


These migrations and wanderings of entire Jewish communities produced a number of social and halakhic effects. Jews began to long for the Final Redemption and for a restored and renewed supreme halakhic authority that would once again consolidate the Jewish people scattered throughout the diaspora. The attempt by Jacob Berab to renew the ancient institution of ordination was one manifestation of this yearning.<sup>3</sup> The expulsions and wanderings that uprooted entire communities and replanted them in new locations created a whole complex of halakhic problems arising out of the conflict between the laws and customs<sup>4</sup> of the older inhabitants and those of the newcomers. It was this conflict that gave rise to a vast and remarkably creative output of responsa, legislative enactments, and codificatory works.<sup>5</sup> As this halakhic creativity grew in scope, it became increasingly difficult to navigate through the vast literature. Differences of opinion intensified, and conflicting decisions multiplied.

In his *Bet Yosef*,<sup>6</sup> Caro described the condition of Jewish law in his day:



As time has passed, we have been poured from vessel to vessel. We have become scattered, and terrible trials and tribulations, one after the other, have come upon us, to the extent that, as a result of our sins, the verse "And the wisdom of its wise shall fail [and the prudence of its prudent shall vanish]"<sup>7</sup> has become applicable to us. The Torah and its students have become helpless. For the Torah has become not [only] two Torahs; rather, it has been fragmented into innumerable Torahs because of the multitude of books written to explicate its laws and rules. Although all those writers, peace be upon them, meant to enlighten our darkness, the "light" we have enjoyed from them has brought great doubt and confusion because each author has composed his own work in which he either has repeated what previous writers had already written or has stated the law contrary to his predecessors without

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growth, see S. Avitzur, "Zefat Merkaz le-Ta'asiyat Arigei Zemer be-Me'ah ha-Hamesh Esreh" [Safed, The Center of the Woolen Cloth Industry in the Fifteenth Century], *Sefer Zefat*, I, 1962, pp. 41ff.

3. See sources cited *supra* n. 2.

4. Joseph Caro accorded custom considerable force. Thus, he held that a prohibitory custom must be followed even where his own opinion was that the conduct in question was in fact permissible. Indeed, if a custom, whether prohibitory or permissive, is widespread, it is to be followed, since its acceptance indicates that most, if not all, the halakhic authorities disagree with the contrary result reached by Caro's decision-making methodology. (See *Bet Yosef to Tur* OH, Introduction, quoted *infra*, and cf. *Resp. Avkat Rokhel* #32.) The prodigious increase in the number of customs gave rise to a new form of legal literature, namely, compilations of the various customs having the force of law.

5. The multiplicity of local customs and legislation resulted in the development of conflict of laws as a distinct branch of the law. See *supra* pp. 78-79, 677, 936.

6. *Bet Yosef to Tur* OH, Introduction.

7. Isaiah 29:14.

mentioning the conflict. You will sometimes find that several codifiers have stated a rule categorically as though it is universally accepted, but when you investigate, you discover that leading halakhic authorities have rejected it. Innumerable instances of this kind will be apparent to anyone who examines the books of the codifiers and then traces their sources to the Talmud and the ancient authorities. And, if one attempts to trace the source of every law from the Talmud through all the commentaries and codes, he will find this task to be exceedingly difficult and will surely become exhausted in the search for the source of the law in the Talmud.<sup>8</sup>

The wounds of exile and dispersion had left their scars on Jewish law; the one Torah had become not two but innumerable Torahs, and "the Jews of that generation needed a book such as this that collects all the laws and reveals their sources so that a correct conclusion can be reached as to what the *Halakhah* prescribes."<sup>9</sup> There were many great halakhic authorities in that generation, but of them all, Joseph Caro alone undertook this momentous task so vitally needed by both his own and later generations.<sup>10</sup>

### **B. A Two-Part Code: A Book of *Halakhot* and a Book of *Pesakim***

How did Joseph Caro propose to accomplish this task, and what was the method chosen by him to solve the problems involved in the codification of Jewish law?

