



The History and Process of Halacha **An Introduction to *Living the Halachic Process***

In the next several pages, we will try to provide a very basic history of the way halacha developed and the rudiments of how it works. We do not intend to present innovative discoveries or to provide a rigorous academic thesis on these topics. Rather, we want to simply and clearly present facts and explain phenomena that are prerequisites to putting the responsa in this book and, indeed, the serious study of any realm of halacha in perspective. This can enable the novice to navigate the ensuing halachic discussions, as well as help the “halachically experienced,” who may have overlooked some information or under-appreciated certain phenomena, to achieve a deeper understanding of this field. Each of the topics upon which we will touch is the subject of volumes of research literature. We hope that, in this condensed form, the information will be more appropriate for our purposes.

1. Halacha - A Basic Definition

We will start with a basic working definition of the Hebrew word halacha. This noun comes from the verb root for walking or going. As we go through life, we need a path to follow in order to safely reach our intended destination. In the spiritual realm, it is insufficient simply to desire to serve HaShem (God) and to bring ourselves to a high spiritual level and to closeness to Him. We need to know what practical steps we must take in order to reach the destination. For the most part, HaShem gave us instructions how to reach this lofty goal. These specific instructions are the basis of halacha. (Note: often in rabbinic jargon, including this work, halacha also refers to the opinion that is accepted as normative practice.)

Halacha tells us what we are supposed to do and from what we are supposed to refrain. In most cases, these instructions take the form of binding commandments, both positive and negative, that we call *mitzvot*. Some of the positive mitzvot apply constantly (e.g., loving HaShem). Some are time-related, including daily (e.g., putting on *tefillin*), weekly (e.g., reciting *Kiddush* on Shabbat) and yearly (e.g., eating matza on Passover). Some are situational (e.g., blessing HaShem after completing a meal). Most negative commandments apply constantly (e.g., never killing, stealing, or eating non-kosher food). Some are time-related (e.g., not eating on Yom Kippur) and some are situational (e.g., not withholding the pay owed to a worker). Halacha is a major part of the body of Jewish teachings broadly called Torah (which comes from the root to teach). (Torah can also refer to more specific elements of Jewish teachings, such as *The Five Books of Moses* or laws of Divine, rather than of rabbinic, origin. We apologize for any confusion that this variety of meanings may cause in the chapters that follow.)

2. Torah - Written and Oral

HaShem presented the Torah to us in two complementary forms: written (*Torah shebichtav*) and oral (*Torah shebe'al peh*). The written form (the Written Law) is contained in *Tanach* (the *Holy Scriptures*). *Tanach* (or *Tanakh*) is an acronym for *Torah* or *Chumash* (*The Five Books of Moses* or *Pentateuch*), *Nevi'im* (*The Prophets*), and *Ketuvim* (*The Writings*). HaShem dictated the words of the *Chumash* to *Moshe Rabbeinu* (Moses) and instructed him to write them in Torah scrolls, which have



been scrupulously copied since the day of his death. Many sections of the *Chumash* contain very few commandments. Examples are *Bereishit* (*Genesis*), the first parts of *Shemot* (*Exodus*) and *Bamidbar* (*Numbers*), and the first and last parts of *Devarim* (*Deuteronomy*). One might call these “historical” sections, but that, to a great extent, would miss the point. Far more than a national history, the less halachic sections are the source of much of the beliefs, philosophy and ethics of the Torah.

The 613 mitzvot are found in the *Chumash*; no one can add to or subtract from this set, not even the prophets. In fact, the other two parts of *Tanach* (known as *Nach*) do not teach us any mitzvot. In the realm of halacha, *Nach* can serve only to imply how HaShem expects us to implement the mitzvot of the Torah or to introduce a protection or implementation of a Torah law (see Chapter 3).

As anyone who seriously studies both the *Chumash* and halacha is aware, it is impossible to know precisely how to fulfill a commandment based on the Written Law’s cryptic instructions alone. Thus, through Moshe, HaShem presented to the Jewish people an Oral Law, which we are to use as a tool to expound the Written Law and determine how to implement the mitzvot of the Torah. This Oral Law has several elements.

One important, but somewhat limited, element is known as *halacha l’Moshe miSinai*. Halacha l’Moshe miSinai refers to HaShem’s oral, halachic communications to Moshe at Sinai, which, in many cases, provide details related to the mitzvot found in the written text of the Torah. An example is that, although HaShem commanded in writing not to eat certain foods, the minimum amount that constitutes a full violation of the prohibition (usually, the size of an olive) was transmitted orally to Moshe.

Another element of the Oral Law, which is more commonly found in Torah scholarship (but also is more complex), is the *middot shehaTorah nidreshet bahen* (hermeneutics). These are the analytical techniques that HaShem instructed Moshe to use in order to expound upon the halachic sections of the Torah. *Chazal* (the Rabbis of Talmudic times, see Chapter 4, Sections A and B) applied these rules to derive laws related to the mitzvot – laws that have the same authority as those that were explicitly stated in the Torah. Rabbi Yishmael had a list of thirteen such rules. In the post-Talmudic period, we no longer derive laws using this system. Rather, we study the laws that Chazal obtained with this method and try to understand the laws’ parameters. Even understanding hermeneutics on this level is very complex, and few people in recent generations have had the confidence to expound upon it. Thus, most post-Talmudic halachic analysis is aimed at uncovering what the Talmudic texts mean and applying them, rather than trying to analyze the laws from their source in the Written Law.

3. Rabbinic Law

In addition to the authority given to the Rabbis to extrapolate Torah laws, the Torah also authorized the Rabbis to create a set of rabbinic laws. These rabbinic laws “encase” the Torah laws with extra provisions, whose stated purpose is to protect the existing Torah laws. In other words, if one would be allowed to do *x*, which the Torah permits, he might go a step further and do *y*, which the Torah forbids. Therefore, the Rabbis forbade us to do *x*. The rabbinic parlance for this practice is “making a fence” around the Torah. These rabbinic laws broaden the scope of halacha tremendously. For example, the Torah forbids cooking in milk only of meat from some mammals. The Rabbis extended the prohibition to poultry. Even though birds do not produce milk, their meat has similarities to beef. Therefore, the Rabbis were concerned that if one would eat chicken cooked in milk, he might eat beef cooked in milk (see Question E-1).

Chazal also had the authority to make *takanot*. Takanot are institutions made in order to alleviate problems or to meet new challenges to society, from either a religious or even a social or economic perspective. Some examples are the *takana* (singular) not to marry more than one wife and the altering of the rules of transaction to prevent abuse of the Torah’s legal system.

Chazal also created rabbinic positive mitzvot, particularly when they viewed them as a logical extension of Torah principles. For example, the holiday of Chanuka, with all of its laws, is rabbinic in origin. The Rabbis took the existing principles of showing thanks to HaShem and performing acts to perpetuate the memory of His miracles and applied them to miracles that occurred in their days. Also, although the Torah mentions blessing HaShem for food only after it has been consumed, Chazal determined that it is proper to do so before eating it as well.

There are differences in severity and in regard to certain details between Torah laws and rabbinic ones. However, observant Jews treat the two as equally binding except in circumstances where halacha



distinguishes between them. The major differences between the two categories regard punishment (which we do not administer in our days) and where there is doubt whether something is forbidden.

4. Rabbinic Historical Periods and Bibliographical Notes

The Oral Law was intended to remain in oral form, as it did for more than a millennium. However, nearly 2,000 years ago, the Rabbis foresaw that if they did not start recording Torah ideas and rulings, much would be lost. This was due to difficulties that prevented the scholars of the time from reaching the levels of their predecessors. Therefore, they decided to “bend the rules” and allow the Oral Law to be written. Once this change was implemented, a new scholastic phenomenon arose that revolutionized the nature of Torah study and brought about the Jewish bookshelf. We will now briefly review different types of halachic literature, according to their time-periods, and explain the function of each.

Note: For a variety of reasons, we refer to the periods using approximate, rounded dates.

