

Class 10 – Codes and Codifiers
Rabbi Moshe Davis

Class Outline

- Review
- The Development of Halacha
- Changes in form and style vs. changes in substance
- Purpose of the Mishnah Torah

I. Review

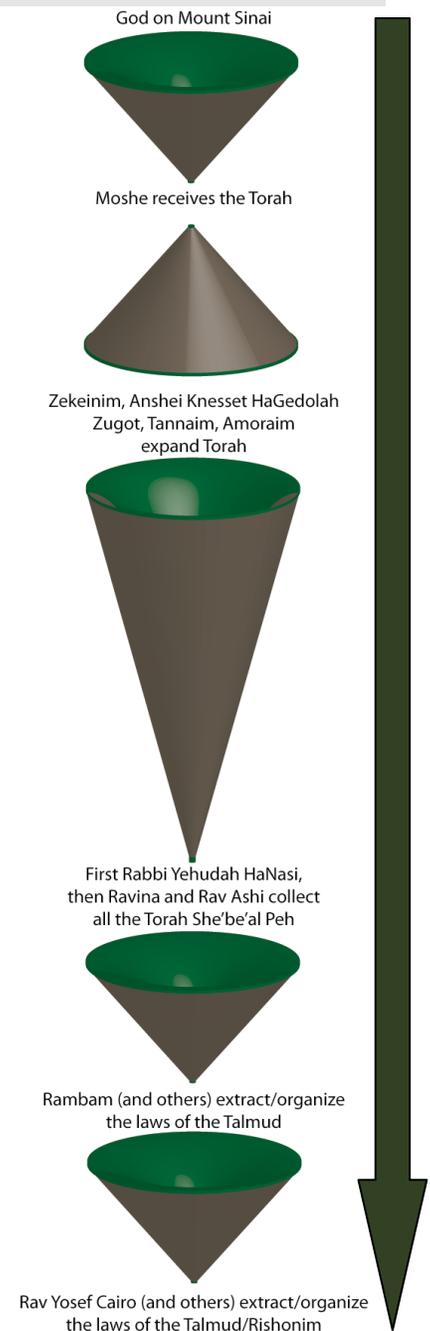
The Jewish scholars between the 11th and 15th centuries are called the Rishonim. This is the first period in Jewish history where there is no longer one central location of Jewish life and learning. Small Jewish settlements across the Diaspora expand and become self sufficient both religiously and economically. The areas of scholarship for the Rishonim was very wide ranging, and for the most part, the Rishonim in Muslim controlled countries were more prolific writers and thinkers than those living in Christian countries.

Why is there a need for a book (or one book) of Jewish Law?

