

Living the Halachic Process
Volume III



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

Volume III

Answers to Queries Sent to the

ERETZ HEMDAH INSTITUTE

Headed by

Rabbi Yosef Carmel

Rabbi Moshe Ehrenreich

By

Rabbi Daniel Mann



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Eretz Hemdah Institute

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לע"נ

אשת חיל עטרת בעלה

אמא וסבתא למופת

רבת חסד ועשייה

מרת סוזי (שרה) ונגרובסקי ע"ה

רבות בנות עשו חיל ואת עלית על כלנה

נלב"ע י בתמוז תשע"ד

ספר זה מוקדש
לזכרם של סבנו וסבתנו
שלמה וחנה שפירא-שולר
שנספו בשואה
ולא נודע מקום קבורתם
תנצב"ה

נכדיהם: משפחות רוטברג, שפירא,
רוזנטלר, אלטשולר, יסלזון

*This book is dedicated to the
blessed memory of*

Salomom and Chana Spira-Schaller

שלמה וחנה שפירא-שולר

who perished in the holocaust and
their final resting place is unknown

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Altshuler and Jeselsohn families

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In Loving Memory of

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our beloved grandparents

Their love for their children,
grandchildren, and great-grandchildren

was paralleled only by their love for

TORAH, LEARNING, and ERETZ YISRAEL

Shprintzy and Effy

לעלוי נשמת
מנוחה פרידמן הי"ד
בת ר' יעקב אריה והדס פרידמן ז"ל
אחותו של הרב מאיר פרידמן ז"ל
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In Loving Memory of
Menucha Frydman
sister of Rabbi Meyer Frydman

מוקדש ע"י
דוד, אריה ויעקב פרידמן
ומשפחותיהם

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.

"סוֹף דְּבַר הַכֹּל נִשְׁמַע אֶת הָאֱלֹהִים יִרְא וְאֶת מִצְוֹתָיו שְׂמוֹר כִּי זֶה כָּל הָאָדָם" (קהלת יב, יג)

הוקדש על ידי חיה דבורה וצבי אהרן יוזון

Foreword

והחוט המשלש לא במהרה ינתק

“...and the threefold cord will not be quickly severed”

(*Kohelet* 4:12)

It is our privilege to present the third volume of *Living the Halachic Process*.

Rabbi Daniel Mann, one of the first graduates and a *musmach* of Eretz Hemdah with the “Torah crown” of Yadin Yadin is one of the pillars of Eretz Hemdah. Rabbi Mann is a central part of our English language Ask the Rabbi responsa project, which serves tens of thousands of Jews all over the world and is responsible for the English language weekly publication of *divrei Torah*, Hemdat Yamim, part of which is well known to the reader of Torah Tidbits, as the Vebbe Rebbe column. His work is awaited and appreciated by a huge readership in every corner of the globe. We are therefore confident that this new volume, which is a natural outgrowth of that work, will be well received, like the previous volumes, by a broad readership.

Our wish for him and for us is that we should have the privilege to continue in the footsteps of our mentor, Maran Hagaon Harav Shaul Yisraeli *zt”l* to spread Torah and Halacha in a way that more and more people will love and appreciate and cling to the obligation to live according to Halacha.

With Torah blessings,

Rabbi Yosef Carmel Rabbi Moshe Ehrenreich
Deans of Eretz Hemdah





Preface

In the prefaces of the first two 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. As we prepare to present the questions and answers that comprise this third volume to the public in book form, we have decided to cut back on explanations. With Divine Assistance, we have been sharing our rulings with rabbis (in Hebrew, in the *BeMareh HaBazak* series) on a broad spectrum of issues with the public for over two decades. For some fourteen years, we have been sharing our answers in English to questions from the general public in the weekly publications “Hemdat Yamim” and “Torah Tidbits.” After all this time, we will suffice with referring to the introduction and prefaces of the first two volumes and rely on the familiarity with our work of much of our readership.

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 of 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, they did

not review it word for word, and therefore not everything within it is necessarily 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 fourth 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. Raphaël Freeman did another fine job on the typesetting. 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, with a spirit of *ahavat Torah* and *ahavat haberiyot*. The office staff at Eretz Hemdah, led by Yafa Rosenhak, have, as always, been supportive, skilled and helpful. Rivki Hadad has been very involved in this volume, producing the graphic design and arranging the source sheets for the accompanying CD, in which Rachel Harari-Rafal has also assisted.

Having been affiliated with Eretz Hemdah for more than a quarter century, 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

Menachem Jacobowitz and Rabbi Ofer Livnat, 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 every word of 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 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 why they should be doing what they do. May we all merit to increase that which is good and noble in our Torah-lead lives.

Rabbi Daniel Mann
Eretz Hemdah Institute
Cheshvan 5775 (Nov. 2014)



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Sample Source Sheet from Companion CD

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, in the section dedicated to Living the Halachic Process. One can also contact us (+972-2-537-1400 info@eretzhemdah.org) to order a free CD.

A-1

What One Can Do While Waiting to Take Three Steps Back

Q I am often unable to take the three steps back immediately at the end of *Shemoneh Esrei* because of a slow davenner behind me. What may I say or do while in this situation?

4. גמרא, ברכות דף ט עמוד ב

דוכי מיני מסידן ודא אמר רבי יוחנן: בתחלה הוא אומר: 'זה שפתי תפתחי' (תהלים נא), ולבסוף הוא אומר: 'זהו לרצון אמרי פי וגו' (תהלים יטו) - ... רב אישי אמר: 'אפילו תימא אבולתי, ובין דקבעתי רבנן בתפלה - תתפלה אריבתא ומיא...'

1. שולחן ערוך אורח חיים סי' קכ טע"ד-ה

אמר לעבדו כנגד המתפללים בתוך ד' אמות, ודווקא לפניו, אבל בעצורים מותר לעבור ולעמוד. אמר אם השלים תפלתו והיה אדם אחר מתפלל אחריו, אמר לפסע נ' פסקות עד שניגמר מי שאחריו את תפלתו, שאם יעשה זה הרי הוא נקובר כנגד המתפלל, וצריך לזקק בו, אפילו אם האחרון התחיל להתפלל אחריו, מאחר שכבר התחיל.

משנה בורח שם סי' טו

לפנים - וגדודים שלפניהם, להמנן אברהם בסקין כלפניהם דמי, ולהאליהו רבא שרי.

2. גמרא, ברכות דף כט ע"ב

אמר רבי תנחום אמר רב אמי אמר רבי יוחנן בן לוי: 'מענה ולא תזכיר של ראש הוש בעבודה - תזכיר לעבודה, נזכר בהראש - תזכיר לעבודה, בשום שלום - תזכיר לעבודת, באם סיים - תזכיר לראש', אמר רב פפא בימי דרב אחא בר אבא: 'זה דאמר מרוב תזכיר לראש - לא אמרן אלא שבעה רגליו, אבל לא עקר רגליו - תזכיר לעבודה', אמר ליה 'מפני כך דאמר' אמר ליה: 'מאבא דמי שמעיל לי, ואבא מרי מרבי, אמר רב נחמן בר יצחק: 'זה דאמרן עקר רגליו תזכיר לראש' - לא אמרן אלא שתי רגלי לומר התנעים אחר תפלתו, אבל רגלי לומר התנעים אחר תפלתו - תזכיר לעבודה, איבא דאמרן, אמר רב נחמן בר יצחק: 'זה דאמרן' בי לא עקר רגליו תזכיר לעבודה' - לא אמרן אלא שרגלי לומר התנעים אחר תפלתו, אבל אם אינו רגלי לומר התנעים אחר תפלתו - תזכיר לראש'.

3. שולחן ערוך אורח חיים סימן תכב טע"ף א

... ואם לא נזכר ע"י ששהלים תפלתו, תזכיר לראש, ואם תפלתו תזכיר לומר התנעים אחר תפלתו נזכר אחר שהשלים תפלתו קודם שיעקר רגליו, תזכיר לירצהו.

משנה בורח שם סי' ט

קודם שיעקור רגליו - נקט האי ליטנא מיטת המהבאר מידו שקיפין לא אמר התנעים, רק דבין דרגלי, מסתמא ותזכיר לומר גם עתה אבל אם כבר אמר התנעים שיים אותם ואין במחשבתו לומר עוד, אפילו נעדין לא עקר רגליו כמי שקקר דמי ותזכיר לראש תתפלה.

5. שולחן ערוך אורח חיים סי' קכב ט"א

אם בא להפסיק ולענות קודם וקדושה בין ידו לידיהו לרצון, אונו פוסק, שיהיו לרצון מכלל התפלה הוא: **אבל בין ייחודו לברוך לשרא התנעים שקור רמי ותיג** ודאק בסימא שנתנתן רמי 'זהו לרצון מיד אורי תתפלה אבל בסימא שנתנתן לומר התנעים קודם ייחודו לרצון, בסימא גם בן קדושה וקדושה, ובסימא אלו נזנים להפסיק ביחודו צדור, קודם ייחודו לרצון, לכן בסימא גם בן קדושה ולקדושה ולברכו ודע לרי רמי'א שתיבא תי'א'.

סי' שם סי' ק

אבל בין ייחודו לרצון כו' - משמע בכל גונו שפיר דמי, ואחר כך כיום כדרך שמפסיק בברכה של קריאת שמע, וצריך לומר דתחלה שיודי כמי שאומר לפקודים התנעים, על כן אין לזה דמיון לירח ברכות כלא, על כן בסימא כמי שיצדור, ובסימא דרגלי, ענינאם עליו קודם, והימין קצת יליה ברכות, על כן בסימא דוקא כבברכת קריאת שמע.

משנה בורח שם סי' ד

ולקדושה ולברכו - ענין בסימא סיו, דהבריש שמפסיקין כאמצע ברכת קריאת שמע, והוא היחוד הוא, ואם כבר סיים הכל אלא שאינו יכול לפסוע מומת אדם שמתפלל לצדוהו, ובכשי עומד בסימא קודם, לעולו ענינאם מיל להפסיק ולענות 'אמר', ובמאמר מרדכי כתב בפשיטות דאפילו 'ברוך הוא וברוך שמו' מותר או לומר:



Section A
Tefilla (Prayer)



A-1 What One Can Do While Waiting to Take Three Steps Back

Question: I am often unable to take the three steps back immediately at the end of *Shemoneh Esrei* because of a slow *davener* behind me. What may I say or do while in this situation?

Answer: First, let us review your assumption that you may not step back. In general, you may not encroach within four *amot*¹ of the person behind you during the latter's *Shemoneh Esrei*, even in order to take three steps back.² It is important to note that many *poskim* permit stepping backwards if the person *davening* is standing at an angle.³ Many also permit an intrusion for the sake of a *mitzva*, which could include the ability to continue *davening* with the *minyán*. However, even if you cannot take three steps back at the end of *Shemoneh Esrei* because someone is *davening* behind you, your participation in the *davening* need not be significantly impaired, as we will discuss.

The *gemara*⁴ identifies two factors that determine whether one has finished *Shemoneh Esrei*.⁵ One factor is whether he has stepped back; the other is whether he usually says *tachanunim* (additional requests) at the end of *Shemoneh Esrei*. According to the version of the *gemara* that we accept, even if one has not yet stepped back, if he does not say *tachanunim*, then his *Shemoneh Esrei* is considered finished after completing the final *beracha* (*Sim Shalom*).⁶ It follows that one who says *tachanunim* but has completed them is also finished, even before stepping back.⁷ This is the situation you describe, and your

1. Approximately six feet.
2. *Shulchan Aruch, Orach Chayim* 102:5.
3. See *Living the Halachic Process*, volume I, A-8.
4. *Berachot* 29b.
5. The *gemara* there is discussing whether one must repeat the entire *Shemoneh Esrei* upon realizing at that point that he forgot *Ya'aleh V'Yavo*.
6. *Shulchan Aruch, Orach Chayim* 422:1.
7. See *Mishna Berura* ad loc. 9.

question is valid. What can you do and what can you not do at that point, after completing *Shemoneh Esrei* but before stepping back?

The *Shulchan Aruch*⁸ rules that after finishing the last *beracha* of *Shemoneh Esrei*, one still may not answer *Kedusha* until after saying, “*Yiheyu l’ratzon...*” The reason is that “*Yiheyu l’ratzon...*” completes *Shemoneh Esrei*, even though the actual *berachot* of *Shemoneh Esrei* have already been recited, just as “*HaShem, sefatai tiftach...*” opens it.⁹ The Rama¹⁰ points out that since Ashkenazim have the practice to say *tachanunim* (*Elokai Netzor*) before “*Yiheyu l’ratzon...*,” they can also answer *Kedusha* before it.¹¹ In any case, if one has said “*Yiheyu l’ratzon...*,” even if he is in the midst of *tachanunim* and thus has not stepped back, he can say anything that is permitted during *Kri’at Shema*.¹² This includes responding to *Barchu* and the main parts of *Kaddish* and *Kedusha*¹³ and, for Ashkenazim, answering “*amen*” to *HaKel HaKadosh* and *Shomei’ah Tefilla*.¹⁴ The reason to refrain from other worthwhile responses is that *Elokai Netzor* is somewhat connected to *Shemoneh Esrei*, although it is considered to be on a lower level.¹⁵

The *gemara*¹⁶ compares taking three steps back after *Shemoneh Esrei* to taking leave from a king. (*Davening Shemoneh Esrei* is described as standing before the King.¹⁷) One should certainly feel limited in what he can do before taking leave of the King, even if he has technically finished *Shemoneh Esrei* and is permitted to respond under certain circumstances. Therefore, one should even skip parts

8. *Orach Chayim* 122:1.

9. See *Berachot* 9b.

10. *Orach Chayim* 122:1.

11. In practice, some Ashkenazim say “*Yiheyu l’ratzon...*” both before and after *Elokai Netzor*. See *Taz* ad loc. 2.

12. *Shut HaRashba* 1:807.

13. *Shulchan Aruch, Orach Chayim* 66:3; see *Mishna Berura* 66:17.

14. Rama ad loc.

15. *Taz, Orach Chayim* 122:1.

16. *Yoma* 53b.

17. Rashi, *Berachot* 25a.

of *Elokai Netzor* in order to avoid even responding to *Kedusha* before stepping back.¹⁸ As we saw above, this does not warrant infringing upon another's four *amot*. However, the *Ma'amar Mordechai*¹⁹ intuits that if one is ready to step back and is prevented from doing so by a technical reason (e.g., someone is *davening* behind him), the level of standing before the King is reduced. In that case, he argues, one can even answer, "*Baruch hu u'varuch shemo*" upon hearing HaShem's Name, even though this response is only a *minhag*. The *Mishna Berura*²⁰ and many other *Acharonim* accept this opinion, with some permitting participation in other parts of *tefilla*, such as *Ashrei* and *Aleinu*, if one cannot step back. The *poskim* discuss whether the same is true for religiously related utterances that are not directly associated with *tefilla*.²¹ One may certainly read *divrei Torah* at that time,²² and he may say the *Tehillim* he customarily recites at the end of *davening*,²³ but if possible, he should refrain from other positive speech unrelated to *tefilla*.

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

19. Ad loc. 2.

20. Ad loc. 4.

21. See the opinions in *Ishei Yisrael* 32:(73).

22. In many contexts, reading is not considered the equivalent of recitation. See *Aruch HaShulchan, Orach Chayim* 68:4.

23. *Ishei Yisrael* *ibid*.

A-2: How to Carry Out a Shortened Chazarat HaShatz

Question: Sometimes a *minyan* recites what is called “*heiche kedusha*.” Usually, the *tzibbur* recites the silent *Shemoneh Esrei* and, after its completion, the *chazan* begins the *chazarat hashatz* and *Kedusha*. In the case of *heiche kedusha*, the *chazan* says *Shemoneh Esrei* aloud through *Kedusha* before the *tzibbur* has said the silent *Shemoneh Esrei*. When this is done, should the *tzibbur* start *Shemoneh Esrei* along with the *chazan* and continue after *Kedusha* is completed or should everyone listen and respond until after *Kedusha* and only then begin *Shemoneh Esrei*?

Answer: The *Shulchan Aruch* and Rama discuss starting *Shemoneh Esrei* along with a *chazan* in two different contexts. In one case, the *tzibbur* is *davening* normally, but a latecomer is ready to start *Shemoneh Esrei* when *chazarat hashatz* is about to begin.¹ A second case is one in which, under extenuating circumstances (e.g., the end time for *davening* is approaching), the *tzibbur* wants to recite *heiche kedusha*.² (In this context, we will not discuss the question of in which cases, if any, a congregation should choose the *heiche kedusha* system.)

In the former case, regarding a latecomer, the *Shulchan Aruch* describes the individual as starting to recite *Shemoneh Esrei* along with the *chazan*. Rav Ovadia Yosef posits that this is the correct approach both regarding the case of the individual and that of *heiche kedusha*.³ Even though one should normally not respond to *Kedusha* if he is in the midst of his silent *Shemoneh Esrei*, he may do so in this case because he is reciting *Kedusha* in its correct place along with the *tzibbur*.⁴ In contrast, the Rama rules that an individual should

1. *Orach Chayim* 109:2.
2. Rama, *Orach Chayim* 124:2.
3. See *Yalkut Yosef*, vol. 1, p. 279.
4. See *Tosafot*, *Berachot* 21b.

preferably commence *Shemoneh Esrei* only after responding to *Kedusha* and the concluding *beracha*. However, the *Mishna Berura*⁵ cites significant Ashkenazic opposition to the Rama's view. These *poskim* say that it is acceptable for an individual to start with the *chazan*. It may even be preferable to do so, especially during *Shacharit*; if the latecomer waits to begin his *Shemoneh Esrei* he will likely end up reciting *Kedusha* at the problematic juncture of "*Shira Chadasha...*"

Regarding *heiche kedusha*, the Rama recommends beginning one's *Shemoneh Esrei* along with the *chazan*, as long as at least one person delays starting his *Shemoneh Esrei* in order to answer "*amen*" to the *berachot*.⁶ While this would seem to answer your question, the Rama is referring specifically to a case in which there is insufficient time to *daven* normally, and some commentaries understand that the situation does not allow the *tzibbur* enough time to start *Shemoneh Esrei* after *Kedusha*. In any other case, they argue, it would be proper for the *tzibbur* to wait.⁷ This answers your question in the opposite direction. Unless it will be impossible to finish *Shemoneh Esrei* on time, the *tzibbur* should begin *Shemoneh Esrei* only after *Kedusha*.

It is unclear why these commentaries conclude that starting along with the *chazan* is not preferable in the case of *heiche kedusha*. It is possible that they are concerned that there should be people to answer *amen* to the *berachot*. This is more of an issue for a *tzibbur* than for an individual.⁸ Alternatively, the problem may be reciting *Kedusha* while in the midst of one's *Shemoneh Esrei*.⁹

In fact, there are significant reasons to argue that it is preferable for the *tzibbur* to start *Shemoneh Esrei* together with the *chazan*. The *Kaf HaChayim* points out that if everyone were to listen to the *chazan* without *davening* themselves, it would appear as though he were reciting *chazarat hashatz* for them. This is problematic, the *Kaf*

5. 109:14.

6. Rama, *Orach Chayim* 124:2.

7. *Mishna Berura* 124:8.

8. This is the implication of the *Divrei Chamudot*, *Berachot* 4:15.

9. See a variation of this issue in the *Levushei Serad* on the *Magen Avraham* 109:9.

*HaChayim*¹⁰ argues, because *chazarat hashatz* should not be recited before the *tzibbur* has said the silent *Shemoneh Esrei*. Rav Hershel Schachter posits that it is appropriate to say *Kedusha* only in the appointed place within one's *Shemoneh Esrei*. During *chazarat hashatz*, it is as if the whole *tzibbur* is in the midst of *Shemoneh Esrei*; consequently, *Kedusha* is in its appointed place. However, in the case of *heiche kedusha*, in which everyone is reciting his own *Shemoneh Esrei*, if *Kedusha* is recited before people have begun *Shemoneh Esrei*, *Kedusha* is not in the right place.¹¹ Rav Schachter reports that Rav Soloveitchik had the practice of beginning *Shemoneh Esrei* with the *chazan* in the case of *heiche kedusha*.

Both positions on your question have significant support, and the stakes seem low, as most of the participants in the debate seem to disagree only as to which approach is **preferable**. Nevertheless, the majority opinion and the more prevalent practice among Ashkenazim is to wait until after *Kedusha* before starting *Shemoneh Esrei* during *heiche kedusha* (at least for *Mincha*, when *heiche kedusha* is more common). Those who follow Rav Soloveitchik's rulings should start along with the *chazan*.

10. *Orach Chayim* 124:10.

11. *Nefesh HaRav* p. 126.

A-3: *Davening Without a Minyan vs. Working Before Davening*

Question: In the morning, is it better to *daven* without a *minyan* before doing any work or to do some work first and *daven* with a *minyan* later (at a halachically acceptable time)?

Answer: One should not perform any work before *davening* once *alot hashachar* (some 72 minutes before sunrise) has passed.¹ “Work” in this context is not limited to one’s employment, but rather includes a wide variety of household tasks of even moderate time duration.

The reason for this *halacha* is that when one gets up in the morning, addressing his Maker should be his first concern. Therefore, there are significant similarities in logic and halachic parameters between this restriction and those of not traveling, eating, or greeting people before *davening*.² Generally, an activity for the purpose of a *mitzva* is permitted before *davening* because it is not considered an affront to HaShem.³ Even then, precautions are sometimes necessary to reduce the concern that one may get carried away and miss *davening* on time altogether.⁴

The initial reaction to your question is that neither option is ideal. It is best to *daven* with a *minyan* before working, and everything else must wait. However, in cases of significant need, the pre-*davening* restrictions may be waived. One classic example is traveling before *davening* when the travel arrangements will be unavailable after one *davens*.⁵ (Not every trip justifies such steps,⁶ but further discussion is beyond the scope of our present discussion.). The *Ishei Yisrael*⁷

1. *Berachot* 14a; *Shulchan Aruch, Orach Chayim* 89:3.
2. *Berachot* op. cit. and 10b; *Shulchan Aruch, Orach Chayim* 89:2–4.
3. *Mishna Berura* 89:36 and 250:1.
4. See *Shulchan Aruch, Orach Chayim* 89:6 regarding learning before *davening*.
5. See *Mishna Berura* 89:20.
6. See *Mishna Berura* 90:29.
7. 13:(47).

says that the circumstances that justify travel before *davening* also justify work before *davening*. These extenuating circumstances are also certainly grounds for missing a *minyan*.⁸

Assuming that you will not be able to both *daven* with a *minyan* and do so before starting work, your question of which of the two factors should take precedence is a good one. The consensus of the few sources on the matter is that it is better to *daven* first than to start working and *daven* with a *minyan* later.⁹ The ruling is readily understandable. Under ordinary circumstances, it is **forbidden** to work before *davening*. In contrast, while *davening* with a *minyan* is an important element of *tefilla* and also makes it more effective,¹⁰ it is not forbidden to *daven* without a *minyan*.¹¹ A serious inconvenience is a sufficient reason to miss a *minyan*,¹² and avoiding the prohibition of working before *davening* also qualifies.

That being said, the case for always *davening* first, even without a *minyan*, is not iron-clad. To begin with, the Rama¹³ cites and does not entirely reject the opinion that one may do work after reciting *Birkot HaShachar*. Although we would not normally condone this, when it “buys time” to allow someone to *daven* with a *minyan*, it is not unreasonable. Second, those who have to *daven* very early in order to avoid working first may have to say *Shemoneh Esrei* before sunrise, which is permitted only under pressing circumstances.¹⁴ If the *minyan* alternative has the additional benefit of being at or after sunrise, this might tip the scale in its favor. Finally, if the quality of the *davening*, from a practical or even psychological perspective, is

8. See *Mishna Berura* op. cit.

9. *Ishei Yisrael* 12:13; *Rivevot Ephraim* 1, 66 in the name of Rav Hadaya.

10. *Berachot* 8a.

11. See also *Living the Halachic Process*, vol. 1, A-5.

12. See *Shulchan Aruch, Orach Chayim* 90:16, and *Mishna Berura* 90:52.

13. *Orach Chayim* 89:3.

14. *Shulchan Aruch, Orach Chayim* 89:8; see *Bi'ur Halacha* to 58:1.

enhanced at the *minyán*, this too is a major factor.¹⁵ Therefore, we suggest that you discuss the different considerations and options with a rabbi who knows you and your situation well.

15. See *Mishna Berura* 89:39.

A-4: Forming a Separate *Minyan* to Accommodate Multiple Mourners

Question: I have noticed recently that when there is more than one *chiyuv* (a mourner or someone who has a *yahrtzeit*) at our *minyan*, a second *minyan* often forms in a side room. Is this desirable or proper?

Answer: It is often difficult and unwise to argue with *chiyuvim* because their demands usually stem from a sincere desire to honor their parents properly. Putting things in perspective, however, helps develop a healthy halachic outlook, which can ease a situation in which a binding ruling is not appropriate.

The Rama¹ rules that it is proper for sons of a deceased parent to increase his or her merit by reciting *Kaddish* and acting as *chazan* during the eleven months after his or her death. However, the mourners do not have an absolute obligation or entitlement to be the *chazan*. The *Shulchan Aruch*² says that the congregation may choose a person other than the mourner to be the *chazan*, if it so desires. A mourner's absolute right applies only to the *Kaddeishim* designated for him.³ However, the congregation has a *mitzva* to allow the mourner to be the *chazan* under normal circumstances (i.e., when he is a fluent *chazan* and a decent person).

Those mourners who are not able to be the *chazan* were allotted *Kaddeishim* to aid them in attaining merit for their parents. It is halachically preferable for one mourner alone to recite each *Kaddish*. To deal with situations of multiple mourners, the *Acharonim* arrived at detailed rules of *kedimut* (prioritization). However, over the last few hundred years, in order to prevent quarreling, the *minhag* to allow multiple people to say *Kaddish* together has spread almost universally

1. *Yoreh Deah* 376:4.
2. *Orach Chayim* 53:20.
3. *Mishna Berura* 53:60.

among both Sephardim and Ashkenazim.⁴ Thus, nowadays, the applicability of the rules of *kedimut* is limited to the question of whom to choose as *chazan*.

Upon review of the major sources on *kedimut*,⁵ one will not find the suggestion of splitting *minyanim*. Because the idea has apparently only been implemented relatively recently, the practice is still too recent and limited to have spawned significant literature. The main source that condones it is the *Afarkasta D'Ania* (20th century).⁶ The main concern that he addresses in regard to the practice is its impact on the halachic concept of *b'rov am hadrat melech* (the King's honor is enhanced in large gatherings). He demonstrates, however, that this is not an absolute rule and that it can be outweighed by other factors. The *Afarkasta D'Ania* assumes that a mourner has an obligation to be a *chazan*, even though he does not always have the opportunity, and he thus maintains that this is sufficient grounds for splitting *minyanim*.⁷

We would counter that it is difficult to believe that *Chazal* created a full-fledged obligation that is so frequently impossible to fulfill due to the mourner's capabilities or the presence of multiple mourners. Furthermore, if it were a compelling obligation, why didn't earlier *poskim* address the problem? Rather, we believe that the *mitzva* is to follow the halachic rules, which provide guidelines regarding how to deal with multiple *chiyuvim*. Following this system, the *chiyuvim* will be able to recite *Kaddeishim* and do their fair share of serving as *chazan* as well.

We can identify six possible problems that may result from creating a separate *minyan* (depending on the case): 1. Lack of adherence to the principle of *b'rov am*, as discussed above; 2. moving people

4. See *Gesher HaChayim* 30:10:12.

5. See *Ma'amar Kaddishin* in *Bi'ur Halacha* 132; *Gesher HaChayim* 30:10.

6. 1:30.

7. Some have the practice of forming an additional *minyan* only on *Motzaei Shabbat*, due to the added need to "assist" the deceased at this time; see *Kitzur Shulchan Aruch* 26:1

from their *makom kavu'a*;⁸ 3. *davening* outside of a set *shul*;⁹ 4. the possibility that there will not be nine people responding to the parts of the *tefilla* that require a *minyan*; 5. the effect on the cohesiveness of the community and its *davening*;¹⁰ 6. *tircha d'tzibbura*,¹¹ when it is necessary to wait longer for a *minyan* in order to begin *chazarat hashatz*.¹² A combination of these factors may explain why the classical *poskim* did not propose the solution of splitting a *minyan* for a mourners' benefit.

There seem to be two sociological reasons for this recent innovation, developing from the grass roots. One is the "shtiebelization" of our communities. The tradition of consistently *davening* in one *shul* has given way, in many places, to finding the best fit for each circumstance (based on time, speed, location, etc.). Why shouldn't helping a mourner be a reason to ignore the above issues, about which people are lax in any case? The second explanation is that once one *chiyuv* is seen making his own *minyan* (and people are afraid of causing hard feelings if they confront him), others feel that their parent deserves no less, thus causing a snowball effect. If the trend becomes more prevalent, trying to prevent its implementation will indeed cause fights (which we do not condone). It is best if those concerned consider that their parents' souls will acquire no less merit by having a son who follows the age-old rules of *kedimut* and preserves the integrity of communal *tefilla*. Hopefully, this will slow the trend.

8. *Shulchan Aruch, Orach Chayim* 90:19.

9. *Shulchan Aruch, Orach Chayim* 90:9; see also *Mishna Berura* 90:18.

10. See *Shulchan Aruch, Orach Chayim* 124:4.

11. Inconveniencing the community, especially by delay.

12. See Rama 124:3 and *Mishna Berura* ad loc. 13.

A-5: A *Brit Mila* or *Mincha* – Which Should be Done First?

Question: At an afternoon *brit mila* at which the participants will *daven Mincha*, which should be done first – the *brit* or *Mincha*?

Answer: We will first explain why this question does not arise in the writings of the classical *poskim*. A *brit mila* may be performed throughout the daylight period. However, since “the diligent do *mitzvot* early,”¹ it is proper that it take place in the morning, and this has been the widespread *minhag* for centuries.² There is therefore little discussion of *mila* at *Mincha* time.

Considering why *Shacharit* precedes a *brit* may be instructive in attempting to determine whether *Mincha* should similarly precede a *brit*. One reason is that *tadir kodem* (more frequently occurring *mitzvot* are performed before less frequent ones).³ This reason would seem to apply to *Mincha* as well. Alternatively, perhaps the precedence of *Shacharit* is due to its association with other *mitzvot* such as *Kri'at Shema*, which is a Torah commandment in addition to being frequent.⁴ This reasoning would not apply to *Mincha*. Other explanations include that we are concerned that if we delay *Shacharit*, we may not be able to *daven* by the end of its proper time, and that *Shacharit* is a morning *mitzva*, whereas *mila* is a daylight *mitzva*.⁵ These latter reasons also do not apply to *Mincha*, the latest time for which is the same as for a *brit*.

Is the factor of *tadir* sufficient to compel us to *daven Mincha*

1. *Z'rizin makdimin l'mitzvot* (*Pesachim* 4a).
2. The question of whether it is proper to delay a *brit* in order to increase the number of participants or for another reason is beyond the scope of the present discussion. See *Yabia Omer* II, *Yoreh Deah* 18.
3. *Aruch HaShulchan*, *Yoreh Deah* 262:9.
4. See *ibid.* and *Yechaveh Da'at* III:15.
5. See *Otzar HaBrit* 3:5:(5).

before a *brit*? In a similar situation, the *gemara*⁶ says that one who had not *davened Musaf* by *Mincha* time should *daven Mincha* first because of *tadir*. However, *Tosafot*⁷ claims that this is so only when one needs to *daven Musaf* and *Mincha* in immediate succession. Otherwise, one should *daven Musaf* first and *daven Mincha* later within its time span. According to this, the fact that *Mincha* is more *tadir* than a *brit* would only give it precedence if it is necessary to *daven Mincha* around the time of the *brit*.

The *Shulchan Aruch*⁸ seems to prefer the opinion that *Mincha* precedes *Musaf* even when one could *daven Mincha* later. But how far do we take the precedence of *tadir kodem*? Certainly, one who wants to recite *Shehecheyanu* on a fruit (a non-*tadir mitzva*) in the afternoon does not have to *daven Mincha* first! Rather, something must trigger the *tadir mitzva* to “come to mind” now. In the *gemara*’s case, the fact that one wants to *daven* naturally raises the question of which *tefilla* is appropriate. Similarly, when one wakes up on the day of the *brit*, both *Shacharit* and *mila* are matters he ordinarily wants to take care of as soon as possible. In contrast, *Mincha* is not something that is normally *davened* at the earliest opportunity. That being the case, the fact that it is *tadir* may not give it precedence over the *brit*.

One reason to require *Mincha* first is the halachic problem of having a “big meal,” including a *brit* meal, prior to *Mincha* because of the concern that one will become distracted and fail to *daven Mincha* in its proper time.⁹ However, that issue may not apply to everyone, perhaps including those who are in a situation in which they will be reminded to *daven*.¹⁰ Furthermore, there sometimes is a long break between the *brit* and the festive meal, during which time *Mincha* can be *davened*.

It appears that different courses of action are called for in different

6. *Berachot* 28a.

7. *Ad loc.*

8. *Orach Chayim* 286:4.

9. Rama, *Orach Chayim* 232:2.

10. Rama *ad loc.*; see *Ishei Yisrael* 27:(27).

cases. When the “schedule” of the *brit*, as determined by the principals to the *brit*, includes *Mincha*, it makes sense to *daven Mincha* first because it is *tadir*, and this is in fact what usually happens. If *Mincha* is arranged independently by the guests, there should be no halachic question. Neither the *mitzva* of *mila* nor the *mitzva* to take part in the meal (which, as we noted, can generate the obligation to *daven Mincha* first) are obligations that are incumbent upon guests. Therefore, the guests do not have to decide whether *Mincha* or *mila* has precedence. It is a matter of their convenience. Furthermore, there are other factors – such as the *mohel*’s schedule, among other matters – that may be part of the equation. Thus, no rule or ruling in this regard can be applied definitively across the board.

A-6: A Wheelchair Bound *Chazan*

Question: Is a person in a wheelchair allowed to be a *chazan*?

Answer: There are two main issues to discuss regarding this question.

In discussing the qualifications of a *chazan*, the *Magen Avraham*¹ cites the Maharshal, who says that a *ba'al mum* (one who has a physical blemish) is qualified to serve as a *chazan*. However, based on a passage in the *Zohar*, the *Magen Avraham* writes that a *ba'al mum* should not serve as a *chazan*. He explains this based on the concept that one would not make a presentation before a king in a manner that appears blemished. He also compares this situation to the prohibition on a *kohen* who is a *ba'al mum* to serve in the *Beit HaMikdash*. Notably, even a temporary blemish disqualifies the *kohen* for as long as it exists.² As far as accepted *halacha* is concerned, the *Mishna Berura*³ prefers the opinion that a *ba'al mum* may serve as a *chazan*, but he remarks that some prefer an “unblemished” *chazan* if he is equally qualified.⁴

An important distinction likely applies. The *Binyan Tzion*⁵ points out that the *Shulchan Aruch*⁶ allows a blind person to be a *chazan*, even though he is certainly a *ba'al mum*. He says that the *Magen Avraham* was likely talking about an appointment as a permanent *chazan*, whereas the *Shulchan Aruch* was discussing having a blind man *daven* occasionally. (This distinction between permanent and occasional *chazan* runs through a large part of the laws of a *chazan*.)

Another relevant issue in the present case is the requirement to stand during significant sections of *tefilla*, including, most

1. 53:8.
2. Rambam, *Bi'at HaMikdash* 6:1.
3. 53:13.
4. See also *Ishei Yisrael* 14:6.
5. 5.
6. *Orach Chayim* 53:14.

prominently, *Shemoneh Esrei*⁷ – something a wheelchair bound *chazan* cannot do. On the other hand, one who has difficulty standing at the moment may *daven* while seated.⁸ This leniency can be understood in two different ways. Perhaps *davening* seated is not an ideal manner of *tefilla*, but it is better than not *davening* at all. Alternatively, since we stand during *davening* in order to act in a manner that shows and/or contributes to our awe while praying before HaShem,⁹ sitting is not a problem at all when it is the maximum one is capable of.¹⁰ According to the latter understanding, it follows that since the wheelchair bound *chazan* is doing his best, there is no problem for the congregation, even though it could have found a *chazan* who can stand.¹¹

The Rambam¹² says that one may read *Megillat Esther* seated, but he should not do so when reading for the public because it deserves honor (*kavod hatzibbur*). Similarly, Rav Ezra Batzri¹³ rules that in our case, the congregation has the right to say that it is beneath its dignity to have a *chazan* who is unable to stand, as is normal and preferred. However, he says that taking such an approach with regard to a person for whom others should feel compassion, as HaShem does, would be a sin.

Let us now translate the halachic indications into general instructions. If one has been injured and will be in a wheelchair for a matter of weeks or months, he and the *gabbaim* would probably do well to wait until he recuperates to return him into the rotation of *chazanim*. The preferences we have seen above and the regrettable possibility that people may stare or comment negatively make a postponement prudent. On the other hand, if a *yahrtzeit* or a situation of *aveilut* arises, he should not be excluded, since Halacha allows him to serve

7. *Shulchan Aruch, Orach Chayim* 94:4.

8. *Ibid.*

9. See *Taz, Orach Chayim* 94:4.

10. Rav Ezra Batzri, *Techumin*, vol. IV, pg. 459.

11. *Ibid.*

12. *Megilla* 2:7.

13. *Op. cit.*

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as *chazan*. Physical challenges, such as getting a *sefer Torah* to and from the *bima*, can be easily overcome. If one is permanently (or for an extended period) in need of a wheelchair, he should be included in as many normal activities as are physically and halachically possible. He should be allowed to be the *chazan* under these circumstances, certainly when he is not a full-time *chazan*.¹⁴

14. If he was previously appointed as *chazan*, he can continue (see *Ishei Yisrael* op. cit.).

A-7: What a Woman Should Do If She Missed *Mincha*

Question: I (a woman) try to *daven Shacharit* and *Mincha*, but not *Ma'ariv*, every day. Not infrequently, I forget to *daven Mincha*. When that happens, am I supposed to *daven Ma'ariv* that night, and if so, once or twice?

Answer: One factor that your question depends upon is whether women are obligated to *daven Mincha*. The Rambam¹ says that women are obligated by Torah law to *daven* daily. However, the Torah law is fulfilled by any request made during the day, and the Rabbinic decree that one *daven* set prayers twice or three times a day² is time-based. Women, who are not obligated in time-bound commandments, may therefore not be obligated in the formal structure of *Shacharit* and *Mincha*. Many women follow this approach and suffice with a short prayer/request daily.³

In contrast to the view of the Rambam, the Ramban⁴ maintains that *tefilla* is entirely a Rabbinic obligation. Because of its importance as a means of requesting mercy from HaShem, the Rabbis obligated women as well. Accordingly, women are obligated in at least the essentials of *Shacharit* and *Mincha*, just like men. The *Mishna Berura*⁵ prefers the Ramban's opinion.

One major difference between the obligations of men and women concerns *Ma'ariv*, which is essentially a voluntary *tefilla*.⁶ While men accepted it upon themselves as an obligation, women did not.⁷ Another difference is that women who are especially busy, in particular

1. *Tefilla* 1:2.
2. See below.
3. *Magen Avraham* 106:2.
4. Comments on *Sefer HaMitzvot L'HaRambam*, Aseh 5.
5. 106:4.
6. *Berachot* 27b.
7. *Mishna Berura*, *ibid*.

those responsible for the unpredictable needs of small children, may be exempt from *Shacharit* and *Mincha*, either by relying on the lenient opinion of making a short prayer/request or because their involvement with the children exempts them.⁸

You categorize yourself as one who *davens Shacharit* and *Mincha* but not *Ma'ariv*, and thus your situation is as follows. If you are obligated in *Mincha* to the same degree as a man, you should *daven tashlumin* (a make-up prayer) for your missed *Mincha*, just as a man would. However, *tashlumin* was instituted to be recited **after** the next established *tefilla* (in your case, *Ma'ariv*). In fact, if one does something that shows that the first *tefilla* he recited was the make-up, preceding the set *tefilla*, he does not fulfill *tashlumin*.⁹ Thus, if you do not *daven Ma'ariv*, you will not be able to *daven tashlumin*; you cannot wait until *Shacharit*, as *tashlumin* must be done at the next *tefilla* period.¹⁰ (One could raise the argument that for a woman, *Shacharit* is the next *tefilla* after *Mincha*, but Rav S.Z. Auerbach rejects that logic.) Even if you are not obligated in *Ma'ariv*, if you choose to *daven* it, you can then do *tashlumin*.¹¹ However, it is unclear whether you are required to go so far as to *daven Ma'ariv* in order to make *tashlumin* possible.¹²

A claim might be advanced that one *Shemoneh Esrei* at the time of *Ma'ariv* is sufficient, as a woman is obligated in one *tefilla* other than *Shacharit*. Usually, the second *tefilla* is *Mincha*, but if a woman *davens Ma'ariv* voluntarily, she has recited the correct number of *tefillot*. However, this reasoning is flawed because she was supposed to *daven Mincha*, and when she missed it, she is expected to *daven tashlumin*. A normal *Ma'ariv* fulfills neither *Mincha* nor its *tashlumin*. In fact, if you were to *daven Ma'ariv*, you would be **required** to *daven* the *tashlumin* for *Mincha*.¹³ Thus, while it is questionable

8. See *Ishei Yisrael* 7:7.

9. *Shulchan Aruch, Orach Chayim* 108:1.

10. *Shemirat Shabbat K'Hilchata* 43:(110) in the name of Rav S.Z. Auerbach.

11. See *Mishna Berura* 263:43.

12. *Shemirat Shabbat K'Hilchata* op. cit.

13. See *Ishei Yisrael* 36:(15).

whether you have to *daven Ma'ariv*, if you do so, you will have the opportunity, and thus the obligation, to say an additional *Shemoneh Esrei* at that time as *tashlumin*.

If a woman has not accepted upon herself the obligation to *daven Mincha*, she obviously cannot be obligated more in *tashlumin* than she is in the original *tefilla*. There may be an issue if a woman tries to *daven Mincha* fairly regularly except when she is quite busy, but on a given day she forgot without a real excuse. However, even in that case, she is presumably not obligated in *tashlumin*, since she does not treat *Mincha* as a full obligation.

In summary, in your case, it is unclear whether you must *daven Ma'ariv*, but if you did, you would say two *Shemoneh Esreis*. While it is difficult to mandate *davening Ma'ariv* under those circumstances, we suggest that it may be worthwhile,¹⁴ especially if it makes you feel better or will help you remember to *daven Mincha* in the future.

14. See *Halichot Shlomo, Tefilla* 13:8.

A-8: Chazanim Repeating Words

Question: When I hear a *chazan* repeat words to fit tunes during *tefilla*, it upsets me. Am I correct to react that way?

Answer: The *mishna*¹ states that one who says “*Modim modim*” is silenced. The reason is that he appears to be addressing two deities. Rabbi Zeira² extends this *halacha* to *Shema* as well. The *gemara* questions this by quoting a *baraita* that states that repeating *Shema* is “*meguneh*” (unseemly), implying that we do not go as far as to silence one who repeats. The *gemara* explains the apparent contradiction by distinguishing between a case in which one repeats the statement as a whole and a case in which one repeats word by word. Rashi explains that if one utters a coherent statement twice in succession, it may be understood as addressing two deities; repeating each word appears “only” like a mockery, which is a less serious affront. The Rif³ comes to the opposite conclusion: repeating words gives the impression of speaking to two deities, whereas repeating sentences is generally “only” derogatory. The *Shulchan Aruch*⁴ does not decide between the opinions, stating only that it is forbidden to repeat *Shema* in either manner. Only if one feels that he had insufficient concentration is it proper to repeat a section.⁵

The problem of giving the impression that he is addressing two deities does not apply to most passages of *Kri'at Shema* and *tefilla*.⁶ Nevertheless, many *poskim* write that the negative view of unnecessarily repeating words applies throughout *tefilla*, and the Maharam Shick⁷ offers five objections. The most classically halachic one,

1. *Berachot* 33b.
2. Ad loc.
3. 23b of the Rif's pages to *Berachot*.
4. *Orach Chayim* 61:9; see also *Beit Yosef, Orach Chayim* 61.
5. *Mishna Berura* ad loc. 22.
6. *Beit Yosef, Orach Chayim* 61.
7. *Orach Chayim* 31.

which applies to parts of *tefilla* during which one may not talk, is the matter of *hefsek*.⁸ Rav Moshe Feinstein,⁹ while objecting to repeating words, writes that if one keeps the sequence of the words intact, repetition is not a *hefsek*. His proof is the fact that one who did not concentrate when saying certain words is allowed to repeat them even though he was already *yotzei*.¹⁰ However, he reasons that if one repeats words out of sequence, at least when this distorts the meaning, it is a *hefsek*.

The *Aruch HaShulchan*¹¹ employs his well-known approach, seeking justification for common practices that apparently contradict *halacha* when people are reluctant to change their ways. He suggests that perhaps the problem of repeating words is restricted to the instances that the *gemara* mentions.

Some of the Maharam Shick's objections are subjective. For example, he says that repeating words is a disrespectful way of presenting our prayers to HaShem. *Chazanim* may counter that the inspiration gained by using moving tunes to reach the *tefilla*'s ultimate goals justifies some repetition and even provides useful emphasis. Skeptics will counter that one can use or compose tunes that are just as moving without affecting the words' integrity and that the Rabbis who formulated the prayers were in a better position to judge the *tefilla*'s goals than a composer of cantorial pieces. Some would also invoke the *Shulchan Aruch*'s¹² complaints about certain *chazanim* flaunting their voices. Of course, no two cases are precisely the same.

After summarizing that repeating words in a way that does not change meaning, while being far from ideal, is vaguely justifiable, we offer the following comments. In an ideal world, a congregation would instruct its *chazanim*, as a rule, to not repeat words. However, many congregations include dear Jews who may not be aware of or

8. A problematic interruption.

9. *Igrot Moshe, Orach Chayim* 11, 22.

10. Fulfilled his *mitzva*.

11. *Orach Chayim* 338:8.

12. *Orach Chayim* 53:11.

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careful about every halachic intricacy. In such settings, it may not be realistic or worthwhile to take issue with those who do repeat. Likewise, if in a congregation where generally there is no word repetition, a guest or someone who does not take this rule seriously does repeat, it does not pay to offend him. A rabbi may want to introduce the *halacha* in an educational way that avoids hurting feelings. In general, we should criticize others very sparingly. This is especially true in our society, in which people are used to freedom and react negatively to criticism (sometimes with severe consequences). Only regarding people or settings (such as a yeshiva) where there is a willingness to learn improved ways of performing *mitzvot* would we suggest correcting (privately) one who is unaware of these objections. Certainly, when nothing positive can be achieved, it is a shame to upset yourself.

A-9: One Who Davened Mincha Instead of Ma'ariv

Question: I got confused one night and instead of davening Ma'ariv (with Kri'at Shema and its berachot preceding Shemoneh Esrei), I did a Mincha davening (Ashrei and Shemoneh Esrei). When I realized this after Shemoneh Esrei, what should I have done?

Answer: There are times when one might recite *Shemoneh Esrei* at *Ma'ariv* without having recited *Kri'at Shema* and its *berachot*. The most common case is when one comes late to *Ma'ariv* and needs to join the *minyán* for *Shemoneh Esrei*. In this situation, he starts with *Shemoneh Esrei* and says *Kri'at Shema* with its *berachot* afterwards.¹ Thus, the lack of having said *Kri'at Shema* does not disqualify your *Ma'ariv Shemoneh Esrei*. (Whether you said *Sim Shalom*² instead of *Shalom Rav* is not a problem, as switching them does not disqualify *Shemoneh Esrei*.³)

However, the question remains as to whether you fulfilled the *mitzva* of davening *Ma'ariv* (the basis of which is *Shemoneh Esrei*), considering that you may have intended to daven a different *tefilla*. The *gemara*⁴ questions whether one who reads *Kri'at Shema* as a Torah text – without the intent to fulfill the specific *mitzva* of *Kri'at Shema* – fulfills the *mitzva*, and concludes that this depends on the general question of whether *mitzvot tzrichot kavana* (require intent). If they do, one cannot fulfill the *mitzva* of *Kri'at Shema* if he intends to fulfill another *mitzva* (learning Torah) at that time. The *Shulchan Aruch*⁵ rules that *mitzvot* do require *kavana*. However, there is a major disagreement among the *poskim* regarding whether this applies only to *mitzvot* whose obligation is from the Torah or

1. *Shulchan Aruch, Orach Chayim* 236:3.
2. If you daven *Nusach Sephard*.
3. *Mishna Berura* 127:13.
4. *Berachot* 13a.
5. *Orach Chayim* 60:4.

even to *mitzvot* of Rabbinic origin,⁶ including the specific *tefillot* of the day.⁷

If we assume that the *mitzva* to *daven Mincha* and the *mitzva* to *daven Ma'ariv* are distinct *mitzvot*, it seems that when you *davened Mincha*, you did not have in mind to fulfill the *mitzva* of *Ma'ariv*, and it therefore appears questionable whether you fulfilled the *mitzva* of *Ma'ariv*. This assumption, however, is incorrect. Although they apply at different times and are accompanied by different *mitzvot*, the various *tefillot* are all part of one *mitzva* of *tefilla* that must be repeated at certain intervals and circumstances. This is similar to *Birkat HaMazon*, which is the same *mitzva* after whatever meal one says it and whether or not it includes *Retzei* or *Ya'aleh V'Yavo*. Therefore, one who *davens* and intends erroneously to fulfill the *mitzva* of *Mincha* at the time of *Ma'ariv* does fulfill the *Shemoneh Esrei* component of the *mitzva* of *Ma'ariv*, as each is part of the general *mitzva* of *tefilla*.

While not doing full justice to the topic, we will suggest some support for the idea that the various *tefillot* are essentially the same by considering the *halacha* of *tashlumin* (make-up for missed *tefillot*). When one unintentionally misses *davening* a certain *tefilla*, he is to make it up by *davening* the subsequent *Shemoneh Esrei* twice.⁸ When he does so, he repeats the *Shemoneh Esrei* appropriate for the time of the new *tefilla*. For example, if he missed Friday *Mincha*, he *davens* the *Ma'ariv Shemoneh Esrei* of Shabbat twice, even though that *Shemoneh Esrei* differs from the one that he missed.⁹ This implies that the repeated *Ma'ariv Shemoneh Esrei* of Shabbat is a fulfillment of the same *mitzva* of *tefilla* that he missed. We can apply this logic to the various weekday *tefillot* as well. If each of the three *tefillot* were a different *mitzva*, we would presumably wait until the next *Mincha* to make up a missed *Mincha*, but this is not the case.

6. See *Mishna Berura* 60:10.

7. Even according to the Rambam, who holds there is a Torah obligation to *daven* daily, the three specific *tefillot* are Rabbinic (*Tefilla* 1:1).

8. *Berachot* 26a–b; *Shulchan Aruch, Orach Chayim* 108.

9. *Ibid.* 9.

The *Mishna Berura*¹⁰ says that one who missed *Shacharit* can even be a *chazan* for *Mincha*, and that his *chazarat hashatz* serves both as a makeup of *Shacharit* for himself and of *Mincha* for whoever needs to be *yotzei* with him.

In carrying out *tashlumin*, if one deviates from the prescribed order and demonstrates that the first *Shemomeh Esrei* is meant for *tashlumin* and the second for the normal *tefilla*, then his first *Shemoneh Esrei* does not count.¹¹ However, this does not mean that intention for the wrong *tefilla* is generally a problem. First, the rule holds only when one says something that shows he had the wrong *tefilla* in mind.¹² (It is an interesting question whether reciting *Ashrei* or *Sim Shalom* would be such an indication.) More fundamentally, the *poskim* indicate that the *halacha* that *tashlumin* should not precede the regularly scheduled *tefilla* is unique. The problem apparently does not apply to one who has in mind to *daven* a regular *tefilla* but ended up saying the wrong one.

Furthermore, it is not clear to us (and perhaps to you) that you really wanted to *daven Mincha*. It is likely that you knew it was night and you were supposed to *daven Maariv*, but you just recited the wrong sections.¹³

For any and all of the above reasons, after having completed *Shemoneh Esrei*, it would have sufficed to recite *Kri'at Shema* and its *berachot* and then conclude with *Aleinu*.

10. 108:4.

11. *Shulchan Aruch* *ibid.* 10.

12. *Ibid.*

13. Analogously, one who leaves out *Retzei* in the *Birkat HaMazon* of Shabbat is usually fully aware, based on the setting, that he is *bentching* for a Shabbat meal.

A-10: At What Points During Davening May a Gabbai Speak?

Question: When is it permitted for a *gabbai* to speak in the course of performing his various responsibilities, such as choosing people for *aliyot* and informing them, finding out their names, and discussing who should be the *chazan*? Specifically, I was wondering about during *chazarat hashatz*,¹ *Kaddish*, and *kri'at haTorah*.²

Answer: *Chazarat hashatz* is a logical time to take care of planning the *aliyot*. Although it is theoretically better to do so as the Torah is being taken out of the ark, practically, this would often not leave enough time.

The *Shulchan Aruch*³ writes sternly about one who engages in “mundane talk” during *chazarat hashatz*, which implies that matters of an appropriate nature are permitted. This does not mean that one should feel free to do any positive act (e.g., learning) during *chazarat hashatz*; as a rule, people should listen, be careful to answer *amen* to the *berachot*, and not affect negatively the discipline of others in *shul*.⁴ However, everyone should understand that a *gabbai* has little choice but to use that time to carry out his communal tasks. (It is unfortunate that some *gabbaim* take the opportunity to also do unnecessary “schmoozing.”) Exceptions during *chazarat hashatz* are when there may not be ten men,⁵ besides the *gabbai* and the person with whom he is speaking, who are following *chazarat hashatz*⁶ and during *Kedusha*⁷ and *Modim D'Rabbanan*. Speaking during *Kaddish*

1. Repetition of *Shemoneh Esrei*.
2. “Laining,” the Torah reading.
3. *Orach Chayim* 124:7.
4. See *Shulchan Aruch* *ibid.* 4 and *Mishna Berura* 124:17.
5. In reality, nine plus the *chazan*.
6. See *Shulchan Aruch* *ibid.* and *Igrot Moshe*, *Orach Chayim* IV:19.
7. See Rama, *Orach Chayim* 125:2.

is more severe than during *chazarat hashatz* and should be avoided at almost all costs.⁸

The more difficult question regards the various parts of *kri'at haTorah*. The *gemara in Sota*⁹ says: "Once the *sefer Torah* is opened, it is forbidden to speak even in matters of Halacha." The *gemara in Berachot*,¹⁰ however, mentions that Rav Sheshet learned during *kri'at haTorah*. To reconcile these sources, the *Rishonim* make various distinctions pertaining to who the learner is and what his circumstances are.¹¹ Nevertheless, according to at least most of them, it is forbidden for a *gabbai* to speak during the actual *laining*. This could be because it is disrespectful or disruptive or because he is missing sections that he should hear.¹² Only in a situation in which there is no choice would talking be permitted at this time.¹³

There is a *machloket* regarding whether it is permitted¹⁴ or forbidden¹⁵ to speak *divrei Torah*¹⁶ *bein gavra l'gavra* (between *aliyot*). The *Beit Yosef* objects, but out of a somewhat technical concern that one who begins to speak might not stop in time for the next *aliya*. This concern does not seem to apply strongly to a *gabbai* on duty for two reasons: he needs some latitude in order to do his job and the *laining* will generally not commence until he is ready.

A remaining question regarding *kri'at haTorah* is how to view the *beracha* after an *aliya*.¹⁷ Is it considered part of the *laining*, to which everyone must listen, or is it part of *bein gavra l'gavra*? The *Ritva*¹⁸

8. See *Mishna Berura* 56:1.

9. *Sota* 39a.

10. 8a.

11. See *Tur, Orach Chayim* 146.

12. *Igrot Moshe, Orach Chayim* 1v:40.5; see opinions in *Yabia Omer* 1v, *Yoreh Deah* 31.

13. See *Aruch HaShulchan, Orach Chayim* 146:2.

14. *Bach, Orach Chayim* 146.

15. *Beit Yosef, Orach Chayim* 146.

16. Torah topics.

17. There are indications and logic to suggest that speaking during the opening *beracha* is similar to speaking during the reading itself; see *Mishna Berura* 146:4.

18. *Megilla* 21b.

says that the fact that the concluding *beracha* begins with “*Baruch*” indicates that it is not a “continuation *beracha*,” and one may therefore talk before it is recited. In a similar vein, regarding the *halacha* that one may leave *shul bein gavra l’gavra*, the *Pri Chadash*¹⁹ says that the period after the reading but before the *beracha* is already considered *bein gavra l’gavra*. Some rabbis even had the *minhag* to deliver a *derasha* before the ending *beracha*.²⁰ In addition, there is significant discussion regarding whether the *berachot* are an obligation for the whole congregation or just for the *oleh* and whether it is important for ten people to hear them.²¹

After weighing these factors, it seems reasonable to conclude that if (1) ten people hear the *beracha*, (2) the *gabbai* can talk without distracting the *oleh*, and (3) it will help eliminate delays that burden the congregation,²² then the *gabbai* may speak in order to fulfill his responsibilities before or during the *oleh’s* concluding *beracha*. Others should listen to the *beracha* intently.

19. 146:1.

20. See *Yechaveh Da’at* v:17.

21. See *Teshuvot V’Hanhagot* 1:143.

22. Halacha deems this a noble goal.

A-11: Must the *Oleh* for *Maftir* Read Along?

Question: When the *oleh*¹ for *maftir*² makes the *berachot* on the *haftara*³ but someone else reads it, must he read along? If we read from a *klaf*,⁴ must the *oleh* read along specifically from the *klaf*?

Answer: First, we will summarize the matter of an *oleh* reading along with the regular *kri'at haTorah*. The *Shulchan Aruch*⁵ rules that the *oleh* must read along because if he did not do so, his *beracha* would not be connected to anything he read and would therefore be *l'vatala*.⁶ For the same reason, the *Shulchan Aruch*⁷ rules that a blind man cannot have an *aliya* because he is not able to read from the *sefer Torah*, as is required. The Rama⁸ argues that nowadays, since the *oleh* says only the *berachot* and the *ba'al korei* reads the Torah for the community to hear, the blind and those who do not know how to read along may get *aliyot*, as is indeed the practice. The *Bi'ur Halacha*⁹ presumes that the Rama relied on the lenient opinion that reading along is **not absolutely necessary** in order to avoid a divisive situation in which many people would be denied *aliyot*. The Rama agrees, however, that under ordinary circumstances, the *oleh* should read along with the *ba'al korei*.

Are the halachic dynamics of *haftara* comparable to those of *kri'at haTorah*? The Rama¹⁰ says that the *oleh* for *maftir* should be the one to read the *haftara*. Only if he cannot read the *haftara* should someone else read it. Why can't the *oleh* for *maftir* just recite the *berachot*

1. One who receives an *aliya*.
2. The last *aliya* on Shabbat and *Yom Tov*.
3. The reading of a section from *Nevi'im* (the Prophets).
4. A Torah-like scroll of the book from the Prophets being read.
5. *Orach Chayim* 141:2.
6. Of no value.
7. *Orach Chayim* 139:3.
8. Ad loc.
9. To 141:2.
10. *Orach Chayim* 284:4.

on the *haftara* and have someone else *lain* it? The *Pri Megadim*¹¹ says that just as in the context of the regular *kri'at haTorah*, one must not recite the *berachot* without reading, the same is true for the *haftara*. Thus, he implies that just as the *oleh* reads along quietly with the regular *laining*, so does the *oleh* for the *haftara*.¹² The *Mishna Berura*¹³ and *Yaskil Avdi*¹⁴ also equate the *haftara* to *kri'at haTorah* in allowing one who cannot read the *haftara* himself to receive *maftir* and recite the *berachot* on the *haftara*.

The *Chayei Adam*¹⁵ says that the Gra instituted a change in *minhag*. Instead of having the *oleh* for *maftir* recite the *berachot* and *lain* the *haftara*, he separated the two by insisting that a *klaf* be used for the *haftara*. Since a *klaf* can only be read by experts, many of those called up for *maftir* will be unable to read the *haftara* themselves. This raises the next question: does the recommended reading along need to be from the *klaf*, when it is used? First, we should understand that the idea to require a *klaf* was raised by the *Levush*¹⁶ (contrary to the prevalent *minhag* of his time), who assumed that the rules for the document from which a *haftara* is read are like that of a Torah or a *megilla*. Despite the fact that the *Magen Avraham*¹⁷ and *Taz*¹⁸ justified the old *minhag*,¹⁹ the use of a *klaf* spread, with the encouragement of later *Acharonim*. Nevertheless, it is readily accepted that the one reading may read from a *chumash* as long as people in the congregation read along from a *chumash*.²⁰ Therefore, if the reason for an *oleh* for *maftir* to read along is that he should not make

11. 284, *Eshel Avraham* 3.

12. The *Minchat Yitzchak* IX, 22 says that the *Pri Megadim* views this as a *b'di'ieved* situation, although he does not understand why. The *Pri Megadim* can be read differently.

13. 284:8.

14. VII, *Orach Chayim* 14.

15. 31:40, accepted by the *Mishna Berura* op. cit.

16. 284:1, cited by the *Mishna Berura* 284:1.

17. Opening to *siman* 284.

18. 284:2.

19. See *Divrei Yatziv*, *Orach Chayim* 129, at great length.

20. See *Bi'ur Halacha* to 284:5.

berachot without reading, then even reading from a printed *haftara* suffices. If the *Levush* is correct that we must read the *haftara* from a *klaf* because it is no different from Torah reading, then just as a regular *oleh* must read along from the Torah, the *oleh* for *maftir/haftara* must read along from the *klaf*. However, the latter approach appears to be a *chumra*.

We suggest that if an *oleh* can easily read along with the *ba'al korei* from the *klaf*, he might as well do so. However, one need not insist on this, and it would be counterproductive for an *oleh* who cannot read effectively without punctuation.

A-12: The Correct Pronunciation of a *Kamatz Katan*

Question: In my *shul*, some people correct the *ba'al korei* when he reads a *kamatz katan* like a regular (classic Ashkenazi) *kamatz* (as in the word “nut”) instead of like a *cholam* (as in “note”). Not all *ba'alei kri'ah* appreciate this, and some refuse on principle to read it as the correctors want. What are we to do?

Answer: If your *shul* has a rabbi, this public policy matter is his decision. Since not every *shul* has a rabbi and not every rabbi wants to rule on matters of *dikduk*,¹ we will present our opinion.

A major difference between classic Ashkenazic and Sephardic pronunciations is that the former has different pronunciation for each vowel, just as each vowel has its own symbol. Sephardim (as opposed to *Teimanim*²) pronounce *kamatz* and *patach* in the same way, as they do with *tzeireh*³ and *segol*.⁴ (Almost all Religious Zionists in Israel and many Modern Orthodox elsewhere have adopted the Sephardic approach to vowels).⁵ Ashkenazim will argue that if the *ba'alei mesorah*⁶ thought we should pronounce some different vowels identically, they would not have created different symbols for them. Sephardim apparently accepted the Masoretic vowel symbols, which are representative of grammatical distinctions,⁷ but not

1. Grammar.
2. Yemenites.
3. Two dots.
4. Three dots.
5. At Eretz Hemdah, our English writing is based exclusively on this approach, but during our joint *tefillot*, every *chazan* leads services according to the custom he personally prefers.
6. A group of scholars of the Torah text in Tiberias over a thousand years ago, who, among other things, created the symbols for the vowels in Hebrew. Until their time, the proper pronunciation was passed down only by oral tradition.
7. Note that *kamatz* and *tzeira* are grammatically “long vowels,” whereas *patach* and *segol* are “short vowels.”

all of their rules of pronunciation.⁸ Thus, it is understandable that Sephardim pronounce a *kamatz katan* not like their *kamatz*,⁹ but rather like a *cholam*, despite the *kamatz* symbol. However, it would be inconsistent with Ashkenazic grammatical logic to pronounce a *kamatz katan* like a *cholam*, when Ashkenazic tradition maintains that the symbol is the indicator of the basic pronunciation. (Only in the last few decades have some publishers begun to distinguish slightly between the symbols of *kamatz* and *kamatz katan*.) Therefore, the “correctors” are incorrect in the first place.

