

THE SYSTEM OF HALACHAH – VIII

The Halachic Process

In the first two classes in the Morasha series on the System of halachah, we learned how Jewish Law is built upon the Divine revelation of both the Written Torah and Oral Torah beginning on Mount Sinai, continuing through the prophets until the Second Temple. In the next five classes in this series, we saw how the Sages and rabbis served as the carriers, interpreters and legislators of Jewish law, carefully transmitting the Torah from generation to generation until today.

Now, in this final class in the System of Halacha series, we will explore the nature of the halachic process itself. When a Jew today asks a question of a competent authority in Jewish law, what stands behind the answer he or she is given? We will further examine key stages, rabbis and legal codifications that have developed throughout the chain of Torah transmission, as discussed in the fifth System of Halacha class. We will thus gain insight into the underpinnings and dynamics of the halachic process.

Finally, we will illustrate the halachic process by looking at a typical example, namely, the contemporary question on whether one can fulfill the mitzvah of bikur cholim (visiting the sick) via the telephone, email, or Skype.

This class will address the following questions:

- On what authority do contemporary rabbis make halachic decisions?
- How is it that the Talmud is central to Jewish law, but it is not possible to derive halachah directly from it?
- What was the impact of post-Talmudic and Medieval Jewish scholars on the system of Jewish law?
- How did the Shulchan Aruch, the most widely accepted code of Jewish law, come to be written, and why is it so authoritative?

Class Outline:

- Section I. The Stages of Halachah
 Part A. Talmud – The Backbone of halachah
 Part B. Rishonim (Early Authorities) – Commentary, Codification, and Responsa
 Part C. The Shulchan Aruch and the Acharonim (Later Authorities)
 Part D. Contemporary Poskim (Halachic Decision Makers)
- Section II. Sample Halachic Process: Visiting the Sick
 Part A. Biblical Sources
 Part B. Talmudic Analysis
 Part C. Clarification by the Rishonim
 Part D. Codification by the Acharonim
 Part E. Contemporary Applications

SECTION I. THE STAGES OF HALACHAH

In this section we will explore the historical development of the system of halachah that we have today. Starting with the ratification of the Talmud, we will then move on to explore the unique contributions of the Rishonim (Medieval authorities). Then we will explain how the Shulchan Aruch came to be written and what its relationship is to the writings that preceded it. Finally, we will attempt to understand the thought process of a contemporary Posek (halachic decision maker) and how one rises to such a stature.

PART A. TALMUD – THE BACKBONE OF HALACHAH

While the Torah grants authority to the rabbis of each generation, it would be overly simplistic to assume that every scholar is an island unto himself. The Oral Law has developed in stages throughout Jewish history. Starting with the Mishnah and the Talmud, then the Rishonim and Shulchan Aruch, each phase has established binding precedents for those that follow.

The first point of departure for any halachic inquiry is the Talmud. The historical circumstances in which it was written and the consensus that developed around it invest the Talmud with the ultimate authority in Jewish law. We shall see, though, that while the Talmud is the first word in halachah, it is not the last.

1. **Rashi to Bava Metziah 33b – The Mishnah is the edition of the Oral Torah as finalized by Rabbi Yehudah Hanassi together with all the Torah scholars of his time.**

God granted him (Rabbi Yehudah HaNassi) favor in the eyes of Antoninus, the Roman king, as stated in Avodah Zarah 10b, and they (the Jews) had respite from persecution. He summoned all the scholars in the Land of Israel. Until his days the [text of the] tractates (of the Mishnah) had not yet been finalized. Instead, each scholar

שנתן הקדוש ברוך הוא לו (רבי יהודה הנשיא) חן בעיני
 אנטונינוס מלך רומי, כדאמרין בעבודה זרה (י, ב),
 ונחזו מצרה, ושלח וקבץ כל תלמידי ארץ ישראל, ועד
 ימיו לא היו מסכתות סדורות, אלא כל תלמיד ששמע
 דבר מפי גדול הימנו גרסה, ונתן סימנים: הלכה פלונית
 ופלונית שמעתי משם פלוני,

studied whatever version he heard from a greater scholar and he would note, "I heard this halachah from Rabbi so-and-so."

At this convention, each one contributed what he had heard, and they carefully clarified the basis of each halachic dispute and which opinion should be followed. They edited each tractate and arranged those dealing with property laws in one unit, those dealing with levirate marriages in another, and those dealing with sacrifices in another. In many cases, Rabbi Yehudah HaNassi concurred with a minority opinion and recorded it as universally accepted so that the coming generations would follow it. That is why the Talmud states: there is no greater level of Torah study than paying attention to the details in the text of the Mishnah.

וכשנתקבצו אמר כל אחד מה ששמע, ונתנו לב לברר טעמי המחלוקת דברי מי ראוי לקיים, וסידרו המסכתות; דברי נזיקין לבדם, ודברי יבמות לבדם, ודברי קדשים לבדם, וסתם נמי במשנה דברי יחידים שראה רבי את דבריהם ושנאן סתם, כדי לקבוע הלכה כמותם, לפיכך אמרו בגמרא: אין לך מדה גדולה מזו, שיתנו לב לטעמי המשנה.

2. **Sefer Mitzvot Gedolot, Introduction to Negative Commandments – The Talmud is also a product of consensus, composed in a time of relative calm.**

After [the writing of the Mishnah], the Jews were subjected to terrible persecution. The Sages were dispersed, their intellectual capacities became limited, and their questions about the Mishnah grew to be increasingly difficult to resolve. The *Amora'im* [Sages of the Talmudic era] – Rav in Babylonia and Rav Yochanan in Israel, as well as their students after them – arose and clarified the meanings of the Mishnah and the rationale behind the disparate views presented therein. As time passed, the people spread throughout the world, and the Sages of each land were not able to find common ground in explaining the Mishnah. Finally, Rav Ashi arose 358 years after the destruction of the Temple...

Rav Ashi was the head of the yeshivot in the exiled Jewish community. Since the time of Rebbe [Yehudah HaNasi], no other individual had enjoyed such a combination of enormous material wealth and Torah erudition (Sanhedrin 36a, Gittin 59a). God gave him favor in the eyes of the Persian king, [enabling him] to convene all the Sages of Israel from each country, and they compiled the certified explanation of the Mishnah. This is what is called the Babylonian Talmud, and it was composed with the unanimous consent of all the Sages of that generation.

ואחרי כן עמדו צרות רבות ונתפזרו חכמי הדורות ונולדו ספיקות בביאור המשנה מפני שנתמעטו הלבבות. ועמדו אמוראים, רב בבבל ורבי יוחנן בארץ ישראל, ותלמידיהם אחריהם, וביארו טעמי המשנה ומחלוקתיה כאשר האריך הזמן מפני הפיזור הגדול ולא היו חכמי הארצות בדעה אחת ובהסכמה אחת בפירוש המשנה עד שעמד רב אשי בשלש מאות ושמונה וחמשים שנה אחר...

האיש ההוא רב אשי היה ראש ישיבות גליות ישראל, ומימות ר' עד רב אשי לא מצינו תורה וגדולה במקום אחד (סנהדרין לו, א גיטין נט, א), ונתן לו הקדוש ברוך הוא חן בעיני מלך פרס ושלח וקיבץ כל חכמי ישראל שבכל הארצות והעמידו פירוש המשנה על מתכונתו, והוא הנקרא תלמוד בבלי, וסדרוהו בהסכמת כל חכמי הדור.

Political conditions were favorable in Israel, allowing the composition of the Mishnah, and again stable in Babylon during the years just prior to the creation of the Talmud. These periods of relative stability enabled massive conventions in which the world's recognized Torah scholars were able to compare notes and make decisions. Since these conventions were so comprehensive and exhaustive, their decisions became absolutely binding. From then on, no scholar could disagree with a ruling found in the Mishnah or the Talmud.

3. **Rabbi Yosef Karo, Kesef Mishneh, Hilchot Mamrim 2:1 – Scholars of post-Talmudic times cannot disagree with the Talmud.**

It is possible to say that the scholars decided that once the Mishnah was completed the scholars of future generations would have no authority to disagree with the earlier generations [who authored the Mishnah]. Likewise, once the Talmud was completed, no one was authorized to disagree with it.

ואפשר לומר שמיום חתימת המשנה קיימו וקבלו
שדורות האחרונים לא יחלקו על הראשונים וכן עשו
גם בחתימת הגמ' שמיום שנחתמה לא ניתן רשות
לשום אדם לחלוק עליה:

Aside from the universal acceptance of the Talmud and the ratification of its laws, there is another reason why it is so authoritative. With the downslide of Torah knowledge that necessitated the publication of the Oral Law also came a wide chasm in our intellectual abilities to dispute the rulings of earlier generations.

4. **Rambam, Introduction to Mishneh Torah – After the Talmud was published, no rabbinical authority can legislate any new law binding on the entire nation.**

Ravina, Rav Ashi and their colleagues were the last of the Sages of Israel who transmitted the Torah in its entirety to the following generation and who had the authority to institute rabbinical laws and restrictions on the entire nation of Israel, wherever they may live. After the time of Rav Ashi's convention in which they compiled the final version of the Talmud and [after] its final editing by his son, the Jewish people were scattered to countries in all directions, reaching the far corners of the world and remote islands. War erupted in the world, making travel dangerous and erratic. As a result, in-depth Torah study was diminished. The Jewish people no longer gathered by the thousands and tens of thousands in the yeshivot as they had done previously. Only individuals in each city, the few who sensed God's calling, studied the Torah, delving into the compositions of those earlier Sages and gaining knowledge of the halachah.

