

## ***Rambam on Fathers Teaching Their Children to Swim: Synthesis and Commentary in Rambam's Works***

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“A person should do the *mitzvot* and live by them” (*Va-Yikra* 18:5) and not die by them. We can learn from this that the Torah's commandments are not meant to bring vengeance to the world but, rather, compassion, kindness, and peace.”

Maimonides, *Mishneh Torah, Hilkebot Shabbat* (2:3)

I often heard that a father is obligated to teach his children<sup>2</sup> how to swim. When my son turned two, I showed him how to kick and blow bubbles in the pool. A few summers later, he swam in the deep end. I believed that I had fulfilled my duty.

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<sup>1</sup> This article was written to honor the memory of Yehiel Shalom Eliyahu Lehat, an avid swimmer. My thanks to R. Dr. Aaron Adler, R. Asher Benzion Buchman, Mr. Joshua Lazoff, Dr. Judith Bleich, Dr. Marc Herman, R. Yehuda Kamravapour, Mrs. Brigitte Lehat, R. Yaakov Rosenes, R. Dr. Elijah Schochet, and R. Dr. Marc Shapiro for helping me clarify and expand certain ideas, locating and referring me to sources, and for discussing with me many of the points presented in this article. My thanks to my wife, Emmanuelle, for proofreading. Any errors are mine alone.

<sup>2</sup> The Talmud only references a father's obligation to teach his son to swim (see R. Chaim Kanievsky, *Gam Ani Odekha*, vol. 3, ed. Gamliel Rabinowitz, Responsa 9 noted by R. Yonatan Paz, “The Father's Obligation to Teach His Son to Swim” [Hebrew] *Ha-Mayan, Tishrei* 5780, vol. 9, no. 1, p. 138 fn. 30). R. Paz (p. 138) also notes the opinion of R. Pinchas Horowitz in *Hiddushei ha-Makneh, Kid-dushin* 30b s.v. *ela bito mi b-yado*. R. Horowitz explains there that a father is obligated to find a spouse for his daughter and teach her a trade, just like a son. R. Horowitz believes that the Talmud used the word “son” since only boys are obligated to study Torah. However, a father is obligated to teach his daughter other relevant obligations like teaching her a trade. Based on this, R. Horowitz would likely explain that if there is a fatherly duty to teach a child swimming, daughters are also included. My thanks to R. Aaron Adler for referring me to R. Paz's article.

In this essay, I look at how Rambam potentially understood this obligation. I will first present Rambam's position in his *Mishnah Commentary* and provide potential theories for how he came to this ruling. In the second part of this essay, I will analyze why Maimonides lists swimming as a fatherly duty in his *Mishnah Commentary* but omits this obligation in his *Mishneh Torah*.

### Part I: Rambam's *Mishnah Commentary*

Rambam writes in his *Mishnah Commentary* that a father needs to fulfill various duties:

מצות הבן על האב שש מצות ואלו הן למול ולפדותו וללמדו תורה ולהשיאו אשה וללמדו אומנות ולהושיטו בנהר ולמדו לכולם מן הכתובים בראיות שיאריך ביאורם כאן ואין תועלת מרובה בכך כל אלו חייב האב לעשותם לבן.  
There are six obligations placed upon a father. These are: to circumcise him, to redeem him, to teach him Torah, to marry him off, to teach him a trade and to swim in the river. All [six] of these obligations are derived from verses that are explained at length here, but there is little purpose in this. The father is obligated to teach his son all of these.<sup>3</sup>

Rambam rules that a father is obligated to teach his son to swim. He explains that this obligation is derived from a verse though he does not tell us which one. "There is little purpose in this," in bringing proof texts for each *mitzvah* which goes beyond his scope of writing a concise commentary. Rambam, also, does not give us many clues as to how he arrived at this position.

### *Yerushalmi* and *Mekhilta*

To determine how Rambam came to his ruling, let us first explore *Yerushalmi* (*Kiddushin* 19a)<sup>4</sup>:

מצות שהאב חייב לעשות לבנו למול ולפדותו וללמדו תורה ולהשיאו אשה רבי עקיבה אומר אף ללמדו לשוט על פני המים... "ללמדו אומנות" תני רבי ישמעאל "ובחרת בחיים" זו אומנות... רבי עקיבה אומר אף לשוט על פני המים דכתיב "למען תחיה אתה וזרעך."

<sup>3</sup> Hebrew translation by R. Yosef Kapach, *Mishnah im Perush ha-Rambam, Seder Nashim*, p. 197 (*Kiddushin* 1:7).

<sup>4</sup> Many of the potential sources for Rambam's ruling (*Mekhilta d-Rabbi Ishmael, Parashat Bo* (13:13), *Yerushalmi* (*Kiddushin* 19a), *Tosefta, Kiddushin* (1:8), *Kobelet Rab-bah* (9:9), and *Bavli* (*Kiddushin* 29a, 30b) were noted at the beginning of R. Yonatan Paz's article, "The Father's Obligation to Teach His Son to Swim" (Hebrew), p. 132.

Commandments that the father is obligated to do for his son: to circumcise him; redeem him; teach him Torah; teach him a trade; and marry him off. Rabbi Akiva says even to teach him to swim on the surface of the water... “To teach him a trade,” Rabbi Yishmael states that the source for this is *Devarim* (30:19): “And choose life”; this refers to a trade... “Rabbi Akiva says even to teach him to swim on the surface of the water,” as it is written in the verse, “So that you should live, you and your children (*Devarim* 30:19).”

*The Mekhilta d-Rabbi Ishmael, Parashat Bo* (13:13) provides a similar formulation. The *tanna kamma* lists five fatherly obligations, and Rabbi Akiva provides a sixth: to teach the child to swim.

Some<sup>5</sup> suggest that Rambam rules that a father is responsible for teaching his son to swim because this is the opinion of Rabbi Akiva and "הלכה כר"ע מחבירו", “the halakhah follows Rabbi Akiva when he argues with a colleague.”<sup>6</sup> This answer falls in line with a manuscript of Rambam’s *Mishnah Commentary* which quotes, almost word-for-word, Rabbi Akiva’s formulation in the *Yerushalmi*, ולהשיטו על פני המים.<sup>7</sup> We can identify the *Yerushalmi* and the *Mekhilta d-Rabbi Ishmael* as the source for Rambam’s ruling.

However, I do not believe that our investigation should end there. First, many understand הלכה כר"ע מחבירו as not applicable in all circumstances.<sup>8</sup> Second, הלכה כר"ע מחבירו means that the halakhah follows Rabbi Akiva when he argues with a colleague (singular). When Rabbi Akiva argues with multiple colleagues, we follow the majority, יחיד ורבים הלכה כרבים. The *tanna kamma* is often identified as the opinion of the Sages, and we should therefore rule like them against Rabbi Akiva.<sup>9</sup>

<sup>5</sup> See R. Yonatan Paz, “The Father’s Obligation to Teach His Son to Swim” (Hebrew), p. 135.

<sup>6</sup> *Erwin* 46b.

<sup>7</sup> R. Yosef Kapach notes this manuscript in his edition of *Mishnah im Perush ha-Rambam, Seder Nashim*, p. 197 (*Kiddushin* 1:7), fn. 23.

<sup>8</sup> See R. Eliyahu Lerman, *Devar Eliyahu, siman* 86 who explains why Rambam does not rule that הלכה כר"ע מחבירו, in our case. See, also, R. Jacob Ettlinger, *Binyan Tzzyon, siman* 175 where R. Ettlinger explains that Rambam does not believe that the principle הלכה כר"ע מחבירו is foolproof in another case. See, however, Rashi, *Erwin* 46b ad loc.

<sup>9</sup> See R. Aaron Adler, *The Underlying Methodological Principles Behind Maimonides’ Reversals (From His Mishnah Commentary to His Codes)* 1987. Ph.D. Dissertation, p. 202. My thanks to Dr. Marc Herman for providing me with a copy of the dissertation. Cf. R. Gershon Shaul Yom-Tov Heller, *Tosafot Yom Tov, Sanhedrin* 1:4.

We, therefore, need to analyze the *Bavli*, *Tosefta*, and *Kobelet Rabbah*. While investigating these sources, we will try to affirm Rambam's position that the halakhah follows Rabbi Akiva in our case.

### ***Bavli, Kobelet Rabbah, and Tosefta***

The *Tosefta*, *Bavli*, and *Kobelet Rabbah* do not state that a father is obligated to teach his son to swim in the name of Rabbi Akiva. Instead, these sources state the ruling in the name of an alternate, anonymous opinion, the *yesh omrim*. *Tosefta, Kiddushin* (1:8), for example, states:

איזו היא מצות אב על הבן למולו ולפדותו וללמדו תורה וללמדו אומנות ולהשיאו אשה וי"א אף להשיטו בנהר.

What are the father's *mitzvot* toward his son? To circumcise him; redeem him; teach him Torah; teach him a trade; and marry him off. Some say (*yesh omrim*): even to teach him to swim in the river.

The *tanna kamma* lists five fatherly obligations, and the *yesh omrim* provides a sixth: even to teach the child how to swim.

