

בס"ד

Skills for Torah Sheb'al Peh

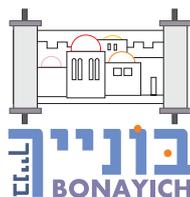
Series 1

Introductory Skills in Torah Shebichtav

Unit 1.1

Torah Shebichtav and Torah Sheb'al Peh

Shalom Hayman



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Research and Writing: S. Hayman
Translation and Editing: P. Hayman
Graphics: A. Darmon, S. Davis

Internet:

www.bonayich.com

www.vshinantam.com

www.vdibartabam.com

Correspondence:

bonayich@bonayich.com

Bonayich Educational Services, Ltd.

POB 731 Elkana, Israel 44814

Telephone 972-3-9063155, 201-2559364

Facsimile: 972-3-9074714

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A Foreword to Booklet Series

In the five series of booklets which follow, we will study various skills for the study of Torah Shebichtav and Torah Sheb’al Peh. Of course, the contents of the two Torah are most important. However, in order to study these contents in depth and in the correct way, and to derive from them the maximum benefit in the areas of faith, beliefs, learning and action, there is need to clarify the skills and fundamental issues that should accompany the study.

The first booklet series – which we begin here – deals with aspects of study of Torah Shebichtav, as preparation for the study of Torah Sheb’al Peh, which is the object of these booklet series. The second series deals with the study of the Mishnah of Rabbi Y’hudah HaNasi and the manifold topics involved in Mishnah. The third series deals with the study of the broader Torah HaTannaim which surround the Mishnah of Rebbe, such as the Tosefta, the B’raitot and the Midr’she Halachah. The fourth series will deal with the study of Torah Ha’Amoraim, including the historical background to the Amoraic period, characterization of individual statements of the Amoraim, and understanding of Amoraic discussions in the Talmud. The fifth and last series will deal with the study of Talmudic shakla v’tarya = discussion, and with the many issues surrounding Talmudic discourse, such as clarification of the nature of shakla v’tarya, fixed patterns of debate and discussion, and much more.

In these booklets, it is our method to ask the learner questions about topics under discussion that demand thought even before primary sources on the subject are presented. We will urge the learner to also think about his/her thinking, in order to guide the learner to carefully consider his/her conceptions, assumptions and learning methods, to the end of acquisition of the detailed learning skills in the various booklets. In our opinion, the booklets in all the series make a significant contribution to renewal of accurate and proper Torah learning to its rightful place. We hope that you will gain greatly from these booklets, and that together we will succeed in attaining greater quality of learning in Torah!

B Introduction

The first issue to deal with in this first series, in the context of the study of Torah Shebichtav, is the relationship between the written Torah and the Torah Sheb'al Peh. In this way, this booklet serves as an overall introduction to the five series of booklets.

Before we learn skills for accurate study of the Torah Shebichtav itself, and afterwards the skills for accurate study of the literature of Torah Sheb'al Peh – the Mishnah and the Talmud – we first must clarify two more basic questions: what are these two Torot, and what is their relationship with each other?

The relationship of the two Torot is a deep and involved topic, and has been dealt with extensively in the literature of Jewish scholars in all periods. Here, we will deal only with a few critical points that are needed for our studies in the following booklets.

C What are “Torah Shebichtav” and “Torah Sheb'al Peh”?

As we open our discussion of the relationship between Torah Shebichtav and Torah Sheb'al Peh, we must first clarify what we mean by these two terms.

1. In your opinion, what are “Torah Shebichtav” and “Torah Sheb'al Peh”?

In this chapter, we will learn sources that suggest a variety of answers to this question.

Approach #1

Look at the following source:

SOURCE

1

Vayikra, Chapter 23, Verse 40

וּלְקַחְתֶּם לָכֶם בַּיּוֹם הַרְאִשׁוֹן פְּרִי עֵץ הַדֶּרֶךְ כַּפַּת תְּמָרִים וְעֵגֶף עֵץ עֵבֶת וְעֵרְבֵי נָחַל,
וּשְׂמַחְתֶּם לִפְנֵי ה' אֱלֹהֵיכֶם שִׁבְעַת יָמִים:

2. Which mitzvah is described here?

3. What are the four species mentioned in the verse?

4. How can we know exactly which tree, fruit or plant the Torah refers to?

Look at the following source:

SOURCE
2

**Yad HaChazakah of the Rambam,¹ Laws of Shofar, Sukkah and Lulav,
Chapter 7, Laws 1-4**

“פפות תמרים” האמורות בתורה
הן חריות של דקל כשיצמחו קדם שיתפרדו העליון לזאן ולזאן,
אלא כשיהיה כמו שרביט, והוא הנקרא “לולב”.
“פרי עץ הדר” האמור בתורה הוא אתרוג,
ו“ענף עץ עבות” האמור בתורה הוא ההדס שעליו חופין את עצו ...
“ערבי נחל” האמורות בתורה אינן כל דבר הגדל על הנחל,
אלא מין ידוע הוא הנקרא “ערבי נחל”,
עלה שלו משור ופיו חלק וקנה שלו אדם וזה הוא הנקרא “ערבה” ...
וכל הדברים האלו מפי השמועה ממושה רבנו נתפרשו.

5. According to the Rambam, how do we know the identification of the species the Torah is referring to?

This is one type of teaching which, according to Jewish faith and tradition, Moshe received at Sinai, and as the Rambam summarizes at the beginning of his introduction to the Mishnah: “Know, that any mitzvah given by HaShem to Moshe our Teacher – was given together with its explanation.” From here, we see that the Torah Sheb’al Peh was an explanation and specification of the Torah Shebichtav, and was given together with it.

