

Class 14 – Achronim
Rabbi Moshe Davis

Class Outline

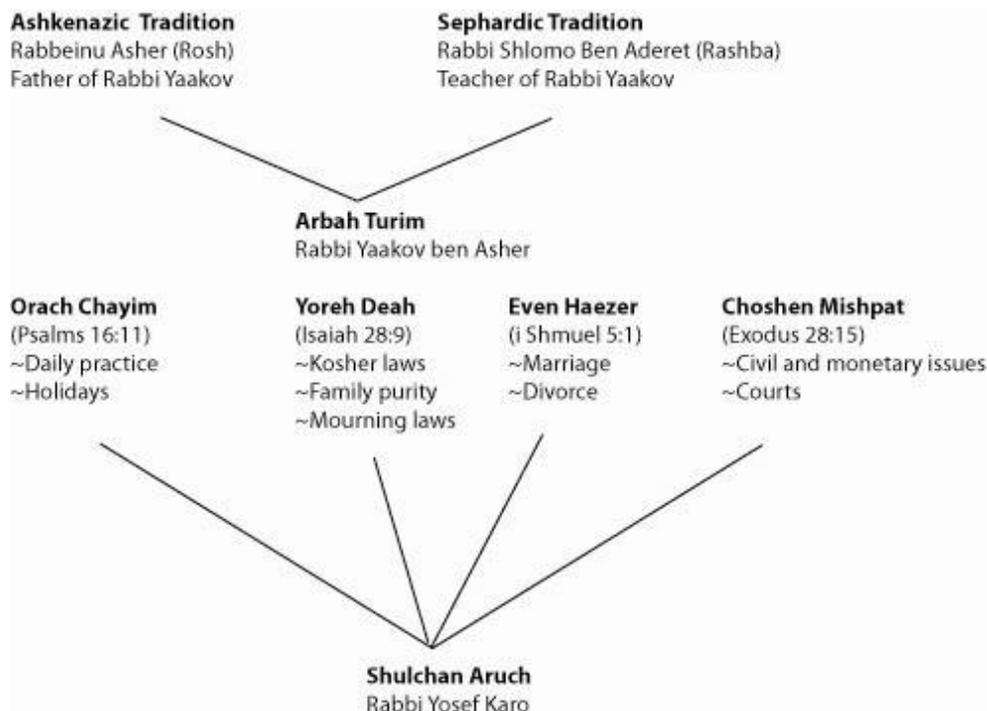
- Review
- The end of the Rishonim, a second codification
- Reactions to the Shulchan Aruch
- Methodologies of Learning

I. Review

Due to newfound geographic diversity, Jewish communities began to develop their own customs and ways of practicing Jewish law. These customs became part of the fabric of Jewish life, to point wherein the Jewish legal system views the observance of such customs as obligatory. The three primary forms of Jewish custom are: (1) Customs grounded in Jewish law (2) customs grounded in Jewish value, and (3) customs not based on clear law or Jewish value.

II. The end of the Rishonim, a second codification

The Arbah Turim, predecessor to the Shulchan Aruch
Rabbi Yaakov Ben Asher Germany 1270 – Spain 1343)



- **Major historical events preceding the work of Rabbi Yosef Karo**

1. Fall of the Eastern Roman Empire (1453)
2. Spanish Expulsion (1492)
3. Discovery of America (1492)
4. Martin Luther Reformation (1483-1546)
5. Printing Press (Early 1500s)

- **Motivation for codification**

Introduction to Beit Yosef

Rabbi Yosef Karo (Spain, 1488 – Land of Israel 1575)