Though we do not often hold like the *yesh omrim* against the *tanna kamma*,<sup>10</sup> with Rambam as our starting guide, I believe that we can examine *Bavli*, *Kobelet Rabbah*, and *Tosefta*, and rule that a father is obligated to teach his child to swim. All three of these sources present our ruling in the name of a *yesh omrim*. However, in their elucidation of the Biblical source, *Bavli* and *Kobelet Rabbah* reveal something fascinating. *Kobelet Rabbah* (9:9) states:

מצוות האב חיב בבנו למולו ולפדותו וגם ללמדו תורה וללמדו אומנות ולהשיאו אשה ויש אומרים אף להשיטו בנהר... ללמדו אומנות מנין שנאמר "ובחרת בחיים" לשא אשה מנין שנאמר "קחו נשים והולידו בנים ובנות וקחו לבניכם נשים" להשיטו בנהר מנין שנאמר "ובחרת בחיים".

*Mitzvot* that a father must fulfill for his son: to circumcise him and to redeem him; also to teach him Torah; and to teach him a trade, and to marry him off. And some say even to teach him to swim in a river... Where do we derive [the obligation] to teach him a trade? From the verse (*Devarim* 30:19), "And choose life." Where do we derive [the duty] to marry him off? From the verse (*Yirmiyahu* 29:6), "Take wives and beget sons and daughters, and take wives for your sons." Where do we derive [the obligation] to teach him to swim in the river? From the verse (*Devarim* 30:19), "And choose life."

<sup>10</sup> See R. Chaim Kanievsky, *Esh ha-Torah, Bereshit, Sh"ut Torat Hayyim*, ed. Zev Aryeh Stiglitz, Jerusalem 5768, p. 234 noted in R. Paz, p. 134, fn. 8.

*Kobelet Rabbah* explains that the source for teaching a child to swim is *Devarim* (30:19): ובחרת בחיים, “and choose life.” Interestingly, ובחרת בחיים, “and choose life,” is also used as the proof text for the trade obligation. Teaching one’s son a profession and how to swim are both classified under the same core obligation, to teach the child “life.” Learning how to swim protects a person from drowning.<sup>11</sup> Learning a trade protects a person from a life of thievery and starvation.<sup>12</sup> They are both life-sustaining skills.<sup>13</sup>

*Barli*, perhaps even more so, indicates that teaching a child a profession and how to swim are parts of the same halakhah. *Barli*, *Kiddushin* 29a, states:

ת”ר האב חייב בבנו למולו ולפדותו וללמדו תורה ולהשיאו אשה וללמדו אומנות וי”א אף להשיטו בנהר.

The Rabbis taught: A father is obligated to circumcise his son, to redeem him, to teach him Torah, to marry him off, and to teach him a trade. And, some say (*yesh omrim*), even<sup>14</sup> to [teach] him how to swim in a river.<sup>15</sup>

The *tanna kamma* says that a father is obligated to instruct his son in an occupation. *Barli* later derives this obligation from a verse in *Kobelet* (9:9), ראה חיים עם אשה אשר אהבת, “See life with the woman you love.”

<sup>11</sup> Rashi (*Kiddushin* 30b) explains that the son might travel at sea and the boat may sink. Without the skill to swim, he may drown.

<sup>12</sup> As Rabbenu Hananel ben Shmuel first explains, learning a trade will allow him to earn money for food and basic needs. Work allows the son to survive and live [*Shitat ba-Kadmonim*, *Kiddushin* 30b]. Rambam explains in his Commentary on *Avot* 2:2 that learning a trade prevents a person from stealing.

<sup>13</sup> See R. Zev Wolf Einhorn, *Perush Maharzu* ad loc., who writes on the words ובחרת בחיים למען תחיה אתה וזרעך, ודורש שבכלל פסוק זה נכלל ג”כ להושיטו בנהר שאף אם יפול במים ר”ל יבחר בחיים שינצל על שיכול לשוט.

<sup>14</sup> Though the word אף can mean “also,” something added to the previous position, it can also mean “even,” something that, without such a statement, would not be evident. Though Rambam on *Shekalim* (1:1) defines אף as “also,” in *Moed Katan* (1:2) he seems to interpret אף as “even”. Cf. R. Shlomo Adani, *Meleket Shlomo*, *Mo’ed Katan* (1:2), s.v. *V-yotzim af al kil’ayim* and *Shekalim* (1:1), s.v. *V-yotzim af al kil’ayim*.

<sup>15</sup> The Talmud states: להשיטו במים, to swim in the water. However, Rashi appears to correct the text to, להשיטו בנהר, to swim in a river. R. Meir Friedman (*Matai Meir*, *Masekhet Kiddushin*, 115) suggests that Rashi possibly does this to align the text with *Kiddushin* 30b and *Tosefta*, *Kiddushin* (1:8).

“See life”—a trade— “with the woman you love.”<sup>16</sup> *Bavli* then explains the reason why a father is obligated to teach his son to swim:

מאי טעמא? חיותיה הוא.

What is the reason [that a father is obligated to teach his son to swim]? It is his life.

Swimming is also his “life.” Like a trade, swimming is derived from the *ראה חיים* verse. This is how R. David Luria<sup>17</sup> explains the *Bavli*. R. Nachum Rabinowitz suggests that this is how Rambam, in his *Commentary*, understood it as well. As Rambam writes, “All [six] of these obligations are derived from verses that are explained at length here.” Since *Bavli* never explicitly mentions a proof text for swimming, we can surmise that Rambam, like R. Luria, believed that the textual source for teaching a child to swim is the same as teaching him a trade, *ראה חיים*.<sup>18</sup>

Based on what we have analyzed so far, in *Bavli* and *Kobelet Rabbah*, Rambam seems to have held that the *yesh omrim* explains the *tanna kamma*.<sup>19</sup> The *tanna kamma* states that a father is obligated to teach his son a trade. The *yesh omrim* explains that this obligation extends to swimming instruction since both duties are part of the halakhah to teach the child “life.”

In addition to the logical similarity and the shared sources, a close reading of *Bavli* may indicate that swimming is an extension of the trade obligation. First, unlike the *Yerushalmi*, *Tosefta*, *Kobelet Rabbah*, and *Mekhilta d-Rabbi Ishmael*, *Bavli*’s *baraita* presents the father’s obligation to train his child professionally immediately before the duty to teach him to swim. *Yerushalmi*, *Tosefta*, *Kobelet Rabbah*, and *Mekhilta d-Rabbi Ishmael* write the

<sup>16</sup> *Kiddushin* 30b. *Bavli* there explains that just as a father is obligated to help his son get married, so too he is obligated to teach him a trade. The Gemara states that the “woman whom you love” can also metaphorically be a reference to Torah study.

<sup>17</sup> *Hagahot ha-Radal*, *Oz Ve-hadar*, *Yalkut Me'arshim*, 30b, s.v. *Hayuto Hi*; see, also, R. Yehezkel Abramsky, *Hazon Yehezkeel*, *Tosefta*, *Kiddushin* (1:8), s.v. *Afl-basito b-nahar* [These sources were noted by R. Yonatan Paz, p. 135]. It should be noted that these sources do not explicitly state that the *yesh omrim* explains the *tanna kamma*, like this author.

<sup>18</sup> R. Nachum Rabinowitz, “Learning to Swim and Taking a Trip During the Three Weeks (Hebrew),” *Shu”t Siach Nachum, Ma’ale Adumim* <<http://www.ybm.org.il/Admin/uploaddata/LessonsFiles/Pdf/9570.pdf>>.

<sup>19</sup> Cf. R. Gershon Shaul Yom-Tov Heller, *Tosafot Yom Tov, Bikkurim* 3:6 and R. Yosef Kapach’s note in *Mishnah im Perush ha-Rambam, Seder Zera’im*, p. 249 (*Orlah* 1:1), fn. 3. See R. Gershon Shaul Yom-Tov Heller, *Tosafot Yom Tov, Hullin* 8:4 where he states that R. Akiva explains the *tanna kamma* even when the Mishnah phrases his opinion as *רבי עקיבה אומר*.

first five fatherly duties in chronological order. First, a father should circumcise his son. A few weeks after he should redeem him. Later, when the child starts to speak, he should instruct him in Torah.<sup>20</sup> As the son matures, he should teach him an occupation, and then help him marry. As Rambam (MT *Hilkehot De'ot* 5:11) writes: “Reasonable people will first choose a trade to support themselves and afterward buy a house and afterward marry.”<sup>21</sup> *Bavli*, on the other hand, flips the last two obligations around (“marry him off and teach him a trade”). *Bavli*’s *baraita* perhaps does this so that the trade obligation can immediately precede the swimming duty, thereby indicating that the latter is an extension.<sup>22, 23</sup>

### Sources That Do Not Appear to Align with Rambam

*Yalkut Shimoni* and *Midrash Tanhuma*,<sup>24</sup> at first glance, do not align with Rambam’s position. *Yalkut Shimoni*, *Shelah* (Remez 745:2) states:

האב חייב בבנו בחמשה דברים למולו ולפדותו וללמדו תורה וללמדו אומנות ולהשיאו אשה.

A father must fulfill five obligations for his son: to circumcise him, redeem him, teach him Torah, teach him a trade, and marry him off.

*Midrash Tanhuma*, *Shelah* (*siman* 14), as well, only lists these five duties. Still, Rambam could interpret these sources as we explained previously. The duty to teach a child to swim is included in the *Yalkut Shimoni* and *Midrash Tanhuma*’s trade obligation. This interpretation veers from a simple one but can fit with Rambam’s position.<sup>25</sup>

<sup>20</sup> Maimonides, *Mishneh Torah*, *Talmud Torah* 1:6.

