

Living the Halachic Process
Volume IV

**LIVING THE
HALACHIC PROCESS**
QUESTIONS AND ANSWERS FOR THE MODERN JEW

Volume IV

Answer to Queries sent to the

ERETZ HEMDAH INSTITUTE

Headed by

Rabbi Yosef Carmel

Rabbi Moshe Ehrenreich

by

Rabbi Daniel Mann



Living the Halachic Process, Vol. IV
Eretz Hemdah Institute

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הר"ל בהשתתפות המשרד לענייני דתות

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לע"נ

אשת חיל עטרת בעלה

אמא וסבתא למופת

רבת חסד ועשיה

מרת סוזי (שרה) ונגרובסקי ע"ה

רבות בנות עשו חיל ואת עלית על כלנה

נלב"ע י בתמוז תשע"ד

Dedicated to the memory of

Leah and Rabbi Jacob Mann

הרב יעקב ולאה מן ז"ל

Quincy, Mass.

Miriam and Abraham Roseman

אברהם אייזיק ומרים רוזמן ז"ל

Kew Gardens Hills, New York

To Rav Mann,

A genuine *talmid chacham*
who is *marbitz torah* to an entire generation.

More importantly to a person
who I call a true friend.

May you continue to educate
us all *Ad Meah Vesrim Shana*

Alan and Barbara Weichselbaum

In Honor of
Rabbi Daniel Mann

from the families of

Roger & Rebecca Fine

Milltown, New Jersey

&

Rabbi David and Dr. Julie Fine

Modiin, Israel

לכבוד

הרב יוסף ופרופ' ליילה ברונר

אריכות ימים ושנים בבריאות
בזכות לימוד התורה

וולטר ואסתר פיינבלום

In Memory of our Beloved Parents

Leonard and Molly Naider
Joseph and Belle Serle

May your memories serve as a blessing
for your family and Klal Yisrael. Your children,
grandchildren and great-grandchildren
all miss you very much.

Anita and Fred Naider

We dedicate this book

in honor of

**THE SOLDIERS OF THE
STATE OF ISRAEL**

Eric and Gale Rothner

לעילוי נשמת

יצחק אייזיק בן יהודה לייב ע"ה – Irwin Usdan

התמסרותו למידת הישרות וההגינות ברוח התורה עברה כחוט השני במסכת חייו. מידותיו התרומיות ומעלותיו גדשו את חייו הצנועים כאיש עסקים. שמו הטוב הלך לפניו כאיש ישר בעל מוסר עבודה גבוה. נעימות הליכותיו ודיבורו בנחת עם הבריות היו נודעים לכל.

היווה בחייו דוגמא חיה וזוהרת למשמעותה המלאה של קבלת אחריות כלפי הציבור וכלפי המשפחה. חי חיים צנועים בכדי לאפשר את קיומם של חיי תורה ומצוות באמריקה. היה "עשיר" גדול על פי קנה המידה האמיתי שקבעו חז"ל במסכת אבות – "השמח בחלקו".

הקדשת ספר זה לעילוי נשמתו יש בה הצדעה לאהבתו הגדולה ללימוד התורה והשתתפות בשיעור תורה, וחגיגת הערך העליון ממנו שאב נחת רוח של ממש – הזכות לראות בחייו את ילדיו לומדים בישיבות ואת נכדיו ממשיכים את דרך התורה והמצוות אשר התווה להם.

נפטר בפתאומיות בטרם עת בגיל 62. אמנם לא זכה לאריכות שנים, אך זכה בהחלט לאריכות ימים – באשר כל ימיו היו מלאים בתורה ודרך ארץ.

"סוף דְּבַר הַכֹּל נִשְׁמַע אֶת הָאֱלֹהִים יִרְא וְאֶת מְצוֹתָיו שְׂמֹר
כִּי זֶה כָּל הָאָדָם" (קהלת יב, יג)

הוקדש על ידי חיה דבורה וצבי אהרן יוזון

Foreword

We find in the words of the wisest man to live: “וארבעה ... והמה חכמים מחכמים מטיבי לכת” (the fourth goes the best ... and they are fully developed in their wisdom) (Mishlei 30).

As we publish the fourth volume of *Living the Halachic Process*, our heart is filled with joy. Our Rabbis greatly praised one who is involved in Torah study and especially one who does so with great regularity and continued intensity. A fourth volume represents a further marker on the long path of Eretz Hemdah’s responsa projects. The Eretz Hemdah Institute, founded by our leader, HaGaon HaRav Shaul Yisraeli, *z.t.l.*, has served for thirty years as a trusted address for people seeking Torah and Halacha from the scholars of the Land of Israel. This and previous volumes join the nine volumes of the Hebrew-language *BeMareh HaBazak Responsa*, the latter being primarily for the use of rabbis and rabbinical courts throughout the Jewish world. This current volume gives a glimpse of the work of our Ask the Rabbi service, for the broad public, which we run in conjunction with the OU.

Rabbi Dayan Daniel Mann, one of Eretz Hemdah’s first graduates and a pillar of our Eretz Hemdah rabbinical staff for many years, is one of the leading members of the Ask the Rabbi service. He is not afraid to “go on long expeditions along the paths of Torah” and produces well-balanced halachic rulings. Rabbi Mann clarifies every question from several perspectives and considers additional halachic considerations that influence the final ruling. Every response includes Talmudic sources, as well as those of the *Rishonim* and the *Acharonim*. It also has a clear conclusion that is based on an understanding of the present-day realities, in a modern and fast-changing world. Each answer is presented in a manner that a layman without a yeshiva background or deep understanding of the intricacies of Halacha can understand. This gives the reader the feeling that he can connect to Torah and to a life of adherence to Halacha. Rabbi Mann’s work has greatly

contributed to building the halachic approach of Eretz Hemdah. This approach is characterized by deep and broad Torah study, along with a broad perspective and sensitivity to the spiritual needs of every Jew in every situation and every place. It is an approach of “its ways are ways of pleasantness” and “the power of the lenient ruling is greater,” while not compromising one bit on the integrity of Halacha. We pray to HaShem that this approach will bring more Jews to value and enjoy Torah and ultimately cause them to more fully follow a life of Torah and *mitzvot*. In this way, people will say about one who follows this approach: “Fortunate are his parents.” We take this opportunity to wish well to Rabbi Mann’s parents, Rabbi Dr. Jonah and Mrs. Tirtza Mann, who are partners in the publication of this book in several ways. May they have many years of *nachas*, good health, and service of HaShem with happiness. To Rabbi Daniel Mann himself, we wish a large portion of *nachas* from all the members of his family: his children, their spouses, and the grandchildren, many more years of service of HaShem with happiness along with his special wife, Natanya, who is a real partner in all of his endeavors.

We pray that we will merit to produce many more Torah scholars, who walk well along the correct path and embark upon “long and difficult journeys and reach their destinations.” May they be Torah scholars, whether halachic decisors, yeshiva heads, or rabbinical court judges, who cling to HaShem, Who is “Good and the Doer of Good.” May they sanctify the Divine Name and demonstrate, with their “gait and mode of living,” that “טוב לי” (The Torah of Your mouth is better than thousands of gold and silver coins) (Tehillim 119:72).

With Torah blessings,

HaRav Moshe Ehrenreich HaRav Yosef Carmel
Deans of the Eretz Hemdah Institute



Preface

The questions and answers found in this volume are taken from the files of our responsa service and our weekly *parasha* sheets from the years 5766-5771 (2006-11). A lot has changed in the world since then, including the world of Halacha. Therefore, in preparing the “old” responses for publication as a “new” book, I did not things for granted. Not only did I review all the sources and rethink the logic, but I considered the possibility that the societal basis might have changed in certain cases, as well. For example, in response G-8, we pointed out that the status of the dollar in Israel has undergone a change since the original answer was written.

In the prefaces of the earlier volumes of *Living the Halachic Process*, we spelled out much of the background behind the book: the internet Ask the Rabbi service, the halachic philosophy of Eretz Hemdah, and the challenge of rendering halachic rulings in the impersonal forum of the Internet. With Divine Assistance, we have been sharing our rulings to rabbis (in Hebrew, in the *BeMareh HaBazak* series) on a broad spectrum of issues with the public for well over two decades. For some seventeen years, we have been sharing our answers in English to questions from the general public in the weekly publications “Hemdat Yamim” and “Torah Tidbits” (they now also appear in other forums and even in another language). As we prepare to present the questions and answers that comprise this fourth volume in book form, we will not go into long explanations but will rely on the familiarity of much of our readership with our work. We will just update some small things that have changed in recent years.

New resources have also become available to help us answer the questions. The increasing usage of internet searches for information, which applies to this researcher/writer as well as many others, has been impactful in a few ways. On one simple level, there is now broader access to a variety of contemporary

rabbinic opinions on halachic issues of the day (as well as classical ones, for which we have had good access for decades). This includes “breaking issues,” which have not had the chance to make it into published *sefarim*. (Of course, it is important to be able to recognize which opinions one finds on the internet are reliable and significant and which are not.)

Furthermore, it is now practical to check the accuracy of the querier’s assumptions in a relatively short amount of time and with a fair amount of confidence. For instance, when a decade ago, we received a question about one who expected to have a totally immobile arm due to shoulder surgery (response F-5), I must admit that I assumed that his understanding of his physical limitations were correct. Upon reviewing the material for this volume, I decided to “research” the matter from the Beit Midrash, without having to look for a specialist in the field. Indeed, I found demonstrations as to how one can maneuver his arm after shoulder surgery. While the “updated” answer left a recommendation that he relies on the medical advice he receives for his case, it also suggests that the patient will likely learn that he will be able to do more than he expected in a safe manner.

I also would like to recognize the evidently fine job done by the producers of a new halachic work. Nowadays, many of the important Torah resources that are written or produced are done by teams working for organizations. One such fine organization is Dirshu. In addition to running projects to encourage high-level Torah learning, they have also put out an edition of the Mishna Berura with notes that focus on the opinions of contemporary *poskim* and present-day applications of the halachic principles. Upon reviewing the old Ask the Rabbi/ OU Vebbe Rebbe columns, I looked in the Dirshu Mishna Berura, whenever feasible, to see if they have discussions that contribute to the subject matter upon which I had already written.

It is always a pleasant obligation to thank those who have helped make this volume, in its present form, a reality. While I have authored all the answers found in *Living the Halachic*

Process, I have done so, not as an individual project, but as a member of the staff of Eretz Hemdah to whom the great majority of these questions were sent for the institute's ruling. As always, this project of Eretz Hemdah was initiated and supervised by its deans, Rav Moshe Ehrenreich and Rav Yosef Carmel, in keeping with the spirit and the guidance provided by our founding president and mentor, HaGaon HaRav Shaul Yisraeli, *zecher tzaddik livracha*. Many of the questions and answers were discussed with our deans, especially when I was unsure whether my ruling or presentation captured the approach and spirit of Eretz Hemdah. That being said, I must caution that due to the fact that this book is not written in their native tongue, the deans did not review this work word for word, and therefore I cannot give assurance that everything in this volume represents the institute's official position.

To bring the literary quality of this book up to standard, I was privileged to once again receive the editing services of *avi mori* (my father/teacher), Rabbi Dr. Jonah Mann. His great dedication to every phrase and word of the book, with the encouragement and help of *imi morati*, Tirtza Mann, never ceases to inspire me, even during this fifth collaboration. May HaShem grant us many more years of joint study and projects in good health.

The copy editing was provided by Meira Mintz with great wisdom, professionalism, and enthusiasm. Rut Saadon did a fine job on the typesetting, the graphic design, and arranging the source sheets which are available online and upon request. My daughter Aviva Tropp helped in a few elements of the book's preparation. This is a good opportunity to thank Riki Freudenstein who has been proofreading, since the beginning, our weekly publication "Hemdat Yamim," from which all these pieces have been taken. The office staff at Eretz Hemdah, led by Yafa Rosenhak, have, as always, been supportive, skilled and helpful. Of note, we thank Rachel Harari-Rafal, who has done a great job of getting the questions and answers to and from the staff of respondents and queriers, respectively, in a timely fashion.

Having been affiliated with Eretz Hemdah for almost three decades, first as a student and then as a staff member who has been privileged to be included in many important projects, I would like to express my gratitude. The gratitude is both personal, as the recipient of spiritual and material support throughout the years, and on behalf of *Klal Yisrael*, before whom I can testify about the great efforts that Eretz Hemdah has dedicated on their behalf with great love. In addition to the deans, the board of the Institute, now headed by Shalom Wasserteil, has enabled Eretz Hemdah to both educate exceptional Torah scholars and provide many services for the benefit of the Jewish community in Israel and throughout the world.

In researching and writings the responses in this volume, I have over the years used teachers, colleagues, family, friends, and students as unofficial advisory boards and/or sounding boards, and they have enhanced my thinking significantly. Of specific note are Rabbi Ofer Livnat and Rabbi Menachem Jacobowitz, colleagues at Eretz Hemdah, along with many of the fellows at Eretz Hemdah, and my senior colleagues at Yeshiva University's RIETS Israel Kollel, Rabbi Dovid Miller and Rabbi Assaf Bednarsh. Many of the questions were jointly studied with a group of my students at the RIETS Israel Kollel. I thank all of them for their time and insight. Special thanks to my long-time *rebbe*, Rabbi Mordechai Willig, who once again somehow found the time to review this volume.

I am very indebted to my wife, Natanya, for enabling me to dedicate my time to the study and teaching of Torah and inspiring me by her example of dedication and enthusiasm to *mitzvot*, especially the teaching of Torah and tireless *chesed*. May we continue to see great *nachas* from our children and, thankfully, already their children.

Above all, we thank Hashem, the Giver of the Torah, for allowing us to teach His Torah to His nation. We are indeed privileged to live in a generation in which we can communicate with those so far away in a moment's time and are able to try to

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help them solve halachic dilemmas. We are further fortunate to be able to share the ideas of timeless Torah, applied to old and new situations, with a broad public of people who are thirsty to know how to follow Halacha and are interested in understanding the basis and rationale of what they need to do. May we all merit increasing that which is good and noble in our Torah-based lives.

Rabbi Daniel Mann
Eretz Hemdah Institute
Cheshvan 5778 (Oct. 2017)

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Sample Accompanying Source Sheet

Those who are interested in deepening their understanding of the topics or want to use the book as the basis for a class may find great value in the source sheets we have prepared.

They are available for view or downloading on our website (www.erezhemdah.org), in the section dedicated to *Living the Halachic Process*. Contact us with any questions on this or other matters at (972)-2-537-1485 or info@erezhemdah.org.

A-6

A Chazan Who Has Animosity Toward a Congregant



May one serve as a *chazan*, in general, or as *ba'al tokeiah* on Rosh Hashana if he hates one of the shul's congregants for no good reason, especially if this causes the congregant to have great difficulty concentrating?

4. שו"ת האלף לך שלמה חלק אורח חיים סי' שנו

שאלתו על דבר התקוע אם יהיה יכול למהות. הנה מובאר בנ"י ומנן אברהם דעכשו אינו יכול למהות דהוי דבל אחר רוב פורעי המס, וכן המכס דה"ו וכן ה"פ מניח בשם הלכותי. אך יש לומר דהמנהג דהוי רק בשליח צבור ור"ב דאין מציאין את הדין ודעתו אלא במופד שמוציא הדין, אך וצויאנו בעל כרחו ובכפ בתקנה אם הוי התקנה גם על זה, אוקמוהו ארינא, ויש לומר דיהיה יכול למהות ולומר דכיון דכבר יש לו חוקק לתקוע, זה לא נחשב כקבלתו כבר, דכל שנה הוי ענין ספרי עצמו, דאין דומה לשליח צבור, דשליח צבור הוי מנישו ומחד להתפלל ויה וילית, לכך כיון דאין לו תפקיד הוי מקבלתו כבר, אבל בתקנות דמפיק כל השנה כל חדוש כל שנה בקבלה חדשה ... ואף אם דומה לאם כבר קבלתו, מכל מקום התם מיידי באם אין בו הרחק קדושה שנוא, דאין כיון דמדינתא כשר, לכך כיון דמתחלה יכול למהות גם בזה, מכל מקום אם כבר קבלתו, אינו יכול למהות, אבל אם טוען בשביל איזה תקלוק מנישו שנתחדש בשליח צבור או נדעך עתה, אם רואין בני העיר שיש בו ממש, והאי יכול דיהיה למהות אף שקבלתו תחלה, דשליח צבור דומה לשלחא מביחא ואומנא, ולא כיון התראה ומסקינן להו כלי התראה ... אך זה כיון אם אין הדבר נתייע לשליח צבור או אי שיש שני אנשים אשר אפשר לקבץ שוין הם להצבור זה כמו זה, או נהו והדבור ריגועי בזה, ויכול דיהיה למהות עד שימוטנו שיבא שליח צבור המרוצה לכולם או לקבל השני השנה לכולם, אך אם דבר נתייע לשליח צבור מיד וליכא אחר רק זה, או אף שיש אחר רק שאין הצבור רוצים בו רק בזה דיהיה אומר להופך, ודאי אין דיהיה מוכיח הצבור ... וילכו אחר הרוב, ולכך הכא נמי, אם יש תוקע אחר והצבור נחמד להו גם בו רק שרוצים גם בהראשון, בזה דיהיה יכול למהות ויקבלו השני אם יש ליהודי טעם חזון התראה שיראשון לקבל מנישו יותר מבראשונה, אבל אם אין הצבור רוצים בהשני רק דוקא בהראשון, או אין דיהיה יכול למהות ויתקע הראשון ויהיה יכול לצאת בתקיעתו, ובזה הדשליח צבור צריך לבין להוציא שנוא, כן כיון התקוע להוציא המונה והמוחה ויון לצאת בתקיעתו:

1. בית יוסף אורח חיים סי' נג

מהר"י קלון כתב ... שהתפלה הוא של הקהל שהיא במקום התמידין שהיו באים משל צבור, ואין ראי שיהיה אדם שלוחם להקריב קרבנם שלא מדרתם ורצונם. ומטעם זה פסק רבינו שמחה דאפילו יהודי יכול לעכב את החזנות ולומר: "איני חפץ שיהיה פלוני חזן", אם לא שכבר המכס עליו מתחלה

2. שולחן ערוך אורח חיים סי' נג סעי' יט

... אפילו יהודי יכול לעכב ולומר: "איני רוצה שפלוני יהיה חזן", אם לא שכבר המכס עליו מתחלה. הנה דוקא שיהיה לאותו יהודי טעם חזן על פי טובי העיר, אבל בלאו הכי אין אזהרה יכול למהות בשליח צבור. ואם הוא שנוא, יכול למהות בו קודם שהמכס עליו.

משנה ברוחה שם סי' נו

שנוא – רוצה לומר, שידוע באמת מוכר שהם שנואים זה לזה, לכך יכול למהות בו, דאין נעשה שלוחו לתפלה בעל כרחו. אבל אם אומר שהוא שנוא, לאו כל כמינה:

מנן אברהם שם סי' כ

ונראה לי דהוקא כזמנא, שהיה השליח צבור מציא הרובים ויהיה בתפלתו, אז היה יהודי יכול לעכב, דאין נעשה שלוחו בעל כרחו, מה שאין כן נעשה שכלם בקיאות, רק הישליח צבור הוא לפיטום, אף על פי שאומר קדיש וברכו, אין כל כך פריא

3. רמ"א, אורח חיים סי' תקפא סעי' א

וידקדקי ליהודי אחר שליח צבור היתר הגון והיותר גדול בתורה ומעשים שאפשר למצוא, שיתפלה סליחות ימים נוראים, ויהא בן שלישים שנים, גם שיהא נשוי (כל בו). מזה כל שיהא כשרים הם, רק שיהיה מרוצה לקולל; אבל אם מתפלל בחוק, אין ענין אחריו "אמן". וכן צריך שיציא כל אדם בתפלתו; ואם יהיה לו שנוא ומכין שלא להוציא, אם נחשב אינו יוצאים בתפלתו



Section A:
Tefilla (Prayer)

A-1: Shaving Before *Shacharit*

Question: I heard a discussion between two learned rabbis on the question of shaving before *Shacharit*. One took a position, along the lines that you once outlined,¹ that work should generally not be performed before *Shacharit*, with possible exceptions only when in *she'at hadechak*.² The other rabbi said that shaving is not work, but rather resembles getting dressed in the morning, particularly for clean-shaven people, some of whom go straight to work after *davening*. What is your opinion?

Answer: As we would expect of a debate between learned rabbis, each side has a significant basis. Our approach incorporates the claims of each side, hopefully in a balanced manner.

One related case with classical sources on the topic of activity before *davening* concerns haircutting, which is halachically equivalent in many respects to cutting a beard. The *gemara* forbids haircutting before *Mincha* lest one become so occupied with it that he ends up not *davening*.³ The *Shulchan Aruch*⁴ says that no formal prohibition was made on haircutting before *Shacharit* because it is an uncommon occurrence. However, the *Eliya Rabba*⁵ maintains that the *Shulchan Aruch* refers to the time **before** *alot hashachar* (at least 72 minutes before sunrise). After that point, when *davening* is nominally possible, it is forbidden to take a haircut, because all work is improper before *davening*. *Shacharit* is more lenient than *Mincha* only regarding the added stringency of not starting haircutting a half hour before the time of *davening*, but not concerning the regular regulations on activities. Although the *Eliya Rabba* cites the *Kolbo* as saying that haircutting is not the type of activity that is considered forbidden

1. *Living the Halachic Process*, vol. III, A-3.

2. Pressing circumstances.

3. See *Shabbat* 9b.

4. *Orach Chayim* 89:7.

5. 89:12.

work, the *Mishna Berura*⁶ accepts the strict view. Thus, the first opinion you cited certainly has validity.

It is important to consider, though, that the classical sources dealt with haircutting, which is similar to shaving only for those with beards. That was indeed the norm for religious Jewish men until the modern era. For such men, shaving is a periodic activity that we view as a matter of choice at any given time. For many clean-shaven men, on the other hand, daily shaving is a matter of simple hygiene that cannot be delayed for long. This distinction can be significant in several areas of Halacha, including shaving on *Chol HaMo'ed*, as well as during *sefirat ha'omer* and the Three Weeks. For example, those who permit shaving on *Chol HaMo'ed*, based on the lenient rulings of Rav Soloveitchik and Rav Moshe Feinstein,⁷ reason that shaving before *Yom Tov* does not suffice for an entire week, as it once did. There are even (disputed or contrary) accounts that Rav Feinstein maintained that not only **may** a clean-shaven man shave on *Chol Hamo'ed*, but it is **preferable** to do so in honor of the holiday.

Some apply the same logic to shaving in the morning. The halachic concept of *hikon likrat Elokecha* mandates preparing oneself with a clean body and appropriate clothes for *davening*.⁸ One *posek* who has written that shaving may be included in the category of *hikon likrat Elokecha* is Rav Yitzchak Yosef,⁹ although he describes shaving before *tefilla* as a legitimate but not preferable practice. According to many oral accounts of rabbinic advice, especially in societies in which “needing a shave” has a social stigma and is a physical nuisance, shaving before *Shacharit* is even preferred, and this is the practice of many fine Jews.

That being said, it is unwise to make a single, sweeping rule. Those with beards should normally not shave before *Shacharit*. Those with slow-growing or light beards would do better to

6. 89:36.

7. *Igrot Moshe, Orach Chayim* I:163.

8. See *Shulchan Aruch, Orach Chayim* 91-92.

9. *Yalkut Yosef, Orach Chayim* 89:32.

shave before going to sleep or after *davening*, and if this is not satisfactory, they should wait until after having said *Shema* and some *berachot*.¹⁰ Those who need a morning shave to make themselves presentable should feel free to do so before *davening*. However, if they are running late, it is hard to justify missing even *P'sukei D'Zimra* on that account.

10 . See *Living the Halachic Process* op. cit.

A-2: Accompanying the *Chazan* with Singing or Humming

Question: When we sing sections of *Kedusha*, some people sing along with the *chazan*, and some just hum the tune. Is one practice more proper than the other?

Answer: *Kedusha* is a series of three important *p'sukim* (*Kadosh...*, ¹ *Baruch k'vod...*,² and *Yimloch...*³), each of which is preceded by an introductory passage (*Nekadesh...* [or *Nakdishach...* in *Nusach Sephard*], *Le'umatam...*, and *U'v'divrei...*), with additions inserted on Shabbat. Many of the hummers are concerned that it is forbidden to repeat the words of this *tefilla*.

Actually, there are early sources that question whether the congregation should say some parts of *Kedusha* **at all**. The *Shulchan Aruch*⁴ says that no one but the *chazan* should recite *Nakdishach*. The *Machatzit HaShekel*⁵ and *Mishna Berura*⁶ explain that this passage was instituted for the *chazan*, serving as the *sheliach tzibbur* (representative of the congregation), to prompt the congregation, which would respond with the *pasuk* alone. The *Beit Yosef*⁷ is uncertain as to whether this idea applies to the other introductory passages as well. In practice, however, the congregation does say *Nekadesh/Nakdishach*.⁸ (The *Aruch HaShulchan*⁹ writes that the *minhag* is to say only *Nekadesh*, and not *Le'umatam* and *U'v'divrei*; on Shabbat, the *minhag* is to say

1. *Yeshaya* 6:3.

2. *Yechezkel* 3:12.

3. *Tehillim* 146:10.

4. *Orach Chayim* 125:1, based on *Shut HaRosh* 4:19.

5. *To Magen Avraham* 125:1.

6. 125:1.

7. *Orach Chayim* 125.

8. *Mishna Berura* op. cit. *Sephardim* often sing it together – see *Yabia Omer* VII, *Orach Chayim* 14.

9. 125:2.

the long additions.) The common practice can be attributed to two sources: 1) The *Taz*¹⁰ questions why there should be any problem in saying these passages. As corroboration, he cites the *Shulchan Aruch*'s¹¹ ruling that one who starts *Shemoneh Esrei* along with the *chazan*'s *chazarat hashatz* says *Kedusha* with him word for word. 2) The *Ari*¹² instructs specifically **to recite** all of *Kedusha* silently along with the *chazan*.

What about **repeating** words in *Kedusha*, such as when one has already said the line but now wishes to sing along with *chazan*? The *halacha* is that it is forbidden to speak during *Kedusha*,¹³ and one should not even learn during this time.¹⁴ However, the *poskim*¹⁵ rule that this restriction on learning does not apply to the additional passages for Shabbat, which one does not have to listen to because they are not critical to *Kedusha*. Accordingly, restrictions on repetitions or usurping the *chazan*'s role are also not likely an issue in those passages. Although the *poskim* advise not to talk until the end of the *beracha* after *Kedusha*,¹⁶ it appears that the issue is one of disrespect to *Kedusha* and does not apply to repeating parts of its verses. Is the problem of *hefsek* (formal interruption) relevant when the congregation repeats parts of *Kedusha*? In the case of a *chazan* who unnecessarily repeats words in the midst of *chazarat hashatz*, the *poskim* rule that the problem of *hefsek* is relevant only when the repetition is done in a manner that distorts the passage's meaning. Otherwise, it is not a *hefsek* even if it is done unnecessarily, e.g., to fit in with a musical piece.¹⁷ The congregation's repetition is no more of a problem than the unnecessary repetition of the *chazan*. Therefore, singing the words of *Mimkomcha* along with the *chazan*, for instance,

10. 125:1.

11. *Orach Chayim* 109:2.

12. Cited in *Ba'er Heitev*, *Shulchan Aruch*, *Orach Chayim* 125:1.

13. *Shulchan Aruch*, *Orach Chayim* 125:1; Rama, *Orach Chayim* 125:2.

14. *Magen Avraham* 125:1; *Mishna Berura* 125:1.

15. *Ibid*.

16. See *Mishna Berura* 125:9, in the name of the *Maharil*.

17. See *Igrot Moshe*, *Orach Chayim* II:22; *Yabia Omer* op. cit.

should not constitute a *hefsek*.

There may be a halachic problem when, out of religious/musical fervor, the congregation drowns out the *chazan*. One consequence of this – a lack of respect – would apply to all of *Kedusha* (as above). However, when the congregation sings the appropriate words clearly, even if the *chazan* is not audible, this should not be a problem. Assuming that this is done to involve and inspire the congregation, there is no disrespect. In contrast, it is more of a problem when people are “stringent” to just hum, but do it so loudly that the words are not heard clearly, not from the *chazan* and not from the congregation. This seems to give the music more importance than the text, and it was precisely regarding this point that *poskim* criticized some *chazanim*.

Another problem is that those who are still in the midst of *Shemoneh Esrei* need to hear *Kedusha*, as they cannot recite it themselves. There is a *machloket* regarding whether they can fulfill this obligation by hearing it from people other than the *chazan*, considering that their fellow congregants do not have in mind to recite it on their behalf¹⁸ (whereas the *chazan* should indeed have that in mind). However, this problem is mitigated by the fact that the obligation relates specifically to the three basic *p’sukim* of *Kedusha*,¹⁹ which are less often sung by the congregation.

The following is our advice. During *Kadosh* and *Baruch* (and perhaps the final words of *L’umatam* and *U’v’divrei*), the *chazan* should be heard clearly, and the congregation should do no more than sing or hum quietly. During the longer Shabbat additions, people may sing along as they like, and if this drowns the *chazan* out, they **should** recite the words.

18. *Az Nidbaru* II:60 rules that one can fulfill the obligation by hearing *Kedusha* from other congregants; *Igrot Moshe, Orach Chayim* III:4 rules that one cannot.

19. See *Halichot Shlomo, Tefilla* 8:38.

A-3: Davening When Waiting for Tefillin

Question: If I do not have my *tefillin* with me, but someone will lend me his during *chazarat hashatz*, what *davening* should I say before getting them?

Answer: The *gemara*¹ states that one who recites *Kri'at Shema* without *tefillin* is like one who says false testimony about himself. Rabbeinu Yona² explains that since *Kri'at Shema* contains the commandment to don *tefillin*, it is problematic to read about that *mitzva* and not fulfill it. There are several sources that say that, for positive and/or to avoid negative issues, it is important to also have *tefillin* on during *Shemoneh Esrei*.³ Therefore, it is common that those who are kind enough to lend their *tefillin* to others at the *minyan* wait at least until after *Shemoneh Esrei*, and usually until after *Kedusha*.

You ask wisely how the borrower should prioritize between *davening* as much as possible with *tefillin* and *davening* as much as possible (including, especially, *Shemoneh Esrei*) with a *minyan*. (If feasible on halachic and technical grounds, *davening* at a later *minyan* is, of course, the best option.) There appears to be a contradiction on the matter between sources relating to your question and between the standard practice regarding a related one. Many people who go to a late *minyan* “solve” the problem of missing *sof z'man Kri'at Shema*⁴ by reciting it before *shul*. Several *poskim* deal with the question of whether this is acceptable, since these people usually recite *Kri'at Shema* without *tefillin*.⁵

1. *Berachot* 14b.

2. *Berachot* 8a in pages of Rif.

3. *Shulchan Aruch*, *Orach Chayim* 25:4; *Tosafot*, *Berachot* 14b; see *China D'Chayei* 30.

4. The latest time one can recite *Kri'at Shema* at its proper time.

5. Obviously, this is referring to *tefilla* during the week, not on Shabbat, when *tefillin* are not worn.

Rav Ovadia Yosef⁶ justifies the action by citing authorities who maintain that the problem of “false testimony” is not relevant if one will put on *tefillin* later in the day.⁷ Offering further support is the opinion of the *Meiri*⁸ that saying *Kri’at Shema* without *tefillin* is a problem only when it is done in a manner that shows disregard for *tefillin*. The *Meiri* further maintains that the whole issue is only Rabbinic.⁹ Thus, the practical solution of saying *Kri’at Shema* before *shul* has a solid basis; saying *Kri’at Shema* without wearing *tefillin* is acceptable under appropriate circumstances.

Based on this, we would expect that if one has to choose between *davening Shemoneh Esrei* with a *minyan* but without *tefillin*, on the one hand, and reciting *Kri’at Shema* and *Shemoneh Esrei* with *tefillin* but without a *minyan*, on the other hand, that a *minyan* takes precedence. However, the *Magen Avraham*¹⁰ writes that wearing *tefillin* has precedence, and one should wait for them before *davening*, even if doing so causes him to miss the *minyan*.

The *Magen Avraham*’s analysis is reminiscent of the transitive property of inequality. If one enters *shul* when the congregation is about to start *Shemoneh Esrei* of *Shacharit*, the rule is that he does not skip straight to *Shemoneh Esrei*. This is so because the importance of *davening Shemoneh Esrei* immediately following the mention of *geula*¹¹ (call this G) is greater than that of *davening Shemoneh Esrei* with a *minyan* (call this M).¹² In other words, $G > M$. Nevertheless, if one obtains *tefillin* between *geula* and *Shemoneh Esrei*, he should put on the *tefillin* at that point, despite the resulting break.¹³ This shows that the importance of *davening*

6. *Yabia Omer* I, *Orach Chayim* 4.

7. Rav Shlomo Kluger (*HaElef Lecha Shlomo* 47) writes that putting on *tefillin* later suffices only if he recites *Kri’at Shema* with the *tefillin* before *sof z’man Kri’at Shema*.

8. *Berachot* 14b.

9. See *Yabia Omer* op. cit.

10. 66:12.

11. Redemption, which is the subject of the *beracha* directly preceding *Shemoneh Esrei*.

12. *Shulchan Aruch*, *Orach Chayim* 111:3.

13. *Ibid.* 66:8.

with *tefillin* (call this T) is greater than the proximity of *Shemoneh Esrei* to *geula*: $T > G$. Since $T > G$ and $G > M$, it follows that $T > M$. Thus, applying the “transitive property of importance,” it follows that *davening Shemoneh Esrei* with *tefillin* must be more important than *davening Shemoneh Esrei* with a *minyan*.

The *Magen Avraham*'s proof is weak because putting on *tefillin* between *geula* and *Shemoneh Esrei* does not necessarily constitute a full halachic break.¹⁴ Additionally, we can use an analysis similar to that of the *Magen Avraham* to come to the opposite conclusion. One may recite *Kri'at Shema* without *tefillin* in order to *daven* like *vatikin* (call the latter V).¹⁵ Thus, $V > T$. Furthermore, many posit that *davening Shemoneh Esrei* with a *minyan* is greater than *vatikin*:¹⁶ $M > V$. Since $M > V$ and $V > T$, it follows that $M > T$. Accordingly, applying the transitive property results in the conclusion that *davening* with a *minyan* is more important than *davening* with *tefillin*, contradicting the *Magen Avraham*!

Thus, there is significant halachic logic to argue that one who will be borrowing *tefillin* later on should *daven* along with the congregation and put on the *tefillin* during *chazarat hashatz* when he gets them.¹⁷

Nevertheless, it is difficult to rule against the *Magen Avraham*, whose view is accepted by the *Mishna Berura*,¹⁸ and one should therefore wait until after getting the *tefillin* before reciting the crucial parts of *tefilla*.

Assuming one is following the view of the *Magen Avraham*, may he at least start some of *Shacharit* before getting the *tefillin*, and if yes, at what point in the *tefilla* should he put them on? It is better to put on the *tefillin* right after *Yishtabach* than during the

14. *Shut Maharsham* III:359.

15. A preferred time to pray, in which the *davening* of *Shemoneh Esrei* begins at sunrise.

16. See discussion in *Yabia Omer* op. cit.

17. See *Minchat Yitzchak* II:107, who connects the matter of reciting *Kri'at Shema* before *davening* without *tefillin* and our question.

18. 66:40.

berachot of *Kri'at Shema* or *P'sukei D'Zimra*,¹⁹ but even this is not the optimal time.²⁰ Therefore, considering that he will not be reciting the critical passages of *Kri'at Shema* and *Shemoneh Esrei* with a *minyan* in any case, there are advantages to hold off saying *P'sukei D'Zimra* and to put on the *tefillin* before *Baruch She'amar*. (There are so many timing considerations involved that it is not possible to give one conclusive ruling or recommendation.)

19. See Rama, *Orach Chayim* 54:3.

20. See *Shulchan Aruch* and Rama, *Orach Chayim* 51:4.

A-4: Continuing a Minyan with Less Than Ten

Question: I once learned that when a *minyan* starts with ten men and one or two leave, the *minyan* can continue normally. Is this true?

Answer: The general principle to which you refer does exist, but we must refine some details.

The *mishna*¹ lists parts of the *tefilla* that require a *minyan*, “*devarim shebekedusha*” – including *Kaddish/Barchu* and *chazarat hashatz*.² The *Yerushalmi*³ comments that if a *minyan* was present at the beginning of a section, the remaining people can continue to recite it even after some left and there is no longer a quorum of ten. Nevertheless, a *pasuk*⁴ is cited to harshly criticize those who leave the group short of a *minyan*, even when the remaining people may continue.

The Rashba,⁵ in applying this ruling, says that if a group started *chazarat hashatz* with a *minyan* and someone then left, those remaining should recite even *Kedusha* (which is in *chazarat hashatz*), despite the fact they had not started *Kedusha* with a *minyan*. The *Terumat HaDeshen*⁶ also extends the confines of what is included in these sections of *tefilla*. If a group was in the midst of *chazarat hashatz* when they lost their quorum, they can go so far as to say the *Kaddish (Titkabel)* that follows *U’va L’Tzion*, which marks the completion of the section that began with *Shemoneh Esrei/chazarat hashatz*.

1. *Megilla* 23b.

2. Repetition of *Shemoneh Esrei*.

3. *Megilla* 4:4.

4. *Yeshaya* 1:28.

5. *Shut HaRashba* I:95.

6. I:15.

This follows from the fact that this *Kaddish*'s key additional sentence requests that HaShem accept the completed *tefilla* of *Shemoneh Esrei* (“*Titkabel tzlot'hon...*”). This demonstrates that all of the *tefilla* until this point was a continuation of *Shemoneh Esrei/chazarat hashatz*.

The *Shulchan Aruch*⁷ codifies the above principle and its applications. Thus, what you remember learning is basically correct; if the *tefilla* began with a *minyan*, its members may continue to recite a *davar shebekedusha* that they had already begun, even if there is no longer a *minyan*.

There is a further leniency, greater than you mentioned, regarding the number of people who can be missing. The Ran,⁸ reasoning that a significant part of the *minyan* must remain for the group to continue as a *minyan*, sets the minimum at a simple majority of six (including the *chazan*). This view is also accepted by the *Shulchan Aruch*.⁹

However, we must stress that the group may not “continue normally.” Rather, they may only recite those prayer components that are directly connected to the *davar shebekedusha* that began with a *minyan*. The *Yerushalmi*¹⁰ posits that each of the sections mentioned separately in the *mishna* constitutes a separate section. Therefore, the fact that there was a *minyan* for *Kaddish/Barchu*, for example, does not entitle the group to recite *chazarat hashatz* without ten men. Similarly, if a group began *chazarat hashatz* with a *minyan* but people left during *chazarat hashatz*, they would have to skip *nesi'at kapayim*.¹¹ They would also have to skip *kri'at haTorah*, even though the *Shemoneh Esrei* unit is not completed until after the Torah is returned to the *aron*.¹² While we cannot discuss every application of the principle in this forum,

7. *Orach Chayim* 55:2-3.

8. *Megilla* 13b in Rif's pages.

9. *Op. cit.*

10. *Op. cit.*

11. The *kohanim*'s *duchenen*, performed daily in Israel and on holidays abroad.

See *Bi'ur Halacha* to 128:1.

12. Rama, *Orach Chayim* 55:3.

we will mention an interesting distinction. At *Ma'ariv*, if there was a *minyán* for the opening *Barchu*, the group may recite the *Kaddish* before *Shemoneh Esrei*, because *Barchu* marks the beginning of the *berachot* of *Kri'at Shema*, which only conclude with *Kaddish*. However, the group would need to start *Shemoneh Esrei* with a *minyán* in order to recite *Kaddish Titkabel* with (at least) six men, because the *Kaddish Titkabel* at the end of *Ma'ariv* relates to *Shemoneh Esrei*. In contrast, at *Shacharit* and *Mincha*, the group would have to start *chazarat hashatz* with a *minyán*, not just the silent *Shemoneh Esrei*, in order to continue and complete *Kaddish Titkabel* without a *minyán*. The reason is that *Kaddish Titkabel* was composed primarily for *chazarat hashatz*. However, at *Ma'ariv*, at which there is no *chazarat hashatz*, it relates to the silent *Shemoneh Esrei*.¹³

The *Shulchan Aruch*¹⁴ writes about the critical need to have (a minimum of) nine men listening to all of *chazarat hashatz*. Based on the principle at hand, if there are nine men listening in the beginning and three stop paying attention, the *chazan* may continue, as the lack of mental focus among some individuals is no worse than their complete absence after having left. However, such a situation is to be seriously criticized, just as we saw above regarding those who leave physically.¹⁵

13. *Mishna Berura* 55:22.

14. *Orach Chayim* 124:4.

15. *Igrot Moshe*, *Orach Chayim* IV:19; see *Derisha*, *Orach Chayim* 124:1.

A-5: Repeating *Shemoneh Esrei* by Mistake

Question: I was in the middle of reciting *Shemoneh Esrei* of *Mincha* when I realized that I had already *davened*. What was I supposed to do under those circumstances and why?

Answer: The answer is straightforward, but it is worthwhile to analyze the rationale.

The *gemara*¹ states: “Rav Yehuda said in the name of Shmuel: If one was standing in prayer (i.e., in the midst of *Shemoneh Esrei*) and remembered that he had already *davened*, he should stop, even in the middle of a *beracha*.” Thus, it appears that when you became aware of your predicament, you should have stopped immediately.²

The question is how one reconciles this ruling with what follows logically from the previous segment of the *gemara*. Specifically, R. Elazar says that one who is not sure if he *davened* should **not** *daven* out of doubt. However, R. Yochanan, whose position is accepted as *halacha*,³ argues, saying: “If only a person would *daven* all day long!” Considering the fact that one does not recite *berachot* when he is unsure of whether they are called for, R. Yochanan’s language implies that it is not a problem for someone to *daven* even if he did *daven* previously. Why, then, is your case different?

Further confusion arises from a subsequent *gemara*, which states that one who already *davened* and enters a *shul* in which people are presently *davening* may join them as long as he adds something new to *Shemoneh Esrei* (i.e., during the middle thirteen *berachot*, which consist of requests⁴).

1. *Berachot* 21a.

2. *Shulchan Aruch, Orach Chayim* 107:1.

3. *Ibid.*

4. *Ibid.* 2.

Accordingly, why doesn't the *gemara* instruct the person in the situation that you describe to simply continue by adding something to his prayer?

The Rosh⁵ reconciles matters. He submits that R. Yochanan did not mean that one may literally *daven* all day long without any further conditions. Rather, one may *daven* an additional time if he adds something new to the *Shemoneh Esrei*. The rationale is that one may *daven* a second time only as an optional *tefilla* (*nedava*), which he undertakes in order to add something that was not included in the first one. If he does no more than repeat, it is deemed to be a second mandatory *Shemoneh Esrei*. Since *tefilla* corresponds to the *korban tamid*,⁶ which is brought only once during a given time period, one must not *daven* two of the same *tefilla*. Only if he *davens* in a manner that shows that it is a *nedava* is it permissible, as an individual can offer an optional *korban olah*⁷ in a similar manner to the *korban tamid*. The congregation, on the other hand, may not repeat *Shemoneh Esrei*, because an optional communal *olah* was not permitted in the *Beit HaMikdash*. Similarly, one cannot *daven* an extra *Musaf*, just as an individual could not bring a *korban* parallel to any of the *Musaf* offerings in the *Beit HaMikdash*.

One who is unsure whether he had *davened* is obligated to recite *Shemoneh Esrei* and need not add anything to the *tefilla* because the prospect that he may actually need this *tefilla* is equivalent to adding something new.⁸ However, one should mitigate the possibility of a superfluous *Shemoneh Esrei* by making the following conditional statement:⁹ “If I did not *daven*, this should be an obligatory *tefilla*. If I already *davened*, it should

5. *Berachot* 3:15.

6. A basic sacrifice brought every day – once in the morning and once in the afternoon.

7. A sacrifice in which the entire animal is burned on the altar.

8. Rosh *ibid*.

9. It is probably sufficient to have the condition in mind, without verbalizing it (see *Ishei Yisrael* 31:(4)).

be deemed optional.”¹⁰

If one starts *Shemoneh Esrei* thinking it is a normal, obligatory *tefilla* and realizes in the middle that he had already *davened*, he is stuck. The *tefilla* cannot be reclassified at this point as a *nedava*, and there is therefore no framework with which to continue, even if he wants to add something.¹¹ Only if one began with a doubt and a condition that envisioned *nedava* from the outset can he continue after realizing that he had already *davened*.¹²

In the case of one who remembered in the middle of *Shemoneh Esrei* of *Ma'ariv*, which always has an element of *nedava*,¹³ there are *poskim* (especially Sephardi)¹⁴ who say that he can then continue to *daven* as a *nedava*, as long as he adds something new. However, the *Magen Avraham*¹⁵ and *Mishna Berura*¹⁶ maintain that since *Ma'ariv* is treated nowadays as an obligatory *tefilla*, it is no different from other *tefillot*.

10. *Mishna Berura* 107:2, based on *Chiddushei HaRashba*, *Berachot* 21a.

11. Rosh op. cit.

12. See *Mishna Berura* 107:7.

13. *Berachot* 27b.

14. See *Kaf HaChayim* 107:12 and *Yalkut Yosef*, *Orach Chayim* 107:7.

15. 107:3.

16. *Bi'ur Halacha* to 107:1.

A-6: A Chazan Who Has Animosity Toward a Congregant

Question: May one serve as a *chazan*, in general, or as *ba'al tokeiah*¹ on Rosh Hashana if he hates one of the *shul*'s congregants for no good reason, especially if this causes the congregant to have great difficulty concentrating?

Answer: The *Beit Yosef*² cites the Maharik, who maintains that since the prayers correspond to the *temidin*,³ which must be funded by the community, a *chazan* must be acceptable to everyone in the community. The logic is that it is improper to appoint a *shaliach* (agent) who is unwanted. Based on this, the *Shulchan Aruch*⁴ rules that an individual's protest against a potential *chazan* is accepted, as long as it is made **prior to the *chazan*'s appointment**. The Rama⁵ adds that this refers to a case in which the protestor can convince the communal leadership that he has sufficient cause and rules that hatred between people qualifies as sufficient cause.⁶ Thus, your inclination to disallow the functionary in question ostensibly has a basis.

However, *Acharonim* distinguish between the aforementioned sources and the most common modern applications. The *Magen Avraham*⁷ and *Mishna Berura*⁸ write that the Maharik's logic applies only when one needs to rely on the *chazan* to fulfill his own prayer obligation, i.e., when people would listen to the *chazan*'s repetition of *Shemoneh Esrei* instead of reciting it themselves. However, nowadays, the *chazan* only leads the congregation

1. Shofar blower.

2. *Orach Chayim* 53.

3. Daily public sacrifices in the *Beit HaMikdash*.

4. *Orach Chayim* 53:19.

5. Ad loc.

6. See *Mishna Berura* ad loc. 56

7. 53:20.

8. 53:53.

in certain sections and provides cantorial flourishes for parts of *tefilla*, while each person himself recites all that he needs to. Consequently, we revert to the regular rule that the majority has the authority to make appointments to various communal tasks, and individuals lack veto power.

Realize also that many of the qualifications for a *chazan* (found in *Orach Chayim* 53) concern the position of the *shul's* **main** *chazan*.⁹ In that case, the most appropriate person should be chosen, which may exclude one with any serious blemish. The *Aruch HaShulchan*¹⁰ indicates that animosity is reason to invalidate only such a permanent *chazan*, but not one who will be serving sporadically. As he mentions, we cannot possibly tolerate an “endless” process of disqualifications.

Irrespective of the fact that not everyone needs or deserves the special privilege of being the *chazan*, the issue of embarrassing someone and depriving him of the honor of occasionally being the *chazan* should not be taken lightly. Almost all those who are capable of leading services have done so at some time. Although a particular *chazan* **may** be a flawed individual (which we cannot judge from afar), many flawed people lead services. That some individual congregant may be unable to concentrate is not a significant factor. For any number of reasons, one may be bothered by another person's *davening*, and it is not feasible to grant veto power purely on subjective grounds.

On the other hand, when it comes to a *chazan* for the *tefillot* of Rosh Hashana and Yom Kippur, we do seek a higher level of qualification, and his relationships with members of the community play more of a role.¹¹ This is especially true regarding blowing the shofar on Rosh Hashana, which resembles the classic case in which an individual can object. The shofar blower enables others to fulfill their *mitzva* of hearing the sounds of the shofar, not everyone receives the honor of being the *ba'al tokeiah*,

9. See *Shulchan Aruch, Orach Chayim* 53:6.

10. *Orach Chayim* 53:19-21.

11. Rama, *Orach Chayim* 581:1.

and the claim can be made that each year is considered a new appointment.¹² Therefore, if there are viable options to replace him with someone who is similarly capable and gets along with everyone, it is reasonable to alert the local rabbi/leadership. They would have to weigh the obviously not black-and-white matter on its merits.¹³ However, we cannot stress enough that it is much more appropriate that the effort be made to reduce tension and defuse the issue than to replace the person and undoubtedly raise the conflict to new, more regrettable levels.

12. See *HaElef Lecha Shlomo, Orach Chayim* 356.

13. *Ibid.*

A-7: Standing During *Chazarat HaShatz*¹

Question: Should one stand during *chazarat hashatz*? In my *shul*, some people stand, but most sit. Is this a clear *halacha* or simply a matter of personal preference?

Answer: We will paint a picture, based on sources, that is somewhere between “clear *halacha*” and “personal preference.”

The Rama² cites an opinion³ that people should stand⁴ during *chazarat hashatz*. On the one hand, he presents it as an **opinion**; on the other hand, he does not mention those who disagree. The implication is that this is something people are expected to do, but it is not clear that it is a categorical requirement, like standing during *Shemoneh Esrei* itself. The *Mishna Berura*⁵ explains that since listening to the *sheliach tzibbur*⁶ is considered like speaking (*shomei'ah k'oneh*), it is as if one were reciting *Shemoneh Esrei* himself, and one should therefore stand. Extending the logic further, it might follow that one must keep his feet together during *chazarat hashatz*, but the major *poskim* do not mention this, and very few people have this practice. Indeed, many sources indicate that *chazarat hashatz* is different from *Shemoneh Esrei*.

The Rambam⁷ writes that during *chazarat hashatz* “all are **standing** (*omdim*) and listening,” which seems to imply that one should stand. However, some⁸ *poskim* point out that since the

1. Repetition of *Shemoneh Esrei*.

2. *Orach Chayim* 124:4.

3. *Hagahot HaMinhagim* (Tirna).

4. In many areas of halacha, including in this context, someone leaning on something to the extent that he would fall if the object were to be quickly removed is not considered to be standing (see *Ishei Yisrael* 24:(66) and 23:(18), based on *Mishna Berura* 94:22-3).

5. 124:20.

6. *Chazan* – one who leads the services.

7. *Tefilla* 9:3.

8. See *Yechaveh Da'at* V:11.

Rama did not name the Rambam as his source, it is possible that the Rambam is referring not to the position of the body, but rather to the stopping of activity.

Although the views of *poskim* vary, the primary thrust of the consensus is as follows. The historically normative, preferred practice is to stand during *chazarat hashatz* unless there is good reason not to. Clearly, however, there were times and places at which very respectable people and communities did not stand. Furthermore, the matter should not be viewed as an outright obligation.⁹

Indeed, in some cases, the straightforward advice would be not to stand. If one is weak or sick, he can feel free to sit during *chazarat hashatz*. (This is true even when he can find the strength to stand for *Shemoneh Esrei* itself.¹⁰) If standing encourages people to roam around and thereby detracts from their own and/or others' ability to concentrate on *chazarat hashatz*, it is better that they sit and follow in a focused manner.¹¹

The case you speak of, a congregation in which a clear majority sits, is a tricky situation and appears to involve two related concepts. One is *yohara* (haughtiness). Classic *yohara* is when one does something that is a clear stringency in a context that can be construed as haughtiness. Is standing an act of *yohara*, and thus undesirable? Despite the general lack of adherence to the halachic preference for standing, it is difficult to consider that one who stands in accordance with the instructions of the Rama and many others should be placed in that category. The other relevant concept is *al yeshaneh mipnei hamachloket* (do not act differently from others because it can cause conflict). The *gemara* applies this idea not only to cases in which someone is more lenient than his peers, but also sometimes even to someone who is stricter than his peers.¹² In a *shul* in which only a few people stand and it

9. See *ibid.*

10. See *Ben Ish Chai* I, *Teruma* 10.

11. Based on *Yaskil Avdi* II, *Orach Chayim* 2.

12. See *Pesachim* 51b.

is the type of community that is (overly?) sensitive to matters of possible *yohara*, we would discourage people from standing and thereby standing out.

It is important to note that even if one sits during *chazarat hashatz*, he should wait to do so until after the *beracha* of *HaKel HaKadosh*, following *Kedusha*, and he should stand during *Modim D'Rabbanan*, due to the bowing done at that time.¹³

13. *Yechaveh Da'at* op. cit.; *Living the Halachic Process*, vol. III, G-9.

A-8: Priorities for a Slow *Davener*

Question: I *daven* slower than most people in my *shul*, and, as a result, I usually miss responding during *Kedusha*. What can/should I do to remedy the situation?

Answer: We are working under the assumption that it is worthwhile to continue *davening* at your *minyan*. (This may depend on more factors, including subjective ones, than we can address in this forum.)

The simplest option is to *daven* faster. The *Yaskil Avdi*¹ suggests speeding up at the end of *Shemoneh Esrei* (within reason, of course) if doing so will enable one to finish in time for *Kedusha*. However, almost all *poskim* reason that one's *kavana* is so critical to his *tefilla* that he should not tamper with it even to facilitate saying *Kedusha*.

It is essential to evaluate the importance of taking part in saying *Kedusha*. The *gemara*² writes that one who comes to *shul* late and will be unable to finish *Shemoneh Esrei* in time for *Kedusha* should delay starting *Shemoneh Esrei*. This implies that *Kedusha* is more important than *tefilla b'tzibbur*.³ On the other hand, the consensus of *poskim* rules that one who is ready to start *Shemoneh Esrei* **with everyone else**, but *davens* slowly, should start normally, even at the expense of missing *Kedusha*. The different explanations of how to reconcile the apparent contradiction between this ruling and the *gemara*'s instruction impact our case.

The *Pri Megadim*⁴ suggests that if one starts *Shemoneh Esrei* after the *tzibbur*⁵ has begun, he does not get the full effect of *tefilla b'tzibbur*. Based on this, we can argue that in truth, *tefilla b'tzibbur*

1. I, *Orach Chayim* 3.

2. *Berachot* 21b.

3. Saying *Shemoneh Esrei* as part of a *minyan*.

4. *Orach Chayim* 109, *Eshel Avraham* 2.

5. Community; in this case, those assembled in *shul*.

is more important than answering to *Kedusha*, but the *gemara*⁶ instructs one not to start *Shemoneh Esrei* because *Kedusha* has precedence over a **partial** *tefilla b'tzibbur*.⁷ Accordingly, if one is ready to begin *Shemoneh Esrei* with the *tzibbur*, he should do so even if that means that he will not be able to answer to *Kedusha*.

The *Bi'ur Halacha*⁸ raises an additional possibility. When one is ready to begin *Shemoneh Esrei* along with the *tzibbur*, he is faced with the immediate obligation of *tefilla b'tzibbur*, whereas the obligation of *Kedusha* arises only in the future. In general, we do not push off doing *mitzvot* in the present just because it may interfere with doing other *mitzvot* in the future.⁹

The *Az Nidberu*¹⁰ offers a third possibility. Only when one is late for *Shemoneh Esrei* as a result of negligence do we require him to wait due to the prospect of missing *Kedusha*. In contrast, if he will not finish *Shemoneh Esrei* on time for *Kedusha* because he *davens* slowly, we let him start *Shemoneh Esrei* nonetheless.

A fourth distinction is that if **on occasion** one starts *Shemoneh Esrei* late, he must sacrifice his *tefilla b'tzibbur* to be ready to answer *Kedusha*. However, one who *davens* slower than his counterparts should not be deprived of *tefilla b'tzibbur* on an ongoing basis.¹¹

All the above agree that one who is ready to start *Shemoneh Esrei* with the *tzibbur* does so without taking *Kedusha* into account. However, there are other situations that depend on which explanations one accepts. What does one do if he regularly is not ready to begin *Shemoneh Esrei* with his fellow congregants because the recitation of *Kri'at Shema* and its *berachot* take him

6. Ibid.

7. *B'tzel HaChochma* IV:3 discusses how close to the beginning of *Shemoneh Esrei* one needs to begin in order to get the full effect.

8. To 109:1.

9. The *Bi'ur Halacha* implies that once the *tzibbur* is well along in *Shemoneh Esrei*, there is not the same type of obligation to join them, and under such circumstances the prospect of answering to *Kedusha* is of greater importance.

10. VIII:41.

11. *Aruch HaShulchan, Orach Chayim* 109:5.

longer? According to the first two reasons above, he should wait at least until *chazarat hashatz* to start *Shemoneh Esrei*,¹² since anyway he will not receive the full benefit of *tefilla b'tzibbur* and he must be concerned about the upcoming *Kedusha*. However, according to the third and fourth approaches, he can start *Shemoneh Esrei* when he is ready and listen quietly to *Kedusha* at the appropriate point.¹³ He is not at fault for starting late, and if he were compelled to wait, he would regularly miss out on *tefilla b'tzibbur*.

All things considered, however, it is best to avoid starting late, since then one misses out on a full *tefilla b'tzibbur* according to some opinions and/or on responding during *Kedusha*.

One possible way for a slow *davener* to finish *Shemoneh Esrei* in time for *Kedusha* is to start *Shemoneh Esrei* before the congregation. Is this a good option? The *gemara*¹⁴ cautions against beginning one's *tefilla* before the congregation. On the other hand, we rule that it is permitted to do so if the *tzibbur* will miss the deadline for *tefilla*.¹⁵ What is the problem with going ahead? It might be because one thereby misses *tefilla b'tzibbur*.¹⁶ If so, we would have to determine to what extent there is a problem when one misses saying the critical first part of *Shemoneh Esrei* with the *tzibbur* but finishes with the *tzibbur*, and whether being in a position to recite *Kedusha* is sufficient justification.

Many *poskim* write that there is an issue of disrespect to the *tzibbur* when one begins *Shemoneh Esrei* before them.¹⁷ According to this approach, we would have to determine whether people will be understanding in light of the motivation of enabling one to recite *Kedusha*, and, if not, whether the need justifies any subsequent

12. For details of when exactly to start and of the different ways of dealing with the resulting challenges, see *Shulchan Aruch, Orach Chayim* 109:2, and *Ishei Yisrael* 33:2-3.

13. See *Shulchan Aruch, Orach Chayim* 104:7.

14. *Berachot* 28b, cited as *halacha* in *Shulchan Aruch, Orach Chayim* 90:10.

15. *Shulchan Aruch* op. cit.

16. Rabbeinu Yona, *Berachot* 19a in Rif's pages; see *Mishna Berura* 66:35.

17. See *Mishna Berura* 66:34.

fallout. Some *poskim* allow going ahead of the *tzibbur*,¹⁸ but we feel that the negative usually outweighs the positive.

One option for the slow *davener* is to come early to *shul* and begin the *berachot* of *Kri'at Shema* when the congregation is reciting *P'sukei D'Zimra*. That way, he can proceed at his natural pace and start *Shemoneh Esrei* with the *tzibbur*. During *Birchat Kri'at Shema*, he should answer *Amen Y'hei Shmei...* and the last *Amen* of *Kaddish* and respond to *Barchu*.¹⁹

18. See analysis in *Yabia Omer* II, *Orach Chayim* 7.

19. *Shulchan Aruch*, *Orach Chayim* 66:2, and *Mishna Berura* ad loc. 17; see *Ishei Yisrael*, ch. 19.

A-9: Pre and Post-Sleep Recitations for Those Who Sleep by Day

Question: I work a night shift and therefore sleep in the day rather than at night. What do I do about saying *Kri'at Shema Al Hamita*,¹ *Elokai Neshama*, and *Modeh Ani*?

Answer: The *gemara*² instructs that even though one said *Kri'at Shema* at *Ma'ariv*, he should say it again before going to sleep. Another *gemara*³ mentions an associated *beracha* (*HaMapil*). It then lists *berachot* that are recited when one awakens, starting with *Elokai Neshama* and continuing with the *Birchot HaShachar*, which are to be added as one goes through the activities of getting up and starting his day. Yet another *gemara*⁴ reports that, before retiring, R. Yehoshua ben Levi would say certain psalms that are effective in warding off evil spirits.

Based on this background, let us investigate your specific questions. Most *poskim* are of the opinion that one may not recite the *beracha* of *HaMapil* before going to sleep in the daytime.⁵ Among other possible reasons, this is because the *beracha* was instituted for sleeping at regular times. Likewise, one who sleeps during the day is not obligated to say *Kri'at Shema*,⁶ as the *halacha* to do so before sleeping was apparently instituted in connection with the *mitzva* of *Kr'iat Shema* at night.⁷ Some recommend reciting *Viyhi Noam* and *Yoshev B'Seter* before daytime sleep,⁸ which is relevant for those who normally recite these protective sections of *Kri'at Shema Al Hamita*. These

1. Bedtime *Kri'at Shema*.

2. *Berachot* 4b.

3. *Ibid.* 60b.

4. *Shvu'ot* 15b.

5. *Bi'ur Halacha* to *Orach Chayim* 339:1; see also, *B'Tzel HaChochma* V:166.

6. *Ishei Yisrael* 35:12.

7. See *Tosafot*, *Berachot* 2a; *Aruch HaShulchan*, *Orach Chayim* 239:3.

8. Rama, *Orach Chayim* 231:1.

halachot are apparently applicable even if one will wake up from the daytime sleep at night.⁹

One who awakens from any reasonable night's sleep (presumably, even if he began during the day) recites *Elokai Neshama*.¹⁰ However, if he woke up very early, he should wait until *alot hashachar* (dawn).¹¹ There is a minority opinion that one should say *Elokai Neshama* after any sizable sleep throughout the day.¹² Some assert that by the next morning, one who slept during the day can certainly say *Elokai Neshama* even if he did not sleep again at night, as by then, he had both slept and experienced a new morning since his last recitation. However, we do not suggest making the passage's concluding *beracha* under those circumstances, as many authorities maintain that it was instituted for the normal practice of sleeping at night and awakening for a new day.¹³

*Modeh Ani*¹⁴ is not mentioned in the *gemara* and, in fact, does not appear in the *Shulchan Aruch*, the *Rama*, or their earliest commentators. It has made its way into *siddurim* through a book called *Seder HaYom*, and the *Mishna Berura*¹⁵ states: "It is good to say, as soon as one gets up, *Modeh Ani* ..." As it is a relatively recent *minhag*, it is not surprising that we find little halachic literature on "the rules of *Modeh Ani*" for those who sleep at unconventional times. On the other hand, the general concept of (ending and) starting one's day with holy thoughts is ancient and is at the heart of the various aforementioned sources and others.

We find the following thesis to be very logical.¹⁶ The recitation of the non-*beracha* thanks to HaShem capsulated in *Modeh Ani* developed because in our times we do not allow people who have

9. See *B'Tzel HaChochma* op. cit.

10. *Mishna Berura* 46:24.

11. *Ibid.* 47:30.

12. See *Bi'ur Halacha* to *Orach Chayim* 52:1; *Ishei Yisrael* 5:(43).

13. See *Ishei Yisrael* op. cit.

14. "*Modah* ..." for a woman.

15. 1:8.

16. Presented in *Piskei Teshuvot* 1:(22).

just woken to say *Elokai Neshama* and *Birchot HaShachar* before washing their hands, as they once did.¹⁷ *Modeh Ani*, which is not in *beracha* form and does not invoke HaShem's Name, enables one to immediately convey *Elokai Neshama*'s basic expression of thanks for having regained full consciousness.

We assume that the above logic that applies to *Elokai Neshama* applies also to *Modeh Ani*. There is a significant difference between *Modeh Ani* and *Elokai Neshama*, however. The latter is a formal *beracha*, which one is forbidden to recite when it is not called for, whereas the former is a praise that is not in *beracha* form. Therefore, although it is not mandated that one recite *Modeh Ani* when he slept only during the daytime, he may, if he desires, say it either upon awakening or in the morning.

17. *Shulchan Aruch, Orach Chayim* 46:2.

A-10: When During Torah Reading is it Forbidden to Talk?

Question: I know that one may not talk during *kri'at haTorah*, neither during the actual *laining* nor in between the *aliyot* (*bein gavra l'gavra*). When does it become permitted to talk?

Answer: We will focus only on the limitations on speech that relate to *kri'at haTorah*. Many topics and modes of discussion are forbidden throughout the entire *tefilla* and, in fact, some of them are off-limits in a *shul* at any time.

The *gemara*¹ says: “Once the *sefer Torah* is opened, it is forbidden to speak even in matters of Halacha.” Two sources from the *Navi* are cited. One focuses on being quiet,² and the other mentions the need to listen.³ The case of *bein gavra l'gavra* is not discussed in this *gemara* explicitly, and, according to several authorities,⁴ it is permitted to talk at that time. Indeed, when discussing the situation of someone disgracing the Torah by walking out in the middle of the reading, the *gemara*⁵ says that it is permissible to go out *bein gavra l'gavra*. It is Rabbeinu Yona⁶ who stipulates that once the Torah is opened, it is forbidden to talk until the end of the reading, including *bein gavra l'gavra*. The *Beit Yosef*⁷ explains that the prohibition is apparently based on our concern that the person will continue talking after the reading resumes.⁸

1. *Sota* 39a.

2. *Nechemia* 8:5.

3. *Ibid.* 3.

4. *Bach, Orach Chayim* 146, cited by the *Magen Avraham* 146:3 and others; *Be'er Sheva, Sota* 39a, citing also the Rambam, *Tefilla* 12:9, the simple reading of which seems to indicate this.

5. *Berachot* 8a.

6. *Berachot* 4a of the Rif's pages.

7. *Orach Chayim* 146.

8. Another explanation of Rabbeinu Yona's opinion is that it is disrespectful to speak during the entire unit of *kri'at haTorah*, including its breaks..