Caro's statements and works reveal that his codificatory method was to create a single work consisting of two parts or books that, although separate and distinct in form and content, would, taken together, achieve a single overall objective. This approach to codification was not entirely original. A similar approach had already been suggested in the letter to Phinehas of Alexandria in which Maimonides stated that he was thinking of writing a separate book that would contain the sources for some of his rulings in the *Mishneh Torah*.<sup>11</sup> However, this statement was no more than a bare

8. These remarks of Caro in his Introduction were intended to describe not only the tribulations of exile generally that were suffered by the Jewish people, but also the particular tribulations of the expulsions that had occurred just before his time, as well as of those in his own lifetime. These tribulations produced an unusual and inordinate increase in halakhic disputes—differing views as to the details of legal rules—leading, as he put it, to "innumerable Torahs." See also Hida's remark, quoted in the next sentence of the text.

9. Hida, *Shem ha-Gedolim*, Books, Letter bet, #59.

10. See further *id.*: "In that generation, there were three rabbis worthy of the task: Joseph Taitazak, our teacher [Caro], and Maharibal [Joseph ibn Lev]. Any one of them could have accomplished the work, but Heaven decreed that the law should be given by our holy teacher [Caro] because of his extreme humility."

11. See *supra* pp. 1220–1221.

Logically, when there are differences of opinion among the halakhic authorities, it would seem that the law should be determined by adducing arguments and proofs from the Talmudic sources and appraising the merits of each opinion. However, although this would, in principle, be the correct methodology, Caro contended that as a practical matter it was almost impossible to employ. He gave two reasons: (1) all the *rishonim* based their opinions on arguments and proofs, and "who can be so audacious as to put his head between the mountains . . . of God, . . . [and] decide between them by appraising arguments and proofs?"; and (2) such a course would involve "an exceedingly long journey" too onerous to ever complete. The lengthy analysis that would be required to show that one opinion is more persuasive than another would take so much time and would be so exhausting that it would allow no reasonable hope of ever reaching the desired objective of presenting a final and unequivocal determination of all the rules of Jewish law.<sup>24</sup>

In view of these considerations, Caro chose a different and original method to determine the binding legal rules:

Since I concluded that the three pillars of instruction upon which the House of Israel rests are Alfasi, Maimonides, and Asheri, of blessed memory, I resolved that when two of them agree on any point I will determine the law in accordance with their view, except for those few instances when all or most [of the other] halakhic authorities disagree with that view and a contrary practice has therefore become widespread.<sup>25</sup>

When one of the three above-mentioned pillars<sup>26</sup> expresses no opinion on a particular matter and the other two do not agree, we will turn to Nahmanides, Rashba, Ran, the *Mordekhai*, and *Semag* . . . and declare the law in accordance with the view of the majority of these authorities. When none of the three above-mentioned pillars expresses an opinion, we will declare the

24. See also Caro's remarks, *Bet Yosef to Tur OH*, Introduction (in the beginning, following the quotation *supra* pp. 1311–1312), for a thorough explanation of the difficulties involved in clarifying and finally ascertaining the law on the basis of the Talmudic and post-Talmudic sources.

25. As to this reservation, see Caro's further remarks quoted here and *see infra* p. 1355.

26. In *Resp. Avkat Rokhel* #201, Caro called them "the three pillars of the world." The heading of that responsum reads: "The above question was answered by Maharashdam," and the responsum concludes, "Until here [is what] I [the publisher of the responsum] have found." The responsum bears no signature. However, it is clear that Caro was its author since it contains the sentence, "And in my work *Bet Yosef* I wrote. . . ." The purpose of the heading is simply to call attention to the fact that Maharashdam wrote a responsum on a similar question (*Resp. Maharashdam*, HM, #1). There is also other evidence proving that Caro wrote the responsum; for further discussion, see H. Dimitrovsky, "Vikku'ah she-Avar bein Maran Rabbi Yosef Caro ve-ha-Mabit" [A Dispute between Our Master, Rabbi Joseph Caro, and Mabit], *Sefer Zefat*, I, pp. 82–83 and nn., *ad loc.*

law according to the well-known halakhic authorities who have expressed their opinion on the particular matter.

This method is the most feasible way (lit. "the royal road"); it is correct, easy to apply, and the most efficient solution to the problem. And if, despite our ruling that certain things are permissible, the practice in some countries has been to prohibit those things, those countries should continue to follow their custom, since they have already accepted the opinion of the halakhic authority holding those things prohibited, and they are therefore not permitted to act in accordance with the permissive ruling, as is stated in chapter *Makom she-Nahagu*.<sup>27</sup>

The criterion for determining the law on a question disputed by the halakhic authorities was thus not an evaluation of the arguments on the merits of the question, but rather a technical and mathematical formula based on the number of proponents of a particular opinion among a pre-selected group of halakhic authorities.