II. The Development of Halacha

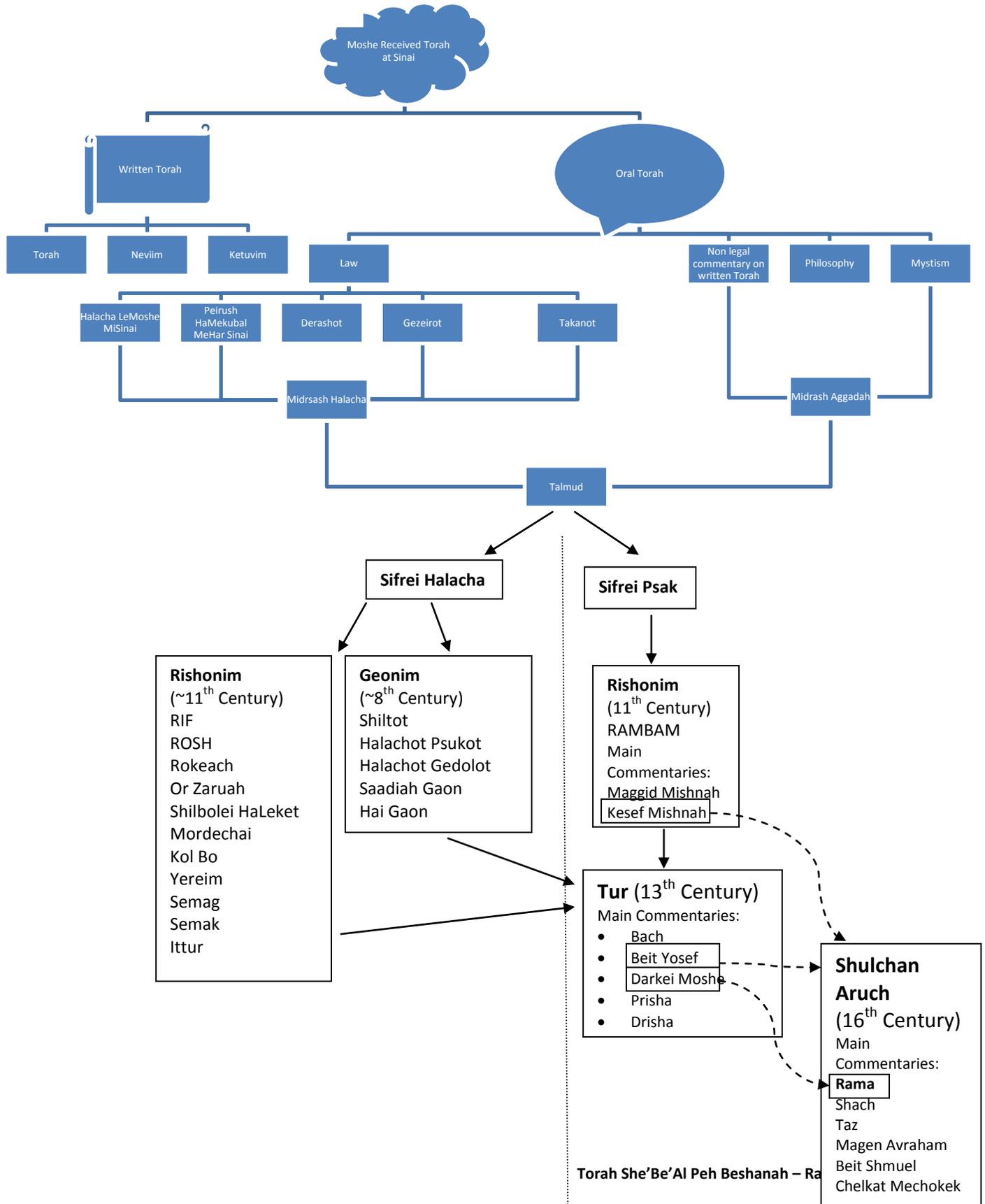
- **The short version**

1. God gives Moshe the Torah at Mount Sinai but did not tell him everything explicitly – or at least it was not all explicitly recorded.
2. The sages of the next 1500 years expounded and expanded the Torah.
3. First with Rabbi Yehudah HaNasi's Mishnah, followed by Ravina and Rav Ashi's gemara, the Torah She'be'al Peh was organized and condensed.
4. The Rishonim did a bit of expanding themselves, but also organized and condensed the law.



5. Rav Yosef Cairo (and others) condensed the law.

- **The long(er) version**



III. Changes in Form and Style vs. Changes in Substance

As new books of Jewish law are authored, they differ both in terms of the opinions they quote as well as the style in which they are written.

- **Different Types of Halachik Works**

- 1. Commentary to the Talmud**

Characteristics: More theoretical than practical, directly connected to original sources

Example: Commentary of the Ritva

- 2. Responsa**

Characteristics: Often short, usually very focused, self contained

Example: Responsa of the Rashba

- 3. Essay**

Characteristics: Long, not organized, not comprehensive

Example: Sefer HaYashar of Rabbeinu Tam

- 4. Codes of Law**

Characteristics: Long book but short chapters/laws, organized

Example: Mishnah Torah of the Rambam

- **Organizational method of the major Jewish books of Law**

How is the Torah organized?

How is the Mishnah organized

How are the Rif and the Rosh organized?

How is the Mishnah Torah organized?

How are the Tur and the Shulchan Aruch organized?