A. Tanna'im (1 CE – 200 CE)

The post-Biblical period began about twenty-four centuries ago with an assembly of scholars known as *Anshei Knesset HaGedola* and continued with pairs of leading scholars known as the *Zugot*. However, major records of rabbinic literature begin just over 2,000 years ago in *Eretz Yisrael* (the Land of Israel) with the scholars called the *Tanna'im*. Some of the most famous earlier Tanna'im include Hillel and Shammai and their academies, R. (=Rabbi) Akiva, R. Gamliel, and R. Yehoshua. The later Tanna'im, among whom R. Akiva's students were particularly prominent, include R. Yehuda, R. Meir, R. Shimon, R. Yossi, and, finally, R. Yehuda HaNasi (approximately 200 CE). R. Yehuda HaNasi has particular importance in our context. He selected the most authoritative formulations of *Tanna'ic* discussions and decisions from among the tens of thousands that circulated through the various academies. These passages were called *mishnayot* (singular, *mishna*), which, roughly, means learnings. R. Yehuda HaNasi organized the *mishnayot* in a way that would address the gamut of halachic issues.

The *mishnayot* were compiled into six sections or *sedarim*. These *sedarim*, collectively, are known as *Shas* (the acronym of the Hebrew *shisha sedarim* – six sections). The *sedarim* were broken down further into *massechtot* (tractates). An overview of the content of the *sedarim* is found in section B. A generation later, Rav (Rabbi) Chiya and Rav Oshaya compiled other Tanna'ic statements into *toseftot*, which accompany the *mishnayot* according to the order of *Shas*. The Tanna'ic statements that were not included in either compilation are called *baraitot*. They are often cited by the *gemara* as proof in cases where they give more details on particular topics than do the *mishnayot*.

B. Amora'im (200 – 500 CE)

After the compilation of the *mishnayot* by R. Yehudah HaNasi, there was a general acceptance that future generations of scholars would not argue with the Tanna'im. The rationale for this practice, which would be repeated in a similar manner later in halachic history, was as follows. Moshe, who was taught by HaShem, was the source of all Torah scholarship, which he possessed at the highest attainable level. He passed down all that was humanly possible to his disciple, Yehoshua (Joshua), thereby starting an uninterrupted chain of transmission. The accepted assumption is that the closer one is to the beginning of the chain, the higher is his authority. At different points in history, there was a consensus that a clear demarcation between the scholars of different eras had passed. These demarcations were often accompanied by monumental halachic works that summarized the scholarship of the era that was concluding. Under those circumstances, it was decided, formally and/or popularly, that scholars would never again be able to reach the heights of scholarship of their predecessors and that they should, therefore, not argue with them.

Following the period of the Tanna'im was the period of the Amora'im, which lasted for approximately 300 years. The Amora'im made a monumental contribution to the Torah world by discussing the *mishnayot*, determining the reasons behind them, and applying the general principles that they derived to cases where there was no recorded ruling by the *Tanna'im*. Moreover, in cases of dispute (*machloket*), the Amora'im were faced with the task of deciding which opinions of the Tanna'im to accept as halacha. In this regard, they formulated several rules. For example, we accept the opinion of the majority over that of the minority. We accept an anonymous opinion in a *mishna*



over an opinion that is found elsewhere in the name of a specific scholar. We accept the opinions of the Academy of Hillel over those of the Academy of Shammai. There are many other rules and notable exceptions to the rules.

At the time of the Amora'im, there were two major Jewish communities and Torah centers in the world: Eretz Yisrael and *Bavel* (Babylonia). Despite the geographical distance between these centers, scholars, students, and scholarly information moved from one to the other. During this period, due in great part to oppression and poverty in Eretz Yisrael, the Babylonian center became the dominant one. Before its scholarship dwindled, in the midst of the Amora'ic period, significant portions of the scholarship in Eretz Yisrael's centers were redacted and compiled to form a work that we call the *Talmud Yerushalmi* (The Learning of Jerusalem).

Although serious scholarship existed throughout Bavel, two major centers arose in Sura and Naharda'a (and, later, in Pumbedita). Each had its own academy and academy head (see more in the section on *Ge'onim*). The work that summarized the scholarship of the Amora'im, which was organized by Ravina and Rav Ashi in around 500 CE, is called the *Talmud Bavli* (The Learning of Babylonia). Of the two Talmuds, the *Talmud Bavli* is studied far more. Several factors contribute to this phenomenon: the *Talmud Yerushalmi* is written in difficult language and syntax; it has more variant texts; it covers a period that ended earlier than the period covered by the *Talmud Bavli*; and it has shorter discussions on the topics that are still applicable on a daily basis when Jews live out of Israel and are without the Temple. When a Talmudic scholar, in citing a source, gives the name of a massechet (a book of Talmud) and a page number, he is referring to the page of the *Talmud Bavli*, in the standard editions. Each page number refers to two sides of a page, and we distinguish between the sides referring to "a" and "b."

The basic structure of the Talmud, both for the Bavli and for the Yerushalmi, is as follows. Generally, the mishnayot that comprise a tractate are cited one at a time. After each one, there is a section of corresponding *gemara*, which is the analysis of the text of the mishna and the ensuing discussion. It is noteworthy that it is not unusual for the *gemara* to discuss matters that are quite tangential to the mishna's contents. The organizers of the Talmud had an agenda to find a place for a wide variety of wisdom in the fields of halacha, philosophy, Biblical exegesis, ethics, medicine, and even social and financial advice. When the matters were directly related to the discussion of a mishna, it was included in that mishna's *gemara*; when the wisdom was not related directly to a mishna, there were other ways to find a place for it.

With the completion of the *Talmud Bavli* (modern scholars disagree about how long the editing continued), another period of scholarship ended. Again, there was a general acceptance that no one after that point could argue against the halachic conclusions that were stated in or even implied by the Talmud. Later generations, to this day, look for proof of their opinions, first and foremost, in the Talmud.

We will now give an overview of the topics covered by *Shas*, according to the *sedarim*, including a partial list of massechtot:

- a. *Zera'im* – This deals primarily with agricultural laws, many of which apply only in Eretz Yisrael. They include the mitzva of giving tithes of different types and the prohibition of crossbreeding. *Talmud Yerushalmi* has discussion on all of the *seder* (singular of *sedarim*), but *Talmud Bavli* contains only the first massechet, *Berachot*, which deals with daily prayers and blessings on food. References to laws that are related to *Zera'im* are interspersed throughout the *Talmud Bavli* as tangential points to its discussions.
- b. *Mo'ed* – This seder deals with the laws of the special days on the calendar, starting with Shabbat and including the various holidays and fasts. There is almost a complete complement of Talmud for this seder. Tractates include *Shabbat*, *Eruvin* (carrying and traveling on Shabbat), *Pesachim* (Passover), *Yoma* (Yom Kippur), *Beitza* (general laws of festivals), *Rosh Hashana*, *Sukka* (the laws of Tabernacles), *Megilla* (Purim), and more.
- c. *Nashim* – This seder deals with family law, and it has a full complement of Talmud. Massechtot include *Kiddushin* (marriage), *Gittin* (divorce), *Ketubot* (monetary laws between husband and wife), *Yevamot* (levirate marriage), *Nedarim* (oaths), and *Sota* (adultery).
- d. *Nezikin* – Although the word *nezikin* literally refers to damages, this seder discusses the entire range of monetary law and some additional topics. The main topic of monetary law is broken



into three massechtot known as “gates,” *Bava Kama*, *Bava Metzia*, and *Bava Batra*. *Sanhedrin* and *Makkot* discuss the workings of courts, including the administration, when warranted, of punishments. This seder also includes massechtot that deal with a variety of important ancillary topics, such as *Avoda Zara* (idolatry) and *Avot* (general ethics). There are Talmudic tractates on the great majority of the seder.

- e. *Kodashim* – The word *kodashim* means sacred items. This seder deals with the Temple (*Middot*), the sacrifices that were brought there for a variety of purposes (*Zevachim*, *Menachot*, *K’ritot*, *Tamid*, *Bechorot*, *Kinim*), donations to the Temple (*Arachin*), and their misuse (*Me’ila*). *Chulin* deals primarily with the *kashrut* of animals. There are tractates of *Talmud Bavli* on most of the seder, and most of the tractates are relatively short. Other than *kashrut* topics of *Massechet Chulin*, these topics come up rarely in our book, which generally deals with modern, day-to-day questions. However, as anyone who has studied Talmud knows, concepts and precedents learned in one place can apply to another in surprising ways. Thus, in addition to its inherent value as Torah, *Kodashim* also teaches us concepts that are relevant to modern-day halacha.
- f. *Taharaot* – This seder discusses the laws of purity and impurity. This is perhaps the most difficult section of *Shas*. It is also one that has relatively few daily applications and on which there is no *massechet* of *Talmud Bavli* other than its last *massechet*, *Nidda*, which deals with the laws of family purity. Its longest *massechet*, *Keilim*, is concerned with the impurity of vessels, and the subject of *Ohalot* is the impurity associated with being in a covered area with a corpse.