Caro understood and emphasized that his method was not ideal but was chosen only because of its utility, as "the most feasible . . . and . . . efficient solution." It was entirely possible that the final ruling based on his mathematical reckoning would sometimes be inconsistent with the conclusion that would perhaps more accurately conform to the Talmudic sources. Furthermore, this mechanical approach could sometimes lead to internal inconsistencies in the law as finally determined. For example, although rulings of Maimonides on two different issues may be logically interconnected, if Maimonides and Alfasi agreed on the result on one issue and Asheri disagreed, the law on that issue would be determined according to the result reached by Maimonides and Alfasi; yet if Alfasi and Asheri agreed against Maimonides on the other issue, the law would not follow Maimonides' view, although this result would be inconsistent with the theory of his ruling on the first issue.

Nevertheless, with all its drawbacks, this methodology for decision making was better than relying on an appraisal of the merits of each question, both because of the substantive difficulty involved in making a choice from among the different opinions, and because the laborious efforts required to reach a conclusion as to every single issue would have been a never-ending process. In effect, Caro established preselected "judicial benches." The first "bench" was composed of Alfasi, Maimonides, and Asheri; the second consisted of one or two of them together with Nahmanides, Rashba, Ran, and the authors of the *Mordekhai* and *Semag*. Any question the first bench was not able to decide was referred to the second; and, in

27. TB Pesahim 50b-51a; for detailed discussion, see *supra* p. 900 n. 14 and pp. 933-934.

misinterpretation and erroneous legal rulings. Nevertheless, he chose the way of brevity because lengthy discussion is an obstacle to study and analysis. By opting for conciseness "I will make it impossible for the poorer student to say, 'My studies overwhelm me and my mind is not adequate to understand the long discussions that are so wearying, much less draw conclusions on the basis of them.'"<sup>160</sup> To forestall misunderstanding that might result from the brevity of his presentation, Rema took the following precaution:

⇒ In order to prevent error I added one thing. For Heaven is my witness that I have taken great pains in every instance to give the name of the author of each statement—I have left none out, and I have added none. Thus, for any person for whom my brevity is not satisfactory, I have in every case cited the source for my statement, and the matter can be found in the books available to him. If he does not believe, let him investigate and see with his own eyes.

⇒ The second reason for continuing with *Darkhei Moshe* was:<sup>161</sup>

I have added much to his [Caro's] material [in *Bet Yosef*], and I have "burst forth to the south and the west" with opinions by *rishonim* and *aḥaronim*. . . . I have included many responsa of *geonim* and responsa of recent authorities such as those of Maharai [Israel Isserlein] and [material from] *Issur ve-Hetter*,<sup>162</sup> . . . which the author of *Bet Yosef* never saw.

*Bet Yosef* did not include a significant part of the literature of novellae, responsa, and codes, particularly of the Ashkenazic authorities listed by Rema at the beginning of his Introduction:<sup>163</sup>

by his remarks (Introduction, *supra* n. 145 at 1b, beginning of col. 2) concerning his use of the formula "*ad kan leshono*" [lit. "up to here is his language"]:

Because it was my intention to shorten and to separate the wheat from the chaff, as far as I could, I sometimes presented the substance without using the precise words [of the source] and I sometimes omitted the details and included only the general principles, because that was my main intention. Nevertheless, after presenting a source in that manner, I have written "*ad kan leshono*," even though I made changes, . . . because the word *lashon* [usually translated as "language"] has three definitions: It can refer to the tongue, as is known; it can refer to language, as it is written, ". . . a nation whose language you do not understand" [Deuteronomy 28:49]; and it can also refer to the intention of the speaker, because the tongue is the quill of the heart and articulates its ideas. Therefore, I have written "*ad kan leshono*."

In other words, Rema reworked the content of each source and extracted its central idea ("presented the substance without using the precise words"); he nevertheless concluded his presentation of the view of each authority with "up to here is his *lashon*," in the sense of "up to here is his idea."

