

## The Conceptual Approach to Learning Gemara

What is it?  
Where has it been?  
Where is it going?

Chaim Saiman  
Drisha Institute  
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### I. What is the Conceptual Approach?

#### Kiddushin 48a.

עשה לי שירים נזמים וטבעות  
ואקדש אני לך  
כיון שעשאן מקודשת  
דברי רבי מאיר  
וחכ"א  
אינה מקודשת עד שיגיע ממון לידה  
....

#### Option 1: Kiddushin via debt forgiveness

מאי לאו בהא קמיפילגי  
דמר סבר המקדש במלוה מקודשת  
ומר סבר המקדש במלוה אינה מקודשת

#### Option 2: The Nature of an Employment Contract

לא דכולי עלמא מקדש במלוה אינה מקודשת  
והכא בישנה לשכירות מתחלה ועד סוף קמיפילגי

מר סבר אינה לשכירות אלא בסוף  
ומר סבר ישנה לשכירות מתחלה ועד סוף

#### Option 3: Does Labor acquire an Ownership Right in Capital

ואיבעית אימא  
דכ"ע ישנה לשכירות מתחלה ועד סוף  
ומקדש במלוה אינה מקודשת

והכא באומן קונה בשבח כלי קמיפילגי  
מר סבר אומן קונה בשבח  
כלי ומר סבר אין אומן קונה בשבח כלי

## II. Where has it been?: The “Brisker Derekh”

### 1. Warm up round: The Mitzva of burning chametz

- Pre-brisker concerns
- Brisker concerns

### 2. Shaatnez in the Kohan’s Vestments: Legal and factual states of nature

#### רמב"ם הלכות כלאים פרק י'

כהנים שלבשו בגדי כהונה שלא בשעת עבודה אפילו במקדש לוקין מפני האבנט שהוא כלאים ולא הותרו בו אלא בשעת עבודה שהיא מצות עשה כציצית.

#### השגת הראב"ד

כהנים שלבשו בגדי כהונה וכו'. א"א טעה בזה שהרי אמרו ביומא בפרק בא לו כהן גדול במקדש אפילו שלא בשעת עבודה מותר ומאי דקאמר (נמי) מפני האבנט שהוא כלאים אינו דאטו חושן ואפוד מי לית בהו כלאים.

#### Grach “stensi” § 60.

אכן נראה, דלכולי עלמא אין העבודה המתרת אלא הלבשה, ורק דפלוגתתם היא אם יש על הלבשה בגדי כהונה שלא בשעת עבודה דין לבישת בגדים:

, דהרמב"ם סבירא ליה דדוקא אם הלבשה היא לעבודה אז הוא דיש על הלבשה דין לבישת בגדי כהונה, והיא המתרת לאיסור כלאים, אבל שלא צורך עבודה אין עלה שם לבישת בגדי כהונה כלל,

והראב"ד חולק וסובר דגם שלא בשעת עבודה יש על הלבשה דין לבישת בגדי כהונה, ויש כאן מה שיתיר איסור כלאים

According to both opinions, service in the Temple does not act as the “permitting factor,” but rather, the wearing of the Kohen’s vestments themselves is what permits *sha’atnez*. But the argument between [Rambam and Raa’vad] concerns whether there is *din* [status; legal effect] of “wearing the vestments” when one is not performing Temple service. Wherein Rambam holds that the *din* [status] of “wearing the vestments” only applies when they are worn for the purpose of performing Temple service, and this the “permitting factor” for the *sha’atnez*. But when a kohen wears the vestments and is not performing service, then it has no legal status of “wearing the vestments” at all. The Raa’vad, by contrast, holds that even when one is not performing temple service, he has the status of “wearing the vestment” such that the *sha’atnez* is permitted.

### 3. From Facts to Law: Brisker halakhic Abstractions

#### **R. Baruch B. Leibovitz, *Birkhat Shmuel Yevamot s. 61***

To explain the matter we shall investigate the disqualification of drawn water. Is it so disqualified that **the status of water does not attach** [to the drawn water] (דלא חל שם מים) and it is as if there were no water at all . . . Or, is it not like there is no water at all, and that the status of water attaches to it [the drawn water] but rather, that **there is a principle of disqualification that attaches to the drawn water**, (דין פסול דחל עליהו), a principle of disqualification with respect to the *mikva*.

#### ***Birkhat Shmuel*, (Introduction).**

Spirituality [*Ruchniyut*] and anything understood through the logic of the Torah took on a physical existence. This was emphasized in all his mannerisms and especially in his explanations of *halakhic* concepts. He would thus explain that that an ox that is ownerless and is not included within the legal category of an “ox that damages” [since there is no one to pay for the damage] is therefore **not an ox!** . . . Similarly with regard to the *heftza*, which according to his understanding and expression every spiritual [halakhic] matter was considered a *heftza* [object; reality]. For example, regarding the concept of will/intent in a transaction, he would explain that the will creates an onset of the object [reality?] of the transaction,(שהדעת הוא העושה חלות חפצה של קינין), and many similar examples.

