

# INTRODUCTION TO THE SYSTEM OF HALACHAH - JEWISH LAW

“The Kuzari,” a medieval book on Jewish philosophy, tells of a certain king who is disturbed by a recurring dream of an angel telling him, “Your intentions are worthy; your actions are not.” Whether or not we have personally experienced such a dream, we are all challenged by the dilemma it presents: How do we know what the right course of action is? How do we convert our noble intentions into truly moral actions?

## WHY IS THERE HALACHAH?

Indeed, no less than one of the greatest Sages of Jewish history faced this very problem. Rabbi Akiva related an incident that had a strong impact on his own spiritual development:

אמר ר' עקיבא כך היה תחילת תשמישי לפני חכמים, פעם אחת הייתי מהלך בדרך, ומצאתי מת מצוה, ונטפתי בו בארבעת מילין, עד שהבאתיו למקום בית הקברות, וקברתיו, וכשבאתי והרציתי את הדברים לפני ר' אליעזר ור' יהושע, אמרו לי על כל פסיעה ופסיעה שפסעת, מעלה עליך כאילו שפכת דם נקי, אמרתי להם, רבותי, למה, אם בשעה שנתכוונתי ליכות, נתחייבתי, בשעה שלא נתכוונתי ליכות, על אחת כמה וכמה...

Rabbi Akiva said: The following incident introduced me to the importance of learning from Torah scholars: I was once traveling and found an unclaimed corpse. I dealt with it, carrying it nearly four *mil* (Persian miles) until I found a graveyard and buried him. When I told my teachers Rabbi Eliezer and Rabbi Yehoshua about it, they said to me, “Every step that you took was like an act of murder (for you should have buried it on the spot).” I said to them, “My teachers, why, if at a time that I intended to do something meritorious, I in fact did something blameworthy, then how much more so when I don’t even have such honorable intentions!?” (Talmud Bavli, Derech Eretz 8; see also Tosafot to Ketubot 17a)

Although he intended to do the right thing, due to his unawareness of the proper recourse in such a situation, Rabbi Akiva made a mistake. How can we avoid such blunders? Rabbi Akiva’s answer, indeed the answer Judaism has always offered to those wanting to bridge the gap between good intentions and ethical behavior, is to learn Torah:

מאותה שעה לא זזתי מלשמש תלמידי חכמים

From that time on I did not cease from being in attendance of Torah scholars.

Judaism teaches that we are expected to “do the right thing.” “What does the Lord, your God, ask of you?” queried Moshe (Moses), “only that you remain in awe of God your Lord, so that you will follow all His paths and love Him” (Devarim/Deuteronomy 10:12). How do we get from the lofty aspirations of love and awe of God to actually following His path? The only way is to follow God’s instructions for life, the Torah.

## WHERE DOES HALACHAH COME FROM?

The Torah offers a way of life guided by Divine law, grounded in the national revelation of the mitzvot (commandments) at Mount Sinai, elucidated and transmitted from generation to generation throughout the ages. In truth, though, our knowledge of God's will dates back further than Sinai. Indeed, the very first person, Adam, talked with God and received mitzvot from him. Noah too was told about mitzvot; he and his immediate descendants were prophets who taught others in the name of God. Judaism itself was born with the rediscovery of God by our Patriarch Avraham and the spiritual paths forged by his immediate descendants. And when this family blossomed into a nation of over 2.5 million in Egypt, God took them out under the leadership of Moshe and finally revealed His Torah to them at Mount Sinai.

The content of God's revelations to mankind is contained succinctly in the written Torah with its history of the world and the 613 mitzvot, followed by the writings of the Prophets. Nevertheless, without the Oral Torah to clarify, elucidate, and interpret it into practical applications, the written Torah alone is a closed book. Seeming contradictions abound, laws are worded vaguely, fundamental institutions are left unexplained. And that is why the original content of the Written Torah was transmitted with an oral explanation. An oral tradition overcomes the disadvantages of a written text by resolving ambiguity and clarifying the original intent of the Author. At the same time it facilitates the multifaceted reading of the text which itself remains concise, yet layered with meaning.