Poskim discuss how broadly to apply this concern. Most permit learning quietly by oneself *bein gavra l'gavra*,⁹ as it may be easier to stop and because learning does not disturb others.¹⁰ Similarly, if there is an organized break, such as when someone presents *divrei Torah* to the whole congregation between *aliyot*, this problem likely does not exist.¹¹ Some also permit very short statements *bein gavra l'gavra*.¹²

Interestingly, the *Shulchan Aruch*,¹³ while accepting Rabbeinu Yona's stringency that one must be silent even when the Torah is not being read, adopts the Rambam's¹⁴ ruling that the prohibition on talking applies only once the reading begins. The aforementioned *gemara* and Rabbeinu Yona speak about silence from the time the Torah is opened.¹⁵

Our analysis of the question of when the prohibition of talking begins and why it was implemented may also impact on the question of whether it extends the entire time until the *haftara*, during which talking is similarly forbidden.¹⁶ From the perspective of the possibility that one who talks will continue doing so, the prohibition seems to apply from the beginning of the *laining* straight through the *haftara*.¹⁷ On the other hand, even if we regard the *laining* and the *haftara* as a single unit, there is a big difference between the two with respect to the prohibition. The original *takana*¹⁸ of *laining* on Shabbat did not include the

9. See *Ateret Paz* I:III, *Even HaEzer* 13.

10. *Tosafot*, *Berachot* 8a; Rama, *Orach Chayim* 146:2; see *Bi'ur Halacha* ad loc.

11. *Yechaveh Da'at* V:17.

12. *Magen Avraham* op. cit.; *Aruch HaShulchan*, *Orach Chayim* 146:3.

13. *Orach Chayim* 146:2.

14. *Tefilla* 12:9.

15. The *Ateret Paz* op. cit. tries to explain why it is easier to stop talking before the initial reading than *bein gavra l'gavra*.

16. *Shulchan Aruch* op. cit. 3.

17. Admittedly, there is anyway a sizable break for *Kaddish* and *hagba*, but it does not seem that this would eliminate the problem.

18. A practice of Rabbinic origin.

haftara or *maftir*. Along with the institution of the *haftara*, the Rabbis instituted the requirement that the one who gets the *aliya* to read from the *Navi* should read from the Torah first, so as not to equate an *aliya* for reading from the *Navi* to that for reading from the Torah.¹⁹ We even separate between the two Torah readings (the *parasha* and *maftir*) with *Kaddish*. Therefore, it makes sense to argue that after the seven *aliyot*, *bein gavra l'gavra* is no longer a consideration. In fact, Rabbeinu Yona himself says that the prohibition is in place until he “finishes the *parasha*,” which implies until after the seventh *aliya* is concluded.²⁰

As alluded to above, there is logic to argue that the *Shulchan Aruch* might disagree. However, since the extension of the prohibition to *bein gavra l'gavra* was made in order to comply with Rabbeinu Yona's stringency, it makes sense to limit the stringency to the main *laining*, to which he referred. Furthermore, based on halachic logic,²¹ one might distinguish between the period before *maftir*, when the reading from the *sefer Torah* is still not completed and where the *aliya* can even count toward the requirement of seven *aliyot*,²² and the period after *maftir* and before the *haftara*.

19. *Megilla* 23a.

20. We have not found *Acharonim* who discuss the matter.

21. We have not found explicit discussion among the *poskim*.

22. *Shulchan Aruch, Orach Chayim* 282:6.

A-11: Honors for Younger Congregants

Question: How should teenagers be treated when it comes to being given *kibudim* (honors) in *shul*? In some *shuls*, they receive only “less desirable” *kibudim*, such as *peticha*¹ and *gelila*.²

Answer: The *mishna*³ lists the parts of the services that a *katan* (boy before bar mitzva) can and cannot perform. In theory, a *katan* can get an *aliya*⁴ (although the longstanding *minhag* does not allow it⁵), but he cannot be a *chazan* for the core parts of the *tefilla*. Teenagers are halachically able to lead any part of the services.⁶ The question is one of appropriateness.

The *gemara*⁷ states that only one whose beard has grown in may be chosen as *chazan*. Most *Rishonim* and the *Shulchan Aruch*⁸ explain that this limitation applies to the significant honor and responsibility that comes with one’s appointment as the **regular** *chazan*, and it is due to the congregation’s honor. On an occasional basis, however, teens may serve without any problem. Although one may come across a local practice (in actual experiences or in the writings of a *posek*) not to allow singles or young men to serve as *chazanim*, this is not viewed as a halachic or a mainstream policy vis-à-vis an occasional *chazan*.⁹

1. The opening of the ark.

2. Closing up of the Torah scroll.

3. *Megilla* 24a.

4. *Shulchan Aruch, Orach Chayim* 282:3

5. *Mishna Berura* 282:12.

6. Assuming, as we almost always do without checking, that he has physical signs of the beginning of maturity.

7. *Chulin* 24b.

8. *Orach Chayim* 53:6.

9. See *Shevet HaLevi* V:19.

Generally, there are no halachic issues with honoring teens with *aliyot*.¹⁰ Whereas, as noted above, the position of *chazan* has compelling elements of a respected status that not everyone deserves to fill, *aliyot* are more a matter of an opportunity to do a *mitzva*, and that applies to all ages.¹¹ Admittedly, it is appropriate and sometimes required to give the earlier *aliyot* to “those most deserving of honor.”¹² However, it is not usually justified to totally skip over upstanding young people.

In fact, there is a *halacha* that indicates that youngsters are also expected to receive “medium-level” *kibudim*. The *mishna*¹³ states that one who receives the *aliya* of *maftir*, which was then considered a “lower-level” honor, is “compensated” by getting to be the *chazan* for *Musaf*. The *mishna* says that if a *katan* gets *maftir*, since he is not eligible to be the *chazan*, we give the honor of *Musaf* to his father. While the *gemara* softens the matter somewhat, the clear assumption is that a *katan*, let alone a teen, should not be relegated to those “honors” that others do not want.

It is true that there have been and still are places where youngsters are not given *aliyot* on Shabbat, but this is not viewed as healthy under typical circumstances, and it is certainly not a *halacha*.¹⁴ The matter of policy depends quite a bit on the *shul*'s particular situation. One reason to prefer adults for *kibudim* is that at least regarding *davening*, they are, in theory and often in practice, more experienced and proficient than adolescents. When this is the case, it is certainly a factor, but it is countered to some extent by the value of training the next generation. In some *shuls*, when there are not always enough *kibudim* to go around, adults

10. We will not discuss here special circumstances, such as the reading of *Parashat Zachor*.

11. Compare *Shulchan Aruch, Orach Chayim* 53:16, and *Mishna Berura* 141:25.

12. *Kohanim* and *levi'im* receive the first two *aliyot*. Regarding the Shabbat reading, the *Shulchan Aruch, Orach Chayim* 136:1, presents rules of precedence for the third *aliya* based on a person's stature.

13. *Megilla* 24a.

14. See *Tashbetz* II:261; *Tzitz Eliezer* VII:1.13.

are more likely to expect the more “desired” *kibudim* and to be insulted by a perceived slight. This, too, is a factor, but it should not necessarily result in excluding youngsters’ participation altogether.

Making youngsters feel appreciated and respected is important for their developing attitudes toward *shuls* in particular, and religion in general. Therefore, in all but exceptional communities, we would urge giving teens a fair share – both quantitative and qualitative – of the honors. It is also appropriate and wise to give pre-bar mitzva boys the opportunity to play roles in sections where Halacha allows it (*peticha, gelila, An'im Zemiroth, P'sukei D'Zimra, Kabbalat Shabbat*), according to their capabilities. When youngsters are involved more in the rituals, the welcoming atmosphere toward them in the *shul* is likely to increase (including greetings after *davening*, etc.), and this, in turn, should impact positively on their attitude and behavior.

A-12: A Mistake in a *Pasuk* with HaShem's Name

Question: The practice of some *ba'alei kri'ah* is that when they make a mistake in reading a *pasuk* in which HaShem's Name is mentioned, they repeat the whole *pasuk*. Is this necessary, and how should the correction be made?

Answer: Some mistakes in the Torah reading are significant enough to require repeating words, whereas some are not.¹ Furthermore, repeating words in order to fix the mistake can introduce other concerns. If the *pasuk* in question contains HaShem's Name, two primary issues must be considered. One is the general concern to avoid saying HaShem's Name unnecessarily; repetition ostensibly causes one of the readings of the Name to be superfluous. Another issue is that we are generally not supposed to recite only a part of a *pasuk*.² How, then, does one correct a mistake while both maintaining the sanctity of HaShem's Name and minimizing tampering with the completeness of the *pasuk*?

The earliest source³ we have found on this topic is the *Chayei Adam*.⁴ He writes that one may repeat part of a *pasuk* if he wants to make a correction (apparently even when it is not critical); he need not return to the beginning of the *pasuk*. Repetition is permitted even when it entails repeating HaShem's Name. The *Chayei Adam* explains that we do not view the repetition as tantamount to reading only part of a *pasuk* or as inappropriately reciting a Name, but rather as completing a *pasuk* that was, in effect, incomplete because of the mistake.

In order to clarify this position, we will present a hypothetical

1. See *Shulchan Aruch* and Rama, *Orach Chayim* 142:1, and *Bi'ur Halacha* ad loc. regarding the details.

2. *Megilla* 22a.

3. Written only about 200 years ago.

4. 5:2 .

example. Let us take the following *pasuk*: A-B-C-NAME-D-E-F. The *ba'al korei* made a mistake at C, but he only realized it at D, after he had said HaShem's Name.

According to the *Chayei Adam*, the *ba'al korei* should return to C and read from there again until the end of the *pasuk*. Although he will thus read only part of the *pasuk*, and he will also be repeating HaShem's name, this is the appropriate course of action under the circumstances. Various *poskim* have cited this ruling as the authoritative source.⁵

Two respected, yet not commonly studied *sefarim* arrive at a different ruling while presenting an apparently incorrect understanding of the above *Chayei Adam*. The *Chesed La'Alafim* and *Sha'arei Rachamim*⁶ write that if one realizes that he erred after having already read HaShem's Name, such that he will have to repeat the Name in order to correct the mistake, he should stop at that point and return to the beginning of the *pasuk*. The *ba'al korei* need not complete the reading of the *pasuk* first. Thus, upon realizing his mistake at D, he should immediately return to A and read the whole *pasuk* again. These authorities explain that although it will turn out that the *ba'al korei* did not complete the *pasuk* in its first reading, it is proper to return immediately to the beginning of the *pasuk* so that the entire *pasuk* with HaShem's Name will be read properly. They posit, unlike the premise of the *Chayei Adam*, that repeating HaShem's Name is problematic if one does so in the context of a partial *pasuk*, even though the intention is to turn the incomplete *pasuk* into a complete and correct one.

The *Tzitz Eliezer*⁷ claims convincingly that the *Chayei Adam* should be understood as we previously cited him. Thus, there is no need to restart a *pasuk* in order to avoid the repetition of HaShem's Name in a partial *pasuk*. It is possible that the other sources understood the *Chayei Adam* as they did because they

5. See *Elef HaMagen* 619:54 and *Afarkasta D'Anyah II, Orach Chayim* 23.

6. Both cited in *Tzitz Eliezer* XII:40.

7. *Ibid.*

were already aware of a *minhag* to return to the beginning of the *pasuk*. In fact, the *Tzitz Eliezer* concedes that the *minhag* does not follow the view of the *Chayei Adam*, but rather is to restart the *pasuk*, and he posits that one should conform to the *minhag*.

Furthermore, the *Tzitz Eliezer* writes that the *minhag* is to **first complete** the *pasuk* so as not to leave it unnecessarily incomplete, and to then return to the beginning of the *pasuk*. Thus, upon realizing his mistake at *D*, the *ba'al korei* should finish reading until *F* and then return to *A* and read the entire *pasuk* again. Admittedly, if the mistake renders the reading invalid, completing the *pasuk* may not have full value. Considering this, we can understand the *Tzitz Eliezer's* distinction that if one has to recite another Name in order to complete the *pasuk* (between *D* and *F*), he should rather “cut his losses” and revert immediately to the beginning of the *pasuk*, as the *Chesed La'Alafim* recommended. Note that if the mistake occurred before or after reading HaShem's Name in such a way that one can make the correction without repeating the Name,⁸ there is neither need nor justification to return to the beginning of the *pasuk*.

Since all of the systems that one can employ are reasonable, a *gabbai* can allow the *ba'al korei* to act as he is accustomed. He should not confuse the *ba'al korei* by instructing him to do otherwise. (In a case in which he will do something as confusing as repeating a whole *pasuk*, banging civilly on the *bima* or otherwise alerting the congregation that something out of the ordinary will be occurring is often advisable.) Those who do the correcting should also consider whether their proposed correction is indeed warranted,⁹ especially in proximity to HaShem's Name,¹⁰

8. For example, if the mistake was at *C* and he realized before saying the Name, or the mistake was at *D*).

9. In general, it is proper that only people who are familiar with the *halachot*, Hebrew language, and the rules of grammar make any corrections, but this is not always the case.

10. The *Mishna Berura* 142:4 rejects a popular misconception in his time that one should not correct any mistakes when it requires repeating HaShem's Name. However, when the correction is actually unnecessary, he would likely agree that it is not advisable.

in order to avoid the confusion that often results, as we have seen.

A-13: *Oleh* Reading Along with the *Ba'al Korei*

Question: I was taught to read along with the *laining*¹ when I get an *aliya*, but I see that not everyone does this. Is there a requirement to read along?

Answer: Actually, there are even opinions that one should **not** read along. The *Zohar*² states that only one person may read from the Torah at a time. However, this source likely does not preclude an *oleh*³ from reading along, for one or more of the following reasons:⁴ 1) The *Zohar* may have objected only to someone else reading along audibly,⁵ whereas an *oleh* should be reading so quietly that he cannot even hear himself.⁶ 2) The *Zohar* referred to Talmudic times, when the *oleh* also *lained*, so that there was no need for anyone else to read.⁷ 3) We base our rulings on standard halachic sources whenever they contradict the *Zohar*.⁸

Let us indeed investigate several halachic indications and sources. The Rosh⁹ writes that if the *oleh* does not read along, his *beracha* is *l'vatala*,¹⁰ as it does not make sense that *A* makes a *beracha* on a Torah reading that *B* carries out. The Talmudic system, whereby the *oleh* himself *lained* aloud for the community, is fundamentally ideal. Our practice of giving the recitation of the *berachot* to the *oleh* and assigning the reading for the community to a *ba'al korei* is a consequence of the fact that not everyone who is deserving of an *aliya* knows how to *lain* proficiently. The Rosh

1. Torah reading.

2. See the *Beit Yosef, Orach Chayim* 141.

3. *Aliya* recipient.

4. See *D'var HaMishpat* (Cohen) 1 at length on the entire topic.

5. *Ibid.*

6. *Shulchan Aruch, Orach Chayim* 141:2.

7. *Darchei Moshe, Orach Chayim* 141.

8. *Ibid.*

9. *Megilla* 3:1.

10. Meaningless, and thus forbidden.

writes that while an *oleh* must read, he does not need to know how to read independently; he can be helped by following along with the *ba'al korei*.¹¹ The *Beit Yosef*¹² concludes that according to this compromise position – which permits giving an *aliya* only to someone who is capable of reading from the *sefer Torah*, but even with help – the blind or others who cannot read a Torah scroll at all should not receive an *aliya*. Even if he can repeat after the *ba'al korei*, it is forbidden in the context of Torah reading for one to recite what he has not read from a *sefer Torah*.

Acharonim question the view of the Rosh/*Beit Yosef*. Given the broad halachic rule of *shomei'ah k'oneh*,¹³ since the *oleh* is listening to the *ba'al korei* read, why isn't it considered as if he is reading along? Indeed, the Mahari¹⁴ and the *Taz*¹⁵ disagree with the Rosh's view and maintain that a blind person may indeed receive an *aliya*. The *Taz* cites as proof a *Yerushalmi*¹⁶ that states that one person can make a *beracha* on the *Megilla* even when the reading is done by another.

Rav Yaakov Emden¹⁷ supports the Rosh's approach by asserting that *shomei'ah k'oneh*, as applied to relating the spoken text to the listener, is insufficient here. Since the *laining* must be read from a Torah scroll, the *oleh* must read it from the scroll (at least with his eyes), which a blind person cannot do. The *Bi'ur Halacha*¹⁸ deflects the *Taz*'s proof from the *Yerushalmi* by distinguishing between the cases. Regarding the *Megilla*, the reading and its *berachot* are the obligations of the entire congregation. Just as every individual can listen to the *ba'al korei*'s reading in order to fulfill his obligation, he can listen to anyone's *beracha* to fulfill that part of his obligation. In contrast, the *beracha* on Torah

11. *Shut HaRosh* 3:12.

12. *Orach Chayim* 141.

13. Listening to a recitation is like having recited it; see *Sukka* 38b.

14. *Hilchot Kri'at HaTorah* 3.

15. 141:3.

16. *Megilla* 4:1.

17. *She'eilat Ya'avetz* I:75.

18. To 141:2.

reading was instituted specifically for the one who is called to **read from the *sefer Torah***, not for the rest of the congregation, even though they listen to the reading. (Other explanations of the Rosh are beyond our present scope.)

How do we rule? The *Shulchan Aruch*,¹⁹ following the Rosh, writes that a blind man should not receive an *aliya*. The Rama²⁰ counters that nowadays, since the *ba'al korei* does the reading on the congregation's behalf, it suffices that he read from the scroll, and the *oleh* can therefore even be blind or illiterate. Many Sephardic communities follow the Rama.²¹ However, in ordinary circumstances, when the *Shulchan Aruch*²² states that the *oleh* **must** read along or be guilty of a *beracha l'vatala*, the Rama does not dissent. Is there a tacit contradiction in the Rama? The *Bi'ur Halacha*²³ assumes that the Rama also prefers the Rosh's ruling and relies upon the Maharil's leniency only in the case of the blind and illiterate. Since they **cannot** read along, depriving them of ever having *aliyot* would embarrass them and might cause acrimony.

Regarding your question, then, you are certainly acting properly. Apropos those who do not read along, it is the rabbi's prerogative and obligation to decide if, how, and when to educate them or deal with the **possibility** that their *aliyot* do not count. From your perspective as a member of the congregation, remember that the ruling of the Maharil, the Rama, and others can be relied upon *b'di'eved*.²⁴

19. *Orach Chayim* 139:3.

20. Ad loc., as explained by the *Mishna Berura* ad loc. 12.

21. See pertinent treatment in *Kaf HaChayim*, *Orach Chayim* 139:15, and *Yalkut Yosef* 139:4.

22. *Orach Chayim* 141:2.

23. Op. cit.

24. According to Rav Yaakov Emden's reasoning, one who is reading along with his eyes is more likely to fulfill the requirements than a blind person is.

A-14: Leaning During an *Aliya*

Question: I often see people lean on the *bima* during their *aliyot*. Is that a problem? Should I tell them not to lean?¹

Answer: The *mishna*² says that one may read *Megillat Esther* standing or sitting. The *gemara*³ notes that, in contrast, Torah reading must be performed while standing. As support, the *gemara* cites a *pasuk* describing the transmission of the Torah from HaShem to Moshe: “You [Moshe] stand here with Me.”⁴ Just as HaShem was “standing” (symbolically), later transmitters of the Torah should do the same. To answer your questions, we need to determine the nature and severity of this requirement, the status of leaning in this regard, and whether it applies to an *oleh*⁵ as well.

The *Yerushalmi*⁶ says that standing during the reading of the Torah is intended to honor it and is related to the idea that the Torah must be transmitted in a manner of trepidation, not casualness. The *Tur*⁷ rules that if one did not read the Torah while standing, the *mitzva* of reading is not fulfilled, and the *laining* must be repeated. Some authorities disagree with this ruling, however. The *Magen Avraham*⁸ rules that *b'di'eved* one does fulfill the *mitzva* without standing, as is evidenced by the fact that we allow a king to read while seated. The *Mishna Berura*⁹ and most recent *poskim* accept this lenient view.

Despite the relative leniency on the matter of standing, the *Shulchan Aruch*¹⁰ writes that at least *l'chatchila*, one should stand

1. Regarding another element of the scenario, see response F-7.

2. *Megilla* 21a.

3. Ad loc.

4. *Devarim* 5:28.

5. One receiving an *aliya*.

6. *Megilla* 4:1.

7. *Orach Chayim* 141.

8. 141:1.

9. 141:1.

10. *Orach Chayim* 141:1, based on the *Yerushalmi* op. cit.

without even leaning on anything. This can be understood in two ways: 1) Leaning is not considered standing. 2) Since one must show proper regard for the Torah's transmission, standing that is not totally attentive, such as leaning, is wrong. The *Magen Avraham*¹¹ says that both points are true, but in different cases. If one stands with a strong lean, so that he would fall were the object he was leaning on to be removed, then this is not considered standing from a halachic perspective. If, on the other hand, he stands and leans in a way that he would not fall, then this is generally considered standing, but not in a particularly respectful manner. Based on this, he reasons, for example, that the Mordechai's permission for an obese person to lean¹² applies only to slight leaning, the logic being that when the leaning is understandable, it is not a sign of disregard. However, stronger leaning is simply not considered standing, as required, and is therefore never acceptable. The *Sha'arei Ephrayim*¹³ comments that it is also customary to allow a measure of leaning when looking at the top lines of a tall *sefer Torah*, arguing that leaning over in order to see well is not disrespectful to the Torah.

In general, the laws governing Torah reading apply both to the *ba'al korei* and to the *oleh*, and the matter of standing is no exception.¹⁴ (The *Sha'arei Ephrayim*¹⁵ and *Mishna Berura*¹⁶ write that even the *gabbai* must stand.¹⁷)

When we observe people who are committed to Halacha but at times fail to follow some details properly, we are often presented with a dilemma regarding whether or not they should be corrected. In the case of partial leaning – which is likely not

11. *Orach Chayim* 141:2.

12. *Shulchan Aruch* op. cit.

13. 3:12.

14. See *Shulchan Aruch* and Rama op. cit.; *Sha'arei Ephrayim* op. cit.

15. *Ibid.*

16. 141:5.

17. There is a major discussion regarding whether the congregation must stand when listening to the reading; see *Shulchan Aruch* and Rama, *Orach Chayim* 146:4.

overly haughty and, according to the majority of opinions, does not affect the fulfillment of *kri'at haTorah* – you should point out the *halacha* to the *oleh* **only** if you are confident that it will be taken in the right way. If, on the other hand, many people are leaning entirely during their *aliyot*, it would be most constructive if an effective spokesman can make the *olim* aware of the problem in a manner that does not embarrass them. Of course, the optimal method would be in the context of the rabbi finding opportunities to educate the entire congregation.

A-15: *Birkat Kohanim* with a Cast

Question: I broke my arm, and it is now covered with a soft cast. I am a *kohen*. May I do *Birkat Kohanim*¹ in this state? (My arm is mobile.)²

Answer: The *mishna*³ states that a *kohen* with blemishes on his hands should not perform *Birkat Kohanim* because this will cause people to look at him. Rashi⁴ comments that the Divine Presence rests upon the *kohen*'s hands during *Birkat Kohanim*, and seeing them could therefore be dangerous. *Tosafot*⁵ argues convincingly that the Divine Presence accompanied the *kohanim* only in the *Beit HaMikdash*. Rather, he argues, the point is that when people stare at a peculiarity of a *kohen*, it hinders their concentration. Either way, the blemish does not disqualify the *kohen* per se, but creates a problem that the Rabbis decided must be avoided.

It is questionable whether a cast meets the requirements of a “wonder”⁶ that distracts people. On the other hand, it might be somewhat of a curiosity to see *Birkat Kohanim* done with a cast, and perhaps it would draw improper attention. Realize that even one whose hands are colored (e.g., by a dye) does not do *Birkat Kohanim*.⁷

Let us thus examine other elements of the issue.

The *gemara*⁸ states that even one whose blemish would ordinarily preclude him from doing *Birkat Kohanim* may do so if the people of his town are familiar with his condition. The *Shulchan Aruch*⁹ rules that this applies to one who has been in

1. *Duchenen*.

2. We are not addressing here questions of washing the hands before *Birkat Kohanim* if the cast covers part of the hand; see *VaAni Avarchem*, ch. 16.

3. *Megilla* 24b.

4. Ad loc.

5. *Chagiga* 16a.

6. See *Mishna Berura* 128:109.

7. *Megilla* ibid.

8. Ibid.

9. *Orach Chayim* 128:30.

the city for thirty days. After people have become accustomed to the condition, they will not be tempted to look at him during *Birkat Kohanim*.¹⁰ Thus, after the cast has been on for thirty days (assuming you are in a place where you are a “regular”), there is no issue.

There is another major factor that may allow you to do *Birkat Kohanim*. The *Shulchan Aruch*¹¹ rules that if the local custom is for the *kohanim* to drape their *tallitot* over their heads, then even one with blemishes on his face or hands may do *Birkat Kohanim*, provided that the blemish is thereby covered.¹² (It does not suffice that the members of the congregations usually avoid looking, because people are more likely to be drawn to look when there is a blemish to see.¹³) Thus, if in following your local *minhag* your *tallit* will cover enough of your arm so that the cast will not be visible (which is usually the case), you may continue doing *Birkat Kohanim*.

What if the local *minhag* is not to cover that much, but you want to do so? If your sleeve covers the entire cast (even if you usually do not wear long sleeves), there should be no problem, as how you wear your clothing is a matter of personal preference; it is not related to *minhagim* that affect *halacha*. A question does arise, however, if you cover the cast with a *tallit*, contrary to the *minhag*. The implication of the *Shulchan Aruch* is that this would not enable you to do *Birkat Kohanim*, but it is unclear why not. The *Igrot Moshe*¹⁴ explains that it is not because of a prohibition to change the *minhag*. Rather, differing from the practice because of a blemish likely draws attention to it. It stands to reason, then, that if you are in a community where some *kohanim* cover more and some cover less, you could cover more now to keep the cast out of view.

10. *Mishna Berura* ibid. 111.

11. *Op. cit.* 31.

12. The Rama (ad loc.) clarifies that covering the face alone is insufficient if a blemished hand protrudes.

13. *Mishna Berura* op. cit. 115, disagreeing with the *Taz* 128:28.

14. *Orach Chayim* II:32.

LIVING THE HALACHIC PROCESS

In summary, you should evaluate your situation based on the above guidelines. If you come to the conclusion that you should not do *Birkat Kohanim*, be aware that according to some authorities, you should walk out before *Birkat Kohanim* so that people will not suspect that something is wrong with your *kohen* status.¹⁵ Some say that this is not necessary because your visible blemish “informs” others why you are not doing *Birkat Kohanim*. There is no conclusive ruling on the matter.¹⁶

15. See a parallel case in *Shulchan Aruch* op. cit. 43.

16. See *Bi'ur Halacha* to 128:30 and *VaAni Avarchem*, p. 173.

A-16: Steps to Enable a *Kohen* to be Ready for *Birkat Kohanim*

Question: I am a *kohen*, and I often speed up my *Shemoneh Esrei* in order to finish in time for *Birkat Kohanim*.¹ Someone told me that I could go up and recite *Birkat Kohanim* even in the midst of *Shemoneh Esrei*. Is this true? In general, I am interested in suggestions regarding how to deal with the situation.

Answer: There is indeed a possibility for a *kohen* to go up for *Birkat Kohanim* while in the middle of *Shemoneh Esrei*, but there are limitations as well.

The Radbaz² says that if there is no other *kohen* who will be doing *Birkat Kohanim*, then a *kohen* who is still in the midst of *Shemoneh Esrei* should interrupt his *tefilla* to go up and do it. The Radbaz asserts that since *Birkat Kohanim* is a *mitzva* from the Torah – as opposed to specific *tefilla* sections, which are Rabbinic – the *kohen*'s obligation in *Birkat Kohanim* takes precedence. The precedent for this is the *halacha* that when a *kohen* serves as a *chazan*, he can recite *Birkat Kohanim* if he is able to effectively return to his *tefilla* afterward.³ If, on the other hand, there are other *kohanim* in the congregation, there is no need to disrupt one's *Shemoneh Esrei*. Although a *kohen* has a personal obligation to *duchen*, that obligation is activated only when he is called upon to do so.⁴ The Radbaz posits that when the call to the *kohanim* to recite *Birkat Kohanim* is made, it is addressed only to those who are available, which usually does not include those still in the midst of *Shemoneh Esrei*. The *Magen Avraham*⁵ remarks that if an individual *kohen* who is still *davening* was specifically told to go

1. *Duchenen*.

2. IV:293.

3. *Shulchan Aruch, Orach Chayim* 128:20.

4. See *Shulchan Aruch* *ibid.* 4.

5. 128:40.

up for *Birkat Kohanim*, his obligation would indeed be activated, and he would have to stop his *tefilla* and fulfill it.

There are restrictions, however, on a *kohen's* ability to interrupt his *tefilla* in order to go up for *Birkat Kohanim*. In order to do so, one requirement is that the *kohen* must move at least slightly in the direction of the place of *Birkat Kohanim* during the *beracha* of *R'tzei*.⁶ Another is that this break will not preclude his ability to resume *Shemoneh Esrei* properly afterward.⁷

The *Mishna Berura*,⁸ after citing the *Magen Avraham*, brings other significant opinions⁹ that question, considering the strictness with which *Chazal* treated *Shemoneh Esrei*, whether it is permitted to interrupt it, even if the *kohen* was called. This reservation may be valid even if there is no other *kohen* present.¹⁰ According to the latter opinions, the *kohen* is only allowed to *duchen* if he is up to the same part of *Shemoneh Esrei* as the *chazan* at the time of *Birkat Kohanim*. Under these circumstances, neither walking to the front of the *shul* nor reciting *Birkat Kohanim* at its appointed place in *Shemoneh Esrei* is considered a significant break.

If a *kohen* may not go up to *duchen* because he is in the midst of his *tefilla*, he does not leave the *shul*. A *kohen* is instructed to leave *shul* before *Birkat Kohanim* either to avoid the obligation to *duchen* taking effect when he is called upon or as a technical measure, so that people will not think that he is unfit.¹¹ Neither issue is much of a problem when one is halachically prevented from doing *Birkat Kohanim*. Thus, neither issue justifies walking out at a time during which one is supposed to be standing in one

6. *Shulchan Aruch* op. cit. 8; see *Mishna Berura* 128:106.

7. See Radbaz op.cit; *Mor U'Ktzia* to *Orach Chayim* 128.

8. 128:106.

9. Including *Eliya Rabba* 128:50 and Rav Yaakov Emden (see *Mor U'Ktzia* op. cit.).

10. *Mor U'ktzia* op. cit.; *Kaf HaChayim, Orach Chayim* 128:56. It is difficult to determine the opinions of the *Eliya Rabba* and the *Mishna Berura* in a case in which there are no other *kohanim*.

11. *Terumat HaDeshen* II:22.

place.¹²

Let us now discuss strategy regarding finishing *Shemoneh Esrei*. If you are already up to *Elokai Netzor*, you can skip or shorten it, as is suggested regarding finishing in order to answer to *Kedusha*.¹³ Since you can answer to *Kedusha* in that situation,¹⁴ taking part in *Birkat Kohanim* should be no less important. Even if you do not have enough time to take the three steps backwards, you can still go up at that point. Furthermore, you should remember to take a minimal move toward the *duchen* during *R'zei* and make sure to keep your hands clean since the last time you washed – which, according to most views, can even be the morning washing.¹⁵

It is obviously not an optimal situation to possibly miss *Birkat Kohanim* or to have to deal with concerns of timing, which, among other things, is probably disturbing to your concentration. If you feel you can reasonably speed up your *tefilla* with little to no concentration loss,¹⁶ we suggest doing that. Another possibility discussed by the *poskim* is to start *Shemoneh Esrei* somewhat early and thus finish at a workable time. Although it is recommended to start *Shemoneh Esrei* with everyone else, many permit starting a little early if this results in significant gains.¹⁷ While you are certainly not required to do so, if it facilitates a better frame of mind in your *Shemoneh Esrei*, you may do so.

12. See *Shulchan Aruch, Orach Chayim* 104:2, and *Ba'er Heitev* 104:2.

13. *Shulchan Aruch, Orach Chayim* 122:1.

14. *Ibid.*

15. *Va'Ani Avarcheim* p. 165; see *Yalkut Yosef, Orach Chayim* 128:(12).

16. Especially if you would ordinarily miss *Birkat Kohanim* by just a few seconds.

17. See *Yabia Omer* II, *Orach Chayim* 7.

A-17: Stopping During *Tefilla* to Use the Bathroom

Question: What should one do if he feels an urge to use the bathroom when he is in the middle of *davening*? When should he use the bathroom? When does he recite *Asher Yatzar*? From where in the *davening* should he resume?

Answer: These are important questions. Many people do not know what to do, or find the relevant *halachot* to be complicated, as they may appear counterintuitive.

The *gemara*¹ takes the matter of properly preparing the body for a respectable *tefilla* very seriously, and this includes cleanliness. Accordingly, if one recites *Shemoneh Esrei* at a time in which he will be unable to restrain his need to defecate for 72 minutes (the ruling regarding urination is unclear²), his *tefilla* is considered an abomination, is disqualified, and must be repeated.³ Even when one can wait 72 minutes, it is proper for him to take care of his needs before *davening* if he feels any real urge to use the bathroom, even if this means that he will be unable to *daven* along with the congregation as a result.⁴

If one started *tefilla* or a section thereof when it was already forbidden for him to do so, and he then reconsiders, he must stop immediately, irrespective of where he is up to. However, if his situation “deteriorated” more quickly than expected, the question of what to do depends on the section of *tefilla* and the severity of the urge. During *Shemoneh Esrei*, when it is forbidden to move one’s feet under all but the most extenuating circumstances, he must continue until the end and then use the bathroom, even if he will miss *Kedusha*.⁵ Only if one reaches the stage at which

1. *Berachot* 23a.

2. See *Mishna Berura* 92:2 and *Bi’ur Halacha* ad loc.

3. See Rambam, *Tefilla* 4:10; *Shulchan Aruch, Orach Chayim* 92:1.

4. *Mishna Berura* 92:5.

5. *Shulchan Aruch, Orach Chayim* 92:2, and *Mishna Berura* 92:8.

restraining himself is degrading would he be able to leave his place in the midst of *Shemoneh Esrei*.⁶ Even in that case, if he is *davening* in public and walking out in the middle will cause significant embarrassment, he may choose to continue *davening*.⁷

During *Kri'at Shema* and its *berachot*, one may choose whether to go to the bathroom or continue the *tefilla*.⁸ However, since he may not start *Shemoneh Esrei* in that state, it is best to pause at one of the standard breaks⁹ in that section.¹⁰ During *P'sukei D'Zimra*, one may go to the bathroom between any of the psalms or before *Barchu*. He should not wait until after *Barchu*, as that begins the next section of *tefilla*.¹¹

If one stopped properly, he can certainly continue from the place in *tefilla* at which he stopped. Even if he should have stopped earlier, any part of *tefilla* that he recited other than *Shemoneh Esrei* is considered valid after the fact,¹² allowing him to continue from where he stopped.¹³ If, however, he spent more time in the bathroom than it takes him to recite the entire section that he is presently reciting, he would be required to return to the beginning of the section.¹⁴

When to recite *Asher Yatzar* after exiting from the bathroom depends on the place in *tefilla* that one has reached. If he was in the middle of *P'sukei D'Zimra* when he left to use the bathroom, he should optimally make the *beracha* at the first break between “paragraphs” of *P'sukei D'Zimra*.¹⁵ If he used the bathroom during *Kri'at Shema* or its *berachot*, he should delay reciting

6. Rama, *Orach Chayim* 92:2; see *Mishna Berura* 92:11.

7. *Mishna Berura* op. cit.

8. *Mishna Berura* 92:9.

9. See *Shulchan Aruch, Orach Chayim* 66:5.

10. *Mishna Berura* 92:9.

11. *Ibid.*

12. As noted above, in the case of *Shemoneh Esrei*, whatever is recited when a strong need to use the bathroom exists is invalid and certainly should be repeated.

13. *Mishna Berura* 92:6.

14. *Bi'ur Halacha* to 92:2.

15. See *Mishna Berura* 51:8; *Ishei Yisrael* 16:6.

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Asher Yatzar until after *Shemoneh Esrei*¹⁶ (assuming that he will not feel a new urge to go to the bathroom by the time he has the chance to recite it). During *Shemoneh Esrei*, one would certainly not be allowed to recite *Asher Yatzar* under any circumstances.

16. *Mishna Berura* 66:23.

A-18: *Me'ein Sheva* at a *Minyan* Not Held in a *Shul*

Question: I was at a Shabbat bar mitzva at a hotel in Israel. We *davened* in a makeshift *shul* (with an *aron* and *sefer Torah*) that is often used for “private *minyanim*” as well as other functions. Should we have recited *Me'ein Sheva* (the *beracha* that includes *Magen Avot*) at the end of *Ma'ariv*?

Answer: The phenomenon of *Me'ein Sheva* is interesting. It is essentially a shortened *chazarat hashatz*,¹ and this is surprising at *Ma'ariv*, which does not have a *chazarat hashatz*. The *gemara*² explains that we recite it because many *shuls* were located in dangerous places, and the Rabbis wanted to extend the *davening* to give latecomers time to finish before everyone else left.

Because of the unusual nature of the institution of *Me'ein Sheva*, it is not surprising that *Rishonim* limit it to circumstances that resemble the original situation. The Ra'avya³ states that it was instituted only for a *minyan* and that the practice is maintained even in times when there is no known particular danger, in order to preserve the practice instituted in previous generations. The Rivash⁴ and *Beit Yosef*⁵ assert that it does not apply to improvised *minyanim*, such as of those who gather in the house of a groom or a mourner, as it is not as likely that people will come from different places to join them, and there is therefore less need to be concerned about latecomers. This approach is accepted by the *Shulchan Aruch*.⁶

What are the parameters of a permanent *shul* regarding the

1. Repetition of *Shemoneh Esrei*.

2. *Shabbat* 24b.

3. Cited by the *Tur*, *Orach Chayim* 268.

4. *Shut* 40.

5. *Orach Chayim* 268.

6. *Orach Chayim* 268:10.

recitation of *Me'ein Sheva*? The *Taz*⁷ seems to have a relatively broad definition, as he includes cases in which a group sets aside a place to *daven* for a number of days. There is some disagreement as to whether this refers to a few days or a few weeks, as well as to whether it has to be consecutive days with all *tefillot* or could be on weekends only,⁸ as is likely the case in the hotel in question.

The *Eliya Rabba*⁹ and the *Mishna Berura*,¹⁰ in citing the *Taz*'s inclusion of a place set aside for a number of days, maintain that a *sefer Torah* must **also** be present. In contrast, some *poskim* hold that the presence of a *sefer Torah* suffices without other requirements,¹¹ which would make your *davening* place established enough for the purposes of *Me'ein Sheva*. It is also possible that your location is close enough to the hotel's main *shul* that it is like an extension of the *shul*, and it would then be considered a permanent *beit kneset*.¹² On the other hand, there is logic to say that the main determining factor should have to do more with the nature of the group that assembled than with the history of the place where they meet (unless it is a full-fledged *shul*). In your case, according to this approach, since the bar mitzva group is a one-time event, *Me'ein Sheva* should not be recited.

In the final analysis, your case is one of a *safek* (doubt) as to which definition to accept. How does one deal with such a situation? First, some rule (albeit, based on kabbalistic sources) that once instituted, *Me'ein Sheva* should be said at any *minyan*,¹³ and this appears to be the *minhag* in Jerusalem,¹⁴ at least for Sephardim.¹⁵ Second, the *Magen Avraham*¹⁶ maintains that even

7. *Orach Chayim* 268:8.

8. See opinions in *Minchat Yitzchak* X:21.

9. 268:19.

10. 268:24.

11. See opinions in *Minchat Yitzchak* op. cit. and *Yabia Omer* II, *Orach Chayim* 29.

12. See a similar argument in *D'var Moshe*, cited in *Minchat Yitzchak* op. cit.

13. See *Rav Pe'alim* III, *Orach Chayim* 23.

14. *Har Tzvi*, *Orach Chayim* I:152.

15. *Yabia Omer* op. cit.

16. 268:14.

when circumstances indicate that a *minyán* should not recite *Me'ein Sheva*, one need not protest against those with the *minhag* to recite it. However, *Acharonim*¹⁷ point out that those who recite *Me'ein Sheva* needlessly violate the rule not to say a *beracha l'vatala* (in vain), and we usually avoid this even when there is only a doubt of *beracha l'vatala*. Thus, in conclusion, if you were not in Jerusalem, it would have been prudent not to have recited *Me'ein Sheva* (as it is difficult to claim there was a *minhag* among a group that is not a permanent community).¹⁸ However, if you did recite it, you certainly had *poskim* to rely upon, especially considering that there are elements that make the multipurpose room much more appropriate for prayer than the house of the groom mentioned above.

17. *Shut Maharalbach* 122; *Pri Megadim, Orach Chayim* 268, *Mishbetzot Zahav* 8.

18. *Mishna Berura* 268:25.

A-19: *Kaddish HaGadol* for Burial and a *Siyum*

Question: Why do we recite the same special *Kaddish* at both a burial and a *siyum*? After all, one is a sad occasion, while the other is happy.

Answer: To explain this, we must first understand the basic idea of *Kaddish*. We will then be able to understand how this special *Kaddish* (sometimes called *Kaddish HaGadol*) fits into the picture.

In brief, the idea of *Kaddish* is that we pray that HaShem's prominence in the world should increase for our sake and, *kav'yachol*,¹ for His. In so doing, we demonstrate our connection to Him and our commitment to sanctify His Name. *Chazal* instituted the various *Kaddeishim* primarily in the context of *tefilla* and the public recitation of *p'sukim*, especially during *tefilla*.² At the end of some *Kaddeishim*, we insert requests that our prayers be accepted and/or that we be blessed with peace. *Kaddish* is also appropriate after Torah study,³ at which time we pray for those who teach and study Torah (*Kaddish D'Rabbanan*).

The themes of the End of Days – resurrection of the dead, the rebuilding of Yerushalayim and the *Beit HaMikdash*, and a world that will serve only HaShem – are all elements that are added to the opening of *Kaddish HaGadol*, in contrast to other *Kaddish* texts. HaShem's presence in the world will reach its height at the End of Days, when *Mashiach* will help fix the world. In fact, the opening words of this *Kaddish* appear to be taken

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1. Literally, as if it can be. This indicates that the idea that one is about to say cannot be applied to HaShem in the fullest sense, but rather conveys the idea in a general way.
 2. See *Mishna Berura* 55:2.
 3. One version of *Massechet Sofrim* 19:12 (19:9 in some editions); see also *Sota* 49a.

from Yechezkel's⁴ description of *milchemet Gog U'Magog*.⁵ Let us translate the beginning of *Kaddish HaGadol*:

Let HaShem's great Name be exalted and sanctified in the world that He is destined to renew and to give life to the dead and raise them to eternal life, to build the city of Yerushalayim and complete its Temple in its midst, uproot idol worship from the Land, and return the service of the Heaven to its place, and the Holy One Blessed Be He shall rule in His majesty and splendor in our lives...

Where does this text come from, and when should it be said? *Massechet Sofrim*⁶ refers to it (without citing the full text) in discussing the *Kaddish* that is said by mourners while people console them after the *davening* on Shabbat. *Massechet Sofrim* writes, however, not to include the special opening passage, which, according to one version there, was reserved for the *Kaddish* after completing the study of Torah. However, the *Shulchan Aruch*⁷ records that we do recite *Kaddish HaGadol* after a burial, near the grave. (According to the Ramban's⁸ version of *Massechet Sofrim*, *Kaddish HaGadol* is also recited later by mourners, but according to the Ramban, this is only true when the deceased had acted in a way that suggests that he will be included in the Resurrection of the Dead.) The reference of this *Kaddish* to the resurrection of the dead, which should certainly be on the minds and lips of those attending a funeral, is clearly appropriate under the circumstances. *Kaddish*'s function in the context of a funeral is not to express sorrow, but rather to sanctify HaShem's Name even in difficult times, which brings merit to the deceased, and to pray for the grand days of the future.⁹

4. *Yechezkel* 38:23.

5. A war that accompanies the dawning of the End of Days.

6. Op. cit.

7. *Yoreh Deah* 376:4.

8. *Torat HaAdam, Hatchalat Aveilut*.

9. See *Derisha, Yoreh Deah* 376:4.

What does *Kaddish HaGadol* have to do with a *siyum*? Fascinatingly, the Rambam¹⁰ uses *Kaddish HaGadol*'s text as the **regular** *Kaddish D'Rabbanan*, the *Kaddish* recited after certain types of Torah learning, including parts of the *tefilla* that contain Rabbinical exegesis. This likely stems from his reading of *Massechet Sofrim*, but this is not our *minhag*. The *gemara*¹¹ records that whoever learns Halacha every day will take part in the World to Come (the time of ultimate reward).¹² Making a *siyum* shows one's efforts and accomplishments in this regard. Thus, *Kaddish HaGadol*'s content is appropriate at that time, as the learning he has done will help facilitate his participation in the World to Come.

While not closing the door on other homiletic connections between burial and a *siyum*, the simplest explanation is that *Kaddish HaGadol* is appropriate for both events because of their connections to the theme of the World to Come, which is included in the prayer's text. In neither case is *Kaddish HaGadol* indicated because of a connection to sadness or happiness, respectively.

10. *Seder Tefillot Kol HaShana*.

11. *Nidda* 73a.

12. The World to Come can refer to the world of souls, which receive reward after their personal death, or it can refer to an ideal time for the entire world, in which those who are deserving are resurrected from the dead to take part. There is overlap between the treatments of these topics, and sometimes it is unclear if a statement is referring to one, the other, or both.

Section B:
Berachot (Blessings)

B-1: *Birkat HaMazon* After Significant Delay

Question: I interrupted my meal (bread included) to *daven Ma'ariv*, which, it turned out, was preceded by a long speech. By the time I returned to eat, an hour and a half had passed. Could I still have *bentched*?

Answer: The *mishna*² states that one can *bentch* only until the food is digested. The *gemara*³ offers two opinions for the definition of this cut-off point. R. Yochanan says that it is when one becomes hungry again, whereas Reish Lakish says that it does not occur as long as one is still thirsty from having eaten or for 72 minutes, depending on how much he ate. We rule according to R. Yochanan and assume that the *mishna* refers to when one **begins** to become hungry as the food is being digested.⁴ However, most *poskim* assume that R. Yochanan accepts a 72-minute minimum time limit; he simply maintains that if one has not yet begun to become hungry, he can *bentch* **even after** 72 minutes have passed.⁵

The problem is that a feeling of hunger is hard to quantify or determine with certainty.⁶ Therefore, one should be careful to *bentch* no later than 72 minutes after having finished eating. You did not succeed in doing so in the case that you describe. Unless you were certain that you were either still full (should *bentch*) or already hungry (too late), you entered the realm of *safek* (doubt).

Ostensibly, your desire to continue eating and then *bentch* was the halachic preference. In order to make sure this would have worked, the continuation of your meal would have had to

1. Recited *Birkat HaMazon*.

2. *Berachot* 51b.

3. *Ibid.* 53b.

4. *Shulchan Aruch, Orach Chayim* 184:5.

5. See *Mishna Berura* ad loc. 20; *Bi'ur Halacha* ad loc.

6. *Aruch HaShulchan, Orach Chayim* 184:7.

include at least a *k'zayit*⁷ of bread.⁸ If it did, then *Birkat HaMazon* would be of value either way. If you were still full enough from the earlier eating before continuing, then *Birkat HaMazon* would have covered both parts of the meal. If you were not full enough, then while you would not have addressed the first part of the meal, at least *Birkat HaMazon* would not have been *l'vatala*,⁹ as it was called for by the post-*Ma'ariv* eating.¹⁰

However, the idea of eating more raises another question. If a break is actually long enough for feelings of hunger to begin, making it too late for a *beracha acharona*,¹¹ is it necessary to make a new *beracha rishona*¹² before eating again? The *Magen Avraham*¹³ assumes that once the time for a *beracha acharona* has passed, a new *beracha* is necessary because the previous eating is a matter of the past. However, the *Even HaOzer*¹⁴ argues that there is no source to indicate that digestion breaks the validity of a *beracha rishona*. On the contrary, the Rambam¹⁵ asserts that a *beracha* that one makes when he begins eating can cover other foods “even if he breaks all day long,” provided that he has not decided to stop eating.

Although there are attempts to deflect the *Even HaOzer*'s proofs,¹⁶ and some *poskim* agree with the *Magen Avraham*, the *Even HaOzer*'s opinion is the more accepted one.¹⁷ Therefore, you would not have needed to make a *beracha* in order to have continued eating. Furthermore, in a case like yours, where there is **doubt** whether digestion occurred, even the *Magen Avraham*¹⁸

7. The size of an olive.

8. *Mishna Berura* 184:20.

9. Recited in a manner in which it has no value, and is therefore forbidden.

10. This idea is found in the *Magen Avraham* 184:9 and *Mishna Berura* op. cit.

11. *Beracha* made after eating, including *Birkat HaMazon*.

12. *Beracha* made before eating.

13. Op. cit.

14. *Orach Chayim* 179.

15. *Berachot* 4:7.

16. See *Tzitz Eliezer* XII:1.

17. See *Mishna Berura* 184:17; *Yechaveh Da'at* VI:11.

18. Op. cit.

allows eating more without a new *beracha*, and indeed suggests it in order to avoid the doubt regarding *Birkat HaMazon*. Apparently, then, it is preferable to be in a situation in which one might need to say *HaMotzi* but refrain out of doubt than to forego a *Birkat HaMazon* that he might still be able to recite.¹⁹

Therefore, eating more bread (without a *beracha*) would have been the best way for you to have salvaged *bentching*.²⁰ In the event that there was no more bread available, if you already had a satiating meal and you thought it was likely that you were still considered full, you could have *bentched* even though there was some doubt about it.²¹

19. See *Levushei S'rad* on *Magen Avraham* op. cit.

20. It is possible to raise an objection to this suggestion since you changed your location between your first and second sittings, which might be significant even though you returned. Ashkenazim follow the Rama's view (*Orach Chayim* 178:2) that one does not need to recite a new *beracha* after moving to a different location in the midst of a meal that includes bread. As we discussed, we also rule like the *Even HaOzer* that even a long break does not necessitate a new *beracha* as long as one intends to continue eating. However, the *Tzitz Eliezer* (XII:1) tries to prove that when one waits a long time and also changes locations, we would accept the *Magen Avraham's* position that he requires a new *beracha*. In our humble opinion, the case he presents is not convincing (although this discussion is beyond our scope). We accept what is apparently the majority view that even with the combination of the passing of time and a different location, one may eat more bread without a new *beracha*. Furthermore, we have noted that even the *Magen Avraham* agrees with the *Even HaOzer* when it is doubtful whether the food already began to be digested.

21. *Kaf HaChayim, Orach Chayim* 184:28; see *Aruch HaShulchan, Orach Chayim* 184:8.

B-2: Reciting a *Beracha* Oneself or Relying on Another Person's *Beracha*

Question: My husband and I went out to eat with my friend and her husband, who are much more religious than we are. I made *HaMotzi* on behalf of everyone, but afterwards my friend's husband made his own *HaMotzi*. I was quite insulted. Is there a *halacha* that a man cannot fulfill his *mitzva* by answering *amen* to a woman's *beracha*?

Answer: Let us begin with a true story, whose relevance should be clear later. An Ashkenazi man got engaged to a Sephardi woman in the days when there was little interaction between the groups. At the engagement party, the bride's father wished the groom's father that soon he should have a grandchild named after him. The recipient of the "blessing" got upset, and the "good wisher" took it as a sign that his new in-law did not want to share grandchildren with him. Only after some explaining, did the Ashkenazi side realize that Sephardim desire grandchildren named after them **while they are alive** and that the bride's father had intended to bless his new *mechutan*.¹ The Sephardi father similarly learned the hard way that Ashkenazim do not name after someone who is alive, so that he had, in effect, "wished" that his *mechutan* die shortly. Had either one been aware of the other's assumptions, there never would have been an incident, and after clearing things up, there was no reason for feelings to remain hurt.

Let us now explain where you and your friends have different assumptions.

The *gemara*² spells out when a person can make a *beracha* on behalf of others who are eating with him. Basically, there are

1. In-law.

2. *Berachot* 42b.

two scenarios: 1) They recline to eat together.³ 2) They make a statement that they intend to eat together. The *Shulchan Aruch*⁴ points out that nowadays, when people rarely recline when eating, the criterion is that they sit down to eat at one table. We assume that you and your friends ate at one table. The criterion was therefore met, and you had reason to consider it appropriate for one person to recite *HaMotzi* and have the others answer *amen*, without making their own *beracha*.

In fact, when starting the meal as one group, there is a benefit in one making the *beracha* on behalf of all, based on the concept of “with a multitude of people, it is a glory for the King.”⁵ (Regarding *Birkat HaMazon*, after the meal, only if there is a *zimun*⁶ is it proper for one to listen and answer rather than recite separately.⁷ Standard practice is that every individual recites *Birkat HaMazon* on his own.)

May a woman recite *HaMotzi* on behalf of others? Only one who is fully obligated in a *mitzva* can perform it on behalf of others who are fully obligated.⁸ For example, women, who are not obligated in shofar blowing, cannot blow shofar for men in order for them to fulfill their *mitzva*.⁹ However, women are obligated (Rabbinically, just like men) to make *berachot* before eating, and they can therefore be proxies for men. Indeed, there are judiciously observant families in which the wife makes *HaMotzi* at the Shabbat meal.

It is therefore understandable that you might feel that your friend’s husband’s decision to make his own *beracha* was some sort of snub. However, it is much more likely that he just followed a *minhag* that is well over a hundred years old, accepted by many,

3. In Talmudic times, reclining was a sign of a eating a meal.

4. *Orach Chayim* 167:11.

5. *Mishlei* 14:28; see *Bi’ur Halacha* to 167:11.

6. Three people reciting *Birkat HaMazon* as a group, with introductory passages.

7. *Shulchan Aruch, Orach Chayim* 193:1.

8. *Berachot* 20b.

9. *Rosh Hashana* 29a.

which is apparently not practiced by or known to you (which is also fine). According to this practice, people generally make their own *berachot* rather than rely on listening to the *beracha* recited by another. One reason given is concern that one will speak between answering *amen* to the *beracha* and eating.¹⁰ Another reason for this general custom regarding various types of *berachot* is that we are concerned that people will not concentrate in a manner that enables them to fulfill their obligation with another's *beracha*.¹¹

Only on Shabbat and *Yom Tov* is it still widely practiced that one person recites *HaMotzi* on everyone's behalf. This is because there is usually only one set of *lechem mishneh*¹² upon which the *beracha* is recited. Consequently, if one recites his own *beracha* before eating his piece of bread, it is questionable whether he is still connected to the *lechem mishneh*.¹³ Even so, there are places where people make their own *berachot* after the central one was made over the two *challot*.¹⁴

10. *Shulchan Aruch HaRav, Orach Chayim* 167:18.

11. *Mishna Berura* 8:13.

12. Double loaves.

13. *Shemirat Shabbat K'Hilchata* 55:19; see *Mishna Berura* 274:8.

14. See *Shemirat Shabbat K'Hilchata* *ibid*.

B-3: The *Beracha* on Pizza

Question: How can it be that whether or not you wash (do *netilat yadayim*) before eating pizza depends upon how much you eat? I would think that either it is bread or it is not bread!

Answer: To understand this, we must first consider what makes a food deemed to be bread or a quasi-bread.

The *gemara*¹ discusses a category of food called *pat haba'ah b'kisnin*, which is a baked grain-based food that shares qualities with normal bread but is also different from it. The *gemara* says that the determination of whether one recites *HaMotzi* or *Mezonot* on *pat haba'ah b'kisnin* depends on whether one is *kovei'a seuda* (“sets a meal”) around it, and the amount that will be consumed is the major factor in this determination. The *Shulchan Aruch* writes that the other special *halachot* of bread similarly apply to *pat haba'ah b'kisnin* when one is *kovei'a seuda* – namely, that one recites *Birkat HaMazon* on it² and must wash before eating it.³

In order for a food to be a candidate for bread status, it must be made from one of the five main grains, and it must be baked or look like bread.⁴ (Thus, for example, corn bread and spaghetti are not treated like bread no matter how much one eats of them.) Among foods that pass these tests, there are characteristics that can classify them as *pat haba'ah b'kisnin* instead of bread. The *Shulchan Aruch*⁵ cites three features of *pat haba'ah b'kisnin*: 1) It has a pocket of sweet filling; 2) its dough contains significant amounts of ingredients, such as sugar and oil, besides flour and water; 3) it is thin and crisp. It is unclear whether **all** of these features are required or whether **any** significant non-bread

1. *Berachot* 42a.

2. *Orach Chayim* 168:6.

3. *Ibid.* 158:1.

4. See *Shulchan Aruch*, *Orach Chayim* 168:10.

5. *Ibid.* 7.

characteristic makes the food *pat haba'ah b'kisinin*.⁶

Let us now discuss pizza. On the one hand, pizza might be *pat haba'ah b'kisinin* for one or both of the following reasons: 1) Its dough may contain a lot of liquid other than water (e.g., oil, apple juice, milk); 2) it is baked with a topping of pizza sauce and cheese, which make it similar to the pocket of filling described above.

On the other hand, pizza might not be *pat haba'ah b'kisinin*: Regarding #1, the designation as *pat haba'ah b'kisinin* requires that there be a lot of other liquid in the dough (for Sephardim, enough to taste; for Ashkenazim, a majority of the non-flour component⁷), and this is often not the case regarding pizza. Regarding #2, although pizza may have a “filling,” it is not clear that all kinds of fillings remove the bread status. For example, the *Shulchan Aruch*⁸ says that a *pashtida* (similar to a *knish*) filled with meat, fish, or cheese requires the *beracha* of *HaMotzi* on any amount. The *Mishna Berura*⁹ explains that classic *pat haba'ah b'kisinin* is made with sweet fillings that make it dessert-like (e.g., pie), as opposed to those that are more meal-like. The *Taz*, however, maintains that all fillings are treated the same,¹⁰ and the matter is therefore usually treated as the subject of doubt.

Furthermore, the *Beit Yosef*¹¹ states that *pat haba'ah b'kisinin* is something that, because of its characteristics, people do not usually center a meal around. One can argue that people eat pizza as the main part of a meal, rather than as a minor part or as a snack between main meals. Accordingly, the ruling I personally follow is to treat pizza like bread for any amount.¹² Many *poskim* distinguish between cases in which the dough is made with water

6. See *Bi'ur Halacha* to 168:8.

7. *Shulchan Aruch* and Rama, *Orach Chayim* 168:7.

8. *Ibid.* 17.

9. 168:94.

10. *Orach Chayim* 168:20.

11. *Orach Chayim* 168; see also the *Aruch HaShulchan*, *Orach Chayim* 168:25.

12. See *Am Mordechai*, *Berachot* 24.

and those in which it contains a high concentration of fruit juice, and some advise to treat the matter as a doubt and only eat pizza as part of a bread meal.¹³ The more prevalent practice, however, treats pizza as *pat haba'ah b'kisnin*.

How much does one have to eat of *pat haba'ah b'kisnin* for the *halachot* of bread (washing, *HaMotzi*, and *Birkat HaMazon*) to apply? The *Shulchan Aruch*¹⁴ stipulates that one has to eat the amount that most people consider appropriate for a meal. In another halachic context,¹⁵ the equivalent of three or four eggs suffices. The *Mishna Berura*¹⁶ cites a *machloket* regarding whether that quantity also suffices in our context or whether the amount of a more extensive meal is needed. He also says that if one is eating other foods with the *pat haba'ah b'kisnin*, he need only eat the amount of *pat haba'ah b'kisnin* that would **fill people up along with the other food**.¹⁷ Rav M. Feinstein goes a step further, writing that nowadays, when bread's role in meals is less significant than it once was, even a small amount of *pat haba'ah b'kisnin* in the midst of a meal is treated like bread.¹⁸

Nevertheless, the most prevalent practice is that only two or perhaps three average-sized slices of pizza are treated like bread.

13. See *V'Zot HaBeracha*, p. 217.

14. *Orach Chayim* 168:6.

15. See *Shulchan Aruch*, *Orach Chayim* 368:3.

16. 168:24 .

17. *Ibid.* Not all agree; see *Aruch HaShulchan*, *Orach Chayim* 168:17.

18. *Igrot Moshe*, *Orach Chayim* III:32. See also *V'Zot HaBeracha* op. cit.

B-4: *Beracha* on Ice Cream for Dessert

Question: Should one make a *beracha* on ice cream served as a dessert at a meal in which one ate bread?

Answer: The *gemara*¹ presents the basic rules of *berachot* during a meal in which one ate bread. Foods that “come due to the meal” do not require a *beracha*, whereas those foods that are not due to the meal require a *beracha* before eating them.

The Rosh² describes foods that come due to the meal as those that are connected to the main part of the meal and are usually eaten with bread. Fruits are prime examples of foods that are not due to the meal.³ They are ordinarily eaten to impart a sweet taste, rather than to satiate. *Poskim* further assume that foods brought to the table relatively close to *Birkat HaMazon* are eaten specifically for dessert and generally do not come due to the meal,⁴ which makes them candidates for a *beracha*. However, because of certain factors, some of which we will discuss, it may not always be necessary to recite a *beracha* before eating them.

The *gemara*⁵ asks why, according to these rules, one is required to make a *beracha* on wine drunk during the meal. Wine appears to be part of the meal, and therefore should not have its own *beracha*. The *gemara* answers: “Wine is different, as it causes a *beracha* for itself.” The most accepted explanation is that wine is unique in that we make a *beracha* on it in various *mitzva* contexts (e.g., *Kiddush* and *Sheva Berachot*), even when we are not interested in drinking it.⁶ It follows that were it not for this unique characteristic, wine would indeed not have required

1. *Berachot* 41b.

2. Ad loc.

3. *Shulchan Aruch, Orach Chayim* 177:1.

4. See *Mishna Berura* 177:4.

5. Op. cit.

6. Rashi ad loc.

a *beracha* during a meal. Accordingly, most *Rishonim* and the *Shulchan Aruch*⁷ posit that other drinks consumed during the meal, even toward its end, do not require a *beracha*. Many explain that eating contributes to one's thirst, and quenching thirst is thus an integral part of the meal.

We should note that some *Rishonim* understand the *gemara* differently and argue that one makes a *beracha* on all drinks during the meal. The *Shulchan Aruch*⁸ even cites this view as a minority opinion and suggests removing doubt by making a *Shehakol* before the meal to cover drinks. However, this is certainly not the standard practice.

Surprisingly, the idea of *berachot* on drinks is crucial for your question about ice cream. At first glance, ice cream is a classic dessert, meant to finish the meal with a sweet taste. Unlike drinks, it is neither present during the main meal nor is it intended to quench one's thirst. Nevertheless, a number of *poskim* claim that ice cream is really a liquid; it is served as a solid because people enjoy it at a very cold temperature. These authorities argue that since the accepted practice is to not make a *beracha* on liquids during a meal, including during dessert, one should not make a *beracha* on ice cream. Rav Moshe Feinstein is cited as maintaining that one does not make a *beracha* on ice cream for dessert.⁹ *Yalkut Yosef*¹⁰ also rules this way in the name of his father, Rav Ovadia Yosef, who also points out that ice cream is not chewed like foods. Some distinguish between ice cream whose main ingredient is milk, making it a frozen liquid, and ice cream that is a mixture of eggs, soy products, and sugar (i.e., most *pareve* ice cream).¹¹ Perhaps Rav Moshe was speaking only about classic ice cream. However, Rav Ovadia does not accept this distinction.

It is difficult, on fundamental grounds, to accept the above

7. Op. cit. 174:7.

8. Ibid.

9. See *V'Zot HaBeracha*, p. 74.

10. *Orach Chayim* 167:10.

11. *Ohr L'Tzion* II, 12:12.

ruling (despite the principle of *safek berachot l'hakel*, which would indicate that we should not say a *beracha* in a situation of doubt). The great majority of *poskim* understand that the matter does not depend on the halachic definitions of liquid vs. solid, but rather on the function of the food. Drinks that relate to the essential meal do not necessitate an additional *beracha*; foods eaten as dessert do. (The reason that we do not make a *beracha* on most cakes eaten for dessert is that they may have a halachic status of bread.¹²) Even among drinks per se, the *Mishna Berura*¹³ mentions some situations and opinions about a *beracha* for whiskey or coffee at the end of a meal, and the main determinant is its function vis-à-vis the meal. Indeed, the *gemara* did not state a formal rule about liquids during a meal. There is thus little reason to lump together all liquids, and especially not ice cream, when their roles in the meal are so different.

Most *poskim* rule that one should make a *beracha* on ice cream. Some suggest avoiding the issue by first making a *beracha* on a food that all agree requires *Shehakol* (e.g., candy).¹⁴ We recommend making a *beracha* on ice cream served as a dessert unless one always follows Rav Moshe's or Rav Ovadia's rulings.

12. *Bi'ur Halacha* to 168:8.

13. 174:39.

14. See *Piskei Teshuvot* 167:3 for sources and for other ways of avoiding the halachic question.

B-5: Two Out of a Group Who Want to do a *Zimun*¹

Question: I know that if two people want to do a *zimun* and a third does not want to yet, the two can force the third to answer. What about if there are four or more people? Can two of them pick one person and force him to join them?

Answer: The *gemara*² says that if three people eat together, one stops eating to answer for two who want to *bentch*,³ but two people do not need to stop to answer for one person, although they may if they wish. Rashi explains that the one who is not *bentching* should show proper manners to answer, implying that there is no halachic requirement to take a break in his meal to do so. However, the *Shulchan Aruch*⁴ rules according to the *Rishonim* who maintain that it is halachically required for the third person to answer; should he refuse to answer, the two may commence as if he were answering and fulfill their requirement of *zimun*.

In order to answer your question regarding two people who want to use a third when there are more than three participants in the meal, we need to understand the reasoning behind the *halacha* above. *Poskim* explain that it is based on the concept of *rov* (majority).⁵ The minority that is not yet ready to *bentch* must follow the majority of the group, which is interested.

According to important *poskim*, the idea of *rov* can be extended to a *zimun* of ten, the text of which includes HaShem's Name. The *Eliya Rabba*,⁶ for example, says that six out of ten who want to do a *zimun* create a majority and can force the other four to answer.

1. Three reciting *Birkat HaMazon* as a group, with introductory passages.

2. *Berachot* 45b.

3. Recite *Birkat HaMazon* (Yiddish).

4. *Orach Chayim* 200:1.

5. *Birkei Yosef*, *Orach Chayim* 200:5; *Mishna Berura* 200:2.

6. *Orach Chayim* 200:6.

If the matter depends on *rov*, it appears, for instance, that two people cannot force three, or even two people to do a *zimun*. The *Birkei Yosef*⁷ assumes the implication of the *Eliya Rabba*: five people cannot compel five others to answer to a *zimun* of ten. This, however, cannot be used as a proof for the case of two and two, as one could argue that one needs a majority not of the group, but of the necessary quorum of the *zimun* at hand (of three or of ten, respectively). Thus, it might be that two people could force anyone they want to join a *zimun* of three, whereas five people, which is only half of a *zimun* of ten, could not force such a *zimun*.