160. Introduction, *supra* n. 145 at 1b, 1st half of col. 1.

161. *Id.*

162. The reference may be to *Sefer Issur ve-Hetter ha-Arokh*. See *supra* p. 1305. *Sha'arei Dura*, also known as *Sefer Issur ve-Hetter* (see *supra* pp. 1248–1249), is specifically mentioned *infra*.

163. Introduction, *supra* n. 145 at 1a, 1st half of col. 1.

For he did not include *Or Zaru'a*,<sup>164</sup> *Ha-Agudah*, *Sha'arei Dura*, *Issur ve-Hetter*,<sup>165</sup> Mahari Brin,<sup>166</sup> Maharil, Maharyu, Maharam Pado,<sup>167</sup> *Seder Gittin va-Halizah*,<sup>168</sup> Benjamin Ze'ev, and other collected novellae too numerous to list.

That *Bet Yosef* did not include all the various opinions found in the halakhic sources is a serious deficiency in a work aiming to be a compendium of the halakhic literature, particularly when the omission is likely to affect halakhic decisions. This is apparent from Rema's explanation of his third reason for continuing with *Darkhei Moshe*.<sup>169</sup>

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

He ignores the principle established by the earliest of the *rishonim*, Alfasi, who held, at the end of the last chapter of [Tractate] *Eruvin*<sup>170</sup>—and many have agreed with him—that the law should always be determined in accordance with the views of the later authorities, and that the earlier authorities should not be followed, even if the difference of opinion is between a teacher and one of his students. The *aḥaronim*, as led by Maharik and Maharai, have always adhered to this principle. . . . He [Caro] is in conflict with all the customs followed in these lands, most of which are based, simply and straightforwardly, on this principle and are questioned by no one. Therefore, I, too, do not desire to dispute them. . . . Similarly, it is normal practice to follow the views of the *Mordekhai*, Asheri, and his son Riba [Jacob b. Asher, author of the *Turim*], and I have taken this path.

Rema's third reason, which he viewed as the most important, is thus related to the method for determining the binding legal rule that Caro

164. The observations in n. 146 *supra* apply to the authors and works referred to here.

165. See *supra* n. 162.

166. The reference is to Israel b. Ḥayyim Bruna.

167. The reference is to Meir Katzenellenbogen, known as Maharam of Padua.

168. The reference is to a book of this name by Jacob Margolioth; see Sh. Ar. EH ch. 154, *Seder ha-Get* (beginning): "Statement of the proofreader: Everything that is written in this *sefer* without attribution is from the *sefer* of Jacob Margolioth, of blessed memory." Similarly, EH ch. 169 (after par. 56 of Sh. Ar.) in *Seder Halizah Kezarah*: "Statement of the proofreader: Here too, wherever the glosses do not give the source, it can be assumed to be from the various *sedarim*, particularly that of Jacob Margolioth."

169. Introduction, *supra* n. 145 at 1b, 2nd half of col. 1.

170. See *supra* p. 1170.

He continued:



I realized that it would be beneficial to gather the lilies and the sapphires [*i.e.*, the halakhic conclusions] of its [*Bet Yosef's*] discussion, [and present them] briefly, clearly, and comprehensively, in an elegant and pleasant style, so that God's perfect Torah<sup>32</sup> may be fluent on the tongue of every Jew. Thus, when a scholar will be asked a matter of *Halakhah*, he will not need to hesitate.<sup>33</sup> . . . The law to be applied in practice on any question that he will be asked will be clear to him because he will be fully familiar with this book [the *Shulhan Arukh*], which is so excellently constructed. It is divided into thirty parts, so that if one studies one part each day, he will have reviewed its contents every month.<sup>34</sup> Of such a person it will be said, "Happy is he who comes here with his knowledge readily in hand."<sup>35</sup>

Furthermore, the younger students will study it constantly and commit it to memory. Practical *Halakhah* will thus become "childhood learning" absorbed in their earliest years; and when they grow old, it will not depart from them. The intelligent students will shine like the heavens because they will be spared the pain of great toil and will enjoy studying this book; it is entirely

32. See Psalms 19:8.

33. See *Sifrei*, Deuteronomy, Va-ethanan, sec. 34 (ed. Finkelstein, p. 60), to Deuteronomy 6:7; TB Kiddushin 30a and *Tosafot*, *ad loc.*, s.v. Al tegangem ve-tomar lo. Caro continued: "But he will 'say to Wisdom, 'You are my sister'" [Proverbs 7:4]; just as it is clear to him that his sister is forbidden to him [see TB Sanhedrin 7b], so too it [*i.e.*, a matter of *Halakhah*] will be as clear."