This oral tradition was originally meant to be transmitted by word of mouth. It was handed down from teacher to student in such a manner that if the student had any question, he would be able to ask, and thus avoid ambiguity. A written text, on the other hand, no matter how perfect, is always subject to misinterpretation. Furthermore, the Oral Torah was meant to cover the infinitude of cases which would arise in the course of time, which is why it could never have been written in its entirety. God therefore gave Moshe a set of rules through which the Torah could be applied to every possible case.

Turning to the contents of the Oral Torah, it contains both Biblical and rabbinic law. By Biblical law we mean the accepted tradition of proper interpretation of the Torah text. For instance, God told Moshe not to cook a calf in its mother's milk (*chaleiv*), as opposed to its mother's fat (*cheilev*), even though both words have the same Hebrew spelling in the Torah. Biblical law includes 1) any law passed directly down from Moshe, 2) laws *derived* from the Torah using one of the interpretive tools (*Thirteen Midot*), or 3) Talmudic reasoning (*Sevarah*). Examples of these three categories include 1) the type of parchment and ink used in Torah scrolls, 2) the placement of tefillin on top of the head and 3) the responsibility of the one making a financial claim to produce proof of damage, respectively.

Aside from Biblical laws, the Sages are empowered by the Torah to introduce new laws of rabbinic nature. These laws fall into two general categories based on the impetus behind them: (1) *gezeirot* – protective enactments, and (2) *takanot/minhagim* – amendments/customs. Generally, a *gezeirah* is a law that restricts or prohibits certain acts, while a *takanah* is an institution calling for the fulfillment of an act. These laws, also passed down through the generations as part of the Oral Torah, served to safeguard the practice of the mitzvot and to promote social welfare.

## TRANSMISSION

Originally, the Oral Torah was passed on orally from teacher to student; however, safeguards were in place to ensure its accurate transmission. While it was prohibited to formally publish works of the Oral Torah until the Mishnah was transcribed in 200 CE, individual students kept written records of their studies. In every generation, the leaders of the Torah academies took the responsibility of ensuring the integrity of the transmission, buttressed by thousands of students debating and clarifying the law. The system of *Semichah*, or rabbinic ordination, was developed. In order to be authorized to render halachic decisions or to carry the

tradition on to the next generation, a scholar had to be ordained by someone from the previous generation who himself had been ordained in this manner. Hence, only those who had proven themselves worthy of this ordination were trusted to pass the tradition further.

Aside from the official teachings of the Oral Torah, the practice of halachah itself has proven to be the greatest safeguard against distortion or loss of the Oral tradition. The careful implementation of halachah has continued unabated since its inception some 3,300 years ago. Whether in the Land of Israel or in the lands of the Diaspora, in good times as well as challenging periods, the Jewish people have observed the Torah through adherence to its laws. Following the halachah has always been seen as a direct fulfilment of God's wishes. The desire to do God's will alone has been the binding force of halachah throughout the ages.

*There is a well-known Hasidic tale that recounts that, one Passover eve, the Berditchever Rebbe announced that he would not begin the Seder until a quantity of outlawed Turkish wool, Austrian tobacco and Oriental silk were brought to him from within the Jewish village. Within a short time everything that he requested was procured. Thereupon, he announced that one additional item was required: a crust of bread. His disciples were taken aback by this strange request but they unquestioningly set out to fulfil their master's command. They scoured the town, but to no avail – they were forced to return empty-handed. The Berditchever listened in silence as they reported their lack of success. Then, with a smile enveloping his face, he raised his hands and exclaimed, "Master of the Universe! The Russian Czar deploys thousands of guards to patrol his borders, employs countless numbers of police officers in order to enforce his edicts and administers a vast penal system to punish those who violate his laws. But look at the contraband that can be found within his borders! You, Master of the Universe, have no guards, no police, and no prisons. Your only weapon is a brief phrase in the Torah, forbidding Jews to retain chametz (leavened bread) in their possession on Passover, but not a bit of chametz can be found in all of Berditchev!" (Rabbi J. David Bleich, Contemporary Halachic Problems, Vol. 3, pp. xiii-xiv).*