However, the language of the *poskim* implies that it is indeed a matter of group dynamics – namely, the *zimun* takes place when the time is most appropriate for the group. Furthermore, there is no reason to assume that two can select one from the main group and turn him into part of their minority subgroup.

The exact definition of what constitutes a *rov* in *bentching* is important for the following common case. One person wants to *bentch*, and a second is not yet finished eating but volunteers to answer for his friend. Can these two force the third? The *Birkei Yosef*⁸ (discussing the case of five and five, with one of the “non-*bentchers*” volunteering) leans toward the view that they cannot. The person who volunteers is not considered an interested party who counts toward a *rov*; only one who is actually *bentching* now counts.

In contrast, Rav Kook⁹ leans toward the approach that even the volunteer counts to mandate the third to join, as he is, for whatever reason, interested in doing a *zimun*. He bases his inclination on the following *gemara*.¹⁰ Rav Papa was eating with his son and a third person. Only his son was ready to *bentch*, and Rav Papa agreed to accommodate him, which, the *gemara* says, was beyond the letter of the law on Rav Papa’s part. The *gemara*

7. 200:5.

8. *Ibid.*

9. *Orach Mishpat, Orach Chayim* 40.

10. *Berachot* 45b.

does not mention what the third person had to say, and Rav Kook assumes that once Rav Papa agreed, the third's willingness was irrelevant. (One can deflect the proof and contend that, given Rav Papa's stature, it was clear that the third person would not object.)

However, it seems that the *Birkei Yosef's* opinion that only two who are actually *bentching* can force a third to join them is more accepted in practice.¹¹ (*VaYa'an Avraham*¹² raises the possibility that if the second person agrees because he is halachically required to respect the person who wants to *bentch*, it would be considered a *rov*, but he does not rule that way).

When it comes down to it, most people agree to accommodate their friends anyway, which is as it should be. Thus, this discussion is mainly theoretical and perhaps could provide guidelines in "halachic etiquette" for those who finish eating early and are not in a rush.¹³

11. See *Sha'arei Teshuva* 200:2.

12. (Palagi) *Orach Chayim* 16.

13. Regarding how long one who answers must wait until resuming his meal, see *Shulchan Aruch* and Rama, *Orach Chayim* 200:2, and for more detail, *Living the Halachic Process*, III, B-2.

B-6: How to Proceed with *Birkat HaMazon* after *Zimun*

Question: I have seen many *minhagim* with regard to *bentching* after *zimun*. Sometimes, the *mezamen*¹ recites all of *Birkat HaMazon* silently. Sometimes, he waits for the others to finish the first *beracha* and then recites the end of it out loud so that they can answer *amen*. Sometimes, the *mezamen* says the entire first *beracha* out loud. What are the issues, and what is the proper method?

Answer: This is a classic case of a practice that has changed from the manner it was originally intended, with splintered variations arising. Let us proceed through the development.

According to many authorities, originally, a *mezamen* would not only introduce *bentching* with what we call *zimun*, but would also recite all of *Birkat HaMazon* aloud, while the others would listen and answer *amen*.² This accomplishes most fully the idea of praising HaShem together.³ The *minhag* has developed over time for every individual to *bentch* by himself, apparently out of concern that people will not listen to the *mezamen* well enough⁴ or because they may have to understand the text they are hearing in order to be included.⁵

What, if anything, is left of the idea of a joint *bentching*? When the *Shulchan Aruch*⁶ says that every person *bentches* by himself, he notes that they do so quietly. In this way, they can still hear

1. The person leading the *zimun*.

2. *Bach, Orach Chayim* 193; *Mishna Berura* 201:15.

3. See *Berachot* 45a.

4. See *Beit Yosef, Orach Chayim* 183.

5. *Shulchan Aruch, Orach Chayim* 193:1. See relevant opinions in *Mishna Berura* 193:5.

6. *Orach Chayim* 183:7.

the *mezamen*.⁷ The Rama⁸ adds that the others should go ahead toward the end of each *beracha* to enable them to answer *amen* to the *mezamen*'s *berachot*.⁹ Many people follow the Rama's suggestion (except that the *mezamen* usually waits for the others, instead of the others speeding up).

The *Mishna Berura*¹⁰ mentions that in his time it was common for everyone to *bentch* out loud, and no one heard the *mezamen*. (Now it is more common for everyone, including the *mezamen*, to *bentch* quietly.) However, the *Mishna Berura* stresses that it is important for all to hear the *mezamen* at least for the first *beracha* (until "*hazan et hakol*") because of the *halacha*¹¹ that this marks the end of the *zimun*. (The main ramification of this idea is that those who interrupt their meals to answer to the *zimun* should wait until after that point before resuming their meals.¹²)

The matter depends on a *machloket Amoraim*¹³ regarding whether *zimun* ends at "*hazan et hakol*" or at "*u'vetuvo chayinu*," the addition to *bentching* that is inserted when there is a *zimun*. Sephardim follow the latter opinion.¹⁴ The *Mishna Berura*,¹⁵ ruling for Ashkenazim, instructs that one should read along the first *beracha* quietly at the pace of the *mezamen*, who should be reciting it out loud.¹⁶ The *Magen Avraham*¹⁷ goes a step further, saying that until that point, people should only listen to the *mezamen* and then *bentch* the remainder by themselves. The *Mishna Berura*¹⁸ writes that only those who can concentrate on

7. *Mishna Berura* 183:27.

8. *Orach Chayim* 183:7.

9. We do not want it to even appear that one is answering *amen* to his own *beracha*; see also, Rama, *Orach Chayim* 59:4.

10. 183:28.

11. According to the ruling for *Ashkenazim* – see below.

12. Rama, *Orach Chayim* 200:2.

13. *Berachot* 46a.

14. *Shulchan Aruch* op. cit.

15. Op. cit.

16. See discussion in *Living the Halachic Process*, vol. III, B-2.

17. 183:12.

18. Op. cit.

listening to the *mazamen* and can understand the first *beracha* should follow the *Magen Avraham*.

As you observed, the *mezamen* does not always recite even the first *beracha* for the others to listen. Because it is difficult to quarrel with a prevalent practice that has been followed by knowledgeable people for a long time,¹⁹ different rationales for the leniency have been given. One is that, in this case, Ashkenazim rely on the *Shulchan Aruch*'s ruling that *zimun* ends with “*u'vituvo chayinu*.”²⁰ In fact, the *Tzitz Eliezer*²¹ cites an opinion that it is generally better to *bentch* separately after a *zimun*, without listening to the *mezamen*. Additionally, the *Chazon Ish*²² indicates that when there is a *zimun* of ten, in which case HaShem's name is invoked in the introductory part of the *zimun*, it is not necessary to listen to the *mezamen* until “*hazan et hakol*.”²³

In summary, in places where there is no clear *minhag* to the contrary, we recommend that one follow the *Mishna Berura*'s position. Namely, the *mezamen* should recite the first *beracha* audibly and the others should read along quietly while also listening. However, we do not discredit the other approaches you have seen.

19. See *S'dei Chemed*, cited in *Kaf HaChayim*, *Orach Chayim* .183:38 The account pertains to Ashkenazi rabbis, for whom listening to the first *beracha* from the *mezamen* is more important than for Sephardim, as we have discussed.

20. *Ibid*.

21. XVI:1.

22. *Orach Chayim* 31:2.

23. See *Mishna Berura* 200:8.

B-7: Combining Small Amounts of Foods for a *Beracha Acharona*

Question: If I eat half a *k'zayit*¹ of one food whose *beracha acharona* is *Me'ein Shalosh*² and half a *k'zayit* of another food whose *beracha acharona* is *Borei Nefashot*, what *beracha acharona*, if any, should I make?

Answer: We will focus on only a few of this issue's many possible permutations. We start with the case in which the different foods are eaten as separate entities (e.g., a small piece of cake and a small piece of apple), not in a combined manner (e.g., a *k'zayit* of cake with fruit filling).

The general rule is that one cannot fulfill the obligation of *Me'ein Shalosh* by reciting *Borei Nefashot* or vice versa, even *b'di'aved*.³ (An exception is that if one will be making an *Al HaEtz* on fruit of the *shivat haminin*,⁴ he is exempt from saying *Borei Nefashot* after eating fruit of trees that are not of the seven species.⁵) Therefore, if one is **not sure** whether he should recite *Me'ein Shalosh* or *Borei Nefashot*, he is in a bind; if he guesses wrong, he will be making an inappropriate *beracha*.⁶

It is important to note that *Borei Nefashot* is not a generic *beracha* (as its text might imply) that works *b'di'aved* for any food, unlike the mainly parallel *beracha rishona*, *Shehakol*.⁷ Some *Acharonim*⁸ disagree at least partially, maintaining that if it

1. The size of an olive.

2. The long *beracha acharona* that summarizes the elements of *Birkat HaMazon*; it is often called *Al HaMichya*, based on one of its possible options.

3. *Mishna Berura* 208:62.

4. The seven species for which the Land of Israel is praised (wheat, barley, grapes, figs, pomegranates, olives, dates).

5. *Shulchan Aruch, Orach Chayim* 208:13.

6. See Rama, *Orach Chayim* 208:18, and *Mishna Berura* 208:80.

7. *Magen Avraham* 208:26.

8. *Igrot Moshe, Orach Chayim* I:74; *Kaf HaChayim, Orach Chayim* 202:79.

is impossible (for halachic or technical reasons) to recite *Me'ein Shalosh*, then reciting *Borei Nefashot* is not a *beracha l'vatala* and is better than saying nothing.

The *Magen Avraham*,⁹ referring to the case about which you asked, states that if one ate half of a *k'zayit* of *Me'ein Shalosh* food and half of a *k'zayit* of a *Borei Nefashot* food, he says *Borei Nefashot*. The *Machatzit HaShekel*¹⁰ explains that *Borei Nefashot* does apply on a basic level to all foods. If a food is of a higher level of importance and necessitates *Me'ein Shalosh*, *Borei Nefashot* is insufficient, and saying it therefore causes a meaningless *beracha*. However, if there are no grounds for reciting *Me'ein Shalosh* (i.e., one ate less than a *k'zayit* of that type of food), then even a *Me'ein Shalosh* food, to which *Borei Nefashot* basically applies, can connect with another food to warrant a *Borei Nefashot* covering both. In other words, although *Borei Nefashot* does not apply sufficiently to **all** foods, it does not conflict with **any** food.

The *Machatzit HaShekel* adds another justification for the *Magen Avraham*'s ruling.¹¹ He notes that some *Rishonim* say that just as one must make a *beracha* **before** eating any amount of food, one must similarly recite at least the simple *beracha* of *Borei Nefashot* **after** eating any amount of any food.¹² While we do not accept this opinion, it provides one more reason to warrant a *Borei Nefashot*, which suffices to justify a *beracha* when the total of the foods consumed was at least a *k'zayit*.

In order to recite *Borei Nefashot* on a combination of foods that together constitute a *shiur*,¹³ even though each was less than the *shiur*, it is necessary that the foods share the same *shiur* unit. Therefore, half a *k'zayit* of a solid and half a *revi'it* of a liquid do

9. 210:1.

10. Ad loc.

11. See also *Sha'ar HaTziyun* 210:2.

12. This applies to any amount, small or large, of *Borei Nefashot* food, as well as to *Me'ein Shalosh* food when not enough was consumed to necessitate the higher level *beracha acharona*.

13. The amount one needs to eat to require the *beracha*.

not join to warrant a *Borei Nefashot*.¹⁴

Regarding foods that are combinations of multiple ingredients with different *berachot* (e.g., cake, which is made of flour, sugar, oil, etc.), there are different opinions and *minhagim*. Concerning the *beracha rishona* for cake, as long as there is a significant amount of flour from the major grains, one makes a *Mezonot*. However, for the *beracha acharona*, there needs to be a *k'zayit* of the major grains, without taking other grains into account.¹⁵ A question arises if supplementary foods, such as sugar and spices, are added to the flour. Does one make an *Al HaMichya* only if he has consumed a *k'zayit* of flour, or is eating a *k'zayit* of the cake sufficient? The *Mishna Berura*¹⁶ is not fully conclusive, and there are various opinions among *Acharonim* on the matter. Further discussion is beyond our present scope.

14. *Magen Avraham* 210:1.

15. *Shulchan Aruch, Orach Chayim* 208:9.

16. 208:48 .

B-8: *Shehecheyanu* on Vegetables

Question: Does one make *Shehecheyanu* upon eating a vegetable from the new crop, or is this *beracha* just for new fruit?

Answer: We must distinguish between the answer in principle and in practice. In principle, *Shehecheyanu* applies to anything that grows in clearly distinct seasons. In fact, the Talmudic source for *Shehecheyanu* regarding produce is a *gemara*¹ that gives squash, a vegetable, as an example. In practice, however, many of the criteria for *Shehecheyanu* are not met by almost all vegetables.

This *beracha* is a proper response to the happiness that results when something we enjoy reappears after having been out of our lives for a while. We must explore specific issues with that concept in mind. The most basic criterion for *Shehecheyanu* is that there must be a clearly distinctive season when a crop is renewed during the course of the year.² Accordingly, the Rama³ writes, “We do not make *Shehecheyanu* on a new *yerek* (or *yarak* – roughly, a vegetable), because it stands in the ground all year.” The reason he cites,⁴ in the name of Mahari Weil, is that it is therefore difficult to discern which *yerek* is old and which is new. Some *poskim* note the lack of “importance” of many vegetables as a reason not to recite *Shehecheyanu* on them.⁵

The critical issue regarding many vegetables (and some fruit) is whether, despite having distinct growing seasons, they are available throughout the year without significant interruption. This depends on the understanding of the Rama’s statement that *yerek* is in the ground all year. The *Mishna Berura*⁶ notes that since almost every vegetable has a distinct growing season, the

1. *Eruvin* 40b.

2. *Shulchan Aruch* and Rama, *Orach Chayim* 225:6.

3. *Ibid.*

4. *Darchei Moshe*, *Orach Chayim* 225:2.

5. *Aruch HaShulchan*, *Orach Chayim* 225:12.

6. 225:18.

Rama's generalization is difficult to understand. (Nowadays, with the extensive use of hothouses, it is indeed common for many vegetables to be grown throughout the year.) One explanation of the Rama is that because of the concern that one may become confused between different types of vegetables, we do not make *Shehecheyanu* on any of them, even on those that do not grow throughout the year.⁷ Another explanation is that when the Rama described that *yerek* "stands in the ground," he meant that many vegetables are stored in the ground⁸ for long periods. As a result, many vegetables that grow seasonally are available all year anyway, thus exempting them from *Shehecheyanu*.

There are varied opinions about *Shehecheyanu* on fresh produce in situations in which it is very noticeably superior to that which has been in long-term refrigeration.⁹ This difference between new and stored produce seems more prevalent regarding fruits than vegetables. If the produce is available only in cooked, marinated, or dried forms, one says *Shehecheyanu* on new, fresh produce, due to the significant qualitative difference between them.¹⁰ When produce is available throughout the year because it is imported from regions with different growing seasons, we do not say *Shehecheyanu* on the new produce.¹¹

Although, in theory, there should be some vegetables (at least in certain places) that require making a *Shehecheyanu*, the *minhag* (for Ashkenazim) seems to be to never make it on any vegetable. (Sephardim generally have the *minhag* to say *Shehecheyanu* more freely on vegetables, based on the regular

7. *Perisha, Orach Chayim* 225:5; see *Mishna Berura* op. cit.

8. The equivalent of modern refrigeration.

9. See *Igrot Moshe, Orach Chayim* III:34; *V'Zot HaBeracha*, p. 161; *Be'er Moshe* V:65. Pertinent factors include pleasure from superior taste, realization of the fact that the produce is from a new season, and that a new season is significant because it heralds the coming of food for the future.

10. *Aruch HaShulchan* op. cit.; *Halichot Shlomo* 23:20.

11. *V'Zot HaBeracha*, p. 161.

rules.¹²) Classical *poskim* mention that the idea of *lo plug* (not to distinguish between similar cases) could justify withholding a *beracha* from the entire category of *yerek*.¹³ However, not all agree conceptually to a broad use of *lo plug*, and anyway, the term *yerek* was probably originally meant for a more limited category of produce than what we call vegetables.¹⁴ Nevertheless, since the number of vegetables requiring *Shehecheyanu* based on the guidelines that we have mentioned has decreased over time, the extension of *lo plug* in practice seems natural. (Remember also that it is not an outright obligation to recite *Shehecheyanu* on produce.¹⁵)

The distinction between fruits and vegetables in this regard generally follows along the lines of common usage of these words in English. Whether the food's *beracha* is *Borei Pri HaAdama* or *Borei Pri HaEtz* depends more on how the produce grows than on its nature, and it is thus not a relevant factor. Therefore, one should make *Shehecheyanu* on watermelon, strawberries, etc., in places where they are seasonal.

12. *Yalkut Yosef, Mo'adim*, p. 254; see additional sources in *V'Zot HaBeracha*, p. 161.

13. *Magen Avraham* 225:12; see *Mishna Berura* 225:18.

14. *Aruch HaShulchan* op. cit.; see *Mishna Berura* op. cit.

15. *Magen Avraham* 225:6.

B-9: Answering *Amen* to an Electronically Heard *Beracha*

Question: When one hears a *beracha* being recited over the radio or telephone, can/should he answer *amen*? Can he be *yotzei*¹ a *beracha* in this way?

Answer: One can be *yotzei* a *beracha* by hearing it only if it is made by a person who is obligated in the *mitzva*.² Even in order to answer *amen*, he must hear the *beracha* from a person whose *beracha* is meaningful.³ Therefore, all agree that one is not *yotzei* and does not answer *amen* to a *beracha* that he hears on a recording, as no one is actually reciting the *beracha* at that time.

Almost all *poskim* agree that one cannot fulfill the *mitzva* of hearing shofar via a microphone, telephone, or radio, because one must hear the authentic sound of a shofar.⁴ While most *poskim* likewise disqualify *Megilla* reading via a microphone, this point is not as clear, since the authenticity of the sound required for shofar is likely unique. Furthermore, even though the *Megilla* must be heard from a person who is obligated in the *mitzva*, which would seem to disqualify device-generated reproductions, it is possible to argue that one does hear a person via a microphone. First of all, the *ba'al korei*, by means of his voice, is directly causing the production of the sound. Moreover, the production is heard at essentially the same time as the *ba'al korei* is reading. Finally, along with the louder sound of the microphone, the *ba'al korei*'s voice is also present in the room. Therefore, the lenient position

1. Fulfill his obligation.

2. *Rosh Hashana* 29a.

3. See *Shulchan Aruch*, *Orach Chayim* 215:3, regarding a small child's *beracha*.

4. *Rosh Hashana* 27b. We are not discussing questions of electricity on *Yom Tov*.

regarding *Megilla* via a microphone is marginally tenable.⁵

An interesting *gemara*⁶ seems to minimize the importance of hearing the voice of the person reciting, as long as one knows what is being said. The *gemara* describes a huge amphitheater in Alexandria, in which flags were waved to inform people when to answer *amen*. This implies that one does not have to **hear** what is being said in order to answer; he need only **know** what is being said. This source has limited applicability because, as *Tosafot*⁷ explains, the participants were not attempting to fulfill any *mitzva* at the time. However, it does seem to indicate that one can at least answer *amen* without having heard the voice of the person reciting the *beracha*.

Rav S.Z. Auerbach⁸ permits those who hear *berachot* in *shul* via a microphone to answer *amen*, but he rules that one who hears *berachot* via a radio or a telephone may not. The distinction is based on the fact that the people in Alexandria were close enough to be “connected” to the root of the *berachot*, even though they were not actually hearing them. In contrast, there is no physical connection between the person reciting and those “listening” at a distance via telecommunication.

It is possible to raise the following counter-argument to Rav Auerbach’s claim (which itself is based on logic, not sources). Regarding answering *amen*, it is not the authenticity of the voice that is crucial, but rather the connection between that which was recited and the one who “heard” it. Therefore, it is logical that the immediate and realistic reproduction created by live telecommunication creates a palpable connection even over great distances. Although to be *yotzei* through someone else’s *beracha*, it is likely that one must hear the original sound emanating from a

5. See *Tzitz Eliezer* VIII:11. *Igrot Moshe, Orach Chayim* II:108, leans toward validating it conceptually, although not in practice. However, it appears that part of his lenient approach is based on a lack of pertinent scientific information.

6. *Sukka* 51b.

7. *Sukka* 52a.

8. *Minchat Shlomo* I:9.

valid halachic entity, the lesson learned from Alexandria may also apply to those “connected” through modern technology. Indeed, Rav Ovadia Yosef rules that while one cannot be *yotzei a beracha* via a telephone, he may answer *amen* and respond even to prayers that require a *minyan*.⁹

Another factor that might preclude answering *amen* is the possibility that the voice travels over an area that is filthy or includes idol worship.¹⁰ However, there are several reasons to be lenient on this issue, in addition to the question of the chances that the “sound” travels over such places. First, it is not clear that we *pasken* that this is a problem, especially when there are other points of leniency.¹¹ Also, the disqualification due to passing over problematic places **might** apply only to sound waves and not to the transmission of electrical signals, which will later be used to recreate the sound.

In conclusion, one cannot fulfill a *mitzva* that requires hearing something specific via telecommunication. It is unclear, however, whether he can answer *amen* to *berachot* heard in this manner. One may rely on ample grounds to do so, considering that the stakes regarding an unwarranted *amen* are lower than for an unwarranted *beracha*.¹² We would certainly stop short of saying that he is required to answer *amen* in these cases.¹³

9. *Yechaveh Da'at* II:68.

10. See *Shulchan Aruch, Orach Chayim* 55:20.

11. See opinions in *Yechaveh Da'at* op. cit.

12. See *Igrot Moshe, Orach Chayim* IV:91.

13. See also *Piskei Teshuvot* 215:3.

B-10: When to Make a *Beracha* on the Morning *Netilat Yadayim*

Question: How can we wait to make the *beracha* on *netilat yadayim* in *shul* (or at the beginning of *davening* at home), when it is not immediately after we washed our hands? Aren't *birchot hamitzva*¹ always recited at the time that the *mitzva* is performed?

Answer: The *gemara*² describes the morning *berachot* as being recited as one performs the particular action to which each *beracha* relates (e.g., opening one's eyes, putting on shoes, washing hands, putting on *tzitzit*, etc.). Nowadays, however, we make the *Birchot HaShachar*, which praise HaShem for providing us with our physical needs, at one time, usually at the beginning of *davening*. The *Shulchan Aruch*³ provides two reasons for not reciting these *berachot* sooner: 1) Our hands are considered dirty when we get up, making it improper to make a *beracha*; 2) since some people cannot make the *berachot* themselves, they can listen to the *chazan* say them in *shul*. Your query revolves around the question of whether the *beracha* on *netilat yadayim* should remain at its natural time, when washing, or can also be moved along with the series of *berachot* recited in *shul*.

The *Beit Yosef*⁴ cites two approaches to the matter. The simpler one, which he accepts,⁵ is that the *beracha* should not be delayed so much, as you argued. *Birchot hashevach*,⁶ such as the *Birchot HaShachar*, are made after exposure to or experiencing the matter that one is praising, whereas *birchot hamitzva*, such as *netilat yadayim*, are made before performing the *mitzva*.

Interestingly, even according to this approach, the *beracha* on

1. Blessing made for the performance of *mitzvot*.

2. *Berachot* 60b.

3. *Orach Chayim* 46:2.

4. *Orach Chayim* 6.

5. *Shulchan Aruch, Orach Chayim* 6:2.

6. Blessings that praise HaShem for providing wonderful things for mankind.

netilat yadayim is unlike other *birchot hamitzva*. It is recited **after** washing, and not before, because before washing, one's hands are likely soiled in a manner that precludes making *berachot*.⁷ However, there is still logic to make the *beracha* either before one wipes his hands dry or soon thereafter, as opposed to after a long break until *davening*.⁸

The *Beit Yosef* justifies the *minhag* (which was more prevalent among Ashkenazim) to make the *beracha* on *netilat yadayim* in *shul*, by citing the Rashba's reason for *netilat yadayim* as support. The Rashba⁹ says that as one embarks on the day as a new creation, he must thank HaShem and wash his hands like a *kohen*, in preparation for expressing thanks in the *Birchot HaShachar*. Since the washing is related to the *Birchot HaShachar*, just as the latter are recited in *shul*, the *beracha* on *netilat yadayim* is also made there. Based on this, the *Perisha*¹⁰ concludes that this *beracha* is not a standard *birkat hamitzva*.

The Rosh¹¹ says that *netilat yadayim* and its *beracha* were instituted as a preparation for *tefilla* in addition to being a prerequisite for a bread-based meal. According to this opinion, which the *Chayei Adam*¹² says we should not dismiss, if one washed his hands upon waking and later went to the bathroom before *davening*, it would be the handwashing after using the bathroom that would require the *beracha*. The *Chayei Adam* notes that this is a problem only if one wants to make a *beracha* on *netilat yadayim* upon waking when he expects to use the facilities between *netilat yadayim* and *davening*.

The Gra¹³ goes further, arguing that due to the connection between *netilat yadayim* and *tefilla*, the appropriate time for the

7. See *Tosafot, Pesachim* 7b, and the aforementioned *Shulchan Aruch, Orach Chayim* 46:2.

8. See *Mishbetzot Zahav, Orach Chayim* 6:4.

9. *Shut* I:191.

10. *Orach Chayim* 6:3.

11. *Berachot* 9:23.

12. 7:6.

13. *Ma'aseh Rav* 3.

beracha is **specifically** before *tefilla*. (Admittedly, he appears not to require another *netilat yadayim* if he does not use the facilities in between). However, the Gra's opinion is extreme in this matter. This is evidenced by the fact that he accepted the Rosh's view to such an extent that he requires *netilat yadayim* **with a beracha** before *Mincha* and *Ma'ariv* as well,¹⁴ a practice that we do not observe.

In these matters, we would suggest that Ashkenazim (before *davening*) and Sephardim (after washing)¹⁵ follow their respective classical *minhagim*.¹⁶ The question that arises for Ashkenazim is what to do when there is a longer than usual wait between *netilat yadayim* and *tefilla*. The *Chayei Adam*¹⁷ suggests that the person go to the bathroom again, making the *beracha* after that. However, the *Bi'ur Halacha*¹⁸ raises the issue that according to the aforementioned Rashba, the *beracha* will not relate to the *netilat yadayim* that requires a *beracha*, which is the one upon awakening. This appears to be a concern if a long time elapses, even when one did not use the facilities in between.¹⁹ The Rama²⁰ leans toward making the *beracha* earlier in this case, whereas the *Bi'ur Halacha* appears to side with the *Chayei Adam*. The safest thing, in the event of an expected long break, is to make the *beracha* on *netilat yadayim* at home, followed by *Birchot HaShachar*, including *Birkat HaTorah*, which marks the beginning of *davening*.²¹

14. Ibid.

15. See *Yalkut Yosef* (5745 ed.), vol. I, p. 14.

16. There are, in fact, different *minhagim*, as contemporary *poskim* point out (see *Ishei Yisrael* 2:25), but this is the original *minhag* and the one that has been assumed in most standard *siddurim*.

17. Op. cit., as understood by the *Bi'ur Halacha* to 4:1.

18. To 4:1.

19. See *ibid*.

20. *Orach Chayim* 6:2.

21. *Mishna Berura* 6:9. Note that, according to all opinions, there is a long interval between the *beracha* on *netilat yadayim* and *Shemoneh Esrei*. See *Ishei Yisrael* 2:(105*).

Section C:
Shabbat

c-1: The Violation of Shabbat by Small Children

Question: Sometimes I see people encouraging their toddlers, when a need arises, to do things on Shabbat that would constitute *chillul Shabbat* for an adult. Is this permitted?

Answer: There are more permutations and approaches than we can discuss in this forum, but let us consider the basic opinions and guidelines.

Every *mitzva* has a stage at which a child is considered *higi'ah l'chinuch*, one who has reached the point at which it is practical to educate him, and his father is then obligated to see to it.¹ Regarding negative commandments, a father should try to prevent his child from doing prohibited acts even at a relatively young age.² However, a toddler lacks the pertinent understanding, and a father can allow a toddler to act as he wishes.³

Even when one need not stop a child from doing a prohibited act,⁴ it is forbidden (according to most opinions, by the Torah⁵) for anyone to **feed** him non-kosher food or **encourage** him to do a prohibited act.⁶ It is, however, permitted to put the child in a situation in which he may, of his own accord and interest, decide to do something forbidden, although perhaps only if it is forbidden on the Rabbinic level.⁷ For example, the *gemara*⁸ tells of one who lost keys to a *beit midrash* in the public domain. R. Pedat told him to take children to play where the keys were lost,

1. *Shulchan Aruch, Orach Chayim* 343:1.

2. *Mishna Berura* 343:3.

3. See *ibid*.

4. For example, if the child is too young to be taught or if the adult in question is not the child's father.

5. See *Beit Yosef, Orach Chayim* 343.

6. *Mishna Berura* 343:4.

7. See *Yevamot* 113b-114a; Rambam, *Shabbat* 24:11.

8. *Op. cit.*

with the hope they would find the keys, play with them, and bring them back.⁹ In contrast, the *mishna*¹⁰ requires one who sees a child extinguishing a fire to tell him to stop. The *gemara*¹¹ explains that this refers to a case in which the child was acting on his father's behalf. The *Mishna Berura*¹² says that in such a situation, even a child who is not *higi'ah l'chinuch* should be stopped.

There are some major pertinent *machlokot*. The Rashba¹³ and the Ran¹⁴ say that one may prompt a child to do something that is forbidden only Rabbinically. However, both refer to cases in which the child acts for his own purposes. The Rashba,¹⁵ for example, claims that the case described in the *mishna* about a child who was stopped from extinguishing a fire involved a Rabbinic violation, and yet the child was stopped because he was acting for the needs of someone else.

In contrast, the *Shulchan Aruch*¹⁶ is presumed to forbid prompting a child to violate even a Rabbinic prohibition, including when it is for his own purposes. However, many *poskim* justify relying on the view of the Rashba and Ran, at least in a case of the child's significant need.¹⁷ Rav Ovadia Yosef¹⁸ rules that in a matter in which there are legitimate opinions permitting an action for an adult and it is at worst a Rabbinic prohibition, all would allow one

9. See *Chut Shani, Shabbat*, vol. IV 95:3, who presents an apparent contradiction between this *gemara* and *Shabbat* 90a, which implies that one may not give a child something forbidden to eat even when there is only a chance that he will eat it. He says that it is permissible to bring a child to a place where he might perform a prohibition with an object that is there, but it is forbidden to give him the object.

10. *Shabbat* 121a.

11. Ad loc.

12. 334:64.

13. *Yevamot* 114a.

14. *Yoma* 1a of the Rif's pages.

15. *Shabbat* 121a.

16. *Orach Chayim* 343:1

17. *Shulchan Aruch HaRav, Orach Chayim* 343:6. See also *Shemirat Shabbat K'Hilchata* (ed. I) 32:39.

18. *Yabia Omer* I, *Yoreh Deah* 4.

to prompt a child to perform the action for himself.

Another disputed circumstance is one in which adults need the child to violate a Rabbinic law in order to enable the adults to fulfill a *mitzva*. There is a rule that one can ask a non-Jew to do something that is Rabbinically forbidden for Jews in order to allow a Jew to fulfill a *mitzva* or when there is a great need.¹⁹ The *Taz*²⁰ says that the same applies to asking a child to violate a Rabbinic prohibition under those circumstances. A famous example is the ruling of R. Akiva Eiger,²¹ who allows a child to carry a *chumash* to *shul* to read from, in a place where there is no *eiruv*, when it is an adult who has a real need to also use it there. *Yalkut Yosef*²² writes that one does not have to protest against those who rely on this opinion if a non-Jew is not available. A child may even act **on behalf** of an adult if the latter refrains from some matter just as a personal stringency.²³

Apparently, there are those who make use of their children on Shabbat more freely than others. As long as they do so in a careful way, ensuring especially that the action does not involve any Torah violations, they have legitimate halachic opinions upon which to rely.

19. *Shulchan Aruch, Orach Chayim* 307:5.

20. *Orach Chayim* 346:6, based on the Mordechai.

21. *Shut* I:15; see *Bi'ur Halacha* to 343:1.

22. *Dinei Chinuch Katan* p. 228.

23. *Yalkut Yosef* op. cit.

c-2: Using a Non-Jew to Shut Lights on Shabbat so that a Jew Will Not

Question: We run Shabbat-long Jewish inspirational programs for non-*shomer Shabbat* students at a resort that we rent. The resort does not have timers for the lights, and participants who turned on lights before Shabbat will in any case certainly shut them before going to sleep. Participants in our programs are exposed to the concept of keeping Shabbat, and some decide to try to keep Shabbat while they are with us. Many of them believe that if they switch the lights off once, there is no point in keeping the rest of Shabbat. Are there sources to allow us to either ask or hint to a non-Jew to turn off the bedroom lights to allow these Jewish kids a better chance at observing Shabbat?

Answer: There are several circumstances in which a non-Jew can do work on a Jew's behalf on Shabbat. Some involve using hints, as you note. One possibility is to use a hint in which you mention only the need and do not use any active verb. For example, you could say, "There is too much light in many of the rooms for people to fall asleep," as opposed to, "It would be nice if someone would shut the lights before people go to sleep."¹ Before Shabbat, one can use even the latter, more-specific type of hint so that the non-Jew will perform the action on Shabbat.²

Despite the fact that these distinctions are quite well-accepted, we must deal with certain problems in applying them. The *Magen Avraham*³ says that when one sees a non-Jew doing *melacha* for a Jew with his (the Jew's) property, he must protest, even when the non-Jew is acting of his own volition. This problem can be remedied, however, by employing the principle of *katzatz*, i.e., having the non-Jew paid per job (as opposed to being paid by

1. *Magen Avraham* 307:31; *Mishna Berura* 307:76.

2. *Shulchan Aruch, Orach Chayim* 307:2; see *Mishna Berura* ad loc. 10.

3. 252:9.

time worked).⁴ Nevertheless, the leniency of *katzatz* does not apply on a Jew's property when people will likely think that the Jew paid the non-Jew according to time worked, including if the non-Jew starts doing the work of his own volition on Shabbat. In such cases, he should be stopped.⁵ Why, then, does it help to give a special hint to the non-Jew if, when push comes to shove, he is doing the work on the Jew's property? *Acharonim* struggle with this issue,⁶ but in general the *minhag* is to allow the non-Jew to come to a Jew's house to do a single, non-commercial activity based on the Jew's hint.⁷

In situations in which it is considered that the Jew did not instruct the non-Jew to do the work, it is nonetheless prohibited for the Jew to receive positive, direct benefit until after Shabbat from what a non-Jew did on a Jew's behalf on Shabbat.⁸ However, not everything is considered such a benefit. A classic example that the *poskim* discuss is extinguishing a candle to make it dark, which is considered simply **removing** light and not **providing** a benefit, and is thus permitted.⁹

In addition, there is an overarching *heter* that allows one to tell a non-Jew (even directly) to shut the lights under circumstances such as you describe. Shutting an electric light is a Rabbinic prohibition.¹⁰ In several instances of need, it is permitted to ask a non-Jew to perform (what for us is) a Rabbinic prohibition, including shutting a light to allow a child to sleep.¹¹ One of the examples of need is for a *mitzva*. The chance that this act of the non-Jew may be a part of a process that encourages your participants to embark upon a Shabbat/Torah observance way of life, or at least an improvement in that realm, makes it a *mitzva*.

4. *Shulchan Aruch, Orach Chayim* 244:1.

5. *Ibid.*

6. See *Orchot Shabbat* II, 23:10; *The Sanctity of Shabbos*, p. 23-24.

7. See *Shemirat Shabbat K'Hilchata* 30:2-10.

8. *Shabbat* 122a.

9. See *Chayei Adam* II, 62:3.

10. *Mishna Berura* 278:3.

11. *Shemirat Shabbat K'Hilchata* 38:26.

LIVING THE HALACHIC PROCESS

Therefore, besides permissibility through the method of hints, it should be permitted because of your perceived need. That being said, we would caution that your plan could have negative educational ramifications instead of or in addition to positive ones, especially if not formulated properly. Since you are in the field of working with this population, we leave such considerations to your discretion.

c-3: Preventing a Son's *Chillul Shabbat*

Question: Our teenage son, who lives at home, is no longer Torah observant, but he does not violate basic *mitzvot* such as Shabbat when he is with us, out of respect. We were invited out for Shabbat, and we expect that if we go away, he will be *mechallel Shabbat* in our home. May we go away, or would we and/or our house become responsible for the *chillul Shabbat* that will likely occur?

Answer: While your question, as asked, is a worthy one, you certainly understand that the more important issue in regard to your son's religious observance is the long-term prospects. However, we will start with the question you posed.

Giving someone an object that is expected to lead him to sin violates the Torah prohibition of "putting a stumbling block before the blind."¹ This applies to spiritual as well as physical "stumbling blocks."² *Poskim* discuss giving a person an object that is not forbidden per se but which he will use both in a permitted and a forbidden manner. See, for example, *Igrot Moshe's*³ discussion of why it is permitted to rent an apartment to a *mechallel Shabbat*, who will use it for, among other things, matters that are forbidden on Shabbat.

In-depth analysis of this topic is beyond our present scope. The essential consideration here is that you are not **giving** your son access to your home **for Shabbat**. Rather, he lives in your home, where his religious observance is apparently better than at other places. Admittedly, your leaving the house does provide him with more comfortable opportunities for *chillul Shabbat*, but that is not the same as actively giving him a forbidden object or directly "placing a stumbling block." For example, an attractive woman might cause someone to harbor inappropriate thoughts when he comes in contact with her. However, we certainly do not forbid her from going into the public domain with the allegation that she is "placing a stumbling block" before him. Rather, situations to sin do exist, and one who goes about his life normally and responsibly is not held accountable for the prospect that

1. *Vayikra* 19:14.

2. *Avoda Zara* 6b.

3. *Orach Chayim* II:66.

others will “use” him or his possessions inappropriately.

The circumstances would be very different if non-religious Jewish neighbors asked you for permission to use your house for a party on Shabbat that would include *chillul Shabbat*. In that case, you would actively and directly be giving people use of something that they did not have before and which is expected to facilitate their sinning. (We do not intend this as a ruling about the latter case. In these matters, various factors and nuances play a major role in determining the *halacha*.)

The more pertinent issue for you is the obligation of *afrushei me'issura*, to distance your fellow Jew from sin. This certainly includes your children. The source of this obligation is likely the *mitzva* of *tochacha*⁴ (rebuke).⁵ It is true that we are not accustomed to trying to prevent neighbors from sinning, but that is because we are unlikely to be successful.⁶ However, according to your account, your mere presence prevents your son's *aveirot*.

The question is to what extent you are expected to act in order to fulfill the *mitzva* of *afrushei me'issura*. In general, one is supposed to go to significant lengths to fulfill positive commandments. However, this is to a lesser degree than is required to avoid breaching negative commandments, for which one needs to give up all of his money, if necessary.⁷ Are you required to follow your son around all day and give up other activities?! Clearly not! However, it is difficult to present precise guidelines for the efforts that are appropriate under the circumstances. We would thus say that the likelihood of your son's sinning should be a serious factor in planning your schedule, but you cannot be expected to simply never go away.

Your main goal, in this regard, is to use your relationship with your son to improve matters at their root, as opposed to preventing individual violations. While development of this topic and presentation of its sources⁸ are beyond our ability in this forum, realize that it is often more constructive to “overlook” your child's religious and other shortcomings in order to maintain a positive relationship. While we admire your dedication to every aspect of your son's religious life, we urge you to be careful that your handling of issues like this does not have a deleterious effect on your relationship and his overall personal/spiritual situation.

4. *Vayikra* 19:17.

5. *Shut Ktav Sofer, Yoreh Deah* 83.

6. See *Yevamot* 65b.

7. See Rama, *Orach Chayim* 656:1.

8. A far-reaching and important source is the *teshuvah* of Rav S.Z. Auerbach in *Minchat Shlomo* I:35.

c-4: Heating Up Food Before Shabbat

Question: I want to put cold but cooked soup on a hot plate right before Shabbat. I have heard that the directive for putting things up to heat at that time is particularly stringent. Considering that it is forbidden to reheat cooked liquids on Shabbat, is it also forbidden right before Shabbat?

Answer: We will first introduce the stringency of “right before Shabbat” that you refer to and then apply it to your case.

There are two categories regarding having foods on a flame on Shabbat (irrespective of the *melacha* of actually **cooking** on Shabbat): *shehiya* and *chazara*.¹

Shehiya means leaving a pot/food on a flame, after putting it there to cook or to heat up before Shabbat. In certain situations, it is permitted to leave the food on any heat source; in others (the subject of a *machloket* since Talmudic times²), something must be done to reduce the chance that one will “stoke the coals” or its equivalent. The bottom line is that *blechs*³ and nonadjustable hot plates⁴ fulfill the halachic requirement, when necessary.

Chazara refers to returning a food to a heat source, classically on Shabbat, after it had been removed previously. *Chazara* has more stringent requirements than *shehiya* (for reasons that exceed our present scope). In order for it to be permissible in the classic case (i.e., on Shabbat), five basic requirements must be met: 1)

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1. Some call it *hachazara*.
 2. See *Shabbat* 36b; *Shulchan Aruch* and Rama, *Orach Chayim* 253:1.
 3. A sheet of metal to cover the flame and/or perhaps the controls. The main explanation for this requirement is that when one does something to reduce the intensity of heat, he sends a message that he certainly does not plan to raise the flame (see *Igrot Moshe*, *Orach Chayim* 1:93).
 4. As there is no possibility of “stoking the coals.” *Shemirat Shabbat K’Hilchata* 1:24 adds that they are not made for cooking, although the first reason should suffice by itself (see *Am Mordechai*, *Shabbat* 7).

The food is fully cooked; 2) the flame is covered;⁵ 3) the pot remained in one's hand since being removed; 4) the remover had in mind to return it to a heat source; 5) the food is still somewhat warm when returned. Only condition #2 applies to *shehiya*.⁶

The general assumption – that the core difference between *shehiya* and *chazara* is that the former applies when the food is left on a flame from before Shabbat and the latter applies when one puts food on the flame on Shabbat – is challenged by the following *gemara*:⁷ “According to the one who says that people may do *chazara*, this is true **even on Shabbat**.” This implies that there is a case of *chazara* that is not on Shabbat (and that it is less problematic to permit than *chazara* on Shabbat). *Tosafot*⁸ explains that this refers to putting the food back on the flame so close to Shabbat that if the food were cold, it would not have a chance to become hot before Shabbat. Although several *Rishonim* disagree with *Tosafot*, the Rama⁹ says that it is proper to follow *Tosafot*'s opinion.

If putting food on the flame at that time is indeed *chazara*, does this mean that most or all of the aforementioned five conditions of *chazara* must be satisfied, a possibility your question seems to entertain? Actually, it does not. The five conditions of classic *chazara* can be broken up into a few groups, based on the problems that they solve. One concern is that putting the food on the flame should not result in violating *bishul*¹⁰ on Shabbat. This is taken care of by conditions #1 (already cooked) and #5 (still warm, which is a requirement for liquids¹¹). However, one cannot violate *bishul* by putting food on a heat source **before** Shabbat, and we have no source for a Rabbinic extension to *Erev Shabbat*.

So in what way is *chazara* close to Shabbat worse than

5. Or its equivalent; see above.

6. *Shulchan Aruch* and Rama, *Orach Chayim* 253:2.

7. *Shabbat* 38b.

8. *Shabbat* 36b.

9. *Shulchan Aruch*, *Orach Chayim* 253:2.

10. Cooking.

11. *Shulchan Aruch*, *Orach Chayim* 318:4.

shehiya? It applies at least to condition #2 (a covered flame), making it a requirement in more cases than it is for *shehiya*.¹² There is an opinion¹³ that conditions #3 (food in hand) and #4 (intention to return), which are special stringencies of *chazara*, are in effect also right before Shabbat. However, the accepted opinion is that the stringency of “right before Shabbat” applies only to condition #2.¹⁴ Since a nonadjustable hot plate is no worse than a *blech* (which solves #2), you do not have a problem.

12. See *Shabbat* 36b; *Shulchan Aruch* and Rama, *Orach Chayim* 253:1.

13. *Korban Netanel* to Rosh, *Shabbat* 3:2.

14. *Mishna Berura* 253:72.

c-5: Removing Loose Hair on Shabbat

Question: What can I do when I take off my head covering on Shabbat and find hairs that have detached from my scalp and are lying on the rest of my hair? May I remove them by hand or in another manner?

Answer: This response is somewhat uncharacteristic in comparison to our standard approach to Halacha. We have been unable to find explicit reference to this issue. While there seem to be ample grounds to **forbid** removing the detached hair, our researched answer, although largely intuitive and without an apparent classical source or a clearly defined reason, is that it is evidently **permitted**. Let us commence.

There seem to be two potential problems with removing the hair. First, the loose hair is unwanted, and it is forbidden to remove an undesired object that is mixed in among desired objects (i.e., the attached hair) because of the prohibition of *borer*.¹ Second, a detached hair is not part of the human body and has no clear purpose. Therefore, it should be *muktzeh* and forbidden to handle directly.

Nevertheless, there are strong indications (but not a full proof) that neither of these issues will lead us to the conclusion that it is prohibited to remove the hair. The *Shulchan Aruch*² forbids combing one's hair normally on Shabbat because of the certainty that some hair will be uprooted from the scalp, which falls under the *melacha* of *gozez*.³ The *poskim*⁴ say that one may groom his hair gently with a soft brush, because it is uncertain whether any hair will thereby be uprooted and it is not his intention to

1. Selecting; see *Orach Chayim* 319.

2. *Orach Chayim* 303:27.

3. Shearing.

4. See *Mishna Berura* 303: 86-87.

do so. We note that *poskim* do not forbid this option by raising the concern that if there are detached hairs, they will certainly be removed, which we hypothesized would be *borer*.

The *Shulchan Aruch*⁵ also permits picking out lice or other insects from clothing or hair, without the matter being considered *borer*. The Rama,⁶ in discussing the prohibition of laundering, permits removing feathers stuck to clothes, which also would seem to be removing the unwanted from the wanted, and thus *borer*. A powerful indicator is that women remove anything superfluous from the hair (including loose hairs) that could be a *chatzitza* before immersing in the *mikveh*, and we do not find major sources limiting how this should be done on Shabbat (except for the matter of combing the hair, which, as above, is a problem of *gozez*, not *borer*).

It is more difficult to explain exactly **why** it is not *borer*. Possibly, some substances or circumstances are too distant from the classic cases of *borer*, which refer to separating different types of food. Perhaps removing impurities from hair and fabrics falls under the categories of shearing and laundering; when those do not apply, *borer* is not a factor either. Similarly, Rav S.Z. Auerbach⁷ suggests that since it is normal for things to get on hair and fabrics, removal is considered cleaning them rather than selecting. There may be other distinctions. The exact parameters of the explanation are important because there are likely test cases that depend on the correct explanation. However, our relatively strong halachic intuition, based on similar precedents, is that your case is permitted.

Regarding *muktzeh*, in some of the sources above,⁸ the *poskim* speak of removing the apparently unusable objects directly by hand, and thus assume that it is not a problem of *muktzeh*. The most likely explanation is along the lines of the thesis of the *Chazon*

5. *Orach Chayim* 316:9.

6. *Orach Chayim* 302:1.

7. *Minchat Shlomo* I:11.

8. See also *Shulchan Aruch, Orach Chayim* 317:9.

*Ish*⁹ that when cleaning an object from unwanted “impurities” (e.g., washing dishes), the unwanted residue is subsumed under the non-*muktzeh*. We view the action as cleaning the usable object, as opposed to moving *muktzeh*. In your case, you would be considered to be handling your head of hair, rather than grabbing detached hairs. While not everyone agrees with this thesis,¹⁰ the lenient approach seems to be a mainstream view.¹¹ Other possible explanations to reconcile the contradictory indications may also put your case on the lenient side of the matter.

In summary, whereas we have neither conclusively proved nor explained **exactly** why we believe one may reach into her hair and remove a detached hair, indications for permitting it far exceed those for forbidding it.

9. *Orach Chayim* 47:15.

10. See *Shvut Yitzchak, Muktzeh*, p. 108.

11. See *Shemirat Shabbat K’Hilchata* 14:(149) and *Orchot Shabbat* II, 19:207.

c-6: Using a Dishwasher on a Timer on Shabbat

Question: May I set a dishwasher on a timer so that I will load it on Friday night with the night's dishes, and it will go on overnight? Can I do the same thing in the afternoon so that by the time Shabbat is over, the afternoon's dishes will have been done?

Answer: At first glance, there would not seem to be **fundamental** problems with operating the machine on a timer, as you are not changing anything of Shabbat significance by your actions on Shabbat. After all, the same activation of the electric device and the heating of the water will occur regardless, whether or not you fill the racks with dishes. The removal of the grime from the plates by means of the hot water (which occurs only because you put the plates in on Shabbat) is not considered *borer*¹ or *bishul*.² (The reasons for this are beyond our present scope.) It is likely that the detergent will become cooked, and it should therefore be put in before Shabbat (also, see below).³

However, the halachic problem arises as a result of a common safety device. In order that hot water should not escape from the dishwasher during its operation, the systems are designed so that the machine works only when the door is closed. Obviously, when one loads the dishwasher, the door is open, and then he must close it in order for the machine to be activated later by the timer.

The impact of the closing of the dishwasher's door on Shabbat is classified **only** as *gerama*, an indirect causative action. It is less severe than a direct chain reaction, like pulling the trigger on a gun, or even a delayed chain reaction that takes significant time to develop, such as changing a timer to go on in an hour rather than in ten hours. Here, the closing of the door simply allows

1. Selecting, in this case by removing impurities. See response C-5.

2. Cooking.

3. *Techumin* XI, pp. 137-154.

a separate process, triggered independently by a timer set from before Shabbat, to be impactful later. This *gerama* is far from a full violation of Shabbat and is permitted in certain situations that warrant a low-level violation of Shabbat.⁴ However, in most cases, it is forbidden to cause such a delayed-reaction *melacha*. For example, we do not allow one to press the buttons of an air conditioner that will make it go on later when a timer activates the electricity.

There is a technical solution, albeit a problematic one, that one can arrange with the help of an appliance technician to bypass the aforementioned safety device. (The Zomet Institute provides this service.) Then closing the door has no effect on the dishwasher's operation. (One caveat is pertinent. The detergent should be placed in the body of the machine, not in its usual place in the door. Otherwise, it gets into the washing cycle by virtue of closing the door.) Unless one can ensure that this will not cause dangerous situations (such as opening the door during operation), we would say that this is forbidden because "danger is more severe than prohibitions." However, we cannot preclude the possibility that someone can create safeguards that make such an option a responsible one.

As far as using the dishwasher a second time, we know of no way to have a second cycle without an act of *gerama*, such as pushing a button, turning a dial, etc. If one preferred to have that cycle take place on Shabbat afternoon for use after Shabbat, rather than Friday night, this can probably be done with the safeguards in place. Generally, it is forbidden to prepare on Shabbat for something needed after Shabbat (*hachana*), even if the preparation does not include a prohibited action.⁵ Although filling the racks with dishes is an action that takes place on Shabbat, it need not be considered preparation, as many people find the dishwasher to be a good place to temporarily store dirty dishes, and closing the door is natural for aesthetic reasons.

4. See *Shabbat* 120b and Rama, *Orach Chayim* 334:22.

5. *Shulchan Aruch*, *Orach Chayim* 323:6.

A final issue, which may or may not disallow having a dishwasher go on, is called *avsha milta*. The Rama⁶ forbids having a mechanism operating from before Shabbat that one is forbidden to operate on Shabbat, if it makes noise (which might give others the wrong impression that he activated it on Shabbat). The issue is relevant even if the mechanism goes on by timer during Shabbat. It is permitted only if it is common for people to set up the mechanism in advance and there is therefore no reason to suspect that one desecrated Shabbat.⁷ This could be a problem for a dishwasher. Rav Moshe Feinstein⁸ says that the forbidden level of noise is such that it can be expected to be heard in the next room, which is border-line for a dishwasher. While Rav O. Yosef⁹ and Rav N. Rabinowitz¹⁰ say that *avsha milta* applies to washing machines, relatively quiet dishwashers would avoid this issue.

In short, although in principle there may be a way to use dishwashers on a timer on Shabbat, a combination of technical and halachic problems makes it not simple in practice.

6. *Orach Chayim* 252:5, as opposed to the *Shulchan Aruch*, ad loc.

7. *Ibid.*, regarding a chiming clock.

8. *Igrot Moshe*, *Orach Chayim* IV:70.

9. *Yechaveh Da'at* III:18. He actually rules that for Sephardim, *avsha milta* is never a problem. However, for Ashkenazim, for whom *avsha milta* is forbidden in the absence of a special need, the level of noise of an old model washing machine qualifies as problematic.

10. *Si'ach Nachum*, *Orach Chayim* 15.

c-7: Expressing Milk for Medicinal Purposes

Question: My infant has conjunctivitis. A pediatrician I saw in *shul* on Shabbat morning suggested expressing mother's milk directly into his eye instead of using standard eye drops (although he was totally fine with either system or beginning treatment at night). Is that permitted on Shabbat?

Answer: According to the great majority of authorities, human nursing, not only milking a cow, is a Torah violation of *mefarek*,¹ at least in many cases. We obviously allow a baby to nurse on Shabbat, but usually it is the baby who performs the very important, “problematic” act. Is it permissible for a woman to express milk for her baby's needs in general, or, in this case, for medicinal purposes?

The *Shulchan Aruch*² says that a nursing mother may not express milk into a cup to feed her child. (It is permitted to express to relieve an oversupply in such a manner that the milk is lost immediately³). However, there are instances in which expressing milk with the aim of it being used is permitted. They may shed light on our case.

The *Shulchan Aruch*⁴ rules that a woman may express milk into her baby's mouth⁵ in order to interest him in nursing. Most *poskim* understand that this is not a level of need that we would consider life threatening. Why, then, is it permitted? Similarly, the

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1. Extracting a food from within a different type of casing. See *Shabbat* 95b; *Tosafot, Shabbat* 135a; *Mishna Berura* 330:32. *Sha'ar HaTziyun* cites a minority opinion that extracting milk from a woman is no more than a Rabbinic prohibition.
 2. *Orach Chayim* 328:34.
 3. See *Shulchan Aruch, Orach Chayim* 330:8, and *Mishna Berura* 330:32.
 4. *Orach Chayim* 328:35.
 5. *Mishna Berura* 328:112.

*Shibolei HaLeket*⁶ says that a woman may not squirt her milk on someone who is under the influence of a strange malady, because the situation entails neither danger nor extreme pain. This implies that it would be permitted in the presence of such pain. Why?

The *Magen Avraham*⁷ and *Mishna Berura*⁸ explain the implied leniency by claiming that this expressing of milk is a *melacha she'eina tzricha l'gufa*, which usually means that the end result of the Shabbat violation is not used in a classical, positive way. Since this classification reduces the act to a Rabbinic violation, it is then permitted on Shabbat to relieve significant pain.⁹ While it is difficult to understand how the category of *melacha she'eina tzricha l'gufa* applies in the rulings above,¹⁰ it is hard to dismiss an approach posited by such prominent proponents, and their leniency seems to apply to your case. (Even non-illness needs of a small child, let alone medical situations, are considered equivalent to those of sick adults.¹¹) In fact, the *Kaf HaChayim*¹² writes, based on the above, that a woman may express milk into the ear of someone with a serious earache (assuming it has therapeutic value).

The *Tosefet Shabbat*,¹³ not seeing a *melacha she'eina tzricha l'gufa* in the above, suggests a different reason for the leniency – expressing milk from a woman in a manner other than nursing is an **unusual** form of *mefarek*, and is thus only a Rabbinic prohibition, just as a human “nursing” from a cow is.¹⁴ According

6. 123, cited by the *Beit Yosef, Orach Chayim* 328, and (in abridged form) the Rama, *Orach Chayim* 328:35.

7. 328:41.

8. 328:113.

9. See *Ketubot* 60a; *Shabbat* 107a.

10. Since the milk that is extracted is being used; see *Tosefet Shabbat* 328:59.

The *Kaf HaChayim, Orach Chayim* 328:208, explains that the normal use is to collect it in a utensil so that it will be drunk.

11. Rama op. cit. 17.

12. *Orach Chayim* 328:209.

13. 328:59.

14. *Ketubot* 60a.

to this approach, your case would also be permitted. (The *Mishna Berura* finds the *Tosefet Shabbat*'s approach difficult.¹⁵) Other possible grounds for leniency relate to the small amount of milk that is expressed and that it is being used immediately. These points apply to your case as well.¹⁶

While each explanation has its weakness, the fact that so many of them permit your case is of great importance.¹⁷

We have established significant grounds to permit the pediatrician's suggestion, although it is far from clear cut.¹⁸ Since the eye is an area with regard to which Halacha tends to be lenient at the mildest possibility of danger,¹⁹ and since we are also very careful regarding such a young baby, we would be lenient in this case if there were any medical preference for using mother's milk as a medical therapy. However, you indicate that the doctor does not really favor the mother's milk idea over other effective available medicinal alternatives. Therefore, it is halachically preferable – because of doubt and because it is better to avoid the Rabbinic *mefarek* violation when there are good alternatives – to not use the system of expressing mother's milk into the eye on Shabbat.

15. *Sha'ar HaTziyun* 81.

16. See *Yalkut Yosef, Shabbat* IV, p. 319-320 (5764 ed.).

17. I have thought of a novel lenient approach that would also apply to this case, but it is not sufficiently developed to share in this forum.

18. We have also spoken to *poskim* whose initial reaction was to not allow it.

19. *Shulchan Aruch* op. cit. 9.

c-8: Categories of *Muktzeh* and their Ramifications

Question: While walking with my friend on Shabbat, a digital camera fell out of the carriage she was pushing. The question arose whether she was allowed to move it or whether she had to leave it where it fell, with the likelihood that it would be taken. If it is *muktzeh machamat chisaron kis* (an object that is so precious that its owner will use it only for its main, forbidden-on-Shabbat function), then I assume there was no way to move it. However, if it is cheap enough that the owner would use it for other things, then as a *kli shemelachto l'issur* (a simple utensil whose main use is for a forbidden activity), would it have been permitted to invent a use for the camera at home (e.g., as a paperweight) that would have enabled it to be brought there? (There was an *eiruv*.)

Answer: The categorization of an object as *muktzeh machamat chisaron kis* depends on the specific owner, object, and circumstances.¹ We assume that digital cameras usually fall into that strict category.² Nevertheless, according to most *poskim*, it is still possible to protect the object, as we will now explain.

The *gemara*³ discusses whether *tiltul min hatzad* of a *muktzeh* object (moving it by pushing it with a non-*muktzeh* item) is forbidden. We rule that it is permitted to move the *muktzeh* object that way for the purpose of attaining access to an adjacent non-*muktzeh* object that was being blocked by it or in order to free up its place.⁴ *Tiltul min hatzad* is prohibited, however, when the purpose is to use or protect the *muktzeh* object.

1. *Mishna Berura* 308:6-7.

2. This assumption can change over time, as the price and exceptionality of these cameras tend to decrease.

3. *Shabbat* 43b.

4. *Shulchan Aruch, Orach Chayim* 311:8.

Based on this premise, *Rishonim* discuss the *mishna*⁵ that says that if one wants to sleep on a straw bed in which the pieces of straw are laid out unevenly, he may not straighten them out with his hands, but he may do so with his body. Why isn't the latter *tiltul min hatzad*, which should be forbidden in this case, since he wants to use the rearranged straw? The Rosh,⁶ as understood by most *poskim*,⁷ explains that moving something with a part of the body that is not usually used for moving things (*tiltul b'gufo*) is less severe than *tiltul min hatzad*. Consequently, this action is permitted even when the intention is to use or protect the *muktzeh* object. Ostensibly, then, one can kick the camera to a place where it will not be as vulnerable.

Two minority opinions reject this leniency. The *Pri Megadim*⁸ posits that the leniencies regarding indirect *tiltul* do not apply to *muktzeh machamat chisaron kis*. However, this opinion is not widely accepted by the *poskim*.⁹ A second issue is that the *Chazon Ish*¹⁰ contends that the Rosh's position is not being applied correctly. He argues that the Rosh's aim was not to introduce the principle that *tiltul b'gufo* is permissible, but only to explain why the *mishna* allows one to inadvertently move the straw while lying down on it. Since lying down on the straw is not categorized as *tiltul* whatsoever with regard to *muktzeh*, even though some straw will move, he reasons it is permitted even when one uses that action intentionally. However, in general, *tiltul b'gufo* is forbidden for the purposes of using or protecting the *muktzeh* object. While some *poskim* adopt this opinion,¹¹ most others permit *tiltul b'gufo*.¹² One may certainly be lenient in a case of

5. *Shabbat* 141a.

6. *Shabbat* 3:19.

7. See *Shulchan Aruch* op. cit. and *Beit Yosef* ad loc.; *Mishna Berura* 308:13.

8. Introduction to *Mishbetzot Zahav*, *Orach Chayim* 308.

9. See *Shemirat Shabbat K'Hilchata* 22:(80).

10. *Orach Chayim* 47:12.

11. *Igrot Moshe*, *Orach Chayim* V:22.6.

12. *Mishna Berura* 308:13, *Shemirat Shabbat K'Hilchata* 22:34.

possible significant loss,¹³ like that of the camera.

Your idea of employing the leniency of moving a *kli shemelachto l'issur* for a permissible function¹⁴ can be entertained if you can determine that the camera is not *muktzeh machamat chisaron kis*. The *Magen Avraham*¹⁵ allows one to move a *kli shemelachto l'issur* for a permissible function even when his **main intention** is to protect it. The *Mishna Berura*¹⁶ accepts the premise of allowing moving for a secondary intention. Although it is possible that the *Mishna Berura*'s ruling is limited to using it for a real, existing need, the *Machatzit HaShekel*¹⁷ and *Yalkut Yosef*¹⁸ allow a contrived need. However, your friend would have had to come up with an actual plan to use the camera on Shabbat after bringing it home. It is also important to note that some *poskim* require that no usable non-*muktzeh* object is readily available for that use.¹⁹ In any case, had you been sufficiently creative, your idea could have solved the problem.

13. *Igrot Moshe* op. cit.

14. *Shulchan Aruch, Orach Chayim* 308:3.

15. 308:8.

16. 308:16.

17. To *Magen Avraham* op. cit.

18. *Orach Chayim* 308, p. 412.

19. *Mishna Berura* 308:12; the *Shemirat Shabbat K'Hilchata* 20:8 is equivocal on the matter.

c-9: How Much of the *Lechem Mishneh*¹ Does One Need to Eat?

Question: Does one have to eat a *k'zayit*² of the *lechem mishneh*? What happens if the *lechem mishneh* is too small for everyone to get a sizable piece or if someone prefers another *challa*?

Answer: The Rama,³ in describing how much of a loaf one should properly cut off after reciting *HaMotzi*, writes: “The ruling that one should not pull off more than a *k'beitza*⁴ applies only during the week when one is eating by himself. However, on Shabbat or when one is eating with many people and needs to give a *k'zayit* of the removed piece to everyone, he can pull off as much as he wants.” Ostensibly, then, it appears that everyone should receive a *k'zayit* of the main bread upon which the *beracha* was made. However, we must put the matter in perspective based on the sources and issues.

The *poskim*⁵ say that one should not normally cut off a large piece of bread from his loaf because it looks gluttonous.⁶ However, the *gemara*⁷ states that if one does so specifically on Shabbat, it is fine, as he is then considered someone who enthusiastically approaches the *mitzva* to eat on Shabbat. The Rambam⁸ asserts as well that one should not cut off too small a piece because that looks stingy. The *Beit Yosef*⁹ supports this view with a *gemara*¹⁰ that shows the importance of a host giving nice-sized

1. Two whole loaves of bread for Shabbat.

2. The size of an olive, assumed to be approximately 1 fl. oz.

3. *Orach Chayim* 167:1.

4. The size of an egg, assumed to be approximately 2-3 fl. oz.

5. See Tur/*Beit Yosef*, *Orach Chayim* 167.

6. Based on *Berachot* 39b.

7. *Ibid.*

8. *Berachot* 7:3.

9. *Op. cit.*

10. *Berachot* 46a.

pieces to his guests. Thus, one can easily understand the Rama's recommendation above, which is based on earlier sources, as simply relating to matters of manners rather than an implication that the guests are halachically supposed to eat a *k'zayit* of the main loaf.¹¹

The *Magen Avraham*,¹² however, understands that there may be a *beracha*-related reason for the host to give each person a *k'zayit*-sized piece of the loaf. While he admits that the *minhag* is not to be careful on the matter, he says it is **preferable** for every person to eat a *k'zayit*. The *Dagul Merevava*¹³ explains that due to the significance of a bread meal, with its special *halachot*, it should begin with an immediate *k'zayit* of bread. That being said, these sources do not state a preference that the *k'zayit* must come from the loaf upon which the *beracha* was made. In fact, if the guests have bread in front of them, they may immediately eat from that bread based on the host's *beracha*.¹⁴

The question remains regarding Shabbat, when everyone must be connected to *lechem mishneh* and should wait to receive a piece of it.¹⁵ On Shabbat, it is best to cut off a large enough piece of the loaf in the beginning to suffice for the whole meal.¹⁶ There are also important sources¹⁷ indicating that it is generally preferable for each person to have a *k'zayit* of the loaf on which the *beracha* was made, and especially when it is the *lechem mishneh*.¹⁸ However, these sources do not consider this to be an absolute requirement. If one is not going to eat a *k'zayit* **immediately**, it might not be a preference to receive a *k'zayit* piece from the

11. See *Mishna Berura* 167:15.

12. 167:7, cited by *Mishna Berura* op. cit.

13. Ad loc.

14. *Shulchan Aruch* op. cit. 15.

15. Ibid., unless they have their own *lechem mishneh* in front of them.

16. *Shulchan Aruch, Orach Chayim* 274:2.

17. *Igrot Moshe, Orach Chayim* V:16; *Teshuvot V'Hanhagot* II:171.

18. One should eat from a loaf of *lechem mishneh* in order to be connected to that observance; *Shulchan Aruch HaRav, Orach Chayim* 274:4.

central loaf.¹⁹ (By some point, however, one should have eaten a *k'zayit* of bread for it to be a meal and thereby recite *Birkat HaMazon*²⁰ and, more than that, a *k'beitza* to justify the *beracha* that was made on *netilat yadayim*.²¹)

In conclusion, the preferred practice is to provide a *k'zayit*²² of the *lechem mishneh* to each guest.²³ However, one who dislikes the *challa* that was used for *lechem mishneh* or has health concerns with it can follow the basic *halacha*. After having a small taste of the *lechem mishneh*, he can proceed to eat other bread. Similarly, hosts who make *HaMotzi* on a loaf that is not large enough to distribute a *k'zayit* of it to all present (e.g., with large groups or for those who use rolls or *matza* for *lechem mishneh* and supplement it with other *challa*) need not feel that their guests are being deprived.

