

ספר מקורי דוד

HALACHA SOURCES

A Study Guide in English for Tracing the Halacha

*In the footsteps of the authors of the Shulchan Aruch
and the other authorities, including many contemporary rulings*

by Rabbi Dovid Lipman

Introductory Volume - **The Halachos of Chanukah**
(*Shulchan Aruch Orach Chayim 670 through 684*)

Pre-release Edition

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Foreword

TWO HUNDRED PAGES ABOUT A FIFTEEN-MINUTE OPERATION WITH A COUPLE OF CANDLES?

I once heard Rav Noach Orlowek quote Rav Avigdor Miller [not verbatim]: "The most important thing to know is that the universe has a Creator. Therefore, the first thing the Torah says is: "In the beginning, Hashem created the heavens and the earth." The second most important thing to know is that the Creator is not impressed by physical size or magnitude. Therefore, the Torah gives tiny Earth equal treatment with the cosmic heavens in the above first sentence (and then entirely discards the heavens in the next sentence, proceeding: "And the earth...")

This is the message of Chanukah, when we declare to Hashem, "You delivered the strong into the hands of the weak, and the many into the hands of the few, and the wicked into the hands of the righteous, and the impure into the hands of the pure, and the [wanton] sinners into the hands of those involved in Your Torah." The *true* significance and power of any particular entity in the universe does not depend on its superficial appearance, but rather upon *what its Creator puts into it*. Therefore, someone may measure a quantity of oil superficially, judging that it is only enough to burn for one night; but that oil can in fact burn for eight nights, if Hashem gives it the power.

Similarly, the Halachos of Chanukah seem like a small matter. The *truth* is, "Taste, and you will see that Hashem is great." (*Tehillim* 34:9) This is an invitation extended to students of all areas of the Torah, and the Halachos of Chanukah are no exception.

INTRODUCTION TO THE AUTHORS OF THE *SHULCHAN ARUCH*

The *Shulchan Aruch* is based on the works of the Sages [i.e. the Mishnah, the Gemara, etc.] and the "early authorities" who came afterwards [as will be explained]. Its composition consists of three basic stages: the Tur, the *Beis Yosef* (and the *Darkei Moshe*), and the *Shulchan Aruch* itself (with the *Rema*). This work is, for us, the "bridge" which leads us from the Torah of the Sages to the practical Halacha.

The period of the Sages ended with the "sealing" of the *Talmud Bavli* (usually simply called "the Gemara"), in the late 300's (C.E.). The period of the *Gaonim* followed, and then came the "early authorities" [the "*Rishonim*"]. Actually, in Halachic works, the *Gaonim* are not usually considered to be an entirely separate period (with a unique status), but rather they are viewed (whenever their Halachic views are available) as simply the earliest of the "early authorities".

A number of the early authorities wrote compositions on the broad spectrum of Halacha (or a very large part). One of these was the Tur. *Rabbeinu* Yaakov ben Asher of Spain (~1280 - ~1345) wrote the *Arba'ah Turim* [lit. the "four columns"], in four volumes (*Orach Chayim*, *Yoreh Dei'ah*, *Even HaEzer*, and *Choshen Mishpat*), with each

volume divided into hundreds of chapters. One might point to the particular distinctiveness of the Tur as being the combination of (1) spanning all of the Halachic subjects relevant after the destruction of the *Beis HaMikdash*, and (2) citing numerous positions of the early authorities - and doing so relatively frequently. The Tur usually adopts the positions of his father, the Rosh. [The Halachic weight of those positions will be seen soon.]

R. Yosef Karo was born in Spain, in 1488. He spent the latter part of his life (i.e. when he wrote the *Beis Yosef* and the *Shulchan Aruch*) in the Land of Israel, where he passed away in 1575. In order to clarify and unify the practical Halacha for the Jewish people (and especially the *Sefardi* "world"), he created the *Beis Yosef* (and summarized its conclusions in the *Shulchan Aruch*), as follows:

Building off the Tur, which already included a varied collection of positions of the early authorities on nearly every relevant subject, the *Beis Yosef* fills in the rest. He most often starts with the fundamental source from the Sages (usually a Gemara), which he either quotes (in full or in part, often including key explanations of Rashi [1040 - 1105]), or references by tractate and folio. Then he quotes or cites the positions of major and/or "minor" early authorities, working his way to the final ruling [as detailed soon].

Meanwhile, R. Moshe Isserles (~1525 - 1572) was in Poland, working on the same idea. When the *Beis Yosef* was printed, he decided that his work (at least in its original form) was no longer needed, and he re-wrote it, making it an extension of the *Beis Yosef*. When this work, the *Darkei Moshe*, is printed together with the Tur and the *Beis Yosef*, it consists of notes (usually short) to the Tur and *Beis Yosef*, adding a relatively small amount of material.

