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## Inyana D'yoma

### Sephardim, Ashkenazim, and the Hannukah Menorah: Halakhah and History

RABBI DR. JACOB J. SCHACTER

It has already long been demonstrated that in describing Ashkenazim and Sephardim in the Middle Ages one cannot speak of two totally distinct and unrelated ethnic and cultural identities. Although geographically separate and culturally different, Ashkenazi and Sephardi Jews did not flourish in isolation from one another. Individuals and ideas moved from one society to the other and some measure of interaction between them existed throughout the medieval period.

There is much evidence for this phenomenon. Rabbenu Tam writes in his *Sefer ha-Yashar* that scholars from Spain “served in the presence of Rabbenu Gershon Me’or ha-Golah (“*shimshu lefanav*”),<sup>1</sup> the Spanish chronicler, Abraham ibn Daud, records in his *Sefer ha-Qabbalah* that in the middle of the eleventh century “there came to the city of Cordova [Spain] a great scholar from France by the name of R. Paregoros”<sup>2</sup> and his book ends with a reference to Rabbenu Tam living in Ramerupt,<sup>3</sup> Rashbam writes on more than one occasion that he consulted “*sifrei Sepharad*” in preparing his commentary on the Torah,<sup>4</sup> the author of the *Shibbolei ha-Leket* presents a halakhic

exchange between “*anshei Sepharad*” and “*hakhmei Zarfaf ve-Erez Ashkenaz*,”<sup>5</sup> the Rashba refers to Ashkenazi students who studied in his yeshiva (in Barcelona),<sup>6</sup> R. Asher b. Yehiel spent roughly half his life in Germany and half in Spain,<sup>7</sup> and there are more examples, many more.<sup>8</sup>

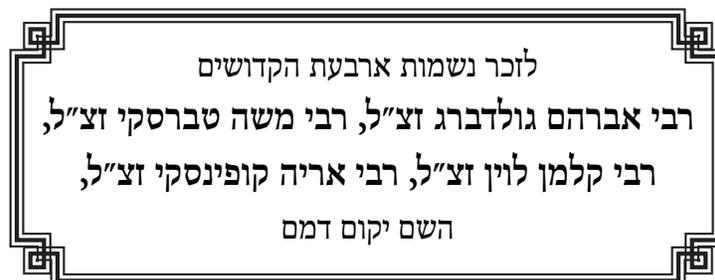
One particularly remarkable and unusual example of such influence in a halakhic context is provided by the *mizvah* of *ner Hannukah*. The Talmud (*Shabbat* 21b) states that the basic requirement is to light only one candle per night for the entire household. Those more scrupulous in their observance (*mehadrin*) should light a separate candle for each member of the household, regardless of which night of Hannukah it may be. Finally, those who are unusually scrupulous (*mehadrin min ha-mehadrin*) add one additional candle each successive night of Hannukah (according to the opinion of bet Hillel).

For some reason, the standard of *mehadrin min ha-mehadrin* has been determined to be the normative requirement, but its exact meaning is the subject of a dispute between the Ashkenazi authorities, the Ba’alei he-Tosafot, and Maimonides, the Sephardi. According to Tosafot (*s.v.*

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*ve-ha-mehadrin*), the most candles that can ever be lit in any household on Hannukah is eight, on the last night of Hannukah. In his view, the *mehadrin min ha-mehadrin* position circumvents the *mehadrin* view and considers only the number of nights of the holiday as an operative consideration. One candle is lit the first night, two the second night, and so on, regardless of the number of people present. For Maimonides (*Hil. Hannukah* 4:1-2), however, the *mehadrin min ha-mehadrin* view considers both the number of people present as well as the number of nights as equally relevant variables, with the result that if there are ten people present on the last night of Hannukah, eighty candles are lit – the number of people (ten) times the number of nights (eight).<sup>9</sup>

It is interesting to note that within a few centuries something very interesting occurred in the worlds of Ashkenaz and Sepharad. Not only was one culture influenced by the other but, remarkably, *each culture adopted the ruling of the other* as the normative halakhah. By the time we come to the sixteenth century, Tosafot's position was adopted by the Sephardi R. Joseph Karo and Maimonides' opinion was followed by the Ashkenazi R. Moshe Isserles.<sup>10</sup> In his commentary on the *Tur*, the seventeenth century R. Yoel Sirkis correctly notes that "our [Ashkenazic] custom is like the opinion of the Rambam and the Sephardic custom is like the opinion of Tosafot."<sup>11</sup> His son-in-law, R. David Halevi, actually went so far as to add "and this we

do not find in other places."<sup>12</sup> While it has been shown that this assertion is a bit of an exaggeration,<sup>13</sup> this remarkable phenomenon of this cross cultural, crisscrossed influence is certainly unusual and deserves attention.