After the final editing of the Talmud, if any rabbinical court in any city legislated a new directive or restriction for the Jews under their jurisdiction, in their city or in a number of cities, that new halachah did not become incumbent upon all the nation of Israel, because of the great distance between communities and the difficulty

נמצא רבינא ורב אשי וחבריהם, סוף גדולי חכמי
ישראל המעתיקים תורה שבעל פה. ושגזרו גזירות
והתקינו התקנות והנהיגו מנהגות ופשטה גזירתם
ותקנתם ומנהגותם בכל ישראל בכל מקומות
מושבותם. ואחר בית דין של רב אשי שחבר הגמרא
וגמרו בימי בנו נתפזרו ישראל בכל הארצות פיזור יתר
והגיעו לקצוות ואיים הרחוקים ורבתה קטטה בעולם
ונשתבשו הדרכים בגייסות ונתמעט תלמוד תורה ולא
נכנסו ישראל לתלמוד בשיבותיהם אלפים ורבבות כמו
שהיו מקודם אלא מתקבצים יחידים השרידים אשר ה'
קורא בכל עיר ועיר ובכל מדינה ומדינה ועוסקין בתורה
ומבינים בחיבורי החכמים כולם ויודעים מהם דרך
המשפט היאך הוא.

וכל בית דין שעמד אחר הגמרא בכל מדינה ומדינה
וגזר או התקין או הנהיג לבני מדינתו או לבני מדינות
רבות לא פשטו מעשיו בכל ישראל מפני רחוק
מושבותיהם ושבוש הדרכים. והיות בית דין של אותה
המדינה יחידים ובית דין הגדול של שבעים ואחד בטל

of travel. Since that court is a minor court (the Sanhedrin of seventy-one had ceased to exist many years before the Talmud was published), it could not impose its authority on any other community. Likewise, if any scholar were to interpret the halachah in a novel way, and those who come after him would find that it contradicts the written Talmud, that interpretation is rejected in favor of one that agrees with the Talmud, whether it be an earlier scholar or later one...

However, the Jewish people are required to follow every halachah contained in the Talmud. Each community is obligated to follow all the customs, decrees and enactments found in the Talmud, since these rules were originally agreed upon by the entire nation of Israel.

מכמה שנים קודם חיבור הגמרא. לפיכך אין כופין אנשי מדינה זו לנהוג כמנהג מדינה האחרת. ואין אומרים לבית דין זה לגזור גזירה שגורה בית דין אחר במדינתו. וכן אם למד אחד מהגאונים שדרך המשפט כך הוא ונתבאר לבית דין אחר שעמד אחריו שאין זה דרך המשפט הכתוב בגמרא, אין שומעין לראשון אלא למי שהדעת נוטה לדבריו בין ראשון בין אחרון:....

אבל כל הדברים שבגמרא הבבלי חייבין כל ישראל ללכת בהם וכופין כל עיר ועיר וכל מדינה ומדינה לנהוג בכל המנהגות שנהגו חכמי הגמרא ולגזור גזירותם וללכת בתקנותם, הואיל וכל אותם הדברים שבגמרא הסכימו עליהם כל ישראל.

5. **Rabbi Avraham Yeshaya Karelitz, Kovetz Igrot Chazon Ish, Volume II, Chapter 24 – The people who came after the publication of the Talmud realized that they could not challenge it.**

The truth of the matter is that the generation following the Mishnah[’s creation] experienced a dramatic decline in scholarship. The people realized without a doubt that the earlier scholars were invariably correct. Since they recognized that they would not possibly match the knowledge of the truth as did the Tannaim before them, [they realized] that they had no authority to disagree with them. Their Torah study was aimed at understanding the teachings of the Tannaim who preceded them.

The Sages of the Talmud regularly rejected the opinion of any Amora if it was discovered that he was unaware that a Tanna disagreed with him. The only exception was Rav [Rabbi Abba Aricha] on account of his exceptional brilliance. All their conclusions were reached with Divine guidance and the experience of Divine Inspiration. God concurred with their rulings as stated in Bava Metzia 86a, “Rebbe (Rabbi Yehudah HaNassi) and Rabbi Natan closed the era of the Mishnah.” The same occurred when the Talmud was finalized, as it states, “Ravina and Rav Ashi are the final decision makers of Talmudic law.”

When the Rabbi (Rabbi Yosef Karo - Kesef Mishnah) asserted that the Sages have subordinated themselves to the authority of the Mishnah and Talmud, it is not simply out of

אבל האמת בזה, שדור שאחר המשנה ראו את מיעוט הלבבות נגד בעלי המשנה וידעו לבטח שהאמת לעולם עם הראשונים, ואחרי שידעו אמתת הדבר שאי אפשר שישניגו הם האמת מה שלא השיג אחד מן התנאים, לא היו רשאים לחלוק והיו רק שונים את כל דברי התנאים שקדמום,

וגם מחתימי התלמוד בטלו דברי אמורא שאמר מוחמת העלמת דברי התנא, ורק רב ברחב לבבו לא נתבטלו דבריו. וכל הסכמותיהם הי' בהשגחת הבורא יתברך ובתופעת רוח הקדש וכבר הסכים הקב"ה על ידן כדאמר ב"מ פ"א רבי ורבי נתן סוף משנה וכן הי' בדור של חתימת התלמוד, וכן אמרו רב אשי ורבינא סוף הוראה.

ומש"כ מרן שקבלו כן, לא טובה וחסד עשו עם הראשונים אלא האמת חייב אותם, כי איך נעשה על דעתנו אם ידענו שדעתנו קצרה והאמת אין אתנו, וכה אנו עושין נגד הראשונים ז"ל?

goodwill or as a favor to those Sages, but it is in recognition of the truth. How could we follow our own opinion when we know well that our own intelligence is lacking and that the truth is not with us? Can we dare oppose the decisions of the Sages?

The fact is that the entire Torah was given at Sinai – even the halachot yet to be discovered by future scholars. The Tannaim rediscovered what had been forgotten, but up to the time of Rebbe not everything had been revealed. By the time the Mishnah was created, however, everything that needed to be revealed had been revealed. Nothing more would be revealed after that. All the Torah is alluded to somewhere in the words of the Tannaim. The secrets contained in the Mishnah were revealed somewhere between the first generation of the Amoraim and the last generation of the Amoraim. Our portion is only what the Amoraim revealed to us. This was well-known to them, as stated in that passage in Bava Metzia.

ובאמת הלא כל התורה בסיני נתנה אפי' מה שתלמיד ותיק עתיד לחדש, והתנאים החזירו מה שנשכח, ועד זמן רבי לא נתגלה הכל אבל בסוף משנה כבר נתגלה כל מה שראוי להתגלות ולא יתגלה דבר מחדש אלא נרמז הכל באחד מדברי התנאים, וכן נתגלה המשנה מדור ראשון של אמוראים עד דור האחרון, ועלינו חלקנו רק במה שנוכר בדברי האמוראים, והי' הדבר מקובל בידם כדאמר בבבא מציעא שם.

All later codes and decisions are binding only insofar as they have a source in the Talmud.

6. **Rabbi Yom-Tov Lipmann Heller, *Tosafot Yom Tov, Shevi'it 4:10* – The Talmud is the measuring rod of any halachic ruling.**

Even though the Torah may be interpreted in a variety of ways, that is only for exegetical purposes. When it comes to actual legal rulings, however, we can only rely upon what the Talmudic Sages said.

ואעפ"י שהתורה ניתנה להדרש בפנים מפנים שונים. ה"מ למדרש בעלמא אבל בפסקי דינין אין לנו אלא מה שיאמרו חכמי הגמ'.

Aside from the prominence of the Talmud as a source of law, it should also be noted that the style of the Talmud and the methodology it uses are the training ground for halachic reasoning. Study of the Talmud teaches us how to think along halachic lines and as such it is crucial for any potential halachic decision maker to master it [more on this below in Part D: Contemporary *Poskim* (Halachic Decision Makers)]

PART B. THE CONTRIBUTIONS OF THE GAONIM AND RISHONIM

Through the process of continual analysis of Talmudic precedents and logic and its application to newly developed cases, the process of halachic decision making continued to develop even after the Talmud was published. The history of halachic literature followed in stages.

1. **Rabbi Aryeh Kaplan, *Handbook of Jewish Thought, Volume 1*, pp. 236-238 – After the closing of the Talmud, the Gaonim carried on the unbroken tradition.**

The main work of the Talmud came to an end with the death of Ravina in 4259 (499 CE). This

initiated the period of the Savoraim (Rabbanan Savorai), who made some final edits and comments to the Talmud and added a few passages of their own. The period of the Rabbanan Savorai lasted 90 years, until 4349 (589 CE). In some places, they wrote final decisions about halachot disputed in the Talmud. Since the Savoraim headed academies including all the Sages of the time, their decisions are as binding as those of the Talmud.

This was followed by the period of the Gaonim, which lasted until the death of Rav Hai Gaon in 4798 (1038 CE). A Gaon is the head of either of the great academies of Sura and Pumbedita in Babylonia, which had been founded in Talmudic times and were still considered the centers of authority in all matters of Torah law. To qualify, the Gaon had to have absolute mastery over the entire Talmud.