## CODIFICATION AND PUBLICATION

משה קבל תורה מסיני ומסרה ליהושע ויהושע לזקנים וזקנים לנביאים  
ונביאים מסרוה לאנשי כנסת הגדולה... (פרקי אבות א:א)

Moshe received the Torah from Sinai and gave it over to Yehoshua. Yehoshua gave it over to the Elders, the Elders to the Prophets, and the Prophets gave it over to the Men of the Great Assembly... (Pirkei Avot/Ethics of the Fathers 1:1)

The oral method of transmission lasted fifteen hundred years from the time of the giving of the Torah in 1312 BCE until the final redaction of the Mishnah in approximately 200 CE. The actual process of committing the Oral Torah to writing did not happen overnight. It stretched over several centuries starting with the Men of the Great Assembly, the leaders of the nation around the time of the construction of the second Temple (fifth century BCE). These Sages codified much of the Oral Torah in a system that facilitated its memorization, organizing in it into treatises and chapters.

This codification was known as the Mishnah. One reason for this name was that it was meant to be repeatedly reviewed (*shana*) until memorized. The final, most precise and authoritative redaction of the Oral Torah was engineered by Rabbi Yehudah HaNasi (Judah the Prince) around 200 CE. At this time, a great conference of the leading Sages reviewed, ratified, and codified everything that had been transmitted as the Oral Torah.

The writing of the Mishnah was a historical necessity to prevent the Oral Torah from being lost. With the

loss of sovereignty of the Land of Israel to the Romans, the destruction of the Temple and the exile of many Jews, rabbis did not have the peace of mind required for the great demands of mastering the Oral Torah. The legal basis for publishing the Oral Torah came itself from a verse in Scripture: “There is a time to act for God; they voided Your Torah” (Tehillim/Psalms 119:126). This verse implies that when the Torah is in danger of becoming forgotten, it is a time to take action for the sake of God, even by means normally forbidden.

As the socio-political situation of the Jewish people continued to deteriorate under Babylonian and Roman rule in the Second through Fourth Centuries, eventually the Oral Torah required the publishing of further elucidation to ensure its survival. The Talmud was therefore developed to serve as a record of the debates and logic that underpinned the rulings of the Mishnah. It also recorded developments in rabbinic law, as well as Aggadata – the philosophical and ethical teachings of the Oral Torah.

The historical circumstances in which the Talmud was written and the consensus that developed around it invest it with the ultimate authority in Jewish law. Political conditions were favorable in Babylon during the years just before the writing of the Talmud. This enabled a massive convention of all the world’s recognized Torah scholars, where they were able to compare notes and come up with decisions. Since this convention was so comprehensive and exhaustive, the conclusions that were formed there became absolutely binding.

## DYNAMICS OF DISPUTE

Why were “decisions” necessary in the first place? Aren’t we talking about a body of knowledge passed down through the generations – what needed to be decided? Actually, the Oral Torah is not just a *body* of law. It is also a *system* of law with its own unique methodology that can lead to multiple legal outcomes. The Torah itself empowered the Sages to determine stances in Jewish law. Even Moshe himself was taught different ways of resolving legal matters, and he left many issues for future generations to analyze and then determine the halachic practice for themselves. This process of determining the halachah is characterized by disagreements among Talmudic sages. Yet, the Talmud ascribes to the notion that even legal opinions not accepted as halachah have credibility in Heaven: “These and these are the words of the living God” [Eruvin 13b]. As such, many views were recorded in the Mishnah, even though they were rejected in practice, simply because they are also considered “the words of the living God.”

