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Discovery of a Lost Jurisprudential Genre in the Genizah Treasures

By Neri Y. Ariel*

Abstract

*In the early medieval era, the Geonim were the generally accepted spiritual leaders of the Jewish community worldwide and wielded secular authority over the Jews in Islamic lands. The Geonim specialized in the writing of legal monographs. In previous research, scholars have pointed out that remnants from the Judeo-Arabic branch of the *adab al-qaḍā* (אֲדָב אֶלְקָצָא) genre have survived. In this article, new developments and discoveries in the research on relevant Genizah fragments are presented. In the current stage of research, we can already divide the diverse fragments into several books. Both the achievements in the scientific reconstruction of the genre and the developments in the preparation of a pioneering critical edition of relevant surviving remnants deepen our contextual and intertextual understanding of the Judeo-Arabic language and culture. These new discoveries have important ramifications for our understanding of the development of court procedures, judges' characters, and ethical juristic duties from late antiquity to the present day.*

Introduction

In previous research, scholars maintained that only lone remnants of the Judeo-Arabic literary genre *adab al-qaḍā* (אֲדָב אֶלְקָצָא)¹ (lit.: “good manner for legal procedure” or manual of jurisprudence) had survived.² As documented in the current case study, the Genizah proves once again to be an

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1 In Judaeo-Arabic as well as Arabic texts, books, and dictionaries, אֲדָב אֶלְקָצָא is spelled in a variety of ways. Therefore, it is difficult to say what the “original” name of that genre even in Arabic jurisprudential literature was.

2 For a preliminary research overview and selected bibliography on this matter,

inexhaustible source of unknown medieval works and even of lost genres. This essay presents new discoveries and developments in the research on relevant Genizah texts containing references to *adab al-qadā'*. These discoveries faced initial difficulties due to the dilapidated and entangled character of the Genizah fragments, which are the focus of the current research.³ At the present stage of this research, most of the diverse fragments have already been identified and attributed to at least four known books. In the following paragraphs, the monographs will be presented chronologically, from the earliest to the most likely latest, along with discussions of some of the problems scholars are facing when studying them.

1. *Rav Shemuel b. Hofni Gaon's* כתאב לואזם אלהכאם (*Kitāb lawāzim al-ḥukkām*) ("Book of the judges' duties")

It was Simcha Assaf who decades ago published a fragment of Rav Shemuel b. Hofni's (d. 1013) work כתאב לואזם אלהכאם (*Kitāb lawāzim al-ḥukkām*) ("Book of the judges' duties") containing part of its beginning, including the introduction and the table of contents (CUL T-S 8.236).⁴

This fragment provides information about the subjects discussed in this type of jurisprudential literature, e.g., the characteristics and qualifications of the judge and the rabbinic court, the rules of judicial procedures and the obligations (e.g., oaths of witnesses) involved.⁵ Because the fragment explicitly mentions the author's name, it is essential to the textual reconstruction of his *Kitāb lawāzim al-ḥukkām*. In addition, the fragment listing the titles of chapters 8 to 42 of the book helps to identify further thematic issues. However, because several titles are missing, it is most likely that 42 is not the final number of chapters in this work.

see my MA thesis under <https://huji.academia.edu/NeriAriel>, now updated and soon to be published in my PhD dissertation, which I was privileged to write under the supervision of Professor Robert Brody: "Manuals for Judges (اداب القضاة) in Geonica: A Study of Genizah Fragments of a Judeo-Arabic Monographic Genre."

3 See NERI Y. ARIEL, "שריד אנונימי מהלכות דיינים בערבית-יהודית," in: גנזי קדם *Ginzei Qedem* 9 (2013), pp. 51-81; NERI Y. ARIEL "Towards Identification Methodology of Genizah Fragments," in: *Trumah* 24 (Heidelberg, 2017) (forthcoming).

