

# TORAS HA-ROGOCHOVER - Part 1

לרפואת אמי מורתי מרת הענא מרים בת חנה ונענא גיטל בת רחל אסתר זרעא חיא וקיימא  
זרעא די לא יפסוק ודי לא יבטול מפתגמי אורייתא

The purpose of these short essays is to give the English reader a taste of the depth of the Torah of HaGaon Rav Yosef Rozen ztz"l, known as The "Rogochover Gaon" and hopefully to whet the appetite for further study. My hope and prayer is to produce, with G-d's help, a full length book containing the Torah of The Rogochover, for which I will need a sponsor. Anyone who comes forward will be blessed and the Rogochover will certainly be a meilitz yosher for this person for all eternity!!

## Parallel Realities

The spiritual world is reflected in the physical world. An example of this is the halacha that if one is writing tefillin or mezuzos, he is not allowed to interrupt when he gets to the name of Hashem - even if a king comes by [Yerushalmi Brachos 5/1]. The reason, explains the Rogochover, is that דהוה מציאות אחת ואי אפשר לחלק - Hashem's name is one reality and cannot be split up into two parts. Just as Hashem is One, so must be the writing of His name. That also explains why one who writes Hashem's name on Shabbos is not chayav until he writes the whole thing [Yerushalmi Shabbos 13/1]. Even though one is normally obligated for writing two letters, Hashem's name is different. You need the whole thing. The gemara [38 with Rashi] in Yoma relates that Ben Kamtzer would write the name of Hashem by putting four pens in between his fingers and he would write the name of Hashem at once. Why the acrobatics? The Imrei Emes explains based on our principle. Ideally, Hashem's One-ness should be expressed in the writing of His name.

## The Nature Of Kinyan Kiddushin

How does one understand the act of kiddushei isha. This question was the topic of much discussion among our rabbis. The Rogochover presented the question as follows: Does the קנין of the אשה create an איסור or does the איסור create the קנין. Where does it start - with the קנין or with the איסור?

Tosfos in Nedarim [6b] asks why the gemara entertains the possibility that there is לקידושין יד [i.e. a partial lashon is effective]. What is the basis for such a premise?

Tosfos answers that קידושין is like הקדש and just as we say יד להקדש so too we can say the same about kiddushin. This would indicate that kiddushin starts with איסור [as hekdesh] and the קנין stems from the איסור.

Another proof is the gemara [Kiddushin 7a] that suggests that if one marries "half" a woman, the kiddushin should spread to the rest of her just as it does when one is part of a קרבן. So we see that fundamentally we are dealing with איסור.

Another proof - the language of the gemara in explaining what the lashon of kiddushin means - דאסר לה אכולי עלמא כהקדש - Sounds more like איסור than קנין - no?

Kinyan and Issur don't always go together. A yevama who is waiting for her late husband's brother to perform yibbum has an איסור on her but no קנין [if you say אין קנין]. When a פרושה marries a פרושה, according to the Yerushalmi [Yevamos 7/4], there is no kinyan but only an איסור דרבנן.

Moreinu HaRav Shimon Shkop ztz"l [Nedarim simman aleph in a footnote] writes that fundamentally, kiddushin is a יחוד or קנין and the איסור is an outgrowth.

Rav Elchonon [kovetz shiurim kiddushin 53] writes that it depends: If one uses a lashon of kiddushin then we are dealing with איסור that develops into a קנין. But if the man uses a different lashon [מאורסת etc.] then it starts with the קנין that evolves into an איסור as well.

Or maybe the two elements take effect simultaneously? See Rav Amiel [Middos 8/40] and Zecher Yitzchok [from Rav Itzele Ponivitcher ztz"l 1/23 and 2/48.]

## The Power Of Inheritance

*If one says "My property should go to you and after you it shall go to so and so, the law is as follows: If the first recipient is fit to inherit the benefactor and he thus received the award as an inheritance, the second one has no rights to it and after the first recipient dies the inheritance is passed to his heirs and not to the second. The reason is that this award was not made in the language of a gift but of an inheritance and an inheritance can't be interrupted.*

*Asked Rava "How can we say that an inheritance is not interrupted? The benefactor interrupted it?"*

*Answered Rav Nachman: The benefactor thought that an inheritance can be interrupted but he was wrong because the Torah says that it cannot. [Bava Basra 133a]*

Explained the Rogochover Gaon: There are two reasons why a person inherits. One is because he is a relative [see Bava Basra 110a]. The other is because the inheritor is כמו עצם המוריש - he is like the essence of the one bequeathing. Thus, an inheritance is not considered as if it in a different domain, rather it is as if it remained in the original domain. That is why our gemara says ירדשה אין לה - that inheritance doesn't stop.