¹ Rabbi Moshe ben Maimon, lived in Spain, Morocco, Israel and Egypt, died in the Jewish year 4965. He was among the greatest of the Rishonim, and was called “The Great Eagle.” He composed a commentary on the Mishnah, a thoroughgoing halachic treatise covering all areas of Torah knowledge, called “Mishneh Torah” (or “Yad HaChazakah” because it is composed of 14 sections, and “Yad” = 14), a fundamental work of Jewish thought called “Moreh N’vuchim,” and many responsa and epistles.

6. There are many hundreds of examples of this type of relationship between the two Torot. Can you bring several others?

There is another type of tradition in *Torah Sheb'al Peh*, called "halachah to Moshe at Sinai." This appellation is very odd and requires explanation – we just learned that the explanations of the mitzvot given at Sinai were also given at Sinai. What, then, could be the meaning of special term for this second type of tradition in *Torah Sheb'al Peh*?

7. What do you think could be the meaning of the term "halachah to Moshe at Sinai?"

Now, have a look at the Rambam's definition of this term:

SOURCE

3

Introduction of the *Rambam* to the *Mishnah*, Shilat Edition, Page 39

כל ענין שאין לו הוראה בכתוב, ואין לו סמך, ואי אפשר להוציאו בקוש –
בזה בלבד יאמרו "הלכה למשה מסיני".

8. According to this source, what is a "halachah to Moshe at Sinai?"

9. What, then, is the difference between the explanations of the mitzvot given at Sinai and the halachot called "halachah to Moshe at Sinai?"

10. According to all we have learned to this point, what are "Torah Shebichtav" and "Torah Sheb'al Peh"?

Summary

The first explanation of these terms is:
"Torah Shebichtav" is the Torah we have as a written text – the Five Books of the Torah – and the "Torah Sheb'al Peh" includes the explanations of the mitzvot give to Moshe orally, and the independent halachot given to Moshe, all of which were handed down orally from generation to generation, even to our day.

Approach #2

Now, we'll learn another explanation of these two terms:

11. In Torah Shebichtav, together with the explanations given to Moshe and the halachot given at Sinai that aren't connected to a written source, is there a solution for all questions and problems that could ever arise? If not, how do we arrive at solutions and answers for new questions and problems?

Study the following source:

SOURCE

4

D'varim, Chapter 17, Verses 8-11

(ח) כִּי יִפְלֹא מִמֶּנֶּךָ דְבַר לְמוֹשֶׁה בֵּין דָם לְדָם בֵּין דִּין לְדִין וּבֵין נֹגַע לְנֹגַע
דְּבַר רִיבַת בְּשַׁעֲרֶיךָ
וְקָמַת וְעָלִיתָ אֶל הַמָּקוֹם אֲשֶׁר יִבְחַר ה' אֱלֹהֶיךָ בּוֹ:
(ט) וּבָאתָ אֶל הַכֹּהֲנִים הַלְוִיִּם וְאֶל הַשֹּׁפֵט אֲשֶׁר יִהְיֶה בַיָּמִים הַהֵם
וְדִרְשָׁתָה וְהִגִּידוּ לְךָ אֵת דְּבַר הַמִּשְׁפָּט:
(י) וְעָשִׂיתָ עַל פִּי הַדִּבָּר אֲשֶׁר יִגִּידוּ לְךָ מִן הַמָּקוֹם הַהוּא אֲשֶׁר יִבְחַר ה'
וְשִׁמְרָתָה לַעֲשׂוֹת כְּכֹל אֲשֶׁר יִוָּדָד:
(יא) עַל פִּי הַתּוֹרָה אֲשֶׁר יִוָּדָד וְעַל הַמִּשְׁפָּט אֲשֶׁר יֵאמְרוּ לְךָ תַעֲשֶׂה
לֹא תִסּוּר מִן הַדִּבָּר אֲשֶׁר יִגִּידוּ לְךָ יָמִין וּשְׂמֹאל:

In light of these verses, the Rambam's decides as follows:

SOURCE
5

Yad HaChazakah of the Rambam, Hilchot Mamrim, Chapter 1, Halachot 1-2

בית דין הגדול שבירושלים הם עקר תורה שבעל פה,
והם עמודי ההוראה, ומהם חק ומשפט יוצא לכל ישראל,
ועליהן הבטיחה תורה,
שנאמר: "על פי התורה אשר יורוך" - זו מצות עשה.
וכל הפאמין במשה רבנו ובתורתו,
חזב לסמוך מעשה הדת עליהן ולישען עליהן.
כל מי שאינו עושה פהוראתו - עובר בלא תעשה,
שנאמר: "לא תסור מקל הדבר אשר יגידו לך ימין ושמאל."

12. What does the Torah command us in these verses?

13. According to the Torah's directive, what is the exclusive binding authority that is responsible to decide matters of Torah in every generation?

14. How do the Sages know how to resolve the problems that arise from time to time, if there are no explicit answers in the Torah Shebichtav?

15. From these sources, can we derive another explanation of the term "Torah Sheb'al Peh?" What is it?

Summary

**A second explanation of our two terms is:
"Torah Shebichtav" is what is written in the Five Books of the Torah, and
"Torah Sheb'al Peh" is all that is developed by the Sages of Israel over the
generations, as they synthesize circumstances of time and place with the
Torah Shebichtav and the oral traditions from Sinai.**

16. Are you aware of any literature of Torah Sheb'al Peh that fits this second explanation? What?

There is quite a wide literature that meets this explanation, and we learn about it in the coming series.

17. Does the second explanation of "Torah Shebichtav" and "Torah Sheb'al Peh" contradict the first one? Explain.

This meeting between the Sages of the Torah, the circumstances of time and place and Torah Shebichtav and its related oral traditions, is not simply a technical operation done by dry procedures. To clarify this, we'll ask a fundamental question:

18. In your opinion, would legislation by scholars of the non-Jewish world based on Torah Shebichtav also be considered Torah Sheb'al Peh? Explain your answer.

