Eli Hirsch's fascinating attempt "to explore various connections between the topic of bereirah and philosophical issues related to time and destiny" represents a bold attempt at synthesis between the disciplines of Talmud and Analytic Philosophy and as such raises some very interesting methodological issues. Before touching upon some these issues I would like to relate to some of the substantive claims in Hirsch's paper, particularly some of the Talmudic claims. In my opinion, Hirsch has relied upon certain, at best partial approaches to the *sugya* (talmudic topic) of "bereirah". This has led him to certain inaccuracies in both fact of the matter and interpretation which has in turn has prejudiced his integration of the Talumudic and philosophical material. Nevertheless, Hirsch's analysis and its prejudices presents, in my opinion a crucial insight into the topic of "bereirah" and the possibility of the connections between "bereirah" and philosophical issues. I will try to elaborate, beginning with Hirsch's claim about the Ockhamist.

Hirsch maintains that the Ockhamist, in opposition to the Aristotelian, based upon his acceptance of soft facts at some point in time "t", <u>must</u> maintain "yesh breirah". To utilize Hirsch's own example, when Reuven at some time "t" purchases the house at that his wife will choose at some latter point in time "t-1" the "house that his wife will choose at "t-1" is a "soft fact" at time "t". Therefore the sale at "t" is valid. If I understand him correctly, the overall argument runs something along the following lines: i) Halakha presents a relatively minimal criteria of "singling out" or "specifying" a particular object in order for a transaction to be valid. ii) A successful act of reference is sufficient for this "specifying". iii) For the Aristotelian, a sentence of the form "house A will be chosen" is neither true nor false at time "t" and there is no fact of the matter to the sentence "the house that will be chosen" as of time "t". As such it does not "refer", it fails to specify or single out any house to be transferred at time "t". iv) But for the Ockhamist a sentence of the form "house A will be chosen" is softly true or false at time "t" and there is a soft fact of the matter to the sentence "the house that will be chosen" as of time "t". As such it does "refer", it succeeds in specifying and singling out a house to be transferred at time "t". v) As such the Ockhamist <u>must</u> hold "yesh breirah". I believe the weak point in Hirsch's argument lies not on the philosophical side but on the Halakhic side, somewhere in the world of axioms (i) and (ii). This can best be understood by turning to the position of Nahmanides (Ramban) and the distinction between "tenai" and "bereirah" elaborated upon by both Ramban and Hirsch.

As cited by Hirsch, Ramban (Gittin 25b) distinguishes between "tenai" a transaction on condition, and "brereirah" which seems to be a transaction on condition (tenai), but involves "conditions on two things" or "if this one then not that one". While Hirsch, following the formulation of the late Provencal commentary Meiri interprets this position of Ramban and the Spanish school of medieval commentaries as a matter of distinction between a condition "internal to the transaction" (bereirah) vs. a condition "external to the transaction" (tenai), in my opinion this rendering represents a slight misreading and misrepresentation of the texts of Ramban and his school. Without entering into the intricacies of the texts, in formulating their distinction Ramban and Ritba (Gittin 26a) utilize terminology of "action" (*ma'aseh*) and "accomplishment" (*chalut*). The proper interpretation of the problem of "conditions on two things", the case of "bereirah" seems to be that that <u>which</u> is being accomplished at time "t", the <u>what</u> of the matter is not clear at time "t" and is dependent upon retroactive clarification

(bereirah). Such is not the case in "tenai". Here the <u>what</u> of the matter, which object is being affected by the given transaction is defined and only the validity of the transaction, the <u>whether</u> or not of the transaction remains in question. In the language of conceptual talmudic analysis, in "breirah" the "action\accomplishment" (*ma'ase\chalut*) remains unclarified at the time of their performance. While it remains, in my opinion, an open question as to whether this distinction between <u>what</u> and the logical question of <u>whether</u> can really be defended in coherent terms and what that defense would look like, I believe Ramban's distinction reveals a crucial perspective that yields a problem for Hirsch's Ockhamist.

In short, Halakhic transactions are not just about reference, the specifying or picking out of a particular object to be transferred or subjected to a particular status change. They are rather, or also, about the action, termed "ma'aseh kinyan" in Halakhic terminology performed upon objects which affect their transfer or status change, termed "chalut" in the Halakhic terminology. As such the "ein breirist" of Ramban maintains that these aspects of transactions cannot be clarified at some later point in time retroactively, they must be clearly defined as of the time of their performance at time "t".