<sup>21</sup> See R. Yosef Karo, *Kesef Mishneh* ad loc. and the source he quotes for Rambam’s ruling, *Sotah* 44a.

<sup>22</sup> Cf. R. Asher Miller, *Korban Asher* (5721), p. 73.

<sup>23</sup> In addition, unlike other cases in *Bavli* where the *yesh omrim* and the *tanna kamma* are mentioned together [i.e., *Hullin* 13a–b], *Kiddushin* 30b never states that the *yesh omrim* and the *tanna kamma* disagree.

<sup>24</sup> These sources were noted by R. Saul Lieberman in *Tosefta Ki-fshutah*, vol. 8, *Seder Nashim* (*Kiddushin*). New York: The Jewish Theological Seminary of America, 5733, p. 924 fn. 21.

<sup>25</sup> See *Mishnah im Perush ha-Rambam*, ed. Yosef Kapach, *Seder Tabarot*, *Niddah* 3:2 where Rambam writes, ואף על פי שפשוט משנה זו שר' מאיר הוא המחמיר וחכמים מקילים, אלא שכבר נתבארה דעתם בתוספתא כמו שאמרתי לך. In other words, Rambam felt that sources like the *Tosefta* can lead him to interpret other sources not according to the *peshat*.

## Rambam's Use of Sources

In the beginning of his *Mishnah Commentary*, Rambam poetically describes how he constructed his work:

אני משה בן מימון הספרדי בניתיהו, ומים התלמוד משיתיהו, ומספיר התוספתא  
יסדתיהו, ובפוך ספרא רבצתיהו, ומזהב ספרי טחתיהו, ובדברי הגאונים סמכתיהו,  
וכנסף הצרוף זקקתיהו, ובמעבה לבי יצקתיהו.

I, Moshe ben Maimon, the *Sefardi* built this [*Commentary*]. From the sea of the Talmud [*Bavli* and *Yerushalmi*]<sup>26</sup>, I have drawn it. From the sapphire, the *Tosefta*, I based it. With the emeralds of the *Sifra*, I embedded it.<sup>27</sup> And with the gold-plating of the *Sifrei*, I overlaid it. With the words of the *Geonim*, I bolstered it. And, as silver is smelt, I refined it.<sup>28</sup> And into the depths of my heart I have poured it.<sup>29</sup>

Rambam based his *Commentary* on both *Talmuds*, *Tosefta*, *Sifra*, *Sifrei*, and the words of the *Geonim*. Rambam then clarified these sources to come to a suitable interpretation, “as silver is smelt, I refined it.” To reach his interpretation of a particular Mishnah, Rambam may align *Bavli* with *Yerushalmi*, insert a *Sifrei* or *Sifra* for context, or base his interpretation on a *Tosefta*.

I believe we can theorize how Rambam came to his ruling on swimming. *Mekhilta* and *Yerushalmi* state that Rabbi Akiva is the one who rules that a father is obligated to teach his child to swim. Rambam may have held this position because הלכה כר"ע מחבירו, the halakhah follows Rabbi Akiva when he argues with a colleague.<sup>30</sup> Additionally, just like a father is obligated to teach his son a trade, he must also teach him to swim. These two duties fall under the same core obligation—a father must teach his child life-sustaining skills. To demonstrate this point, *Kohelet Rabbah* and *Bavli* use the same proof text for the swimming and trade obligation. Finally, the very order in which *Bavli*'s *baraita* presents the fatherly duties indicates that training a child to swim is an extension of the trade obligation. In other words, rather than arguing, the *yesh omrim* explains the *tanna kamma*. None of these sources explicitly rule that a father is obligated to

<sup>26</sup> See R. Saul Lieberman, *Introduction to Hilkhot Yerushalmi of Rambam*. New York: JTS Press, 1995, p. 14.

<sup>27</sup> Based on *Yeshayahu* 54:11. R. Nechemia Rot noted this in his edition of Rambam's *Introduction to Mishnah Commentary*, *Machon Yerushalayim* 5765, p. 2, fn. 28.

<sup>28</sup> Based on *Tehillim* 12:7 and *Melakhim* (1) 7:46. R. Nechemia Rot noted this in *ibid.*, p. 3, fn. 31, 32.

<sup>29</sup> Hebrew translation from R. Yosef Kapach, *Mishnah im Perush ha-Rambam, Seder Zera'im, Introduction*, p. 1. English translation based on R. Zvi Lampel, *Maimonides' Introduction to the Talmud*. New York: The Judaica Press, 1987, p. 24.

<sup>30</sup> *Erwin* 46b.



teach his child swimming, and one can question our suppositions. However, I do think that we can see how Rambam may have “smelt” these sources and reached his conclusion.

### An Alternate Explanation

There is also the possibility that Rambam came to his ruling in light of *Ḥazal*’s general affirmation of life-sustaining behaviors. The Talmud recommends when and how much a person should eat as well as what type of foods promote healing and prolong life.<sup>31</sup> The Talmud even recommends when someone should avoid sleeping<sup>32</sup> and how much one should walk before a meal.<sup>33</sup> Rambam understands these statements as principles of health. As he writes in *Hilkehot De’ot* 4:1:

הואיל והיות הגוף בריא ושלם מדרכי השם הוא שהרי אי אפשר שיבין או ידע דבר מידיעת הבורא והוא חולה לפיכך צריך להרחיק אדם עצמו מדברים המאבדין את הגוף ולהנהיג עצמו בדברים המברין והמחלימים ואלו הן לעולם לא יאכל אדם אלא כשהוא רעב...

Maintaining a healthy body is one of the ways of G-d, for it is impossible to understand and have any knowledge of the Creator when one is sick. A person should therefore distance himself from things that cause bodily harm and accustom himself to practice behaviors that promote health and recovery. These are: A person should not eat unless he is hungry...

For Rambam, body and soul are intertwined. One cannot live a spiritual life devoted to knowledge of G-d without physical health.<sup>34</sup> Healthy habits fall under the category of “life”<sup>35</sup> just like learning to swim and practicing a profession. Each of these behaviors is life sustaining and protects from harm. Each of these keeps one’s body intact so that a person

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<sup>31</sup> See *Gittin* (70a) and *Berakhot* (62b). See R. Menachem Mendel Krakowski, *Avodat Ha-Melekh on Mishneh Torah, De’ot* (4:1–2) who notes these sources.

<sup>32</sup> See *Sukkah* (26b). See R. Krakowski, *Avodat Ha-Melekh on Mishneh Torah, De’ot* (4:5) who notes this source.

<sup>33</sup> See *Berakhot* (23b). See R. Krakowski, *Avodat Ha-Melekh on Mishneh Torah, De’ot* (4:2) who notes this source and explains how Rambam may have interpreted *Berakhot* (23b). R. Krakowski also mentions *Shabbat* (41a) as a possible source for Rambam’s ruling.

<sup>34</sup> See R. Krakowski, *Avodat Ha-Melekh on Mishneh Torah, De’ot* (4:1) who notes *Midrash Tanhuma, Va-Yikra* (6:1) as Rambam’s source. The *Midrash Tanhuma* states: “שאי אפשר לגוף להיות בלא נפש שאם אין נפש אין גוף ואם אין גוף אין נפש”.

<sup>35</sup> See R. Yirmiyahu Low, *Divrei Yirmiyahu on Mishneh Torah, De’ot* 4:1 who writes, “ודרשו וחי בהם הכל עבור שמירת הגוף מביא לשמירת הנפש”.

can continue practicing the commandments. Considering this, we can accept that the *tanna kamma* and the *yesh omrim* disagree. The *tanna kamma* holds that a father is not obligated to teach his child to swim while the *yesh omrim* states that he is. Considering *Hazaḥal's* advocacy, mentioned throughout the Talmud, for practicing life-sustaining behaviors, Rambam rules like the *yesh omrim*.<sup>36</sup>

## Part II: Rambam's *Mishneh Torah*

Though Rambam in his *Mishnah Commentary* explicitly states that a father is obligated to teach his son to swim, he never mentions this duty in his *Mishneh Torah*. Several authorities discuss this apparent variance.

### Rabbi Jacob Ettlinger

Let us first analyze how R. Jacob Ettlinger (1798–1871), Rav of Altona and author of *Arukh la-Ner*, analyzed this question. In his book of responsa, *Binyan Tziyon*, in *siman* 125, R. Ettlinger writes as follows:

ב"ה אלטאנא, בחדש כסליו תר"י לפ"ק. לק"ק מאסבאך  
**נשאלתי** – למה השמיט הרמב"ם הלכה ברורה שחייב אדם לישא אשה לבנו וללמדו אומנות וי"א אף להשיטו בנהר והיא גמרא ערוכה קידושין (דף כ"ט) ושלשה מצות הראשונים הנזכרים שם הביא כל א' ואחד במקומו וביותר צ"ע מאחר שהביא בפירושו למשניות אילו השש מצות.  
**תשובה** – לישא אשה לא השמיט הרמב"ם דכן כתב בה' איסורי ביאה (פ' כ"א ה' כ"ה) מצות חכמים שישא אדם בניו ובנותיו סמוך לפרקן והיא הברייטא דסנהדרין (דף ע"ו) ובה נכלל המצו' שחייב להשיא לבנו אשה רק שבברייטא זו מבואר יותר מתי צריך להשיא אשה לבנו גם שמצו' על האב ללמד בנו אומנות אף שכעת לא ראיתי להרמב"ם שכתב בפ' כן מכ"מ לא השמיטה והביאה לפסק הלכה בה' רוצח (פ' ה' ה' ה') שכתב שם אבל אם ייסר בנו כדי ללמדו תורה או חכמה או אומנות ומת פטור ע"ש שמחלק בין כבר למדו אומנות אחרת או לא והיינו ע"פ גמרא דמכות (דף ט') דבלא גמיר מלאכה אחריתי מצו' קעביד ואם השמיט הרמב"ם הך דיש אומרים דגם להשיטו בנהר בזה אין תימה דפסק כת"ק דג"כ לא חשיב הך.  
 קטן יעקב

<sup>36</sup> This is similar to *Hullin* 13a–b where the *tanna kamma* and the *yesh omrim* disagree, yet Rambam, in his *Commentary* to *Hullin* (1:2), rules like the *yesh omrim*. Rambam possibly ruled like this in light of the *Tosefta*, *Hullin* (2:6) which does not list a disagreeing opinion.