Why, then, is there a *kamatz katan* if all *kamatzes* are the same? Grammatically, there are significant differences – for Ashkenazim, as well – between the *kamatzes*. A *kamatz katan* comes about **primarily** when the vowel “should have been” a *cholam*. If the word with the *cholam* is attached to other words or syllables (called *semichut* by grammarians), the rules of pronunciation turn it into a *tenuah ketana* (short vowel),¹⁰ which is pronounced like a *kamatz* because this makes it easier to enunciate more syllables in proximity. In fact, when pronouncing a *kamatz katan*, some *ba’alei kri’ah* use the same basic *kamatz* sound in a somewhat shorter manner. However, according to the Ashkenazic approach, after having changed a *cholam* into a *kamatz* in a situation in which it is hard to pronounce a *cholam*, it is illogical to pronounce it precisely as if it remained a *cholam*! In similar cases involving a change in vowels, such as when a *kamatz* is shortened into a *patach* (e.g., *yum* (sea) turns into *Yam Soof*), Ashkenazim change the pronunciation.

Admittedly, some *dikduk* experts agree with the correctors. However, many (we would argue, the majority of) Ashkenazi *ba’alei dikduk* agree with the stubborn *ba’alei kri’ah*. More important is

8. This does not mean that Ashkenazic pronunciation is closer to that of the *ba’alei mesorah*, but there are differentiations that Sephardim do not make that Ashkenazim do (accurately or inaccurately).
9. This is like an Ashkenazi *patach*, as in the word “not.”
10. If a *tenuah ketana* is followed by a *sheva*, that *sheva* is a *sheva nach* unless the next letter contains a *dagesh chazak*. (Apologies to those uninitiated in grammar, who are likely to be perplexed.)

the matter of *minhag*. This respondent has been *laining* and listening to expert *ba'alei kri'ah* for several decades and has of late been asking older *ba'alei kri'ah* if they, until the last decade or two, ever heard classic Ashkenazi *ba'al kri'ah* pronounce a *kamatz katan* like a *cholam*. No one has!

We would discourage either side in this debate from correcting the other, especially since the word's meaning rarely changes as a result (a complicated discussion of its own). The correctors' intentions are noble, as the "new experts" are convinced the new approach is correct, and **perhaps**, despite our arguments, it is. However, it borders on chutzpa to correct a system of reading that has been followed by their fathers' and grandfathers' generations, and likely many generations before. There are those (whom we respect) who have discarded their community *minhag* and switched to the pronunciation that experts consider most authentic. However, the most authentic pronunciation probably is similar to the way *Teimanim* do it,¹¹ while the "new experts" in question read like Ashkenazim in every way other than *kamatz katan*. So, if one is going to keep to Ashkenazic tradition, he should read a *kamatz katan* with a *kamatz* sound.

11. Interestingly, *Teimanim* pronounce a *kamatz katan* like a *kamatz*, which they generally pronounce similarly but not identically to a *cholam*.

A-13: Giving the Second *Aliya* to One With Doubtful *Levi* Status

Question: One of the participants in our *minyán* is a Russian immigrant (say, Reuven) who has become religious. He has been assuming that he is a *levi*, as his late father, a non-observant Jew, once mentioned in passing. However, Reuven's only known living relative, a paternal uncle, is confident that they are not *levi'im*. Also, his father's grave gives no indication of his being a *levi*. Reuven and I (the *gabbai*) would like to know whether he should continue receiving *aliyot* as a *levi*.

Answer: Investigative work might uncover how likely it is that Reuven is a *levi*. However, we cannot do that for you, at least not without additional information. A last name may give a reasonable indication, although rarely is it conclusive. Based on the information you provided, it does not appear likely that he is a *levi*. The passing statement of a non-observant Jew carries little weight, given that he might not even have known what a *levi* is and that his statement was further firmly contradicted by someone who is likely to know as well as he. Thus, for example, Reuven cannot assume that his lineage would exempt his firstborn son from a *pidyon haben*, as it would in the case of a *levi*.¹ The question is whether it is acceptable to allow Reuven to continue getting the second *aliya*, which is reserved for *levi'im*, in order to make him feel more settled by not dismissing his previous assumption outright, even though it is probably not objectively warranted.

The *gemara*² discusses the case of one who was assumed to be a *levi* due to the fact that his community regularly gave him the second *aliya*. The *Ran*³ derives from this *gemara* that someone who claims

1. *Shulchan Aruch, Yoreh Deah* 305:18.
2. *Ketubot* 25b.
3. *Ketubot* 10b of the Rif's pages.

without proof that he is a *levi* should not receive the second *aliya*, as this could later be used as proof regarding other matters (e.g., receiving *ma'aser rishon*). The same is true in the case of a *kohen* and the first *aliya*. Nevertheless, the Ran says, the prevalent practice is to believe people without proof. He suggests that since *terumot* and *ma'asrot*⁴ are now Rabbinic and uncommon, we are not so strict in determining who is deserving of the special *aliyot*. However, the Ran accepts the Rambam's⁵ opinion (stated regarding a possible *kohen*) that we do not give the special *aliyot* without proof.

Must we assume that the stakes are high enough for a *levi* to equate the rule for him to that of a *kohen* and withhold the second *aliya* due to inadequate proof of eligibility?⁶ The *Yam Shel Shlomo*⁷ rejects the lenient *minhag* of trusting *kohanim* regarding *aliyot* and explains that even though there is no *teruma* at present, the laws regarding who can perform *nesi'at kapayim*⁸ are also mandated by the Torah. Also, he says, we must consider the hopefully imminent rebuilding of the *Beit HaMikdash*. Whereas the first issue does not apply to *levi'im*, the *Beit HaMikdash* is relevant. After all, a non-*levi* who mistakenly does a *levi's* work violates a serious prohibition.⁹ The *Yam Shel Shlomo's* logic would therefore limit us from giving the second *aliya* to one of questionable *levi* status.

The *Chazon Ish*¹⁰ says that nowadays, no one really deserves to be called up as a *levi*. Such a long period has passed since authorities checked lineage before *aliyot* that no one has adequate proof. Our doubts on the matter explain why we do not give them *ma'aser*. According to the *Chazon Ish*, one could say that it does not matter much

4. Tithes.

5. *Issurei Bi'ah* 20:13.

6. The matter of who washes a *kohen's* hands before *duchenen* is a *minhag* without severe halachic implications. See *Beit Yosef, Orach Chayim* 128, and *Mishna Berura* 128:22.

7. *Ketubot* 2:42.

8. *Duchenen* – the blessing of the community made by the *kohanim*.

9. See Rambam, *Klei HaMikdash* 3:9 and *Kesef Mishneh* ad loc.

10. *Shvi'it* 5:12.

that your friend also takes the title of *levi*. However, it seems that a case of a *pidyon haben* would raise an issue of doubt. In any case, here, where even the subject does not really claim that he is a *levi*, but just that he might be one, he should not get the second *aliya*.

The *Shulchan Aruch* records the *takana* that the *kohen's aliya* should be followed specifically by that of a *levi*, lest we lead others to think that the *kohen* is not valid and thus violate his honor.¹¹ If we were to treat Reuven as a *levi* and he is not actually one, would we violate this *takana*? Logic dictates that if everyone presumes Reuven to be a *levi*, this would not be a concern. To the contrary, one could claim that if we change his presumed status and begin to give him the third *aliya*, it might give the impression that the previous *levi* was not authentic.¹² Therefore, we suggest that until people get accustomed to the fact that Reuven is now presumed to be a *yisrael*, he should not get the *aliya* directly after *levi* (i.e., he should receive *aliyot* only on Shabbat and *Yom Tov* from the fourth *aliya* on).

11. See *Shulchan Aruch, Orach Chayim* 135:8, and *Mishna Berura* ad loc. 28.

12. See this concern in *Shulchan Aruch* *ibid.* 9.

A-14: What to Do When a Mistake is Found in a Sefer Torah During Laining

Question: What do we do if we find a mistake in the *sefer Torah* during *laining*?

Answer: Many problematic mistakes in *sifrei Torah* can now be caught in advance by computer checks, which every *shul* should try to arrange. The *halachot* of what renders a Torah *pasul* are well beyond our scope, but include problems even with one letter. Our answer assumes that a determination has been made that the Torah in question is *pasul*.

There are four main approaches in dealing with a case in which a *sefer Torah* is discovered to be *pasul* during *laining*. The simplest opinion, held by most *Rishonim*, is that the entire *laining* up to that point does not count.¹ Accordingly, we should begin the *laining* again from the beginning of the *parasha* with its full complement of *aliyot*. However, this opinion is rarely followed these days, and the reason begins with the Rambam.

The Rambam² validates the *beracha* recited during an *aliya* that was read from a *sefer Torah* that is *pasul* because the main element of the *mitzva* is to read the Torah's content, not to read from a kosher *sefer Torah*. More strikingly, the Rambam permits reading from a *sefer Torah* that is *pasul* with *berachot* if a kosher one is not available. We do not accept the latter ruling,³ and there are even indications that the Rambam retracted it.⁴ However, all of the accepted opinions rely on his approach to a certain degree regarding situations of *bdi'eved*.

The *Shulchan Aruch*,⁵ based on the Mahari Bei Rav, rules that whatever was read before the mistake was discovered is valid *bdi'eved*.

1. *Beit Yosef, Orach Chayim* 143, in the name of the Rashba, Rosh, and others.
2. *Shut HaRambam* 294.
3. *Shulchan Aruch, Orach Chayim* 143:3.
4. See Rambam, *Sefer Torah* 10:1.
5. *Ibid.* 4.

However, if the mistake is found in the midst of an *aliya*, we finish the *aliya* (including at least three *p'sukim*⁶) from a kosher *sefer Torah* before the *oleh* makes the concluding *beracha*. Otherwise, we would be relying *l'chatchila* on the *sefer Torah* regarding the concluding *beracha*. Sephardim and a number of Ashkenazic communities follow this ruling.

The Mordechai⁷ objects to taking out a new *sefer Torah* in the middle of an *aliya*. He deduces from the *gemara*⁸ that when switching *sifrei Torah* in the middle of an *aliya*, a new *beracha* is required. According to the approach that the reading from a *pasul sefer Torah* is valid, however, a new *beracha* would be unnecessary, and thus forbidden, at this point.⁹ Therefore, he instructs to finish the *aliya*, if possible, at the point of discovery and recite the concluding *beracha* on that which was read. If we cannot end the *aliya* there (e.g., we did not read three *p'sukim*, or it is too close to a break in the Torah text), we continue reading from the *pasul sefer Torah* until we can stop. Some important Ashkenazi *poskim* say that this is the correct and prevalent *minhag*.¹⁰

The fourth approach and third major *minhag* is based on the Rama's¹¹ compromise between the Mahari Bei Rav and the Mordechai. The Rama maintains that it is preferable to stop where the mistake is found, as the Mordechai says. However, if we have not yet read three *p'sukim* and thus cannot end the *aliya*, we take out a kosher *sefer Torah* and read from it without repeating the opening *beracha*.¹² If three *p'sukim* were read, which normally allows for a concluding *beracha*, but we cannot stop for some reason, there is a further

6. *Mishna Berura* 143:18.

7. *Megilla* 792–4.

8. *Yoma* 70a.

9. This is particularly likely, considering that people did not purposely read from a *pasul sefer Torah*, which is equivalent to reading by heart.

10. See the *Magen Avraham* 143:4, *Sha'arei Ephrayim* 5:2, and *Aruch HaShulchan* 143:5.

11. 143:4.

12. *Mishna Berura* 143:23.

machloket. The *Pri Megadim*¹³ maintains that the Rama agrees with the Mordechai that it is preferable to read from the *pasul sefer Torah* until we can stop. However, the *Mishna Berura*¹⁴ says that in this case as well, the Rama instructs us to continue reading only from a kosher *sefer Torah*. Unless there is a *minhag* to the contrary, we suggest following the Rama and *Mishna Berura*.

It is important to note that if a mistake is discovered in the last *aliya* or beyond, the Ashkenazic *minhag* is complicated.¹⁵ Finally, the *b'dieved* validation of *laining* from a *pasul sefer Torah* also applies to counting the previous *aliyot* toward the necessary seven on Shabbat, although having seven *aliyot* from a kosher *sefer Torah* may be preferable.¹⁶

13. *Mishbetzot Zahav, Orach Chayim* 143:1.

14. 143:22.

15. See *ibid.*

16. *Ibid.* 13.

A-15: Correcting a Mistaken Opening *Beracha* for Torah Reading

Question: During *kri'at haTorah*, the *oleh*¹ mistakenly finished reciting the concluding *beracha* (*Asher Natan*) before the *aliya* before realizing his mistake. Should he then have recited the correct opening *beracha* (*Asher Bachar*)? If not, what was he to do after the *aliya*?

Answer: This not infrequent scenario is the subject of an interesting *machloket*. The Maharil² tells of one who started saying *Asher Natan* before the *aliya* and was corrected while in the middle of the *beracha*. The Maharil required him to revert to the beginning of the *beracha*, not just to the words “*asher bachar*,” where the two *berachot* diverge. Since he required the *oleh* to repeat HaShem’s name in *beracha* form (at the beginning of the *beracha*), he must have considered the *beracha* of *Asher Natan* before the *aliya* to be untenable, even *b’dieved*.³

The *Be’er Sheva*⁴ argues with the Maharil on two points. First, he reasons that if one starts a *beracha* improperly, he can and should correct it from the point of the mistake only, before its completion. The *beracha* is then valid because “everything follows its completion.”⁵ Second, regarding one who finished the *beracha* improperly, the *Be’er Sheva* borrows a rule from the laws of the *berachot* of *Kri’at Shema*: the order of *berachot* is not crucial to their fulfillment.⁶ Consequently, even if one said *Asher Natan* before the Torah reading and *Asher Bachar* afterwards, what is important is that the two *berachot* of an *aliya* were both recited. Thus, in your case, the *Be’er Sheva* would say to commence the Torah reading and have the *oleh* recite the normal opening *beracha* at the end.

1. The one who gets an *aliya*.
2. *Kri’at HaTorah* 3, as understood by the *Be’er Sheva* 37.
3. After the fact.
4. Op. cit.
5. *Berachot* 12a, regarding various *berachot*.
6. *Shulchan Aruch, Orach Chayim* 60:3.

The *Eliya Rabba*⁷ agrees with the *Be'er Sheva* that one who realized his mistake in the middle of the *beracha* stops where he is and switches to *Asher Bachar*. In fact, he understands the Maharil to agree with the *Be'er Sheva* in this case. However, with regard to one who finished the *beracha* of *Asher Natan*, he agrees with the Maharil. He maintains that one cannot extrapolate from the *berachot* of *Kri'at Shema* to those of *kri'at haTorah*. The *Beit Yosef*⁸ posits that despite their location, the *berachot* of *Kri'at Shema* are not really *berachot* for the purpose of *Kri'at Shema*. For this reason, even when one cannot fulfill the *mitzva* of *Kri'at Shema*, he still says those *berachot*. Accordingly, says the *Eliya Rabba*, the order of the *berachot* in relation to *Kri'at Shema* or to each other is not critical. In contrast, the *berachot* of *kri'at haTorah* were instituted for the *kri'at haTorah*, to be recited before and after the reading, and their order is critical. He compares switching the order of these *berachot* to saying *Borei Nefashot* before eating meat and *Shehakol* afterwards, and he cites the Avudraham's explanation of why the wording of *Asher Natan* is appropriate specifically after the Torah has been read.

The *Pri Megadim*⁹ says that since it is unclear whether the *Be'er Sheva* or the *Eliya Rabba* is correct, one should not say *Asher Bachar* after completing *Asher Natan*. This is because of the rule that if there is a doubt whether a *beracha* is necessary, one refrains from making it because of the concern of a *beracha l'vatala*.¹⁰ The *Sha'arei Ephrayim*¹¹ counters with a pertinent point. If the *oleh* does not say *Asher Bachar* before the *aliya*, what will he say afterward? Saying *Asher Bachar* might be inappropriate after the *aliya*, in which case there is once again the concern of a *beracha l'vatala*. Thus, not making the correction before the *aliya* simply delays having to decide what to do about the doubt. In fact, the *Sha'arei Ephrayim* maintains that if one

7. 140:3.

8. *Orach Chayim* 46.

9. *Eshel Avraham* 139:5.

10. A *beracha* of no value, which is forbidden to make.

11. 4:16 and *Pitchei She'arim* ad loc.

said only *Asher Natan* before the *aliya*, he probably should still say *Asher Natan* again afterwards.

Concerning the bottom line, since the *Magen Avraham*¹² and the *Mishna Berura*¹³ agree with the *Be'er Sheva*, the standard *p'sak* is to commence *laining* the *aliya* after just *Asher Natan* and then to say *Asher Bachar* following the *aliya*. Only in a case in which the mistake was made after the *aliya* and *Asher Bachar* was recited a second time would we say that if he completed the *beracha* improperly, he must start again and make the correct *beracha* (*Asher Natan*), which was not yet recited.¹⁴

12. 139:5.

13. 139:15.

14. *Derech HaChayim* 79:6.

A-16: Are *Levi'im* Obligated to Wash the Hands of the *Kohanim*?

Question: As a *kohen* raised in *chutz la'aretz*, where *Birkat Kohanim*¹ is a big event² and *levi'im* are eager to wash the hands of the *kohanim*, I have been surprised that in Israel I usually have to wash my own hands. Should I say something to the *levi'im*?

Answer: In the many places in Israel that this respondent has *davened*, I have found that *levi'im* almost always wash the hands of the *kohanim*. Nevertheless, we will present the background for the practice and relate to the situation in your community.

The *Beit Yosef*³ cites the *minhag* for *levi'im* to wash the *kohanim*'s hands before *Birkat Kohanim*, tracing the *minhag* to the *Zohar*. The *Zohar* speaks of adding sanctity to *Birkat Kohanim* by having *levi'im*, who are sanctified from the time of Moshe and Aharon, wash and thereby sanctify the *kohanim*'s hands. The *Aruch HaShulchan*⁴ offers an additional reason: it is reminiscent of the *Beit HaMikdash*, where the *levi'im* assisted the *kohanim*. The latter rationale seems to portray the practice as related to the relationship between the two groups, whereas the *Zohar* describes it as an attempt to prepare for *Birkat Kohanim* on the highest level possible. (It is unclear why the *Aruch HaShulchan* felt a need to add a new, albeit logical, reason to the clear one provided by the *Zohar*, the classical source upon which the *minhag* is based.)

Although important *poskim* state that one is not required to follow Kabbalistic practices, the normative approach is that those practices that are found in standard sources like the *Shulchan Aruch*, as

1. Also known as *Nesi'at Kapayim*, or *duchenen* in Yiddish. This is the Priestly Blessing mandated by the Torah in *Bamidbar* 6:22–27.
2. In Israel, *Birkat Kohanim* is performed every day, whereas abroad it is performed only on *Yom Tov* (see question A-17).
3. *Orach Chayim* 128.
4. *Orach Chayim* 128:15.

in this case,⁵ and are followed broadly should be adhered to with care. Questions arise concerning situations in which it is either difficult to keep the *minhag* or when maintaining it conflicts with a different halachic issue. We will explore the opinions of the *poskim* in a few such cases.

The correct ruling seems to be that a *levi* should participate in the washing, even when he will be unable to hear part of *chazarat hashatz* and answer *amen*, but not if he is needed for the *minyán* of people answering.⁶ There is much discussion regarding whether a *levi* who is a *talmid chacham* should wash the hands of a *kohen* who is far from being one, as this might diminish the *talmid chacham's* honor. The *Magen Avraham*⁷ cites a *machloket* on the matter, concluding that if one of the *kohanim* is a respected person, the *levi* may wash all of the *kohanim's* hands.

Some of the opinions shed light upon the general outlook on the *minhag*. The *Pri Chadash*,⁸ who argues very strongly against a learned *levi* lowering his honor, prefaces his position by remarking that it is not absolutely necessary for a *levi* to wash the *kohen's* hands. In contrast, the *Shulchan Aruch HaRav*,⁹ in the course of arguing that the *levi* may waive his honor, says that the *levi* is not so much serving the *kohanim* as adding sanctity to the process. Some state that in our time we cannot assign people to distinct categories of being deserving of more or of less dignity, and the *Aruch HaShulchan*¹⁰ counsels that doing so could unwarrantedly hurt feelings. The *Igrot Moshe*¹¹ understands why a *levi* who feels rushed to complete his *tefila* might not want to fulfill this practice, whose source is only Kabbalistic, but he generally characterizes refusal to do so as the wrong

5. *Orach Chayim* 128:7.

6. See *Shevet HaLevi* VIII:47 and *Teshuvot V'Hanhagot* III:48.

7. 128:7.

8. *Orach Chayim* 128:6.

9. *Orach Chayim* 128:11.

10. Op. cit.

11. *Orach Chayim* IV:127.

approach. The *Yalkut Yosef*¹² rules that it is a better for a learned *levi* to refrain from washing the hands of simple *kohanim*, but he cites the *Knesset HaGedola* as saying that a *levi* who does wash in such a case is not committing a sin.

As far as advice for you is concerned, while we agree that the *levi'im* in your *shul* seem to be shirking their duties, we think you should not confront them. After all, the *levi'im* do not have a full-fledged obligation, and there is no problem with *kohanim* washing their own hands before *Birkat Kohanim*. We suggest that you point out the situation to your *rav* (or a congregational leader if you do not have a *rav*). An announcement or subtle statement emphasizing the positive aspects of washing the *kohanim's* hands might be made at an appropriate time. Ashkenazim assume that firstborns (of their mothers) should be substitutes if there are no *levi'im*.¹³ Enlisting them might just get the *levi'im* moving.

12. *Orach Chayim* 128:23 and in the footnote ad loc.

13. *Bach*, *Orach Chayim* 128; *Mishna Berura* 128:22; see *Kaf HaChayim*, *Orach Chayim* 128:40, who says that Sephardim do not seem to accept this opinion.

A-17: An Ashkenazi Doing *Birkat Kohanim* in a Sephardi *Minyan* in *Chutz La’Aretz*

Question: I am an Ashkenazi *kohen* who lives in *chutz la’aretz*. I often *daven* at a Sephardi *minyan*, where they do *Birkat Kohanim*¹ every day. Should I do it with them?

Answer: Let us start by exploring why Ashkenazim refrain from doing *Birkat Kohanim* daily in *chutz la’aretz* and see whether it is possible for you to participate in the Sephardi *minyan*’s practice. According to the original *halacha*, *Birkat Kohanim* is said every day. However, at least 700 years ago, the *minhag* developed in most Diaspora communities not to do it on weekdays, but to rather limit it to *Yom Tov* (and perhaps Shabbat). The *Shulchan Aruch*² rejected this *minhag*, which explains the prevalent (although not universal) Sephardic practice, but the Rama³ and Ashkenazim accept it.

Many explanations have been suggested for the *minhag*, which is often a sign that no individual reason is particularly compelling. We will mention a few conjectures.

The Rama remarks that one should recite the blessings of *Birkat Kohanim* when in a good mood, which happens more often on *Yom Tov*. The Maharil⁴ and the Agur⁵ cite concern that the time spent on *Birkat Kohanim* leads to difficulty for those who need to get to work. In addition, the Maharil⁶ suggests that a practice developed that one must be ritually pure to do *Birkat Kohanim*, and since it is not always practical for *kohanim* to go to the *mikveh*, it became customary to

1. Also known as *Nesi’at Kapayim*, or *duchenen* in Yiddish. This is the Priestly Blessing mandated by the Torah in *Bamidbar* 6:22–27.
2. See *Beit Yosef*, end of *Orach Chayim* 128.
3. *Orach Chayim* 128:44.
4. *Shut HaChadashot* 21.
5. 176.
6. Op. cit.

omit *Birkat Kohanim* entirely. The *Beit Yosef*⁷ reacted that it is illogical to use a post-Talmudic stringency to require ritual purification before *Birkat Kohanim* as a reason to circumvent the *mitzva*. While conceding that the absolute obligation to do *Birkat Kohanim* applies only when the congregation calls upon the *kohanim*, which does not occur according to the *minhag*, the *Beit Yosef* maintains that it is still wrong to avoid the *mitzva*.

There are other explanations for the *minhag* as well. The *Beit Ephrayim*⁸ says that since the reliability of a *kohen's* genealogy is no longer strong, we minimize the practice of *Birkat Kohanim* to avoid the prohibitions involved in a non-*kohen* performing the *mitzva*. (If we avoided *Birkat Kohanim* entirely, genuine *kohanim* might stop observing the restrictions of a *kohen*, which is a bigger concern, and we therefore maintain the practice on *Yom Tov*.) The *Chatam Sofer*⁹ explains that we usually lack the proper level of concentration during *davening* that is necessary to incorporate *Birkat Kohanim* into the *tefilla*. Additional reasons are advanced,¹⁰ but this will have to suffice in this forum.

Several Ashkenazi *poskim* (most prominently the Gra) yearned to return to the daily practice of *Birkat Kohanim* and did not think that any of the reasons suggested justified uprooting the practice. Nevertheless, the idea of changing this old *minhag* is problematic. (Some frightening stories of failed attempts to restore the practice can be found in the *Minchat Yitzchak*¹¹ and the *Aruch HaShulchan*.¹² These stories lead many to feel that it is apparently divinely desired that we not change the *minhag*.) However, there are no qualms expressed regarding communities that have always followed the standard *halacha* of doing *Birkat Kohanim* daily. We also note that the

7. *Orach Chayim* 128.

8. *Orach Chayim* 6.

9. *Orach Chayim* 23.

10. See *Tzitz Eliezer* V 11:60; *Minchat Yitzchak* V 11:1; *Piskei Teshuvot* 128:(413).

11. *Op. cit.*

12. *Orach Chayim* 128:64.

minhag is that *kohanim* from *chutz la'aretz* join in *Birkat Kohanim* daily when they are in Israel.¹³

Some of the explanations that we have seen apply primarily to a community not doing *Birkat Kohanim* but do not preclude an individual from joining an existing *Birkat Kohanim*. Of supreme importance in this context is that if a *kohen* is present during a communal call to the *kohanim*, he has a Torah obligation to take part in *Birkat Kohanim*, whereas the *minhag* was likely instituted based on the idea that the *kohanim* would not be called at all.¹⁴ A solution, if necessary, is for the Ashkenazi *kohen* to step out beforehand. (We do not feel it is justifiable to tell an Ashkenazi not to *daven* with Sephardim.) However, any public action that separates one from what the *shul* is doing is itself very problematic. In general, one should follow the local practice (including the tradition of the *davening* in the *shul* that one attends) regarding matters that are noticeable to the public.¹⁵ For this reason, for example, the *Chayim Sha'al*¹⁶ allows a Sephardi to recite a *beracha* on *Hallel* on Rosh Chodesh if he is *davening* in an Ashkenazi *minyan*,¹⁷ and the *Divrei Yatziv*¹⁸ writes similarly regarding the *haftara* at *Mincha* of a fast day. Therefore, we feel that it is proper for an Ashkenazi *kohen* to do *Birkat Kohanim* along with the other *kohanim* at a Sephardi *minyan*.

13. It is not fully clear whether the Ashkenazi *minhag* was intended to apply in *Eretz Yisrael*. The matter depends to a great extent on the rationale behind the *minhag*, and the matter is beyond our present scope.

14. See the *Beit Yosef* op. cit.

15. See *Igrot Moshe, Orach Chayim* 11:23.

16. 1:99.

17. Rav Ovadia Yosef (*Yechaveh Da'at* 1v:31) differs.

18. *Orach Chayim* 248.

A-18: When to Go Up for *Birkat Kohanim*

Question: Some *kohanim* in my *shul* do not go up to do *Birkat Kohanim*¹ at the proper time. Sometimes, one *kohen* washes his hands right after *Kedusha*, goes back to his place, and does not remember to move toward the *duchan*² when the rest of the *kohanim* do. Other times, someone will get a late start washing and is still outside during *Retzei*. Are these *kohanim* allowed to do *Birkat Kohanim* under such circumstances?

Answer: The *gemara*³ says that just as Aharon is described as blessing the people at the time of *avoda* (bringing of *korbanot*),⁴ *kohanim* should similarly go up for *Birkat Kohanim* in *avoda* (the *beracha* of *Retzei*, in which we pray for the service to return to Zion). The *gemara* continues that the *kohanim* are not required to actually go up to the *duchan* during *Retzei*, as it suffices for them to “uproot their legs” (*akar*) to go up, i.e., to start walking in the correct direction. The *Shulchan Aruch*⁵ describes that the standard practice is that the uprooting takes place at the beginning of *Retzei*, but it can be extended until the end of that *beracha*.⁶ After this time, it is too late to go up to do *Birkat Kohanim*, even if the *kohen* was delayed for reasons beyond his control.⁷

There is a *machloket* regarding one who went to wash during *Retzei* and did not start walking toward the *duchan* by the end of *Retzei*. The *Ateret Zekeinim*⁸ says that only walking toward the

1. Also known as *Nesi'at Kapayim*, or *duchenen* in Yiddish. This is the Priestly Blessing mandated by the Torah in *Bamidbar* 6:22–27.
2. Literally, “platform,” but in this context, any area in the front of the *shul* where *Birkat Kohanim* is carried out.
3. *Sota* 38b.
4. *Vayikra* 9:22.
5. *Orach Chayim* 128:8.
6. *Mishna Berura* 128:25.
7. *Shut HaRadbaz* 1:516; *Mishna Berura* 128:29.
8. On the *Shulchan Aruch* op. cit.

duchan counts as *akar*. The *Pri Megadim* infers that going to wash is considered like *akar*, as we will presently explain. The *Radbaz*⁹ maintains that a *kohen* walking on his way to *shul* during the time he should have been approaching the *duchan* is not halachically equivalent to *akar*, and he may not do *Birkat Kohanim* if he arrives after *Retzei*. However, says the *Magen Avraham*,¹⁰ leaving a house that is close to *shul* (for the purpose of doing *Birkat Kohanim*¹¹) is considered *akar*. The *Pri Megadim*¹² posits that the *Magen Avraham*'s logic is that the movement must be preparatory for *Birkat Kohanim*, but that this suffices even if it is not specifically in the direction of the *duchan*. Therefore, going to wash is certainly valid. Thus, there is room for leniency to allow a *kohen* who went to wash during *Retzei* to continue on to *Birkat Kohanim* even after the completion of the *beracha*.¹³ (An important consideration is that the *mitzva* of *Birkat Kohanim* is from the Torah, whereas the requirement of *akar* at *Retzei* is apparently only Rabbinic.¹⁴) Under such circumstances, one should definitely not try to stop a *kohen* who assumes he is acting legitimately. (It **might** be worthwhile to educate him in a pleasant manner to avoid the situation in the future.)

The first issue you raise is more problematic. If the *kohen* went to wash soon after *Kedusha* and subsequently lost track of time, there are two reasons why the washing is less effective than in the case described above. First, it is possible that washing works as *akar* only after the *chazan* starts *Retzei*,¹⁵ whereas in this case, the *kohen* went to wash well before *Retzei*. Second, washing likely works as *akar* only

9. Op. cit.

10. *Shulchan Aruch, Orach Chayim* 128:10.

11. *Chayei Adam* 32:13.

12. *Eshel Avraham* 128:10.

13. There is further room for leniency when the washing station is in the direction of the *duchan* from where he was standing at the beginning of *Retzei*; see *VaAni Avarcheim* 18:(50); *Sha'ar HaTziyun* 128:30.

14. See *Mishneh Halachot* vIII:15.

15. *Kehunat Yitzchak*, p. 32; see opinions in *VaAni Avarcheim* 8:(15) and the unclear position of *Shevet HaLevi* vIII:23.

when the *kohen* proceeds directly afterwards to the *duchan*. However, when one intends to return to his own place and indeed does so, it turns out that the washing was quite preliminary. Whether this is acceptable may depend on whether having clean hands is simply a prerequisite for *Birkat Kohanim* or whether the washing is a fundamental preparatory act.¹⁶ Therefore, in order to obviate any doubts, it is important for the *kohanim*, after washing, to move toward the *duchan* sometime during the *beracha* of *Retzei*.

16. See *Shulchan Aruch* op. cit. 6, and *Mishna Berura* ad loc. 19–20.

Section B:
Berachot (Blessings)



B-1: Is it Preferable to Start a Meal with Bread?

Question: It seems wrong that some people decide not to do *netilat yadayim*¹ and eat bread at the beginning of a meal, and thus do not *bentch* (recite *Birkat HaMazon*). One who has a meal should *bentch*, and if it takes eating a little bread, so be it. However, someone told me that if you eat only a little piece of bread, you have to recite individual *berachot* throughout the meal. Is that so?

Answer: One is not required to eat bread if he does not want to, even if it means that he will not *bentch* (except on Shabbat and *Yom Tov*, when eating a meal including bread is required²). That being said, regularly avoiding eating bread **because** one does not want to be bothered with *bentching* is a regrettable phenomenon.

A person who has the philosophy that you espouse and makes the effort to wash and *bentch* at every meal should be careful not to cause more halachic problems than it is worth. The first possible issue involves *netilat yadayim*. Although it is proper to be stringent and wash before eating any amount of bread,³ the **obligation** likely begins only when eating a *k'zayit*,⁴ and possibly even a *k'beitza*.⁵⁶ Therefore, one should not make a *beracha* on *netilat yadayim* before eating less than a *k'beitza*.⁷ (The question of how to calculate these sizes is hotly contested and beyond our present scope).

Eating a small amount of bread with the intention that everything else that one eats will be “covered” by the meal’s *berachot* (*HaMotzi*

1. A special manner of washing one’s hands, in this case, before eating bread.
2. *Shulchan Aruch, Orach Chayim* 274:4; *ibid.* 529:1.
3. See *Shulchan Aruch, Orach Chayim* 158:3, and *Mishna Berura* ad loc. 10.
4. The size of an olive.
5. The size of an egg.
6. *Shulchan Aruch* op. cit. 2.
7. *Mishna Berura* ad loc. 9.

and *Birkat HaMazon*) raises another problem. While the *gemara*⁸ says that bread exempts from a *beracha* other foods that are eaten subsequently during the meal, this is true only under circumstances in which the foods are subsumed in the meal.⁹ Based on this, the *Magen Avraham*¹⁰ suggests that if one eats a tiny piece of bread, or even a larger amount but for the sole purpose of exempting other foods, the other foods do not revolve around the bread and the *HaMotzi* may not exempt them from their *berachot*. He counters that it is possible that since bread is usually the anchor of the meal, the principle that the *beracha* on it exempts other foods applies across the board.

According to the more accepted understanding of the *Magen Avraham*'s opinion,¹¹ one should not set up a situation in which he is eating bread just to exempt other *berachot*, due to the doubt regarding whether this works. The same logic applies, despite one's good intentions, when one eats bread just so that he will be obligated to *bentch*. Admittedly, some prominent authorities say that other foods are exempted even in that case.¹² However, this is hardly an optimal situation that we would suggest for one who would prefer not to eat bread at all. If one likes to eat bread for its own sake but abstains in order not to "be bothered" with washing and *bentching*,¹³ it would be fine to convince him to regularly include bread in his meal, and the *Magen Avraham*'s issue would not apply.¹⁴

If one eats less than a *k'zayit* of bread, then although he still recites *HaMotzi*, even more *poskim* agree that he must make all the

8. *Berachot* 41b.

9. See some applications, ad loc.

10. 177:1.

11. See *Machatzit HaShekel* ad loc.; *Mishna Berura* 177:3.

12. *Even HaOzer* 174:12; *Aruch HaShulchan* 177:2; *Igrot Moshe, Orach Chayim* 1v:41.

13. The same is likely true of one who enjoys bread but would prefer to avoid it due to dietary concerns.

14. See *V'Zot HaBeracha*, p. 71.

individual *berachot* during the meal.¹⁵ Furthermore, he will not be able to *bentch* in any case and will have to make the appropriate *berachot* after eating. If he does have a *k'zayit*, he must eat it within the time frame of *k'dei achilat pras*.^{16 17}

We have not weighed all the pros and cons (including the issue of eating bread-like foods during a full meal without bread¹⁸), and we have not arrived at a recommended course of action for every permutation. However, we can fairly say that if a person is not interested in eating approximately a slice of bread, he should feel free to pass it up together with washing and *bentching*. Whichever approach one takes, he should become familiar with the several halachic questions that arise in “bread meals” and “non-bread meals.”

15. *Igrot Moshe* op. cit. In this case, regarding several *halachot*, it is not even considered eating, and there is also no obligation of *Birkat HaMazon* to unite the food into the framework of a meal. See also *Chelkat Ya'akov, Orach Chayim* 49.

16. The duration of this timeframe is also contested, but is roughly in the range of 4–9 minutes.

17. *Mishna Berura* 210:1.

18. See *Igrot Moshe* op. cit.

B-2: How Long to Wait After Zimun to Resume Eating

Question: When I answer a *zimun* but I am not *bentching* right away, when can I resume eating?

Answer: The *gemara*¹⁹ cites a *machloket* regarding until which point *birkat hazimun*²⁰ extends. Rav Nachman says it is until “*Nevarech...*,” i.e., the introductory portion of the *bentching* said only when there is a *zimun*. Rav Sheshet says that it is until “*HaZan...*,” i.e., the end of the first *beracha* of *Birkat HaMazon*. Most *Rishonim*²¹ understand that the *machloket* regards one who is answering but not *bentching* with the *zimun*. The question is, like yours, how long he has to take part in the *zimun*.

The *Shulchan Aruch*²² accepts Rav Nachman’s opinion. Thus, Sephardic practice is to end the *zimun* at the conclusion of the *zimun* addition (“... *u’v’tuvo chayinu*”). In contrast, the Rama²³ accepts Rav Sheshet’s opinion.

The original intent of *zimun* was that only the *mezamen*²⁴ would *bentch*, while the others would listen silently and fulfill their *mitzva* through him. However, due to the concern that people would not concentrate sufficiently, the practice developed for the others to *bentch* silently along with the *mezamen*²⁵ or, if they have not yet finished eating, to *bentch* later. Although most *mezamnim* do not recite the whole *bentching* audibly, they should do so at least for the *zimun*,

19. *Berachot* 46a.

20. The *beracha* that begins the joint *bentching*.

21. Including *Tosafot* ad loc.

22. *Orach Chayim* 200:2, based on the Rif (*Berachot* 34a in the Rif’s pages) and his understanding of the Rambam (*Berachot* 5:2; see *Beit Yosef, Orach Chayim* 200).

23. Ad loc.

24. The one who leads the *zimun*.

25. *Shulchan Aruch, Orach Chayim* 183:7.

which, for Ashkenazim, includes *HaZan*.²⁶ Therefore, Ashkenazim should have the *mezamen* say the entire first *beracha* out loud.

When one is answering *zimun* but not *bentching*, he should listen to the *zimun* without eating.²⁷ Thus, in an Ashkenazi *zimun*, he should wait until after *HaZan* has been recited by the *mezamen*. For Sephardim, he can resume eating following the introductory part of the *zimun*.

It is interesting to inquire whether the need to wait is for the benefit of the one answering or whether it is an inherent requirement of the *zimun* as a whole. Two practical questions likely depend on this *chakira*.²⁸ One question is whether one who ate foods other than bread, and thus is not required to *bentch* and is not personally obligated in *zimun*, needs to wait until after *HaZan* before resuming his eating (for Ashkenazim). If he breaks his connection to the *zimun* after its initial stage, do we say that there was not a proper joining together to constitute a *zimun*? Another issue involves a joint Ashkenazi-Sephardi *zimun*. Can the Sephardi follow his own ruling and consider the *zimun* complete before the beginning of *bentching*, or does that ruin things for his Ashkenazi friends?

The Rosh²⁹ explains Rav Sheshet's requirement to wait through *HaZan* as follows. *HaZan* is not part of the *zimun*. However, since *zimun* entails *bentching* together and the *zimun* is not a full *beracha*, it is not considered a *zimun* if the participants are not joined together for the first *beracha* of *Birkat HaMazon*. (Following this logic, several *poskim* say that when a *zimun* consists of ten men, at which time HaShem's Name is mentioned in the *zimun*, turning the introductory section into a *beracha* of its own, it is unnecessary to wait until

26. *Mishna Berura* 183:28.

27. *Tur, Orach Chayim* 200.

28. Halachic dilemma.

29. *Berachot* 7:12.

after *HaZan*.³⁰) The *Mishna Berura*³¹ explains that the first *beracha* is partially connected to the *birkat hazimun*. According to the latter explanation and probably according to the former, if there is not at least passive participation throughout the first *beracha*, an Ashkenazi should not consider it as though he was part of a complete *zimun*.³²

Therefore, returning to the above questions, even one who did not eat bread should wait until after *HaZan* has been recited before continuing to eat.³³ Additionally, a Sephardi who interrupts his meal to participate in a *zimun* should wait until after *HaZan* to ensure that there is a *zimun* from the perspective of everyone involved. *Yalkut Yosef*³⁴ says that a Sephardi who leads Ashkenazim in *zimun* should recite *HaZan* audibly, and logic dictates that he would concur in our case as well. However, if *bentching* along with the *zimun*, Sephardim should not answer “*amen*” to the *mezamen’s beracha*.³⁵

30. *Pri Megadim*, *Orach Chayim* 200, *Mishbetzot Zahav* 2; *Chazon Ish*, *Orach Chayim* 31:2. The *Mishna Berura’s* opinion on the matter is difficult to determine – see *Mishna Berura* 193:17 and 200:9 and *Piskei Teshuvot* 183:(57).

31. 200:8.

32. See *Shulchan Aruch HaRav*, *Orach Chayim* 200:2, who seems to concur.

33. See *Mishna Berura* 197:15.

34. 192:4.

35. *Ibid.* – see his reasoning there.

B-3: One Who is Uncertain if He Recited *Birkat HaMazon*

Question: What happens if I eat a meal and do not remember if I *bentched*?¹

Answer: The *Shulchan Aruch*² rules that if one is unsure whether he *bentched* or not, he should nevertheless *bentch*. Usually, one should avoid making a *beracha* when it is questionable whether he is obligated. However, when the possible obligation is from the Torah, he should take his chances and recite what might be an extra *beracha*.³

It is important to emphasize that this is the case only if one ate enough to be satiated (*k'dei sevi'a*), as the Torah mentions *Birkat HaMazon* in the context of “You shall eat and be satiated and bless HaShem . . .”⁴ Otherwise, if it was not yet recited, *bentching* is a Rabbinic obligation, and we revert to the regular rule not to make *berachot* in cases of doubt.⁵

There are many questions regarding what is considered *k'dei sevi'a*. One is if it depends on eating an objective amount or on whether the particular individual is satiated.⁶ Another very basic question upon which we will now focus is what one has to eat in the process of reaching satiation. One is obligated in *Birkat HaMazon* only if he ate bread,⁷ as only bread turns eating into a full meal. Does the requirement of *Birkat HaMazon* apply when one eats bread and is **satiated from all that was consumed**, or when one eats enough bread to be **satiated from the bread itself**?

1. Recited *Birkat HaMazon*.
2. *Orach Chayim* 184:4.
3. Based on *Berachot* 21a.
4. *Devarim* 8:10.
5. See *Mishna Berura* 184:15.
6. See *Mishna Berura* *ibid.* 22; *Bi'ur Halacha* *ad loc.*
7. *Shulchan Aruch*, *Orach Chayim* 168:6.

The *Halachot Ketanot*⁸ makes a claim based on the following principle. When one eats bread at a meal,⁹ he is exempt from making *berachot* on the other foods he eats during the meal because they are supplemental to and subsumed under the bread, the central component of a meal. If so, he argues, even if one became satiated only because of the other foods, it is as if he was satiated from the bread, and the obligation to *bentch* is from the Torah.

In contrast, the *Pri Megadim*¹⁰ assumes that in order for the obligation to be from the Torah, the *k'dei sevi'a* must come from the bread. If just being full were sufficient, he reasons, why is eating a *k'zayit* of bread required? There are a number of answers to the *Pri Megadim*'s question. One, which he hints at himself, is that it is necessary to fulfill the Torah's first requirement of "you shall eat" with bread,¹¹ whereas regarding being satiated, the important thing is one's state at the end.¹² Another possible answer is that if one eats less than a *k'zayit* of bread, it is likely that he must make a *beracha* on foods eaten subsequently during the meal.¹³ If so, the *Halachot Ketanot*'s logic¹⁴ does not apply, and he would agree, in that case, that other food would not create an obligation to *bentch*.¹⁵

Rav Ovadia Yosef¹⁶ suggests that this *machloket* existed among the *Rishonim*. The *gemara*¹⁷ relates how Shimon Ben Shetach ate very little at a meal, yet he *bentched* on behalf of King Yannai and

8. 11:227.

9. It is likely that a *k'zayit* (the size of an olive) is needed – see *Mishna Berura* 177:3.

10. *Eshel Avraham* 184:8.

11. Regarding many Torah laws, a *k'zayit* is the lower limit of what is considered eating.

12. See *Bi'ur Halacha* to 184:6 regarding one who was almost full before eating bread.

13. See *Magen Avraham* 177:1.

14. See previous paragraph.

15. Not surprisingly, the *Pri Megadim* (ad loc.) feels that even less than a *k'zayit* of bread exempts other foods.

16. *Yechaveh Da'at* VI:10.

17. *Berachot* 48a.

his friends. *Tosafot*¹⁸ says that this is problematic according to the *Bahag*, who maintains that one who ate only enough for a Rabbinic obligation in *Birkat HaMazon* cannot exempt those who were satiated, as the king certainly had a full meal. Rav Yosef suggests that Yannai ate a large meal with only a little bread. According to *Tosafot*, that would obligate him from the Torah, while according to the *Bahag*, it would not.

In any case, the more widely held position seems to be that satiation need not result exclusively from the quantity of bread.¹⁹ There are additional halachic factors that indicate that in your case, one should *bentch* out of doubt.²⁰ Therefore, one who ate at least a *k'zayit* of bread during a filling meal and is not sure if he *bentched* should *bentch* out of doubt.

18. Ad loc.

19. See *Igrot Moshe*, *Orach Chayim* IV:41, and sources cited in *Piskei Teshuvot* 184:(82).

20. *Yechaveh Da'at* op cit.

B-4: Moving to a New Location in the Midst of a Meal

Question: If I start a meal in one place and want to leave in the middle or continue eating elsewhere, what do I do about *Birkat HaMazon*?

Answer: You have made the question more manageable by asking specifically about a meal, which we are assuming includes bread, as the answer differs depending on what one is eating. Even so, we will not be able to address all of the many details involved.

The *gemara*¹ posits that when one moves from the place where he was eating, he needs to make a new *beracha* before resuming to eat. However, Rav Chisda rules that if he was eating the type of food whose *beracha acharona* must be recited in the place where he ate, which certainly includes a meal that requires *Birkat HaMazon*,² he does not need to make a new *beracha rishona* when he returns to eat in his original location. The logic is that one is linked to the setting of a significant consumption of food even after he has changed locations, making it possible to return to it. (All agree that for foods whose *beracha acharona* is *Borei Nefashot*, one can recite it in a different location from where he ate. There is a not fully resolved *machloket* regarding food products – other than bread – of the main grain types and fruit of the “seven species.”^{3,4})

Rav Sheshet rejects Rav Chisda’s distinction and says that one is required to recite a *beracha* upon returning to the meal unless he was part of a group eating together of which at least someone remained behind.

1. *Pesachim* 101b.
2. *Shulchan Aruch, Orach Chayim* 184:1.
3. Wheat, barley, grapes, figs, pomegranate, olives, dates. *Eretz Yisrael* is praised by the Torah (*Devarim* 8:8) for growing these species, and their *beracha acharona* is a condensed *Birkat HaMazon* known as *Me’ein Shalosh*.
4. *Shulchan Aruch, Orach Chayim* 184:3.

The *Shulchan Aruch*⁵ rules according to Rav Sheshet. We would discuss the ramifications of his opinion for the benefit of Sephardim, who generally follow the *Shulchan Aruch*, but Rav Ovadia Yosef and other Sephardic *poskim*⁶ do not accept his position on this matter (in order to avoid questionable *berachot*). We will therefore concentrate on the Rama's opinion.

The Rama⁷ limits the need for extra *berachot* after leaving the place of eating in a number of ways. The one that directly affects your question is that if one leaves a friend behind or if one was eating a meal including bread, he is not required to make any *beracha* upon resuming eating at the original place.

We must address two remaining topics. The Rama points out that although one does not need a *beracha* before resuming his meal in his first location, he should generally not leave, even with intention to return, without *bentching* first. The main concern is that he might forget to return to continue eating, and thereby miss *Birkat HaMazon*.⁸ However, one may rush out to a *minyan* or to perform another passing *mitzva*, if necessary.⁹ In addition, leaving for a short time does not present a problem.¹⁰

There is a difference between the two points of leniency for Sephardim. Since they fundamentally side with Rav Sheshet, according to whom another *beracha* should be recited after the break, one should not leave even for a short time. However, if there is a *mitzva* need, one should not forego the *mitzva* out of concern for the question about *berachot*.¹¹

Another question is whether one may continue his meal elsewhere and not return for *Birkat HaMazon*. The original *beracha* of

5. *Orach Chayim* 178: 1–2.

6. See *Yalkut Yosef, Orach Chayim* 178:(1).

7. *Orach Chayim* 178:2.

8. *Ibid.* The *Beit Yosef (Orach Chayim 178)* also mentions the concern that he might return too late for *Birkat HaMazon* to relate to his original eating.

9. Rama, *ibid.*

10. *Mishna Berura* 178:34.

11. *Yalkut Yosef, Orach Chayim* 178:2.

HaMotzi enables additional eating without a *beracha* even in a new location.¹² The *Birkat HaMazon* that one recites in the new location also covers what he ate in the first location provided that he has some bread in the new location, as well.¹³ Otherwise, one would have to return to *bentch* in the original location. In any event, it is preferable to *bentch* prior to leaving. For Ashkenazim, one may continue his meal elsewhere *l'chatchila* if that was his intention when he started.¹⁴

12. Rama op. cit.

13. *Shulchan Aruch, Orach Chayim* 184:2; see *Mishna Berura* ad loc. 9.

14. *Mishna Berura* 178:40.

B-5: The *Beracha* on Schnitzel

Question: I have heard people question something I considered a simple fact – that the *beracha* on schnitzel¹ is *Shehakol*. What is the truth?

Answer: The truth is actually **not** simple. As we will see, much of the difficulty is not a matter of Halacha, but rather of taste: Why is it that many people prefer schnitzel to cutlets that are not breaded?

Clearly, the *ikar* (main part) of schnitzel is the poultry. In general, we make a *beracha* on the *ikar*, which exempts us from saying a *beracha* on the less important ingredients,² and this is usually determined by the majority component of the food.³ However, an exception to this rule is that if the minority of a food is made from one of the major grain species (which includes standard flour), the *beracha* on the mixed food is *Mezonot*.⁴

Grain products have this special status only if they play a significant role in the food's character. Some *Rishonim* seem to understand that the grain rule is simply an application of the assumption that grain usually shapes the character of the food even when it is a minority.⁵ According to this approach, in a case like ours, where the poultry is clearly the main ingredient, the *beracha* should be *Shehakol* even though it is breaded.

However, the accepted approach⁶ is that grain has halachic precedence. Therefore, even when another food is more important than the grain component, as is true for schnitzel, the *beracha* is *Mezonot*. It is sufficient for the grain component to be a significant ingredient,

1. Breaded cutlets.
2. *Berachot* 44a.
3. *Shulchan Aruch, Orach Chayim* 208:7.
4. *Ibid.* 2.
5. *Rosh, Berachot* 6:7.
6. See *Beit Yosef, Orach Chayim* 208, and *Mishna Berura* 208:7.

even if it is not **the** main ingredient.⁷ The classic case in which the grain component is not considered significant is when its purpose is just to make the ingredients stick together (e.g., gefilte fish).⁸

The question thus is what contribution the schnitzel's coating makes. The following are the logical claims that we are aware of. (After each, we will write what *beracha* is appropriate if this is **the** factor):

1. The coating tastes good as a nicely seasoned doughy food (*Mezonot*).
2. It absorbs oil from the pan and gravy from the cutlet in one rich (albeit not so healthy) layer. (The *beracha* can go either way, as the doughy part tastes good, but mainly because of what it absorbed. Still, this factor would seem to indicate *Mezonot*.)
3. It helps the spices to stick (*Shehakol*).
4. It keeps the cutlet from drying out (*Shehakol*).
5. It allows frying at a high temperature with a reduced chance of burning (*Shehakol*).

Although the majority of these theories point toward *Shehakol*, this does not mean that this should be the conclusion. This is because if **all** of the above are true, then the coating has important food characteristics, which make *Mezonot* appropriate, irrespective of additional "*Shehakol* benefits."

Regarding the bottom line, some important *poskim* say that one should say *Mezonot* on schnitzel when the coating is relatively thick and *Shehekol* when it is thin.⁹ Some contemporary authorities differ regarding whether "standard" schnitzel has a thick or thin coating.¹⁰ Rav Moshe Feinstein is cited as requiring *berachot* on both the meat and the coating, as neither element is dominant enough to

7. See *Shulchan Aruch* op. cit.

8. *Ibid.*; *Tosafot*, *Berachot* 36b.

9. See opinions in *V'Zot HaBeracha*, pp. 256–261.

10. *Ibid.*; *Birkat HaShem* III, 10:59.

outweigh the other. Others suggest first eating a little of each separately to avoid doubt. (This solution makes halachic sense, but we do not like mandating convoluted practices to avoid making halachic decisions.)

Of crucial importance is that the *minhag* is quite clearly to say *Shehakol*. Often, a *minhag* to say *Shehakol* develops because *Shehakol* is the "safe" *beracha*, as one always fulfills his obligation, at least after the fact, with *Shehakol*.¹¹ This is particularly logical in our case, since the ruling may change depending on the time, place, and piece of schnitzel. Although some *poskim* say that *Mezonot* is also a "catch-all" *beracha* for almost all foods,¹² this is far less certain. Therefore, although we think that, fundamentally, most schnitzels "deserve" *Mezonot*, practically, there is not enough certainty in the matter to instruct people to change from the standard practice of reciting just *Shehakol*.

11. *Shulchan Aruch, Orach Chayim* 204:13.

12. *Bi'ur Halacha* to 167:10.

B-6: Factors that Determine the Precedence of *Berachot*

Question: Before eating peaches and grapes, I made a *Borei Pri HaEtz* with the intention of eating a peach first. Immediately (i.e., before eating), I realized that according to the laws of *kedimut* (priority in *berachot*), I should have made the *beracha* on and eaten the grapes first. At that point, what should I have eaten first: the peach or a grape?

Answer: First, we will explore whether you could have eaten grapes based on the *beracha* that you made. Then we will analyze whether that would have been preferable or whether it would have been better to eat the fruit that you had in mind during your *beracha*.

The *Yerushalmi*¹ poses a question regarding whether when one makes a *beracha* on a food and it gets lost before he eats it, he needs to make another *beracha* before eating a new piece. The Rambam² and others rule, based on this *Yerushalmi*,³ that if one makes a *beracha* on one food and instead has to eat a different piece, even of the same type, he must make a new *beracha*. The *Bi'ur Halacha*⁴ explains that although a *beracha* made on one food covers all foods of the same *beracha* category, this is true only after the *beracha* took effect on the food that one had in mind. At that point, we apply the concept of *gereira*, which allows the *beracha* to be “dragged along” to other foods that he will eat. However, the *beracha* cannot initially apply to that which was intended to be a secondary food.

The *Beit Yosef*⁵ cites a minority opinion of Rabbeinu Tam, who says that the *beracha* one makes on one food can apply equally to

1. *Berachot* 6:1, cited by the *Beit Yosef*, *Orach Chayim* 206.
2. *Berachot* 4:10.
3. It is not fully clear whether the *Yerushalmi* resolves the question, as is implied by the Rambam. See the *Kesef Mishneh* on the Rambam *ibid.*, the *Mareh HaPanim* on the *Yerushalmi* *op. cit.*, and Rabbeinu Tam cited below.
4. To 206:6.
5. *Orach Chayim* 206.

another. The *Beit Yosef* understands that since the *Yerushalmi* did not resolve its question, Rabbeinu Tam reasons that we should apply the rule of *safek berachot l'hakel* (when in doubt, we refrain from possibly unnecessary *berachot*).

The *Shulchan Aruch*⁶ accepts the Rambam's opinion, whereas the Rama⁷ says that if one planned to eat other food⁸ as well, the *beracha* takes effect on that food and he does not need to make another *beracha*. The *Kaf HaChayim*⁹ and *Yalkut Yosef*¹⁰ are among the Sephardi *poskim* who say that due to the Rama's opinion and the possibility that the *Shulchan Aruch* agrees when one had other food specifically in mind, one should not make another *beracha* due to *safek berachot*.

Now let us discuss whether it would have been advisable to eat the grapes first, despite the fact that your intention had been for the peach. One of the basic rules of *kedimut* is that a fruit that is one of the *shivat hamininim* (seven species for which *Eretz Yisrael* was praised), which includes grapes, has precedence. According to the Rama, who maintains that a *beracha* can apply to a different fruit than the one he intended directly, should you have eaten a grape first, as a grape is objectively more appropriate and you also had it in mind?

The *Magen Avraham*¹¹ says that if as one was making a *beracha*, nicer fruits (which he had intended to eat later) were brought in, he should eat according to his original plan. This is true despite the fact that it is preferable to have a *beracha* pertain to the nicer fruit.¹² We can extrapolate that regarding the change between peach and grapes, one should also not change from his original intention.

One may attempt to deflect this proof by pointing out that a more

6. *Orach Chayim* 206:6.

7. Ad loc.

8. Of the same *beracha*

9. *Orach Chayim* 206:42.

10. *Orach Chayim* 206:18.

11. 206:8.

12. See *Kaf HaChayim* 202:2.

important factor of *kedimut*, such as belonging to the *shivat haminim*, might warrant a switch to the more appropriate food. However, this is unlikely. After all, according to most *Rishonim*, the *beracha* cannot be switched retroactively to a different food. Even the Rama, who says that it can, arguably accepted the minority opinion because of the principle of *safek berachot l'hakel*. However, why would we want to switch the object of the *beracha* and place ourselves in a situation in which it is questionable whether the *beracha* is proper? If the *halachot* of *kedimut* were absolute and precluded one from fulfilling the *mitzva* of saying a *beracha* in an alternate way, we would have to weigh the issues. However, the Rama says that as long as one intended that the *beracha* made on the “lesser fruit” should apply also for the more “important” fruit that would be consumed later, the *beracha* works for it. (Additionally, it is not clear that the element of *kedimut* can be recovered by eating the more appropriate food first after one’s *beracha* was made with the intention for the less appropriate food. However, that point is beyond our present scope.)

Based on the above, you should have eaten the peach first and continued with the grapes without a further *beracha*. Interestingly, your *beracha acharona* should have focused on the grapes, as you said *Al HaEtz*, which exempts the *Borei Nefashot* on the less important peaches.¹³

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

B-7: *Beracha Acharona* After Ice Cream and Ices

Question: If one eats ices or ice cream, does he have to make a *beracha acharona*, or is it considered that he ate it too slowly?

Answer: We will start by discussing the parallel discussion among the *poskim* regarding tea and coffee, and we will then see how ice cream and ices compare.

The *tosefta*¹ states that one fully violates the prohibition of drinking on Yom Kippur only if he drinks the relevant amount within the time it takes to drink a *revi'it*² (several seconds). This differs greatly from the corresponding time period for eating, which is *k'dei achilat pras*, somewhere between 4 and 9 minutes according to the mainstream opinions. The Rambam applies this distinction between eating and drinking to a broad variety of *halachot* where drinking is of importance.³ In contrast, the Ra'avad⁴ maintains that *k'dei achilat pras* is the time period for drinking, as well. His basis is a *gemara*⁵ that says that one who drinks a *revi'it* of *tamei*⁶ liquid within *k'dei achilat pras* becomes *tamei*.

Many *poskim* assume that one of the ramifications of this *machloket* is the question of how quickly one must drink a liquid in order to be obligated in a *beracha acharona* afterward. Since the *Shulchan Aruch*⁷ cites both opinions but prefers that of the Rambam, he presumably requires one to drink the required *revi'it* without unusual pause in order to make a *beracha acharona*.⁸ Although not all *poskim*

1. *Yoma* 4:3.
2. Approximately 3–4 ounces.
3. See Rambam, *Shevitat Asor* 2:4; *Ma'achalot Assurot* 14:9; *Terumot* 10:3.
4. *Terumot* 10:3.
5. *K'ritot* 13a.
6. Halachically impure.
7. *Orach Chayim* 612:10.
8. *Mishna Berura* 210:1.

accept the Rambam's ruling even regarding Yom Kippur, because of the principle of *safek berachot l'hakel* (when in doubt, we refrain from possibly unnecessary *berachot*), one who drinks slowly should not make a *beracha acharona*.⁹

Some *poskim* say that the halachic pace of drinking should depend upon the beverage. For example, in the case of hot tea and coffee, which are difficult to drink quickly, drinking at a normal pace for those drinks warrants a *beracha acharona*. However, most *poskim* say that one should not make a *beracha* after drinking tea or coffee at the normally slow pace. Some recommend leaving a cooled off *revi'it* at the end to drink quicker and so that one can make the *beracha*.¹⁰

Normally, it takes a few minutes to consume ice cream and ices. The question, which is also the subject of considerable disagreement, is whether consuming ice cream and ices is considered like drinking or like eating. One element of the question hinges on the fact that these are foods that are liquid at room temperature but are served as a frozen solid. Some distinguish between foods and drinks depending on whether one chews it or whether it melts in his mouth and is swallowed like a liquid.¹¹ Others raise a possible distinction based on the food's ingredients. In our case, ice cream, whose ingredients are more food-like, would be treated as a solid, whereas ices, which are primarily frozen, sweet, colored water, should be considered a drink.¹² Additionally, it seems logical to distinguish between ice cream and ices in another way. At room temperature, the ices mixture is similar to a drink, but it is more refreshing when frozen. In contrast, ice cream is not normally consumed in liquid form, and it functions as a cold, solid dessert.

In the final analysis, one would do better not to make a *beracha*

9. See *ibid.*

10. *Machatzit HaShekel* to *Magen Avraham* 210:1; *Mishna Berura* *op. cit.*; see *V'Zot HaBeracha*, p. 40.

11. See *Yabia Omer* VIII, *Orach Chayim* 25. See also *ibid.* v, *Orach Chayim* 18, where, based on this distinction, he says that the broth of soup is also treated like a liquid in this regard.

12. *B'Tzel HaChochma* 3:114.

acharona on ices, unless possibly if he chews them. Regarding ice cream, it makes more sense to combine the opinions that indicate that as long as one consumes a *revi'it* within *k'dei achilat pras*,¹³ he should make a *beracha acharona*. The safest idea is to avoid the problem by eating a food (other than water)¹⁴ that definitely requires a *Borei Nefashot*.

13. If one treats ice cream fully like a solid food, it would suffice to have a *k'zayit* within *k'dei achilat pras* - see *B'Tzel HaChochma* *ibid*.