19. See *Shemirat Shabbat K'Hilchata* 55:(15), based on the aforementioned *Magen Avraham*.

20. *Shulchan Aruch, Orach Chayim* 168:9.

21. *Ibid.* 158:2 .

22. Without exaggerating the size of *k'zayit*, as many do at the Pesach *seder*.

23. See *Shemirat Shabbat K'Hilchata* 55:24

c-10: Removing Food with a Slotted Spoon¹

Question: While serving on Shabbat, is one permitted to transfer vegetables or matza balls from a pot of soup to a bowl using a special slotted spoon?

Answer: A *baraita*² mentions cryptically that selecting (*borer*) some food from among other types of food is sometimes forbidden and sometimes permitted. The following three conditions, which different *Amoraim*³ invoke to explain the *baraita*, are accepted by the *Shulchan Aruch*⁴ as the *halacha*. Only if all of the conditions are present is it permitted to make the selection.⁵ 1) The action is done by hand, not by a utensil whose purpose is selection. 2) The food that one wants to eat is removed from that which he does not now want. 3) The food that is removed will be used in the short term.

At first glance, your case fails the first test, as a utensil is being used, not hands. One could try to argue for leniency based on the following important rule that Rav Moshe Feinstein employed.⁶ One is allowed to remove food that he wants to eat from its surroundings with a spoon or fork if the selection could have been done as efficiently by hand and the utensil was used for a side reason (e.g., to keep his hands clean). One could claim that in our case one would use his hands were it not for such factors as hygiene and not wanting to dirty or burn his hands. Then again, the spoon in question here is a special one that effectively is a strainer. It is likely, therefore, that in such a situation, Rav Feinstein would not have been lenient.

Nevertheless, we can permit using the slotted spoon in this context due to a combination of factors. First, the *Maharitz*⁷ says that the act of removing a **solid** from the medium of a liquid is not considered *borer*. He used this principle to explain his ruling that one may remove a fly that fell

1. Adapted from *BeMareh HaBazak* VI:45.

2. Cited in *Shabbat* 74a.

3. *Ibid.*

4. *Orach Chayim* 319:1-2.

5. See also *Tosafot*, *Shabbat* 74a.

6. *Igrot Moshe*, *Orach Chayim* I:124.

7. *Shut* 203.

into a drink.⁸ It is true that many disagree,⁹ and, in fact, the more accepted halachic practice is to take out some liquid along with the fly.¹⁰ On the other hand, the *Yalkut Yosef*¹¹ posits that the essential *halacha* follows the *Maharitzatz*, just that it is **preferable** to remove some liquid with the fly. Furthermore, the *Shevitat HaShabbat*¹² maintains that when the solid pieces inside the liquid are large, even those who disagree with the *Maharitzatz* would concede that removing large pieces is not *borer*.

Relating to your question, there is another significant reason to be lenient. The person who takes out the vegetables presumably does not care if a modest amount of liquid is transferred along with the vegetables. His intention is simply to efficiently move some vegetables from one place to another, not to remove liquid from the vegetables. Thus, even if liquid does fall off along the way, it is not considered *borer*. Based on this concept, Rav Ovadia Yosef¹³ allows using a spoon with holes to remove pieces of meat from *chulent*, even though some gravy slips off in the process. He bases himself partially on a similar ruling in *Shemirat Shabbat K'Hilchata*.¹⁴ There, Rav Neuwirth writes that one may use a ladle with holes in order to quickly transfer wet spaghetti from a pot to a plate when his intention is not for a significant amount of water to fall off in the process.

In summary, due to several reasons for leniency, it is permitted to use a slotted spoon to move vegetables (or other foods) from a pot of soup to bowls on Shabbat.

8. Admittedly, some (including *Ba'er Heitev*, *Orach Chayim* 319:2) understand the *Maharitzatz* to be referring only to cases similar to that of a fly in a drink, where the fly floats on the surface and is otherwise clearly separate from the liquid medium. This is not always the case, especially concerning vegetables in a thick broth. See *Yalkut Yosef* 319:(34).

9. Including the *Taz*, *Orach Chayim* 319:13.

10. *Mishna Berura* 319:61; *Bi'ur Halacha* to 319:16.

11. 319:28.

12. *Borer* 11.

13. Cited in *Yalkut Yosef* 319:(52). *Yalkut Yosef* writes (319:42) that it is laudable to be stringent on the matter.

14. 3:54.

c-11: Moving a Potted Plant on Shabbat

Question: May I move a potted plant on Shabbat, or is it *muktzeh*?

Answer: Before we get to your question regarding *muktzeh*, we must first discuss the potential problem of uprooting a plant from the place where it is growing. The *Shulchan Aruch*¹ states: “Regarding a plant pot (*atzitz*), even if it has no hole (*she'eino nakuv*), one should be careful not to take it from the ground and hang it from pegs or vice versa, whether the pot is made of wood or pottery.” In general, planting and uprooting apply only to things that are growing in the ground. Nevertheless, we consider a potted plant sitting on the ground to be nourished from it.² Therefore, distancing the *atzitz* from the ground or bringing it closer to the ground is forbidden on Shabbat under the categories of uprooting or planting, respectively.

One would assume that within a house, considering the space and materials in between the plant and the ground, the plant's nourishment is only from the soil in the pot and there is no connection to the ground. On the other hand, *poskim* rule that one may not pull things off even potted plants that are inside the house.³ However, there could be distinctions based on the material from which the house is made, as there are various opinions as to what type of buffer under the *atzitz* serves as a sufficient separation. Metal and glass certainly break the connection between the plants and the ground.⁴ There is much discussion regarding a case in which part of the plant (not its roots) extends beyond

1. *Orach Chayim* 336:8.

2. *Bi'ur Halacha*, ad loc., discusses the degree to which this is true for an *atzitz she'eino nakuv* and why.

3. See *Mishna Berura* 336:41.

4. *K'tzot HaShulchan* 142:(5).

the separation.⁵ There is further discussion regarding whether the floors in most homes constitute a separation.⁶

The *Tehilla L'David'* infers from the *Shulchan Aruch's* ruling⁸ that the problem of moving an *atzitz* arises only when one moves it from the ground to a place detached from the ground, e.g., hanging, or vice versa. In contrast, it is permitted to move the *atzitz* between two similar places, even if it passes through a different type of area in the process. This is a strong but certainly not simple or unanimous contention.⁹

Even if we can resolve the aforementioned issue, we still must deal with the matter of *muktzeh*. Soil is a classic *muktzeh* item, as it is not a utensil, a food, or a similar item that is slated for a Shabbat appropriate activity. Yet, if one sets soil aside for a specific appropriate purpose, it can be moved.¹⁰ How do we consider the soil in an *atzitz*? The *Tehilla L'David'*¹¹ surmises from the discussion above that *muktzeh* is not a problem, since the **sole** basis for the questions about moving an *atzitz* is the possible violation of planting and uprooting. The rationale is that the soil does serve a purpose; it serves the plant (and is part of the plant pot¹²), which adorns the house. Some claim that even if the soil is considered to have a function, it is like a *kli shemelachto l'issur* (a utensil usually used for a forbidden purpose), as it helps plants live and grow, which is something one may not be involved with on Shabbat.¹³ Such an object is permitted to be moved only when it is to be used for a permitted purpose or because the location it occupies is needed. Still others maintain that it cannot be moved

5. See *Orchot Shabbat* 18:24.

6. See *Piskei Teshuvot* 336:6.

7. *Orach Chayim* 336:6.

8. Op. cit.

9. See *K'tzot HaShulchan* op. cit.; *Shemirat Shabbat K'Hilchata* 26:(5).

10. *Beitza* 8a.

11. Op. cit.

12. *Shevitat HaShabbat, Kotzeir, Be'er Rechovot* 7; *Orchot Shabbat* 19:(184).

13. *Shevitat HaShabbat, Kotzeir* 5. See *Be'er Rechovot* op. cit.

for any purpose.¹⁴

In general, there is a *machloket* regarding whether vegetation that is growing is *muktzeh* when there is no fear that one will uproot it improperly. The *Taz*¹⁵ and *Magen Avraham*¹⁶ say it is *muktzeh*; the *Machatzit HaShekel*¹⁷ cites those who are lenient. The *Mishna Berura* leaves the matter undecided.¹⁸ If one **regularly** moves a plant pot from place to place, then *muktzeh*, at least, is likely not a problem.¹⁹

Two of our time's foremost authorities rule that one should not move an *atzitz* on Shabbat.²⁰ It is unclear what the **exact** basis of their rulings is. The simplest advice is to arrange matters before Shabbat so that there is no need to move the plant pot, thereby avoiding the significant problems we have discussed. Nevertheless, we cannot fault one who relies on the opinions that one can move an *atzitz*, especially *she'eino nakuv*, from place to place, at least in a case of need. (Moving a vase with flowers in it is certainly not a problem.²¹)

14. See opinions in *Shemirat Shabbat K'Hilchata* 26:(5).

15. *Orach Chayim* 336:4.

16. 312:6.

17. Ad loc.

18. *Sha'ar HaTziyun* 336:38.

19. *Orchot Shabbat* 19:151.

20. Rav Moshe Feinstein, cited in *Tiltulei Shabbat*, p. 86; *Shemirat Shabbat K'Hilchata* 26:2.

21. *Shemirat Shabbat K'Hilchata* 26:25; *Orchot Shabbat* 19:104.

C-12: Making Ice Cubes on Shabbat

Question: Is one allowed to make ice cubes on Shabbat?

Answer: A *baraita*¹ states that on Shabbat, one may not crush snow to get water, although he can put snow in a cup of water and have it melt into the water. There are three main explanations of the prohibition.² Rashi³ says that it resembles a *melacha*, as one actively creates a new object form. The *Sefer HaTerumah*⁴ asserts that the resulting water is *nolad* (lit., born, referring to a type of *muktzeh*). The Rambam⁵ groups this action with a Rabbinic prohibition related to squeezing fruit for juice.

A practical difference between the explanations comes about when one warms congealed gravy so that it becomes a liquid. The *Sefer HaTerumah* forbids this as *nolad*, as well. However, the *Beit Yosef* presents the *Sefer HaTerumah* as a minority opinion and thus rules against in the *Shulchan Aruch*.⁶ The Rama,⁷ in contrast, writes that the *minhag* follows the stringent opinion, while noting that one can be lenient in a case of need. The same disagreement should apply to putting ice in a warm place (not hot enough to be considered cooking) to melt.⁸

Most *poskim* maintain that this *machloket* also applies to the question of freezing water. If transforming from ice to water is considered changing an object, why should transforming from liquid to solid be any different? Accordingly, for Sephardim, who follow the *Shulchan Aruch*, it should be permitted to make ice

1. *Shabbat* 51b.

2. See presentation in *Beit Yosef, Orach Chayim* 318.

3. *Shabbat* 51b.

4. 235, as understood by many *poskim*. See below regarding different opinions as to whether the *Sefer HaTeruma*'s explanation is indeed fundamentally different from that of Rashi.

5. *Shabbat* 21:13

6. *Orach Chayim* 318:16.

7. Ad loc.

8. *Mishna Berura* 320:35.

cubes on Shabbat, and for Ashkenazim, who follow the Rama, it should be permitted only in a case of need.

However, some *poskim* distinguish between the cases in different ways. The *Dovev Meisharim*,⁹ for one, posits that the reason to allow melted ice is that ice that is slated to turn into water is considered a form of water. In contrast, in relation to water, ice is a new entity, which one may not create on Shabbat. However, most *poskim*¹⁰ reject this distinction and maintain that those who permit melting ice cubes also permit placing water in the freezer to make ice cubes.

It is also possible that the Rama, who is ambivalent regarding melting fats, might allow making ice cubes outright. The *Tzitz Eliezer*¹¹ points out that there are two ways to explain the *Sefer HaTerumah*'s ruling, which is the source of the Rama's stringency. One explanation¹² is that the water **resulting** from the melting is *muktzeh*, and it makes no difference what process produced it. The other explanation¹³ is that the **process** of putting fat near a fire is considered semi-actively turning solid into liquid. If the latter is the only problem, we could consider that placing water in a freezer, where the process of freezing does not begin in earnest for a while, is an act too far removed from the eventual formation of ice to be forbidden. Certainly, the Rambam's logic regarding crushing snow – that it is similar to squeezing – does not apply to turning liquid into solid.¹⁴

Some raise the possibility that freezing water is similar to making cheese, which is forbidden as an extension of building,¹⁵ but a consensus of *poskim* rejects this idea for various reasons. First, building likely does not apply to water.¹⁶ Also, ice lasts only

9. I:55.

10. See a partial list in *Piskei Teshuvot* 320:(14).

11. VI:34. See a similar discussion in *Shevet HaLevi* III:55.

12. See *Eglei Tal, Dash* (37).

13. *Panim Meiros* I:84.

14. *Shulchan Shlomo* 320:18.

15. *Shabbat* 95a.

16. *Mishna Berura* 320:36.

as long as it is kept cold, and thus one has not built anything stable.¹⁷

In summary, Sephardim can freely make ice cubes in a freezer. Ashkenazim have ample reason to be lenient, and certainly when there is significant need (although recent *poskim* nuance this compromise differently¹⁸). If one does not plan to use the ice cubes on Shabbat, the problem of *muktzeh* does not apply, which would seem to make the case for leniency stronger. However, under those circumstances, there would usually be a problem of *hachana* (preparations for after Shabbat). Certainly, one may put a drink in the freezer to quickly cool it, despite the possibility that he will forget about it there, considering the preponderance of opinions that maintain that even purposely freezing is permitted.¹⁹ (Automatic ice makers, where electrical systems are a factor, are beyond our present scope.)

17. See *Mishneh Halachot* IV:48.

18. See *Shemirat Shabbat K'Hilchata* 10:4.

19. *Az Nidberu* VI:8.

C-13: Carrying a Child on Shabbat Where There Is No *Eiruv*

Question: Is it permitted to pick up a child in a place that has no *eiruv*? A friend told me that as long as the child can walk himself, one may pick him up.

Answer: While your friend is not totally mistaken, the basic answer is that one may not carry a person of any age on Shabbat in a place that lacks an *eiruv*. Let's see where the misconception comes from and when it is possible to employ your friend's idea as a leniency.

The *gemara*¹ quotes the following *machloket* among *Tanna'im*. R. Natan says that one who carries live animals on Shabbat is *patur* (exempt from a *korban* for violating Shabbat unintentionally) because there is no Torah-level prohibition for carrying live things. The Rabbanan, whose opinion we accept, say that one must bring a *korban* after carrying even a live animal. However, Rava proposes that regarding a child, we assert the principle that *chai nosei et atzmo* (a live being carries himself), even according to the Rabbanan, and there is therefore no Torah-level violation in that case. On the other hand, R. Natan did not say his leniency regarding a tied-up living being.² The Rambam³ understands that a being incapacitated by illness is the equivalent of one who is tied up; thus, R. Natan maintains that one cannot carry an incapacitated live being. Rava's opinion in the *gemara* justifies your friend's claim, but only partially, because all agree that it is at least Rabbinically forbidden to carry even a capable and cooperative child.⁴

Before discussing practical ramifications of the various

1. *Shabbat* 94a.

2. *Ibid.*

3. *Shabbat* 18:16.

4. See *Mishna Berura* 308:154.

opinions, we must also look at a *mishna* in *Shabbat*.⁵ The *mishna* states that one may help her baby “cruise”⁶ but may not drag him along. Rashi explains that dragging is like carrying, which is forbidden. The Ran⁷ says that the difference between cruising and dragging is that a cruising baby is developed enough to be considered *nosei et atzmo*, whereas in the case of a baby with no capacity to walk, who must be dragged, the Rabbanan maintain that dragging is considered Torah-level carrying. The most lenient, admittedly minority, opinion is that of *Tosafot*,⁸ who maintains that even a newborn baby on the way to his *brit* is considered *nosei et atzmo* (as opposed to the way back from the *brit*, when he is unwell).⁹ At the other extreme, the *Bi'ur Halacha*¹⁰ cites *Rishonim* who maintain that unless a child is actually able to walk, one who carries him violates a Torah violation.

The *Mishna Berura*¹¹ cites the *Pri Megadim*, who holds that it is permitted to tell a non-Jew to carry a child through an area that is not a *reshut harabim* (Torah-level public domain) but only a *karmelit* (Rabbinic-level public domain). This is of great practical import considering that (at least according to Ashkenazi *minhag*) we rarely have a street that constitutes a *reshut harabim*. The *Pri Megadim*'s rationale is that in the case of a violation that is only a *shvut d'shvut* (there are two reasons that it is not forbidden from the Torah, but rather only Rabbinically) we can be lenient in certain cases of need. It is unclear what level of need is required (*mitzva*, the welfare of the child) in order to allow such a leniency.¹²

5. 128b.

6. Walk while being supported and led.

7. *Shabbat* 51b in the Rif's pages.

8. *Shabbat* 130a.

9. See *Tzitz Eliezer* XIII:32, who considers that this opinion can be combined with other grounds for leniency to grant permission to carry under certain circumstances. His context dealt with carrying in a place where there is an *eiruv* upon which a certain individual does not rely.

10. To 308:41.

11. Op. cit.

12. See *BeMareh HaBazak* III:36:(5).

In general, though, a Jew should not carry even a child who can walk, even in a *karmelit*, as Halacha usually equates a *karmelit* with a *reshut harabim*. However, the *Mishna Berura*¹³ instructs not to correct those who in practice will ignore a stringent ruling on this matter.

A case in which *poskim* allow even a Jew to carry a child who can walk is when a small child tires and/or refuses to walk anymore. The *Igrot Moshe*¹⁴ elucidates that significant difficulty for the child or his crying qualifies as the equivalent of the needs of a *mitzva*, for which it is permitted to carry a child who is capable of walking through a *karmelit*.¹⁵

13. Op. cit.

14. *Orach Chayim* IV:91.

15. See also *Tzitz Eliezer* op. cit.

C-14: A Group *Eiruv Techumin*

Question: A few friends of mine and I take turns going to a local rural community outside our *techum Shabbat*¹ to *lain* on Shabbat. We have a place to put an *eiruv techumin*² that will permit us to get there, but we do not want to have to do this every week. Also, what do we do about the fact that the *eiruv* is going to be needed by a different person each week?

Answer: It is possible to make an *eiruv techumin* for a period of many *Shabbatot*.³ (To do so, one must use something with a long shelf life and ensure that it is in a safe but accessible place.) When making the declaration that accompanies the placing of the *eiruv*,⁴ one should indicate that it should take effect only on the *Shabbatot* when he might want to use it (see more on this below).⁵ This could be important for the following reason. An *eiruv techumin* does not fundamentally increase the distance one may walk. Rather, it changes – hopefully in the most advantageous way – the central point around which the circle with a radius of 2,000 *amot* is calculated. On a week that is not your turn to *lain*, you might want the freedom to walk in a different direction, which the *eiruv* could actually preclude.

The same food that was put aside for that purpose for one week can be reused. You do not even need to know before a given Shabbat whether you are going to activate it that Shabbat; you can rely on the original global declaration.⁶ This is because we

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1. The area within a circle of radius 2,000 *amot* (approximately a kilometer) centered at a person's "place of resting" (i.e., his central point or base for the Shabbat), within which he is allowed to move on Shabbat.
 2. The food placed in a specific spot to enable one to move his halachic base for Shabbat from his location when Shabbat starts to where the *eiruv* is located.
 3. *Shulchan Aruch, Orach Chayim* 413:1.
 4. See *Shulchan Aruch, Orach Chayim* 415:4.
 5. *Bi'ur Halacha* to 413:1.
 6. *Shulchan Aruch, Orach Chayim* 413:1.

maintain that regarding Rabbinic *halachot* such as this,⁷ certain details of a halachic process can be determined retroactively (*bereira*).⁸ Therefore, the *eiruv* is operative based on the original declaration, and the days for which the declaration will apply can be decided later.⁹

The next question is if everyone in your group can share an *eiruv*. The *Shulchan Aruch*¹⁰ says that one person can place an *eiruv techumin* on behalf of a group and make a *kinyan* for its members. This works even if it is unclear at the time that the *eiruv* is laid down who will be included for a given Shabbat. (For example, the *mishna*¹¹ talks about all those who will go to a house of mourning.)

There are, nevertheless, a few conditions that must be satisfied. The members of the group must be aware of their possible inclusion in the *eiruv* before the given Shabbat begins,¹² even though they do not have to decide at that point whether they want to be included for that Shabbat.¹³ There also must be a requisite portion of the *eiruv* for each person who needs to be included for a given Shabbat.¹⁴ Since the requisite amount is the quantity of a food that is sufficient for two meals,¹⁵ this may be challenging in cases in which it is needed for a potentially large group over time. Although you are talking about a small group,

7. The limitation of the *techum Shabbat* to a distance between 2,000 and 24,000 *amot* is Rabbinic (*Beit Yosef, Orach Chayim* 404; *Mishna Berura* 404:5). An *eiruv techumin* is effective for only a maximum of 4,000 *amot*.

8. *Beitza* 38a; Rambam, *Yom Tov* 5:20.

9. See *Mishna Berura* 413:8.

10. Op. cit.

11. *Eiruv* 82a.

12. *Shulchan Aruch, Orach Chayim* 413:1

13. See *Mishna Berura* 413:7.

14. *Shulchan Aruch* op. cit.

15. According to the standard opinion, this quantity is approximately equivalent to a pound of bread (*Netivot Shabbat* 31:(38)).

we will discuss some of the options for a large group.¹⁶

One technique is to use a food that is consumed in small quantities. Unlike an *eiruv chatzerot*, which must be of bread, an *eiruv techumin* may consist of anything edible,¹⁷ as long as there is an amount that would be used in two standard meals.¹⁸ For drinks, this is two *revi'iot*.¹⁹ Regarding foods used as relish to put on other foods, the amount can be even less,²⁰ such that a bottle of something of that sort could be effective for an entire group of people over time.

Another system is that each week, after using the *eiruv*, the person who used it makes a *kinyan* to pass it on to the next person or back to a central person who is in charge of making a *kinyan* on behalf of the relevant participants. (The easiest is a *kinyan sudar*, in which the transferred object does not have to be present.) According to the *Shevet HaLevi*,²¹ it is not even necessary to make a *kinyan* to pass the *eiruv* back, as the user of the *eiruv* each week may acquire it conditionally for only one Shabbat at a time. Using this method, it is sufficient for the *eiruv techumin* to consist of a quantity that is enough for the maximum number of people who will use it on any given Shabbat.²²

16. For a very large group, such as residents from one community who may want to go to the next town over the next few months, the two systems may have to be combined.

17. *Shulchan Aruch, Orach Chayim* 409:7.

18. *Ibid.*

19. Approximately a cup.

20. *Shulchan Aruch, Orach Chayim* 386:6.

21. VI:44.

22. There are more complicated systems for communal *eiruvim* that prefer not to rely on the *Shevet HaLevi's* leniency, but they are beyond our present scope.

Section D:
Mo'adim (Festivals)

D-1: Is a Shofar *Muktzeh* When Not in Use?

Question: After one has finished blowing the shofar or hearing shofar-blowing on Rosh Hashana, is the shofar *muktzeh* from that point on?

Answer: In order to answer this question, we must first evaluate whether it is permitted to blow the shofar after the *mitzva* is completed. If it is permitted, then the shofar is a *kli shemelachto l'heter* (a utensil used for permitted purposes) and can be moved for any reasonable purpose.

This matter is actually the subject of substantial disagreements. The Rama¹ says that one is forbidden to blow the shofar for no specific need on Rosh Hashana after he has fulfilled the *mitzva*.² The *Tur*³ even cites an opinion that a man may not blow shofar on Rosh Hashana for a woman after fulfilling the *mitzva* himself, since she is not obligated to hear shofar blowing, and it is therefore a blowing without justification. This opinion is not accepted because we rule that there is nevertheless value for a woman to hear the shofar. Otherwise, though, it would have been forbidden.

Another discussion⁴ mentions an opinion that one who makes the shofar blower repeat a blast when he is not required to do so is making him violate the Rabbinic prohibition of blowing the shofar without a reason. The *gemara*⁵ also discusses the case of children blowing the shofar for practice for the future without a *mitzva* need and implies that an adult should not do this.

1. *Orach Chayim* 596:1.

2. In the *Darchoi Moshe*, *Orach Chayim* 588:1, he cites earlier opinions of both those who permit it and those who forbid it, but he leans toward the latter.

3. *Orach Chayim* 589.

4. *Tur*, *Orach Chayim* 590.

5. *Rosh Hashana* 33a.

On the other hand, the *Taz*⁶ argues that blowing shofar is forbidden only on Shabbat, out of concern that one may carry the shofar in the public domain, but it is permitted on *Yom Tov*, since carrying is permitted then. The *Taz* maintains that the sources forbidding blowing for adults refer to Shabbat. The *Ohr Zarua*,⁷ in fact, explicitly permits blowing shofar all day long on Rosh Hashana that does not fall on Shabbat.

In the final analysis, most *poskim* forbid blowing shofar without a specific purpose after fulfilling the *mitzva*. However, one may blow to fulfill the *minhagim* to add more blasts (100, for most) than are strictly required for the *mitzva*.

One of the *Taz*'s arguments that it is permitted to blow after finishing the *mitzva* is that if it were forbidden, then it would also be forbidden to move the shofar due to *muktzeh*. We would similarly expect that it would be forbidden to carry a *lulav* after fulfilling that *mitzva*. However, the *gemara*⁸ assumes that it is permitted to carry a *lulav* after fulfilling the *mitzva*, and the Rama⁹ himself says that a shofar is *muktzeh* only regarding Shabbat. The *Magen Avraham*¹⁰ contends that a special type of *muktzeh* applies to a shofar, namely, *muktzeh l'mitzvato*.¹¹ This form of *muktzeh* primarily precludes **using** the shofar for another purpose, but many assume that *muktzeh l'mitzvato* does not prevent one from moving the object.¹²

In any case, the great majority of *poskim* assume that even though one may not blow the shofar beyond the needs of the day,

6. *Orach Chayim* 596:2.

7. II:266.

8. *Sukka* 41b.

9. *Orach Chayim* 588:5.

10. 588:2.

11. An object that is set aside for a *mitzva* may not be used for a non-*mitzva* purpose.

12. *Tosafot*, *Shabbat* 45a; see *Tzelach*, *Shabbat* 44a, and *Mishna Berura* 588:15.

he may move the shofar.¹³ The *Mishna Berura*¹⁴ explains that one cannot presume that a shofar is no longer slated to be used, because it is possible that someone has not heard shofar-blowing and still needs it. The *Kaf HaChayim*¹⁵ reasons that since children may blow throughout the day, the shofar is fit for use, and thus not *muktzeh*.

The *Shemirat Shabbat K'Hilchata*¹⁶ wonders why we assume that one may move a shofar after having finished using it, while it is unclear whether one may move a *brit mila* knife after the *mila*.¹⁷ He suggests a logical distinction – it is more common to unexpectedly find someone in need of hearing shofar-blowing than to unexpectedly find a baby in his eighth day who needs a *mila*.

13. *Mishna Berura* 596:3 in the name of *Acharonim*; *Shemirat Shabbat K'Hilchata* 28:34.

14. *Ibid*.

15. *Orach Chayim* 596:7.

16. 20 :(51).

17. See the *machloket* between the Rama, *Yoreh Deah* 266:2, and *Taz* ad loc. 1.

D-2: *Birkat Kohanim* of *Ne'ila* after Sunset

Question: If it will be difficult to get to *Birkat Kohanim* (*duchenen*) of *Ne'ila* on time, is it better to rush the *davening*, or should we just omit it under these circumstances?

Answer: The practice of doing *Birkat Kohanim* during *Ne'ila* is referred to in a *mishna*¹ and is accepted by the *Shulchan Aruch*.² The Rama,³ however, says that the *minhag* is not to do so. The *Bach*⁴ and *Mishna Berura*⁵ explain that when *Birkat Kohanim* is done during *Ne'ila*, it is too common that it ends up taking place at night, which is not allowed. The Gra⁶ explains things differently. Since the *mishna* says that one does *Birkat Kohanim* at *Shacharit* as well, we infer that just as our *minhag* is not to do it then, we also do not do it at *Ne'ila*.

Ashkenazim in most of the world do not do *Birkat Kohanim* at *Ne'ila*, but in Israel the common *minhag* is to include it. This makes perfect sense according to the Gra, who shaped many Israeli Ashkenazi *minhagim*. Those in Israel, who do *Birkat Kohanim* every day – including *Shacharit* of Yom Kippur – can do it also at *Ne'ila*.

Is there a clear need, in light of the *minhag* in Israel, for *Birkat Kohanim* to be done during the day, as you (and the *Bach*) assume? The *Yerushalmi*⁷ discusses a *machloket* as to whether *Ne'ila* is *davened* after nightfall following Yom Kippur (Rav) or only during the day (Rav Yochanan). It questions Rav's view

1. *Ta'anit* 26a.

2. *Orach Chayim* 623:5.

3. Ad loc.

4. *Orach Chayim* 623.

5. 623:9.

6. To Rama op. cit.; see *Sha'ar HaTziyun* 623:14.

7. *Ta'anit* 4:1, cited by the Rosh, *Yoma* 8:20.

based on the aforementioned *mishna* that *Birkat Kohanim* is said at *Ne'ila*, and *Birkat Kohanim* cannot be done at night because it is compared to the service in the *Beit HaMikdash*, which is done in the daytime only.

The Rambam⁸ and *Shulchan Aruch*⁹ rule like Rav Yochanan in the *Yerushalmi* that *Ne'ila* must be done before the setting of the sun. It follows that *Birkat Kohanim* should also be during the day. The Maharil,¹⁰ however, says that *Birkat Kohanim* can be done at night. He explains that parts of the service in the *Beit HaMikdash* could continue into the night. The *Sheilat Ya'avetz*¹¹ supports the Maharil's position by pointing out that there are *Rishonim* who rule like Rav and thus do not accept the linkage between *Birkat Kohanim* and the *Beit HaMikdash* service. These opinions notwithstanding, a clear majority of *poskim* rule that *Birkat Kohanim* may not be done at night.¹² The *Magen Avraham*¹³ suggests skipping the *piyutim* said during *Ne'ila* in order to get to *Birkat Kohanim* on time, returning to those *piyutim* after *chazarat hashatz*.

It is important to note that the cutoff point is not as simple as many assume. It is not clear cut – in general and in this particular context – that the day finishes at what we call sunset. The *Shulchan Aruch HaRav*¹⁴ says that daytime in this regard continues until halachic night, *tzeit hakochavim*, which is at the very least thirteen and a half minutes after sunset. On the whole, when the *Shulchan Aruch* talks about *sheki'a*, he likely refers not

8. *Tefilla* 1:7.

9. *Orach Chayim* 623:2. According to the *Magen Avraham* 489:1, the *Shulchan Aruch* is referring to a point close to the time of *tzeit hakochavim* of Rabbeinu Tam, which is approximately an hour after what we call sunset. *Yechaveh Da'at* VI:40, however, agrees with those who maintain that the *Shulchan Aruch* is referring to what we call sunset.

10. *Hilchot Yom Kippur* 10.

11. 51.

12. See *Yechaveh Da'at* VI:40.

13. 623:3.

14. 623:8.

to the “disappearance” of the sun under the horizon, but rather to around an hour later. It is difficult to rely on this latter opinion, since most of us regularly do work on *Motzaei Shabbat* and eat at the end of Yom Kippur before this time. However, during the time of *bein hashemashot*, which we usually assume starts at sunset and extends for close to 20 minutes,¹⁵ there is more room for leniency.

The *Yechaveh Da'at*¹⁶ says that while *Birkat Kohanim* should be skipped at *Ne'ila*, if it is not done by nightfall, it should be carried out during *bein hashemashot* if the congregation did not succeed in completing it by sunset. This is because of a *sefeik sefeika* (double doubt): maybe *Birkat Kohanim* can be done at night, and even if it cannot be done at night, maybe *bein hashemashot* is not night. This is all the more logical considering that the source of not doing *Birkat Kohanim* at night is probably only Rabbinic.¹⁷

While, in theory, a congregation (in Israel) should consider steps such as rushing and skipping *piyutim*, the psychological effect and the impact on the quality of *tefilla* may preclude going too far. If the congregation gets up to *Birkat Kohanim* modestly after sunset and has to choose between passing up *Birkat Kohanim* or doing it then, we would suggest doing it, unless a dispute would ensue.

15. At the very least, thirteen and a half minutes.

16. Op. cit.

17. See *Yechaveh Da'at* op. cit.

D-3: Intravenous Nutrition on Yom Kippur

Question: How does the fact that one can receive nourishment intravenously affect the laws of eating on Yom Kippur? May one who has trouble fasting have an intravenous drip? Should someone who needs to eat for medical reasons use intravenous instead?

Answer: We will start with a discussion of whether intravenous nourishment is a violation of eating on Yom Kippur, which affects both questions.

Generally, prohibitions of eating are violated by swallowing.¹ Yet, the *Chatam Sofer*² maintains that in order to fully violate the prohibition of eating on Yom Kippur, a requisite amount must sit in one's digestive track, where it can impact the body. Therefore, one could claim that it does not make a difference how the impact is delivered. However, the *Acharonim* advance strong questions against the *Chatam Sofer's* position,³ and all seem to agree that there must also be some normal process of eating in order to entail a violation.⁴ Ingesting in a manner in which one does not derive normal enjoyment from the eating process (e.g., when the food is scorching hot) is forbidden only Rabbinically.⁵ Several *poskim* put intravenous nourishment at the same level.⁶ However, it may actually be even more lenient; not only is intravenous nourishment not normal eating, but it also bypasses the digestive track and goes straight into the blood.

1. See *Chulin* 103b.

2. *Shut Chatam Sofer, Orach Chayim* 127.

3. See *Achiezer* III:61; *Chelkat Ya'akov, Orach Chayim* 216.

4. See *ibid.* and *Tzitz Eliezer* X:25.21.

5. Rambam, *Shevitat Assor* 2:5.

6. *Teshuvot V'Hanhagot* II:290; *Chelkat Ya'akov* op. cit.

It is true that when *pikuach nefesh*⁷ allows one to violate a Torah law (such as eating on Yom Kippur or eating a forbidden food), he should do so in a way that is least severely forbidden.⁸ Nevertheless, *poskim* do not require one to get nourishment intravenously instead of eating on Yom Kippur. We will present several reasons, starting with the technical and working our way to the fundamental: 1) Inserting the catheter on Yom Kippur might be as severe a violation of Halacha as eating.⁹ 2) It is possible that the intravenous nutrition will not be as healthy as eating food normally, or that the chemicals, the pain, and/or the possibility of infection make it an unsatisfactory option.¹⁰ 3) In general, when *pikuach nefesh* allows one to violate a Torah law, efforts to reduce the severity of the violation are likely only Rabbinic.¹¹ For this or other reasons, one does not have to find unnatural ways to obviate the need for applying *pikuach nefesh*.¹² 4) Taking steps that are not medically indicated in order to enable one to fast might even be considered obviating the divine decree that this person will be too sick to fast.¹³

The question of whether someone may receive intravenous nutrition on Yom Kippur so as not to be as adversely affected by the fast is a good one and should be broken up into a few parts. We mentioned above that many consider such nutrition a full-fledged Rabbinic violation of Yom Kippur, which is certainly forbidden without a real medical need. *Teshuvot V'Hanhagot*¹⁴ makes an interesting (but, as he admits, unproven) claim that intravenous nutrition violates a Torah-level **positive** commandment to afflict

7. Efforts to save a life.

8. *Yoma* 83a.

9. *Igrot Moshe, Orach Chayim* IV:101.3. Rav Feinstein comments that, in some cases, this could be obviated by inserting the catheter before Yom Kippur.

10. See *Igrot Moshe, Orach Chayim* III:90; *Maharsham* I:123.

11. *Kiryat Sefer, Ma'achalot Assurot* 14.

12. See *Minchat Shlomo* I:7.

13. *Igrot Moshe* op. cit.

14. II:290.

oneself on Yom Kippur.¹⁵ Regarding a healthy person, then, there would be no justification to use intravenous nutrition. Even if it does not constitute a violation, it still seems like something novel that is against the spirit of the law, which would be a bad idea in general, and certainly on Yom Kippur.

However, if one is sick enough to be bedridden, which is usually sufficient cause to allow the violation of at least some Rabbinic laws,¹⁶ it might be permitted to use intravenous nutrition. For a person in such a condition, swallowing medicinal pills without water is indeed permitted.¹⁷ In the case of one who is legitimately but not dangerously sick who may become sicker by fasting, taking pills or having an intravenous inserted before Yom Kippur or by a non-Jew on Yom Kippur might be permitted.¹⁸ Someone in that situation (or one who knows that he fasts **horribly**) should discuss alternatives with his personal rabbi. In this matter, neither unnecessary “torture,” at one end of the spectrum, nor improper leniency, at the other end, is appropriate.

15. *Vayikra* 23:27.

16. See *Shulchan Aruch, Orach Chayim* 328:17; *ibid. Yoreh Deah* 155:3.

17. *Shemirat Shabbat K’Hilchata* 39:8.

18. See *Igrot Moshe, Orach Chayim* III:91; *Teshuvot V’Hanhagot* op. cit.

D-4: Keeping a Kosher Restaurant Without a *Sukka* Open on Sukkot

Question: I own a kosher restaurant and would like to keep it open on Sukkot. However, there is no place for me to put a *sukka*. May I keep it open anyway, and, if so, are there conditions I must meet?

Answer: You do not want your restaurant to be responsible for people eating improperly. While women's eating in a *sukka* is optional, men are generally forbidden to eat a meal outside the *sukka*.¹ On the other hand, is it your job to play policeman in this instance any more than you do, for example, with regard to people making *berachot* on the food that they get in your restaurant? Actually, there is a difference between the issues. Providing your customers with kosher food is about the most you can do; you need not be concerned whether they will properly recite a blessing. You can assume that many people will or might make *berachot*; if there is someone who you are sure will not, he would act the same wherever he eats! (This is a simplified treatment of the topic of one's responsibility for the religious shortcomings of others.²) In the present case, in contrast, some of the customers might indeed eat in a *sukka* at home or at another kosher eatery if yours is closed.

Let us take a look at some of the categories of people who are exempt from eating in a *sukka*. Travelers, even those traveling for non-*mitzva* purposes, are exempt from sitting in a *sukka* during their travels.³ That may apply to many men who will visit your restaurant. There are limitations on the use of this leniency,

1. *Shulchan Aruch, Orach Chayim* 639:2.

2. See also *Minchat Shlomo* I:35.

3. *Shulchan Aruch, Orach Chayim* 640:8.

however.⁴ The most important one is that they do not have easy access to a *sukka*.⁵ Even if you can assume that most of your Sukkot customers do not need a *sukka* (which we cannot determine from here), it will not mitigate the situation when you recognize locals who prefer your cuisine over their *sukka* obligation.

Anyone may eat outside of a *sukka* when he is not having a halachically recognized set meal.⁶ A meal, in this regard, consists of bread the size of an egg or foods from the major grains (foods upon which one makes the *beracha* of *Mezonot*, except for rice) that are eaten in significant quantities and/or settings.⁷ Exactly how much of non-bread products this entails is a matter of dispute, as is the question of whether other foods can be eaten in a meal-like manner outside the *sukka*.⁸ It is possible to use this avenue of leniency and prepare a special Sukkot menu based primarily on foods that can be eaten outside of a *sukka*. You could even serve some bread with a visible note that says that those who need a *sukka* should have less than x amount of bread. Then you can rely on the principle of *teli'ah* – you can be optimistic that an object you give someone that could be used properly or improperly will indeed be used properly.⁹ This idea of *teli'ah* would also be especially helpful regarding providing take-out food, which customers may be planning to eat in a *sukka* or under conditions in which a *sukka* is not required.

It is usually problematic to get paid for work done on *Chol HaMo'ed*, but it is permitted when done for *ochel nefesh* (to facilitate eating on the *chag*).¹⁰ While it might be against the spirit of the law to use a leniency intended for the needs of the *chag* in a way that lessens the *mitzva* of *sukka* (if that is the case),

4. See *Igrot Moshe, Orach Chayim* III:93, who rules particularly strictly on this matter.

5. *Mishna Berura* 640:40.

6. *Shulchan Aruch, Orach Chayim* 639:2.

7. *Ibid.*

8. See *Mishna Berura* ad loc. 16; *Bi'ur Halacha* ad loc.

9. See *Avoda Zara* 15b.

10. See *Bi'ur Halacha* to 542:1.

halachically, it is still *ochel nefesh*.

Let us summarize. If you are in a place that lacks kosher eateries, it would be worthwhile religiously to use legitimate leniencies to stay open and try to arrange things so that few people will violate their obligation to eat in a *sukka*. If there are plenty of establishments with a *sukka* (in which case the volume of customers at a kosher restaurant without a *sukka* would in any case not be that great), it would be best to give yourself and your workers a deserved rest on the *chag*. (We also would understand if the rabbi(s) who provide your *hashgacha* would not allow you to be open.) However, especially in these difficult economic times,¹¹ we would not want to rule out the possibility of working things out, as we began to outline above.

11. This question was asked in 2010.

D-5: For Which *Mitzvot* Does *Shelichut*¹ Work?

Question: If a person is in a place where *arba minim*² are unavailable, can he fulfill his *mitzva* by asking someone to be his *shaliach*³ to hold the *arba minim*?

Answer: The *mitzva* of taking the *arba minim* on Sukkot is a classic example of a *mitzva sheb'gufo*, a *mitzva* that devolves upon the body of the one who is obligated to perform it, for which *shelichut* is ineffective.⁴ The Torah requires a man to put the *arba minim* in his own hands, not in another person's hands. Likewise, one must sit in a *sukka* himself and have *tefillin* on his own arm and head.

Follow-up Question: If anything that one needs to do with his body cannot be done by means of a *shaliach*, how can one appoint a *shaliach* to light Chanuka candles on his behalf?

Follow-up Answer: We see that you want us to get deeper into the *lomdus*⁵ of the concept and parameters of *mitzva sheb'gufo*. First, we should admit that there is at least one opinion that when there are not enough *arba minim* to go around for a community, one person can hold it on behalf of the rest.⁶ This opinion is rejected,⁷ mainly because of the concept of *mitzva sheb'gufo*, as we will explain further. Alternatively, the *gemara*⁸ derives from

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1. Agency.
 2. The four species taken on Sukkot – *lulav*, *etrog*, *hadassim*, and *aravot*.
 3. Agent.
 4. *Tosafot Rid*, *Kiddushin* 42b; see *K'tzot HaChoshen* 182:1.
 5. Halachic analysis.
 6. A rabbi cited by *Shut Chatam Sofer*, *Orach Chayim* 182.
 7. Including by the *Chatam Sofer* *ibid*.
 8. *Sukka* 41b.

the *pasuk*⁹ “*U’lekachtem...*” (You [plural] should take) that every individual must take *arba minim* himself.¹⁰

Let us discuss why many *poskim* consider *arba minim* a *mitzva sheb’gufo*, while lighting Chanuka candles is apparently not. The *K’zot HaChoshen*¹¹ makes the following distinction between various types of *mitzvot* regarding our discussion. The main objective of some *mitzvot* is to do an action. In such a case, we say that a *shaliach*’s action on another’s behalf connects back to the *meshale’ach* (the one who asked him to do it), who thereby fulfills his *mitzva*. In contrast, *mitzvot* whose fulfillment is *memeila* (by itself) when a certain situation exists do not lend themselves to the transference principles of *shelichut*. Thus, it is true that if a *shaliach* attaches *tefillin* to another’s head, we treat it as if the *meshale’ach* did the action. However, that is nevertheless insufficient for fulfillment of the *mitzva* by anyone other than the one on whose body it is resting. If you were to put *tefillin* on your friend’s head, he would fulfill the *mitzva*, not you, because the fulfillment is achieved by virtue of the *tefillin* being on one’s head. For this reason, making someone a *shaliach* for **your** *mitzva* of *tefillin* by putting *tefillin* on his own or on a third party’s body on your behalf is not effective. Although the *shaliach*’s action is considered like that of the *meshale’ach*, his body remains his own; you cannot fulfill your own *mitzva* without the *tefillin* being on your own body. The right action in the wrong place is of no value to you. The same is true in the context of the *mitzva* of *arba minim*, which requires them to be in the hands of the one who wants to fulfill the *mitzva*.¹²

One can distinguish this from the case of Chanuka candles. Although it is true that the main *mitzva* of Chanuka is the action of

9. *Vayikra* 23:40

10. See *Chatam Sofer* op. cit.

11. *Ibid.*

12. See *Mishneh Halachot* III:145, who explains that the source of viewing the *mitzva* of *arba minim* as situation-based, not action-based, is actually the aforementioned derivation of *Sukka* 41b.

lighting,¹³ your assumption is not completely accurate. A *shaliach* cannot **independently** fulfill the *mitzva* of Chanuka lighting on your behalf, as he must light the candles in **your house**.¹⁴ In that sense, the case of the *shaliach* who lights Chanuka candles on your behalf is similar to that of someone putting *tefillin* on your head, which works even for a *mitzva sheb'gufo*. (There is a difference in that lighting Chanuka candles entails an action element, and thus requires a valid *shelichut*, whereas it makes no difference who attaches *tefillin* to one's body.¹⁵)

A different formulation is found in *Minchat Asher*.¹⁶ Rav Weiss distinguishes between a *mitzva* whose **main purpose** is the action, in which case a person must do it himself, and a *mitzva* whose main point is arriving at a result, in which case someone else can help him accomplish that.¹⁷

13. *Mishneh Halachot* op. cit.

14. See *Minchat Shlomo* II:58.

15. See *Har Tzvi, Orach Chayim* I:23.

16. *Bereishit* 15.

17. See there for further insight and distinctions, such as the existence of “complex” *mitzvot* that include both elements. See also his explanation of why the helper must sometimes have halachic qualifications to serve as a *shaliach* and at other times anyone can do it.

D-6: *Eiruv Tavshilin* and the Second Day of *Yom Tov*

Question: With regard to making an *eiruv tavshilin*, are there any differences between a case in which *Yom Tov* falls on Thursday and Friday and a case in which it falls on Friday and Shabbat¹?

Answer: There are three types of *eiruv*: 1) *tavshilin* – to allow cooking on *Yom Tov* for Shabbat; 2) *chatzerot* – to allow carrying on Shabbat in certain types of domains; 3) *techumin* – to allow walking to an area that normally would be out of one’s range on Shabbat and *Yom Tov*. A characteristic all the *eiruv* share is that each creates permissibility for something that, without it, is forbidden by a Rabbinic prohibition. The *eiruv*, as Rabbinic enactments to allow one to modify the way Halacha views certain situations, cannot turn a Torah violation into a permitted activity.

One of the explanations of *eiruv tavshilin* is that it enables us to view the subsequent cooking on *Yom Tov* as a permitted continuation of that which began before *Yom Tov*.² Therefore, one of the basic rules of *eiruv tavshilin* is that it must be made before *Yom Tov* begins.

This straightforward rule is a little more complicated when *Yom Tov* falls on Thursday and Friday and one forgot to make the *eiruv* on Wednesday. **Fundamentally**, there are not “two days” of *Yom Tov* in *chutz la’aretz*, but only one. Since there are two days that, in theory, could be *Yom Tov* and we might not know which

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1. In Israel, there are two days of *Yom Tov* only on Rosh Hashana, and the first day of Rosh Hashana never falls on Friday, such that only the first scenario is possible. Outside of Israel, where two days of *Yom Tov* are observed, a Friday/Shabbat *Yom Tov* is possible on other festivals as well. In Israel, some festivals can fall on Friday, such that an *eiruv tavshilin* would be necessary.
 2. See *Beitza* 15b and *Piskei Rid* ad loc; Rama, *Orach Chayim* 527:1; *Mishna Berura* ad loc. 3.

one it is,³ the Rabbis required us to **treat** each one as if it is the day of *Yom Tov*. Thus, for example, when *Yom Tov* of Sukkot falls on Thursday and Friday, we act as if we do not know whether *Yom Tov* is on Thursday or on Friday. Therefore, if one forgot to make an *eiruv tavshilin* on Wednesday, he can still make the *eiruv* on Thursday with the following condition. If Thursday is really *Yom Tov*, then Friday is a regular weekday on which one may cook for Shabbat. If Friday is really *Yom Tov*, then the *eiruv* took effect on Thursday, which is actually *Erev Yom Tov*. Either way, he is then allowed to cook on Friday for Shabbat.⁴

This then would be a leniency for a Thursday/Friday as opposed to a Friday/Shabbat *Yom Tov*. In the latter case, if one forgot to do the *eiruv* before *Yom Tov*, it would be too late, because the above condition cannot be applied.

It is important to realize, though, that this logic does not apply when the Thursday/Friday *Yom Tov* is Rosh Hashana. Not only is Rosh Hashana special as the only two-day *Yom Tov* in Israel, but it was also instituted as a **definite** two days of *Yom Tov* (albeit only Rabbinically).⁵ Therefore, one cannot make the *eiruv tavshilin* on Thursday, because that is after the two-day *Yom Tov* has begun, and he cannot consider the possibility of only Thursday or only Friday being the real *Yom Tov*, which is necessary to make the above condition.⁶

A major question regarding *eiruv tavshilin* is how it permits cooking on *Yom Tov* when the food will not be eaten that day. Cooking on *Yom Tov* is ostensibly forbidden by Torah law except when done for *ochel nefesh*.⁷ Rav Chisda explains that just as one may cook on *Yom Tov* for *Yom Tov*, according to Torah-level law, he may cook on *Yom Tov* for the adjacent Shabbat. Therefore, while there is a Rabbinic prohibition of cooking on *Yom Tov* for

3. This is what actually happened in practice before there was a fixed calendar.

4. *Beitza* 17a.

5. *Ibid.* 6a.

6. *Shulchan Aruch, Orach Chayim* 527:22.

7. Food needs for the day.

the adjacent Shabbat, that prohibition is removed by the *eiruv tavshilin*. Rav Huna, in contrast, says that fundamentally, there is a Torah prohibition to cook on *Yom Tov* for Shabbat. However, it is uncertain that one is cooking only for after *Yom Tov*, as it is almost always **possible** that the food can be available for unexpected guests who will come on *Yom Tov*. This possibility removes the Torah-level prohibition, and *eiruv tavshilin* is able to make it permitted to cook food with the intention of using it on Shabbat.

Poskim point out that there should be a difference between the explanations of Rav Chisda and Rav Huna when one cooks on *Yom Tov* so close to the end of the day that guests could not benefit from the food on *Yom Tov*. Rav Chisda's grounds for leniency still apply, but Rav Huna's do not. Because of Rav Huna's opinion, we should not rely on *eiruv tavshilin* to cook very late in the day on *Yom Tov*.⁸ However, the *minhag* may not require us to be so careful,⁹ and there is room to rely on Rav Chisda in a case of great need.¹⁰ In comparison to a Friday/Shabbat *Yom Tov*, it is easier to be lenient on the Friday (the second day) of a Thursday/Friday *Yom Tov*, as Friday is *Yom Tov* only Rabbinically. Therefore the cooking could not possibly be forbidden by a more severe Torah prohibition.¹¹ In this regard, it is likely¹² that the grounds for leniency are the same when the Thursday/Friday *Yom Tov* is Rosh Hashana as it would be for other holidays. This is because, while the two days of Rosh Hashana are treated as definite *Yom Tov*, the second day is still only Rabbinic.

8. *Magen Avraham*, introduction to *siman* 527.

9. *Aruch HaShulchan*, *Orach Chayim* 527:3.

10. *Mishna Berura* 527:3; *Shemirat Shabbat K'Hilchata* 2:12.

11. *Ibid.*

12. The *Shemirat Shabbat K'Hilchata* 2:(32) is uncertain whether one can be equally lenient on the second day of Rosh Hashana.

D-7: When and How to Light Chanuka Candles When Returning Home Late

Question: I will be working late on Chanuka and will arrive home around 10 or 11 PM. Can I light the candles with a *beracha* when I come home (I live alone)? If not, can I do it at work?

Answer: First, one may not light at work with a *beracha*. The *mitzva* is essentially only fulfilled in a home. Although a *minhag* extends the practice to a *shul*¹ and some apply it to large gatherings of Jews, such as weddings,² one may not light the candles with a *beracha* at a standard workplace, even if several Jewish workers are present.

One option that you did not mention is to ask (or hire) someone to light for you as your agent in your house. This is acceptable if you have a suitable place (like a window to the street less than 30 feet above street level) where passersby can see the lit *menora*.

However, this option has drawbacks. The *Magen Avraham*³ says that when a man lights a *menora* for a woman (or vice versa) in the latter's house, he can make the *berachot* only if the homeowner is there. There are different understandings of the rationale and parameters of this ruling. *Mikraei Kodesh* (Frank)⁴ says that the first *beracha*, which is a standard *beracha* before performing a *mitzva*, can be made even if the home's resident is not there. The matter concerns only the *berachot* of *She'asa Nissim* and *Shehecheyanu* (on the first night), which are connected to the experience of seeing the publicizing of the miracle. These latter

1. *Shulchan Aruch, Orach Chayim* 671:7.

2. See *Piskei Teshuvot* 671:15.

3. 676:4, accepted by most *poskim*, including the *Mishna Berura* 675:9. See also *Pri Megadim, Mishbetzot Zahav* 675:4.

4. *Chanuka* 23.

berachot can only be made by or in the presence of the one to whom the *mitzva* applies. *Igrot Moshe*,⁵ agreeing with the thesis, adds that if the agent already lit candles for himself, he may not make those *berachot* again; similarly, if he says those *berachot* first for someone else, he should not make them subsequently in his own house. Others maintain that the *Magen Avraham*'s ruling applies also to the first *beracha*.⁶

If the agent does not make the *beracha* out of concern for the view of the *Magen Avraham*, the *mitzva* itself is certainly fulfilled (as long as people can see the candles). Nevertheless, without the *berachot*, the *mitzva* is not done in the most proper manner. Generally, it is also preferable that one do a *mitzva* himself, and we will therefore explore if you can fulfill the *mitzva* when you come home.

There are two opinions in the *gemara*⁷ regarding whether there is a deadline for lighting late during the night – specifically, when people stop walking around outside, which used to be half an hour into the night. The *Shulchan Aruch*⁸ says that one lights even if that time has passed, and many assume he means with a *beracha*.⁹ In contrast to Talmudic times, there is now more room for flexibility for two reasons. In many of our neighborhoods, people walk around late at night. It is therefore possible (we cannot judge from here) that the deadline has not been reached by 11 PM. Second, for most people who light inside their homes, the main element of the *mitzva* is to publicize the miracle within the home.¹⁰ Therefore, *poskim* rule that if people are awake in the home, one can light with a *beracha* even after the general

5. *Orach Chayim* I:190.

6. *Minchat Shlomo* II:58.

7. *Shabbat* 21b.

8. *Orach Chayim* 672:2.

9. See *Magen Avraham* 672:6; *Mishna Berura* 672:11.

10. *Chayei Adam* II:154:19, based on an opinion in the Rama, *Orach Chayim* 672:2.

deadline.¹¹ However, if everyone has gone to sleep and it is not practical to wake them for one's lighting, he should not make a *beracha*,¹² although one who makes the *beracha* need not be stopped.¹³

In your case, you are the only one at home, and therefore it ostensibly should be like the situation of doubt, where no *beracha* would be made. However, there are strong indications that since your household consists of just one person, lighting for yourself would be considered a legitimate lighting and would warrant a *beracha*.¹⁴

In summary, if you light in a neighborhood where passersby can see your *menora* but do not frequent your street at the time you make it home, it would be good, if possible, for someone to light for you at the regular time **and** for you to light later, both without *berachot*. Otherwise, you can light for yourself with the *berachot* when you come home.

11. Ibid.; *Mishna Berura* op. cit.

12. Ibid.

13. *Sha'ar HaTziyun* 672:17.

14. See *ibid.* and *Chemed Moshe* 672:3.

D-8: *Mincha* Before Chanuka Lighting on Friday

Question: I know that some people are careful to *daven Mincha* on *Erev Shabbat* **before** lighting Chanuka candles, but *shuls* continue to have *minyanim* at the regular time, as if it is not a requirement. Is it indeed necessary to *daven Mincha* first?

Answer: There are prominent, albeit **relatively** recent, sources that indicate that one should *daven Mincha* before lighting Chanuka candles on *Erev Shabbat*.

The *Sha'arei Teshuva*¹ says in the name of the *Birkei Yosef* that Chanuka lights should be lit after *Mincha* because *Mincha* corresponds to the daily afternoon *korban* in the *Beit HaMikdash* and the lighting of the *chanukiya*² is related to the miracle that occurred with the *menora* in the *Beit HaMikdash*. Since, in the *Beit HaMikdash*, the *menora* was lit subsequent to the afternoon *korban*, our practice of remembrances should follow the same order.

This logic is not overwhelmingly compelling. First of all, Chanuka lighting is a *mitzva* of the night, not one that is designed specifically to follow *Mincha*. (Indeed, considering that the Jewish day begins at night, the lighting **precedes** its day's *Mincha* by many hours.) Second, it is far from agreed upon that the lighting of the *chanukiya* corresponds to the lighting of the *menora* in the *Beit HaMikdash*.³

Another prominent source is the *Pri Megadim*,⁴ who comments in the following context. In the *Darchei Moshe*,⁵ the Rama cites *Rishonim* who say that whereas the Chanuka lighting in *shul* is

1. 679:1.

2. Chanuka *menora*.

3. See *Tzur Yaakov* (Horwitz) I:136

4. *Eshel Avraham* 671:10.

5. *Orach Chayim* 671:5.

usually done between *Mincha* and *Maariv*, on *Erev Shabbat* it should be done before *Mincha*. Although the Rama⁶ says that the *minhag* is to light after *Mincha* even on *Erev Shabbat*, the *Magen Avraham*⁷ asserts that when the time before the beginning of Shabbat is short, one should light the candles before *Mincha*. The *Pri Megadim* understands from the *Magen Avraham* that on *Erev Shabbat* in general, for example when lighting at home, *Mincha* should come first. To explain this he notes an interesting dilemma. Chanuka lighting is fundamentally done at night, and since we are forced to light early as Shabbat approaches, lighting them makes it night-like, after which it is almost self-contradictory to *daven Mincha*.

The *Tzur Yaakov*⁸ takes issue with the *Pri Megadim* based on two strong questions. First, regarding practice, if the people whom the *Rishonim* discuss are *davening Mincha* in *shul* close to nightfall, they presumably lit Chanuka lights at home **previously** – i.e., before *Mincha*. Second, regarding the matter's logic, he asks: if lighting Chanuka candles is like ushering in night, how can we light Shabbat candles afterward?

Besides the questions, we should remember that the idea of *davening Mincha* first is not based on classical sources, nor is it clear that it was meant to be binding. Despite all of the above reservations, *Acharonim* (including the *Tzur Yaakov*) find it difficult to dismiss the prominent opinions. The *Mishna Berura*⁹ describes it as a preferable practice.

The great majority of *poskim* say that it is worthwhile only if one can *daven* earlier with a *minyan*.¹⁰ If one is in a community that is very geographically centralized (certainly including yeshiva dorms), then one option is to make the pre-Shabbat *Mincha minyan* some twenty minutes or so earlier than

6. *Orach Chayim* 671:7.

7. Ad loc. 10.

8. I:136.

9. 679:2.

10. See *Yechaveh Da'at* I:74.

usual, thus allowing people to go back home to light. (It is likely unwise to make *Mincha* so early that people who do not want to return home might mistakenly light before that *Mincha*, sooner than the earliest permissible time.) If we are dealing with a large community, it is possible to have a very early *minyán* for *Mincha*, which can be attended by those who want and are able to follow this stringency, and another *minyán* at around the regular time. We would suggest to the individual to make a reasonable effort to attend the earlier *minyán*. (If he does, he also likely benefits from having less time pressure before Shabbat.)

It would seem wrong, in ordinary communities, to have only a very early *Mincha* and thereby reject the quite accepted *minhag* (as apparent from several written sources and from personal experience) that people light and then go to *shul* for *Mincha*.

D-9: Are Women and Single Children Obligated in *Mishlo'ach Manot*?

Question: Should my wife and children give their own *mishlo'ach manot*, or do the many *mishlo'ach manot* we send suffice for everyone?

Answer: The Rama¹ writes: “Women are obligated in *mishlo'ach manot* as men are; women should send to women, and men should send to men.” Some *Acharonim* disagree, as the *Megilla* talks about a **man** giving *mishlo'ach manot* to his friend. However, the great majority of *poskim*, including Sephardim, accept the Rama’s view.²

The *Magen Avraham*³ reports that women in his time rarely gave *mishlo'ach manot*. He suggests that only a widow (or any single woman) is actually required to give it herself, since when a husband gives to several people, we consider that some of the gifts are on his wife’s behalf. The *Magen Avraham* implies that as long as a couple is giving to two people (which is sufficient to fulfill two individual’s *mitzvot*), there is no need to specify which *mishlo'ach manot* are whose or to be careful that it is going to the corresponding gender. He nevertheless concludes that it is proper to be stringent.

Recent *Acharonim* have discussed how exacting this stringency is. Neither a woman nor a man is ever required to hand deliver her/his own *mishlo'ach manot*, since it may be sent by a halachic agent or even a non-halachic courier.⁴ It is recorded in the name of Rav S.Z. Auerbach⁵ that it is proper and sufficient to specify to one’s wife and mention to at least one of the recipients that the *mishlo'ach manot* are [also] on her behalf.⁶ He assumes that no one needs to legally own the *mishlo'ach manot* he gives, as long as he or she has permission to give it.⁷ Rav Ovadia Yosef⁸ prefers that the woman herself give a specific *mishlo'ach manot* to a particular woman,

1. *Orach Chayim* 695:4.

2. *Mishna Berura* 695:25; *Kaf HaChayim*, *Orach Chayim* 695:56; *Yalkut Yosef*, *Mo'adim* p. 333.

3. 695:14, cited by *Mishna Berura* op. cit.

4. See *Living the Halachic Process*, vol. II, D-12.

5. *Halichot Shlomo*, *Mo'adim* 19:17.

6. See *ibid.* footnote 27.

7. *Ibid.* See discussion in *Hilchot Chag Bechag* 13:(16).

8. See *Yalkut Yosef* op. cit.

but he does not discuss making sure that the food she gives is halachically hers. Still others⁹ suggest being more stringent and having the woman make a *kinyan* from her husband or have others do so on her behalf, so that she will own the *mishlo'ach manot*. Even if one is conceptually stringent on this point, an act of acquisition is not necessary in a great many of our families, in which the spouses' normal arrangement is that their property is owned jointly. Thus, each spouse has a right to claim whatever is needed for a variety of purposes, including *mitzvot*.¹⁰

The matter is less simple regarding children who are financially dependent on their parents. Some say that they are not required to give *mishlo'ach manot* separately, as those with full financial dependency do not usually have monetary obligations. Here, it appears that the more accepted practice is to obligate the children, at least when they are over *bar* and *bat mitzva* ages.¹¹ Obviously, children do not have joint ownership in the family's property. Therefore, in order to follow the opinions that one must own the *mishlo'ach manot* he gives, children should use their own money or receive permission from the parents to acquire for themselves some food supplies for this purpose.

The *Pri Megadim*¹² says that even children under *bar/bat mitzva* ages should fulfill the *mitzva* as part of their *chinuch* (training). Some *poskim* claim that we fulfill this obligation by having the children deliver their parents' *mishlo'ach manot*.¹³ However, it seems both halachically and educationally sound for parents to give supplies to their small children and have them prepare and deliver *mishlo'ach manot* to their own friends.

In summary, where possible, it is preferable that every member of the family give at least one *mishlo'ach manot* package. It is a worthwhile stringency to tell children that when taking the packages, they will be acquiring them for themselves to give. It seems unnecessary, and possibly even insulting, to tell one's wife that she has to first acquire the provisions before giving hers.

9. See opinions stated in *Mikra'ei Kodesh* (Harari), *Purim* 12:(37).

10. See *Bava Batra* 137b.

11. *Mikra'ei Kodesh* op. cit. 15.

12. *Eshel Avraham* 695:14.

13. See *Piskei Teshuvot* 695:15.

D-10: The Practice of *Machatzit HaShekel*

Question: Please explain the basis and parameters of giving *machatzit hashekel* before Purim. Specifically, how much must I give, and does everyone in the family have to take part?

Answer: Let us first clarify a few things about the *minhag* of *machatzit hashekel* before dealing with specifics. There is a *mitzva* from the Torah² to donate a half *shekel* every year (during the month of Adar) for the upcoming year's public sacrifices.³ While this does not apply now,⁴ a *minhag* has developed to give a donation in memory (*zecher*) of the practice. (It must be clear that it is only a *zecher*, as an attempt to make a real *machatzit hashekel* would produce *hekdesh*⁵ coins that must be used only for the *Beit HaMikdash*.) Notably, this old *minhag*⁶ was not cited in such basic sources as the Rambam and *Shulchan Aruch*, but it is cited in the Rama.⁷ At some point in history, Sephardim also adopted the *minhag*.⁸

Given that the original *mitzva* was to donate a half-*shekel* to the *Beit HaMikdash*, it might have been expected that one would give a single half-*shekel* coin as a *zecher* to the *machatzit hashekel*.⁹ However, the Torah¹⁰ mentions the word “*teruma*” three times in that context (in the first year of donation, when the

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1. Giving a donation as a remembrance of the yearly donations to the *Beit HaMikdash*.
 2. *Sefer HaMitzvot L'HaRambam*, Aseh 171.
 3. Rambam, *Shekalim* 4:1.
 4. *Sefer HaMitzvot* op. cit.
 5. Property that is sanctified for the use of the *Beit HaMikdash*.
 6. Found in the Mordechai (*Megilla* 777), written over 700 years ago.
 7. *Orach Chayim* 694:1.
 8. See *Kaf HaChayim* ad loc.; *Yalkut Yosef, Mo'adim*, pp. 310-314.
 9. See *Bi'ur Halacha* 694:1.
 10. *Shemot* 30:11-16.