4 SIMCHA ASSAF, "משיירי ספרותם של הגאונים," in: תרביץ *Tarbiz* 15 (1944), pp. 27-35, here pp. 33-35.

5 For general summaries in this regard, see the bibliographies in: YUVAL SINAI, השופט וההלך השיפוטי במשפט העברי (Jerusalem: Hebrew University 2010); ELIAV SHOCHETMAN, סדר הדין בבית הדין הרבני (3 vols. Jerusalem: A. S. Sidre Mishpat, 2011).

There is a high probability that another, quite long Genizah fragment (2 doubled bifolia), preserved in the Taylor-Schechter Genizah Collection (T-S Ar. 46.156) as well, appears to be a remainder of Rav Shemuel b. Ḥofni's *Kitāb lawāẓīm al-ḥukkām* introduction, too.⁶

Like the aforementioned Genizah fragment T-S 8.236, it also starts with a theological introduction to the subsequent halakhic discussion, a characteristic phenomenon of the writings of the late Geonim, who followed the Muslim pattern of starting legal discussions with theological introductions. The discussions presented in this fragment are deeply rooted in *usūl al-fiqh* ("the sources of the law") i.e., Islamic jurisprudence, pondering concepts that are well known as basic to *Mu'tazilite Kalām*, e.g., אלעדל ואלתוחד (*al-'adl wat-tauḥīd*) (justice and Divine unity): אלקאצ'ר אלדי לא יעג'ז, אלעאלם אלדי לא יגהל, אלגני אלדי לא יחתאג' (The true Mighty who does not lack power, the Omniscient who has non-lack of knowledge, the Affluent who has no need) etc. Furthermore, it includes a typical *via negativa* anthropomorphist and apophatic theodicy. This is not the right place to go into further details or discuss the text in greater depth, but it is important to mention that these discussions get entangled in the art of a dialogical *taqsim*, the traditional method of *Kalām* investigation. There is a dialogue between two opinions with a clear direction and intention; however, it is not always clear which opinion is represented in each stage of the complicated and detailed discussion. The climax of this discussion is the final argumentation of the *tauḥīd* and the negation of the possibility of a second god, as this would contradict the idea of the unity, exclusiveness, and infiniteness of the One True God and his absolute harmony. God's attributes as true Judge are compared here to the general characteristics of a judge of flesh and blood and an earthly court, as written in Exodus 22:7 ונקרב בעל הבית אל האלהים (The householder shall approach the court).

Another fragment, representing this literary genre (T-S Ar. 48.61),⁷ can be identified quite easily, too, as it lists a chapter title that corresponds exactly with a title of the same chapter mentioned in the introduction published by Simcha Assaf (T-S K.19):⁸ ואלבאב אלו אחד וארבעין אלקול פי כיפיה

6 Cf. the short manuscript description in: COLIN F. BAKER & MEIRA POLLIACK (eds.), *Arabic and Judaeo-Arabic manuscripts in the Cambridge Genizah collections*, vol. II: *Arabic old series* (T-S Ar.1a-54) (Cambridge University Library Genizah Series; vol. 12) (Cambridge: Cambridge University Press, 2001), p. 442 no. 6404.

7 Cf. the short manuscript description in: BAKER & POLLIACK (eds.), *Arabic and Judaeo-Arabic manuscripts* (note 6), p. 474 no. 6837.

8 SIMCHA ASSAF, "שלשה ספרים לרב שמואל בן חפני – ספר חובת הדינים / כתאב לואזם אלהאכם,"

סואל אלהאכם ללמדעא עליה ותחרירה עליה אקואלה (“and chapter 41 deals with how the judge interrogates an accused person and investigates his case”).⁹

Finally, there are two more Genizah fragments in the Taylor-Schechter Genizah Collection which, because of their script, seem to be part of She-muel b. Ḥofni’s *Kitāb lawāẓīm al-ḥukkām*, too, and deal thematically with types of judges’ disqualifications as discussed in the halakhic reasoning put forward in the Mishnah and Talmud Bavli (mainly tractate *Sanhedrin*).¹⁰ Of course, it might be questioned whether such considerations as compatibility with the genre, identical script, and general content proximity are satisfying criteria for identifying these fragments. Therefore, certain doubts regarding their identification remain and cannot completely be clarified until further studies provide additional arguments and valid proofs. Even if it turns out that these fragments are part of this book, indeed, their exact context remains unclear.