[עפ"י ההקדמה לס' צפנת פענח על שמות עמ' ט"ו]

## The Nature Of Time

If a person rapes a 12-12 and a half year old girl, the pasuk says that he must pay a fine of 50 shekels to the father. The gemara [Ksubos 38b-39a] discusses what happens if she dies before the rapist is brought to judgement.

Abaye said: If a person rapes a girl and she died before the father can bring him to court, he is absolved from paying the fine as the pasuk says etc. Rava, however wasn't so sure.... For Rava wondered what the halacha is if a boy raped a girl who was a naara [from 12 until 12 and a half] and she died, is there such a concept as בגר בקבר i.e. her reaching adulthood [12 and a half which is halachically considered full adulthood for a girl] in the grave. The gemara explains the safek: On one hand we can say that יש בגר בקבר and her child will receive the fine. Or perhaps אין בגר בקבר and her father receives the fine as is the case for every living naara. [Rava disagrees with Abaye and holds that regardless the fine is paid and the only question is who receives it].

The gemara then questions the premise that such a young girl could have a child and rephrases Rava's query: Do we say יש בגר בקבר and she therefore has been released from the domain of her father [a בוגרת is considered a complete adult and the father no longer has rights] and the rapist will not pay the fine because his בעל דין [the girl] is no longer alive. Or perhaps אין בגר בקבר and she is still considered a naara and the father retains his rights and the fine would be paid.

Mar bar Rav Ashi put Rava's query this way: Does death create a din of bagrus [thereby disallowing the father from collecting the fine] or does it not [and the father would collect]. According to the first side of the question, the moment she dies, she instantly becomes a bogeres because מיתה עושה בוגרות. [According to Rava she only would become a bogeres after 12 and a half years have passed since her birth but not immediately].

Explains the Gaon Hageonim Moreinu Harogochover Rav Yosef Rozen ztz"l: This gemara is engaging us in a deep philosophical discussion about the nature of "time". There are three ways of viewing time.

A] Time relates to various objects and subjects. Even after they cease to exist, time continues traveling forward as if they were still in existence.

B] The moment the person or object ceases to exist - time stops along with it [in relationship to it of course but not completely].

C] We see a person as traveling through time and there are many dots on this journey. Every second is a dot. Imagine a long highway with millions of dots, one after the next. That is time and every dot is a second. What is stopping a person or object from getting many dots ahead of himself is the fact that he finds himself bound by a framework constricted by time. He must wait until the next second until he advances to the next dot. The moment he dies and is released from this framework, he is free to traverse this extremely broad territory we call "time" and jump completely across until he is "on the other side" [so to speak].

The latter understanding explains the opinion of Mar bar Rav Ashi, namely that a girl becomes a בוגרת instantaneously upon her death - מיתה עושה בגרות. She has been freed from the constrictions of time and doesn't have to wait a second in order to advance to the next dot. She jumps ahead and touches all of the dots on this long highway at once. [I MUST note that Rav Menachem Kasher (Mefaneyach Tzfunos P. 106) disputes this understanding of the words of the Rogochover. He claims that the Rogochover never suggested such a novel and almost radical idea that a person can jump ahead in time after death. He seems to understand (please look there and tell me if I am reading him right) that her status as a naara is a positive force in her life as long as she exists. This positive force prevents her from advancing forward immediately beyond naarus to bagrus. The moment she dies, this force is removed and automatically she ceases to be a naara. Not a JUMP but a removal of a barrier granting her full adult status. In other words, it is not that she is a bogeres now but that she is no longer a naara. What grants the father the right to collect the fine is her status as a naara. He loses that right when she dies because מיתה עושה בגרות meaning she has the halachic status of a bogeres because she is no longer a naara. Rav Kasher quotes a passage from the writings of Rav Yosef Engel ztz"l to the same effect).

If we say that time continues to relate to the person, even after her demise, the halacha would be יש בגר בקבר. She might be dead, but since the requisite six months passed since her 12th birthday, her father would not be able to collect because she is out of her father's domain [possibility "A" above].