14. *Bi'ur Halacha* to *Orach Chayim* 204:7

B-8: Repeating *Tefillat HaDerech* During an Ongoing Trip

Question: If one travels over the course of more than one day, should he say *Tefillat HaDerech*¹ more than once, and if so, when?

Answer: The *Kolbo*² cites the Maharam MiRotenberg's assertion that one says *Tefillat HaDerech* only once during the day even if he interrupts his trip for a while. The *Kolbo* infers that if one planned to stop overnight at that point and then changed his mind, he should recite the prayer again even during the same day. The *Shulchan Aruch*³ accepts both rulings. Several *Acharonim*⁴ deduce from these sources that if an **intention** to stop for the night ends the prayer's efficacy, then after an actual passage of a night, one who continues his trip must certainly recite *Tefillat HaDerech* again the next day.⁵

While this seems to answer your question, there is discussion as to whether some level of break in one's travel is required in addition to the dawning of a new day. The Radbaz⁶ is inclined⁷ to believe that since *Tefillat HaDerech* is a stopgap replacement for *tefilla*, it is always appropriate when a new day of *tefilla* arrives.⁸ Most *poskim* require some type of break for the next day's travel to be considered a new

1. A prayer requesting divine protection while traveling.
2. 87.
3. *Orach Chayim* 110:5.
4. Including the *Bach*, *Orach Chayim* 110, and *Taz*, *Orach Chayim* 110:5.
5. The *Pri Chadash* (*Orach Chayim* 110:5) does say that one recites *Tefillat HaDerech* only once per trip even if it extends over several days, but his opinion is not accepted.
6. 2176. See also *Shaarei Teshuva* 110:8.
7. However, the Radbaz was not willing to rely on his position. He concludes that if the traveler does not stop in a place of inhabitation, he should say *Tefillat HaDerech* again, **omitting** the ending that makes it a *beracha*. See the discussion on this "safer" option in the final paragraph below.
8. The *Piskei Teshuvot* 110:6 attributes this opinion to the *Bach* and *Taz*, but this seems to be an inaccurate reading of the sources.

unit that justifies another *beracha*. The *Bach*⁹ and *Perisha*¹⁰ respectively mention sleeping in a city or a roadside inn in order to require a new *Tefillat HaDerech* the next day, as does the *Mishna Berura*.¹¹ The latter points out¹² that the passing of the night by itself may not suffice since even regarding the daily *Birkat HaTorah*, if one did not sleep at all during the night, many posit that he does not make a new *Birkat HaTorah* in the morning.

Not everyone agrees that sleep per se is the issue, but rather the accompanying break in the trip. There is a *machloket* regarding one who sleeps on the side of the road but in a serious manner. Rav S.Z. Auerbach is cited¹³ as requiring a new *beracha* if one slept outside of the car, whereas *Ishei Yisrael*¹⁴ says that one would have to sleep in a proper inn in order to need to say *Tefillat HaDerech* again. The same *machloket* should apply to one who sleeps on an airport bench during a long stopover. When one sleeps on a ship or plane, in which case the trip continues as he sleeps, there is a greater consensus that a new *Tefillat HaDerech* is unnecessary.¹⁵

The question of whether the main reason for a new *Tefillat HaDerech* is a new day or a new leg of the trip also affects the timing of another *Tefillat HaDerech*. The *Bi'ur Halacha*¹⁶ is unsure what to do if one breaks for the night in a hotel and wakes up before dawn¹⁷ for the next leg of the trip. Should he recite *Tefillat HaDerech* immediately after leaving town or should he wait until the morning begins? He suggests that one should be cautious and wait. However, if the trip will finish before morning, he should recite it while it is still night.

We will point out that generally, if one is unsure whether to

9. On the *Tur*, *Orach Chayim* 110.

10. On the *Tur* *ibid*.

11. 110:26.

12. *Sha'ar HaTziyun* 110:26.

13. *Halichot Shlomo* 21:2.

14. 50:4.

15. See *Ishei Yisrael* 50:(13).

16. To *Orach Chayim* 110:5.

17. *Alot hashachar* is the beginning of the halachic day.

say *Tefillat HaDerech*, he can do so without its ending (*Baruch ata HaShem shomei'a tefilla*).¹⁸ Recited in this manner, it is not a *beracha* and therefore does not pose the problem of a possible *beracha l'vatala*.¹⁹ Even though the beginning of *Tefillat HaDerech* also contains HaShem's Name, it is in the context of a *tefilla*, not a *beracha*. Some *poskim* suggest another alternative – incorporating this prayer for travel safety in *Shemoneh Esrei* before one departs in the *beracha* of *Shema Koleinu*, where requests can be inserted relatively freely.²⁰

18. Radbaz op. cit.; *Mishna Berura* 110:26.

19. A blessing of no value.

20. *Halichot Shlomo* op. cit.

B-9: *Beracha* at the Place Where One Was Saved in a Car Accident

Question: My car slipped off the road and started rolling down a hill in a wooded area and was stopped by a tree after two tumbles. I was belted in and, *baruch HaShem*, I escaped with only mild bruises. I said *Birkat HaGomel*. Should I make the *beracha* upon experiencing a *ness* (miracle) when I pass by the place of the accident?

Answer: First, if you are Ashkenazi, reciting *HaGomel* as you did was proper, as one recites the *beracha* after surviving any life-threatening situation.¹ A Sephardi would recite the *beracha* without HaShem's Name, as this scenario is not one of the four classic cases mentioned in the *mishna*.² You would do well to find additional ways to thank HaShem, including giving *tzedaka*.³ We too join in giving praise to HaShem for looking out for you and to you for looking out for yourself by wearing a seat belt. Now let us address your question.

The *mishna*⁴ instructs to recite a *birkat haness*⁵ upon seeing a place where miracles happened to *Bnei Yisrael*. The *gemara* extends this idea to an individual, who recites "...*she'asah li ness bamakom hazeh*"⁶ at a place where he personally was miraculously saved. The *gemara* presents three stories of men who did so after the following miracles: (1) one was saved from a lion, (2) a break in a wall appeared suddenly, enabling escape from a crazed animal, and (3) a spring materialized in the desert to save from dehydration.

The Avudraham⁷ says that this *beracha* applies only to salvation in a manner that defies the laws of nature. According to this opinion,

1. *Mishna Berura* 219:32.
2. *Shulchan Aruch, Orach Chayim* 219:9.
3. See *Mishna Berura* 218:32.
4. *Berachot* 54a.
5. A *beracha* recited over the occurrence of a miracle.
6. "Who did for me a miracle in this place."
7. Cited by *Beit Yosef, Orach Chayim* 218.

you would not need to make the *beracha*. Although your experience was certainly dangerous, it is not out of the ordinary to survive such an accident in reasonable health. The *Shulchan Aruch*,⁸ while basically accepting the Avudraham, also cites an opinion that requires a *beracha* for one who was saved even in a natural manner. The *Magen Avraham*⁹ says that he is unaware of any such second opinion, but many discuss the possibility that it is the view of the Rivash.¹⁰

The Avudraham seems to view *HaGomel* and *birkat hanes* as being on different tracks. The former is for normal extrication from potentially dangerous situations; the latter is for miraculous salvation. In contrast, the Rivash sees them as complementary. *HaGomel* is recited one time in the presence of a *minyán* soon after being saved; *birkat hanes* is said when one passes by the place of the *ness* in the future. In any event, the *Shulchan Aruch*¹¹ concludes that one who is saved in a natural manner would do well to recite the *beracha*'s essence without HaShem's Name.

The Gra¹² questions the opinion that requires a *beracha* for any salvation. If this were the case, a woman who gave birth or a person who was seriously sick should have to recite it. The *Bi'ur Halacha*¹³ responds that one is not required to recite a *birkat hanes* in cases in which most people survive (e.g., birth). In other words, a natural event is regarded as a miracle if one was saved from a situation that **usually** results in death.

Thus, we summarize as follows. You certainly should not recite the *birkat hanes* with HaShem's Name. With regard to saying it without HaShem's Name, it depends on whether most people who start rolling down a wooded hill at a slow speed while wearing a seat belt are killed. We do not have statistics on the matter, but we would guess that it is quite common to survive such an accident but

8. *Orach Chayim* 218:9.

9. Ad loc. 12.

10. 337, cited by the *Beit Yosef, Orach Chayim* 219.

11. Op. cit.

12. Ad loc.

13. Ad loc.

uncommon to escape without at least moderate injuries. However, the only natural salvation that warrants *birkat hanes* is escape from death. If there was a serious chance of death but one that does not reach a majority of similar instances, *HaGomel* is in order, but the element of miracle is missing.

Nevertheless, if, regardless of the probability, you want to continue to acknowledge HaShem's part in your escape from a dangerous situation, it would not be inappropriate to recite *birkat hanes* without HaShem's Name.¹⁴

14. Regarding some other details of the *beracha*, see the *Shulchan Aruch, Orach Chayim* 218:3–6.

B-10: Reciting *HaGomel* for a Child Who Was Saved

Question: Someone made a standard *Birkat HaGomel*¹ because his young grandchild was saved from danger. Is it correct to recite *HaGomel* on behalf of a child?

Answer: Regarding a question about something that already happened, we should consider the matter from two perspectives: What is best to do in similar future circumstances? If what was done was less than optimal, can we legitimize it after the fact?

The first question is whether *Birkat HaGomel* applies to a *katan* (minor), even one who is old enough to perform *mitzvot*. The Maharam Mintz² says that it is inappropriate for a *katan* to recite the *beracha* because of the *beracha*'s language. We³ say "...*hagomel lchayavim tovot* (Who does favors for those who **deserve punishment**).” In other words, the one who makes the *beracha* acknowledges that had the danger been actualized, it would have been deserved because of his sins. However, a child is not culpable for his sins, and it is improper for the child to suggest that it is his father who is culpable.⁴ The Maharam Mintz does not deem it an option to alter the *beracha*'s form and leave out the issue of culpability.⁵

Despite the existence of dissenting opinions,⁶ the consensus

1. The blessing recited after emerging safely from a potentially dangerous situation.
2. 14, accepted by the *Magen Avraham*, preface to *siman* 219.
3. The Maharam Mintz's version of the *beracha* is semantically different.
4. This is based on the concept that a minor child can die due to the sins of his father (*Shabbat* 32b); see also *Magen Avraham* 225:5 regarding the *beracha* a father makes when his son becomes bar mitzva. The Maharam Mintz also raises the possibility that the child deserves punishment for the sin of a person from whom he was reincarnated, but that kabbalistic idea is not within our range of discussion.
5. It is ironic that in our texts of the *gemara* (*Berachot* 54b), the *beracha*'s text does not include the word "*lchayavim*.”
6. See *Birkei Yosef*, *Orach Chayim* 219:1.

among *poskim* is to not require a child who is saved to make a *beracha*⁷ and even to discourage it.⁸ Furthermore, you seem to be speaking about a child who is too young to be obligated or able to make the *beracha* himself. In such a case, the *poskim* do not obligate anyone, including his father,⁹ in his stead.

It is important to note that *Birkat HaGomel* is modeled after the *korban toda* (sacrifice of thanksgiving).¹⁰ Beyond specific halachic requirements, there are various ways to show thanks to HaShem. These include making a *seudat hoda'a* (meal of thanksgiving) and giving *tzedaka*, which are appropriate in the case you describe. On the other hand, some may feel a lack of fulfillment or may fear a bad omen if no one recites *HaGomel*. It is not always wise to argue with people who feel this way. Thus, let us see if a voluntary *beracha* is possible.

The *gemara*¹¹ relates that when Rav Yehuda recovered from an illness, disciples who visited him noted their gratitude to HaShem for saving him for them without using the *HaGomel* formula. Rav Yehuda remarked that he was thereby exempted from reciting *HaGomel*, and the *gemara* explains that it was because he had answered “*amen*.” The Rosh¹² explains that the students, who felt personal joy at their *rebbe*'s recovery, were not required but were permitted to make the *beracha*. The *Beit Yosef*¹³ rules that with the exception of disciples regarding their *rebbe*, one should not make the *beracha* about others.¹⁴ However, Ashkenazim should note that the Rama¹⁵ says that anyone

7. *Mishna Berura* 219:3; *Yalkut Yosef, Orach Chayim* 219:3.

8. See *Tzitz Eliezer* XIV:20.

9. He not only is most responsible for his son, but might be the cause of his child's harm (see note 4 above). See Maharm Mintz op. cit., who explains that there are other factors that could be responsible for such tragedy.

10. Rosh, *Berachot* 9:3.

11. *Berachot* 54b.

12. Cited by the *Tur, Orach Chayim* 219.

13. *Orach Chayim* 219.

14. See the interesting responsum of Rav Ovadya Yosef in *Yechaveh Da'at* 11:25, in which, based on this *Beit Yosef*, he rules that others should not recite *HaGomel* on behalf of those saved in the Entebbe hijacking rescue.

15. *Orach Chayim* 219:4.

who feels the happiness may make the *beracha*. The *Mishna Berura*¹⁶ assumes that this is true even if the one who was saved is not present (which similarly applies if he is too young to understand). Thus, while one should not make a practice of saying *berachot* for others, we can justify the grandfather's *beracha* in the case you describe.

As we saw above, we are hesitant to change the *beracha*'s text, and it is therefore unclear whether one who recites *HaGomel* for someone else should omit "*lchayavim*" to avoid implicating others.¹⁷ He should change the text (composed in the first person) and indicate who was saved. This is not considered changing the *beracha*'s form but rather applying it to the correct person.¹⁸

However, there is some logic in keeping the word "*lchayavim*." The *Taz*¹⁹ suggests that only one who feels the joy of the other's salvation may make *HaGomel* for him. We thus consider it as if he is thanking HaShem on his own behalf for saving someone close to him. Therefore, he says, the mention of culpability might refer to the one reciting the *beracha*. In the same vein, use of the first person in describing the favor bestowed can also be justified.

In conclusion, while not recommending the course of action taken by the grandfather, we need not reject it either.

16. 219:17.

17. The *Taz*, cited by the *Sha'ar HaTziyun* 219:13, says that it should be omitted, but he was addressing specifically the case of a father or *rebbe*, whom one must be careful to honor.

18. *Mishna Berura* op. cit.

19. *Orach Chayim* 219:3.

Section C:
Shabbat



c-1: Use of a Non-Jew on Shabbat

Question: We have a local *goy shel Shabbat*¹ (*Shabbos goy*). I do not know how and when I can use him for things other than emergencies. If I hint to him, can he do whatever I want when I need him?

Answer: There are two issues to discuss regarding the use of a *goy shel Shabbat*. One is *menschlichkeit*. You are apparently talking about a person who is paid by the community, whose main concern is its members' most pressing needs. This includes taking people to the hospital, preventing large losses, and helping with the acute needs of individuals and groups. In some cases, the *goy shel Shabbat* is paid with the assumption that he will only be called upon to help for a relatively small number of acute needs. He might legitimately ask for more money if he is bombarded incessantly with requests to deal with small inconveniences. More importantly, he cannot be in two places at the same time, so if he is taking care of one person's small need, he will be temporarily unavailable for another's more significant needs, and that delay is sometimes crucial. (Regarding an "unofficial" *Shabbos goy*, there is a concern of not abusing his goodwill, but this concern can be eliminated or mitigated through pay or presents.)

Now we will discuss the laws of Shabbat. While it is not a simple matter, the standard halachic assumption is that in the case of some types of hints, it is considered as if the Jew did not make a request. The source for this assumption is the *Magen Avraham*,² who distinguishes between types of hints to resolve an apparent contradiction between halachic rulings. The Rama³ says that whenever one may not do something on Shabbat, he may not hint to a non-Jew to do it for him. In contrast, classical sources indicate that one may tell

1. A non-Jew who is available on a regular basis, for pay or as a favor, to do things for a Jew on Shabbat that a Jew is forbidden to do.
2. 307:31.
3. *Orach Chayim* 307:22.

a non-Jew that he cannot read a letter, thereby hinting to open the letter. The *Magen Avraham* answers that one is allowed to mention a **need**, but he may not tell a non-Jew to do an **action** in a way that will serve as a hint to do that which he wants the non-Jew to do. The *Mishna Berura*⁴ and contemporary *poskim* accept this *Magen Avraham*.

However, there are two problems that must limit use of this leniency. First, when one sees a non-Jew doing forbidden work on his own initiative in a Jew's home and/or using a Jew's property on the Jew's behalf, he is required to protest the activity.⁵ This is because the Jew appears to the observer to be enlisting the non-Jew's help in a forbidden manner. If it is necessary to protest when a non-Jew initiated the work, how could it be permitted to hint to him to do it in the first place? The other problem is that if a non-Jew does forbidden work on a Jew's behalf, even without his involvement or knowledge, the Jew may not benefit from the result until enough time transpires after Shabbat for that particular chore to have been done then.⁶ Again, a hint is certainly no better than not having raised the request in any form, and it should therefore be forbidden to benefit from the result on Shabbat.

Because of these factors, the *poskim* limit the efficacy of hinting to a non-Jew on Shabbat to cases such as the following: 1) A situation in which the Jew could have continued the activity that the non-Jew helped him with without the latter's action (e.g., eating in a room where there was already sufficient light to eat by, when the non-Jew put on another light to make it more pleasant).⁷ 2) The nature of the benefit provided is one of removing disturbances or impediments, not one of providing something positive new.⁸ (Examples include

4. 307:76.

5. *Shulchan Aruch, Orach Chayim* 252:2.

6. *Shulchan Aruch, Orach Chayim* 276:1.

7. *Mishna Berura* 307:76. See a somewhat more stringent application of this distinction in *Igrot Moshe, Yoreh Deah* 111:47.2.

8. *Orchot Shabbat* 23:(46).

shutting a light and perhaps opening an envelope.⁹) 3) The Jew will receive benefit only after Shabbat.¹⁰

In cases of significant need, in which it is permitted to ask a non-Jew straight out to perform what would be a Rabbinic violation for a Jew,¹¹ it is also permitted to benefit from whatever work was done.¹² Therefore, if one was careful regarding *menschlichkeit* and thus the need is apparently great when he calls the *goy shel Shabbat*, there are many additional cases in which the benefit element is resolved as well. In any case, if one is not familiar enough with the *halachot*, he should ask a rabbi before going to the *goy shel Shabbat*. Many communities assist in the matter by having the *goy shel Shabbat* keep “an instruction manual” handy for those who seek his help.

9. The latter is the case the aforementioned *Magen Avraham* discussed; see related discussion in article #14 at the end of *Orchot Shabbat*, vol. 111.

10. *Melachim Omnayich* 4:1.

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

12. See *Shulchan Aruch, Orach Chayim* 276:1, and *Mishna Berura* ad loc. 7.

c-2: Using a Driver Who Did Not Make *Havdala*

Question: May one get into a taxi on *Motzaei Shabbat* when the driver is a Jew who one assumes did not make *Havdala*, considering that it is forbidden to do *melacha*¹ before *Havdala*?

Answer: The *gemara*² tells of an *Amora* who chopped wood after Shabbat before reciting *Havdala*, but only after reciting an informal *Havdala* (which we call *HaMavdil*). We accept the opinion that this declaration that HaShem has distinguished between holy and mundane days is recited without HaShem's Name.³ In any case, it is agreed that before reciting some form of *Havdala* (over a cup, in *Ma'ariv*, or *HaMavdil*), it is forbidden to do *melacha*. Therefore, if you know that the taxi driver has not employed any of these options, you are arguably facilitating his transgression, which it is forbidden to do under the general category of *lifnei iver* – placing a spiritual “stumbling block” before the blind.⁴

We should note that the Rama⁵ cites the opinion of Rabbeinu Yerucham that some *melachot* (e.g., lighting a flame and carrying) are permitted before any form of *Havdala*, and only more “complete” *melachot* are forbidden (e.g., weaving and writing). While the Rama prefers the stringent opinion, it would not be forbidden to enter a taxi if the driver is acting in a manner that is permitted according to a legitimate opinion.⁶ The question is thus how to categorize driving. The *Tzitz Eliezer*⁷ assumes that driving a car is considered serious enough work for even Rabbeinu Yerucham to forbid it. This is not

1. Work that the Torah prohibits on Shabbat.
2. *Shabbat* 150b.
3. *Shulchan Aruch, Orach Chayim* 299:10.
4. See *Vayikra* 19:14.
5. *Orach Chayim* 299:10.
6. See *Minchat Shlomo* 1:43.
7. XI:34.

obvious, as the *Taz*⁸ says that the classification depends if it is work that is usually done by a skilled worker. This would seem not to apply to driving, as most people drive. The *Mishna Berura*⁹ says that the classification depends how much toil is involved, but this also does not seem to apply to driving. Perhaps, the *Tzitz Eliezer* is bothered by the taxi's professional context or by the fact that driving is an acquired skill that requires ongoing concentration.

The major discussion is about the nature of the prohibition of *melacha* before *Havdala*. Is it that the prohibitions of Shabbat continue until one ends them (just as one can start Shabbat with a declaration on late Friday afternoon)? Or is it that the work is permitted from the perspective of Shabbat, but since there is a *mitzva* to honor Shabbat as it leaves with *Havdala*, it is forbidden to commence work before fulfilling that *mitzva*? Rabbeinu Yerucham¹⁰ seems to take the latter approach, which explains why some *melachot* are permitted before *Havdala* in his view. There are indications from the *gemara* that this is the correct outlook.¹¹

If the problem with doing *melacha* before *Havdala* is indeed one of postponing the *mitzva* and not a matter of transgressing a more standard *aveira*, then there is strong room for leniency. There are many sources that indicate that *lifnei iver* does not apply when the problem is somewhat weak or indirect.¹² The *Tzitz Eliezer*¹³ adds an interesting twist. If the problem is the delay of the *mitzva*, then it does not apply to one who has no intention of doing the *mitzva* at all. He reasons that if we did not make that assumption, it would be forbidden at many times of the day to feed non-*daveners* (even if they will make *berachot*) because it is forbidden to eat before *tefilla*. This observation could be reconciled according to the thesis that *lifnei iver* does not apply to indirect or weak violations.

8. Ad loc. 9.

9. 299:38

10. See *Taz* ibid.

11. See *D'var Yehoshua* 11:108.

12. See one application in *Achiezer* 111:26.

13. Op. cit.

Rav Shternbach¹⁴ prefers the approach that there is a continued Shabbat prohibition of *melacha* until *Havdala* is recited. Nevertheless, he maintains that *lifnei iver* does not apply because the taxi driver is continuing to do the same *melachot* – those entailed in driving – that he was doing before he was hailed. (This reasoning would not apply in the case of a car service that works only when called.) Further development of the concept of *lifnei iver* on the Torah and Rabbinic levels is beyond our scope.

According to the approach that the Shabbat prohibition continues until *Havdala*, the problem may also be avoided or mitigated by the practice of some¹⁵ to get the driver to say “*Shavua tov*,” which might indicate his interest that Shabbat no longer be with him and serve on some level like *HaMavdil*, thus suspending the continuing prohibition.

For one or more of the reasons above, it should not be surprising that several *poskim*¹⁶ rule and standard practice is that one may call, hail, or get into a taxi with a driver who did not recite any form of *Havdala*.

14. *Teshuvot V’Hanhagot* 11:161.

15. See *Shemirat Shabbat K’Hilchata* 59:8 and *Tzitz Eliezer* op. cit.

16. Including those mentioned above.

c-3: Making *Kiddush* for Others Before Accepting Shabbat

Question: A friend of mine goes to a local hospital where there are Jewish patients who are not able to make *Kiddush*, and he does so on their behalf. When Shabbat begins late and people eat before Shabbat, he makes *Kiddush* for them before accepting Shabbat and then returns home. May he make *Kiddush* for others before he himself accepts Shabbat?

Answer: At first glance, it seems that your friend is making *Kiddush* at a time when he is not obligated to do so on behalf of those who have presumably accepted (or are now accepting) Shabbat and are thus obligated in *Kiddush*. In general, one who performs a *mitzva* on behalf of someone else must be obligated in it to the same degree as the one for whom he is doing it.¹ On the other hand, this requirement may be somewhat theoretical, as one who has already discharged his obligation in a certain *mitzva* can perform it, even with its *beracha*, in order to enable the fulfillment of the obligation of one who has not yet done so (based on the concept of *arvut*²).³ We must thus consider the following: Is your friend considered obligated in *Kiddush* because it generally applies to him, just as in the case of one who already fulfilled his obligation? Or do we say that if the time is such that the *mitzva* does not apply to him, he is not considered obligated at all?

In order to resolve this dilemma, we need to consider cases conceptually similar to this one. *Acharonim* cite a *Yerushalmi*⁴ that says that residents of un-walled cities may not read the *Megilla* on behalf of those from walled cities (whose obligation is a day later,

1. *Rosh Hashana* 29a.

2. The mutual obligation that one has for his counterpart – in this case, regarding the fulfillment of religious obligations.

3. *Rosh Hashana* 29a.

4. *Megilla* 2:3.

on “*Shushan Purim*”). We see from here that one who is generally obligated in a *mitzva* but not at the present time is not considered obligated with regard to performing the *mitzva* for one who is obligated at the time. However, Rabbi Akiva Eiger⁵ raises a distinction to suggest that our case is more lenient than the one discussed in the *Yerushalmi*. Here, one who has not accepted Shabbat **can** accept it and immediately become obligated in *Kiddush*. Therefore, the obligation is considered relevant for him even before he actually accepts Shabbat, and perhaps he may therefore recite *Kiddush* on behalf of one who accepted Shabbat. However, Rabbi Akiva Eiger leaves the matter as an unresolved doubt.

Several contemporary *poskim* tried to resolve Rabbi Akiva Eiger’s doubt. Rav S.Z. Auerbach⁶ cites Tosafot,⁷ who says that one who did not eat may recite *Birkat HaMazon* on behalf of one who did eat. Rav Auerbach reasons that the one who did not eat is considered obligated in *Birkat HaMazon* because he **could** eat and thereby become obligated, in line with Rabbi Akiva Eiger’s logic for leniency. However, Rav Auerbach makes a distinction between *Birkat HaMazon* recited by one who has not eaten and *Kiddush* recited by one who has not accepted Shabbat. The *mitzva* of *Birkat HaMazon* theoretically applies to all people at all times, as long as the circumstances are that they ate. In contrast, *Kiddush* on Friday afternoon is not considered a relevant *Kiddush* for one who has not yet accepted Shabbat, even though he could accept it if he wanted to.

On the other hand, we should consider whether it is clear that *Kiddush* is irrelevant before Shabbat. The Rambam apparently does not accept the concept of *tosefet Shabbat* (the ability/obligation to usher in Shabbat early),⁸ yet he says that it is possible to recite *Kiddush* toward the end of Friday afternoon.⁹ This lends credence to

5. To *Shulchan Aruch*, *Orach Chayim* 267:1.

6. *Minchat Shlomo* 1:3.

7. *Berachot* 48b.

8. See question C-6.

9. *Shabbat* 29:11.

the concept that *Kiddush* (as well as its parallel, *Havdala*) applies and may be recited soon before the time of the transition between weekday and Shabbat. Thus, the obligation of *Kiddush* may already apply on a certain level soon before Shabbat even for one who has not yet accepted Shabbat, making him connected enough to *Kiddush* to enable him to recite it for those who have accepted Shabbat.¹⁰ While it is difficult to rely on this thesis alone, which is certainly not unanimously held, it can be considered seriously when contemplating grounds for leniency in various cases.¹¹

Rav Auerbach was hesitant to allow *Kiddush* in such a manner on a regular basis. However, Rav Ovadia Yosef¹² and the *Tzitz Eliezer*¹³ were willing to rely on the more lenient position of Rabbi Akiva Eiger and allow one who has not accepted Shabbat to make *Kiddush* for others. In a case such as the one you describe, where one is doing an extra *mitzva* of *chesed* with this *Kiddush* and it would likely be difficult to find a replacement who can make *Kiddush* without qualms, we feel that it is proper to be lenient on the matter.

It is important to note that while it is proper that someone who is hearing the *Kiddush* should be eating subsequently, this may not be an absolute necessity.¹⁴ (Details of this issue are beyond our present scope.)

10. *Minchat Shlomo* op. cit.

11. See *ibid.*

12. *Yabia Omer* VIII, *Orach Chayim* 46.

13. XIV:25.

14. *Tzitz Eliezer* XII:24.

C-4: When and How to Accept *Tosefet Shabbat*

Question: How and when does one fulfill the *mitzva* of *tosefet Shabbat* (extending Shabbat) as Shabbat enters?

Answer: The concept of *tosefet* first arises regarding Yom Kippur. The *gemara*¹ learns from the Torah's mention of fasting from the 9th of Tishrei² in the evening until the next evening that the fast begins a little before the end of the 9th of Tishrei and ends a little after the end of the next day. The *gemara* demonstrates that one should similarly refrain from *melacha*³ directly before and after both Shabbat and *Yom Tov*. (The concept is applied to *Shemitta* years as well.⁴) The Rambam omits this concept of *tosefet* in the laws of Shabbat, and even in the laws of Yom Kippur, he mentions it only regarding fasting.⁵ However, the *Shulchan Aruch*⁶ requires *tosefet Shabbat*.

There are a two or three possible elements of the period of *tosefet*:
1) One violates *tosefet* if he does *melacha* up until Shabbat begins.⁷
2) One's acceptance of the new day is binding even if he accepted it earlier than necessary.⁸ 3) It is a *mitzva* or even an obligation to accept *tosefet* actively. Your question addresses #3, whose source is unclear.

As a source for #3, some cite the *Mishna Berura*,⁹ who says that accepting Shabbat is accomplished orally. He in turn cites the Rama,¹⁰

1. *Yoma* 81b.
2. Instead of 10 Tishrei (the date of Yom Kippur) starting at nightfall.
3. Forbidden work.
4. See *Shvi'it* 1:1; *Mo'ed Katan* 3b.
5. See *Maggid Mishneh*, *Shvitat Asor* 1:6.
6. *Orach Chayim* 261:2.
7. *Beitza* 30a, regarding those who ate "until dark" entering Yom Kippur.
8. *Shulchan Aruch*, *Orach Chayim* 263:10.
9. 261:21.
10. 608:3 and 553:1.

who writes that cognitive acceptance without speech is ineffective, and one who only mentally decided not to eat any more before a fast may therefore eat again. The *Mishna Berura*¹¹ also cites important *poskim* who rule that a mental decision is binding, and he does not seem to decide between the approaches. Based on these passages, the *Shemirat Shabbat K'Hilchata*¹² says that one accepts Shabbat before the day's end, preferably with speech, although his acceptance is possibly binding with a cognitive decision alone.

There are two troubling factors here. First, few observant Jews or *shuls* are careful to actively accept Shabbat early. In fact, many *shuls* finish *Mincha* moments before or even after sunset, at which time *tosefet* has kicked in automatically.¹³ (It is unclear how long *tosefet* is, but it is almost certainly single digits of minutes.¹⁴) It is also strange that the *Mishna Berura* does not cite a source for the requirement to perform an act of accepting Shabbat early. The Rama he cites refers only to element #2. The Rama writes that oral voluntary acceptance is binding. It is possible that it simply makes sense to say that if there must be *tosefet* and speech creates it, one should actively accept it rather than be forced into it (although we note that *tosefet* is not accepted actively before *Shemitta* or at the end of Shabbat). However, it is still troubling that the classical halachic sources do not mention this requirement, even regarding Yom Kippur, the original source.¹⁵

In fact, it is not clear that explicit acceptance is necessary. Rav Ovadia Yosef¹⁶ argues that if one is in a *shul* where *Mincha* (which must be prayed before Shabbat) will finish after sunset, he may *daven* without accepting Shabbat. Rav Yosef claims that the essence of *tosefet* is simply refraining from *melacha*. The *Ohr L'Tzion*¹⁷ also posits that the requirement of *tosefet* is to refrain from *melacha* and

11. 553:2.

12. 46:2.

13. Element #1 of *tosefet Shabbat* – see above.

14. See opinions in *Piskei Teshuvot* 261:2.

15. See *Shulchan Aruch, Orach Chayim* 608:1.

16. *Yabia Omer* v11, *Orach Chayim* 34.

17. *Orach Chayim* 11:18:2.

understands the *Mishna Berura* to be referring only to element #2.¹⁸ He does add, however, that there is a value to an oral acceptance, if one is possible. The *Shevet HaLevi*¹⁹ is also not convinced that active acceptance is necessary. While he notes that many *Rishonim* consider *tosefet* a *mitzva*, he says it is likely that mental acceptance is enough.

There is little reason not to actively accept Shabbat a few minutes before sunset when one is unlikely to need to do *melacha*. However, the fact that most people do not do so is not a mistake. For Ashkenazi women, the matter is a non-issue, as they usually accept Shabbat when lighting Shabbat candles.²⁰ When they do not do so, their status is like that of a man.

18. It is not clear whether the *Shemirat Shabbat K'Hilchata* op. cit. can also be read that way.

19. X:50.

20. Rama, *Orach Chayim* 263:10.

c-5: Playing Major League Baseball on Shabbat

Question: As a sports fan, I was wondering whether it is permitted for Jewish Major League baseball players to play a game without actually violating Shabbat.

Answer: This potentially crucial question – if a professional baseball player were to decide to keep Shabbat, could he play on Shabbat? – was not asked by or on behalf of a player. If he were to ask, it would be necessary to analyze all aspects of the question, certainly including the issues of going to one’s job even if one does not need to do *melacha*,¹ being paid for work on Shabbat, *uvdin d’chol*,² the spirit of Shabbat, and impact on the public. We would have to keep in mind the likelihood that he would have to give up a very profitable career and the possibility that a stringent ruling would hold him back from *mitzva* observance. We will not do that in this response. As the question was asked by a curious sports fan, we will take the hopefully enlightening (and entertaining) opportunity to apply some intricacies of the laws of Shabbat to some intricacies of baseball in a more theoretical manner.

All Major League stadiums are fully enclosed, making them *reshuyot hayachid*³ despite the masses of people who assemble there.⁴ Thus, carrying, hitting, and throwing in the stadium are not *chillul Shabbat*. While there are Rabbinic restrictions on carrying even in a *reshut hayachid* without an *eiruv*,⁵ they only apply when carrying between areas owned by different people or groups.⁶ An entire stadium is owned by one person or group, so this is not a problem.

1. An activity that the Torah forbids on Shabbat.
2. Weekday-like activity.
3. Private domains.
4. *Shulchan Aruch, Orach Chayim* 345:2, 7.
5. *Ibid.* 366:1.
6. *Ibid.* 370:8.

What if one hits a home run, in which case (in certain parks) the ball can go from an enclosed to an unenclosed area? A disciplined hitter will not intend to hit the ball out of the stadium, but beyond the playing field wall. Therefore, even if a player hit a home run that left the entire stadium, it would be a *davar she'eino mitkavein* (an unplanned, uncertain violation of Shabbat). One does not have to be concerned from the outset that his ostensibly permitted action (hitting the ball hard) may unintentionally turn into a Shabbat violation.⁷

Often, hitters “dig in” at the batter’s box by using their cleats to make a small ditch to help them push off when swinging. This is a form of *choresh* (plowing) or *boneh* (building)⁸ that is done directly and purposely to improve the ground for one’s purposes, and it is a Torah-level violation.⁹ (See the *Mishna Berura*’s¹⁰ objection to playing on the ground, which does not seem to apply to baseball.)

Sliding on the base paths dirties a player’s uniform. The *gemara*¹¹ says that one who shakes out his clothes to remove dew (according to *Tosafot*) or dirt (according to Rashi) violates a Torah prohibition. The *gemara* continues that this applies only to new, black clothes, which one is careful to keep clean. The Rama¹² cites opinions that one may not shake out any article of clothing on which he is not willing to tolerate that level of dirt. While the matter is more complex than we can address here, the *Bi’ur Halacha*¹³ rules stringently on the matter when one does not only shake out the clothing, but also performs an action of cleaning on the place of the dirt. Therefore, it is at least

7. Rambam, *Shabbat* 1:5.

8. See *Shabbat* 73b, which explains that the same act done to the ground can be either *choresh* or *boneh* depending on the categorization of the place in which it is done .

9. Rambam, *Shabbat* 8:1 and 10:12.

10. 308:158.

11. *Shabbat* 147a.

12. *Orach Chayim* 302:1.

13. Ad loc.

preferable to do no more than lightly shake off the top layer of dirt, leaving whatever is partially imbedded in the fabric.

When playing the outfield, is there a problem of cutting or uprooting the grass (a question not applicable to stadiums with artificial turf)? In general, one is allowed to walk on grass because even if he were to cut some blades, it is a *davar she'eino mitkaven*.¹⁴ However, the *Mishna Berura*¹⁵ points out that if one runs on tall grass, it is a *p'sik reishai* (a certainty that one will inadvertently perform the prohibition), which is forbidden. Although stadiums have short grass, it is possible that with cleats, the matter is a *p'sik reishai*, and this respondent lacks the technical expertise to rule on the matter.

The *Shulchan Aruch*¹⁶ rules that balls are *muktzeh* because they do not have a serious use that would make them utensils. The Rama says balls are not *muktzeh* because they are set aside for the purpose of playing, which he considers sufficient. Therefore, balls are not *muktzeh* for Ashkenazim; Sephardim are divided on the matter.¹⁷

In summary, by taking proper precautions, one can solve most, if not all, of the technical halachic issues of playing baseball on Shabbat, while certain halachic and certainly spiritual issues would remain (including some that we have not mentioned).

14. *Shulchan Aruch, Orach Chayim* 336:3.

15. Ad loc. 25.

16. Ibid. 308:45.

17. See *Yalkut Yosef, Shabbat* 11, p. 387, who cites different opinions and rules stringently.

c-6: Use of a Coffee Maker With a Timer on Shabbat

Question: May one set an automatic coffee maker on a timer so that it brews the coffee on Shabbat morning? (The ingredients would be put in and the settings adjusted before Shabbat, and no electrical switches need to be pressed to remove the coffee.)

Answer: There are two main discussions in the *gemara* about setting up before Shabbat situations in which a process of a *melacha* will occur on Shabbat without further human involvement.

One passage¹ discusses leaving food on the fire to cook (*shehiya*). Specifically, the *gemara* deals with the question of when it is required to take steps to deal with the concern that someone will raise the fire on Shabbat. One opinion maintains that if the food has reached the state of *k'ma'achal ben d'rusai* (nominally cooked), it may be left on the fire normally; another opinion requires removing the fuel source or covering it. Apparently, if the fire is covered so that there is no concern of stoking the coals (or the equivalent), one could leave food on it at any stage of cooking. According to a wide spectrum of *poskim*,² a non-adjustable heat source (e.g., a “Shabbat hot plate”) requires no covering even when the food it is cooking has not reached *k'ma'achal ben d'rusai*. **From this perspective**, if a coffee maker has only one level of heat/speed of brewing, even if it has many other settings and controls, setting the machine to activate the brewing process on Shabbat would be permitted.

Another *gemara*³ deals more broadly with systems set up before Shabbat that would be forbidden if set up on Shabbat. The *gemara* says that if one places wool in a cauldron of dye before Shabbat, he

1. *Shabbat* 36b–38a.
2. *Shevet HaLevi* v:35; *Halachos of Shabbos* (Eider), p. 340; see *Igrot Moshe, Orach Chayim* 1v:74, par. 25,35, who implies this approach. See also *Orchot Shabbat* 2:(19), who is hesitant to rely on this logic alone.
3. *Shabbat* 18b.

must seal the lid before Shabbat due to a concern that he will stir the cauldron. Regarding uncooked food left on the fire from before Shabbat, the *gemara* refers only to a problem of stoking coals and not of stirring. Rabbi Akiva Eiger⁴ suggests that if the food started cooking but did not reach *k'ma'achal ben d'rusai* before Shabbat started, stirring would indeed be a concern (which a *blech* or a non-adjustable heat source would not obviate). Although the *Bi'ur Halacha*⁵ mentions this stringency, it seems that the vast majority of present-day *poskim* accept the *Shulchan Aruch's* ruling⁶ that when the Rabbinic concern about stoking coals is taken care of, even uncooked food can be left on the flame.⁷

Nevertheless, the *Tzitz Eliezer*⁸ forbids putting uncooked food before Shabbat in a place where a heat source will be activated by a timer on Shabbat. One of the bases for his ruling is the Ramban,⁹ who deals with the question of why the concern of stirring is not raised regarding cooking food. One of his answers is that the Rabbis were concerned about stirring only in regard to dye and not in regard to food, even though it is forbidden to stir uncooked food on the flame. However, according to the Ramban's other answers, it is forbidden to allow a situation in which the cooking of food starts on Shabbat and one might come to hasten it through stirring. Rav S.Z. Auerbach¹⁰ responded that we accept the Ramban's lenient answer – that we are not concerned about stirring – allowing the possibility of timers that start the cooking process on Shabbat. We may rely on this opinion.

Rav Auerbach would certainly permit use of a coffee maker through a timer, as you described. Regarding machines in which it is not feasible to stir the coffee as it brews, all should agree that this is not grounds for a prohibition.

4. To *Shulchan Aruch, Orach Chayim* 253:1, and to *Mishna, Shabbat* 3:1.

5. Ad loc., s.v. “*Ela k'shehitchil*.”

6. *Orach Chayim* 253:1.

7. See *Minchat Shlomo* 11:34.1; *Orchot Shabbat* 2:68.

8. 11:6.

9. *Shabbat* 18b.

10. *Minchat Shlomo* op. cit.

A final issue is that the Rama¹¹ forbids operating from before Shabbat a mechanism that is forbidden to operate on Shabbat if it makes noise, as this is degrading for Shabbat (*avsha milta*). It is permitted to set up such a mechanism only if people often do so in advance and there is thus no reason to suspect that Shabbat desecration occurred.¹² Since coffee makers are usually not operated on a time delay, this could pose a problem. However, most machines are probably not loud enough to cause a prohibition, which would pertain when the noise can be heard in another room.¹³

There are (and will be) many models of coffee makers, so one must ensure that the one he uses meets all the requirements. Do not assume or quote us as giving a blanket leniency in all cases.

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

12. *Ibid.*, regarding a clock that chimes.

13. See *Igrot Moshe*, *Orach Chayim* IV:70.

c-7: Closing a Door to a Closet Containing Mothballs on Shabbat

Question: We have had problems with moths in a certain closet, so we have put a material that kills moths and their larvae (developing moths) through fumes that are trapped and accumulate inside the closet. If we open the door to the closet, may we close it again on Shabbat, or is that considered killing the moths?

Answer: Your question is affected by many halachic concepts, including some that are too complex to discuss thoroughly in this context, but we will refer to as much as needed to give you a ruling for your case.

It is forbidden to kill animal life on Shabbat, and this prohibition has elements of severity that exceed the prohibition to trap them.¹ However, there are several potential reasons for leniency in your case. We are assuming that your main intention in closing the closet door is unrelated to killing moths.² There is sufficient time to kill the moths, larvae, and/or eggs during the week.

If it is certain that closing a door will kill moths, this unintentional but definite and otherwise desired result is called a *p'sik reishei*, a violation of Shabbat that is usually forbidden on the level of Torah law.³ On the other hand, killing an animal through poison is not a classic direct action; one puts out poison, which later kills without human involvement. There is a *machloket Acharonim* regarding whether one is allowed to put poison in front of animal on Shabbat so that it will eat it and die. The *Shvut Yaakov*⁴ makes a strong argument that this is a situation of *gerama* (indirect causation), which

1. *Shulchan Aruch, Orach Chayim* 316:9.
2. Experts question the safety of mothballs, which are toxic and probably carcinogenic. This may be sufficient reason not to use them, at least without precautions. Hopefully, you have a safer material.
3. *Shabbat* 75a.
4. II:45.

can be permitted when certain other alleviating factors apply. Here, the killing is a *melacha she'eina tzricha l'gufa* (it is not done to make use of the final result, i.e., the dead moth), which almost all *Rishonim* agree is only a Rabbinic prohibition. The *Shvut Ya'akov* says that with the combination of these mitigating factors, placing the poison can be permitted to avoid *tza'ar*. Presumably, it would also be permitted in order to avoid a loss. Even in the case of a *p'sik reishai* of a direct but unintentional action, significant opinions permit the action if only a Rabbinic prohibition is involved.⁵

Your case, however, is different in both the direction of stringency and leniency. Here, the moths are not enticed to eat the poison, but rather the fumes reach the moths, which is more direct. (Rav Ovadia Yosef⁶ makes this distinction regarding a case of spraying insects with poison.) On the other hand, here the substance is placed before Shabbat, and you are inquiring about closing a door on Shabbat. That action does not create the fumes or direct them at the moths; it simply stops the fumes from dissipating. One could argue that this should still be forbidden. After all, in a parallel case, when one closes a pot of not yet cooked food so that the heat will not escape and the food will thereby cook faster, most consider the action a full violation.⁷ However, it is unclear that this model should be applied in all contexts. (The matter demands further investigation beyond our present scope).

The strongest reason to permit closing the closet door is the uncertainty whether any moths will die on Shabbat as a result of that action. First, it is not certain that there are any moths or larvae there at this time, especially given that ongoing use of the substance has already eliminated or at least decreased their population. This may make the action a *davar she'eino mitkaven*, performing an intrinsically permitted action when there is only a possibility – not a certainty – that it will cause an unintentional forbidden result, which

5. *Terumat HaDeshen* 64; see opinions in *Yabia Omer* 1, *Orach Chayim* 19.

6. *Yabia Omer* 111, *Orach Chayim* 20.

7. See *Bi'ur Halacha* 257:4.

is permitted. There is major discussion regarding whether this leniency applies even when the uncertainty has to do with an existing situation (i.e., are there moths?).⁸ (It is possible to counter that in a case in which if there are moths, they will certainly die immediately, it should be forbidden to enter the possibility of a violation through *p'sik reishet*.⁹) Furthermore, our research suggests that it is unclear that moths that are in the closet will definitely die on Shabbat because the extermination process is a slow one. Therefore, it should be permitted to close the door assuming that one is not doing so with the intention to kill the moths as quickly as possible.

In summary, because of a few possible factors and perhaps their confluence, it is permitted to close the door.

8. See *Taz, Orach Chayim* 316:3.

9. See discussion in *Bi'ur Halacha* 316:3.

C-8: Cake after *Kiddush* at Night

Question: I will be hosting *sheva berachot* on the Shabbat that follows the fast of *Asara B'Tevet* (which falls on Friday). I am considering serving a snack, including cake and drinks, after *Kiddush* at night instead of going straight into the meal. Does this raise any halachic issues?

Answer: The short answer is that your idea is permitted. While *Kiddush* must be recited at the place of a meal,¹ we rule that it is sufficient for this meal to be a light one.² Although this is more common specifically in the context of the daytime *Kiddush*, which is in some ways a lighter obligation than that of the night, this *halacha* is found in the *Shulchan Aruch* among the laws of *Kiddush* at night.³ Thus, the type of snack you suggest, which includes cake, should suffice for *Kiddush* to take effect.⁴

Since you asked about any halachic issues, we will address some minor ones:

1) While the aforementioned *Kiddush* is valid and permits one to eat, it is not unanimously held that this *Kiddush* is sufficient with regard to the meal one will eat afterwards. Rav M. Feinstein⁵ says that the *Kiddush* before a snack is valid enough to allow one to eat but that another *Kiddush* is necessary before eating the full meal. While this opinion is not generally the accepted one, some people make *Kiddush* a second time as a stringency. (See *Shemirat Shabbat K'Hilchata*,⁶ who neither accepts nor rejects this opinion.) *Kiddush* can easily be repeated in the daytime, when all one needs to do is to recite a few

1. *Pesachim* 101a.

2. *Shulchan Aruch, Orach Chayim* 273:5

3. See *Shemirat Shabbat K'Hilchata* 54:22.

4. Regarding how much of what foods is included, see *Magen Avraham* 273:10–11 and *Living the Halachic Process*, vol. 11:C-3.

5. *Igrot Moshe, Orach Chayim* 1v:63.

6. 52:(62); 54:(76).

psukim and make a *beracha* of *Borei Pri HaGefen*. At night, however, *Kiddush* entails an additional *beracha* of *Mekadesh HaShabbat*. In this case, one has to take sides regarding reciting *Kiddush* again before the meal, as there is halachic risk for both omission (insufficient *Kiddush*) and commission (*beracha l'vatala*⁷). The *Shemirat Shabbat K'Hilchata*,⁸ while not certain whether Rav Feinstein would require one to repeat *Kiddush* at night, himself says that one should not.⁹ In any case, even Rav Feinstein's stringency does not apply if the meal takes place at the same place as the original *Kiddush*. Thus, you will not need a new *Kiddush* when you begin the meal.

2) Immediately prior to a bread-based meal, one should not eat any type of food that would not require a *beracha* during the meal, as this constitutes an unnecessary *beracha*. However, it is considered unnecessary because there is usually little gained by eating these foods before the meal in a manner that requires another *beracha*.¹⁰ Since you have a specific reason that you feel makes it worthwhile to have this snack to break the fast, that is enough of a reason to justify the *beracha* before the meal, whether or not most would agree with you on this subjective matter. Your guests, of course, are hungry and have every right to eat what they are served and need not wait for the meal.

3) There is a significant and complex halachic discussion about what one is supposed to do regarding a *beracha acharona* on a snack he eats immediately before a bread meal.¹¹ Briefly, the general rule is that one should recite a *beracha acharona* on the snack. The following are exceptions, when one does not or **perhaps** does not make a *beracha acharona*: a) The food is one that increases one's appetite for the meal. b) The food requires a *beracha* even during the meal and one will be eating that same food during the meal in a manner

7. A blessing of no value.

8. 54:(76).

9. Ibid. (77).

10. See *Mishna Berura* 176:2.

11. See the *Mishna Berura* *ibid.*, *V'Zot HaBeracha* ch. 9 for more detail.

that is considered a continuous eating; c) The food falls under the general broad category of bread-like foods (including most cakes);¹² d) There is a *machloket* regarding when one drinks both before and during the meal. As a result, Ashkenazim refrain from a *beracha acharona* out of doubt.¹³

Depending on what you serve, you might have to choose between having many people make *beracha* mistakes and offering some type of explanations or joint *berachot*. Some may view that as tacky and cumbersome. Having one person make a *beracha acharona* on behalf of others is also not ideal halachically,¹⁴ but it is justified to save people from mistakes.

If you feel there is a real gain, you may choose to arrange the *Kidush* as you suggest despite the issues, which are surmountable. The easiest way to obviate most of the complication is to wait around 15 minutes between the end of the first installment and the beginning of the proper meal.¹⁵ If you wait less than that and you served only cake and drinks, no *berachot acharonot* would be said.

12. See *ibid.* and *Living the Halachic Process*, vol. 1:B-5.

13. *Bi'ur Halacha* 174:6; see *V'Zot HaBeracha* op. cit.

14. See *Mishna Berura* 193:2.

15. See *V'Zot HaBeracha* op. cit.

c-9: Starting *Mincha* of Shabbat a Few Minutes Early

Question: A local *minyan* for *Mincha* on Shabbat often starts before the earliest time permitted. When I asked about it, they said they are careful that the *Amida* (“*Shemoneh Esrei*”) is recited at the proper time. Is that good enough?

Answer: The only primary source we found on the matter is the *Tzitz Eliezer*,¹ who infers from classical sources that *kri'at haTorah* and even *U'Va L'Tzion* must be at the proper time for *Mincha*. He is cited by *Tefilla K'Hilchata*² and *Ishei Yisrael*³ without any dissenting opinion. (*Ishei Yisrael* also relates to a less conclusive oral ruling from Rav Chayim Kanievsky, who agrees that this is preferable.). The *Tzitz Eliezer* assumes that one should wait for *Ashrei* as well, although he does not cite support or even logic for that claim.

Let us analyze the matter based on the classical sources. *Kri'at haTorah* was instituted at *Mincha* of Shabbat due to the “*yoshvei keranot*.”⁴ Rashi explains that these are businessmen who do not hear *kri'at haTorah* on Monday and Thursday, and so this is their additional reading. The *Shita Mekubetzet*⁵ explains that the *kri'at haTorah* was instituted because many people get drunk during the day. The Rabbis placed *kri'at haTorah* along with *Mincha* to encourage people to come for *Mincha*, which is a time of divine goodwill and an appropriate time to show that we are different from those who get drunk. For some reason, the *Tzitz Eliezer* assumes that the reading itself has to be at a time when one can *daven Mincha* and may not precede it and lead into *Mincha* at the right time. He also cites

1. X:20.
2. 21:90.
3. 36:90.
4. *Bava Kama* 82a.
5. Ad loc.

the *mishna*,⁶ which, after listing the various Torah readings, says that each one should be “**at its time**.”

It is not clear to all *poskim* that this short Shabbat *kri'at haTorah* has to be precisely at the same time that *Mincha* is recited. The *Eshel Avraham*⁷ raises a doubt whether, if the need arises, one can do *kri'at haTorah* at a different time from when the group is *davening Mincha*. The *Yaskil Avdi*⁸ writes that a group may do *kri'at haTorah* after people privately *davened Mincha*, and even after sunset.

It is a valid question whether the relating of this reading to *Mincha* tells us to (at least preferably) **attach the reading to the tefilla of Mincha** or whether it was instituted **at the time of Mincha**. If the former is correct, it makes sense to say that if it is done a few minutes before the time of *Mincha*, it should be fine. After all, *P'sukei D'Zimra* is meant to lead into *Shacharit*, and it can be recited earlier than *Shemoneh Esrei* can.⁹ In contrast, if *kri'at haTorah* was instituted to be **at the time of Mincha**, it should ostensibly not be done any earlier than *Mincha*. It is also not clear if those who allow *kri'at haTorah* detached from *Mincha* maintain that the time is not so important. It is possible that they hold that the important thing is that *kri'at haTorah* be after the time of *Mincha* has begun, whether or not *Mincha* is being said at that time.

Your question assumes that the time noted on our calendars, half an hour after *chatzot* (astronomical midday), is the absolute earliest time for *Mincha*, but this assumption warrants investigation. The *gemara*¹⁰ says that while *Mincha* is modeled after the afternoon sacrifice, which was brought half an hour after *chatzot*, Avraham Avinu would *daven* right after midday. *Tosafot*¹¹ and the *Magen Avraham*¹² are among those who say that conceptually, the time of *Mincha* be-

6. *Megilla* 31a.

7. Butchatch, 292.

8. VIII, *Orach Chayim* 38.

9. See *Ishei Yisrael* 16:15.

10. *Yoma* 28b.

11. *Nidda* 63b.

12. 458:1.

gins at *chatzot*. We wait a half hour longer simply because we are concerned that we may recite it too early. It is not obvious to say that the Rabbis went so far as to push off the time of *kri'at haTorah* or *Ashrei/U'Va L'Tzion* due to this concern. There is also some question¹³ regarding how to calculate the half hour (30 minutes or one twenty-fourth of daylight, which can be a few minutes longer or shorter depending on the time of the year). Thus, during certain times of the year, it may be possible, according to some opinions, to *daven* a little earlier than the time recorded on most calendars.¹⁴ The case for leniency becomes even stronger when we consider that the *Mishna Berura*¹⁵ cites opinions that after the fact, one who *davened Mincha* during the half hour after *chatzot* fulfills the obligation.

The *Tzitz Eliezer* relies strongly on kabbalistic sources that state that the spiritually appropriate time for *U'Va L'Tzion* and *kri'at haTorah* is the afternoon (*Mincha* time). Aside from the question of whether we are bound by such sources, since the time in question is after *chatzot* (and thus afternoon), it is very arguable that this time is appropriate.

We lack the conviction to rule against the stringent ruling cited without clear sources for leniency. However, we feel that since there are few sources and no compelling logic for stringency, one should certainly not oppose a *minyan's* practice to start *Mincha* a few minutes "early."

13. See *Sha'ar HaTziyun* 233:8.

14. The standard practice followed by many calendars is to be stringent.

15. 233:2.

c-10: Is Raw Food That One Expected to be Cooked *Muktzeh*?

Question: I put uncooked food on a hot plate before Shabbat,¹ expecting that it would become ready over Shabbat. After Shabbat began, I discovered that the hot plate was not properly plugged in. Was the food *muktzeh*? Is it possible to argue that since I reasonably believed that the food would be edible, the food was on my mind when Shabbat began, not removed from it, as the word *muktzeh* implies? When I found out about the mishap, Shabbat had already begun, and I remember learning that there is no *muktzeh* for part of Shabbat. Is that correct?

Answer: First, we are assuming that the food was not only not fully cooked but not considered even marginally edible. If it was marginally edible, it would not be considered *muktzeh*.² If it was fit only for a dog's consumption but it was (as in your case) slated for human consumption, then most *poskim* consider it *muktzeh*.³

Almost all of the issues you raise are discussed in one *gemara*.⁴ The *gemara* tries to determine whether something can be *muktzeh* for part of Shabbat. One of the proofs it brings is the case of a person who put some fruits on the roof to make them into dried fruit. The *baraita* rules that they are *muktzeh* unless he designated them before Shabbat for consumption. The *gemara* attempts to understand the particulars of the case, especially what the state of the fruit was when Shabbat started:

1. The circumstances under which it is permitted to put uncooked food on a heat source before Shabbat in order for it to cook over Shabbat is beyond the focus of this response.
2. *Mishna Berura* 308:126.
3. *Ibid.* 127.
4. *Beitza* 26b.

If they were fit [to eat], why did they need to be designated? If they were not fit, what did it help to do so? If you want to say that he did not know if they were fit or not, didn't Rav Kahane say that *muktzeh* that dried up [before Shabbat] without the owner knowing is permitted? Therefore, it must be talking about a case in which it had been fit, became unfit [on Shabbat], and then became fit again. If you say there is no *muktzeh* for part of Shabbat, why did they require designation? On the other hand, if there is *muktzeh* [for part of Shabbat], how does designation help? You must say that it is talking about a case in which they were partially fit, as some people would eat them and some would not. If he designated them, he revealed his thought process [that he will eat them]. If he did not designate them, he did not reveal his thought process.

This *gemara*, whose conclusions are brought as the *halacha* in the *Shulchan Aruch*,⁵ teaches the following things regarding your questions. Whether or not something is *muktzeh* does not depend on the owner's perception of whether it is useable but rather on whether it actually is.⁶ Although the *gemara* is discussing a case in which the person thought the food was unfit and it actually was fit, there is every reason to believe that if the food was unfit, it would not help that he thought it was fit.⁷

Additionally, even if we argue that the food is not *muktzeh* if one thought it was going to be fit on Shabbat,⁸ the raw food in your case would still be *muktzeh*. Even regarding something that was not *muktzeh* when Shabbat started, if it became unfit during Shabbat,⁹ it is considered *muktzeh* from the time it became unfit, as long as it

5. *Orach Chayim* 310:3–5.

6. See *ibid.* 4.

7. *Shemirat Shabbat K'Hilchata* 22:17.

8. *Shemirat Shabbat K'Hilchata* 22:(31) does cite such an opinion, although he does not accept it as the *halacha*.

9. In a case in which it could not be reliably expected to be returned to being fit in a permissible manner.

remained so. When the *gemara* says (as you recalled) that “there is no *muktzeh* for part of Shabbat,” it refers to a case in which the object not only started Shabbat as fit but, after becoming not fit, subsequently became fit again. In that case, it reverts back to not being *muktzeh* according to the lenient opinion, which is accepted as the *halacha*.¹⁰ (Had it started Shabbat as *muktzeh*, it would have remained such even if it became practically fit.¹¹) However, in your case, the uncooked food remained unfit and thus *muktzeh*.

Even assuming the raw food in question was *muktzeh*, you could have possibly moved it, depending on the mode and the purpose of your moving it. Moving a *muktzeh* object by pushing, pulling, or carrying it with the use of a non-*muktzeh* item that one holds normally in his hand (*tiltul min hatzad*) is permitted for purposes other than the protection of the *muktzeh* item (e.g., to clear space for use of the area).¹² Most *poskim* say that *tiltul min hatzad* is forbidden to protect the *muktzeh* object (i.e., to refrigerate it so that it can be used after Shabbat). However, moving *muktzeh* with parts of the body that are not usually used for moving (*tiltul b'gufo*), such as one's legs and elbows, is permitted even to protect the *muktzeh* item.¹³

10. Ibid. 3.

11. Ibid.

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

13. Ibid.

c-11: Using a Utensil to Catch *Muktzeh*

Question: On Shabbat, is one allowed to put a utensil (*kli*) in a place where it will catch a *muktzeh* object? For example, can I put a plate under a candle to catch falling wax? Can I place a bucket to catch or gather dirty water that dripped or seeped in? In the latter case, may I remove the accumulated water?

Answer: While the two cases you give seem to depend on the same issues, there are halachic differences between them, which are also affected by timing. We will start with the case of wax.

Wax is not a *kli* and is not normally fit for use on Shabbat, as burning it is forbidden. It is thus *muktzeh machamat gufo*, the basic level of *muktzeh*. If wax started dripping onto the plate before Shabbat and one's intention when placing the plate was to catch the wax, the plate could theoretically become a *bassis l'davar ha'asur* (an otherwise permitted object that becomes *muktzeh* by serving as a base for something *muktzeh*). However, it is likely that droplets of wax are not important enough to affect the status of the plate in that case.¹ (In contrast, a candlestick resting on the plate would likely make the plate a *bassis l'davar ha'asur*.²)

The matter is even more lenient if one did not put the plate under the candle until after certain nightfall of Shabbat (after *tzeit hachavim*³), as a *bassis l'davar ha'asur* cannot be created in the midst of Shabbat.⁴ In such a case, if one wants the base utensil, he can shake off the *muktzeh* item and use the utensil. Furthermore, if it is not possible to remove the *muktzeh*, or even if it would just cause

1. See *Mishna Berura* 310:31; *Shemirat Shabbat K'Hilchata* 22:(44). The *Shemirat Shabbat K'Hilchata* 22:26 does not seem to rely on this logic alone.
2. See *Shulchan Aruch, Orach Chayim* 277:3; *Mishna Berura* ad loc. 18; *Shemirat Shabbat K'Hilchata* 20:59.
3. The emergence of stars, which is the halachic beginning of the night.
4. *Mishna Berura* 266:26; *Orchot Shabbat* 19:283.

damage to do so, one can use the base as is.⁵ The problem, however, is that it is forbidden on Shabbat to take a *kli* out of use (*mevatel kli meihechano*). According to some, this applies even if you could remove the *muktzeh* and thereby return the plate to use.⁶ For this reason, the *Shulchan Aruch*⁷ forbids putting a *kli* under a candle to catch oil. The *Mishna Berura*⁸ says that this can be remedied by putting something usable on Shabbat on the *kli* before placing it under the candle, whereby the *kli* can still be moved.

Now we will discuss your example of water. If one placed a bucket before Shabbat to catch the water, then the situation depends on the state of the water. If the water is fit for washing or animal consumption, there is no problem of *muktzeh*.⁹ If the water is not usable, it is *muktzeh*, and the bucket is therefore a *bassis l'davar ha'asur*. However, the *gemara*¹⁰ says that just as a *g'raf shel re'i* (portable toilet) can be removed with the excrement it contains if it is in a place where people go about activities and find its presence disturbing, we can similarly apply this leniency to cases of milder disturbances. This includes utensils containing food residue,¹¹ as well as our case of a bucket filled with unclean water if it is found in a room in use.¹²

Placing the bucket on Shabbat to catch the water¹³ or returning it after spilling out the water is more problematic due to the convergence of two concepts. On Shabbat, one is not allowed to intentionally create a situation of *g'raf shel re'i* with the plan to move it.¹⁴ Thus, one should decide when he puts the bucket under the water that he will leave it there. But if he does that, then he will have violated the

5. *Mishna Berura* 277:18; *Shemirat Shabbat K'Hilchata* 20:47.

6. See the presentation of the positions in *Menuchat Ahava* 1:14:20.

7. *Orach Chayim* 265:3.