The decisions of the Gaonim were almost universally accepted. Therefore, they cannot be disputed by any later authority without considerable proof.

While its authority cannot be disputed, the Talmud nevertheless was not written as an organized reference book of laws. It is very difficult to extract practical halachah from it without complete mastery of it in its entirety. This led over time to the eventual codification of Talmudic law in the Middle Ages by the Rambam and others. The Sages of this later period, up to the publication of the Shulchan Aruch, are called the *Rishonim* (First-Stage Scholars).

2. **Ibid., pg. 238 – The Rishonim were the first to organize the legal rulings of the Talmud and Gaonim.**

As the great Babylonian academies diminished in stature, there ceased to be any formally acknowledged world center of Torah authority. However, a number of summaries of halachic decisions based on the Talmud and the rulings of the Gaonim were compiled by leading rabbis, and they achieved almost universal recognition. Most noteworthy among these were the works of Rabbi Yitzchak Alfasi (Rif; 1013-1103 CE), Rabbi Asher ben Yechiel (Rosh; 1250-1328 CE), as well as the Mishnah Torah, or Yad HaChazakah, by Rambam (1135-1204 CE). The rabbis of this period are known today as the Rishonim, the “earlier [Torah authorities].”

3. **Rabbi Moshe Mizrahi, HaKeter Institute, Jerusalem – The roles of the Rif, Rashi and Rambam.**

Of course, every word in the Talmud is necessary, but the lengthy back-and-forth discussions made it difficult and cumbersome for all but the most advanced scholars. To remedy this, the leading Spanish Torah scholar of his time, and maybe of all time, Rabbeinu Yitzchak Alfasi (Rif), wrote a condensed version of the Talmud, leaving out all its discussions and giving the reader the conclusion and final decisions. A student of both Rabeinu Nissim ben Yaakov and Rabeinu Chananel, Rav Alfasi’s work became the prime source for halachah. Every halachic work produced since then has been influenced by it, and it is printed together with every edition of the Talmud.

At the same time in France, Rabbeinu Shlomo ben Yitzchak, or as we know him “Rashi,” sought to make the Talmud more accessible in a different manner. He composed a running commentary on the entire Talmud, deciphering difficult words and explaining the Talmud’s discussions in a brief but comprehensive manner. Almost all of his commentary is extant today, and it has become so basic and popular that there is no longer such a thing as studying Talmud without Rashi’s commentary. Even so, with few exceptions, Rashi did not give us his opinions about deciding the halachah where it is disputed or undecided in the Talmud.

In the following century, another Spanish scholar, Rabbeinu Moshe ben Maimon, came up with a revolutionary idea. He saw that the halachot were scattered haphazardly throughout the Talmud, so that if someone wanted to master the halachot of Shabbat he would have to know tractates Bava Kama,

Ketubot, Pesachim and others besides the basic tractate of Shabbat. So he began a ten-year project to gather all the halachot found in the Talmud and organized them in a clear fashion. Also, taking into account that the Jews no longer lived in Babylonia, he rewrote all the halachot of the entire Oral Torah, taken from the two Talmuds and the responsa of the Gaonim, in clear, classic Hebrew, a language that he expected Jews in all countries to understand. He named this work Mishneh Torah, which means the “Repetition of the Torah.”

4. **Rabbi Moshe Mizrahi, HaKeter Institute, Jerusalem – The roles of Rabbeinu Tam, Baalei Tosafot, and other Rishonim.**

Rambam's French contemporary was a grandson of Rashi, Rabbeinu Yaakov ben Meir, otherwise known as Rabbeinu Tam (the Torah describes our forefather Yaakov as a man who was *tam* – perfect). He developed the system of comparing different passages of the Talmud to one another and resolving all apparent contradictions. His followers continued developing this system, eventually creating a wealth of literature commenting on the entire Talmud, called *Tosafot* – additions. Both Rashi's running commentary and the Tosafot eventually became part and parcel of the Talmud, all appearing on the same pages. When the first printed Talmud was created, the standard already existed: The text of the Talmud appears in the middle column of the page in square Hebrew characters, Rashi appears on the inside column and Tosafot on the outside column, both in the unique Hebrew characters (“Rashi's script”) created for and used by the commentators.

Another contemporary of Rambam and Rabbeinu Tam was Rabbeinu Avraham ben David, who lived in the region of Provence in southern France. He was an outspoken opponent of the positions of Rabbeinu Yitzchak Alfasi and Rambam, and he wrote works challenging their halachic viewpoints. Provence was the home of many prominent *Rishonim*, and most of their works reflect the enormous influence of Rambam. In fact, they referred to the Mishneh Torah as the *Urim Vetumim* (the stone-clad breastplate of the High Priest, which served as a means of communicating with God), as if it gave them a direct communication with God, Who gave the Torah.

The Spanish Rishonim eventually combined the schools of Rabbeinu Yitzchak Alfasi and of the Tosafot. This came to a climax with the appearance of Rabbeinu Asher ben Yechiel (Rosh), a German scholar who had been a prime disciple of Rabbeinu Meir of Rothenberg, and who fled to Spain when his mentor was imprisoned and held for ransom. He composed a monumental work on the Talmud, formatted like the Rif but including all the opinions of the Tosafot and of the most prominent Spanish Rishonim. His work appears in our printed Talmud after each tractate.

One of Rabbeinu Asher's sons, Rabbeinu Yaakov (Ba'al HaTurim), found that the Rishonim up to that point had written an entire library of Talmudic works. In many cases there were four, five, even ten or more approaches to clarify passages in the Talmud. It was rare for the average person to have access to all these handwritten works, much less be able to study and understand them and decide which to follow in practice.

5. **Rabbeinu Yaakov, Preface to Arba'ah Turim – Numerous opinions required a systemic approach to organizing the halachah.**

As a result of our endless exile, we have become weakened. Our hearts have become numb, our hands feeble, our eyes dim, our ears deaf and our tongues dumb. Our power of speech has been taken from us, the wellsprings of our wisdom have become plugged up. Our logic has become confused, and disputes have increased. There

ויען כי ארכו לנו הימים בנפוצותיו ותשש כוחנו ושמים
לבנו ורפו ידינו וכהו עינינו וכבדו אזנינו ונאלם לשונינו
וניטל מדברינו ונסתמו מעיינות חכמתנו ונשתבשו
הסברות וגדלו המחלוקות ורבו הדעות ולא נשארה
הלכה פסוקה שאין בה דעות שונות ... ואמרו רבותינו
ז"ל ילך אדם אצל חכם וילמדנו....

is no halachah free of multiple opinions...Our Rabbis taught that one should go to the wise man so that he will teach...

Therefore, my thoughts moved me and got me thinking [about what to do]. I took upon myself to examine the holy books and gain an understanding of them. Then I would pick two or three of the main teachings of the authors and clarify them in a manner that would leave no doubt.

על כן העירוני רעיוני ומחשבותי ועם לבבי אשיחה
אמרים. אקומה נא ואסובבה ... ואבינה בספרים
ואלקטה ב' ג' גרגרים בראשי האמרים מדברי
המחברים ... ואבררם בענין שלא ישאר בהם ספק.

6. Rabbi Moshe Mizrahi, HaKeter Institute, Jerusalem – The organization of the Arba'ah Turim.

Rabbeinu Yaakov first divided all practical halachah into four sections: a) **Orach Chaim** – an individual's obligations to serve God daily, weekly and on special occasions; b) **Yoreh Deah** – kosher food and guidelines of marital relations and mourning; c) **Eben Ezra** – marriage and divorce; d) **Choshen Mishpat** – civil and financial law. He condensed all the major halachic opinions, organized them into chapters and offered his final rulings.

This work – Arba'ah Turim, Four Columns – soon became the backbone of all halachic studies. Even the Rishonim contemporary to Rabbeinu Yaakov referred to it in their works, and certainly those who came afterward. Studying halachah, from then and until today, means to study the Arba'a Turim and determine the opinion of Rabbeinu Yaakov.

There are two major differences between Rambam's work and that of Rabbeinu Yaakov. The Mishneh Torah expresses only Rambam's opinion on all issues, whereas the Arba'ah Turim explains all the major opinions. Also, the Mishneh Torah included all the halachot of all the Torah, including all those mitzvot that apply only when the nation is at home in the Land of Israel and when the *Beit Hamikdash* (The Temple) is standing and functioning. The Arba'ah Turim includes only those halachot that are in practice during the era of our exile.

PART C. THE BEIT YOSEF AND SHULCHAN ARUCH

It turned out that studying the Arba'a Turim was not a simple matter. Although the *Tur*, as it is called, is a comprehensive work, the material is presented succinctly, resulting in many ambiguities. Not only that, but Rabbeinu Yaakov did not have access to many important compilations of the Rishonim, not to mention the important works that were composed after his time.

Harav Yosef Karo was born in Spain in 1488 and was exiled along with his family during the Spanish expulsion. The Karo family settled in Turkey, and young Rav Yosef wasted no time in mastering the Talmud and its commentaries. He grew up to be a leading rabbi, and headed a group of elite, devout scholars who devoted themselves entirely to the study of halachah and Torah ethics. Rav Karo led his followers to the holy city of Safed, where he quickly became recognized as the leading Torah scholar among more than two hundred outstanding scholars.