The opinion that אין בגר בקבר will argue that after death, time ceases to play a role in this person's life [or better "death"] and he remains the same age forever.

The Torah was given by Moshe Rabbeinu who died at 120 when he still retained his youthful exuberance [לא כהתה עינו ולא נס ליחון]. The Torah is eternally fresh and new and so אין בגר בקבר [if we maintain

[The Rogochover makes dozens of references to this gemara and it served as a fundamental source of insight for him into the nature of time. I was helped greatly in understanding his deep words by the sefer צפונות הדוגינצ'ובי page 18-19].

## Time As It Relates To The Divine And [Lihavdil] To Us

The gemara in Nazir [7a] asks a question: If someone says "I am a Nazir as many times as the number of hairs on my head" he becomes a Nazir for limitless separate periods of nezirus, meaning that after every thirty days he shaves, brings his korbanos and starts again. However, if someone says "I am a Nazir from here until a certain place" we estimate how many days it takes to get to this place. If it takes less than 30 days to arrive, then the person is a Nazir for 30 days [the minimum period of nezirus]. If it takes longer than 30 days, then he is a Nazir for one long period corresponding to the number of days of the trip.

The question is - Why in the first case of the hair does the person follow **many different terms** of nezirus while in the second instance he follows just **one long term** of nezirus? In the second case he should follow as **many terms** as the amount of days of the trip as in the first case?!

Rava answers that in the "hair" case he keeps separate terms because each hair is separate and distinct from all the other hairs. In contrast, days are not separate from each other. Therefore, when he mentions the **time** it takes him to reach the place he spoke about, he will only keep one long term. We learn from here that **time is one long block**, one day not distinct from the next.

The gemara questions this from the pasuk ויהי ערב ויהי בקר יום אחד - that seems to imply that each day is distinct. Answers the gemara - it is not that each day is distinct from the next but that one day is comprised of a day and night. After 6 of these we have Shabbos.... But we still view time as one solid block, each day connected to the previous and next.

Based on this gemara, explains the Rogochover ztz"l: From our human perspective, time is one continuous flow. That explains the gemara [ב"מ נ"ח] that if one hires someone to guard his cow for a month, he may pay for all 30 days and it is not considered that he paid for the Shabbos labor. This is because all of the 30 days are viewed as one unit.

From a Divine perspective, every day is an individual unit. It says in the Tosefta [Eduyos Chapter 2] that הימים והשעות כחוט השערה לפני המקום - Days and hours are like a "hair" before Hashem. Just as each hair is distinct, so too, every second is distinct before Hashem.

## Hasoras Monea

There is a basic questions that has faaaaaaaaaaarrrrrrrr reaching ramifications in different areas of halacha. Is הסרת מונע - the removal of something preventative, considered a positive action. One example would be the question of removing water from a full hot water tank which will result in cold water entering and the subsequent "cooking" of the water. If הסרת מונע is considered an action then the removal of the water which prevented more water from entering would be considered a melacha even if he didn't directly pour the water in.

Another example would be raising the shades on Shabbos to allow sunlight in which would enhance the growth of the plants [called "zorea" in the beis medrash]. The shades are מונע - preventing the sun from shining on the plants and by lifting them one is removing this preventative force. If one is connected to a life support system and one "pulls the plug" one can argue that this is הסרת מונע - he is not actively killing but removing the force preventing death. There are many, many more examples.

The *Heilege Rogochover Gaooiiinnnnn* cites two gemaros to prove that הסרת מונע is deemed an action.

1] If one removes a stone from the fence of a field allowing it to be filled with water it is considered a chazaka on the field even though he was just מסייר the מונע [i.e. the stone which prevented the water from watering the field]. [Bava Basra 53a]

2] The gemara says that if one shechts an animal with a water powered wheel [which was also quite sharp] it is a kosher shchita. The gemara contrasts with a source that says that the shchita is invalid. The gemara reconciles that when one originally removes the wooden board that prevents the water from powering the wheel for the first spin, the shchita is valid. This is called כח ראשון - the first source of energy. When the wheel turns the second time the shchita is invalid. This is called by our Holy Talmud - כח שני. כח שני is not considered an act powered by a human being and thus the act is invalidated. But כח ראשון of הסרת מונע is considered a valid action [Chullin 16a].