8. Ad loc. 6.

9. *Shulchan Aruch*, *Orach Chayim* 338:8, and *Mishna Berura* 338:30.

10. *Shabbat* 124a.

11. Ibid.

12. See *Mishna Berura* 338:33.

13. *Shulchan Aruch* op. cit.

14. *Beitza* 36b.

prohibition of *mevatel kli meihechano*. The *Tur*¹⁵ argues against this stringency, and the *Bi'ur Halacha*¹⁶ suggests a proof that we rely on the *Tur*'s lenient opinion from the fact that people collect *mayim acharonim* and morning *netilat yadayim* water in a receptacle. (It is possible to distinguish between those cases and the case in question.¹⁷) Also, one can create a situation of *g'raf shel re'i* on Shabbat in order to avoid significant loss.¹⁸

If the water has already caused a *g'raf shel re'i* situation on the floor, one can remove the unseemly *muktzeh* even by hand, and certainly with or in a *kli*. Thus, one could sweep the water into a *kli* of some sort in the process of removing it.¹⁹

15. *Orach Chayim* 338.

16. To *Shulchan Aruch* op. cit.

17. See *Bi'ur Halacha* op. cit.; *Shemirat Shabbat K'Hilchata* 22:(38).

18. *Aruch HaShulchan*, *Orach Chayim* 338:15.

19. See *Orchot Shabbat* 19: 331, 334.

c-12: Workers in the House of One Who Has Accepted Shabbat Early

Question: If I accept Shabbat early, can workers who are building an extension to my house (none of whom are Jewish) continue working until regular Shabbat begins in town?

Answer: In cases of a non-Jew working on behalf of a Jew on Shabbat, there is a conceptual distinction – and sometimes a practical one – based on the type of work relationship that exists. A Jew may not have a worker who is paid on the basis of time (*po'el*) do *melacha*¹ on his behalf.² In contrast, it is fundamentally permitted to have a worker who is paid a set amount for the job (*kablan*) do *melacha* on Shabbat, as long as he is not required to do the work specifically on Shabbat.³ However, the Rabbis did not allow even a non-Jewish *kablan* to do work on a Jew's house (or in an equivalent public setting), as people might suspect that he is a Jew's *po'el* (*marit ayin*).⁴

Although Halacha is often based on broad categories and does not always change based on a case's specific context, in this context, a reasonable amount depends on the extent to which people are practically likely to actually suspect him. For example, when the work is done outside the limits where Jews may go on Shabbat, it is permitted for a non-Jew to do the work as a *kablan*.⁵

Let us then consider your case practically. Even if people see your workers working and think you told them to do so, there should still be no problem. After all, when they see work being done a half hour before sunset on Friday afternoon, they will not suspect any wrongdoing, since as far as they know, you did not yet accept Shabbat.⁶ This

1. An activity that the Torah prohibits on Shabbat.
2. *Shulchan Aruch, Orach Chayim* 243:1.
3. *Ibid.* 247:1.
4. *Ibid.* 244:1.
5. *Ibid.*
6. This is the conclusion of *Aseh Lecha Rav* 11:28.

situation is reminiscent of the *halacha* regarding an Israeli spending a second day of *Yom Tov* that falls out on Friday in the Diaspora. Under ordinary circumstances, an Israeli who finds himself outside of Israel may not perform *melacha* on the second day of *Yom Tov*, even though he is only obligated to observe one day, due to the concern of *marat ayin*. However, the Radbaz⁷ rules that he can cook on Friday without an *eiruv tavshilin*⁸ because those who see him cooking do not know that he did not make an *eiruv tavshilin*.

Nevertheless, if this were the only point of leniency, we would be hesitant to rely on it. First of all, there is little discussion among the *poskim* regarding whether or not prohibitions of *marit ayin* apply during *tosefet Shabbat*.⁹ Furthermore, considering you might return home from Shabbat *davening* with neighbors and make *Kiddush* before guests while hammers are still banging in the extension, there would seem to be a practical problem of *marit ayin*, as well.

However, there is a straightforward way to allow the work. The Rama¹⁰ allows an individual to ask a non-Jew to do work for him after he has accepted Shabbat early. The *Mishna Berura*¹¹ confirms that this is permitted even when the need for the non-Jew's help is not *mitzva*-related. (See the *Shulchan Aruch*,¹² who allows asking even another Jew to do work at this time if the latter did not yet accept Shabbat.) Accordingly, let us make a simple calculation. If it is permitted to ask a non-Jew to do work at that time, one can certainly allow a non-Jew to do work in his house even if it is seen publicly. After all, the reason for the general prohibition is that one might think that the homeowner hired the non-Jew as a *po'el*. The problem of a *po'el* is not that he is paid, but that he is doing working on a Jew's behalf. Thus the worst thing that people might think you

7. 1v:73, accepted by the *Mishna Berura* 496:13 and others.

8. The food prepared before a *Yom Tov* that allows one to cook on *Yom Tov* that falls on Friday for Shabbat.

9. The time added on to Shabbat.

10. *Orach Chayim* 261:1, based on Mahari Weil 116.

11. 261:18.

12. *Orach Chayim* 263:17.

are doing – namely, that after accepting Shabbat early, you asked a non-Jew to do work for you – is in fact permitted. Thus, *marit ayin* obviously does not apply in this case.

That being said, if indeed the work is being done within the confines of your home and the members of your household see or hear the work, the work may not be in the proper spirit of Shabbat. It seems that the permission to employ a non-Jew during *tosefet Shabbat* is intended primarily for incidental, short-term work or work that is done away from the Jew's proximity. Therefore, if it is possible, we would urge you to either begin Shabbat at the regular time during the period of construction or ask the workers to finish earlier than usual. However, if this causes significant problems, you may follow the purely halachic considerations that the restrictions upon what a non-Jew may do for you on Shabbat do not apply to *tosefet Shabbat*.

C-13: Are Pets *Muktzeh* on Shabbat?

Question: Are pets *muktzeh*? If they are, may one touch them without moving them?

Answer: The *gemara*¹ states clearly that animals are *muktzeh*. However, the *gemara* notes an exception to this rule – an animal is not *muktzeh* if it is intended for eating that day, making it useable for people. (This situation could occur on *Yom Tov*, when one is allowed to *shecht*² an animal to eat it; it does not apply on Shabbat, when slaughtering animals is forbidden.)

Is a pet another exception to the *gemara*'s rule that animals are *muktzeh*? In general, the two main categories of objects that are not *muktzeh* are foods and utensils (*keilim*), as they are useable. The question is whether a pet, which is “used” by man much in the way that a toy or a doll is, can be included in some form in the non-*muktzeh* status of a *kli*.

A number of *Rishonim* subscribe to such a possibility. *Tosafot*³ cites the opinion of R. Yosef (a *Rishon*) that a baby bird is not *muktzeh* because it can be used to quiet a baby. The Mordechai⁴ cites the same logic in the name of R. Shimshon. Although *Tosafot* and the Mordechai strongly reject these opinions, this may be only because the bird under discussion was not a special one set aside as a pet. The *Maharach Ohr Zarua*,⁵ in a question he sent to the Rosh, makes that claim regarding a bird that chirps in a way that people enjoy, arguing that it is not *muktzeh*. However, the Rosh⁶ says that even such a bird is forbidden. He reasons that when *Chazal* instituted the prohibition of *muktzeh*, they applied it to live animals across the board. Since the

1. *Beitza* 2a.
2. Ritually slaughter.
3. *Shabbat* 45b.
4. *Shabbat* 316.
5. 81.
6. Cited *ibid.* 82.

Rosh is more prominent than any of the *Rishonim* who are lenient on the matter, the great majority of *Acharonim* accept his opinion.⁷

The Rosh's rule that animals are always categorized as *muktzeh* can be explained in at least a couple of ways. It is possible that since the vast majority of animals are not slated for Shabbat use and are therefore categorized as *muktzeh*, Chazal did not allow us to consider the small minority that are pets as belonging to a different category. Another complementary possibility is that while inanimate objects lend themselves to being considered subservient to man and categorized as *keilim*, living beings are considered important creatures with independent identities, and not *keilim*. Therefore, except when there is a compelling reason to consider an animal to be under the domain of man and set aside for him to use and move (i.e., an animal slated for slaughter and eating on *Yom Tov*), an animal remains *muktzeh*.

Regarding petting the animal, the matter is problematic as well. Although one is allowed to touch a *muktzeh* object on Shabbat, he is not allowed to touch it in a manner that will cause even part of it to move.⁸ Petting an animal usually causes at least some of it to move and is therefore forbidden.

However, there are certain actions that are permitted. (Regarding cases of an animal in danger or in pain, we have addressed significant leniencies in the past that we will not revisit at this time.⁹) It is permitted to lead most animals by a leash, if there is a need to do so.¹⁰ This is a special leniency, as it is usually forbidden to pull something *muktzeh* for the purpose of the *muktzeh* object.¹¹ If there is no *eiruv*, there are certain restrictions on what can be on the animal and how the leash must be attached and held when it goes outside, but the

7. See *Shemirat Shabbat K'Hilchata* 27:25 and footnote 96; see an overview of opinions in *Yabia Omer* v, *Orach Chayim* 26.

8. *Shulchan Aruch*, *Orach Chayim* 308:42.

9. See *Living the Halachic Process*, vol. 11, c-6.

10. *Shulchan Aruch*, *Orach Chayim* 305:1; *Mishna Berura* ad loc. 11; *Shemirat Shabbat K'Hilchata* 27:8.

11. *Shulchan Aruch* *ibid.* 311:8.

details are beyond our scope.¹² It should also be permitted to let a friendly pet cuddle up to a person, as long as the person does not purposely move it even partially. If it is moved inadvertently, it is not a problem.

In summary, most *poskim* rule that pets are *muktzeh*. However, there are some serious lenient opinions, a fact that is pertinent in cases of great need or when there are additional mitigating circumstances. Additionally, one should not criticize those who do not treat their pets as *muktzeh*.

12. See *ibid.* 305:16; *Shemirat Shabbat K'Hilchata* 27:8.

C-14: Itching Flaky Skin on Shabbat

Question: I often have itchy, dry skin. Is it permitted on Shabbat to relieve the itch by scratching if, based on experience, I know that some flakes will fall off?

Answer: The classic examples of the *melacha* of *gozez* (shearing) on Shabbat are the removal of hair and nails from a live or dead human or animal.¹ However, one *gemara*² mentions removing warts and another³ mentions removing strands of partially detached skin from around the nails as Torah-level prohibitions. This would ostensibly also be the case regarding removing dry skin, as the *Shemirat Shabbat K'Hilchata*⁴ confirms. Similarly, it is forbidden to purposely remove dandruff (a form of dry skin) that is still attached to the scalp.⁵

If it were not definite that the scratching would cause skin to come off and it was not your intention that it would, it would be permitted to scratch, as a *davar she'eino mitkaven*⁶ is permitted on Shabbat.⁷ However, we will take you at your word that it is definite that the unintentional removal of skin will occur, making it a *p'sik reishet*⁸ and ostensibly forbidden.⁹

However, in your case, there are several mitigating factors. First, the *gemara* states regarding warts that there is at most a Rabbinic violation if they are dried out.¹⁰ This mitigating factor likely applies to dry skin as well. Even if the warts are not dried out, if one removes

1. See *Rambam, Shabbat* 9:7.
2. *Eruvin* 103a.
3. *Shabbat* 94b.
4. 35:32.
5. *Ibid.* 14:43.
6. A case in which one performs a permitted action that may, as an unintended circumstance, cause a prohibited result as well.
7. *Shulchan Aruch, Orach Chayim* 337:1.
8. A case in which it is definite that the prohibited result will occur.
9. *Shabbat* 103a; *Shulchan Aruch* op. cit.
10. *Eruvin* 103a.

them by hand, he violates only a Rabbinic prohibition, as the normal way to remove warts is to use a utensil. This second point probably does not apply to dry skin. The *Bi'ur Halacha*¹¹ raises the possibility that it is normal – and therefore forbidden from the Torah – to remove certain strands of skin by hand. However, if one used his elbow or otherwise did things unusually, there would once again be no more than a Rabbinic violation.

A further mitigating factor in the case of dry skin relates to *gozez's* basic definition. We accept the predominant opinion that *gozez* applies whether one needs that which is removed¹² or whether the removal improves the surface from which it is taken.¹³ The *melacha* is not transgressed on a Torah level if there is neither a use for that which was removed nor an improvement of the area from which it was removed. In your case, you do not plan to use the removed skin flakes. Moreover, we have been told by a dermatologist that the removal of dry skin is not good for the remaining skin. Thus, there is another reason that there is no Torah prohibition involved.

In order to turn the mitigating factors into a lenient ruling, we need to employ an important general rule. Some authorities are lenient in cases of *p'sik reishai* when the problematic result is forbidden only Rabbinically,¹⁴ but the more accepted opinion is that such acts are still forbidden.¹⁵ However, when there are two reasons why there is no Torah prohibition, most authorities permit a *p'sik reishai*, at least when the result is not desired.¹⁶ We have demonstrated that there are at least two reasons that scratching dry skin is not a Torah prohibition. Since, as mentioned, it appears that it is not in the interest of the person who itches to have the skin removed, it is permitted to scratch the area even if some flakes will certainly fall off.

If one wants to be particularly stringent, he can refrain from

11. To 340:2.

12. E.g., wool for fabric and hair for a wig.

13. Ibid. 1.

14. See discussion in *Yabia Omer* 1, *Orach Chayim* 19.

15. *Mishna Berura* 316:18.

16. Ibid.15; see *Sha'ar HaTziyun* 316:18; *Yabia Omer* VI, *Orach Chayim* 36.

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scratching or scratch lightly, especially considering that it is better not to scratch in the first place. However, in a case where the discomfort of the itch makes it difficult to control himself, the laws of Shabbat need not hold him back.

C-15: Cholent Cooking Further on Shabbat

Question: On Friday night, I took the *cholent* off the *blech*,¹ spooned some out while holding the pot, and returned the pot to the fire. While tasting the sampling, I found that it was not fully cooked (although it was edible), but I left the *cholent* pot on the *blech*, where it became fully cooked. Did I do the wrong thing, and if so, was it permitted to eat the *cholent* the next morning?

Answer: According to your description, the *cholent* was *k'ma'achal ben d'rosai* (nominally edible) when you took it off the *blech*, but it was not *mevushal kol tzorko* (fully cooked). According to the most accepted opinion, returning such food until it cooks fully is a Torah-level violation of cooking on Shabbat.² When you spooned out some *cholent*, you also violated a less severe prohibition of *meigis* (stirring). In the case of non-fully cooked food, this prohibition applies even when one just removes food with a spoon, even when the pot is off the fire.³ In general, we urge *cholent* preparers to either cook the *cholent* long and/or hard enough to ensure that it is fully cooked before Shabbat or to refrain from handling it (including its lid) until the morning.

Is food that was handled improperly in the cooking process forbidden *bdi'eved*?⁴ The answer depends on the nature of the violation. There are two categories of problems involved in returning food to a heat source on Shabbat. One issue is the actual cooking, which may include a Torah prohibition when the food was not fully cooked and, according to many, even when reheating a fully cooked liquid.⁵ The other is the Rabbinic prohibition of improperly putting even cooked

1. A sheet of metal that separates a pot from the fire beneath it, making it permitted to keep a food on the fire on Shabbat.
2. *Shulchan Aruch, Orach Chayim* 318:4, based on the Rambam, *Shabbat* 9:3.
3. *Shulchan Aruch* op. cit. 18.
4. After the fact.
5. See *Shulchan Aruch* op. cit. 4 and Rama ad loc. 16.

foods on a heat source (*chazara*) in cases in which the Rabbis were concerned that one might adjust the fire or that it might look like the person is cooking.⁶

Regarding cooking, the *Shulchan Aruch*⁷ rules that even if a food was cooked *b'shogeg* (by mistake), it may not be eaten on Shabbat.⁸ However, the *Mishna Berura*⁹ says that in a case of need, one may rely on the opinion that when Shabbat was violated *b'shogeg*, the result is permitted *b'di'eved*. The case you describe is one of *shogeg*, and whether the *cholent* was permissible would thus seem to depend on these opinions.

There is another reason to be lenient *b'di'eved* as well. Although we generally follow the stringent view, the Rashba and several other authorities¹⁰ maintain that the prohibition of cooking does not apply after the food is *k'ma'achal ben d'rosai*. The logic is that since the Torah forbids cooking raw food to the point of *k'ma'achal ben d'rosai*, *k'ma'achal ben d'rosai* food must be considered halachically cooked, after which point there is no prohibition. As a rule, when we accept a stringent position but one acted according to the view of important authorities who rule leniently, the result is not prohibited *b'di'eved*.¹¹ This applies to our case due to the Rashba's opinion. It is true that there is a dispute regarding whether the Rashba completely permitted cooking *k'ma'achal ben d'rosai* food or whether he meant that there is no Torah level prohibition to do so, while there is a Rabbinic one.¹² However, even if the latter interpretation is correct, one can be lenient in your case, as if one violates a Rabbinic enactment on Shabbat *b'shogeg*, the resulting product is permitted *b'di'eved*.¹³

Paradoxically, we are more stringent regarding the result of the

6. See *Orach Chayim* 253.

7. *Orach Chayim* 318:1.

8. Regarding permissibility after Shabbat, see *ibid*.

9. 318:7.

10. See *Bi'ur Halacha* to 318:4.

11. *Mishna Berura* 318:2.

12. See *Beit Yosef*, *Orach Chayim* 318 and *Taz*, *Orach Chayim* 318:3.

13. Gra, accepted by the *Mishna Berura* 318:3.

violation of the Rabbinic prohibition of *chazara*, as in the case of *chazara*, we treat *b'shogeg* acts as if they were *meizid* (intentional). This is due to the concern that someone will purposely violate these rules, which he might view lightly, and claim that he did so *b'shogeg*.¹⁴ Therefore, one may not benefit on Shabbat from the fact that he violated the rules of *chazara* when he returned food to the flame, even if he did so *b'shogeg*.

There are five basic conditions that must be met in order to permit *chazara*: 1) The flame is covered; 2) one kept his hand on the pot; 3) he intended to return the food to a heat source; 4) the food is **fully** cooked; 5) the food is slightly warm.¹⁵ In your case, a nominally cooked food was returned to the *blech*, and requirement #4 was therefore violated. It would thus seem that the food is forbidden to eat.¹⁶

However, one has to know the logic of any given requirement of *chazara* in order to determine its parameters. The first three requirements are related to *chazara* per se and are governed by its strict rules regarding *b'di'aved*. In your case, you did nothing wrong in that regard. The problem in your situation lies in the fact that the food was not fully cooked. However, that requirement was instituted only to avoid cooking, not due to the special rules of *chazara*.¹⁷ In fact, according to the lenient opinions regarding cooking *k'ma'achal ben d'rosai* foods, *chazara* was permitted in your case.¹⁸ Therefore, based on the same analysis that we used above, there was no prohibition *b'di'aved*, and the *cholent* was permitted.

14. *Shabbat* 38a.

15. See *Shulchan Aruch* and Rama *ibid.* 2; see also *Shemirat Shabbat K'Hilchata* 1:18.

16. *Shulchan Aruch, Orach Chayim* 253:1.

17. *Bi'ur Halacha* to 318:4; see *Orchot Shabbat* 2:40.

18. *Bi'ur Halacha* *op. cit.*

C-16: Separating *Shemitta* Food Before Clearing Plates on Shabbat

Question: When I clear leftover food off of plates on Shabbat and some of the food has *kedushat shvi'it*,¹ is it *borer*² to separate that which needs to go into the *pach Shemitta*?³

Answer: There are three main conditions that one needs to fulfill in order to permit the selection of one object from another: 1) One must take the desired element (*ochel*) from the undesired (*p'solet*); taking *p'solet* from *ochel* is forbidden. 2) One must plan to use the *ochel* in the near future. 3) One may not use a special utensil to facilitate the selecting. Since you will not use the *kedushat shvi'it* remnants that you separate in the near future, condition #2 seems to be absent in your case.

To deal with this problem, we have to analyze condition #1. Is it that only separating *ochel* from *p'solet* is permitted and other things are forbidden, or is that *p'solet* from *ochel* is forbidden and other things are permitted? A difference between the two possibilities is when one takes *ochel* from *ochel*, separating two things that will both be used at the same time in the future, but not immediately. On this point, the *Pri Megadim*⁴ raises the possibility of leniency, but the *Bi'ur Halacha*⁵ rejects the possibility and rules that if that which is removed will be used only significantly later, it is forbidden.

However, our case is one of separating *p'solet* from *p'solet* in a manner that neither will be used even in the future, and the *Bi'ur Halacha* agrees that it is permitted to do so. The reason this case is more lenient has to do with the definition of *borer* as a positive act.

1. Food with sanctity of *Shemitta* that therefore may not be disgraced.
2. The Shabbat prohibition of selecting.
3. A receptacle in which produce of *Shemitta* that will not be eaten is placed to decay instead of putting it somewhere disgraceful.
4. *Mishbetzot Zahav* 319:2.
5. To 319:3.

When one separates *p'solet* from *ochel*, the act is positive because it leaves an improved *ochel* behind. However, when both elements are thrown out, the fact that they are separated in the process is not positive in a significant manner.

This is one of the bases for permitting one to pour an undesired mixture of liquid and solid pieces into the sink even though the liquid will go down the drain and the solid pieces will be held back by the sieve-like drain cover. Rav S.Z. Auerbach⁶ says that since both things are being discarded, the fact that they are separated in the process does not make the act *borer*. One could claim that the same is true in our case, in which one plans to put the two types of discarded food in two different garbage receptacles.

Despite the reasonable halachic basis for permitting separating the holy and non-holy unwanted leftovers,⁷ several contemporary *poskim* were unwilling to permit it practically.⁸ The matter may depend on the logic behind a *Shemitta* receptacle. Is it that one may discard *kedushat shvi'it* food but because of its holiness one should do so in a respectful manner?⁹ Or is it that one has no right to waste *Shemitta* produce that is fit to eat, and so one puts it aside so that he can, at least in theory, eat it later? If the latter is the case, then removing *kedushat shvi'it* from other food is like selecting *ochel* from *p'solet* for non-immediate use, which is forbidden.¹⁰ We heard in the name of Rav H. Schachter that the fact that the food requires a specific halachic process **might**¹¹ make the selection halachically significant and therefore a problem.

In any case, one should consider the following. According to our mentor, Rav Shaul Yisraeli, it is sufficient to put the *Shemitta* food in a bag before throwing it in the regular garbage. Whether one accepts

6. See *Shemirat Shabbat K'Hilchata* 12:16 and *ibid.* (47).

7. See *Orchot Shabbat* 3:44.

8. *Ibid.* in the name of Rav N. Karelitz and Rav Wozner; *Ayil Meshulash* (Shlesinger) 9:24 in the name of Rav Elyashiv.

9. See *Katif Shvi'it* 63:7.

10. See *Ayil Meshulash* *ibid.* (78).

11. As far as we know, he did not render a ruling on the matter.

LIVING THE HALACHIC PROCESS

this view or accepts the stringency of having a receptacle where the food will rot first, one may put non-*Shemitta* garbage along with the *Shemitta* remnants as long as the former is not already decomposing or will otherwise disgrace the *Shemitta* food. Therefore, there is no halachic need to separate the two types, and he can put the whole mixture in any non-disgraceful location.

c-17: Buying on Credit on Shabbat

Question: In my yeshiva, someone sells baked goods in the following manner. The proprietor leaves the products in a box accompanied by a price list and a sign-up sheet. Students are trusted to take what they want, write down their names and a tally of their purchases, and pay periodically. Is it permitted to take things on Shabbat and record the purchase after Shabbat?

Answer: It is forbidden to buy things on Shabbat and *Yom Tov*, either because the *navi*¹ warns against “looking for your interests and speaking matters” on Shabbat or because commerce may lead to writing.² On the other hand, the *mishna*³ permits acquiring items, even from a professional proprietor, on *Yom Tov* and Shabbat.⁴ This is permitted if the product is intended for use on the holy day and the acquisition is done in a way that avoids classic signs of commerce.⁵

What must one avoid? One of the major issues is measuring quantities⁶ or, under certain circumstances, even using a measuring utensil without actually measuring.⁷ This problem is not relevant in your case, even if the baked goods are sold by weight, as the measuring is done before Shabbat.⁸ There is generally a prohibition to mention the purchased item’s price when discussing its acquisition or to use a term such as “buy.” (One can request that the provider “give” or “fill up” or say that he wants to “have” or “receive.”)⁹ This is obviously

1. *Yeshayahu* 58:13.

2. Rashi, *Beitza* 37a.

3. See *Beitza* 29a, 29b.

4. The context of the Talmudic discussion is the laws of *Yom Tov*, but it is almost unanimously held that these *halachot* are (almost) identical for Shabbat – see *Beit Yosef, Orach Chayim* 323.

5. *Shemirat Shabbat K’Hilchata* 29:17.

6. *Shulchan Aruch, Orach Chayim* 500:1.

7. *Ibid.* 323:1.

8. See *Beitza* 29a.

9. *Shulchan Aruch* op cit. and *Mishna Berura* 323:1.

not a problem in your case, as the “acquirer” on the honor system does not need to interact with a supplier.

One might argue that since the price is listed, it may still be considered a forbidden sale (especially since the buyer is acquiring the food in the same basic manner it is done during the week¹⁰). In truth, however, the fact that the price is listed is not a problem. In fact, the Rama¹¹ uses the existence of a known set price as a mitigating factor. In discussing what one should not say, the *gemara* mentions the idea of *schum*, which usually means a total. The *Rishonim* dispute whether it is permitted to mention the measure of a specific item that one is acquiring without adding it to previous purchases to arrive at a sum total. The Rif permits asking for a certain object at a certain price as long as one does not add up the various obligations.¹² The Rama accepts this opinion, provided that the price is known. In that case, the mention of the price is viewed not as a commercial discussion, but as a means of identifying the amount of product that one wants.¹³ Although the *poskim* question whether we should rely on this leniency,¹⁴ it is clear that the fact that a price is clearly known does not render the transaction forbidden if it is not mentioned orally. The *Shulchan Aruch*,¹⁵ whose stringent opinion is accepted by Sephardim,¹⁶ rules that a price should not be mentioned in any case, but even he does not object to an object’s price being clearly known when agreeing to the transfer.

One thing one must avoid is studying the price list, as detailed written accounts of transactions are known as *shitrei hedyotot* and are forbidden to be read.¹⁷ (In that context, the *Mishna Berura* also points out that one should not put pins next to the name and amount

10. See *Beitza* 29a.

11. *Orach Chayim* 323:4.

12. See *Beit Yosef* *ibid.*

13. See *Mishna Berura* 323:19.

14. *Ibid.* 20; *Shemirat Shabbat K’Hilchata* 29:19.

15. *Orach Chayim* 323:4.

16. *Yalkut Yosef, Orach Chayim* 323:1.

17. See *Mishna Berura* *op cit.* 20.

of money that corresponds to the details of the transaction. It is possible that the pin or similar system can be used for *mitzva* purposes, such as recording pledges at a charity appeal,¹⁸ but that is beyond our present scope.)

Although issues of Shabbat do not prevent taking the baked goods on credit, one should make sure that the proprietor allows him to take them, since he is not able to immediately write down his debt. It is possible that the seller trusts his clientele not to lie but does not trust them to remember to update the account after Shabbat.

18. Ibid.

C-18: Is a Phone Carried as a Precaution *Muktzeh*?

Question: I am an older man who recently underwent a series of health crises, including a heart attack. I usually take a cell phone with me when I am outside my home in case I need to call for help. On Shabbat, I feel uneasy going out alone without a phone, as people may not be around in my building's stairwell or late at night. May I carry the cell phone in my pocket (we have an *eiruv*), or is there a problem of *muktzeh*? (My nervousness is not enough to be unhealthy itself, and I will not refrain from going out if you forbid me from taking the phone.)

Answer: Your presentation implies that you do not feel that the cell phone is consistently needed on the level of *safek piku'ach nefesh* (a remote but rational chance that it is needed to save a life). You may be taking into account that where you live,¹ many fine Jews would drop everything to help a person in distress, and/or that there is an active Hatzalah² organization in the neighborhood. We will begin with your assumptions.

A cell phone is generally *muktzeh*, falling under the sub-category of *kli shemelachto l'issur*, as its main purpose is to make phone calls, which is prohibited on Shabbat under normal circumstances. Such an object can sometimes possess a higher level of *muktzeh*, known as *muktzeh machamat chisaron kis*,³ if one is concerned enough about its protection to refrain from using it for purposes other than its regular ones.⁴ However, nowadays cell phones are reasonably priced and durable enough that people will use them for just about

1. The questioner included an address.
2. A Jewish volunteer paramedic organization with squads in many large Orthodox communities.
3. Lit., *muktzeh* due to loss of money.
4. *Shulchan Aruch, Orach Chayim* 308:1

anything they desire, so the standard rules of a *kli shemelachto l'issur* apply to them.

A *kli shemelachto l'issur* may be moved for *tzorech gufo* (a physical use) or *tzorech mekomo* (to remove it from a place one wants to use).⁵ It may not be moved simply to protect it from damage.⁶ In our case, your interest is not in protecting the phone, but in its **possible** usage in a permitted manner. The questions are: Is it enough that you are not moving the object to protect it, or do you need a positive *tzorech gufo* or *tzorech mekomo*? If it must be positive, how exacting are we in determining utility in order to justify moving something *muktzeh*?

There are discussions among the *Acharonim* that seem connected to these questions. For example, the *Shemirat Shabbat K'Hilchata*⁷ rules that the need of the **place** is to be taken quite literally, i.e., the *muktzeh* object is occupying a place that one wants to actively use. If it is only that the object is an embarrassment or is otherwise unwanted where it is, it may not be moved. In other words, there must be a well-defined need of place. However, not all authorities agree with this view,⁸ and the conclusion may depend on the parameters of the case.⁹

The *Mishna Berura*¹⁰ says that one can move a *kli shemelachto l'issur* to use it for permitted purposes only if a non-*muktzeh* article is not available. This again seems to indicate that the need must be significant. Many *poskim* limit this stringency to cases in which it is easy to use the non-*muktzeh* object,¹¹ and not all feel that the *Mishna Berura*'s reasoning is unanimously accepted.¹² However, there still seems to be an assumption that there are significant standards for application of *tzorech gufo u'mekomo*.

5. Ibid. 3.

6. Ibid.

7. 20:10.

8. See *ibid.* (20); see the discussion at length in *Az Nidbaru* VIII:30.

9. Ibid.

10. 308:12.

11. *Igrot Moshe, Orach Chayim* v:21.12; *Minchat Shlomo* 11:18.

12. *Shemirat Shabbat K'Hilchata* 20:(19); see parallel discussion in *Be'er Moshe* I:21.

Our case is special in two opposing ways. On the one hand, the **potential** usage is the most important one possible – saving lives. On the other hand, the **chances** of needing to use it on Shabbat appear extremely small. This is relevant, as the *gemara*¹³ says that placing sticks to separate the loaves of the *lechem hapanim* and prevent their spoilage is not considered *tzorech gufo* because it is unlikely that there will be spoilage in a short time. This implies that if the chance the object is needed is minimal, it is not considered a valid need.¹⁴

Tying things together, we suggest as follows. If the appropriate, sensitive health experts feel that there is even a **remote but rational** chance that the cell phone will be needed to save a life, it is permitted and absolutely proper to take it with you, first and foremost because of the *piku'ach nefesh* need (although it will also make it *tzorech gufo*). If it is felt that the chance the cell phone will be needed for an emergency does not reach even that low threshold, then not only would *piku'ach nefesh* not apply, but there would not be a valid *tzorech gufo* and it would be forbidden on grounds of *muktzeh*.

13. *Shabbat* 124a.

14. Unless the *gemara* means that there is absolutely no chance of spoilage, which does not seem likely.

Section D:
Mo'adim (Festivals)



D-1: The Timing of *Selichot*

Question: It is difficult for me to say *Selichot*¹ late at night or early in the morning. What are the factors involved in the issue of the timing of *Selichot*?

Answer: Much of the issue of the timing of the *minhag* to recite *Selichot* in the days before Rosh Hashanah and Yom Kippur is based on kabbalistic considerations, which are not within our area of expertise. However, we can discuss the basic ideas as filtered through the *poskim*.

Different times of the day have different characteristics, making them more or less appropriate for certain types of religious activity. The first part of the night possesses the characteristic of *din*.² The second part of the night is an *eit ratzon*.³ Thus, the latter is the time when the *Selichot* prayers are most appropriate, as they are specially formulated to elicit mercy from HaShem.

Several classical sources⁴ and several of the *piyutim*⁵ themselves refer to *Selichot* being said at *ashmoret haboker*, during the few hours leading up to *alot hashachar*, which itself is around 72 minutes before sunrise. At this time in particular, HaShem hovers over our world,⁶ making it an *eit ratzon*. There are also sources that indicate that *chatzot*⁷ is a special *eit ratzon*.⁸ Therefore, the optimal times to say *Selichot* are either after *chatzot* or in the predawn hours. Rav Moshe Feinstein⁹ points out that in previous generations, people generally

1. Special prayers of supplication recited at appropriate times during the year, most notably before the High Holy Days.
2. Strict judgment.
3. A time when requests are more readily accepted.
4. Including *Shulchan Aruch*, *Orach Chayim* 581:1.
5. Liturgical pieces.
6. *Magen Avraham* 581:1.
7. Astronomical midnight.
8. See *Yechaveh Da'at* 1:46.
9. *Igrot Moshe*, *Orach Chayim* 11:105.

went to sleep and woke up earlier than most do today, and the pre-dawn option was therefore more convenient and common. However, he continues, one should not infer a clear preference between these times from that phenomenon. Only on the first night of *Selichot* (for Ashkenazim), on *Motzaei Shabbat*, there may be a preference to say *Selichot* at *chatzot*, when more of Shabbat's impact remains.¹⁰

The main objection is to saying *Selichot* at night before *chatzot*, a time of *din*. Although *Selichot* have a special power to elicit mercy – especially the *Yud Gimmel Middot*,¹¹ which is their most basic component – kabbalistic sources say that it is spiritually dangerous to recite them at a time of *din*, since it is viewed as though mercy is overstepping its bounds.¹² Rav Feinstein is identified with the camp that does not put a strong emphasis on kabbalistic sources in making halachic decisions. He rules¹³ that even though much positive effect is missing when *Selichot* are recited during the first half of the night, if a feasible alternative is lacking, it is better to recite them at that time than to deprive the congregation of its inspiration in preparing for the *Yamim Nora'im*.¹⁴ Rav Feinstein prefers reciting *Selichot* at a change of *ashmorot*, one of which is approximately two hours before *chatzot*. However, other *poskim* counsel to avoid the strongly detrimental situation that the kabbalists describe even when there is no easy alternative.¹⁵ Some suggest that early night in America is not so bad because it is after *chatzot* in Israel. However, we attribute the times of *din* and *ait ratzon* to each place according to its astronomical situation.¹⁶

The safer approach for those who find it impossible or at least difficult to recite *Selichot* after *chatzot* or before dawn is to do so in the

10. See *Piskei Teshuvot* 581:(15).

11. The recitation of the Thirteen Attributes of HaShem, taken from *Shemot* 34:6–7.

12. See *Birkei Yosef, Orach Chayim* 581:1.

13. *Igrot Moshe* op. cit.

14. High Holy Days.

15. *Yechaveh Da'at* op. cit.

16. See *ibid.*.

morning.¹⁷ While it is not especially an *eit ratzon*, it is not a time of *din* either, and the period of the year is itself an *eit ratzon*.¹⁸ For many people, this is much more manageable and does not sap as much energy that could be used for other *mitzvot*. The general approach is that it is worthwhile to sacrifice a modest amount of quality and quantity of Torah learning in order to say *Selichot*.¹⁹ However, one has to make the difficult evaluation of whether he is capable of fulfilling his daily responsibilities while dedicating some of his physical resources to reciting *Selichot* at the optimal time.

17. Rav Ovadia Yosef (ibid.) says that it is even possible to say *Selichot* before *Mincha*.

18. See *Igrot Moshe's* (op. cit.) reaction to the questioner's thesis.

19. *Shaarei Teshuva* 581:1.

D-2: Blowing Shofar on the Left Side of the Mouth

Question: When the otherwise most appropriate candidate for blowing shofar is able to blow only on the left side of his mouth, should he be passed over in favor of one who can blow on the right side?

Answer: The Rama¹ cites the *minhag* that it is proper to blow the shofar on the right side of the mouth. (Sephardim also seem to have adopted this *minhag*.²) His reason is that the Satan is on the right side, and through the shofar blowing, we counter and confuse him.³ (The connection between the shofar and the Satan is a major theme with various ramifications, and we should not belittle its importance, as shofar is a *mitzva* whose whole nature revolves around hidden messages.) The *Bi'ur Halacha*⁴ further notes that when Gideon's men were blowing the shofar at the time of war, they held the shofars in their right hands.

That being said, the *poskim*, starting with the Rama, present the idea of blowing on one's right side as a preference, not as a requirement. Let us investigate different factors that may influence the matter.

Some of the people who are able to blow the shofar only on the left side are left-handed. The *Magen Avraham*⁵ says that a left-handed person **should** blow on the left side. He bases his ruling on the explanation of the *minhag* that the left side of a right-handed person does not need the shofar's help because *tefillin* are donned on his left arm. The *Magen Avraham* therefore suggests that a left-handed person who puts *tefillin* on his right arm should blow on the left. However,

1. *Orach Chayim* 585:2, based on *Minhagim* (Tirna), *Rosh Hashana*.
2. See *Yalkut Yosef, Mo'adim*, p. 41.
3. See also the *Minhagim* of the Maharil.
4. To 585:2.
5. 585:4.

the *Aruch HaShulchan*⁶ counters that we are not interested in where the *ba'al tokeiah* puts his personal *tefillin*, but rather the practice of the majority of the congregation, who are presumably right-handed. Furthermore, most *poskim* maintain that even a left-handed person should blow on the right side.⁷ On the other hand, the *Levush*⁸ claims that according to Kabbala, it is better for all to blow on the left side.⁹ Although the “pro-left” opinions are not accepted, they further weaken our resolve to insist that the *ba'al tokeiah* blow on the right side of his mouth.

When it comes to priorities in picking a *ba'al tokeiah*, the Maharam Shick¹⁰ gives precedence to one who is learned and God-fearing but can blow only on the left side of his mouth over a relatively ignorant or less scrupulously religious person who blows on the right side. This parallels the general guidelines regarding those who lead services on Rosh Hashana.¹¹ The *Yalkut Yosef*¹² concurs.

The quality of the blowing is also more important than the issue of blowing on the right side. Although a congregation will usually fulfill its *mitzva* by listening to one who struggles through the *teki'ot* with mistakes and delays, this situation entails several regrettable elements: 1) It is not an honorable way for the *mitzva* to be fulfilled. 2) Some people, especially those who are not able to be present for the entire period of the shofar blowing, may not hear enough proper blasts to fulfill the *mitzva*. 3) Some congregants are so taken by the drama of whether and when the *ba'al tokeiah* will make it through his duties that they neglect to concentrate on the essential concerns of the day (including repentance and accepting HaShem's dominion).

6. *Orach Chayim* 585:6.

7. *Sha'ar HaTziyun* 585:18.

8. *Orach Chayim* 585:2.

9. The Maharam Shick, *Orach Chayim* 294 also raises the possibility that what is important is to have the shofar face to the right, which can be done even if it is in the left side of the mouth.

10. *Orach Chayim* 294.

11. See Rama, *Orach Chayim* 581:1, and *Mishna Berura* 581:11.

12. *Mo'adim*, p. 41.

4) Some people may begin to talk, even *lashon hara*, and act in an undignified manner.

The Maharam Shick¹³ invokes another factor, which cannot be overemphasized. All such decisions should be made with sensitivity and with a strong desire to avoid discord. This is always appropriate, but it is certainly crucial on the High Holy Days. Another general consideration is that one who leads the services should be acceptable in the eyes of the congregation.¹⁴

Many of the factors we have mentioned do not have clear cut definitions. How proficient is proficient? How righteous is righteous? How likely does discord have to be in order to be a consideration? Making such a decision is among the difficult tasks that earn a rabbi or a *gabbai* his keep.

13. Op. cit.

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

D-3: Causing a Flame to Be Extinguished on *Yom Tov*

Question: Is there a way to shut off a gas range on *Yom Tov* after one has finished cooking? Letting it remain on is a waste of money, and at least on Shavuot, the extra heat in the house is unwelcome.

Answer: The topic of extinguishing flames on *Yom Tov* is too extensive to cover thoroughly in this forum. We will discuss the basic sources and some practical options.

The *gemara*¹ says that according to the *Rabbanan*, one may not extinguish a burning block of wood on *Yom Tov* so that a house or a pot does not become smoky, nor otherwise directly extinguish a fire just to prevent a modest loss. However, it is not clear whether we follow the *Rabbanan*'s opinion and to what particular set of circumstances this prohibition applies. Some *Rishonim*² say that the *gemara* refers to a case in which the smoke will not severely hamper one's *Yom Tov* activities (e.g., he can spend quality time in another house); if extinguishing the fire is necessary for *Yom Tov* needs, it is permitted. After all, one may perform a variety of *melachot*, including *havara*,³ for *Yom Tov* purposes. Others contend that even if extinguishing a flame enhances *Yom Tov*, it is still forbidden because the direct benefit of that action is only the removal of a problem, and this is not deemed a positive benefit.⁴

One of the differences between the opinions pertains to a case in which a food requires cooking or reheating with a lower intensity flame because the current flame will cause it to burn. If a smaller flame is available, the pot should be moved there, and the larger flame should be left alone. However, if there is no smaller flame, the Rama⁵

1. *Beitza* 22a.

2. See opinions in *Beit Yosef, Orach Chayim* 514.

3. Transferring a fire. Creating a new fire is forbidden rabbinically.

4. See opinions in the Rama, *Orach Chayim* 514:1; see also *Mishna Berura* 514:4.

5. *Orach Chayim* 514:1.

rules that one may lower the flame so that the food does not get burnt. However, there are several limitations on this ruling. The *Mishna Berura*⁶ argues that the situation must be such that the food will be harmed seriously if the flame is not lowered; lowering the flame to mildly preserve the food's taste is forbidden. The *Magen Avraham*⁷ and *Mishna Berura*⁸ seem to say that if a smaller flame could be lit from an existing fire, one may not lower the larger flame. While the *Igrot Moshe*⁹ argues cogently that lowering a flame (at least a gas flame) is no worse than lighting a new one, many *Acharonim* disagree.¹⁰ The *Shulchan Aruch*¹¹ maintains the position that lowering the flame is never an option, although significant Sephardic *poskim* consider leniency in cases of great need and/or mitigating halachic considerations.¹² (There is often a practical option of moving the food somewhat away from the flame.) In any case, other halachic options should certainly be sought.

Even on Shabbat, *g'ram kibbuy* (indirect extinguishing, e.g., placing a noncombustible material around a fire so that it goes out instead of spreading) is permitted to prevent a financial loss.¹³ It is debated whether the same rule applies to *Yom Tov* or whether on *Yom Tov* it is permitted without any special need. Therefore, many *poskim* discuss the following suggestion. One can boil a full container of water (as long as he will actually make use of the water and is thus boiling for a positive reason) so that it spills over and douses the flame. At that point, he can turn off the gas. This is considered indirect, in part because one does not touch the fuel and because the result is separated

6. 507:23. See *Shemirat Shabbat K'Hilchata* 13:(55) (2012 edition) in the name of Rav S.Z. Auerbach, who wonders why even small improvements in food, which justify doing work on *Yom Tov*, would not justify extinguishing a flame as well.
7. 514:2.
8. 514:6.
9. *Orach Chayim* IV:103.
10. See citations in *Piskei Teshuvot* 514:2.
11. 514:1.
12. *Kaf HaChayim, Orach Chayim* 514:23; *Yalkut Yosef, Mo'adim*, p. 489.
13. *Shulchan Aruch* and Rama, *Orach Chayim* 334:22.

time-wise from his action. Grounds for leniency are strengthened by the fact that, unlike in the classic case of *kibbuy*, there is no leftover coal-like residue.¹⁴ However, on both technical and halachic grounds, this is not the ideal system.¹⁵

The best system is to set up a Shabbat-clock device that shuts off the flow of gas at an appointed time. Gadgets are now marketed specifically for this purpose. One may rely on the opinions that he can set the timer mechanism on *Yom Tov*¹⁶ before the flame has been lit.¹⁷

14. See analysis in *Yabia Omer* 1, *Orach Chayim* 31.

15. See *Shemirat Shabbat K'Hilchata* 13:13.

16. See *Yabia Omer* 111, *Orach Chayim* 17.

17. *Shemirat Shabbat K'Hilchata* 13:16.

D-4: Lighting a *Havdala* Candle on *Yom Tov*

Question: What do we do about lighting a *Havdala* candle when *Motzaei Shabbat* is a *Yom Tov*?

Answer: Lighting candles is one of the actions that one is permitted to do on *Yom Tov* but not on Shabbat. However, there is a Rabbinic prohibition to create new fire on *Yom Tov*, even for a legitimate need, and one may thus only transfer a flame from an existing source to another place.¹

Although the main rationale for the Torah's permission to make use of fire on *Yom Tov* is to enable the preparation of food for *Yom Tov*, the dispensation also applies to other needs of the day, including the performance of *mitzvot*.² However, one may not transfer a flame without a clear, positive use, although it is not always apparent what qualifies.³ For example, it is permitted to light candles in a *shul*, and the *Mishna Berura*⁴ says that this applies even during the day, when the congregants can manage without them, since the additional light is an appropriate honor to HaShem. He also says that candles that are customarily used at a *brit mila* may also be lit on *Yom Tov*.⁵

One would think that in the case of a *Havdala* candle, over which *Chazal* instituted making a *beracha* of praise to HaShem, one may certainly light the candle via a transfer from an existing flame, even though reciting the *beracha* is less than a full obligation.⁶ However, it is not really necessary to use the traditional braided candle. The *gemara*⁷ says that using a “torch” – that is, a candle of many wicks – is just the choice manner of performing the *mitzva*. Accordingly, the

1. *Shulchan Aruch, Orach Chayim* 502:1.
2. *Beitza* 12a and *Tosafot* ad loc.
3. *Shulchan Aruch* ibid. 514:5, based on the Rosh, *Beitza* 2:22.
4. Ad loc. 31.
5. Ibid. 30.
6. *Shulchan Aruch* ibid. 298:1.
7. *Pesachim* 103b.

original flame would suffice for *Havdala*. Rav S.Z. Auerbach was apparently unsure whether fulfilling the *mitzva* in the preferred manner warrants transferring a fire from a simple candle.⁸ It is also important to note that if one lights his usual *Havdala* candle, he will not be able to extinguish the flame, as doing so to preserve the candle for future use is not the type of positive use that permits extinguishing fire on *Yom Tov*.

Therefore, the preferred system for making the *beracha* on a flame is to take two candles that were lit for *Yom Tov* and put them together so that their flames become interconnected.⁹ In this way, one creates the torch effect without having to light extra candles. In the event that one cannot put two candles together, he can light a match or two (by touching them to an existing flame) and put two flames together to fulfill the *mitzva* in its standard way.¹⁰ One should let the matches go out by themselves and not extinguish them.

In contrast to the above, the *Tzitz Eliezer*¹¹ maintains that one **should** light a new candle(s) and not use those lit for the honor of *Yom Tov*. His main reason is that the purpose of the *Havdala* candle is to give light, not honor.¹² The *Pri Megadim*¹³ says that even if a *Yom Tov* candle was lit both for honor and for light, it is not valid for *Havdala*. The *Tzitz Eliezer* demonstrates that Shabbat and *Yom Tov* candles are meant both for light and for honor and are therefore problematic for *Havdala* according to the *Pri Megadim*. However, the *Bi'ur Halacha*¹⁴ says that the *Pri Megadim's* view is not clearly accepted, and the *Shemirat Shabbat K'Hilchata*¹⁵ asserts that even in

8. *Shemirat Shabbat K'Hilchata* 62:(31).

9. *Shemirat Shabbat K'Hilchata* 62:18.

10. See a related responsum in *Tzitz Eliezer* v1:10, which says that one may light a *yahrtzeit* candle on *Yom Tov* if need be, because the respect it shows for the deceased is sufficient justification.

11. XIV:42.

12. *Shulchan Aruch, Orach Chayim* 298:12.

13. *Eshel Avraham* 298:16.

14. To 298:11.

15. 62:(30).

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an era in which electric lights provide most illumination, the main purpose of the *Yom Tov* candles is to give light.

In summary, while it is legitimate to light special candles for *Havdala* when *Yom Tov* falls on *Motzaei Shabbat*, the preferred practice is to put two *Yom Tov* candles together to form a “torch” upon which to make the *beracha*.

D-5: One Who Must Eat on Yom Kippur – How Careful about the Amount?

Question: If, for life-threatening health reasons, someone must eat on Yom Kippur an amount that at times exceeds the *shiur*,¹ does he have to be careful about the *shiur* the rest of the day?

Answer: Regarding all elements of this response, we are discussing a case in which any care taken to minimize eating will not negatively affect the health of someone who is suffering from a life-threatening condition.

A sick person who must eat on Yom Kippur should ingest food and liquids in small quantities² whenever possible, in order to minimize the level of this necessary breach of eating on Yom Kippur.³ Your question is whether or not eating more than the *shiur* is an “all or nothing” proposition. In other words, once one has to break the fast in the fullest sense, does it make no difference how many times he does so? Or does he have to consider the amount each time he wants to eat?

With regard to other eating violations (e.g., a sick person who has to eat non-kosher food), the answer to this question is simple. Just because one was compelled to perform a major violation once does not mean that the act is less severe later. The question is whether eating on Yom Kippur is a normal “eating violation,” so that every *shiur* of food eaten is a violation, or whether it is a violation of the obligation to fast. If the latter is true, then one could argue that once one was forced to break his fast, further eating does not fundamentally change matters and he can now eat without limitation.

The *Shulchan Aruch*⁴ says that when one has an obligation to fast

1. The amount of eating or drinking that constitutes a full violation.
2. Approximately one fluid ounce of food and of liquid in nine minutes.
3. *Shulchan Aruch, Orach Chayim* 618:8.
4. *Orach Chayim* 568:1.

on a specific day (even if it is self-imposed) but ate, he must continue fasting; he cannot say that fasting the rest of the day will not accomplish anything. Seemingly, this applies even more so on Yom Kippur and thus answers our question. However, the *Binyan Tzion*⁵ suggests that this requirement to continue the fast may only apply if one ate improperly. In contrast, when Halacha allowed one to break his fast (by eating a full *shiur*), we might say that there no longer is a fast to continue. At that point, whether or not he eats a full *shiur* afterwards or is careful to eat small amounts and take appropriate breaks may be irrelevant. The *Mikra'ei Kodesh*⁶ goes a step further, saying that even if one ate a full amount and then recuperated totally, one might still argue that halachically he is permitted to eat afterward.

There are certain indications that the prohibition of eating on Yom Kippur is indeed not a classical prohibition but rather a *mitzva* to undergo a daylong fast. The Torah⁷ command is to “afflict yourselves,” as opposed to “do not eat.” In that context, it says from “evening to evening,”⁸ implying that there is a single time unit during which one either succeeds or fails to fast. The *shiur* is not the *k'zayit*, which is the usual criterion for the action of eating, but rather a larger amount that negates “afflicting” because it “puts one’s mind at ease.”⁹

The crucial source in trying to resolve this matter is a *gemara* in *Kritot*.¹⁰ The *gemara* discusses the possibility of someone being obligated in two *korbanot* for violating a prohibition twice on Yom Kippur. The example the *gemara* gives is one who ate forbidden fats in

5. 34.

6. (Frank) *Yamim Nora'im* 39.

7. *Vayikra* 23:27.

8. *Ibid.*

9. *Yoma* 79a. The issue of putting the mind at ease should not be exaggerated. The violation is not dependent upon going from a state of hunger to one of relatively less hunger. After all, one who eats a half hour into Yom Kippur, when he is still satiated from eating before the fast began, nevertheless commits a full violation, although his mind was not put at further ease. Rather, the violation is to eat significantly in a way that generally suffices to put the mind of one who was hungry at ease (see *S'fat Emet* 73b).

10. 18b.

the morning and again in the afternoon. *Tosafot*¹¹ and the Rosh¹² ask why the *gemara* did not just mention one who ate anything twice on Yom Kippur (i.e., not necessarily a forbidden food). The *Binyan Tzion*¹³ suggests, based on his aforementioned idea, that this scenario might only obligate in one *korban* because after he ate once, there is no fast to break another time. However, *Tosafot* and the Rosh, who are more authoritative sources, do not propose that fundamental answer, but rather less satisfying, technical answers. The *Binyan Tzion* admits that this implies that which most *poskim*¹⁴ seem to posit: although there is a positive element of fasting a whole day, every act of eating is a violation on a day when eating is forbidden. Therefore, even one who was permitted to fully breach Yom Kippur due to health reasons must refrain from eating a *shiur* of food again as the day goes on if he no longer requires that much.

11. Ad loc.

12. In the *Shita Mekubetzet* ad loc.

13. Op. cit.

14. See also *Yalkut Yosef, Mo'adim*, p. 96.

D-6: Must One Stand Throughout *Ne'ila*?

Question: It is hard for me to stand the whole time during *Ne'ila*, as most people do because the *aron kodesh* is open. Am I required to do so?

Answer: In this case, it is easier to summarize the halachic sources than to give an absolute ruling.

The *gemara*¹ derives from the *mitzva* to stand up for a *talmid chacham* that it must certainly be required to stand up for a *sefer Torah*. The *Shulchan Aruch*² rules that this is relevant only when the *sefer Torah* is being moved before the people. When it is out of sight or has been placed at its destination, one may sit. This is derived³ from the Torah's mention that *Bnei Yisrael* stood for Moshe until he entered the *ohel mo'ed*.⁴ Since the law of standing before a *sefer Torah* is derived from standing before *talmidei chachamim*, the obligation does not exceed that in place regarding Moshe. Thus, when the *sifrei Torah* are stationary in their special place (the *aron kodesh*), the Torah law to stand for them does not apply, even if they are visible.

Furthermore, the Rama⁵ rules that when a *sefer Torah* is resting on the *bima*, one need not stand because it is in a separate domain from that of the people. The *Taz*⁶ comments that when the *sifrei Torah* are contained within the domain of the *aron*, it should similarly not be required to stand for them. However, he points out that the *minhag* is to nevertheless stand in their honor when the *aron* is open.

Some *minhagim* turn into binding practices, whereas others do not. Rav Moshe Feinstein⁷ wonders whether the *Taz* is claiming that

1. *Kiddushin* 33b.
2. *Yoreh Deah* 282:2.
3. As interpreted in *Kiddushin* 33b.
4. The Tent of Meeting (see *Shemot* 33:8).
5. *Yoreh Deah* 242:18.
6. Ad loc. 13.
7. *Igrot Moshe, Orach Chayim* v:38.

standing when the *aron kodesh* is open is a *minhag* that became a binding *halacha* or one that remained a positive, voluntary practice. He prefers the reading of the *Taz* that it is a voluntary practice. This would be the case if those who began the practice did not institute it formally, as future generations are expected to continue a practice with the same level of obligation that their predecessors did. Rav Feinstein points out that even if there is a doubt regarding which type of *minhag* it is, one can decide the matter leniently. The *Panim Me'ivot*⁸ has a somewhat stricter outlook, and even Rav Moshe urges (without outright requiring) a rare community that sits before an open *aron kodesh* to conform to the prevalent custom.

Nevertheless, the different approaches to the practice of standing before an open *aron kodesh* are still significant. If the *minhag* is binding, the obligation fundamentally applies to all. Of course, even when all are obligated, some are not physically capable of complying. For example, someone who is recuperating from knee surgery may sit even for *Kedusha*, despite the fact that Halacha normally requires standing. However, when it is only uncomfortable to stand, one must do so when it is required. If the *minhag* is not binding per se, one can consider other factors more liberally and evade compliance due to moderate discomfort or if it compromises his concentration, etc.⁹ Admittedly, it is difficult to give absolute guidelines. However, if we agree with Rav Feinstein's assumption above, as we do, there is more leeway in considering personal needs as a deciding factor.

The *Aruch HaShulchan*'s¹⁰ formulation puts the matter in a perspective with which we identify. After explaining that the *halacha* does not require us to stand before an open *aron kodesh*, he writes: "Since [people] developed the practice to do so to honor the Torah, it follows that one who does not stand in effect shows a lack of honor for the Torah. It follows that it is necessary to stand. However, if

8. 1:74.

9. See *Igrot Moshe* op. cit.

10. *Yoreh Deah* 282:13.

someone has weak legs and people will not suspect him [of disrespect], it is permitted to sit.”

Based on all the above, we suggest as follows. On Yom Kippur, and especially during *Ne'ila*, we should try our utmost to act properly and certainly avoid anything that could be misconstrued as being disrespectful to the Torah. However, people are aware that many fellow congregants are physically spent and find it extremely difficult to stand for long stretches of time. Therefore, it is permitted for someone in that category to sit. Nevertheless, if one feels that his sitting will be misunderstood or will adversely affect others, he should find a couple of minutes when he will not be missing critical sections of the *tefilla* to step out of *shul* and sit. In that way, he can regain his strength and continue *davening* and standing.

D-7: *Havdala* after Yom Kippur that Fell on Shabbat

Question: I know that *Havdala* after Yom Kippur is different from *Havdala* on *Motzaei Shabbat*. What happens when Yom Kippur falls on Shabbat?

Answer: How to treat *Havdala* after Yom Kippur that fell on Shabbat depends on the logic for each individual element of *Havdala*. We will proceed according to the order of *Havdala*.

In this *Havdala*, we do say the *p'sukim* that precede *Borei Pri HaGefen*, as we do after a regular Shabbat.¹

The accepted reason for the *beracha* on smelling *besamim* on *Motzaei Shabbat* is that one's *neshama yeteira* (literally, “extra soul”) departs when Shabbat ends, and the *besamim* help revive him.² After Yom Kippur, this does not apply because one has no *neshama yeteira* on Yom Kippur.³ The *Shulchan Aruch*⁴ says that even if Yom Kippur falls on Shabbat, one does not use *besamim* in *Havdala*, for there is no *neshama yeteira* on a fast day, even on Shabbat.⁵ (See Rashi,⁶ who connects *neshama yeteira* with eating.) However, many (especially, Ashkenazic) *poskim* disagree with the *Shulchan Aruch* and maintain that its coinciding with Yom Kippur does not remove this aspect from Shabbat.⁷ Many point out that it is certainly not a *beracha l'vatala*⁸ to make the *beracha* on *besamim*, since that *beracha* is indicated any time one purposely smells such a fragrance.⁹ The

1. *Mateh Ephrayim* 624:5; *Shemirat Shabbat K'Hilchata* 62:27.

2. *Tosafot*, *Beitza* 33b.

3. *Shulchan Aruch*, *Orach Chayim* 624:3; see *Beit Yosef*, *Orach Chayim* 624.

4. *Op. cit.*

5. See *Beit Yosef* *op. cit.*

6. *Beitza* 16a.

7. See *Mishna Berura* 624:5 and *Sha'ar HaTziyun* 624:6.

8. A blessing of no value, which it is forbidden to recite.

9. See *Taz*, *Orach Chayim* 624:2; *Magen Avraham* 624:1.

question is mainly whether it is acceptable to say the *beracha* in its regular place, since if the *beracha* is not crucial for *Havdala*, it may create a *hefsek* (problematic break) between the *beracha* on the wine and the main *beracha* of *Havdala*, which is followed by the drinking of the wine.¹⁰ In practice, there is no right or wrong answer for Ashkenazim, as there are *minhagim* either way.¹¹ If one drinks the wine and then makes the *beracha* for the *besamim* and smells them, there is little to lose.¹² Sephardim certainly do not go against the *Shulchan Aruch's* ruling and do not make the *beracha* on *besamim* during *Havdala*. However, they may make the *beracha* after drinking the wine, if they so desire.¹³

A final issue regards the requirement for the fire that is used for the *beracha* of *Borei Me'orei HaEish*. There are two reasons to make this *beracha* on *Motzaei Shabbat*. One is that fire was discovered on *Motzaei Shabbat*.¹⁴ The other is that the use of fire, which was restricted on Shabbat, becomes permitted again. The former rationale does not apply after a Yom Kippur that occurs during the week, so that the latter reason is the sole motivation for the *beracha* on a weekday. It is further necessary, specifically after Yom Kippur, that the fire upon which the *beracha* is made have existed on Yom Kippur and that people refrained from using it.¹⁵ This is why many people use a flame that was transferred from a *yahrtzeit* candle that remained lit throughout the day. However, when Yom Kippur falls on Shabbat and the first reason to make the *beracha* also applies, a new flame that was lit on *Motzaei Shabbat* should suffice.¹⁶ Even so, there are opinions¹⁷ that maintain that one should use a flame that existed and

10. See the *Taz* op. cit., who deals with this potential problem.

11. See *Mishna Berura* op. cit.; *Shemirat Shabbat K'Hilchata* 62:28.

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

13. See *Kaf HaChayim, Orach Chayim* 624:9; *Yalkut Yosef, Mo'adim*, p. 115; *Mikra'ei Kodesh* (Harari), *Yom HaKippurim* p. 298.

14. Rosh, *Berachot* 8:3.

15. *Pesachim* 54a.

16. Ritva ad loc.

17. Including the *Magen Avraham* 624:7.

was not used on Yom Kippur in order to stress the fact that it was forbidden to use fire on Yom Kippur. The *Mishna Berura*,¹⁸ while not being impressed by this argument,¹⁹ notes that the *minhag* is to be stringent on the matter. However, he says that if one makes the *beracha* not on a new fire that was created by friction but on a flame that was transferred from it, one may certainly be lenient. (Note that this condition is fulfilled automatically when one uses a match to light the *Havdala* candle.) Nevertheless, there are those who are careful to use the *yahrtzeit* candle system.²⁰ Unquestionably, one who does not have such a flame available should make the *beracha* as usual.

18. 624:7.

19. See *Sha'ar HaTziyun* 624:9.

20. *Shemirat Shabbat K'Hilchata* 62:35.

D-8: Cutting the Branches of a Neighbor's Tree that Impinge upon a Sukka

Question: I have been building my *sukka* on my balcony for years. A neighbor's tree has been encroaching on my air space. I have trimmed branches in the past, but now there are branches very high overhead that densely cover major parts of the *sukka*. Do high branches ruin the *sukka's kashrut*? If so, do I have the right to make my neighbor cut down the significant section of the tree that causes the problem, and if so, who pays for it?

Answer: We have discussed in the past¹ some intricacies of the circumstances under which foliage above a *sukka* renders it invalid. To oversimplify, if the *sukka* is mainly covered by leaves so that there is more shade than light in it, the *sukka*² is invalidated even if the foliage is more than 20 *amot* above the *sukka*.³ Inquire further if you are unsure whether your *sukka* is disqualified.

We now move to issues of *nizkei shecheinim*.⁴ This general issue was addressed at length in an article by Rabbi Yona Reiss. We will summarize those of his conclusions that have an impact on our case.⁵

The *Shulchan Aruch*⁶ rules that if Reuven's tree extends over Shimon's property, Shimon may cut off the part that disturbs use of his own property. When it does not clearly cause damage, we apply the rule that the land was distributed so that people would allow each other to benefit from each other's property when appropriate.⁷ Along similar lines, a person who may be damaged indirectly by his

1. *Living the Halachic Process*, vol. II, D-5.
2. See *Shulchan Aruch, Orach Chayim* 626:1.
3. *Mikra'ei Kodesh, Sukkot* 15.3.
4. Damages caused by neighbors.
5. With his permission.
6. *Choshen Mishpat* 155:26.
7. *Bava Batra* 27b.

neighbor's activity in the neighbor's own property should be the one to take precautions to avoid damage.⁸

The *Shulchan Aruch*⁹ says that when a neighbor's tree impedes someone from acting normally in his own home, he can cut down the offending portion of the tree. There is no reason to believe that using one's balcony for a *sukka* is an exception. This situation should warrant removal of branches even if there are alternative places to put the *sukka*, if that location has legitimate advantages in the owner's eyes.