Historically, differing legal opinions were resolved as Torah law through a court system that worked by majority rule. For this reason, disputes were few and short lasting. In Temple times, the Sanhedrin, or Jewish Supreme Court, sat in the Temple compound and issued ruling in Jewish law based on majority vote of its Sages. These were scholars of the highest rank who had mastered the Oral Torah and integrated it within their own personalities with the utmost integrity. However, because of the oppression of the conquering powers and the harsh decrees imposed, it became more difficult for the Sages to concentrate well enough to clarify the disputes. Differences of opinion became more rampant until the time of the Mishnah. Moreover, the increased number of disputes was attributed to the students’ failure to adequately study under their Torah mentors and to learn from their personal examples.

The first ongoing disputes were few in number. However, with the development of the academies of Hillel and Shammai (first century BCE), the disciples differed on many fine points of Jewish law; disputes became so prevalent that there appeared to be two distinct schools of thought regarding Jewish law.

Oppression temporarily subsided in the days of Rabbi Yehudah HaNassi. This great sage and leader found favor in the eyes of the governing Romans and was able to convene a mass assemblage of Torah scholars to debate and discuss all that was known of the Oral Torah to date. The disputes were clarified and often resolved. While the Mishnah still records many of these disputes, Rabbi Yehudah HaNassi arranged the Mishnah in such a way that it would be known which opinion was accepted as halachah. For instance, an opinion recorded anonymously takes precedent over one attributed to a particular sage. Furthermore,

documenting disputes was necessary in order to maintain a record of minority opinions that might be relied upon in the future.

It should be noted that even with the publication of the Mishnah, the Oral Torah remained largely oral, in need of those who had mastered it to teach it to the next generation. It is true that with the compilation of the Mishnah many disputes were clarified and often resolved. The Mishnah records many of these disputes, but it is arranged in such a way that the accepted opinion could be gleaned simply by the structure in which it was presented. However, the correct interpretation of the Mishnah was not always agreed upon. Eventually the Talmud developed to explain the disputes in the Mishnah, a process that itself led to more disputes. Similarly, Talmudic commentators emerged to explain how the halachah was to be concluded from its discussion in the Mishnah and the Talmud. And so the process of dispute and debate continued, and persists to this very day.

## THE STRUCTURE OF JEWISH LAW

The development of the Oral Torah, with all of its dynamics of disputes and decisions, did not stop with the sealing of the Talmud. It has developed in stages throughout Jewish history. Starting with the Mishnah and the Talmud, then the Rishonim, Acharonim and Shulchan Aruch, each phase has established binding precedents for those that follow.

While the Talmud is the first word in Jewish Law, it is not the last. Even though its authority cannot be disputed, the Talmud nevertheless was not written as an organized reference book of laws. It is very hard to extract practical halachah from it without complete mastery of it in its entirety. Over time, this difficulty led to the eventual codification of Talmudic law in the Middle Ages by Rambam (Maimonides) and others. The Sages of this later period, up to the publication of the Shulchan Aruch, the Code of Jewish Law, are called the *Rishonim* (First-Stage Scholars: 11<sup>th</sup> – 15<sup>th</sup> centuries). Their works served as precedents and as bases for further elucidation of the halachah by the *Acharonim* (Later-Stage Scholars: 16<sup>th</sup> – 19<sup>th</sup> centuries). And the process continues to this day, when present-day rabbis apply Torah law to new questions as they arise, based on the legal principles of the Oral Torah and the precedents set by the rulings of earlier authorities. In this sense, halachah functions as a living system of law not unlike other contemporary legal systems.

The structure of Jewish law is in many ways analogous to that of Western legal systems. While the analogy is somewhat simplistic, it is instructive to give a sense of how the halachic process is organized. Just as the written basis of the United States legal system is the constitution, the Torah is the basis of the halachic system... Like any Western legal system, our laws are compiled into statute books. Just as there are tomes of federal and state laws, we have compilations of Jewish law dating back over 800 years. The earliest extensive organized compilation of Jewish law was performed by Moses Maimonides, a great rabbi and physician of the 12th century. His *Yad HaChazaka*, also known as the *Mishnah Torah*, covers all areas of Jewish law and remains one of the most authoritative legal guides in Judaism. The next great statute book, the *Arbah Turim*, was written by Rabbi Yaakov ben Asher in the early 14th century. Probably the most famous compilation of Jewish law is the *Shulchan Aruch* (Code of Jewish Law), written by the Sephardic Posek (halachic decision maker) Rabbi Yosef Karo, who lived in Safed, Israel, with glosses by the Polish Ashkenazi Posek Rabbi Moshe Isserles. This seminal work was completed in the late 16th century, and while hundreds of subsequent commentaries have been written, it remains the preeminent guide to Jewish law. (Daniel Eisenberg, MD, "Why Jewish Medical Ethics," [www.aish.com](http://www.aish.com))

