

**"Ketsot Ha-Choshen" –
The Beginning of "Lamdanut": Features & Tendencies**

Noam Samet

Advisor: Prof. Avraham (Rami) Reiner

Abstract

The subject of this thesis is R. Aryeh Leib Ha-Kohen Heller's *Ketsot Ha-Choshen*, one of the major commentaries on the Shulhan Arukh, focusing on the section on civil law - Choshen Mishpat. It is also considered a central text in the sphere of *lamdanut*, occupying a place of honor in the traditional beit midrash and exerting considerable influence over patterns of halakhic study and thought to this day. A review of the work and its features is enlightening with regard to the early stages of modern *lamdanut* and the processes of change and growth in halakhic literature in modern times.

The **Foreword** offers a brief explanation of the importance of *Ketsot Ha-Choshen* (or, in abbreviated form, 'the *Ketsot*') as a transitional work that straddles the Polish beit midrash of the 16th-17th centuries and the forms of study that developed from the 19th century onwards.

The **Introduction** presents Heller's biographical and personal background with attention to the unique historical features of Galician Jewry at the turn of the 18th century.

The body of the thesis consists of two parts.

Part I examines the world of halakhic scholarship that preceded the appearance of the *Ketsot* and places the work within the broader context of halakhic literature in the early modern age.

Chapter one reviews the chain of commentaries on the Choshen Mishpat section of Shulhan Arukh, starting from the 16th century *Sefer Me'irat Enayim*, via the *Shakh* (R. Shabbetai HaKohen) and the *Urim Ve-Tumim* (R. Jonathan Eibeschutz) up to the *Ketsot Ha-Choshen* in the second half of the 18th century. The **second chapter** focuses on another central axis in *lamdanut* literature: the Ashkenazi preoccupation with halakhic **uncertainty** (*sefekot*) and the various approaches to dealing with situations of legal doubt. The writings of Maharik (R. Joseph Colon), Maharshah (R. Solomon Luria), the *Shakh* and the *Tumim* all testify to the centrality of this issue in Ashkenazi *lamdanut* discourse in the early modern period.

Rounding off the first section, **chapter three** is devoted to Heller's introduction to the *Ketsot*. This is a philosophical and theological document in which Heller sets forth the ideological background to the study methodology that he proposes.

Part II of the dissertation is devoted to an examination of *Ketsot Ha-Choshen* itself, with an emphasis on Heller's methodological innovations and their impact on later scholarship. This part rests upon a study of Heller's halakhic discussions in the *Ketsot*, with the theoretical claims presented in the first part of the dissertation now addressed within the context of and with reference to the work itself.

The **fourth chapter** deals with the fundamental question of the authority of the *dayanim*, and Heller's position in this regard. In a work focusing on Choshen Mishpat, the question of the source of authority to judge in our time, in the absence of a formal chain of *semikha*, is, of course, a central one. The discussion assumes new significance in the historical context of the second half of the 18th century, when changes in the Austrian monarchy led to the almost complete dissolution of the authority of rabbinical and Jewish communal courts.

The **fifth chapter** presents an analysis of one of the best-known examples of Heller's innovations: his view regarding those unfit to give evidence, as set down in chapter 34 of Choshen Mishpat and other related sources. Analysis of the innovation of the *Ketsot* and its sources offers an appropriate background for defining the central features of his approach and, in particular, its conceptual dimensions.

The **sixth chapter** broadens the perspective and reviews five central examples of Heller's conceptual innovations in different spheres: agency (*shlichut*), legal acquisition (*kinyan*), guardianship, and more. In each example, emphasis is placed on his theoretical shift in relation to the treatment of the subject by his predecessors. The broader perspective facilitates illustration and clarification of the principles set down in chapter five, and an examination of their later impact on *lamdanut*.

The **seventh chapter** focuses on a line of thought that is characteristic of Heller's work: a legal orientation that tends towards realistic explanations that elucidate the law based on a quasi-mechanical or technical image of the basic mechanisms of the halakhic system. A somewhat similar parallel is to be found in his relatively extensive reliance on the mechanism of "gezerat ha-katuv" as the reason for laws that have no other rational justification.

The **Conclusion** comes back to our initial questions and brings together some of the central insights gleaned from the research concerning the features and trends of *lamdanut* in its early stages.