Who has to put in the effort to make the arrangements and/or pay for cutting off the branches? When one acts in a manner that does not cause damage at the time of his action but damage will develop over time, it is up to the potentially injured party to distance himself.¹⁰ We do not find precedent to make the damager financially liable when he initially acted properly (e.g., when planting the tree in his own area) and the damage arose indirectly. When describing the right to cut down the bothersome branches, the Rambam¹¹ and the *Shulchan Aruch*¹² mention the person who is being damaged as the one who cuts them down, presumably because this is his responsibility. When the tree grows and subsequently causes severe damage, we find *poskim* who say that the tree's owner has to remove the branches at his own expense.¹³ However, this opinion is apparently not unanimous, and it is logical primarily when one could forecast at the time of his action that a serious problem would arise. In contrast, in our case, it was not necessarily clear at the time the tree was planted that it would eventually invalidate a neighbor's *sukka*. Therefore, the tree's owner is not required to cut down the branches himself or hire someone to do so. On the other hand, if you damage

8. See *ibid.* 25b.

9. *Op. cit.* 28.

10. See *Shulchan Aruch* and Rama *op. cit.* 31.

11. *Shecheinim* 10:8.

12. *Op. cit.* 28.

13. *Shut Hon Rav* (Nachmias), *Choshen Mishpat* 8.

the tree in the course of responsibly cutting down branches of the tree as needed, you are not obligated to give any compensation.¹⁴

In summary, you are allowed to cut down the part of the tree that is causing the problem, and no money needs to be paid to you for your work or by you for any resulting damage to the tree. An important piece of advice is that you try to work everything out through mutual agreement and compromise in advance. Make sure that your *sukka* remains a *sukkat shalom*.¹⁵

14. See *Shulchan Aruch* op. cit. 30.

15. A *sukka* of peace – a play on words from the blessing after *Kri'at Shema* at night.

D-9: The Purpose of the *Hechsher*¹ for *S'chach*

Question: There are many brands of mats of bamboo and the like that serve as *s'chach* for a *sukka* that have *hechsherim*. What are the rabbis attesting to that is not self-evident?

Answer: Some of the major criteria for *s'chach*, such as that it be made from something that grew from the ground and that it is now detached from the ground,² are self-evident in the mats in question. However, there are other issues that either require or benefit from certification.

One area in which the *hechsher* is significant is the requirement that *s'chach* be made so that it is not *mekabel tumah* (capable of becoming ritually impure).³ A category that could potentially make a mat be *mekabel tumah* and therefore unfit is a *kli* (a utensil), specifically one that is suitable for *midras* (sitting or lying on).

The *mishna*⁴ says that the *kashrut* of a mat of reeds for *s'chach* depends on whether it was made with the intention of serving to give shade, which is proper, or for lying down upon it. (If it is small, it is more likely that it was made for lying on.)⁵ The Rama⁶ says that an individual's intention alone while making a mat is not sufficient to determine that it can be used for *s'chach*. Rather, most of the mats of this type produced in that location must not be for lying or sitting upon but for functions such as *s'chach*. This is a result of a Rabbinic concern that people who cannot discern another's intentions will assume that it was not produced for *s'chach*. The *Mishna Berura*⁷ claims

1. Rabbinical certification.
2. *Shulchan Aruch, Orach Chayim* 629:1.
3. *Sukka* 11a; *Shulchan Aruch* op. cit.
4. *Ibid.* 19b.
5. *Ibid.*
6. *Orach Chayim* 629:6.
7. 629:18.

that in his time, mats were made for lying on and were not valid for *s'chach*. However, contemporary *poskim* point out that most mats of the type used for *s'chach* in our day are clearly made specifically for that purpose. A *hechsher* confirms that the certifying rabbi's conclusion is that the mat was made for *s'chach* and is not confusingly similar to mats for lying or sitting on.

Rabbi Yehuda disqualifies a *sukka* that rests upon a bed.⁸ One of the *gemara's* explanations is that not only should the *s'chach* not be *mekabel tumah*, but it may not even be supported by something that is *mekabel tumah* (e.g., a bed). The concern is that people might use the supports themselves as *s'chach*, and the standards for the two should therefore be similar.⁹ Although most authorities rule that the *s'chach* may rest on something that is *mekabel tumah*,¹⁰ it is customary to try to conform to the stringent opinion.¹¹ Consequently, it is preferred that the strings that hold the slats or pieces of bamboo together be made from something that grew in the ground (i.e., not synthetic) and are not *mekabel tumah*. The *gemara*¹² says that processed flax is unfit as *s'chach*, and different *Rishonim* give various explanations. According to some, cotton thread is fit for *s'chach*,¹³ but in any case, it would at worst be Rabbinically disqualified. Therefore, it is likely that it is permitted to **support** the *s'chach* with cotton threads, as the Rabbinic concern lest one come to do X usually only applies if X is a problem on the level of Torah law.¹⁴ Furthermore, it is not clear that the threads that connect the strips are considered actual supports for the *s'chach*.¹⁵ Some brands of mats use fibers that were not processed and thus avoid this possible halachic problem, which is something to which their *hechsherim* attest.

8. *Sukka* 21b.

9. See Ran ad loc.

10. See *Beit Yosef*, end of *Orach Chayim* 630.

11. *Mishna Berura* 630:59.

12. *Sukka* 12b.

13. See *Mishna Berura* 629:12.

14. See *Bi'ur Halacha* 630:1.

15. See *Shevet HaLevi* VI:74.

Some *poskim*¹⁶ raise questions about the mats despite the *hechsherim*. This is due to the injunction not to use wide pieces of *s'chach*,¹⁷ out of concern that one might think that if such a *sukka* roof is permitted, he could even sit in his regular home. While each strip of the *s'chach* mats is thin, if the mat is viewed as one piece, it is very wide. The consensus (although not unanimous),¹⁸ as well as the widely accepted practice, is that pliable connected strips that form a foldable mat are unlike a thick beam and are halachically acceptable.

In summary, halachically produced *s'chach* mats are efficient and acceptable. Their *hechsherim* reduce the possibility of halachic problems, fraud, and the uncertainty that those who are not experts in Halacha may have.

16. See letter of Rav Elyashiv, which appears in *Az Nidberu* 11:66.

17. *Shulchan Aruch, Orach Chayim* 629:18.

18. See *Shevet HaLevi* op. cit.; *Az Nidberu* op. cit.; *Piskei Teshuvot* 629:6.

D-10: Drinking Wine on *Chol HaMo'ed*

Question: I have heard that one should drink wine on *Chol HaMo'ed*, but not all religious people do so. Although I enjoy drinking wine occasionally, I am not always in the mood, and it is not always convenient. Should I make it a point to drink wine on *Chol HaMo'ed*, and if so, how often and how much?

Answer: There is an obligation of *simcha*¹ on the holidays, including all of *Chol HaMo'ed*.² The classical way to reach that *simcha* was to partake in the special festival *korbanot* called *shalmei simcha*.³ The question is what happens nowadays when there are no *korbanot*.

The Rambam⁴ says that in addition to *korbanot*, or perhaps in their place, *simcha* is fulfilled nowadays through various physical enjoyments, depending on the person. These include food treats for children, clothing for women, and meat and wine for men. The *Beit Yosef*⁵ is troubled with the Rambam's mention of meat, as the *gemara*⁶ states specifically that wine takes the place of the *shalmei simcha*. The *Nishmat Adam*⁷ explains that the Rambam means that one has a choice between wine and meat. In any case, the Rambam seems to understand that the consumption of wine is a way to fulfill a Torah-level obligation of *simcha*.⁸ *Tosafot*⁹ differs and maintains that nowadays, in the absence of *korbanot*, *simcha* on the holidays is only a Rabbinic decree.

Either way, there seems to be some obligation to drink wine

1. Literally, happiness, but here the intention is to do enjoyable things, which cause happiness.
2. *Sukka* 48a; Rambam, *Yom Tov* 6:17.
3. *Ibid.*
4. *Ibid.* 17–18.
5. *Orach Chayim* 529.
6. *Pesachim* 109a.
7. 11, 104:1.
8. *Sha'agat Aryeh* 65.
9. *Mo'ed Katan* 14b.

throughout the *chag*, and as you note, not all observant men are careful to do so. Yet, this phenomenon is hardly new, as a *gemara* seems to assume that not everyone drinks or even has access to wine during the *chag*. The *gemara*¹⁰ discusses the possibility of reciting *Shehecheyanu* throughout the *chag* and points out that according to the opinion that wine is necessary in order to recite *Shehecheyanu*, it may not be possible to do so, as wine is not always readily available. As Rashi¹¹ explains, “wine is not ‘found’ for all people on *Chol HaMo’ed*.” The *Mishneh Halachot*¹² claims that the *gemara* was not questioning the obligation to drink wine on *Chol HaMo’ed* but was just pointing out that it was nevertheless not always available. According to the aforementioned *Nishmat Adam*, who states that one has a choice between wine and meat, there is no question, for if one has meat, there is no need for wine.

The *Shulchan Aruch* does not cite an independent obligation to partake of wine on *Chol HaMo’ed*, but he says regarding *Yom Tov* that the meal is based around wine.¹³ On *Chol HaMo’ed*, however, there is no outright obligation to have a full meal.¹⁴ Nevertheless, as the *Magen Avraham*¹⁵ asserts, there is a preference to have a full meal, which raises the question of whether having wine is part of that preference.

A logical compromise, presented by the *Sha’agat Aryeh*¹⁶ and *Mo’adim U’Zemanim*,¹⁷ goes as follows. While the *mitzva* from the Torah to have *simcha* on *Yom Tov* in the *Beit HaMikdash* required bringing the *shalmei simcha* as a set rule, there are more options in our time. The *gemara*¹⁸ brings a proof that wine is an effective means

10. *Sukka* 47b.

11. Ad loc.

12. VII:78.

13. *Orach Chayim* 529:1.

14. See *Orach Chayim* 188:7 and *Magen Avraham* 530:1.

15. 530:1.

16. Op. cit.

17. VII:111.

18. *Pesachim* 109a.

of making one happy. The Rambam finds a basis for meat being an important component of *simcha*, as well. These are subjective components, and there are other alternatives, which for some people are much more appropriate. The *gemara*¹⁹ already says that, in general, it is fitting to give clothes to women and sweets to children. However, even for adult males, other foods or experiences *may* be effective replacements for wine. If one does not enjoy wine, then alternatives are **certainly** called for.

It is a good practice for one who enjoys wine to drink a *revi'it* (3–4 oz.) daily together with a *Chol HaMo'ed* meal to fulfill the *mitzva* according to all opinions and/or in the optimal way.²⁰ Grape juice is not a replacement, as a mild level of intoxication is part of the *simcha* element.²¹ Some say that any alcoholic beverage is sufficient to provide *simcha*.²² However, one who does not drink wine but does other things to make each day festive need not feel guilty. Obviously, anyone who drinks an alcoholic beverage must be certain to be in conformity with the law and the strictest standards of safety before driving a car.

19. Ibid.

20. See Rav Moshe Feinstein, cited in *Zichron Shlomo* (Zucker), Hebrew section, p. 33; see also *Chol HaMo'ed K'Hilchato* 1:12.

21. Based on Rashi, *Bava Metzia* 66b.

22. See *Piskei Teshuvot* 529:9.

D-11: Where to Light Chanuka Lights – Inside or Outside?

Question: Should I light my *chanukiya*¹ inside or outside?

Answer: [We share this response with the public hesitantly because it is far from clear that one who strives to be *machmir*² would be acting appropriately in changing his *minhag*. However, we do not want to ignore a topic that has already been discussed publicly.]

Two pertinent points are clear. First, the standard Talmudic instructions and practice were to light *chanukiyot* outside.³ (One who lived in an attic put it in the window facing the street.⁴) Second, the longstanding custom in most Jewish communities has been to light inside.⁵ How do we explain this change and decide how to act nowadays?

The *gemara*⁶ says that in a time of danger, one should light on his table. The *Itur*⁷ notes that once the practice to light inside developed, although based on the danger to light outside, it continued. Many *poskim* assert⁸ that it is preferable to light outside, if it is possible to do so. (Rav Moshe Feinstein assumed that it was not possible in the United States in 1975, as was the case for his forebears in Europe.⁹) Rav Shternbach¹⁰ strengthens the impact of the historical danger on the recommended practice. He suggests that when part of the populace is in a dangerous state of affairs, everyone should light inside

1. Chanuka *menora*.
2. Follow the stringent opinion.
3. *Shabbat* 21b.
4. *Ibid*.
5. See *Ohr Zarua* II:323:2; Rama, *Orach Chayim* 671:7.
6. *Op. cit*.
7. *Chanuka*, pg. 114b.
8. *Ibid.*; see *Mikra'ei Kodesh* (Frank), *Chanuka* 16.
9. *Igrot Moshe, Orach Chayim* IV:125.
10. *Mo'adim U'Zemanim* II, 140.

because we do not want some people taking risks under the pressure to keep up with others who are able to light outside.

Other historical explanations are given. The *Aruch HaShulchan*¹¹ speculates that when Jews moved to windy and rainy places, glass cases were needed to protect the *chanukiyot*. Besides detracting from the intended publicity that one is lighting for a *mitzva*, these cases are not always feasible or affordable. Thus, the *minhag* arose to light indoors. If the climate were a factor to be taken into account, there would be logic to distinguish between one place and another, especially in Israel, considering that the relevant Talmudic text was written there or nearby.¹²

At this point in our inquiry, it would still seem that those who can succeed in lighting outside in glass cases should try to do so. However, other factors may “level the playing field.” At the time we light the *chanukiya*, it should have the potential to burn for a half hour.¹³ If one opens the side of the case for the kindling and has to close it quickly before the wind blows out the candles, shouldn’t this be considered lighting in a place where the candles of the *chanukiya*, **when they are being lit**, would not last a half hour? Although there are reasonable answers to this question,¹⁴ some *poskim* maintain that if one cannot light the candles in a manner in which the wind will be kept out from the outset, it is better to light inside.¹⁵

Another problem with lighting outside, especially for those who live in apartment buildings, is that it is not always clear where exactly one should light. Is it at the door between one’s apartment and the stairwell, at the entrance to the building, or at the edge of the sidewalk of the street, etc.? Is living on a higher floor considered like being in an attic?¹⁶ Halachic research can provide sensible solutions

11. *Orach Chayim* 671:24.

12. Our experience, however, tells us that it can be plenty rainy and windy in Israel around the time of Chanuka.

13. See *Shulchan Aruch, Orach Chayim* 675:2.

14. See *Mikra’ei Kodesh* *ibid.* 17.

15. See *Torat HaMo’adim, Chanuka* 3:3.

16. See *Torat HaMo’adim* *ibid.* 2.

for most circumstances. However, the fact that the *minhag* to light inside has been around for so long has made it more difficult to find sources providing answers to these questions. Therefore, this doubt as to precisely where to light outside may be yet another reason to continue lighting inside, as was almost universally done just a generation ago. Furthermore, if we light in the window facing the street,¹⁷ the *mitzva* of publicizing the miracle is performed properly (on lower floors), and the *chumra*¹⁸ of lighting outside may not turn out to be preferable at all.

Summarizing, there is an apparent advantage in lighting outside. However, since there are strong reasons not to require it, we would discourage lighting outside in places where it is not an accepted practice or where it could encourage vandalism or anti-Semitism. In areas where both practices are prevalent (especially in certain communities in Israel), one who can light outside in a manner that does not generate significant doubts may prefer to do so, but he should not feel obligated to change from his family tradition .

17. See *Igrot Moshe, Orach Chayim* IV, 125, based on *Magen Avraham* 671:8.

18. Stringency.

D-12: Lighting Chanuka Lights on Friday

Question: I am nervous this year, with the first day of Chanuka falling on Shabbat, that my one Chanuka light may go out too early. Is there a halachic solution to this problem?

Answer: Indeed, the Chanuka lights must last quite a while on Friday evening. There is a disagreement regarding whether the *mitzva* to light usually begins at *sheki'ah*¹ or at *tzeit hakochovim*.^{2 3} Chanuka lights should remain lit half an hour past that point.⁴ Since we generally accept Shabbat around 20 minutes before *sheki'ah* and Chanuka lights must be lit prior to that time, the lights must last considerably longer than on a weekday.

Generally, if one set up the Chanuka lights with enough fuel to last the required time but unexpectedly they went out earlier, he does not have to relight them.⁵ The question is whether this applies even when lighting them for Shabbat, which has to be done during the day and sometimes, as this year, before Chanuka has even begun. If the lights go out before Shabbat begins, it might be worse than the situation on an ordinary night, when at least the *mitzva* of lighting is fulfilled at the correct time.

The *Terumat HaDeshen*⁶ makes an interesting argument on the matter. Although the purpose of the lighting on Friday is for the lights to burn into the night, the lighting itself is an important part of the *mitzva*, specifically the *hechsher mitzva* (the necessary facilitator). He notes that we recite the *beracha* when we light, although it is still not the *mitzva*'s classic time, because it is necessary to carry out the lighting prior to the approach of Shabbat. Thus, however

1. Sunset.
2. When stars come out.
3. See *Shulchan Aruch, Orach Chayim* 672:1 and *Mishna Berura* ad loc. 1.
4. *Shulchan Aruch* op. cit. 2.
5. *Shulchan Aruch, Orach Chayim* 673:2.
6. 1:102, accepted by the *Shulchan Aruch* *ibid*.

long the lights end up burning, including during the period before Shabbat, is sufficient.

According to the *Terumat HaDeshen*, even if it is possible to relight the extinguished candles before Shabbat begins, it is not necessary to do so. (We note that several *poskim* say that although it is not necessary, it is still worthwhile to relight the lights. This is true even during the week, when the the lighting was performed at the correct time, and certainly before Shabbat.⁷) Certainly, then, you should not feel that you have failed halachically if the lights accidentally go out sometime after Shabbat has begun, when you cannot relight them.

The *Taz* (673:9) takes issue with the *Terumat HaDeshen* and requires relighting an extinguished Chanuka candle if one has not yet accepted Shabbat. He agrees with the *Terumat HaDeshen*'s primary thesis – that the *mitzva* can be actuated before nightfall. However, he says that the fulfillment of the *mitzva* begins at the last moment that one can light the candles, which is immediately before Shabbat starts, either automatically at the conclusion of Friday or at whatever time one accepts Shabbat earlier. If the candles are still burning at that point, it is equivalent to their burning a little into a regular night of Chanuka, when it would not be necessary to rekindle them. However, according to the *Taz*, one cannot be credited with the *mitzva* before Shabbat has actually begun for him. Thus, if the Chanuka candle is extinguished before Shabbat begins, one must light it again. In the case with which you are concerned, in which the flame goes out after your Shabbat has begun, the *Taz* would agree that you would have fulfilled the *mitzva* already.

To minimize your nervousness that your Chanuka lights might not last as long as intended, we suggest you consider the following. First of all, after the first day of Chanuka, it is pretty safe to assume that at least one light will last long enough, and that is sufficient according to the basic *halacha*,⁸ which requires just one light per

7. See *Mishna Berura* 673:27.

8. See *Mishna Berura* 679:2.

household.⁹ Even on the first night, if more than one adult is lighting, you can instruct everyone to have in mind that if some lights go out prematurely, the remaining one(s) should count as a household Chanuka light. Again, in no way is this required halachically, but it may assuage your worry.

In particular, a practical idea is to use a (long-lasting) wax candle rather than olive oil for this night,¹⁰ as wax is usually more reliable. Another piece of general advice is to do a trial run to see that your wick/oil combinations work well. However, just as importantly, we suggest that you get used to following the normal halachic rules without being more nervous than Halacha expects or the Torah desires.

9. *Shabbat* 21b.

10. The discussion about whether wax or oil is usually preferable is beyond our present scope.

D-13: Missing *Parashat Zachor*

Question: I may have to be out of town on *Shabbat Zachor* in a place where there is no *shul* or possibility to hear the reading of *Parashat Zachor*. Is it sufficient that I hear the same *p'sukim* every year on the Shabbat of *Parashat Ki Teitzei* and that I will hear the reading about the actions of Amalek on Purim morning?

Answer: Many sources¹ indicate that there is a *mitzva* from the Torah to read *Parashat Zachor*, which is made up of a number of *p'sukim* found at the end of *Ki Teitzei*.² This assertion finds support in the *gemara*,³ which derives that *Megillat Esther* must be read from a proper scroll based on a scriptural comparison to the *mitzva* to remember the actions of Amalek, which HaShem commanded Moshe to write down in a “book.”⁴ The *gemara* continues that although one can fulfill the *mitzva* “not to forget” what Amalek did by reading silently, we must read about their actions aloud because the Torah also says to “remember,” which indicates doing a positive action. The *Terumat HaDeshen*⁵ infers from the Rosh⁶ that the Torah requirement includes the need for a *minyan*. Therefore, the *Shulchan Aruch*⁷ stipulates that because *Parashat Zachor* is a Torah *mitzva*, one should go to a place with a *minyan* for *Shabbat Zachor* to hear the Torah reading – hence, your predicament.

Let us see if there are any mitigating circumstances that can lessen the obligation or provide alternatives. Not all the *Rishonim* who mention the Torah-level obligation to read *Parashat Zachor* indicate that the obligation can be met only at the time and in the manner that

1. Including *Tosafot*, *Megilla* 17b, and the Rosh, *Berachot* 7:20.
2. *Devarim* 25:17–19.
3. *Megilla* 18a.
4. *Shemot* 17:14.
5. 1:108.
6. Op. cit.
7. *Orach Chayim* 685:7.

we normally carry it out. The *Sefer HaChinuch*,⁸ for one, says that the Torah law may possibly be fulfilled by a reading every couple of years, before one forgets the story. Others⁹ explain that *Chazal* felt it necessary to institute the reading once a year because one tends to forget things after twelve months.¹⁰ (See the discussions in *Shut Chatam Sofer*¹¹ and the Maharam Shick¹² about the problem that in a leap year there are thirteen months between the special readings of *Zachor*.)

The *Magen Avraham*¹³ notes that in his time, people were not very careful to hear *Parashat Zachor*. He justifies the practice by suggesting that they heard the story of Amalek in the *kri'at haTorah* of Purim morning.¹⁴ Many take issue with this suggestion because the Purim reading does not connect the story to the *mitzva* to wipe out the remembrance of Amalek.¹⁵ If this were the only difficulty, one could solve it by hearing the *p'sukim* of *Zachor* when *Parashat Ki Teitzei* is read. However, this solution also entails complications. First, one probably has to have in mind to fulfill the specific *mitzva* to remember Amalek through that reading, and he likely even has to alert the *ba'al koreh* to have this intention in mind for all those listeners who want to be included.¹⁶ (The *Taz*¹⁷ says that the *berachot* are also an absolute requirement, so in his view, the *oleh* might also need to have him in mind.) Furthermore, if you plan to use this tactic in the coming year but did not do so last year, 18 months will have gone by in between readings, which, as we saw above, is problematic.

8. 603.

9. *Beit She'arim, Orach Chayim* 285.

10. Based on *Berachot* 58b.

11. *Even HaEzer* 1, 119.

12. *Sefer HaMitzvot* 605.

13. 685:1.

14. *Shemot* 16:8–16.

15. See *Mishna Berura* 685:16.

16. See *Mikra'ei Kodesh* (Frank), *Arba Parshiyot* 6.

17. 685:2.

The Rama¹⁸ says that if one is unable to attend a public reading of *Parashat Zachor*, he should read it by himself. Ideally, this should be done from a *sefer Torah*,¹⁹ which is probably not available to you. However, on that Shabbat, one should at least accomplish the *mitzva* “not to forget” Amalek’s actions through any clear review of the subject matter. Although *Chazal* established a specific time and manner in which to fulfill the positive *mitzva*, it is likely that one can fulfill the Torah obligation by individually reading the *psukim* from a *sefer Torah* before or after your trip.²⁰

Despite the mitigating factors and alternatives, the *Shulchan Aruch*’s simple ruling still seems to require you to make every **reasonable** effort to be in a place where you can hear the public reading of *Parashat Zachor* at its time. There are circumstances, however, in which a person cannot arrange to fulfill a *mitzva*. It is difficult to provide exact guidelines, but we can address your specific situation if you wish to share it with us.

18. *Orach Chayim* 685:7.

19. *Mishna Berura* 685:17.

20. See *Sha’ar HaTziyun* ad loc. 5.

D-14: Reading *Megillat Esther* from a Scroll

Question: Some people use kosher *megillot* to follow the reading of *Megillat Esther*. Is that important to do? Also, whether one uses a printed text or a *klaf* (*megilla* scroll), should he read along (with his lips) with the *ba'al korei*?

Answer: We cannot give one set answer because the matter depends on the individual person's abilities and circumstances. Rather, we will explore the basic sources and logic, which will help enable one to apply the *halachot* wisely.

The *gemara*¹ deals with an apparent contradiction. One *baraita* says that if a *klaf* is missing some text, one can recite the missing parts by heart. Another *baraita* says that an illegible *megilla* is *pasul*, in which case using it is like reading by heart, which is invalid.² The *gemara* resolves the contradiction by stating that it depends on whether the majority of the *klaf* is proper or problematic. Accordingly, we can conclude that reading a minority of *Megillat Esther* without a kosher *klaf* is valid. However, the *Shulchan Aruch*³ says that this is true only *b'di'aved* (i.e., one who has already read a minority from a non-kosher *megilla* need not repeat it or if one has only a *megilla* with just the majority written properly, he may use it⁴).

One who listens to the entire reading from a *ba'al korei* using a kosher *megilla* with the requisite intent and concentration fulfills the *mitzva*.⁵ What happens if the listener misses a minority portion of the reading (either due to his lack of attention or because the *ba'al korei* read it incorrectly or could not be heard)?⁶ If he is reading along

1. *Megilla* 18b.

2. *Ibid.* 17a.

3. *Orach Chayim* 690:3.

4. *Mishna Berura* ad loc. 8.

5. See *Mishna Berura* 690:48.

6. We are discussing here a part that would be significant enough to disqualify the reading if the *ba'al korei* left it out. See a *machloket* on the parameters in

correctly from his own *klaf* the entire time, there is no problem. If he had just been listening and following along visually, can he start reading from where he missed until he catches up with the *ba'al korei*? Does all of the reading need to be done by one reader? The Rama⁷ says that since many in the congregation do not use kosher *megilot*, the *ba'al korei* must repeat the four *p'sukim* recited by the entire congregation, since their reading is like reciting by heart. The implication is that this would be unnecessary for those with a proper *klaf*, as the *ba'al korei*'s recitation of most of the *Megilla* along with the congregation's reading of the four *p'sukim* would then combine for a proper reading. Thus, having more than one reader is acceptable. Actually, even one who is following with a printed *megilla* can also make up that which was missed by reciting that text on his own,⁸ but since this is valid only *b'di'aved* (see above), it should be avoided.

Before we apply our findings, we will mention one more issue. The *Shulchan Aruch*⁹ is concerned that one who reads along with the *ba'al korei* may cause others or even himself to concentrate on his reading at the expense of the *ba'al korei*'s, at least for some words. This is problematic if one is not reading from a kosher *megilla*.

The *Pri Megadim*¹⁰ recommends reading along from a kosher *megilla* because it is often so noisy that one will surely miss some words. Although one can listen and then read aloud only when necessary, he apparently reasons that it is hard to identify the problem and react in time. Making up for missed words without a *klaf* would be valid only *b'di'aved*, and only if one concentrated on the *ba'al korei*'s reading most of the time.

On the other hand, there are disadvantages to following with a *klaf*. Many people will make serious mistakes in their own readings, and when focused on that, they may not sufficiently follow the *ba'al*

Shulchan Aruch (op. cit. 14) and *Bi'ur Halacha* (ad loc.), but it likely comes down to a word, or perhaps even a letter.

7. Ad loc. 4.

8. See *Mishna Berura* 690:16.

9. Op. cit. 4.

10. 689, *Eshel Avraham* 11, accepted by the *Mishna Berura* 689:19.

korei's proficient reading. There is also a fascinating *machloket Acharonim*¹¹ regarding whether one who reads for himself from a *klaf* has the preferred status of participating with a *minyán*.

We suggest as follows. If your *shul* is quiet (enough) that you can concentrate on the *ba'al korei*, read only as a makeup when you or the *ba'al korei* misses something. If your *laining* skills are good, it certainly pays to do so from a kosher *megilla*. If you will likely not hear a lot, read along the whole text (very quietly¹²), preferably from a kosher *klaf*. If the quality of your reading is mediocre or less, follow a printed *megilla* with vowels and read only to make up the parts that you miss.

11. See *Teshuvot V'Hanhagot* 11:349; *Pri Megadim* *ibid.*

12. As one has no right to disturb others.

D-15: How Thoroughly Should *Bedikat Chametz* Be Done?

Question: Growing up, we scrubbed and cleaned our house for a month before Pesach, but on the night of *bedikat chametz*, we did a ceremonial *bedika*, which was unlikely to uncover any *chametz* (except the ten “planted” pieces). However, based on my study of the relevant *gemarot*, I understand that the serious search for *chametz* should be done specifically on the night of the fourteenth of Nisan. What should we really be doing?

Answer: In terms of the classical sources, your observation is correct. The *gemara* does not discuss the serious cleaning we do in advance, and it does instruct that the *bedika* is performed on the night of the fourteenth.

However, the phenomenon you describe existed already in the time of the *Rishonim*. The *Terumat HaDeshen*¹ reports that many people would sweep the house a few days before Pesach, put a few pieces of bread in some rooms, and stop the *bedika* when they found them. He rejects this practice based on the Mordechai,² who maintains that sweeping the house beforehand is not sufficient. The *Shulchan Aruch*³ concurs, saying that cleaning the house thoroughly before the night of the *bedika*, even with the intention of that serving as the *bedika*, does not exempt one from *bedikat chametz* on the night of the fourteenth. However, a few centuries later, the *Sha'arei Teshuva*⁴ cites and justifies the practice you refer to. Does the practice conflict with the *Terumat HaDeshen*'s ruling, or has the situation changed so that the *Terumat HaDeshen* would agree?

The main reason the Mordechai gives for requiring a *bedika* even

- 1:13. The *Terumat HaDeshen* lived in 15th century Germany.
2. *Pesachim* 535.
3. *Orach Chayim* 433:11.
4. Ad loc.

in a cleaned house is to avoid distinguishing between one *bedika* and another. In other words, *Chazal* instituted the time for doing a *bedika* as the eve of the fourteenth, and one should not say that his particular situation is an exception to the rule because he previously obviated the need. The *Terumat HaDeshen* already points out that if this were the only issue, it would have been sufficient to nominally fulfill the *mitzva* of *bedika* with a minimal *bedika* on the fourteenth. However, both the *Mordechai* and the *Terumat HaDeshen* stress that sweeping the house does not do a complete job, as *chametz* may still remain in the holes and cracks, and it is therefore not a valid replacement for *bedikat chametz*. The *Sha'arei Teshuva* addresses this concern, justifying the actions of those who do a cursory job on the fourteenth by arguing that they clean very carefully beforehand.

The *Magen Avraham*⁵ raises another issue. *Chazal* required that the *bedika* be done by candlelight at night or in an area with direct sunlight during the day. Few are careful to check all areas they clean in this manner. Furthermore, the *Taz*,⁶ *Bach*,⁷ and others say that even if one did a halachic level *bedika* on the thirteenth at night, he must repeat it on the fourteenth, the time *Chazal* instituted. The *Chok Ya'akov*⁸ and *Pri Chadash*⁹ say that one can fulfill the obligation of *bedika* on a night prior to the fourteenth, but the *Ba'er Heitev*¹⁰ notes that this opinion is on the condition that one is careful that *chametz* be kept away from the checked areas after that point.

We can still justify the prevalent practice even according to those who say that the *bedika* must be done on the fourteenth. Only those areas into which *chametz* is sometimes brought need to be searched.¹¹ One can claim that areas that were cleaned and into which people were subsequently careful not to bring *chametz* are thereafter

5. 433:20.

6. 433:1.

7. 433.

8. Ad loc. 23.

9. Ad loc. 11.

10. Ad loc. 1.

11. *Pesachim* 2a.

categorized as places that do not contain *chametz*. Thus, a superficial perusal of the house, during which one concentrates on confirming the assumption that indeed no *chametz* got into various rooms, may be considered as checking the relevant parts of the entire house.¹²

According to some *poskim*, the situation in which there is not really anything to check for on the night of *bedikat chametz* mandates the *minhag* to put out some pieces of bread in order to justify making a *beracha* on the search.¹³ Others accept the assumption that one is checking to ensure that *chametz* did not somehow enter the cleaned rooms, and they justify the *beracha* on other grounds.¹⁴

It would be wrong to imply that all *poskim* fully accept the practice you mention. The *Mishna Berura*¹⁵ seems to neither embrace it nor reject it. Rav Ovadia Yosef¹⁶ says that it is proper to do a serious *bedika* on the fourteenth. However, our orientation is to instruct people to follow a prevalent *minhag* when it is justifiable, as this one is. (In contemporary times, many people have large homes containing so many possessions that it is barely feasible to do a proper *bedika* in one night, in any case.) If one wants to be more stringent, that is his prerogative.

12. This is apparently the understanding of the *Sha'arei Teshuva* op. cit. See also *Piskei Teshuvot* 433:8.

13. See Rama, *Orach Chayim* 432:5; *Sha'ar HaTziyun* ad loc. 12.

14. *Aruch HaShulchan*, *Orach Chayim* 432:5.

15. 433:1.

16. *Yechaveh Da'at* 1:5.

D-16: *Bedikat Chametz in Shul*

Question: Must someone be appointed to do *bedikat chametz* in a *shul*, or is it enough that congregants are told to remove all *chametz* from their places?

Answer: The *Yerushalmi*¹ states that *shuls* and *batei midrash* require *bedikat chametz* because various meals are held in them. The *Tur*² says that the *shuls* of his time required *bedika* because small children would bring food inside. Major *Acharonim*³ stipulate that this *bedika* should be carried out in accordance with the rules of *bedikat chametz*, such as doing it on the night of the 14th of Nisan by candlelight. The *Shulchan Aruch HaRav*⁴ and *Mishna Berura*⁵ complain that *shamashim*⁶ are not sufficiently careful to do this *bedika* specifically on the 14th at night.

Let us take a more thorough look at the reason for this particular *bedika*. To begin with, there is a *machloket* among *Rishonim* why *bedikat chametz* is required in general. Rashi⁷ says that it is in order to avoid the Torah's prohibition of *bal yeirā'eh ubal yimatzei* (not to possess *chametz* in one's domain on Pesach). In contrast, *Tosafot*⁸ says that the Rabbis instituted *bedikat chametz* to distance people from the possibility of eating *chametz*.

It is unclear whether the first reason applies to *chametz* that might have been left behind in a *shul*. The *Chidushei Hagahot*⁹ maintains that were it not for the precedent of the *Yerushalmi*, we would say there is no need for *bedika in shul*; *bal yeirā'eh ubal yimatzei* cannot

1. *Pesachim* 1:1.
2. *Orach Chayim* 433, accepted by the *Shulchan Aruch*, *Orach Chayim* 433:10.
3. *Magen Avraham* 433:19; *Mishna Berura* 433:43.
4. 433:36.
5. Op. cit.
6. Those in charge of the technical running of the *shul*.
7. *Pesachim* 2a – see Ran, *Pesachim* 1a.
8. *Pesachim* 2a.
9. On the *Tur* op. cit.

apply to a public place, as it is not the domain of any individual. The *Perisha*¹⁰ says that we would have posited that *bal yeira'eh bal yimatzei* and *bedika* do not apply because whatever is left in a *shul* becomes *hefker* (rendered ownerless). He points out that the *Yerushalmi* assumes that we are more stringent regarding *shuls* than the regular rules would indicate. The *Da'at Torah*¹¹ conjectures that the problem is that the members of the community become partners in whatever is left in *shul*, and partners can violate *bal yeira'eh ubal yimatzei* in their joint possession of *chametz*. However, he questions whether there is much of a chance that a significant amount of *chametz* would be present (a *k'zayit*¹² per person), which would justify requiring *bedikat chametz*.

The *Aruch HaShulchan*¹³ presumes that since *bal yeira'eh ubal yimatzei*, which is likely the main reason for *bedikat chametz*, does not apply in a *shul*, one should not make a *beracha* before the *bedika*. The *Shulchan Aruch HaRav*¹⁴ and *Mishna Berura*¹⁵ disagree and maintain that a *beracha* is called for. Many others suggest that to avoid the doubt of saying a *beracha l'vatala*,¹⁶ the designee for the *bedika* in *shul* should check his house first and then proceed directly to check the *shul*, all based on the original *beracha*. The travel time is not a *hefsek* (break) regarding the *beracha*.¹⁷

There are opinions that *bedikat chametz* in a *shul* is not a public obligation per se, but that we are concerned that whoever might have left *chametz* behind (including the fathers of the young children mentioned above) would violate *bal yeira'eh ubal yimatzei*. The *shamash* has an obligation to look out for those members of the congregation who may unknowingly be in that situation. In any case, whoever

10. 433:11.

11. On the *Shulchan Aruch* op. cit.

12. Size of an olive.

13. *Orach Chayim* 433:12.

14. 433:36.

15. Op. cit.

16. A blessing of no value, which it is forbidden to recite.

17. See *Yechaveh Da'at* 1:5.

else is willing to lend a hand may search with a *beracha* on behalf of unspecified others.¹⁸

Based on the above presentation, it is logical that *bedikat chametz* in a *shul* is an exception to the regular rules. Therefore, one could advance the claim that there is no similar obligation to do a formal *bedika* in other public facilities. However, we do note that Rav Ovadia Yosef takes for granted that public institutions such as bus companies and airlines should check their relevant equipment for *chametz*.¹⁹

18. See *B'ér Sarim* 1v, 68–69; *Kinyan Torah BaHalacha* v:33.

19. *Yechaveh Da'at* 1, 5.

D-17: How Much Charoset Goes on the Maror?

Question: How much *charoset* should one eat along with the *maror*?

Answer: The *mishna*¹ states: “They brought before him *matza*, *chazeret*,² *charoset*, and two cooked foods, even though *charoset* is not a *mitzva*. Rabbi Elazar b’Rabbi Tzadok says it is a *mitzva*.” The *gemara*³ inquires what the purpose of *charoset* is according to each opinion. We will deal with each possibility separately.

If *charoset* is not a *mitzva*, we use it because of the concern about “*kappa*.” There are two main opinions among the *Rishonim* regarding what *kappa* is. Rashi says that it is a venom-like liquid that is found in sharp-tasting vegetables, and it is neutralized by the special essence or even the odor of *charoset*.⁴ Rabbeinu Chananel says that it is a dangerous worm that grows on *chazeret* and is killed by the *charoset*. *Tosafot*⁵ discusses why only a health hazard is raised and not a halachic one, as it is forbidden to eat worms. One possibility they raise is that this worm is considered a natural part of the vegetable and is not included in the prohibition of eating small creatures. Another possibility is that it is not likely enough that there is *kappa* for there to be a *kashrut* problem, but we are stricter regarding the safety concern.

According to the position that *charoset* is a *mitzva*, it serves as a remembrance either of the *tapuach* tree⁶ or of the mortar, each of which has historical significance in connection with *Bnei Yisrael*’s

1. *Pesachim* 114a.

2. Referring to *maror*.

3. *Ibid.* 116a.

4. See *Pesachim* 115b.

5. *Ad loc.*

6. Based on *Shir HaShirim* 8:5; see *Sota* 11b. Despite the fact that “*tapuach*” is an apple in Modern Hebrew, there are conflicting views among scholars as to the identity of the biblical *tapuach*.

stay in Egypt. Both explanations may actually be correct, as Abaye⁷ says that *charoset* should be sharp to recall the *tapuach* and thick to recall the mortar.

The classical sources do not mention **eating** *charoset* along with the *maror* but rather **dipping** the *maror* into *charoset*. In his commentary on *Mishna*,⁸ the Rambam claims that according to Rabbi Elazar b'Rabbi Tzadok, one should make a *beracha* of “*al achilat (eating of) charoset*,” but he notes that we do not rule that way. In his halachic work,⁹ not only does the Rambam not mention the *beracha*, but he also refers to dipping the *charoset*, not eating it. In fact, the *gemara*¹⁰ cautions not to immerse the *maror* in *charoset* for too long because the *maror* might lose its bitter taste. This appears to parallel the fact that we do not eat the *matza* and *maror* together earlier in the *Seder* so that the *maror* will not diminish the initial taste of the halachically more important *matza*.¹¹ The *Ran*¹² explains that since the *maror* is only dipped in the *charoset*, there is no problem of the *charoset* nullifying its taste the way we are concerned that *maror* (which requires a substantial amount) would nullify the *mitzva* of *matza*. Therefore, it should come as no surprise that the *Shulchan Aruch*¹³ says: “One must shake off the *charoset* from it [the *maror*].”

This does not mean that any amount of *charoset* on the *maror* endangers the validity of the *maror*. *Tosafot*¹⁴ says that since *charoset* was instituted to be used with the *maror*, even if only for health reasons, it does not compromise the fulfillment of the *mitzva* of *maror*. The *Shulchan Aruch* also does not instruct us to clean the *maror* entirely, but rather to shake off the *charoset* to prevent significant

7. 116a.

8. *Pesachim* 10:3.

9. *Chametz U'Matza* 7:11 (see *Lechem Mishneh* ad loc.) and 8:8.

10. *Pesachim* 115b.

11. *Ibid.* 115a.

12. *Pesachim* 25a in the *Rif's* pages.

13. *Orach Chayim* 475:1.

14. *Pesachim* 114a.

amounts from remaining. Consequently, one should not spoon on *charoset*, but only dip the *maror* in it.¹⁵

In summary, the *charoset* is not intended for eating, but rather for dipping, and one should not leave significant amounts of it on the *maror*. If one wants to eat more of the *charoset*, he should do so later during the meal or on another day of Pesach.

15. The *Mishna Berura* (475:13) indicates that there is no consensus regarding whether the entire amount of *maror* should be submerged or if it is sufficient to dip part of it.

D-18: Eating *Shmura Matza*¹ All of Pesach

Question: Should I eat only *shmura matza* all of Pesach? This seems to be becoming an increasingly popular practice. Is this Halacha, a worthwhile *minhag*, or neither?

Answer: There are certainly halachic elements to the question, but family and local *minhagim* should play a major factor in deciding what to do.

The *gemara*² says that one can eat on Pesach “dough of non-Jews” that has been checked for signs of leavening, as long as he eats (on the first night) a *k’zayit*³ of *matza* (i.e., *shmura matza*) at some point. We see from here that the **basic requirement** of eating *shmura matza* is fulfilled at the *Seder* with a *k’zayit*. (Nowadays, the practice is to have five *k’zeitim*, but that issue is beyond our present scope).

What is *shmura matza*? The grain/flour/dough from which *shmura matza* is made is watched over to preclude the possibility of leavening. The main opinions of *Rishonim* are that the supervision is either from the time of cutting of the stalks or from the kneading, when the flour is first exposed to water, and there is a compromise position that it starts at the time of grinding.⁴ The *Shulchan Aruch*⁵ rules that it is proper that the *matza* intended for use at the *Seder* should be guarded from the time of cutting, and this is the common practice.

The simple reading of the *gemara*⁶ is that this vigilance must be carried out in conjunction with the intention of making the *matza* fit for the *mitzva* of eating it on *Seder* night. The Rif’s⁷ version of the text,

1. *Matza* whose grain/flour is supervised to ensure that no water touches it until minutes before the baking.
2. *Pesachim* 40a.
3. The size of an olive.
4. See *Beit Yosef, Orach Chayim* 453.
5. *Orach Chayim* 453:4.
6. Op. cit.
7. *Pesachim* 12a in his pages.

however, does not require intent for the *mitzva*, but that the watching simply be for the purpose of making *matza*, i.e., taking steps to ensure that the product does not come in contact with water prematurely. It is noteworthy that even what we refer to as non-*shmura matza* is *shmura* according to many *Rishonim*, as care is taken that it not become *chametz* from at least the time of kneading.

The *gemara*⁸ derives from *p'sukim* that other than on the night of the *Seder*, the eating of *matza* on Pesach is a *reshut* (optional). The question remains whether eating *matza* is only a **neutral option** or whether it is the fulfillment of a **non-obligatory *mitzva***. While most posit the former, the Ba'al HaMaor,⁹ the *Chizkuni*,¹⁰ and the Gra¹¹ argue that it is a positive *mitzva* to eat *matza* throughout Pesach. However, even if one maintains that there is an optional positive *mitzva* throughout Pesach to eat *matza*, it is not clear that one must go out of his way (or spend significant money) in order to fulfill it.¹² It is also unclear whether *shmura matza* is required in order to fulfill it. Perhaps this weaker extension of the *mitzva* beyond the *Seder* does not depend on the element of *shmura*, and regular *matza* is therefore sufficient.¹³

The Rambam¹⁴ discusses the concept of *shmura*, not in the context of how to make *matzot* but as a Rabbinic stringency to avoid the possibility of *chametz*, and he does not differentiate between the first night and the rest of Pesach. The *Aruch HaShulchan*¹⁵ says that the Rambam holds that *shmura* is preferable because one should *l'hatchila*¹⁶ go beyond normal steps to ensure that the *matza* is not leavened, not because of the opportunity to fulfill a further *mitzva*.

8. *Pesachim* 120a.

9. *Pesachim* 26b in the Rif's pages.

10. *Shemot* 12:18

11. *Ma'aseh Rav* 185.

12. See discussion in *Mo'adim U'Zemanim* III:267.

13. See *Ma'aseh Rav* op. cit. and 186; *Meishiv Davar* 11:77.

14. *Chametz U'Matza* 5:8.

15. *Orach Chayim* 553:20–21.

16. The proper way to do something.

(This is consistent with the Rambam's apparent agreement with the Rif that the vigilance does not require intention for the purpose of the *mitzva*.) The *Chayei Adam*¹⁷ attributes this approach to the Gra. Although the Torah may insist upon this level of vigilance only on *Seder* night, it is logical that it should apply on some level throughout Pesach, as the transgression of eating *chametz* is identical for all seven days.

A possible practical difference between the reasons to prefer *shmura matza* is in regard to machine *matza*. Some authorities demand hand-made *matza* for the *Seder* because a machine cannot possibly have positive *mitzva* intent. These opinions should not require hand *matza* throughout Pesach according to the Rambam's approach.¹⁸ Another difference is whether one should eat some *shmura matza* or make sure that all the *matza* he eats is *shmura*. Whether the stringent practice applies only to *matza* or even to foods made from *matza* meal also depends on the two reasons. Finally, according to the *mitzva* element, there is something to gain by eating *matza* throughout Pesach, whereas if we are concerned about *chametz*, one who avoids eating *matza* actually decreases the risk.

In summary, the stringency of using *shmura matza* throughout Pesach is not frivolous. On the one hand, since people spend money on all sorts of Pesach delicacies, why not spend some on *shmura matza* also? However, there are dangers in creating family *minhagim* without knowing how things will end up. Do we want our children, who may not be able to afford the higher price of *shmura matza*, to feel compelled to buy it, when their grandparents did not? Will people refuse to eat at others' homes because they use regular *matzot*? Thus, while eating *shmura matza* for all of Pesach is a reasonable *chumra*, it is questionable whether one should adopt the *minhag*.

17. II:128:30.

18. There are different views as to whether there are more problems of possible leavening with *matza* made by machine or by hand. Of course, the matter could depend on the specific factory involved. In any case, the element of the Rambam's concept of *shmura* can be accomplished by machine.

D-19: Making Egg *Matzot* Available to Guests at a Hotel

Question: I run a hotel that has many guests for Pesach. Can we put a box of egg *matzot* on each table so that those who need them will find them easily, or must we be concerned for the very likely possibility that some guests will, out of ignorance or lack of interest, use these *matzot* when it is not warranted? Would it be considered *lif-nei iver*¹ (the violation of placing a halachic stumbling block before the “blind”)?

Answer: Although you are apparently aware of the basic bottom line on egg *matzot*, it is worthwhile to review the relevant sources. The *gemara*² says that dough made with fruit juices does not leaven. According to most *Rishonim*, this applies to eggs as well.³ However, there are several problems with relying on this ruling to produce various types of what we call egg *matzot* as a suitable Pesach product. (Different brands of “egg *matzos*” use different alternatives to water, and eggs are just one example. We will call all of them egg *matzot* for simplicity’s sake. The Hebrew and halachic term is *matza ashira*.⁴)

According to many *Rishonim* and the *Shulchan Aruch*,⁵ if flour is kneaded with fruit juice mixed with water, not only can the dough become *chametz*, but it is also expected to leaven more quickly than when flour is kneaded with water alone. Thus, not only would *kashrut* certifiers have to make sure that the flour was not exposed to water before the dough was made, but also that no water was mixed **into** the dough, even if it was subsequently baked within eighteen minutes.

1. See *Vayikra* 19:14.
2. *Pesachim* 35b.
3. See *Tur* and *Beit Yosef, Orach Chayim* 462.
4. Literally, rich *matzot*, i.e., *matzot* that contain ingredients other than flour and water.
5. *Orach Chayim* 462:2.

There is also a dispute between *Tosafot*⁶ (lenient) and Rashi⁷ (stringent) regarding if egg *matzot* do not become *chametz* at all or if their leavening is not complete enough to generate the consequences of full-fledged *chametz* but a lesser prohibition pertains. Most *Rishonim*⁸ and the *Shulchan Aruch*⁹ agree with *Tosafot*, and the Sephardic practice is indeed to permit eating egg *matzot* on Pesach.¹⁰ In contrast, the Rama¹¹ sets the tone for Ashkenazim, reporting that the *minhag* follows Rashi, and it is forbidden to eat egg *matzot* on Pesach. The Rama concludes with a compromise: when there is a pressing need to be lenient, such as for a sick or a very old person, one may eat egg *matzot*. It is wrong, however, for healthy Ashkenazim to eat egg *matzot* on Pesach (although it is permissible to possess them during Pesach and eat them afterwards¹²).

There is an additional problem regarding the use of egg *matza* at the *Seder*. Egg *matza* is *matza ashira*, which is not valid for fulfilling the *mitzva* of eating *matza* on *Seder* night, even though they are not *chametz*. Therefore, even Sephardim and the sick should not use egg *matza* during the parts of the *Seder* where there is an obligation to eat *matza*. (Other alternatives for those who experience difficulty eating regular *matza* exist but are beyond our present scope.)

It is a good question whether putting egg *matzot* on the tables is a violation of *lifnei iver* if you know that some people who should not eat them will do so. (See *Yechaveh Da'at*,¹³ who demonstrates that even a Sephardi, who may eat egg *matzot* himself, may not give them to an Ashkenazi without informing him of the issue.) If you are not aware of the status of the people at each table, then you could use rely

6. *Pesachim* 35b.

7. *Pesachim* 36a.

8. Including the Rambam, *Chametz U'Matza* 5:2.

9. *Shulchan Aruch*, *Orach Chayim* 462:1.

10. See *Yechaveh Da'at* 1:10.

11. *Orach Chayim* 462:4.

12. *Mishna Berura* 462:18.

13. Op. cit.

on the principle of *t'liya*.¹⁴ This means that when it is quite possible that the object one is giving to someone will be used properly, it is permitted to give it to him even though there is a good chance he will use it improperly. Whereas this is a legitimate approach to take in cases of problems that are difficult to solve (e.g., someone who runs a large store and cannot keep track of who is buying what), it is not acceptable here. First, what should you, your waiter, or your *mashgiach* do upon learning who is who and seeing people acting improperly? Furthermore, how could you allow those who were told that the *kashrut* of your establishment is good to make a mistake under the assumption that anything on the table is acceptable?

A simple solution is to have a table with egg *matzot* placed off to the side with a large sign that identifies the egg *matzot* as something that Ashkenazim may eat only when the situation is pressing. You may suggest that those with questions should ask the rabbi or *mashgiach*.

14. See *Taz, Yoreh Deah* 251:1.

D-20: Forgotten Chametz Found After Pesach

Question: I spent some time in Hong Kong in the fall and since I was planning to return the next summer, I left some things there, including a bottle of scotch. I did not give thought to it until I returned in May. Is it *chametz she'avar alav haPesach*?¹ While I did not include it in my *mechirat chametz*,² did my *bitul chametz*³ help?

Answer: We accept Rabbi Shimon's opinion⁴ that *chametz she'avar alav haPesach* is a Rabbinic injunction that prohibits eating or benefiting from *chametz* that was owned by a Jew on Pesach, due to the violation of *bal yeir'eh ubal yimatzei*.⁵ When *bal yeir'eh ubal yimatzei* does not apply, neither does *chametz she'avar alav haPesach*.⁶ Ostensibly, then, *chametz* that was included in *bitul chametz*,⁷ which removes the Torah prohibition of *bal yeir'eh ubal yimatzei*,⁸ should be permitted after Pesach. The *Yerushalmi*⁹ cites a *machloket* regarding whether this is indeed the case. We accept the opinion of R. Yochanan, who forbids it due to concern that one will abuse the system.¹⁰

There would seem to be another factor that would incline us to be lenient in your case – you did not remember that you were in possession of the *chametz* in question. However, the Rambam¹¹ and

1. *Chametz* owned by a Jew over Pesach, which is forbidden to use after Pesach.
2. Sale of *chametz*.
3. Nullification of *chametz*.
4. *Pesachim* 30a.
5. The prohibition to possess *chametz* during Pesach.
6. *Ibid*.
7. Which usually includes all *chametz*.
8. *Pesachim* 4b.
9. See Rosh, *Pesachim* 2:4.
10. *Shulchan Aruch, Orach Chayim* 448:5.
11. *Chametz U'Matza* 1:4.

*Shulchan Aruch*¹² rule that *chametz she'avar alav haPesach* is forbidden even when one left the *chametz* over *b'shogeg* (accidentally) or *b'oness* (due to extenuating circumstances). The *Bi'ur Halacha*¹³ seriously considers the claim of some *poskim* that when the grounds for leniency can be combined (i.e., *bitul* was performed and the *chametz* was left accidentally), the prohibition of *chametz she'avar alav haPesach* does not apply. However, he focuses primarily on a case of *oness*, whereas your case is one of *shogeg*, which may be more severe.

Nevertheless, there is yet another important point of leniency here. Because you left Hong Kong more than thirty days before Pesach and did not have any intention to return until after Pesach, you were not required to perform *bedikat chametz*¹⁴ before leaving.¹⁵ There is a major *machloket* regarding whether this exemption applies only to the search for unknown *chametz* or whether one is exempt even from removing known *chametz*.¹⁶ According to the lenient opinion, you did not neglect any responsibility, as someone in that situation may rely on the *bitul* he performs wherever he finds himself. If so, there certainly would not be a problem of *chametz she'avar alav haPesach*.

According to the opinion that you should have taken care of the *chametz* you knew about, when you were removing the *chametz* from your regular house, whether through a formal *bedika* or other means (including *mechirat chametz*), you should have sold the *chametz* in Hong Kong or had someone get rid of it.¹⁷ Your failure to remember

12. *Ibid.*:3.

13. To *Shulchan Aruch, Orach Chayim* 448:3.

14. A search for *chametz*.

15. *Pesachim* 6a; *Shulchan Aruch, Orach Chayim* 436:1.

16. See *Mishna Berura* 436:5. Among those who maintain the lenient view are the *Ritva, Pesachim* 6a, and *Pri Chadash* 436:1.

17. You optimally should have sold the *chametz* with a rabbi in Hong Kong, both to make the sale more realistic and to solve the problem of timing. If done in the United States, the *chametz's* location should have been mentioned specifically. (It is far from optimal to rely on catchall phrases, such as "wherever the *chametz* happens to be," certainly when the *chametz* is in a different continent.) It would also have been better to do an early sale, as we will explain.

the Hong Kong *chametz* is not fundamentally different from doing a *bedika* but forgetting to look under the couch. Regarding a situation in which one performed an imperfect *bedika* and a proper *bitul*, the *Mishna Berura*¹⁸ brings strong indications in both directions regarding whether *chametz she'avar alav haPesach* applies. He concludes that in the event of significant loss, one can sell the *chametz* to a non-Jew. This is usually forbidden for *chametz she'avar alav haPesach*, but it is permitted according to some opinions when one did *bitul*.

*Bitul*¹⁹ and *mechirat chametz*²⁰ are effective only until an hour before *chatzot* (halachic midday) of the day before Pesach. Therefore, depending on where you live and at what time you did *bitul* on the night of the *bedika*, there could be a complication, as Hong Kong is between thirteen and sixteen hours ahead of the United States. (*Mechirat chametz* would definitely have had the complication unless there was an early sale.²¹) Although most *poskim* say that in such matters, we follow the owner's place, not where the *chametz* is, the *Igrot Moshe*²² asserts that if the *chametz* is in a location where the timing does not work out, it becomes forbidden.²³ However, given the other indications for leniency, we maintain that if the loss of an (expensive?) bottle of scotch is significant to you, you can sell it or give it as a present to a non-Jew.

18. 448:25.

19. *Shulchan Aruch, Orach Chayim* 434:2.

20. *Ibid.* 448:4.

21. See *Living the Halachic Process*, vol. 1, D-17.

22. *Orach Chayim* IV:94.

23. See *Mechirat Chametz K'Hilchato* 3:17 and *Living the Halachic Process* op. cit.

D-21: Changing One's Custom Regarding the Days of Sefira¹

Question: May one change the *minhag* he keeps for the restrictions of the *sefira* period from year to year, according to his needs?

Answer: After reviewing the historical and halachic backgrounds of the national mourning period of *sefira*, we can deal with your question more intelligently.

The *gemara*² reports that many thousands of Rabbi Akiva's disciples died one year in the period between Pesach and Shavuot. As a result, *minhagim*, which are now binding, developed to refrain from marriages, music and dancing, and haircutting as a sign of national mourning during the course of thirty-three days.³ There are many versions as to the exact time period during which the disciples died and during which these restrictions apply. The *Shulchan Aruch*⁴ writes that the restrictions are lifted from the thirty-fourth day of the *sefira*. According to others, the restrictions are lifted on the thirty-third day (*Lag BaOmer*).⁵ Other approaches begin the restrictions at the beginning of Iyar and continue until right before Shavuot.⁶ Another opinion mandates the restrictions during the entire period from Pesach to Shavuot and arrives at thirty-three days by subtracting certain joyful days, including *Lag BaOmer*, on which the restrictions do not apply.⁷

Although the Rama is clear that there should be a uniform *minhag* in each locale, recent *poskim* have pointed out that due to the

1. The time of the year between Pesach and Shavuot during which practices of national mourning are observed.
2. *Yevamot* 62b.
3. See *Tur* and *Beit Yosef, Orach Chayim* 493.
4. *Orach Chayim* 493:2.
5. Rama ad loc. This is the most widely followed Ashkenazic *minhag*.
6. *Ibid.*:3.
7. See *Mishna Berura* ad loc. 15.

mingling of people from different communities of origin, such uniformity is no longer viable.⁸ As far as deciding which *minhag* one should personally choose, he may employ a guideline noted by the *Chok Yaakov*.⁹ Since the mourning of *sefira* commemorates an event in the distant past and the practice is obligatory only due to *minhag*, one may be lenient regarding questions that arise. Therefore, those without a clear *minhag* are allowed to pick one based on convenience, if they so desire, and all of the variations that we mentioned are valid.

Usually, when one chooses a *minhag* or a way to fulfill a *halacha* among various options, he may not do so in a manner in which he ends up employing mutually contradictory leniencies. For example, the *gemara*¹⁰ says that one may choose either option with regard to the question of the cutoff point between the times of *davening Mincha* and *Ma'ariv*, but *poskim* point out that one may not use the “gray” time period for both *Mincha* and *Ma'ariv*.¹¹ However, with regard to following mutually contradictory opinions during different time periods (in the case of *Mincha* and *Ma'ariv*, using the gray area for one or the other inconsistently but only on different days), there is room for leniency.¹² In our case of *sefira*, this would allow one to adopt different practices on different years.

Rav Moshe Feinstein¹³ presents a fascinating argument to justify switching *minhagim* from year to year that is specific to *sefira*. He notes that most, if not all, of the *minhagim* are predicated on the assumption that there must be thirty-three days between Pesach and Shavuot that are governed by the laws of *sefira*. The specific manner that one calculates that period is not crucial, as long as it follows a logical system. Therefore, one can freely switch from an approach observed one year to a different but equivalent approach the next year.

8. See *Igrot Moshe, Orach Chayim* 1:159.

9. 493:2. See also *Igrot Moshe* op. cit.

10. *Berachot* 27a.

11. See Rosh, *Berachot* 4:3.

12. See *Shulchan Aruch, Orach Chayim* 233:1.

13. *Igrot Moshe* op. cit.

Rav Moshe argues that according to the Gra, this is true regarding all the *minhagim* except the one that finishes on *Lag BaOmer*, before thirty-three days have been completed. It would be problematic to switch from one of the other *minhagim* to that *minhag*. However, Rav Moshe points out that according to the *Bach*, the *minhag* of up to *Lag BaOmer* is also predicated on keeping thirty-three days, so that one can interchange among all of the *minhagim*. Therefore, one may follow the *Bach's* position to arrive at a leniency.

In summary, although one should generally be consistent about the opinions he follows regarding halachic practices, the idea of switching *minhagim* regarding the dates of the *sefira* restrictions from year to year is widely accepted and can be justified in several ways.

D-22: Remodeling Work During the Three Weeks and the Nine Days

Question: We are remodeling our kitchen. My wife ordered and signed a contract for work to be done on cabinets and other things that is supposed to start on July 15 (23 Tammuz). May work continue during the Nine Days [before and including *Tisha B'Av*] or must it be stopped?

Answer: The *gemara*¹ says that from the beginning of the month of Av until after *Tisha B'Av*, one should lessen his business dealings and his building activities. The *gemara* does not specify the types of business transactions and building it refers to, nor does it clarify what “lessen” means. However, in the context of restrictions that apply on fast days that are established in response to a drought, the *gemara*² refers to “building of joy” and gives the example of the house in which one’s son will be married. The *Yerushalmi*³ gives a counter example of a type of construction that is permitted: when a wall needs support to prevent its collapse. What is the *halacha* in cases between these two extremes?

The *poskim* arrive at the following basic consensus. If there is a fear of collapse, one can do what is required even for the needs of a “building of joy.”⁴ In general, however, any type of construction whose purpose is to enhance and not for a necessity should not be performed during the Nine Days.⁵ This would apply to most cases of kitchen renovations, which usually take a functional kitchen and make it more attractive or more convenient. There is an opinion that this is forbidden even from the beginning of the Three Weeks.⁶

1. *Yevamot* 43b.
2. *Tàanit* 14b.
3. *Tàanit* 4:6.
4. *Shulchan Aruch, Orach Chayim* 551:2.
5. *Mishna Berura* 551:12.
6. Maharil, *Tisha B'Av* 8.

However, one has the right to be lenient on the matter before the Nine Days, especially if she already made an agreement with workers.