I would like to try to evoke the intuition that lies behind Ramban's approach as I have interpreted it, with a theoretical variant of the case discussed by Hirsch. Let us imagine the case where Reuven tells Shimon, not that (1) he is transferring to Reuven now at time "t" the object "x" that his wife will pick out next week, but rather that (2) he is placing in the courtyard of Reuven now at time "t" the object "x" that his wife will pick out next week. I think it should be obvious to us that while (1) may somehow work, (2) is clearly problematic. The point is that (2) and (1) are really the same. The halakhic actions and results involved in halakhic transactions and status changes should be viewed as akin to or "kinds" of real world physical occurrences. As such, they cannot be clarified retroactively.

To return to the terms of Hirsch's example and his Ockhamist, while it may be the case that there is a "soft fact" of the matter of "the house that my wife will choose" already at time "t", there is no fact of the matter soft or otherwise of "the house that my wife has already chosen" at time "t". The problem here is that halakhic "transactions" may require the actual identification of the "the house that my wife has already chosen" at time "t" in order to be acted upon, transferred or undergo a status change as of time "t". If so, to return to Hirsch's argument outlined above, (i) and (ii) seem flawed. It is not necessarily the case that "soft" factivity and reference are sufficient for the halakhic criteria of "transactions" and it is not the case that the Ockhamist <u>must</u> hold "yesh breirah".

This brings us to the perspective embodied in Hirsch's argument, what I earlier referred to as his "prejudice", intended or otherwise. Clearly in maintaining (i) and (ii) what I will call the "minimal criteria of reference" theory for Halakhic transactions and status changes, Hirsch rejects the intuition argued for here of modeling transactions and status changes on real world physical occurrences or even more strongly, viewing them as cases of real world physical occurrences. But what does Hirsch's argument assume?

While this can be produced abstractly and formally, as Hirsch likes Rashi on the topic of "breirah", let us turn to Rashi. Not to Rashi's position of "safek" discussed extensively in Hirsch's paper but to a different famed position of Rashi on breirah found at Gittin 25a. The Talmud there offers a tentative distinction between the classic case of

breirah where the clarification depends upon the future action of Reuven, the performer of the action himself (*toleh bedaat atzmo*), and a case of "bereirah" where the clarification depends upon the future action of someone other than Reuven, the performer of the transaction (*toleh bedaat acheirim*). This possible distinction maintains that while one may hold "ein breirah" in case (1), *toleh bedaat atzmo*, one would admit that "yesh breirah" in case (2), *toleh bedaat acheirim*. Rashi (ad. loc.) interprets this distinction as based upon different mental states in the two cases. In case (2), the performer of the action is certain (*gamar be'daato*) that given "x", the satisfaction of a certain condition, he certainly desires a particular outcome. In contrast, in case (1), *toleh bedaat atzmo*, the act of making conditions dependent on one's own future choice reflects an overall mental uncertainty (*poseiach al shnei haseiphim*) as of time "t". Consequently, due to this lack of "mental certainty" or "intent" at time "t", one holds "ein breirah" in the former case of *toleh bedaat atzmo*. Rashi's comment here, and in my opinion his distinction between "tenai" and "breirah" found in his comment to Gittin 25b (s.v. *ve'lechi*) reflect the general position that whether or not a particular case is judged as "breirah" according to the "ein breirist" depends upon the question of "intent" or "mental clarity" and that the problem that concerns the "ein breirist" is a problem of lack of "mental clarity" or "intent".

How does this help elucidate Hirsch's assumptions of (i) and (ii), the "minimal criteria of reference" theory under discussion? It seems to me that we may suggest one of two models for the Halakhic and legal realm of transactions and status changes. In model one, what I will call for lack of a better term, the "idealist" model, the Halakhic realm of transactions, ownerships and statuses is conceptualized as a purely formal or even mentally and verbally constructed universe. In this realm, in accord with its fundamental nature, "objects", although certainly viewed in a realist sense, are transferred or affected by mental states, coherent utterances, agreement between parties and the like. In addition, from this perspective, any problem in the realm of transactions <u>should</u> be a problem of lack of sufficient intent\mental state or coherent utterance and the like necessary to affect a transaction. If we think about it, this model explains both Rashi's striking position that the problem of "breirah" consists of a lack of mental clarity\intent and Hirsch's assumption of a "minimal criteria of reference" for transactions and status changes. As long as the two conditions of i) clarity of mental state (Rashi), and ii) successful reference (Hirsch's Ockhamist) the transaction should proceed non-problematically.