1 *Sefer ha-Yashar* (New York, 1959), 74a.

2 Gerson D. Cohen, *The Book of Tradition by Abraham ibn Daud* (Philadelphia, 1967), Hebrew, p. 59; English, p. 79.

3 *Ibid.*, Hebrew, p. 66; English, p. 89.

4 *Devarim* 7:14, 18:11. See too *Shemot* 23:24.

5 R. Zidkiyahu b. Avraham ha-Rofe, *Shibbolei ha-Leket*, vol. 2 (Jerusalem, 1969), 147-48.

6 *Teshuvot ha-Rashba*, vol. 1, #395.

7 Avraham Hayyim Freiman, *Ha-Rosh, Rabbenu Asher b. Yehiel ve-Ze'eva 'av: Hayeiheim u-Fa'alam* (Jerusalem, 1986).

8 See Simhah Assaf, "Halifat She'elot u-Teshuvot bein Sepharad u-vein Zarfaz ve-Ashkenaz," *Tarbiz* 8 (1937):162-170; H. J. Zimmels, *Ashkenazim and Sephardim* (London, 1976); Avraham Grossman, "Relations between Spanish and Ashkenazi Jewry in the Middle Ages," in Haim Beinart, ed., *Moreshet Sepharad: The Sephardi Legacy*, vol. 1 (Jerusalem, 1992), 220-39.

9 I am not here dealing with the issue of who lights the eighty, one person lights all or each person lights eight.

10 See *Shulhan Arukh, Orach Hayyim* 671:2. Once again, the issue of who does the lighting is not now my concern.

11 *Bayit Hadash (Bah), Tur, Orach Hayyim* #671, s.v. *ve-kamah*. For an interesting historical explanation for this shift, see R. Yehzekel Kazenellenbogen, *She'elot u-Teshuvot Knesset Yehezkel* #17.

12 *Turei Zahav (Taz)*, ad. loc., #671:1, end.

13 See R. Shlomo Yosef Zevin, *Ha-Mo'adim ba-Halakhah* (Tel Aviv, 1955), 166, n. 15.

## THE PLEASURE OF RUCHNIYUS: JEWISH VS. GREEK THOUGHT

MICHAEL FREIDMAN

A common theme of Chanukah focuses on the differences between the Greek and Jewish worldviews. While the Greeks were concerned with the physical and aesthetic, the Jews take faith in the spiritual, *ruchniyus*.<sup>1</sup> We believe in a non-tangible G-d and a Torah that demands not only pragmatic action, but also spiritual perfection. We know of a world beyond that cannot be concretely described. The Greek worldview preferred a minimalist mindset, one that takes the meaning out of anything not an end unto itself. The Greeks placed *gezeiros* forbidding many aspects of Torah life, an uprising against the *mesorah* and *ruchniyus*.<sup>2</sup> What exactly is this "*ruchniyus*" that they were so against?

*Ruchniyus* is not an easily defined term. Hashem and one's *neshama* are fundamentally immaterial. Although we cannot understand them tangibly, we can experience moments of spiritual closeness with Hashem. A *mashal* is given to understand *ruchniyus* in the *sefer* "Bilvavi Mish-

kan Evne."<sup>3</sup> The *sefer* depicts a man who is speaking to a relative, a "*karov*," on the phone, and a friend asks where the relative on the other line is located. The man answers, "he is across the ocean, in a different country." The friend is astonished; in his mind the relative is far from *karov*! "Bilvavi Mishkan Evne" explains that there are spiritual relationships that are non-physical, yet no less real. We experience some of them, and we have *emuna* that there is more than meets the eye in the *olamos ha'elyonos*. We have a means of calculating *kedusha* and *tahara* and we can connect to Hashem, but one cannot touch the spiritual. *Ruchniyus* is unquantifiable with physical measures. As such, involvement with the spiritual is a task impossible and irrelevant to the Greeks.