This brings us to what may be a major point of leniency in your situation. Several *poskim*⁷ say that if one hired a non-Jew before the Nine Days to do the work in a manner in which he is paid by the job (as opposed to according to time), the job is in the province of the non-Jew and may be done during the Nine Days. However, some of these *poskim*⁸ add the proviso that if the worker will accept a small fee to delay the work, the owner should prefer that option. Another scenario in which it is not required to push off the work is when the delay will cause a significant loss.⁹ Some examples include when the work or materials will be more expensive later or a case in which an interim setup would be difficult to maintain given that the work has already begun.

Essentially, there are three ideas that motivate us to refrain from certain types of acquisitions and construction during the period of national mourning. One is that the *mazal* of Bnei Yisrael is low at that time (which is something you may want to consider). Another is that one should avoid doing the type of activities that are considered overly happy. The third idea is that the entire Three Weeks is a time that is historically tragic for us and we are therefore not supposed to recite the *beracha* of *Shehecheyanu*, which includes the phrase “*laze-man hazeh*” (“to this time”).¹⁰ If you plan to recite *Shehecheyanu* on the renovations (which itself is a good question that is beyond our present scope),¹¹ it should not be done during this period. Consequently, it would be problematic to have the job finished before mid-day of the 10th of Av.¹² Even if you do not contemplate making the

7. Maharil *ibid.*, cited by the *Bach*, *Orach Chayim* 551, *Eliya Rabba* 551:3, and *Mishna Berura* 551:12.

8. Maharil and *Mishna Berura* *op. cit.*

9. *Mishna Berura* 551:13.

10. *Shulchan Aruch*, *Orach Chayim* 551:17.

11. See *Mishna Berura* 223:11–12.

12. See parallel discussion in *Igrot Moshe*, *Orach Chayim* 111:80.

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beracha, it is still proper that the project not be completed during the Nine Days, as this affords greater joy than the interim progress on the work does. Therefore, in the event you have little choice but to have the workers do the bulk of the work during the Nine Days, try to have some of the overall job finished afterwards. Additionally, no work should be done on *Tisha B'Av* itself.

Section E:
Kashrut



E-1: Does Tasting a *Fleishig* Crumb Make One *Fleishig*?

Question: During a *milchig* meal, I saw a crumb on the table, which I assumed was from bread. I put it on my tongue and then realized it was a crumb from the coating of chicken schnitzel. Of course, I immediately spit it out. Could I have continued the *milchig* meal, or was I *flesihig* and therefore required to wait six hours?

Answer: We will first analyze the explanations offered by the *Rishonim* for the practice of waiting six hours (or however long one's *minhag* requires) between eating meat and milk and see which apply to your case. We will then refer to some of the *Acharonim*'s rulings to confirm that the analysis is applicable in practice.

The *gemara*¹ requires one to wait the amount of time in between typical meals between eating *fleishig* food and subsequently eating *milchig* food, but not vice versa. Rashi² explains that a certain fatness comes out of the meat that one eats, and this remains in the mouth for quite some time. The Rambam³ explains that the issue is the possibility that some meat will remain between the teeth.

Many authorities⁴ discuss practical differences between these explanations. One difference occurs if one chewed meat but removed it before swallowing. The Rambam would require waiting because it is possible that some meat became stuck between the teeth. Rashi, however, would not require waiting because the taste lingers only when one swallows the meat.⁵ Another difference pertains if one finds meat between his teeth after six hours. The Rambam apparently assumes that by then the meat is no longer problematic. According

1. *Chulin* 105a.

2. Ad loc.

3. *Ma'achalot Asurot* 9:28.

4. Including the *Tur*, *Yoreh Deah* 89.

5. See *Shach*, *Yoreh Deah* 89:2.

to Rashi, however, it is assumed to pose a problem. We accept the stringencies that follow from both explanations.⁶

If we posit, as above, that chewing does not pose a problem according to Rashi, then briefly having a *fleishig* crumb on one's tongue certainly does not. Similarly, according to the Rambam, it is not logical to be concerned about meat between the teeth if the taster did no chewing at all.

Our case is quite similar to one discussed by early authorities in which after eating and waiting six hours, someone found and removed a piece of meat from between his teeth. In both cases, meat was in the mouth recently and was then removed, and in both cases, there is no concern for the impact of a recent eating. The *Shach*⁷ says that even according to Rashi's opinion that meat is still considered *fleishig* after six hours in the mouth, one does not have to wait another six hours from that point. Nevertheless, the Rama⁸ maintains that in this situation, one should rinse his mouth before eating *milchig*. The *Aruch HaShulchan*⁹ explains the Rama's rationale: it is not reasonable that a mouth that had meat in it one moment could have milk in it the next moment without taking steps to remove the residue.

Most *poskim*¹⁰ assume that the required manner of removing the residue is the same as when one wants to eat *fleishig* soon after eating *milchig*. In that context, we *pasken* that one needs to rinse the mouth with a liquid (*hadacha*) and eat a solid food to absorb the remaining taste (*kinuach*).¹¹ According to our analysis, then, you could have continued your *milchig* meal after rinsing your mouth and eating a *pareve* food. You should also have made sure there was no *fleishig* residue on your hands by either checking them or washing them.¹²

6. *Tur* *ibid.*; see *Shulchan Aruch* and Rama, *Yoreh Deah* 89:1.

7. *Ad loc.* 3.

8. *Ibid.*

9. *Ad loc.* 5.

10. *Shach* *op. cit.* 4; *Chochmat Adam* 40:12; *Aruch HaShulchan* *op. cit.*

11. *Shulchan Aruch* *op. cit.* 2.

12. See *Shulchan Aruch* and Rama *ibid.* 2–3.

Despite this conclusion, general practice is sometimes stricter than analysis would indicate, as we will show with an example that resembles your case. The *Pri Megadim*¹³ demonstrates that if one only chewed an otherwise *pareve* food that had absorbed some meat gravy, he has no inherent reason to wait six hours. Nonetheless, the *Pri Megadim* claims that due to the concept of *lo p'lug* (not distinguishing between similar cases that fall into the same category), one should wait six hours in this case. The *poskim*¹⁴ accept this stringency, which raises the possibility that in our case, as well, we should follow a more stringent practice than our analysis would indicate. Nevertheless, the *poskim* rule regarding our case that one who merely tasted food with his tongue is not treated like one who chewed it, and he does not need to wait six hours.¹⁵ However, both *kinuach* and *hadacha* are required.¹⁶

(Your situation includes additional mitigating circumstances that make leniency easier. However, even without them, one does not have to wait before eating *milchig*, and if necessary, it might even suffice to wash one's mouth or eat something in between.¹⁷)

13. *Mishbetzot Zahav, Yoreh Deah* 89:1.

14. *Pitchei Teshuva* ad loc.:1; *Kaf HaChayim* ad loc.:3.

15. *Pri Chadash, Yoreh Deah* 89:18; *Aruch HaShulchan* 89:14; *Darchoi Teshuva* 89:10; *Kaf HaChayim* op. cit. 4.

16. *Pri Chadash* and *Aruch HaShulchan* op. cit.

17. See *Badei HaShulchan, Yoreh Deah* 89:19.

E-2: Using a Knife Sharpener for *Milchig* and *Fleishig* Knives

Question: Can I use the same mechanical knife sharpener for *milchig* and *fleishig* knives?

Answer: In order to answer your question, we must address two different scenarios.

If you are the first to use the sharpener, then a simple precaution will prevent problems from arising. As long as you make sure that the knife's blade is clean when sharpening, there will be no transfer of *ta'am* (absorbed taste) from the knife to the sharpener, which will then remain *pareve*. This is because *ta'am* is not transferred from one *kli* (utensil) to another without a capable medium.¹

Before continuing, we must note that one should not take the cleanliness of a knife for granted, even when it appears to be clean. The *gemara*² says that a radish that was cut with a knife that is used to cut meat is assumed to be *fleishig*. Rashi³ explains (as one of two explanations) that a knife often has a thin layer of fat on it, and this layer may come off onto the radish when it is cut. One might thus claim that the standard *fleishig* knife has residue on its surface, which can be transferred to the knife sharpener with the help of the friction and heat that are produced during the sharpening process. However, *poskim* assume that it is possible to clean a knife so that no residue remains. Only when one does not clean it right away, but rather allows the fat to congeal on the knife, is it insufficient to merely wash it clean. In that situation, *ne'itza b'karka* (plunging the knife repeatedly into firm earth) becomes necessary in order to properly clean

1. Rama, *Yoreh Deah* 92:8.
2. *Chulin* 111b.
3. Ad loc. 112a.

it.⁴ (Many say that using an abrasive cleaning agent, such as a strong detergent or steelwool, is equivalent.)

If the sharpener was previously used without care having been taken to ensure that the knives were clean, a problem arises. During sharpening, surface meat or milk residue may have gotten onto and/or into the metal of the sharpener. Even so, if you subsequently clean the sharpener and the knives that are to be sharpened before the next use, there will not be any transfer of *ta'am*, as we explained above that this will happen only with the help of some medium. However, if either the sharpener or subsequently sharpened knives remain soiled, the transfer of *ta'am* is possible. For example, if the sharpener remains soiled on its surface by *milchig* residue, a taste may be transferred into the blade of a *fleishig* knife that is being sharpened and, in addition, the mixture of the tastes will transfer back to the sharpener. If the sharpener is cleaned after being made *milchig* but another knife being sharpened has food on its surface, the *milchig ta'am* can be transferred from the sharpener to the food and, simultaneously or subsequently, to the knife. It is true that if the clean sharpener sat unused for 24 hours, *ta'am* that emanates from it is assumed to give off a detrimental taste and the matter is far less problematic (details are beyond our present scope). However, this factor is insufficient to allow unrestricted, continual use.⁵

The question is if we can be optimistic about how the sharpening will be done or if we need to assume the worst. *Hagalat Keilim* (Cohen)⁶ cites an opinion that does not permit giving knives to a non-Jewish professional to sharpen out of concern that the sharpeners will have a residue from non-kosher meat or fats. However, he points out that in our times, people usually give only clean knives to be sharpened. Furthermore, he implies that even during the time of the *Rishonim*, indications are that few *poskim* were concerned about this problem. For example, in discussing the issue of giving a knife

4. See Rama, *Yoreh Deah* 94:7, and *Darkei Teshuva* ad loc.102.

5. See response E-3.

6. 13:(260).

to a non-Jew for sharpening, the Mordechai⁷ raises only the concern that the tradesman will make personal use of it for non-kosher food, not that the sharpening itself is problematic. Rav Cohen concludes that it is proper and sufficient to carefully clean a sharpener before using it.

In conclusion, while it is conceivable that using one knife sharpener for both *milchig* and *fleishig* could cause problems, it does not seem necessary to be concerned about this possibility. The key is to take note that the knives that will be sharpened are clean and that the sharpener itself appears clean.

7. *Avoda Zara* 833.

E-3: Kashering a Water Kettle that Came in Contact with Cheese

Question: I put a hot, *pareve* water kettle in a *milchig* sink and saw that it touched a relatively small piece of cheese. Do I need to *kasher* the kettle, and if so, how?

Answer: Had the kettle simply touched a perfectly clean, reasonably dry *milchig* sink, no *kashering* would have been necessary. This is because *ta'am* (halachic taste) is transferred from one *kli* (utensil) to another only via a medium such as food or significant moisture.¹ (For this reason, one may put both *milchig* and *fleishig* pots on the same stovetop grates.) However, in your case, the kettle touched the *milchig* food itself, and we must assume there was some absorption into the kettle² if it was hot enough to cause the transfer of *ta'am* (*yad soledet bo* – approximately 45°C/113°F).

What would happen if you used the kettle without first *kashering* it? Even if you used the kettle within 24 hours to boil water and the water later became mixed into something *fleishig*, the food would be permitted for Sephardim, and perhaps for Ashkenazim.³ This is because of the concept of *notein ta'am bar notein ta'am*. If the “problematic” taste began as a permitted food (e.g., dairy) and is twice removed from its source (from cheese into kettle, from kettle into water), the weak remaining taste does not create a new prohibited state (when mixed with meat). Ashkenazim should not purposely mix the water with a *fleishig* food,⁴ and Sephardim should not boil water in the *milchig* kettle having in mind to mix it with *fleishig*.⁵

The halachic situation is more lenient if the *kli* sat unused for 24

1. Rama, *Yoreh Deah* 92:8.
2. See *Shulchan Aruch*, *Yoreh Deah* 105:3, which states that even when something warm is placed on something cold, there is some degree of transfer of taste.
3. See *Shulchan Aruch* and Rama, *Yoreh Deah* 95:2.
4. Rama op. cit.
5. *Shach* ad loc. 4

hours. In most cases, if one cooks food in a pot that became *treif* but has not been used for 24 hours, the food remains kosher. This is because of the concepts of *eino ben yomo* and *notein ta'am lifgam*. The absorbed taste that remains in the walls of a utensil for over 24 hours becomes spoiled to the extent that whatever taste is subsequently transferred harms the food that is cooked in the pot, and this taste therefore does not make other food *treif*.⁶ Therefore, water boiled in the kettle that absorbed *milchig* taste at least 24 hours earlier should not be considered *milchig*.⁷

However, although the food we want to heat in the *kli* would remain kosher even if the *kli* is not *kashered*, the rule is that *kashering* is required. This is because the Rabbis were concerned that people would confuse pots that had been *treifed* recently with those that had not been used for 24 hours. Therefore, the *kli* must be *kashered* as if it were *treifed* within 24 hours.⁸ If the piece of cheese that your kettle touched was very small, it is possible that no *kashering* is necessary.⁹ Otherwise, you are required to *kasher* the utensil that absorbed *milchig* taste if you want to use it for *pareve* food that can subsequently be mixed with *fleishig*.

It is sometimes easier to *kasher* a *pareve kli* that became *milchig* than to *kasher* a *treif* one. A *kli* that absorbed *ta'am* while over a flame without a liquid medium requires *libun*, exposing it to very high “dry” heat,¹⁰ commonly available only from blowtorches and self-cleaning ovens. However, if the absorbed *ta'am* came from a permitted food with halachic limitations (e.g., milk or meat), it is sufficient to put

6. *Shulchan Aruch, Yoreh Deah* 103:5.
7. Admittedly, the Rama, *Yoreh Deah* 95:3 says that we put certain limitations on the use of this water because it can be easily replaced.
8. *Avoda Zara* 76a.
9. See *Binat Adam* 41:58, who rules this way based on a combination of factors, including the opinion that when there is consistently enough food cooked in the pot so that the small quantity absorbed will not give a perceptible taste, then one is allowed to use the pot (see *Shulchan Aruch, Yoreh Deah* 99:9, with commentaries).
10. *Shulchan Aruch, Orach Chayim* 451:4.

the *kli* into boiling water, a process called *hagala*.¹¹ In your case, in which the *ta'am* was absorbed away from a fire, there is no need for full *libun* in any case.

When *hagala* works, an easier form of *libun* known as *libun kal* is also valid.¹² Although there are differing opinions regarding the heat level needed for *libun kal*, most assume that it is sufficient to leave the *kli* in a normal oven at its highest setting for at least a half hour. One of the technical advantages of *libun kal* is that if it is done for long enough, it burns up problematic grime that is hard to remove.¹³ This makes it unnecessary to carefully clean the entire *kli* from residue. Thorough cleaning is necessary prior to *hagala*, and this may be difficult or impossible.¹⁴

A kettle that is partly plastic does not seem to be a candidate for *libun kal* because the high temperature may ruin it. (This also makes it forbidden to *kasher* it in this way even if one is willing to take the risk.¹⁵) One could remove the plastic section, do the *libun kal*, and reattach the plastic (assuming the plastic part did not touch the cheese). Theoretically, one should be able to apply the heat of *libun kal* to the part of the *kli* that absorbed the cheese. In this way, the rule *k'bol'oh kach polto* (just as it absorbs, so it expels) presumably applies.¹⁶ However, the *Shach*¹⁷ and others say that it is proper to rely on this leniency only *b'di'aved* (after the fact). Nevertheless, if it is not possible to clean the *kli* and do *hagala* to it, it is possible to employ *libun* to the place of the absorption alone. This is especially reasonable regarding a *kli* that will be used for *pareve*, and certainly if the amount of *ta'am* that was absorbed is tiny compared to the amount of water one regularly uses.¹⁸

11. *Avoda Zara* 76a.

12. Rama, *Orach Chayim* 451:4.

13. *Ibid.*

14. See *Tur*, *Yoreh Deah* 121; *Hagalat Keilim* (Cohen) 6:(5).

15. *Shulchan Aruch*, *Orach Chayim* 451:1.

16. Rama, *Yoreh Deach* 121:6.

17. *Ad loc.* 18.

18. See *Shulchan Aruch*, *Yoreh Deah* 99:7.

E-4: Rinsing After Eating *Pareve* Food Cooked in *Fleishig* Pot

Question: I know that if one eats *milchig* food, he has to wash his hands and rinse his mouth before eating *fleishig*. What if he eats *pareve* food that was cooked in a *fleishig* pot? Although he does not have to wait six hours, does he at least have to clean his mouth and hands?

Answer: The matter of milk and meat is one in which Halacha employs more stringency than one might expect. This applies both to what is considered *milchig* and *fleishig* and to the measures required between eating the two. We will examine whether your case also falls on the side of stringency.

In general, when something not kosher is cooked in a pot, it makes the pot “not-kosher,” which in turn makes the food that later cooks in it not kosher, etc. However, kosher foods that only have the potential to become not kosher – such as meat or milk foods, which may become not kosher if mixed with the opposite type – lose that ability when their residues are sufficiently removed from their original state. This status is known as *notein ta’am bar notein ta’am*, or *nat bar nat*. Based on this idea, hot *pareve* food that was placed in a *fleishig* utensil, for example, does not become forbidden when mixed with *milchig* food because the *fleishig* taste in the *pareve* food is not significant enough to produce *basar b’chalav* (meat mixed with milk).¹ However, the Rama² says that if the food was cooked or roasted in a pot that had been used for *fleishig* within 24 hours, one is not allowed to mix it with *milchig* food and, of course, vice versa. This does not mean that we treat the otherwise *pareve* food as totally *milchig* or *fleishig*. In fact, the Rama says that you may put this food into a utensil of the other type. Your question is whether

1. *Chulin* 111b; *Shulchan Aruch*, *Yoreh Deah* 95:2.
2. *Ad loc.*

according to Ashkenazim, who follow this view of the Rama, the food is *fleishig* enough to require washing the hands and mouth before eating *milchig*.

In order to answer this good question, let us review the laws dealing with the amount and type of separation between eating milk and meat. The *gemara*³ discusses waiting between eating meat and subsequently eating cheese but states that no wait is required before eating meat after cheese. The *gemara* concludes, however, that one should either check or wash his hands and also clean his mouth before eating meat. The *Shulchan Aruch*⁴ rules that these requirements apply only regarding actual meat and milk/cheese. However, between eating two *pareve* foods, when one was cooked together with meat and the other with milk, one does not need to wait or wash. In practice, the *minhag* seems to be to wait even after eating *pareve* food that was cooked together with significant enough amounts of *fleishig* to impart a *fleishig* taste before eating even *pareve* food cooked with similar amounts of *milchig*.⁵

In any case, the Rama⁶ states unequivocally that if one ate *pareve* food cooked in a *fleishig* pot, he can eat even cheese immediately afterward. This makes a lot of sense, as we saw that according to the *Shulchan Aruch*, one could even mix this basically *pareve* food directly with milk (the Rama is one step more stringent). In fact, to make this statement more of a *chiddush*, some say that it concerns a case in which there was a little actual meat gravy in the pot⁷ or when the food that was cooked in the pot was sharp, in which case the leniency of *nat bar nat* does not usually apply.⁸ Certainly, in the event that ordinary *pareve* food was cooked in a clean *fleishig* pot, one does not have to wait afterward.

What about washing one's hands and rinsing one's mouth? These

3. *Chulin* 104b–105a.

4. *Yoreh Deah* 89:3.

5. See opinions in *Badei HaShulchan* 89:82.

6. *Yoreh Deah* 89:3.

7. *Shach*, *Yoreh Deah* 89:19.

8. Rabbi Akiva Eiger ad loc.

are more widely required than waiting, as we see from the case of one who ate dairy before meat. While one could contemplate stringency, the *Eliyahu Rabba*⁹ maintains that it is not necessary to take any of those steps, and this approach is accepted by the *Kaf HaChayim*¹⁰ and contemporary *poskim*.¹¹ The *Badei HaShulchan*¹² raises the possibility that when the *pareve* food is sharp or when one actually sees or feels residue on his hands or mouth, he should have to remove it. However, as he seems to be aware, he does not substantiate this claim with sources, and since the logic can go either way, we will not introduce further stringency than already exists. Thus, the answer to your question is that after eating any *pareve* food cooked in a *fleishig* pot, no washing or rinsing is needed.

9. *Orach Chayim* 173:4.

10. *Yoreh Deah* 89:61.

11. Including *The Laws of Kashrus* (Forst) 8:(71).

12. *Bi'urim* to 89:3.

E-5: What May a Slaughterhouse Do With Non-Kosher Byproducts?

Question: We want to open a kosher slaughterhouse in South America and were wondering if it is permitted to sell the non-kosher parts of the animals to non-Jews. That makes economic sense, but is it permitted to benefit from forbidden foods?

Answer: You are apparently early in the planning process. In order to run a kosher meat operation, you will need an expert rabbinic staff not only to carry out the *shechita*, but to ensure that other necessary halachic steps are done properly. The head of that staff should be able to answer this and a host of other questions responsibly. If he is not, the whole operation will not be worth very much from a *kashrut* perspective. However, we are glad to help with your feasibility check.

It is permitted to benefit from almost all forbidden food. Exceptions include meat cooked with milk, *chametz*, and *orlah* (fruit from new trees). It should not be forbidden to benefit from anything related to a slaughterhouse, whether it is a *neveila* (an animal that died without proper *shechita*), *tereifa* (an animal with life-threatening blemishes), *cheilev* (certain fatty sections of cattle), blood, or *gid hanashe* (certain sinews in an animal's hind legs).¹

However, it is prohibited to deal commercially with non-kosher food. The *mishna*² says that hunters may sell non-kosher animals that they chance upon. The *gemara*³ derives this from the *pasuk*, “*Vesheketz yiheyu lachem* (and they shall remain defiled for you).” In other words, one may benefit from most non-kosher foods (derived from “for you”). Yet, from the same *pasuk*, the *gemara* also concludes that there are limitations on this benefit (derived from “remain defiled”), usually described as a prohibition on commerce in forbidden foods.

1. See *Pesachim* 21a–23b.
2. *Shevi'it* 7:4.
3. *Pesachim* 23a.

Most *Rishonim* posit that this prohibition is a Torah law.⁴ The Rashba⁵ says that the reason is to minimize the possibility of eating forbidden foods, while others say it is a *gezeirat hakatuv* (a heavenly decree without a known reason).

Due to the prohibition of commerce, one may not purposely acquire food that is forbidden by the Torah. However, if the non-kosher food came into one's possession accidentally or as a by-product of permitted activity, he may sell it.⁶ The Rama⁷ urges one not to leave such food in his possession longer than necessary. Understandably, it is not always clear whether a specific situation is considered purposely acquiring non-kosher food or just chancing upon it. However, in the case of a slaughterhouse, in view of the fact that kosher animals have parts that are not kosher, obtaining these parts is not considered a deliberate action. After *shechita*, when it is necessary to discard much of the hind section of the animal and the udder (because of a combination of absolute halachic reasons, *minhagim*, and a desire to simplify the process),⁸ these parts can be sold to non-Jews. Even if the entire animal turns out to be not kosher, the Torah says explicitly that one can sell a *neveila* to a non-Jew;⁹ the same is true of a *tereifa*.¹⁰ This arrangement also enables producers to sell the meat of animals that are the subject of halachic questions rather than search for difficult, time-consuming solutions to prevent great loss.

Must one be concerned that the non-kosher meat will eventually be sold to Jews? The Torah law of *lifnei iver*, not to put a "stumbling block" before others, does not apply here for several reasons. Whoever ends up eating the meat could have obtained the same type of

4. See *Shut Chatam Sofer, Yoreh Deah* 104–106, 108; *Yabia Omer* VIII, *Yoreh Deah* 13. The *Noda B'Yehuda* II, *Yoreh Deah* 62 maintains that most *Rishonim* say that it is a Rabbinic prohibition.
5. *Shut* III:223.
6. *Shulchan Aruch, Yoreh Deah* 117:1.
7. Ad loc.
8. See *Shulchan Aruch, Yoreh Deah* 90.
9. *Devarim* 14:21.
10. *Pesachim* 21b.

forbidden food elsewhere.¹¹ Furthermore, the transfer of a forbidden object from one Jew to another through an independent non-Jewish intermediary is too indirect to violate *lifnei iver*.¹² Although there is sometimes a Rabbinic prohibition to sell non-kosher food to a non-Jew out of concern that it might end up with a Jew,¹³ that pertains when one might not realize the food is problematic (e.g., flour infested with bugs¹⁴). In our case, the chance one will confuse the non-kosher with kosher is remote, considering that one may not buy meat without a *hechsher*.

It would be problematic, however, to sell non-kosher products to a Jewish merchant to resell, as this would be aiding and abetting him to violate the prohibition of dealing commercially with non-kosher items. Under certain circumstances, there are grounds for leniency (beyond our present scope), but seeking a non-Jewish merchant is a simpler idea.

11. See *Avoda Zara* 6a - 6b.

12. *Avoda Zara* 14a.

13. See *Pesachim* 40b.

14. Rama, *Yoreh Deah* 84:5.

E-6: Tovelling Commercial Food-Producing Equipment

Question: Is it necessary to *tovel* equipment used in commercial food production (e.g., in a restaurant or factory)? Some equipment is impossible to *tovel*. Some equipment is too big to *tovel* anywhere but in a natural body of water, and sometimes the nearest *mikveh* is very far away. What should one do?

Answer: There are several elements in which leniency can be considered.

The *gemara*¹ says that only *klei seuda* (literally, utensils of a meal) require *tevilla*. To keep matters simple, let us say that utensils that come in contact with food during the preparation, serving, eating, or storage of food are considered *klei seuda* and require *tevilla*. Nevertheless, the *minhag* is not to *tovel* certain “utensils” that seem to meet that definition. For example, few people *tovel* refrigerator racks or the body of ovens (even when made from material that requires *tevilla* and even though food is put directly on them). The *Aruch HaShulchan*² says that a *kli seuda* is something that is not too big and/or is designed to be moved from place to place, as opposed to things to which the food must be brought. Others say that utensils that are intended to be connected to the ground do not obligate one in *tevillat keilim*.³ Some large equipment **might** be exempt from *tevilla* on these grounds.

The major reason for leniency, however, is due to the commercial use of the utensils in question. The *Shulchan Aruch*⁴ assumes that one who bought a *kli seuda* but intended not to use it in connection

1. *Avoda Zara* 75b.
2. *Yoreh Deah* 120:39. See a similar explanation in the name of Rav S.Z. Auerbach in *Tevillat Keilim* (Cohen) 11:(8*) regarding closet shelves.
3. See *Tevillat Keilim* 1:(16).
4. *Yoreh Deah* 120:8.

with food is not obligated in *tevilla*. The *Beit Yosef*⁵ extends this exemption to a merchant who bought a *kli seuda* not for his own use, but rather in order to sell it. One could also claim that the exemption applies to factory equipment, as its usage is commercial and not for the owner's personal use.

The question is whether we can compare the situation of a person who bought a utensil to sell, who will never use it himself in connection to food, to that of one who uses a utensil with food, but happens to plan on selling the food rather than consuming it himself. There is a *machloket* regarding a restaurant, in which food is prepared in order to serve people on its premises. The *Minchat Yitzchak*⁶ says that its utensils are also considered to belong to the category of those that serve commercial purposes and are thus exempt according to significant *poskim*. Rav M. Feinstein and Rav S.Z. Auerbach are among those who maintain that since the owner uses these utensils for food, they are obligated as *klei seuda* even in this commercial setting.⁷ The latter opinion seems to be the more accepted one. However, the case of a factory is somewhat more lenient, as the owner is not in personal contact with anyone who directly makes use of the equipment in connection with a meal. Instead, the Jew prepares and sells the food, after which he loses all association with it. In this case, the *Chelkat Yaakov*⁸ permits using non-*tovelled* utensils based on the ruling of the *Tuv Taam V'Da'at*, who himself was lenient only when most of the food is produced for non-Jews.

A final point of leniency relates to the difficulty to do *tevilla*. *Tevilla* is a positive *mitzva*; the prohibition of using a utensil that has not undergone *tevilla* results only from the failure to perform the *mitzva*. If it is prohibitively expensive or time-consuming to get the equipment to a *mikveh*, there is room to argue that the performance of the positive *mitzva* is not expected of the person, and it would then

5. *Yoreh Deah* 120.

6. 1:44.

7. See *Tevillat Keilim*, pp. 89–90.

8. *Yoreh Deah* 42.

be permissible to use the utensils.⁹ However, when *tevilla* is unfeasible, the *Shulchan Aruch* and Rama¹⁰ suggest that one should give the utensil as a present to a non-Jew and then borrow it from him, as the *mitzva* applies only while the utensil is under Jewish ownership. In the case of expensive equipment, selling it (without demanding full payment upfront) and then renting it back seems more reasonable.

In summary, if it is difficult to *tovel* commercial food-preparation equipment, whether due to their immobility or the lack of a nearby *mikveh*, one may transfer ownership to a non-Jew or rely on the opinions that maintain that such utensils do not require *tevilla*. If, in spite of this, one wishes to make a great effort to do *tevilla* anyway, he certainly should not make a *beracha* when doing so.

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

10. *Yoreh Deah* 120:16.

E-7: *Tevillat Keilim*¹ When There is an Air Pocket

Question: I *tovelled*² a big pot in the *mikveh*, putting the pot in on an angle. Some bubbles came out, but I am sure that an air pocket remained. Do I have to redo the *tevilla*?

Answer: The *mishna*³ says that if one puts a *kli* (utensil) into a *mikveh* upside down, it is an invalid *tevilla*. This is due to the air pocket, which prevents water from entering the *kli* fully. While this seems to invalidate your *tevilla*, a further examination shows that matters are not so simple.

The *Kiryat Sefer*⁴ questions whether the problem with an air pocket is that it is considered that the water does not encompass the entire *kli*, in which case there is a Torah-level problem; if one does not submerge the entire *kli*, it is not regarded as a *tevilla* at all.⁵ The other possibility is that the air pocket is a *chatzitza* (something that separates the water from the object that requires *tevilla*).

There are two main parameters in *chatzitza* – whether the *chatzitza* covers most of the object and whether there is an issue of *makpid* (i.e., one does not want to leave the *chatzitza* there indefinitely). When a majority of the *kli* is covered in a manner in which one would be *makpid*, the *tevilla* is disqualified on the Torah-level; when only one parameter is present, there is a Rabbinic problem. If neither is present, there is no disqualification.⁶ Accordingly, if the problem is that an air pocket is deemed to be a *chatzitza*, the disqualification is at worst Rabbinic, since water touches the entire outside and some

1. Immersion of certain newly acquired utensils in a *mikveh*.
2. Immersed.
3. *Mikvaot* 10:1.
4. *Mikvaot* 3.
5. Rambam, *Mikvaot* 1:2.
6. *Eiruv* 4b.

of the inside of the *kli*, and even this disqualification is predicated on the assumption that there is an issue of *makpid*.

Let us evaluate whether there is a Torah-level requirement that the water touch the whole *kli* and not just that the whole *kli* has to be placed under the level of the water. If this were the case, why doesn't a *chatzitza* on a minority of the *kli* disqualify the *tevilla* on the level of a Torah law? Similarly, why is the *tevilla* fully valid if one plans to leave the external substance on the *kli* for the long term? One approach is that in such cases, the *chatzitza* is *batel* to (halachically not distinguishable from) the body/object, and it is considered as if the water touches everything.⁷ However, the more convincing approach is that the water is required to touch only the majority of the surface, as long as the whole object is submerged and thus enveloped in water. Regarding the part of the *kli* that the water is prevented from touching, one must evaluate the matter according to the guidelines of the laws of *chatzitza*.⁸

According to the second approach, one could ask if something as "ethereal" as air can be a *chatzitza*. There seems to be a *machloket* whether something porous is a *chatzitza*. On the one hand, *mishnayot*⁹ indicate that liquids on a surface are not a *chatzitza*, whereas their dried-up residues are. Nevertheless, the *mishna*¹⁰ states that *tevilla* on a barrel full of a not water-like liquid is invalid, and liquid must thus be a *chatzitza*. *Tosafot*¹¹ explains that a small amount of liquid (as in the former cases) is permeable, whereas a barrel full of liquid is not.¹² Others suggest that thick liquids are not considered permeable, and the reason that some liquids are not a problem is that the parameter of *makpid* does not apply to them.¹³ If so, an air pocket, which is not permeable when the *kli* is at certain angles, seems to be

7. *Sidrei Tahara, Yoreh Deah* 198:1.

8. *Chazon Ish, Yoreh Deah* 95:3; see *Badei HaShulchan* 198:27.

9. See *Mikvaot*, ch. 9.

10. *Mikvaot* 10:6.

11. *Zevachim* 78b.

12. See *Bi'ur Halacha* 161:1.

13. See *Rama, Yoreh Deah* 198:14 and *Shach, Yoreh Deah* 198:19.

problematic. Then again, one could argue that air is not something that one is *makpid* about.

After discussing the logic, we must return to the classic halachic sources, starting with the *mishna* noted above and the *Shulchan Aruch*,¹⁴ which disqualify upside-down *tevelling*. While this seems to indicate that any air pocket is a problem, the *Shulchan Aruch* says that if the *kli* is somewhat wide, the *tevilla* is valid because water gets to its bottom. The *Bach*¹⁵ and *Taz*¹⁶ argue that even wide pots can have air pockets, and the *Taz* distinguishes between wide-and-deep and wide-and-shallow utensils. Experimentation and scientific analysis (we did both) corroborate the *Bach*'s assertion that any pot can have an air pocket.

Perhaps, one can still accept these facts and explain the situation halachically, as follows. There is not an absolute need for water to touch the entire surface, and air does not function as a *chatzitza*. However, an immersion that does not come close to getting water throughout the *kli* is not a proper *tevilla*. In the event that there is a great width to height ratio in the utensil, it is enough for the base of the *kli* to be slightly off the horizontal axis, in which case water comes in fully, and it is easier for the water to get to any given spot with minimal maneuvering. Thus, in those cases, it is considered a reasonable *tevilla*. If so, it is likely that your immersion was also a reasonable and valid *tevilla*.

All the same, since the **simple reading** of the sources indicates that *tevilla* that leaves air pockets is invalid, we suggest you do *tevilla* again, but without a *beracha*. If it is difficult to do so, there is some room for leniency (including for reasons beyond our present scope).

14. *Yoreh Deah* 202:6.

15. *Yoreh Deah* 202.

16. *Yoreh Deah* 202:6.

E-8: *Hafrashat Challa*¹ When Part Was Baked and Part is Dough

Question: I used 2 kilograms of flour² to bake several *challot*. I remembered about *hafrashat challa* only after baking most of the batch and freezing the remaining dough (which I did not need for that Shabbat). How do I do *hafrashat challa* now?

Answer: One who did not do *hafrashat challa* on dough may do so even on the resulting bread.^{3,4} However, your question is a good one. Should the *challa* be taken from the dough, the bread, both, or either?

One may not do *hafrashat challa* from one *min* (type) to apply to another, e.g., if two batches are made from different grains.⁵ Are raw dough and baked bread made from the same grain considered to be one *min* in this regard? The *Tur*⁶ discusses the case of one who mixed up loaves of bread, of which some had *hafrashat challa*, while some had not and thus cannot be eaten. How does he arrange to take *challa* from the loaves that were not covered by a *hafrasha*? One solution is to make an additional batch of dough that is enough to create a new obligation of *hafrashat challa*, connect it to the existing loaves, and then take *challa* from the new dough with a stipulation that the *hafrasha* applies also to whichever loaves require it. The

1. The removal of a piece from the dough, which, were it not for problems of ritual impurity, should have been given to a *kohen*.
2. There are many opinions regarding the minimum amount of flour needed for an obligation of *hafrashat challa*. When the amount is uncertain, one takes off *challa* without reciting a *beracha*. Treatment of this topic requires a complete, separate discussion, but we will assume that two kilograms of flour obligates one in *hafrashat challa* with a *beracha*, as the querier apparently posits.
3. We will reserve the term *challa* for the part that is taken off during *hafrashat challa*.
4. *Shulchan Aruch, Yoreh Deah* 327:5.
5. *Ibid.* 324:2.
6. *Yorah Deah* 324.

*Derisha*⁷ wonders why one could not suffice by preparing a small amount of new dough, which, upon being connected to the existing loaves, is enough to create an obligation of *challa* based on the combination with whichever loaves need a *hafrasha*. He answers that bread and dough are like two *minim*, which do not combine to create an obligation of *hafrashat challa*. Therefore, while the baked bread that previously required *hafrashat challa* still does, the new dough is exempt because of its small amount, and one cannot take *challa* from something that is not obligated in order to apply it to something that is obligated. However, if the new batch of dough is large enough to cause one to be obligated in *hafrashat challa* independently, the *challa* taken from it can also apply to the bread. Extending this concept to your case, the original dough ostensibly obligated you in *hafrashat challa*, and *challa* can therefore be taken from either the bread or the dough.

However, we must examine a few assumptions. First, it is not clear that all agree with the *Derisha*. The *Hagahot Maimoniot*⁸ says that one cannot apply *hafrashat challa* from bread to dough or vice versa. However, that is a minority opinion, and the *Challat Lechem*⁹ even limits it to an exceptional situation.

The truth is that the procedure of baking some of the dough and freezing the rest complicates matters in a manner that few seem to be aware of. The *Shulchan Aruch*¹⁰ (based on a *mishna*¹¹) states that if one makes enough dough for *hafrashat challa* with the intention of dividing it **before baking** into pieces that individually are too small for *hafrashat challa*, the entire batch is exempt from *hafrashat challa*. (Although the obligation begins at the time it is dough, this is based on the assumption that the future **baking** will be performed in a manner in which it is still obligated in *hafrashat challa*. In contrast,

7. Ad loc.:4.

8. *Teshuvot* after *Zera'im* 22.

9. 2:(23).

10. *Ibid.* 326:2.

11. *Challa* 1:7.

once the bread is baked, separating it into parts does not affect the obligation of *hafrashat challa*.)

If so, how do we ever do *hafrashat challa*, since our individual loaves are clearly less than the *shiur* of *challa*? One answer is that the aforementioned ruling refers to situations in which the dough is given to different people. In contrast, if one keeps all of the dough, since it is possible that the baked small loaves will be “reunited” later, it is considered one batch, and there is consequently an obligation.¹² Nevertheless, several *poskim* differentiate between levels of future connections of the loaves even when they are kept by one person.¹³ This is not the forum for an in-depth analysis. The bottom line is that it is unclear whether there is an obligation of *hafrashat challa* when that which is baked immediately and that which is planned to be baked much later are individually “undersized.” (The obligation is even less likely when the later baking takes place after the the first loaves have been consumed.)

Let us consider various possibilities in your general scenario. If the amount that you bake in the first round is clearly not enough for *hafrashat challa* (e.g., if you broke up the dough into two equal sections), then because of the doubt regarding whether the two parts count as one batch, you should not make a *beracha*. (Those who prepare dough for two weeks of baking just so they can make a *beracha* are paying the price of creating a situation in which that *beracha* is questionable.) Regarding your specific question, regarding a case in which you did not do *hafrashat challa* right away, it is easier to rely on the aforementioned *Derisha* and to do *hafrashat challa* at the point when you remembered (without a *beracha*), taking the *challa* from either the bread or the dough. If this week’s batch is enough for an obligation and the leftover dough is smaller and thus possibly exempt, then according to some sources, taking *challa* from the possibly exempt dough to apply to the obligated bread is invalid. However, it is possible that the *minhag* follows the opinion that views the

12. See *Pitchei Teshuva*, *Yoreh Deah* 326:2.

13. *Ibid.*

dough to be baked and that to be frozen as one batch if it is owned by one person, as many women take *challa* with a *beracha* even in this situation.¹⁴

In your case, the safest halachic idea is to bake the remaining dough (and freeze the bread) and put the batches together by having them touch, be in the same utensil, or by covering them together¹⁵ for *hafrashat challa*. Another safe system is to take *challa* from the bread on the bread and from the dough on the dough (without a *beracha*, assuming each is too small for a *beracha*).

14. See *Shevet HaLevi* IV:145.

15. *Shulchan Aruch* op. cit. 325:1.



Section F:
Holy Articles



F-1: The Propriety of a Traveling *Sefer Torah*

Question: I *daven* with a *minyan* on a train car in Israel that is set aside for that purpose. Someone brings a *sefer Torah* to read from on Mondays and Thursdays. I have heard that one may not move a *sefer Torah* from its set place to read from elsewhere. Is what we are doing permitted?

Answer: The *Shulchan Aruch*¹ rules that one should not take a *sefer Torah* to a prison in order to read for the inmates, who otherwise would not have access to *kri'at haTorah*.² The *Mishna Berura*³ explains that it is a *zilzul* (degradation) of the *sefer Torah* to be **taken to** people, even to those who need it, as they are supposed to congregate around it in its place, not the other way around. Some *poskim*⁴ say that *zilzul* applies only when those in need can make it to the *sefer Torah* (as opposed to inmates). However, the *Shulchan Aruch*'s ruling is generally accepted.⁵ Moreover, in your case, it is likely that the great majority of the *minyan*'s participants do have other opportunities to hear *kri'at haTorah* other than on the train. Thus, we have to explore if there are other grounds for leniency.

The *Yerushalmi*⁶ says that it was permitted to bring a *sefer Torah* to the *kohen gadol* because of his stature, and the Rama⁷ extends this principle to other “important people.” The *Bi'ur Halacha*⁸ states that if there are ten inmates, then the *Shulchan Aruch* would agree that their obligation to hear the Torah reading makes it proper to bring

1. *Orach Chayim* 135:14, based on the *Yerushalmi*, *Yoma* 7:1.
2. The public reading of the Torah.
3. 135:47.
4. See *Bi'ur Halacha* ad loc.
5. See *Mishna Berura* 135:46 and *Yalkut Yosef*, *Orach Chayim* 135:11.
6. Op. cit.
7. *Orach Chayim* 135:14.
8. To 135:14.

the *sefer Torah* to them. The *Nishmat Avraham*⁹ cites Rav S.Z. Auerbach as saying that a “community of ten” probably has the stature of an important person. However, both refer to situations in which the ten men would have no way of hearing *kri'at haTorah* if the Torah is not brought to them, which, as noted above, is not likely in your scenario.

Some *poskim* discuss the idea of bringing an *aron kodesh* along so that the *sefer Torah* is shown respect and has some permanence in its temporary location. This idea is rooted in a *teshuva* of the Maharam Padova,¹⁰ but he also mentions an additional mitigating factor – that the *sefer Torah* will stay in that location for at least a day or two.¹¹ (The *Kaf HaChayim*¹² says that using an *aron* is enough according to the lenient opinion). We understand that in your case, the *sefer Torah* is brought in and out with a passenger on his commute.¹³

A more convincing leniency takes into consideration the context of the use of a particular *sefer Torah*. The issue of *zilzul* is more pertinent if a *sefer Torah* that is based in a *shul* and is used there for public reading is moved temporarily for the needs of an individual. However, it is entirely acceptable to write a *sefer Torah* for the specific purpose of the owner taking it along with him to learn from in various locations. (In fact, this is the way the *mitzva* to write a *sefer Torah* was apparently intended,¹⁴ and this is what was expected from a Jewish king.¹⁵) The *gemara*¹⁶ relates that after the Yom Kippur service in the *Beit HaMikdash*, many people would bring their

9. 1, pg. 76.

10. 88.

11. Rama op. cit, with the *Mishna Berura* ad loc. 49.

12. *Orach Chayim* 135:83.

13. See also *Aruch HaShulchan*, *Orach Chayim* 135:32, who cites and agrees with the *minhag* that the Torah should be used three times in its temporary location.

14. See *Sefer HaChinuch* #613.

15. “It shall be with him, and he shall read from it all the days of his life” (*Devarim* 17:19). See *Sanhedrin* 21b.

16. *Yoma* 70a.

own *sifrei Torah* to show how nice they were. Some *poskim*¹⁷ deduce from this anecdote that a personal *sefer Torah* does not have a restriction on its being moved. Logically (and this view has backing in the language of some sources), the issue is not so much the ownership per se as for what purpose the *sefer Torah* is intended. Moving a privately owned *sefer Torah* that has been used repeatedly in one place might be problematic. In contrast, it might be permitted to move one that was made in order to be utilized in a roving manner,¹⁸ or even to designate for this purpose a publicly owned *sefer Torah* that is no longer being used in *shul*.

It is likely that some of the classical *poskim* who do not discuss this relatively new distinction do not agree with it. However, leniency on this matter is certainly legitimate, and we have seen a *teshuva* of Rav David Spektor¹⁹ in which he permits it. Therefore, this issue should not be grounds for qualms about joining this *minyán*. (A separate discussion is required regarding the advantages and disadvantages of *davening* in this unique setting.)

17. See *Torah Lishma* 58; *Har Tzvi*, *Orach Chayim* 71, suggests this, as well.

18. *Kaf HaChayim* *ibid.* 78.

19. Of Beit Shemesh. It is possible that Rav Spektor is the *rav* of the owner of the *sefer Torah*, in which case it is important that others respect his decision.

F-2: Placing Books on a *Bima*

Question: Is it permitted to learn Torah with one's *sefarim* on the *bima*,¹ given that it is intended for a *sefer Torah*?

Answer: In general, the question that you raise is cogent. A *sefer Torah* has a higher level of *kedusha* than ordinary *sefarim* from which we learn, and one may not use an article set aside to serve an object with a certain level of *kedusha* for something with a lower level of *kedusha*.² Since *sifrei Torah* are placed on the *bima*-table, one would expect it to be forbidden to place *sefarim* of lesser *kedusha* there. The *Mishna Berura*³ says that not only is the table cover upon which the *sefer Torah* normally sits a *tashmish kedusha* (an article that is intended to serve an object of *kedusha*) because of its contact with the sacred scrolls, but so is the table. The reason is that the covering is (partially) removed at times, at which point the *sefer* sits directly on the table.

Nevertheless, the above is true only when the *kedusha* is allowed to take full effect. One may make a condition to limit an article's *kedusha* and allow its use for additional purposes. A source for this concept is the *Yerushalmi*,⁴ which discusses various items that serve *sifrei Torah* on/in which mundane things were placed. It explains that a condition can be made from the outset to allow such joint use. Other sources take the matter a step further and indicate that no explicit condition is needed to limit the scope of *kedusha* in cases in which circumstances indicate an implicit condition. For example, the violation of *me'ila* (misappropriating property of the Temple) does not apply to the holy garments of the *kohanim* because the "Torah was not given to angels," who, unlike humans, could be

1. Podium upon which the *sefer Torah* is read. To be exact, the article to which the question relates is actually the *shulchan*, (i.e., the table and its cover) upon which the *sefer Torah* rests.
2. *Megilla* 26b; *Shulchan Aruch, Orach Chayim* 154:6.
3. 154:10.
4. 4th *perek* of *Megilla*, cited by the Rosh, *Megilla* 4:11.

vigilant to use such garments only for their designated services and not at all beyond that.⁵

The *Terumat HaDeshen*⁶ employs these ideas to explain the common practice of making personal use of articles that serve a *sefer Torah*. Concerning holy articles that are under the auspices of the community, he argues that we can apply the concept of “*lev beit din matneh aleihem*” (literally, “the heart of the court makes a condition about them”). In other words, when dealing with matters that affect the masses, in which case it is difficult to avoid the use of the *tashmish kedusha* for other purposes, the normal “rules of engagement” that enable mundane use can be assumed without stipulation. In contrast, we must be concerned that an **individual** who owns a holy article may want the full status of *kedusha*, about which he feels he can be careful.⁷ When an individual plans to transfer the article to the community promptly after he obtains it, we presume that he intends to limit the *kedusha* according to the recipient community’s needs.⁸

One should be aware of a few limitations in applying *lev beit din matneh*. First, the principle only applies in situations in which it is clear that there is a practice of using the holy article for a lesser *kedusha*.⁹ Even then, the *Terumat HaDeshen* was not enthusiastic about relying on the leniency. Therefore, it is preferable to state explicitly when donating the article or starting to use it that its *kedusha* will be limited.¹⁰ In any event, one should not use the holy article in a disgraceful manner.¹¹ Although *lev beit din matneh* can allow even mundane uses of the article and the leniency can be quite broad, there are strong indications that the usage of a given article may be

5. *Kiddushin* 54a.

6. 1:273. The Rama (*Orach Chayim* 154:8) accepts this leniency.

7. *Mishna Berura* 154:35.

8. See *Bi’ur Halacha* to 154:9.

9. *Mishna Berura* 154:36.

10. *Magen Avraham* 154:15.

11. *Ibid.* 151:14.

permitted only for customary functions, but not in other ways that are conspicuously different.¹²

Returning to your question, the *Terumat HaDeshen*¹³ himself addressed the matter of putting *sefarim* on the *bima* and even leaning on it. He said that the widespread practice was acceptable because of *lev beit din matneh*. Since his time, it does not appear that the practice has become less prevalent. Therefore, one may learn from ordinary *sefarim* at the *bima*.

12. See *Yabia Omer* VII, *Orach Chayim* 26.

13. *Op. cit.*

F-3: Does an Elevator Require a *Mezuzah*?

Question: Is there a need to put a *mezuzah* in an elevator of a building of Jews? Is there at least a value in placing one there?

Answer: This is a fascinating question from the perspective of applying classical *halachot* to new situations, which leads to varied conclusions in this case. As far as the bottom line *l'maaseh* is concerned, our response will be somewhat straightforward. We will refer to a residential building. The status of *mezuzot* in commercial settings, even in normal rooms, is a major discussion in its own right.¹

The Rambam² says that there is no need for a *mezuzah* in a *sukka* or in a house on a boat because these are not permanent places of living. One can similarly claim that an elevator is not part of a permanent place of living. Although access to the elevator is an extension of the use of a building's apartments, which are permanent abodes, from the perspective of any specific apartment or floor, one cannot enter the elevator whenever he wants. Rather, the elevator is available to any given housing unit only at certain nonspecific times.³

On the other hand, the *Shulchan Aruch* writes that a *beit sha'ar* (a hut that serves as a gateway) that opens into a house does require a *mezuzah*.⁴ This is true even when the *beit sha'ar* does not have the regular features of a room that ordinarily require a *mezuzah*. Thus, for example, a *beit sha'ar* must have a *mezuzah* even if its dimensions are not 4 *amot* (approximately 6 feet) by 4 *amot*.⁵ In a sense, then, an elevator is more likely to require a *mezuzah* than a *sukka*. As it moves up and down from floor to floor, it serves a function on behalf of people who live in the building on a permanent basis.⁶

1. See *Living the Halachic Process*, vol. 1, G-4.

2. *Mezuzah* 6:9.

3. *B'Tzel HaChochma* 111:80.

4. *Shulchan Aruch, Yoreh Deah* 286:7.

5. *Chamudei Daniel*, cited in *Pitchei Teshuva, Yoreh Deah* 286:11.

6. *Minchat Yitzchak* 1v:93, based on the aforementioned *Chamudei Daniel*.

However, this is far from a simple matter. First, the view that an area can require a *mezuzah* just because it serves another area that requires one is not necessarily accepted.⁷ Second, the elevator does not serve as a fixed *beit sha'ar* for any given floor, but is rather a moving *beit sha'ar*.

There are a variety of opinions among contemporary *poskim* regarding whether one should put a *mezuzah* by an elevator.⁸ Those who do recommend placing one for the most part instruct to do so without a *beracha* because of the doubt regarding whether it is really required. These *poskim* must also contend with another issue – where one should put the *mezuzah*. On the one hand, there is logic to putting it in the entrance from the corridor into the elevator shaft. This would require a *mezuzah* on each flight. One *posek* rules that on the ground floor, where one enters the building, the *mezuzah* should be on the right side going into the elevator. In contrast, on other floors, where one presumably first arrives by exiting the elevator, the *mezuzah* should be on the right side from the perspective of one leaving the elevator (i.e., the left side when facing the elevator).⁹ On the other hand, some claim that since the elevator shaft is just a dangerous empty space that is sealed except when the elevator door opens, one should put a *mezuzah* only on the right side of the entrance of the elevator itself. That way, whenever one would move from the corridor to the elevator shaft, one would meet the *mezuzah* at the elevator's entrance.¹⁰

At any rate, what is most important to us in this case is that the *minhag ha'olam*¹¹ is not to put a *mezuzah* anywhere around an elevator. While we have seen some reasons why one might want to do so, we have not found close to a consensus of *poskim* who require it. Faced with such uncertainty, it is better not to start a trend that challenges

7. See *Minchat Yitzchak* op. cit.

8. See opinions for and against in *Pitchei She'arim* 286:220–222.

9. *Chovat HaDar* 5:11.

10. *Minchat Yitzchak* op. cit.

11. The accepted practice.

an accepted practice. We prefer not to encourage the not uncommon phenomenon in our days of a *chumra*¹² race – in this case, to have a “halachically *mehadrin*” building. In many circles, this could be perceived as casting aspersions on the masses, and the drawbacks of the *chumra* would thereby outweigh its advantages.

12. Stringency.

F-4: A Mezuzah at a Jewish-Owned Commercial Establishment

Question: If a Jew owns a restaurant that is in a non-Jewish area and is run by non-Jews (the Jewish owner visits only occasionally), must he affix *mezuzot* to its doorposts?

Answer: At first glance, it seems that he should affix *mezuzot*, as ownership is a major component of the obligation of *mezuzah*.¹ It is true that if a Jew rents out a home to another Jew, it is the tenant, rather than the owner, who is obligated in *mezuzah*.² However, that might be because a renter possesses the element of ownership that is most pertinent to the obligation of *mezuzah*.³ Furthermore, according to many opinions, the renter's obligation is only Rabbinic⁴ and was instituted because the renter benefits from the *mezuzah*'s protection⁵ or because it looks like he is the owner.⁶ However, if there is no renter, it would seem that the Jewish owner should not be exempt from the *mitzva*.

Nevertheless, there are possible grounds to exempt the Jewish owner. There is strong basis for the argument that a landlord is exempt because inhabitation of the premises is a necessary component of an obligation in *mezuzah*.⁷ In our case, perhaps the Jewish owner does not frequent the restaurant sufficiently to be considered inhabiting it.⁸ However, it is not clear that the owner's presence is the critical issue. The *Aruch HaShulchan*⁹ says that even an area of

1. See *Chulin* 135b.
2. *Bava Metzia* 101b.
3. See *Aruch HaShulchan, Yoreh Deah* 286:3.
4. See *Tosafot, Menachot* 44a.
5. Rashi, *Pesachim* 4a.
6. *Shut R. Akiva Eiger* 1:66.
7. *Tosafot* op. cit.; Ritva, *Bava Metzia* 101b.
8. See *Igrot Moshe, Yoreh Deah* 11:141, who claims that how often he enters is not a determining factor. See also *Pitchei Mezuzot* pp. 64–66.
9. *Yoreh Deah* 286:4.

one's home that only non-Jewish workers spend time in requires a *mezuzah* because the workers function there on behalf of the Jewish owner. Rav M. Feinstein¹⁰ extends this logic. He asserts that a landlord would have been obligated in *mezuzah* for a rented apartment because he rents it out for his own profit – all the more so if he keeps his furnishings there – and he is exempt only because he lacks full access. Accordingly, our owner would be obligated due to the fact that the restaurant serves him, even if through the activities of non-Jewish workers.

The question of ownership vs. time spent in the premises also arises regarding a hospital. Many *poskim* exempt a Jewish patient from having a *mezuzah* placed in his room, even if he will stay in one hospital room for a long time, because he has no legal connection to the room.¹¹ Conversely, the *Shevet HaLevi*¹² is among those who rule that in Israeli hospitals, the Jewish owners need to affix *mezuzot* even though they do not live in the rooms. Presumably the rationale of the *Shevet HaLevi* is that the usage is an extension of their ownership, although he does mention that numerous Jewish staff members come in and out of these rooms. It is not clear what he would say about a Jewish-owned hospital occupied predominantly by non-Jews, which is parallel to your case. *Pitchei Mezuzot*¹³ demonstrates that there is a *machloket* regarding whether or not it is important that the owners of the premises frequent it.

The relevance of the actual users of the site to the *mitzva* can be inferred from the Rashba.¹⁴ He claims that the Torah requires a *mezuzah* in a building owned jointly with a non-Jew because the Jew needs the *mezuzah*'s protection. Accordingly, if the owner rarely frequents the site and thus does not need particular protection there, he might be exempt. On the other hand, we find that one is obligated in *mezuzah*

10. *Igrot Moshe* op. cit.

11. *Avnei Nezer, Yoreh Deah* 380; *Shevet HaLevi* 11:156.

12. *Ibid.*

13. Pp. 64–66.

14. *Chulin* 135b.

in a storage room for wine or oil,¹⁵ presumably even if he goes there infrequently.¹⁶ (One might claim that this is because storage rooms are extensions of a home.)

Despite the inconclusiveness of the above discussion, there is further reason to consider exempting the owner in this case. It is unclear whether *mezuzot* are required in commercial settings at all, even if a Jew works long hours there.¹⁷ The standard *p'sak* is to affix one without a *beracha* out of doubt. This doubt provides another reason for exemption in our context.

Finally, security of the *mezuzza* is another factor arguing for leniency. For example, although a renter may not, upon vacating a house, remove the *mezuzza* he had affixed, he should remove it if the next renter is a non-Jew,¹⁸ out of concern that the latter might mistreat it.¹⁹ Some *poskim* discuss a similar concern for non-Jewish negative reaction regarding jointly owned property.²⁰ This could conceivably be an issue in our case even if a Jew is the only business owner.

Combining indications, there are sufficient reasons to justify not affixing a *mezuzza* to the building of a Jewish-owned business that is not mainly frequented by Jews, and this seems to be the *minhag*. It would be laudable, nevertheless, to affix *mezuzot* without a *beracha* provided that there is little likelihood of their being desecrated.

15. *Shulchan Aruch, Yoreh Deah* 286:1.

16. See *Igrot Moshe* op. cit.

17. See *Living the Halachic Process*, vol. 1, G-4.

18. *Bava Metzia* 102a; see also *Pitchei Teshuva, Yoreh Deah* 291:9.

19. *Shita Mekubetzet, Bava Metzia* 102a.

20. *Shach, Yoreh Deah* 286:6.

F-5: Trying on a *Tallit Katan* Without *Tzitzit*

Question: I was trying on some pairs of *tallit katan* (the four-cornered garment upon which *tzitzit* fringes are attached) in a store to see what size would be best for me. Afterwards, I wondered whether what I had done was permissible since *tzitzit* were not attached, and I consequently had worn a four-cornered garment without *tzitzit*.

Answer: There is an interesting *chakira*¹ regarding the timing of the *mitzva* of *tzitzit*. Is the *mitzva* to attach the *tzitzit* to the *tallit katan* (the garment) **before** it is put on?² Alternatively, does the *mitzva* to put on the *tzitzit* actually begin, at least in theory, only **after** one puts on the garment?³ In any event, since you knowingly put on a garment that had no *tzitzit* without intention to immediately attach *tzitzit* (albeit with the intention to take it off relatively soon thereafter), your question is a good one. Nevertheless, there are two reasons why putting on the garment without *tzitzit* was fine in your case.

The *gemara*⁴ infers from the commandment to attach *tzitzit* to “the four corners of your (in the singular) garment”⁵ that one is exempt from putting *tzitzit* on a borrowed garment. (After borrowing it for 30 days, a Rabbinic obligation kicks in because it appears that it is his own garment). Although the *Shulchan Aruch* rules that when one borrows a *tzitzit* garment, he should make a *beracha* before putting it on (i.e., before the obligation applies), that is true when the garment and the *tzitzit* are complete and ready for the *mitzva*. In that case, we assume that the owner is willing to transfer ownership to the borrower (on the condition that it will be returned) so that the latter can fulfill the *mitzva*.⁶ Clearly, however, when it is not practical

1. Fundamental conceptual dilemma.
2. See Rambam, *Tzitzit* 3:10.
3. See *Tosafot*, *Yevamot* 90b.
4. *Chulin* 136a, codified in *Shulchan Aruch*, *Orach Chayim* 14:3.
5. *Devarim* 22:12.
6. *Mishna Berura* 14:11.

to attach the *tzitzit*, neither you nor the storeowner is interested in your acquiring ownership of the *tallit katan*, and the obligation of *tzitzit* therefore does not apply.

A similar situation arises when one uses a *shul*-owned *tallit* for an *aliya* or the like. Although classical sources⁷ indicate that in such a situation, one should recite a *beracha* before putting the *tallit* on, common practice is not to do so, apparently because the congregation would have to wait too long as the person makes the *beracha* and puts it on in the appropriate way. Therefore, one leaves the *tallit* in the congregation's possession and does not make a *beracha* on it. (We will not discuss in this context what the optimal practice is.)

There is another reason why you were not required to have *tzitzit* on the garment you put on, and this one would apply even if you were trying on a *tallit katan* after buying it. First, we must address another halachic issue affecting clothing. The *mishna*⁸ says that it is permissible⁹ for one to put on a garment containing *sha'atnez* in the course of selling it (to a non-Jew) on the condition that he does not intend at the time to also benefit from it as a garment. The *Shulchan Aruch*¹⁰ accepts this ruling. The commentaries¹¹ explain that the wearing of the garment is considered a *davar she'eino mitkaven* (a prohibited action that one does without intention) in that he is not interested in wearing the garment per se.¹² *Tosafot*¹³ says that the same leniency applies to wearing a *tallit katan* without *tzitzit* for the purpose of selling it. The requirement of *tzitzit* applies only to garments that are being worn for the purpose of immediate benefit

7. See *Mishna Berura* *ibid.* at length.

8. *Kilayim* 9:5.

9. Admittedly, it is laudable to avoid doing so (*ibid.*).

10. *Yoreh Deah* 301:6.

11. See also *Shabbat* 46b.

12. The exact explanation of the application of *davar she'eino mitkaven* to this context is quite complicated.

13. *Nidda* 61b, cited by the *Magen Avraham* 19:2.

from wearing them. The same logic applies to one who is trying on a *tallit katan* momentarily for size.¹⁴

Therefore, what you did – as many others do – was certainly alright.

14. *Tzitzit* (Cohen), p. 384.

F-6: Checking the *Tzitzit* of a *Shul Tallit*

Question: A non-regular to our *shul* came without a *tallit* and was given a *shul tallit*. The guest proceeded to check each *tzitzit*,¹ counting the knots and strands before putting on the *tallit*. Is it proper to do such an examination on Shabbat? Isn't this discourteous?

Answer: We will answer this question on several levels, starting with the most basic.