C. Ge’onim (500 – 1000 CE)

We have relatively little literature from and information about this period of approximately 500 years. The world’s rabbinic scholarship was concentrated in the academies of Bavel, which survived throughout the periods of the Amora’im and the *Ge’onim*. In fact, the term *ga’on* (the singular of *ge’onim*) was the title of the head and leading scholar of each of the academies. The academy heads were world Jewry’s religious leaders. They interacted (sometimes harmoniously and sometimes less so) with the political leader of Babylonian Jewry, the *Reish Galuta* (the Exilarch). The *Reish Galuta*, who was always a descendant of the monarchical family of David, had strong and official status as the political head of the Jewish community of Bavel.

Some of the rulings of the *Ge’onim* have survived in *responsa* literature or in citations by their successors from the period of the *Rishonim*. However, of the periods we have mentioned, this one has had by far the least impact on modern halachic scholarship. The period of the *Ge’onim* ended with the decline of the Babylonian Jewish community and the close of the *yeshivot* of Sura and Pumbedita after so many hundreds of years. At that point, Talmudic and halachic scholarship arose in a variety of different places.

D. Rishonim (Early Scholars, 1000 – 1500 CE)

The *Rishonim* “opened up” the Talmud and halacha, in general, enabling their coherent and organized study on a variety of levels. The early *Rishonim* were particularly crucial in this regard.

Some 950 years ago, Rashi (R. Shlomo ben Yitzchak) wrote one of the first, and still the most used, running commentaries to almost all of *Talmud Bavli*. Somewhat later, a group of scholars from the general area of France-Germany, who spanned more than a 100-year period, wrote a further commentary, *Tosafot*. *Tosafot* critiques and complements Rashi’s work. The commentaries of Rashi and *Tosafot* frame the gemara in the standard editions of the Talmud. *Tosafot* is not a running commentary, but it discusses, often in depth, individual aspects of the gemara, which *Tosafot*’s authors felt Rashi had erred about or left room for further development.

Some of the other *Rishonim* who followed *Tosafot*’s style include (in chronological order) the Ramban, Rashba, Ran, and Ritva (to whom we refer according to their acronyms, Rabbi *x* son of *y*). Unlike Rashi and *Tosafot*, these scholars lived in Spain, whose Jewish community was enjoying a “golden age” during much of the period in which these scholars wrote (the 13th through 15th centuries). While serving primarily as commentaries to help people understand the Talmud, their works – known as *Chidushei* (the novel ideas of) *HaRamban*, *HaRashba* etc. – also influence the process of



determining practical halacha. Firstly, in the course or in the summary of their discussions, the authors often state what they feel should be done in a given case not discussed in the Talmud or which of the Talmud's opinions should be accepted. Furthermore, we accept even the Talmud's implied opinions. Therefore, when one knows how to correctly understand the cases that the Talmud discusses and the logic behind the rulings, he can determine the Talmud's view on questions that are not explicitly addressed in the Talmud or even the Rishonim.

Nevertheless, the Rishonim's more direct and profound impact on the world of halacha was brought about by summarizers and codifiers, not commentators. One of the first Rishonim, the Rif (of Morocco), the leading halachist of his time, wrote a work that modeled after the gemara, but removed much of the debate and replaced it with his rulings as to which opinions among those presented in the Talmud would be accepted. Some 300 years later, the Rosh (one of the Tosafot scholars, from Germany) wrote a similar work in a slightly expanded form, which dealt with more applications of the Talmud's rulings.

Probably the greatest scholar and personality of the period of the Rishonim, the Rambam (R. Moses Maimonides, latter part of 12th century), wrote the most important halachic code of this era. The Rambam called this code *Yad Hachazaka* or *Mishneh Torah* (in rabbinical parlance and bibliographical citations, it is common to simply refer to the book as the *Rambam*). This code made it possible to learn halacha systematically, independently of the Talmud. One must understand that Talmudic discussions jump from topic to topic in an attempt to derive halachic concepts from precedents found in diverse areas of halacha. The Rambam gathered the conclusions of the various gemarot, reworded them into extremely clear and precise Hebrew paragraphs and organized them by topic into fourteen sections and close to 100 subsections that encompass all of the laws (and some basic philosophy) that can be derived from the Talmud. Although this is only a code that summarizes conclusions and decides between Talmudic opinions, there is no post-Talmudic work whose language is studied as much for nuance and attempted application as the *Rambam*. To this day, the *Rambam* is at the core of many, if not most, high-level Talmudic *shiurim* (lectures) delivered in the leading *yeshivot* (rabbinical seminaries). Another important code that is organized by topic is the *Arba'ah Turim* (usually called the *Tur*), a four-section work written by Rav Yaakov, the son of the Rosh.

The third major source of halacha from the period of the Rishonim is responsa literature. As practical questions arose throughout Jewish communities the world over, a local rabbi would at times feel it necessary to enlist the advice of one of his region's greatest authorities. In those times, it was rarely practical to send a letter to another part of the world. In fact, it was not usually necessary, as most countries had at least one outstanding, recognized halachic authority (*posek*).

The responsa, known in Hebrew as *shut*, an acronym for *she'eilot u'teshuvot* (questions and answers), are fascinating to study as they reveal the thought process of the posek and often provide a historical and human perspective. However, the application to halacha is, in some ways, more difficult in the case of responsa than in the case of either of the other two major sources of halacha from the Rishonim. The commentaries and codes deal primarily with general cases concerning a single issue under normal circumstances. Likewise, the main purpose of the section in the code is to determine the "generic" halacha on a given issue. Responsa literature deals primarily with real-life questions that were so complicated or serious that the local authority did not want to rely upon his own understanding. Several issues may interplay in one case. (See Chapter 5, Stage 4 for greater perspective.) Often the ruling is based on multiple doubts. For example, we can be lenient in a certain case because of a combination of several, related or independent, possible reasons for leniency. The combination of reasons can allow for leniency even if each individual reason is not convincing. The level of need of the person on whose behalf the question is asked (by his rabbi) may play a major role. In many cases, a posek will lean toward a strict ruling, yet will be lenient in the event of great need. In other cases, he may lean toward leniency but suggest stringency for those who have easy alternatives. It is, thus, often difficult to identify the posek's halachic opinion in a generic case. Nevertheless, the study of responsa is crucial for determining halacha, both despite and because of its special nature. Most of the published responsa are written in an in-depth and clear manner that makes the author's view of the general issues quite apparent. Furthermore, because the responsa are concerned with specific circumstances, a posek can study how centuries of predecessors applied Talmudic principles to complex and touchy real-life situations.



We will list a sample of the major authors of responsa, categorizing them by period and region, distinguishing between Sephardic and Ashkenazic and, very roughly, between early and late. Please note that, in the context of Rishonim, the term “Sephardic,” which literally means, “from Spain,” refers to any Jew whose origins are from the region of Spain, which includes Provence and North Africa. Likewise, the term, “Ashkenazic,” which literally means, “from Germany,” also includes France. The Middle Eastern and East European Jews are classified as Sephardic and Ashkenazic, respectively, but their communities were small, and, for the most part, they did not leave records of comparable scholarship in the period of the Rishonim.

Early Sephardic – Rif, Ri MiGash, Rambam, Ra’avad, Rashba (voluminous).

Early Ashkenazic – Maharam MiRutenburg, Rosh, Maharach Ohr Zarua.

Late Sephardic – Ran, Rivash, Tashbetz, Radbaz.

Late Ashkenazic – Terumat HaDeshen, Maharil, Mahari Weil.

E. Acharonim (Later Scholars, 1500 – present)

In broad terms, one could say that the periods of the Rishonim and *Acharonim* were separated by one historical event and by the works of one scholar. The event, which caused the destruction of the most prominent Jewish community of its time and the dispersion of its communities and its scholars, was the Spanish Inquisition. The scholar was Rabbi Yosef Karo, born in Spain a few years before the Inquisition, who eventually settled in Safed in Eretz Yisrael.

As we have seen, the main centers of Jewish life and scholarship in the period of the Rishonim were Spain (and the neighboring regions) and France/Germany. After the expulsion from Spain, the Sephardic communities initially settled in North Africa, Turkey, Holland, and Eretz Yisrael. Of the communities that formed in these areas, only the one in North Africa remained stable until modern times. During the period of the Acharonim, the Ashkenazic communities moved slowly eastward. In the beginning, Poland emerged as an important Torah community. As time progressed, Lithuania, Ukraine, Russia, and Hungary were added to the list of countries that produced major halachic works.