In the Holy City of Altona,<sup>37</sup> in the Month of Kislev 5610<sup>38</sup>

[Responding] to the Holy City of Mosbach<sup>39</sup>

**I was asked:** Why did Rambam omit explicit halakhot that a man is obligated to marry off his son, teach him a trade, and some say (*yesh omrim*) even to (teach) him to swim in the river? The Gemara in *Kiddushin* (29a) mentions (these *mitzvot*). The first three fatherly duties (circumcision, redemption, and teaching him Torah) that are mentioned (in the Talmud) are brought (by Rambam in his *Mishneh Torah*) each in their place. This question requires even more research since (Rambam) in his *Mishnah Commentary* mentions all six *mitzvot*.

**Answer:** Rambam did not omit the obligation to marry him off. He writes in *Hilkehot Issurei Biah* (21:25), “It is a commandment of the Sages that a man should marry off his sons and daughters when they are young.” This is found in a *baraita* in *Sanhedrin* (76b). Included in this is the fatherly obligation to marry off a son. However, the *baraita* (in *Sanhedrin*) explains even the time when a man should marry off his son. The *mitzvah* to teach his son a trade is also (found in the *Mishneh Torah*). Though at this time, I did not find where Rambam wrote this explicitly, nevertheless, he did not omit (the halakhah). A final ruling is issued in *Hilkehot Rotzeah* (5:5), “...but if he reprimands his son when teaching him Torah, wisdom, or a trade and he dies, the father is exempt (from having to travel to a city of refuge).” See there where Rambam makes a distinction between whether or not he already taught him one trade. This (distinction) is based on the Talmud in *Makkot* (8b) that there is a *mitzvah* (to teach a son a trade when) he has not learned a skill already.<sup>40</sup> And, it poses no problem that Rambam omitted the *yesh omrim* that one is also obligated to teach his son to swim. There is no question. This is because Rambam rules like the *tanna kamma* who does not consider this [an obligation].

Katan Jacob

R. Jacob Ettlinger was asked: where are the father’s *mitzvot* to marry off his son, teach him a trade, and instruct him in swimming listed in the *Mishneh Torah*? The *Gemara* in *Kiddushin* lists these obligations, yet Rambam appears to omit them. R. Ettlinger explains that Rambam does mention the obligation to marry off a son and teach him a trade. Whether written explicitly or indirectly, Rambam ruled that these two obligations are part of a father’s duty. Swimming, however, is different. Rambam in

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<sup>37</sup> An urban borough in the modern-day city-state of Hamburg, Germany.

<sup>38</sup> Late October, early November 1849.

<sup>39</sup> A settlement in modern-day southern Germany.

<sup>40</sup> See *Makkot* 8b for more details.

his *Mishneh Torah* rules like the *tanna kamma* that a father is not obligated to teach his children to swim.<sup>41</sup>

I was confused after first reading *Binyan Tzzyon*, *siman* 125. R. Ettlinger should have addressed the glaring contradiction that he set up. Why does Maimonides list swimming as a fatherly responsibility in his *Commentary*, but, as R. Ettlinger explains, rules that there is no such duty in his *Code*? R. Ettlinger should have addressed this striking variance.

I would like to propose two solutions to this question. First, like some before him,<sup>42</sup> R. Ettlinger perhaps held that Maimonides changed his mind between writing his *Mishnah Commentary*, which he mostly wrote in his twenties, and his *Mishneh Torah*.<sup>43</sup> However, R. Ettlinger did not want to draw attention to this reversal. As R. Ettlinger writes, “One should find merit in the words of great ones like this<sup>44</sup> and should not attribute it to a mistake.”<sup>45</sup> Though Rambam invited readers to challenge his rulings,<sup>46</sup> R.

<sup>41</sup> R. Ettlinger posits that we can learn from Rambam’s omissions. Since he omitted the swimming duty from his *Mishneh Torah*, he did not view it as an obligation. It should be noted that R. Ettlinger is not ruling practically in *Binyan Tzzyon*, *Siman* 125. I believe this for two reasons. First, the questioner never asked what to do in a specific case. Second, in his answer, R. Ettlinger analyzed Rambam on Rambam’s terms, without reference to other halakhic sources. Cf. R. Jacob Ettlinger, *Binyan Tzzyon*, *siman* 55: “ופסק הרמב”ם כן...ומכ”מ להלכה כיון דכל שאר פוסקים ס”ל...פסק הטוש”ע כוותייהו ולא חש לדעת הרמב”ם.”

<sup>42</sup> See, for example, R. Gershon Shaul Yom-Tov Heller, *Tosafot Yom Tov, Mo’ed Katan* 1:7, s.v. *sh-nivul hu la*.

<sup>43</sup> Cf. Introduction, *Hilkebot Yerushalmi of Rambam*, p. 12 where R. Saul Lieberman explained that Rambam edited the *Mishnah Commentary* throughout his life. See, also, cf. R. Isadore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)*, Yale University Press, 1980, p. 17 and Dr. Marc Herman, “Two Themes in Maimonides’ Modifications to His Legal Works,” *Journal of the American Oriental Society*, vol. 139, no. 4, p. 907–910.

<sup>44</sup> R. Ettlinger is referring to the *Maharsha* (R. Shmuel Eidels) in this context, but his comment can equally apply to Rambam or any past Sage. When R. Ettlinger does note that a past authority erred, it is done with great respect.

<sup>45</sup> R. Jacob Ettlinger, *Binyan Tzzyon ha-Hadasot*, *siman* 148.

<sup>46</sup> Maimonides, *Mishnah Commentary*, *Uktzin* 3:12 [”ומי שימצא בו טעות...”]. [This source was noted by R. Yosef Marcus in his article “*Shiur* #04: The Commentary of Rambam on the Mishnah (Part 1),” *Har Etzion Virtual Beit Midrash* <<https://www.etzion.org.il/en/halakha/studies-halakha/approaches-pesak/commentary-Rambam-mishna-part-1>>]; It should be noted that Rambam also invited readers to find mistakes in his *Mishneh Torah* [See R. Isadore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)*, p. 37–41].

Ettlinger, out of respect, did not identify the discrepancy.<sup>47</sup> This seems to be the most likely answer. However, I would like to suggest a second theory.

R. Ettlinger possibly did not address the “contradiction” between the *Mishnah Commentary* and the *Mishneh Torah* because he believed that there is no contradiction. Variances between these works can be attributed to their differing purposes. R. Ettlinger believed that Rambam based his entire *Mishneh Torah* on the “*Bavli* and *Yerushalmi*, as well as the *Sifra*, *Sifrei*, and *Tosefta*.”<sup>48</sup> Rambam, in his *Mishnah Commentary*, will also analyze these sources but will occasionally only comment on the Mishnah based on its corresponding Gemara in the *Bavli*. In one place, R. Ettlinger writes:

אמת הוא שפי' הרמב"ם הוא כס"ד שם... שהרבה פעמים מצינו גם בפי' רש"י כזה  
שמפרש במשנה כהס"ד אם הפי' הוא פשוט יותר.

In truth, the *Mishnah Commentary* is like the *salka daita* there... there are many places where even Rashi explains like this—he explains the Mishnah like the *salka daita* if the explanation is more straightforward.<sup>49</sup>

According to R. Ettlinger, Rambam will sometimes<sup>50</sup> explain the Mishnah like the corresponding *sugya* without taking into account other sources. If Rambam comments on a Mishnah in *Kiddushin (Bavli)*, for example, he will only reach conclusions based on *Kiddushin (Bavli)* without trying to understand how it fits into a similar *sugya* elsewhere. He will do

<sup>47</sup> I have yet to see a case where R. Ettlinger explicitly wrote that Rambam made a mistake or retracted his position. R. Ettlinger in *Binyan Tzzyon ha-I'Hadashot, siman 77* only questions his own explanation of the *Mishnah Commentary*, not the commentary itself ["ומכ"מ אר"ש הונה לי בצ"ע"].

<sup>48</sup> Maimonides, *Mishneh Torah, Introduction*.

<sup>49</sup> R. Jacob Ettlinger, *Binyan Tzzyon ha-I'Hadashot, siman 76* and first printed in *Shomer Tzzyon ha-Ne'eman*, 123. See, also, *Arukh la-Ner, Makkot 16a s.v. loke v-eino meshaleah* [These last two sources were noted in R. Yehuda Horovitz's edition of the *Binyan Tzzyon* (vol. 2), Jerusalem Academy Publications, 2002, p. 257 and (vol. 1), p. 300 fn. 21]. My thanks to Dr. Marc Shapiro and R. Yaakov Rosenes for helping me locate this edition.