The *Shulchan Aruch*² rules that one should check daily that his *tzitzit* strings are kosher (and did not rip) before making the *beracha* to avoid the possibility of uttering a *beracha l'vatala*.³ There are some indications⁴ that this is more of an act of piety than a real halachic obligation, and it might only apply if one has to make a *beracha* on this particular *tallit*, as avoiding a *beracha l'vatala* is the most acute concern in that case.⁵ The reason the check is not absolutely required is that there is a *chazaka* (a presumption based on status quo and/or experience) that the *tzitzit* remain kosher. On the other hand, there is a principle that we prefer not to rely on a *chazaka* when one can easily verify the situation directly.⁶ In any case, it is agreed that if one checked the *tzitzit* before putting them away, the likelihood of change is too remote to warrant checking.⁷

Nowadays, few people check their *tzitzit* daily (presumably, this is why you were taken aback). Rav Ovadia Yosef explains that this phenomenon is based on classical halachic principles.⁸ Additionally,

1. We refer here to the fringes of the *tallit*.
2. *Orach Chayim* 8:9.
3. A blessing of no value, which it is forbidden to recite.
4. Including the language of the *Shulchan Aruch* *ibid.*, based on the Rosh, *Tzitzit* 20.
5. See discussion and applications in *Bach*, *Orach Chayim* 8, and *Mishna Berura* 8:22.
6. See *Pri Megadim*, *Mishbetzot Zahav* 8:8; *Mishna Berura* *op. cit.*
7. *Magen Avraham* 8:11.
8. *Yechaveh Da'at* VI:1.

our *tzitzit* are likely stronger and there may be fewer things that are liable to rip them than in the past. If the *minhag* to be lenient is based on practical considerations, then it makes a lot of sense to check a *shul tallit*, as such *tallitot* are often not checked for a long time and ripped strings are therefore more common. Since a guest has no way of knowing the condition of a particular *tallit*, one can argue that it is more problematic to rely on a *chazaka* and that he is actually **required** to check it before putting it on with a *beracha*. (The guidelines for what disqualifies *tzitzit*⁹ are beyond our present scope.)

There is no halachic prohibition to check the *tzitzit* of a *tallit* on Shabbat. The *Bi'ur Halacha*¹⁰ discusses what the gain is in checking them, considering that fixing them on Shabbat is not permissible. He concludes that at the very least, the check will alert the person not to make a *beracha* on the *tzitzit* and, when possible, to avoid wearing the *tallit*. Based on the above, the guest followed the preferred approach of the classical halachic sources, and you should therefore view him as having acted honorably.

There is a flipside, however, which should be noted by those who are in the guest's predicament, as opposed to the observers' position. The Rabbis were often concerned¹¹ lest one act differently from those around him in a manner that could be insulting, especially in the context of religious observance. Since checking the *tzitzit* of a *tallit* is rarely done, a guest who checks the *tzitzit* of the *shul tallit* may give the impression of disrespect to the host *shul*, as the congregants might assume that he specifically has doubts about them, rather than that he simply is being halachically careful as a matter of course.

The question is whether a person who chooses to be strict about checking *tzitzit* (at least of a *shul tallit*) has alternatives. Besides the obvious options of relying on the lenient opinions or checking inconspicuously, we will present another one. One fulfills the *mitzva*

9. Some disqualifications are uncommon and not every imperfection renders the *tallit* unfit. See *Shulchan Aruch, Orach Chayim* 12:1, and *Magen Avraham* 8:11.

10. To *Orach Chayim* 13:2.

11. See 4th *perek* of *Pesachim*.

of *tzitzit* by wearing a *tallit katan*;¹² wearing a *tallit* is not necessary for that purpose. Despite this, married men have the practice of wearing a *tallit* when *davening Shacharit*.¹³ Putting on a *tallit* with a *beracha* as an additional fulfillment of the *mitzva* of *tzitzit*, as is the norm, requires owning the *tallit*. It is true that one can make the *beracha* on a *shul*-owned *tallit*,¹⁴ either because a public *tallit* may be jointly owned¹⁵ or because he has tacit permission to acquire it for the time he wears it in order to fulfill the *mitzva*.¹⁶ However, many men have the *minhag* not to make a *beracha*,¹⁷ and they thus do not intend to acquire the *tallit*. The matter of joint ownership is also very questionable regarding a guest in *shul*. Consequently, those who do not make the *beracha* are neither obligated in nor fulfill the *mitzva* of *tzitzit* when using the *shul tallit* and thus have no need to check its *tzitzit*. In our opinion, from the perspective of a guest, this approach is better than making a spectacle that people in *shul* (rightly or wrongly) find offensive.

12. The small garment with *tzitzit* attached to its corners, which we usually call *tzitzit*.

13. See response F-7.

14. *Mishna Berura* 14:11.

15. *Bi'ur Halacha* to *Orach Chayim* 14:3.

16. *Mishna Berura* 14:11.

17. See *Mishneh Halachot* 1X:234.

F-7: Should a Single Man Wear a Tallit?

Question: In one of your articles, you related to the fact that most single Ashkenazi men do not have the practice of wearing a *tallit*¹ for *davening*. I understand that some opinions connect this *minhag* to the juxtaposition in the Torah of *tzitzit* and marriage.² However, the *Shulchan Aruch*, Rama, and most *poskim* disagree, ruling that the *mitzva d'orayta*³ of *tallit* begins at *bar mitzva*. Isn't it a mistaken *minhag* to avoid the *mitzva d'orayta* of wearing a *tallit*?

Answer: While your surprise about the practice is understandable, you seem to have overstated the issue. We will explore the reasons for a distinction between married and single men regarding a *tallit gadol*, as we believe that it is important to avoid the outright rejection of established *minhagim*.

The Torah obligation to wear *tzitzit* exists only when one is wearing a four-cornered garment, but the *Shulchan Aruch* writes that it is important to create a situation in which one can perform the *mitzva*.⁴ Although every individual relevant garment that is worn creates a *mitzva* that it have its own set of *tzitzit*, one receives credit for the *mitzva* by wearing a single properly prepared *tallit katan*.⁵ Thus, it is incorrect to characterize one who wears *tallit katan* but does not wear a *tallit* as one who is avoiding a *mitzva d'orayta*. If a *tallit katan* did not suffice for the *mitzva* of *tzitzit*, we would likely wear a *tallit* all day.

Why do we wear a *tallit* when *davening* (*Shacharit*), considering that we are already wearing *tzitzit*? One issue is the concern that our

1. The more exact term is *tallit gadol*, the large garment with *tzitzit* strings worn during *davening*, but we will use the common term of *tallit*.
2. *Devarim* 22:12–13.
3. A commandment of Torah origin.
4. See *Shulchan Aruch, Orach Chayim* 24:1.
5. That which we usually refer to as “*tzitzit*” is actually a small garment to which the *tzitzit* (fringes) are attached.

tallit katan garments are too small for the *mitzva* of *tzitzit* to apply to them.⁶ Failure to fulfill the *mitzva* of *tzitzit* might be of particular concern during *Shacharit*, when we recite the Torah section in which the *mitzva* is stated (the third section of *Kri'at Shema*).⁷ The *gemara*⁸ writes that one who recites *Kri'at Shema*⁹ without wearing *tefillin* is like one who bears false testimony. The same might be said about one who recites it without *tzitzit*, thus strengthening the resolve of those who are careful to wear clearly kosher *tzitzit* (i.e. a *tallit*) at that time.¹⁰ However, *Tosafot*¹¹ believes that this admonition is **not** applicable to reciting *Kri'at Shema* without *tzitzit*. The distinction is that one is not fully required to wear a four-cornered garment and thus have *tzitzit*, whereas he is required to don *tefillin*. While this is the subject of significant debate,¹² the concern that ordinary *tzitzit* are **perhaps** too small is not strong enough to countermand the *minhag* of single men not to wear a *tallit*.

The Maharil¹³ is the classical source who cites the *minhag* for single men not to cloak themselves in *tzitzit*. Indeed, important *poskim* (including the *Mishna Berura*¹⁴) have difficulty justifying the *minhag* to deprive them of the *mitzva*. However, the dissenters seem to have understood the Maharil as saying that single men did not wear *tzitzit* at all, not as referring to our present *minhag* that they wear *tzitzit* but do not wear an additional *tallit* for *Shacharit*. Many understand the Maharil as referring to the present day *minhag* and have no problem with it.¹⁵

6. *Darchei Moshe, Orach Chayim* 8:3.

7. Taken from *Bamidbar* 15:37–41.

8. *Berachot* 14b.

9. Where the *mitzva* of *tefillin* is mentioned – *Devarim* 6:8 and 11:18.

10. There are other possible explanations for the fact that people wear a *tallit* specifically at *Shacharit* and throughout the entire *tefilla*. See, for example, *Tzitzit* (Cohen), p. 434.

11. Ad loc.

12. See *Yechaveh Da'at* 1v:2.

13. Cited by the *Ba'er Heitev* 17:4 and many others.

14. 17:10, based on the *Ba'er Heitev* op. cit.

15. See *Tzitz Eliezer* xx:8; *Tzitzit*, p. 352.

The question remains why one would want to deprive unmarried men of the advantages of wearing a *tallit* for *Shacharit*. (We will leave kabblastic reasons to others.) While the Maharil does mention the juxtaposition of the *p'sukim* on *tzitzit* and marriage that you mention, that hardly qualifies as a satisfying source without a specific reason for it. The *Divrei Yatziv*¹⁶ posits that since *tzitzit* symbolize the need to observe all *mitzvot* and a single man has not fulfilled the *mitzva* of getting married, withholding the *tallit* encourages him to marry as soon as possible. We will suggest another simple reason. The Radbaz¹⁷ posits that one should cover his head with a *tallit* during *davening*.¹⁸ He says that if this were not so, we would not wear a *tallit* at all, given that we already have *tzitzit* on. At the same time, the *Magen Avraham*¹⁹ writes that single men, and possibly even married men who are not *talmidei chachamim*, should **not** cover their heads with a *tallit*,²⁰ apparently to avoid appearing haughty. Based on the assumptions of these important *poskim*, it would be pointless for a single man to wear a *tallit*, thus explaining the *minhag*. In other words, the reason to wear a *tallit* is to cover one's head, and unmarried men, according to the *Magen Avraham*, should not do that even if they do wear a *tallit*. While there are different practices regarding married men covering their heads during *davening*, the *minhag* for married men to wear a *tallit* is universally accepted. Thus, while we do not generally follow the Radbaz's approach, his view may certainly explain the development of the *minhag* among single men.

In any case, when it comes to single men, both the *minhag* to wear a *tallit* and the one not to wear it are easily justifiable, and each person can follow his family *minhag* without compunction.

16. *Orach Chayim* 44.

17. 1:343.

18. See opinions in the *Mishna Berura* 8:4.

19. 8:3.

20. See *Kiddushin* 29b and 8a.

F-8: Is Long Hair a Problem for Tefillin?

Question: I have heard that there is an issue with long hair being a *chatzitza* (problematic separation) between the *tefillin shel rosh* and one's head. How does one determine how much hair is too much?

Answer: Some *poskim* say that long hair is a *chatzitza* for *tefillin*. However, regarding most cases of long hair, these opinions are difficult to justify, and as we will see, length is not the main factor.

The place to put the *tefillin shel rosh* is where the hair grows.¹ Since one is not required to shave his head every morning, hair could not possibly be a *chatzitza* regarding *tefillin*. The question is: why not?

The *gemara*² discusses whether hair that hangs down from the head and reaches between a *kohen's* clothes and his body is a *chatzitza* or whether it is considered to be a part of the body itself. The *gemara* does not resolve the question. The *Machatzit HaShekel*³ says that the doubt relates only to the hair at the back of the head. A *blorit* (probably a clump of hair in the front of the head) is a *chatzitza* for *tefillin*. He says that in the case of a *blorit*, one cannot apply the rule that anything that exists normally (*revitaihu*) is not a *chatzitza* because it is “abnormally big.” Presumably, if long hair whose roots are in the part of the head where the *tefillin* rest were combed down neatly (even if that hair extends to one's waist), it would not pose a problem because the part of the hair that the *tefillin* is on is the same as it would be if one cut the hair closer to the head. Rather, the problem must be only if there is noticeably more hair than usual at the point where the *tefillin* sit. Thus, slightly long hair that is parted on one side of the head could be more problematic than longer hair arranged with a middle part,⁴ and we have not heard of people being careful about the former.

1. *Shulchan Aruch, Orach Chayim* 27:9.

2. *Zevachim* 19a.

3. 27:4, cited by the *Mishna Berura* 27:15.

4. See the *Aruch HaShulchan, Orach Chayim* 27:14.

*Igrot Moshe*⁵ goes further, concluding that even transplanted hair is not a *chatzitza*, since it cannot be removed from the head without cutting (unlike a toupee) and, furthermore, the person wants the hair to remain. Rav Ovadia Yosef⁶ points out that mourners must let their hair grow for at least thirty days, and some do so for twelve months, yet the *poskim* do not warn about this being an issue regarding *tefillin*. He also points out that there is a *s'fek s'feika* (double doubt) strengthening the contention that hair is not a problem of *chatzitza*, since in addition to the possibility that hair is considered part of the body, the Rashba⁷ posits that *chatzitza* is not a problem for *tefillin shel rosh*.

There are two scenarios in which the concerns raised by *poskim* are particularly pertinent for those people who, by our standards, have long hair. One is that there could be several layers of hair on the sides of the head, where the straps of the *shel rosh* hold down the *tefillin*. Much of this hair would not be there at all if one's hair was of normal length. On the one hand, this seems not to be a problem according to the Rama,⁸ who says that *chatzitza* applies only to the boxes of the *tefillin*, not the straps. On the other hand, the *Mishna Berura*⁹ says in the name of "the *Acharonim*" that one should not be lenient in regard to the part of the straps that are used to fasten the *tefillin* to the body. Another issue raised by the *Mishna Berura*¹⁰ is that in addition to posing possible problems of *chatzitza*, a lot of hair can prevent the *tefillin* from being secured properly in place. In other words, although the *tefillin* can be considered to be resting **on the head** even if there is hair in between it and the scalp, it is not supposed to be resting **on a clump of hair** that happens to be rooted in the scalp.¹¹ Sometimes, especially when long hair is also thick and/

5. *Orach Chayim* IV:40.18.

6. *Yechaveh Da'at* II:2.

7. *Shut* III:282.

8. *Orach Chayim* 27:4.

9. 27:16.

10. *Mishna Berura* 27:15.

11. See *Shulchan Aruch, Orach Chayim* 27:5, which distinguishes between a thick

or curly, the *tefillin* does not seem to be resting on the head to a significant degree.

In summary, in all but the most extreme cases presented above, there is ample reason to say that long hair does not interfere with the fulfillment of the *mitzva* of *tefillin*. We would note that many of the *poskim* who raise the issue do so in the context of combating the phenomenon of long hair for men based on other halachic, social, and philosophical considerations, rather than the concern about *chatzitza* for *tefillin*.¹²

and a thin hat between the head and the *tefillin*.

12. See *BeMareh HaBazak* V:25.

F-9: One Who Makes the Wrong Beracha on Tefillin Shel Yad

Question: I accidentally made the *beracha* of “... *al mitzvat tefillin*” when putting on my *tefillin shel yad*. Was that valid, and what should I have said for the subsequent *beracha* on the *shel rosh*?

Answer: The *gemara*¹ cites R. Yochanan who says that when fastening the *shel yad*, one makes the *beracha* of “... *l’haniach tefillin*,” and upon placing the *shel rosh*, he recites “... *al mitzvat tefillin*.” The *gemara* points out that R. Yochanan seems to contradict Rav Chisda’s statement that one makes a *beracha* on the *shel rosh* only if he talks in between placing the two *tefillin* (speaking breaks the original *beracha*’s efficacy regarding the *shel rosh*). The *gemara* answers that if one is silent, he makes one *beracha*, and if he talks, he makes two *berachot*. However, it is not clear what the one and the two *berachot* are referring to.

One approach in the *Rishonim*² is that they indicate the total number of *berachot* recited when putting on the two *tefillin*. *L’haniach* is recited before fastening the *shel yad*, and that should normally suffice for both. If, however, the person talks, he must recite a second *beracha* before donning the *shel rosh*. This view is accepted by the *Shulchan Aruch* and is the practice followed by Sephardim.³ According to Rabbeinu Tam,⁴ in contrast, the numbers one and two refer to how many *berachot* are said before donning the *shel rosh*. In other words, one always recites *l’haniach* before the *shel yad* and *al mitzvat* before the *shel rosh*. If he spoke, he must repeat *l’haniach* before the *shel rosh*, thus creating a need for a second *beracha* at that point (for

1. *Menachot* 36a.
2. Including Rashi ad loc.
3. *Shulchan Aruch, Orach Chayim* 25:6.
4. See *Tosafot* ad loc.

a total of three). The Rama⁵ accepts Rabbeinu Tam's approach and establishes the *minhag* among Ashkenazim to follow it.

Based on your question, it is clear that you are an Ashkenazi, who recites two *berachot* – *l'hani'ach* on the *tefillin shel yad* and *al mitzvot tefillin* on the *shel rosh*.⁶ A Sephardi recites only one *beracha* – *l'hani'ach* – before putting on *tefillin*, and he would say *al mitzvot tefillin* only if he talked in between putting on the two *tefillin*⁷ or if he could put on only the *tefillin shel rosh*.⁸ A Sephardi would not have made the mistake that you did, which is more likely for Ashkenazim who say *al mitzvot tefillin* daily. What is the *halacha* if an Ashkenazi recites *al mitzvot tefillin* instead of *l'hani'ach* before putting on the *tefillin shel yad*?

The Rosh,⁹ in basic agreement with Rabbeinu Tam, says that either *beracha* could fundamentally apply to the *shel yad* or the *shel rosh*. However, *Chazal* preferred that we not recite two *berachot* on one *mitzva*, and they decided that *al mitzvot* was more appropriate at the end of the *mitzva* of *tefillin*. The *Taz's* brother¹⁰ says that *al mitzvot* pertains to the remembrances that *tefillin* raise and *l'hani'ach* applies to the *mitzva's* specific detailed actions, but, again, both elements and both *berachot* apply to each of the *tefillin*.

The following halachic ramifications emerge from this generally accepted position. Since both *berachot* relate to both *tefillin*, if one recited *al mitzvot* at the time of putting on the *shel yad* and *l'hani'ach* when putting on the *shel rosh*, he fulfilled the *berachot* requirement despite the imperfect order. Therefore, says the *Sha'arei Teshuva*,¹¹ if one already recited *al mitzvot* and completed fastening the *shel yad*,

5. *Orach Chayim* 25:6.

6. *Shulchan Aruch, Orach Chayim* 25:5

7. *Ibid.*

8. *Ibid.* 26:2.

9. *Pesachim* 1:10.

10. In a *teshuva* found in the *Taz, Orach Chayim* 25:6.

11. 25:5, based on the *Michtam L'David, Orach Chayim* 12.

he should recite the remaining *beracha* of *l'hani'ach* before putting on the *shel rosh*. Although some disagree,¹² this is the best solution.¹³

The matter is different if you catch your mistake before fastening the *shel yad*. Since *l'hani'ach* was, in fact, instituted to precede the *shel yad* and covers the *shel rosh* as well, you should recite *l'hani'ach* after *al mitzvat* and prior to fastening the *shel yad*. Then, with both *berachot* already recited, you should not make any *beracha* before putting on the *shel rosh*.¹⁴ If you catch and correct the mistake quickly enough by inserting the words "*l'hani'ach tefillin*" within around a second and a half of saying *al mitzvat*, then we apply the regular rule that mistakes in *berachot* can be rectified *toch k'dei dibbur*.¹⁵

If a Sephardi for some reason recited *al mitzvat* when he made his single *beracha*, he has already fulfilled the requisite *beracha* and would not make another *beracha* upon putting on the *shel rosh*.¹⁶

12. See *ibid*.

13. See *Be'er Moshe* v:10.

14. *Sha'arei Teshuva* *ibid*.

15. Within the amount of time it takes one to greet his rabbi. This is the opinion of the *Be'er Moshe* *op. cit.*, in contradiction to the *Kaf HaChayim*'s (25:39) novel ruling. Whether it is preferable to make the abrupt change in the *beracha* or to leave the *beracha* as is and follow the aforementioned rules is not a simple matter and is beyond our scope; see *Be'er Moshe* *op. cit.*

16. *Michtam L'David* *op. cit.*



Section G:
Miscellaneous



G-1: Does Hosting Count as Giving *Tzedaka*?

Question: I read in your book, *Living the Halachic Process*,¹ that one is not obligated to spend his own money to perform *mitzvot bein adam la'chaveiro* (interpersonal *mitzvot*). Does that mean that one is not obligated to spend money on *hachnasat orchim* (hosting guests) or that he can use *tzedaka* money for that purpose?

Answer: Let us first distinguish between different cases of *hachnasat orchim*.

If one's guest is poor enough to deserve receiving *tzedaka*, then the expense of hosting him is no less a legitimate use of *tzedaka* than any other.²

Hachnasat orchim also applies when one hosts people of means.³ However, one should not presume that all instances of hospitality fulfill (in the most complete manner) the *mitzva* of *hachnasat orchim*. The *Terumat HaDeshen*⁴ proposes that the *mitzva* of *hachnasat orchim*, whose fulfillment justifies utilizing certain halachic leniencies, applies to a guest who is away from home and sleeps at the host's residence. However, as the *Beit Yosef*⁵ says, inviting neighborhood friends over is not a *mitzva* at all.

Let's put things in perspective. Maintaining good relations with friends and neighbors is certainly a crucial part of a healthy Jewish lifestyle. To illustrate with an extreme example, a wife can demand a divorce from her husband if he forbids her to lend household items to neighbors because this harms her relationship with them.⁶ Nevertheless, just as giving birthday presents to one's family is neither

1. Vol. I, F-4.

2. *Ahavat Chesed* 3:1.

3. *Ibid.*; *Sukka* 49b.

4. 1:72.

5. *Orach Chayim* 333.

6. *Ketubot* 72a.

tzedaka nor a *mitzva*, the same is true regarding investing in friendships, even though the practice is commendable. (Hosting local people specifically because they are lonely seems to resemble hosting those from out of town who need a place to stay or eat. Further details and analysis are beyond our present scope.)

How should expenses be covered when one hosts in a manner in which he fulfills the *mitzva* of *hachnasat orchim* but not of *tzedaka* – for example, when he hosts a guest from out of town who is not poor? The *gemara*⁷ says that *gemilut chasadim*⁸ can be achieved through one's body and through his resources, and the *Yerushalmi*⁹ says that the amount of one's responsibility can total up to a maximum of a fifth of his resources. Although this seems to imply that one must use his own money for *gemilut chasadim*, the examples that Rashi¹⁰ and the Meiri¹¹ give for using resources regard loans of money and objects, cases in which one is reimbursed. Therefore that which you read in our book, that *mitzvot* of *chesed*, including *hachnasat orchim*, do not **fundamentally** require one to spend money, is not contradicted. In fact, therefore, even if a host requests that the guest share in the expenses, he still fulfills the basic *mitzva* of *hachnasat orchim*.¹²

On the other hand, a Jew is encouraged to provide his guest with respectable food,¹³ and the expected norm is to not request a reimbursement. The money the host outlays is part of the normal fulfillment of a *mitzva*, and the question at hand is therefore whether *tzedaka* money may be used for that purpose.¹⁴ Indeed, *Acharonim* discuss whether one can take money from his *ma'aser kesafim* fund¹⁵

7. *Sukka* 49b.

8. Acts of kindness.

9. *Pe'ah* 1:1.

10. *Sukka* 49b.

11. *Sukka* 49b.

12. See *Encyclopedia Talmudit* vol. IX, column 130.

13. Consider the story of Avraham serving the angels (*Bereishit* 18:4–8) and see *Chulin* 100a.

14. *Tzedaka U'Mishpat* 6:(15).

15. A fund that one finances from a tenth of his income, to be used for various

to spend on a *mitzva*. The classic use of *ma'aser* funds is for supporting the poor.¹⁶ According to some (including the simple reading of the Rama), one may not use such funds for other *mitzvot*. However, distinctions are proposed. The *Be'er HaGolah*¹⁷ says one may use the money to perform a *mitzva* in which he is not obligated. The *Shach*¹⁸ cites authorities who say that if there is a *mitzva* (apparently, a voluntary one) that one can perform only if he uses *tzedaka* funds, he may do so. The *Chatam Sofer*¹⁹ limits such leniencies to one who accepted the practice of giving *ma'aser kesafim* with the proviso that he could use the funds for such *mitzvot*.

In summary, one has the right to accept the practice of separating *ma'aser kesafim* on the condition that expenses incurred by hosting those in need – in a manner that goes beyond the standard call of duty – are included in his fund's use. Otherwise, he should follow the lead of Avraham Avinu and cover the costs of hosting for the sake of the *mitzva*.

altruistic causes.

16. Rama, *Yoreh Deah* 249:1.

17. Ad loc.

18. *Yoreh Deah* 249:3.

19. *Shut*, *Yoreh Deah* 231.

G-2: Dealing With the Tensions of a Complex Upbringing

Question: We bring up our children with the hope that they will love the ideals and personalities we cherish from our “*Dati Leumi*”¹ upbringing. However, for a combination of philosophical and pragmatic reasons, we send them to *yeshivot*/schools that might be classified as “modern *Haredi*.”² At school, our children have heard remarks that are offensive to families like ours, which, although not directed at them, upsets them. Now that one of our sons has decided to wear a hat on Shabbat at home, in addition to in *yeshiva*, he has started to feel that he is getting less welcoming treatment from some congregants at *Dati Leumi shuls*. (It is difficult to determine how accurate that perception is.) A few weeks ago, we were in a *shul* where a man (believe it or not, a psychologist!) who does not know us came over twice during *davening* to make very obnoxious comments to my son about the fact that he wears a hat when his father does not. My son, a respectful boy in his early teens, was upset. How do you suggest we go about trying to give our kids the best of “different worlds” and protect them from abuse?

Answer: There are, of course, many factors (including subjective ones) that help determine what the best educational and societal settings are for a given family. We will not try to use this forum to give you our opinion about the type of school in which to enroll your children or which *shuls* to frequent. Rather, we will deal with the phenomenon of tensions that arise when adolescents find themselves

1. National Religious, essentially parallel to what American Jews call “Modern Orthodox.”
2. Haredi literally means fearful (of HaShem). The most accepted translation of the name of this large and varied group of Orthodox Jews is ultra-Orthodox. Modern Haredi and its mirror image, Haredi Leumi, are subsets that combine certain characteristics of the two broader camps of the Orthodox community.

in complex settings in which they receive conflicting religious and societal messages.

One cannot hermetically shield his children from abuse any more than he can protect toddlers from falls without tying them down and thereby harming them. When you embarked on your “take from here and there” educational approach, you should have been aware that few Jewish communities practice full religious pluralism, even between different styles of Orthodoxy.

Some communities do not believe in pluralism and feel that it is correct to criticize their “rivals” relatively freely. Other communities believe in pluralism, but some of their individual members tend to react negatively to those who do not act in accordance with their ideals – including even to external signs, such as clothing that shows allegiance to a “competing” subgroup. (We will not attempt to preach to those who are, in our eyes, guilty of these insensitivities because they are not likely to listen.³) Not everyone notices the hypocrisy of his being intolerant of a person whom he perceives, correctly or not, of being intolerant. *Baruch HaShem*, many people are not like that, and only a minority of those who have such prejudices express them in an openly abusive way. However, just as kids are made fun of from time to time because of their height, weight, intelligence, etc., you and your children will hear occasional comments about wearing a hat or not wearing one, or a variety of other practices and viewpoints, coming from one side of the ideological divide or another.

It is unhealthy to expose your children to schools that inappropriately “bash” principles your family stands for. Differing opinions need not be harmful, but their insensitive and even irresponsible presentations can be. The man who abused your son made a psychological mistake (besides the transgression of embarrassing a young guest⁴). Such actions, as well as the cumulative effect of more subtle negativity or coldness, are likely to distance the victim from the

3. See the eloquent and powerful words of the Netziv in his famous introduction to *Sefer Bereishit* in *Ha'amek Davar*.
4. See *Bava Metzia* 58b.

community the abuser represents, whether it is *Dati Leumi*, *Haredi*, or anything else. This is a disservice to you, the parents, who are trying to impart the positive legacy you were raised on and other values that you have the right to embrace. While it is best to minimize the number of such interactions, it is not possible and probably not even desirable to avoid them totally. You should figure out how to teach your child – according to his personality, capacity, and experiences – about the dynamics of these matters and prepare him to think healthily and wisely.

While your educational goals are your prerogative, please consider the following. You want your children to be exposed to the best of “two worlds,” to love all Jews, and to be comfortable among the communities in which they mingle. Understand that at least in the prevailing socio-religious climate in Israel and other Jewish communities, it is likely that your children will not “straddle the fence” when they grow up; they will eventually choose a side. That does not mean your efforts are in vain. With *siyata dishmaya*,⁵ although your children will end up in whatever community they (and not you) decide, they will have learned lessons that most of their peers will lack. Undiscerning outsiders may judge your children by their mode of dress or other externals, but that does not mean that they have not been enriched and broadened. However, to succeed, it is important to expose them wisely to positive elements and personalities of the rest of the “world” that they are less likely to take part in. Hopefully, not only will this educate them about ideals that you believe in, but it will also assist them in developing a more natural affinity and love for larger parts of *Klal Yisrael* than they might otherwise have.

We respect your resolve to adopt a difficult educational path, based on your high aspirations for your children and your own broad outlook. Realize, however, that it requires considerable parenting skills to instruct your children how to swim safely against the current (or should we say, currents). Some feel they have no choice. We hope this path will lead your family to a situation in which your

5. Divine assistance.

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children will gain much but that the price of tensions and distress from comments will not be too high. Make sure you and they can handle it and, if you believe you can, we wish you good luck!

G-3: Full Body Scans for Security

Question: What does Halacha have to say about the full body scans that are now being implemented in airports for security?

Answer: We will base our answer regarding the situation as it **appears to exist at this time** (subject to our basic level of research). Body scans enable security agents to view the exterior of the subject's body, including the private parts, as if the person were undressed. However, the quality of the image, which is more like a sketch than a photograph, is such that it is difficult to recognize the subject. The way the current system is supposed to work is that one security guard takes the scan at a portal while another agent views the scan in a closed booth nearby and only informs other agents if he detects something suspicious. Under these circumstances, there is no violation of the *halachot* of *tzniut*¹ for the following reasons.

In a somewhat parallel context, we find the concept of *b'avidetei tarid*,² the principle that one who is preoccupied with his professional activities will not be affected by seeing that which could otherwise arouse him. A common application of this concept permits doctors to examine all parts of a patient's body without unusual *tzniut* precautions.³ Similarly, it allows X-ray technicians to look at parts of the body that they should not normally look at.⁴ In general, it is hard to believe that a normal person viewing these not particularly clear images would be aroused by them, especially when he views hundreds of them every tedious day. Thus, this security procedure does

1. Modesty.
2. *Bava Metzia* 91a.
3. *Igrot Moshe, Yoreh Deah* III:54.
4. Some other applications of *b'avidetei tarid*, albeit not universally accepted, regard lifeguards and photographers. In those cases, the matter depends on the context and the likelihood that they will not typically view their subjects in an inappropriate manner.

not pose *tzniut* problems for the security agents or, consequently, for the travelers involved.

There are further reasons for leniency. The *gemara*⁵ says that while a man must not look at certain attractive clothes of a woman even when she is not wearing them, this is only if he knows the clothes' owner. Some apply the distinction of whether one knows, or at least sees, the person to limit the prohibition of hearing a woman's singing voice to instances in which the man has seen the singer (at least via a picture).⁶ In our case, in which the guard does not know the subjects of the scans and would not recognize them based on what he saw, there is little cause for concern that he will be aroused.

Let us go further, however, and consider the possibility that **some** of the security men are the type to be aroused anyway. If such a security agent were to ask us the halachic question, we would forbid him (as well as such a doctor, etc.) to take the job, given his unusual "susceptibility." However, this is not the unknowing traveler's concern, nor need it be the concern of the authorities. To illustrate, the *gemara*⁷ says that it is forbidden for a man to look even at a woman's finger in order to derive enjoyment. Nevertheless, since this is deviant behavior, women may certainly keep their fingers and other "permitted" parts of their bodies uncovered, even if it is probable that from time to time someone will stare at them improperly. The person who stares has the problem, not the person who dresses and acts appropriately.

If the security agent is a non-Jew, who is not commanded to refrain from improper thoughts, and given that there is no reason to believe that the situation could bring about contact that could cause sin, the matter is even less problematic. Although this leniency would not be of much help in Ben Gurion Airport, we have already seen ample grounds for leniency in general, and we conclude that this system is permitted.

5. *Avoda Zara* 20b.

6. *Yabia Omer* 1, *Orach Chayim* 6.

7. *Berachot* 24a, as normally understood.

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In addition, two other points are relevant. First, the ultimate purpose of these checks is to save lives (although there are disagreements regarding whether it is the most effective system). Second, one of the major alternatives to a body scan is a full body search, which, if performed by a member of the opposite gender, is certainly more problematic.

G-4: Refraining from Sitting in a Parent's Seat

Question: What is the source for the idea that one should not sit in a parent's set place at a dinner table? Does this apply only when the parents are present? Are guests also precluded from sitting in the place of the head of the home?

Answer: The Torah commands us to show respect (*kavod*) to our parents¹ and to treat them with awe (*mora*).² The *gemara*³ mentions not standing or sitting in their places as examples of *mora*.

The main question we will focus on is what is considered “their place.” Rashi explains that standing refers to a communal place where some men congregate for people who seek their advice. He does not explain what the place of sitting is. The Ramah, cited by the *Tur*,⁴ says that one should not sit in his parent's seat (literally, place of lounging) at home. The *Tur* implies that Rashi, in contrast, felt that a seat at home lacks the importance for the prohibition to apply. However, the *Beit Yosef*⁵ posits that Rashi agrees with the Ramah that sitting in a parent's seat at home is obviously forbidden. The *Beit Yosef* explains that Rashi needed to clarify only where standing would be problematic, as such a formal place does not exist at home.

In any case, the *Shulchan Aruch*⁶ forbids sitting in a parent's spot at home. The *Beit Yosef*⁷ and *Shach*⁸ say that one may stand where his parents usually sit. This is not the same as taking his or her place in a manner that equates the child's importance to that of his parents.

1. *Shemot* 20:12.
2. *Vayikra* 19:3.
3. *Kiddushin* 31b.
4. *Yoreh Deah* 240.
5. Ad loc.
6. *Yoreh Deah* 240:2.
7. Op. cit.
8. *Yoreh Deah* 240:1.

A contemporary *posek*⁹ asserts that it is also forbidden to sit in a parent's personal chair if it is unique (special upholstery, armrest, etc.), even if it is not in its usual location. Rav Elyashiv is quoted¹⁰ as saying that the prohibition does not apply to a parent's bed, which is not a place of honor.

Most sources seem to indicate that the prohibition applies even if the parent is not present. However, there is a minority opinion that if the parent is not present, it is permitted for the child to sit in his parent's seat except in the presence of a group of people who have assembled around the table.¹¹ Most *poskim* permit sitting in the parent's seat after his death.¹² In many ways, it is a blessing for the parent that his child fills the resulting void and continues his legacy.

A parent can waive his right to honor.¹³ Therefore, if a parent permits, his child can sit in his place. Although there is a *machloket* whether a parent may even allow himself to be disgraced by his child,¹⁴ it seems clear that sitting in another's place, including a parent's, is rarely a disgrace.¹⁵ In fact, in various situations, the parent's permission may be assumed. For example, the *Aruch HaShulchan*¹⁶ uses such an assumption to justify the standard practice that boys sit in their father's seat in *shul* when the latter is not present.

In general, it seems from the *poskim* that a practical, logical approach is called for. We therefore would suggest the following. It seems that in some families, there is a true parent's "seat of honor" only at a Shabbat meal, whereas in other situations, places are not designated or taken seriously. Certainly, there is no need to create such a seat, and if a parent moves around frequently for any reason, we would not elevate the seat he sits in most often to the status of his

9. *Halichot Bein Adam LaChaveiro* 5:79.

10. *Ibid.* 5:77.

11. *Rishon L'Tzion, Yoreh Deah* 240:2.

12. See *Chayim B'Yad, Yoreh Deah* 125:48.

13. *Kiddushin* 32a.

14. See *Beit Yosef, Yoreh Deah* 334.

15. *Yaskil Avdi VII, Yoreh Deah* 21.

16. *Yoreh Deah* 240:9.

seat. In a similar vein, the *Aruch HaShulchan*¹⁷ says that while the *halacha* of not sitting in a parent's seat applies to a mother, since it was less common in his time for a mother to have a designated seat, the rule often did not apply.

Undoubtedly, the stakes are lower for a guest, as the serious commandment of honoring a parent is not relevant to him. However, it is worthwhile for a guest to ascertain whether there are defined places for the heads of the family. If there are, it would be appropriate for him to respect them as well.

17. Ibid.

G-5: Origin of the Practice of Men Covering Their Heads

Question: When and based on what sources did the practice for a man to cover his head originate, and in what circumstances is it required? Does it make a difference what he is doing and where he is?

Answer: The practice of men covering their heads has evolved toward increased stringency after the times of the Talmud, and it is likely that geographic/cultural factors had an influence on it.

The Talmudic references to covering one's head refer to it as a practice of the particularly pious¹ or as applicable when one has a specific need to reinforce his fear of Heaven.² The standard explanation is that a head covering reminds a person that he must accept the need for a separation between HaShem above and himself.³

Certain halachic sources indicate that the appropriateness of covering one's head depends on both the person and the circumstances. The Rambam⁴ views keeping the head covered as a high level of modesty, regarding which Torah scholars should be concerned. *Massechet Sofrim*⁵ cites two opinions on whether one may recite parts of prayers that contain HaShem's Name with his head uncovered, and most *poskim* rule stringently on the matter.⁶ It is also likely objectionable to enter a *shul* without a head covering.⁷ The implication is that under other circumstances, it is acceptable to have an uncovered head. The Gra⁸ champions the view that head covering in all situations is a matter of piety and not real Halacha.

1. *Kiddushin* 31a.
2. *Shabbat* 156b.
3. See language in *Kiddushin* 31a; *Taz, Orach Chayim* 8:3.
4. *De'ot* 5:6.
5. 14:15 (14:12 in some editions).
6. *Shulchan Aruch, Orach Chayim* 91:3.
7. *Ibid.*
8. To *Orach Chayim* 8:2.

On the other hand, there are indications that the need to wear a head covering applies to all Jewish men under normal circumstances. The *gemara*⁹ says that the morning *beracha* of “...oter Yisrael b’tifara” is said when one puts a cloth on his head, and the fact that this is a daily *beracha* leads some to understand that donning a headdress is a mainstream practice. The *Shulchan Aruch*¹⁰ instructs that one should not go more than four *amot* with his head uncovered. The Gra,¹¹ however, claims that this is a suggestion for those who strive for piety. (Note that this discussion in the *gemara* precedes the instruction not to walk with too straight a posture.)

An important element of this *machloket* is dynamic. The Ashkenazi *Rishon* Mahari Bruna¹² maintains that in Talmudic times, the matter was only an issue of piety, but now that we live among the non-Jews, it is a binding law. This is because gentiles make a point of uncovering their heads to show respect, and acting like them in this regard would be a violation of following the identifying practices of other nations. The *Taz*¹³ famously develops this approach and considers going without a head covering in places where this is routine for non-Jews to be a full violation of the Torah prohibition of copying gentile practices. Some other *poskim* take a somewhat compromise approach. The Maharshal¹⁴ says that while he is skeptical about there being a classic halachic requirement to cover one’s head, possibly even for prayer, once this has become expected of Jews, it is improper to upset people by failing to follow suit.

We see from several of these sources that the social context plays a major part in determining the proper approach. Not surprisingly, the custom to cover the head was much less widespread among Jews from non-Christian countries, where it was not an issue in separating

9. *Berachot* 6ob.
10. *Orach Chayim* 2:6.
11. Op. cit.
12. *Shut Mahari Bruna* 34.
13. *Orach Chayim* 8:3.
14. *Shut Maharshal* 72.

Jews and non-Jews. The *Mishna Berura*¹⁵ claims that had the Gra lived in his time (only around 100 years later), he would have agreed that one is halachically required to cover his head.

The validity of a weak covering, such as covering the head with one's hand, may depend on the underlying reason for the practice. If it is required for inherent halachic reasons (e.g., according to many, for prayers), then using one's own hand is not adequate.¹⁶ However, in the case of simply sitting or walking when it is bothersome to put on a *kipa*, a hand is likely enough of a covering, as one thereby indicates that he accepts the practice and concept of separation between HaShem and himself.

Obviously, the practice among religious Jews to wear a *kipa* is almost universal, at least when one is within the confines of a Jewish community, and that should be continued. Perhaps the most pressing question concerns people who are afraid of discrimination if they wear a *kipa*. What to do in such a situation is a major dilemma, which requires a separate halachic discussion. One should consult an Orthodox rabbi who is familiar with the local modalities and the particular situation of the person involved.

15. *Sha'ar HaTziyun* 2:17.

16. *Taz* op. cit.

G-6: The Origins and Nuances of Our Nation's Names

Question: I am on my state's History-Social Science Curriculum Framework and Evaluation Criteria Committee. We have been debating whether the Ancient Hebrews should be referred to by the name "Hebrews" or "Israelites." How does your organization refer to your ancient ancestors? Also, was it the Hebrews or the Israelites who organized the Kingdom of Israel? From which did the teaching emerge that God established ethical principles for humankind?

Answer: The names Hebrews (*Ivrim* [*Ivri*, sing.], in Hebrew) and Israelites are now used almost interchangeably, along with the name Jews. (The latter is somewhat of a misnomer, as it technically refers only to the descendants of the Tribe of Judah.¹) However, study of the most authoritative text, the Holy Scriptures (Hebrew Bible), reveals that there is a clear, although not absolute, historical distinction between Hebrews and Israelites.

The first person called an *Ivri* was Abraham (at the time, Abram) in *Genesis* 14:13. One explanation² of this appellation is that he was a descendant of Eber, a prominent great-grandson of Shem, the son of Noah,³ and, according to Jewish tradition, an early monotheist. (Many ancient nations were named after progenitors mentioned in that chapter.) Another possibility⁴ is that Abram came from the other side (*ever*) of the river (Euphrates), as is stressed in *Joshua* 24:3.

The name Israelites (or *Bnei Yisrael* = Sons of Israel) could not have been used until God renamed Jacob, Abraham's grandson, Israel, well into his life.⁵ However, even after the renaming, the name *Ivrim* was used to identify people from that family, or perhaps some

1. Most but not all Jews today are believed to be descendants of the Tribe of Judah.
2. See Ibn Ezra's long commentary to *Exodus* 21:2.
3. *Genesis* 10:21–24.
4. See Ibn Ezra op. cit.; Rashi's commentary to *Genesis* 14:13.
5. *Genesis* 32:29.

broader ethnicity. Joseph was called an *Ivri* three times by others,⁶ and he referred to himself as having been kidnapped from the land of the *Ivrim*.⁷ The *Ivrim* were a known, despised group in Egypt, to the extent that the Egyptians considered it disgraceful to eat in their company.⁸ In *Exodus*, when the family was already large enough to be called a nation,⁹ they are still referred to as Hebrews several times, including in the Biblical narrative. Moses was a “child of the Hebrews,” who went out and saw a Hebrew being hit and later two Hebrews fighting.¹⁰ God is presented to Pharaoh as the “God of the Hebrews.”¹¹ In total, there are eleven references to the family/nation in *Exodus* as Hebrews, all before the exodus from Egypt took place. (There are also many references to Israelites in this section.)

No references to the Nation of Israel as *Ivrim* are found in the Pentateuch¹² after the exodus. The only mention of *Ivri* in the rest of the *Pentateuch* concerns a Hebrew slave.¹³ Throughout the rest of the Holy Scriptures, in fact, there are few uses of the name Hebrew. One context is regarding slaves. This makes sense because a Jewish slave reminds us of our ancestors before they became a free nation. In several places in *Samuel I*, the Philistines, who dominated the Israelites at that time, called their Israelite foes *Ivrim* – again in the context of a derogatory reference to a lowly group. Finally, Jonah identified himself as a Hebrew,¹⁴ arguably in a self-deprecating manner. In contrast to the handful of references to *Ivrim*, there are thousands of uses of the term *Bnei Yisrael* (Israelites) in biblical accounts.

In short, it is clear that the **nation** that left Egypt, received the Torah at Sinai, and later founded the Kingdom of Israel in the former

6. *Genesis* 39: 14, 17; *ibid.* 41:12.

7. *Ibid.* 40:15.

8. *Ibid.* 43:32.

9. See *Exodus* 1:9.

10. See *Exodus* 2: 6, 11, 13.

11. *Ibid.* 7:16.

12. *Chumash* = Five Books of Moshe.

13. *Exodus* 21:2; *Deuteronomy* 15:12.

14. 1:9.

Land of Canaan was known as *Bnei Yisrael*. Previously, there had been a **family/tribe** that was started by Abraham the Hebrew and sustained by Isaac and Jacob/Israel. They and their early descendants spread monotheism and morality as respected citizens/leaders in the Land of Canaan,¹⁵ including a region known as the Land of the Hebrews (see above). This family/tribe and perhaps others associated with them were known to the outside world, for the most part, as Hebrews. Their descendants continued the same mission of spreading monotheism and morality, but as an independent nation known as Israel, with a unique legacy and set of laws.¹⁶

Summing up, while the names Hebrews and Israelites can be and often are used interchangeably, the more precise usage depends on the exact period of history to which one is referring.

15. See *Genesis* 14:14–23; 21:33; 23:6; 26:26–29.

16. See *Exodus* 19:1–6.

G-7: Netilat Yadayim and Hygienic Concerns

Question: Given the great concern regarding “swine flu,”¹ many consider it hygienically prudent to wash their hands with soap and water before doing *netilat yadayim* with a washing cup and eating a bread meal. Is it permitted to do *netilat yadayim* with a *beracha* when you know that your hands are already clean before the *netila*? If one may make the *beracha*, should he dry his hands before doing *netilat yadayim*?

Answer: The *Shulchan Aruch*² deals with the issue of one who leaves the bathroom and is ready to eat. Such a person has two obligations of *netilat yadayim* – one as a result of using the bathroom and one in preparation for his bread meal. If he does *netilat yadayim* only once for both needs, he will necessarily create a problem of *hefsek*.³ Whether he washes and then recites the *beracha* of *Asher Yatzar* for attending to his needs or first recites the *beracha* on the *netilat yadayim*, followed by *HaMotzi*, and only afterward recites *Asher Yatzar*, there will be a break between the time the other *beracha* became necessary and when it was recited.⁴ Therefore, the *Shulchan Aruch* says to wash two times in such a case, the first to be followed by *Asher Yatzar* and the second by “... *al netilat yadayim*.” We can ostensibly learn from this ruling that the fact that one just washed his hands does not preclude his performing another formal washing along with its *beracha* before eating bread.

In reality, however, there is a *machloket* regarding whether *netilat yadayim*, when performed before a bread meal, is a *mitzva* that warrants a *beracha* when it is a repeat of a *netila* that was done recently.

1. *Baruch HaShem*, the pandemic that existed at the time the question was asked does not exist presently.
2. *Orach Chayim* 165:1.
3. Improper break.
4. See *Mishna Berura* 165:2.

The *Beit Yosef*⁵ infers from *Tosafot*'s discussion⁶ regarding the two washings that we do on *Seder* night that if one does *netilat yadayim* for a low-level obligation (e.g., before eating a food other than bread dipped in certain liquids) and then needs to do one for bread, the latter *netilat yadayim* is still a full obligation that warrants a *beracha*. However, the *Darchei Moshe*⁷ maintains that this is so only when a significant amount of time has passed, as we assume that the person eventually lost concentration in maintaining the cleanliness of his hands. In cases in which the washings were in close proximity, the *Darchei Moshe* is not convinced that *netilat yadayim* is required. Therefore, while one should wash a second time, he should not make a *beracha* on the second *netilat yadayim*.⁸

However, in our case, it is relatively simple to ensure that the “ritual washing” is adding something that the washing with soap and water is missing – that is, if only the second washing satisfies the halachic requirement of using a cup. We see this distinction in the *halacha* cited above regarding one who washes after using the bathroom and before eating bread. The *Mishna Berura*⁹ cites *Acharonim* who say that the first washing, done to enable reciting *Asher Yatzar*, should be performed in a manner that suffices only for the purpose of cleanliness but is not halachically valid for a bread meal. If one did a complete *netilat yadayim* the first time, these *Acharonim* maintain that the second washing would need to be done without a *beracha*. An incomplete *netilat yadayim* can be accomplished by **not** using a valid washing cup, which is a requirement for *netilat yadayim*.

One could also make a second *netilat yadayim* necessary by having his hands touch a covered part of his body or some other “dirty”

5. *Orach Chayim* 158, a view reflected in its author's *Shulchan Aruch*, *Orach Chayim* 158:7.
6. *Pesachim* 115b.
7. *Orach Chayim* 158:2, as its author rules in the Rama, *Orach Chayim* 158:7 (see *Mishna Berura* ad loc. 32).
8. Rama, *Orach Chayim* 158:7.
9. 165:2.

place.¹⁰ However, we imagine that this second approach would not sit well with those who are particularly concerned about hygiene.

In addition to not using a cup during the hygienic washing, which is easy enough, one should preferably not use the first spurt of water from the faucet, as some authorities feel that this is equivalent to washing with a standard utensil.¹¹

Turning to your second question: should one dry his hands in between hygienic cleaning and *netilat yadayim*? The reason that doing so might be necessary is that the water on the hands may be *tamei*,¹² which could prevent the water of *netilat yadayim* from purifying the hands. A similar case is discussed by the *poskim*. The *Shulchan Aruch*¹³ discusses pouring some of the *netilat yadayim* water on the hands to remove dirt prior to the main *netila*. The *Bi'ur Halacha*¹⁴ notes that there is no mention of a need to dry the hands before proceeding. He says that this is so because either the prewashing is part of the *netilat yadayim* process, whereby water can become *tamei* and is removed by the second rinse, or, to the contrary, the water that gets on the hands is not *tamei* unless it got there through an improperly executed *netila*.¹⁵ While the *Yalkut Yosef*¹⁶ agrees with this approach, there are significant *poskim*, both Ashkenazi and Sephardi, who disagree.¹⁷ They maintain that if water is used to remove dirt prior to the *netila*, one should dry his hands from the questionable water before commencing the real *netilat yadayim*. Without getting into the intricacies, it seems that our case is more lenient than the one these *poskim* discuss. It thus appears that it is not necessary to dry hands that were washed for hygienic reasons before *netilat yadayim*.

10. See Rama, *Orach Chayim* 158:7.

11. See discussion in *Tzitz Eliezer* v III:7.

12. Ritually impure.

13. *Orach Chayim* 162:2.

14. Ad loc.

15. Based on the *Magen Avraham* 162:10.

16. *Orach Chayim* 159:1.

17. *Ben Ish Chai*, *Shemini* 11; *Chazon Ish*, *Orach Chayim* 24:20; *K'tzot HaShulchan* 33:4.

G-8: *Ribbit*¹ – Discount on Rent for an Apartment for its Buyer

Question: I sold an apartment to a *ben Torah*.² There was a payment at the signing and there were additional payments at various dates. The closing was to be on December 1, contingent on the completion of all payments, which in turn depended on obtaining a mortgage and clearing up certain legal issues. By no fault of either side, the final payment took place several weeks later. Our contract included a clause allowing the buyers to move into the apartment well before Dec. 1, but they had to pay the same rent the outgoing renters did. They did not pay in advance, and I figured that they would take care of it together with the final payment. When the time came, the buyer claimed that he should pay rent only until Dec. 1, the envisioned date of transfer of ownership. He argued that while payment was not actually completed by that date, he had already paid a clear majority of the purchase price. He said he would accept the ruling of any rabbi I want to ask, and I would like to ask you. I am pretty sure I am right, but considering that he paid so much money and that the amount in dispute is tiny in the scheme of all the money changing hands, I feel that it would be a shame to leave a bad taste from our transaction. Thus, assuming I am correct, I would be happy if you would suggest a *p'shara* (compromise).

Answer: From a reading of the contract, it is clear that December 1 was not the time the sale **would** become final, but rather the time it **could have** been final had the money been ready. Under such circumstances, had there not been a clause about renting before the sale was complete, the buyer could not have demanded the keys before the **actual** closing, even though a large part of the money had been paid. Regarding the rent, there is some logic for the buyer to pay in

1. Interest payment on a loan or other monetary obligation.
2. One who is careful to follow the laws of the Torah with all of their intricacies.

a prorated manner, according to the percentage of the money that was not yet paid. (We will see below a halachic issue this can raise). In any event, since the contract refers to full rent, it is clear that until the apartment belongs to the buyers, they are to pay rent in full. (Since we had access only to the contract and your understanding of the events but not the buyer's version, we cannot say anything conclusive or binding.)

The above is a brief analysis of your **rights** from the perspective of *Choshen Mishpat*.³ However, you express uneasiness with the situation, in which the buyer paid a lot of money toward the apartment and yet still has to pay full rent until the time the sale was complete, even after the expected date of sale. This is a noble attitude, but in this case it requires us to delve into *Yoreh Deah*.⁴

Making down payments on merchandise that is not yet available but is to be legally transferred to the buyer later has the halachic status of a loan that the seller demands of the buyer prior to the sale. Therefore, the buyer/lender must not receive an actual monetary reward for advancing the money, as that reward would be *ribbit*.⁵ If, for example, a buyer and seller agree that the price of the merchandise is \$100,000 but that if the buyer advances significant funds, the price will be \$98,000, then the \$2,000 discount is considered a \$2,000 interest payment.

A major exception to the prohibition on discounts for prepayment is when the commodity that is being sold is legally ready to be transferred, even if in practice the parties decide to delay the actual transfer.⁶ To a certain extent, we consider that the sale went through and the payment is not ahead of its normal time.⁷ Thus, you could

3. Monetary law, colloquially using the name of the section of *Shulchan Aruch* that discusses these matters.
4. The section of *Shulchan Aruch* that deals mainly with ritual law, including the relevant topic of *ribbit* (usury), which is a special religious obligation related to money.
5. *Shulchan Aruch*, *Yoreh Deah* 173:7.
6. *Ibid*.
7. *Beit Yosef*, *Yoreh Deah* 173; *Taz*, *Yoreh Deah* 173:10.

have initially given your buyers a good price for a larger than normal down payment. You certainly could have offered them a reduction in the rent, either as a form of a permitted discount or following the logic that he bought a percentage of the apartment with his payments. We rule, however, that even when dealing with an existing commodity, one may not state two sales prices, where one is for a later payment and one for an early payment,⁸ unless a *heter iska*⁹ is used. Rather, the basic schedule of payments should be set first and then an exact sales price with that schedule in mind.

The contract that you provided does not seem to indicate anything but full rent. If there were a doubt about what was agreed or understood regarding the rental payment, a discount could be considered a compromise on the legal question and would not be *ribbit*.¹⁰ However, it seems that there is no such doubt here and that all agree the contract indicates that you are correct; it is only that the buyer is now complaining and you feel bad that you held so much of his money for what ended up being longer than the expected time. If so, making it up to him by changing the agreement after the fact and forgiving the rent after December 1 would be a violation of the Rabbinical prohibition known as *ribbit meucheret* (late *ribbit*). (It is not a Torah violation, as this pertains only when the *ribbit* stipulation was set at the time of the “loan.”¹¹ The main practical difference between the two levels of *ribbit* is that if the interest payment was already made in an instance of Rabbinical late *ribbit*, the lender does not have to return the interest to the borrower.¹²)

8. *Tur, Yoreh Deah* 173; Rama, *Yoreh Deah* 173:7.

9. An agreement that turns what would have been *ribbit* into a joint investment between the two parties. This usually brings about the same financial outcome through a very different mechanism, which is permitted. See details of the application in *The Laws of Ribbis* (Reisman), p. 237.

10. *Shut Avnei Nezer, Choshen Mishpat* 23.

11. *Shulchan Aruch, Yoreh Deah* 161:5.

12. *Shulchan Aruch* and Rama *ibid.* 2.

G-9: Incomplete Standing for *Modim D'Rabbanan* and to Honor *Talmidei Chachamim*

Question: I see people making a semi-rising motion at the beginning of *Modim D'Rabbanan*¹ and also when a *talmid chacham* walks by. Is that correct behavior? What are the rabbinical sources on the matter?

Answer: The same actions in the different contexts are based on different sources and apparently on different logic.

The *Shulchan Aruch*² rules, based on the *Yerushalmi*,³ that when the *chazan* gets to *Modim* during *chazarat hashatz*, the congregation should also bow. The classical sources do not mention standing at that point (although many require or suggest doing so throughout all of *chazarat hashatz*⁴). However, *Acharonim* point out that proper bowing starts only from a standing position.⁵ The connection between standing and bowing can be inferred from the *halacha* that one who is unable to stand for the entire *tefilla* should try to stand at least at the times at which he must bow.⁶ Regarding what parts of *Modim D'Rabbanan* require that one bow, there are multiple opinions and *minhagim*: at the beginning, at the beginning and end, and throughout.⁷ Consequently, the time that one should be standing corresponds to the opinions on bowing.

The question is whether semi-standing is considered standing. Regarding *Shemoneh Esrei*, during which one certainly should stand,

1. The paragraph recited by the congregation when the *chazan* reaches the blessing of *Modim*.
2. *Orach Chayim* 127:1.
3. *Berachot* 1:5.
4. See Rama, *Orach Chayim* 124:4.
5. *Yechaveh Da'at* v:11; *Ishei Yisrael* 24:38.
6. *Shulchan Aruch*, *Orach Chayim* 94:5.
7. See *Shulchan Aruch*, *Orach Chayim* 127:1.

the *Shulchan Aruch*⁸ says that one should not even lean on a lectern or on another person. The *Mishna Berura*⁹ points out that in general, standing while leaning is not considered standing if the person would be unable to continue standing in that position if the support were to be removed. Depending on how high off the chair one lifts himself, it is questionable whether the average person would be able to keep himself in the position that you call a semi-rise if his support (the chair or other object) were removed. Accordingly, can we justify the practice you describe?

It appears that one can find some justification in significant, albeit minority, sources. Regarding bowing at *Modim D'Rabbanan*, the Rambam¹⁰ says: "All of the people bow down a little, and they should not bow too much." The basic idea of not bowing too much is found in the *Yerushalmi*,¹¹ but there is much discussion as to whether it is specific to *Modim D'Rabbanan* or whether it is a general guideline.¹² In any case, the *Bach*¹³ explains that the Rambam maintains there should be a less-than-usual bow at *Modim D'Rabbanan*. Since the people have already *davened Shemoneh Esrei* and bowed at *Modim*, they should not need to do so again. The reason they do bow is to avoid giving the impression that they disagree with the enthusiastic praise of HaShem that the *chazan* is reciting. (For this reason, even one in the midst of his silent *Shemoneh Esrei* at that time should bow along with the others.¹⁴) Therefore, a small bow is recommended. It is very possible that according to this approach, just as the bow is not a full one, it is similarly unnecessary to stand fully. Although the

8. *Orach Chayim* 94:8.

9. 94:22.

10. *Tefilla* 9:4.

11. Op. cit.

12. See *Beit Yosef, Orach Chayim* 127.

13. *Orach Chayim* 127. The *Beit Yosef* says much the same thing.

14. *Mishna Berura* 109:10.

*Magen Avraham*¹⁵ and *Mishna Berura*¹⁶ do not *pasken* like the *Bach*, his view may explain the *minhag*.

The matter of standing up to some extent for a *talmid chacham* has a solid basis in classical sources. The *gemara*¹⁷ discusses whether a *rav* can be *mochel* (relinquish rights to) the honor he deserves, and we rule that he can.¹⁸ The *gemara* tells of a *talmid chacham* who seemed to be *mochel*, but was actually slighted when someone remained in his chair when he approached. The *gemara* explains that the person should have at least done a *hidur*, which Rashi¹⁹ explains as a slight movement to show that he would like to stand up. The idea of demonstrating some level of honor is accepted by the *Shulchan Aruch*,²⁰ and the semi-rising of which you speak is one such example.

15. 127:1.

16. 127:2.

17. *Kiddushin* 32a–32b.

18. *Shulchan Aruch, Yoreh Deah* 242:32.

19. *Kiddushin* 32b.

20. *Shulchan Aruch* op. cit.

G-10: A *Beracha* on the *Mitzva* to Write a *Sefer Torah*

Question: Why is there no *beracha* on the writing of a *sefer Torah*?

Answer: This question, which we have not found discussed directly by the *Rishonim*, has several suggested answers in the writings of the *Acharonim*.

Before addressing possible answers, it is important to mention a fundamental issue debated by the *Rishonim* that may affect some answers. The Rambam¹ rules that every individual is obligated to write a *sefer Torah* or have one written for him, even if he possesses a *sefer Torah* that he inherited. However, the Rosh² (as most understand him) posits that only in our nation's early history, when the *sefer Torah* was the primary text for Torah study, was there a *mitzva* to have a scroll of the Five Books of Moshe written. Nowadays, the main *mitzva* is to possess a broad variety of texts that one needs for his Torah study.

The *Divrei Menachem*³ says that since the main point of the *mitzva* to write a *sefer Torah* is so that one can learn from it, conceptually, it is a preparatory *mitzva*, and a *beracha* was therefore not instituted. Along similar lines, the Mahari BeiRav⁴ suggests that it is like several other *mitzvot* where we make the *beracha* only before the final stage of the *mitzva*.⁵ Just as one does not make a *beracha* on building a *sukka* until before he sits in it or on preparing *tefillin* until before he puts them on,⁶ one does not make a *beracha* on the *mitzva* of writing a *sefer Torah*, which is completed when one learns from it. The

1. *Sefer Torah* 7:1.

2. *Sefer Torah* 1.

3. Cited by the *S'dei Chemed*, vol. VI, p. 313. He bases himself on *Shut HaRashba* 1:18, but the Rashba can be understood differently.

4. 62.

5. See *Menachot* 42b.

6. Rambam, *Berachot* 11:8.

Mahari BeiRav also suggests that a separate *beracha* for writing a *sefer Torah* is never necessary because it is covered by the daily *berachot* we recite before learning and, according to the accepted opinion, even before writing words of Torah.⁷ However, the *Chatam Sofer*⁸ argues that the former explanation makes sense only if one assumes, as does the Rosh, that the *mitzva* to write a *sefer Torah* is inexorably linked to that of Torah study,⁹ and he views that as a minority opinion.

The *Chatam Sofer*¹⁰ discusses two technical explanations for why the Rabbis did not institute a *beracha*. One is that writing a *sefer Torah* takes a long time, and there is a concern that it will never be completed, thus causing a *beracha l'vatala*.¹¹ The *Chatam Sofer* is not satisfied with this answer, suggesting that one could write almost a whole *sefer Torah*, check it for accuracy, and then make a *beracha* before finishing up the last few words. Although *berachot* are usually supposed to be made before one starts a *mitzva*, he proposes that in situations in which following that principle would prevent the recitation of a *beracha*, we would recite it closer to the end of the work. He extends this theory (which is not obvious) to the *beracha* on building a fence for a roof, arguing that it should be made when the fence is about to become sufficiently safe.

The *Chatam Sofer* prefers a different technical answer – one which has depressing implications. He says that already at the time of *Chazal*, there were questions about the proper spelling of certain words in the Torah, and there is thus a certain lack of confidence that we are actually fulfilling the *mitzva* (which requires a kosher *sefer Torah*). A *beracha* is therefore inappropriate. However, there is great logic to argue that since we assume the halachically accepted spelling of the Torah text to be correct in regard to other relevant

7. *Shulchan Aruch, Orach Chayim* 47:3.

8. *Orach Chayim* 52.

9. This is also probably true regarding the latter explanation, which the *Chatam Sofer* does not mention.

10. *Ibid.*

11. A blessing of no value, which it is forbidden to recite.

*mitzvot*¹² and *berachot*, this misgiving would not be the reason why we do not make a *beracha* on the *mitzva* of writing.¹³

Even when the practical details surrounding the *berachot* for *mitzvot* are quite clear, the basic question of why a certain *mitzva* has or does not have a *beracha* is not infrequently shrouded in mystery and is fertile ground for halachic inquiry and ingenuity.