Rav Yosef Karo wrote a commentary, the *Beit Yosef*, on the code of the *Tur*. Not only did he explain the *Tur*, but he also used the opportunity to survey and discuss the major opinions among the Rishonim on the questions at hand. Subsequently, Rav Moshe Isserles (Rama) of Cracow, Poland authored the *Darchei Moshe*, in which he comments on both the *Tur* and the *Beit Yosef*. In these notes, Rav Isserles stressed the opinions of the later Ashkenazic *poskim* (plural of *posek*) and the practices of the Ashkenazic communities. Rav Yosef Karo used the *Beit Yosef* as the basis for his famous work, the *Shulchan Aruch*.

The *Shulchan Aruch* has been the most authoritative code of halacha, from soon after its publication until today, and it is the main source of practical mitzva observance for Sephardic Jewry. It consists of the same four sections and (approximately) 1500 *simanim* (chapters) as does the *Tur*. To understand the source and rationale for the *Shulchan Aruch*'s rulings, one can refer to the *Beit Yosef* and, usually, see the explanation in the author's own words. The Rama inserted glosses into the text of the *Shulchan Aruch* that reflect how Ashkenazic rulings differ from those of the *Shulchan Aruch*. Where the Rama does not comment, the *Shulchan Aruch*'s ruling is assumed to be binding, unless proven otherwise, for the Ashkenazic communities as well. The *Shulchan Aruch*, as modified by the Rama's glosses, is still the most important authority for Ashkenazic communities the world over.

The four sections of the *Tur/Shulchan Aruch* are:

Orach Chayim: This name means “the way of life.” The first third of this section deals with daily rituals chronologically from the time one wakes up in the morning until he goes to sleep at night. It includes the laws related to hygiene, wearing *tzitzit*, donning tefillin, the prayers, and the blessings before and after eating foods. The weekly laws of Shabbat and the brief laws of the new month are contained in the next third of Orach Chayim, and the annual festivals are covered in the final third.

Yoreh Deah: This section deals, in general, with ritual law that is not time-based. The first third is concerned with the kosher status of various foods. The rest of *Yoreh Deah* is comprised of smaller sections. They include the laws of idolatry, usury, family purity, oaths, relationships with parents and teachers, charity, sacred scrolls, circumcision, agricultural laws, burial, and mourning.

Even HaEzer: This section contains the laws that pertain to marriage. Starting, logically, with the mitzva to marry, it progresses to the laws of whom one may marry, the laws of the wedding ceremony,



and to the monetary and other obligations that take effect after marriage. The last parts of *Even HaEzer* discuss the dissolution of marriage. Here, one finds the laws of *gittin* (divorce), *yibbum/chalitza* (the processes that a woman needs her brother-in-law to perform if her husband dies without children), and suspicion of adultery.

Choshen Mishpat: This last section of the *Tur/Shulchan Aruch* is concerned with monetary law. It begins with the laws of a Jewish court and of testimony given before it. It then discusses the relative strength of different types of claims and the administration of an oath in order to decide between the claims of the litigants. Other areas of monetary law discussed are worker/employer relations, contracts and transactions, damages, watchmen, etc.

As the *Shulchan Aruch* emerged as the basis of halachic practice, much of the halachic writing of the Acharonim began focusing on that work. Every page of the standard editions of the *Shulchan Aruch* is bordered by several commentaries, which differ somewhat from section to section and from edition to edition. The commentaries, sometimes called *nosei keilim* (literally, those who carry the weapons), differ from each other in style and purpose. However, generally their functions are to explain the source and logic of the *Shulchan Aruch/Rama*, discuss cases not addressed explicitly within, and point out the few places where the custom is not to follow the *Shulchan Aruch*. In these ways the commentaries, while primarily “serving” the *Shulchan Aruch*, are often, themselves, the most important tool for determining practical halacha.

Other commentaries, which were not included in the standard *Shulchan Aruch* editions, were published independently. (In many cases, a commentary was first published independently, and, when it proved to be popular, it was incorporated into a standard edition.) Still other works are codes in their own right, but they follow the order of the *Shulchan Aruch* and base themselves closely on its content. Often, they reword the *Shulchan Aruch* and edit it according to their opinions.

Let us now mention some of the most important commentaries on the *Shulchan Aruch*, most of which are cited extensively throughout *Living the Halachic Process*. Most of them are found in one or more of the four sections of the *Shulchan Aruch*, but not in all. We will thus present them section-by-section. [Note that the identity of halachic authors and their *sefarim* (books) are often interchangeable. A work may be referred to by the name of its author (e.g., the Gra, the Rambam); other times, the author is identified by the name of one of his famous works (e.g., the Chafetz Chayim, the Chazon Ish).] It is accepted parlance, when referring to the book or the author, to speak about them in the present tense, even though the work is centuries old.

Orach Chayim: The primary commentators are the Magen Avraham and the Taz, both of whom lived in Eastern Europe in the 17th century. The *Magen Avraham* is considered, by most, somewhat more authoritative than the *Taz*. There are a few works written on these two commentaries that appear on the page or in the back of the standard editions of the *Shulchan Aruch*. Prominent among them are the Pri Megadim, who has a separate commentary on each of the two, and the Machatzit Hashekel, who has an enlightening running commentary on the Magen Avraham. The Gra (the Gaon of Vilna, 18th century) provides cryptic but highly regarded notes on the passages of the *Shulchan Aruch*. Important Sephardic commentaries include the *Pri Chadash* (late 17th century) and the *Birkei Yosef* (18th century), both of which were written in Eretz Yisrael.

Among the more recent halachic contributions, the most prominent was written by Rabbi Yisrael Meir HaKohen (Kagan) of Radin, Poland, known best by the name of his early publication, the Chafetz Chayim. His commentary to *Orach Chayim* has three components. Each component is named, but the work, as a whole, is referred to by the name of the primary component, the *Mishna Berura*. The *Mishna Berura* explains the *Shulchan Aruch* and *Rama*, summarizes the opinions of the major authorities up to its time (the turn of the 20th century) and presents its own conclusions. The second component, the footnotes to the *Mishna Berura*, is called the *Sha'ar HaTziyun*. The third component, the author's more in-depth analysis of specific issues of interest, in which he often discusses the topics from their roots in the gemara and the Rishonim, is called the *Bi'ur Halacha*.

We will now discuss the special role of the *Mishna Berura*. Once that role has been clearly defined, we will understand why the *Mishna Berura* is so regularly cited in this and other works and why his opinion seems to carry so much halachic weight. However, in order to put things in perspective, we need to digress to a more general topic.



It is important to point out the relationship of the Acharonim to the *Shulchan Aruch* and the Rishonim. We saw above that those who came after the Tanna'im and the Amora'im, respectively, would/could not disagree with scholars of the previous period. They interpreted their predecessors' statements, applied them to new circumstances, and, by necessity, had to choose which of their opinions to follow when no clear consensus existed. In contrast, there was no formal decision made that Acharonim may not argue on Rishonim. Admittedly, Acharonim do not generally do so. However, it is not uncommon for early Acharonim to argue on late Rishonim. The same is true regarding the Shulchan Aruch and his counterpart, the Rama. Even though their combined *Shulchan Aruch* was, for the most part, accepted as the final word in halacha, it is common to find the opinions of early Acharonim that argue with them. These Acharonim were specifically "emboldened" to do so when the local practice was different from the Shulchan Aruch's or when, in their opinion, the majority of the Rishonim differed with the Shulchan Aruch's ruling. Later Acharonim rarely reject a given ruling of the Shulchan Aruch unless earlier Acharonim had already done so.

As early as the time of the Talmud, the following paradoxical concept had been formulated. Although we revere the earlier authorities as greater and as having a stronger Sinaitic tie than their successors, we are more likely to accept the views of the later generations (*hilchata k'batra'i*). The reason is as follows. The later authorities accepted the primacy of their predecessors. Therefore, if, in spite of this, they took issue with their predecessors, it was only after studying their arguments and carefully deciding against them. In contrast, the earlier authorities were not privy to the later authorities' opinions and logic. Therefore, we have to consider the possibility that if the earlier authorities had seen their successors' arguments, they would have conceded the point. Thus, if an Acharon cites the opinion of a Rishon or the Shulchan Aruch and says that we do not accept a particular ruling, we are likely to follow the Acharon. (Of course, often various Acharonim debate whether we should accept or reject a ruling of the Shulchan Aruch.)