<sup>50</sup> Other times, the *Mishnah Commentary* explains the *Mishneh Torah*. In *Binyan Tzzyon, siman 41*, for example, R. Ettlinger uses the *Mishnah Commentary* to determine which *Bavli* text Maimonides possessed as well as which *Mishneh Torah* commentator is correct. As he writes: "ואף שכס"מ כתוב דדוחק הוא לומר שהרמב"ם גרס גרסא שאינה בנוסחתינו במכ"ה לא ראה הפי' המשניות".

this “if the explanation is more straightforward.”<sup>51</sup> He refers to explanations reached after only analyzing the corresponding tractate as the *salka daita*.

R. Ettlinger possibly felt that Rambam, in his *Mishnah Commentary* here, only based himself on *Kiddushin* (*Bavli*). As mentioned previously, the Babylonian Talmud, *Kiddushin* (29a, 30b), perhaps more so than other sources, indicates that a father is obligated to teach his son to swim. Unlike *Yerushalmi*, *Tosefta*, *Kobelet Rabbah*, and *Mekhilta d-Rabbi Ishmael*, *Bavli*’s *baraita* presents the father’s obligation to train his child professionally immediately before the duty to teach him to swim, indicating that the latter is an extension. When viewing all the sources in total, however, Rambam believed that a father is not obligated to teach his son swimming. Reading the *Bavli* in light of these other sources, the *tanna kamma* argues with the *yeshev omrim*.<sup>52</sup> The *tanna kamma* states that there are five fatherly duties. The *yeshev omrim* adds a sixth: to teach a child to swim. Rambam rules in *Mishneh Torah* like the *tanna kamma*, as R. Ettlinger writes.<sup>53</sup>

<sup>51</sup> See, also, R. Ettlinger’s *Binyan Tziyon ha-Hadasot*, *siman* 77, where he says that in choosing between two explanations, Rambam will write the simpler one [כתב [הרמב"ם פי' זה הפשוט יותר]. R. Ettlinger is saying that Rambam will choose the explanation that raises the least amount of difficulty from point A to point B. In the context of *Binyan Tziyon ha-Hadasot*, *siman* 77, Rambam chose to explain the Mishnah like Rav Huna in the name of Rav since the Gemara (*Yevamot* 60a) only challenges his explanation. Rambam would run into several more difficulties if he chose to explain the Mishnah like Rav Ashi. First, Rambam would need to assume the halakhah follows Rabbi Eliezer ben Yaakov. Second, he would run into the much larger textual question posed against Rabbi Eliezer ben Yaakov on *Yevamot* 60a.

<sup>52</sup> See, for example, the *Yerushalmi* where Rabbi Akiva uses a unique source for teaching a child to swim: “למען תחיה אתה וזרעך” — So that you should live, you, and your children.” The source for professional training, on the other hand, is derived from a different part of the verse: “ובחרת בחיים”, and choose life.”

<sup>53</sup> I would prefer not to read R. Ettlinger this way, as this approach does not fall in line with recent manuscript evidence. R. Ettlinger may have simply been stating that Rambam, in his *Commentary*, sometimes *explains* the Mishnah in light of the corresponding *sugya*. Rambam, however, will never rule against the halakhah in his *Mishnah Commentary*. As R. Aaron Adler explained [Email Conversation, June 2021]: “The fact is that Rambam constantly returned to his *Mishnah Commentary* manuscripts to correct/append his original text, which contained his early opinions on the subjects. He clearly wanted readers of the *Mishnah Commentary* to get the “bottom line” on any subject discussed. Hence, he cared to constantly update the material... whatever Rambam wrote in the *Mishnah Commentary* at any stage—באשר הוא שם—it was a final halakhic decision.” The two examples quoted in *Binyan Tziyon Ha-Hadasot*, *siman* 76 show Rambam *explaining*

## Rabbi Nachum Eliezer Rabinowitz

Let us now analyze the approach of R. Nachum Eliezer Rabinowitz (1928–2020), Rosh Yeshivah of Birkat Moshe in Ma'ale Adumim and author of *Yad Pesbubah* on *Mishneh Torah*. In a responsum addressing swimming during the three weeks, R. Rabinowitz first analyzes Rambam's position on our topic. R. Rabinowitz recognizes a variance between Rambam's *Mishnah Commentary*, which rules that a father is obligated to teach his child to swim, and his *Mishneh Torah*, which omits such a ruling. However, he tries to reconcile this apparent contradiction by stating that Rambam hinted at this duty in his *Code*.

R. Rabinowitz believed that Rambam derived the swimming obligation from the same source as teaching him a trade, ראה חיים. Swimming can be seen as a type of trade. As R. Rabinowitz writes:

החיוב להשיטו בנהר אף הוא נלמד מן הכתוב 'ראה חיים', ודינו שווה לאומנות, ושמא השחייה במים אף היא נקראת אומנות.

The obligation [to train a child] to swim is also derived from the verse “ראה חיים, see life.”<sup>54</sup> The law is equal to the trade obligation, and perhaps swimming can even be referred to as a trade.<sup>55</sup>

In other words, swimming can be used to support oneself. Swimming is needed if one is a fisherman, in the navy, or shipping at sea. Swimming is limited to a professional context and is therefore naturally derived from ראה חיים as well. R. Rabinowitz continues:

ראה ברמב"ם (הל' רוצה ושמירת נפש ה, ה) בדין האב המייסר את בנו ללמדו תורה או אומנות ומת תחת ידו, שפטור מגלות מפני שהיה עסוק במצוה; אבל אם

the Mishnah like the corresponding tractate. Rambam comments on *Makkot* (3:4) and *Hullin* (12:4). These *Mishnayot* are the same; however, Rambam's comments are different. On *Makkot* (3:4), Rambam explains Rabbi Yehudah's position. His comments on Rabbi Yehudah add clarity to *Makkot* (3:4) and, as R. Ettlinger suggests, flow from the corresponding Gemara. On *Hullin* (12:4), though, Rambam omits explaining Rabbi Yehudah since commenting that Rabbi Yehudah holds a *lav sh-nitak l-asah* gets *malkut* would bewilder readers who look at the corresponding Gemara alone. Rambam is not making a halakhic point, but rather an explanatory choice. Cf. R. Chaim Hezekiah Medini, *Sdei Hemed* (vol. 9), *Sh"ut Divrei Hakhamim*. New York: Avraham Yitzhak Friedman, 5722, p. 140–141 (*Kellali Ha-Poskim* 8:1) [This source was noted in R. Yehuda Horowitz's edition of *Binyan Tziyon* (vol. 1), p. 300 fn. 21].

<sup>54</sup> R. Rabinowitz bases his opinion on Rabbenu Hananel ben Shmuel [*Shitat ha-Kadmonim*, *Kiddushin* 30b], a student of Rambam.

<sup>55</sup> R. Nachum Rabinowitz, “Learning to Swim and Taking a Trip During the Three Weeks (Hebrew),” *Shu"t Siakh Nachum, Ma'ale Adumim* <<http://www.ybm.org.il/Admin/uploaddata/LessonsFiles/Pdf/9570.pdf>>.

היה "ללמדו אומנות אחרת שאינו צריך לה" – גולה על ידו. מעתה הוא הדין, אם לימד את בנו אומנות המפרנסת את בעליה בלי לרדת לים ולהפליג בספינה, כי אז אין צורך ללמדו שחייה במים הואיל שזו כאומנות אחרת שאינו צריך לה. אבל אם לימדו אומנות המזיקה אותו לנסוע בנהרות ובים, הרי להשיטו במים כלול באומנות, ובלעדי שילמדנו שחייה לא קיים את המצוה ללמדו אומנות. ועדיין הדבר צריך תלמוד.

One must analyze Rambam's words where he discusses a father who reproves his son while teaching him Torah or a trade, and he [accidentally] dies under his hand (*MT, Hilkebot Rotzeah U-Shmirat Nefesh* 5:5). In that case, the father is exempt from exile because he is involved in a *mitzvah*, but if "he teaches him another trade that he does not need," then he must go into exile. From here we can understand the law [that a father does not need to teach his child swimming] if the father teaches him a profession where the son does not need to travel by sea or ship to support himself. The reason he does not need to teach him swimming, in this case, is because this is considered another trade that is not necessary [for earning a living]. However, if a father teaches his son a trade where he must travel by river or sea, then swimming is part and parcel of his occupation. If he does not instruct him to swim, the father will not fulfill the *mitzvah* of teaching him a trade. This matter still requires further analysis.

R. Rabinowitz limits the swimming obligation to cases where the son will be working in a maritime profession. He views the obligation solely from a professional context. R. Rabinowitz acknowledges that this is not a perfect solution. He possibly felt this way since Rambam writes that swimming is one of the six obligations, not a subset of the trade duty.

### **Rabbi Aaron Adler**

Let us now turn to the position of R. Aaron Adler, author of *Al Kanfei Nesharim: Mehkarim be-Sifrut ha-Hilchatit shel Ha-Rambam* and community Rav in Israel. In an email correspondence, I presented Rambam's variance on swimming. R. Adler answered as follows:

Rambam accepted the parental obligation to teach one's son to swim. For sure, Rambam was not concerned about his son winning a gold medal at the Olympics. Swimming, to Rambam, meant "life-saving" techniques—for oneself and others. Beyond Torah study, *Brit*, and *Pidyon ha-Ben*, the *baraita* [*Kiddushin* 29a] includes marriage and profession [אומנות]. This means that part of parental educational responsibility is to see to it that the son is prepared to live a proper self-sustaining life...