The answer to this question is basic to the understanding of Torah in general, and of Torah Sheb'al Peh in specific. In the Talmud Bavli, the following tradition is brought:

"Rabbi Yochanan said: HaShem established a covenant with Israel only for the sake of the Torah Sheb'al Peh." (Talmud Bavli, Gittin, 60b) In other words, the legislative system we discussed above is a national system connected in its most essential levels with the People of Israel. In order to understand the reason for this, we need to deeply understand an additional explanation of the term "Torah Sheb'al Peh."

Approach #3

The explanations of the Torah Shebichtav in the Torah Sheb'al Peh, and the halachot given from Sinai without a basis in the Torah Shebichtav, enjoy binding authority by force of the tradition that they were given at Sinai. However, what is the source of the binding authority of the elements of Torah Sheb'al Peh that were legislated by the Sages?

19. In your opinion, what could be the criterion by which we could establish what is binding Torah Sheb'al Peh and what is not?

Our Sages dealt with this question. Let's have a look at their answer:

SOURCE
6

Talmud Bavli, Massechet Avodah Zara, Page 36a

אָמַר רַבֵּה בַר בַּר חֲנָה אָמַר רַבִּי יוֹחָנָן:
בְּכֹל יְכוּל לְבַטֵּל בֵּית דִּין דְּבַרֵּי בֵּית דִּין חִבְרוּ,
חוּץ מִשְׁמוֹנֶה עֶשְׂרֵי דְבָרִים,
שֶׁאִפְלוּ יָבֵא אֱלֹהֵי וּבֵית דִּינֵנו אֵין שׁוֹמְעִין לוֹ!
אָמַר רַב מִשְׁרְשֵׁינָא: מַה טַּעַם?
הוּאִיל וּפְשִׁט אֲסוּרוּ בְּרַב יִשְׂרָאֵל...

SOURCE
7

Rabbi Y'hudah HaLevi, 2 The Kuzari, Book 3, Paragraph 23

...וְשָׁלְמוֹ שְׁנֵי הָעֵנְיָנִים אֲשֶׁר הִמָּה עֲמוּדֵי הַתּוֹרָה:
הָאֶחָד, מַה שֶׁתִּהְיֶה הַתּוֹרָה מֵאַתְּ הָא-לוֹהִים,
וְהַשֵּׁנִי, שֶׁתִּהְיֶה מִקְבָּלַת בְּלֵב נְאֻמָּן מִהַקֵּהל...

And the Rambam wrote a similar idea regarding the acceptance of the Talmud Bavli as binding on all of Israel:

2 Rabbi Y'hudah HaLevi lived in Spain and came on aliyah to Israel, died in the Jewish year 4900. He was the student of the Rif (Rabbi Yitzchak al-Fasi), and composed much poetry, and the most fundamental work of Jewish thought called "The Kuzari," about which the Gaon of Vilna said that "the main principles of the faith of Israel and Torah are derived from it." All the basic issues in the study of the faith of Israel are based on and clarified in this book.

Rambam, Introduction to the *Yad HaChazakah*

כָּל הַדְּבָרִים שֶׁבִּגְמָרָא הִבְבְּלִי,
 חִזְבִּין כָּל יִשְׂרָאֵל לְלֶכֶת בְּהֵם,
 וְכּוֹפִין כָּל עִיר וְעִיר וְכָל מְדִינָה וּמְדִינָה
 לְנַהֵג בְּכָל הַמִּינֵהְגוֹת שֶׁנֶּהְגּוּ חֲכָמֵי הַגְּמָרָא וְלְגֹזֵר גְּזֵירוֹתָם וְלְלֶכֶת בְּתַקְנֹתָם,
 הוֹאִיל וְכָל אוֹתָם הַדְּבָרִים שֶׁבִּגְמָרָא הִסְפִּימוּ עֲלֵיהֶם כָּל יִשְׂרָאֵל.

And similarly, later scholars said a similar thing regarding the words of Sages after the closing of the *Talmud Bavli*:³

Responsa of *Rabenu Asher*,³ Principle 43, Paragraph 8

חֲכָם אֶחָד הָיָה בְּאַרְצֵנוּ וְהָיָה שְׂמוֹ רַבֵּנוּ גְרָשָׁם,
 תִּקַּן תַּקְנוֹת טוֹבוֹת בְּעֵנֶן הַגְּרוּשִׁין, וְהָיָה בִּימֵי הַגְּאוּנִים ז"ל.
 וְתַקְנֹתָיו וְגִזְרוֹתָיו קְבוּעוֹת וְתַקְיֵעוֹת כְּאֵלוֹ נִתְּנוּ מִסִּינִי,
 בְּשִׁבְלֵי שְׁקָבְלוֹם עֲלֵיהֶם וּמְסָרוֹם מְדוּר לְדוּר.

20. According to these sources, what is the criterion by which it is decided what legislation since Sinai in the *Torah Sheb'al Peh* is of binding authority and what is not?

21. From this criterion, can we suggest another explanation of the term "*Torah Sheb'al Peh*?" What would it be?

22. According to this explanation, how should we explain the term "*Torah Shebichtav*?" (Clue: look again at Source #7 from the *Kuzari*.)

³ Rabenu Asher, called the "Rosh," lived in Germany and fled to Spain, died in 5088. He was one of the greatest halachic authorities in Germany. He compiled the "*Piske HaRosh*" on the *Talmud*, and many comments on Talmudic discussions called "*Tosafot HaRosh*," as well as many responsa.

Summary

**A third explanation of our two terms is:
"Torah Shebichtav" means the contents given us by HaShem,
and "Torah Sheb'al Peh" means what arises from the national culture of
the People of Israel over the generations. The very acceptance of certain
laws by the nation, gives those laws binding authority thereafter.**

In accordance with this new understanding, we need to return to the second approach above, and understand it more deeply.