IV. Purpose of the Mishnah Torah

Rambam's Introduction to the Mishneh Torah

...Rabbenu Hakadosh composed the Mishnah. From the days of Moses, our teacher, until Rabbenu Hakadosh, no one had composed a text for the purpose of teaching the Oral Law in public. Instead, in each generation, the head of the court or the prophet of that generation would take notes of the teachings which he received from his masters for himself, and teach them verbally in public. Similarly, according to his own potential, each individual would write notes for himself of what he heard regarding the explanation of the Torah, its laws, and the new concepts that were deduced in each generation concerning laws that were not communicated by the oral tradition, but rather deduced using one of the thirteen principles of Biblical exegesis and accepted by the high court.

This situation continued until [the age of] Rabbenu Hakadosh. He collected all the teachings, all the laws, and all the explanations and commentaries that were heard from Moses, our teacher, and which were taught by the courts in each generation concerning the entire Torah. From all these, he composed the text of the Mishnah. He taught it to the Sages in public and revealed it to the Jewish people, who all wrote it down. They spread it in all places so that the Oral Law would not be forgotten by the Jewish people.

Why did Rabbenu Hakadosh make [such an innovation] instead of perpetuating the status quo? Because he saw the students becoming fewer, new difficulties constantly arising, the Roman Empire¹⁸ spreading itself throughout the world and becoming more powerful, and the Jewish people wandering and becoming dispersed to the far ends of the world. [Therefore,] he composed a single text that would be available to everyone, so that it could be studied quickly and would not be forgotten.¹⁹ Throughout his entire life, he and his court taught the Mishnah to the masses...

...After the court of Rav Ashi composed the Talmud and completed it in the time of his son, the Jewish people became further dispersed throughout all the lands, reaching the distant extremes and the far removed islands. Strife sprung up throughout the world, and the paths of travel became endangered by troops. Torah study decreased and the Jews ceased entering their yeshivot in the thousands and myriads, as was customary previously.

Instead, individuals, the remnants whom God called, would gather in each city and country, occupy themselves in Torah study, and [devote themselves] to understanding the texts of the Sages and learning the path of judgment from them.

Every court that was established after the conclusion of the Talmud, regardless of the country in which it was established, issued decrees, enacted ordinances, and established customs for the people of that country - or those of several countries. These practices, however, were not accepted throughout the Jewish people, because of the distance between [their different] settlements and the disruption of communication [between them].

Since each of these courts were considered to be individuals - and the High Court of 71 judges had been defunct for many years before the composition of the Talmud - people in one country could not be compelled to follow the practices of another country, nor is one court required to sanction decrees which another court had declared in its locale. Similarly, if one of the Geonim interpreted the path of judgment in a certain way, while the court which arose afterward interpreted the

proper approach to the matter in a different way, the [opinion of the] first [need] not be adhered to [absolutely]. Rather, whichever [position] appears to be correct - whether the first or the last - is accepted.

These [principles apply regarding] the judgments, decrees, ordinances, and customs which were established after the conclusion of the Talmud. However, all the matters mentioned by the Babylonian³¹ Talmud are incumbent on the entire Jewish people to follow. We must compel each and every city and each country to accept all the customs that were put into practice by the Sages of the Talmud, to pass decrees paralleling their decrees, and to observe their ordinances, since all the matters in the Babylonian Talmud were accepted by the entire Jewish people.

The [Talmudic] Sages who established ordinances and decrees, put customs into practice, arrived at legal decisions, and taught [the people] concerning certain judgments represented the totality of the Sages of Israel or, at least, the majority of them. They received the tradition regarding the fundamental aspects of the Torah in its entirety, generation after generation, [in a chain beginning with] Moses, our teacher.

All the Sages who arose after the conclusion of the Talmud and comprehended its [wisdom] and whose prowess gained them a reputation are called the Geonim. All these Geonim that arose in Eretz Yisrael, Babylonia, Spain, and France taught the approach of the Talmud, revealing its hidden secrets and explaining its points, since [the Talmud's] manner of expression is very deep. Furthermore, it is composed in Aramaic, with a mixture of other tongues. This language was understood by the people of Babylonia in the era when the Talmud was composed. However, in other places, and even in Babylonia in the era of the Geonim, a person cannot understand this language unless he has studied it.³²