The fundamental difference between the *Beis Yosef* and the *Darkei Moshe* is in their basic systems for deciding the final ruling. The *Darkei Moshe* gives heavy weight to major early authorities, such as Rashi [*Rabbeinu Shlomo* "Yitzchaki" (1040 - 1105)], the Behag [*Rabbeinu Shimon Keira* (mid 700's)], *Rabbeinu Chananel* [~975 - ~1050], Tosafos [commentary material on the Gemara from the 12th - 14th centuries], the Ra'avad [*Rabbeinu Avraham ben Dovid* (~1120 - 1198)], the Ramban ["Nachmanides" (1194 - ~1270)], the Rashba [*Rabbeinu Shlomo ben Avraham ibn Aderes* (~1235 - 1310)], the Maharam of Rottenburg [*Rabbeinu Meir ben Baruch* (~1213 - 1293)], the *Maggid Mishneh* [*Rabbeinu Vidal di Toulouse* (1300 - ~1370)], and the *Ran* [*Rabbeinu Nissim ben Reuven* (~1320 - ~1380)]. The *Beis Yosef*, on the other hand, chose the three "weightiest" early authorities and made them the basic Halachic ruling "tripod": the Rif [*Rabbeinu Yitzchak "Alfasi"* (1013 - 1103)], the Rambam ["Maimonides" (~1135 - 1204)], and the Rosh [*Rabbeinu Asher ben Yechiel* (~1250 - 1327)]. He generally rules like them over the above-mentioned others, and within themselves he follows two out of three.

Of course, both the *Beis Yosef* and the *Darkei Moshe* also bring from the "minor" early authorities, such as the *Ba'al HaMaor* [*Rabbeinu Zerachyah HaLevi* (~1126 - ~1186)], the *Hagahos Maimonios* [*Rabbeinu Meir HaKohen* (late 1200's)], the *Mahari Veil* [*Rabbeinu Yaakov Veil* (early 1400's)], the *Ohr Zarua* [*Rabbeinu Yitzchak ben Moshe of Vienna* (~1190 - ~1260)], the *Maharik* [*Rabbeinu Yosef Kolon* (~1420 - 1480)], *Rabbeinu Yerucham* [1270 - ~1345], the *Maharil* [*Rabbeinu Yaakov HaLevi* (Siegel) Mullen (~1360 - 1427)], the *Rivash* [*Rabbeinu Yitzchak ben Sheishes* (1326 - 1408)], the *Smag* [*Rabbeinu Moshe of Kutzi* (~1200 - 1260)], and the *Terumas HaDeshen* [*Rabbeinu Yisrael Isserlan* (~1390 - 1460)]. This is appropriate for issues on which the major ones do not rule.

As mentioned, R. Yosef Karo then summarized and codified the conclusions from the *Beis Yosef* in the *Shulchan Aruch* (where he divided each chapter into numbered sections). In response, R. Moshe Isserles wrote

"*hagahos*" ("emendations" or "glosses") to expand slightly on the text of the *Shulchan Aruch*. These reflect his "system for ruling" (as distinct from that of the *Beis Yosef*, as mentioned). But the "*hagahos*" of R. Moshe Isserles (whose text is generally referred to as "the *Rema*") have a separate significance (which also pertains to the above-mentioned "notes" which are what the *Darkei Moshe* "adds" to the *Beis Yosef*):

The rulings and practices of the *Beis Yosef* and the *Shulchan Aruch* are none other than those of the *Sefardi* part of the Jewish world. Similarly, those of the *Darkei Moshe* and the *Rema* are those of the *Ashkenazi* part. One might ask: Did the rulings of the respective compositions determine those practices, or did the practices influence the rulings? The answer to this question actually seems to vary from subject to subject. One thing is clear, however: After the *Shulchan Aruch* appeared, it was accepted as authoritative by the *Sefardi* world; and the combination of the *Shulchan Aruch* and the *Rema* was similarly accepted by the *Ashkenazi* world.

DEVELOPMENTS SINCE THEN

Still, the scepter never truly left the hands of the Sages (and the early authorities who explain their words). In the period since the *Shulchan Aruch* and the *Rema*, the "later authorities" [the "*Acharonim*"] not only explained their words, but also questioned them and disagreed with them (in a small minority of cases). This development, as well as the universal downward spiraling of the Torah-learning levels of the generations [see *Eiruvin* 53a], resulted in the frustration of the purpose of the *Beis Yosef* / *Darkei Moshe* and the *Shulchan Aruch* / *Rema*; people could no longer study their words and walk away with a clear authoritative ruling.