2. Portions from Rav Hai b. Sherira Gaon’s כתאב אדב אלקצ’א (Kitāb adab al-qaḏā) (“Book of good manner for legal procedure”)

A single fragment from a codex in the Bodleian Libraries collection (Ox. Bodl. Ms. Marsh Or. 509, ff. 112r-115r)¹¹ can be identified as the final part

in: Sinai 17 (1945), pp. 113-118, here pp. 117-118; Assaf incorrectly spelled the Judeo-Arabic title כתאב לואזם אלהאכם “Book of the duties of the judge (חאכם),” instead of כתאב לואזם אלהאכם “Book of the duties of the judges” (חכאם), and translated – likewise incorrectly – “Book of the duty of the judges”. Cf. STEFAN C. REIF, PAUL FENTON ET AL. (eds.), *Published Material from the Cambridge Genizah Collections: a Bibliography, 1896-1980* (Cambridge University Library, Genizah Series) (Cambridge: Cambridge University Press, 1988), pp. 101, 447.

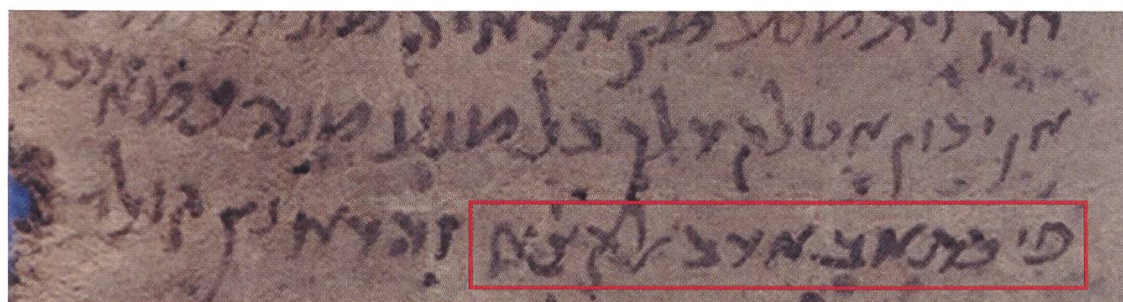
⁹ See NERI Y. ARIEL, “Methodology” (forthcoming).

¹⁰ CUL T-S NS J 520 and T-S NS J 518; cf. the short manuscript description in: ROBERT BRODY, *A Hand-List of Rabbinic Manuscripts in the Cambridge Genizah Collections*, vol. I: *Taylor-Schechter New Series* (Cambridge University Library Genizah Series, vol. 5) (Cambridge: Cambridge University Press, 1998), p. 294 nos. 5320 and 5321, and AVIHAI SHIVTIEL & FRIEDRICH NIESSEN, *Arabic and Judeo-Arabic Manuscripts in the Cambridge Genizah Collections*, vol. I: *Taylor-Schechter new series* (Cambridge University Library Genizah Series; vol. 14), (Cambridge: Cambridge University Press, 2006), p. 626 nos. 9249 and 9251.

¹¹ For further information, see ADOLF NEUBAUER & ARTHUR E. COWLEY, *Catalogue of the Hebrew Manuscripts in the Bodleian Library and in the College Libraries of Oxford*, 2 vols. (Oxford: The Clarendon Press, 1886–1906), vol. I, p. 114 no. 581. – Neubauer’s source is [JOHANNES URI:] *Bibliothecae Bodleianae codicum manuscriptorum orientalium videlicet hebraicorum, chaldaicorum, syriacorum, aethiopicorum, arabicorum, persicorum, turcicorum, copticorumque catalogus iussu curatorum preli academici a*

of the *Kitāb adab al-qaḍā*, authored by Rav Hai b. Sherira Gaon (939–1038), head of the Babylonian Academy of Pumbeditha.