34. The notion of reviewing one's studies each month is found in the Talmud; see TB Berakhot 38b ("R. Hiyya b. Abba would review his learning every thirty days"); TB Pesahim 68b ("R. Sheshet would review his learning every thirty days"). There were places where this practice was applied to the *Shulhan Arukh*; see *Shem-ha-Gedolim*, Books, Letter *zayin*, #23. See also Sh. Ar. HM 43:29 (at the end) where the phrase "[one should study] up to this point on the twenty-first day" appears—a vestige of the division of the *Shulhan Arukh* into thirty parts. See also *Sema*, *ad loc.*, subpar. 53. This phrase is missing from early editions; see, e.g., ed. Venice 1565, 1567 (Gryphio), 1574. However, it is found in ed. Venice 1567 (Cavalli) and 1594, and ed. Cracow, 1594.

The division into thirty parts is made in ed. Venice 1567 (Cavalli) at the top of each page and at the end of each chapter; since that edition is not readily available, the divisions are set forth here: Day 1—OH 1–88 (at the end of ch. 88 appears, "[one should study] up to this point on the first day"; similar statements are found at the end of each of the divisions); Day 2—OH 89–169; Day 3—OH 170–259; Day 4—OH 260–317; Day 5—OH 318–372; Day 6—OH 373–467; Day 7—OH 468–544; Day 8—OH 545–684; Day 9—OH 685–697, YD 1–61; Day 10—YD 62–124; Day 11—YD 125–182; Day 12—YD 183–220; Day 13—YD 221–259; Day 14—YD 260–297; Day 15—YD 298–342; Day 16—YD 343–403, EH 1–12; Day 17—EH 13–66; Day 18—EH 67–118; Day 19—EH 119–153; Day 20—EH 154–173; Day 21—EH 174–178, HM 1–43; Day 22—HM 44–74; Day 23—HM 75–102; Day 24—HM 103–141; Day 25—HM 142–175; Day 26—HM 176–224; Day 27—HM 225–263; Day 28—HM 264–311; Day 29—HM 312–388; Day 30—HM 389–427. As noted *supra*, there were books of *halakhot* that were divided into seven parts for a weekly study cycle. See *supra* p. 1264, concerning *Semak*.

35. TB Mo'ed Katan 28a, where this was said in regard to a Sage who reviewed his learning in thirty days.

pleasurable, containing clear and definitive statements of the applicable law, without discursive debate or argument.

I called this book *Shulḥan Arukh* [The Set Table]<sup>36</sup> because the reader will find set out in it all kinds of delicacies meticulously arranged, preserved, systematized, and clarified. I trust that, by divine grace, the earth will be filled with the knowledge of God by virtue of this book—the small and the great, the student and the accomplished scholar.

This, then, was Caro's approach to codifying the *Halakhah*. *Bet Yosef* included the disparate opinions on all the laws and their sources; but, "so that God's perfect Torah may be fluent on the tongue of every Jew," Caro composed another book "containing clear and definitive statements of the applicable law, without discursive debate or argument." This latter work would be written "briefly, clearly, and comprehensively, in an elegant and pleasant style," so that when a judge or scholar is asked a question, "he will not need to hesitate, . . . [and] the law to be applied in practice on any question that he will be asked will be clear to him." Like all codifiers—in Jewish law<sup>37</sup> as well as in other legal systems<sup>38</sup>—Caro was convinced that not only would his code serve Talmudic scholars and experts, but also "the younger students will study it constantly and commit it to memory," so that "practical *Halakhah* will thus become 'childhood learning.'" Caro's two-part work—a book of *halakhot* and a book of *pesakim*—indeed constitutes the halakhic code *par excellence*, fully appropriate to the nature, and responsive to the needs, of the *Halakhah*.<sup>39</sup>