Aware of the problems inherent in the study of the Arba'a Turim, Rav Yosef Karo set out to remedy the situation by composing a running commentary on that work, titled *Beit Yosef*. He had three goals in this project: a) to explain each passage of the Arba'a Turim, presenting its sources and Rabbeinu Yaakov's halachic decisions; b) to collect all other opinions of the Rishonim pertinent to the halachah discussed in each

chapter; and c) to issue an authoritative halachic ruling in every case, which may or may not concur with Rabbeinu Yaakov's rulings.

1. Rav Yosef Karo's Preface to the Beit Yosef – Rationale of Rav Yosef Karo to write the Beit Yosef.

Many, many years have passed. We have been cast from vessel to vessel; we have been exiled and exposed to terrible calamities one after the other, until (because of our sins) we have reached the point of "The wisdom of its wise men will be lost" (Yeshayahu/Isaiah 29:14). The Torah has not become like two Torahs – it has become like innumerable Torahs because of the proliferation of books that explain its laws and rules.

Therefore I, the least of all Israel's masses, have decided to author a book that will include all the halachot in practice today, explaining their sources in the Talmud and all the opinions of the Poskim, without exception. I decided to base this work on the Arba'ah Turim, since it already lists the opinions of the majority of the Poskim.

Whoever will have this book will have each passage of the Talmud laid out before him with Rashi's and Tosafot's comments, besides the halachic discussions of Rabbeinu Nissim, Rabbeinu Yitzchak Alfasi, Rabbeinu Asher, the Mordechai, the Rambam, etc. (some sixteen more Poskim are listed) all fully explained.

ויהי כי ארכו לנו הימים הורקנו מכלי אל כלי ובגולה
הלכנו וכמה צרות צרורות תכופות זו לזו באו עלינו עד
כי נתקיים בנו בעוונותינו ואבדה חכמת חכמיו וגו'...
לא נעשית התורה כב' תורות אלא כתורות אין מספר
לסיבת רוב הספרים הנמצאים בביאור משפטיה
ודיניה....

על כן אני הדל באלפי ישראל ... הסכמתי לחבר ספר
כולל כל הדינים הנוהגים בביאור שרשיהם ומוצאיהם
מהגמרא עם כל חילוקי סברות הפוסקים איש לא
נעדר.... הסכמתי לסמוך לספר ארבעה טורים ... כי
הוא כולל רוב דעות הפוסקים....

נמצא שמי שיהיה ספר זה לפניו יהיו סדורים לפניו
דברי התלמוד עם פירש"י והתוספות והר"ן ופסקי
הרי"ף והרא"ש והמרדכי והרמב"ם והגהותיו וכו' כל
דבריהם מבוארים היטב.

Rav Yosef Karo set forth a system with which to arrive at his halachic rulings. Of all the Rishonim, he set Rabbeinu Yitzchak Alfasi (Rif), Rambam and Rabbeinu Asher (Rosh) as head-and-shoulders above all others. Their rulings are far more authoritative than those of the others. Wherever all three agreed, that is the halachah hands-down. Wherever two agreed and the third did not, the halachah follows the opinion of the two. However, there are plenty of exceptions to this rule, especially when the latter Rishonim concurred almost unanimously against these three in favor of the opinion of, for example, Rabbeinu Tam.

2. Ibid. – The Beit Yosef's (and Shulchan Aruch's) Method of Psak Halacha

The Household of Yisrael depends upon the halachic rulings of the three pillars of halachic decision – Rabbeinu Yitzchak Alfasi (Rif), Rambam and Rabbeinu Asher (Rosh). I have decided that wherever two of these Poskim agree, we are to rule accordingly except for a number of places where all or at least most of Israel's Torah Sages disagree with that ruling and it has become commonplace to rule otherwise. Wherever one of the three pillars did not reveal his opinion and the other two disagree on the matter, we have

להיות שלש עמודי ההוראה אשר הבית בית ישראל
נשען עליהם בהוראותיהם הם הרי"ף והרמב"ם
והרא"ש, אמרתי אל לבי שבמקום ששנים מהם
מסכימים לדעה אחת נפסק הלכה כמותם, אם לא
במקצת מקומות שכל חכמי ישראל או רובם חולקין
על הדעה ההיא ולכן פשט המנהג בהיפך. ומקום
שאחד מן הג' העמודים הנוכחים לא גילה דעתו בדין
ההוא והשני עמודים הנשארים חולקין בדבר, הנה
הרמב"ן והרשב"א והר"ן והמרדכי וסמ"ג לפנינו אל
מקום אשר יהיה שמה הרוח רוח אלהין קדישין ללכת

the Ramban, Rashba, Ran, Mordechai and Sefer Mitzvot Gedolot to refer to. We will follow the path blazed for us by these giants of spirit. This system is the most logical way to avoid pitfalls and paves the path toward serving the King.

נלך כי אל הדעת אשר יטו רובן כן נפסוק הלכה... ודרך
זו דרך המלך נכונה וקרובה אל הדעת להרים מכשול.

After completing the Beit Yosef, Rav Karo wrote the Shulchan Aruch, a shorter work containing the conclusions of his halachic decisions. In the introduction to the Shulchan Aruch, Rav Karo writes that he hopes that every Jew will be able to study the compendium and become fully knowledgeable of all Jewish law. The Shulchan Aruch became the ultimate code of halachah, the most comprehensive and authoritative collection of halachic rulings ever published.

3. **Harav Moshe Chagiz in responsa Halachot Ketanot (#182): In particular for Jews of the Middle East or wherever communities of the Spanish exile had re-established themselves, Rav Yosef Karo was accepted as *the* halachic authority, just as Rabbi Yehudah Hanasi had been accepted by the entire Jewish nation after he composed the Mishnah.**

I have a tradition from my grandfather, Harav Moshe Galanti, that throughout the Land of Israel and all the Oriental cities of Babylon, Syria, Turkey and Egypt, the people have accepted, for themselves and for their descendants, the rulings of our master, Harav Yosef Karo. I also heard him say that during his lifetime the Torah giants of Safed renewed this commitment to bide by the rulings of our master. Whatever he ruled is the final word.

קבלתי ממר זקני הראש"ל המג"ן שבכל ארץ ישראל
ובכל ערי המזרח בבל סוריה תורכיה ומצרים קיבלו
עליהם ועל זרעם הוראות מרן רבינו יוסף קארו זצ"ל.
וגם שמעתי מפי קדשו שביזמנו חזרו גאוני צפת וחיידשו
תוקף ההסכמה הזאת לקבלת דברי מרן אשר יאמר כי
הוא זה.

In northern Europe, however, the leading rabbis were not that quick to accept Rav Karo's Shulchan Aruch. The Jews of Germany and Poland had established their own traditions, often differing from the decisions found in the Beit Yosef. Furthermore, they opposed Rav Karo's basic approach of following the rulings of Rif, Rambam, and Rosh. They argued that according to Talmudic principles the halachah should follow the opinions of latter-day Torah scholars, which in this case meant the latter Rishonim. Although all the rabbis recognized Rav Karo as an enormous scholar and hailed the Beit Yosef as the greatest halachic work composed in history, they felt that their communities had the right – nay, the obligation – to preserve their traditions and practices. The chief rabbi of Krakow, Harav Moshe Isserles, set about to make the Beit Yosef and Shulchan Aruch practical works for Ashkenazic Jews as well.

4. **Rabbi Yitzchak Berkowitz, Summary of Klalei Hora'ah, www.jerusalemkollel.com – Contrasting the halachic approaches of Rav Yosef Karo and Rav Moshe Isserles.**

Interestingly enough, Rav Yosef Karo and Rav Moshe Isserles both worked on their momentous works at the same time, completely unbeknownst to one another. The Beit Yosef and Shulchan Aruch were published first, and Rav Isserles realized that to a large degree his work overlapped that of the Beit Yosef. He therefore chose to turn his work into a commentary of sorts on the Shulchan Aruch to clarify where he differed. The source of their differences is largely based on their different approaches.

Both Rav Karo and Rav Isserles agreed in principle that it was necessary to codify Jewish law so that it could be accessible to the masses. The multitude of opinions in the Rishonim made arriving at halachah too difficult for the average Jew. Some decision in each matter needed to be made so that

the people had a viable way to properly observe Jewish law. However, how exactly to arrive at the Halachic decisions for the masses was a point of difference between the two. Rav Yosef Karo felt that the use of majority was most appropriate, and thus felt he should choose the opinion of the majority of the most authoritative Poskim among the Rishonim. He defined those Rishonim to be the Rif, Rambam, and Rosh. (In the event that one was silent and the others argued, then he would fall back on other Rishonim like the Rashba, Ramban, etc.)

Rav Moshe Isserles, however, felt that the Gemara tells us the principle that halachah follows the *Batroi* – the Later Authorities. That is, the later authorities have the advantage that they have seen all the earlier arguments, they have seen all the various recordings of the *Mesorah* (the Tradition) and can choose which they felt was the most authentic. Therefore, the halachah should follow the later Rishonim who were the most authoritative Poskim of their time. With the end of the Rishonim, the Mesorah was considerably weakened, thus the latest Rishonim is the last possible application of the rule of *Batroi*. Rav Isserles selected the Trumas Hadeshen (otherwise known as the MaHarai) and the Maharil as *Batroi*.

It seems that Rav Karo understood that the principle of *Batroi* ended with the period of the Gemara. It is in fact a novel idea to apply the concept to the period of the Rishonim, whose Mesorah was considerably weaker than that of the Amoraim and even that of the Gaonim and Rabbeinu Savorai. Nevertheless, Rav Isserles does apply the concept in that the Rishonim still had some semblance of an intact Mesorah.