That Rav Hai probably called his book כתאב אדב אלקצ'א (*Kitāb adab al-qaḍā*) – and not כתאב אדב אלקצ'אה (*Kitāb adab al-quḍḍāb*) (“Book of the judges’ good manner”), or the like – can be learned from a not catalogued fragment contained in the Jacques Mosseri Genizah Collection (Cambridge University Library), where the text reads: פי כתאב אדב אלקצ'א:



As such, the book title כתאב אדב אלקצ'א is well-known from the Cairo Genizah, but mistakenly translated by the editors of the respective bibliography as [ספר] מוסר הדיינים (“[Book of] the judges’ good manner”).¹² The same mistake, by the way, was made by Simcha Assaf, too. Though he quoted the title כתאב אדב אלקצ'א correctly, he rendered it as מוסר הדיינים:¹³

<p>וכבר הביא את זה בעינו רבינו האיי גאון זכר קדוש וטהור לברכה בספר הראשון מספרו אשר לו בספר מוסר הדיינים, וזה לשונו: והגויים משסיהם אסורים, ואפילו</p>	<p>..... וקד אורד הדא בעינה רבינו האיי גאון זכר קדוש וטהור לברכה פי אלפצל אלאול מן כתאב אלדי לה פי [כתאב אדב] אלקצא והדה נץ קולה ואלגויים] לם</p>
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Two other Genizah fragments contain the same sequence of lines, i.e., the end of *Kitāb adab al-qaḍā*, and additional colophons support its identification.

In Genizah fragment T-S NS 309.14,¹⁴ we find the following colophon:

Joanne Uri confectus, Pars prima, Oxonii [Oxford]: E Typographeo Clarendoniano, MDCCLXXXVII [1787], pp. 39-40, § CCXXXVII [237].

12 NEHEMYA ALONI, רשימות ספרים מגניזת קהיר, ed. by MIRIAM FRENKEL and HAGGAI BEN-SHAMMAI, with the participation of Moshe Sokolow, Jerusalem: Ben Zvi Institute, 2006, p. 459.

13 See, SIMCHA ASSAF, “כתב אדב אלקצ'א (ספר מוסר הדיינים) לרב האיי,” in: *Tarbiẓ* 7 (1936), pp. 217-218.

14 Cf. SHIVTIEL & NIESSEN, *Arabic and Judaeo-Arabic Manuscripts* (note 10), p. 471 no. 7190.



<תם כתאב> אדב אלקצא
 <וללה אל> חמד ואלשכר
 <...> כתירא
 <...> ענא בכתבתה תמאם בר
 <... ..> קרוי וכאן דלך פי שהר
 <... ..> כלות מנה

<Completed is the Book> of the good manner for legal procedure,
 <to God> be praise and thanks
 <...> manifold.
 <...> by me in writing it (?), Tamam son of
 <...> from Kairouan (?¹⁵). It was [done] in the month
 <...> at the end of it

In T-S K6.198, the כתאב אדב אלקצא has a different colophon:¹⁶



תם אלכתאב בתפצ'ל אללה
 ואחסאנה. פי שהר תמוז
 דשנת תתל"ה ללכליקה
 קנאו <הצעיר> יצחק בר חיים
 <קדושת יהוסף הלוי>
 <... יבור>
 <... האלהים>

Completed is the book with God's mercy
 and His goodness, in the month of Tammuz [~July]
 in the year 835 of the Creation [= 1075 C.E.].

15 See JOSHUA BLAU, מילון לטקסטים ערביים-יהודיים מימי הביניים / *A Dictionary of Medieval Judaeo-Arabic Texts* (Jerusalem, 2006), p. 543.

16 I would like to acknowledge the permission of the Syndics of Cambridge University Library to reproduce the images from their collections.

It was purchased by <the young(?)> Isaac bar Ḥayim,
the holiness of... Joseph Halevi(?) ...
<... may he be blessed
by God <... ...>

Since the words [...] תם אלכתאב (“completed is the book [...]”) appear in both colophons, and the surviving text preceding them is identical in both Genizah fragments cited here, it seems plausible that both fragments can be identified as parts of Rav Hai’s *Kitāb adab al-qaḍā*, known from Genizah book lists (see note 12 above).