I have not words to describe how much has been said about this topic. If you want to read a breathtaking tshuva on the topic, see Rav Ovadia Yosef Shlita in Yabia Omer 4/35 and the dozens or hundreds of sources quoted.

## The Death Of The Husband

The Mishna [Kiddushin 2a] establishes that death of the husband breaks the bond between man and wife. What is the nature of this break? Is it an active dissolution of the marriage or is it just that the husband is gone so automatically she is husband-less and free to marry someone else. In the terminology of the Heilige Rogochover, is מיתה a פעולה or הנעדר. A possible nafka minah - If the husband comes back to life, does he need to remarry her or are they automatically back together. If it is an active פעולה they would need to remarry. If it is just that he disappeared in the meantime - נעדר - if he comes back to life they would be right back together.

The Acharonim have quite a bit of discussion on the topic. The Rogochover wasn't terribly interested in Achronim and he found most things in the Gemara-Rashi-Tosfos-Rambam. He noted that the two sides of the chakira are reflected in the two answers the Gemara [Kiddushin 2b] gives to the question וניתני האישה קונה ומקנה - Why does the Mishna not say האיש קונה [instead of נקנית] and [האשה נקנית] and [האשה קונה] [instead of את עצמה]. Why do we couch the law in terms of the woman [who is passive] and not the man [who is doing the marrying and divorcing].

The Gemara's first answer is that a man is not מקנה ["freeing"] a woman when he dies. It is Hashem who is doing the הקנאה. In the Gemara's words מן שמיא הוא דמקני לה. This means that a husband isn't actively causing the woman to be unmarried but rather he was taken away by Divine will and therefore he is no longer around to make her forbidden to others. This answer takes the position that death is הנעדר and not an active dissolution.

The second answer is that if it would have said קונה, I would have assumed that this means even against her will - by saying נקנית we understand that the woman must agree to the marriage [no forced marriages by yidden...]. This answer rejects the premise of the first answer [that it is a Divine act] but rather it is the husband who is freeing her [i.e. it is his פעולה]. This is like the first side of the chakirah we presented.

The gemara [13b] asks - How do we know that the death of a husband releases his wife? The gemara answers that it is simple logic - He forbade her when he took her and now he he gone so she is automatically permitted to marry someone else. The Rogochover and Reb Elchonon Wasserman both independently concluded from this that death is הנעדר - a passive "the husband is no longer here so she is permitted" type release.

But the gemara rejects this and learns from a pasuk that just as divorce separates - so does death. If we are comparing death to divorce we are compelled to conclude that death is an active release, a פעולה, just like divorce. The Rogochover in his famous terseness expresses this proof with a gloss on his gemara that contained the

following words - סברא - נ"ב י"ג לקמן וניין.

[I have tremendous amounts of compassion and pity for those who learn gemara superficially and miss out on the depth of the Achronim. Not everything they always say is correct but EVERYTHING they say makes one think more deeply and for THAT we live.....:-).

Nu - vyter.]

The Rogochover then wrote on his gemara פג וגיטין דף פג. So let us see what he means. The gemara there says that the Torah compares a woman's unmarried status preceding her second betrothal to her unmarried status preceding her first betrothal. *מקיש קודמי הויה שניה לקודמי הויה ראשונה, מה קודמי הויה ראשונה דלא אגידא בקודמי הויה שניה דלא אגידא באיניש אחרתא* - *Just as preceding her first betrothal she is not bound to another man due to any previous marriage so must it be preceding her second betrothal that she is not bound to another man due to her previous marriage.* This refutes R' Eliezer who maintains that a divorce that leaves a woman partially bound to her first husband [when it stipulates that she may not marry some men and may marry others] is valid.

Asks Tosfos - This is NOT a refutation of R' Eliezer. When her second betrothal comes around she is still forbidden to the relatives of her first husband. So how can we say conclusively that she is no longer legally bound to her first husband the second time she marries and reject R' Eliezer. He maintains that a man can still be married to a woman vis a vis certain men [and she may not marry them] and not with respect to others [whom she may marry] and in fact everybody would agree that every divorced woman still has a connection to her first husband insofar as that she is forbidden to his relatives.

We may conclude from here that in fact after a man divorces [or dies], his former wife's prohibition to his relatives is NOT because the couple is presently connected but rather an independent *din* that states that since in the past they were forbidden, we now continue the prohibition, despite her complete detachment from her former husband. If we learn that way then the proof against R' Eliezer is reinstated. A woman is indeed completely unattached to a man both before her first and second marriages [and thus a get that allows for some semblance of connection between the two would be invalid].