5. **Rabbeinu Moshe Isserles, gloss to Choshen Mishpat 25:2 – The halachah follows the later authority.**

Whenever the words of the Rishonim have been recorded in writing and are well known, yet the later authorities dissent from them, as we find the opinions sometimes dissenting even from the Gaonim – we follow the more recent authorities seeing as (we have a rule that) since the time of Abaye and Rava (in the Talmud), the halachah follows the later authority.

כל מקום שדברי הראשונים כתובים על ספר והם מפורסמים, והפוסקים האחרונים חולקים עליהם, כמו שלפעמים הפוסקים חולקים על הגאונים, הולכים אחר האחרונים, דהלכה כבתראי מאביי ורבא ואילך.

Rav Isserles wrote glosses on the Beit Yosef called Darchei Moshe and glosses on the Shulchan Aruch called Hamapah. In these glosses he pointed out all the differing views and practices of Ashkenazic Jews, which are often more stringent than those of Sephardic Jews, and sometimes more lenient. The rulings found in the Beit Yosef and the Shulchan Aruch were universally accepted throughout the Middle East, across North Africa, and as far as India. The unanimity of the people's acceptance of his rulings gave them great weight, comparable to the authority of the Talmud itself which the nation accepted unanimously.

7. **Harav Eliyahu ben Chaim, responsa (#160) – The halachic prominence of Rav Yosef Karo.**

Harav Yosef Karo has been accepted as the halachic authority for us and for our descendants. We must follow his rulings, even when a hundred other rabbis disagree with him. We follow his rulings whether they are lenient or stringent, even regarding something forbidden by the Torah. The greatest of the generations have agreed on this throughout time. Rabbeinu Moshe

כבר נתקבל הרב בית יוסף לרב עלינו ועל זרענו אחרינו ללכת אחר הוראותיו גם במקום שמאה אחרונים חולקים עליו, בין להקל בין להחמיר ואפילו באיסור תורה. והסכימו על זה דור אחר דור גדולי הדורות. ורבינו הרמ"א בתשובה למרן הבית יוסף כתב אליו: והגני אומר מתניתא דמר קא מתניתא, וחלילה להמרות דברי מעלת כבוד תורתו, שכל החולק עליו כחולק על

Isserles wrote a letter to our master, the Beit Yosef, stating: "I myself study your teachings. Heaven forbid that I would challenge your Torah authority. Anyone who opposes you is tantamount to an opponent of God. Your rulings can be relied upon even regarding a Torah prohibition and certainly in minor monetary matters."

השכינה, ועליו יש לסמוך אפילו באיסורא דאורייתא
וכל שכן בענין ממון הקל.

8. Harav Akiva Eiger in Igrot Sofrim (#47): For Ashkenazic Jews, Rabbeinu Moshe Isserles was accepted as the highest authority.

The Torah nation (the Jews) who reside in Germany and the neighboring countries have accepted upon themselves and their descendants the Torah of Moshe – Rabbeinu Moshe Isserles – wherever he disagreed with the rulings of the Beit Yosef. The Torah of Moshe is our tradition and we must not veer from it, whether to be more lenient or more stringent.

תופשי התורה בארץ אשכנז ובארצות שסביבותיה
קיימו עליהם ועל זרעם תורת משה הרמ"א נ"ע בכל
השגותיו על הוראות הבית יוסף, ותורת משה מורשה
לנו מבלי לנטות ממנה להקל או להחמיר.

The publication of the Shulchan Aruch spawned a new generation of halachic literature, as scholars scrambled to explain, comment, disagree and expand upon it. The past two centuries have seen several works condensing all this material, particularly the Orach Chaim section, into handbook form, enabling simple laymen to access the basic halachot necessary for day-to-day living.

PART D. CONTEMPORARY POSKIM (HALACHIC DECISION MAKERS)

The sheer number of specific questions about halachot has increased exponentially since the Industrial Revolution and the advent of high-speed travel, and especially after the harnessing of electricity and with all the technological changes our world has seen. Since the Talmud and Rishonim did not discuss these things, contemporary scholars have grappled to apply the Talmud's principles to our modern lifestyle and to rule on the halachah as it pertains to all these new nuances of lifestyle.

The contemporary Torah scholar searches for precedents in the works of earlier Poskim whenever he needs to issue a ruling, much as a lawyer or a judge searches for precedents for a legal decision. In order to be able to render a ruling on something new, the scholar must be eminently familiar with the Talmud, its commentaries, the Arba'ah Turim, the Beit Yosef and Shulchan Aruch and its commentaries. In addition, he must be familiar with the enormous volume of halachic responsa that grows larger with each passing generation.

As noted above, the Talmud is not the last word on halachah, but it is the crucial training ground for developing the kind of thinking required to reach halachic rulings. One simply cannot understand any halachic literature without a firm grounding in Talmud.

1. Rabbi Yitzchak Breitowitz, "How a Rabbi Decides a Medical halachah Issue," from www.jlaw.com – Halachic rulings are based on knowledge of the relevant Talmudic discussions with their commentaries, legal precedent, and the application of halachic reasoning.

All halachic decision-making is ultimately grounded in Talmudic conceptualization. The classic and

definitive codifications of Judaism – Rambam’s Mishnah Torah, Tur, and Shulchan Aruch – are all based on conclusions derived from Talmudic *sugyot* (topical discussions). The responsa literature – a vast body comprising thousands of volumes from every part of the world – applied Talmudic discussions and the rulings of the codes to contemporary situations, thereby ensuring that halachah remains a living, vital tradition.

Having acquired the Talmudic methodology through years of devoted study, Poskim can apply their knowledge and intellect to decide cases of Jewish law as questions arise.

2. Rabbi Aryeh Kaplan, Handbook of Jewish Thought, Volume 1, pp. 241-247 – Present-day Rabbinic leaders have the authority to decide cases of Jewish law.

In every generation, there are certain rabbis who, because of their great scholarship and piety, are generally accepted as religious leaders and authorities, as it is written, “You must observe all that they decide for you” (Deut. 17:10). Although this commandment relates specifically to the Sanhedrin, it also applies to the religious leaders of each generation...

The opinions found in any generally accepted code or responsum is considered a binding precedent. Nevertheless, a recognized Torah scholar may dispute such a decision if he has ample Talmudic proof or an unequivocal tradition that a particular decision was not generally accepted. In such cases, it is preferable to follow the rulings of a living authority, as it is written, “You shall come... to the Judge who shall be in those days” (Deut. 17:9).

In the early 20th century, for example, Rabbi Yisroel Meir Kagan, (known as the Chafetz Chaim after a book he wrote on the Laws of Proper Speech), published a modern commentary on the Orach Chaim section of the Shulchan Aruch. This compilation, known as the Mishnah Brurah, was the fruit of over twenty years of writing. A Sephardic contemporary of the Chafetz Chaim, Chacham Yosef Chaim, is also called after his most famous work, the Ben Ish Chai, whose laws and Torah commentaries are studied worldwide. In more recent times, authorities such as Rabbi Avraham Yeshaya Karelitz (the Chazon Ish), Rabbi Moshe Feinstein and Rabbi Ovadiah Yosef published comprehensive answers to contemporary halachic questions, addressing all areas of life including the implications of modern medical technology.

How does one become accepted as a leading authority in Jewish law these days? Here is how one such publicly-recognized authority so humbly put it:

3. Rabbi Moshe Feinstein, quoted in an article by Israel L. Shenker, “Responsa: The Law as Seen by Rabbis for 1,000 Years,” New York Times, May 5, 1975 – Authority in Jewish law is by dint of mutual consensus.

“If people see that one answer is good, and another answer is good, gradually you will be accepted.”

KEY THEMES OF SECTION I.

- ⌘ Halachah is rooted in the Talmud, the consensus of all the Jewish Sages at the time of its completion. It is the authoritative text of the Oral Law and the backbone of any legal decision in matters of halachah.
- ⌘ Since the Talmud is not an organized textbook of law, efforts were made to clarify and/or codify its rulings by scholars in the Middle Ages; these scholars were known as the Rishonim.
- ⌘ The Shulchan Aruch emerged as the most authoritative organized collection of Jewish law, taking

into account the writings and rulings of the Rishonim on every Talmudic topic.

- ≈ Contemporary Torah scholars rely on their knowledge of the Talmud and Shulchan Aruch and their commentaries, applying their Talmudic reasoning and methodology to rule on issues of Jewish law presented to them.

SECTION II. SAMPLE HALACHIC PROCESS: VISITING THE SICK

The Morasha class on the System of Halachah VI – Rabbinic Authority, demonstrated that the Sages of the Talmud wore three hats, as carriers, interpreters, and legislators of the Written and Oral Torahs. Below we will present an example of a halachic ruling regarding three contemporary questions about the mitzvah of *bikur cholim* (visiting the sick) – namely, whether or not a person can fulfill this mitzvah by simply calling a sick person on a telephone, by sending an email, or using Skype. We will start with the relevant Biblical sources, and then move on to the Talmudic discussion of them. Then we will see how the Rishonim drew out the legal principles expressed in the Talmud, and finally how modern day halachic authorities apply these principles in a contemporary setting.

PART A. BIBLICAL SOURCES

The mitzvah of visiting the sick is one aspect of the mitzvah to “walk in God’s ways.”