Having the above in mind, we can say that, at our point in history, the *Mishna Berura* is considered the most authoritative work on daily, practical halacha. To a certain extent, the *Mishna Berura* himself has at times been "outdated" by more recent authorities. Scholars such as the Chazon Ish, Rav Moshe Feinstein and Rav Shlomo Zalman Orbach, to name a few prominent 20th century poskim, on occasion disagree with the *Mishna Berura*'s conclusions. Many, especially among their closer following, will abide by the decisions of more recent poskim rather than those of the *Mishna Berura*. However, the *Mishna Berura* still stands as the modern Ashkenazic world's chief authority of halacha, whose status is approaching the status that the Shulchan Aruch has enjoyed throughout the period of the Acharonim until this day.

The Sephardic communities use the *Mishna Berura* as a book for study and as a major halachic authority. However, they do not accept it as an almost "automatic bottom line" as do Ashkenazim, for the following reasons.

Firstly, in a case of a dispute between the Shulchan Aruch and the Rama, even though the *Mishna Berura* will explain both opinions, he will generally accept the Rama's ruling, whereas Sephardim will accept the Shulchan Aruch's ruling. Secondly, although a community will acknowledge the greatness of the halachic authorities of other Jewish communities and may study their writings, each community has its list of "favorites." Ashkenazic poskim, including the *Mishna Berura*, rely heavily on the following early or middle Acharonim: Gra, Chatam Sofer, Noda BiYehudah, and Rav Akiva Eiger. In contrast, the leading Sephardic sages of that period include the Pri Chadash, Chida, Rav Chayim Falagi, and Ben Ish Chai. A halachic work of similar scope to that of the *Mishna Berura*, from a Sephardic perspective, is the *Kaf HaChayim*, and we cite it not infrequently.

As history unfolds and because Sephardic communities are relatively united in modern-day Israel, a new authority has arisen, namely, former Chief Rabbi, Rav Ovadya Yosef. Through his voluminous responsa and the writings of his sons, whose work he oversees, Rav Ovadya, as he is called, has presented a clear and scholarly voice that most Sephardim have accepted.

The third reason that Sephardim do not accept the *Mishna Berura* broadly is that the *Mishna Berura* was written for the Ashkenazic community, taking into account the customs of the various sub-communities. At the time, there was little connection between European Jewry and the communities of North Africa and the Middle East. Thus, the *Mishna Berura* does not address the important element of *minhag* (custom) concerning Sephardim. It is noteworthy that some Sephardim have registered the



same complaint about Rav Ovadya Yosef. Rav Ovadya, who hails from Baghdad, does not put as much stress on the customs and approach of North African Jewry as some of the devotees of its customs would like.

After this long digression, let us return to the world of bibliography. There are other independent codes of halacha that follow the order of the *Shulchan Aruch*. They include the *Levush* (late 16th century), *Shulchan Aruch Harav* (by the first Lubavitcher Rebbe, late 18th and early 19th centuries), and the *Aruch HaShulchan* (late 19th century). Other codes that deal with daily, practical halacha, which do not follow the *Shulchan Aruch*'s order, include the *Chayei Adam* and *Kitzur Shulchan Aruch*.

In the last few decades, there has been tremendous growth in the publication of code-like books, written in a modern style, each of which is limited to one topic. This phenomenon, arguably, began with Rav Neuwirth's *Shemirat Shabbat K'Hilchata* on the laws of Shabbat, a sefer that we cite frequently. Other similar works are *Ishei Yisrael* and *Tefilla K'Hilchata* on prayer and *V'Zot HaBeracha* on blessings, to name just a few. We will mention other works that employ a similar style in connection with different sections of the *Shulchan Aruch*.

This new genre is also found in English sefarim (books). Perhaps, the first series of topical books in English was produced by Rav Shimon Eider. This phenomenon continues with an ever-growing series of Artscroll publications, written by different authors. Other individuals and organizations have followed suit. Although serious scholars write these works, they do not always have the scholarly clout that some of the authors of previous generations had. Rather than taking bold stands of his own, the author in the modern genre concentrates on compiling and clearly expressing the views of past and present halachic authorities.

We do not belittle the accomplishment of the aforementioned "modern-codifiers." We note that *Living the Halachic Process*, although it uses the different genre of responsa, is also not an attempt to break new ground from a scholarly basis. Instead, our goal is to present matters analyzed with a classical, halachic approach in a format that is novel (see foreword to *Living the Halachic Process*).

Along the line of modern compilers, it is appropriate to mention a new series, *Piskei Teshuvot*, following the order of *Orach Chayim*, which is proving to be very useful and popular. This work, which has been helpful to us in our research, compiles opinions on questions related to the *Shulchan Aruch* and *Mishna Berura*. It puts particular stress on questions that have come to the fore in recent times and refers extensively to the poskim of our time.

Yoreh Deah: The two main commentaries on the *Yoreh Deah* section of the *Shulchan Aruch* are the *Taz* (also on *Orach Chayim*) and the *Shach*. The *Taz* once again is viewed as slightly less authoritative than his counterpart is. The *Shach* (Rabbi Shabtai the Kohen, 17th century) may have been the most respected halachic authority during the period of the Acharonim. As was the case in *Orach Chayim*, here in *Yoreh Deah* the *Pri Megadim* comments upon the two main commentaries and the revered *Gra* provides his notes (as he does for all four sections of the *Shulchan Aruch*).

Perhaps the most important addition to the pages of the standard edition of *Yoreh Deah* is the late 19th century work, *Pitchei Teshuva*. This work, which literally means "openings of responsa [literature]", compiles many of the most important related halachic positions of the Acharonim that are not found in the commentaries of the *Shulchan Aruch*. Often these opinions come from responsa literature, as the name implies. The fact that the *Pitchei Teshuva* decides to cite a given position and the way that he treats the opinion are both indications of whether the opinion is accepted halacha. A work, which more voluminously compiles opinions on issues in *Yoreh Deah*, is the early 20th century *Darchei Teshuva*. The *Pri Chadash*, the *Birkei Yosef*, and *Kaf HaChayim*, whom we mentioned above as three of the most important Sephardic commentators on *Orach Chayim*, write on *Yoreh Deah* as well. Rabbi Avraham Danzig, the author of the code *Chayei Adam* on *Orach Chayim*, also authored a code on the subject matter of *Yoreh Deah*, known as *Chochmat Adam*. As there is no *Mishna Berura* on *Yoreh Deah*, many consider the *Chochmat Adam*'s rulings as the most authoritative on practical matters of *Yoreh Deah*. Others favor the *Aruch HaShulchan*. Rav Yaakov of Lisa, who is best known for his commentary *Netivot HaMishpat* on *Choshen Mishpat*, wrote the *Chavot Da'at* on much of *Yoreh Deah*. In addition, there are several commentaries on individual topics of *Yoreh Deah*.

As is true for *Orach Chayim*, there is an increasing number of modern-style sefarim, in Hebrew and in English, on the individual areas of halacha covered in *Yoreh Deah*. In fact, there are too many



for us to give a meaningful sampling. We will just mention that Rav Yeshaya Bloy has written fine works on the laws of usury, *mezuzah*, and charity, each of which we have used in the preparation of this book. Rav Shimon Eider's book on the laws of family purity (a topic that we have avoided in this forum) is, as we mentioned above regarding all of Rav' Eider's sefarim, a trailblazer in the phenomenon of high-level halachic works in English.

Even HaEzer: Although this is probably the least studied section of the *Shulchan Aruch*, there are very significant, classical commentaries on it. The main commentaries are the *Beit Shmuel* and *Chelkat Mechokek* (17th century, Eastern Europe). Above, regarding the study of *Yoreh Deah*, we discussed the importance of the *Pitchei Teshuva*. On *Even HaEzer*, the *Pitchei Teshuva* writes much more extensively. Additionally, the *Ba'er Heitev*, which in other sections of *Shulchan Aruch* (written by different people) simply summarizes the main commentators, adds many of his own comments to *Even HaEzer*. One of the most eye-opening of the commentaries is the *Avnei Milu'im*, written by the author of the *Ketzot HaChoshen* (see *Choshen Mishpat*).