R. Yisrael Meir HaKohen [the "*Chafetz Chayim*" (~1839 - 1933)], to solve this problem, compiled the *Mishnah Berurah* (his three-part commentary to the *Shulchan Aruch* / *Rema*). In relatively simple language, he synthesized all the necessary information from all the above periods into a single presentation. What the *Mishnah Berurah* does *not* do is to depict "the story behind the Halacha". That aspect of the *Beis Yosef's* work seems at first glance to be lost to the student of the *Mishnah Berurah*.

In truth, it is not entirely so. The printed page of the *Mishnah Berurah* includes the work of the *Be'er HaGolah* [R. Moshe Ravkash (early 1700's)], notes to the *Shulchan Aruch* - which are usually none other than brief references to the sources according to the *Beis Yosef*. (This work was "extended" by his grandson, R. Eliyahu the Gaon of Vilna [1720 - 1797, also known as "the *Gra*"]. In breathtakingly brief notes, he traces, to the basic "Gemara - Rashi - Tosafos" level, all the Halachos of the *Shulchan Aruch* [those not already sufficiently traced by the *Be'er HaGolah*] and of the *Rema* [to which there are almost no *Be'er HaGolah* notes at all].)

However, for many people nowadays, the study of *Mishnah Berurah* can be absolutely exasperating, for a number of reasons:

(1) For one thing, it was not written in our "mother tongue". The language is not only Hebrew-Aramaic, but actually even Talmudic in style. If the reader is not already familiar with this language and style, he often struggles to grasp the text's meaning accurately.

(2) Many people are not accustomed to keeping up with the flow from *Shulchan Aruch* / *Rema* text to *Mishnah Berurah* commentary, and back, and forth, plugging each comment into its piece of the source text (not to

mention combining that with reading the important clarifications in the other two parts, the *Bi'ur Halacha* and the *Sha'ar HaTziyun*, with each note of those parts also stemming from a particular phrase in the *Shulchan Aruch* or *Mishnah Berurah*). [For students who *have* already succeeded in unraveling all this, R' Chaim Kanievsky {born 1928} wrote the *Shoneh Halachos* so they can *review* more easily, but he himself is the first to point out that the *Mishnah Berurah's* content cannot really be grasped from his re-organized text.]

(3) As for the *Beis Yosef* and his "bridge" between the Gemara and the Halacha, nowadays only the most advanced students can recognize the brief references in the *Be'er HaGolah*, and even the actual study of the *Beis Yosef* itself is only possible for the well-trained scholar. Therefore, the reader of the *Mishnah Berurah* usually has no choice but to memorize the endless details, with no idea of how they fit into the original "big picture".

(4) Finally, people nowadays find it difficult to relate to the ancient form of codified Halacha. Far too often, the case described in the sources is one which would never happen in today's world. People need to see illustrations of how to apply the words of the authorities (and, in effect, the Sages) to the every-day situations of contemporary life.

THE DESIGN OF THIS PROJECT (AND HOW IT ADDRESSES THE CURRENT NEEDS)

The project has two main objectives: (1) **To re-organize the material** around the *rulings* of the *Shulchan Aruch* (with *Rema*), the *tracing* of the *Beis Yosef* (and the *Darkei Moshe* and the *Gra*), and the finishing touches of the *Mishnah Berurah* (and some "supplementary" authorities). (2) **To present it all in English**, clearly and understandably; but with as little "original interpretation" as possible, to enable studying as though from the source. Of course, these approaches need to be explained:

The *Shulchan Aruch* (with *Rema*) is considered the universal authority, as a rule. (The rule has exceptions, but that does not prevent it from being a rule.) In this project, the most central text being studied is really that of the *Shulchan Aruch* itself. The division into *simanim* and *se'ifim* is none other than the *Shulchan Aruch's*. In each individual presentation, the "climax" is the translation of the *Shulchan Aruch* (with *Rema*). As the student will notice, the *Shulchan Aruch's* text is extremely concise, but its meaning is clear and instructive after one has seen the background which precedes it. More than any of the rest of this project's material, this is what deserves to be diligently reviewed.

The *Beis Yosef* and the *Darkei Moshe* (and the *Gra*) trace for us the path from the sources to the *Shulchan Aruch*. This often shows that a *se'if* is actually composed of a number of distinct subjects. In our presentation, translations of the sources are generally provided, and the development through the early authorities explained, with each subject kept separate. The order of the subjects generally reflects the order within the text of the *se'if*, so that once the development has been explained, the student is ready for the translation of the *Shulchan Aruch*. Occasionally, the *Shulchan Aruch's* text does not deal with the subjects distinctly from one another, such that the text can only be quoted after a number of subjects have all been developed.