This identification is further supported by an indirect translated quote found in the *Rishonim* literature. Rav Hai’s name appears in a quotation from ספר הדין ליקוטי (Liqute sefer ha-din) (“Excerpts from the book of law”), found in a British Library manuscript (Ms. Add. 27, 181), and likewise published by Simcha Assaf.¹⁷ The original Judeo-Arabic text of Rav Hai’s treatise, extant in the above-mentioned codex Ms. Marsh Or. 509 (ff. 112r-115r) of the Bodleian Library¹⁸ and in the Genizah fragments that are dealt with above, matches perfectly with the Hebrew translation in Simcha Assaf’s edition, quoted in chapter “ב” of his article.¹⁹ This chapter is of special importance insofar as its paragraphs belong to the end of the *Kitāb adab al-qaḍā* and thus help to determine its outline.

Other fragments in Judeo-Arabic from that genre contain parallels to chapter “א” in Simcha Assaf’s edition of Yehudah b. Barzillai al-Bargeloni’s (11th/12th c.) ספר הדין (*Sefer ha-din*),²⁰ but the exact location of this paragraphs within the book is still unclear.

The source of the Hebrew translation, however, is established, and in light of its medieval Hebrew translation, the Arabic text can be better understood and interpreted.

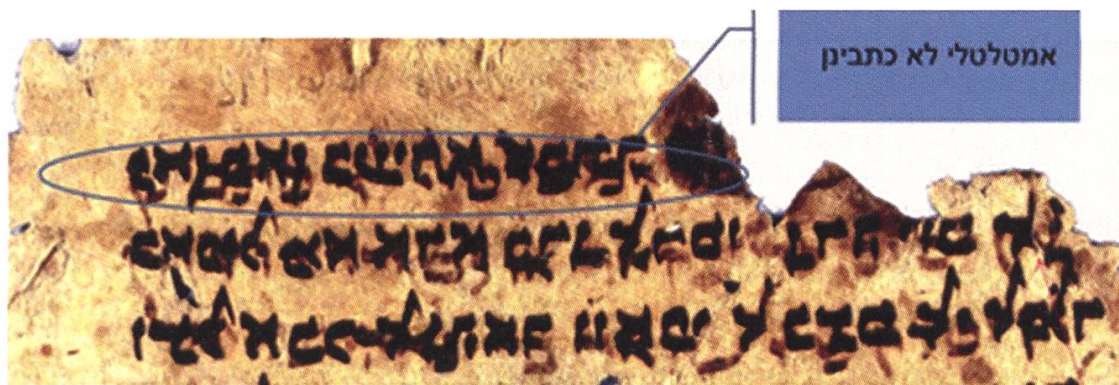
The verso of CUL T-S K6.198 included impressions from another leaf it adhered to. Assistance of simple Photoshop functions allow us to read a few more lines of the text. These lines are also quoted in Yehudah al-Bargeloni’s Hebrew translation of the work published by Assaf (see note 17).

17 SIMCHA ASSAF, “שרידים מספר הדינים לרב האיי גאון ז”ל,” in: הצופה להכמת ישראל: *HaZofeh Quartalis Hebraica* 9 (Budapest, 1925), pp. 76-79; SIMCHA ASSAF, תשובות הגאונים וליקוטי ספר הדין לרבי יהודה אלברצלוני (Jerusalem, 1927), p. 12. – Manuscript online via: https://www.bl.uk/manuscripts/Viewer.aspx?ref=add_ms_27181_f008v.