The Greeks were known for their pursuit of pleasure, Hedonism. Jews also value pleasure, albeit not its physical and base forms; rather, we strive for spiritual pleasure. The Ramchal states that man was created in order to "take

pleasure in Hashem and benefit from the Radiance of His *Shechina*.”<sup>4</sup> Further, Rav Shalom Dov Ber Schneerson in *Kuntres* “U’Mayan m’Beis Hashem” discusses levels of pleasure in terms of their spiritual standing. These start with sweet physical foods, move toward a sweet voice, character refinement, and, finally, taking pleasure in intellectual endeavors, specifically G-dly ones.<sup>5</sup> The Rambam states that one of the highest levels of perfection is to desire and long for goodness.<sup>6</sup> We focus on pleasures that are beyond the five senses and their physical limitations, pleasures that are intrinsically positive and holy.

Interestingly, the Torah does not discredit physical beauty. Aesthetics play a role in some *halachos*. For example, an *Esrog*, beyond the *halachik hidurim*, must have subjective beauty.<sup>7</sup> A man should find his spouse attractive.<sup>8</sup> However, the value we place in beauty is different than the value the Greeks place in it. They see beauty as a tool for enjoyment; we see beauty as a vehicle for spiritual gain. The *Esrog* is to be beautiful in order to perform the *mitzvah* in a beautiful fashion. A beautiful wife is not intrinsically important, but a means toward *Shalom Bayis*. While the Greeks see the physical as the goal, we see it as the means of achieving *ruchniyus*.

Thus it becomes clear why the Greeks tried *l’hashkich* Torah, to cause the Torah to be forgotten. Shlomo Ha’melech states that the Torah is “*d’vash v’chalav tachas leshoneich*,” “Milk and honey under your tongue.”<sup>9</sup> The To-

rah is “*chayeinu v’orech yameinu*,” “our life and the length of our days.”<sup>10</sup> It is also quite pleasurable, and many that have spent time in a *beis medrash* “taste” the *geshmak* in learning. The Torah demands of us not just cold calculations, but that we serve Hashem “*b’simcha u’vi’tuv levav*.”<sup>11</sup> We are supposed to enjoy Torah and *mitzvos*, not due to any pragmatic benefit, but due to the spiritual “*peiros*” which they bring us in both this world and Olam Ha’ba.<sup>12</sup> The Greeks could not bear such abstract conceptions of pleasure or perfection and condemned the facets of Jewish life that are not strictly rational. With this slightly better understanding of *ruchniyus*, may we strengthen that which the Greeks tried to destroy: to take more enjoyment in serving Hashem, and see the ultimate manifestation of *ruchniyus* in this world very soon.

1 Pachad Yitzchak: Chanukah 4 discusses the difference between Greek and Jewish wisdom; see also Alei Shur 2:22.

2 Rambam Hilchos Megillah v’Chanukah 3:1; Al haNisim prayer; Shabbos 21a, 23a

3 Chelek 1, 1:58

4 Mesilas Yesharim, Perek 1

5 Kuntres U’Mayan M’Beis Hashem, 1:2-3

6 Shemoneh Perakim, 6

7 Shabbos 133b

8 Kiddushin 41a, Rambam Ishus 3:19, Issurei Biah 20:3

9 Shir haShirim 4:11, see also Rashi there

10 Maariv; similarly, Devarim 30:20

11 Devarim 28:47

12 Peah 1:1

## LIGHTING NEIROS CHANUKAH IN SHUL

KEVIN PERLITSH

The requirement to light *neiros Chanukah* in Shul (see S”A 571:7) is a strange one. No one fulfills their individual obligation through this lighting. What are we doing it for? How could we make a *beracha* on it?