The finishing touches of the *Mishnah Berurah* are usually much simpler to grasp now, as their background has already been painted. The *Mishnah Berurah* itself is largely a synthesis of the "*Beis Yosef*" material, so the entirety of the *Mishnah Berurah's* discussion on a *se'if* is completed relatively quickly in our presentation. After that

point, supplementary material is often presented, most of which draws upon later authorities, describing their analyses of questions which all the previous material may leave the student asking. Sometimes, we present questions without giving answers, and the student is challenged to evaluate the issue on his own (before consulting an expert in Halacha for a practical answer).

The English used here is not formal, and not wordy. This is not a class or a speech. Rather, it is the material itself, i.e. the words of the Sages and the authorities, and anything we add is only what was deemed necessary in order to make those words accessible to the student in English. The Sages and the authorities do not embellish their words, and the reason is obvious: the naked information itself is what is precious, and we cannot allow ourselves to be distracted from it. The transformation into English does require some use of explanatory methodology, but the text must remain a study text, so we refrain from adding interpretation of our own, thus leaving the students to their study.

The above should have clarified how this project intends to provide a more satisfactory tool for the study of this material. However, that does not truly express the deeper purpose of the project, which is to provide a new framework for serious Torah study. Let us explain:

For generations, the almost exclusively Hebrew-Aramaic Torah texts were studied by all educated Jews, and they found in them depth, profundity, and challenge. The Torah itself is clearly oriented toward practical application, and for students who sought this "bottom line", there would be an abundance of texts into which to delve, from which they would finally emerge with Halachic clarity, ready to turn their knowledge into actually living more virtuous lives. Today, many wish to participate in this most beautiful of pursuits, but feel unready - or even unable - to overcome the language barrier. They see before them as the only attainable option - English Judaica. That means reading works which clarify the Halacha, with all the unconnected details, or works presenting source material - translated or elucidated - but always restricted to an elementary level of understanding, and never leading the reader toward practical life. The available works lack the above-mentioned qualities of satisfying Torah study, and this project was conceived to fill that lack.

In closing, we should point out that although this presentation can be studied on its own, it can alternatively be expanded on as well. After all, these texts are the same sources which are being treated by all the other English Torah works, and examining a number of them together will surely result in a blend even greater than the sum of its parts. In any event, we hope this work will engender a significant step forward in the Torah development of contemporary English-speaking Jewry.

ADDITIONAL ASPECTS OF THE TEXT OF THIS VOLUME

The more central translations were originally done very literally, in an attempt to capture the wording of the sources as precisely as possible. Those appear here as an appendix, after all of the main text. Then, the translations were adapted, in order to be more manageable, and that is how they appear in the main text. Additional appendices include a special glossary of Halachic "Principles" (for certain concepts which are totally familiar to some, and totally foreign to others), and Bibliographic information about the cited authorities. One final point: In the well-

known "ArtScroll" edition of the Gemara, the pages are sub-divided, with superscripted numbers indicating each subdivision. Those superscripted page numbers have been included in our references to the Gemara sources, in order to make it simpler to examine the Gemara using that edition.

ACKNOWLEDGEMENTS

Many have helped me (and continue to help me) in a broad and general way; they are in fact too many to mention here. Therefore, the focus here is on those whose assistance stands out with respect to this specific project, and this volume in particular. I thank R. Yissachar Goodrich, for his enormous contribution to the revision of the text. R. Pinchas Kohler also provided a large amount of such help; and R. Yitzchak Meir Gruen, R. Eliyahu Ehrentrau, R. Avraham Friend, R. Eli Linas, R. Moshe Pessin, and Mrs. S. C. Mizrachi, provided significant assistance as well. My teacher, Rav A. Keele, lent me his guidance with respect to the development of the content. Rav A. Stern gave me much of his time for discussing the Halachos. I hereby express my appreciation to all of them, and also to whomever I may have neglected to list. [There are also individuals who provided significant and timely financial help; the decision has been made not to name them here.]

DEDICATION

My dear grandmother, Blanche Lipman (Bayla Rivkah bas Moshe HaLevi), passed away during the weeks of the final preparation of this volume, on the sixteenth of Tishrei, 5769. Her life was filled with both the love and the devotion of nothing less than an angel. Probably her most outstanding product is her family. In the words of the Gemara (*Makkos* 10a), "Anyone who loves abundantly - the produce is theirs." She will be sorely missed by her children, grandchildren, and great-grandchildren, who have now joined the ranks of the less fortunate - those who simply do not have a Grammy.

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Important Note: This is a text for Torah study.

It is not intended to be relied upon for practical rulings.

Questions about applying these Halachos in practice must be referred to a qualified expert.

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