Mishkan was being assembled, there were three donations), and the Rama consequently says that we should give three such coins. The standard practice is to give half denominations of the local currency; the Rama mentions specific coins appropriate in his time in different places. In our time, the Israeli half-*shekel* and the American half dollar are appropriate, in the respective countries. Since the classical coins from the *Beit HaMikdash*'s times were made out of silver, there are *shuls* that provide old half-dollar coins, which contain a significant amount of silver, but this is not a real requirement. These *shuls* usually allow people to buy the special coins for whatever price they like, and, of course, they donate the coins back to the "pot."¹¹ Some *poskim* suggest that one should give the value of a Biblical half *shekel* (approximately 10 grams of silver¹²).¹³ Many people take the opportunity to make more significant donations. (Anything above the minimum amount, according to the various opinions, may be taken from *ma'aser kesafim* money.¹⁴)

The Rama says that only men above the age of twenty are required to give the *machatzit hashekel*, as the *pasuk*¹⁵ seems to indicate.¹⁶ In contrast, the *Tosafot Yom Tov*¹⁷ says that involvement in the donation for the *korbanot* applies to all male adults, as the mention of a twenty-year old minimum concerns a one-time donation also referred to by those *p'sukim*. The *Mishna Berura*¹⁸ notes that it is customary to give even on behalf of women and young children. A reasonable compromise is for men over twenty to give the larger amount (equivalent to the Biblical half *shekel*) and others to give the smaller amount (equivalent to half of the

11. See *Bi'ur Halacha* op. cit.

12. The equivalent of \$5-\$6 at the time of preparation of this volume.

13. *Kaf HaChayim* 694:20; see *Yalkut Yosef* op. cit.

14. *Yalkut Yosef* op. cit., p. 314.

15. *Shemot* 30:14.

16. See *Bartenura, Shekalim* 1:3.

17. To *Shekalim* 1:4.

18. 694:5.

local currency),¹⁹ since it is not logical to build stringency on stringency regarding this *minhag*.

There are various opinions about when the optimal time is to give the *machatztit hashekel*. Although the *Mishna Berura*²⁰ cites an opinion that it is done before the morning reading of *Megillat Esther*, the more prevalent *minhag* is to give it before (or after) *Mincha* the day before Purim. This means that it is usually done on Ta'anit Esther. Indeed, the *Kaf HaChayim*²¹ says that the *Mincha* of the fast is the appropriate time to give money that goes to *tzedaka*. His implication is that even Jerusalemites, who observe Purim the day after everyone else, should give the *machatztit hashekel* on Ta'anit Esther. However, the more prevalent practice seems to be for Jerusalemites to give it at the *Mincha* before their Purim (on the day of Purim observed outside of Jerusalem), except on a *Purim Meshulash* year,²² when they too give it on Ta'anit Esther.²³

19. See also *Bi'ur Halacha* op. cit.

20. Op. cit. 4.

21. 694:25.

22. "Triple Purim," in which the celebration of Purim in Jerusalem is broken up by element over three days; see *Living the Halachic Process*, vol. II, D-13.

23. *Purim Meshulash* 2:1; see *Riv'vot Ephrayim* II:194.

D-11: Chametz that Is Difficult to Reach

Question: Often during Pesach cleaning, I am aware of *chametz* that is in places that are very hard to get to. Am I required to make every possible effort to get the *chametz* out?

Answer: There are several Talmudic discussions about situations in which it is questionable whether it is necessary to get rid of *chametz* that is not readily accessible. The *gemara*¹ cites a *baraita* that when there is a hole in between the properties of two Jews, each one must put his hand in as far as it reaches in search of *chametz*. Whatever might remain beyond that point can stay, and it suffices to do *bitul*² on it. Similarly, a *mishna*³ states that one does not have to worry about possible *chametz* underneath rubble. Again, the *gemara*⁴ adds that one should do *bitul*. If it is known that *chametz* exists there, he must take steps necessary to remove it unless there are three *tefachim* (approximately 9 inches) of rubble on top of it.⁵

Perhaps the most pertinent *gemara* for the present discussion is the series of questions about *chametz* in out-of-the-way places in *Pesachim* 10b. The *gemara* presents two possible positions regarding the necessity to remove *chametz* that is on top of rafters. On the one hand, perhaps it is necessary to remove it, lest the *chametz* fall on Pesach and someone winds up eating it. On the other hand, perhaps the Rabbis did not want to inconvenience one to bring a ladder for that task, considering the unlikelihood he will come to eat it. The *gemara* then asks that even if we are stringent in this case, perhaps it is nevertheless unnecessary when

1. *Pesachim* 8a.

2. A declaration of nullification.

3. *Pesachim* 31b.

4. *Ibid.*

5. *Tosafot, Pesachim* 8a; *Shulchan Aruch, Orach Chayim* 433:8.

chametz fell into a pit (from which it will not “fall up”). Then again, suggests the *gemara*, maybe the person will go down to the pit and eat the *chametz*.

The Rambam⁶ and *Shulchan Aruch*⁷ rule stringently on the question of the rafters. Regarding the pit, they are lenient as long as one does *bitul*. The *Beit Yosef*⁸ explains that by doing *bitul*, one lowers the issue to a maximum of a Rabbinic-level problem, and then one need not remove the *chametz* in this case, which the *gemara* left as an unsolved question. We do not make him remove that *chametz* in that case because it would take a lot of toil to get the *chametz*, and the fact that it is out of easy access makes this case similar to the aforementioned example of rubble.⁹ (One cannot purposely put *chametz* into such a situation.¹⁰)

In describing the example of the rafters, where one must go to the trouble of removing it, the Rambam and *Shulchan Aruch* talk about a *k'zayit*¹¹ of *chametz*. Some *poskim* say that if there is less than a *k'zayit* of this semi-accessible *chametz*, there is no need to go to the trouble of removing it.¹² Anyway, all sources indicate that if the *chametz* is in a place that is inaccessible during Pesach and there is significant difficulty getting to it before Pesach, one may rely upon *bitul chametz* (which we anyway perform as a matter of course) and leave it where it is.

Nonetheless, we are aware that many (if not most) of us seem to be more stringent on ourselves in these matters than Halacha requires. Why isn't Halacha good enough for us? One source or rationalization for the fixation with perfection in our Pesach cleaning is the following: “People have the practice of scraping walls and chairs that *chametz* touched, and they have what to rely

6. *Chametz U'Matza* 2:14.

7. *Orach Chayim* 438:2.

8. *Orach Chayim* 438.

9. *Ibid.*; see *Mishna Berura* 438:15.

10. *Ibid.*; *ibid.*

11. The size of an olive.

12. See *Mishna Berura* 438:12 and *Sha'ar HaTziyun* 438:11.

upon [for being arguably needlessly stringent], and if there is *chametz* in a crevice that one cannot reach, he should put a little cement over it.”¹³ Based on this type of approach, it is common for many normal people to do more than is halachically required and remove every piece or even trace of *chametz* from various places. So, for instance, if you spend several minutes reaching into the recesses of your sofa to get out *chametz*, you are more *machmir* than required, but you are also in good company. Even *chumrot* should have limits, but these are hard to delineate.

13. *Shulchan Aruch, Orach Chayim* 442:6. This practice has apparent support in the *Yerushalmi*.

D-12: One who Failed to Recline While Drinking Wine on Pesach

Question: What do I do if I forget to recline while drinking one of the cups of wine at the *Seder*?

Answer: Our main focus in our answer will be on Ashkenazi men. (Many Ashkenazi women do not recline while drinking, and a woman who does recline has more room for leniency if she forgot.¹ We will present the simpler instructions for Sephardim at the end.)

The *gemara*² says that, in principle, one must recline only for two of the four cups of wine. However, since it could not conclude whether that means the first two or the last two, the ruling is to recline for all four. The Rosh³ stipulates that if one was supposed to recline (while eating *matza* or while drinking wine) and did not, he did not fulfill the *mitzva* properly and must eat or drink again. (One does not repeat the section of the *Seder* related to the cup, just the drinking.) However, the Rosh wonders whether the repetition is appropriate for the third or fourth cup. There is an obligation to drink four cups, but one should not drink more than that in a manner that gives the appearance that one is drinking as a formal part of the *Seder*. Since one is not allowed to drink wine after the third cup (obviously, excluding the fourth cup) or after the fourth cup,⁴ drinking more suggests that one is adding a fifth official cup of wine. This makes repeating potentially problematic. On the other hand, the Rosh reasons that since one did not fulfill the *mitzva* properly if he drank without reclining, that cup did not count, and he can and should drink another. The Rosh provides no resolution to the quandary.

1. See Rama, *Orach Chayim* 472:4.

2. *Pesachim* 108a.

3. *Pesachim* 10:20.

4. See *Shulchan Aruch*, *Orach Chayim* 479:1 & 481:1.

The halachic implications are even more complex nowadays for Ashkenazim. The original reason to eat and drink while reclined was that it demonstrates that we are liberated people, as that is how important people once ate at leisure. The Ra'avya⁵ makes the argument that since, nowadays, important people eat sitting erect, reclining no longer accomplishes its intended function, and it is therefore no longer necessary. The Rama factors this argument into his rulings. He uses it not only to explain the *minhag* of women in his time not to recline,⁶ but also as a reason not to require a man who forgot to recline to repeat the eating⁷ or drinking. However, the Rama concludes that regarding wine, one should implement the Rosh's distinction in the following manner.⁸ For the first two cups, where there is no halachic downside to drinking more, he should repeat. For the latter cups, where there is a problem of appearing as though one is adding cups, one should rely on the Ra'avya that drinking erect is sufficient and avoid further drinking, which would be unnecessary and improper according to his view.

The *Magen Avraham*⁹ found an issue even with repeating the first cups. As we discussed above, drinking a cup of wine that one normally should not be drinking makes it look like a mandatory cup. Logically, making an additional *beracha* on the wine also makes it look formal. The *Magen Avraham* points out that even though one **may** drink wine between the first two cups, we are no longer in the practice of doing so.¹⁰ Therefore, one's intention with the *beracha* over the first cup is for that cup alone. Repeating the cup would thus entail reciting another *beracha*, which makes it look like a problematic additional cup. The *Magen Avraham*

5. 525, cited in the *Tur, Orach Chayim* 472.

6. *Orach Chayim* 472:4.

7. Regarding *matza*, he rules to repeat eating the *matza*, but not to repeat either of the *berachot*.

8. *Ibid.* 7.

9. 472:7.

10. See *Shulchan Aruch, Orach Chayim* 473:3.

argues that we should thus rely on the Ra'avya rather than repeat the first cup.

Regarding forgetting to recline for the second cup, if one had any thoughts of drinking wine during the meal, another *beracha* would not be necessary, and it would be preferable to repeat the cup.¹¹ The *Magen Avraham* says that it is best, when preparing to drink the first cups, to have in mind that the *beracha* should apply to any further drinking.¹²

The *Mishna Berura*¹³ seems to endorse the *Magen Avraham*'s approach. Given that the *Magen Avraham*'s criteria are subjective and hard to determine, and since the matter is a Rabbinic one with a few mitigating doubts, one can resolve ambiguity on the side of leniency (i.e., not to repeat). (If and when one does repeat, drinking grape juice is a wise choice.)

For Sephardi men, the situation is simpler. The *Shulchan Aruch*¹⁴ does not rely on the Ra'avya on this subject. Matters are further simplified by the fact that according to the rulings accepted by Sephardim, the *berachot* on the first and third cups exempt the *berachot* on the second and fourth, respectively. Accordingly, a Sephardi man should always repeat the cup if he forgot to recline while drinking.

11. *Magen Avraham* op. cit.

12. We note the likelihood that if one is not remembering to recline, he would also forget to have another cup in mind, as the two occur within seconds of each other.

13. 472:21.

14. *Orach Chayim* 472:7.

D-13: Does One Need to Own the Matza that He Eats?

Question: Someone showed me a *gemara* that says that one has to own his *matza* on *Seder* night. Yet, I have never seen people being careful to acquire ownership when they have the *Seder* in someone else's home. How can we reconcile the practice with the sources?

Answer: The *gemara*¹ does appear to say, as you indicate, that one must own his *matza*. In discussing *matza* that is made from *ma'aser sheni*,² the *gemara* says that according to the opinion that *ma'aser sheni* is considered "HaShem's property," one cannot use it to fulfill the *mitzva* of eating *matza*. This is derived from a textual connection between *matza* and *challa*³ taken from dough, which applies only to one's own dough. We accept the opinion that *ma'aser sheni* is in fact the property of its human owner, and thus the question is moot in that regard.⁴ However, the concept is reflected in the *halacha* that one does not fulfill the *mitzva* with stolen *matza*, which is likely due to a lack of ownership.⁵ Therefore, there is a potential problem even if one "steals" *matza* unintentionally and no one cares about it (e.g., two people mix up their *matzot*).⁶

Why, then, do we not find that people are careful to make a halachic acquisition (*kinyan*) of the *matza*? The lack of concern about this ostensibly important halachic issue is significant on

1. *Pesachim* 38a.

2. Produce that can be eaten only in Jerusalem, where it possesses a status of *kedusha*.

3. The removal of a small piece of dough from the batch, which, at the time of the *Beit HaMikdash*, was given to *kohanim*.

4. Rambam, *Chametz U'Matza* 6:8.

5. *Mishna Berura* 454:15; see Rosh, *Pesachim* 2:18.

6. *Mishna Berura* op. cit. He suggests there that people should stipulate that they are giving their *matza* as a present to whoever accidentally received it.

two levels, in this case as well as in many issues in Halacha. First, the fact that there is no *minhag* to be careful is itself halachically significant. Perhaps more importantly, the classical *poskim* are silent on the subject of needing to make a *kinyan* before eating the *matza* that one is given as a guest. This phenomenon, called *setimat haposkim* (the silence of the halachic authorities or their not having made distinctions between cases), is a major halachic factor. In other words, if there were indeed a need to do something extra in a common situation, classical *poskim* would have spoken about it. (Regarding unusual occurrences, it is more reasonable to say that the lack of a source or a *minhag* of stringency is due to a dearth of discussion about rare cases in general. That cannot be said here, as guests for the *Seder* have always been common.)

Therefore, we do not suggest that one go out of his way to be stringent and have guests make a deliberate act of *kinyan* before eating *matza*. Creating a clearly new *chumra* is unwarranted and thus has a negative effect. Let us, then, explore why there is no need.

The *Sefat Emet*⁷ suggests that we can apply the Rosh's position about a groom who "borrows" a ring to effectuate a marriage. We assume that it was given to him to acquire it halachically, for if not, the marriage will not take effect. Similarly, the host gives the *matza* to his guests as a present, and the guest receives it with that intention. This explanation is somewhat difficult, as many people are not aware that one needs to own the *matza*, such that the assumption of their intention may be unrealistic.⁸

However, there is a simple answer. Intention to acquire is pertinent when one could be acting either to acquire something or to borrow it. If the object will be returned to its original owner, the transaction is considered borrowing unless one goes out of his way to acquire the object. However, when one receives *matza*

7. *Sukka* 35a.

8. Concerning the suggestion in footnote 6, it is likely that the *Mishna Berura* presumes that the "acquirer" does not need similar intention for the giver's intention to be effective.

in order to eat it, he will obviously not be returning it. Thus, the **scenario itself** demonstrates an effective intention to acquire the *matza*. Since putting something onto (or into) one's body is an act of *kinyan*,⁹ one acquires the *matza* by the time he swallows it.¹⁰

Another possibility is that one acquires the *matza* when he makes a change in it by chewing it. The *mitzva* is fulfilled seconds later, when he swallows. This argument does not apply to stolen *matza*¹¹ because the beginning of the action in “fulfilling” the *mitzva* is forbidden; since the *matza* is acquired by a forbidden act, the entire action is disqualified.¹² This explanation is also difficult because changes to an object affect ownership only in cases such as that of a thief, where the thief previously did an action to try to bring the object into his control, and that element is missing here.¹³

Some *poskim* disagree with the premise that you arrived at based on the *gemara* – namely, that one needs to own the *matza*. Some argue, based on the comparison to *challa*, that one requires only **full permission** to eat the food as he likes, but not actual ownership.¹⁴ This certainly exists for guests and household members.

In summary, although it is not clear what the correct halachic explanation is, guests at another's *Seder* do not have to do anything special to make sure they own the *matza* that they will eat.

9. See *Gittin* 77a.

10. In a public *shiur*, Rav Asher Weiss went a step further. He posited that an act of consumption such as eating food is a “natural *kinyan*.” Therefore, the eater does not need to intend to acquire it.

11. *Shulchan Aruch, Orach Chayim* 454:4.

12. See *Shulchan Aruch, Orach Chayim* 649:1, and *Mishna Berura* ad loc. 3.

13. Perhaps the fact that he takes the *matza* without planning to return it can combine with the change that occurs to affect acquisition.

14. *Imrei Bina, Pesach* 23; *Tzitz Eliezer* XII:37.

D-14: Stovetop Grates for Pesach

Question: How does one prepare stovetop grates for Pesach use?

Answer: As is common with regard to Pesach, the *halacha* is particularly strict on this matter, and the practice that many of us have is even more stringent than the classical sources indicate.

During the course of the year, the almost universal practice is to use the same stovetop grates without even cleaning them between *milchig* and *fleishig* use. This surprising leniency is based on one or more of the following possibilities: 1) Even if the grates have absorbed taste from spilled milk and meat (and are thus *treif*), there is no transfer from the grates to the pots that sit on them. In general, there is no transfer from one utensil to another when there is no food or liquid in between them.¹ Although when there is spillage, there is liquid in between the two, the *Chavat Da'at*² rules that only the presence of a significant amount of liquid can facilitate the transfer. This does not occur on grates, as excess liquid quickly runs off. 2) The fire on the stove serves as a means of *kashering*.³ 3) The substance that falls on a grate is expected to be burnt up before it can affect the grate.⁴

We might expect that one could likewise use the same grates without problem on Pesach. Yet, the Rama⁵ writes that a *chatzuva* (tripod, which people used like our grates) requires *libun* (the form of *kashering* that employs extreme dry heat) for Pesach.

There are various attempts to explain why there is a stringency specifically for Pesach. One is that as opposed to year-long prohibitions, where only a discernable influx of forbidden

1. *Shulchan Aruch, Yoreh Deah* 92:8.

2. 92:20.

3. See *Hagalat Keilim* (Cohen) 13:(85).

4. Based on a similar concept in *Shulchan Aruch, Yoreh Deah* 92:6; see *Igrot Moshe, Yoreh Deah* I:59. This is an unrealistically optimistic assumption in most cases.

5. *Orach Chayim* 451:4.

food taste renders food non-kosher, on Pesach even the smallest amount of absorbed material renders it not kosher for Pesach.⁶ However, *poskim* seem to posit that not even trace quantities of taste particles are transferred from one pot to another.

A different possibility is the claim that it is more likely that one will put *matza* directly on the grate, as opposed to *milchig* or *fleishig* food during the year. The Rama's source, the Mahari Weil,⁷ seems to justify the need for *libun* for Pesach on different grounds. He notes that *chametz* is a particularly severe prohibition, one which we are not used to avoiding. This, then, is the most authoritative difference,⁸ which is also one that is used to explain many Pesach stringencies.⁹

Because this *kashering* is a stringency, the *Mishna Berura*¹⁰ says that it is sufficient to do the easier form of *libun*, known as *libun kal*, a level of heat that most modern ovens are presumed to reach at their maximum setting within half an hour. He also rules that if one put a pot on a grate that was used during the year and had not been *kashered*, it would not become *chametzdik*.

The suggested way of *kashering* is described by Rav Shimon Eider as follows.¹¹ Clean the grates and then put all of the burners on high for 15 minutes with a sheet of metal covering them so that they reach a very high temperature throughout. It is also possible to put them into an oven on high for around half an hour. If one puts them through a cycle in a self-cleaning oven (assuming this is safe for them), any imaginable halachic doubt will be removed.

Many *poskim* rule that one can either *kasher* the grates or clean them of any residue on the outside and then cover them.¹²

6. *Shulchan Aruch, Orach Chayim* 447:1.

7. 193.

8. See *Hagalat Keilim* op. cit. at length.

9. See *Tosafot, Pesachim* 2a.

10. 451:34.

11. *Halachos of Pesach*, p. 178.

12. *Hagalat Keilim* 13:89.

There should be no need to both *kasher* and cover the grates.¹³

However, our holy nation is in its most stringent mode on Pesach, and many fine Jews cover the grates with aluminum foil **after *kashering***. (Rav Scheinberg is among those who cite this as the standard practice.) Although we certainly do not mandate this, we do not scoff at the idea either.

If only from the perspective of time, it is likely worthwhile for those who can to purchase replacement grates for Pesach and spare themselves significant time and work over many years of Pesach preparations.

13. The stove top itself is more difficult to clean and questionable to *kasher*. Most *poskim* say that one should cover it. We will leave the analysis for another opportunity.

D-15: *Erev Pesach* that Falls on Shabbat

Question: What do you suggest that we do on *Erev Pesach* this year,¹ which is on Shabbat, regarding when and what to eat?

Answer: There are a number of valid solutions to the challenges of *Erev Pesach* on Shabbat. People should determine the most practical solutions according to the halachic guidelines that their rabbis present.

One **practical** choice is to use only *Pesachdik* and/or disposable utensils and keep separate whatever *chametz* that one plans to eat while it is still permitted on Shabbat. The main complication is the fact that one is required to eat halachically recognized bread during at least the first two Shabbat meals.²

Using regular *chametz* bread is the most halachically straightforward option.³ It is permissible to eat *chametz*, even after the house has been prepared for Pesach, until four (halachic) hours into the morning⁴ (around two hours before halachic midday – consult a local calendar). Eating *matza* raises a problem, because according to most *poskim*, *Chazal* forbade eating *matza* on *Erev Pesach* from the beginning of the morning.⁵

The reason that *Chazal* forbade eating *matza* on *Erev Pesach* is so that when we eat *matza* at the *Seder*, it will be clear that it is being eaten for the *mitzva*.⁶ From that perspective, it is permitted to eat *matza* that is unsuitable for the *mitzva* of eating *matza*

1. The question was asked in 5768 (2008). The situation will arise next in 2021 and 2025.

2. *Shulchan Aruch, Orach Chayim* 274:4.

3. Out of concern for crumb management, unsliced *challa* is not the optimal choice. Pitas or rolls are a wiser option.

4. *Shulchan Aruch, Orach Chayim* 243:1.

5. *Mishna Berura* 471:12; *Yechaveh Da'at* I:91.

6. See Rambam, *Chametz U'Matza* 6:12.

on *Seder* night.⁷ This is primarily what is called *matza ashira* (colloquially referred to as “egg matzo”), which is kneaded with liquids other than water.⁸

However, there are two complications with using *matza ashira* as our bread on Shabbat *Erev Pesach*. First, although the *gemara*⁹ says that the liquids in *matza ashira* do not cause fermentation that makes food *chametz*,¹⁰ Ashkenazim are stringent to treat *matza ashira* as possible *chametz*, such that it is permitted to eat it on Pesach only in cases of great need.¹¹ (Some *poskim*¹² rely on the view of the *Noda B’Yehuda*¹³ that one must avoid eating *matza ashira* only after midday of *Erev Pesach*.) Second, *matza ashira* may have the status of *pat haba’ah b’kisnin*¹⁴ regarding its *beracha*,¹⁵ and this makes it questionable as a choice for Shabbat bread.¹⁶

Based on the above principles, let us take a meal-by-meal look at the day.

Friday night meal – The halachically simplest idea is to eat bread that is *chametz*. Those who do not want to worry about having *chametz* in their ready-for-Pesach home may eat *matza* according to most *poskim*. If one has the *minhag* not to eat *matza* from the beginning of Nisan, or if he accepts the stringent ruling regarding eating *matza* the night before Pesach,¹⁷ *matza ashira* is

7. *Shulchan Aruch, Orach Chayim* 471:2.

8. See *Pesachim* 35a-b.

9. *Ibid.*

10. At least if no water is present; see *Tosafot* ad loc.

11. Rama, *Orach Chayim* 462:4.

12. See *Sha’arei Teshuva* to *Orach Chayim* 444:1.

13. I, *Orach Chayim* 21.

14. Foods with similarities to bread, but not sufficiently to share all of the *halachot* of bread.

15. See *Shulchan Aruch, Orach Chayim* 168:7.

16. *Igrot Moshe, Orach Chayim* I:155 explains that this is not a problem on Shabbat, but he still seems to prefer *challa* when convenient. See Rav Ovadia Yosef’s preferred solution in *Yechaveh Da’at* I:91.

17. See *Igrot Moshe* op. cit.

a reasonable alternative until midday.

Shabbat morning meal – If one finishes eating *chametz* (not necessarily the whole meal) by the end of four halachic hours of the morning (consult a local calendar), which can be accomplished by *davening* very early, matters are halachically simple.¹⁸ *Matza ashira* with a *hashgacha* for Pesach is desirable for situations in which it is difficult or nerve-racking to deal with *chametz*, and one would seemingly not need to rush, as one has until halachic midday.

Seuda shlishit – This meal should normally be held in the afternoon¹⁹ and should preferably include bread,²⁰ but *chametz* is already forbidden by then. *Matza ashira* is also problematic for Ashkenazim. The Rama²¹ writes that we eat other foods, such as fruit or meat, at this *seuda shlishit*. The *Mishna Berura*²² cites a different alternative: break up the morning meal into two, so that one can fulfill *seuda shlishit* on *challa* or *matza ashira* at that time. He points out that there should be a pause between the two meals in order to avoid the problem of making an unnecessary *beracha*, but he does not say how long that pause should be. Opinions range from a few minutes to half an hour, with some suggesting taking a short walk in between.²³

One who is not usually careful to have *challa* at *seuda shlishit* throughout the year need not consider this idea. He can eat his normal breadless *seuda shlishit* in the afternoon, preferably earlier than usual in order to foster having a good appetite for the *Seder*.²⁴ Even those who usually have *challa* at *seuda shlishit*

18. The problem of the need to get rid of crumbs or leftovers by the end of the fifth hour is solvable, but it is beyond our present scope.

19. Starting from approximately a half hour after astronomical midday; see *Shulchan Aruch, Orach Chayim* 291:2.

20. *Ibid.* 291:5.

21. *Orach Chayim* 444:1.

22. 444:8.

23. See *Piskei Teshuvot* 444:6.

24. See details in *Shulchan Aruch, Orach Chayim* 471:1.

may follow the Rama's recommendation over that of the *Mishna Berura*, as the latter is somewhat counter-intuitive and not without halachic problems. Sephardim can use *matza ashira* but must do so earlier than three halachic hours before sunset.²⁵

25. *Shulchan Aruch, Orach Chayim* 471:2.

D-16: Eating Dairy on Shavuot

Question: Does one really have to eat *milchig* on Shavuot? If so, when is one supposed to do so, and what steps should he take regarding eating meat and milk? There seem to be many *minhagim* and little clarity on the issue.

Answer: We can give you only partial clarity – and an assurance that there are many legitimate ways to fulfill the *minhag*.

The *minhag* to eat *milchig* food on Shavuot seems to have begun in Ashkenazic lands in the days of the *Rishonim*, and it is accepted by the Rama.¹ However, over time it has become a more accepted practice among Sephardim, as well.² There are many theories as to the rationale behind the *minhag*, which affect the optimal way to follow it. Also, some ostensibly good ways of fulfilling this *minhag* raise halachic problems. Given the plethora of opinions on the matter and the fact that people recognize that this *minhag* is not overly crucial, it is not surprising that both rabbis and laymen have developed varied systems.

The Rama³ understands that the *minhag* is meant to remind us of the *shtei halechem* (two loaves of bread), which were offered on Shavuot in the *Beit HaMikdash*. The *Magen Avraham*⁴ explains that by having both milk and meat products in a meal, it will be necessary to have two loaves of bread with which to eat the food.⁵ For that reason, he suggests that we bake some *milchig* bread. Although bread is supposed to be *pareve*, loaves that are small or are made in a special shape, both of which were customary on Shavuot, are permitted.⁶ This approach explains why many eat

1. *Orach Chayim* 494:3.

2. See *Kaf HaChayim, Orach Chayim* 494:61; *Yalkut Yosef, Moadim*, p. 444.

3. *Ibid.*

4. *Ad loc.* 8.

5. Note that in previous eras, bread was dipped into and spread with other foods on the table.

6. Rama, *Yoreh Deah* 97:1.

milchig and *fleishig* at the **same meal** despite the problems that this entails (see below), as the halachic tension it creates is part of the observance.

Another reason to split a meal into *milchig* and *fleishig* parts is that many authorities require a meat meal both at night and during the day of *Yom Tov*.⁷ Others say it is sufficient to have meat during the day. Therefore, those who have one fully *milchig* meal on Shavuot usually do so at night.⁸

Other reasons for the *minhag* are based on kabbalistic ideas regarding milk,⁹ hints derived from the word as an acronym,¹⁰ and the idea that after receiving the Torah, *Bnei Yisrael* needed time to be able to prepare kosher meat and therefore had to eat dairy.¹¹ According to these approaches, it may be sufficient to have *milchig* food at any point during *Yom Tov*, including a snack or *Kiddush* after *Shacharit*.

Clearly, one should not compromise the laws of meat and milk in order to fulfill this *minhag*. Therefore, if eaten in succession, *milchig* must be first. In between the two parts of the meal, one should clean his mouth by eating *pareve* food and by drinking or rinsing, and he should also either rinse or inspect his hands.¹² He should also change the tablecloth.¹³ (Many people simply eat the *milchig* food on a plastic tablecloth on top of the regular one.) Some people are careful to make a full break between the *milchig* and *fleishig* parts of the meal through *Birkat HaMazon* (or a *beracha acharona* in the case of those who fulfill the *minhag* with cake).¹⁴ However, that is a particularly stringent practice and is not halachically required.¹⁵ If one does *bentch*, note that there

7. See Rosh, *Berachot* 7:23 with *Ma'adanei Yom Tov*; *Sha'arei Teshuva* 529:4*.

8. See *Piskei Teshuvot* 529:11 and 494:11.

9. *Magen Avraham* 494:6.

10. *Aruch HaShulchan*, *Orach Chayim* 494:5.

11. *Mishna Berura* 494:12.

12. *Shulchan Aruch*, *Yoreh Deah* 89:2.

13. *Mishna Berura* op. cit. 16.

14. *Pri Megadim* on *Shach*, *Yoreh Deah* 89:6.

15. *Ibid.*; see *Mishna Berura* op. cit.; *Melamed L'ho'il* II:23.

are varied opinions as to how long to wait before starting the meat meal.

In brief, it is all but impossible to coordinate the most stringent approach to the integration of milk into a meat meal on Shavuot with all the stringencies involved with eating milk and meat in general.¹⁶ Some systems are so cumbersome that they might have a negative effect on people's *simchat Yom Tov*, cause them to make mistakes, or unnecessarily delay the *minhag* of learning all night. Therefore, people should continue a family *minhag* with which they are comfortable or adopt one that works for them. One who wants to figure out the most *machmir* system may be blessed, but he should be aware of "collateral damage."

16. See *Igrot Moshe, Orach Chayim* I:160.

D-17: Eating Meat During the Nine Days

Question: Is it forbidden to eat meat during the Nine Days, or is it just a *minhag*?

Answer: The *gemara*¹ says that on the day before Tisha B' Av, one should not eat meat. The *Shulchan Aruch*² rules that this refers only to the *seuda hamafseket*.³ Clearly, then, the *gemara* assumes there was no prohibition to eat meat during the Nine Days.

However, there is an old *minhag* forbidding one from eating meat earlier than that. The *Tur*⁴ says that this is a *minhag* mentioned in the *Talmud Yerushalmi* (according to one version) as starting on the first day of the month of Av. The *Shulchan Aruch*⁵ cites various opinions regarding when the *minhag* begins: the week in which Tisha B' Av falls, the beginning of the month, or from the fast of the 17th of Tammuz (i.e., the Three Weeks). The *Mishna Berura*⁶ notes that the *minhag* of Ashkenazim is from the beginning of Av. The practice of some Sephardim is to refrain from meat only on the week of Tisha B' Av. However, most Sephardi *poskim* rule to start from the beginning of the month. In practice, this means to refrain from meat from the second day of Av, because they hold that the prohibition does not apply on Rosh Chodesh, which is normally a festive day.⁷

Your question is whether the above is a fully binding *halacha* or whether it is a weaker *minhag*. This is difficult to answer clearly. The long answer, which can be discussed regarding many practices, is too extensive for this forum. The short answer is

1. *Ta'anit* 26b.

2. *Orach Chayim* 552:1.

3. The meal right before Tisha B' Av.

4. *Orach Chayim* 551.

5. *Orach Chayim* 551:9.

6. Ad loc. 58.

7. *Kaf HaChayim*, *Orach Chayim* 551:126; *Yalkut Yosef*, *Mo'adim*, p. 567.

that it is both. Once a *minhag* develops and is accepted broadly throughout a community,⁸ it becomes incorporated in Halacha and is binding on the community, or even in the entire Jewish world.

Note the *Aruch HaShulchan*'s⁹ comments regarding your question: "Our fathers already accepted hundreds of years ago not to eat meat or drink wine from Rosh Chodesh Av until after Tisha B'Av, except on Shabbat. This is to remember the sacrifices and the libations that were discontinued due to our sins ... Now, in our great sins, how people take this prohibition lightly! First of all, they violate a Torah law by abusing a vow, for since our fathers accepted this *minhag*, it is an oath of the Nation of Israel. Besides this, how can we not be embarrassed?! ... A nation about which it was said 'you shall be holy' will not agree to restrain themselves eight days a year as a remembrance of our house of holiness and grandeur ..." Granted that this is a notably strong stand both on the halachic status of a *minhag* in general, and on this issue in particular. However, it highlights the idea that the assumption that a *minhag* by its nature is largely unimportant is not simple, especially when the *minhag* is old and established.

The relative lower expectations regarding *minhagim* are related to the common situations in which the *minhagim* were initially accepted and the leniencies incorporated into them (explicitly or by means of historical development). The *minhag*/prohibition not to eat meat during the Nine Days is an example of this phenomenon, as its leniencies (or lenient opinions in its regard) likely stem from the fact that it is a *minhag*, not a regular prohibition. We will now present a partial list of such leniencies.

Whereas one may not feed non-kosher food to even an infant, during the Nine Days, he may give meat or wine to a child who is too young to understand the meaning of mourning for Jerusalem,¹⁰

8. The size of which can vary.

9. *Orach Chayim* 551:23.

10. *Magen Avraham* 551:31.

at least when this is needed to fulfill a *mitzva*.¹¹ One who is (even slightly¹²) sick may eat meat during the Nine Days,¹³ if there is a health benefit from eating meat. One may make a *seudat mitzva*¹⁴ with meat, including a meal upon finishing a tractate of Talmud (*siyum*).¹⁵ Regarding the parameters of when it is permissible to make such a *siyum* and who can be invited, it is notable that the custom has developed to be more lenient than the classical *poskim* envisioned. We feel that in general, it is proper – **when possible, appropriate, and logical** – to follow legitimate *minhagim* as they develop, whether for stringency or leniency. Here, again, the general development has been for stringency, but within some of its specific applications, there is a direction of leniency. This type of balancing is part of the halachic system, including regarding halachic *minhagim*.

11. *Mishna Berura* 551:70, e.g., when the child drinks grape juice from *Havdala* instead of an adult.

12. *Mishna Berura* *ibid.* 61.

13. Rama, *Orach Chayim* 551:9.

14. *Mitzva*-related meal.

15. Rama *ibid.*

D-18: Doing Dishes on Tisha B'Av

Question: When I have dirty dishes from the *seuda hamafseket*¹ and from feeding children on Tisha B'Av, may I wash them on Tisha B'Av?

Answer: Washing one's skin is forbidden on Tisha B'Av, including even putting one's finger in water without justification.² When there is justification, such as for the need of a *mitzva*, it is permissible to wash as much as is necessary.³ There are other justifications besides *mitzvot*. The *gemara*⁴ says that one whose hands are dirty may wash his hands normally on Yom Kippur (and therefore certainly on the less stringent Tisha B'Av). In explaining this *halacha*, the *Tur*⁵ says that only washing for enjoyment is forbidden.

Accordingly, there is logic to say that since few people intend to get washing enjoyment from doing dishes, it should be permitted to wash dishes normally on Tisha B'Av. However, there are strong indications that we permit non-enjoyment washing only under specific circumstances that justify it. For example, the *gemara*⁶ allows one to wade through water on Yom Kippur on the way to visit his rabbi (a *mitzva*), but leaves open the question of whether the rabbi may go to visit his student.⁷ One can claim that wading through water is more likely to be an enjoyable form of real bathing, which thus requires a more serious justification. Similarly, when one is allowed to wash his hands for a *mitzva* need, he must wash only the minimum area of the hand that is

1. Meal before the fast.

2. *Shulchan Aruch, Orach Chayim* 554:7.

3. *Ibid.* 8.

4. *Yoma* 77b.

5. *Orach Chayim* 554.

6. *Op. cit.*

7. We are stringent on the matter; see *Shulchan Aruch, Orach Chayim* 613:7.

necessary, not the whole hand, as we normally prefer.⁸ This does not seem to be a particularly significant form of enjoyment, and thus our concern for how it is done seems to indicate that there must be a clear necessity even when one does not intend to wash for enjoyment.

We do find that preparing a meal is a legitimate justification to get one's hand wet. The *gemara*⁹ allowed doing “*keniva*” of vegetables toward the end of Yom Kippur, so that one will have peace of mind that he will be ready to eat when the fast ends. The Rashba and Ramban¹⁰ explain that *keniva* is washing, and we thus see that the fact that one's hands will undoubtedly get wet in the process does not prohibit it. (We do not practice this leniency, but for an unrelated side reason.¹¹)

The *Magen Avraham*¹² further says that women who are cooking on Tisha B'Av may wash meat even though their hands will get wet. This ruling, however, is far from straightforward. The *Pri Megadim*¹³ makes two comments on this opinion of the *Magen Avraham*. One is that it is referring to someone who needs meat. The *Machazeh Eliayhu*¹⁴ understands that the *Pri Megadim* was bothered by the fact that it is forbidden to eat meat until the next afternoon (the 10th of Av). He infers from the fact that the *Pri Megadim* felt it necessary to point out that the person needs the meat earlier that it would be forbidden to wash one's hands while cooking on Tisha B'Av for the next day's meal. The *Pri Megadim*'s second comment is that one should not use warm water, which is a higher level of enjoyment. The *Kaf HaChayim*¹⁵ takes issue with this, at least in cases in which warm water is necessary for the cooking, and it seems logical to be lenient in

8. *Shulchan Aruch, Orach Chayim* 554:11.

9. *Shabbat* 114b.

10. Ad loc.

11. *Shulchan Aruch, Orach Chayim* 611:2; see *Mishna Berura* ad loc. 9.

12. 554:11, cited by the *Mishna Berura* 554:19.

13. Ad loc.

14. 87.

15. *Orach Chayim* 554:46.

that case.

The matter of avoiding touching water when possible is the subject of another disagreement. The *Beit Yosef*¹⁶ and *Taz*¹⁷ maintain that when a child must be washed on Yom Kippur, a non-Jew should do it, so that the Jew can avoid the pleasure of touching the water. However, the *Magen Avraham*¹⁸ and most authorities rule that when it is permitted for the child to be washed, a Jew may wash him.

In the final analysis, it is permitted to wash only those dishes that are needed to be washed on Tisha B'Av. Some examples are: to avoid flies and odors, to make sure that as many dishes as are required will be available for those who must eat on Tisha B'Av, or to break the fast right afterward. In other cases, one should either use rubber gloves or wait until after Tisha B'Av. Irrespective of issues of washing, housekeeping type activities that can be delayed should be done only after *chatzot*.¹⁹

16. *Orach Chayim* 616.

17. 616:1.

18. 616:1.

19. Midday; see Rama, *Orach Chayim* 554:22.

D-19: Shofar Blowing During Elul

Question: What is the reason for blowing shofar during the month of Elul, and what *halachot* do I need to know about it?

Answer: The *minhag* is an old one, which the *Tur*¹ cites based on *Pirkei D'Rabbi Eliezer*.² The reason recorded there is connected to the historical event when Moshe went up to Har Sinai to receive the tablets a second time, which took place on Rosh Chodesh Elul. This was accompanied by the blowing of the shofar to warn the people that Moshe was leaving and that they must not make the type of mistake they made the first time with the Golden Calf.

Of course, our *minhag* extends the blowing of the shofar beyond Rosh Chodesh to the entire month of Elul (minus Shabbat and the day before Rosh Hashana). There are two further reasons that explain the extension of the *minhag*. One is that Elul is a time when *teshuva*³ is appropriate, and the shofar helps rally people to this end. The connection between *teshuva* and shofar is evident from the *pasuk*:⁴ “Shall a shofar be blown in a city and the nation will not tremble?”⁵ A final idea that is suggested is that blowing the shofar confuses the Satan as to when Rosh Hashana will be.⁶

These reasons complement each other. The first establishes the significance of the starting date, the second extends it past Rosh Chodesh,⁷ and the third explains why it is appropriate only until Rosh Hashana and not until Yom Kippur, which is the end of the period of *teshuva*.

During Elul, we blow one series of blasts. The *minhag* is not to be so careful to ensure that the blasts are halachically valid.

1. *Orach Chayim* 581.

2. 46.

3. Repentance.

4. *Amos* 3:6.

5. *Tur* op. cit.

6. *Ibid*.

7. See *Prisha* ad loc.

Apparently, the view is that any reasonable reminder of *teshuva*, of a hint of Rosh Hashana, and/or of the events of the historical Rosh Chodesh Elul is sufficient.

There is a significant difference between Ashkenazic and Sephardic practice regarding this *minhag*. Ashkenazim blow the shofar at the end of *Shacharit*, although there was once a *minhag* to do so in the evening as well.⁸ Sephardim do it during *Selichot* instead. This is consistent with their *minhag* to start *Selichot* in the beginning of the month of Elul. In fact, the *Tur* presents the two practices together, as both are linked to the special nature of Elul, which makes the joining of the two appropriate.

The fact that Ashkenazim blow the shofar in *shul* in the morning is significant according to two prominent, recent *poskim*. Rav Moshe Feinstein⁹ explains that we do it specifically during the day, and not after *Ma'ariv*, because of sources that indicate that the first half of the night is not an auspicious time to make supplications. The *Tzitz Eliezer*¹⁰ posits that the *minhag* applies only in *shul*, as is the common practice, and need not be fulfilled by one who missed *shul*. He explains that the historical shofar blowing was a public event and that the aforementioned *pasuk* that indicates the *teshuva*-powers of a shofar also refers to the blowing in a **city**, not in the home. Therefore, most women, who are not usually present in *shul* daily, do not generally hear shofar blowing during Elul, which is perfectly acceptable.

There are different opinions and *minhagim* regarding on which of the two days of Rosh Chodesh Elul we should start the *minhag*. Some of the arguments relate to the day that Moshe went to Har Sinai for the 40-day period or how many days of shofar blowing we are interested in having.¹¹ In any case, the more prevalent *minhag* is to start on the second day of Rosh Chodesh, which is the first day of Elul, but either *minhag* that is practiced

8. See *Tur* op. cit.; Rama, *Orach Chayim* 581:1.

9. *Igrot Moshe*, *Orach Chayim* IV:21.

10. XII:48.

11. See *Bach*, *Orach Chayim* 581, and *Magen Avraham* 581:2.

locally is acceptable.¹²

12. *Igrot Moshe* op. cit.

Section E:
Kashrut

E-1: Kashrut of an Animal Fed Meat and Milk

Question: I have heard that veal comes from calves that are fed a mixture of milk and meat. Shouldn't that make the veal forbidden, since the calf is thus an animal whose sustenance comes from non-kosher food?¹ This case is particularly severe because the feed is *assur b'hana'ah*²!

Answer: We will start with your assumption that the feed is fully forbidden as *basar b'chalav*, the combination of milk and meat, before revisiting that assumption.³ The halachic ramifications are very complicated, and we will only summarize them.

Generally, when a forbidden food undergoes a major change so that it reappears in a totally different form, the new food is permitted. Thus, as one of many examples, a bird born from the egg of a *treif*⁴ bird of a kosher species is permitted.⁵ Similarly, once the animal feed is consumed by the animal, it should no longer be considered a forbidden mixture. Nevertheless, we must contend with the following source. The *mishna*⁶ cites an opinion (R. Chanina ben Antignus) that if a kosher animal drank a non-kosher animal's milk, it should not be used for a *korban*. The *gemara*⁷ says that this refers to a case in which it drank milk in

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1. This question and answer does not relate to other possible halachic questions, including concern for the welfare of animals, which is a separate issue. See response G-10.
 2. Forbidden in benefit.
 3. There are many methods of feeding veal calves, including with a "milk replacer" that may contain animal fats along with milk proteins.
 4. A severely injured animal, which is rendered non-kosher despite belonging to a kosher species.
 5. *Temura* 31a.
 6. *Ibid.* 30b.
 7. *Ibid.* 31a.

a manner that would sustain it all day. *Tosafot*⁸ surmises that, similarly, if an animal was sustained consistently on grains of *avoda zara*, it would be forbidden, apparently even for regular eating (not only as a *korban*).

The Rama⁹ rules according to *Tosafot*'s stringency regarding animals that have consistently been fed non-kosher feed. The *Shach*¹⁰ and others¹¹ raise two major grounds to disagree with the Rama. First, *Tosafot*'s suggestion concerns feed of *avoda zara*, which is *assur b'hana'ah*, whereas the Rama extends it to feed that is forbidden by a simple eating prohibition. Second, *Tosafot* was explaining an opinion that is not even accepted as the *halacha*.

According to the *Shach*'s first point, there is more reason to forbid an animal or its byproducts when it was fed *issurei hana'ah*.¹² This leads to many complicated discussions regarding use of milk on Pesach from animals that were fed *chametz* on Pesach. We can address that matter only superficially in this forum. One major factor indicating leniency is the principle that *zeh v'zeh goreim mutar*.¹³ In other words, when something is the product of two or more physical factors, some of which are permitted and some forbidden, the resulting object is permitted. In the case of Pesach, the milk is a result of the *chametz*, which is *assur b'hana'ah*, but it is also the result of other feed and/or of the animal's body, and it should thus be permitted. One question, though, is whether the major dependency on *chametz*, especially over time, makes the animal and its milk some type of continuation of the *chametz* (along the lines of the Rama's ruling). It is also possible that regarding *chametz*, where the rules of *bitul* (nullification) do not apply, *zeh v'zeh goreim mutar* might not either.¹⁴ Oversimplifying

8. Ad loc.

9. *Yoreh Deah* 60:1.

10. Ad loc. 5.

11. See *Pri Chadash*, *Yoreh Deah* 60:5; *Igrot Moshe*, *Orach Chayim* I:147.

12. Objects that are forbidden in benefit.

13. *Avoda Zara* 49a.

14. See *Magen Avraham* 445:5.

the matter, we would say the *Mishna Berura*¹⁵ is equivocal and Rav Moshe Feinstein¹⁶ rules leniently.

Important to us in Rav Feinstein's thesis is that he rejects not only the Rama, but also the *Shach*'s distinction between *issurei hana'ah* and other prohibited foods. Rav Feinstein says that using the byproduct of an *issur hana'ah* that is now gone (i.e., the *chametz* or *basar b'chalav* animal feed) is far too indirect to be considered benefiting from the original forbidden item. He views the prohibition as being feasible only if we deem the byproduct as an extension of the original forbidden object, which is an opinion we do not accept.

Returning to your question about the calves eating a mixture of milk and meat, the various opinions cited above are not relevant. The reality is that even in a calf feed that is a mixture of milk and meat (not all are), the milk and meat are not cooked together.¹⁷ A non-cooked mixture of meat and milk is forbidden to eat only Rabbinically and is permitted in benefit.¹⁸ In all likelihood, even the stringent opinion of the Rama does not apply to a Rabbinic prohibition. This is true not only because Rabbinic prohibitions often have more lenient rules, but also because Rabbinic prohibitions are often viewed as personal and practical rather than intrinsic. As noted, prohibiting the byproduct stems from the notion that it is intrinsically an extension of a forbidden object, and that is likely irrelevant in the case of a Rabbinic prohibition.¹⁹

15. 448:33.

16. *Igrot Moshe* op. cit. addresses the matter at great length, and, for the most part, rules that the milk is permitted.

17. This is the reality as far as we have been able to ascertain, including with help from information provided by the Orthodox Union *kashrut* agency.

18. *Shulchan Aruch, Yoreh Deah* 87:1.

19. See *Chelkat Yoav* II:20, who applies this basic approach in a similar manner.

E-2: Does Food Stay *Pareve* in a Cooking Bag?

Question: May I cook *pareve* food that is in a cooking bag in my *fleishig* crock pot – in water or perhaps even along with *fleishig* food – and still consider the food *pareve*?

Answer: The answer assumes that the cooking bag prevents noticeable seepage of liquid through the bag.¹ If you cannot ensure this situation,² the discussion below is academic. We thus will treat the bag as a utensil within a utensil.

We will begin with the case in which you simultaneously cook *fleishig* and *pareve* together, but they are separated by the “walls” of the cooking bag. In this case, the bag turns into a *fleishig* utensil. (Had the bag contained *milchig* food, then “first level” tastes of *milchig* and *fleishig* would have joined together in the walls of the bag to become the forbidden substance known as *basar b’chalav*.³)

There is a far-reaching *machloket* between Ashkenazi and Sephardi *p’sak* regarding *pareve* food cooked in a *flesihig* pot. The *Shulchan Aruch*⁴ says that the *pareve* food remains *pareve* because the *fleishig* taste is twice removed from its source (*nat bar nat*), once by entering the pot and again when leaving it to enter the *pareve* food. However, there is a significant *machloket* among *Acharonim*⁵ if that leniency applies if the *fleishig* source is present on one side of the pot (e.g., on the pot’s cover) at the time that the *pareve* food is on the other side. Some consider this as direct transfer of taste from one food to another, despite the

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1. See *Shulchan Aruch, Yoreh Deah* 95:2, regarding an egg shell, which is too porous to be considered a separation.
 2. Some such bags are purposely made porous.
 3. See *Shulchan Aruch, Yoreh Deah* 92:5.
 4. *Yoreh Deah* 95:2, accepted, as usual, by Sephardim.
 5. See opinions in *Pitchei Teshuva, Yoreh Deah* 95:1; *Badei HaShulchan* 95:7.

barrier between them.⁶

For Ashkenazim, if one cooked *pareve* food by itself in a *fleishig* pot, he may not eat it together with *milchig* food, as cooking or roasting transfers taste too powerfully to fully apply the leniency of *nat bar nat*.⁷ Certainly, then, if *fleishig* food is cooking on the other side of the bag, one may not eat the food in the bag with *milchig* food. It is assumed to have absorbed too much *fleishig* taste from the food cooking in the crock pot to have all the leniencies of *nat bar nat* food. (While some of the *halachot* of such in-between foods are mentioned below, there are too many permutations and opinions to cover the topic thoroughly in this forum.)

The situation is different when only water or *pareve* food is in the crock pot outside the cooking bag. In that case, even that which is **outside** the bag is only *nat bar nat* of *fleishig*. Even though Ashkenazi *poskim* are relatively stringent regarding *nat bar nat*, there is reason to believe that they would not go as far as to treat the food **inside** the bag as *fleishig* in any way. After all, the Rama⁸ says that if *pareve* food was cooked in a *fleishig* pot and then was already accidentally mixed into milk, the mixture may be eaten. Furthermore, one may put such food into a *milchig* utensil without it affecting the status of that utensil or the food that will be cooked in it subsequently. In our case, then, we have no reason to believe that the bag or the *pareve* food within it should be affected by the water that was cooked in the *fleishig* pot.

It is important to note that several *Acharonim* say that one should not to set up a *nat bar nat* situation deliberately. For example, the *Pri Megadim* asserts that one may not cook a *pareve*

6. According to several opinions (including the *Pri Chadash*, *Yoreh Deah* 95:1, and the *Kaf HaChayim*, *Yoreh Deah* 95:1), the problems of setting up a *nat bar nat* situation *l'chatchila* (discussed later) apply to Sephardim as well. Rav Ovadia Yosef (*Yabia Omer* IX, *Yoreh Deah* 4) rules like those who are lenient even *l'chatchila*.

7. Rama, *Yoreh Deah* 95:2.

8. *Ibid.*

food in a *fleishig* pot if he is planning to place it while hot on a *milchig* utensil.⁹ Based on this, we might conclude that it is similarly not right to place the bag and its *pareve* food contents into a *fleishig* pot to cook if you want to be able to eat that *pareve* food with *milchig*. That being said, if the crock pot was not used within twenty-four hours for *fleishig* food, there is further reason to be lenient.

Compared to the *Pri Megadim*'s case, yours has an element of additional leniency, but also of further stringency. On the one hand, you are not putting the *nat bar nat* in a *milchig* utensil, but rather in a *pareve* one.¹⁰ The *pareve* food inside the utensil is arguably once further removed. Additionally, in many cases, at the time of the cooking you will not have **plans** to use the *pareve* food with *milchig* food, and if you decide later that you want to, it is no longer an instance of a full level of *l'chatchila*. On the other hand, you want to cook the *pareve* food **at the same time** that the *fleishig*-leaning water is in the pot, which we saw might be more stringent.

Let us summarize. If one has *pareve* food that he wants to be able to eat with *milchig* food, he should certainly not cook it in a cooking bag together with *fleishig* food, at the very least for Ashkenazim. Cooking it along with a *pareve* base in a *fleishig* pot is difficult to forbid. However, one who wants to be careful should avoid doing so when possible if he plans to eat the *pareve* with *milchig*.

9. *Pri Megadim*, *Mishbetzot Zahav* 95:5; see *Badei HaShulchan* 95:30; Rav Moshe Feinstein (*Igrot Moshe*, *Yoreh Deah* III:10) says that one may be lenient for even a small need.

10. See in *Living the Halachic Process*, vol. II, E-7, that this is not clear grounds for leniency regarding *l'chatchila*, although every additional factor for leniency may have an impact.

E-3: Roasting Chicken and Fish Together in an Oven

Question: May I roast chicken and fish together in an oven when they are both uncovered? (The fish will not be eaten with milk.)

Answer: The *gemara*¹ says that one should not eat fish that was roasted together with meat because of the danger of leprosy. The *Shulchan Aruch*² codifies this in regard to actually eating meat and fish together. The Rama³ adds that one should not roast meat alongside fish because of *reicha* (lit., the aroma, which imparts a tiny transfer of taste). However, he rules that *b'di'eved* (if this was already done), the food is not forbidden.

The Rama's position can be viewed as parallel to the halachic discussion⁴ regarding roasting kosher and non-kosher foods together or roasting *pareve* food and meat with the desire to eat the former with milk. In those contexts, we say that roasting things near each other facilitates *reicha* between the foods. While these situations should be avoided, food does not become forbidden without more significant contact. Examples of more problematic contact are cooking under one "roof" so that the process produces *zeiah*,⁵ or adjacently so there is an intermingling of gravy, or when the foods touch. While one should avoid roasting meat and dairy together in an oven, there is no problem *b'di'eved* if one of them was covered reasonably well.⁶

In your case, there is room for leniency even *l'chatchila*. The Maharshal⁷ allows one to roast meat and fish together in one oven, at least in a relatively large oven (like most of ours). He claims,

1. *Pesachim* 76b; see Rashi ad loc.

2. *Yoreh Deah* 116:2.

3. Ad loc.

4. *Yoreh Deah* 108:1; *ibid.* 97:3.

5. Significant water vapor, which facilitates greater transfer.

6. *Shulchan Aruch* and Rama, *Yoreh Deah* 108:1.

7. *Yam Shel Shlomo, Chulin* 7:15.

based on the Rambam,⁸ that the prohibition due to danger applies specifically to cooking the two together in one pot. In an oven, however, where there is no more than *reicha*, there is no danger. The *Taz*⁹ cites the Maharshal, but relies on his leniency only in regard to baking bread in the same oven with meat and then eating it with fish (not roasting fish and meat together). The *Shach*¹⁰ cites the Maharshal's lenient opinion regarding roasting meat and fish *l'chatchila* in the same oven, but he also cites an opinion that it is forbidden even *b'di'eved*, and he does not state which opinion he accepts.

There are varied indications as to whether the potential danger from eating meat and fish together is treated with more leniency or greater severity than standard "religious" prohibitions. On the one hand, one may use the same utensils for meat and fish.¹¹ In other words, not all cases in which there could be a transfer of particles are deemed to be dangerous. On the other hand, there are opinions¹² that we are stricter regarding meat and fish – in not allowing *bitul*¹³ when there is sixty times more of one than the other – based on the rule that "danger is more severe than a prohibition."¹⁴

As far as the propriety of following the lenient opinion is concerned, it seems that we have to decide how severely the matter of danger should be viewed. For one, is there an issue of a Torah law? Rav Kook¹⁵ writes that the prohibition to inflict on oneself a non-life-threatening danger¹⁶ is only Rabbinic. Rav

8. *Ma'achalot Assurot* 9:23.

9. *Yoreh Deah* 116:2-3.

10. *Yoreh Deah* 116:1.

11. *Taz*, *Yoreh Deah* 116:2.

12. See citations *Pitchei Teshuva*, *Yoreh Deah* 116:3. The *Pitchei Teshuva* himself is lenient, after introducing a few grounds for leniency.

13. Nullification.

14. *Chulin* 10a.

15. *Da'at Cohen* 55.

16. The modern form of leprosy, while serious, is rarely fatal, especially since there are effective treatments.

Ovadia Yosef¹⁷ says that while it is forbidden from the Torah to damage oneself, it is only Rabbinically forbidden to eat meat and fish, as it only creates the **possibility** of mishap. Both (each in his own context) see the Rabbinic status of the prohibition as reason to rule leniently. Furthermore, many *poskim* draw attention to the Rambam's apparent inattention to this *halacha* involving danger.¹⁸ The *Magen Avraham*¹⁹ sees this as support for his suggestion that the danger is not prevalent in our times and places. The *Chatam Sofer*²⁰ raises an additional possibility that it applies only to a specific species of fish. (There is a rejected opinion that it does not apply to fowl and fish.²¹) While few go as far as ignoring the idea of not mixing meat and fish, many *poskim* factor these opinions in when looking for leniency in gray areas.²²

Therefore, while it is halachically prudent not to roast meat and fish uncovered in the same oven, it seems reasonable in a regular, large oven when there is a need.

17. *Yabia Omer* I, *Yoreh Deah* 8.

18. Note that the Rambam was a renowned physician in addition to a great rabbi.

19. 173:1.

20. *Shut* II:101.

21. See *Pitchei Teshuva*, *Yoreh Deah* 116:2.

22. See *Chatam Sofer*, *Pitchei Teshuva*, and *Yabia Omer* op. cit.

E-4: For How Long Should *Hagala* be Done?

Question: I have seen books that describe the process of *hagala*,¹ but I have not seen a discussion as to how long one has to leave the utensil in the boiling water. This seems strange, especially since a lot of *treif* material may have been absorbed in the utensil over a long period of usage.

Answer: The *poskim* do not give an exact amount of time for *hagala*; it seems to be a matter of several seconds.² Actually, the *Shulchan Aruch*³ even alludes to the opinion that one should preferably not leave the utensil in for too long (to avoid a situation in which the expelled particles return to the utensil). It is difficult to argue with the logical intuition behind your assumption that the more an object absorbs, the longer it takes to remove everything that is inside. The *Taz*⁴ seems to agree with this idea in theory, yet we still do not find a clear formula for how long the *hagala* should be and if – and by how much – the time increases depending upon the circumstances.

Let us analyze this halachic phenomenon, which we can develop only slightly in this forum. Some of the laws of the Torah are purely ritual in nature, and we should not expect them to depend on scientific factors or differing circumstances. For example, even if there is a correlation between species of birds being predators and their status as not kosher,⁵ we would not say that a violent chicken would be not kosher or a kind vulture would be kosher. However, regarding something like *kashering* a utensil to remove the absorbed problematic substance, we might expect

1. Putting a utensil into boiling water to remove the absorbed material.

2. See *Mishna Berura* 452:4.

3. *Orach Chayim* 452:1.

4. *Orach Chayim* 451:23.

5. *Chulin* 59a.

to need to be practically confident that we removed the requisite amount of the absorption.

It can be demonstrated that when the Torah gives instructions regarding how to perform *kashering*,⁶ its intention was that if one follows the rules, he does not have to be concerned with the **possibility** that not everything was removed. Halacha indicates that one may assume it, and that suffices. This is a lenient counterweight to the following stringent nonscientific “assumption” regarding absorption. When a utensil was exposed to a substance in the presence of sufficient heat to expect that there was absorption, we halachically treat the utensil as if it became **totally saturated** with the substance. It is not that we really think there is actually that degree of absorption, which is in truth physically impossible, but since we do not know how much was absorbed, we halachically choose the worst-case scenario.⁷ This stringent assumption applies even if the contact was for but a matter of a few seconds. (There is a *machloket* regarding whether there is some minimum time beneath which there is no absorption.⁸)

It is true that there are sub-rules of *hagala* that change according to different circumstances. For example, if a utensil absorbed something while on the fire, *hagala* must be done while on the fire. If the absorption ensued via a lesser type of heat, then the heat requirements are correspondingly easier.⁹ On the other hand, boiling water, if this is the required medium, is considered effective even if the temperature of the boiling water at the geographic site where the absorption occurred was higher than at the place of *hagala* (altitude affects the boiling point).

When we do make distinctions according to circumstances, it is often based on categories to which the Torah alludes. For example, Halacha distinguishes between the tendency of

6. *Bamidbar* 31:23.

7. *Beit Yosef, Yoreh Deah* 98.

8. See *Pitchei Teshuva, Yoreh Deah* 105:8.

9. *Shulchan Aruch, Orach Chayim* 451:5.

materials to absorb and the ability to *kasher* utensils made of different materials. Metals and wood are assumed to absorb and release particles normally. On the other hand, pottery is assumed to absorb a lot, such that normal *hagala* will not remove all that is required.¹⁰ The commentaries find the source for the distinction in the Torah itself.¹¹ *Poskim* then discuss other, possibly unique, materials – such as glass – to evaluate into which category they should be put according to various characteristics.¹²

Regarding the matter of time, the Torah does not relate to different categories. Therefore, it should come as no surprise that once the requisite conditions for *hagala* are reached, it does not matter how many times or for how long non-kosher or *chametz* food was previously used in the utensil or for how long we performed *hagala*. It will not make a halachic difference if intuition or scientific evidence says that these factors have an impact.¹³

10. See *Pesachim* 30b.

11. See Rashi ad loc.

12. See *Shulchan Aruch* and Rama, *Orach Chayim* 451:26.

13. In the rare circumstance that, in using the utensil after *hagala*, one was actually able to discern taste of the food he had tried to remove, the situation would be more complicated and is beyond this discussion.

E-5: What to Do When *Tevillat Keilim* Is Not Feasible

Question: I will be traveling to a place with no *mikveh* in which to do *tevillat keilim*¹ for the utensils that I will need to buy. If I do not do *tevillat keilim*, does the food become non-kosher?

Answer: The Torah speaks in the same context about the often overlapping laws of *hechsher keilim*² of used utensils and *tevillat keilim* of utensils (both new and old) that were obtained from non-Jews.³ A major difference is that the former is needed to solve technical *kashrut* problems, whereas the latter is a positive *mitzva* of purification that causes no physical changes. One of the ramifications of this difference is that if one failed to perform *tevillat keilim*, the foods that came in contact with the utensils remain kosher.⁴ The problem is the continued use of the utensil before *tevilla*.⁵

Rav Shlomo Zalman Auerbach⁶ points out that there must be a full-fledged violation of the laws of *tevillat keilim* if one uses a utensil before *tevilla*. Since one does not have to do *tevilla* unless and until he **uses** the utensil, if one were allowed to use it before *tevilla*, when would he be required to immerse it? Therefore, this usage entails a failure to perform the positive *mitzva* at the time it was required. If the reason to disallow usage is not a classic prohibition, but rather only a failure to perform the positive *mitzva* of *tevilla*, then if one is incapable of doing the *tevilla* (e.g., there is no *mikveh*), the fundamental violation would not exist. Nevertheless, even if fundamentally the problem of usage prior

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1. Immersion of utensils.
 2. Ridding utensils of non-kosher residue.
 3. *Bamidbar* 31:23.
 4. *Tosafot*, *Avoda Zara* 75b.
 5. See Rambam, *Ma'achalot Assurot* 17:3.
 6. Cited in *Tevillat Keilim* (Cohen) 4:(2).

to *tevilla* relates to the positive *mitzva*, there is likely a Rabbinic prohibition to use the utensil prior to the *tevilla*,⁷ and you will need to overcome it.

There is an idea that you can implement in a variety of ways that will enable you to use the *keilim* without *tevilla*. The *halacha* is that one must do *tevilla* on utensils that are **acquired from** a non-Jew. However, if they remain the non-Jew's property and one only borrows them or even rents them, he does not need to do *tevilla*.⁸ Although you are not likely to find a non-Jew who is willing to lend or even rent you new utensils at a price that reflects that status, you can pay the sticker price while having in mind to only rent them.⁹ The problem with this scenario is that if the utensils remain his, you should return them to the store at some point.¹⁰ One possible way to deal with that problem is to arrange with the storeowner (who may think you are strange, but that is not the end of the world) that you are renting the utensils for part of their normal price, but you are giving him the full price in case he does not want to accept back used utensils or in case you do not take the opportunity to return them.

Another technical idea is to physically give the utensils to another non-Jew (perhaps a hotel worker or a neighbor) after saying something along the lines of, "I am not going to need these utensils after I leave, so I want to give them to you as a present **as of now**. Since I am nice enough to give you them as a present, I ask that you agree to let me use them and that you be responsible to retrieve them when I leave. If you do not, I can assume you let me keep them."

In theory, one could use this type of *ha'arama* (shrewd halachic ploy) to avoid doing *tevillat keilim* even when a *mikveh* is available.

7. Compare *ibid.* with *ibid.* 3:(24).

8. *Shulchan Aruch, Yoreh Deah* 120:8.

9. *Tevillat Keilim* (Cohen) 4:19.

10. *Tevillat Keilim* *ibid.* suggests having in mind not to acquire the utensil at all and assumes that the non-Jewish proprietor has in mind to relinquish his ownership. Thus, you would be using unowned property. The reason we believe our suggested system is preferable is beyond our present scope.

However, we are not supposed to be interested in circumventing *mitzvot*, and in the absence of special circumstances, we should take possession of the utensils and perform *tevilla*. Nevertheless, in a case like yours, in which it is not feasible to perform the *mitzva*, this technique is very appropriate.

It is important to note that many natural bodies of water are kosher as *mikva'ot*, and one may be available in the area you are visiting. However, if it will be difficult to ascertain whether there is a body of water that is halachically valid or to gain access to it, you may obviate the need by employing one of the above suggestions. We also remind you that neither disposable utensils nor those made out of substances other than metal or glass require *tevilla*.

Section F:
Holy Articles

F-1: When Can the *Beracha* on a *Tallit* Count for *Tzitzit*?

Question: I am a single *kohen* living in Israel. I therefore wear my *tallit* only for *Birkat Kohanim*.¹ When I put on my *tzitzit* in the morning, should I make a *beracha* then, or should I plan that the *beracha* on the *tallit* will cover the *tzitzit*?

Answer: First, it is important to understand the *halacha*, which you correctly assume, that one who puts on a *tallit* does not make a *beracha* when putting on his *tzitzit* in the morning.