There are multiple reasons brought down by the Rishonim as to why we light *neiros Chanukah* in Shul. The Beis Yosef quotes the Kol Bo (though it is not printed in our Kol Bo) that we light in shul for the *orchim* – guests who are visiting the community. The Shut Binyan Shlomo (Rav Shlomo HaKohein miVilna Siman 53) notes that this reason is unclear and difficult to comprehend. What kind of *orchim* are we referring to? The Kol Bo can’t be referring to people who are guests in other people’s houses, because we know the law is that they are supposed to join in lighting with the *ba’al habayis* (S”A 577:1). If the Kol Bo is referring to *orchim* who are actually sleeping in the shul, then they should be the ones lighting, not the Gab-

bai. Another issue with this reason is that it is very rare *bizman hazeh* to have *orchim* living in shul, so why should all shuls light nowadays? This issue parallels the *sugya* of making *kiddush* in Shul Friday night (Pesachim 101a). The Gemara says that we make *kiddush* for the sake of the guests who are spending their Shabbos living in the shul. Rishonim, including the Rambam (Shut Siman 221) and the Ran (there in Pesachim), explain that even though there are no *orchim* nowadays, we still maintain the original *takanah*. Presumably, that would also hold true by the practice to light *neiros Chanukah* in shul.

The Orchos Chayim (Hilchos Chanukah Siman 17) says that the lighting is for the sake of *mi she’aino baki* and *mi she’aino zariz*, people who aren’t knowledgeable in the *halachos*, or do not care enough to perform the *mitzvah*. He also adds that we light in shul as a *hiddur mitzvah*. This leads to other questions, including the permis-

ibility of making a *beracha* on a *hiddur mitzvah*, and doing *hiddur mitzvah shelo bisha'as ikar hamitzvah*.

Finally, the Orchos Chayim adds that it is a *zeicher l'mikdash*. We see that a few of the halachos of lighting in Shul indicate a relationship to the lighting in the *Beis Hamikdash*. These include where we should light the menorah (Mishnah Brurah 671:42), when exactly we should light at night (Sheivet Halevi OC 4:65), and the fact that there should even be a lighting in the morning (Shut Binyan Shlomo sham).

The Chacham Tzvi (Shut Siman 88) points out a contradiction in the Shulchan Aruch. The Beis Yosef quotes the Rivash (Shut Siman 111) who says that even though lighting *Neiros Chanukah* in Shul is only a *minhag*, we still make a *beracha*, just like we do by Hallel on Rosh Chodesh. The Chacham Tzvi asks, how could the Beis Yosef contend that we should make a *beracha* on the *minhag* of lighting *neiros Chanukah* in shul when the Beis Yosef himself rules that one does not, in fact, make a *beracha* on Hallel of Rosh Chodesh (S"A 422:2)!

Rav Shlomo Zalman Auerbach (Shut Minchas Shlomo Tinyana 58:3:2) explains that there is a difference between when the whole source of the *mitzvah* is *minhag*, and when the *din* is based on a preexisting *chiyuv* which was then expanded to another setting. Hallel on Rosh Chodesh, as well as *Krias Rus* or *Koheles*, is a *mitzvah* which is rooted in *minhag*, and therefore one should not make

a *beracha*. However, *neiros Chanukah* in Shul is a manifestation of the original *mitzvah* of lighting at home. The *minhag* of lighting in Shul broadened the original *mitzvah* of *pirsumei nisa* at home, and extended it to the shul as well. This distinction was originally stated in a slightly different context by the Tos Rid in Sukkah (44b).

Rav Ovadiah Yosef (Chazon Ovadiah Mitzvas Hadlakas Neiros Chanukah Ha'arah 19) gives a different answer to this contradiction in the Shulchan Aruch. He infers from the Rambam (Hilchos Mamrim 1:2) that the *pasuk* of "*al pi hatorah asher yorucha*" teaches us an additional *mitzvah* to keep the *gzeiros*, *takanos*, and *minhagos* of the *Chachamim*. Based on this, Rav Ovadiah explains that there is a difference between *minhagim* that were started by *Chachmei Yisrael*, and *minhagim* that *Klal Yisrael* started on their own. The Meiri (Brachos 14a) similarly states that the reason why there is no *beracha* on the Hallel of Rosh Chodesh is because the *Chachamim* did not institute its recitation, rather the Jewish people instituted the practice by themselves. On the other hand, it is apparent from a number of Rishonim, including the Rivash cited above, that *Chachmei Yisrael* instituted the lighting of *neiros Chanukah* in shul in order to enhance the *pirsumei nisa*, and therefore we should make a *beracha*.

May we all fulfill our *mitzvah* of *pirsumei nisa* to its fullest, through both the lighting in our homes and in our shuls.