36. The term *shulḥan arukh* as referring to an arrangement of rules and laws appears in *Mekhilta*, Mishpatim, ch. 1 (ed. Lauterbach, III, p. 1; ed. Horowitz-Rabin, p. 246): "R. Akiva says: . . . 'Set them [*i.e.*, the laws] out before them like a set table [*ke-shulḥan arukh*].'" See also Rashi on Exodus 21:1, s.v. Asher tasim lifneihem. Cf. *Sifrei*, Numbers, Pinḥas, sec. 136 (ed. Horowitz-Rabin, p. 182): "R. Akiva says: 'The verse discloses that the Almighty showed all the hidden chambers of the Land of Israel to Moses like a set table.'" In this passage, R. Akiva used the metaphor to indicate how easy it was to see what was set out, and to distinguish each item from the others. Rashba also used the term in connection with his book *Torat ha-Bayit*; see his Introduction to the book and *supra* pp. 1273–1275 (noting the similarity between the codificatory methodologies of Caro and Rashba).

See also Proverbs 9:1–2: "Wisdom has built her house, she has hewn her seven pillars. She has prepared the feast, mixed the wine, and also *set the table*" (emphasis supplied). Jacob ibn Ḥabib wrote in the Introduction to his *Ein Ya'akov*: "It was for this reason that Alfasi, and Asheri after him, realized that it was good in the sight of God to be beneficent to Israel and to arrange before them a set table [*shulḥan arukh*] in one special book [which would contain] all the parts of the aforesaid laws." Ibn Ḥabib died in Salonika about 1516, some fifty years before the completion of the *Shulḥan Arukh*.

37. See *supra* pp. 1153, 1185, 1265–1266, 1270.

38. See *supra* p. 1141.

39. It should be noted that, in the opinion of many scholars, Caro deviated in the *Shulḥan Arukh* from the policy he followed in *Bet Yosef*, which was to declare the law in accordance with the majority view among Alfasi, Maimonides, and Asheri; instead, he



I viewed all his [Caro's] statements in the *Shulhan Arukh* as having been presented as though they were given by Moses at divine command so that students would come and drink his words without challenging them. . . . I therefore decided that, at those places where his [Caro's] statements do not seem to me to be correct, I would write down next to each such statement the opinions of the *aharonim*, in order to make the students aware of every instance where his statements are disputed.<sup>190</sup>

Rema believed that a judge should have available a book—even though it may be categorical in form and contain no source references—which presents as briefly as possible the different views of the halakhic authorities, so that in reaching his decision in each case, he can take into account the principle that the law is in accordance with the views of the later authorities, local custom and practice, and his own view as to what is appropriate in the particular circumstances of each case.<sup>191</sup> This basic approach to halakhic decision making had been developed by the spiritual founders of Polish Jewry, Jacob Pollack and Shalom Shakhna, to the extent that they opposed the writing of all codificatory works and would not even preserve copies of their own responsa. The essence of this approach was adopted by Rema even though he believed that the times demanded a code that contained the sources of the law.<sup>192</sup> He maintained this approach even when he followed in the footsteps of Caro and wrote a book of *pesakim*—alongside a book of *halakhot*—without citation of authority or sources. He believed that under no circumstances should a judge or other authority be deprived of all the relevant opinions; he regarded knowledge of the various opinions to be an indispensable requisite of the decision-making process.

Rema's glosses, in addition to presenting the various opinions and lo-

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between the People of the East and the Residents of the Land of Israel], Jerusalem, 1938, and Margalio's extensive Introduction. See also *supra* pp. 880ff. To corroborate the need to take custom into consideration, Rema cited Caro " . . . as the *gaon* himself wrote in his Introduction to his great book"—the reference being to Caro's statement in his Introduction to *Bet Yosef* on *Tur* OH to the effect that if a custom contrary to the rulings of Alfasi, Maimonides, and Asheri has been accepted, the custom should be followed, and if there is a custom to prohibit something which, according to law, is permitted, the custom is binding on those who have been following it. See *supra* p. 1318 and *infra* n. 191.

190. Rema's Introduction to his glosses to the *Shulhan Arukh*.

191. See *id.*: "Whoever has a palate to taste will himself be able to distinguish between the 'sweetmeats' according to their flavors, and will not rely on others. Whoever has not attained this level should not deviate from the custom, as the *gaon* himself wrote in his Introduction to his great book." For a discussion of the last part of the quotation, see *supra* n. 189.

192. *Darkhei Moshe*, Introduction, p. 1b, 1st half of col. 1; see also our discussion *supra*.