18 See note 11 above.

19 ASSAF, “שרידים מספר הדינים לרב האיי גאון ז”ל,” (note 17), pp. 77-79.

20 ASSAF, “שרידים מספר הדינים לרב האיי גאון ז”ל,” (note 17), pp. 76-77.



כתבין אדברה' אמקדצי אמטלטי לא כתבין, ואם אין לנתבע קרקע א: אם לא
רצה האלוה להפרע מן הקרקע ישאר הנתבע בתים וכשעתא נד שיהא פירע כל
הזמן שדוא הריב לפירע מן המטלטי, כדאמר' מיניה אפילו מליטא דעל

Notwithstanding the fact that the name of *Kitāb adab al-qaḏā* seems to appear (or be alluded to) in three anonymous colophons, has survived in book lists known from the Genizah, and is based on a combination of decisive evidence and careful analyses – corroborated, moreover, by the fragments of Yehudah al-Bargeloni's work, which provide at least an indirect proof of the *Kitāb adab al-qaḏā* entire sequence, it nevertheless can be accepted with certain reservations only. Though Assaf's conclusion that the translation of Yehudah al-Bargeloni is a quote from R. Hai's *Kitāb adab al-qaḏā* is logically plausible and intuitively makes sense, it is not irrefutable or beyond all further discussion. The problem is, however, that we do not yet have a reliable basis or ideal criterion according to which all these fragments can be convincingly identified. This lack of intrinsic evidence is a major issue on every Genizah scholar's agenda and is typical particularly of the monographs of late Geonic literature.

3. *A Reconstruction of an Anonymous Judeo-Arabic Halakhic Commentary, or "The Black Box Case"*

Another document attesting to the existence of the literary genre of "manuals for judges" can also be found in the Genizah treasures. This document contains reconstructed fragments of a hitherto unknown work of laws and instructions concerning דיינים (*dayyanim*) (judges). Part of this document has already been published in the article mentioned above (see note 3). Since then, further Genizah fragments have been discovered that belong to this work as well. Until now, this fascinating but rather problematic work was not known, neither to traditional savants nor to scholars.

Some fragments are written in a script that has a striking resemblance to, or even more than a merely paleographical connection with, Rav Hai's

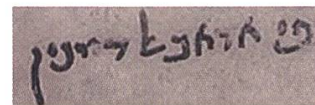
Kitāb adab al-qaḍā. However, as far as their content is concerned, there is no paragraph or sequence of lines identical to any paragraph or sequence of lines in Rav Hai's *Kitāb adab al-qaḍā* and no distinct evidence of what text they belong to. Judging by their style, the fragments look like those of a quite early monograph originating from the period of the late Geonim. However, there are no definite answers yet to the questions of who authored this monograph or within what group or milieu it was written. There are some enigmatic textual and generic connections between the monograph and the *Kitāb adab al-qaḍā*, deserving and requiring further research in this field. These works were even found together on the same bifolio leaf (T-S Ar. 47.197).²¹ Until now, however, any attempt to identify the fragments as part of R. Hai's *Kitāb adab al-qaḍā* or of Shemuel b. Ḥofni's *Kitāb lawāzīm al-ḥukkām* causes textual incoherencies, thematically incongruous repetitions, and stylistic problems. Therefore, this work should be considered an independent third example of a "manual for judges", at least until clear and convincing proofs are found that may serve as unmistakable arguments and reliable criteria for its precise identification.²²

4. *Ibn Aknin's* Faṣl fī ādāb al-dayyanin ("Chapter on the judges' good manners")

Five more previously unidentified Genizah fragments, however, could now be identified unquestionably as parts of the treatise פצל פי אדאב אלדיינים (*Faṣl fī ādāb al-dayyanin*) ("Chapter on the judges' good manners"), written by R. Yosef b. Yehudah Ibn Aknin al-Bargeloni (c. 1150–c. 1220).²³

These five fragments are: (1) Oxford, Bodleiana, Ms. Ox. Hunt. 518;²⁴ (2 a/b): Jewish Theological Seminary ENA 2715.35 and 2715.36, and Cambridge University Library, T-S Ar.46.256,²⁵ and (3 a/b): Manchester B 6368 and Manchester B 3192.

Though the chapter title is written on top of the Genizah leaf (JTS ENA 2715.35r), it was, however, very difficult to determine where the leaf comes from.