The *Shulchan Aruch*² says that one whose hands are still unclean from the night should put on his *tzitzit* without a *beracha*, which he will recite later. He suggests that one recite the *beracha* while purposely handling the *tzitzit* or when he puts on another pair of *tzitzit* (i.e., a *tallit*). The *Darchoi Moshe*³ extends this by making it a regular practice – one makes a *beracha* only on the *tallit* that he wears for *Shacharit*, and this also covers the smaller pair of *tzitzit* that he wears under his clothes.

The *Mishna Berura*⁴ reports that this was the *minhag* in his time as well, and he provides reasons for it. One is to avoid making two interchangeable *berachot*⁵ in close proximity. Since one *beracha* can service multiple *tzitzit* garments, a second *beracha* on a *tallit* would be a *beracha she'eina tzricha* (an unneeded and thus improper *beracha*).⁶ The *Darchoi Moshe*⁷ is bothered by the

1. *Duchenen*.

2. *Orach Chayim* 8:10.

3. *Orach Chayim* 8:3.

4. 8:24.

5. Although we recite "... *al mitzvat tzitzit*" on *tzitzit* and "... *l'hitatef batzitzit*" on a *tallit*, each *beracha* is effective for either garment (*Chayei Adam* I:12:4).

6. The *Chayei Adam* (ibid.) actually prefers making the *beracha* on the *tzitzit* to cover the *tallit*.

7. Op. cit.

possibility that the *tzitzit* garment will be too small for the *mitzva* of *tzitzit* (and thereby will not warrant a *beracha*). There are other factors that could make a *beracha* on the *tzitzit* unnecessary (e.g., the garment's shape or having worn the *tzitzit* all night⁸).

However, the common practice does raise problems. *Berachot* generally should precede the *mitzva*'s fulfillment; here, the *beracha* is made after the *mitzva* of *tzitzit* was performed. The *Beit Yosef*,⁹ based on Rabbeinu Yona, explains that it is sufficient that the *beracha* precedes part of the performance of the *mitzva*, and in this case, the *tzitzit* continue to be worn after the *beracha*. Alternatively, the *Taz*¹⁰ answers that since we assume that one's hands are dirty when it is time to put on the *tzitzit* and he cannot make the *beracha* right away, it is appropriate to delay the *beracha*.¹¹

Is this system best even if one will put on his *tallit* only a significant amount of time later – in your case, during *chazarat hashatz*? Here, the concern regarding the unnecessary recitation of two *berachot* in succession is reduced, and the problem of delaying the *beracha* on the *tzitzit* increases. Several *poskim* therefore say that when a long time is expected between the two, one makes a *beracha* first on the *tzitzit* and later on the *tallit*.¹² Some still prefer one *beracha*, recited on the *tallit*, because of the lingering concern that the *tzitzit* may not warrant a *beracha*.¹³ This position is far from clear; note that when one does not wear a *tallit*, he takes his chances and makes a *beracha* on the *tzitzit*. The preferable practice should also depend upon whether the specific *tzitzit* garment definitely requires *tzitzit* or not.¹⁴ However, it is difficult to alter *minhagim*.

8. *Mishna Berura* ad loc.

9. Cited by the *Beit Yosef*, *Orach Chayim* 8.

10. *Orach Chayim* 8:9.

11. It is not clear if and how this answer impacts those who put on their *tzitzit* after they have done *netilat yadayim*; see *Pri Megadim* ad loc.

12. See *Be'er Moshe* VI:4; *Tzitzit* 8:52.

13. *Minchat Shlomo* II:4.1.

14. Details are beyond our present scope.

It is also not clear what constitutes a long break. There appear to be different opinions, ranging from around an hour to two or three hours.¹⁵ Therefore, if the gap between *tzitzit* and *tallit* is from the time one dresses until *chazarat hashatz*, there is ample justification either to make a *beracha* on each or make the *beracha* only on the *tallit* (if it is his own *tallit* or he acquires it temporarily before putting it on¹⁶). One can continue to act as he was taught or how he has practiced until now.

Either way, you should have the proper intention. If you make a *beracha* when putting on the *tzitzit*, intend not to include the *tallit* with that *beracha*; if you do not make a *beracha* on the *tzitzit*, have in mind when you say the *beracha* on the *tallit* to include the *tzitzit*, as well.

15. See *Minchat Shlomo* *ibid.*; *Piskei Teshuvot* 8:(144).

16. See *Shulchan Aruch*, *Orach Chayim* 14:3, and *Mishna Berura* *ad loc.* 11.

F-2: *Tzitzit* Attached by a Minor

Question: When I was a *katan*,¹ I made *tzitzit* for myself. Someone told me that they are no longer valid, now that I am fully obligated in *mitzvot*. Is that so? If it is, is it sufficient to rectify the situation by untying and retying one knot as a *gadol*?²

Answer: The *gemara*³ cites Rav's statement that a non-Jew may not make *tzitzit* for a Jew. His source is the *pasuk*⁴ that instructs us to make *tzitzit*, which addresses "the Sons of Israel," excluding non-Jews. *Tosafot*⁵ comments that this implies that women would be able to make kosher *tzitzit*, as only non-Jews are excluded, and this is indeed how the *Shulchan Aruch*⁶ rules.

On the other hand, another *gemara*⁷ derives from the *p'sukim* "You shall fasten ... You shall write ..." that only those who must wear *tefillin* can write *tefillin*, *mezuzot*, and *sifrei Torah*, which excludes non-Jews, women, and children. *Tosafot*⁸ cites Rabbeinu Tam's view that this is part of a general rule that only those who are obligated in a *mitzva* can create the halachic object needed for the *mitzva*.¹⁰ Therefore, Rabbeinu Tam maintains, *tzitzit* tied on to a garment by a woman are invalid. *Tosafot* disputes this view based on the aforementioned *gemara* and another *gemara* that validates a *sukka* made by a non-Jew, concluding that the *halacha* regarding *tefillin*, *mezuzot*, and *sifrei Torah* is unique because it

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1. Under bar mitzva.
 2. Above bar mitzva.
 3. *Menachot* 42a.
 4. *Bamidbar* 15:38.
 5. Ad loc.
 6. *Orach Chayim* 14:1.
 7. *Gittin* 45b.
 8. *Devarim* 11:18-20.
 9. Ad loc.
 10. Women are exempt from wearing *tzitzit* because it is a time-dependent *mitzva* (*Shulchan Aruch*, *Orach Chayim* 17:2).

results from a special derivation. The Rama,¹¹ however, cites the strict opinion and recommends being careful *l'chatchila* not to have a woman make *tzitzit* as well.

The *Magen Avraham*¹² suggests another reason why women should not make *tzitzit* – the term “the Sons of Israel” often excludes not only non-Jews, but also the “Daughters of Israel.”

The *Pri Megadim*¹³ claims that the reason to exclude women from attaching *tzitzit* (if indeed they are excluded) is relevant to the status of minor males. If the reason that women may not tie *tzitzit* is that they are not obligated in the *mitzva*, the limitation applies to minor males as well, as they too are not obligated in *tzitzit* on the level of Torah law. In contrast, the limitation on “the Daughters of Israel” would not apply to minor males, as the *mitzva* of *tzitzit* was addressed to them as well, even if they are presently too young to be fully responsible for any *mitzvot*.

In any case, the *Magen Avraham* equates women and children in this matter, making the status of your *tzitzit* questionable. The *Mishna Berura*¹⁴ says that it is proper to deter a *katan* from making *tzitzit* that are meant for a *gadol* (apparently only for Ashkenazim, as Sephardim follow the *Shulchan Aruch*'s view that women – and thus minors – may tie *tzitzit*). However, the *Mishna Berura* also writes¹⁵ that once a *katan* made *tzitzit* for his own garment, when he becomes a *gadol*, the question of whether he may continue to use them is a question of *b'di'eved*, and he may therefore use them as is.

In this regard, however, a *katan* may lack one halachic requirement for making *tzitzit* that a woman possesses – the ability and reliability to do things properly without supervision. It is possible to check to see if the physical action that the *katan* executed was done properly. However, what about the required

11. *Orach Chayim* 14:1.

12. 14:2.

13. *Eshel Avraham* 14:3.

14. 14:4.

15. *Bi'ur Halacha* ad loc.

*kavana*¹⁶ to create valid *tzitzit*? The *gemara*¹⁷ writes that the threads of the *tzitzit* must be spun *lishma* (for the purpose of the *mitzva*). Although the Rambam¹⁸ says *lishma* is not a requirement for attaching them to the garment, the Rosh maintains that the attaching must also be done *lishma*, and we try to follow the latter position.¹⁹ Therefore, even regarding a *b'di'eved* situation, we can trust the *katan* to have attached the *tzitzit* with the proper *kavana* only if an adult was instructing him to do it *lishma*.²⁰

In your case, however, the situation is significantly better. You do not have to convince someone else that you had proper intention. Rather, if you are confident that you had in mind that you were attaching and tying the strings to be used for the *mitzva* of *tzitzit* (which is highly likely), you can continue to use them.²¹ If you are not confident that you had the right intention or if you want to follow stricter opinions than those that we presented,²² you should undo the *tzitzit* fully so that the whole *tzitzit* will be formed properly.²³

16. Intention.

17. *Sukka* 9a.

18. *Tzitzit* 1:12.

19. *Shulchan Aruch, Orach Chayim* 14:2.

20. See *Mishna Berura* 14:4 and *Bi'ur Halacha* ad loc; see *Gittin* 23a.

21. *Bi'ur Halacha* op. cit.; *Tzitzit* (Cohen) 14:8.

22. See *Tzitzit* op. cit.

23. See also response F-3.

F-3: Dealing with Loosened *Tzitzit* Knots

Question: I have a new *tallit katan* (*tzitzit*), and the knots keep loosening up. Does this make them temporarily *pasul*? If I discover on Shabbat that this has happened, what should I do?

Answer: We will begin with a brief overview of the basic idea of the series of knots and spirals of the *tzitzit* (without getting into their deeper meaning) in order to help understand the answer to your question.

The Torah calls the string appendages to the corners of our garments “*tzitzit*.”¹ This word, which can also refer to hanging strands of human hair,² implies that they are hanging strings. The Torah elsewhere³ speaks of them as “*gedilim*,” which implies that there is a string that is wrapped around other strings.⁴ In addition, at least one knot is needed for each set of strings that is connected to a corner of the garment. This is derived from the latter source, which mentions *tzitzit* in direct proximity to the prohibition of *sha’atnez*.⁵ This juxtaposition teaches us that under the right circumstances, the *mitzva* of *tzitzit* allows one to wear a linen garment with woolen *tzitzit*, since the positive *mitzva* of *tzitzit* overrides the negative commandment against *sha’atnez*.⁶ Furthermore, the juxtaposition implies that the strings must be tied on to the garment, for if they were hanging loose, there would be no issue of *sha’atnez*.⁷

The practice is to have five double knots alternating with four

1. *Bamidbar* 15:38.

2. *Yechezkel* 8:3.

3. *Devarim* 22:12.

4. See *Mishna Berura* 11:66.

5. A garment of wool and linen.

6. See *Yevamot* 4a.

7. *Menachot* 39a.

sets of wrappings, which have different numbers of revolutions of the wrapping string. However, these numbers are not Torah law. The *gemara*⁸ states that one set of knots is required by the Torah; a simple single knot is not permanent enough to count halachically. The *gemara*⁹ proposes a proof that there should be knots around each *gedil*, but then deflects the proof. There is no clear consensus among the *Rishonim* as to what the conclusion of the discussion is.¹⁰ However, it appears accepted that neither the customary number of *gedilim* nor the number of knots in each set is **critical**.¹¹

In fact, the *Beit Yosef*¹² says that if one does not have enough time to tie all the knots as prescribed, one section of wrappings and one set of knots is sufficient. His example of a pressured time is *Erev Shabbat*, in which case one will enter Shabbat with non-standard *tzitzit*. This suggestion is quite instructive given the *halacha* that a four-cornered garment in which not all the *tzitzit* are attached in a manner that fulfills the *mitzva* is considered to have useless appendages, and one is forbidden to wear it on Shabbat because of the prohibition of “carrying” if there is no *eiruv*.¹³ Thus, we see from the *Beit Yosef* that even if each corner has only one halachically valid knot, the *tzitzit* are fundamentally valid, and one may wear those *tzitzit* without a problem of Shabbat. (When Shabbat concludes, one should rectify the situation promptly.¹⁴)

Usually, when a double knot opens, the distance between the two parts slowly increases. Eventually, they will separate to the point that they are not connected enough to be considered a

8. Ibid.

9. Ibid. 38b.

10. See *Beit Yosef, Orach Chayim* 11, in the name of the Mordechai and the Rambam.

11. *Mishna Berura* 11:65. See *Shulchan Aruch HaRav* 11:27, who writes that it is/was more important to have the proper number of knots and windings when the *tzitzit* include a string of *techeilet* (special blue strings). Further discussion of that element is beyond our present scope.

12. *Orach Chayim* 11, accepted by the *Magen Avraham* 11:19.

13. *Shulchan Aruch, Orach Chayim* 13:1.

14. *Mishna Berura* 11:66.

complete knot either regarding the laws of *tzitzit*¹⁵ or the laws of making or undoing knots on Shabbat.¹⁶ It is difficult to delineate or illustrate when exactly this occurs. When in doubt, it is proper, although not immediately critical,¹⁷ to tighten the knot during the week. However, one should be careful not to tighten the double knots on Shabbat in such a way that he might be turning a simple single knot into a halachically significant double knot.^{18 19}

15. Rosh, *Tzitzit* 15.

16. Considering that one part of the knot is still intact and the other part exists, even if it is weak, it is not clear what the extent of the violation of Shabbat is; see *Az Nidberu* III:22.

17. As it is unlikely that all the knots on any set of strings became so loose.

18. *K'tzot HaShulchan, Badei HaShulchan* 123:4.

19. The problem of knots falling apart occurs most frequently when the *tzitzit* strings are relatively thick. In this event, one should check them periodically.

F-4: Readjusting *Tefillin* that Has Slipped

Question: My *tefillin shel yad* sometimes slips out of place and needs readjusting. Should I take off my *shel rosh* and put the two on again in the proper order?

Answer: You assume correctly that it is fundamentally important to put on the *tefillin shel yad* before the *shel rosh*. The *gemara*¹ derives this from the *p'sukim* about the *mitzva* of *tefillin*, which all mention tying the *tefillin* to the arm before placing the *tefillin* on the head. In fact, despite the concept that one should not “pass over” one *mitzva* in order to do another first,² if one initially picked up the *tefillin shel rosh*, he should put it down in favor of the *shel yad*.³ The *gemara* continues that we should take off the *shel rosh* before the *shel yad*, deriving this from the *pasuk* “*v'hayu l'totafot bein einecha*” (**they** shall be *tefillin* [*shel rosh*] between your eyes). The plural form indicates that when the *tefillin* are on your head, there should be two *tefillin* on you.

Is it an actual transgression to have the *shel rosh* on without the *shel yad*, or are the aforementioned sources simply instructions for the optimal order? There certainly cannot be an absolute transgression, as the *mishna*⁴ states that in the absence of one of the *tefillin*, the other is put on by itself. This seems to indicate that the proper procedure for fulfilling the *mitzva* is to put on the *shel yad* before the *shel rosh*, but each individually still has value. This helps us understand the *Taz*'s⁵ claim that if one mistakenly put on the *shel rosh* before the *shel yad*, then a greater concern than having the right order is to get to the state of having both on at the

1. *Menachot* 36a.

2. *Pesachim* 64b.

3. *Shulchan Aruch, Orach Chayim* 25:6.

4. *Menachot* 38a.

5. *Orach Chayim* 684:4.

earliest opportunity. One accomplishes this not by first removing the *shel rosh*, which delays matters, but by putting on the *shel yad* immediately. The *Taz*'s opinion is accepted as *halacha*.⁶

Not all agree with this view, however. The *Avudraham*⁷ compares the case of one who puts the *shel rosh* on before the *shel yad* to a situation in which a community reads the Chanuka Torah reading before that of Rosh Chodesh when the two coincide. He cites a source that indicates that one does not fulfill the *mitzva* of *tefillin* in the case of mistaken order, and he posits that the same is true for the Torah reading. In the context of Chanuka, the Rama⁸ accepts the *Avudraham*'s opinion. The *Taz* takes issue with the *Avudraham*, however, firstly because the apparently Talmudic source that he cites is not found in our texts. It is also possible to accept the opinion of the *Avudraham*/Rama regarding Chanuka, based on local considerations, but not regarding *tefillin*.⁹

The *Malbim*,¹⁰ in a minority opinion, accepts the *Avudraham*'s decision about *tefillin*. He cites statements of *Chazal* that indicate that putting on the *shel rosh* first is an infraction, and he maintains that if one did so, the situation should be rectified by removing the *shel rosh*. However, it appears that if one put on the *tefillin* in the right order and the *shel yad* later slipped, all would agree that one should return the *shel yad* to its proper position without removing the *shel rosh*. After all, at the time of his activity, the set of *tefillin* was put on in the correct order, and no infraction occurred.

The *Shulchan Aruch*¹¹ rules that one should make a *beracha* when returning *tefillin* that slipped out of place. However, many *Acharonim* do not accept this opinion. The *Shelah* explains that

6. *Pri Megadim*, *Eshel Avraham* 25:7; R. Akiva Eiger to 25:6; *Mishna Berura* 25:22. In truth, the *Taz* discusses a slightly simpler case, in which one already has put on the *shel yad* after the *shel rosh*, but *Acharonim* interpret his view broadly; see *Bi'ur Halacha* to 25:6.

7. Cited by the *Taz* op. cit.

8. *Orach Chayim* 684:3.

9. See the *Bi'ur Halacha* to 25:6, in the name of the Gra.

10. *Artzot HaChayim* 25:43.

11. *Orach Chayim* 25:12.

when making the original *beracha*, one's intention is to have it extend until the end of *tefilla*, regardless of such breaks. Although there is no unanimity on the matter, that seems to be the more accepted practice.¹²

Therefore, you can simply return your *tefillin shel yad* to its proper place without any additional actions or repercussions.

12. See *Mishna Berura* 25:42; *Kaf HaChayim, Orach Chayim* 25:77.

F-5: Putting *Tefillin* on an Immobilized Arm

Question: After upcoming surgery on my left shoulder, my left arm will be immobilized in a sling for a few weeks. What should I (a right-handed man) do about putting on *tefillin*? Should I put them on my left arm (preferably, on top of my shirt), despite the fact that I will be unable to wrap the *retzuot* (straps) on my lower arm because of the sling? Is it permissible to put the *tefillin* on my right arm under the circumstances (with someone else wrapping them on me)? If neither option is viable, should I put the *shel rosh* on alone, and, if so, with which *beracha*?

Answer: May HaShem grant you successful surgery and recovery. Presumably, after receiving instructions and gaining experience dressing and undressing in this situation, you will be able to safely do more than you now think. However, we will assume that, for at least some time, you will not be able to roll up the sleeve on your left arm and/or remove the sling.

Tefillin are supposed to be placed on one's weaker arm.¹ There is an opinion that when the weaker arm is unavailable, one puts the *tefillin* on the stronger arm without a *beracha*.² However, the consensus is that the right arm is not an option for a right-handed person.³ We will therefore investigate only the options for your left arm.

Is it absolutely necessary for the *tefillin* and/or the *retzuot* to be placed directly on the body? The *mishna*⁴ criticizes one who puts *tefillin shel yad* on his sleeve. Rashi explains that such a person

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1. *Menachot* 37a. See further details in *Shulchan Aruch, Orach Chayim* 27:6; *Living the Halachic Process*, vol. II, G-12.
 2. See *Magen Avraham* 27:3 and *Pri Megadim, Eshel Avraham* 27:11.
 3. See *Mishna Berura* 27:6.
 4. *Megilla* 24b.

believes that since the Torah⁵ calls *tefillin* an *ot* (sign), it should be visible to others. However, we expound the *pasuk* that “it is an *ot* for you – and not for others.”⁶ The simplest understanding of Rashi⁷ is that the *tefillin shel yad* should not be put on in a way that implies that it is primarily directed toward others. The Rosh⁸ understands that, given that the *tefillin shel yad* do not require being exposed, they **must** be placed directly on the skin, thus precluding a *chatzitza* (separation) between the arm and the *tefillin*.

How broadly does the matter of *chatzitza* affect *tefillin*? The Rashba expresses the conviction that it does not apply to the *shel rosh*⁹ or the *retzuot*, even those of the *shel yad*.¹⁰ However, he concludes¹¹ that the practice is to be careful so that the *shel rosh*, the *shel yad*, and the *retzuot* are free from any *chatzitza*. The Rama¹² rules that *chatzitza* is not a problem for the *retzuot*, but many *Acharonim*¹³ take issue with this claim, at least in regard to the part of the *retzuot* that is needed to tie the *tefillin* down.

If the main problem with the *tefillin* being on top of something else is that it becomes an *ot* to others rather than to oneself, then it is possible to suggest some distinctions and points of leniency. First, when there is a physical need to have the arm covered, perhaps it is acceptable as long as the *tefillin* is covered with another layer.¹⁴ There is also room to distinguish between a bandage or cast, which introduce a *chatzitza*, and a sleeve, which makes the *tefillin* considered as being on the outside of the

5. *Shemot* 13:9.

6. *Menachot* 37b.

7. *Megilla* 24b.

8. *Tefillin* 18.

9. *Rashba*, *Megilla* 24b. He explains that the *pasuk* about the *tefillin* being a sign to oneself is intended specifically for the *tefillin shel yad*.

10. *Shut HaRashba* I:827.

11. *Ibid*.

12. *Orach Chayim* 27:4.

13. *Taz*, *Magen Avraham*, and *Mishna Berura* ad loc.

14. *Mishna Berura* 27:16.

arm. However, the *Chayei Adam*,¹⁵ cited by the *Mishna Berura*,¹⁶ rules that the *tefillin* cannot be on top of a sleeve even if there is another covering above the *tefillin* and even if the sleeve is medically required. While it is possible to dispute this logic and allow someone who cannot remove the sleeve to put the *tefillin* on top of it, one should not do so with a *beracha* on the *tefillin shel yad*.¹⁷ Also, if one can manage to place the *tefillin* directly on the upper part of the bicep,¹⁸ he can rely on the Gra's view that that is also a valid spot for the *tefillin shel yad*.¹⁹

If it is possible to put the *bayit* of the *tefillin* and the part of the *retzuot* that fastens it on the arm itself, the fact that the remainder of the *retzuot* are on the sleeve is less of a problem. In your case, it seems that the forearm can be exposed and the question is whether you can get the sleeve off **without hurting yourself**,²⁰ which would be the best thing. The ability to get seven wrappings on the forearm is not a major issue and certainly does not preclude making a *beracha*, and thus the sling does not create a serious halachic problem.²¹

If you are unable to put on the *shel yad*, you should still put on the *shel rosh*. An Ashkenazi would make both *berachot* on the *shel rosh*, while a Sephardi would make only "...*al mitzvat tefillin*."²²

15. 14:14.

16. Op. cit.

17. See *Minchat Yitzchak* II:46.

18. Such as in the case of a cast or a bandage.

19. See *Mishna Berura* 27:4.

20. One is not expected to risk injury or great pain to try to put *tefillin* on; see *Mishna Berura* 27:29.

21. See *Shulchan Aruch, Orach Chayim* 27:8.

22. *Shulchan Aruch* and Rama, *Orach Chayim* 26:2.

F-6: Selling *Sifrei Torah* that Are Too Heavy for an Aging Community

Question: May a *shul* sell *sifrei Torah* that are too heavy for its aging members to lift?

Answer: Generally, it is permitted to sell a holy object and use the proceeds to buy something of higher *kedusha*, but not to buy something of lesser *kedusha*.¹ The *gemara*² asks whether one may sell a *sefer Torah* in order to buy another one. (Note that a *sefer Torah* has the highest level of *kedusha* of any object outside the *Beit HaMikdash*.) The *gemara* does not reach a conclusion, and most *Rishonim* assume that one should not *l'chatchila* arrange a sale of a *sefer Torah* if there is a choice.³ Although the *Shulchan Aruch* is inconclusive in one place,⁴ in another context⁵ he appears unequivocal, ruling, “One may not sell [a *sefer Torah*] even if he has many *sifrei Torah* (Rama – even if he has barely enough to eat), and it is forbidden to sell an old one in order to buy a new one.”⁶

However, there are likely solutions in situations in which one has *sifrei Torah* that are not being put to good use. According to the first of two opinions cited in the *Shulchan Aruch*,⁷ an individual may sell his own *sefer Torah*. This is because if one owns a holy article personally (as opposed to communal ownership), he has unique authority from the outset.⁸ The source for this proposition is the authority of the *zayin tovei ha'ir b'ma'amad anshei ha'ir* (the public leadership with the knowledge of the public) to sell

1. *Megilla* 26a.

2. *Ibid.* 27a.

3. See *Beit Yosef, Orach Chayim* 153.

4. *Orach Chayim* 153:4.

5. *Yoreh Deah* 270:1.

6. See *Shach* ad loc. 3.

7. *Orach Chayim* 153:10.

8. *Mishna Berura* 153:59.

such items and use the proceeds without restrictions.⁹ According to this lenient position, the *gemara*'s discussion of limitations on selling a *sefer Torah* was referring to a case in which an individual gave it over for public use, in which case he loses sole authority to sell it.¹⁰

On the other hand, the *Shulchan Aruch* also cites an opinion that even a private owner may not sell a *sefer Torah*, with two exceptions (see below). The pertinent question in your case is whether the strict opinion does allow the communal leadership to sell a communal *sefer Torah*¹¹ or whether it forbids this too.¹² The primary sources¹³ indicate that those who do not allow an individual to sell his own *sefer Torah* similarly do not allow the leadership to sell a communal one.

There are very few circumstances in which there is broad agreement that one may sell a *sefer Torah*. The *gemara*¹⁴ discusses instances in which there is an acute need for funds to enable one to learn Torah or to marry. *Acharonim* do not add too much to the list,¹⁵ and it is difficult to imagine that any of them can be applied to your case. Nevertheless, there are various opinions among more recent *poskim*¹⁶ as to whether one can allow the sale of a private *sefer Torah* and, similarly, a public one by the leadership. Many refer to a *minhag* to be lenient on the matter,¹⁷ which may be justified due to people's intention when they acquire the *sefer Torah* in the first place.

Halachically, the best idea in this case is that instead of selling the *sifrei Torah*, the *shul* should lend them to another *shul*, which

9. *Megilla* 26b; see *Ran* on the *Rif* ad loc. 7b.

10. See *Mishna Berura* 153:62.

11. See *Eliya Rabba* 153:22.

12. *Magen Avraham* 153:23.

13. Especially, the Rivash 285, based on the Rambam, *Sefer Torah* 10:2.

14. *Megilla* 27a.

15. See *Mishna Berura* 153:24.

16. See *Dirshu* 153:77.

17. See *Magen Avraham* 153:22; *Achiezer* III:79.

is permitted.¹⁸ Although one should not concoct an exchange of “presents” (a *sefer Torah* to one and money to the other),¹⁹ the *shul* in question can lend larger *sifrei Torah* to *shuls* with younger memberships in exchange for borrowed smaller *sifrei Torah*. If such an arrangement is not feasible and the need is significant, it would be reasonable to rely on the opinions that if there is a formal communal decision, it is permitted to sell *sifrei Torah* and buy others.

18. Rama, *Orach Chayim* 153:11.

19. Rivash op. cit.

F-7: Leaning on the *Shulchan*

Question: In one of your Ask the Rabbi columns,¹ you discussed the issue of leaning while receiving an *aliya*. I think you overlooked a very important problem, as there is a definite prohibition to receive benefit from the *shulchan*,² which is a *tashmish kedusha*.³

Answer: You raise a good point (at least in regard to a serious type of leaning) – albeit one we did not overlook, but rather chose not to address. If the matter were as clear cut as you perceive, it would present problems in most *shuls*, and not only for a person getting an *aliya*. *Gabbaim* often lean on the *shulchan*, and objects, including *tzedaka* boxes and *sefarim*, are routinely placed on it. Let us evaluate if all of these practices are really forbidden.

It is not clear that the *shulchan* has a status of a *tashmish kedusha*. The *gemara*⁴ cites Rava as saying that he at one point did not think that a *shulchan* has a status of *tashmish kedusha*. Since it is covered with a *mitpachat*,⁵ which is what comes in direct contact with the *sefer Torah*, the *shulchan* is ostensibly only a *tashmish d'tashmish* – something that serves a *tashmish kedusha* – that is, it supports the *mitpachat* upon which the *sefer Torah* sits. Rava concludes, however, that since the *mitpachat* is sometimes removed and the Torah then sits directly on the *shulchan*, it is indeed a *tashmish kedusha*. The status thus depends on whether or not the *shulchan* is consistently covered. Either way, this does not really answer your question, as regardless of the status of the *shulchan* itself, it should be forbidden to lean or place extraneous objects on the *mitpachat*.

1. See response A-14.

2. The table the *sefer Torah* sits on.

3. An object used to serve something holy, which may not be used for matters of a lower level of sanctity and may not be discarded freely; see *Shulchan Aruch, Orach Chayim* 154:2.

4. *Megilla* 26b.

5. Cloth or decorative covering.

The *Beit Yosef*⁶ cites the Mordechai, who says that it is worthwhile to make a condition initially that the *mitpachat* will not receive the type of *kedusha* that would make it forbidden to lean on. He proves that if this is not done, it would even be forbidden to put *sefarim* on top of it, since they have a lower level of *kedusha* than the *sefer Torah* does. The ability to make such a condition is confirmed clearly by the *Yerushalmi*.⁷

The Rama⁸ goes a step further, ruling that (at least in *shul*⁹) it is not necessary to make a condition. Because it is evident that people will have trouble refraining from leaning or putting things on the *shulchan* and/or its *mitpachat*, there is an implicit public condition (*lev beit din matneh*) protecting them from possible wrongdoing. The concept of *lev beit din matneh* is found in the *gemara*¹⁰ regarding objects that were given for the *Beit HaMikdash* and its service, and it has been applied to many cases of holy objects.¹¹ The condition does not allow one to use these objects in an unseemly manner,¹² but that does not seem to be a common occurrence.

Admittedly, the *Bi'ur Halacha*¹³ suggests that *lev beit din matneh* applies only to those practices that are difficult to avoid. However, given people's habits and limitations, it is difficult to expect everyone in *shul*, whether having an *aliya* or not, to make sure not to lean on the *shulchan* when standing near it during a variety of different activities. Nevertheless, if one can easily avoid the issue, it is proper that he do so. It is apparently for this reason that several *Acharonim*¹⁴ suggest that if one is very

6. *Orach Chayim* 154.

7. *Megilla* 3:1, cited by the Rosh, *Megilla* 4:11.

8. *Orach Chayim* 154:8, based on the *Terumat HaDeshen* 1:273.

9. See *Mishna Berura* 154:35.

10. Including *Sh'vuot* 11b.

11. See, for one example, *Yabia Omer* VII, *Orach Chayim* 26, regarding the *minhag* to use the *parochet* of the *aron kodesh* for a wedding canopy.

12. *Mishna Berura* 154:34.

13. To 154:8.

14. See *Sha'arei Ephrayim* 3:11; *Mishna Berura* 141:4.

overweight or weak, and he therefore needs to lean significantly on the *shulchan*, he should pull back the *mitpachat* and lean on the surface of the *shulchan*.

Since it is rare for someone to lean on the *shulchan* intentionally and it is often not feasible to pull back the *mitpachat*, we purposely omitted this discussion in our original response. As explained above, being careful not to lean is apparently not fully required and is seldom practiced, in our experience.

F-8: Affixing an Unrolled *Mezuza*

Question: In some modern, decorative, clear *mezuza* cases, the *klaf* is unfolded so that it can be read while attached. Is this kosher and merely less preferable, or **must** the *klaf* be rolled up?

Answer: As you seem to be aware, the very long-standing practice has been to roll the *mezuza klaf* and put it into some sort of canister. The practice is documented already by the *gemara*'s² statement that the *mezuza* should be rolled from the left side of the parchment to the right, so that its beginning (in right-to-left Hebrew) is opened up first. These instructions are codified as *halacha* by the Rambam³ and the *Shulchan Aruch*.⁴

However, your assumption that the rolled method is at least preferred is not necessarily evident from these classical sources. It is possible that the rolled-up method is simply technically preferable or assumed, possibly because it takes up less space and/or is better protected. Perhaps being able to read the words is even an advantage.⁵ Rav Ovadia Yosef⁶ actually raises this as a real possibility. Of course, it is difficult for many of us (including this respondent) to diverge from tradition and ignore possible mystical implications⁷ about which we know little. Note also that there are also apparent advantages to being able to read the contents of *tefillin* scrolls (which are closely related to *mezuzot*), yet these are certainly rolled up and unseen.

Let us return to your question and consider whether an unrolled *mezuza* could be halachically prohibited. The *gemara*⁸ asks why

1. Parchment.

2. *Menachot* 31b.

3. *Mezuza* 5:6.

4. *Yoreh Deah* 288:14.

5. This could be consistent with the Rambam, *Mezuza* 6:13.

6. *Yabia Omer* VIII, *Yoreh Deah* 30.

7. Possibly including the fact that the Name of HaShem on the back of the *klaf* faces out when it is rolled.

8. *Menachot* 34a.

we do not take the *pasuk* literally and write a *mezuzah*'s content directly on our doorposts. In this event, there would not be anything to roll up, of course, which seems to prove that there is no intrinsic need for rolling. However, the *gemara*'s conclusion, which provides a source for writing the *mezuzah* specifically on a *sefer* (i.e., a normal writing surface), may impact our question. The *gemara* says that we learn from another appearance in the Torah of the word "writing," which we know is done on a normal writing surface, that the same is true for a *mezuzah*. The *Rishonim* cite three possible identifications of the other "writing": a *get*, the scroll of a *sota*, and a *sefer Torah*. There is a very strict, lone opinion⁹ that assumes that the *gemara* compares a *mezuzah* to a *sefer Torah* and then reasons that since a *sefer Torah* must be rolled, a *mezuzah* that is not rolled cannot be used to fulfill the *mitzva* of *mezuzah*. This opinion is convincingly disposed of by Rav Ovadia and others.¹⁰

The more serious remaining question is whether changing from standard tradition is objectionable, in and of itself. In Rav Ovadia Yosef's aforementioned responsum, he cites an opinion that, on these grounds, an open *mezuzah* should be removed and reaffixed (without a *beracha*). His own approach is that while he does not recommend it, one could allow such a *mezuzah* display to remain.

Although the question of changes in tradition is a major topic that cannot be treated properly in a sentence or two, it is pertinent to mention an important factor – intention. Affixing a *mezuzah* in an open manner usually would not be motivated by subversive intentions. Rather, it would be intended to glorify the *mitzva*, to make it more apparently significant to some, and/or to be unique. Therefore, although we too would not encourage the practice, we do not choose to criticize it either. We would hope that those affixing such *mezuzot* do not mean to cast aspersions on the classical custom of affixing a *mezuzah*, which would certainly be unfounded and improper.

9. See *Noam*, vol. X, pp. 237-243.

10. See also *Chovat HaDar* 9:(9) and *Pitchei She'arim* 288:94.

We also refer to our responsum in *Living the Halachic Process*, vol. I.¹¹ We ruled there that if the scroll was not yet used as a halachic *mezuzah*, it can be displayed in a non-halachic setting in a room in which it will not be disgraced. Therefore, one who is inclined toward displaying a *mezuzah* scroll is likely better off using the readable one on his **wall** and putting a standard *mezuzah* case on his **doorpost**.

11. G-2.

Section G:
Miscellaneous

G-1: Hosting a Difficult Guest

Question: We have a friend who stops by for meals often when she is in our area. Last night, for the first time, she slept over. It was a nightmare! She received several phone calls in the middle of the night, which woke us. Also, despite being warned, she tripped the alarm. She now seems to want to stay for another night and perhaps return in the future. Are we permitted to refuse her request?

Answer: This is a very difficult question to answer, not simply because it is hard to predict the likely potential scenarios, but because there is a conflict between different values, as we will explain.

*Hachnasat orchim*¹ is a Rabbinically mandated application of the Torah command to love one's counterpart.² It applies to both poor and rich guests and, in theory, can be accomplished even if the host is reimbursed for expenses (food, telephone calls, etc.), since he is providing a warm, welcoming place to be in.³ Thus, even if someone can afford to stay in a hotel (and, from the perspective of her needs, perhaps should do that), if she asks to stay at one's house, or if the situation is such that an invitation is the nice thing to offer, the *mitzva* is normally a responsibility.

There is a general question regarding the obligation to fulfill a *mitzva* that comes with a considerable physical or emotional price, and it arises in different contexts. For example, in *Living the Halachic Process*,⁴ we discussed the case of someone who can expect to have a moderate allergic reaction to eating *matza* on Pesach. The basic assumption is that one does not have to make himself sick in order to fulfill a *mitzva*. Although it is difficult to do, he must try to determine what normal "price" he should

1. Bringing guests to one's home.

2. Rambam, *Avel* 14:1.

3. *Ahavat Chesed* 3:1.

4. Vol. II, D-15.

pay in order to fulfill the *mitzva*. In your case, when it is a matter of your needs and feelings against another person's needs and feelings, the matter is certainly not easy to determine. You should try to consider this issue in an idealistic but realistic manner. The availability of alternative arrangements is a factor in this context.⁵

There is another element to the complex nature of this question. Just as a host is urged and, to a great extent, commanded to extend himself to make the guest happy and feel welcome,⁶ the guest is required to not take advantage or overdo her welcome.⁷ If she is causing outright damage, one is not required to continue hosting her.⁸ We would certainly say that if she were stealing from her host, presumably even if the host is willing to spend similar amounts of money to feed her, she can be asked to leave. You could make the claim that *gezel sheina* (deprivation of sleep) would be equivalent. On the other hand, it is difficult to know where to draw the line on such a matter (otherwise, we would all be considered (sleep) thieves at one time or another).

A final, related issue is that if your guest continues to grossly abuse her rights, she is seriously doing wrong. By letting her continue to do so, in some ways you are erroneously facilitating her transgressions. The Rambam⁹ says that the *mitzva* of rebuke, in addition to correcting "religious" sins and those affecting third persons, is also intended for people who are being abused. They should rebuke the abuser (rather than doing nothing and harboring resentment¹⁰). While one should be very cautious about the use of rebuke, having your guest continue to upset you is unlikely to be in her best interest.

All this being said, we think you should seriously consider the likelihood that your guest was not aware of how her behavior

5. See *Ahavat Chesed* 3:2.

6. *Ibid.* 1.

7. *Halichot Bein Adam LaChaveiro* 8:28.

8. *Ibid.* (16), in the name of *Sefer Chasidim*.

9. *Sefer HaMitzvot, Aseh* 205.

10. See *Vayikra* 19:17.

disturbed you. She is less likely to trip the alarm again, and you can probably unplug the phone or mention calmly how its ringing at inappropriate times disturbs you greatly. Hopefully, your friend is a nice person who will be a much improved guest in the future. Thus, if you can put up with her for another night and see how it goes, you would probably be doing a big *mitzva*, even if you arguably have **the right** to get out of it. Feel free to follow up as things develop.

G-2: Veto Power for Parents on Choice of Spouse?

Question: Must a child obey if his parents disapprove of his choice of a spouse?

Answer: The basic answer to the question is that he or she need not obey. This is how the Rama¹ rules, based on the Maharik,² and later *poskim* accept this view, apparently unanimously. We will look at the Maharik's reasons and briefly consider whether there are exceptions to the rule. If, sadly, an actual case arises, one should ask a sensitive rabbi who will take all the particulars into account.

The Maharik provides three main reasons for his ruling: 1) If a child does not have to expend his money for *kibud av va'em*,³ he certainly does not have to accept the mental anguish of parting from the woman he wants to marry. 2) A parent may not tell his child to violate even a Rabbinic prohibition. Since one may not marry a woman whom we have reason to fear he will not love,⁴ his parents cannot make him give up the woman he loves and possibly marry one whom he will resent. 3) The sacrifices one must make for his parents relate to things that benefit them, not things that his parents want him to do for his own welfare. The *Aruch HaShulchan*⁵ asserts a general rule that a parent cannot prevent a child from performing a *mitzva* in a manner that he feels is best.

Most *poskim* seem to think that all of the reasons are valid individually, although it is difficult to determine that conclusively.⁶

1. *Yoreh Deah* 240:25.

2. 166.

3. Honoring one's parents.

4. *Kiddushin* 41a.

5. *Yoreh Deah* 240:45.

6. See *Tzitz Eliezer* XV:34.

This is an important point because in some cases, some reasons apply while others do not. Indeed, we do find differences of opinion in some of those cases.

A minority opinion holds that a **daughter** has to obey her parents' rejection of her choice of a husband, based on the (questionable) assumption that she does not have a *mitzva* to get married. However, the great majority of *poskim* reject this opinion.⁷

A more serious issue is when the parents not only disagree with the choice, but claim it will cause them disgrace. The Netziv⁸ contends that this impacts them directly and that disgrace overshadows the other considerations. The *Tzitz Eliezer*,⁹ however, points out that the Maharik discussed a particular situation in which there were serious, publicly known questions of morality regarding the prospective wife, such that it is difficult to argue that the Maharik considered disgrace a decisive factor. The *Tzitz Eliezer* further writes that the Netziv's distinction applies only when the disgrace is of a type recognized by *Chazal* or classical sources. (For example, parents' bigotry toward a certain type of fine Jew should not be camouflaged and turned into an objective disgrace.) Otherwise, the parents should try to make their viewpoint conform to their child's choice, not vice versa.

The *Divrei Yatziv*¹⁰ cites the *Netivot Lashevet*, who says that if one's choice of spouse will curtail his ability to perform *kibud av va'em* (e.g., he will have to move away), then it affects the parents, and they can therefore object. The *Divrei Yatziv* disagrees because the Maharik's other reasons still apply. It seems, however, that those reasons apply only when a decision to marry has already been or is almost made. If one is considering a "*shidduch* idea" (before there is an emotional connection) that will negatively impact his or her parents, their feelings and interests should be

7. See *Noda B'Yehuda* II, *Even HaEzer* 45; *Yabia Omer* VIII, *Yoreh Deah* 22.

8. *Meishiv Davar* II:50.

9. *Op. cit.*

10. *Even HaEzer* 3.

considered. This is not an absolute rule, however. The range of potential dating partners, age, dating history, and whether a particular suggestion is unusually promising are important factors.

We would also urge anyone who values the relationship with his/her parents to not only be right, but to be smart. Every person must consider the “fifth *Shulchan Aruch*,” i.e., the ability to apply Halacha wisely. Parents are very often right when they try to protect their child from a horrible mistake. He/she should not only consider their motive, but also the possibility that the parents have picked up on what he/she overlooked due to his/her lack of experience or the excitement with the relationship. He/she would do well to discuss the matter with a wise advisor. That being said, the same reservations apply to parents, who may make the moral or tactical mistake of their lives by getting improperly involved.

G-3: Thanking HaShem after a “False Alarm”

Question: If one has indications that he has a life-threatening illness, but it is subsequently determined that, *baruch HaShem*, it was a “false alarm,” should he recite *Birkat HaGomel*¹ and/or make a *seudat hoda’a*²?

Answer: The *gemara*³ lists one who recuperates from illness among the four types of people who must thank HaShem. He does this by reciting *Birkat HaGomel* in the presence of ten individuals.

Regarding the extent of the illness, the *Shulchan Aruch*⁴ says that this rule applies to any illness that makes one bedridden, whereas the Rama⁵ maintains that it is only for illnesses in which there appears to be danger to one’s life (parallel to the parameters for violating Shabbat for treatment of the ill). Some Ashkenazi *poskim* accept the former approach, at least when the illness confines one to bed for three days.⁶

One might suggest that your question depends on these two opinions. In order to recite *Birkat HaGomel*, do you need a true life-threatening situation, or only one which warrants thanking HaShem when He brings a recovery for even a less serious illness? However, many opinions also require some real sickness that causes hardship⁷ or might be a sign of something life-threatening

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1. The blessing recited after emerging safely from a potentially dangerous situation.
 2. Meal of thanksgiving.
 3. *Berachot* 54b, based on *Tehillim* 107.
 4. *Orach Chayim* 219:8.
 5. Ad loc.
 6. See *Mishna Berura* 219:28.
 7. See *Bi’ur Halacha* to 219:8.

to come.⁸ If, in spite of the symptoms, the person was not significantly sick and it becomes evident that there was nothing remotely dangerous involved (for example, he receives a negative biopsy result on a suspected malignant growth), *HaGomel* would clearly not be called for.

This being said, there is strong logic to distinguish between the formal *beracha* of *HaGomel*, which must meet certain parameters, and the more general *inyan* (positive element) of making a *seudat hoda'a*. The *Shulchan Aruch* does not mention in this context a requirement to make such a *seuda*. Yet, we know that such a practice exists, although apparently on a voluntary basis (as opposed to *HaGomel*). Some cite the following *gemara*⁹ as evidence. Rav Avahu, upon visiting Rav Zeira when he was sick, stated that if the latter would recover, he would make a feast for the rabbis, which he did. Some view this as a source not only of an appropriate thing to do after the recovery, but also as indicating that the promise itself is a *segula*¹⁰ to help bring about the recovery.¹¹ If, under these circumstances, one had the impulse to promise such a party, it does not seem right to claim afterwards that the self-obligation was not binding because it was based on misinformation.

Even if one did not make such an obligation prior to his recovery, a *seudat hoda'a* would still seem appropriate. Even if it turns out that there was no serious illness from which to recover, there still was good (actually, better) news that a perceived problem never materialized. We can illustrate this idea with Talmudic precedent. The *gemara*¹² relates that Rav Yosef (who was blind) said that he would make a feast for the rabbis if he **found out** that the opinion that a blind man is exempt from

8. See *Beit Yosef, Orach Chayim* 219; *Shiltei HaGiborim* 219:3; *Yalkut Yosef* 219:(22).

9. *Berachot* 46a.

10. A spiritual facilitator.

11. See *Imrei Shamai*, p. 85 in the name of the Ba'al Shem Tov's disciples.

12. *Bava Kama* 87a.

positive *mitzvot* **is incorrect**; he wished to be obligated, because one who is obligated in *mitzvot* receives more reward than one who is not obligated. Here, nothing would change; Rav Yosef was simply hoping for a happy realization, and yet a celebration was appropriate. A similar source relates to the history of the origin of an early-winter pagan holiday called *Kalanda*. The *gemara*¹³ says that it was instituted appropriately by Adam, who, upon experiencing his first winter, feared that daylight was disappearing due to his sin, until the solstice passed and he saw that the days were getting longer again. Despite Adam's mistaken impression, as the seasons were in fact part of Creation, the celebration was appropriate (until it turned pagan).

The logic behind such expression of gratitude appears to be as follows. We are always in danger,¹⁴ but it is natural not to feel it constantly. However, when we come face to face with the prospect of our mortality, it is a good time to thank HaShem for our continued existence. Thus, making a *seudat hoda'a* upon receiving good news that proves that one's fears were mistaken is a noble thing for one to do, although it is certainly not required.

13. *Avoda Zara* 8a.

14. As noted in the *beracha* of *Asher Yatzar*.

G-4: A Divorced Woman Reverting to Pre-Marriage *Minhagim*

Question: I am a woman of Sephardi descent who married an Ashkenazi man, but I am now divorced. Should I revert back to my Sephardic customs and rulings?

Answer: Let us investigate the reason that a wife takes on the customs and rulings of her husband's origin, as you correctly assume.

The oldest direct source we know of on the matter of a wife conforming to her husband's traditions is the *Tashbetz*.¹ In addition to referencing the famous phrase that "a wife is like her husband," he says that it is inconceivable that a husband and wife would live in one home governed by different practices. There are slightly varied explanations of this concept. Rav Moshe Feinstein² compares the husband's home to a community; when his wife joins his household, she takes on "the locale's practices," both the stringent ones and the lenient ones, just as a new permanent resident of a community adopts the community's practices.³ An additional element⁴ is that a woman was never fully connected to her father's traditions, as the expectation was always that she would leave to join her husband's family and accept his *minhagim*.

What happens when a couple gets divorced (or if the husband dies)? If the issue when they were married was that they cannot have different *minhagim* while living under one roof, then when they no longer live under one roof, the woman should revert to her former *minhagim*. In fact, the *Tashbetz*⁵ says this, but he adds a major proviso. If the woman is widowed and her husband left

1. III:179.

2. *Igrot Moshe, Orach Chayim* I:158.

3. See *Shulchan Aruch, Yoreh Deah* 214:2.

4. See *Igrot Moshe* op. cit.

5. Op. cit.

her with children, she maintains the *minhagim* of her husband's family. One of the precedents he cites for the mother retaining her marital status because of her children is a *halacha* from the Torah concerning the eating of *teruma*. The daughter of a *kohen* eats *teruma* until she marries. If she marries a non-*kohen*, she no longer may eat *teruma*, but if he dies or divorces her, she "returns to her father's house" and may eat his *teruma* again. However, if she has children from the non-*kohen* husband, she does not "return" to eat *teruma*.⁶ Thus, reasons the *Tashbetz*, we see that a widowed or divorced woman with children retains the family status of her marriage.

Rav Yosef Engel⁷ understands the role of the children in this regard as linking their mother to their father, and one could argue that this does not apply if the parents are divorced. However, it appears reasonable to infer from the *Tashbetz* that her relationship with the children prevents her from reverting back naturally to her father's household and way of life. It is also likely that this view is based not on a halachic derivation, but on a sociological situation that the Torah recognized. Namely, the mother of children, who have their father's halachic status and are presumed to follow his *minhagim*, is expected to continue to act in a way that is consistent with their upbringing. This rationale would apply even if she was divorced, as the *Tashbetz* himself states. Even when the children are grown and she no longer has to raise them, Halacha recognizes the likelihood that she will be very connected to them and may spend much time with them.⁸ It makes sense that she will not be more attached to her father than to them, and it is therefore not necessarily appropriate for her to revert to her previous *minhagim*.

Rav Moshe Feinstein does not rule regarding what happens in a case in which a wife is widowed or divorced. However, his logic seems to imply that if, practically, she went back to interacting with her former community, she could and maybe should go

6. See *Vayikra* 22:13.

7. *Gilyonei HaShas*, *Yevamot* 86b.

8. See a related application in *Ketubot* 54a; *Shulchan Aruch*, *Even Ha'ezer* 94.

back to their *minhagim*. On the other hand, he does raise the possibility⁹ that since a woman waits until she marries to adopt her lifetime *minhag*, she should maintain it thereafter (at least until she remarries).

In the final analysis, it seems that a divorcee without children should revert to her old *minhagim*. The presence of children, who play a pivotal role in the divorcee's lifestyle, should prompt her to retain their joint *minhagim*. However, if she has chosen either her original or her adopted community as her religious/cultural center, she can follow its *minhagim*.

9. In the context of his explanation of the Rambam's minority approach concerning the *minhagim* of one who switches communities.

G-5: Guidelines on Warning People about Forbidden Actions

Question: Can you give me some guidelines on when the *mitzva* of *tochacha* (giving rebuke) applies? For example, if I am not sure if the recipient will respond positively or negatively, should I say something?

Answer: It is not possible in this context to give more than “some guidelines” in this complex matter. We will also modify the question slightly.

Classic *tochacha* is done to change the mind of one who sinned knowingly. Although the *mitzva* exists nowadays, most authorities assume that it can be accomplished satisfactorily only by those people who are uniquely qualified or those with a special relationship to the recipient.¹ We will therefore concentrate on the related *mitzva* of *afrushei me'issura* (keeping a counterpart from sinning) by informing someone who does not know that he is sinning. The *S'dei Chemed*² maintains that *afrushei me'issura* is derived from the *pasuk* of *tochacha*, although others contend that it is only a Rabbinic obligation.³

The first guideline is *mutav sheyiheyu shog'gin v'al yiheyu mezidin* – when one is sinning unknowingly but will continue to sin knowingly if he is informed, it is better that he should not be told.⁴ This, however, applies only when one is sure that the person will not change his ways.⁵ It does not appear that one needs 100% surety, and it is very difficult to decide when to use this distinction. One of the cases in which pointing out a particular mistake is less likely to be successful is when many people act improperly in this

1. See long discussion in *Amud HaYemini, siman 10*.

2. Vol. VII, pg. 318.

3. See *Amud HaYemini* op. cit.

4. See *Beitza 30a*.

5. *Tosafot, Shabbat 55a; Mishna Berura 608:3*.

matter.⁶

The possibility of a negative backlash is also a factor. In a landmark *teshuva*,⁷ Rav S.Z. Auerbach argues that one may even **participate** in a situation in which he knows that a person will be doing something wrong – ostensibly violating *lifnei iver*⁸ – if drawing attention to it would cause that person to deteriorate further and incite hatred of the Torah and its adherents. Certainly then, one can refrain from interjecting when this is likely to cause significantly negative results in addition to probably not helping. We use some variation of this concept often in our interactions with the non-observant and those with inconsistent observance, although, in all honesty, it is not always clear when our silence is due to prudence and when it is to avoid uncomfortable conversations.

It is important to consider that it is not always a choice between whether or not someone's mistake should be corrected, but when, how, and by whom it should be done. Consider the following historical facts.⁹ Yaakov, Moshe, Yehoshua, and Shmuel all waited until close to their deaths to strongly rebuke their constituencies, out of concern that rebuke at an earlier time might cause the recipients to change their allegiances in favor of a path of evil. Similarly, a rabbi in a new position may see many things that he knows his community needs to change. Instead of raising all issues at once and failing, he likely should wait for a (hopefully) opportune time to deal with each (or some) of them.

An interesting question is whether one should get involved when he sees someone who is unaware of the issue doing something that is forbidden according to a majority of opinions, but regarding which there is no unanimity. Again, we will borrow a concept from Rav Auerbach's approach to *lifnei iver*. According to most *poskim*, one who is stringent on a certain questionable

6. See *Beitza* 30a.

7. *Minchat Shlomo* I:35.

8. Placing a spiritual stumbling block.

9. Found in Rashi to *Devarim* 1:3.

practice may enable one who is legitimately lenient on the practice to partake in it.¹⁰ He does not have to apply his own standards regarding a possible violation on someone else. Rav Auerbach¹¹ goes a step further. Suppose that Reuven, who is doing the questionable thing, is unaware of the majority view forbidding the matter and the legitimate minority who are lenient. Even then, Shimon may enable Reuven to act if he knows that were Reuven aware of the various opinions, he would act leniently.

10. See *Ktav Sofer, Yoreh Deah* 77.

11. *Minchat Shlomo* I:44.

G-6: Calculating *Ma'aser Kesafim*¹

Question: If one buys a home for \$100,000 and sells it twenty-five years later for \$250,000, should he pay *ma'aser kesafim* on the net gain of \$150,000, or can he subtract from the net gain for inflation, mortgage payments, improvements, or other matters?

Answer: Few classical sources discuss this type of scenario, which is common these days. This can be attributed to changes in economics. Our point of departure, as you correctly assume, is that the sale of a home obligates one in *ma'aser* on the net gain, as Rav Moshe Feinstein² assumes. However, some of the technicalities in arriving at the real net gain make it almost impossible to arrive at an exact figure.

Rav Feinstein discusses Halacha's outlook on inflation's erosion of a currency's value. For complicated reasons, despite inflation, one who borrows \$1,000 should return \$1,000, and if he gives more, he violates the prohibition of *ribbit*.³ Regarding *ma'aser kesafim*, though, Rav Feinstein's instruction is to adjust the sale price for inflation to determine the real net gain. However, he feels that the government's publicized Consumer Price Index (known as *madad* in Israel) is not correct for our context. Rather, we should consider the inflation on only basic items, not expensive items that one does not buy regularly. Nevertheless, in practice, the CPI may still be the most realistic tool people have access to.

One could claim that considering the interest payments on the mortgage, the real cost of buying the home was greater than the price actually paid, thus lowering the net gain. However, a major component of the cost of a mortgage is due to the inflation component of the mortgage. Thus, if one already reduced the net profits due to twenty-five years of inflation, as above, he cannot

1. The recommended practice of giving one tenth of one's earnings to charity.

2. *Igrot Moshe, Yoreh Deah* II:114.

3. Forbidden interest.

also take off all of the interest-related parts of the payments on the mortgage. Providing an accounting system to deal with this is not practical in this forum.

Certain home improvements and repairs that are needed to maintain and/or raise the resale value of the house should also be deductible. However, a major element in fixing things and making improvements in a home over the years should be viewed as being motivated by improving the quality of life of its residents, as much as – or perhaps more than – a means of raising the eventual resale value, and these costs should therefore not be deducted. This certainly is impossible to calculate with any precision.

One could claim that the practice of *ma'aser* is not applicable to the purchase and eventual sale of residential real estate, assuming one gave *ma'aser* on his earnings before buying it. When *Chazal* extended (either by their understanding of *p'sukim*, Rabbinic decree, or spiritual advice⁴) the concept of *ma'aser* from agricultural produce to include other earnings, they primarily addressed business dealings.⁵ Buying \$1,000 of merchandise to sell as soon as possible for \$1,500 is a commercial activity designed to create earnings, and that falls under the obligation of *ma'aser kesafim*. Using one's earnings (especially after giving *ma'aser* from them) to buy a home in which to live is a matter of consumption, not creating profits. According to this view, one would not need to give further *ma'aser* on these holdings, even if it turns out that the home's price increased in real terms.

The question is whether selling a home creates a new obligation. One could distinguish between one who buys real estate to sell at a profit, which is commerce like any other, and one who sells because he needs to change homes for some reason. The case to exempt is strongest when one needs all the proceeds of the sale to buy a new home. If two people swap homes, intuition dictates that neither would have to pay for the appreciation in the home he is

4. See the presentation of opinions in *Tzedaka U'Mishpat* 5:2.

5. See *Tosafot, Ta'anit* 9a.

transferring. It is not clear that selling a home to buy another one of similar value is fundamentally different in our context.

The strongest position is that calculating *ma'aser kesafim* is only a proper *minhag*, not an outright obligation.⁶ This justifies leniency regarding calculations and halachic disagreements, especially if that was one's stated intention when starting the practice. On the other hand, *ma'aser kesafim* is not an independent simple custom. Rather, it is the recommended average amount of *tzedaka* to be given in fulfilling that *mitzva*.⁷ One should always want to give *tzedaka* generously. Cash flow issues often make it difficult, and the sale of a home **may** give one the opportunity to do so. It may also be an appropriate time for one to internalize that his home purchase decades before was blessed by HaShem, which, in turn, provides an incentive to give **significant** contributions to those in need. Accordingly, the question of whether there is a formal obligation of *ma'aser*, which is anyway hard to calculate, can be made almost moot.

6. See, for example, *She'eilat Ya'avetz* 1:6.

7. See *Shulchan Aruch, Yoreh Deah* 249:1.

G-7: Returning a Security Deposit with a Different Currency

Question: Three years ago (2005), I rented out an apartment in Beit Shemesh and took a security deposit of \$1,000 to ensure my rights based on the agreement. The contract designated that all payments be in US dollars, but, for the renter's convenience, I accepted payment of the deposit in shekels. The rental period is over, and I want to return the deposit. He wants to receive the same amount of shekels that he gave, which, according to the present exchange rate, comes to much more than the \$1,000 written in the contract. How much do I owe him?

Request for Clarification: Usually a security deposit is given as an undated check, and no monies are transferred if all goes smoothly. Apparently, you actually cashed it. When and why did you do so? Was it part of the agreement? If so, please forward the relevant part of the contract.

Clarification: The payment was in cash, although not stipulated in the contract, because the renter did not have an Israeli bank account and I did not mind.

Answer: A security deposit, classically, is money for safekeeping (*pikadon*), whose purpose is to protect the landlord's interests with regard to the property. It is intended to be returned in full, if everything ends without incident. If given by a check that is not cashed, indeed nothing of significance happened. If given with cash, the landlord, at least conceptually, must have it ready to be returned when appropriate.

The *mishna*¹ says that if Reuven gives money to Shimon to watch, Shimon may use it for his own purposes (and return

1. *Bava Metzia* 43a.

other coins) **only** if he is a money changer and, even then, not if Reuven demonstrates that he wants the coins to remain intact. The explanation is that a money changer is in the practice of using any money that is available to him for making exchanges, but others are assumed to literally hold the money on behalf of the owner. Thus, assuming you expressed no interest in using the money you were given, it might be argued that you were expected to have kept it, to return the same bills you received, and not to use them for your purposes. In that event, you have to pay at least the value of what you took at the time you took it² according to the local currency, which, in Israel, is the shekel. Thus, you would pay back the amount of shekels you received, irrespective of the value of \$1,000.

On the other hand, it is possible that in modern times, we treat the standard person like a money changer in this regard,³ especially where people are reluctant to keep cash in safes. When one uses *pikadon* money with permission, he becomes fully responsible for it. The *Shach*⁴ views the use of such money as a loan, not like borrowing an object (*she'eila*). One difference between the two categories is that if the currency goes out of circulation, a loan must be repaid with a valid currency, whereas in the case of *she'eila*, one can make the return with the (now invalid) currency he received. Another is that a loan makes this question not only one of monetary rights, but also of potential *ribbit*.⁵

You might make a similar argument. You took a loan of \$1,000, the sum mentioned in the contract, and it is \$1,000 that you should return – no more and no less – regardless of the bills you received or will return. The laws of *ribbit* dictate that if one borrows a certain commodity, it is forbidden to stipulate that he must return the same amount of the commodity even if the

2. *Bava Kama* 65a.

3. *S'ma* 292:18; see *Shulchan Aruch, Choshen Mishpat* 292:7; *Pitchei Choshen, Pikadon* 5:15.

4. *Choshen Mishpat* 292:9.

5. Forbidden usury.

commodity goes up in price.⁶ However, one can lend a certain amount of currency and demand the same amount of the same currency in return, even if it appreciates in value in the interim, as long as it is the recognized currency of the place, not foreign currency.⁷ Although that would seem to indicate that in Israel, only shekels can be used as currency for matters of *ribbit*, there is a decades-old halachic assumption that the dollar's special status in Israel makes it equivalent to the shekel in this regard.⁸ (It is questionable whether in the present financial situation in Israel this is still true, but when you made the agreement it was.⁹)

However, unless your contract is unusual, the above is not relevant. Generally, the designation of US dollars determines the amount of shekels to be given when payment is due or paid. It is simply a pricing tool. However, the payment in Israel is still ordinarily in and **of shekels**, and thus the security deposit was, predictably, in shekels. Therefore, even if we decide to look at the deposit as a loan (which is questionable),¹⁰ it is a shekel loan to be returned in shekels or their equivalent, unless specified otherwise. Had the dollar gone up (as it did for years), your renter could **not have demanded** that you return **more** shekels than you received. Similarly, now that it went down, you **may not return fewer** shekels than you received, even if you personally view your finances in terms of dollars, and there is also no problem of *ribbit* in so doing.

6. *Bava Metzia* 75a.

7. See *Bava Metzia* 44b.

8. See *Igrot Moshe, Yoreh Deah* III:37.

9. Historically, the dollar had always been viewed in Israel as the epitome of stability, certainly in comparison to the sometimes volatile and always weakening shekel. Around the year 2007, the shekel strengthened and the dollar lost its luster after an ongoing slide against the shekel. Since the time this answer was transmitted, use of the dollar in Israel has become less common.

10. Presumably, you could have hid the money “in a mattress” and returned it three years later.

G-8: Reframing a Transaction to Avoid *Ribbit*

Question: My son is buying a house, and I told him that, please G-d, I would give him a present of \$10,000 to help. He now needs an additional \$20,000 loan, which he is unable to receive from banks to complete the transaction, and I can get such a loan. Am I correct that it is forbidden for me to take the loan in my name and have him pay the bank the interest or reimburse me? May I, instead, reduce my intended \$10,000 present to compensate for my losses on the \$20,000 loan, considering that I only made an oral pledge?

Answer: We praise you for the halachic sophistication of your question. Indeed, there is an apparent prohibition for your son to pay the interest on a loan that you will take and transfer to him.¹ This is because two loans will actually exist. The bank will lend you \$20,000. Then you will be lending your son \$20,000, and he will return the principal **plus** interest. This is forbidden whether he pays the interest to you directly or to the recipient of your choice (i.e., the bank) as in the latter case, he is essentially paying the interest on your behalf, which is forbidden.

First, we will deal with your excellent suggestion. Not only is it forbidden for the borrower to give the lender any money beyond the principal, but it is also forbidden for the lender to receive from him any extra service or benefit of even moderate value.² A borrower certainly must not be *mochel*³ money due to him from the lender as a condition of or in appreciation for the loan.⁴ The question is whether to view the pledged present to your

1. *Shulchan Aruch, Yoreh Deah* 168:1.

2. See *Bava Metzia* 64b.

3. Relinquish rights to.

4. See discussion in *Brit Yehuda* 11:(20) concerning if and under what circumstances this is a Torah-level violation.

son as something that you are already obligated to your son, in which case he should not be *mochel* it in order to get the loan.

If one pledges to give a present to someone without performing an act of *kinyan* to concretize it, he is not obligated to honor his pledge. However, if it is a small present, he is considered to be *mechusar amana* (lacking in trustworthiness) if he does not follow through.⁵ Since authorities may take some steps to pressure him to fulfill this moral obligation,⁶ if the projected recipient waives the payment, this is considered a favor of monetary value. However, \$10,000 is not a small present. (The determination of big and small is likely subjective⁷ and should depend not only on the giver's wealth, but also on the level of his relationship with the recipient. However, the tone of your question implies that a \$10,000 present to your son is not something that you take lightly.) If you have no obligation to pay, then even if you are embarrassed to renege, your son's forgoing part of the present in order to receive the loan is probably not considered *ribbit*.⁸ If your son is considered poor, there is a problem because a promise of even a large present to a poor person is binding as a vow.⁹ In case you are not confident that in your situation you have the right to use the idea of reducing the amount of the present, we offer another approach.

There are two ways that allow you to receive back more than \$20,000 from your son. The simplest way is to make a *heter iska*, the standard solution for framing what might have been a loan into a (partial) investment that your son will be investing on your behalf. Your son will be required to give you profits from the investment on your behalf (according to a written forecast that you can make equal or similar to what the bank is charging), unless he corroborates that he did not achieve such profits.

5. *Bava Metzia* 49a; *Shulchan Aruch, Choshen Mishpat* 204:8.

6. See *Pitchei Choshen, Kinyanim* 1:(2).

7. *B'Tzel HaChochma* V:158.

8. Implication of the *Shut Chatam Sofer, Yoreh Deah* 135, regarding a lender to the community who was exempted from the rotation of hosting guests.

9. *Shulchan Aruch, Yoreh Deah* 258:12.