1. Devarim 13:5 – God calls upon us to walk in His ways and draw close to Him.

You must follow your God and fear Him, observe His commandments, listen to His voice, serve Him, and attach yourselves to Him.

אחרי ה' אלקיכם תלכו ואתו תיראו ואת מצותיו תשמרו ובקלו תשמעו ואתו תעבדו ובו תדבקון:

2. Devarim 28:9 – We are to be holy and walk in His ways.

The Lord will establish you as His holy nation as He swore to you, because you will observe God’s commandments and go in His ways.

יקימך יקוק לו לעם קדוש כאשר נשבע לך כי תשמר את מצות ה' אלקיך והלכת בדרכיו:

How can we go in God’s ways? Our Sages taught that we are to act in the ways that the Torah depicts Him acting. One example is to visit the sick. The Torah relates that on the third day after Avraham’s *brit* (circumcision), God visited him:

PART B. TALMUDIC ANALYSIS

The Talmud identifies the Biblical source for *bikur cholim*, praises its virtues, and clarifies the nature of the mitzvah.

1. Talmud Bavli, Bava Metzia 86b – God had come to visit Avraham since he was weak and sick following his circumcision.

[God appeared to him (Avraham) in the plains

וַיֵּרָא אֵלָיו ה' בְּאֵלָיו מִמְּרָא וְהוּא יָשָׁב פְּתַח הָאֵהָל בְּחֹם

of Mamre while he was sitting at the entrance to the tent in the heat of the day. (Bereishit/Genesis 18:1)]

Rabbi Chama Bar Chanina said: It was the third day since his circumcision, and the Holy One, Blessed be He, came and inquired about Avraham's welfare.

היום.

אמר רבי חמא בר חנינא יום שלישי למילתו היה ובא הקב"ה לשאול בשלמו.

2. Talmud Bavli, Sotah 14a – When a person emulates the ways in which God cares for His creatures (as described in the Torah narratives), then that person “walks in His ways.”

Rabbi Chama bar Chanina said: What is the meaning of the verse, “You must follow your God” (Devarim/Deuteronomy 13:5)? Is it possible for a person to physically follow the *Shechinah* (the Divine Presence)?

Rather, this teaches us to emulate God's attributes: Just as...He visits the sick, as it is written, “God appeared to him [Avraham, who was recovering from his circumcision] in the plains of Mamre” (Bereishit 18:1), so must you visit the sick.

ואמר רבי חמא ברבי חנינא מאי דכתיב אחרי ה' אלקיכם תלכו וכי אפשר לו לאדם להלך אחר שכינה? ...

אלא להלך אחר מידותיו: מה הוא ... ביקר חולים דכתיב וירא אליו ה' באלוני ממרא, אף אתה בקר חולים.

PART C. CLARIFICATION BY RISHONIM

The Rishonim discussed the source for bikur cholim and clarified its parameters within a legal framework.

i. Source of the Mitzvah

Most Rishonim adopted the Talmud's association of bikur cholim with the mitzvah of emulating God. One proponent of this view is the author of Sefer Mitzvot Katan, the thirteenth century French scholar, Rabbeinu Yitzchak ben Yosef of Corbel.

1. Rabbeinu Yitzchak ben Yosef of Corbel, Sefer Mitzvot Katan, Mitzvah 47 – Visiting the sick is a Biblical commandment, an aspect of imitating God's ways.

Mitzvah 47: To visit the sick. As it is written, “Walk in His ways” (Devarim 28).

מצוה מז: לבקר חולים. דכתיב (דברים כ"ח) והלכת בדרכיו.

Rambam (1135-1204) took issue with listing bikur cholim as one of the 613 mitzvot. His position is that the mitzvah of emulating God is the obligation to develop sterling character traits just as God is faultless, but that the Talmudic Sages “borrowed” the concept of emulating Him to promote certain social mitzvot, including visiting the sick. Thus, bikur cholim is essentially a mitzvah instituted by the Sages. He adds that any act of kindness such as visiting the sick is an aspect of the Torah's commandment to love one's neighbor.

2. **Rambam, Hilchot Avel (The Laws of Mourning) 14:1 – Visiting the sick is one of the ways to fulfill the mitzvah to love one's fellow as oneself.**

Our Sages instituted a mitzvah to visit the sick, to comfort mourners, to bury the dead, to assist a bride in getting married, to escort guests... All these are physical acts of loving-kindness, and there is no limit to them.

Although these mitzvot were instituted by our Sages, they are aspects of the Torah's commandment of "You should love your fellow as yourself" (Devarim 19:18) – anything that you would want others to do for you, you should do for your fellow.

מצות עשה של דבריהם לבקר חולים, ולנחם אבלים, ולהוציא המת, ולהכניס הכלה, וללוות האורחים... ואלו הן גמילות חסדים שבגופו שאין להם שיעור.

אף על פי שכל מצוות אלו מדבריהם, הרי הן בכלל ואהבת לרעך כמוך, כל הדברים שאתה רוצה שיעשו אותם לך אחרים, עשה אותן אתה לאחריך...

ii. Parameters of the Mitzvah

Based on the Talmud, the Rishonim further clarify the parameters of the mitzvah and how it is to be fulfilled. They identify three essential components in the mitzvah of visiting the sick: (1) taking care of the patient's physical needs, (2) caring for his emotional needs, and (3) praying for his recovery and health. The basic principles of the mitzvah were codified by the thirteenth-century Spanish sage, Rabbi Moshe ben Nachman (Ramban, 1194-1270).

1. **Ramban, Torat HaAdam, Sha'ar HaMechush – From the Talmud we can derive the essential principles of bikur cholim.**

We learn from here [i.e. Nedarim 40a] that we visit the sick in order to sweep and mop the floor and take care of all of his medical needs, so that he will find satisfaction in his friends' care. Also, by visiting, one will be inspired to pray on the patient's behalf... Therefore, if someone visits a sick person and does not pray on his behalf, he has not fulfilled the mitzvah fully.

ושמעין מהכא דבקר חולים כדי שיכבדו וירבצו לפניו ויעשו לו הצרכים הצריכים לחליו וימצא נחת רוח עם חבריו, ועוד כדי שיכוין דעתו לרחמים ויבקש עליו... לכך המבקר את החולה ולא בקש עליו רחמים לא קיים המצוה.

Rabbi Yaakov ben Asher (1269-1343) author of the Arba'ah Turim, listed two of the same elements of bikur cholim enumerated by Ramban.

2. **Rabbi Yaakov ben Asher, Arbah Turim, Yoreh Deah 335 – Prayer and care are the backbone of bikur cholim.**

It is a great mitzvah to visit (the sick) because as a result, one will pray for him, and doing so is like giving him life. Also, upon seeing him and how he is doing and what his needs are, the visitor will see to his needs and will make sure that someone cleans the floor for him.

ומצוה גדולה היא לבקר שמתוך כך יבקש עליו רחמים ונמצא כאילו מחיה אותו וגם מתוך שרואהו ומעיין בענינו אם יצטרך לשום דבר משתדל בו להמציאו לו ועושה שיכבדו וירבצו לפניו

3. Talmud Bavli, Nedarim 39b-40a – Rabbi Akiva proclaims the importance of visiting the sick.

Rabbi Chelbo fell ill. Thereupon Rabbi Kahana went and announced: "Rabbi Chelbo is sick." No one came forward. Rabbi Kahana told them, "Wasn't it true that a student of Rabbi Akiva fell sick and the Sages did not visit him, so Rabbi Akiva himself came to visit him. Since he cleaned the floor for him, the sick man recovered! 'My master,' said he, 'you have revived me!' Rabbi Akiva went out and lectured: If someone does not visit the sick it is as if he committed murder."

רב חלבו חלש, נפק אכריו רב כהנא: רב חלבו באיש, לא איכא דקא אתי, אמר להו: לא כך היה מעשה? בתלמיד אחד מתלמידי ר' עקיבא שחלה, לא נכנסו חכמים לבקרו, ונכנס ר' עקיבא לבקרו, ובשביל שכיבדו וריבצו לפניו חיה, א"ל: רבי, החייתני! יצא ר' עקיבא ודרש: כל מי שאין מבקר חולים - כאילו שופך דמים:

4. Ibid. 40a – Visiting the sick inspires one to pray on his behalf.

Rav Dimi said, "Whoever visits the sick causes him to continue living. Whoever fails to visit the sick causes him to die...Whoever visits the sick prays for him to remain alive...whoever does not visit the sick does not pray on his behalf."

כי אתא רב דימי אמר: כל המבקר את החולה גורם לו שיחיה, וכל שאינו מבקר את החולה גורם לו שימות... כל המבקר את החולה מבקש עליו רחמים שיחיה... וכל שאין מבקר את החולה אין מבקש עליו רחמים...

PART D. CODIFICATION BY ACHARONIM (LATER AUTHORITIES)

Bikur cholim is codified as a mitzvah in the Shulchan Aruch, the most authoritative code of Jewish law by the early Acharon, Rabbi Yosef Karo (1488-1575).

1. Rabbi Yosef Karo, Shulchan Aruch, Yoreh Deah 335:1 – It is a mitzvah to visit the sick.

It is a mitzvah to visit the sick. Relatives and close friends should come as soon as he becomes bedridden; more distant acquaintances should come only after three days.

מצוה לבקר חולים. הקרובים והחברים נכנסים מיד; והרחוקים, אחר ג' ימים.