## FORGETTING TORAH AND TODAY'S DERECH HALIMMUD

YISRAEL APFEL

While Chanukah primarily focuses on the struggle of the Jewish people to preserve the Torah from external forces, during Chanukah we must also remind ourselves of our obligation to preserve the Torah on an internal level. Specifically, we must analyze the Torah's attitude towards those who forget Torah they have studied and the level of vigilance one must put forward in order to prevent himself from forgetting the Torah he has learned.

The *pasuk* "*Rak hishamer lecha u'shmor nafshecha me'od pen tishkach es ha'davarim asher rau einecha*," "Only beware and guard yourself carefully, lest you forget the things your you have seen"<sup>1</sup> obligates us to remember the experience and the Torah that we were given at Har Sinai. R' Meir, expounding on the *pasuk*, teaches that one who forgets Torah he has learned is "*mischayev be'nafsho*," meaning he "bears guilt for his soul."<sup>2</sup> Following in the path of R' Meir, the Gemara Menachos 99b reiterates, "one who forgets something they learned violates this prohibi-

tion of 'Pen Tishkach.'

What is the nature of this prohibition? The Mishnah tells us that this prohibition only applies to a person who purposely removes Torah from his heart. Rabbeinu Yonah explains that one is considered to have "removed Torah from his heart" if he had the ability to review his learning and did not. However, one who forgets his learning due to old age or sickness does not violate "Pen Tishkach."

Interestingly, the Gemara tells us that the onset of memory loss can be caused by more than just old age or illness. The Gemara in Horiyos<sup>3</sup> lists a number of activities that cause forgetfulness inducing eating food leftover by mice or the heart of a cow. The Shulchan Aruch adds to this list any Torah scholar who neglects to wash his hands after either leaving the bathroom, cutting his nails, or itching his scalp.<sup>4</sup>

Accordingly, the Chazon Ish is quoted<sup>5</sup> as having ruled that a person who eats any of the various items listed in

the Gemara or forgets to wash when necessary violates the prohibition of “*Lo Tishkach*.” However, R’ Ovadia Yosef<sup>6</sup> argues that there are a number of indications that this would not violate “*Lo Tishkach*.” The Sefer Chassidim writes<sup>7</sup> that once an individual, concerned about the Gemara’s cautionary advice, asked a *chochom* if he could eat bread from which mice had eaten. The *chochom* replied that eating from such food would not be considered actively removing Torah from one’s heart. Why? R’ Malkiel Tzvi HaLevi of Lomza<sup>8</sup> explains that one only violates the prohibition if it is certain he will not remember Torah he has learned, however, partaking in these proscribed activities only increases the *possibility* of forgetting, therefore these activities are technically permitted. Nonetheless, even R’ Ovadia Yosef writes that one should avoid regularly engaging in these activities.<sup>9</sup>

Additionally, today, not reviewing one’s learning may not transgress “*Pen Tishkach*” based on R’ Chaim Volozhiner’s understanding of the prohibition. The Gemara in Gittin<sup>10</sup> derives from *pesukim* that the Oral Law is not allowed to be written down. Rashi explains this based on the Gemara that the only reason the Talmud was permitted to be written down was because it was in danger of being forgotten. The Gemara derives from the pasuk “*Eis lasos la’shem heifeiru Toresecha*” that the exigencies of a situation may permit Chazal to violate a prohibition in order to strengthen future observance of Torah. Based on this Gemara, R’ Chaim explains that the prohibition of forgetting one’s Torah only applies when it is forbidden to write down the oral law. However, after Chazal allowed for its redaction, the prohibition no longer served a purpose, for the written texts now ensured the oral tradition’s perpetuity.<sup>11</sup> However the Shulchan Aruch HaRav<sup>12</sup> disputes this understanding. He writes that the prohibition of forgetting one’s Torah is in full force today.

Perhaps another reason to allow for leniency regarding this prohibition is based on the glosses of Rabbeinu Yonah to the aforementioned statement of R’ Meir appearing in the Mishna in Avos. Rabbeinu Yonah explains that Chazal spoke severely about the prohibition of “*Pen Tishkach*” because they feared that one who does not review his learning will ultimately come to “permit the forbidden or forbid the permitted.” Rabbeinu Yonah clearly implies that the prohibition applies specifically to decisors of Halakhah.