Rav Yosef Engel [Asvan Di-oraisa 19b - they were contemporaries but of course the Rogochover doesn't quote him] proves from this gemara that after a man divorces or dies, his legal connection to his wife is severed and her prohibition to his relatives is not due to any present legal bond that exists between them but an independent *din* that prohibits her to his relatives because of their earlier bond.

Here is where it gets thorny. All the Rogochover wrote was פ"ג וגיטין and I haven't



the foggiest which side of the chakirah he is proving.... If anybody enlightens me I would be indebted:-). It could be that what he means is that if מיתה was העדד there would be no room to say that there is still some remnant of the marriage after his death and we could only posit such a theory if we learn that it is an active פעולה which breaks them off but not completely. If we take the position that מיתה is העדד then such a position is untenable. How can they be connected if the source of their detachment is that he doesn't exist? So according to the question of Tosfos divorce [and death] is an active פעולה of separation which allows for some continued legal bond but according to the conclusion of the Rogochover and R' Yosef Engel it may well be העדד because the bond between them is completely severed. [The ramification would be then that we now must consider what the mechanics of a get are. Is it also some type of העדד? Or no - maybe the active הפקעה and dissolution completely severs the bond?].

We have seen that there are two possibilities. Either the death of the husband is a פעולה and actively severs the bond between the couple. Or, he is no longer around - העדד - and thus they cannot have any connection. The difference is that if it is a severance of the bond [פעולה], but the former husband is still a "player" it is possible to entertain the possibility that there will be some legal connection between the two even after his death. But if the bond is severed because the husband is no longer in existence then it is not possible for the remnant of any legal bond to exist. How can a woman be connected to an entity whom she lost because he ceased to exist.

The Rogochover directs us to a Rashi in Ksubos [3b] that would seem to indicate that there is a possibility that a bond would exist even after the demise of the husband. If a man gives a woman a get on condition that he fail to return within 12 months and he dies in the interim, the law is that it is not a valid get [even though he fulfilled the condition and failed to return]. The reason is explained by Rashi "דמאן קא מגרש מהשתא אין המתים מגרשים" - Who is divorcing the woman? Dead people can't divorce! This implies that if dead people could divorce then the couple would be divorced. There is just a formal disqualification that dead people can't effect a divorce [even though we would like them to in our case because he gave her this get on condition that he fail to return and he fulfilled the condition] but it is not that the marriage is over because the husband is a non-entity. [Although I can see someone arguing that this is precisely what Rashi means - אין המתים מגרשים - because they don't exist]. There is still some connection between husband and wife which can't be severed by a get because the husband is gone and halachically a dead man may not divorce. The only we can say that they are still connected is if we learn that death is a פעולה and not העדד.

In the language of the Rebbe [the Rogochover] "אך באמת רש"י כתב דאין המתים מגרשים, "חזינן דאגידא ביה עדיין".

## What Is Darkness?

Is darkness merely a **lack of light** or is darkness a **significant and substantive reality**? In the language of the Philosophers, is darkness אור העדר or a מציאות.

The Rambam in his "Moireh" cites the opinion of the school of the מדבורים who maintain that darkness is not merely a lack of light but the Rambam differs and contends that it is.

The Heilige Rogochover discusses this question and brings numerous proofs from Chazal that darkness is a metzius.

1] The Yerushalmi [Brachos 6/8] offers a moshol of two servants of the king. One is given the daytime to serve, the other is given the night. In the same vein, light serves during the day while darkness serves at night. From here we see that darkness is a metzius, a substantive reality.

2] There is an argument in the Yerushalmi [Brachos 1/1] when the day starts and when the day ends. According to one opinion it starts at sunset while the other opinion maintains that it starts when the stars come out. One opinion holds that the night ends at dawn while the other opinion holds that it ends at sunrise.

They are arguing about our question. If darkness is a lack of light then as long as there is still light it is day. That is why night starts when three stars appear and it is completely dark but not before. But if darkness is a metzius, then the moment the sun sets and it gets a bit dark, it is already considered night.