2. Remah, Shulchan Aruch, Yoreh Deah 335:4 – Prayer is essential to the mitzvah.

Anyone who visits a sick person and does not pray for him has not fulfilled the mitzvah (Beit Yosef, citing Ramban).

וכל שביקר ולא ביקש עליו רחמים, לא קיים המצוה (ב"י בשם הרמב"ן).

Does one need to pray for the sick person specifically at his bedside or can one pray anywhere? The answer has implications for our contemporary application below on bikur cholim via the telephone, email and Skype.

3. Magen Avraham, Shulchan Aruch, Oruch Chaim 119:1 – One can pray for a sick person anywhere, as long as you mention the patient's name.

The Maharil explains based on the Talmud Bavli, Berachot 34 that one who prays for the patient at his bedside does not have to say his name;

המבקש רחמים על חבריו א"צ להזכיר שמו (ברכות דף ל"ד) וה"מ בפניו אבל כשמתפלל שלא בפניו צריך להזכיר שמו (מהרי"ל).

however when you are not in front of him, you need to mention the patient's name.

PART E. CONTEMPORARY APPLICATIONS

Contemporary questions about applying this discussion of bikur cholim have arisen with the invention of the telephone and the Internet. Is it possible to fulfill the mitzvah of bikur cholim over the phone, via email, or Skype? Does calling or emailing a sick person count as visiting him, or can one only fulfill this mitzvah in person? Do you need to pray for the person at the patient's bedside, as part of the mitzvah of bikur cholim, or can that be done in accompaniment to the phone call, email or Skype?

As we shall see, an understanding of the Talmud and Rishonim is essential for being able to address this question, because at issue is the very definition of the mitzvah. What is the mitzvah act of bikur cholim? Is it praying for the sick person, seeing to his needs, etc.? Or is the mitzvah act the visit itself, while these elements are merely conditions that need to be fulfilled in order to do the mitzvah properly? Practically speaking it makes no difference to us, since no one would say that if you cannot visit, then don't bother making a phone call. But can we call it the mitzvah of bikur cholim, or is it just a nice thing to do?

The following is an excerpt from the halachic responsa of Rabbi Moshe Feinstein, a leading twentieth-century Posek.

1. **Rabbi Moshe Feinstein, Igrot Moshe, Yoreh Deah 1:223 – One can fulfill the mitzvah of bikur cholim to a certain degree by making a telephone call.**

As far as fulfilling the mitzvah of bikur cholim by way of telephone, it has been suggested that even though one has not fulfilled all the elements enumerated by the Tur and Beit Yosef in Shulchan Aruch, Yoreh Deah 335 in the name of Ramban, nevertheless it is still a fulfillment of the mitzvah, because performing any of these elements fulfills the mitzvah. And I say that while one who does this has certainly performed a mitzvah, nevertheless he has not fully fulfilled his obligation seeing as he is lacking in the other elements of the mitzvah. Therefore, if it is impossible for him to actually visit, then he may, at least, visit him in any way that he can and fulfill whatever aspects of the mitzvah that can be fulfilled with a telephone call.

ובדבר בק"ח על ידי שאלה בטעלעפאן ... שאף שכל הענינים שחשבו הטור והב"י ביו"ד סי' של"ה בשם הרמב"ן אינו מקיים מ"מ יוצא ידי המצוה של בק"ח משום דגם בעשה אחת מכל אלה נמי יצא ידי חובתו. הנה פשוט לע"ד שאף שמקיים מצוה דבק"ח אבל אינו שייד לומר שיצא י"ח כיון שחסר בבקור זה ענינים האחרים שיש בבק"ח. ורק יצא מזה שאם א"א לו לקיים בהליכה לשם לא נפטר לגמרי אלא צריך לבקרו במה שאפשר לו לכה"פ ענין אחד או שנים שהוא גם ע"י הטעלעפאן.

Clearly, Rabbi Feinstein maintained that the elements of bikur cholim mentioned in the Talmud are actual examples of ways to fulfill the mitzvah. Another contemporary Posek, Rabbi Asher Weiss, chose to disagree with Rabbi Feinstein on this point, saying that while it is certainly a nice thing to phone a sick person (even a mitzvah of *chesed*, loving-kindness), nevertheless it is not a fulfillment of bikur cholim. To perform bikur cholim one must actually visit the sick person.

2. **Rabbi Asher Weiss, Minchat Asher, Bereishit 20 – One cannot fulfill bikur cholim without actually making a visit.**

Our Rabbi, the author of Igrot Moshe, judges whether or not it is possible to fulfill the mitzvah [of bikur cholim] with a telephone call. And he writes in his ruling that we find several ways to fulfill the mitzvah of bikur cholim: (1) to pray for the sick person, (2) to see to his needs, (3) to give him encouragement. Now, according to the reasoning that praying and offering encouragement are fulfillments of the mitzvah, performing this mitzvah would also be possible over the phone; only (the third aspect) seeing to his needs is not possible over the phone.

In my humble opinion, though, it is not at all possible to perform this mitzvah over the phone. For even though one can give encouragement over the phone, nevertheless they (the Sages) have said that we must actually *visit* the sick, and therefore it is only possible to fulfill this mitzvah with an actual visit and not by way of a telephone call from afar. One must fulfill the words of the Torah and the Sages according to their actual guidelines and not simply fulfill the logic behind them...

Therefore, it appears that even were it possible to fulfill all three elements of bikur cholim over the phone, nevertheless it would still not be a fulfillment of the mitzvah but would rather fall under the general category of acts of loving-kindness. It is certainly appropriate to do such an act of kindness when one cannot actually fulfill the mitzvah in accordance with its basic premises, but it is still not the actual mitzvah of bikur cholim.

רבינו האגרות משה (יו"ד ח"א סי' רכ"ג) דן, אם אפשר לקיים מצוה זו ע"י שיחת טלפון, וכתב לדון שהרי מצאנו כמה טעמים במצוה זו, א' שיתפלל על החולה, ב' שישמשנו, ג' שיחזקנו בדברים, ולפי הטעם שיתפלל עליו או יחזקנו, זה שייך גם ע"י שיחת טלפון, אך לפי הטעם שישמשנו זה ודאי לא שייך בטלפון,

אך לענ"ד נראה פשוט שבודאי אין מקיים מצוה זו בטלפון, דגם אם שייך לחזק רוחו ע"י שיחת טלפון, הרי אמרו שצריך לבקר את החולה ואפשר לקיים מצוות התורה ותקנות חז"ל כפשטות מעשיהן, ולא בכל דבר אזלינן בתר טעמא.

ומשו"כ נראה דאף דבכל שלושת הטעמים הנ"ל אפשר לפעמים לקיים ע"י שיחת טלפון מ"מ אין בזה מצות ביקור חולים אלא גדר גמילות חסד בעלמא. ובודאי ראוי לנהוג כן כשאין בידו לקיים מצות הביקור כפשוטו מצד החסד שבמעשה אך אין בזה עיקר מצות ביקור חולים.

What about sending a relative or friend an email – does that constitute any of the elements of fulfilling bikur cholim? What about Skype – might that overcome some of the drawbacks to fulfilling bikur cholim over the phone or email since the patient can actually see the other person?

3. **Rabbi Yehoshua Pfeffer, The Institute for Dayanim, Correspondence – If one cannot physically visit the sick, one should certainly call, use Skype or send email, thereby fulfilling aspects of the mitzvah of bikur cholim.**

We have already mentioned the ruling of Rav Moshe Feinstein (Yoreh De'ah 1:223), who writes that the mitzvah of bikkur cholim can be fulfilled via the telephone. He adds that although this does not constitute a complete fulfillment of

כבר הובאו לעיל דברי הרב משה פיינשטיין (שו"ת אגרות משה, יו"ד ח"א, סימן רכג), שכתב שניתן לקיים מצוות ביקור חולים בטלפון, אף שהוסיף שאין בכך קיום מלא של המצווה, ולא יצא ידי חובתו, אבל עכ"פ

the mitzvah, it is, at least, a partial fulfillment. The same idea is found in Shut Minchat Yitzchak (2:84), and also in Shut Be'er Moshe (2:104), who explains that “the principle fulfillment of the mitzvah is with one’s body, but by means of the telephone one achieves a partial fulfillment.”

This requires elucidation, for we usually treat mitzvot as complete and well-defined units, whereby if one eats the required amount of matzah one fulfills the mitzvah, and if one eats less than the required amount one does not, and there is no mitzvah in eating half of the required amount of matzah on Passover. Yet, concerning visiting the sick, we find that a “partial mitzvah” is also possible. How is visiting the sick different from eating matzah?

However, the explanation of the matter is as I heard on several occasions from my mentor, Rabbi Shlomo Wolbe, who spoke of the words of the prayer “Praised is he who hears Your mitzvot and places Your Torah and Your words on his heart.” What is the meaning of “hearing” the mitzvot? He explained that hearing the mitzvot implies that it is not sufficient to *perform* the mitzvah. We are charged with *hearing* what the mitzvah requires of us, meaning to understand the Divine will that underlies the mitzvah, and to apply it even where the mitzvah is not entirely feasible.

We can therefore understand the rulings of authorities who state that even when there is no technical means of entirely fulfilling the mitzvah, by visiting the sick with one’s person...there remains an obligation to fulfill the foundations of the mitzvah – scrutinizing the needs of the sick, encouraging him and strengthening him, praying for him, and so on.