It appears that Klal Yisrael has adopted a more liberal position regarding the prohibition of “*Pen Tishkach*.” While there is a clear halakhic basis for this flexible orientation, its ultimate cause is likely historical. R’ Yaakov Yis-

rael Kanievsky (the Steipler Gaon) explained<sup>13</sup> that during the times of *Chazal* when the oral law was not written down, scholars focused on reviewing *Mishnayos*, *Braisos*, and their respective explanations that were passed down from teacher to student. However, once the Talmud and other texts explicating the Talmud were committed to writing, the emphasis on review understandably waned. Thus, while obviously reviewing material one has learned is indispensable towards becoming a true scholar, today, the focal point of Torah study has shifted to immersing oneself in the Talmud’s boundless depth.

- 1 Devarim 4:9
- 2 Avos 3:10
- 3 13b
- 4 See Shulchan Aruch, Orach Chaim 4:18 for a list of all the times a person must wash their hands
- 5 Shu”t Shevet Kehasi 1:2
- 6 Anaf Eitz Avot 3:10
- 7 1008
- 8 Shu”t Divrei Malkiel Vol. 2, 53:2
- 9 Shu”t Yabi Omer YD, Vol. 2, 8:4
- 10 60a
- 11 See Shu”t Teshuvot VeHanhagot 1:556 for an interesting application of this explanation of R’ Chaim to the issue of teaching Torah to non-Jews.
- 12 Hil. Talmud Torah 3:10
- 13 Letter printed in Kraina D’Igrassa Vol. 1 Letter 2

# Halacha

## IKAR AND TAFEL, LATKES AND APPLESAUCE

YITZ RADNER

It is well known that when presented with two foods, one an *ikar* and the other a *tafel*, we recite a *beracha* on the *ikar*, nullifying the need for an additional *beracha* on the *tafel*. For example, when eating a peanut butter sandwich, no *beracha* on the peanut butter is necessary, as the *beracha* on the bread exempts any further *beracha* on the peanut butter. Considering this principle, what *beracha* should be made on the latke-applesauce duo that debut on Chanukah each year? At first glance, it seems obvious that the latke enjoys a status as *ikar* while the applesauce plays second fiddle. But if one douses his latke in applesauce, is the latke still an *ikar*? Similarly, if one enjoys the refreshing sweet applesauce as much as he enjoys the mouthwatering latke, does the latke still retain its mantle as *ikar*?

Let us take a moment to ponder what exactly it is that brands one food an *ikar* and the other a *tafel*? Literally, the word *ikar* means primary, and *tafel* means secondary, but in what respect is one food item “a primary food” and another “a secondary food”? The Mishnah in *Maseches Berachos* 44a states that one need not recite a *beracha* on bread when it accompanies a salty dish, since the salty dish is the *ikar* while the bread is the *tafel*. Tosfos (Berachos 44a s.v. *Mevaraich*) posit that this Mishnah is not the chief tannaitic source for the concept of *ikar v'tafel*. Rather, a previous Mishnah on Brachos 42a – a Mishnah primarily devoted to delineating foods exempted from their normal *brachos* when eaten in the context of a meal (such as appetizers and wine) – seems to have already introduced the idea that the *Beracha* on an *ikar* excuses the need for a *beracha* on the *tafel*. Consequently, Tosfos and others are confounded by the reiteration of this concept, as we expect a lack of redundancy in the Mishna. Therefore, Tosfos conclude that our Mishnah on 44a is not introducing the concept of *ikar v'tafel*; rather, the Mishnah's objective is to convey the somewhat revolutionary idea that bread can be secondary. Indeed, Tosfos' understanding seems to be consistent with the Gemara's (44a) initial skeptical remark, “Can bread truly be secondary to a salty dish?”

Ultimately, the Gemara concludes that bread can be a *tafel* when eaten with *Genusar* fruit. Tosfos and others explain that bread is *tafel* in such an instance because

the purpose of its consumption is to temper the effects of previously eaten foods. Ergo, the innovation of the Mishnah is that bread can be *tafel* when eaten to accommodate another food.