21 Cf. the short manuscript description in: BAKER & POLLIACK (eds.), *Arabic and Judaeo-Arabic Manuscripts* (note 6), p. 466 no. 6727.

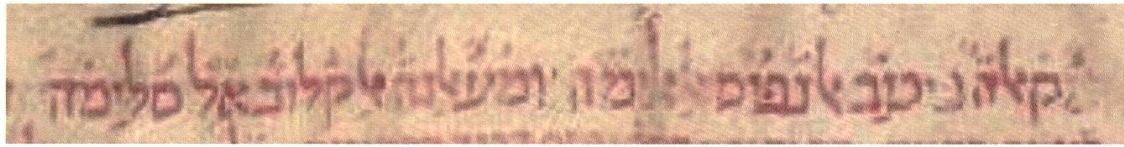
22 A critical edition of this text is appended to my PhD dissertation (forthcoming).

23 This author should not be confused with Mose b. Maimon's student Yosef b. Yehudah Ibn Aknin as-Sibtī (c. 1160–1226).

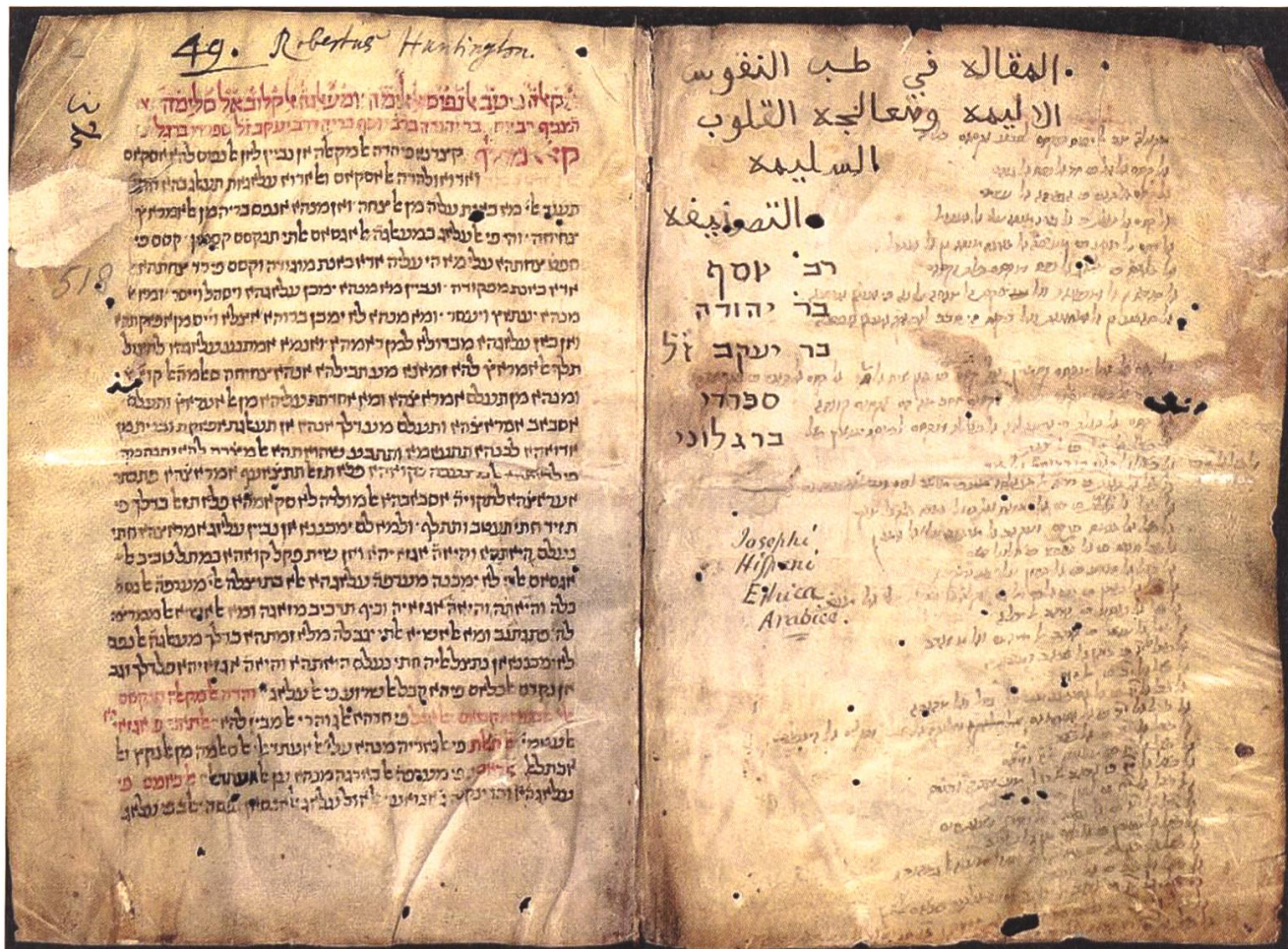
24 Cf. NEUBAUER & COWLEY, *Catalogue* [note 11], p. 450 no. 1273.