## HI TECH / LOW TECH – HALACHAH IS ETERNALLY RELEVANT

Many of us may become aware of halachah, Jewish law, from life cycle events – through interactions with rabbis and observant Jews during a Brit Milah (circumcision ceremony), Bat and Bar Mitzvah, weddings and funerals. And we may think that, aside from additional customs related to commemorating Jewish festivals, these events are the full extent of Jewish law. However, what might be less known is that halachah is the profound expression of our relationship with an infinite God, and as such permeates every aspect of life.

The Industrial Revolution, the advent of high-speed travel, rapid advancements in electricity and technology have changed our world so much. Since the Talmud and Rishonim obviously did not discuss these things, contemporary scholars have applied the Talmud's principles to our modern lifestyle and thereby 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 (halachic decision makers) whenever he needs to issue a ruling, much as a lawyer or 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 Arbah Turim, the Beit Yosef and Shulchan Aruch and its commentaries, besides the enormous volume of halachic responsa that grows larger with each passing generation.

Regardless of how unique a situation may appear, the approach of the halachic system remains unchanged. As the book of Ecclesiastes states: "There is nothing new under the sun." Infertility treatments (including IVF and surrogacy), artificial prolongation of life, abortion, rationing, self-endangerment, and a myriad of other contemporary ethical issues have been dealt with in Jewish law for millennia. The challenge is to appropriately recognize the salient issues in order to properly apply Jewish law. (Daniel Eisenberg, MD, "Why Jewish Medical Ethics," from [www.aish.com](http://www.aish.com)).

Jewish law is a comprehensive, methodological system that applies to the entire Jewish people. Although there is one master framework, worldwide dispersion has led to rabbinic legislation that now reflects differences between Sephardim, Ashkenazim, and Yemenites. Moreover, legal rulings may differ depending on unique circumstances of a given case. For example, the communal observance of Yom Kippur requires fasting as part of the introspection and repentance of the day, but a person with a life-threatening medical condition is obligated to eat and drink to preserve his life. Consequently, when questions arise, there is a prerequisite to seek a qualified Posek, who will thoroughly examine each situation to provide personal halachic guidance.

## THE WAY TO GO!

Through the Oral Torah in all its written manifestations as we have them today – the Mishnah, Talmud, Rishonim, Acharonim, and contemporary Poskim – the Written Torah is transformed into a practical system for living. In short, it becomes halachah, the Hebrew word for Jewish law derived from the term *halach*, meaning "to go" or "to walk." The halachah teaches us how to go through this world, how to walk the straight path before God. Jewish law guides nearly every aspect of human endeavor and interaction so that we may achieve our essential missions in life – to perfect our character, develop a relationship with God, lead an ethical life, raise productive families, and build a just, meaningful world.

Many people claim, "I'm a good person; I have values. Isn't that sufficient?" Values are nice, but they cannot guarantee that we will always make the right decisions. For that, we need instructions, the manual given by the Creator to mankind to guide them through life. That is the Torah – Written and Oral – and halachah is the way the Torah is put into action.

The halachah, which was given to us from Sinai, is the objectification of religion in clear and determined forms, in precise and authoritative laws, and in definite principles. It translates subjectivity into objectivity, the amorphous flow of religious experience into a fixed pattern of lawfulness. (Rabbi Joseph B. Soloveitchik, *Halachic Man*, pg. 59)

Ethical behavior is therefore given to absolute standards. Getting 90% on an exam may be praiseworthy, but someone who in principle is moral 90% of the time – and does whatever he wants the rest of the time – is not moral at all. So too, someone who steals even small amounts, or who robs from those with a lot of money, is still a thief even if he would never dream of stealing larger amounts or from people who couldn't afford it.