Concequentially, two notions of *ikar ve'tafel* seem to emerge: 1) *ikar ve'tafel* based on objective significance, and 2) *ikar ve'tafel* based on subjective significance. The Gemara's original skepticism seems to have been governed by the notion that a food as halachically eminent as bread (with its unique composition of the five grains and dominance in a *Seudah*) could not possibly be *tafel*, as bread is too objectively significant. Ultimately, the Gemara concludes that the purpose for consuming a food also dictates the roles of *ikar ve'tafel*. Namely, bread ingested to accommodate the consumption of a previously eaten salty dish can also assume the role of *tafel* despite its inherent high-ranking qualities. And consequently, we have a basic rubric for the rules of *ikar ve'tafel* based on different aspects of significance. In the case of the Mishnah, bread's objective significance and engendered role as an *ikar* is compromised because subjectively its purpose is secondary to another food.

This tension between identifying an *ikar* based on the objective and subjective significance of a food is an idea expanded on by the Acharonim. Specifically, in his preface to *Hilchos Birkas Ha'Peiros* (Note 11), R. Yosef b. Meir Te'omim (18<sup>th</sup> century, Poland/Germany, and author of *Pri Megadim*) develops a hierarchy constituting of four aspects of objective significance to be considered in order to properly classify foods as *ikar ve'tafel*. Of particular note is R. Te'omim's idea that a food which quantitatively consists of the majority of the dish assumes the role of *ikar* only when its minority companion isn't objectively significant in some other way. For example, he writes that despite the quantitative majority of water in vegetable soup, the dish deserves the *beracha* “*ha'adama*” because the vegetables – with their delicious flavor – overwhelm the tasteless water. Similarly, the minority amount of flour in chocolate cake is enough to warrant a *beracha* of *mezonos* because of the unique status “the five grains” holds in Halacha.

But after we consider the Pri Megadim's hierarchy for objective significance, the Mishnah Berurah (O”C

212:4) reminds us not to forget about subjective significance. Indeed, as noted earlier, objective significance can be eclipsed by subjective significance. Consequently, the Mishnah Berurah rules that bread eaten strictly to temper the smoky effects of whiskey does not require an additional *beracha* despite bread's inherent qualities.

An additional important caveat expressed by the Mishnah Berurah is that while preference toward one food over another may help us to identify the *ikar* and *tafel*, we cannot disregard appetite for the *tafel*. In other words, even a minor appetite for the *tafel* (relative to the *ikar*) revives the need for a *beracha* on the *tafel*. For example, the Mishnah Berurah asserts that although *kichel* consumed as a sort of whiskey chaser would be deemed the *tafel*, an appetite for the *kichel* upgrades it and necessitates a *beracha* on the *kichel* as well.

While it is tempting to apply the Mishnah

Berurah's appetite concept to all cases of *ikar v'tafel* where one is hungry for the *tafel*, it is unclear if the Mishnah Berurah limits this idea to *tafel* foods comprised of "the five grains".

Thus, from the Pri Megadim's hierarchy of objective significance, we may conclude that drowning the latke in applesauce would not necessarily bestow the applesauce with the role of *ikar* if the latke were more objectively significant. Further, from a first glance at the Mishnah Berurah (and Gemara Brachos 44a along with Tosfos), the rules of subjective significance would dictate that the latke would be an *ikar* if the applesauce were eaten as an accommodator – to temper the sharpness of or enhance the latke-eating experience. However, one may still question if an appetite for the applesauce could warrant separate *berachos* for each item.

## From the Massechta

### KIM LEI B'D'RABA MINEI BY CHAYVEI MISOS ONSIM

MOTTI STURM

The majority of *Perek Eilu Na'aros*, this year's *limud* in the Yeshiva, deals with the concept of *kim lei b'd'raba minei* -- the concept that when a person is obligated for two different punishments, such as the death penalty and a monetary obligation, the person only receives the stricter, harsher punishment, and is exempt from the more lenient one. This law has many details and specifications. One such important detail is the teaching of *Dvei Chizkiya* on 35a, which quotes the *pasuk* in Vayikra 24:21, "Makei Beheima Yeshalmena U'makei Adam Yumas." The Torah juxtaposes the monetary obligation that one pays when he damages an animal to the death penalty that one receives when he takes another human's life. This *hekesh* teaches us that just as one is always obligated to pay when he damages another person's animal (or any property) - even if he committed the damage *b'shogeig* (inadvertently) - so too a person who kills another exempted from the lighter punishment through the impetus of *kim lei b'd'raba minei*, even if he only killed inadvertently. (The same is true for any *chiyuv misah*.) This means that even though the killer is not actually getting any punishment meted out to him, as an inadvertent killer does not killed, he is still exempt from receiving the lighter punishment.