Alternatively in model two, what I will call the "physicalist" or "neo-physical" model, we face the non-Rashi\non-Hirschian model. As outlined earlier the Halakhic realm of transactions, ownerships and statuses is conceptualized on the model of the physical world. From this perspective Halakhic transactions and status changes should be viewed as akin to or "kinds" of real world physical occurrences. Actions upon objects, viewed as real world events, rather than merely mental states and coherent utterances would seem to be the key factors in affecting Halakhic transactions and status changes. From this perspective, as argued above, one would probably reject what I have called the "minimal criteria of reference" and the problem of "breirah" would consist of more than just the question of successful or failed reference.

II

A proper treatment of Hirsch's claims regarding the position of the "ein breirist" according to Rashi, both the claim as to Rashi's actual position of "safek", i.e. an indeterminate result to the transaction, and Hirsch's explanation of Rashi as having something to do with "objective muddle" about the future as of time "t", something in between the Aristotelian and Ockhamian position, lies well beyond the scope of these remarks. As such, I would like to close with some brief remarks regarding Hirsch's project, its assumptions regarding interdisciplinary methodology in general and its bearing on the topic of Talmudic exegesis in particular.

Although as it is not the point of his paper and in consequence he does not focus upon it, Hirsch has offered a striking explanation of the Talmudic positions of "ein breirah" and "yesh breirah". In brief, Hirsch's claims suggest the following direction. The "yesh breirist" operates with an Ockhamian conception of the future, soft facts etc. and as such reference is successful at time "t" and the transaction is valid. The "ein breirist" differs exactly on this point. He operates with an Aristotelian conception of the future etc. and as such reference fails at time "t" and the transaction is invalid. In my remarks, I have implicitly argued that this possible explanation of the Talmudic disagreement is at best partial and assumes an "idealist" model of Halakhic transactions and status changes, where mental clarity and reference constitute basically sufficient criteria. Although not argued until this point, I would like to suggest that critiquing the intuition behind Hirsch's implied "explanation" of the Talmudic disagreement leads to an alternative explanation of the disagreement. In short, the "yesh breirist" holds of model (1), the idealist model. As such, once outstanding issues of mental clarity, coherence and reference, perhaps as in Hirsch's Ockhamian account have been handled, one holds "yesh breirah". But the "ein breirist" holds of model (2), the "physicalist\neo-physical model. As such, the case of breirah is fundamentally untenable as a transaction as of time "t" and one must hold "ein breirah".

Which of these "explanations" if any, is preferable; and on what grounds? While this issue is perhaps only of interest to the Talmudic specialist, I would like to express my own intuition regarding this question with some comments about what I take as Hirsch's method for, as he puts it in his opening, "exploring various connections between the topic of bereirah and philosophical issues related to time and destiny". At two points in his paper, Hirsch does this in a particular fashion. In the part of his paper I have discussed. Hirsch claims that the Aristotelian must hold "ein breirah" and the Ockhamist "yesh breirah". In other words, a particular commitment in the realm of philosophy, held in hand while acting in the realm of Halakha, forces the adoption of a particular commitment in the realm of Halakha. I will call this "Halakha of Philosophy". At a later point in his paper, Hirsch maintains that the position of Rashi for the "ein breirist" yields a new way of thinking about whether sentences about the future are true or false, the theory of "indefinitely true" and simultaneously "indefinitely false". As I understand this, on a methodological plane, Hirsch argues that a particular commitment in the realm of Halakha, in this case the position of Rashi, held in hand while acting in the realm of Philosophy yields a particular philosophical position. I will call this "Philosophy of Halakha". It seems to me that the common denominator, the logical structure of these two methodological moves is something like the following. A position held in discipline, "a" for reasons perhaps primarily internal to the assumptions and rules of the discipline can have fruitful consequences when applied to discipline "b".

It would seem to me that this is a bit weak. Hirsch's implied argument, and my own, for the "explanation" of the Talmudic disagreement with philosophical language and categories seem to assume that a stronger more integrative formulation is possible. My own personal opinion is that such a formulation is possible, without any recourse to the obviously artificial claim that the speakers and authors of the Talmud thought in such philosophical language and categories. What such a formulation for the interaction of "Philosophy" and "Halakha" looks like and the new horizons it opens for the discipline of Talmudic exegesis remains to be seen. In my opinion, until that point, the Talmudic specialist with a passing interest in philosophy can not determine any real criteria to prefer one "philosophical explanation" of the Talmudic disagreement regarding "breirah" over another.

.