Based on this principle, it follows that somebody who cannot visit the sick in person should certainly initiate a Skype call. Although this is not the same as a personal visit, it will certainly be a fulfillment of “hearing the mitzvot,” seeking to perform the underlying will of the mitzvah of visiting the sick. A Skype call has an advantage over a regular phone call, because each party sees the other. This brings the two closer, and resembles an actual visit.

יש בכך קיום חלקי. כן כתב גם בשו"ת מנחת יצחק (ח"ב, סימן פד)... ועל דרך זו מבואר בשו"ת באר משה (ח"ב סימן קד): “השבתי עיקר קיום המצוה היא בגופו, ועל ידי טעלעפון ג"כ מקיים חלק מהמצוה.”

ולכאורה צריך להבין את דברי הפוסקים, כי רגילים אנו להתייחס למצוות כיחידות ברורות ומוגדרות, באופן שאם אכל כזית מצה קיים את המצווה, ואם אכל פחות משעור כזית לא קיים את המצווה, ואין שום מצוה באכילת חצי זית של מצה בפסח. ואילו בנוגע לביקור חולים מבואר בדברי הפוסקים שגם במקום שאין לו קיום מלא של המצווה, עדיין יש לו לקיים את המצווה באיזה פרט שיכול. וצ"ע, במה שונה מצות ביקור חולים ממצות מצה?

אבל ביאור הענין הוא כמו ששמעתי ממו"ר הרב שלמה וולבה זצ"ל, שדיבר פעמים רבות אודות דברי התפילה “אשרי איש שישמע למצוותיך ותורתך ודברך ישים על לבו”, וצ"ב מה ענינה של “שמיעת” המצוות שאנו מזכירים. וביאר שלא די במה שהאדם מקיים את מצוות התורה, אלא על האדם לשמוע את מה שהקב"ה רוצה מאתנו באותן מצוות, להבין את רצון התורה במצוה, וליישם את אותו רצון גם במקום שאין המצוה (או האיסור) מתקיימת בשלמותה.

בזה יבוארו דברי הפוסקים, כי גם במקום שאין אפשרות לקיים את המצווה בשלמותה במישור הטכני, על-ידי ביקור החולה בגופו... עדיין יש מקום וחיוב לקיים את יסודות המצווה, שהם לבדוק מהם צרכי החולה, לעודדו ולחזקו, להתפלל בעדו, וכך הלאה.

לאור עקרון זה, הרי שברור שגם מי שאין בידו יכולת לבקר את החולה בגופו, ראוי ונכון שיזום עמו שיחה בסקיפ. ואע"פ שעדיין אין השיחה בסקיפ שווה לביקור החולה בגופו, אך בוודאי יקיים בזה את ה“שמיעה למצוות” שאנו מזכירים, לחתור אחר קיום רצון התורה בביקור החולה. ויש עדיפות של שיחה בסקיפ על שיחת טלפון רגילה, שכן בסקיפ רואים המדברים אחד את חברו, ויש בכך יותר קירוב לבבות בין המשווחים, ומתקרב לנוכחות ממש במעשה

It is noteworthy that according to Rav Hutner (Letters, no. 33), the mitzvah of visiting the sick does not require a personal visit at all. Rather, the word *bikur* translates as “examining” the condition of the sick, rather than visiting. There is therefore no difference between a personal visit and a phone call. According to this view, a Skype call fulfills the mitzvah even more than a regular telephone call.

One can use email to examine the needs of the sick, to wish him well and to encourage him. However, it appears that sending an email is somewhat distant from the actual fulfillment of the mitzvah, because it lacks the personal dimension of a visit, meaning an interactive conversation between the visitor and the visited. Therefore, a phone call, or a Skype call, is certainly preferable to an email. Nonetheless, where this is not possible, an email is better than nothing.

ויש להוסיף ולציין בענין זה את דברי הרב הוטנר זצ"ל, שכתב (אגרות וכתבים לג) שענין ביקור חולים אינו מצריך את נוכחות המבקר כלל ועיקר, מפני שמשמעות ביקור אינו "וויזיט" אלא יסודו העיון במצבו של החולה, ואין חילוק והבדל כלל בין ביקור בגופו לבין שיחת טלפון. לפי דעה זו, כמובן ששיחת סקייפ היא עוד יותר משיחת טלפון רגילה.

גם באמצעות דוא"ל יכול אדם להתעניין אחר צרכי החולה, לברכו ולעודדו. אולם, נראה לענ"ד שענין דוא"ל רחוק קצת מעצם קיום מצוות ביקור חולים, מפני שחסר בו מימד של יחס אישי, דו-שיח אינטראקטיבי בין המבקר לבין החולה. לכן, יש בהחלט עדיפות בשיחת טלפון או סקייפ, אבל אם נבצר מאדם לעשות כן, הודעת דוא"ל כמובן עדיפה מכלום.

KEY THEMES OF SECTION II.

- ≈ The Torah tells us to follow in God's ways. As is seen from the story of Avraham after his *brit*, one of God's ways is that He visits the sick. The Talmud brings this as the legal basis of the mitzvah of *bikur cholim*.
- ≈ Alternatively, Rambam taught that the mitzvah of *bikur cholim* is an institution of our Sages, besides being a fulfillment of the Torah's commandment to love one's fellow.
- ≈ The Rishonim clarified the parameters of the mitzvah, explaining that it has three essential elements: providing physical care to the patient, providing emotional support, and praying on his behalf.
- ≈ The parameters set by the Rishonim are used by modern-day halachic authorities to examine whether or not one can fulfill the mitzvah of *bikur cholim* over the phone when actually visiting is not possible. In the opinion of Rabbi Moshe Feinstein, elements of *bikur cholim* can to some extent also be fulfilled with a phone call. However, Rabbi Asher Weiss maintains that one cannot perform the mitzvah of *bikur cholim* without actually paying a visit. Nonetheless, making a telephone call is still an act of kindness.
- ≈ “Listening” to the meaning of the mitzvah implies that we must fulfill whatever elements of *bikur cholim* are at our disposal, be that by use of Skype, telephone, or even just an email.

CLASS SUMMARY:

ON WHAT AUTHORITY DO CONTEMPORARY HALACHIC DECISION MAKERS ISSUE RULINGS ON MATTERS OF JEWISH LAW?

The Torah itself set up a system by which the Torah scholars of each generation are empowered to decide Jewish law, and the populace is commanded to heed their words.

As such, any authentic ruling is a reflection of God's will.

WHY IS THE TALMUD SO CENTRAL TO JEWISH LAW AND YET, NOT THE FINAL WORD ON HALACHAH?

The Talmud is the backbone of Jewish law and the basis for any halachic ruling. The reason for this is due to the fact that it achieved the consensus of the entire Jewish people and was ratified by an assembly of Sages – first with the organizing of the Mishnah by Rabbi Yehudah HaNassi and again later by Ravina and Rav Ashi with the closing of the Talmud.

However, the Talmud was not written as a systematic code of law. It discusses the same and related topics in different places, and it does not always resolve the disputes that are raised. Clarifying halachic rulings from the Talmud was the work of the Rishonim and even Acharonim, who themselves often disagreed on the correct interpretation of the Talmud. That is how the Talmud forms the basis of Jewish law yet does not usually have the last say on the matter.

WHAT WAS THE IMPACT OF POST-TALMUDIC AND MEDIEVAL JEWISH SCHOLARS TO THE SYSTEM OF JEWISH LAW?

That said, the Talmud is not written in an organized fashion, like an encyclopedia of law. It records many disputes and deals with some topics in multiple locations. The commentaries and legal codes of the Rishonim clarify for us what the Talmud's rulings are on every topic it discusses. Later codes further digest the writings of the Rishonim.

Due to the strong chain of tradition of the Rishonim, their words are of paramount importance in determining the conclusions to be drawn from the Talmud.

HOW DID THE SHULCHAN ARUCH, THE MOST WIDELY ACCEPTED CODE OF JEWISH LAW, COME TO BE WRITTEN AND WHY IS IT SO AUTHORITATIVE?

Rabbi Yosef Karo set out to codify the rulings of the Rishonim, authoring a commentary on the Arba'ah Turim called Beit Yosef. He aimed at achieving a consensus based on the majority of the most prominent Rishonim. His rulings were accepted as the highest halachic authority for Sephardic Jews.

Rabbi Moshe Isserles, writing at the same time in Poland, applied a different method for deciding amongst the opinions of the Rishonim by which he ruled according to the latest authority available to him. His opinions form the basis of Ashkenazic halachah.

While the Shulchan Aruch achieved popularity based on consensus, many commentaries were written to explain it and to cite dissenting views when the local custom or majority opinion differed from it.

FURTHER READING:

SECTION I.

Aryeh Kaplan, The Handbook of Jewish Thought, Volume 1, Chapters 11 & 12

Rabbi Yitzchak Berkowitz, Classes on Klalei Hora'ah from www.jerusalemkollel.com

Rabbi Chaim Miller, Rambam: The Thirteen Principles of Faith, Principle VIII: The Torah

Rabbi Shmuel Teich, The Rishonim, ArtScroll Publications

Rabbi Hersh Goldwurm, The Achronim, Artscroll Publications

Rabbi Avraham Edelstein, The Oral Law, www.nerleef.com/books/orallaw.pdf.

SECTION II.

Rabbi Yitzchak Berkowitz, Linas HaTzedek: Class on Bikur Cholim (www.jvalues.com)

Rabbi Aaron Glatt, Visiting the Sick