As time has passed, we have been poured from vessel to vessel. We have become scattered, and terrible trials and tribulations, one after the other, have come upon us, to the extent that, as a result of our sins, the verse “And the wisdom of the wise shall fail [and the prudence of the prudent shall vanish]” has become applicable to us. The Torah and its students have become helpless. For the Torah has not [only] become two Torahs; rather, it has been fragmented into innumerable Torahs because of the multitude of books written to explicate its laws and rules. Although all those writers, peace be upon them, meant to enlighten our darkness, the “light” we have enjoyed from them has brought great doubt and confusion because each author has composed his own work in which he either has repeated what previous writers had already written or has stated the law contrary to his predecessors without mentioning the conflict. You will sometimes find that several codifiers have stated a rule categorically as though it is universally accepted, but when you investigate, you discover that leading halachik authorities have rejected it. Innumerable instances of this kind will be apparent to anyone who examines the books of the codifiers and then traces their sources to the Talmud and the ancient authorities. And, if one attempts to trace the source of every law from the Talmud through all the commentaries and codes, he will find this task to be exceedingly difficult and will surely become exhausted in the search for the source of the law in the Talmud.

- **Form of codification**

Sifrei Halacha of Rishonim

Rif, Rosh
Mordechai, Kol Bo
Semag, Semak, Ittur

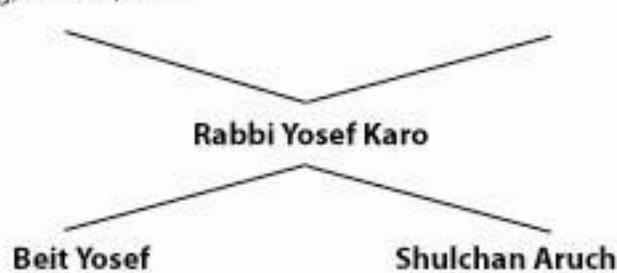
Sifrei Psak of Rishonim

Rambam

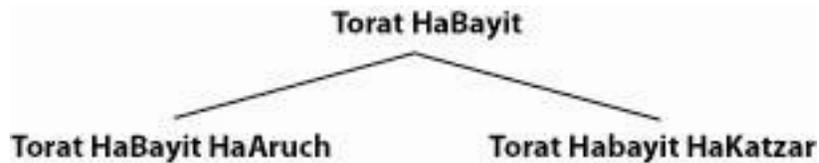
Rabbi Yosef Karo

Beit Yosef

Shulchan Aruch



Rabbi Shlomo Ben Avraham Aderet (Rashba)
Spain 1235 - 1310



- **Methodology of Codification**

Introduction to Beit Yosef

Rabbi Yosef Karo (Spain, 1488 – Land of Israel 1575)

I decided that after presenting all the opinions I will state the legal conclusion, deciding which opinion to accept, for that is the ultimate purpose – that we should have one Torah and one law. But I realized that if we try to determine which authority is correct on the basis of Talmudic arguments and proofs, [we will find that] the Tosafot and the novellae of Nachmanides, Rashba, and Ran are replete with arguments and proofs for each of their opinions, and who will be presumptuous as to undertake to add to them? And who can be so audacious as to pass judgment on such giants, to decide between them by appraising arguments and proofs to contradict their conclusions, or to decide, when they withheld decision? For, because of our many sins, our minds are too weak even to understand them fully; let alone to presume to be wiser than they. Moreover, in any event, even if we were capable of taking this path, we could not keep going on it, because it would be an exceedingly long journey.

Since I conclude that the three pillars of instruction upon which the House of Israel rests are Alfasi, Maimonides, and Asheri, of blessed memory, I resolved that when two of them agree on any point I will determine the law in accordance with their view, except for those few instances when all or most of the other halachik authorities disagree with that view and a contrary practice has therefore become widespread.

When one of the three above mentioned pillars expresses no opinion on a particular matter and the other two do not agree, we will turn to the Nachmanides, Rashba, Ran, Mordechai, and Semag... and declare the law in accordance with the view of the majority of these authorities. When none of the three above mentioned pillars expresses an opinion, we will declare the law according to the well known halachik authorities who have expressed their opinions on the particular matter.

This method is the most feasible way; it is correct, easy to apply, and the most efficient solution to the problem. And if, despite our ruling that certain things are permissible, the practice in some countries has been to prohibit those things, those countries should continue to follow their custom, since they have accepted the opinion of the halachik authority holding those things prohibited, and they are therefore not permitted to act in accordance with the permissive ruling, as is state in chapter Makom Shenahagu.