Regarding “swimming,” Rambam—in the *Mishnah Commentary*—has his eye on the *sugya* [as he states in his Introduction that the *Commentary* will serve as an introduction to one’s Gemara studies, as well as review the Gemara already studied]. Therefore, he explicitly mentions “swimming.” However, in *Mishneh Torah*, all of the other parental obligation items are spread out to their relevant addresses. Accident prevention for loss of life is a dominant theme in הלכות רוצח as well as in הלכות שבת פרק ב. “Swimming” is a detail amongst multitudes of abilities to prevent loss of life. It need not be specifically singled out.<sup>56</sup>

Rambam believes that a father is obligated to teach his son to swim since it is a life-sustaining skill. Rambam specifies the swimming duty in his *Mishnah Commentary* because “he has his eye” on the corresponding Gemara. In *Mishneh Torah*, Rambam synthesizes life-sustaining responsibilities together. The swimming obligation can be deduced from the general premise of *Hilkebot Rotzeah U-Shmirat Nefesh* (11) and *Hilkebot Shabbat* (2) which emphasizes protecting life.

## Jumping Off

Taking R. Adler’s lead, we may find a hint for water safety in *Mishneh Torah*. Rambam (*MT, Hilkebot Rotzeah U-Shmirat Nefesh* 11:4) writes:

אחד הגג ואחד כל דבר שיש בו סכנה וראוי שיכשל בה אדם וימות. כגון שהיתה לו באר או בור בחצרו בין שיש בו מים בין שאין בו מים חייב לעשות חליא גבוהה עשרה טפחים. או לעשות לה כסוי כדי שלא יפל בה אדם וימות. וכן כל מכשל שיש בו סכנת נפשות מצות עשה להסירו ולהשמר ממנו ולהזהר בדבר יפה יפה. שנאמר "השמר לך ושמר נפשך". ואם לא הסיר והניח המכשולות המביאין ליד סכנה בטל מצות עשה ועבר ב"לא תשים דמים".

The same duty of a roof (where one must create a guardrail so that no one falls), applies to any matter which is dangerous where a person will stumble and die. For example, people who have a well or a pit in their courtyard, whether it contains water or not, are obligated to create a partition ten cubits high or make a covering so that no one falls in and dies. So too, for any obstacle which causes danger to life, it is a positive *mitzvah* to remove [the obstacle], to be watchful of it, and remain very, very vigilant in this matter. As the verse writes, “Be careful and watch your souls” (*Devarim* 4:9). If one does not remove [the obstacle] and lets the danger remain, he nullifies a positive commandment as well as the negative one of “not causing blood” (*Devarim* 22:8).

<sup>56</sup> Email correspondence, June 2021.

Similar to the obligation to create a guardrail that prevents people from falling (*ma'akeh*), one is responsible to protect oneself and others from any common life-threatening hazards.<sup>57</sup> Rambam states that it is a positive commandment להסירו, to remove the obstacle—whether it be wild dogs or rickety ladders<sup>58</sup> and "ולהשמר ממנו ולהזהר בדבר יפה יפה", be watchful of it, and remain very, very vigilant in this matter,"—develop behaviors and maintain a state of awareness to prevent danger.

To argue this point further, let us analyze other places in *Mishneh Torah* where Rambam uses the words להשמר. In *Hilkebot Nizkei Mamon* 7:1, Rambam rules:

שור שקשרו בעליו במוסרה ונעל בפניו כראוי ויצא והזיק אם תם הוא משלם חצי נזק ואם היה מועד פטור שנאמר "ולא ישמרנו" הא אם שמרו פטור ושמור הוא זה.  
The following law applies when an owner ties up his ox with a rope and appropriately locks him up [in a corral], yet the ox escapes and damages. If the ox is *tam* he must only pay half the damages. If the ox is *mu'ad* the owner is exempt. This is because the verse writes [by a *mu'ad* that the owner is only responsible when he did not watch the animal] as the verse states, "And he did not watch it" (*Shemos* 21:36). The implications being that if he did watch the ox he would be exempt. [In this case, the ox] was watched.

Rambam defines שמר, as proactively preventing damage. In this case, שמר means restraining the wild ox with a rope and appropriately locking it in a corral. In *Hilkebot Nizkei Mamon* 2:17–18, Rambam uses the word שמר similarly:

<sup>57</sup> See *Meiri* on *Bava Kamma* (46a):5 where he writes: "לא יגדל אדם כלב רע בתוך ביתו ולא יעמיד סולם רעוע או כל דבר שהזיקו מצוי שנאמר ולא תשים דמים בביתך". Rambam, in *Hilkebot Rotze'ah U-Shmirat Nefesh* (11) and *Hilkebot Tefillah* 6:9, indicates that safety training and awareness applies only to common life-threatening dangers. Rambam, in *Hilkebot Tefillah* 6:9, states, "אין המתפלל מפסיק תפלתו אלא מפני סכנת נפשות בלבד ואפלו מלך ישראל שואל בשלומו לא ישיבנו אבל פוסק הוא למלך עובד כוכבים שמא יהרגנו היה עומד בתפלה וראה מלך עובדי כוכבים או אנס בא כנגדו יקצר ואם אינו יכול יפסיק וכן אם ראה נחשים ועקרבים באים כנגדו אם הגיעו אליו והיה דרכן באותן המקומות שהן ממיתין פוסק ובורח ואם לא היה דרכן להמית אינו פוסק". See, also, R. Avraham Yeshayah Karelitz, *Hazon Ish al Ha-Rambam*, vol. 1. Bnei Brak: 5752, *Hilkebot Rotze'ah U-Shmirat Nefesh* (11:2–4), p. 654–655.

<sup>58</sup> See R. Yosef Karo (*Kesef Mishneh* ad loc.) and *Haggabot Maimuniyyot* ad loc. who quote *Ketubbot* (41b) and *Bava Kamma* (46a) as the source for Rambam's ruling. These *gemarot* state, "רבי נתן אומר מניין שלא יגדל אדם כלב רע בתוך ביתו ואל יעמיד סולם רעוע בתוך ביתו שנאמר ולא תשים דמים בביתך".

כלב שנטל את החררה והלך לו לגדיש. אם הניחה בגדיש ואכל את החררה והדליק את הגדיש על החררה ועל מקום החררה משלם נזק שלם ועל שאר הגדיש חצי נזק...במה דברים אמורים בשמור בעל הגחלת את אשו וסתם הדלת ובא הכלב וחתר ונטל את החררה מעל האש.

[The following halakhah applies when] a dog takes a cake [with a hot coal attached to it] and travels to a pile of grain. If the dog places it on the heap, lighting the grain on fire, and eats the cake, [the owner of the dog] must pay full damages for the cake and the place where it placed the cake [in the grain heap]. For the remainder of the grain heap, he is only required to pay half the damages... When does this law apply? When the owner of the coal watches—**בשמור**—his fire and closes the door, yet the dog dug underneath [until it could enter and] and took the cake from the fire.

**שמר**, in this case, means the owner of the fire closed the door to prevent the animal from taking coal and wreaking havoc.<sup>59</sup> Rambam defines the word **שמר** as behaviors that will reduce the risk of damage, not watching in the literal sense. Rambam, instead, uses the word **ולהזהר** as watching, cautiousness, or vigilance. As he writes in *Hilkehot Rotzeah U-Shmirat Nefesh* 6:4 and 6:6:

ויש הורג בשגגה ותהיה השגגה קרובה לזדון והוא שיהיה בדבר כמו פשיעה או שיהיה לו להזהר ולא נזהר...כיצד הזורק אבן לרשות הרבים והרגה או הסותר כתלו לרשות הרבים ונפלה אבן והמיתה בין שסתרו ביום בין שסתרו בלילה הרי זה קרוב למזיד ואינו נקלט מפני שזו פשיעות היא שהרי היה לו לעין ואחר כך יזרק או יסתר.

There are those who kill accidentally but act like an intentional murderer. This is because they acted negligently or should have been vigilant, **להזהר**, but chose not to... [Rambam later in 6:6 provides examples] When does the above apply? When a person throws a stone in the public domain and it kills someone, or when a person demolishes a wall in the public domain and the stone falls from the wall and kills someone. This applies whether he acted during the day or at night. [Though unintentional], he acts like an intentional murderer. He does not go to a city of refuge because he acted negligently since he should have checked his surroundings and then thrown the stone or demolished the wall.

<sup>59</sup> *Bava Kamma* 23a simply states that the “coal was watched, **בשמימר גחלתו**.” In this case, Rambam is explaining **בשמימר גחלתו** as closing the door. Rambam uses the word “and” to equate “watching” with “closing the door” (**בשמור בעל הגחלת**) (את אשו וסתם הדלת). Rambam explains the Gemara like Rashi who explains **בשמימר גחלתו** as שנעל דלתות ביתו יפה ואונס הוא.

One should remain conscious—להזהר—of his actions, watching his surroundings when demolishing a wall or throwing a stone to ensure that no one is present.<sup>60</sup> Rambam here defines the word להזהר as acting with vigilance to avoid damaging others.

Based on what we have seen, we can better understand *Hilkebot Rotze'ah U-Shmirat Nefesh* 11:4:

כל מכשל שיש בו סכנת נפשות מצות עשה להסירו ולהשמר ממנו ולהזהר בדבר יפה יפה.