The same logic applies to the argument about the end of the night. If darkness is a lack of light then the moment light appears at dawn the day starts and night ends. But if darkness is a metzius then as long as there is any darkness, its שלטון and reign has not ended and it is not yet the time of the "ruling" of the day. That only begins when all of the darkness disappears at sunrise. [I could see one arguing with this logic but I am certain that if the Rogochover would hear my question he would swallow me up alive, so I will keep my question to myself and ask him in the olam ha-emes where things are safe...:-)].

3] In davening we say אור מפני חושך - Hashem "rolls away" the light before the darkness. This implies that darkness is a metzius. Hashem has to "bring" the darkness. If it weren't a metzius but just a lack of light, then we could say "אור" alone, he removes the light and automatically there is darkness.

4] The gemara in Psachim [2a] says that Hashem called the dark and commanded it to appear at night. That implies that it is a metzius and not just a lack of light.

## Rogochover Gaon - A Kinyan On A Kinyan

The gemara [kiddushin 4b] derives from the pasuk כי יקח איש אשה ובעלה that a woman is נקנית with ביאה. The Rogochover noted [in his glosses on his gemara page] that the gemara later [68b] derives from the pasuk ואחרי כן תבוא אליה ובעלתה that an יפת תואר is נקנית with ביאה. Why then is that not sufficient for us to learn that a regular wife can also be נקנית with ביאה?

When a soldier sees a gentile woman at war and desires her as an יפת תואר there is seemingly a machlokes in the Yerushalmi as to whether he can cohabit with her when she is still a goya during the war [see Tosfos 22a]. The Rogochover maintains that this is a mistake. EVERYONE holds that one may cohabit with an אשת יפת תואר one time during the war and the argument is only if she is forbidden prior to accepting upon herself the sheva mitzvos. It emerges then that when the pasuk teaches us that one may be קונה an אשת יפת תואר with ביאה we are talking about a woman upon whom this man already made a קנין during the war. Thus, we cannot derive קנין קידושין with ביאה from אשת יפת תואר because she is already קנויה with the ביאה during the battle [which is still not a bona-fide kinyan kiddushin as she is still a goya]. The rule is אין קנין חל על קנין - one קנין cannot take effect on a previous קנין, so when he is קונה the אשת יפת תואר with ביאה it is not a full fledged קנין we can learn from elsewhere.

This understanding of the Rogochover will explain beautifully the opinion of the Raavad and Meiri that if one takes an אשת יפת תואר who has already cohabited with someone else, he is guilty of גזל - from the pasuk of ולא באשת חברו which teaches an איסור גזל for a goy when he takes his friend's wife. On the surface we don't understand what גזל is applicable here for they are not yet married until they cohabit after her conversion. But now we understand that there is already a קנין the first time they are together - hence the איסור גזל.

We can also understand the gemara that teaches that we may not derive that for kiddushin there is a ביאה קנין from יבום for יבום is זקוקה ועומדת - pre-connected. In the Rogochover's words היא קנויה לו בקנין הדין רק אין אשתו מדין תורה ולכן לא מהני קידושין כמו מקדש אשתו עוד פעם - She is already acquired with a קנין הדין but not from דין תורה so it is like marrying one's wife a second time [which obviously is meaningless - note the novel category of קנין הדין but not דין תורה]. Hence, we may not derive from yibum a standard kinyan kiddushin. A regular woman is unattached while a yevama is pre-attached to this man.

[ע"פ ספר צפנת פענח על מס' קידושין]

## Chomer And Tzurah

The Jewish philosophers often spoke about חומר and צורה [as did the ancient gentile philosophers...]. Simplistically, the חומר is raw material and the צורה is what gives the חומר its meaning and purpose. For example: The body is the חומר and the soul is the צורה. The wood is the חומר and when it is fashioned into a table, that gives the חומר a צורה.

There is a machlokes between Beis Shammai and Beis Hillel. Beis Shammai holds that first the heavens were created and then the earth. Beis Hillel holds that first the earth was created and then the heavens. The Rogochover explains that Beis Shammai holds that the צורה [the heavens which gives the world its spiritual meaning] is the עיקר of creation and the חומר is secondary. Beis Hillel maintains that the actualization of Hashem's will is in the חומר and that is primary. Thus, the חומר was created first.