# הלכות שבת סימן רע"א

מח באר הגולה

של ברכה וכן נראה לי (מט) וע"ל סימן קפ"ג סעיף ד' : י"א שאם אין לו אלא כוס אחד מקדש בו בלילה ואינו מועם ממנו שלא יפגימונו האלא (נ) שופך ממנו לכוס אחר ומועם יין שר קידוש (עז) (נא) מהכוס השני ולמחר (נב) מקדש בטה שונשאר בכוס ראשון \*ואם לא היה בו אלא (נג) רביעית בצמצום ונחמר ממנו בלילה מונוג לטחר להשלימו לרביעית (נד) והיינו דוקא כשיש לו כוס אחר להברלה שאל"כ (נה) מוטב (נו) שיניחנה (יז) להברלה שא"א בפת משקדש עליו ולא היא לו יין להברלה ואם יש לו שני כוסות מצמצמים אחר מונוג יקדש בלילה באחר ויבריל על השני ולא יקדש ביום (נז) דקידוש הלילה עדיף \* (יח) באחר שקדש על כוס נוטל ידיו ומברך ענמי \* ואם נטל ידיו קודם קידוש גלי דעתיה \* (נח) דריפתא (ס) חביבא ליה לא יקדש על היין אלא על הפת . הגה (סא) וי"א דלכתחלה יש לנטול ידיו קודם הקידוש ולקדש על היין (הרא"ש ומרדכי פרק ע"ב

## באר היטב

(עז) מהכוס השני . ומ"א כתב דטועם מכוס הראשון וח"כ מוסיף עליו מהכוס השני ע"ש . ובספר אליהו רצה דהה דברי מ"א בשתי ידיים על מה שהקשה על ב"י מתום פסחים ע"ש : (יז) להבדלה . התום והאגודה מולקין ע"י וסוכרים דקידוש עדיף

## משנה ברורה

סגולת רפואה לטעום שכהו על ידי פסיעה גסה מיהו אין מדקדקין בזה כ"כ [א"ר] : (מט) וע"ל סימן קפ"ג . היינו דשם מבואר זה שיתן עינו בכוס של ברכה שלא יסיה דעתו : (ג) שופך ממנו וכו' . כשישור (נג) מלא לוגמיו : (נא) מהכוס השני . ובמ"א