Any obstacle which causes danger to life, it is a positive *mitzvah* to remove the hazard, להסירו. If that cannot be done, one can also fulfill the *mitzvah* by behaving in ways that reduce the risk of danger, להשמר ממנו. Additionally, one can consciously maintain a state of awareness to avoid the obstacle, להזהר בדבר יפה יפה. One applies להסירו, להשמר ממנו, and להזהר בדבר יפה יפה, to each situation at hand. If one owns a wild animal that is potentially life-threatening, for example, he must remove it, להסירו.<sup>61</sup> If one must traverse wild terrain, for example, consciousness and internal vigilance is in order, להזהר בדבר יפה יפה. If one lives in an area where thievery and murder are commonplace, for example, one is obligated to learn skills to prevent loss of life, להשמר ממנו. Depending on the hazard, one must act with להסירו, להשמר ממנו, and/or להזהר בדבר יפה יפה.

The mandate of להשמר ממנו could include learning how to swim. Rambam lists drowning as a common life-threatening hazard in *Hilkebot Rotze'ah U-Shmirat Nefesh* (1:14):

<sup>60</sup> When Rambam writes that he “acted negligently or should have been vigilant, והוא שיהיה בדבר כמו פשיעה או שהיה לו להזהר ולא נזהר מפני,” he is equating the two; acting negligently means not acting with vigilance. Rambam says this later: שזו פשיעות היא שהרי היה לו לעין ואחר כך יזרק או יסתר. See *Makkot* 8a. The words שהיה לו להזהר ולא נזהר, for these cases.

<sup>61</sup> See R. Yosef Kapach, *Mishnah im Perush ha-Rambam, Seder Nezikin*, p. 17 (*Bava Kamma* 4:9) where the Mishnah states: ויצא רבי יהודה אומר, תם חייב ומועד פטור, שנאמר והזיק, אחד תם ואחד מועד חייב, דברי רבי מאיר. רבי אליעזר אומר, אין לו שמירה אלא סכין. ולא ישמרנו בעליו, ושומר הוא זה. רבי אליעזר אומר, אין לו שמירה אלא סכין. והלכה כר' יהודה והלכה כר' אליעזר שמחייב שחיטתו כדי שיפסקו. R. Kapach's version has Rambam ruling like R' Eliezer. While not specifying the ruling like R' Eliezer, the earlier translation states similarly, והלכה כר"י, אבל חייב לשחטו כדי להסיר הזקוק, using the same word, להסירו, as Rambam does in *Hilkebot Rotze'ah U-Shmirat Nefesh* 11:4.

כל היכול להציל ולא הציל עובר על לא תעמד על דם רעך וכן הרואה את חברו טובע בים או לסטים באים עליו או חיה רעה באה עליו ויכול להצילו הוא בעצמו או שישכר אחרים להצילו ולא הציל.

Anyone who can rescue an individual but chooses not to violates the prohibition of “do not stand over the blood of your brother” (*Va-Yikra* 19:16). The prohibition also applies when one sees an individual drowning at sea or robbers or wild animals attacking, and he can save the person or hire someone to save the person but does not.<sup>62</sup>

Rambam rules that a person who has the ability must protect those whose lives are threatened, whether from bands of robbers, wild animals, or water. Rambam, in 1:14, clearly lists water as a source of danger.<sup>63</sup> Therefore, when Rambam writes later in 11:4, להשמר ממנו, included under this is the duty to enact water-safe behaviors.

We can connect the above analysis to a father’s *mitzvah* to teach his children how to swim. Just as one is *halakhically* obligated to safeguard their own life from the dangers of water, so too they are obligated to teach their children these same skills. This falls under the *mitzvah* of *hinukh*. Additionally, a person makes a fence around their roof to prevent anyone who may climb there from falling. Similarly, להשמר ממנו means actively protecting oneself as well as those for whom one is responsible. Rambam seems to expand the duty of להשמר ממנו. Though the obligation to construct a fence applies to specific roofs, והוא שיהיה בית דירה (*Hilkhot Rotzeah U’Shmirat Nefesh* 11:1), here the positive commandment applies to “any obstacle which causes danger to life,” כל מכשל שיש בו סכנת נפשות (*ibid.*, 11:4). And, unlike a pit or a well where one is only responsible for building a partition in their courtyard, בהצרו (*ibid.*, 11:4), the duty of להשמר ממנו, applies whether one is in a private or public domain. In the case of water safety, lakes, seas, and rivers are commonplace, frequently presenting a risk for those who do not know how to swim.

<sup>62</sup> R. Yosef Karo (*Kesef Mishneh* ad loc.) explains that Rambam’s source for this ruling is *Sanbedrin* (73a) which also lists these three examples.

<sup>63</sup> In *Hilkhot Tum’at Tzara’at* (16:10) as well, Rambam identifies water as a source of danger. Rambam mentions that Miriam endangered her life to save Moshe from the sea, “וסכנה בעצמה להצילו מן הים.” See, also, Rambam’s *Sefer Ha-Mitzvot*, Negative Commandments 297: הסכנת נפש אחד כשנראהו בסכנת מות או ההפסד ויהיה לנו יכולת להצילו כמו שהיה טובע בנהר ואנחנו נדע לשחות ונוכל להצילו” (translated from the Arabic by R. Shmuel ibn Tibon). When Rambam writes, “ויהיה לנו יכולת, ואנחנו נדע לשחות” he intended that only someone who is able, להציל, should try to save someone from drowning.

Another way of analyzing *Hilkhot Rotze'ah U-Shmirat Nefesh* (11:4) is to compare it with the corresponding *mitzvah* in *Sefer Ha-Mitzvot*. In *Sefer Ha-Mitzvot*, Positive Commandment 184, Rambam writes:

היא שצונו להסיר המכשולים והסכנות מכל מושבותינו, וזה שנבנה כותל סביב הגג וסביב הבורות והשיחין והדומה להם כדי שלא יפול המסתכן מהם או בהם, וכן כל המקומות המסוכנים והרעועים כלם יבנו על סדר שיסור הרעוע והסכנה, והוא אמרו יתעלה ועשית מעקה לגגך. ולשון ספרי ועשית זו מצות עשה. וכבר התבאר משפטי מצוה זו בבבא קמא.

That is, He commanded us to remove hazards and dangers from our homes. This means we should build walls around roofs, and around pits and ditches and the like so that no one falls from them or into them. So too, any dangerous and rickety places should be built in a way where the danger and instability are removed. This is what He, may He be exalted, said (*Devarim* 22:8): *ועשית מעקה לגגך*, and you shall make a fence for your roof. The *Sifrei* (*Devarim* 229:6) states that the words *ועשית*, and you shall make, tell us that this is a positive commandment. The details of this *mitzvah* have already been explained in *Bava Kamma*.

In his *Sefer Ha-Mitzvot*, Rambam connects all 613 commandments to their Biblical source. In the case of *ma'akeh*, Rambam connects this positive commandment with *Devarim* 22:8:

כי תבנה בית חדש ועשית מעקה לגגך ולא תשים דמים בביתך כי יפל הנפל ממנו  
When you build a new house and make a fence for your roof you shall not place blood in your house for the victim will surely fall.

Both the obligation to build a wall around one's roof, pit, or ditch and the duty to build safe structures fall under the category of *ועשית מעקה*, *לגגך*, make a fence for your roof. The plain (*peshat*) reading of the verse indicates that one must create architecturally safe environments. Rambam, therefore, only lists these duties.<sup>64</sup> However, in the all-encompassing *Mishneh Torah*, Rambam expands the duty to include behaviors that reduce the risk of danger as well.

Additionally, unlike *Sefer Ha-Mitzvot*, Rambam in *Hilkhot Rotze'ah U-Shmirat Nefesh* (11:4) has *Devarim* 4:9, *השמר לך ושמר נפשך*, "You shall be watchful and watch your soul," as the proof-text. Based on this verse, we see the Torah not only mandating the creation of safe environments but

<sup>64</sup> See Rambam, *Sefer Ha-Mitzvot*, *Shoresh* 2. See, also, Dr. Marc Herman, *Systematizing God's Law: Rabbinic Jurisprudence in the Islamic World from the Tenth to the Thirteenth Centuries*, 2016. Ph.D. Dissertation, pp. 126–128.

also safe behaviors.<sup>65</sup> R. Eliyahu of Vilna, the Vilna Gaon, explains השמר "You shall be watchful and watch your soul," similarly. The Gaon, on Rambam's words "שנאמר השמר לך ושמר נפשך", comments "פ"ה דברכות", "the fifth chapter in *Berakhot*."<sup>66</sup> He is referring to *Berakhot* (32b), where *Bavli* states:

מעשה בחסיד אחד שהיה מתפלל בדרך. בא הגמון אחד ונתן לו שלום, ולא החזיר לו שלום. המתין לו עד שסיים תפלתו. לאחר שסיים תפלתו, אמר לו: ריקא, והלא כתוב בתורתכם "רק השמר לך ושמר נפשך", וכתוב "ונשמרתם מאד לנפשתיכם". כשנתתי לך שלום למה לא החזרת לי שלום. אם הייתי חותך ראשך בסיף, מי היה תובע את דמך מידי.