23. Look again at the second approach above, and try to explain what gives the Sages of Israel the binding authority to interpret the Torah and teach us their interpretation as divine word?

24. Look again at question #18. Can the interpretation of Torah Shebichtav by scholars of the non-Jewish world create Torah? Explain!

Summary

Since the source of the authority of Torah Sheb'al Peh is the Nation of Israel, the Sages of Israel receive their authority to teach from the fact that they are the representatives of the people, and the spirit of the nation is displayed through their work. Therefore, non-Jewish scholars cannot create Torah Sheb'al Peh!

25. Summarize briefly the three approaches to explanation of the term “Torah Sheb’al Peh.”

Now that we have clarified the two terms “Torah Shebichtav” and “Torah Sheb’al Peh,” we can move on to the next important clarification.

D Which Torah Came First?

According to what we learned to this point, the People of Israel received two *Torot*, *Torah Shebichtav* and *Torah Sheb’al Peh*. *Torah Shebichtav* includes what was received in the Five Books of the *Torah*, but does not continue to expand to include new contents. However, *Torah Sheb’al Peh* continues to expand in every generation, in accordance with the needs of time and place, circumstances, and the judgements of the Sages of Israel as the representatives of the Nation of Israel over the generations.

Which *Torah* came first? Did the processes of *Torah* begin at Sinai, such that *Torah Shebichtav* came before *Torah Sheb’al Peh*, or did *Torah Sheb’al Peh* – as the expression of the national life of the People of Israel which arose before Sinai – come before *Torah Shebichtav*?

In order to clarify this question, we need to analyze it according to all three approaches brought above.

According to Approach #1

In the first approach, we learned that *Torah Sheb’al Peh* provides specifications of the *mitzvot* and *halachot* which Moshe received at Sinai. *Torah Shebichtav* was said to mean the Five Books of the *Torah* – *the Mikra*.

26. According to this approach, which *Torah* came first – *Torah Shebichtav* before *Torah Sheb’al Peh*, or the reverse? Explain.

Let’s have a look now at several sources which will help us clarify this.

First, have a look at Chapters 12-13 in *Sh’mot*. There, many *halachot* and *mitzvot* are given to Israel orally long before the events at Mount Sinai, and are recorded in the *Torah Shebichtav*: *t’fillin*, *pidyon b’chorot*, *Pesach*, and much more. Also after the exodus from Egypt and before Mount Sinai, additional *mitzvot* were given:

Sh'mot, Chapter 15, Verses 22-25

- (כב) וַיִּסַּע מֹשֶׁה אֶת יִשְׂרָאֵל מִיַּם סוּף וַיֵּצְאוּ אֶל מִדְבַּר שׁוּר,
וַיֵּלְכוּ שְׁלֹשֶׁת יָמִים בְּמִדְבָּר וְלֹא מָצְאוּ מַיִם.
- (כג) וַיָּבֹאוּ מִרְתֵּהָ וְלֹא יָבִילוּ לְשִׁתּוֹת מַיִם מִמֶּרְהָ כִּי מָרִים הֵם,
עַל כֵּן קָרָא שְׁמֵהּ מִרְהָ.
- (כד) וַיִּלְנוּ הָעָם עַל מֹשֶׁה לֵּאמֹר מַה נִּשְׁתָּהּ.
- (כה) וַיִּצְעַק אֶל ה' וַיֹּרְהוּ ה' עֵץ וַיִּשְׁלַךְ אֶל הַמַּיִם וַיִּמְתְּקוּ הַמַּיִם,
שֵׁם שָׁם לוֹ חֵק וּמִשְׁפָּט וְשֵׁם נִסְהוּ.

27. In your opinion, what are the **חֵק וּמִשְׁפָּט** which HaShem placed before Israel?

Here's what the Sages of the Mishnah period said about these verses:

M'chilta of Rabbi Yishma'el,⁴ *Massechta d'Vayisa, Parashah 1*

- "שָׁם שָׁם לוֹ חֵק וּמִשְׁפָּט",
"חֵק" - זֶה הַשַּׁבָּת,
"וּמִשְׁפָּט" - זֶה כְּבוֹד אָב וְאִם,
דְּבָרֵי רַבִּי יְהוֹשֻׁעַ.
רַבִּי אֶלְעָזָר הַמּוֹדֵעִי אוֹמֵר:
"חֵק" - אֵלּוּ עֲרִיּוֹת, שֶׁנֶּאֱמַר: "לְבַלְתִּי עֲשׂוֹת מַחֲזִיקוֹת הַתּוֹעֵבוֹת" (וַיִּקְרָא י"ח ל).
"וּמִשְׁפָּט" - אֵלּוּ דִינֵי אוֹנְסִין, וְדִינֵי קִנְסִיּוֹת (=קִנְסוֹת) וְדִינֵי חֲבִלוֹת.

Talmud Bavli, Massechet Sanhedrin, Page 56b

- תַּנְיָא: עֲשׂוֹר מִצְוֹת נִצְטוּוּ יִשְׂרָאֵל בְּמִרְהָ,
שִׁבְעַת שְׁקָבְלוּ עָלֶיהוֹן בְּגִי נַח,
וְהוֹסִיפוּ עָלֶיהוֹן: דִּינִין, וְשַׁבָּת, וְכְבוֹד אָב וְאִם.
דִּינִין - דְּכַתִּיב: (שְׁמוֹת טו) "שָׁם שָׁם לוֹ חֵק וּמִשְׁפָּט",
שַׁבָּת וְכְבוֹד אָב וְאִם - דְּכַתִּיב: (דְּבָרִים ה) "כַּאֲשֶׁר צִוְּךָ ה' אֱלֹהֶיךָ,"
וְאִמַר רַב יְהוּדָה: "כַּאֲשֶׁר צִוְּךָ" - בְּמִרְהָ.