The inhabitants of each city would ask many questions of each Gaon who lived in their age, to explain the difficult matters that existed in the Talmud. They would reply to them according to their wisdom. The people who had asked the questions would collect the replies and make texts from them, so that they could consider them in depth.³³ Also, the Geonim of each generation composed texts to explain the Talmud. Some of them explained only certain halachot. Others explained selected chapters that had created difficulty in their age. Still others explained entire tractates and orders. Also, [the Geonim] composed [texts recording] the decisions of Torah law regarding what is permitted and what is forbidden, when one is liable and when one is free of liability, with regard to subjects that were necessary at the time, so that they would be accessible to the grasp of a person who could not comprehend the depths of the Talmud.³⁴ This is the work of God, which was performed by all the Geonim of Israel from the completion of the Talmud until the present date, 1108 years after the destruction of the Temple, 4937 years after the creation of the world.³⁵

At this time, we have been beset by additional difficulties, everyone feels [financial] pressure, the wisdom of our Sages has become lost, and the comprehension of our men of understanding has become hidden. Therefore, those explanations, laws, and replies which the Geonim composed and considered to be fully explained material have become difficult to grasp in our age, and only a select few comprehend these matters in the proper way.

Needless to say, [there is confusion] with regard to the Talmud itself - both the Jerusalem and Babylonian Talmuds - the Sifra, the Sifre, and the Tosefta, for they require a breadth of knowledge, a spirit of wisdom, and much time, for appreciating the proper path regarding what is permitted and forbidden, and the other laws of the Torah.

Therefore, I girded my loins - I, Moses, the son of Maimon, of Spain.³⁶ I relied upon the Rock, blessed be He. I contemplated all these texts and sought to compose [a work which would include the conclusions] derived from all these texts regarding the forbidden and the permitted, the impure and the pure, and the remainder of the Torah's laws, all in clear and concise terms, so that the entire Oral Law could be organized in each person's mouth without questions or objections. Instead of [arguments], this one claiming such and another such, [this text will allow for] clear and correct statements based on the judgments that result from all the texts and explanations mentioned above, from the days of Rabbenu Hakadosh until the present. [This will make it possible] for all the laws to be revealed to both those of lesser stature and those of greater stature, regarding every single mitzvah, and also all the practices that were ordained by the Sages and the Prophets.

To summarize: [The intent of this text is] that a person will not need another text at all with regard to any Jewish law. Rather, this text will be a compilation of the entire Oral Law, including also the ordinances, customs, and decrees that were enacted from the time of Moses, our teacher, until the completion of the Talmud,³⁷ as were explained by the Geonim in the texts they composed after the Talmud.

Therefore, I have called this text, Mishneh Torah ["the second to the Torah,"³⁸ with the intent that] a person should first study the Written Law, and then study this text³⁹ and comprehend the entire Oral Law from it, without having to study any other text between the two...

Partial list of commentaries to the Mishnah Torah

- | | |
|--------------------------------|--|
| 1. Hasagot HaRamach | 19. Perush Makif shel Mori Yosef Qafih |
| 2. Hasagot HaRaavad | 20. Adoni Yad Hachazaka |
| 3. Migdal Oz | 21. Otzer Hamelech |
| 4. Maggid Mishneh | 22. Emunah veTorah |
| 5. Ba'alei Elsha'rach | 23. Divrei Yirmihayu |
| 6. Divrei David | 24. Devarim Nechmadim |
| 7. Yekar Tifereth | 25. Vayikach Avraham |
| 8. Kesef Mishneh | 26. Ziv Mishnah |
| 9. Lechem Mishneh | 27. Yitschak Yeranani |
| 10. Mishneh LaMelech | 28. Maaseh Rokeach |
| 11. Hagahot U'Teshuvot Maimoni | 29. Mirkevet Mishnah |
| 12. Yad Hamelech | 30. Masheret Moshe |
| 13. Kiryat Sefer | 31. Avodat Hamelech |
| 14. Tzofnath Paneach | 32. Pri HaAsamah |
| 15. Ohr Somayach | 33. Kovetz al yad Hachazaka |
| 16. Chiddushei Rabbeinu Chaim | |
| 17. Even HaEzel | |
| 18. Hadranim al HaRambam | |