#### 4. Brisker Jokes: כלי שני אינו מבשל

#### 5. A more Philosophical Account, Rabbi Joseph B. Solovietchik

#### ***Ma Dodekh MiDod (Eulogy for R. Velvel (Gri”z))***

Torah scholars used to denigrate those who studied the laws of kashrut: only those who were about to enter the rabbinate would study this area of the law. Who could guess the day would come [with the development of the *Brisker* approach] and these laws would be freed from the bonds of facticity, external and common sense explanations, and become transformed into abstract concepts, logically connected idea that would link together to form a unified system. . . . Suddenly, the pots and pans, the eggs and onions disappeared from the laws of meat and milk; the salt, blood and the spit disappeared from the laws of salting. The laws of kashrut were taken out of the kitchen and removed to an ideal halakhic world. . . constructed out of complexes of abstract concepts.

#### **6. Classic Brisker dichotomies/ *hakirot***

Internal	External
Essential	Circumstantial

Intrinsic	Extrinsic
Universal	Local
Legal	Factual
<i>heftza</i>	<i>Gavra</i>

## 7. Characteristics of Brisker Analysis

- Core *hakira*; the creation of 2 sub-categories of a mitzva
- Investigation into the “essential nature” of a mitzvah, which is usually different than its physical expression.
- Explanation of both sides of a debate on the basis of these categories
- Not much interest in the practical elements of the halakha.
- Thingification /abstraction (*matir*; water vs. “*din water*” ox vs. “*din ox*”)
- Essentialism. Halakhic concepts have an ontologic reality. They are a “*heftza*” that exists.
- Shift from focus on the *Shulkhan Arukh* and “on the daf” commentaries, to abstract discussion of *sugyot*.

## 8 . Advantage & Attraction of Brisker method

- Make sense of numerous *machlokos* in rabbinic canon. Each position given a respectable accounting from both text and reason.
- Lends meaning to halakhic minutia. No longer little debates about the finer points of law that have not applied for 1500 years, but queries into the essential foundations of halakhic (and thus God’s) thought.
- Lends meaning to words, and laws that are no longer part of halakhic practice. (oxen, temple, kohen’s clothing, *tumah* and *tahara*.). Highlights the eternal elements of Hashem’s law.
- Consistent with Talmudic analysis. Many Talmudic passages cry out for a brisker-styled analysis.
- Offers a sophisticated understanding of Talmud that does not require data about Rabbinic times or current conditions.

### III. **Where is it Going?**

#### A. Common Dissatisfaction of the Brisker Approach

##### 1. Nature of the “concepts” under review:

*Classical Conceptual analysis Hakirov* do **not** usually probe

- Philosophy
- Theology/ spirituality
- Morality
- Practicality
- History & development of halakhah

## 2. Law and Society

R. Joseph B. Soloveitchik, *Ma Dodekh MiDod*

Reb Hayyim purified *halakha* from all exogenous influences. Based on his approach, one rejects the psychologization or historicization of halakha. . . . *Halakhic* thinking follows a path of its own. Its rules and principles are not psychological-factual but ideal-normative, as is logical-mathematical thinking. The historical and factual context does not impinge on truth or correctness of halakhic judgments. . . . Just as the validity of mathematical thought is not assessed through psychological analysis.

A more extreme form of this sentiment was attributed to Reb Hayyim himself: (Cited in the name of R. Hayyim in HAGGADAT BRISK)

There are commandments, such as assisting one's fellow to load and unload his donkey, which are the foundation of civilized society. . . . One may think that the reason the Torah instituted these commands is in order for society to function. But in truth, the fact is the opposite. *Because* there is a commandment not to murder, *therefore* murder leads to destruction. Similarly, regarding charity, because the Torah commanded to give charity, such an act sustains the world. . . . Thus the universe is created in accordance with the Torah, and the Torah is the blueprint of the creation. For in truth, a universe could be created in which murder would sustain society and charitable deeds would destroy it—is the hand of God limited? Rather, *because* the Torah commanded us to perform charitable deeds and refrain from murder the universe was created in a fashion in which charity sustains the world while murder destroys it. Everything is in accord with what is written in the Torah; and not that the Torah was given on the basis of the world. The Torah predated the creation, as it is stated “God looked into the Torah and created the universe.”

## 3. Law & Spirituality.

- R. Velvel's transition from drinking wine דין חירות vs. דרך חירות.

## 4. “Neo- *hakirot*” or open textured conceptualism

### משנה סנהדרין מה

היה רחוק מבית הסקילה ארבע אמות -  
מפשיטין אותו את בגדיו.  
האיש מכסין אותו מלפניו,

והאשה מלפניה ומאחריה,  
דברי רבי יהודה,

וחכמים אומרים:  
האיש נסקל ערום,  
ואין האשה נסקלת ערומה.

#### גמרא שם

...

הכא בהא קמיפלגי:  
מר סבר  
בזיוני דאיניש עדיפא ליה טפי מניחא דגופיה,  
ומר סבר:  
ניחא דגופיה עדיף מבזיוני.

#### . משנה סוטה פ' ט:ד

נמצא ראשו במקום אחד  
וגופו במקום אחר  
מוליכין הראש אצל הגוף,  
דברי רבי אליעזר;  
רבי עקיבא אומר:  
הגוף אצל הראש.

מאין היו מודדין?  
רבי אליעזר אומר: מטיבורו,  
רבי עקיבא אומר: מחוטמו

#### ירושלמי שם

ומאיין היו מודדין  
רבי אליעזר אומר מטיבורו  
ממקום שהולד נוצר  
רבי עקיבא אומר מחוטמו  
ממקום הכרת פנים.

#### בבלי שם

במאי קמיפלגי?  
מר סבר: עיקר חיותא באפיה,  
ומר סבר: עיקר חיותא בטיבוריה