4 Midrash Halachah on the Torah. In this Midrash the Tannaim derive halachot through interpretation and analysis of verses of Mikra. The M'chilta is a halachic Midrash on the book of Sh'mot. In addition to the M'chilta (of Rabbi Yishma'el), there is also another halachic Midrash on Sh'mot from the Bet Midrash of Rabbi Akiva, called the M'chilta of Rabbi Shimon bar Yochai, who was the student of Rabbi Akiva.

28. How did the Sages interpret the verse? What are **טק ומשפט**?

29. Now we will ask again: according to the first approach, that *Torah Sheb'al Peh* is explanations of the *mitzvot* and of the *halachot* that were said to Moshe orally, did *Torah Shebichtav* come first, before *Torah Sheb'al Peh*, or possibly the other way around?

Summary

According to the first approach, *Torah Sheb'al Peh* came before *Torah Shebichtav*, because before the giving of *Torah Shebichtav* many *mitzvot* and *halachot* were already given to Moshe orally.

According to Approach #2

In our study of the second approach, we learned that *Torah Sheb'al Peh* may be defined as the cumulative and ongoing teaching of *Torah* by the Sages of every generation. This teaching arises out of the synthesis of the Sages, the circumstances and needs of times and places, and the *Torah Shebichtav*.

30. According to this approach, which *Torah* came first?

It would appear that the *Torah Shebichtav* came first according to this approach, but we need to ask a deeper question in this regard:

31. In your opinion, what is a stronger authority: *Torah Shebichtav*, or the words of the Sages in every generation? Explain!

Look at the following sources:

SOURCE
13

Mishnah, Massechet Rosh HaShanah, Chapter 4, Mishnah 1

יום טוב שְׁלֹרֵאשׁ הַשָּׁנָה שָׁחַל לְהִיּוֹת בְּשַׁבָּת –
בְּמִקְדָּשׁ הָיוּ תוֹקְעִים אֲבָל לֹא בְּמִדְיָנָה.

It should be immediately clarified that from the Torah Shebichtav the mitzvah of shofar on Rosh HaShanah pertains no less to Shabbat than to any other day. Therefore:

32. What question arises from the Mishnah?

The Amoraim, the teachers of the Talmud, dealt with this question:

SOURCE
14

Talmud Bavli, Massechet Rosh HaShanah, Page 29b

מָנָא הָנִי מִיָּלִי? ...
אֵלֵּא אָמַר רַבָּא: מִדְּאוּרֵייתָא מִיִּשְׂרָאֵל שְׂרִי, וְרַבְּנֵי הוּא דְגָזַר בֵּהּ, כְּדַרְבֵּהּ.⁵
דְּאָמַר רַבָּה: הַכֹּל חֲזִיבִין בְּהַתְּקִיעַת שׁוֹפָר, וְאִין הַכֹּל בְּקִיִּיאִין בְּהַתְּקִיעַת שׁוֹפָר,
גְּזִירָה שְׂמָא יִטְלֵנוּ בְּיָדוֹ וְיַלְךְ אֶצְל הַבְּקִי לְלָמוּד,
וְיַעֲבִירֵנוּ אַרְבַּע אַמּוֹת בְּרִשׁוֹת הַרְּבִים.⁶
וְהֵינּוּ טַעְמָא דְלֹלָב, וְהֵינּוּ טַעְמָא דְמַגִּילָה.⁷

And in order to understand why in the Mikdash it remained permitted to blow the shofar on Shabbat, Rashi explains:

SOURCE
15

Rashi,⁸ Rosh HaShanah, Page 29b

גְּזִירָה שְׂמָא יִטְלֵנוּ וְכו' –
וּבְמִקְדָּשׁ לֹא גָזַר, דְּאִין אִיסוּר שְׁבוּת דְרַבְּנֵי בְּמִקְדָּשׁ.⁹

- 5 That is, from the Torah it is certainly permitted to blow the shofar on Shabbat, but the Sages decreed not to do so, for the reason explained by Rabba, as brought in the next few lines of the Talmud.
- 6 That is, all are obligated in the mitzvah of shofar, but not all know how to do it. Therefore, there is a concern that people will carry the shofar in the public domain in order to take it to learn, and by doing so they will transgress a Rabbinic prohibition regarding carrying. Because of this concern, the Rabbis said not to blow shofar on Shabbat.
- 7 That is, the same concern and reasoning can be found in the mitzvah of the four species on Sukkot and the reading of the M'gillah on Purim, that they are permitted on Shabbat in principle, but the Rabbis decreed against their performance on Shabbat lest people come to carry in the public domain on Shabbat.
- 8 Rabbi Shlomo Yitzchaki, one of the greatest of the Rishonim, lived in France and Germany, and died in 4865. He compiled commentaries on Tanach and Talmud that are considered to be the most fundamental and important commentaries of all.
- 9 That is, the Sages decreed prohibitions on Shabbat called "shvut," and one of them is carrying in a semi-public domain on Shabbat. However, in the Bet Mikdash, their decrees did not apply.

From what we have now learned, it seems that the Sages made a decree to limit the fulfillment of the mitzvah of shofar (and other mitzvot) described in the Torah Shebichtav.

33. What question arises from this case?

However, from the question comes the answer, and the question mark becomes an exclamation mark – we can learn from here an important principle: the Sages of the Torah Sheb'al Peh have the power even to uproot a mitzvah from the Torah! Of course, there is a great deal to learn about this – when and under which circumstances such an action of the Sages is permitted within the Torah system, but in principle we have learned that such an action may be permitted on their part.

34. Again examine question 31. Has your answer to this question changed? Explain.

See the following source:

SOURCE
16

Talmud Bavli, Massechet Shabbat, Page 23a

אמר רב חנא בר אשי אמר רב: המדליק גר שלחנכה צריך לברך...
מאי מברך? מברך:
"אשר קדשנו במצותיו וצננו להדליק גר שלחנכה".