The most important recent work on a significant part of *Even HaEzer*, *Otzar HaPoskim*, was actually written by a group of scholars. It contains extensive citations of countless halachic works on *Even HaEzer*'s subject matter and is indispensable for the scholar who needs to rule on these matters.

Although some present-day works on *Even HaEzer* have emerged, the number does not compare to the number of works on either *Orach Chayim* or *Yoreh Deah*. This is because the subject matter of *Even HaEzer* is not very practical on a day-to-day basis. *Even HaEzer* is used primarily in adjudication between spouses, in officiating at the various family-related ceremonies (primarily marriage and divorce), or in dealing with specific, marriage related, halachic problems. These are the domain of knowledgeable rabbis and do not readily lend themselves to popular, halachic literature.

Choshen Mishpat: The main commentaries on the page are the *S'ma* (17th century) and the *Shach*, which we already mentioned. Although the Taz wrote a commentary to *Choshen Mishpat*, his comments here are terser than they are in other sections of the *Shulchan Aruch*. The Gra and *Pitchei Teshuva* serve their usual functions (described above). The most famous *Choshen Mishpat* commentaries from the middle of the period of Acharonim are the *Ketzot HaChoshen* and *Netivot HaMishpat*. The former, usually just called the Ketzos (in the Ashkenazic pronunciation) is often referred to as the father of modern *lamdanut* (Talmudic analysis). Rather than concentrating on detailed textual analysis, the work tends to arrive at broad principles that give new approaches to the questions at hand. The *Netivot HaMishpat* was written by a contemporary, Rav Yaakov of Lisa. *Netivot HaMishpat* is largely a critique of the *Ketzot*.

Like *Even HaEzer*, *Choshen Mishpat* is mainly the domain of judges, not of the general public, and it has relatively few practical guides. We note that as business ethics has thankfully become an increasingly popular field, more books and articles have been published on the subject for both expert and layman. There is a wonderful present-day series, serving both the knowledgeable layman and the scholar, with clearly presented analysis of opinions on the topics of *Choshen Mishpat*. It is entitled *Pitchei Choshen* and is authored by Rav Bloy, whom we mentioned previously.

Responsa literature in the period of the Acharonim has many of the same characteristics as in that of the Rishonim. However, partially because of the invention and increased utilization of the printing press, the number of works and the average length of the individual responsa has increased greatly. Jewish and general society and technology have changed greatly in the last two hundred years. Therefore, the manner in which recent responsa literature has dealt with new halachic questions, challenges, and opportunities makes them particularly fascinating and indispensable. Among the fields where this phenomenon is manifest are medical ethics, conversion, and technology on Shabbat.

We now present a very partial list of authors and works of responsa that, arguably, have had the greatest impact on practical, halachic scholarship today.

Early and middle Acharonim: Maharit, Maharshal, *She'eilat Ya'avetz* (Rav Yaakov Emden), *Noda B'Yehuda*, Chatam Sofer, Rav Akiva Eiger, *Rav Pe'alim*, *Chayim Sha'al* (Chida), Chavot Yair.



Last century and a half: *Sho'el U'Meishiv*, *Melamed Leho'il*, *Achiezer*, *Da'at Kohen* (Rav I.Y. Kook), *S'ridei Aish*, *Igrot Moshe* (Rav M. Feinstein), *Yabia Omer* (Rav Ovadya Yosef), *Minchat Yitzchak*, *Tzitz Eliezer*.

It is interesting to note that, even within the realm of responsa literature, we feel the presence of the *Shulchan Aruch*. Firstly, when one can cite or infer from a ruling of the *Shulchan Aruch* and/or Rama what their opinion is on the matter at hand, the final ruling is all but decided. Even regarding organization, many of the responsa are divided into volumes according to the section of the *Shulchan Aruch* to which the subject matter relates. Within each volume, the order of topics often follows the order of the subtopics within the *Shulchan Aruch*. We mention parenthetically that we have also roughly employed a *Shulchan Aruch* based organization in *Living the Halachic Process*.

5. The Process of Halacha – Approaches Toward Rendering Halachic Rulings

Rabbis who render halachic rulings must go through several steps. In most cases, various rabbis will do so in a similar fashion and will come to the same, or at least a similar, ruling. Yet, because of training, orientation, and circumstances, there will at times be significant differences in their approaches to solving the issues. As a result, different rabbis may come to very different rulings and/or practical guidance on the same question. In order to give some appreciation of the complexity of the halachic process, we will go through the stages and elements of the process and explain how styles differ.

This study will also enable the reader to put in perspective our orientation, as it finds expression in *Living the Halachic Process* and in Eretz Hemdah's other venues for rendering halachic opinions. We will discuss our approach to halacha and to the type of responses that appear in this book in the foreword, which we urge the reader to read thoughtfully.

Stage 1 – Absorbing the details of the question and its background

The first task of the posek regarding a specific question raised by an individual (as opposed to writing a code or a general article) is to understand the details, both technical and personal, of the case. Two cases that may sound identical to the layman may turn out to be dissimilar in terms of crucial nuances and, thereby, have different rulings. We will concentrate on the personal elements of a case later in this analysis. The rabbi should realize that the real question might not be limited to what the inquirer thinks the issue is. Therefore, he may need to request additional information that might be relevant to the decision-making process as it evolves.

Stage 2 – Identifying the halachic issues

The next step is to analyze the case in order to identify the different halachic issues that need to be addressed. Even a simple case could hinge on several, complicated halachic disputes among authorities, whereas a complicated case could boil down to a single, clear-cut halachic precedent. This analysis should be done before one even opens a book to research an issue. It is also one of the hardest things for a developing, young rabbi to learn since the question of what needs to be researched can itself not be easily researched. Rather, one must know how to identify the issues using logic, creativity and intuition, which, ultimately, is based upon deep-rooted halachic and Talmudic experience.

Stage 3 – Research and appraisal of the halachic issues

The third part of the process is to research the specific issues that have been identified. Nowadays, there are several series of books and CDs that make a plethora of works and opinions available and relatively easy to find. Often, the challenge is not finding the information but finding the time and possessing the organizational skills necessary to sift through it.

There are two basic approaches to deciding how to deal with the available halachic information. (One can also use a combination of the two or vary his approach depending upon the nature of the question and upon other factors.) One approach can be called the *iyun* (in-depth analysis) approach and the other can be called the *beki'ut* (breadth of material) approach. We will illustrate these approaches by comparing the styles of two of our time's most prominent poskim.



Rav Moshe Feinstein (1897–1986), author of the *Igrot Moshe*, was the most respected posek in the history of American Jewry. Without formally announcing his intention to do so, he took the *iyun* approach. Rav Moshe had a highly unusual mastery of the classical sources, many of which we have mentioned in the bibliographical sections of this introduction. By classical sources, we mean the most central and respected works of previous centuries. In every generation, after all, dozens of halachic works are written and only a handful are placed in the highest tier of scholarship that all scholars of future generations will study. This includes the *Talmud Bavli*, the writings of the major Rishonim, the *Shulchan Aruch* and its major commentaries, and a few prominent works of responsa from the period of the Acharonim. Besides these works, Rav Feinstein cites only a handful of others with any regularity.

The approach to *p'sak* (rendering rulings) that Rav Feinstein was taught and/or developed was to analyze the classical sources carefully in order to uncover their principles and logical underpinnings. One then applies those principles to a myriad of permutations of related questions. Rav Feinstein also used his own logic, grounded in a mastery of the workings of halacha, to discover and to apply new ideas that are not found in the classical sources. If Torah-based logic indicates a certain halachic direction, it is acceptable to follow it in the absence of explicit, classical sources, whether supportive or not. This intellectual independence is a phenomenon that is more typical of the Rishonim than of many of the Acharonim. Among the Acharonim it depends greatly on the style of learning taught in a certain region, with Rav Feinstein being a mildly extreme example of the Lithuanian approach.

To rule responsibly on a topic without the concurrence of “colleagues” from the period of later Acharonim, one must be certain that his mastery of the classical sources is indeed rock solid. Without boasting about it to others, Rav Moshe Feinstein had the confidence that he could base his decisions almost entirely on classical sources, as only a handful of people in a generation can do. Indeed, due to Rav Feinstein’s expertise, one can almost never find a ruling of his that can be refuted by an explicit passage from a classical source or even by an indisputable inference from one.