25 Cf. the short manuscript description in: BAKER & POLLIACK (eds.), *Arabic and Judaeo-Arabic Manuscripts* (note 6), p. 450 no. 6505.

Thanks to the generous advice of Paul Fenton, the same chapter title was found mentioned in an exquisite codex in the Oxford Collection (Ox. Hunt. 518), in a work called טב אלנפוס אללימה ומעאלג'ה אלקלוב אלסלימה



(*Tibb al-nufūs al-alīma wa-mu'ālaḡat al-qulūb al-salīma*) (“The hygiene of ailing souls and the therapy of healthy hearts”), written by R. Yosef b. Yehudah Ibn Aknin al-Bargeloni. The text in the Genizah fragments and that of the Oxford manuscripts are almost identical, with only slight variations.



Ms. Oxford Bodleian Libraries, Ox. Hunt. 518²⁶

26 The manuscript is online accessible via: <https://digital.bodleian.ox.ac.uk/inquire/p/d286cb3b-98e4-4858-a8df-3169e88b106f>. – I would like to acknowledge the permission of the Bodleian Libraries at the University of Oxford to reproduce the images from their collections.

Therefore, the fragment T-S Ar. 46.256 published by Shraga Abramson decades ago and characterized as unknown and anonymous,²⁷ can now be identified as a treatise authored by R. Yosef b. Yehudah Ibn Aknin al-Bargeloni.²⁸

5. *To sum up*

Most of the fragments in the corpus under discussion here do not allow for complete and undoubted identification, and there is still a great measure of ambiguity regarding their contextualization. More research must be done on them. In the future, however, it may be discovered that they belong to one of the works mentioned above, or to similar and newly identified works of the same genre. Notwithstanding, these seemingly isolated and scattered fragments help to reconstruct a macro picture of this not-yet-well-researched genre, despite their text being only a small part of a larger category of lost literature that left only unclear clues. The reconstructed textual sequences of the fragments and their accurate identifications as part of distinct works lead to the hypothesis that, in addition to the two known works by Samuel ben Ḥofni and Rav Hai Gaon, there might have been one, two, or even more hitherto unknown works that represent the “manuals for judges” and that have unfortunately not survived. Closer philological analysis of the connections between the fragments and fragment sequences may lead not only to the exact identification of certain texts but also to a better understanding of this genre as a whole and the contextualization of a comprehensive literary type that was once part of the remarkably multifaceted culture of medieval Judaism.

27 SHRAGA ABRAMSON, “קטע חדש ממכילתא דרשב” in: *Tarbiz* 41 (1972), pp. 361-372, here pp. 365-366.

28 A critical edition of this text with a broad discussion is under preparation for publication: NERI Y. ARIEL, “Annotated Edition with Commentary on *Fāsl fi adab al-Dayyanin* from *طب النفوس* by Ibn Aknin,” in: *Jewish Law Annual* 2017/18 (Hebrew, forthcoming).