35. What is the source of the mitzvah to light candles on Channukkah, from the Torah or from the Sages a long time after the giving of the Torah? Be specific.

36. Look again at the words of the *Talmud*, at the formulation of the blessing said before lighting the Channukkah candles. This formulation attributes the mitzvah to the command of HaShem. What question arises here?

In the continuation of the discussion there in the *Talmud*, the Sages deal with this question:¹⁰

וְהִיכֵן צִנְנוּ?
 רַב אֲוִיָּא אָמַר: (דְּבָרִים יז) מִן לֹא תִסּוּר.¹⁰
 רַב נְחֻמְיָה אָמַר: (דְּבָרִים לב) "שָׂאֵל אֲבִיךָ וַיְגַדְךָ וַיְקַנְיֶךָ וַיֹּאמְרוּ לְךָ".

37. How did our Sages deal with this question?

38. Now it should be asked: do you think the mitzvah of lighting Channukkah candles is a Torah mitzvah or a Rabbinic mitzvah? Explain.

The Gaonim and Rishonim also struggled with this question:

SOURCE
17

Ba'al Halachot G'dolot,¹¹ Introduction, Page 15-17

וְאֵלּוּ מִצְוֹת קוּם עֲשֵׂה: ... (קֵלֶט) גֵּר חֲנֻכָּה ... (ר) וּמִקְרָא מוּגִילָה.¹²

10 Look carefully at Source #4 above, where the verse is brought in full and in its wider context.
 11 A work of halachah from the Gaonic period, the author is which is doubtful. According to Rashi (*Talmud B'rachot* Page 42a, "Ede...") and Tosafot (*Talmud Bava Metzia* page 72b, "Divre...") the book was written by Rav Y'huda'i Gaon, one of the early Gaonim who died in the year 4517. However, in the opinion of the Ramban (in his work *Milchamot HaShem*, *M'gillah* 3a on the pages of the Rif), and of Ibn Ezra (in his long commentary to *Sh'mot*, Chapter 20, Verses 2-3) and of the Ra'avad (*Sefer HaKabbalah*) the book was written by Rabbi Shimon Kayara, a Sage who lived in the middle of the Gaonic period but did not serve as a Gaon, and died in 4600. The book is called "B'Hag" for short.
 12 His intention is to the reading of the *M'gillah* on Purim, which was established just before the building of the second Bet Mikdash. Nevertheless, the B'Hag says that it is a mitzvah from the Torah! This demonstrates that this is a consistent approach of the B'Hag in such cases.

Sefer HaMitzvot of the Rambam, Principle #1

הַשְׂרֵשׁ הַרְאִשׁוֹן:
 שְׂאִין רְאוּי לְמִנּוֹת בְּכָל־הַזֶּה הַמִּצְוֹת שֶׁהֵן מִדְּרַבָּנָן.
 דַּע, כִּי זֶה הָעִנְיָן לֹא הָיָה רְאוּי לְעוֹרֵר עָלָיו לְבִאֵרוֹ ...
 אֲבָל הָעִירוֹנוֹ עָלָיו מִפְּנֵי שְׂטָעוֹ בּוֹ רַבִּים,
 וּמִנּוֹ גַר הִנְפָּה וּמִקְרָא מְגִלָּה בְּכָל־ל מִצְוֹת עֲשֵׂה ...
 וּמָה שִׁירָאָה לִי שֶׁהֵבִיאָם אֵל זֶה,
 הַיּוֹתֵנוּ מִבְּרַכִּין עַל אֱלוֹ הַדְּבָרִים:
 "אֲשֶׁר קִדְּשָׁנוּ בְּמִצְוֹתָיו וְצִנְּנוּ עַל מִקְרָא מְגִלָּה",
 וְ"לְהַדְּלִיק גֵּר" ...
 וְשִׂאלַת הַתְּלִמוּד (שֶׁבֶת כֶּג א) "הֵיכֵן צִנְּנוּ?"
 וְאָמְרוּ: מִ"לֹא תִסּוֹר" ...

39. What is the argument between the B'HaG (= Ba'al Halachot G'dolot) and the Rambam?

40. According to the explanation of the Rambam, what caused the B'Hag to say that this mitzvah is from the Torah?

41. How does the Rambam explain the formulation of the blessing and the words of the Talmud on this point?

In light of the above, not only do the Sages have the power to uproot a mitzvah from the Torah for a number of reasons, they also have the power to establish additional mitzvot. This power goes so far as to obligate the nation to say a blessing over these new mitzvot, and to such an extent that some opinions hold that these new mitzvot have the status of mitzvot from the Torah!

Summary

According to the second approach, the *Torah Shebichtav* may have come before *Torah Sheb'al Peh*, but the *Torah Sheb'al Peh* has the power under certain conditions to uproot a *mitzvah* from the *Torah*, and to establish new *mitzvot* over which a blessing will be said as if they were from the *Torah* (according to the *Rambam*), or having the status of actually from the *Torah* (according to *B'Hag*).

According to Approach #3

It will be recalled that according to this approach, *Torah Sheb'al Peh* is the national culture of the People of Israel, who have been given the ability to live national life according to *Torah* and *HaShem's* word, and from this ability springs the authority of the Sages to teach and legislate in every generation.

42. According to this approach, which *Torah* came first?

Let us examine this approach carefully. Look at the following *Midrash*

SOURCE
19

Midrash Rabba,¹⁵ *Kohelet*, *Parashah 1*, Paragraph 9

אמר רבי שמעון בן יוחאי:
בתיב: (ישעיה סה) "כי כימי העץ ימי עמי",
ואין עץ אלא תורה,
שנאמר: (משלי ג) "עץ חיים היא למחזיקים בה",
וכי מי נברא בשביל מי –
התורה בשביל ישראל או ישראל בשביל תורה?
לא תורה בשביל ישראל!
אלא תורה שנבראת בשביל ישראל הרי היא קומת לעולמי עולמים,
ישראל שנבראו בזכותם (=בזכות עצמם) על אחת כמה וכמה!