The approach that is almost diametrically opposed to Rav Moshe’s is that of Rav Ovadya Yosef (born in 1920, may he live to 120), author of *Yabia Omer*, *Yechaveh Da’at*, and other *sefarim*. Rav Ovadya is blessed with a memory that is beyond astounding. (It is told that as a young and poor yeshiva student, Rav Ovadya would pay a local bookstore a small fee to allow him to peruse entire books. He would climb a ladder to get to a book and, while standing on the ladder, commit its contents to memory.) In addition to a mastery of the classical sources, Rav Ovadya probably knows more books verbatim, spanning many centuries of rabbinic scholarship, than the average rabbi has ever heard of.

On almost any conceivable question, he can and does cite dozens of previous rulings and halachic discussions. It is almost senseless for him to arrive independently at a new piece of logic. After all, anything that has not been mentioned by any of centuries of authors is unlikely to be correct. It is interesting that Rav Ovadya will often quote works of living authors who are much younger and less prominent than he is. His biggest task in arriving at a general, halachic conclusion is to assess the weight of the different opinions and arguments that he has compiled. The “weighing process” is based both on the prominence of the different poskim and the perceived cogency of their arguments.

Most poskim employ some combination of these two extreme approaches. Few have the standing and confidence to take Rav Moshe Feinstein’s approach. Few have the vast knowledge to use Rav Ovadya Yosef’s approach. (We note again that technological advances and other factors have vastly improved the accessibility of halachic material. Therefore, on many issues, one may have sufficient source material to use Rav Yosef’s approach.)

A rabbi’s style of brainstorming, collecting sources, and analyzing them does not depend that much upon his orientation, halachic philosophy or circumstances. It depends more upon the system of analysis that he was taught, his skills, his resources, and, occasionally, time constraints.

Stage 4 – Translating the halachic indications into a ruling

The final stage of the process of rendering a ruling is to turn the information and indications of what the halacha appears to be into an actual decision. It is at this stage that a rabbi’s halachic philosophy and various other factors, objective and subjective, play a major role. Frequently, the ruling is clear: the matter is clearly permitted, is clearly forbidden, or the steps one needs to take are *x*, *y*, and *z*. However, in many of the cases for which one needs a rabbi to research, there are reasonable



indications in each direction. The rabbi will often find that according to some authorities, the practice is permitted and according to others, it is forbidden. How is he to rule? Following are some considerations in which different poskim have notably different approaches.

1. *Chumra* (Stringency) vs. *kula* (leniency)

There are communities where the normal procedure in a borderline case is to be stringent (*machmir*). After all, they reason, if you were given a potion that might be tasty, but it might be poisonous, would you drink it? Others correctly point out that HaShem did not intend that we should be forbidden in everything until proven permitted. Taking this to the other extreme, some feel: "If it is clearly forbidden, we are willing to refrain from it. If it is unclear, then we have enough restrictions and need not be concerned about doubtful ones." Actually, although there are theoretical grounds for such extreme philosophical approaches, several rules exist that should, and to an extent do, help us arrive at a more balanced approach.

Let us mention just two in a highly oversimplified manner. One rule is that when there is doubt concerning a matter of Torah law, we rule strictly; when there is doubt in a rabbinic matter, we rule leniently. A second rule is that majority opinions prevail over minority ones. In spite of the presence of such rules, for a variety of reasons, to which we cannot do justice to in this overview, they only help us decide. They do not preclude different approaches, in general and in specific cases. Some poskim have a clear tendency toward *kula* and others toward *chumra*. Usually, the tendencies are quite modest, allowing for occasional novel leniencies and novel stringencies but mainly moderate, balanced rulings.

2. *She'at hadechak* (Extenuating circumstance) and *b'di'eved* (after the fact)

These are factors that, in general, make any posek more likely to rule leniently. The concept of *she'at hadechak* mandates that in the face of extenuating circumstances, one has greater license to rely upon lenient, even minority, opinions. For example, one's refusal to eat at someone's home would be insulting to the host, and the food that is served is permitted according to a minority of opinions. A rabbi might rule that under these circumstances, one can rely upon the lenient opinion. A classic example of *b'di'eved* is when one unknowingly added to a dish that he was preparing an ingredient that is forbidden according to many opinions. The rabbi would have told him not to use the ingredient, but the question arose after it was already added. May he eat the food? Is the pot still kosher? These are questions of *b'di'eved*.

There is a famous halachic phrase that the ruling in a case of *she'at hadechak* is similar to that in a case of *b'di'eved*. In both cases there is more reason to be lenient than in the case of *l'chatchila* (under normal circumstances, where one must decide whether to do the matter in question in the first place). Some rabbis weigh these factors of leniency more strongly than others do. Furthermore, at times, there can be a difference of opinion concerning whether a given situation is really a *she'at hadechak*. For example, let us revisit the host above who, arguably, is lax on kashrut standards. Some might say that it is proper to rely on lenient opinions to avoid embarrassing the host. Others might have a different outlook, contending that embarrassment should not be a factor in this type of halachic decision and that the host should be taught that his or her standards are unacceptable. Of course, the individual personalities and the relationship of the parties involved are considerations that might need to be taken into account.

There are certain cases that are often raised by the classical poskim as *she'at hadechak*. Prominent among them are a significant loss of money, questions that arise about food before or on Shabbat, and the need to provide food for guests.

3. *Minhag* (Accepted practice)

Another factor in determining the halacha is *minhag*, the accepted practice regarding the matter involved. In other words, even if the rabbi's analysis of the classical sources makes him lean toward a certain conclusion, if the accepted practice is to act differently, he might recommend the accepted practice rather than his halachic inclination. There are areas of halacha where the *minhag* is surprisingly lenient; there are areas where it is surprisingly strict and even increasingly so over the generations. Yet, many consider *minhag*, whether it be one of worldwide Jewry or restricted to a given community, a relatively compelling factor. We refer in this context to the *minhag* in a community of God-fearing people who are dedicated to the adherence to halacha. This community must also have been under the leadership of capable rabbis during the time the *minhag* was initiated.



Why do we attribute to minhag such prominence? One of the main reasons is the belief that if HaShem allowed a well-intentioned community to act in a certain way, it is likely to be an appropriate approach. Furthermore, if a practice was adopted by a community and continued for some time, it is probable that the rabbinic leadership approved of it.

From a pragmatic perspective, changing a minhag can be detrimental for a few reasons. First of all, since much of religious practice is based on following family and community tradition, if one questions the significance of one tradition, he endangers people's resolve to continue conforming in other areas of religious practice. In addition, any deviation from accepted practice is likely to elicit angry reactions, and we strive to avoid disputes. Finally, if the minhag was a voluntary stringency that the community accepted, it can take on the status of a vow that the community members must keep (see question H-12). Thus, unless one is convinced that the minhag is incorrect, the rabbi should leave it intact.

One of the factors that shapes a community's minhag is the idea that it is normally bound to follow the rulings of its communal rabbi(s). This concept sometimes extends beyond the community to a region or to a broader ethnic subgroup. There have been many instances, throughout Jewish history, when a certain rabbi was so respected by other rabbis and/or lay community of the region that they decided to follow his rulings even when it contradicted an existing minhag or the consensus among poskim. As we have seen, the Shulchan Aruch and Rama had such standing in the Sephardic and Ashkenazic regional ethnic groups, respectively. We should note that both of these poskim made an effort to follow existing practice, not to overrule it based on their own inclinations. Poskim who shaped practice in given communities even when they contradicted existing minhagim include the Rambam among Yemenite Jews and the Gra among certain elements of the Lithuanian community.

Among the poskim who take minhag most seriously are two Moshes: Rav Moshe Isserles (the Rama) and Rav Moshe Feinstein. Among those who seem to give it relatively little weight is the Chazon Ish.

4. Tziruf shitot (Combining opinions)

An important, general method of p'sak is called *tziruf shitot*. It could happen that no one factor can justify leniency, e.g., when a majority of poskim reject any such individual idea. However, several weaker indications may exist, which, when considered together, could justify leniency. Consequently, what one idea standing alone cannot do, the convergence of many such ideas conceivably can. Some poskim are more likely than others to use this approach. Rav Ovadya Yosef, for one, uses it extensively.

Note that tziruf shitot may yield a strict decision. Specifically, if a certain practice is potentially objectionable for a few reasons, a rabbi may forbid it even though no individual potential problem is sufficiently compelling on its own.