III. Reactions to the Shulchan Aruch

Rabbi Moshe Isserles (Poland 1520 – 1572)

Introduction to Darkei Moshe

Rabbi Moshe Isserles began his commentary to the Tur, the Darkei Moshe, before realizing that Rabbi Yosef Karo had recently wrote his Beit Yosef. Upon learning of the Beit Yosef, Rabbi Isserles continued his own work for three stated reasons:

Reason One

To present the material without lengthy discussion.

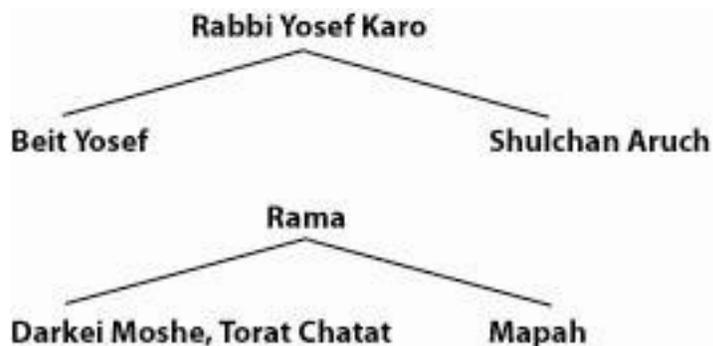
Reason Two

I have added much to his [Karo's] material, and I have burst forth to the south and the west with opinions by rishonim and achronim... I have included many response of geonim and response of recent authorities such as those of Maharai and Issur veHetter... which the author of Beit Yosef never saw.

Reason Three

The third reason, which is the main one, is the purpose of our work seeks to achieve. It is well known that the author of the Beit Yosef is disposed to follow the great halachik authorities; and in all cases he states the law "according to two or three witnesses [Deuteronomy 17:6]," who are the beloved masters – Alfasi, Maimonides, and Asheri – whenever two of them agree. He pays no attention to the other rabbis who are giants of Torah; he follows only the great ones, deciding in accordance with any two of them, even though they are from an earlier period and are not recent authorities.

He ignores the principle established by the earliest of the rishonim, Alfasi, who held, ad the end of the last chapter of Eruvin – and many have agreed with him – that the law should always be determined in accordance with the views of the alter authorities, and that the earlier authorities should not be followed, even if the difference of opinion is between a teacher and one of his students. The achronim, as led by Maharik and Maharai, have always adhered to this principle... He [Karo] is in conflict with all the customs followed in these lands, most of which are based, simply and straightforwardly, on this principle and are questioned by no one. Therefore, I, too, do not desire to dispute them... Similarly, it is normal practice to follow the views of the Mordechai, Asheri, and his son Rabbi Yaakov ben Asher, and I have taken this path.



- **Background of Rabbi Moshe Isserles**

Responsa Rama 25

Authored by the son of Rabbi Shalom Shachna

...In truth, I together with many other students asked him [Rabbi Shachna] to write a book of his rulings but – because of his great piety and humility, being the most humble of men on earth, - he responded: “I know that in the future they will rule only according to what I write because [of the principle that] the law is in accordance of the views of the alter authorities, and I do not want everyone to rely on me.” He was referring to those cases where there was a difference of opinion among halachik authorities and he decided between them or differed with them. Since “a judge must be guided only by what his own eyes see,” let each one do as the time requires, according to the dictates of his own heart...

- **Other Responses to Shulchan Aruch**

Rabbi Shlomo Luria (Maharshal Poland 1510-1574)

Introduction to Yam Shel Shlomo

I decided to follow the course of wisdom and search out the roots of every subject... I sometimes had to spend an entire week racking my brains until I discovered the root of a matter. Only then did I write it in the book. The following is my method: I include all the opinions – early, intermediate and recent – codifiers, authors, and customs, law by law, authors of response, writers of epistles, collections and anthologies – so that no litigant will be able to argue: Look how this author’s laws and rulings have been written on the basis of his own imagination and doubtful proofs. If he had seen the book of the resonsum of such-and-such a rabbi, he would never have dared to disagree and would most certainly have changed his mind.