¹³ *Midrash Aggadah* on the *Torah*. The *Midrash* deals with the spiritual sides of the *Torah*, including matters of morality, values, beliefs, opinions and person characteristics. There are volumes known as "*Midrash Rabba*" on the five books of *Torah* and on the five scrolls – Song of Songs, Ruth, Lamentations, Ecclesiastes and Esther.

43. What does the Midrash mean when it asks: "What was created for the sake of what?"

44. If we say that Israel was created for the Torah, what would that imply?

45. If we say that the Torah was created for Israel, what would that imply?

46. What does the Midrash decide?

47. How is this Midrash connected to the third approach above? Is it possible to draw a parallel between the concepts of "Torah Shebichtav" and "Torah Sheb'al Peh" on the one hand, and the concepts "Torah" and "Israel" in the Midrash, on the other hand? Explain!

48. According to this approach, what came first, Torah Shebichtav or Torah Sheb'al Peh?

At a deeper level, the claim that *Torah Sheb'al Peh* came first can be very reasonably understood: what sense is there to speak of ideals and spiritual principles if there is no ability to realize or live them? In other words, in order that *Torah Shebichtav* – which presents the principles and ideals of the divine tradition in its entirety – is to have a place in this world, it was necessary to first form a vessel to receive, keep and observe it. Therefore, the Nation of Israel – whose ongoing existence is the substance of the *Torah Sheb'al Peh* – must have come before *Torah Shebichtav*.

One may also add to this that according to the tradition of Israel, the syllabus of learning for children echoes this principle. In the *Mishnah*, in *Pirke Avot*, it is mandated that a child begins study of *Torah Shebichtav* at age 5 and *Torah Sheb'al Peh* at age 10. What is the child doing until age 5? The answer is clear: the child is learning the lifestyle of the Nation of Israel from parents and from all around him/her, in a natural and organic way. In this way, the child grows and experiences the *Torah Sheb'al Peh* in actual life, before the study of *Torah Shebichtav*.

Summary

According to the third approach, the *Torah Sheb'al Peh* came first, since it is first necessary to verify the ability to fulfill the divine contents of the *Torah* in actual life, and only afterwards is there place for these contents to be given.

Above, in questions 23-24, we clarified that the second approach is really a function of the third: since there is a nation capable of living *Torah* life in reality, it is that nation that grants the authority to the *Torah Sheb'al Peh*. Therefore, the Sages at the head of the nation are charged with the responsibility, and given the authority, to teach the meaning and application of all of *Torah*.

49. Now, we may ask again: according to the second approach, which *Torah* came first? Why?

50. What is the implication of the conclusion that *Torah Sheb'al Peh* preceded *Torah Shebichtav*?

E Summary

In this booklet, we learned about “Torah Shebichtav” and “Torah Sheb’al Peh.” We learned three approaches to the definition of these terms. Then, we asked which of the two Torah came first, and what are the implications of the question. We learned that at the heart of the matter, Torah Sheb’al Peh is and flows from the national spiritual life of the Nation of Israel. Study of the national spiritual life of Israel over the generations will reveal the contents of the Torah Sheb’al Peh. The literature of the Torah Sheb’al Peh which we will study in the coming units contains the ongoing conclusions of this national culture. In the coming units, we will learn how to learn this literature, but we must always have in mind the fundamental pillar of it all – the national life and culture of the Nation of Israel throughout time.

Source Translations

Source #1

Vayikra, Chapter 23, Verse 40

And you shall take for the first day, the fruit of the beautiful tree, boughs of palm, a branch of the braided tree and willows of the brook, and rejoice before HaShem your God for seven days.

Source #2

Yad HaChazakah of the *Rambam*, Laws of *Shofar*, *Sukkah* and *Lulav*, Chapter 7, Laws 1-4

The “boughs of palm” mentioned in the Torah are the frawns of palm as they sprout, before the leaves separate in all directions, so that it will be like a staff, and it is called “*lulav*.”
“Fruit of the beautiful tree” in the Torah is the *etrog*, and the “branch of the braided tree” in the Torah is the myrtle, the leaves of which cover the stalk...
“Willows of the brook” in the Torah isn’t just anything that grows by the brook, but a specific species which is called “willows of the brook,”
It’s leaf is like a saw, and it’s face flat, and it’s stalk is red, that is “*aravah*”...
And all of these things were explained from what Moshe heard.

Source #3

Introduction of the *Rambam* to the *Mishnah*, *Shilat Edition*, Page 39

Any matter which does not have a written instruction, and has no textual allusion, and cannot be learned by analogy from what is written - is called “halachah to Moshe from Sinai.”

Source #4

D’varim, Chapter 17, Verses 8-11

- (8) When a matter is difficult for you, whether in capital law, civil law, or ritual law, and there is dispute in your local courts, you shall arise and go up to the place with HaShem your God shall choose.
- (9) And you shall come to the Kohanim, the *L’vi’im*, or to the judge that will be in those days, and you shall ask, and they will tell you the law.
- (10) And you shall act in accordance with what they tell you from the place that HaShem will choose, and you shall be careul to act entirely in accordance with their teaching.
- (11) You shall act in accordance with the teaching they teach you, and in accordance with the judgement they say to you – do not turn aside from what they tell you to the right or to the left.