5. Considering the inquirer's attitude toward halacha

It is important, at this point, to emphasize that a lenient decision is not necessarily a compromise of halachic standards and a stringent one is not necessarily beyond the letter of the law. As we wrote earlier, if the ruling is clear-cut, i.e., the matter is forbidden or is permitted without question, the posek has no problem. The difficulty arises within the large gray area that is between these extremes. (See question H-6.) When a question falls into this area, one of the factors that a rabbi must consider is the effect that the p'sak will have on those for whom it is intended. A factor that plays a crucial role is the mind-set of the rabbi's congregation or of the individual asking the question. To what extent are they interested or willing to accept strict rulings? How "sure" do they want to be that in no way possible are they doing something improper?

One group may go so far as to want its rabbi to permit something only when he can do so with nearly absolute certainty. The rabbi will usually accommodate and will issue strict decisions quite freely even when the doubt is small. In another community, the rabbi may feel that his members have difficulty abstaining from even that which is clearly forbidden or doing that which is clearly required. He may fear that if he forbids any more than the absolute minimum, they are likely to react negatively. This communal attitude could take the form of becoming generally unwilling to follow the rabbi's instructions, even in areas where there is no room for leniency.



Even under less severe circumstances, a person may not have the discipline to comply with the p'sak. It might then have been preferable for the rabbi to have given the person the latitude to take the lenient path that he eventually did take rather than to cause him to violate his rabbi's instructions. Even if the person or people do immediately abide by the p'sak, if they are "turned off," their willingness to follow halacha in general might be compromised, causing damage "down the road." Under such circumstances, the rabbi may legitimately decide that his mandate is to try to find and to implement leniencies as if the situation were an objective she'at hadechak, even when it is not.

Often a community that is generally receptive to stringencies, or at least that is not demanding leniencies, may react differently concerning certain specific issues where they perceive a compelling reason and/or are accustomed to follow an unusually lenient opinion. The rabbi is likely to explore whether leniency is possible, unless he decides to challenge his community to try to change their "bad habits" in that area. (One notable example: many who usually are very stringent are nevertheless unwilling to accept a p'sak that forbids smoking altogether or even just on *Yom Tov*, where leniency is particularly difficult to defend.)

There are times when a rabbi properly follows a stricter-than-necessary approach for a community that is weak in its observance. This phenomenon, which has clear precedents in the Talmud, is based upon the concern that the members of the community will abuse and overextend a potentially legitimate leniency or misunderstand its application.

A common, touchy situation for a rabbi exists when his community members are diverse in the level of stringency that is appropriate for each of them. Ideally, he would be strict for one and lenient for another. However, can he employ a double standard within one community? (Often, parents have that question regarding behavioral issues of their children.) If not, should he be strict for all or lenient for all? In practice, some rabbis will indeed render opposite rulings privately for different congregants.

Another alternative is for the rabbi not to give a clear-cut ruling but to present the situation as it is. He can say, for example, "That is a good question! There are very significant opinions that permit the matter and likewise those who forbid." The hope would be that the one who is less capable of accepting stringency would understand the statement as giving him permission to do the matter in question, whereas the more cautious individual would refrain because he was not told that it was okay. (Note that some people see a yellow traffic light as essentially red whereas others see it as essentially green.) In addition, the rabbi could continue after making the initial, ambiguous statement by leading each congregant along the path that is appropriate for him. Each rabbi has to learn the technique of explaining halacha to the community and to individual congregants. He has to find an approach that he believes in and to "fine-tune" it in a manner that is appropriate for the community.

It is interesting to consider the following possibility. Sometimes a particular posek will have a reputation for being lenient and another for being strict. However, part of the tendencies may be a result of the nature of the community for whom they are ruling. It is then possible that poskim who are machmir are actually poskim of machmir communities. It should not be automatically assumed that a ruling for one individual is appropriate for another individual or group. In any event, this certainly does not come to deny that certain poskim, because of their personal nature, training or approach, tend more toward leniency or strictness.

Some people direct an accusation toward the rabbinic community: "If there is a rabbinic will, there is a halachic way." This claim is that whenever the rabbis want to permit something, they will. This statement is patently false. However, it is possible to understand why a person might sometimes feel that it contains an element of truth. After all, if the need is great, a rabbi will be satisfied with a lower level of certainty that the matter is permitted than he normally would. He may expend more time and effort searching for a means to be lenient. In addition, sometimes when one is not able to permit the matter in question, he may be able to use a halachic system to obviate the problem. If leniency was debatable in the first place, it is likely that, in the eyes of many rabbis, the great need will "tip the scale." Thus, there is a relatively high "success rate" in cases where the rabbis feel a great need to find a leniency.

One should realize that often people get the impression that the percentage of lenient rulings in these cases is higher than it really is. The people in need do not always look for a consensus of rabbis who permit the matter but will be satisfied with a small minority. It is not difficult to find a small minority of rabbis who, when the need is great, are willing to permit something that has some basis for



leniency. However, we should point out that when the matter is clearly forbidden, even the greatest need will not cause a responsible rabbi to render a lenient ruling.

6. The willingness to rely on creativity

Another matter of halachic approach is the willingness to arrive at and to rely on a novel idea, which, as far as the rabbi knows, is not mentioned by previous poskim. Some poskim will assume that if the idea is not mentioned in halachic literature, it stands to reason that it is not worthy. How could it be that the idea is valid and is not documented? Did it never come up before? (We refer primarily to questions on scenarios that have existed before modern times on a regular basis.) Others take the approach that if it makes sense and/or is consistent with the classical sources, why should the fact that it is not spelled out explicitly preclude it from being correct? Logically, those who generally rely greatly on breadth of knowledge, like Rav Ovadya Yosef, would tend to be more bothered by the lack of supporting positions, which the silence of halachic literature suggests. On the other hand, those who rely on their analysis, like Rav Moshe Feinstein, would not be as reluctant to “go out on their own.” One famous, recent posek who espoused many opinions that were unique to him, especially in the direction of stringency, is Rabbi Avraham Yeshaya Karelitz, of Vilna and Bnei Brak, known as the Chazon Ish. As opposed to Rav Feinstein, who would even arrive at a leniency based on a novel idea, the Chazon Ish did so more frequently to conclude with a stringency. Thus, for example, his most staunch followers are careful to use a *sukka* with restrictions that previously were unheard of.

Classically, a posek arrives at his position through explicit precedent, textual analysis, or rigorous logic, even if the idea is novel. Those with more confidence are sometimes willing to allow their own halachic intuition or that of other respected rabbis to be a major factor in the decision. As in other fields, one with great experience can come to very accurate conclusions based on his intuition. One great rabbi might confide in another: “I am confident that the ruling is as follows, although I cannot yet identify all of the specific grounds for this claim.” Other poskim might reason that if one cannot articulate the basis of his ruling or conclusion, he should not rely upon it.

It is interesting to revisit the two poskim whose styles we contrasted in terms of research of the halachic issues, Rav Moshe Feinstein and Rav Ovadya Yosef. How are they similar and do they differ in terms of how they come to their final ruling? Both had a willingness to be lenient; however, in Rav Ovadya’s case, it is a deliberate trend, which he has verbalized as an important thing to do. Both took she’at hadechak and minhag very seriously. Rav Moshe, in particular, would come up with a very novel approach to justify an accepted minhag or a policy that seemed crucial to implement. On the other hand, when he felt that something was improper, he was not afraid to forbid it, even when it was difficult for many people to accept. Rav Moshe dealt with many watershed, national Jewish issues. Notably, there were situations that were unique to a people in great flux in a new community (America), as the majority of Jews had turned their backs on conforming to halacha. It is clear from many of those rulings that he understood and took into consideration the religious capabilities of the broader community. He often found leniencies that allowed the broader Jewish community to function with some form of unity and mutual respect. We note, for example, rulings he made regarding giving honors in the synagogue to those whose personal behavior might have precluded them from receiving such privileges. On the other hand, there were other issues in which he felt that a strong, strict stand was the proper way to defend against a continual lowering of standards. On the matter of the height of a *mechitza* in a synagogue, he took a consistent stand, which rejected both the strictest practice and the tendency of some to be particularly lenient. In contrast, Rav Ovadya deals, to a much greater extent, with standard types of questions emanating from and applying to the religious community. Yet, even within that community, he believes in the importance of being lenient when possible.

As we complete this introduction, it is necessary to reiterate that the information and perspective that were discussed are of a basic nature. Yet, understanding the basic history and process of halacha clearly is a prerequisite to appreciating halachic discussion on any reasonable level.