I was therefore unyielding and said about them [the authorities he cited]: “They are all superior beings, but they will be examined as men” [Psalms 82:6-7]. Therefore, I did not rely on any single author above his colleagues, even though whoever studies them thoroughly can discern great differences in quality between them; for, in any event, it is the Talmud that is determinative and supplies the proofs to justify an opinion. Occasionally, an author will state the legal rule correctly, but not for the right reasons...

Consequently, I closely examined and investigated, over and over again, every source and legal decision, with great effort and study (and little sleep), often consulting with my colleagues and especially my students. The reader will find in this book the origin of the law with clear proofs and will surely realize and understand that I did not neglect to study any author before I reached my conclusion.

Rabbi Mordechai Jaffe (Levush Malchut, Poland 1530 – Prague 1612)

Introduction to Levush Malchut

He [Karo] has abbreviated it to the extreme, and it will be completely inadequate for those who will study it. It is like reading a closed book or [dreaming] a dream without knowing its interpretation – as is if it all were “law given to Moses at Sinai,” without statement of any reason.

He has persistently written most laws in conformity with the opinion of Maimonides... because this is the practice of Moslem lands where Karo... was the chief leader [of the Jewish community]. In these [western] lands, however, such is not the practice. I therefore decided to return to my task, to write and explain the laws practiced in these lands – Germany, Bohemia, Moravia, Poland, and Russia and their associated communities.

IV. Methodologies of Learning

An Analysis of Darchei HaLimud Centering on a Cup of Tea

Rabbi Gavriel Bechhofer

I am attempting to define the differences between the major classical *Darchei Halimud* in the 19th-20th century Yeshiva world, focusing on a well known jest. This is albeit a light-hearted, but hopefully illustrative example. In *Brisk* they would mockingly say that in *Telshe* one would *klerr* (analyze) the following *chakira* (problem): What makes tea sweet, is it the sugar or the spoon stirring?

Now, the truth is that in *Telshe*, there were two *derachim*, that of Reb Chaim Rabinovitz (Reb Chaim *Telzer*) and that of Reb Yosef Leib Bloch & Reb Shimon Shkop. This *chakira* captures the hallmark of the former (Reb Chaim *Telzer's*) *derech* - Contingencies - but not the latter, which we'll explore later.

Let us now go through how the various *darchei halimud* would approach this important conundrum:

Brisker Derech: Intrinsic Categorization and Definition - There are two (*tzvei*) *dinim* in sweetening tea: The *cheftza* (substance), i.e., the sugar; and the *pe'ula* (activity), i.e., the stirring with the spoon. Everyone knows that Lipton is the "Brisk" tea because it has a double (*tzvei dinim*) tea bag.

Poishner Derech: Brilliant Novelty (*pilpul*) - Neither. It is the tea itself, as the *heichi timtsei* (*sine qua non* - medium) for making the tea sweet, which makes the tea sweet, for if there was no tea, there would be no sweet tea either.

The Rogatchover's Derech: Combination of the Two Previous *Derachim* - There are three *dinim* in sweetening the Bigdeh Shesh: *The Collected Writings* 176 tea: The *cheftza*, the *peu'la* and the *niph'al* (the impacted entity), i.e., the tea itself.

Hungarian Derech: Extrinsic Resolution - Since wine is sweet and it is not stirred, it follows that the stirring is not what makes the tea sweet, but the sugar.

Reb Yosef Leib & Reb Shimon's Derech: Abstraction to an Essence - It is the *Hitztarfus* (Fusion) of tea molecules and sugar molecules that makes the tea sweet.

Sephardi Derech: Uncomplicated Grasp - The *Sephardi* would walk away from the argument that the six *Ashkenazim* were engaged in over the tea shaking his head in disbelief about how silly these *Ashkenazim* were - obviously the sugar stirred into the tea is what makes the tea sweet!