A second, similar but less standard approach is slightly halachically preferable in a case in which it is known what the money is being used for.¹⁰ Write a document that states that the \$20,000 you are giving your son makes you a part owner of the house proportional to the cost. In this way, there will be no loan whatsoever but only an investment. State also that your son's payments to the bank on your behalf will constitute a gradual buying out of your partnership plus rent he owes you corresponding to your current share in the apartment.¹¹ For more details about such a document, see *The Laws of Ribbis*,¹² or get back to us.¹³

10. *Igrot Moshe, Yoreh Deah* II:62.

11. *Ibid.*

12. Reisman, pp. 259-260.

13. There may be at least one other possible avenue of leniency, but it is less certain, and its conditions are complicated enough for us to prefer the solutions above.

G-9: Drying Hands after *Netilat Yadayim* with a Hand Dryer

Question: After washing one's hands for *netilat yadayim* before eating bread, is it permitted to dry one's hands with an electric (blow) hand dryer instead of a towel?

Answer: Your assumption that there is a halachic need for *niguv* (drying of the hands) is basically correct, but the underlying reason affects its requirements.

One of the rationales that *Tosafot*¹ gives for the practice of making the *beracha* on *netilat yadayim* only after the washing has taken place² is that *netilat yadayim* is not completed until the *niguv*, which follows the *beracha*, is done. This seems to give a halachic status to *niguv*, which *Tosafot* justifies by citing the *gemara*,³ which states, "Eating without first drying the hands is like eating *tamei* (impure) bread."

In what way does the bread become impure because one washed but did not dry his hands? One suggestion involves the *halacha* that the water one uses for *netilat yadayim* can become *tamei* after the first washing, and steps need to be taken to remove it from the hands. Although the basic solution is to wash the hands a second time, some *poskim* believe that *niguv* is a final part of the removal process.⁴

Rashi comments on the aforementioned *gemara* that the problem with not drying hands is *mi'us* (unsightliness), which can also be called *tamei*. He apparently means to say that *niguv* is a matter of manners, as wet hands make bread soggy. It is difficult, though, to say that *mi'us* is the only issue. The *tosefta*⁵ says that

1. *Pesachim* 7b.

2. A *beracha* ordinarily precedes the performance of a *mitzva*.

3. *Sota* 4b.

4. See *Beit Yosef, Orach Chayim* 158.

5. *Yadayim* 2:1.

niguv is required only after *netilat yadayim*, not *tevillat yadayim*.⁶ If the issue is *tumah*, the distinction is understandable, since after a single immersion, all the water is pure. However, regarding *mi'us*, why should there be a difference between whether moisture remains on the hands from washing or from immersing? (The *Taz*⁷ rejects the possibility that the *gemara* disagrees with the *tosefta*).

Therefore, a third explanation is suggested,⁸ which includes elements of the first two. The heart of the problem is *mi'us*, due to which the Rabbis instituted that the procedure of *netilat yadayim* would be incomplete until *niguv*, which solves *mi'us*, is done. However, in regard to *tevillat yadayim*, which is a throwback to the Torah laws of *tevilla*, the need for *niguv* was not formalized.

There is a major difference between the approaches of removing *tumah* and of a formal requirement related to *mi'us*. It arises when one does *netilat yadayim* with at least a *revi'it* (3-4 ounces) of water for the first washing. The *Shulchan Aruch*⁹ says that since in that case there is sufficient water to wash away the impure water, *niguv* is unnecessary. The Maharshal,¹⁰ in contrast, maintains that since there is an issue of *mi'us*, *niguv* is required. The latter approach is the prevalent one.¹¹ Therefore, even after *netilat yadayim* with a lot of water (which is now commonplace), *niguv* is needed.

The *Levush*¹² makes a claim that is pertinent to our question. He says that the *tosefta* never denied a need for dry hands after immersing, but meant only that the drying need not be done in a formal, halachically effective way by using something absorbent. Consequently, after *tevilla*, when there is no problem of *tamei* water, one can allow the hands to dry naturally so as to avoid

6. Immersing hands in an appropriate body of water.

7. *Orach Chayim* 158:13.

8. *Taz* *ibid.*, based on the Maharshal.

9. *Orach Chayim* 158:13.

10. *Yam Shel Shlomo*, *Chulin* 8:39.

11. *Mishna Berura* 158:46.

12. *Orach Chayim* 158:13.

mi'us. In contrast, in order to remove *tamei* water after *netila*, an absorbent material must be used. Several *poskim* accept the *Levush's* stringency.¹³

In all probability, using an electric dryer is considered a means of speeding up the process of hands drying naturally and would not suffice according to the *Levush*. However, if one used a *revi'it* of water (as is most common) for the first washing, such that the issue is only one of *mi'us*, the *Levush's* concern does not apply, and even the *Levush*, and presumably the Maharshal, would agree that using an electric dryer is fine.¹⁴

13. See *Shulchan Aruch HaRav*, *Orach Chayim* 158:17; *Kaf HaChayim*, *Orach Chayim* 158:87. The *Chazon Ish*, *Orach Chayim* 25:10, does not accept this stringency.

14. *B'Tzel HaChochma* IV:141.

G-10: Jewish Attitude Toward Veganism

Question: The attached literature explains why we feel Jewish leaders, including rabbis, should take a leading role in promoting vegetarianism and veganism.¹ We await your comments and feedback, as the rabbinic community is relatively silent on the matter.

[*We, very briefly, will summarize the issues that the question included. Readers are invited to learn more at www.JewishVeg.com (a site that was referenced).*] The billions of farmed animals produce more greenhouse gases than human transportation does, contributing to the looming world ecological disaster including flooding, heat waves, and droughts in places such as Israel. These animals require enormous amounts of water and animal feed, much of which could feed starving people. Wasting resources in this way violates *bal tashchit* (the prohibition to waste). Jews are not filling their leadership role of *tikkun olam* (improving the world). Also, most farming of animals is carried out in a cruel manner, thus violating *tza'ar ba'alei chayim*.²

Answer: The scientific consensus seems to agree with your basic premises. However, we lack the expertise to confirm or reject the definitive picture you paint of the extent of the danger and the most effective ways to act. We imagine that this is a primary reason why many rabbis are uncomfortable speaking out, along with the fact that for most people it is difficult to eliminate dependency on animal products. Because we agree that waiting until all the facts are crystal clear may doom us, we are responding to you in an abridged and theoretical manner to do our part in advancing **dialogue** within the Jewish community.

1. Not using animal products, including milk and eggs.

2. Causing pain to living beings, prohibited by the Torah (see *Bava Metzia* 30b).

Few, if any, of us can make a significant impact on world ecology. Thus, the decision each of us has to make about his diet is analogous to the following situation. A person has a serious medical condition. He can decrease the chances of tragedy by a **tiny amount** if he undergoes a difficult treatment. Although it **might** be wise for him to take those steps, he is not halachically required to do so. Otherwise, anyone with a serious illness would have to expend all of his resources to attempt to find medical expertise that possibly could help heal him! (In a different context, our teacher, Rav Zalman Nechemia Goldberg, has argued that this is not necessary). On the Jewish, national level, if the world would follow our lead, we might have an obligation to make a significant difference, but we do not think that this is presently the case. However, we still feel it is noble to try to advance ecological concerns along the lines of the Rabbis' words, "It is not for you to finish the job, but neither are you free to ignore it."³

There are various steps that we can take to improve the situation, of which vegetarianism/ veganism is but one. These **include**: supporting "green-minded" candidates for office (when it does not conflict with greater concerns); spending money on fuel efficiency (efficient cars, home insulation, etc.); investing in companies that research and develop environmentally friendly technology; **reducing** consumption of animal products and fuels (adjust thermostats, walk and take public transportation more often); speak to friends and/or write about such steps.

We reject the claim that raising livestock is *bal tashchit*. *Bal tashchit* refers to acts that are directly destructive, such as ripping items and chopping down trees without positive gain.⁴ Allocating resources for a desired, permitted use in a less than ideal manner or inducing collateral damage along the way does not violate the prohibition.

Certainly there are any number of sources that indicate that

3. *Avot* 2:16.

4. See Rambam, *Melachim* 6:10.

one is allowed to control the lives of animals and slaughter them so that we can eat them. On the other hand, there are also *halachot* based on the need to be concerned about our responsibility to animals. A famous example is that one should not eat before feeding his animals.⁵ Regarding cruelty to animals in livestock farms, although it is unclear what the exact parameters of proper conditions are, it is clear that there are many instances of halachically forbidden abuse. We encourage efforts to “clean up the industry,” and we support boycotting companies who are guilty of *tza'ar ba'alei chayim*. However, while veganism and vegetarianism are noble means to limit abuses by reducing the number of animals born to suffer, it does not eradicate the problem and, in any event, is not required.

In summary, we encourage people to take steps to reduce dependence on animal farming and to improve world ecology and concern for animal welfare. However, this does not mean that an individual Jew or the Jewish people as a group need to go as far as to be vegans or vegetarians.

5. *Berachot* 40a.

G-11: *Netilat Yadayim* on Paint Stained Hands

Question: During some volunteer painting that I was doing for a *tzedaka* organization, I had a mishap that caused a significant amount of oil paint to get on my hand and arm. After an initial washing of the hand, a significant amount of paint remained. What am I supposed to do about *netilat yadayim*?

Answer: The general rule is that whatever is considered a *chatzitza*¹ for various required *tevilot* is considered a *chatzitza* for *netilat yadayim* as well.² The most basic sub-rule is that something that is stuck to the skin is a *chatzitza* if **either** it covers most of the skin or if one is *makpid* about it (would like to have it removed).³ Apparently, in your case, after the initial washing, the paint was no longer on most of your hand.

The *Shulchan Aruch*⁴ says that paint is the type of matter whose status as a possible *chatzitza* is subjective. If most people in the world are *makpid* about a particular matter stuck to their bodies, then it is a *chatzitza* even for the minority that is not *makpid*.⁵ However, if a member of this minority is not *makpid* because people in his vocation are accustomed to having such stains, it is not a *chatzitza* for him.⁶ The explanation is that his attitude toward the stain is actually the norm for his vocation; if others were in this line of work, they too would not be *makpid*. However, you are not a professional painter and presumably would appreciate getting the paint off sooner rather than later.

There is another potential ground for leniency regarding

1. A barrier between the skin and the water.

2. *Chulin* 106b; *Shulchan Aruch, Orach Chayim* 161:1.

3. *Shulchan Aruch* op. cit.

4. Ibid. 2.

5. *Shulchan Aruch, Yoreh Deah* 198:1.

6. *Shulchan Aruch, Orach Chayim* 161:2.

discolored skin, but it will not be helpful in your case. One of the reasons that hair coloring is not a *chatzitza* for women is that the coloring is not considered to have any substance (*mamashut*) to it.⁷ However, even after washing it, the oil paint residue may have substance. (Note that dried ink is an example of a *chatzitza*.⁸) Therefore, as long as there is a significant amount of paint left on your hands, *netilat yadayim* will not be halachically effective.

If you have the chance to work more seriously on removing the paint but there still is a little that you cannot get off, then there are new factors to consider that may affect the *halacha*. It is possible that so little remains that you will not be *makpid* anymore. Additionally, the remaining color may reach the state of lacking substance, although this is hard to quantify.

Finally, let us introduce a new concept. When one has a bandage on a wound that cannot be removed because it is too painful to do so, one can wash the hand except for the covered area.⁹ (Note that this is not applicable to *tevilla* that is required by Torah law.¹⁰) Similarly, if one has a wound with a scab on it, then the part of the scab that cannot be removed due to pain is not a *chatzitza*.¹¹ It stands to reason that when one has removed the paint that will come off without damaging or peeling off the skin, what remains is not a *chatzitza*.¹² (This idea may be theoretical in this case, as there are ways of removing all the paint.)

What should you do before you have a chance to remove all that you can? The *Shulchan Aruch*¹³ says that when one does not have any water available for *netilat yadayim*, he should eat with

7. See Rashba and others, cited in *Beit Yosef, Yoreh Deah*, corresponding to 198:17.

8. *Shulchan Aruch, Yoreh Deah* 198:15.

9. *Shulchan Aruch, Orach Chayim* 162:10.

10. *Shulchan Aruch, Yoreh Deah* 198:10.

11. *Mishna Berura* 161:16. Regarding the stricter laws of *tevilla*, see *Badei HaShulchan, Biurim to Yoreh Deah* 198:9.

12. See also *Piskei Teshuvot* 161:1.

13. *Orach Chayim* 163:1.

his hands covered. Similarly, the *Mishna Berura*¹⁴ says that when one cannot wash his hands for a medical reason, he should use this system. If you do not have an opportunity to do a proper job of removing the great majority of the paint within 72 minutes of when you want to eat,¹⁵ you could do the same thing.

May you always have such noble reasons for interesting halachic questions!

14. 162:69.

15. See *Shulchan Aruch* op. cit.

G-12: *Terumot* and *Ma'asrot* on Spices

Question: Does one have to take *terumot* and *ma'asrot* (tithes – hereafter, *teruma*) from mint leaves or other spices that grow in Israel?

Answer: In describing the laws of *teruma*, the Torah refers only to grains, wine, and olive oil.¹ The Rambam² maintains that these are just examples of vegetation that are eaten by people. In truth, all edible species of vegetation that a field's owner would protect require *teruma* to be taken. In contrast, Rashi³ and the Ra'avad⁴ say that other than the aforementioned crops, *teruma* on other foods that grow is only Rabbinic. In any case, fruits and vegetables that grow in the Jewish-owned ground of *Eretz Yisrael* require *teruma* on some level.⁵

The question, though, is whether spices are considered foods in this regard. The *gemara*,⁶ in distinguishing between different levels of *teruma* obligations, says that *teruma* on *tavlin* (spices) is Rabbinic. Thus, it appears that while *teruma* on spices is not derived from the Torah, there is a practical requirement nonetheless. Indeed, many classical sources indicate this. For example, there is a correlation between whether something is considered a food in regard to being susceptible to food *tumah*⁷ and whether it requires *teruma*,⁸ and spices are susceptible to *tumah*.⁹

1. *Devarim* 18:4.

2. *Terumot* 2:1.

3. *Berachot* 36a.

4. *Ma'aser* 1:9.

5. The level of obligation in the times following the destruction of the Second Temple will not be discussed here.

6. *Pesachim* 44a.

7. Ritual impurity.

8. *Nidda* 50a; see *Tosafot*, *Yoma* 81b.

9. See *Mishna*, *Orla* 2:4.

The *gemara*¹⁰ says that one who chews the type of pepper that is used as a spice (*pilpeli*) does not fully¹¹ violate the prohibition of eating on Yom Kippur, implying that it is not a food. However, the *gemara* cites a source that indicates that the prohibition of *orla* applies to *pilpeli*, implying that it is a food, and distinguishes between different types of *pilpeli*. *Tosafot*¹² points out that the qualification for the laws of *orla* is parallel to the qualification for the laws of *teruma*. In order to reconcile the various sources with each other, *Tosafot* distinguishes between different types of spices. One category consists of foods such as onions, which are sometimes eaten as an independent food (or a main element of a food¹³) in addition to being used as a spice. These are considered foods to which *orla*, *teruma*, and *tumah* apply. Spices that are used only for spicing and are not eaten independently are exempt from those halachic obligations.

This approach also works well within the view of the Rambam. On the one hand, he does not mention as a general rule that there is *teruma* for *tavlin* (spices). On the other hand, he mentions the obligation in the context of a few spices, including onions.¹⁴ In the Laws of *Ma'aser Sheni*,¹⁵ he says that products that are grown only for their color, their smell, or their taste cannot be bought with the money of *ma'aser sheni*, which has to be spent on things that “are the food of humans,”¹⁶ and this is a criterion for *teruma*, as well.¹⁷ The list of those nonfoods includes *pilpeli*, which one does not eat separately.

Several *Acharonim* cite and seem to accept *Tosafot's*

10. *Yoma* 81b.

11. It is not permitted to do so (*Mishna Berura* 612:22).

12. Ad loc.

13. See *Nidda* 51b.

14. See *Tzofnat Pa'aneach, Terumot* 2:2.

15. 7:9.

16. Ibid. 7:3.

17. Rambam, *Teruma* 2:1.

distinction, including the *Chatam Sofer*,¹⁸ *Igrot Moshe*,¹⁹ and *Shevet HaLevi*.²⁰ Therefore, it appears that spices that are used only to give a taste and not to be eaten as a food do not require *teruma*. (Rav Mordechai Eliyahu holds that if the spices are grown purposely to be used as a spice, they require *teruma* in any case.) In particular, since mint leaves are used as a food nowadays, for example in salads, they do require *teruma*. (This response does not go into such factors as whether the vegetation grows directly in the ground or in a pot and whether it is grown indoors or outdoors, which are beyond our present scope.)

18. *Chulin* 6a.

19. *Orach Chayim* IV:74.18.

20. II:196.

G-13: Use of Phrase Whose Etymology is from Another Religion

Question: I was surprised to see your column using an expression that comes from another religion's writings. Is that permitted?

Answer: We will omit the specific expression, as we will explain later. In truth, I was unaware of the expression's source. While I have had a lot of exposure to American culture, I am quite ignorant of the writings of other religions, and I do not plan to study them to avoid any such problem in the future. Yet, the question remains: May one knowingly use phrases from the texts or lore of another religion in a totally different context?

The Torah forbids us to copy *chukot hagoyim* (gentile practices).¹ It is difficult to clearly delineate in this forum the extent of this *halacha*, but we will mention basic guidelines. One should not perform a strange or problematic gentile practice, as this would indicate that he is doing so to imitate them or that it is related to the service of their religion.² Logical practices of society are permitted, even if they originate from its non-Jewish elements, especially if they are not geared specifically toward non-Jews.³ Using idioms and phrases in order to effectively or impressively express one's ideas in a manner that his audience will comprehend is a logical practice. Nevertheless, we must investigate the possibility of its being problematic if the saying's origin is in a different **religion**, not general society.

A parallel case that is discussed by *poskim* is using a secular calendar that is associated with a central event of a different religion. It is certainly logical for members of society to refer to a uniform calendar in their interactions. On the other hand, perhaps its connection to another religion should preclude its use

1. *Shulchan Aruch, Yoreh Deah* 178:1, based on *Vayikra* 20:23 and *ibid.* 18:3.

2. Rama *ad loc.*

3. See *Igrot Moshe, Yoreh Deah* I:81.

for Jews. The issue was raised prominently by Hungarian *poskim* at the height of the struggle against the Reform movement. The Maharam Shick⁴ strongly opposed the innovation of writing the gentile date on a tombstone. He considered that the prohibition to cause someone to utter the name of other gods should be extended to people thinking about other religions' beliefs, and he felt the date would cause this.

The *Tzitz Eliezer*⁵ argues that using the secular date is not a problem per se despite its origin, even according to the Maharam Shick. Rather the initials that sometimes follow the date and that indicate its religious context are the issue, not the date itself in a “*pareve*” context. We note that the Maharam Shick identifies the problem as leading one to think about the other religion, as opposed to regular *chukot hagoyim*, where the practice itself is the problem. Thus, context is crucial. Most *poskim* permit using these dates, which even appear sporadically in rabbinic literature without incident.⁶ The *Tzitz Eliezer* and *Yabia Omer*,⁷ while **permitting** use of the secular date, stress to do so only **when there is a specific need**.

One should realize that even when its source is in a certain religion's sacred texts, if the use of a phrase or idiom freely crosses religious lines, it does not represent that religion. One can prove this from our own religious texts, *l'havdil*.⁸ While one should not write three words from the Torah without first inserting a line to make sure the writing is straight, it is permitted if the words are used as an idiom and not as a direct reference to a Torah citation.⁹ Also, one can recite phrases from the Torah in a non-Torah context before reciting *Birkat HaTorah*.¹⁰ Similarly, then, phrases

4. *Shut, Yoreh Deah* 171.

5. VIII:8.

6. See *Yabia Omer* III, *Yoreh Deah* 9, who adds other factors regarding the secular date.

7. *Ibid.*

8. A phrase to distinguish between that which is sacred and that which is not.

9. *Shulchan Aruch, Yoreh Deah* 284:2.

10. *Mishna Berura* 47:4.

that emanate from other religions can be disconnected from their context and status.

Let us summarize. One may decide to avoid the use of non-Jewish cultural expressions, especially those which might have origins in another religion, in strict adherence to the spirit of the laws of *chukot hagoyim*. Yet, many of us legitimately value the advantages of integration in the society where we live or grew up, to the extent permitted by Halacha, even when the culture has strong roots in other religions. **At least** when the public's standard phrases do not conjure up thoughts of the tenets and texts of other religions, it is permitted. (We intentionally are not including examples. Why should we make people self-conscious about common phrases that upstanding Jews use without giving a second thought to their origin?)

Section H:
Family Law

H-1: A Mourner *Davening* at a *Minyan* in the Same Building

Question: If one who is sitting *shiva* is having difficulty gathering a *minyan* and there is a *minyan* elsewhere in the building, is it acceptable for the *avel* to go that *minyan*?

Answer: Two issues come into play in this case: the positive element of a *minyan* taking place in the *shiva* house and the problem of an *avel* leaving his house. We will deal with one at a time.

The Rama¹ writes that the deceased has *nachat ruach* (a spiritual “good feeling”) when people *daven* in the place that he died. Therefore, if the *shiva* house is where the deceased died, significant efforts should certainly be made to hold a *minyan* there. There is a difference of opinion regarding whether *davening* in a *shiva* house in his honor brings about *nachat ruach* when the deceased did not die there.² This element would not seem to exist at all when it is a separate *minyan* held in a different area of the building.

The *Har HaCarmel*³ provides other reasons that it is good to *daven* in a *shiva* house. 1) Often an *avel* says *Kaddish* for the deceased (i.e., for a parent), and it is better to do this without conflicting with other mourners. The *Har HaCarmel* says that the *minhag* was accepted across the board, even when the *avel* does not say *Kaddish*. 2) It is forbidden for the *avel* to leave the house, and the *minyan* thus enables him to avoid missing the *mitzva* of *davening* with a *minyan*. Let us evaluate, then, if the problem of leaving the house applies within the same building.

The *Shulchan Aruch*⁴ rules that an *avel* should not leave his

1. *Yoreh Deah* 384:3.

2. See *Divrei Sofrim* 384:25.

3. *Yoreh Deah* 20.

4. *Yoreh Deah* 393:2, based on *Mo'ed Katan* 23a.

house during *shiva*. The *Terumat HaDeshen*⁵ explains that he should focus on mourning, and this element is compromised when one leaves and interacts with others. Based on this reasoning, the *Terumat HaDeshen* allows one who needs to go from the *shiva* house to a nearby house to do so at night, when there is little activity on the streets.

Poskim considered the relative gain and loss of allowing an *avel* who does not have a *minyan* in the *shiva* house to go to *shul*. The *Magen Avraham*⁶ implies that if he is leaving just to take part in a *minyan*, the mourner should stay at home. Note that the *Terumat HaDeshen* assumed that *davening* in *shul* presents more of a problem than walking home at night, because in *shul* there is likely to be interaction with others. This is different from people gathering in the *shiva* house, where the focus is on the *shiva*.

In contrast, the *Eliyah Rabba* cites an opinion that if the mourner is a son who wants to say *Kaddish* for the deceased, he should go to *shul*,⁷ and many accept this opinion.⁸ The *Chochmat Adam*⁹ goes further, saying that it is logical that any *avel* who would miss *davening* with a *minyan* may go to *shul*. Although he seems reluctant to rule contrary to the *Magen Avraham*, he says that if the *shul* is in the same courtyard, so that the *avel* does not have to pass through the public domain, all agree he should go. A *minyan* in the *avel*'s building is no worse than that permitted scenario. This opinion seems to be accepted by later *poskim*.¹⁰

However, approval to go to the nearby *minyan* does not absolve one from making an effort to have a *minyan* in the ***shiva apartment***, as those who are lenient regarding going out discuss cases in which it is a fact that the *minyan* will not be held there. Therefore, even in the absence of the problem of going outside

5. I:290.

6. 696:8.

7. 132:4. The *Eliyah Rabba* does not seem to accept this view himself.

8. See *P'nei Baruch* 21:(16).

9. *Matzevet Moshe* 8.

10. See *Pitchei Teshuva*, *Yoreh Deah* 393:2; *Divrei Sofrim* 393:42.

or meeting anyone on the street, it is nevertheless proper that the mourner take part in a special *shiva minyan* for his deceased relative. Since different levels of difficulty and other factors may impact a particular case in a manner that we cannot anticipate, it is difficult for us to give an absolute ruling. However, either for the positive reason of *nachat ruach* or for the negative reason of leaving the house, a *minyan* in the *shiva* house should be strongly pursued and takes precedence over having the *avel* participate in another *minyan*.

H-2: May One Be a *Sandek* Multiple Times for One Family?

Question: May someone serve as a *sandek* more than once for the same family? Are there any halachic/*minhag* issues involved?

Answer: The Rama¹ cites and accepts a *minhag* found in the Maharil² not to have one person be the *sandek* for more than one child in a family.

The Maharil explains the matter. The *sandek*, who holds the baby during the *brit*, is like the *kohen* who offers the daily *ketoret* (incense) in the *Beit HaMikdash*. The *mishna*³ says that only a *kohen* who had never offered *ketoret* in the past was a candidate for a *ketoret* service. The *gemara*⁴ explains that since the bringing of the *ketoret* makes one rich, they wanted to “spread the wealth.” The same, say the Maharil and the Rama, is true of a *sandek*.

However, very important *Acharonim* question how compelling and binding this *minhag* is. The *Noda B’Yehuda*⁵ starts off by pointing out that there is no Talmudic source for it; the rationale provided was not the source, but rather helped justify ex post facto a custom that had developed. The Gra⁶ also questions the *minhag*’s Talmudic logic. He notes that if the comparison to *ketoret* were true, then no one should be the *sandek* twice, even for babies from different families, whereas the *minhag* allows this. He also argues that the lack of anecdotal evidence of a correlation between serving as a *sandek* and wealth raises questions about the validity of the reason given. (Some respond that wealth can come in different forms.) The Gra does not reject the *minhag*, but

1. *Yoreh Deah* 265:11.

2. *Mila* 1, based on Rabbeinu Peretz.

3. *Yoma* 26a.

4. Ad loc.

5. I, *Yoreh Deah* 86.

6. *Yoreh Deah* 265:46.

says that its real source is the kabbalistic “Will of Rav Yehuda HaChasid.”

The *Noda B’Yehuda* also accepts the *minhag* and suggests the following *midrash* as a source for the comparison to *ketoret*. The *midrash*⁷ says that when Avraham’s household underwent *mila*, they piled up the foreskins, which eventually emitted a strong odor. HaShem remarked that the resulting stench was as welcome before Him as *ketoret*. The *Noda B’Yehuda* notes⁸ that the reason that *ketoret* leads to wealth is that it is a rare *mitzva*, as it occurs only twice a day and only in the *Beit HaMikdash*. On the one hand, that does not apply to *mila*, which is performed countless times a day throughout the Jewish world. On the other hand, though, since the pool of potential *sandek*s is so great, it is a rare occurrence for an individual to be a *sandek*, just as it is for a *kohen* to bring *ketoret*. In explaining why the *mohel* is not at least as comparable to the one who offers the *ketoret*, the *Noda B’Yehuda* argues that since the number of *mohalim* is small, each one performs *britot* frequently. Therefore, it does not bring them wealth and there is no need to limit a *mohel* to one *brit* per family. Despite his explanation, the *Noda B’Yehuda* reports that not all communities accept the *minhag*, and he mentions that in some communities, the rabbi serves as the *sandek* at all *britot*.

The *Chatam Sofer*⁹ deflects some of the questions and finds a different midrashic source. Regarding the *Noda B’Yehuda*’s comment about rabbis who are the *sandek*s at all the local *britot*, he responds that this is consistent with the Maharil’s primary source. Just as the *kohen gadol* can bring the *ketoret* whenever he desires,¹⁰ the community leader can similarly be a *sandek* as often as he wants, whereas regular people would be limited to once per family.

This brings us to the matter of possible exceptions to the

7. *Yalkut Shimoni, Lech Lecha* 82.

8. Based on *Yoma* 26a.

9. *Shut Orach Chayim* 158.

10. *Yoma* 14a.

rule. There are minority opinions that: 1) a relative can be the *sandek* more than once per family;¹¹ 2) only during a single year should one not be a *sandek* twice (according to some, even for different families);¹² 3) if the father serves as the *sandek*, and thus is not giving the honor to anyone, he can do so for as many of his children as he likes.¹³ (It is rare nowadays for the baby's father to be the *sandek* even once.)

In summary, those who do not have a kabbalistic orientation need not take this *minhag* so seriously, and one need not intervene if another decides to ignore it. However, except when there is a pressing need to reuse a *sandek* (e.g., in a remote location, where there are very few G-d-fearing people), it makes most sense to follow the accepted *minhag* that a family honors a different person to be the *sandek* for each son.

11. *Yad Shaul* 265, cited in *Yechaveh Da'at* III:77.

12. See *Birkei Yosef, Yoreh Deah* 265:20, citing the *minhag* of Salonika.

13. See *Torat Chayim* (Zonnenfeld) 15.

H-3: The Date in a *Ketuba* of an Early Evening Wedding

Question: I am about to have my wedding invitations printed, and I am not sure what time the *chupa* should be. The *mesader kiddushin* is presently not available. I am afraid that I will make the wrong decision about whether the wedding should be before or after sunset, which, I guess, is a halachic decision that he should make. May I set the time without consulting him?

Answer: Mazal tov! A wedding can take place right before sunset or right after sunset, and it is not necessary to know in advance which it will be, as we will explain. A *chatan* and *kalla* have enough (happy) headaches to worry about. Consider, also, that how the timing works out at the wedding is sometimes beyond your control. It is the *mesader kiddushin* who can and usually should arrange things to accommodate the couple's preferences.¹

The main reason some people assume that they **need** to know in advance if their wedding will be before or after nightfall² is to determine the date on the *ketuba*. Indeed, a predated *ketuba* is *pasul*.³ The reason for the *p'sul* is actually quite mundane. A *ketuba* is a monetary document, designed to provide the wife with some financial stability if the marriage is terminated (through the husband's death or a divorce). The *ketuba*, like most documents of obligation, creates a lien on the husband's property. Payment for the obligation can be taken from any property that was in his possession at the time of obligation even if it was sold thereafter, against the will of the buyer. Therefore, one who buys property can and should investigate whether there are liens on it, including

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1. We are not talking about cases in which the rabbi will not be able to start when you want, but that is not usually related to sunset.
 2. We posit that this follows sunset, although this is not as simple as it sounds. See *Nitei Gavriel, Nisu'in* 30:(21).
 3. *Mishna, Shvi'it* 10:5; *Shulchan Aruch, Choshen Mishpat* 43:7.

from a *ketuba*. If someone buys land before the seller gets married, the seller's *ketuba* will not create a lien on that field. Thus, if one were allowed to predate the *ketuba*, the wife would possess a *ketuba* that (depending upon its date) would falsely enable her to obtain the buyer's property.⁴

If the date of the day before sunset is written in the *ketuba* and the critical events occur at night, then the *ketuba* is ostensibly predated by a day.⁵ This problem can be overcome when preparing the *ketuba*. While the *ketuba* is part of a wedding ceremony, a *chatan* can create the obligations included in it and the related liens **before** the ceremony,⁶ specifically by making a *kinyan sudar*⁷ on the obligation before nightfall. In that case, even if the date on the *ketuba* is the pre-nightfall date and the wedding was delayed until night, the *ketuba* is valid, since the *chatan* took part in the *kinyan* in time.⁸ When the *chupa* will be close to sunset, it is relatively easy to ensure that the *kinyan* will be done before sunset. Once we solve this monetary element, the *ketuba* should be fine.⁹ (The above does not help for those who have the custom¹⁰ to perform the *kinyan sudar* under the *chupa* after the *kiddushin*

4. See *Bava Metzia* 72a.

5. See *Gittin* 18a and *Tosafot* ad loc., which indicate that this is likely, although not clearly, a problem.

6. Notably, Rav Moshe Feinstein (*Igrot Moshe, Orach Chayim* V:9) says that this does not apply in our days because the halachic betrothal has not yet taken place. See a critique of this surprising opinion in *Chevel Nachalato* II:69.

7. An act in which one party hands over a utensil to his counterpart in order to finalize an agreement.

8. *Seder Ketuba K'Hilchata* 4:15-16; *HaNisu'in K'Hilchatam* 11:30; *Nitei Gavriel* 30:22; see also *Shut Ramah MiPanu* 65.

9. Rav Shlomo Zalman Auerbach (*Minchat Shlomo* II-III:128) presents a surprising objection to this system due to the prospect of the *ketuba* not reflecting the accurate date of the *chupa*. However, it appears that he intends only to say that one should make an effort to have the correct date of the *chupa* in the *ketuba*, not that a delay disqualifies the *ketuba* (see also *Chevel Nachalato* op. cit.).

10. In particular, this is the custom of many in Yerushalayim.

has taken place.)

In the event that the *chupa* was planned to take place at night and it turned out to be in the day, there would not be a problem according to almost all opinions.¹¹ In this case, the bride foregoes her lien for one day. Although a wife is supposed to possess a valid *ketuba* when with her husband, her *ketuba* is valid despite the postdating.¹² Furthermore, by the time the couple is in the *yichud* room and a *ketuba* might be necessary, the *ketuba* date has probably already come.¹³

We would suggest to a *mesader kiddushin* to ask the couple to choose a time for the *chupa*, add several minutes (to be realistic), and prepare a *ketuba* based on the date expected for that time.¹⁴ (He may want to keep the date blank until things become clearer.) While it **might** otherwise be nice to discuss time issues with him in advance, in your circumstances you can safely assume that he can handle the timing issues later and, of course, choose any approach that **he sees fit**.

The issue that remains for you is that the Jewish date on which the *chupa* takes place¹⁵ sets the last day of *Sheva Berachot*. Two of the factors that are affected are when one is allowed to go back to work¹⁶ and until when the *sheva berachot* are said at the end of *Birkat HaMazon*.¹⁷ If you can live with that uncertainty, you can

11. *HaNisu'in K'Hilchatam* 11:34; *Seder Ketuba K'Hilchata* 4:13; *L'Horot Natan* VI:116.

12. *Mishna, Shvi'it* 10:5.

13. See *Shulchan Aruch*, Rama, and *Ezer MiKodesh, Even HaEzer* 66:1.

14. One reason is that accuracy is proper in documents even when lack thereof does not render it invalid; see Rama, *Choshen Mishpat* 43:13. Another is that there are minority opinions that raise objections to the different solutions.

15. Which part of the *chupa* determines the matter is not simple; see *Yabia Omer* VII, *Even HaEzer* 7.

16. *Shulchan Aruch, Even HaEzer* 64:1.

17. A party may be held without the *berachot*, which sometimes happens anyway if *bentching* gets drawn out until the night after the seventh day; see *Living the Halachic Process* vol. II, I-4.

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write the invitation for whatever time will work out best for the wedding celebration.

H-4: Holding on to Jewelry after a Broken Engagement

Question: Our daughter was engaged, and her *chatan* broke off the engagement with complaints that we know are untrue. We paid for many wedding expenses, and his side has not agreed to pay their share. The *chatan* had given our daughter an engagement ring and other jewelry, and we have received word that his family wants them back. Are we required to return them, or may we hold on to the jewelry until we have been compensated for our expenses?

Answer: This question has two elements, one specific to *Even HaEzer* (laws related to marriage) and another that is a classic *Choshen Mishpat* (monetary law) discussion.

The *mishna*¹ states that certain *sivlonot* (presents that a *chatan* gives to a *kalla* before their marriage) return to the *chatan* if they do not get married. There is a basic distinction between gifts in this regard. Since presents (including foodstuffs) that were meant to be consumed during the pre-wedding celebration were appropriate to be given even if the end goal of marriage was not met, they do not need to be returned. However, presents that were meant to last into the marriage are deemed to have been given on the condition of marriage and must be returned if the couple does not get married.² Although we usually say that conditions that can undo a transaction must be verbalized, when it is clear that a present is based on a future expectation, it is deemed conditional. This is true even if the *kalla* is not at fault at all, including if one of the parties dies.³ Similarly, a *chatan* is required to return the presents that he received from the *kalla*'s side.⁴ Thus, in regard to

1. *Bava Batra* 146a.

2. See also, *Shulchan Aruch, Even HaEzer* 50:3.

3. *Ibid.*

4. *Ibid.* 4.

one element of the question, you are required to return the jewelry.

However, regarding a different relevant element of the question, your claims are likely to have merit. You spent a lot of nonrefundable money on wedding preparations, which now, by his backing out, is a loss to you. It is likely somewhat complicated to figure out how much of this amount the other side owes you, and it may depend on specific elements of agreements and on the chain of events that we are unaware of. We cannot and will not express an opinion without hearing both sides, and it might require a formal *beit din* setting to determine an exact solution. However, since the other side has resisted dealing with the matter, the question is about taking the law into your own hands by withholding the jewelry.

Taking things of value in lieu of payment that one believes he deserves is known as *tefisa*, and its laws are very complicated. Three of its biggest limitations are against unilaterally taking something as collateral for a loan, which the Torah forbids,⁵ causing damage during the *tefisa*, and taking something when he cannot prove that he deserves it.⁶ However, the main problem relates to the act of taking. If the other party voluntarily gave the object (as in this case), one can hold on to it as a guarantee until his rights have been properly addressed (whether by agreement, mediation, or arbitration).⁷ While it is problematic to **obtain** the object through deception,⁸ that is certainly not the case here.

Legal *tefisa* can also bring advantage when it is unclear to a *beit din* which side is correct. The plaintiff who is holding an object and is seeking payment is no longer the only one trying to extract something and upon whom the burden of proof lies. After *tefisa*, the defendant is seeking the seized object returned, and in some cases he will have a greater burden of proof than had there not been *tefisa*. (The details are too complex to discuss seriously

5. *Devarim* 24:10-11.

6. Rama, *Choshen Mishpat* 4:1.

7. *Ibid.*; see *Yam Shel Shlomo*, *Bava Kama* 3:5.

8. See *Birkei Yosef*, *Choshen Mishpat* 4:5.

in this context.⁹⁾

All of this said, it is **extremely** important from a personal, spiritual, and practical perspective that the painful matter of a broken engagement be settled in as smooth a manner as possible. Extended recriminations and posturing can cause all sorts of problems for the futures of the former *chatan* and *kalla*. Therefore, one should make **certain** sacrifices to do what is smart, not just what is right or legally valid.

9. If you are interested in trying to study the topic, see *Klalei Tefisa*, found at the end of the *Shulchan Aruch*, *Choshen Mishpat* 25.

H-5: Omitting *Tachanun* in the Presence of the Recently Remarried

Question: We had a *chatan* (groom) in *shul* during the week after his wedding, so we omitted *Tachanun* on a weekday and *Av HaRachamim* on Shabbat. Someone suggested this was incorrect because both the bride and groom had been married previously. Who is right?

Answer: A *minyan* omits *Tachanun* in the presence of a *chatan*¹ because it is proper for all to join in the *chatan*'s *simcha*, and *Tachanun*'s subject matter is too morose for happy times.² The *Beit Yosef*³ points out that it is acceptable to omit *Tachanun* because its recitation is regarded as relatively optional.

Generally, a couple is in an especially festive state during the entire *shivat y'mei hamishte*.^{4 5} Nevertheless, the Rama⁶ says that the *chatan*'s presence eliminates the recitation of *Tachanun* only on his wedding day. The *Shiyarei Knesset HaGedolah*⁷ suggests that the Rama intended only that the adjustment does not begin prior to the wedding day, but he agrees that it lasts beyond. In any event, the *minhag* is that *Tachanun* is omitted for the full seven days.⁸

The issue is, as you suggested, that the celebration following a second marriage (even when it is not the remarriage of the same couple) is more limited than one for those marrying for the first

1. *Shulchan Aruch, Orach Chayim* 131:4.

2. *Mishna Berura* 131:23.

3. *Orach Chayim* 131.

4. Seven days of celebration, commonly called *Sheva Berachot*.

5. See *Shulchan Aruch, Even HaEzer* 62:6.

6. *Orach Chayim* 131:4.

7. *Orach Chayim* 131:16.

8. *Ibid; Mishna Berura* 131:26.

time. Generally, there are two main elements to the status of the seven days of *Sheva Berachot*.⁹ Meals in which the couple takes part are considered festive, warranting the special *berachot* from which the period receives its colloquial name.¹⁰ Additionally, the husband must be with his wife, refrain from work, and provide her with an atmosphere of *simcha*.¹¹ The *berachot* are recited when either newlywed is in his or her first marriage. However, when both of them had been married before, the *berachot* are recited for only one day.¹² The required period of providing a special atmosphere of *simcha* is a minimum of three days, but not more if both spouses were previously married.¹³ There is a *machloket* whether a first-time groom dedicates three or seven days to his previously married bride.¹⁴

For how many days should there be an exemption from saying *Tachanun*? It is generally agreed that when at least one spouse is in a first marriage, there is no *Tachanun* for seven days, as all seven are considered days of festivities, as is evident from the *berachot*.¹⁵ If both were previously married, although there is only one day of *sheva berachot*, the fact that they are to be happy together is sufficient to omit *Tachanun* for three days.¹⁶

*HaElef Lecha Shlomo*¹⁷ explains that a *chatan* eliminates *Tachanun* from the *davening* for an entire *shul* because he is like a king. He posits that the comparison is due to the fact that the ascent

9. *Sheva Berachot* can refer either to the days of celebration after a wedding, to the individual festive meals during this period, or to the seven blessings recited after those meals. We write the former in upper case and the latter two in lower case.

10. *Shulchan Aruch, Even HaEzer* 62:6.

11. *Ibid.* 64:1.

12. *Ibid.* 62:6. The commentaries *ad loc.* discuss what is included in this “one day.”

13. *Shulchan Aruch, Even HaEzer* 64:2.

14. *Ibid.*

15. *Mishna Berura* *op. cit.*

16. *Ibid.*

17. *Orach Chayim* 60.

of a person to either status causes his sins to be forgiven, and, as is evident from the *gemara*, this applies even in a remarriage.

The *Chesed L'Avraham*¹⁸ also adopts the comparison to a king, but applies it differently and arrives at a contrary decision. A king's special status finds expression in *halacha* in that he is unable to relinquish his right to be honored. Similarly, a first-time couple has an independent status that cannot be relinquished. Consequently, the *chatan* brings the whole congregation along with him. In a second marriage for both, the bride can waive the Rabbinically imposed obligation for the *chatan* to create *simcha* for her.¹⁹ Therefore, in this non-objective state of *simcha*, the *chatan* cannot bring others along. The *Chesed L'Avraham* rules then that only if the *minyán* takes place at the celebration itself would *Tachanun* be omitted. The *Mishna Berura*²⁰ does not accept the *Chesed L'Avraham's chiddush*. Some other contemporary *poskim* do not rule conclusively on the matter.²¹

In summary, in the case you refer to, it was appropriate to forgo *Tachanun* for three days. When *Tachanun* is left out, *Av HaRachamim* and *Tzidkatcha*, at their respective times, follow suit.²²

18. I, *Orach Chayim* 10.

19. Rama, *Even HaEzer* 64:2; see *Beit Shmuel* 64:1.

20. Op. cit.

21. *Nitei Gavriel* 53:6; *HaNisuin K'Hilchatam* 17:85.

22. See *Shulchan Aruch, Orach Chayim* 292:2, and Rama, *Orach Chayim* 284:7.

Section I:
Monetary Law

I-1: Responding to a Nondescript Summons to *Beit Din*

Question: I have a monetary dispute with someone, which I have tried to settle through compromise. Last week, I received a *hazmana* (summons) from a *beit din* to appear on a certain date as a defendant. I am not sure that I want to use that particular *beit din*, and I also do not know the extent of the claim. If it is reasonable, I may pay to avoid a *machloket* and a headache. Do I have to come to the *beit din* that summoned me without any conditions, as their letter implies?

Answer: Your attitude is commendable in several ways. You are willing to compromise to avoid litigation, recognizing that it is usually unpleasant for both sides, and you seem aware of the fact that any adjudication should be before a *beit din*, regardless of your chances to win.¹ We wish more people had your approach, and we are happy to share the *halachot* regarding your situation.

Regarding the choice of a *beit din*, if the sides have different preferences because they live far from each other, the defendant has precedence.² When the lack of agreement has to do with the sides' feelings towards the different *batei din*, the accepted practice is also to prefer the *beit din* chosen by the defendant.³ However, neither side can force the other to accept a *beit din* that he opposes. Rather, in the case of inability to agree on a *beit din*, the system of *zabla*, in which each party picks a *dayan* and the two *dayanim* select a third, is employed.⁴

There are two primary limitations on invoking *zabla*. One is that if there is a “set *beit din*,” whose authority is accepted above that of any other *beit din* in the area, the set *beit din* has

1. See *Choshen Mishpat* 26.

2. Rama, *Choshen Mishpat* 14:1.

3. See *Netivot HaMishpat, Chiddushim* 14:12; *Shut HaRama* 104.

4. *Shulchan Aruch, Choshen Mishpat* 3:1.

jurisdiction.⁵ This situation is generally uncommon in major, contemporary Jewish communities.⁶ Additionally, if the *beit din* that sent the summons feels that one party's "*zabla dayan*" is unfit to serve in that role, they can disallow him.⁷ (In practice, *zabla* panels nowadays often cause a host of problems, and unless it can be done properly, it should be avoided.)

In any case, the staff of the first *beit din* act as the "point men" until a valid panel is chosen for the purpose of binding adjudication. You should respond to them promptly and respectfully and follow their procedural instructions unless there is a reason to suspect their basic credentials. Although you need not accept them to hear the case, it is not necessarily wise to discount them as a possibility just because the other side turned to them.

In theory, Halacha does not require a *hazmana* to contain any more information than the identity of the plaintiff and the *beit din* and the time and place of the hearing.⁸ In practice, many *batei din* expect the sides to present their respective claims and counterclaims in significant detail prior to the hearing in order to make matters run more smoothly. The question arises when the defendant demands information that the plaintiff is unwilling to divulge before the hearing. The *B'er Sheva*⁹ infers from the concept that "one does not divulge all of his claims outside court"¹⁰ that one is not required to divulge any details of his claim. The rationale is to not allow the defendant time to fabricate a defense. The *Shach* deflects the *B'er Sheva*'s proof and explains that a

5. Rama ad loc.

6. Our mentor, HaRav Shaul Yisraeli, posited that the Israeli government *batei din* have a status of set *batei din*, each one in its region (*Mishpetei Shaul* 40). However, since then the Israeli Supreme Court has taken away the ability of these *batei din* to adjudicate, even by agreement of the sides, in monetary law in cases out of their jurisdiction. Therefore, they are no longer factors in such cases.

7. Ibid. 13:1.

8. See *Halacha Pesuka*, *Choshen Mishpat* 11:(7).

9. Cited by the *Shach*, *Choshen Mishpat* 11:1.

10. *Bava Batra* 31a.

defendant has the right to know something about the case so that he can consider complying with the plaintiff's demands rather than go to court. Most *poskim*¹¹ accept the *Shach*'s opinion.

How much detail must the plaintiff divulge as a response to the defendant's demands for information? Does it apply to the amount of money, as you inquire? The *Shach*'s reasoning certainly applies to the amount of money in question, which is crucial information for the defendant in order to determine whether he will bother with adjudication. In fact, the *Urim*¹² says that even those who do not accept the *Shach*'s opinion agree that the plaintiff must at least divulge the amount of the claim. It also follows that the plaintiff needs to tell the defendant what event allegedly made him financially obligated so that he can make an informed decision. The plaintiff certainly does not have to divulge his evidence.¹³

In summary, while the *beit din*'s *hazamana* appears legitimate, you can ask to go to a different *beit din*,¹⁴ and you can make your response dependent on knowing the extent of the plaintiff's demands.

11. Including the *Netivot HaMishpat, Chiddushim* 11:1; see *Pitchei Teshuva* 11:4.

12. 13:1.

13. *Shach* op. cit.

14. Or choose a *zabla* panel, which, again, we would discourage under most circumstances.

I-2: The Morality of Searching for a Thief

Question: In our religious summer camp, some items were apparently stolen, and there were grounds to suspect a specific camper. We considered searching the camper's belongings to try to catch him, return the stolen objects, prevent future thefts, and perhaps educate the offender. We decided not to do the search, but could we have?

Answer: This type of case entails psychological and educational issues that must be addressed by those familiar with the specific dynamics. We will concentrate on the halachic principles.

Moving a person's possessions around while searching does not constitute stealing. Stealing is defined as taking something **away from its owner**, even temporarily,¹ or **using it** physically without permission.² Simply moving an object to another place where its owner maintains access to it is not stealing.

However, going through another person's belongings compromises his right to privacy, a right that Halacha defends. The *gemara*³ discusses in detail the concept of avoiding *hezek re'iya* (damages by seeing sensitive matters). Rabbeinu Gershom placed a *cherem*⁴ on reading a friend's letters without permission. According to many *poskim*, the prohibition to do so preceded the *cherem*, which just strengthened the matter.⁵

May one invade a thief's privacy in order to catch him? As a rule, one may take the law into his own hands to **legitimately** protect his interests. One who recognizes his stolen object in the thief's property may enter the property and take it forcibly, if

1. Rambam, *Gezeila* 1:3.

2. *Ibid.* 3:15.

3. First *perek* of *Bava Batra*.

4. Ban, which includes elements of a curse on one who violates it.

5. See *Encyclopedia Talmudit* on *Cherem Rabbeinu Gershom*, chapter 18.

opposed.⁶ Presumably, this allows suspending other “civil rights” of the thief, including his privacy.

The *Chikekei Lev*⁷ leaves as an unsolved question whether *beit din* can allow one to read a letter that he suspects contains improper, damaging information about him in order to know how to act. The prominent *dayan* Rav Shlomo Daichovsky⁸ discussed the matter regarding listening devices. He maintains that the *Chikekei Lev* would rule that one who has strong grounds to expect being damaged can use such a device to protect his interests. He says that this is all the more true when one has the opportunity to prevent another person from sinning. In our case, it is a sin to possess stolen goods or to steal more, and the camp staff might have been able to facilitate the youngster’s receiving the counseling that he apparently needs.

One problem is that barring definite knowledge of the suspect’s guilt, one could be acting improperly toward the innocent. However, we have precedent in this regard, as well. The *gemara*⁹ tells of Mar Zutra, who suspected a certain *yeshiva* student of stealing a silver goblet. The suspicion was based on the fact that he saw that the student showed disregard for someone else’s property. Mar Zutra physically pressured the student until he admitted to the crime. We thus see that circumstantial evidence that spawns strong suspicions may be used as the basis to take harsh measures to corroborate the suspicions. The *Panim Meivot*¹⁰ cites Talmudic precedents and more recent rulings regarding taking physical steps based on strong suspicions.

Another issue is that it is classically the one with the personal interest who may take steps to protect himself, whereas others should not.¹¹ However, this is apparently intended to prevent

6. *Bava Kama* 27-28; *Shulchan Aruch, Choshen Mishpat* 4:1.

7. I, *Yoreh Deah* 49.

8. *Techumin*, vol. XI, pp. 299-303.

9. *Bava Metzia* 24a.

10. II:155.

11. See *Halacha Pesuka, Dayanim* 4:16.

people who should not be involved from “sticking their noses in” without judicial authority. In our case, the opposite is true; it is improper to allow a victim to act based on his suspicions alone.¹² The camp’s responsible staff members, who are mandated to supervise the campers’ welfare and conduct, are the proper people to be involved.

Thus, if the staff’s higher echelon, in consultation with its rabbi(s), were **convinced** that the suspicions justified a search, they could have halachically performed one. (We would urge those involved in such cases to consult legal counsel regarding the legality of their actions according to the law of the land, as well as to consider all relevant concerns.)

12. See warning in *Chafetz Chayim, Lashon Hara* 7:14.

I-3: Buying From the Store that Ordered an Item for You

Question: I have been looking for a specific *sefer* that a rabbi of mine needs, and I have gone to a few stores that did not have it. I called a store with limited hours, whose owner offered to try to order it. Meanwhile, I am pressed for time, and today I will be in Meah Shearim, with its many *sefarim* stores, before the store I mentioned opens. Can I try to buy the *sefer* in Meah Shearim, or am I bound to give a fair chance to the one who said he would order it?

Answer: When two people not only agree on a sale in theory but also make a valid *kinyan* (act of acquisition), neither side can back out of the deal. When money is paid for a movable object but no valid *kinyan* is made, it is possible for either side to back out. Nevertheless, whoever backs out is subject to a severe, curse-like sanction, known as a *mi shepara*.¹ If each side only gives his word, R. Yochanan and Reish Lakish disagree as to whether there is a moral obligation, known as *mechusar amana* (lacking credibility), to go through with the sale.² We accept R. Yochanan's opinion that such an obligation exists.³ At first glance, we would say that if you **agreed** to buy the *sefer*, you should follow through, but if you just indicated that you would **likely** buy the *sefer* if he receives it, you need not.

However, there are other halachic factors to consider. For this investigation, we presume that the parameters of *mi shepara* and *mechusar amana* are similar. Perhaps *mechusar amana* applies only in a case in which a *kinyan* was possible but was not yet carried out. In your case, in contrast, the storeowner did not own the *sefer* and thus ostensibly could not transfer it, and the matter

1. *Bava Metzia* 44a.

2. *Ibid.* 49a.

3. *Shulchan Aruch, Choshen Mishpat* 204:7.

might thus be too far removed from a *kinyan* for any obligation to exist. The Rosh⁴ seems to present precisely this point. In contrast, the Rambam⁵ asserts that if one paid for an item that the seller does not yet possess and it has a set price, the seller must acquire it on the buyer's behalf or be subject to a *mi shepara*. The *S'ma*⁶ explains that this refers to a situation in which the object is readily attainable, and the seller's commitment to see the deal through can therefore be expected to be sufficiently serious.⁷ The *Shach*,⁸ though, writes that there is always a *mi shepara* after paying for an object, even if it was not readily attainable at the time. It sounds like the *sefer* that you are looking for is hard to come by. Therefore, if you agreed to buy the *sefer*, whether the agreement created an obligation or not would depend on these *machlokot*.⁹

There is also a *machloket* regarding whether it is *mechusar amana* to back out when the item's going rate changed after the agreement.¹⁰ The logic of the lenient opinion is that the moral obligation on someone to keep an oral agreement applies only when there is no compelling reason to back out of it. According to this view, one could deliberate whether your need to obtain the *sefer* without delay is a comparably compelling excuse to back out of the agreement.

There may be another reason to exempt you from going through with the purchase. If you did not agree on a price, then irrespective of issues of availability, the agreement is not yet complete, and it is not *mechusar amana* to not go through with

4. *Shut* 102:10.

5. *Mechira* 22:3, accepted by the *Shulchan Aruch*, *Choshen Mishpat* 209:6.
6. 209:23.

7. See *Kesef Mishneh* on Rambam op. cit.

8. *Choshen Mishpat* 209:13.

9. See *Pri Yitzchak* I:50.

10. Rama, *Choshen Mishpat* 204:11. The Rama prefers the stringent position, that one should still not back out of the agreement, but the *Shach* (ad loc. 8) and the *Netivot HaMishpat* (ad loc., *Chidushim* 10) are not certain that this is correct.

the purchase.¹¹

A reasonable question is whether you must compensate the storeowner for buying the *sefer* based on your request. It is far-fetched to say that he was acting as your agent if and when he bought it. However, spending money based on another's assurance may at times obligate the assurator to compensate. For example, if Reuven asked Shimon to make something for him, which he did, and in the event that Reuven does not take the object, it will cause Shimon loss, Reuven has to pay for the loss Shimon incurred.¹² It is far from clear that this applies in your case, however, because if there is a market for the *sefer*, it likely will not be a loss for the storeowner to order it, even if you do not buy it.

In summary, you are not required to buy from the store that intended to order the *sefer* for you. Nevertheless, all things being roughly equal, you should try to keep your word, or at least inform the storeowner not to order it for you (as it might not be too late), apologize, and allow him to raise a grievance that perhaps we are unaware of.

11. *Pitchei Choshen, Kinyanim* 1:2.

12. *Shulchan Aruch, Choshen Mishpat* 333:8.

I-4: Difficulty Returning Objects Left Behind

Question: I rent out an apartment, primarily for tourists for short stays. Often when I straighten up after they have left, I find articles of varying values left behind. I have spent numerous hours tracking down people and figuring out how to return items, many of which I know they do not care about. Do I have to continue expending funds (e.g., mailing, phone calls) and especially devoting an excessive amount of time?

Answer: First, we commend you for doing the *mitzva* of *hashavat aveida*¹ so diligently. It is possible that some of the returning was unnecessary (for reasons beyond our scope), but one of the major Talmudic sources about the appropriateness of acting beyond the letter of the law discusses specifically the *mitzva* of *hashavat aveida*.²

The letter of the law in this area is quite demanding, applying even to an object worth a *peruta* (a few cents) and not clearly limiting the amount of toil one needs to expend.³ You may demand compensation for related expenses and lost revenues,⁴ but we doubt that you feel comfortable doing so. However, the essence of the *mitzva* is to help others, and at times the amount of effort is disproportionate to the recipient's benefit, to the extent that it is likely that he would not have wanted you to bother. It seems that in cases in which this is likely but not clear enough to rely upon, the spirit of the law is that you should not have to bother, although the *mitzva* technically still applies. We bring up the spirit of the law, which cannot allow one to compromise the letter of the law, because when the spirit does not apply, it is acceptable to use a

1. Returning lost objects.

2. See *Bava Metzia* 30b.

3. See *Pitchei Choshen, Aveida* 8:1.

4. *Shulchan Aruch, Choshen Mishpat* 265:1.

valid halachic device to exempt oneself from the *mitzva*, as we will discuss.

Often, *shuls* are inundated with unclaimed objects left behind, many of which will never successfully be returned to their owners.⁵ Many institutions deal with the problem by posting signs stating that items that remain unclaimed for *x* days will be deemed *hefker*,⁶ and in fact, several prominent *poskim* have advised using this method.⁷ We propose that you use the same concept with some twists. In your case, in which it is relatively easy to track down some owners, it seems wrong to make the matter a function of time alone. Rather, we suggest writing in a lease or stating clearly to the renters before they occupy the apartment the following: “Anything that is worth less than \$20 and apparently has no sentimental value will be held for two weeks. The renter exempts the landlord from making efforts to report finding such items and/or returning them, and the renter hereby relinquishes ownership of them as of two weeks after the end of the rental.” For more valuable or important items, you should continue extending yourself, when necessary, to fulfill the *mitzva* properly.

Let us briefly explain the mechanism of this provision. The *gemara*⁸ discusses the action taken by a person who did not want the poor to unknowingly be obligated in tithes if they took more produce than the laws of *matnot ani'im*⁹ allowed. He therefore declared in the morning that whatever extra produce the poor would take was *hefker* retroactively to the moment of the declaration.¹⁰

5. See our treatment of elements of this topic in *Living the Halachic Process* III, I-12.

6. Ownerless.

7. *Igrot Moshe*, *Choshen Mishpat* II:45; *Minchat Yitzchak* VIII:146; *Shevet HaLevi* IX:308.

8. *Bava Kama* 69a.

9. The produce that its owners are to give to the poor or let them take.

10. Tithes do not apply to produce that the poor are entitled to take or is ownerless.

The complication is that it is not clear which part of what they took was extra, and thus slated for *hefker*. Therefore, *bereira* (retroactive determination) is needed for the *hefker* to take effect, and the efficacy of the declaration consequently depends on the *machloket* among *Tanna'im* regarding whether *bereira* works.¹¹ We rule that *bereira* does not work in regard to Torah laws.¹² How, then, can one be *mafkir*¹³ an undetermined object that will be lost to exempt the finder from the Torah law of *hashavat aveida*? The answer is that *bereira* applies only when the determination must take effect retroactively.¹⁴ If, however, the *hefker* can take effect later on, at the time the matter is determined (i.e., after *x* days, we know which items remain unclaimed), it works.¹⁵

Our formula above also includes an exemption from *hashavat aveida* prior to the *hefker* so that you should not be required to make efforts to return apparently unimportant items during the two weeks. This is based on the rule that the intended recipient of a *mitzva* between man and man can exempt another from performing the *mitzva* on his behalf.¹⁶

11. Ibid.

12. *Beitza* 38a.

13. Make *hefker*.

14. In the case of the poor people described in the *gemara*, for example, the exemption of tithes must be from before the objects were taken.

15. *Tosafot*, *Bava Kama* 69a; see *Shut HaRashba* II:82.

16. See *Tosafot*, *Sh'vuot* 30b; *Shut HaRashba* I:18.

I-5: Damages to a Borrowed Chair on Purim

Question: My friend borrowed chairs from me for his Purim *seuda*. One of his guests, while intoxicated, jumped on a chair and broke it. Does one have to pay for damages he causes during *mitzva*-sanctioned reveling?

Answer: We need to address two issues: 1) Does the damager have to pay? 2) Does your friend, who borrowed the chairs (a *sho'el*¹) and is thus responsible for damages to them, have to pay? We must point out that we cannot rule conclusively regarding a specific case without being authorized to hear the claims of each side. We will simply discuss certain basic principles.

Damages on Purim: The *mishna*² tells of the practice that on the last day of Sukkot, adults would joyously grab *lulavim* from youngsters. *Tosafot*³ and others derive from this that when the practice at some occasion is to act out of appropriate joy (such as at a wedding) in a manner that causes damages to others, those responsible are exempt from paying for resulting damages. The Rama⁴ applies this rule to damages that result from reveling on Purim. This is apparently based on the assumption that when people are acting according to the accepted practice to act wildly, there is an implied *mechila* (relinquishing of rights to payment) should damage occur.⁵ Accordingly, *poskim* delineate certain logical limitations on this exemption, such as that the damage was

1. Of the four categories of “watchmen” of objects entrusted to them, the *sho'el* (borrower) has the most demanding obligations.

2. *Sukka* 45a.

3. Ad loc.

4. *Orach Chayim* 695:2.

5. See *Pri Megadim*, *Eshel Avraham* 695:7.

unintentional⁶ and not too great.⁷ Although the *Aruch HaShulchan*⁸ says that it is no longer acceptable to act on Purim in a way that activates the exemption, this appears to be a minority opinion. In our case, therefore, the reveler who unintentionally damaged a single chair on Purim is apparently exempt.

The *Sho'el's* Obligations: One who borrowed an object is obligated to pay for it if it disappeared or was broken even *b'oness* (under circumstances beyond his control). The *gemara*⁹ posits that an exception to this obligation is a case of *meita machamat melacha*, if the object broke (literally, [the animal] died) due to the use for which it was borrowed. One could claim that since the chair was meant to support a person and it broke under those circumstances, the *sho'el* should be exempt. On the other hand, *meita machamat melacha* applies only when the object was used responsibly, not abused (e.g., by jumping on it).¹⁰

We must therefore determine the extent of the exemption of *meita machamat melacha*. The *Shulchan Aruch*¹¹ accepts the Ramah's¹² approach that the main principle is that the damage occurred during the course of regular work, regardless of the cause. In our case, the chairs were in the midst of being used at the festive meal, and thus it would seem that the exception should apply. However, the Rama¹³ rules like the Ramban¹⁴ that the reason for the exemption is that we can "blame" the owner of the object for giving the *sho'el* something that cannot withstand the job it was given to do. When the object does not fail to withstand its designated task, the borrower remains obligated to pay. The

6. *Mishna Berura* 695:14.

7. *Ibid.*:13.

8. *Orach Chayim* 695:10.

9. *Bava Metzia* 96b.

10. *Shulchan Aruch, Choshen Mishpat* 340:1.

11. *Choshen Mishpat* 340:3.

12. The Spanish *Rishon*, Rav Meir HaLevi Abulafia.

13. *Ad loc.*

14. *Bava Metzia* 96b.

*Shach*¹⁵ accepts the latter ruling. In the case at hand, it is difficult to blame the chair owner, as chairs are not meant to withstand adults jumping on them. Thus, the ruling in our case seems to depend on the *machloket* between these opinions.

In addressing damages during reveling, the *Levush*¹⁶ raises the possibility that when one lends something to be used during wild activities, when it is likely to get damaged, *meita machamat melacha* might apply. This would be another reason to exempt your friend. However, the *Levush* is talking about a situation in which the borrowed object is in the “direct line of fire.” In our case, while many people act uncharacteristically wild on Purim, the aims are not usually focused on chairs used in the *seuda*.

In the final analysis, it is far from clear that a *beit din* would obligate your friend, the *sho'el*, to pay. However, if he is willing to pay, you can feel free to accept payment, as this is likely in line with several halachic sources.

15. *Choshen Mishpat* 340:5.

16. *Choshen Mishpat* 378:9.

I-6: Responsibility for Damage by Mysterious Fire

Question: [*The following is adapted from part of a din Torah ruling under our beit din's auspices in which this author sat as a dayan.*] Reuven hired Shimon to move household items. Due to the large quantity of items, in addition to the moving truck, Shimon used a trailer-car that was pulled along. The packers improperly put more and heavier objects in the trailer than in the truck, apparently beyond its legal weight. This could have caused the tires to blow out and increased the likelihood of an accident, which would have caused minimal damage to the load, considering that it contained primarily non-breakable items. Instead, during the drive, a fire broke out in the trailer, which destroyed almost all of its contents within minutes, despite diligent efforts to put out the fire and save the items. Neither side was able to provide a logical explanation for how the fire started. Does Shimon's negligence (*p'shiya*) regarding one element of his work obligate him to pay for a likely unrelated eventual damage?

Answer: A fire that could not have been anticipated and/or prevented by reasonable care is an *oness* (extenuating circumstance), for which even a *shomer sachar* (paid watchman) like Shimon is exempt from paying.¹ There is a major *machloket* with regard to a case in which a *shomer* was negligent in guarding an object, but the damage eventually came about through an *oness*. The topic is called *techilato b'pshiya v'sofo b'oness*. The *halacha* is that in a situation of *techilato b'pshiya v'sofo b'oness*, the *shomer* is obligated to pay² provided that there is a **chance** that the damage, unexpected as its manner ended up being, would not have happened had the *shomer* not been negligent.³

1. *Bava Metzia* 93a.

2. *Shulchan Aruch, Choshen Mishpat* 291:6.

3. *S'ma* ad loc. 10.

In our case, the fire does not seem to have been related to the overloading of the trailer. However, had the **extra items** that were improperly placed in the trailer been placed in the truck, as they should have been, they would not have been destroyed, as the fire did not get into the truck. The simple rules of *techilato b'pshiya v'sofa b'oness* would thus seem to obligate Shimon.