Source #5

Yad HaChazakah of the **Rambam, *Hilchot Mamrim***, Chapter 1, ***Halachot*** 1-2

The High Court in Jerusalem is the mainstay of the Torah Sheb'al Peh, and they are the pillars of teaching, and from them law and judgement goes out to all of Israel, and about them the Torah directed us, saying:
“According to the teaching they will teach you” – this refers to positive commands. And anyone who believes in Moshe our Teacher and in his Torah, is obligated to rely on them for matters of religion, and to trust their words. Anyone who does not act in accordance with their teacher, transgresses a negative precept, as it says: “you shall not go aside from what they tell you to the right or to the left.”

Source #6

Talmud Bavli, Massechet Avodah Zara, Page 36a

Rabba bar bar Chana said that Rabbi Yochanan said:
Any court may undo what a previous court has established, except for the eighteen matters, and even if Eliyahu and his court want to undo them, we don't listen to them!
Rav M'sharshaya said: Why?
Because they have spread and been accepted by the majority of Israel...

Source #7

Rabbi Y'hudah *HaLevi*, *The Kuzari*, Book 3, Paragraph 23

...and so we have completed our discussion of the two matters which are the pillars of the Torah: First, that the Torah is divine, and second, that it is accepted faithfully by the community...

Source #8

Rambam, Introduction to the *Yad HaChazakah*

Everything that's in the *Talmud Bavli*, all of Israel is obligated by it, and it is permitted to coerce every community in every country to observe all of the customs that the Sages of the Talmud observed, and to decree their decrees and walk in their proclamations, since all of what is brought in the Talmud has been agreed upon by all Israel.

Source #9

Responsa of *Rabenu Asher*, Principle 43, Paragraph 8

There was a Sage in our country and his name was Rabenu Gershom. He made good enactments about divorce, and he lived at the time of the Gaonim. And his enactments and decrees were fixed and established like they had been given from Sinai, since the people accepted them and passed them down from generation to generation.

Source #10

Sh'mot, Chapter 15, Verses 22-25

- (22) And Moshe led Israel from the Reed Sea and they went out to the Shur wilderness, and they went for three days in the wilderness and didn't find water.
- (23) And they came to Marah, and couldn't drink the water from Marah, as they were bitter – therefore the place was called Marah = “bitter.”
- (24) And the people complained about Moshe, saying: what shall we drink?
- (25) And he called out to HaShem, and HaShem showed him a tree, and he tossed it into the water and the waters were sweetened. There, He gave him law and judgement, and there He tested him.

Source #11

M'chilta of Rabbi Yishma'el, Massechta d'Vayisa, Parashah 1

- “There He gave him law and judgement,”
- “Law” – this is Shabbat,
- “Judgement” – this is honoring parents, these are the words of Rabbi Y'hoshu'a.
- Rabbi Elazar HaModa'I says:
- “Law” – these are laws of illicit sexuality, as it says: “...not to do the ways of the abominations...” (Vayikra 18:30)
- “Judgement: - these are laws of civil damage, fines and torts.

Source #12

Talmud Bavli, Massechet Sanhedrin, Page 56b

It is taught: ten mitzvot were commanded to Israel at Marah, Seven accepted by the B'ne Noach (all people), and on top of them were added: civil laws, Shabbat and honoring parents. Civil laws, as it is written there: “there He gave him law and judgement,” Shabbat and honoring parents, as it is written: (D'varim 5) “as HaShem your God has commanded you...,” and Rav Y'hudah said: “as He commanded you” – in Marah.

Source #13

Mishnah, Massechet Rosh HaShanah, Chapter 4, Mishnah 1

When the holy day of Rosh HaShanah comes out on Shabbat, they would blow the shofar in the Mikdash, but not in the rest of the country.

Source #14

Talmud Bavli, Massechet Rosh HaShanah, Page 29b

Where do we learn this from?...

Rava said: from the Torah it is permitted, but the Rabbis decreed against it, as Rabba said, for Rabba said: everyone is obligated in the blowing of shofar, but not everyone knows how to blow it, the decree is lest someone take it and go to the expert to learn, and carry it four cubits in the public domain.

And this is the reason for a similar law by lulav, and m'gillah.

Source #15

Rashi, Rosh HaShanah, Page 29b

“a decree lest someone take it, etc.” -
and in the Mikdash they did not decree this,
since there is no Rabbinic decree in the Mikdash.

Source #16

Talmud Bavli, Massechet Shabbat, Page 23a

Rav Chiyya bar Ashi said that Rav said:
One lighting Channukkah candles should make a blessing...
What does he bless? He should bless:
“..Who sanctified us with His commandments, and commanded us to light the Channukkah
candles.”
And where did he command us?
Rav Aviya said: (D'varim 17) “...don't turn aside.”
Rav N'chemyah said: (D'varim 32) “...ask your father and he will tell you, your elders and
they will say to you...”

Source #17

Ba'al Halachot G'dolot, Introduction, Page 15-17

And these are positive precepts:
...(139) Channukkah candles... (200) reading of the m'gillah.

Source #18

Sefer HaMitzvot of the Rambam, Principle #1

The first rule is:
We shall not include in the counting any mitzvot that are Rabbinic.
Know well, that this is so obvious it should not have needed to be said...
But I mention it because many have error here,
and counted Channukkah candles and the reading of M'gillah as positive precepts from the
Torah...
and what apparently brought them to this was the blessing on them:
“...Who has sanctified us with His commandments and commanded us...”
And the Talmud asked (Shabbat 23b): “Where did He command us?”
and they said: from “don't turn aside...”

Source #19

Midrash Rabba, Kohelet, Parashah 1, Paragraph 9

Rabbi Shimon ben Yochai said:
It is written: (Y'shayahu 65)
“As are the days of the Tree, so are the days of my People,”
and “Tree” means Torah, as it is said:
(Mishle 3) “it is a Tree of Life for those who hold fast to it,”
And which was created for which? -
The Torah for Israel or Israel for the Torah?
Isn't it Torah for the sake of Israel?!
Torah, which was created for Israel, lives forever,
Israel, which was created first, even more so!