For this reason, halachah is precise down to the last detail. This can be compared to other systems in the physical world, when even a small detail is lacking, the entire structure ceases to function. Take a car, for example. It is a large and complex system, yet if even the smallest working part is removed, the car will not operate. The laws of the Torah are a spiritual reality and its complexity demands no less attention to detail than our physical reality does. Halachah therefore applies the mitzvot of the Torah to every facet of our lives with the attention to detail required for truly ethical living. (Rabbi Mayer Twersky, *Why Halacha is Focused on Details*, [www.yutorah.org](http://www.yutorah.org))

From a traditional Jewish approach, Jewish Law, Halachah, defines ethics. Halachah is the code of conduct by which the traditional Jew leads his or her life. Extra-halachic ethics is somewhat of a non-sequitur. We apply Jewish law to each case and the answers that we reach should represent an ethical paradigm. For this reason, Jewish medical ethics is merely the application of Jewish law to medicine, just as kashrut is the application of Jewish law to food, or Jewish tort law is the application of Jewish law to monetary damages. (Daniel Eisenberg, MD, "Why Jewish Medical Ethics," from [www.aish.com](http://www.aish.com))

When the Jewish people keep the Torah through the system of halachah, they are able to walk the straight path before God. By virtue of this system, they are able to avoid the pitfalls of subjective values, of misguided religious fervor, and even of good intentions.

## CONTENTS OF THE MORASHA SERIES ON THE SYSTEM OF HALACHAH

The Morasha System of Halachah Series seeks to explain the foundation, development, transmission, integrity and contemporary application of Jewish law. We also seek to understand the relationship between the Written and Oral Torahs, the role of the Prophets, rabbinic authority, *machloket* (dispute), as well as the rabbis' mandate to interpret the Torah and legislate new laws. The series consists of eight classes and are organized as follows:

### I. The Revelation of Torah

- Section I. The Heritage of Humanity
- Section II. The Avot (Forefathers)
- Section III. The Exodus and Buildup to Mount Sinai
- Section IV. Mount Sinai
- Section V. Forty Years in the Desert
- Section VI. The Book of Devarim (Deuteronomy)
- Section VII. The Prophets

## **II. The Written Torah, the Oral Torah, and their Interrelationship**

- Section I: The Two Torahs: Written and Oral
- Section II. Relationship between the Written and Oral Torahs
- Section III. Why the Oral Torah was Written Down

## **III. The Contents of the Oral Torah**

- Section I. Legal Component of the Oral Torah
- Section II. Philosophic Component of Oral Torah – Aggadata
- Section III. The Oral Torah in Writing - Redactions

## **IV. Necessity, Advantages and Accuracy of the Oral Torah**

- Section I. Necessity of the Oral Torah
- Section II. Advantages of Having the Oral Torah
- Section III. Accuracy of the Transmission

## **V. The Chain of Torah Transmission**

- Introduction. A Daily Workout with Great Personal Spiritual Trainers
- Section I. Overview – The Many Unbroken Chains of Transmission
- Section II. The Biblical Period
- Section III. The Talmudic Period
- Section IV. The Post-Talmudic Period

## **VI. Rabbinic Authority**

- Introduction. The Three Hats of Rabbinic Attire
- Section I. The Qualifications of the Sages
- Section II. Sages as the Carriers of the Explanations of Torah Law
- Section III. The Sages as Interpreters of the Torah to Establish Laws
- Section IV. The Sages as Legislators of Rabbinic Law and Decrees

## **VII. The Concept and Dynamics of *Machloket* – Dispute**

- Section I. The Origin of Disputes
- Section II. The Nature of Disputes
- Section III. Both Sides are Right (Eilu ve'Eilu)
- Section IV. *Machloket* in Contemporary Rulings

## **VIII. The Halachic Process**

- Section I. The Stages of Halachah
- Section II. Sample Halachic Process: Visiting the Sick