It is possible, however, that the halachic logic of obligating *techilato b'pshiya v'sofa b'oness* affects the degree of the obligation. Why should one pay for damages that were related to the *p'shiya* only by chance and not in a predictable manner? The two main possible answers are as follows. 1) When one is negligent, he becomes conditionally obligated financially. He is off the hook if no damage results or if it occurs in a manner totally unrelated to the *p'shiya*. However, when something he is marginally responsible for occurs, the *p'shiya* that had previously obligated him comes into play. 2) An *oness* that happens in the aftermath of a *p'shiya* is a continuation of the *p'shiya*, which obligates him. Thus, at the time of the damage, he is obligated by his *p'shiya*.

The practical difference between these two explanations could be in a case like ours, in which the potential damage resulting from the *p'shiya* would have been relatively limited in comparison to the damage caused by the eventual *oness*. According to possibility #1, the monetary obligation should not exceed that which should have resulted from the *p'shiya*, which, in our case, is minimal. According to #2, the eventual damage should be considered a result of the *p'shiya*, and it obligates Shimon fully.

*Tosafot*⁴ posits that if one did a *p'shiya* in which he would have shared responsibility with another and then an *oness* happened that related to him alone, he pays no more than he would have for the *p'shiya*. Rav Soloveitchik⁵ and Rav Y.M. Charlop⁶ explain *Tosafot*'s position as being based on possibility

4. *Bava Kama* 23a.

5. R. Reichman's *Notes to Lectures, Bava Kama* p. 168.

6. *Beit Z'vul, Bava Kama* p. 62.

#1. In other words, the obligation stems directly from the *p'shiya* and therefore cannot exceed the financial liability that the normal aftermath of the *p'shiya* would have brought about. We have not found anyone who explicitly disagrees with *Tosafot*. Yet, there are indications that others feel that possibility #2 is correct. R. Akiva Eiger⁷ understands that Abayei and Rava dispute which approach is correct and that Rava, according to whom we *pasken*, posits #2. The *Netivot HaMishpat*⁸ assumes that we estimate the damaged object's value according to the time of damage, not that of the *p'shiya*, which also might be an indication that he views the matter like #2. [*Further deliberation and application in this complicated ruling is beyond our scope.*]

7. To *Bava Metzia* 36b.

8. 291:13.

I-7: Was Payment Made?

Question: In my *yeshiva*, there is a *madrich*¹ who is the middleman between a laundromat and students; he pays the laundromat and is reimbursed by us. He keeps a ledger of how much we owe, and we usually pay after they return the laundry. He then crosses out the entry in the ledger. Recently, I used the system and although I am sure that I paid, he did not erase the debt. (I think the ledger was not available when I paid.) He is certain that I did not pay. Must I pay a second time, as he requests?

I am asking this with my *madrich*'s blessing. While we may work things out on our own, we want to know the *halacha*.

Follow-Up Questions: 1) When a student incurs a debt, does the student sign to this on the ledger? 2) Did anyone see you incur this debt or hear you admit to owing money prior to your claim that you paid? 3) Does the *madrich* have a policy that one who owes the money is responsible to ensure that the debt entry is erased? 4) Is the *madrich* paid for this service?

Response to Follow-Up Questions: 1) There are no signatures; we trust him to record things accurately, and he trusts us not to deny it. 2) As far as we know, no one saw me incur the debt. 3) There is no stipulation about the rules of the system. He usually takes care of the matter promptly. 4) He does not get paid.

Answer: We cannot give a formal ruling on a monetary case without hearing the two sides present their cases formally, but we will present what Halacha says about this **type** of case. We will not address all the possibilities, i.e., had your answers been different. Your answers, in fact, make the matter **relatively** straightforward.

There is a *machloket* in the *gemara*² regarding whether a

1. Dorm counselor.

2. *Bava Kama* 118a.

plaintiff who is certain that a defendant owes him money can extract it when the defendant is unsure whether he was ever obligated. We rule that the defendant is not **required** to pay the claim.³ If there was a definite debt at some time and the plaintiff is sure that it still exists, whereas the defendant is unsure whether he paid, then he must pay.⁴ However, when the defendant is confident that he does not owe the money, he is exempt from paying, whether he claims that he never incurred the debt or, as in your case, he says that he paid the debt. This is so even if there are witnesses that the defendant once owed the money and he maintains an unproven assertion that he paid.⁵

How, then, can someone who is lending money, even in the presence of witnesses, ensure that he will be paid? There are a few options. He can tell the borrower at the time of the witness-observed loan that he must pay in front of witnesses.⁶ Better yet, he can draw up a *shtar* (contract). This document does not have to be very complicated, but must state the basic facts and be signed by witnesses.⁷ The borrower then has the choice to have the *shtar* ripped up when he pays, make sure that witnesses observe the payment, or have a valid receipt drawn up. However, in your case, there was no IOU⁸ or contract of any sort (or even witnesses). Therefore, it is clear that you are not halachically obligated “**straight out**” to pay.

That being said, when a monetary dispute comes down to one person’s word against another’s, the defendant must take a Rabbinic-level oath (known as a *shvu’at heset*) that he does not

3. *Shulchan Aruch, Choshen Mishpat 75:9.*

4. *Ibid.*

5. *Shulchan Aruch, Choshen Mishpat 70:1.*

6. *Ibid 3.*

7. Regarding a simple, signed IOU, there is a major *machloket* among the authorities whether the obligated person can claim successfully that he paid; see *Shulchan Aruch* and Rama, *Choshen Mishpat 69:2*, and the commentaries ad loc.

8. Since you did not sign on the ledger.

owe the money.⁹ However, the widespread *minhag* of *batei din* is to not administer oaths. As an alternative, a *beit din* has the authority to impose a compromise in which the oath is “redeemed” with a payment of under fifty percent, but one that is often significant.¹⁰ The logic of warranting some payment is certainly strong in a case like yours, in which you do not question your *madrich*’s honesty (although he does not question yours either), and in which, according to the way the ledger system normally works, you seem to be expected to pay.

We would add that it seems somewhat morally problematic for people to make free use of your *madrich*’s efforts on the group’s behalf and leave him with the possibility of losing out on money when questions of this sort come up. (Note that either of you could be remembering wrong.) Going so far as to better protect himself legally would likely be unpleasant for all involved. Therefore, the **noble** thing for you to do would be to pay at least most of the money.

9. *Shulchan Aruch, Choshen Mishpat 75:7.*

10. The determination of that percentage can be based on a combination of both objective and subjective factors.

I-8: A Roommate Paying for Failing to Lock the Door

Question: My roommate, Reuven, and I disagreed regarding whether it is necessary to lock our dorm room when leaving, and he often does not bother or remember to do so. Recently, some things were stolen from our room after he left it unlocked. I think he should pay me for them, as his attitude was proven overly optimistic at my expense. While I am not going to sue him, I would like to know if I have a right to ask him for compensation.

Answer: We are not giving you a rigorous answer because we may be lacking pertinent information that your roommate might provide. His version of the story, which we have not heard, may present a different perspective. We do not know whether the analysis that follows is the way *dayanim* who might investigate the **whole story**, taken from the two sides, would view it, and we must also instruct you not to cite to your friend what we will write below as being the *halacha* in this case. Rather, the question for present discussion is whether you have grounds to **ask** for payment as one who **might** have a financial and/or a moral claim.

First, let us evaluate whether Reuven – who, as a roommate, was able and arguably responsible to help guard your items to a certain extent – should be obligated to pay as if he were a negligent *shomer* (watchman). In general, one does not become obligated as a *shomer* unless he accepts responsibility for the items in question. It is not sufficient for one to simply be aware that someone left an object in his proximity.¹ Under normal circumstances, one would not assume that roommates take the responsibility of a *shomer* upon themselves, as each is responsible for his own property.

However, it is possible to argue that there are grounds for obligation similar to that of a *shomer*. The Rambam² says that

1. *Bava Metzia* 81b.

2. *Sechirut* 2:3.

even in cases in which the laws of a *shomer* do not apply (e.g., guarding land), one is still obligated to pay for loss or damage caused by his negligence, because “negligence is like damaging.” We can similarly suggest that the negligence of not locking the door obligates Reuven, even if he did not have the responsibility of a *shomer* and did not actively damage your property. The *Shulchan Aruch* and the Rama³ cite the Rambam’s view only as a minority opinion, although the *Shach*⁴ does accept it as *halacha*.

In any case, commentators⁵ say that the Rambam’s position is only tenable when one accepted the responsibility of being a *shomer*. In that case, the moral obligation to watch exists, although without a *shomer*’s standard halachic monetary obligations. Accordingly, one who fails to guard on the most basic level must pay the price. However, in your case, Reuven never promised to guard.⁶ In short, it is unlikely that a *beit din* would extract money from Reuven under the laws of *shomrim*.

A different avenue to explore is the laws of damages. There is a *machloket* regarding whether one is obligated to pay if he broke open his friend’s door and, in so doing, his friend’s animal escaped.⁷ The *Yam Shel Shlomo*⁸ says that even the view that obligates payment in that case does so because felling the door that holds back an animal is like removing the animal itself. In contrast, if one opens a door that allows a thief to come in and steal, he only introduces a new, **potential damaging factor**. The latter is *gerama* (indirect damage), and one is not financially obligated, although there is likely a moral obligation to pay for

3. *Choshen Mishpat* 301:1.

4. *Choshen Mishpat* 66:126.

5. *Ibid.*; see opinions and analysis in *Kehillot Ya’akov, Bava Metzia* 34 (30 in original edition).

6. One could contend that roommates have a relationship of interdependency and responsibility, which makes Reuven responsible on some level, but this is a difficult distinction to make.

7. See *Shulchan Aruch* and Rama, *Choshen Mishpat* 396:4.

8. *Bava Kama* 6:3.

the loss.⁹ Our case is even more lenient for Reuven, as he has every right to open the door. The problem was his failure to lock it later, which is not an act of damage, but only a failure to protect. Thus, on these grounds, as well, it is difficult to obligate Reuven.

A final relevant category, which is a mix of the two above, is *nizkei sh'cheinim* (damages between neighbors). The Tur¹⁰ cites a *machloket* between the Ramah (obligates) and the Rosh (does not obligate) regarding one who does not fence off his property, thereby allowing robbers to come in and steal from his neighbor. The Ramah¹¹ compares this to the case in which neighbor A owns a wall separating his field from that of neighbor B, and B informs A that the wall fell down and that the intermingling of their different crops will render them forbidden.¹² In that case, if the owner of the wall does not act, he is financially responsible for the lost crops.¹³ The Rosh¹⁴ counters that in the latter case, the mechanism that creates the forbidden crops begins working immediately, which is why neighbor A is responsible. This is different from the **possibility** that robbers may come from elsewhere at some later time. The Rama¹⁵ cites both opinions, making the matter inconclusive.

In our situation, then, it is far from clear that you have enough halachic grounds to warrant extracting money from Reuven. On the other hand, if the rules of the dormitory require that the doors should be locked, it would be difficult for Reuven to deny all responsibility, certainly on a moral level. Therefore, if the matter is not likely to cause more hard feelings than it is worth, we think it is legitimate for you to raise the matter for discussion and perhaps suggest a compromise with Reuven over payment.

9. See *Bava Metzia* op. cit.; *S'ma* 396:8.

10. *Choshen Mishpat* 157.

11. *Bava Batra* 1:18.

12. Based on the laws of *kilayim* (mixing of species).

13. *Bava Kama* 100a-b.

14. *Bava Batra* 2:17

15. *Choshen Mishpat* 155:44.

Perhaps more importantly, maybe you can try to get him to accept the responsibility to lock the door in the future.

I-9: Systems to Make a Will Binding

Question: I am working on composing a client's will in a manner that it should be halachically valid. He wants the contents of his home to be divided among his children in the following way: They should divide the contents by consensus. Regarding items about which an agreement is not reached, a system of drawing lots should be used, whereby whoever wins the lottery gets the object.

How can this be phrased so that it will be halachically binding, as there seems to be a problem of *bereira* (retroactive determination) when giving objects to an as of yet undetermined person?

Answer: There are four theoretical ways to accomplish the desired end result. We will explore very briefly which ones work and suggest how to proceed most simply.

The manner that you seem to be assuming is that the father will transfer his property during his lifetime to his children with the stipulation that some of the objects will be given to those whose identity will be determined based on some later event (i.e., the drawing of lots). This does indeed appear to introduce an issue of *bereira*. Namely, it is a problem to give something to a person whose identity is yet to be determined. One example is when one gives rights in sharing a *Korban Pesach* only to the son who arrives first in Yerushalayim. This is valid only if one posits that *bereira* is valid.¹

The same objection applies when the people are determined (e.g., all of your client's children), but the specific objects that they will receive are not. An important application is similar to your case. The Land of Israel was divided by lots to the members of the first generation that entered the Land and was divided among inheritors each time a landowner died with more than one inheritor. The *gemara* states that if we hold that *bereira* does not

1. *Pesachim* 89a.

work, we do not say that each inheritor naturally received the part that was destined for him. Rather, each inheritor “sold” his partial rights in the entire estate to his fellow inheritors in return for full ownership in a portion of the estate.² In summary, since we rule that *bereira* does not work in regard to Torah laws,³ the system you had hoped to use is indeed problematic.

There is a concept known as *mitzva l'kayeiem divrei hamet* that indicates that one can, before he dies, create a duty upon his inheritors to follow his instructions regarding dividing his estate. However, while this is more than a moral obligation, it is not a legal transfer of monetary rights; the cases to which this applies are therefore limited.⁴ Thus, this too is not a fully reliable system.

Another potential approach is to give the children all the property as equal partners but impose upon them a certain system of dividing the property. If partners can create conditions for their mutual rights in the partnership, then the one who gives them their joint rights should be able to impose the same conditions. On the other hand, the *gemara*⁵ says that it is too abstract (*kinyan devarim*) for partners to promise to divide property in a manner that is otherwise not halachically prescribed. Since a full explication of this issue is complicated beyond our scope, we will present the following straightforward solution.

The entire idea of a will in which the distribution does not follow the Torah’s standard guidelines (e.g., where daughters receive a portion and the firstborn does not get a double portion) has, for several hundred years, employed a system called a *shtar chatzi zachar*.⁶ (This is probably the basic system upon which the halachic monetary wills you write are based.) It basically works by the father “admitting” that he owes a large sum of

2. *Gittin* 25a.

3. Rambam, *Terumot* 1:20-21.

4. See *Shulchan Aruch, Choshen Mishpat* 252:2.

5. *Bava Batra* 3a; see *Shulchan Aruch, Choshen Mishpat* 157:2

6. See Rama, *Choshen Mishpat* 257:7, whose ruling is a major source for this practice. See text of *Nachalat Shiva, Shtarot* 21.

money (or creating the obligation to that effect) to each of the desired “inheritors.” The obligation becomes payable right before his death and is binding on his inheritors unless they fulfill the distribution instructions that he leaves behind in a written will. The inheritors then choose between paying the large sum and following the instructions. The instructions are not bound by halachic issues such as *bereira* because nobody is **obligated** to carry them out; it only seems that way because this specific part of the will is what people are likely to follow. In reality, however, their fulfillment of the instructions is just an option to get out of paying a simple monetary obligation that already exists. Accordingly, you can use a regular “halachic will” format and clearly specify the instructions to conform to your client’s interests.

I-10: Charging for Incidental Work Not Originally Discussed

Question: I give a handyman a lot of work and pay him at a generous hourly rate, trusting him to report the hours. It has now come to my attention that he charges me for things that I do not think are right. This includes the time he spends asking experts how to do things and the time and “wear and tear” on the car when he picks up things for me. I told him that I thought that those things, which are not his work itself, should be on his account, yet he keeps on charging me. Can he do that after I told him that he should not be charging?

Answer: We cannot give you a definitive answer – not only because we have not heard the handyman’s version of the matter, but also because many of the issues may depend on nuances that we are not aware of. After learning some of the principles, you should be reasonably equipped to work out a system of dealing with past and future questions **through communication** with the handyman.

Most obligations to workers include an agreement in which the employer explicitly or at least implicitly agrees that the worker will be paid for providing a service. However, there is another possibility for which the employer can be obligated, even without agreement, based on the concept of *neheneh* (benefit).

The Rama¹ discusses the case of a person who was in jail along with a friend, and he used his personal resources to secure not only his own release, but his friend’s, as well. The Rama says that if he added resources in order to include his friend’s release or if he made the outlays with both of them in mind, his friend must reimburse him. The Rama then lays out a general rule: “Anyone who does an action or a favor for his friend, [the

1. *Choshen Mishpat* 264:4.

friend] cannot say: ‘You did it for free because I did not tell you to do it,’ but rather he must pay his wages.’ An exception to this rule of payment without agreement is when the service provided is something that is generally done for free.² Thus, if the “extra” things that the handyman did were of value to you and they are the type of things people usually get paid for, you would have to pay. For those things for which you did not ask, you would not have to pay according to your normal pay scale, but rather at a low rate.³

After your initial protest, however, it is possible that your stance improves. The aforementioned Rama discusses a case in which the recipient of the favor said nothing in advance regarding payment. In contrast, you specified that you did not want to pay for the extras. Perhaps that changes matters, and you then would not have to pay.

Although he raises that possibility, the *Pri Tevu'ah*⁴ rules that if the worker intended to get paid and the situation was one of *neheneh*, the recipient has to pay despite his protest in advance about paying.⁵ In contrast, *Shut Mahariya HaLevi*⁶ argues that it does not make sense that one must pay after he told his counterpart in advance that he refuses to do so. The *Pitchei Choshen*⁷ points out that the *Pri Tevu'ah* was talking about a situation in which the recipient expressed **dissatisfaction** at the idea of paying but wanted the work done. The *Pitchei Choshen* asserts that if there were a conclusive **refusal** to pay, all opinions would exempt him.

This distinction is likely pertinent in your case, as you may have only protested but not refused. On the other hand, there is likely a distinction in your favor. The sources above discussed

2. *Pitchei Choshen*, *Sechirut* 8:31, based on *Shut HaRashba* IV:125 and others.

3. *K'zot HaChoshen* 331:3.

4. Cited in *Pitchei Teshuva*, *Choshen Mishpat* 331:3.

5. An exception would arise if the provider of the benefit could be forced to provide the service for free, e.g., if it required no “sacrifice” on his part.

6. 151.

7. *Sechirut* 8:(64).

cases in which the recipient did not want to pay anything. You, on the contrary, are paying for services generously. Therefore, it makes sense to interpret your protest as follows: “As long as I am generous with the rate of pay, I expect you to be generous at not running up the bill by counting incidental time expenditures. If you want to charge for small incidentals, I will pay you at a lower rate for everything. So, if I am paying nicely, you must let certain things go.”

Especially if there are standard practices in these areas of work, one should not generalize all of the charges in one person’s favor or the other’s, but rather should consider each type of charge separately. **Compromise** about the past and **communication** and guidelines for the future are generally best (e.g., he must ask you in advance about certain categories of work).

I-11: Finding a Credit Note

Question: I found a credit note of an (Israeli) supermarket in that supermarket. May I use it?

Answer: First one needs to determine from whom the note likely fell. The *gemara*¹ discusses the case of one who finds a lost item in a store, distinguishing between the part of the store that is frequented by customers and the proprietor's area. If you found the credit note in the customer area, you can assume that it fell from a customer (unless you found it in an area near where the worker's operate), especially considering that credits are usually ripped up after they are redeemed or kept in the register to check the day's proceeds.

Next, we must discuss whether you should try to return the note to the person who lost it. This depends on whether it has a *siman* (a distinguishing characteristic, so that one can prove that it was he who lost it). If the amount of the credit note corresponds to the value of a specific item that was purchased and returned (as opposed to a coupon that is like a gift certificate with a set denomination), then this constitutes a *siman*.² In that case, you should put up a sign in an appropriate place in or around the store, or you should give a customer service worker your phone number in case someone comes to look for the note. If the store is unhelpful or it is clear from the type of store it is that you will not be able to return the note to its owner, you can assume that he will give up hope of finding it. (It would have been nice of you to wait a few moments to see whether someone was looking around the store for it, although this was probably not halachically required.)

Is it permitted and/or moral to use a credit note that the store wrote for a different person? First, we should be aware that the store's guidelines on the use of the note, as well as any pertinent

1. *Bava Metzia* 26b.

2. Based on *Bava Metzia* 23b.

local laws, could make the following analysis moot. If there are no such guidelines or relevant laws, it is important to determine the status of a credit note.

A credit note is, in many ways, like a partially open check of the store (i.e., the recipient is not specified). This type of “document” was prevalent in previous centuries, and the *poskim* called it a *mamrani*.³ It was usually written by a borrower, who gave it to a lender to ease collecting the loan, as he could collect directly from the borrower or sell it to someone else. There is a lengthy discussion in the *Pitchei Teshuva*⁴ regarding the opinions of the *Acharonim* about a case in which a lender was given a *mamrani* and lost it, and he then asked the borrower, who admitted he had not yet paid, to pay him without receiving the *mamrani* in return. One of the main issues was whether the lender could write a *shovar* (receipt) that effectively dictated that whoever would present the *mamrani* to the borrower would not be able to receive payment for it. This would save the honest borrower from potentially paying twice. The *Tzemach Tzedek* is cited as acknowledging a custom that, in such cases, an announcement would be made in the local shul/community that anyone who possessed this *mamrani* of the borrower in question must produce it within a certain amount of time. After that, it would no longer be valid. The *poskim*’s general orientation is that a *mamrani* is not like cash or an object of value, but is rather a device to facilitate the efficient payment of loans, either to the lender or to the person who bought the *mamrani* from him. Accordingly, it would be wrong for a finder of a *mamrani* to seek payment as if he were the lender or one to whom the lender transferred rights.

The perspective is likely much the same for credits at local or small stores, where relationships have been established between the proprietor and at least many customers. Consequently, if a customer said he lost the note, the proprietor is likely to believe

3. This financial instrument has slightly different names in different sources, apparently corresponding to different times and places.

4. *Choshen Mishpat* 54:1.

him and act accordingly. It follows that the note is not like money, which if lost is lost, but is rather a reminder of a debt. In view of this, one who uses someone else's credit note is cheating the store; the proprietor likely honored the credit already in the absence of the note.

In contrast, if one loses the note in a large, impersonal store, he will not receive the credit, and the store will have "gained" by not paying its debt to the customer. Another person who redeems it simply replaces the deserving recipient. If the finder cannot locate the recipient and redeems the note, the recipient does not lose more than he already has lost. In that case, the store is also not losing, because they should be paying anyway; it should not make a difference to whom they pay as long as they will not have to pay twice. The store views their note as something of value that the customer can use or give as a present or sell. Thus, if the finder cannot return the note to the one who lost it and the store will not give him a refund without it, the finder may keep it and use it like one who finds an ordinary object that has no *simanim*.

Glossary

A

Acharonim – the Talmudic and halachic scholars who lived from the 16th century until our days.

Adar D-10 – the month in the Jewish calendar in which the holiday of Purim falls.

afrushei mei'isura C-3, G-5 – the responsibility to distance someone else from sin.

Al HaEtz B-7 – the blessing recited after eating grapes, figs, pomegranates, olives, or dates.

Al HaMichya B-7 – the blessing recited after eating grains not prepared as bread.

al yeshaneh mipnei hamachloket A-7 – a person should not diverge from the practice of the community, in order to avoid conflict.

aliya (pl. – **aliyot**) A-10, A-11, A-13, A-14, F-7 – when a man is called up to the Torah to bless before and after a section of its public reading.

alot hashachar A-1, A-9 – the halachic beginning of the morning, somewhat more than an hour before sunrise.

amen A-8, B-2, B-6, B-9 – the response to a blessing, expressing agreement with its content.

Amen Y'hei Shmei A-8 – an important passage within *Kaddish* in which the community joins the reciter of *Kaddish*.

Amoraim – a rabbinic scholar of the Amoraic period (approximately 200-500 CE).

amot C-14 – cubits; a measurement with applications in several halachic contexts. The standard opinion is that each is

approximately a foot and a half (45 centimeters).

An'im Zemirot A-11 – a song of praise to HaShem sung at Shabbat morning prayers.

aravot D-5 – willow branches, which serve as one of the four species that one is obligated to hold daily during the holiday of Sukkot.

arba minim D-5 – the four species of vegetation that one is obligated to take in his hands during the holiday of Sukkot.

aron (kodesh) A-18 – the closet-like chest in which Torah scrolls are kept.

Asher Yatzar A-17, G-3 – the blessing recited after using the bathroom.

Ashkenazim – Jews of Central and Eastern European origin.

assur b'hana'ah E-1 – an object from which it is forbidden to receive benefit.

atzitz C-11 – a plant pot.

atzitz she'eino nakuv C-11 – a plant pot that does not have a hole in it.

Av D-17 – month in the Jewish calendar, in which we commemorate the destruction of the Holy Temple.

Av HaRachamim H-5 – a prayer in memory of martyrs, recited on Shabbat.

aveirot C-3 – sins.

avel H-1 – a mourner.

avoda zara E-1 – idol worship.

avsha milta C-6 – an act that is degrading to Shabbat due to the attention drawn to it by the noise it produces.

B

ba'al korei (pl. – **ba'alei kri'ah**) A-6, A-12, A-13, A-14, B-9 – one who publicly reads the Torah for the congregation.

bal tashchit G-10 – the prohibition against destroying objects.

bar/bat mitzva A-18, D-9, F-2 – one who is old enough and competent to be obligated to perform *mitzvot*. This term also refers to the point at which one reaches that stage and the celebration that accompanies it.

baraita – a Talmudic text from the time of the *Tanna'im* that was not incorporated in the *Mishna* or the *Tosefta*.

Barchu A-4, A-8, A-17 – a responsive declaration of praise to HaShem.

baruch HaShem – thank God.

Baruch She'amar A-3 – a blessing recited in the morning prayers, introducing verses of praise to HaShem.

basar b'chalav E-1, E-2 – the forbidden mixture of meat and milk.

batei din see *beit din*.

bayit F-5 – lit., home; the specially formed leather box that holds the parchments of *tefillin* that are affixed to the body.

b'di'eved A-13, A-14, B-7, E-3, F-2 – after the fact; a situation that one is supposed to avoid but, after the situation has already occurred, may be halachically acceptable under the circumstances.

bein gavra l'gavra A-10 – between *aliyot* during the public reading of the Torah.

bein hashemashot D-2 – evening twilight; this time is halachically considered neither definite daytime nor definite nighttime

beit din (pl. – **batei din**) H-4, I-1, I-2, I-5, I-6, I-7, I-8 – rabbinical court.

Beit HaMikdash A-5, A-15, A-19, D-2, D-8, D-10, D-13, D-16, F-6, F-7, H-2 – the Holy Temple in Jerusalem. The first was destroyed c. 2,600 years ago; the second was destroyed c. 2,000 years ago. We pray for the building of the third and final one.

beit kneset A-18 – Hebrew for the Yiddish, *shul* – a synagogue,

where Jews assemble to pray.

beit midrash C-1 – study hall for Torah study.

bentch/ing B-1, B-5, B-6, D-16, H-3 – Yiddish for reciting *Birkat HaMazon*. The term “*bentching*” often refers to *Birkat HaMazon* itself.

beracha (pl. – **berachot**) (see table of contents for section B on *berachot*) A-1, A-2, A-3, A-4, A-5, A-7, A-8, A-9, A-13, A-17, C-9, D-4, D-7, D-12, D-15, F-1, F-4, F-5, F-8, G-3, G-9, H-3, H-5 – blessing. There are a number of categories of *berachot*, and they may be recited periodically or under certain circumstances.

beracha acharona B-1, B-7, D-16 – blessing recited after one eats.

beracha l’vatala A-13, A-18, B-7 – blessing recited in a manner in which it has no value, which is forbidden.

beracha rishona B-1, B-7 – a blessing recited before one eats.

beracha she’eina tzricha F-1 – an unneeded and thus improper blessing.

bereira C-14, I-4, I-9 – retroactive determination; see applications in cited articles.

bima A-12, A-14 – the platform and/or table in the middle of the synagogue upon which the Torah is read.

Birkat HaGomel G-3 – the blessing recited publicly after emerging safely from a potentially dangerous situation.

Birkat HaMazon B-1, B-2, B-3, B-4, B-5, B-6, B-7, C-9, D-16, H-3 – the series of blessings recited after eating a meal that includes bread.

Birkat HaTorah B-10, G-13 – the blessing recited before the study of Torah each new day or before and after the formal public reading of the Torah.

Birkat Kohanim A-9, A-15, A-16, D-2, F-1 – the priestly blessing recited during the repetition of *Shemoneh Esrei* (also known

as *nesi'at kapayim* or *duchenen*).

Birhot Kri'at Shema A-8 – the blessings recited before and after *Kri'at Shema*.

birhot hamitzva B-10 – blessings made for the performance of *mitzvot*.

Birhot HaShachar B-10 – the series of blessings recited before morning prayers, thanking HaShem for providing the basic necessities of life.

birhot hashevach B-10 – blessings that praise HaShem for providing wonderful things for mankind.

bishul C-4, C-6 – cooking.

bitul D-11, E-1, E-3 – the concept of a [forbidden] object losing its halachic status (e.g., when it is a small part of a mixture); see also *bitul chametz*.

bitul chametz D-11 – nullification of *chametz*.

blech C-4 – a sheet of metal used to cover a flame on Shabbat in order to solve certain halachic problems.

Bnei Yisrael D-16 – lit., the Sons of Israel, often translated as Israelites; a common reference to the Jewish People.

b'oness see *oness*.

Borei Nefashot B-7 – a blessing recited after eating certain foods.

borer C-5, C-6, C-10 – selecting, one of the 39 forms of forbidden work on Shabbat.

brit mila C-13, D-1, H-2 – the *mitzva* and celebration of the circumcision of a Jewish male.

brit (pl. – **britot**) see *brit mila*.

C

chag D-4 – festival; see also *Yom Tov*.

chai nosei et atzmo C-13 – a living thing carries himself.

challa (pl. – **challot**) B-2, C-9, D-13, D-15 – a loaf of bread, especially to be eaten at Shabbat and festival meals; the piece

of dough removed during *hafrashat challa*.

chametz D-11, D-14, D-15, E-1, E-4 – leavened bread or other grain-based food, which it is forbidden to eat or own on Passover.

chametzdik D-14 – possessing a status of *chametz*.

Chanuka D-5, D-7, D-8, F-4 – the eight-day holiday in the early winter that commemorates the Hasmoneans' triumph over the Greeks over 2,000 years ago and the subsequent miracle that a small amount of oil burned in the Temple candelabrum for eight days.

chanukiya D-8 – Chanuka *menora* (candelabrum).

chatan H-3, H-4, H-5 – a groom.

chatzer (pl. – **chatzerot**) D-16 – lit., courtyard; property.

chatzitza C-5, F-5, G-11 – a problematic obstruction between two objects that are supposed to come in contact with one another.

chatzot D-18 – the astronomical middle of either the day or night.

This time has halachic significance in a number of contexts.

chatzuva D-14 – tripod, used for cooking.

Chazal – a generic term for the Jewish scholars at the time of the Talmud (approximately 1-500 CE).

chazan A-2, A-6, A-11, A-16, B-10 – cantor or prayer leader.

chazara C-4 – returning foods to a heat source, which is Rabbinically prohibited on Shabbat under certain circumstances even for cooked foods.

chazarat hashatz A-2, A-3, A-4, A-7, A-8, A-18, D-2, F-1 – the repetition of *Shemoneh Esrei* by the cantor.

cherem I-2 – a ban.

chiddush H-5 – innovative statement.

chillul Shabbat C-1, C-3 – the desecration of Shabbat by violating its negative commandments. This is one of the most serious violations of Halacha.

chinuch D-9 – the obligation to educate a child.

Chol HaMo'ed A-1 D-4 – lit., the mundane of the festival; the intermediate days of the holidays of Pesach (Passover) and Sukkot (Tabernacles). These days includes some, but not all, of the halachic elements of the primary days of the festival (*Yom Tov*).

Choshen Mishpat – the section of *Shulchan Aruch* that discusses monetary law.

chukot hagoyim G-13 – the prohibition of following the distinctive practices of non-Jews.

chulent C-10 – a traditional Jewish food, especially for the Shabbat day meal.

chumash C-1 – the Pentateuch; a printed edition of one or more of the five books of the Torah.

chumra (pl. – **chumrot**) D-11, D-13 – stringency.

chupa H-3 – the bridal canopy; part of the ceremony that effectuates Jewish marriage.

chutz la'arets D-6 – the Diaspora (lands outside of the Land of Israel).

D

daven/ing A-1, A-3, A-5, A-6, A-8, A-11, A-17, A-18, A-19, B-1, B-10, D-2, D-8, D-15, H-1, H-5– Yiddish for pray/ing. The term can also refer to a prayer service as a whole.

dayan (pl. – **dayanim**) I-1, I-2, I-6, I-8 – rabbinical judge.

devarim shebekedusha (sing. – **davar shebekedusha**) A-4 – those particularly holy prayers that require a quorum of ten men in order to be recited.

din Torah I-6 – a court case adjudicated in a rabbinical court.

divrei Torah A-10 – Torah ideas that are discussed or studied.

duchan A-16, D-2, F-1 – lit., platform; the area in the front of the *shul* where *Birkat Kohanim* is carried out.

duchenen- A-15, A-16, F-1 – Yiddish reference to the priestly blessing (*Birkat Kohanim, nesi'at kapayim*). The verb form is **duchen**.

E

eiruv C-1, C-8, C-13, C-14, D-6, F-3 – one of a series of Rabbinic mechanisms that make it permissible to do what would otherwise be Rabbinically prohibited on Shabbat or festival; used colloquially to refer to an *eiruv chatzerot*.

eiruv chatzerot C-14, D-6 – a series of walls, poles, and strings, as well as an amount of food set aside, that makes it possible to carry in the enclosed area on Shabbat.

eiruv tavshilin D-6 – the food prepared before *Yom Tov* that allows one to cook for Shabbat on *Yom Tov* that falls on Friday.

eiruv techumin C-14 – the food placed near one's location of inhabitation to enable one to walk a radius of 2,000 *amot* from that location instead of the place the person is found when Shabbat begins.

Elokai Neshama A-9 – one of the first blessings of the morning.

Elokai Netzor A-16 – a supplication recited at the end of *Shemoneh Esrei*.

Elul D-19 – the last month of the Jewish year, which leads up to the High Holy Days.

Eretz Yisrael G-12 – the Land of Israel. This can refer to the boundaries at various times in Jewish history, from biblical times until today. It is noteworthy that the current boundaries of the State of Israel are similar to the boundaries described in the Bible.

Erev Shabbat C-4, D-8, F-3 – Friday, leading into Shabbat.

Erev Pesach D-15 – the day before Pesach.

etrog D-5 – a specific citrus fruit (citron), which one is obligated to hold in his hands during the holiday of Sukkot.

Even HaEzer – the section of the *Shulchan Aruch* that deals with family law.

F

fleishig D-14, D-16 E-2 – Yiddish for a food that comes from or has absorbed taste from meat. It is forbidden to eat such a food together with milk products. This term is also often used to describe utensils used for meat and the state of one who has eaten meat and therefore may not eat dairy for the time being.

G

gabbai (pl. – **gabbaim**) A-12, A-14, F-7 – a person in charge of something (e.g. synagogue services, charitable funds).

gadol F-2 – a man, starting from the age of bar mitzva.

gedil (pl. – **gedilim**) F-3 – the part of *tzitzit* where one string revolves around the others.

gelila A-11 – the rolling up of the Torah scrolls after the Torah reading has been completed.

gemara – the section of the Babylonian Talmud that contains the discussion of the *Amoraim*.

gerama C-6, I-8 – indirect causation.

get F-8 – a religious bill of divorce.

geula A-3 – liberation.

gezel sheina G-1 – “stealing” sleep from someone.

gozez C-5 – shearing, one of the 39 forms of forbidden work on Shabbat.

H

ha’arama E-5 – shrewd halachic ploy.

hachana C-6, C-12 – the Rabbinic prohibition of preparing on a holy day for the needs of a different day.

hachazara see *chazara*.

hachnasat orchim G-1 – hosting guests.

hadassim D-5 – the myrtle branches that serve as one of the four species that one is obligated to hold daily during the holiday of Sukkot.

haftara A-10 – the reading of a section from the Prophets after the Torah reading.

hagala E-4 – a process of *kashering* a utensil with boiling water. This method removes problematic residue absorbed in a utensil through a liquid medium.

HaGomel see *Birkat HaGomel*

HaKel HaKadosh A-7 – the third blessing in *Shemoneh Esrei*, in which we mention HaShem's quality of holiness.

halacha (pl. – **halachot**) – the field of Jewish law; an operative Jewish law; the halachic opinion that is accepted as practically binding in the case of a rabbinic dispute.

HaMapil A-9 – the blessing one recites before going to sleep.

HaMotzi B-1, B-2, B-3, C-9 – the blessing recited before eating bread.

Har Sinai D-19 – Mt. Sinai, where the Torah was presented to the Jewish People.

hashavat aveida I-4 – returning a lost object.

HaShem – lit., “The Name.” Common practice is to use this word to refer to God in order to avoid using His Name in inappropriate settings.

hashgacha D-4, D-15 – rabbinic supervision, usually to ensure the kashrut of food

hazmana I-1 – summons to appear before a rabbinical court.

hechsher keilim E-5 – literally, making utensils fit. See meaning in context in referenced article.

hefker I-4 – ownerless.

hefsek A-2 – a problematic interruption, often in the recitation of

a prayer or blessing.

hekdesh D-10 – property that is sanctified for the use of the Holy Temple.

heter C-2 – the basis for halachic permission to engage in potentially problematic activity.

heter iska G-8 – an agreement that turns what would have been a situation of *ribbit* (forbidden usury) into a joint investment between the two parties. This usually brings about the same financial outcome through a very different, permitted mechanism.

hezek re'iya I-2 – the damage to privacy when one can see his neighbor's sensitive matters.

higi'ah l'chinuch C-1 – reached the age at which he can be trained in religious obligations.

hikon likrat Elokecha A-1 – prepare oneself physically before approaching G-d in prayer.

I

inyan G-3 – a positive element.

issur hana'ah (pl. – **issurei hana'ah**) E-1 – an object from which it is prohibited to benefit.

K

Kabbala H-2 – esoteric, mystical Jewish teachings and the literature related to them.

Kabbalat Shabbat A-11 – the section of psalms/prayers that precedes the Friday night prayers.

kabbalistic D-16 – relating to Kabbala (see entry) and/or its type of approach to matters.

Kaddish (pl. – **Kaddeishim**) A-4, A-8, A-10, A-19, H-1 – a prayer (in which we sanctify God's Name) that is recited by a member or members of the congregation, often by mourners.

- Kaddish D'Rabbanan** A-19 – a *Kaddish* that is recited after the study of Torah.
- Kaddish HaGadol** A-19 – a long version of *Kaddish*. See the context of its use in referenced article.
- Kaddish Titkabel** A-4 – the *Kaddish* that includes a request that the previous recited prayers be accepted (also called *Kaddish Shalem*).
- Kalanda** G-3 – a pagan winter holiday, discussed in the Talmud.
- kalla** H-3, H-4 – a bride.
- karmelit** C-13 – a domain that, based on Rabbinical law, is treated like a public domain regarding carrying in it on Shabbat.
- kasher/ing** D-14, E-4 – the process by which halachically significant taste absorbed in a utensil is removed and/or neutralized, thereby allowing the utensil to be used without halachic concern.
- kashrut** (see table of contents for section E on *kashrut*) E-5 – the field dealing with keeping kosher; also used to refer to the acceptability of ritual objects.
- katan** A-11, F-2 – lit., small; a minor.
- katzatz** C-12 – setting a price for the work one does.
- kav'yachol** A-19 – lit., as if it were possible. This indicates that the idea that one is about to mention cannot be applied to HaShem in the fullest sense, but rather conveys the idea in a general way.
- kavana** A-8, F-2 – intent and concentration.
- k'beitza** C-19 – the size of an egg.
- Kedusha** A-2, A-3, A-7, A-8, A-16, A-17 – a prayer recited during the repetition of *Shemoneh Esrei*.
- kedusha** D-13, F-6, F-7 – sanctity.
- keilim** E-5 – utensils.
- keniva** D-18 – see referenced article.
- ketoret** H-2 – incense, used in the service of the Holy Temple.

ketuba H-3 – a formal marriage contract that, among other things, ensures a Jewish wife financial support during and after her marriage.

kibud av va'em G-2 – honoring one's parents.

kibudim A-11 – honors, given out to participants in public prayers.

Kiddush B-4, D-16 – the blessing through which we sanctify Shabbat, recited over wine before the Shabbat meal both at night and during the day.

kiddushin H-3 – betrothal; the part of the wedding process in which the ring is given and the bride becomes the wife of the groom.

kilayim I-8 – the prohibited mixing of species.

kinyan D-9, D-13, D-14, G-8, H-3, I-3 – an act of finalization of an transaction.

kinyan devarim I-9 – a commitment to do something, which is halachically difficult to finalize.

kinyan sudar C-14, H-3 – an act in which one party hands over some utensil to his counterpart in order to finalize an agreement.

klaf F-8 – parchment; a Torah-like scroll.

kli shemelachto l'heter D-1 – a utensil whose normal use is permitted on Shabbat and *Yom Tov*, which may be moved on Shabbat and *Yom Tov*.

kli shemelachto l'issur C-8, C-11 – a utensil whose normal use is forbidden on Shabbat and *Yom Tov*, which may be moved only for certain reasons.

knish B-3 – food consisting of a filling covered with dough that is either baked, grilled, or deep fried.

kohen (pl. – **kohanim**) A-15, A-16, D-13, F-1, G-4, H-2 – a member of the priestly tribe (who descend from Aaron). Members of this tribe have special religious obligations,

roles, and privileges.

kohen gadol H-2 – High Priest.

korban (pl. – **korbanot**) C-13, D-8, D-10, E-1 – sacrifice/ offering.

Korban Pesach I-9 – the Paschal Lamb. The sacrifice that, in Temple times, was offered on the afternoon before Passover and was eaten as a central part of the *Seder* on the first night of Passover.

korban tamid A-5 – a basic sacrifice brought every day.

korban olah A-5 – a sacrifice in which the entire animal is burned on the altar.

kosher D-4, F-8 – fit; often, the context is permissibility to eat, but it also refers to being able to serve for other functions.

kovei'a seuda B-3 – creating a full meal.

kri'at haTorah A-4, A-10, A-14 – the reading of the Torah during services in the synagogue.

Kri'at Shema A-3, A-4, A-8, A-9, A-17 – three sections of the Torah containing basic elements of our faith. The Torah commands us to recite these sections every morning and evening.

Kri'at Shema Al Hamita A-9 – the recitation of certain central Torah passages before going to sleep.

k'zayit B-1, B-7, C-9, D-11 – the size of an olive. This measurement has many halachic ramifications.

L

lain/ing A-10, A-13, A-14, C-14 – Yiddish for reading the Torah (*kri'at haTorah*).

l'chatchila A-14, E-2, E-3, F-2, F-6 – lit, in the first place; the ideal way of acting.

lechem mishneh B-2, C-9, D-15 – two whole loaves of bread used to begin a Shabbat or festival meal.

lev beit din matneh aleihem F-7 – lit., the heart of the court makes a condition about them; the principle indicating that when dealing with matters that affect the masses, certain rules can be assumed without stipulation.

l’havdil G-13 – lit., to distinguish; when one wants to compare matters, where there is a great disparity regarding the importance of the two.

libun D-14 – a process of *kashering* a utensil with very high “dry” heat.

libun kal D-14 – a process of *kashering* a utensil with dry heat, but with less heat than full *libun*.

lifnei iver [lo titen michshol] G-5 – lit., do not put a stumbling block before the blind; the prohibition of facilitating another’s sin.

lishma – F-2 – done with the proper intention.

lo p’lug B-8 – a concept indicating that we do not distinguish between similar cases that fall into the same category.

lomdus D-5 – halachic analysis.

lulav (pl. – **lulavim**) D-1, D-5, I-5 – a palm branch, one of the four species used on the holiday of Sukkot.

l’vatala A-13, B-1 – of no positive value.

M

Ma’ariv A-4, A-5, A-9, A-18, B-1, B-10, D-8, D-19 – the evening prayer.

ma’aser (pl. – **ma’asrot**) D-10, G-12 – one of a number of tithes in which one gives a tenth; see also *ma’aser kesafim*.

ma’aser kesafim G-6 – the recommended practice of giving one tenth of one’s earnings to charity.

ma’aser sheni D-13, G-12 – the tithe given on produce in certain years, whereby the owner needs to eat the produce in Jerusalem at the time of the *Beit HaMikdash*.

- machatzit hashekel** D-10 – a donation in remembrance of the yearly donations to the *Beit HaMikdash*, given around the time of Purim.
- machloket** – disagreement, in our context, concerning matters of scholarship.
- machmir** D-11 D-16 – follow the stringent opinion; see also *chumra*.
- madad** G-6 – Consumer Price Index.
- madrish** I-7 – (dorm) counselor.
- mafkir** I-4 – the act of relinquishing one’s rights to an object; see also *hefker*.
- maftir** A-10, A-11 – the last portion of the public Torah reading on Shabbat and festivals.
- Magen Avot** A-18 – the main section of the shortened repetition of *Shemoneh Esrei* recited on Friday night.
- makpid** G-11 – being particular and disturbed about a certain situation.
- mamashut** G-11 – palpable physical substance.
- mamrani** I-11 – a document in which the one who signed it awards a certain amount of credit to whoever possesses it.
- Mashiach** A-19 – the Messiah.
- matnot ani'im** I-4 – the produce that its owners are to give to the poor or let them take.
- matza** C-9, D-12, D-13, D-14, D-15, G-1 – unleavened bread. We are commanded to eat *matza* on Passover.
- matza ashira** D-15 – lit., rich *matza*; *matza* made with ingredients in addition to flour and water.
- mechallel Shabbat** C-3 – violating the negative commandments of Shabbat; one who desecrates Shabbat.
- mechila** I-5 – relinquishing of rights.
- mechusar amana** G-8, I-3 – lit., lacking in trustworthiness; a situation in which a party to a transaction can legally back

- out of the deal, but the Rabbis are critical of his doing so.
- mechutan** B-2 – in-laws.
- mefarek** C-7 – the prohibition of extracting, specifically a liquid from a solid, on Shabbat.
- Me'ein Shalosh** B-7 – condensed form of *Birkat HaMazon* recited after eating foods made from one of the seven species for which *Eretz Yisrael* is praised (wheat, barley, grapes, figs, pomegranates, olives, dates).
- Me'ein Sheva** A-18 – the shortened repetition of *Shemoneh Esrei* recited on Friday night.
- megilla** A-13, B-9, D-9 – a Torah-like scroll.
- Megillat Esther** A-14, D-10 – The Book of *Esther*, read on Purim, which is written on a Torah-like scroll.
- meita machamat melacha** I-5 – an object that “died” due to its normal use.
- melacha** C-2, C-4, C-5, C-6, C-12 – an activity that the Torah prohibits on Shabbat.
- melacha she'eina tzricha l'gufa** C-7 – a *melacha* that is performed without intention to make use of the final result.
- memeila** D-5 – something that occurs “by itself,” so to speak.
- menorah** D-7, D-8 – candelabrum.
- mesader kiddushin** H-3 – the rabbi responsible for arranging the halachic requirements of a Jewish wedding.
- meshale'ach** D-5 – the person who authorizes an agent to act on his behalf.
- mezamen** B-6 – one who leads a *zimun*, the introduction to a joint recitation of *Birkat HaMazon*.
- Mezonot** B-3, B-7, D-4 – the blessing recited before eating a non-bread food made of one of the five major grain species.
- mezuza** (pl. – **mezuzot**) F-2, F-8 – a scroll containing certain fundamental Torah passages. There is a *mitzva* to attach *mezuzot* to the doorposts of one's house.

- mi shepara** I-3 – a severe, curse-like sanction for one who backs out of a transaction after money has been paid.
- mi'us** G-9 – something unseemly.
- mikveh** C-5, E-5 – a specially constructed pool for the ritual immersion of people and utensils.
- mila** see *brit mila*
- milchemet Gog U'Magog** A-19 – the major war at the End of Days.
- milchig** D-14, D-16, E-2 – Yiddish for a food that comes from or has absorbed taste from milk products. It is forbidden to eat such a food together with meat products. This term is also often used to describe utensils used for milk and the state of one who has eaten milk products.
- Mincha** A-1, A-4, A-5, B-10, D-8, D-10 – the afternoon prayer.
- minhag** (pl. – **minhagim**) – a custom or general practice.
- minyán** A-3, A-4, A-8, A-18, B-9, D-8, H-1, H-5 – a quorum of ten men who pray together. A *minyán* is required in order to recite certain prayers.
- Mishkan** D-10 – the Tabernacle; the Temple, assembled in the desert, which was the precursor to the Holy Temple.
- mishlo'ach manot** D-9 – the *mitzva* to send food goods to a friend on Purim.
- mishna** – the most authoritative teachings of the *Tanna'im* (c. 1-200 CE)
- mitpachat** F-7 – the covering of the table, upon which the Torah scroll sits in the synagogue.
- mitzva** (pl. – **mitzvot**) – a commandment; a good deed.
- mitzva l'kayem divrei hamet** I-9 – the moral obligation of inheritors to follow the instructions left behind by the deceased owner of the estate.
- mitzva sheb'gufo** D-5 – a commandment that by definition one

must fulfill with his body.

mochel G-8 – relinquish rights.

Modeh Ani A-9 – the short statement of thanks to HaShem that one recites immediately upon awakening in the morning.

Modim D'Rabbanan A-7 – the paragraph recited by the congregation when the *chazan* reaches the blessing of *Modim* in the repetition of *Shemoneh Esrei*.

mohel (pl. – **mohalim**) H-2 – one who performs a circumcision.

Motzaei Shabbat D-2 – Saturday night, after the conclusion of Shabbat.

muktzeh C-5, C-8, C-11, C-12, D-1 – something that does not have the type of function or status on Shabbat that allows it to be moved.

muktzeh l'mitzvato D-1 – the idea that an object that is set aside for a certain *mitzva* is off limits to other use during the time that the *mitzva* applies.

muktzeh machamat chisaron kis C-8 – lit., *muktzeh* due to loss of money; objects that are *muktzeh* because of concern that their use for something other than their main purpose will cause significant financial loss.

Musaf A-5, A-11 – the additional prayer on special days.

mutav sheyiheyu shog'gin v'al yiheyu mezidin G-5 – it is preferable that one violate a prohibition unknowingly than for him to be warned and violate it purposely.

N

nachat ruach H-1 – a spiritual good feeling.

nat bar nat E-2 – abbreviation for *notein ta'am bar notein ta'am*; see referenced article.

Navi A-10 – the books of the Prophets.

Ne'ila D-2 – the fifth and final prayer service on Yom Kippur.

nedava A-5 – a voluntary action.

neheneh I-10 – the benefit that one receives from his counterpart, which obligates the former to compensate the latter.

nesi'at kapayim A-4 – lit., the lifting of the hands; the priestly blessing (*Birkat Kohanim, duchenen*).

netila G-9 – short for *netilat yadayim*.

netilat yadayim B-3, B-10, C-9, G-9, G-11 – the procedure of washing one's hands in a certain way in certain circumstances, such as before eating bread.

niguv G-9 – drying of the hands after *netilat yadayim*.

Nine Days D-17 – the period of national mourning leading up to and including Tisha B'Av.

Nisan D-15 – the month in which Passover falls.

nizkei sh'cheinim I-8 – damages that one neighbor causes to another.

niolad C-12 – a type of *muktzeh*; see referenced article.

nosei et atzmo – see *chai nosei et atzmo*.

O

ochel nefesh D-4, D-6 – activities that one does to provide food for human consumption, which is of importance on holidays.

oleh A-13, A-14 – one who is called up for an *aliya* to the Torah.

oness I-5, I-6 – an extenuating circumstance; a case in which one is not at fault.

orla G-12 – fruit of new trees, which it is forbidden to eat or benefit from.

ot F-5 – a sign.

P

parasha A-10 – the weekly Torah portion read on Shabbat.

pareve D-16, E-2, E-3, G-13 – Yiddish for a food that is neither a milk product nor a meat product and thus may be eaten

with either. This term is also often used to describe utensils used for such foods. Also, something that does not fit into one clear category or another.

pashtida B-3 – a type of food made of dough and filling.

pasken B-9 – Yiddish for rendering a halachic ruling.

pasuk (pl. – **p’sukim**) – a Biblical verse.

pasul F-3, H-3 – unfit for use.

pat haba’ah b’kisnin B-3, D-15 – a baked grain-based food that shares qualities with normal bread but is also different from it.

patur C-13 – exempt.

peruta I-4 – the lowest denomination of currency in Talmudic times.

Pesach D-11, D-14, G-1 – Passover, the festival that celebrates the liberation of the young Jewish Nation from slavery in Egypt.

Pesachdik D-15 – Yiddish for related to the holiday of Pesach

peticha A-11 – opening of the ark that contains the Torah scrolls.

pikadon G-7 – an object that is given for the purpose of safekeeping.

pikuach nefesh D-3 – a situation of danger to life, in which case almost all prohibitions may be violated to save the life.

pilpeli G-12 – the type of pepper that serves as a spice.

piyutim D-2 – liturgical pieces.

posek (pl. – **poskim**) – scholar who regularly renders halachic rulings.

p’sak – a halachic ruling.

p’shiya I-6 – negligence.

P’sukei D’Zimra A-1, A-3, A-11, A-17 – lit., Verses of Song; a major part of the *Shacharit* prayer service, composed of selections from *Psalms* and other biblical passages.

p’sukim see *pasuk*

p'sul H-3 – disqualification.

Purim D-10, I-5 – the holiday celebrating the salvation of the Jews of the Persian Empire from a cruel oppressor.

Purim Meshulash D-10 – lit., Triple Purim; the situation that arises where the celebration of Purim must be broken up over three days.

R

reicha E-3 – lit., aroma, which imparts a tiny transfer of taste.

reshut harabim C-13 – the public domain.

retzuot F-5 – the special straps used to fasten *tefillin* to the body.

revi'it (pl. – **revi'iot**) B-7, C-14, G-9 – a measure of liquid of approximately 3-4 ounces.

ribbit G-6, G-7, G-8 – forbidden interest payment on a loan or other monetary obligation.

Rishonimim – Talmudic or halachic scholars who lived between 1000-1500 CE.

Rosh Chodesh D-17, D-19, F-4 – the beginning of a Jewish month (lunar).

Rosh Hashana A-6, D-1, D-6, D-19 – the holiday that is both the Jewish New Year and the Day of Judgment.

rov B-5 – majority.

R'tzei A-16 – a blessing in *Shemoneh Esrei* in which we pray for the return of the Holy Temple and its service to Zion.

S

safek A-18, B-1 – a situation of doubt.

safek berachot l'hakel B-4 – the principle that in situations of doubt, we refrain from reciting possibly unnecessary blessings.

sandek H-2 – the person who holds the baby during a circumcision.

Satan D-19 – the angel involved in many ostensibly negative

activities.

Seder D-12, D-13, D-15 – the “order” of religious observances and the feast on the first night(s) of Passover.

sefeik sefeika D-2 – a double doubt; i.e., there are two **possible** factors that both point to a certain halachic conclusion.

sefer Torah (pl. – **sifrei Torah**) A-10, A-13, A-14, A-18, F-2, F-6, F-7, F-8 – Torah scroll.

sefarim (sing. – **sefer**) A-12, F-7, F-8, I-3 – books (that deal with Torah topics).

sefirat ha’omer A-1 – the daily counting of forty-nine days from the second day of Pesach until Shavuot; the time period between those two holidays, during which practices of national mourning are observed.

segula G-3 – a spiritual facilitator; i.e., one does a certain practice because it makes him more likely to receive a certain positive outcome.

Selichot D-19 – special prayers of supplication recited at appropriate times during the year, most notably before the High Holy Days (Rosh Hashana and Yom Kippur).

Sephardim– Jews from the communities of North Africa, the Middle East, and the Near East.

setimat haposkim D-13 – the silence of the halachic authorities or their not having made distinctions between cases; see referenced article for significance.

seuda G-3, I-5 – a meal.

seuda hamafseket D-17, D-18 – the meal immediately before a fast.

seuda shlishit D-15 – the third Shabbat meal.

seudat hoda’a G-3 – meal of thanksgiving.

seudat mitzvah D-17 – a meal in honor of something that the Torah deems worthy of celebration.

sha’atnez F-3 – a fabric made of wool and linen, which it is

forbidden to wear.

Shabbat (see table of contents for section C on Shabbat) A-2, A-10, A-18, B-2, D-1, D-6, D-15, D-17, D-19, F-3, H-5 – the Sabbath; the time from sundown Friday until Saturday night. This day is marked by its special observances, prayers, and many restrictions on different types of work.

Shacharit A-1, A-4, D-2, D-16, D-19, F-1 – the morning prayer.

shaliach A-6, D-5 – an agent whose actions are halachically considered as if they were done by the person who appointed him.

Shavuot D-16 – Pentecost; the holiday during which we celebrate the giving of the Torah on Mount Sinai.

She'asa Nissim D-7 – the blessing said at the time there is a remembrance of miracles that HaShem did for our forefathers at that time of year.

she'eila G-7 – the borrowing of an object.

she'eino nakuv C-11 – does not have a hole; see *atzitz she'eino nakuv*

she'at hadechak A-1 – a case of great need for leniency.

Shehakol B-4, B-7 – the most general blessing, recited before eating foods which do not have a more specific text.

Shehecheyanu B-8, D-7 – the blessing recited upon experiencing certain new and significant or cyclical events.

shehiya C-4 – leaving food on the fire on Shabbat.

shekel D-10 – a biblical currency.

sheki'a D-2 – sunset.

shel rosh F-4, F-5 – see *tefillin shel rosh*.

shel yad F-4 – see *tefillin shel yad*.

sheliach tzibbur A-2, A-7 – lit., the agent of the community; *chazan*, one who leads services.

shlichut D-5 – agency; i.e., the ability for one person to perform a halachically significant action on behalf of another person.

Shema A-1 see *Kri'at Shema*.

Shemoneh Esrei A-2, A-3, A-4, A-5, A-7, A-8, A-16, A-17 – the main section of the daily prayers, during which one “stands directly before God” to praise Him and make requests.

sheva berachot B-4, H-3, H-5 – the days (usually seven) of celebration after a wedding; the individual festive meals during this period; the seven blessings that are recited after those meals and at a wedding.

shidduch G-2 – a match, especially for the purpose of marriage.

shiur B-7, D-13 – the amount of something (including foods) that is necessary for a halachic status to apply; a Torah lecture.

shiva H-1 – the seven-day period of mourning after the death of a close relative.

shivat haminim B-7 – the seven species for which the Land of Israel is praised (wheat, barley, grapes, figs, pomegranates, olives, dates).

shivat y'mei hamishte H-5 – seven days of celebration after a wedding, commonly called *Sheva Berachot*.

sho'el I-5 – borrower of an object.

shofar A-6, D-1, D-19 – the ritual “musical instrument” made of a ram’s horn that is used to blow certain types of blasts on Rosh Hashana.

shomei'ah k'oneh A-7, A-13 – one who listens to a recitation is considered as if he recited it.

shomer (pl. – **shomrim**) I-6, I-8 – a watchman , often, over an object.

shomer sachar I-6 – one who is paid to watch an object.

shomer Shabbat C-2 – one who observes the Sabbath according to its restrictions.

shovar I-11 – a receipt.

shtar I-7 – a document.

shtar chatzi zachar I-9 – a document that facilitates a daughter’s

de facto inheritance of her parent.

shteï halechem D-16 – the two loaves of bread that were offered on Shavuot in the *Beit HaMikdash*.

shul A-3, A-5, A-6, A-7, A-8, A-10, A-11, A-16, A-18, B-9, B-10, C-1, C-7, D-7, D-8, D-10, D-19, F-6, F-7, H-1, H-5, I-4 – Yiddish for *beit kneset* (synagogue).

shulchan F-7 – lit., a table. In this case, the table upon which the Torah scroll sits.

shvu'at heset I-7 – a type of oath that one who denies owing money would be obligated to take to exempt himself from payment.

shvut d'shvut C-13 – a case in which there are two reasons that an action is not forbidden on Shabbat based on Torah law, but rather only Rabbinically.

siddurim A-9 – prayer books.

siman (pl. – **simanim**) I-11 – a distinguishing characteristic.

simcha H-5 – joy.

simchat Yom Tov D-16 – the feeling of happiness and festivity which is desired on festivals.

sivlonot H-4 – presents given by a fiancé to his fiancée.

siyum A-19, D-17 – the completion of a large section of Torah study and the related celebration.

sof z'man Kri'at Shema A-3 – the latest time one can recite Kri'at Shema at its proper time.

sota F-8 – a woman accused by her husband, with substantiation, of infidelity.

sukka – D-4, D-5, D-6, F-2 – the booth one sits in on Sukkot (Tabernacles).

Sukkot I-5 – Tabernacles, the holiday during which we celebrate the Divine protection of the Jewish people during their sojourns in the wilderness, as well as the yearly harvest.

T

- Ta'anit Esther** D-10 – the fast day that precedes the festival of Purim.
- Tachanun** H-5 – a prayer recited after *Shemoneh Esrei* during which people “fall on their face,” due to its particularly plaintive nature.
- takana** A-10 – a practice of Rabbinic origin intended to improve a certain element of life in the Jewish community.
- tallit** (pl. – **tallitot**) A-15, F-1 – a four-cornered garment worn during prayers. As required by the Torah, it has special fringes.
- tallit katan** F-3 – the small garment with special fringes attached to its corners, colloquially referred to as “*tzitzit*.”
- Tammuz** D-17 – one of the months in the Jewish calendar, in which the fast of 17 Tammuz falls.
- tamei** G-9 – halachically impure.
- Tanna** (pl. – **Tanna'im**) – a rabbinic scholar of the Tannaic period (approximately 1-200 CE).
- tashmish d'tashmish** F-7 – something whose purpose is to serve an object which in turn is to serve another holy object.
- tashmish kedusha** F-7 – an article that is intended to serve an object of *kedusha*.
- tavlin** G-12 – a spice.
- techeilet** F-3 – a special blue dye, used in the making of *tzitzit* strings.
- techilato b'pshiya v'sof b'oness** I-6 – a watchman was negligent, but the object eventually was “lost” in a manner for which he was apparently not responsible.
- techum Shabbat** C-14 – the confines where one is permitted to walk on Shabbat.
- tefachim** D-11 – a measure used in halachic matters, approximately

- three inches (eight centimeters).
- tefilla** (pl. – **tefillot**) (see table of contents for section A on *tefilla*)
D-2, F-4 – prayer.
- tefilla b'tzibbur** A-8 – prayers recited together with a quorum of ten men.
- tefillin** F-2, F-4, F-5, F-8 – phylacteries, specially made boxes containing hand-written scrolls upon which four sections of the Torah are written. Jewish men wear them during weekday morning prayers.
- tefillin shel rosh** F-4, F-5 – the phylacteries placed on the head.
- tefillin shel yad** F-4, F-5 – the phylacteries placed on the arm.
- tefisa** H-4 – taking something of value in lieu of payment one claims to be owed.
- teli'ah** D-4 – the idea of being allowed to make an optimistic halachic assumption; see referenced article for context.
- temidim** A-6 – see *korban tamid*.
- teruma** (pl. – **terumot**) D-10, G-4, G-12 – tithes given to a *kohen*.
- teshuva** D-19, G-5 – repentance; responsum.
- tevilla** (pl. – **tevilot**) E-5, G-9, G-11 – immersion of a person or a utensil in a *mikveh*.
- tevilat keilim** E-5 – immersion of certain newly acquired utensils in a *mikveh*.
- tevilat yadayim** G-9 – the immersion of hands.
- Three Weeks** A-1, D-17 – the period of time between Shiva Asar B'Tammuz and Tisha B'Av, during which the fall of Jerusalem and the destruction of the Holy Temple are mourned.
- tikkun olam** G-10 – improving the world.
- tiltul** C-8 – moving an object, in the context of the laws of *muktzeh*.
- tiltul b'gufo** C-8 – moving a *muktzeh* object with parts of the body that are not usually used for moving, such as one's legs and elbows.

tiltul min hatzad C-8 – moving a *muktzeh* object by pushing, pulling, or carrying it with the use of a non-*muktzeh* item.

Tisha B'Av D-17, D-18 – the fast day that marks the destruction of the first and second Holy Temples in Jerusalem.

tochacha C-3, G-5 – rebuke.

Torah – A-10, A-12, A-13 – teachings of Jewish law, bible, and ethics; the Five Books of Moses.

treif D-14, E-1, E-4 – colloquial term for something that it is not kosher.

tumah G-9, G-12 – impurity.

tza'ar ba'alei chayim G-10 – causing pain to living beings.

tzedaka D-10, F-7, G-6, G-11 – charity.

tzeit hakochavim D-2 – lit., the emergence of stars; the halachic beginning of the night, which ushers in a new Jewish calendar day.

tzibbur A-8 – a community (of different sizes, depending on context).

Tzidkatcha H-5 – a short prayer, recited toward the end of *Mincha* of Shabbat.

tzitzit F-1, F-2, F-3 – the special fringes that are attached to the corners of four-cornered garments. Colloquially, this also refers to the garment to which the fringes are attached.

U

U'Va L'Tzion A-4 – a prayer recited in *Shacharit* on weekdays and at *Mincha* on Shabbat.

V

vatikin A-3 – the practice of beginning *Shemoneh Esrei* of *Shacharit* at sunrise.

Viyhi Noam A-9 – *Tehillim (Psalms)* 90:17.

Y

- yerek/yarak** B-8 – vegetables.
- Yerushalayim** – Jerusalem.
- yeshiva** I-2, I-7 – academy of Jewish study.
- yichud** H-3 – seclusion of a man and woman, including that of a bride and groom.
- Yishtabach** A-3 – the blessing that concludes the section of *Shacharit* called *P'sukei D'Zimra*.
- yohara** A-7 – haughtiness.
- Yom Kippur** A-6, D-2, D-3, D-18, D-19, G-12 – the Day of Atonement, the fast day that is the holiest day of the year.
- Yom Tov** A-1, B-2, D-1, D-6, D-16 – the main day(s) of Jewish festivals, during which it is forbidden to engage in most of the activities that are forbidden on Shabbat.
- Yoshev B'Seter** A-9 – *Tehillim (Psalms)* 91.
- yotzei** B-9 – fulfilled an obligation.

Z

- zabla** I-1 – a system of assembling a rabbinical court, in which litigants take part in choosing panel members.
- zayin tovei ha'ir b'ma'amad anshei ha'ir** F-6 – the leadership of a community acting in a manner that is open to public scrutiny.
- zecher** D-10 – a remembrance.
- zeh v'zeh goreim mutar** E-1 – see referenced article.
- zeiah** E-3 – significant water vapor.
- zimun** B-2, B-5, B-6 – the responsively recited introduction to *Birkat HaMazon*, recited when three men eat together.