The *drasha* of *Dvei Chizkiya* only mentions that there is no difference between *meizid* and *shogeig*, will-

ful and inadvertent killing. R' Akiva Eiger in *Drush V'Chidush* wonders whether the same *drasha* can also extend to *chayvei misos onsim* - when one performs an act by accident that would have the death penalty if it were done willfully. Inadvertent killing is different than accidental killing: one who kills *b'shogeig* either intends to kill but doesn't realize that he is killing a human, or he knows that he is striking a person but does not realize that the strike would kill the victim. An act of murder done *b'ones* is a complete accident where the killer had no intent to do harm in any way. For example, if someone was shooting a gun and accidentally killed another, G-d forbid, if the killer had no idea that a person was standing in the line of fire and had no intention of killing anything with the gunshot, the murder is considered to have been *b'ones*. R' Akiva Eiger suggests that it could be that *ones* is different than *shogeig* because a *shogeig* still committed an act of *issur*, he just doesn't get punished for. However, it could be that a murder done *b'ones* is not considered a *ma'aseh issur* at all, and does not exempt monetary damages that occur concurrently.

It seems that R' Akiva Eiger's question is dependent on how to understand the reason that one is exempt from *onsim* (accidents) in general. Rashi on 3a (s.v. *d'midoraisa*) quotes the verse of "u'lnaara lo sa'aseh da-

*var:*” a woman is who is raped does not get punished for the act as she is an *anusa* and it was not her fault. The Gemara applies this Pasuk as a general exemption from punishment for one who commits a sin *b'ones* (see Bava Kama 28b). This exemption can be explained in two ways. It could be that really the prohibited action was committed and is reckoned as a normal *ma'aseh issur*, it's just that the Torah exempts the perpetrator if he performed the action *b'ones* (see Kovetz Shiurim Kesuvos 5). If this is the understanding, then *ones* would not be so different than *shogeig*, where a *ma'aseh issur* was committed but there is no punishment. However, some understand the exemption of *ones* to go so far as to say that it is as if the perpetrator did not commit the act of *issur* at all (see Chemdas Shlomo Siman 38). We completely disassociate the action from the actor and treat it as if the action happened by itself. With this understanding, we can understand very well why *ones* would be different than *shogeig*.

R' Akiva Eiger was not the first one to have this question about the *din* of *chayvei misos onsin*. The Shitah Mikubetzes on 30b discusses this exact question and concludes that an *ones* would not have the exemption of *kim lei b'd'raba minei*. The Shitah quotes the Shitah Yishana (s.v. k'gon) who explains that this is because the whole *drasha* of *Dvei Chizkiya* was based on the laws of mon-

etary damage. Generally, one is obligated to pay damages no matter the situation. The Shitah assumes like the opinion of Tosfos in a number of places (see Bava Kama 27b s.v. *u'Shmuel* and Bava Metzia 82b s.v. *v'savar*) that complete accidents are the exception to this rule. They both understand that the *derasha* in Bava Kama (26b) of “*petza tachas putza*” which teaches the obligation of monetary reparations for all damages does not include total and complete accidents. Therefore, the *hekesh* of *Dvei Chizkiya* can only go so far as to teach the exemption of *kim lei b'd'raba minei* in cases of *shogeig*, where one is obligated to pay for damages. The *hekesh* can't extend to apply the exemption of *kim lei b'd'raba minei* to cases of *onsim*. Consequentially, an act of murder committed *b'ones* can't exempt a lesser punishment.

Rav Elchonon Wasserman (Koveitz Shiurim Kesuvos 96) that points out this answer of the Shitah Mikubetzes only works according to this opinion of Tosfos. However, the Ramban in the end of the 6th Perek of Bava Metzia argues on Tosfos and explains that a person is always obligated when he damages, even for complete accidents. According to the Ramban, the *drasha* of *Dvei Chizkiya* can be applied to cases of *onsin* as well. We would therefore be left with R' Akiva Eiger's *safek* if *chayvei misos onsim* are like *chayvei misos shoggin* or not.