הסכים לדעת התוספות דכוס של חובה לריך להיות העשימה דוקא מכוס שיש בו רביעית יין וע"כ הכוון שיעשה כך יספוך מתחלה מהכוס הראשון לתוך כוס אחר ויזכר שישאר בו רביעית יין ויעטס מהכוס הראשון כשישור מלא לוגמיו וח"כ יספוך היין שככוס אחר לתוך כוס זה דבזה נתקן פנימיתו וכלעיל בסיומן קפ"ב סעיף וי"ו ויוכל לקדש עליו אם יש בו עתה רביעית יין [ואף דבאר דהה דבריו וסובר דכעלת השו"ע עדיפת טפי עיין בתו"ש שישבן : (גב) מקדש כמה ששאר . מלשון זה משמע דמקדש בזה הכוס גופא ואף דלעיל בס"י כתב דלריך להיות הכוס מלא (גד) וזה רק למנוה ואין מעכב אם אין לו וכשט דלס יש לו כוס אחר קטן מזה לריך לשפוך היין לתוכו כדי שיהיה מלא : (גב) רביעית בלמנוס . לאו דוקא (נה) אלא ה"ה אם אפילו יש לו יותר מזה אלא דאחר טעימת מלא לוגמיו לא ישאר לו כשישור רביעית אלא דנקט הכי לרבותא דאפילו בזה יש לו תקנה ע"י מצינת מים ומיירי כשהיה היין חוק שאחר המצינה ויכל לקדש עליו ועיין לקמן בסיומן רע"ב ס"ה : (נד) והיינו דוקא וכו' . קאי דלעיל שכתב דכשיש לו כוס אחד מקדש בו בלילה ואשמעינן דהיינו דוקא וכו' : (נד) מוטב וכו' . בזה חיירי השו"ע שהכוס הוא שיעור מלמולס וממונוג כבר דאל"ה הלא יכול לקדש בלילה ולמונוג להשלימו גם להבדלה וכו"ל : (נז) שיניחנה להבדלה . וי"א דקידוש הלילה עדיף מהבדלה ואפילו לדעת השו"ע אם יש לו שר להבדלה מוטב לקדש על היין דהא לכו"ע מדבילין אשיכרא כמ"ש בסיומן רל"ו ס"ז וקידוש השכרא הרבה פוסקים אוסרים וגם על הפת מחמיר ר"ת ולכן אפילו בשחרית (נו) טוב יותר שיקדש על היין אם יש לו שר להבדלה (נז) מהיו מה שנהגו לקדש בבהכ"כ וגם להבדיל בזה בודאי ההבדלה שהוא להוויא רבים ידי חובתן עדיף מקידוש שאינו אלא מנהג כמ"ש סימן רס"ט [מ"א וש"א] : (נז) דקידוש הלילה עדיף . וכלעיל בסיומן זה ס"ג ועי"ש במ"ב סק"ח . המ"א הביא בשם שכה"ג דטוב לקדש על כוס גדול שישיר מאותו הכוס לקידוש היום ולהבדלה והיינו שיתקנו כל פעם שלא יהיה פגום ויקה בשחרית ובהבדלה כוס קטן מהקודם כדי שיהיה מלא אבל הא"ר פסק בזה המנהג וכן במחמר מרדכי ממאן בזה וכתב דטוב יותר לעשות כמנהגו : (נח) אחר שקדש וכו' . ולא קודם (נה) כדי שלא יפסיק בהקידוש בין נט"י להמוויא (נט) אבל בני ביתו שאינם מקדשין בעלמא אלא יולאין בשמיעתן מבעב"כ יוכלו ליעול ידיהם קודם : (נח) דריפתא וכו' . דוקא הכא דאיכא ג"כ השם הפסק שמקדש על היין אחר נטילה וכמו שכתבנו בס"ק כ"ח (ס) אבל בעלמא היכא דלא נטל ידיו מותר לקדש על היין אף דריפתא חביבא ליה יותר מיין ועיין לקמן בסיומן רע"ב ס"ט בהג"ה כמה שכתבנו שם : (ס) חביבא ליה . היינו דלכך נטל ידיו שהוא רעב וממהר לאכול פת : (סא) וי"א דלכתחלה וכו' . דס"ל דאין הקידוש מקרי הפסק כיון שהוא לורך סעודה ולכך יקדש על היין ויפתה הכיס וח"כ יברך המוויא ויבצע הפת וכיון דאינו הפסק ס"ל לרמ"א דטוב לנהוג כן לכתחלה משום דכשאין לו יין ומקדש על הפת בע"כ לריך ליעול ידיו קודם הקידוש (סא) וע"כ טוב לנהוג כן תמיד בלמנוס אחר . ולמונוג את הכוס בחמין אחר הגטילה קודם המוויא ודאי אין לעשות כן לכו"ע כיון דלריך לדקדק יפה שימונוג כדרכו שלא יחפר

## שער הצינ

(ג) דנפחות מזה לא יא וכלקמיה כס"ד וכ"כ התום בהדיא בפסחים ק"ה ע"ב ד"ה ש"מ והא"ר מחפיק דכיון שזוהי שישאר למחר לקידוש נדיבעד די נכל שהוא ולא נכירא כלל וגם בתו"ש והגר"ז כתבו בפשיטות דדוקא כמלא לוגמיו : (נד) כן מלמד בנח"מ בכאור השו"ע וכ"כ הגר"ז בהדיא דמלא הוא רק למנוה וכן נראה : (נה) תו"ש והגר"ז : (נו) ובגלגון ע"ש כתב דמ"א פסריז בזה על המדה ויכל לעשות בזה כמו שירלה ונארי אחרונים העתיקו דברי המ"א : (נז) אינו מבואר כמ"א כוונתו אם אפילו ביש לו שר להבדלה מ"מ טוב יותר להבדיל על היין וקידוש בלילה לא יעשה כלל אי קאי רק לתחלת דבריו דמיירי בשאין לו שר ויש לו רק כוס אחד של יין דבבהכ"כ טו"ע מודו דנימנו להבדלה אבל אם יש לו שר יבדיל על השכר ויקדש על היין וז"ע : (נח) מ"א : (נט) שם : (ס) מחלית השקל בשם ב"י כס"י רע"ב וק פסק בה"מ : (סא) א"ר :