This is sooooo Rogochover-ee. He, in his great geonus, took a seemingly concrete, straightforward argument about a historical, cosmological event and showed how it was really a deep philosophical argument. What is the primary goal of creation - the חומר or the צורה? [He continues to explain that really, Torah-wise, the צורה is the עיקר as Beis Shammai holds. Strange that he seems to reject שיטת בית הלל. He writes וזה באמת בכל התורה - דעיקר צורת הדבר]

He added a gemara in Shabbos which seems to have NOTHING to do with our topic.... but it really does.

*The gemara [Shabbos 62b] says that a woman may not go out wearing a spice bundle and with a flask of balsam oil and if she goes out she is liable to a chatas - so said R' Meir. R' Eliezer exempts her. In what case were these words stated [that she is exempt]? When they have spice or oil in them. But if they don't have anything in them and are empty - she is liable.*

*Rav Adda Bar Ahava said that this teaches that one who takes out less than a shiur of food in a kli is liable for taking out the utensil even though he is not liable for taking out the food. For taking out a spice bundle that has no spices [or oil] is comparable to taking out less than a shiur of food in a kli and the braisa says that the wearer is liable. Thus, one who takes out less than a shiur of food should be liable. Rashi explains that a little bit of the aroma clings to the kli which is considered less than a shiur because all there is left in the kli is the scent with no concrete חומר at all. Since a person is liable for taking out the kli he should also be liable for taking out a kli with less than a shiur of food. In neither case do we say that the kli is subordinate to what is inside because there is less than a shiur.*

*Rav Ashi argues and says that generally when one takes out less than a shiur of*

*food in a kli he is exempt because the kli is subordinate to the food. In the case of the bundle of spices in the kli one is liable because the scent that remains is considered completely inconsequential and all that is left is the kli. But if something of substance remains, even though it is less than a shiur one would be exempt because the kli is subordinate to what is inside.*

Smell is considered צורה. The gemara says that the neshama enjoys the pleasure of smell. So the argument is whether smell alone, צורה, with no חומר, is considered significant and thus comparable to less than a shiur of food [Rav Adda bar Ahava] or if it is completely disregarded because we only consider the חומר to be significant [Rav Ashi].

The Mishna [Uktzin 3/6] records an argument between Beis Shammai and Beis Hillel whether Ketzach is considered food and susceptible to tumah or not. Beis Shammai says that it is not susceptible to tumah while Beis Hillel says that it is.

What is Ketzach? Ketzach is a type of Arabian seed [or fennel] which has a harmful odor but is healthy to eat [Brachos 40a]. Beis Shammai says that it is not susceptible to tumah because the צורה, the smell, is harmful and since that צורה is the עיקר it is not considered food and is thus tahor. Beis Hillel follows the חומר which is the beneficial eating aspect of ketzach and thus considered it food and thus susceptible to tumah. The same argument applies as to whether it is chayav in trumos and maasros. Beis Shammai doesn't consider it food [and it is exempt] while Beis Hillel does.

The Yerushalmi [Yoma 6/1] asks - If one has 2 korbanos, one is bigger and meatier while the other looks nicer, which one do you bring? The answer is .... the meatier one. That is because we follow the חומר [its size] over the צורה [its beauty]. We live in a world of chomer and a mitzva should be performed with the item that excels in chomer. [Rav Aharon Levin ztz"l in Shu"t Avnei Cheifetz 5 suggest from this gemara that if one can choose between a bigger esrog or a more beautiful one he should choose the bigger one. He then rejects this on the basis of a different source.]

There is a famous argument in the gemara [Horiyos 14a] who is greater - סיני - a master of the whole Torah who is not necessarily the sharpest or עוקר הרים a super sharp learner who doesn't know as much as his counterpart. This is really an argument as to whether the mass of vast knowledge חומר [the סיני] is preferable or צורה [the עוקר הרים], the חריף. The gemara concludes that סיני is more necessary.

Two points for חומר over צורה....

Shammai was always looking to enhance the צורה. That is why whenever he would see a beautiful, tasty animal, he would set it aside for Shabbos. If he would find a better one he would eat the first and put the second aside. Shabbos is definitely צורה-דיק.

Or how about the gemara in Yevamos [14a]. Beis Shammai didn't follow Beis Hillel's opinion even though Beis Hillel were the majority and we generally hold the "majority rules" because Beis Shammai were more sharp than Beis Hillel so they felt that their opinion was the decisive one. Their צורה - intellectual sharpness, was superior to Beis Hillel's greater number - their חומר.