There is a story of a pious individual who was praying on the road. A general approached and greeted the pious man, however he did not respond. The general waited until the pious man completed his prayers. After he completed his prayers, the general said to him: "Empty one, is it not written in your Torah, 'רק השמר לך ושמר נפשך', only be watchful and watch your soul [*Devarim* 4:9], as well as 'ונשמרתם מאד לנפשתיכם', And watch your souls very carefully [*Devarim* 4:15]. Why did you not respond to me when I greeted you? Would anyone hold me accountable if I were to slice off your head?"

The autocrat is asking the pious individual why he ignored the danger to his life. While the Gemara concludes this story with how the pious man eventually appeased the Roman general, the latter's point remains true.<sup>67</sup> More than the obligation to create architecturally safe environments

<sup>65</sup> While the positive commandment includes both behavioral training and environmental safety, one only violates the negative commandment when he or she does not construct a safe environment. As Rambam writes at the end of *Hilkhot Rotze'ah U-Shmirat Nefesh* 11:4: "ואם לא הסיר והניח המכשולות המביאין לידי סכנה בטל מצות עשה ועבר בלא תשים דמים". Rambam never mentions that a lack of "watching" violates the negative commandment. See *Kriat Melekh* ad loc., where R. Chaim Kanievsky refers the reader to *Mo'ed Katan* (5a). *Mo'ed Katan* (5a) only indicates that a lack of environmental safety violates the negative command.

<sup>66</sup> *Biur Ha-Gra, Shulhan Arukh, Hoshen Mishpat* (427:8:6).

<sup>67</sup> With the Gaon in mind, R. Mayer Twersky explains that Rambam based his formulation on *Berakhot* (32b) and the verses quoted therein. When Rambam in *Hilkhot Rotze'ah U-Shmirat Nefesh* (11:4) states, "ולהשמר ממנו", he is mirroring *Devarim* 4:9: "השמר לך ושמר נפשך". When Rambam emphasizes, "ולהזהר בדבר יפה", he is mirroring *Devarim* 4:15: "ונשמרתם מאד לנפשתיכם". [R. Mayer Twersky, "U-Shmor Nafshecha Me'od, Watch yourself very carefully." <<https://web.colby.edu/coronaguidance/2020/04/30/twersky-ushmor-nafshecha-meod/>>].

(ועשית מעקה לגגך), we see from *Berakhot* (32b) that one should be vigilant and practice safe behaviors as well (השמר לך ושמר נפשך).

Based on what we have seen, we can point to a few sources (and there are certainly more<sup>68</sup>) that led Rambam to construct the last halakhah in *Hilkebot Rotzeah U-Shmirat Nefesh* 11:4: *Bavli*, *Kiddushin* (29a) and the sources we have mentioned which speak of the father's duty to teach his child professional training and water safety, as well as *Berakhot* (32b). *Berakhot* (32b) teaches that one should be vigilant and implement safe behaviors. *Kiddushin* (29a) extends the responsibility to developing skills to prevent danger as well. In *Kiddushin* (29a), *Bavli's baraita* first states that a father is obligated to teach his son professional training. The *yesh omrim* adds that he must "even teach him to swim." He must teach the child different types of skills to protect him from common life-threatening hazards, "even teach him to swim."<sup>69</sup> With his "eye on the *sugya*," Rambam, in his *Mishnah Commentary*, lists the swimming obligation. In his *Mishneh Torah* (*Hilkebot Rotzeah U-Shmirat Nefesh* 11:4), Rambam synthesizes the halakhah under the general category of להשמר ממנו.<sup>70</sup>

## Conclusion

How do we reconcile "contradictions" between Rambam's *Commentary to the Mishnah* and his *Mishneh Torah*? Why did Rambam write that a father is obligated to teach his son to swim in his *Commentary* but omitted this from his *Code*? Based on our analysis, we see how Rambam's commentators diverged in this case. For R. Ettlinger, Rambam, in his *Mishnah Commentary*, wrote that a father is obligated to teach his child to swim, a position he would later retract or one which flowed with the corresponding Gemara alone. On the other hand, R. Rabinowitz and R. Adler found possible hints for the swimming duty in the *Mishneh Torah*. R. Rabinowitz found a hint in *Hilkebot Rotzeah* 5:5 but limited the swimming obligation to cases that promote an occupation. R. Adler understands the *Mishnah Commentary's* words unconditionally and finds support for this premise in *Hilkebot Rotzeah U-Shmirat Nefesh* (11) and *Hilkebot Shabbos* (2). I have tried to follow R. Adler's lead on the topic.

<sup>68</sup> R. Yosef Karo (*Kesef Mishneh* ad loc.) and *Haggabot Maimuniyyot* ad loc. note *Ke-tubbot* (41b) and *Bava Kamma* (46a) where Rabbi Natan states: "מניין שלא יגדל אדם כלב רע בתוך ביתו ואל יעמיד סולם רעוע בתוך ביתו שנאמר ולא תשים דמים בביתך". See, also, *Berakhot* (62b) where the Talmud writes, "על כל מושב שב חוץ מן הקורה", and Rashi ad loc.

<sup>69</sup> See how *Tosafot*, *Megillah* 4a, s.v. *sh-af ben hayo b-oto ha-nes* defines the word אף.

<sup>70</sup> Cf. R. Yonatan Paz, "The Father's Obligation to Teach His Son to Swim" (*Hebrew*), pp. 135–136.



You should know that every author of a book—whether it deals with the laws of the Torah or with other kinds of wisdom, whether it was composed by one of the ancient wise men among the nations of the world or by physicians—always adopts one of two ways (structures and styles): either that of a monolithic code (*bibbur*) or that of a discursive commentary (*perush*). In a monolithic code, only the correct subject matter is recorded, without any questions, without answers, and without any proofs, in the way which Rabbi Judah adopted when he composed the Mishnah. The discursive commentary, in contrast, records both the correct subject matter and other opinions which contradict it, as well as questions on it in all aspects, answers, and proofs as to why one opinion is true and another false, or why one opinion is proper and another is true and another false, or why one opinion is proper and another improper; this method, in turn, is that of the Talmud, which is a discursive commentary upon the Mishnah.<sup>71</sup>

Maimonides, Letter to R. Pinehas ben Meshulam of Alexandria

Rambam began his *Mishnah Commentary* in his early twenties while escaping Spain. At the end of his *Commentary to the Mishnah* in *Ukẓin* (3:12), he describes the tumultuous time in which he wrote the work:

My mind is often occupied with the needs of the time, and with the exile and wandering in the world from one end of the heavens to the other that God has decreed upon us... He, the Exalted One, knows that I have written the explanation of some laws [in the *Commentary*] while I was traveling by land, and others I wrote while at sea, on the Mediterranean.<sup>72</sup>

Rambam also started composing his *Mishneh Torah* at a busy time in his life, a time of professional advancement and increasing communal responsibility.

Yet, despite his medical and leadership responsibilities and despite his travels and travails, Rambam continued to edit and update these two works throughout his life. They were his twin passions, each fulfilling a unique role. Written with different intentions, he considered each work valuable. One reached a final ruling for each Mishnah but also reviewed

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<sup>71</sup> Quoted from R. Isadore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)*, p. 33.

<sup>72</sup> Translated by R. Yosef Marcus, “*Shiur* #04: The *Commentary* of Rambam on the Mishnah (Part 1)” <<https://www.etzion.org.il/en/halakha/studies-halakha/approaches-pesak/commentary-Rambam-mishna-part-1>>.

and introduced readers to the corresponding *sugya*; the other was a synthesis, a “monolithic code.” The *Mishnah Commentary* is localized to the particular Mishnah; the *Mishneh Torah* is a self-contained halakhic guide. Each traveled along unique passages, across mountains and oceans. Yet, despite their different paths, the conclusions reached in these two works regularly overlap. Rambam remained remarkably consistent.<sup>73</sup>

In this essay, we have tried to demonstrate how one can resolve some “variances” by looking at each work’s context: the *Mishneh Torah* being a monolithic work, and the *Mishnah Commentary* being a localized commentary. With his “eye on the corresponding *sugya*,” Rambam rules, in his *Mishnah Commentary*, that a father must teach his child to swim. In the self-contained *Mishneh Torah*, Rambam synthesized this same halakhah under the general category of להשמר ממנו. Included under להשמר ממנו, are common self-protective behaviors like self-defense from crime and stray animals, as well as water safety.<sup>74</sup>

Did Rambam believe that *poskim*—in his time and in the future—would interpret להשמר ממנו, like this?<sup>75</sup> Did Rambam truly intend for so much to be derived from so little? Perhaps Rambam’s words can guide us in this regard:

All our works are concise and to the point. We have no intention of writing bulky books nor of spending time on that which is useless. Hence, when we explain anything, we explain only what is necessary and only in the measure required to understand it, and whatever we write is in summary form...<sup>76</sup>

Maimonides, *Ma’amar Tehiyyat ha-Metim* (Treatise on Resurrection)



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<sup>73</sup> My thanks to R. Elijah Schochet for helping me formulate this paragraph.

<sup>74</sup> These examples were chosen based on *Hilkhhot Rotzeah U-Shmirat Nefesh* 1:14.

<sup>75</sup> See R. Yonatan Paz, *The Father’s Obligation to Teach His Son to Swim* (Hebrew), pp. 134–138 where he lists *poskim* who ruled that one must teach one’s child to swim as well as those *poskim* who do not believe that such an obligation exists.

<sup>76</sup> Quoted from R. Isadore Twersky, *Introduction to the Code of Maimonides* (*Mishneh Torah*), p. 45.