Chomer is a quantitative concept, a physical mass. Tzurah is a more abstract, spiritual idea. The gemara [Moed Kotton 9a] talks about people who are אנשים של צורה - which Rashi explains this to mean "wise men". This is QUALITY and not quantity. Rov Moshe Feinstein was an אדם גדול even though he was barely 5 feet tall.....:-). There was little chomer there but tremendous tzurah.

We spoke recently about how smell relates to tzurah. The gemara [Brachos 43] says that one's NESHAMA enjoys smell. That is because smell is tzurah-dik. This is unlike food and drink which is more coarse and physical - chomer. [There is a famous Bnei Yisaschar Torah that the only one of the five senses that Adam Harishon didn't sin with was his sense of smell. Smell remains holy...]

There are many arguments in the gemara that revolve around the question of whether reality is primarily defined as chomer or tzurah. How does the Torah perceive reality - Through the physical, quantitative aspect or the spiritual, qualitative aspect?

If someone gives a get and writes in the get that you are divorced from me but still forbidden to all other men - the get is not valid. When one divorces a women she must be permitted to everybody else. However, rabbinically the get is valid [according to the Rambam Geirsuhin 10/1] and she may no longer marry a kohen as a divorcee [but see Tosfos gittin 82a that min hatorah she may no longer marry a kohen]. This is called ..... ריח הגט. It smells of a get.

How does a get smell?????

Here Chazal are telling us that this is not a concrete, hard core, "the real McCoy" type get. It is [Rogochover-ly] צורת גידושין. A more subtle, abstract type of get. A real get allows her to marry anyone she chooses while this get just makes her considered a divorcee insofar as that she may no longer marry a kohen.

Beis Shammai, as we already discussed, assigned more value to tzurah than Beis Hillel. A few examples:

1] If a person writes a get for his wife and then changes his mind and decides not to divorce her, Beis Shammai says that she may no longer marry a kohen because this get has ריח הגט. [Gittin 81a]

2] Beis Shammai says that if someone writes one letter of Hashem's name it is

considered holy [Yerushalmi Sotah 2/4]. [Beis Hillel says that you need two letters.] Just the thought that this will be part of Hashem's name is enough to make it holy.

3] If a custodian intends [see Rashi] to misappropriate a deposit, Beis Shammai says that he is liable for any mishap that might befall the deposit. Beis Hillel says that he doesn't assume liability until he actually misappropriates it [Bava Metziah 43b]. In other words - Beis Shammai follows the tzurah, the machshava, the intent. He holds that one can perform משיכה on the object without actually touching it. This is called צורנית משיכה. Beis Hillel says that tzurah is not enough. He needs to actually use the object for his own needs in order to be liable - חומר.

Once a tzurah loses its form and becomes chomer, it can no longer be restored to its original tzurah. The gemara in Bava Kamma [96b] teaches that if one steals a brick and turns it into dust, he acquires it [as it is no longer the brick that he stole]. Even though he could refashion the dust and turn it into a brick it would not be the same brick it originally was but rather "panim chadoshos". We see from this that "once a tzurah - always a tzurah" is not a guiding principal. Au contraire. Once it loses its tzurah - that is it.

*A sandal from which one ear broke off and he repaired it, it is still tamei medras. If the second ear broke off and he repaired it, it becomes tahor from tumas medras [but remains tamei as having TOUCHED a medras].*

*The gemara asks: Why is it that when the first ear broke the sandal remains tamei as a medras? Is it because the second ear is intact and the sandal is still usable? When the second ear breaks the sandal should also remain tamei medras because the first ear is already repaired and the sandal is still usable? Answers the gemara - When both ears have broken, a "new face" [פנים חדשות] has come into being here. [Shabbos 112b]*

Once it loses its tzurah [i.e. both ears broke off] - that's it. פנים חדשות באו לכאן!

It says that Hashem restored the sea after splitting it לאיתנו [to its strength] which is the same letters as לתנאו. Meaning, Hashem kept his "condition" [tnai] with maaseh breishis that the sea would split. Even after the sea split there was no true change in the tzurah because it was all part of the original plan. If it would have been a bona-fide shnui tzura then it would have required a new creation to restore it to its original state [because once changed - "tzuros" can't be restored without a new creation]. Since Hashem doesn't create new things after that six days of creation - we would be in trouble.... The sea would have to remain split. Therefore, Hashem made this condition enabling the sea to return to its original state.