12. E.g., *tefillin* and *kri'at haTorah*.

13. See the lengthy discussion on the matter in *Ateret Paz* 1:11, *Yoreh Deah* 12:(1).

G-11: Removing Tattoos Before Conversion

Question: I am studying to convert to Judaism with an Orthodox rabbi. I know that tattoos are viewed negatively by my rabbi and others. People are unaware that I have some (not obscene ones), and I am concerned that when I will put *tefillin* on, people will find out. Should I just not convert? Will rabbis accept me?

Answer: It would be irresponsible to advise you whether or not you should convert without knowing you personally. However, tattoos should not be a serious factor in your decision. While there is a Torah prohibition not to have tattoos done,¹ this applies only to Jews. Therefore, people **should** and a rabbi **would** know that you did nothing wrong, and they are obligated not to cast aspersions on your worthiness as a convert. (In any case, the act of conversion itself demonstrates that someone wants to make a major change in his life.) Furthermore, there is not even a clear obligation to remove a tattoo, as the main problem is arranging to have it put in one's flesh, not its existence there.² If your tattoos involve themes of paganism or obscenities, it is proper³ to keep them covered whenever possible.³

That being said, we understand your feelings and encourage you to take steps to avoid situations in which you will be embarrassed in the future. When living as a religious Jew, your (visible) tattoos are likely to make you stand out in a manner that does not do justice to your commitment to Torah observance. You may choose either to keep the fact that you are a convert under wraps or to proudly share with others the lofty status you have attained; many rabbinic sources praise conversion as a brave and laudable step. In any case, you probably will not want to draw attention to awkward elements of the past, which tattoos are likely to do. Therefore, we recommend trying to remove the tattoos for personal reasons, rather than halachic ones.

1. *Vayikra* 19:28.
2. *BeMareh HaBazak* v:78.
3. *Ibid.*

Let us take a quick look at some of the procedures for removing tattoos. You should consider your options now because some procedures are problematic for a Jew. Therefore, if a certain procedure is something you want to pursue (we do not give medical advice), the best time to do so is likely now.

One simple procedure (with moderate results) is to apply a chemical cream that fades the color of the tattoo over time. This is permitted for a Jew, which is important because even if you start the treatment immediately, your conversion may take place before the treatment is completed.

Plastic surgery (which is uncommon for tattoos) requires cutting the body and is halachically problematic because a Jew may not deliberately cause injury to his body, even if it will eventually heal.⁴ While there are grounds for leniency when surgery is done to improve or beautify the body and not damage it,⁵ it is best avoided when alternatives exist.

Laser treatment, which breaks up the dyes and allows them to be removed naturally by the body, is usually not problematic because typically, there is no damage caused, or at most minor scarring.⁶

A final system is called “cover up,” in which one injects new dye that makes the tattoo only faintly visible. The problem with this method is that the new dye is actually a new tattoo, albeit with barely noticeable color. Nevertheless, there is logic for leniency, as there is some question as to whether the **full** prohibition of tattooing applies only to writing or whether any mark is equally forbidden.⁷ If inserting any mark is fully forbidden, then the cover up injection is likely included in the prohibition. If, however, simple marking is prohibited only Rabbinically, and especially if it is forbidden only because it looks like tattooing, then it is **possible** to claim that it is permitted when it is done in order to make the previous marks less noticeable.

4. See Rambam, *Chovel U'Mazik* 5:1

5. *Igrot Moshe*, *Choshen Mishpat* 11:66.

6. See *BeMareh HaBazak* op. cit.

7. Rav Basri in *Techumin* x, pp. 282–7. See *BeMareh HaBazak* 11, p. 81.

Furthermore, the full prohibition may not apply to a technical need, such as marking a slave (obviously no longer in practice).⁸ If this opinion is true,⁹ it is likely applicable when the purpose of the injection is to minimize an existing tattoo. (*B'Tzel HaChochma*¹⁰ analyzes cover up at great length and views it as a reasonable option when necessary for *mitzva* purposes.) Nevertheless, as noted above, it is worthwhile to perform the cover up procedure before converting.

8. *Shulchan Aruch* and Rama, *Yoreh Deah* 180:4.

9. See *Mishpetei Uziel* 11, *Yoreh Deah* 22, who says the ruling is talking about an exceptional case.

10. v:82.

Section H:
Family Law



H-1: Honoring a Request to Bury Outside of Israel

Question: My father-in-law died in America recently and was buried there. My mother-in-law plans to move here (Israel), where all her children live. She has clearly indicated her desire to be buried next to her husband. Will we be required or allowed to carry out her wish, given that it violates the *halacha* that she should be buried in Israel? Other related points are that we will have no place to sit *shiva* in America and will not be able to visit her grave on *yahrtzeits*.

Answer: First, we hope that your question will remain only theoretical for many years. The matters of *shiva* and *yahrtzeit*, while not insignificant, are relatively minor, technical issues that can be worked out when the time comes. The main question to concentrate on is whether one's request to be taken out of Israel for burial is valid and should be honored.

According to most opinions, it is a *mitzva* to live in *Eretz Yisrael*,¹ and it is wonderful that your family, soon to include your mother-in-law, is fulfilling this *mitzva*. In contrast, it is not a *mitzva* to be buried in Israel but rather an **opportunity** for the deceased. The *gemara*² says that being buried in *Eretz Yisrael* brings atonement to the deceased and eases the process of the resurrection of the dead. Therefore, many fine Jews, starting with *Yaakov Avinu*, have asked to be buried here. There has been debate regarding whether those who lived their lives abroad deserve to be buried in Israel.³ Some of the positive effect is lost anyway if one is brought to Israel posthumously.⁴ However, the consensus for several centuries has been that it is worthwhile for one to be buried in Israel even if he lived and

1. See *Pitchei Teshuva*, *Even HaEzer* 75:6; *Eretz Hemdah*, vol. 1, sec. 1.

2. *Ketubot* 111a.

3. See *Yerushalmi*, *Kilayim* 9:3.

4. *Ketubot* op. cit.

died abroad.⁵ For example, the *Shulchan Aruch* allows transporting or even exhuming a body from a proper cemetery in *chutz la'aretz* in order to bring it to Israel. Nevertheless, while it is certainly a significant benefit for one who dies abroad to be buried in Israel, one is not required to make such arrangements for himself.

Note that among the religiously recognized preferences for burial – one that is pertinent in this case and serves as a counterbalance – is the matter of family.⁶ For example, a body may be transported or exhumed so that it can be buried in a cemetery with a family plot. According to most *poskim*,⁷ this applies to a variety of family members, certainly including one's spouse. It seems that of the two choices, burial in *Eretz Yisrael* vs. burial near family, most authorities prefer *Eretz Yisrael*, all the more so if the deceased died in Israel.⁸ However, *poskim* allow one to decide for himself. In your case, there would be an immediate opportunity to bury your mother-in-law next to her husband, whereas it may be difficult to know to what extent there will be a family plot in Israel.

There was a fascinating *machloket* between Rav Moshe Feinstein⁹ and Rav Ovadia Yosef¹⁰ regarding whether to support the idea of exhuming and bringing the remains of Sir Moses Montefiore¹¹ to be buried in Jerusalem, whose community he helped sustain in his lifetime.¹² Rav Moshe opposed the idea, and one of his arguments was that since Montefiore was aware of the opportunity to be buried in Israel and opted not to, his body should be left alone. Rav Ovadia

5. See *Shulchan Aruch*, *Yoreh Deah* 363:1,2; *Shut Maharashdam*, *Yoreh Deah* 203; and several recent *poskim*.
6. *Shulchan Aruch* op. cit. 1.
7. See *Taz*, *Yoreh Deah* 363:2; *Yabia Omer* VII, *Yoreh Deah* 39.
8. See *Yabia Omer* VI, *Yoreh Deah* 31.
9. *Igrot Moshe*, *Yoreh Deah* III:153.
10. *Yabia Omer* op. cit.
11. 1784–1885. Montefiore was a very dedicated British Jew whose great influence and philanthropy helped many Jewish communities and causes, including the early Jewish settlement effort of *Eretz Yisrael*.
12. As of the publishing of this volume, some of Montefiore's descendants are still considering the relocation of his and his wife's burial places.

explained that it is in the deceased's best interest to be brought to Israel, and he claimed that this is what Sir Moses would have wanted had he understood the value of burial in *Eretz Yisrael*. However, Rav Ovadia did not dismiss the deceased's stated desire in the context of burial location. In another responsum,¹³ he ruled that a woman who was buried in Israel but had left explicit instructions to be buried among family in *chutz la'aretz* should have her request followed. (In a similar case, but one in which there were no explicit instructions, he ruled that the deceased should remain buried in Israel.¹⁴). Rav Ovadia did not believe that the decision to take the deceased for burial abroad is qualitatively different from the decision not to bring the body for burial in Israel.

The rationalization for bringing the deceased to rest abroad is even stronger if she already owns a plot there and if the request is formalized in a verifiable document. Thus, while you might argue that your mother-in-law's decision is spiritually unwise, it is certainly legitimate and should be honored (hopefully not any time soon.)

13. Op. cit. 38.

14. Op. cit. VI, *Yoreh Deah* 31.

H-2: A Mistaken *Ketuba* at a Wedding

Question: What should one do if he discovers a mistake in a *ketuba* as it is being read under the *chupa*?

Answer: Different situations may call for different appropriate responses. I will discuss a scenario that I was personally involved in, from which we can learn some general lessons. I was at a wedding at which the *mesader kiddushin* was a respected scholar, and many of the assembled were knowledgeable in Halacha. As the *ketuba* was being read under the *chupa*, I thought I heard that the date was that of the previous year, but I did not see anyone else react. (In legal documents, including the *ketuba*, what is written is crucial, not what is read.) What was I to do?

Let us consider a little background. A predated document of obligation is invalid.¹ A document of obligation creates a lien on the property of the obligated person, either when it is signed or when it is handed over to the recipient of the obligation. The lien allows the recipient of the obligation to seize real estate that belonged to the obligated individual at the time the document was activated from a subsequent buyer of that property. It is thus important to know if the obligation preceded the purchase by the third party. One could misuse a predated document to seize property from someone who actually bought it before the obligation took effect, when there was no lien. Therefore, a predated *ketuba*, which is a document of obligation, cannot serve as such,² at least until it is corrected. Since a couple is not allowed to live together without a valid *ketuba*,³ in my case, it had to be determined whether the *ketuba* was in fact dated a year early. On the other hand, stopping the *chupah* would be embarrassing and disconcerting to the *mesader kiddushin* and the families. Could the inquiry wait?

1. *Shvi'it* 10:5.
2. *Tashbetz* (Bar Tzadok) 459.
3. *Shulchan Aruch, Even HaEzer* 66:1.

At first glance, the question would indeed seem pressing, as the *Shulchan Aruch*⁴ rules that *yichud*⁵ is forbidden without a valid *ketuba* and Ashkenazi couples have *yichud* right after the *chupa*. However, the Rama⁶ seems to accept the opinion that *yichud* is permitted without a *ketuba*. Furthermore, the *Shulchan Aruch*⁷ says that a valid *ketuba* is not necessary if there are witnesses that the *chatan* obligated himself to the terms of the *ketuba* with a *kinyan sudar*,⁸ which is regularly done at a wedding. The Rama⁹ agrees that these witnesses can be relied upon, albeit only in a case of need and until there is an opportunity to write a proper *ketuba*.

Therefore, I decided that it was halachically proper to wait until the crowd dispersed after the *chupa*, and I could inquire discretely. I felt that there was a serious issue of *kavod haberiyot* (human dignity), as people are under the impression that distinguished rabbis should not be making mistakes of this sort. (In fact, everyone is human, and high intelligence and extensive knowledge do not preclude careless mistakes.) Unlike corrections during Torah reading, which are expected, an invalid *ketuba* uncovered under the *chupa* by a mere guest makes for a good story to pass around, likely in a manner that violates the laws of *lashon hara*.¹⁰

In fact, my inquiry led to a chain of events, which ended in the *mesader kiddushin* (and a small group of others, but more than I had hoped for) realizing that the *ketuba* was clearly predated by one year

4. Ibid.
5. Being alone together in a secluded place.
6. Ad loc. Ashkenazim normally accept the Rama's rulings.
7. Ibid.
8. A broadly effective method of finalizing a transaction or other agreement, performed through a symbolic act.
9. Ad loc.
10. Improper speech that causes damage to others, especially by tarnishing their reputation.

and invalid. The *chatan* and *kalla* were (unnecessarily, in my view¹¹) interrupted in the *yichud* room by a young “watchman.”¹²

After the wedding, I had second thoughts about my on-the-spot halachic reasoning. Some have the *minhag* that the witnesses sign the *ketuba* only after it is read under the *chupa*, and this was the practice followed at this particular wedding. Perhaps I should have raised the alarm then and enabled the process of rectifying the mistake to take place before the witnesses signed, in spite of the fact that those assembled would have to wait and would inevitably find out about the mistake. By not doing so, I allowed the witnesses to unknowingly violate the commandment of “Do not bear false testimony against your fellow,”¹³ given that one important element of the testimony that they were signing was false.

In retrospect, I thought of four reasons that **might** justify my silence. Since each one could be the topic of a full article, I will just hint at one. The Rambam and Rosh argue about a case in which one sees a friend unknowingly wearing *sha'atnez* in public. The Rambam¹⁴ says that one should pull the forbidden clothing off of his friend. However, the Rosh¹⁵ maintains that since the violation is unintentional and removing the garment in a public place would be embarrassing, one should wait to inform him until he is in a private place. Along the lines of the Rosh, allowing the unknowing witnesses to sign the improper document in order to save others from significant embarrassment is very possibly justified.

11. Based on the discussion above and on the fact that it is likely that the prohibition of being together without a *ketuba* document pertains only when the wife has reason to suspect that she does not possess a valid one (see *Minchat Yitzchak* IX:139).
12. This is one of the ways to avoid *yichud*. See *Shulchan Aruch, Yoreh Deah* 192:4.
13. *Shemot* 20:7.
14. Accepted by the *Shulchan Aruch, Yoreh Deah* 304:2.
15. *Kilei Begadim* 6, accepted by the Rama ad loc.

H-3: A Chatan Leading Bentching at Sheva Berachot¹

Question: May a *chatan* lead the *bentching* and/or recite the *sheva berachot* at his own *sheva berachot* celebration? If he generally should not, does it make a difference if he is a greater *talmid chacham* than anyone else present?

Answer: We will begin with a bit of background. Two sets of *berachot* are recited under the *chupa*: *birkat eirusin* and *birkot nisuin/birkot chatanim*. We refer to the latter as the *sheva berachot* (which are actually six special *berachot* in addition to the *beracha* over the cup of wine that accompanies them). The *birkat eirusin* relates to the betrothal,² and the *sheva berachot* relate to the *nisuin*³ and are repeated through the week of celebration.

Classical sources seem to indicate that **fundamentally**, the *chatan* himself should recite at least the *birkat eirusin* before fulfilling his *mitzva* of getting married.⁴ However, due to one or more of the following concerns, a strong *minhag* has developed that other people recite both sets of *berachot* (although some concerns may apply more to one than to the other).

The Mordechai⁵ says that it is haughty (*yohara*) for the *chatan*

1. *Sheva berachot* can refer either to the days (usually seven) of celebration after a wedding, to the individual festive meals during this period, or to the seven blessings that are recited after those meals.
2. The halachically most significant part of the marriage process, which makes the woman off-limits to all men but her husband. This is generally accomplished by giving the ring.
3. The second and final halachic stage of the marriage process, after which the couple lives together as husband and wife. At the time of *Chazal*, there were twelve months between the *eirusin* and the *nisuin*, during which time the families prepared for the upcoming union.
4. See Rambam, *Ishut* 3:23; *Tur*, *Even HaEzer* 34; *Shulchan Aruch*, *Even HaEzer* 34:1.
5. *Ketubot* 131.

to claim the *berachot* for himself. The Rambam is reported to have said⁶ that several of the *sheva berachot* were instituted to bless the *chatan* and *kalla*, and they therefore should be recited by others. *Orchot Chayim*⁷ asserts that we are concerned that if the custom is established for *chatanim* to recite the *berachot*, those who are unable to do so will be embarrassed. The consensus is that the *chatan* should recite the *berachot* only if he is the sole available person who can recite them reasonably.⁸

There may be a practical difference between the reasons. Some of the *sheva berachot* are general praises of HaShem and do not focus specifically on the *chatan* and the *kalla*. In theory, according to the Rambam's reason, the *chatan* should be able to recite those *berachot*. It seems that in former times, one person recited all of the *berachot*, and in an "all or nothing" situation, we prefer that the *chatan* do nothing. Nowadays, when we assign the *berachot* to a number of individuals, one could contend that the *chatan* could say the first few *sheva berachot*. Nevertheless, the prevalent *minhag* is that the *chatan* does not recite any of the *sheva berachot*. This is the correct practice according to the other reasons and, in general, is just as well (the *chatan* has enough limelight). This is true both under the *chupa* and during the week of *sheva berachot* celebrations.

The matter is less clear when it comes to leading the *bentching/zimun*. On the one hand, leading the *bentching* is **fundamentally** the same at a *sheva berachot* celebration as at other meals, and there should thus be no reason to exclude the *chatan*. On the other hand, there are clear connections between the *bentching* and the *sheva berachot*. The *sheva berachot* are recited specifically at the end of the *Birkat HaMazon*; the *mezamen*⁹ waits until the *sheva berachot* are finished to make the *beracha* and drink the wine; and the *mezamen*

6. See beginning of *Ma'aseh Rokeach* on the Rambam; see also *Aruch HaShulchan, Even HaEzer* 62:9.

7. *Kiddushin* 21.

8. See *S'dei Chemed* vol. vII, p. 434; *HaNisuim K'Hilchatam* 10:21; *Nitei Gavriel, Nisuim* 99:2.

9. The person who leads the *bentching*.

recites special *sheva berachot* insertions of “*D’vai haser...*” and “...*shehasimcha bim’ono.*” Therefore, it would not be too surprising if the *chatan’s* ineligibility to recite *sheva berachot* would extend to being *mezamen*.

Let us analyze whether the aforementioned reasons to exclude a *chatan* apply also to being the *mezamen*. The *bentching* and the special insertions recited by the *mezamen* do not focus on the *chatan’s* and *kalla’s* welfare. It is unclear whether there is a specific concern that *chatanim* would feel pressured to lead the *bentching* and/or be embarrassed if they do so improperly. Finally, it need not be perceived as haughty for the *chatan* to lead the *zimun*, considering that this is a normal task and that he is usually a guest of the sponsors of the festivities and not seizing the honors himself. Therefore, one can easily make the case that a *chatan* can lead the *bentching*, and some *poskim* even cite a *minhag* that the *chatan* is specifically given this honor,¹⁰ especially at *seuda shlishit*.¹¹

However, since the clearly prevalent practice is that *chatanim* do not *bentch* at their own *sheva berachot* (even if this practice may have been originally motivated by ignorance), it would be objectionable for one to do so without an exceptional reason. Granted, it is unclear whether the practice has reached the level of a binding *minhag*. Nevertheless, due to the practice, a *chatan’s* leading of the *bentching* is likely to raise eyebrows and create an appearance of haughtiness, at least on the level of the spirit of the law. This is all the more so true if it is perceived that he is doing so because he is the most learned person there, as you inquired. However, as we noted above, the *chatan* may recite any of the *sheva berachot* if no one else is capable, and we can extend this to *zimun* when no one else feels comfortable leading the somewhat more complicated *bentching*.

10. *HaNisuim K’Hilchatam* 14:109; *Nitei Gavriel* op. cit. and 106:(12).

11. See Question H-4 in this volume for a situation in which this may be halachically preferable.

H-4: Drinking Sheva Berachot Wine at Se'uda Shlishit

Question: We made *sheva berachot*¹ at *se'uda shlishit* that ended well after sunset. The question arose: should one drink the cup(s) of *Birkat Hamazon*/ *sheva berachot* before *Havdala*?

Answer: First, let us discuss the *halacha* regarding drinking a cup of wine for *Birkat HaMazon* at a regular *se'uda shlishit* that ends at night. The *Magen Avraham*² says that one who *bentches* over a cup of wine at *se'uda shlishit* may drink it before *Havdala*. Since the cup of wine is part of the *bentching*, drinking it in effect concludes the meal. Just as one can complete *se'uda shlishit* at night before *Havdala*, he can similarly drink the wine that is connected to the meal. However, the *Magen Avraham* adds the caveat that if one does not regularly recite *Birkat HaMazon* over wine, in a case when he does use wine, he should not drink it before *Havdala*. For such a person, the connection between the wine and the meal is insufficiently strong to justify drinking before *Havdala*.³ *Eliya Rabba*⁴ and *Tosefet Shabbat*⁵ are not convinced that the fact that one does not use a cup regularly for *Birkat HaMazon* makes a difference in this regard, but *poskim* are reluctant to reject a ruling of the *Magen Avraham* without further indications.⁶

What should one do about *sheva berachot* at *se'uda shlishit* according to the *Magen Avraham*? On the one hand, since most of us are not

1. *Sheva berachot* can refer either to the days (usually, seven) of celebration after a wedding, to the individual festive meals during this period, or to the seven blessings that are recited after those meals. We write the former in upper case and the latter two in lower case.
2. 299:7.
3. See *Machatzit HaShekel* ad loc.
4. 299:6.
5. 299:7; see *Sha'ar HaTziyun* 299:24.
6. See *Mishna Berura* 299:14 and *Sha'ar HaTziyun* op. cit.

vigilant to always *bentch* over a cup of wine, perhaps we should not drink the wine before *Havdala*. On the other hand, we always use a cup for *sheva berachot*. Given that our *minhag* is to use two cups of wine to serve the two purposes, should we distinguish between the two? Rav Shlomo Kluger⁷ reasons that although logic dictates that it is permitted to drink the cup of *sheva berachot* but not the cup of *bentching*, doing that would diminish the status of the cup of *Birkat HaMazon*. Therefore, he suggests that one not drink from either cup before *Havdala*. The *Eshel Avraham*⁸ argues that at *sheva berachot*, one should drink from the cup before *Havdala* because without the preceding *beracha* of *Borei Pri HaGefen*, the requisite seven *berachot* are lacking. Others say that if one always uses a cup for *bentching* at *sheva berachot* or at formal gatherings with a *minyan*, that is sufficient to enable the drinking from the cup.⁹

Assuming that the *beracha* of *Borei Pri HaGefen* is recited and the wine is drunk, further issues and various opinions come into play. First, who should drink the wine? Rav Moshe Feinstein¹⁰ posits that there are different aspects of the cups of wine at *sheva berachot*. The fact that the *chatan* and *kalla* drink is connected to the very nature of *sheva berachot*, which requires a cup of wine; therefore, they should drink before *Havdala*. The reason why the person who *bentches* at *sheva berachot* drinks is related to the general matter of *bentching* over a cup. Since his drinking is not crucial, Rav Moshe posits that it is preferable that only the *chatan* and *kalla* drink the necessary cheeks-full amount of wine. Some propose just the opposite – that is, the one who makes the *beracha* should drink (as well as the *kalla*, since not all options maintain that women are obligated in *Havdala*), but the *chatan* should not. The latter distinction is tenuous.¹¹

7. *Chochmat Shlomo* to *Shulchan Aruch*, *Orach Chayim* 299:4.

8. (Butchatch), cited in *Minchat Yitzchak* 111, 113, and also found in his work *Ezer MiKodesh* to *Even HaEzer* 62:8.

9. See *Tzitz Eliezer* x:45 and *Yabia Omer* v 111, *Orach Chayim* 33.

10. *Igrot Moshe*, *Orach Chayim* 1v:69.

11. *Tzitz Eliezer* op. cit.; *Yabia Omer* op. cit.

Some *poskim* prefer that those drinking should only take a sip,¹² as a sip **may** be permitted before *Havdala* and may be sufficient for drinking from the cup of *sheva berachot*. If the one who *bentches*, the *chatan*, and the *kalla* each has about an ounce of wine, additional opinions would be satisfied.¹³ However, it is perfectly acceptable for at least the three people mentioned to drink as usual from the cup(s).^{14 15}

12. See *Tzitz Eliezer* op. cit.

13. See *Mishna Berura* 271:73.

14. *Yabia Omer* op. cit.

15. Two related reminders are in place. It is not a simple matter to resolve whether *panim chadashot* are required at *se'uda shlishit* (see *Shulchan Aruch* and *Rama, Even HaEzer* 62:8). If Shabbat is the last day of *Sheva Berachot*, the *sheva berachot* should probably not be made after nightfall (see *Living the Halachic Process*, vol. 11, 1-4.)

Section I:
Monetary Law



I-1: Paying for a Cancelled Taxi Order

Question: A friend of mine reserved a place on a *sherut* (a joint, ten-seat taxi service to Ben Gurion airport) for the middle of the night. When he awoke, he realized that he had made a mistake; his flight was the next night. He tried unsuccessfully to reach the taxi service to cancel and then went back to sleep. The taxi driver arrived as scheduled, and when my friend did not appear, the angry driver called him. My friend explained what had happened, but he did not pay the driver. The next night, he called the same taxi service (they did not realize that he was the same person who had called the day before). He did not feel that he had to pay double, as he made use of the transport service to the airport only once. Was he correct?

Answer: One (Reuven) who offers a worker (Shimon) a job can generally back out of his commitment if a *kinyan*¹ had not been made and the job had not begun. However, in this case, Shimon (i.e., the taxi service, through its driver) already drove to Reuven's (i.e., your friend's) house. Consequently, Reuven cannot back out;² traveling to the place of employment was essentially the beginning of the job, which is analogous to a *kinyan*.³ Thus, Reuven should have to pay for the job he ordered, which Shimon indeed began. The fact that Reuven tried to cancel before the driver came is irrelevant since he did not succeed in doing so,⁴ unless the taxi service was responsible for not enabling him to do so,⁵ but this does not appear to be the case.

Perhaps your friend could argue that in this case, the fact that the work was “begun” is not significant. Beginning the work creates an obligation for Reuven to fulfill his commitment to use Shimon for the job. In this case, your friend was willing to use the taxi service for

1. An act of finalization.
2. *Bava Metzia* 76b.
3. *S'ma* 333:6.
4. See the parallel case in *Gittin* 33b.
5. See *Bava Metzia* op. cit.

the same job at the same price, but he simply delayed the implementation by a single day – until the correct time of his flight. However, even if this argument is conceptually correct, the following factors may obligate your friend.

Even when Reuven is not bound by a *kinyan* to use Shimon's services, when a broken offer of work causes Shimon financial damage, Reuven must compensate him. The classical case is when Shimon could have found another job had he not accepted Reuven's offer and it is now too late to replace that job.⁶ In your scenario, it is quite clear that after your friend's cancellation, the driver could not pick up a new customer for that trip to the airport. The question, then, is whether there simply would have been an empty seat had your friend not reserved it or whether someone was turned away or redirected elsewhere. If someone was turned away, your friend should pay for his understandable yet negligent mistake. Your friend has no way of knowing if this is the case. If the driver or the dispatcher says that they did lose out on a fare, then this is an instance of *bari v'shema*, in which a plaintiff claims to be **certain** (*bari*) that the defendant owes him money and the defendant says he is **not sure** (*shema*) if this is correct. The standard *p'sak* is that there is a *chiyuv latzeit y'dei shamayim* (a moral obligation) to pay in such a case.⁷

Another factor is that there are two possible claimants your friend must consider. The taxi company anticipated receiving a certain amount of money, as did the driver. If each receives a fee on a per-person basis, then either may have lost out because of your friend. Our limited research about such services indicates that the driver pays the company a fixed rate for their service of finding passengers, and he keeps all the fares. If so, even though your friend paid the company's driver the next night, the driver from the first night lost out, assuming it was not the same driver.

A minor factor that often plays a role in cancelled jobs is that

6. *Shulchan Aruch, Choshen Mishpat* 333:2.

7. *Shulchan Aruch, Choshen Mishpat* 75:9. Further discussion of the application of the general rule to this specific case is beyond our present scope.

when Reuven reimburses Shimon for his lost revenue, Reuven may reduce the amount because he spared Shimon the toil of the job he ended up not doing.⁸ However, once the driver came to your friend's house and called, any reduction in work, and thus in the fee, would be negligible at best.

We think that Reuven should have gone out to the driver the first night to offer to pay at least the great majority of the fare. This is all the more so true if your friend's address created a *chillul HaShem* (for example, if it was in a religious neighborhood). At this point, he can try to find out if the taxi service can determine who the driver was (or accept their part, if that is their arrangement). Doing so is at least *menschlich* (considering the small percentage the fare is of the total travel costs), and your friend appears to even be obligated to pay for his mistake.

8. *Shulchan Aruch, Choshen Mishpat* 333:1.

I-2: Is a Watchman Responsible for More Than He Expected?

Question: I went with some friends to play ball in a local park, and one of them decided to leave early. He asked me to take his bag back, but I forgot about it, and it is now lost. He says that I owe him \$500 for my negligence, as he had a lot of cash and some electrical devices in the bag. While I trust him on the facts, I would not have agreed to accept such a big responsibility had I known what was in the bag. We asked a rebbe of ours what to do, and he said I should pay, which I did. Later, he said that it might be a complicated case and that we should ask an expert in *Choshen Mishpat*.¹ Did I have to pay and, if not, can I get the money back?

Answer: Indeed, the question and the present situation are tricky. The *gemara*² says that if Reuven tells Shimon that the objects he is asking him to watch are less expensive items than they are in reality and they are then lost in a manner that obligates Shimon to pay, he is financially obligated only for what he thought was the value of the objects he was watching. Following this logic, you might claim that you accepted upon yourself to watch a bag and its contents only of the value that one normally brings to a park, which is far less than \$500.

However, there at least two distinctions between your case and that of the *gemara*. The *gemara* discusses a situation in which, after deceiving Shimon, Reuven now wants Shimon to pay according to conditions that **he himself had claimed** did not exist. In your case, although your friend did not give you pertinent information regarding the extent of your potential liability, he did not lie or refuse to answer your questions. (He probably did not give thought to the possibility that you would care about the extent of your liability, as people often

1. The *halachot* of monetary law.
2. *Bava Kama* 62a.

do not consider worst-case scenarios.) Furthermore, in the *gemara's* case, Shimon accepted responsibility for certain specific objects, and Reuven wanted him to pay for different ones. In contrast, you knew you were responsible for unknown contents of the bag with unknown value. Your contention is simply that the value exceeded the range of the normal value that you could have expected.

Therefore, we must find a precedent that is closer to your case. The *Shulchan Aruch*³ discusses the case of Levi, who borrowed and lost a sword that Yehuda had received from a non-Jew as collateral for a loan that Yehuda gave the non-Jew. The non-Jew demanded a lot of money from Yehuda for the sword, and as a result, Yehuda demanded the same amount from Levi. The *Shulchan Aruch* rules that Levi has to pay Yehuda only the price of an average sword. The view of the *S'ma*⁴ is that the non-Jew was demanding an unreasonable price, which is the reason that Yehuda cannot pass on that demand to Levi. However, the *Shach*⁵ proves that the *Shulchan Aruch's* source is discussing a sword that indeed was very expensive, a fact that Levi could not have been expected to realize when he borrowed it. In such a case, says the *Shach*, we apply the rule from the *gemara* we saw above that a *shomer* (watchman) is not responsible for the value of an object that exceeds his reasonable expectations. What is important to us is that the *Shach's* case resembles ours with regard to the first distinction we raised – there was no deception involved. Nevertheless, the *Shach* posits that the exemption applies because the *shomer's* appraisal of the object was the one expected for the average person. Even when the *shomer* sees the object that he is charged to watch, he is not expected to know its high value. Your case should be no worse, even though when you accepted responsibility for the bag, you were fully aware that it included objects you had not seen. Thus, according to the *Shach*, your obligation is limited to the reasonably expected value of the contents of the bag.

3. *Choshen Mishpat* 72:8, based on the *Hagahot Mordechai, Bava Kama* 207.

4. 72:28.

5. 72:40.

The *Yam Shel Shlomo*⁶ and the *K'tzot HaChoshen*⁷ agree that one cannot obligate a *shomer* for more than he accepted. However, they maintain that a *shomer* cannot claim that he was unaware of the object's value (even if he is being honest), as one accepts an open-ended obligation for whatever the object is worth unless the owner actually deceives him. In our case, since there was no deception, you should be obligated according to this view.

It is **likely** (we cannot say definitely since we are hearing the details from only one side) that had the case come before us, our ruling would not have compelled you to pay the contested amount, at least not all of it, due to the doubt that arises because of an apparent *machloket* on the matter. This opinion is influenced by one of the broadest rules in monetary law: "The burden of proof is upon the one who wants to extract from his friend." However, in a case of doubt, if the defendant already paid, as you did, even though he did so based on an erroneous *p'sak*, the former plaintiff now holds the benefit of possession.⁸ Nevertheless, while you cannot **demand** the money back, we believe you have a moral right to **request** a compromise, just as your friend could have appealed to you for one at the outset.

6. *Bava Kama* 6:34.

7. 291:4.

8. According to most opinions – see *Shach*, *Choshen Mishpat* 25:2, and commentators ad loc.

I-3: Reimbursement Through Additional Services

Question: A laundromat damaged several articles of my clothing. They are willing to reimburse me for some of the losses but only by offering free laundry service. Is that a legitimate form of payment?

Answer: We will deal with the question of the form of payment and take no stand on how much, if at all, they owe you. That would require hearing both sides and appraising the clothes' depreciation in value, neither of which are feasible to arrange from what we understand. It is important, however, for you to have a sense of whether the terms you are being offered meet the basic halachic requirements, assuming that the laundromat does owe you money.

The *halacha* does not always require one to make payment in the form of cash. Regarding a regular loan, one **who has cash** must pay cash.¹ However, when it comes to damages, even one who has money may give objects of the equivalent market value.² If one pays for damages with movable objects (*m'taltelin*), he can give objects of any type and level of quality, as long as the overall value is correct. If he does not own movable objects of the right value, he can pay with real estate, but he then must select from the choicest level of fields that he possesses.³ The advantage to the recipient of being paid with *m'taltelin* over land is that he can take the items to wherever he wants and sell them.⁴

Now we will analyze whether the type of compensation that the laundromat is offering is a legitimate form of payment. They are offering a service whose value is limited to a very specific use and

1. *Shulchan Aruch, Choshen Mishpat* 101:1. In referring to "cash," we do not mean to exclude payment by check, but rather to exclude objects and property.
2. *Ibid.* 419:1.
3. *Shulchan Aruch* *ibid.*
4. *Bava Kama* 7b.

venue (laundering at a single establishment⁵). Therefore, it lacks the broadness of *m'taltelin*, which one can take with him to use or sell, and if you cannot readily sell the free service, perhaps it will be of little use to you. However, if they give you a written credit slip that is not limited to your personal use, then it is arguably like *m'taltelin*, as it can be sold if you personally have no use for it. Is that sufficient?

A similar case discussed by the *poskim* in the context of a loan can serve as a precedent for our case. The *Shulchan Aruch*⁶ accepts the opinion that if someone is a debtor and has a loan contract against a third party, he can transfer it to his own creditor as payment. The Rama⁷ clarifies that such a payment is valid even if the debtor owns standard *m'taltelin* that he could give as payment. Those who do not allow such payment⁸ reason that paying with a loan contract that one has against a third party is not equivalent to giving an object of value because a loan contract does not have **intrinsic** value. In addition, not always does one who possesses such a contract succeed in extracting payment from the obligated party. As we saw above, the *halacha* demands that payment be made in a relatively safe and accessible form, and some do not view a loan contract as meeting those requirements.

It is important to note that the *Shach*⁹ disagrees with the *Shulchan Aruch* and the Rama and says that a loan contract cannot be used as payment unless the lender consents.¹⁰ The *Shulchan Aruch* and Rama themselves note that the value of the contract is not deter-

5. We assume you are not talking about credit at a chain of establishments over a broad geographical region. We are also assuming, however, that the establishment is reputable enough that people are interested in using their services (i.e., cases of damages are not the norm).
6. *Choshen Mishpat* 101:5.
7. Ad loc.
8. See the *Tur*, *Choshen Mishpat* 101, and the *Beit Yosef* ad loc. in the name of *Sefer HaTerumot*.
9. *Choshen Mishpat* 101:3.
10. See *Pitchei Choshen, Halva'ah* 4:12, who cites both opinions without deciding between them.

mined by its face value, but rather depends on how much a person would pay for it. Certainly, one would not pay \$1,000 for the rights to a contract on a loan of \$1,000. In each case, *beit din* would have to consider how easily one can expect to be able to extract payment from the specific debtor, which would be affected by factors such as his financial assets, his personality, and his legal history.

How does the credit at the laundromat compare to transferring a loan contract? In some ways, it is better, in that it does not involve an unknown third party. If the proprietor were to renege on his credit offer, your claim and any legal steps that might have been taken before his offer would then resume from the same point, but there would need to be more direct payment. Thus, it is unlikely that the proprietor will cause problems, and there is little lost by trying to accommodate him.

Both cases raise similar questions as to whether a document – in this case, a written credit for a service – can be considered the equivalent of money.¹¹ In such matters, accepted standards derived from laws or social norms may affect the *halacha*. It seems to us (albeit without extensive research) that in similar situations, proprietors often give this type of compensation. We understand why you would prefer to receive cash, which certainly simplifies matters, but you should also understand that it may be considered perfectly legitimate for him to give you a transferable written credit as compensation. Assuming that you would prefer not to drag the matter to a *din Torah* and that you may lack means of exerting effective pressure, this might be the most practical way for you to obtain compensation with minimum headache.

11. See *K'tzot HaChoshen* 101:2.

I-4: Realtor Fee for an Altered Purchase

[The Eretz Hemdah beit din held a din Torah on the matter discussed below. After deliberation, the panel decided that justice and peace would be best served if the sides would agree to a compromise, which they did to the satisfaction of all. The litigants requested us to write, for their intellectual curiosity, a ruling of “what would have been” had they not agreed to compromise. Instead of writing a detailed, formal p’sak of three dayanim, we decided to outline one dayan’s opinion in our Ask the Rabbi format and share it with the public as well.]

Question: The defendants were interested in buying two apartments in Israel. They signed an agent’s service contract with the plaintiff, a real estate agent, obligating them to pay the plaintiff 2% of the sales price if they were to buy an apartment that she showed them. The plaintiff told the defendants that she regularly gives a discount for buying two apartments, whereby they pay only 1.5% commission for the second apartment. At a certain point, the defendants were interested in principle in buying two apartments that the plaintiff had shown them, but they told her that they would not do so if they would have to pay the full 2% commission. After negotiations, during which the defendants calculated how much the plaintiff stood to gain from the commissions even after a reduction, the plaintiff agreed to lower her agent’s fee to 1.4% for each of the apartments, and she faxed them two invoices stating the respective fees for the two imminent purchases. Subsequently, an engineer uncovered serious flaws in the more expensive apartment, and the defendants bought only the cheaper apartment. The plaintiff then sent the defendants a bill based on a 2% rate of commission, claiming she had agreed to the special reduction only because of the prospect of a double purchase. The defendants, however, paid only the 1.4% rate, which appeared in the invoice faxed earlier. Do the defendants have to pay the remaining 0.6%?

Answer: It is clear from the litigants' presentations that the expectation that the defendants would buy both apartments played a decisive role in their demand and in the plaintiff's acquiescence to reduce the commission rate to 1.4%. This seems to justify the plaintiff's claim. However, it is also clear that the defendants had succeeded in lowering the plaintiff's fee from her standard price and increasing her standard reduction for a second apartment. Although the defendants had signed a contract that set the commission at 2%, the plaintiff had apparently viewed their threat not to buy the apartments unless the commission would be lowered as credible. Therefore, had the sides discussed at the time of their agreement what they would do if the defendants ended up purchasing only one apartment, it is obvious that they would have arrived at a figure somewhere between 1.4% and 2%. Thus, justice was served by their eventual compromise, in which they approximated the agreement that they would have reached had they had the foresight.

Regarding *din* (formal judgment), as opposed to compromise, it is not possible to simply guess at a reasonable rate in this case. Rather, a decision in this case with initial agreements but unclear conclusions must be based on halachic rules. At first glance, the plaintiff appears to be the *muchzeket* (have the benefit of the status quo), as the defendants signed a binding agreement that sets the rate at 2%, an agreement that was never formally cancelled. The invoice that later set the rate for the apartment that was purchased at 1.4% is invalid because it was clearly based on the mistaken assumption that the defendants would buy two apartments. Thus, ostensibly, we should revert to the rate of 2%.

Upon further review, however, we note that the contract did not create a *chazaka* (status quo) because there never was an obligation of 2%. More precisely, the contract represented a **potential** obligation of what the commission would have been had the defendants bought the apartment without receiving a reduction. However, since they refused to buy any apartments until they received an oral agreement to cancel the 2% commission and since no commission beyond 1.4% was set, the burden of proof is on the plaintiff if she wants to extract

more than that. Thus, the plaintiff was working for no less than 1.4%, but regarding the possibility of receiving more, she was like one who worked without an agreement that set the rate of pay. Accordingly, she deserves remuneration in excess of the 1.4% commission only if the lower market range for real estate agent commissions on an apartment of this type exceeds that.¹

1. See Rama, *Choshen Mishpat* 332:4, and *K'tzot HaChoshen* 331:3.

I-5: Is One Obligated to Enable Someone to Sue Him?

Question: I caused significant damage to someone's property but in a manner that I am not required to compensate him for it. He does not know who caused the damage or how it happened. Word got around to me that he is trying to find the "perpetrator" and make him pay. Must I present myself to him and take the risk that he will give me a hard time by not believing what happened or not understanding that I am not obligated to pay, which is likely, given his personality?

Answer: Before we deal with your important dilemma, let us point out a few things. First, you should confirm that you are correct in your assumption that you are clearly exempt by presenting the details to an expert on *Choshen Mishpat* (monetary Halacha). These *halachot* can be complex, and the way you view the case may be subjective. Second, from a very different perspective, consider that although your acquaintance may not presently be aware of who caused the damage, the truth may come out, and the troubles you are trying to avoid may be compounded significantly later on.

We will now deal with your question as asked. Since we have not found an explicit source on the matter, we will compare your case to related concepts.

The *Shulchan Aruch*¹ says that if Reuven is financially obligated to Shimon, Reuven must not avoid payment with the hopes of pressuring Shimon to agree to a compromise. However, the *Tumim*² says that if Shimon owes Reuven a corresponding amount but Reuven cannot prove it, he may be evasive in order to achieve the correct result. Avoiding the need for an argument and a possible *din Torah* when one knows he does not owe money is no worse than the *Tumim*'s case, and we can thus assume that he would certainly not require

1. *Choshen Mishpat* 12:6.

2. 12:5, cited by *Netivot HaMishpat* 12:3 and *Pitchei Teshuva*, *Choshen Mishpat* 12:8.

you to present yourself to the other side. The *Pitchei Teshuva*³ cites a distinction between active obstruction, which is forbidden, and using convenient non-action to gain advantage, which could be permitted. Here too, you are discussing a non-action – not coming forward to admit involvement in the damage – which should certainly be permitted according to the *Pitchei Teshuva*.

The *gemara*⁴ prohibits making fallacious claims in *beit din* as a means to eventually win a case, even if one's vindication is deserved. Such claims would be a violation of the command "Distance yourself from a word of falsehood."⁵⁶ If there is no lie of any type, however, it appears that if one can attain what he deserves simply by not coming forward, he may employ that tactic.

There is an important rule (although one that is difficult and dangerous to apply) that **under certain circumstances**, one may take the law into his own hands rather than go to the trouble of involving a *beit din*.⁷ Based on the guidelines found in that context as well,⁸ there should not be a problem in simply failing to volunteer information and thereby avoiding having to contend with the associated hardships in assuring your rights.

One set of sources that seems to contradict the above indications about not having to volunteer information has to do with the severe steps that are taken against one who refuses to submit to adjudication when so requested.⁹ How can we punish someone if he claims he owes nothing and, for all we know, is correct? The answer is simple. The defendant is censured not for his refusal to fulfill an obligation toward the plaintiff and present himself for adjudication, but rather for his offensive behavior to society, as well as his affront

3. *Choshen Mishpat* 12:8; *Shvut Ya'akov* 1:163, cited *ibid*.

4. *Sh'vuot* 31a.

5. *Shemot* 23:7.

6. See also *Chut HaMeshulash* 1:15, who differentiates in this context between a false claim made before *beit din* and one that is made outside of *beit din*.

7. See *Bava Kama* 27b and *Shulchan Aruch, Choshen Mishpat* 4.

8. These guidelines are beyond our present scope.

9. See *Shulchan Aruch, Choshen Mishpat* 11:1.

to the Torah. Since a Torah society (or any society for that matter) must have an effective court system, once the court determines that one is required to submit to adjudication, he must not be allowed to snub the system and expose it as toothless. Indeed, only if *beit din* made its credentials clear can a defendant be sanctioned for not submitting, as the sanctions are meant only for those who reject the calls of those bodies that they know have legitimate authority.¹⁰

Thus, dependent on the caveats presented in the beginning of our presentation, you are not required to volunteer that you damaged your acquaintance's property if there is a concern that unjustified difficulties would ensue.

10. See *ibid.* 2 and Rama, *Choshen Mishpat* 14:3.

I-6: Protecting a Bicycle that Had to be Moved

Question: Someone locked his bicycle to the banister next to the steps leading to our building. One wheel blocked a third of the steps, creating a significant inconvenience (especially to an older gentleman) and causing a couple of people to trip (it was not easy to notice the protruding wheel, especially at night). After waiting several weeks, during which time apparently no one moved the bicycle and we were unable to ascertain the owner's identity, we broke the chain and moved the bicycle to a place nearby where it does not disturb anyone. Must we now buy a new chain to lock up the bicycle and protect it from theft? In our low-crime neighborhood, carriages and (often) bicycles are left unchained, and they can remain that way many months without being stolen.

Answer: We should first discuss whether you had a right to break the chain and move the bicycle; that question has some impact on your question, as well. In general, one may "take the law into his own hands" to rectify/prevent damages in a manner that causes the least necessary loss to the (potential) damager.¹ If necessary, one may break things that prevent him from passing through a domain in which he deserves access.² It appears, then, that the ongoing inconvenience and potential danger the bicycle caused justified your taking action. If you exhausted reasonable efforts to find the owner and have him remove the bicycle, it was proper to break the chain and relocate the bicycle.

At the point that you have already broken the chain and moved the bicycle, the question is whether you have the normal responsibilities of *hashavat aveida*,³ which include taking actions to preserve

1. *Bava Kama* 28a; *Shulchan Aruch, Choshen Mishpat* 4:1.
2. *Ibid.* 412:2.
3. Returning a lost object.

the object until the owner is found.⁴ Perhaps you could claim to be exempt because there is no lost item, as the owner presumably knows where the bicycle is. Indeed, when someone purposely leaves his object somewhere, no one needs to move it, nor should he, with the intention of returning it.⁵ However, this is not relevant in this case because when the owner left it, the bicycle was chained up, and now it is not. In this new situation, it is likely a service to the owner to take steps to protect the bicycle. This resembles the case of one who hid an object in a garbage dump that was not slated to be emptied. If, subsequently, the dump is going to be emptied, the object is no longer safely hidden, and there is an obligation of *hashavat aveida* when feasible.⁶

However, a different exemption from *hashavat aveida* seems to apply in this case. The *gemara* mentions in a few places⁷ the notion of *aveida mida'at* (literally, an intentional loss). The common denominator of the cases is that an owner purposely left his object in a situation in which its chances of remaining intact and in his possession are poor. Consequently, there is no requirement of *hashavat aveida*. The Rambam⁸ derives this ruling from a *pasuk* – *hashavat aveida* applies when the object was “lost from him,”⁹ as opposed to an intentional loss.

The Rambam¹⁰ says that although there is no *mitzva* of *hashavat aveida* in the event of *aveida mida'at*, the finder may not claim the object for himself. The *Tur*¹¹ says that the finder may even take the object because we consider the owner to have been *mafkir* (relinquished his rights to) it. According to the Rambam, there appears to be a rule that one does not have to go to greater efforts to protect

4. See *Tosafot, Sukka* 25a.

5. See *Bava Metzia* 25b.

6. *Ibid.*

7. Including *Bava Batra* 87b, *Bava Metzia* 25b.

8. *Gezeila VaAveida* 11:11.

9. *Devarim* 22:3.

10. *Op. cit.*

11. *Choshen Mishpat* 261.

someone else's possession than the owner himself did.¹² Similarly, in your case, in which someone left his bicycle in such a manner that he **should have** expected people to eventually exercise their right to take action, he knowingly exposed it to the prospect of being unprotected. Thus, you are not required to take steps to remove the danger that he should have anticipated. The *Tur* probably agrees to this concept in those cases of *aveida mida'at* in which *hefker* does not apply.¹³

In summary, you are probably not required to obtain a chain for the bicycle you moved, especially if the owner still has good chances of retrieving it at its present location. On the other hand, you do not know what circumstances caused the owner to leave the bicycle as he did for as long as he did. Therefore, it would be a responsible step and a nice gesture to protect it.

12. See *Netivot HaMishpat* 261:1; *Even HaEzel, Gezeila VaAveida* 11:11.

13. See *Bava Batra* 87b; *Netivot HaMishpat* 261:1.

I-7: Discount for a *Kashrut* Mistake

Question: Reuven hired Shimon to cater a *mehadrin* (strict level of *kashrut*) affair. Due to a mix-up, Shimon rented *keilim* (utensils) from a service with which he had limited previous dealings. Before the affair began, Reuven's suspicions were aroused that the utensils' *kashrut* was questionable, as was confirmed after the affair. Reuven wants a full refund for the affair, citing his internal feeling of embarrassment that he caused his guests to eat non-kosher food. Shimon, who had offered partial compensation (credit toward future catering), has withdrawn any offer due to Reuven's alleged harassment. What is the *halacha* in such a case?

Answer: [The following is a condensed adaptation of a ruling of our *beit din*.]

It would seem that those who ate food prepared in the questionable *keilim* violated **no Torah prohibition**. Intensive discussion of the relevant *kashrut* elements is beyond this presentation's scope, but the most obvious point is as follows. If the taste given off by a non-kosher *kli* (utensil) has a negative impact on the food with which it came in contact – a property that is assumed if the *kli* had not been used within 24 hours – then the food remains kosher.¹ If we do not know when the *kli* was used last, we may assume that food cooked or heated in it remains kosher because it was likely not used that day and even if it was, the taste expelled from the wall of the *kli* may combine negatively with the new food.² Nevertheless, it is Rabbini-cally forbidden to use a non-kosher *kli* in such a manner that it may give off taste, even if it has not been used within 24 hours.³

If one Jew sells non-kosher food to another Jew without disclosure, the buyer can void the sale. Even if the buyer had consumed the food and obviously cannot return it, the seller must still refund

1. *Shulchan Aruch, Yoreh Deah* 103:5.

2. See *Shulchan Aruch, Yoreh Deah* 122:6–7, and *Shach* ad loc. 4.

3. *Avoda Zara* 76a.

all of the money if the food was forbidden by the Torah.⁴ Rashi⁵ posits that this is a penalty against the seller. The *S'ma*⁶ adds that any benefit the buyer received from the food is offset by the disgust of having eaten non-kosher food. The *Shach*⁷ writes, based on Rashi's explanation, that the penalty would not apply to a seller who was unaware of the problem.

The *Shulchan Aruch*⁸ asserts that if the food was prohibited only on a Rabbinic level, the seller does not have to return the money if the food was consumed. Although the *Pri Chadash*⁹ says that the buyer recovers the price difference between non-kosher food and that for which he paid, most *poskim* maintain that the seller is not obligated to return anything at all.¹⁰ How can it be that the seller ends up receiving a higher price than the food's market value, given that the food was not kosher and he was paid for kosher food? The *Maharit Algazi*¹¹ explains that since the buyer derived the same physical benefit that he would have had it been kosher food, for which he would have had to pay the price of kosher food, coupled with the fact that the seller lost money when the buyer ate it, the buyer's payment of the full price for his enjoyment is appropriate. The *Shach*¹² explains that when the Rabbis instituted food prohibitions, they stipulated that the prohibitions should not enable a disgruntled party to extract money from his counterpart because of them.

It appears that according to the *Maharit Algazi*, since Reuven was willing to pay the price for *mehadrin* food and derived the same practical benefit as if all elements of the affair were indeed of that

4. *Bechorot* 37a; *Shulchan Aruch, Choshen Mishpat* 234:2.

5. *Bechorot* 37a.

6. 234:4, based on *Bechorot* 37a.

7. *Yoreh Deah* 119:25.

8. Op. cit. 3.

9. *Yoreh Deah* 119:24.

10. See *Shach* op. cit. 27; *Pri To'ar, Yoreh Deah* 119:17, as the language of the *Shulchan Aruch*, based on the Rambam, seems to indicate.

11. *Bechorot* 51.

12. Op. cit.

kashrut level, he should not get any money back. However, according to the *Shach's* principle that we treat Rabbinically non-kosher food as if it were kosher regarding monetary issues, we should arrive at a different conclusion when we take the particular circumstances of this case into account. When one pays extra for a **special feature**, whether it is for an “environmentally friendly” product, for a brand name, or for *mehadrin*, he should not have to pay a special high price if he actually received a standard product. We should consider also that since Reuven was troubled already during the affair about the *kashrut*, he did not benefit from the feeling of “religious security” for which people pay extra for *mehadrin*.

Despite the logic to demanding that Shimon return the difference between the prices for basic-level kosher and *mehadrin*, and perhaps even the *Pri Chadash's* aforementioned minority opinion to make him return the price between kosher and non-kosher, it is difficult for *beit din* to extract money from Shimon according to strict law. However, based on the principles of compromise, *beit din* has the authority to require Shimon to return the difference between a kosher and a *mehadrin* affair (approximately 10%).

I-8: Stopping Fare-Beaters

Question: When I was on a bus the other day, I saw two young men share a *chofshi chodshi* (monthly pass), which the bus company clearly forbids. Was I required to say something to them? Could I or should I have told the driver? Would this have been a problem of *lashon hara*¹?

Answer: We will explore three halachic issues, starting with *lashon hara*. If one sees Reuven wronging Shimon monetarily, he may take steps to protect Shimon's rights at the expense of defaming Reuven, provided that seven conditions are met.² Since your intentions were good, if you were sure of what you saw, the main condition left was the need to rebuke the culprits gently before telling others in order to give them the opportunity to rectify the matter without embarrassment.³ If that had proven ineffective, the laws of *lashon hara* would not have prevented you from alerting the driver to claim the money that his company deserved.

The next question is whether you were **required** to take such steps. Accordingly, we must discuss the two potential gains that would warrant action: helping the young men morally and helping the company financially.

In general, there is a *mitzva* from the Torah to rebuke someone who commits a sin.⁴ This *mitzva* is strongly related to the responsibility of *afrushei mei'isura* (to distance a counterpart from sin). Included in this *mitzva* is not only the instruction to rebuke in a way that will cause deep remorse leading to the sinner's decision to turn over a new leaf, but also in such a way that will discourage the imminent, or rectify the recent, perpetration of an individual sin. In your case, the young men were in the midst of making use of the bus

1. Negative, damaging speech.
2. *Chafetz Chayim, Lashon Hara* 10:2. We will not list all of these conditions.
3. *Ibid.*, based on Rambam, *De'ot* 6:8.
4. *Vayikra* 19:17; *Sefer HaMitzvot L'haRambam, Asei* 205.

illegally, as they apparently had no intention to pay. Thus, rebuke was ostensibly called for. However, if one thinks about it, we have numerous opportunities to rebuke people on buses and in other public places for a variety of their actions regarding matters between man and HaShem and between man and his fellow man. For better or for worse, we rarely do so. Our general working assumption is that since our generation is proficient at neither end of rebuke – giving or receiving – we have more to lose than to gain. One could argue that a clear man-against-man sin, such as sneaking onto a bus, is one that everyone would admit is inexcusable, and the rebuke would therefore work. However, many people, likely including the young men you saw, are able to rationalize such activity or simply do not care that it is wrong.

The final issue is *hashavat aveida* (returning something lost). Although the most well-known discussions of *hashavat aveida* refer to physical objects, the *mitzva* also includes a variety of actions that are required in order to prevent loss to others. For example, if one sees that his friend's property is in danger of being damaged, he must protect it.⁵ Furthermore, it appears that according to the consensus of *poskim*, one is required to take steps to help his friend receive the money that he is owed. Thus, for example, in addition to the specific *mitzva* to testify on a friend's behalf, several *poskim* say that the *mitzva* of *hashavat aveida* also includes going so far as testifying to enable someone to collect money due to him.⁶ No matter how we classify the *aveira* of getting on a bus without paying,⁷ the bus company has legitimate interests, and your action presumably could have helped them.

Taking everything into account, however, it is likely that you were still not required to do anything. One is not required to put himself

5. *Bava Metzia* 31a.

6. *Netivot HaMishpat* 28:1; *Sha'ar Mishpat* 28:2; see *Pitchei Choshen, Aveida* 1:(63–65).

7. Some possibilities are stealing by using property without permission and withholding fees due; full analysis is beyond our present scope.

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in a situation of significant embarrassment in order to carry out *hashavat aveida*.⁸ Since asking the offender to pay and/or going to the bus driver to “snitch” would likely have caused a very upsetting experience, you were likely exempt from doing so.

8. *Bava Metzia* 30a.

I-9: Sharing Expenses for a Separating Wall

Question: Someone bought the home next to mine, and he not only wants to build a stone wall between our yards, but also expects me to share in the expenses. Is his claim that I am halachically required to do so correct?

Answer: The *mishna*¹ discusses a type of wall built in order to divide property shared by two people. The *gemara*² discusses whether the two have to agree to a wall, or whether once they agree to divide the property, each can demand of the other to erect a wall between the sections. The *gemara* says that it depends on whether we consider the fact that one neighbor can see what the other is doing on his property as a damaging situation. We accept the opinion that visual intrusion into another's privacy does constitute damage, and thus one neighbor has a unilateral right to have a wall erected.³

In many questions of rights between neighbors, there is a concept of *chazaka*: if one side exercised a certain usage of his property that impacts on his neighbor without the neighbor protesting, he can continue doing so. (The logic, parameters, and opinions on the matter are beyond our scope.) However, the Rambam⁴ rules that the absence of walls between properties does not create a *chazaka* of living without walls, and either neighbor can later demand that one be erected.

There are two explanations for this *halacha*. Usually, a *chazaka* occurs when one side takes an active step that would usually trigger a protest if the other party opposed it, so that the other party's silence is equivalent to agreement. The lack of a fence is a passive situation, and so the absence of a demand to erect one is not proof that such

1. *Bava Batra* 2a.

2. *Ad loc.* 2a–3a.

3. *Shulchan Aruch, Choshen Mishpat* 157:1.

4. *Shecheinim* 2:14.

a demand would not be made in the future.⁵ Another distinction is that in the standard case of *chazaka*, one party does something from which he benefits while the other stands to lose. In such a case, we reason that if the potential loser in the new situation is quiet, he must have gone along with the change. However, in this circumstance, in which each neighbor is the potential gainer and the potential loser from the lack of a wall, we consider the possibility that one did not feel a need to initiate steps to put up the wall, which his neighbor could also do. Therefore, he can exercise his rights in the future.⁶

Either way, in your case, you would have to demonstrate that there was an outright agreement (even an oral one⁷) by your neighbor or one of the previous owners to waive his right to a wall. The Rama⁸ accepts the opinion in the *Rishonim* that one's right to a wall is valid even in places where the practice is not to have such walls.

Normally, both sides have to share equally in the expenses and in ceding space from their properties for the wall's location.⁹ The matter becomes complicated when there is disagreement regarding the thickness and quality of the wall and the cost. In general, the wall between residential yards should be four *amot* (approximately six feet) high so that it effectively obstructs the view.¹⁰ Similarly, the wall must be made of a material that will obstruct the view. However, one can force his neighbor to pay only for the level of construction that local practice – or, in its absence, a *beit din* or an expert – considers a standard wall.¹¹

There are additional details that could affect the *halacha* in a major or a minor way that might come up in an adjudication over this point of contention, were you to need to engage in one. However, we trust that the general information we have provided gives you the basic

5. *Maggid Mishneh* ad loc.

6. *Tur, Choshen Mishpat* 157, in the name of the Rosh, *Bava Batra* 1:2.

7. *S'ma* 157:4; see *Pitchei Choshen, Nezikin* 14:(53).

8. *Choshen Mishpat* 157:1.

9. *Shulchan Aruch* op. cit. 3.

10. Op. cit. 9.

11. *Shulchan Aruch* and Rama op. cit. 4.

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Torah perspective about the demand for privacy and the financial ramifications of that right. We hope this background will help you work out an amicable resolution with your neighbor that takes into consideration the desires and concerns of each of you.

I-10: Using Other People's Religious Articles

Question: I understand that Ashkenazim may borrow religious articles from each other without permission, but Sephardim may not. May an Ashkenazi borrow a Sephardi's religious article without permission?

Answer: Your presumptions are overstated, as we will explain, but your question is fascinating and prompts us to explore cases in which they do apply.

It is generally forbidden (as theft) to borrow other people's objects without permission.¹ In a **specific case** in which we believe that the owner would want the borrower to take the object, the matter is more complicated.² Regarding an object that people **generally** are content for others to use, they may do so. *Rishonim*³ write that people are happy to let others borrow an object that they will use for a *mitzva*.⁴ The *Shulchan Aruch*,⁵ following this assumption, allows one to borrow a *tallit* that he finds in *shul*. The Rama⁶ expands this permission to *tefillin*, and elsewhere⁷ he includes a *lulav*, as well. Indications are that the *Shulchan Aruch* and Sephardic *poskim* agree.⁸

However, the allowance to borrow religious articles without permission is not a blanket one. The *Shulchan Aruch*⁹ makes a condition that one return the *tallit* folded if that is how he found it. The *Magen*

1. *Shulchan Aruch*, *Choshen Mishpat* 359:5.
2. See *Living the Halachic Process*, vol. 11, J-2.
3. See *Beit Yosef*, *Orach Chayim* 14.
4. Based on *Pesachim* 4b, in the context of the case of paying someone to do *bedikat chametz* that should already have been done by someone else. The *gemara* states that one is happy if his money is involved in a *mitzva*.
5. *Orach Chayim* 14:4.
6. Ad loc.
7. *Orach Chayim* 649:5.
8. See *Beit Yosef*, *Orach Chayim* 14, and *Kaf HaChayim*, *Orach Chayim* 14:31.
9. *Orach Chayim* 14:4.

*Avraham*¹⁰ permits borrowing an article only occasionally and requires that it remain in the same building where it was found. The Rama¹¹ says that one may not borrow *sefarim* to learn from, as the concern that the *sefarim* might be ripped makes it unclear that the owner would be happy to lend them. The *Pri Megadim*¹² claims that the *minhag* is to allow borrowing *siddurim* in *shul* without permission, but he opposes the *minhag* based on the rulings of the Rama and others regarding *sefarim*.

The *Aruch HaShulchan*, a more recent leading *posek* who tends to be very *minhag*-oriented, turns everything upside down. Regarding a *tallit*, he not only interprets the classical leniency narrowly, but also observes that nowadays people are more particular about others borrowing their *tallitot*.¹³ On the other hand, he says that people are no longer disturbed by others borrowing their *siddurim* and *sefarim* and that should therefore now be permitted.¹⁴ Even sources from the period when *sefarim* were guarded more carefully assert that a *talmid chacham* who was given *sefarim* to watch can use them because of the assumption that an owner who did not explicitly state otherwise would allow a *talmid chacham* to learn from them.¹⁵

Thus, we find fluidity in the *halacha* based on the circumstances, and we do not find major differences between Ashkenazi and Sephardi *poskim*.¹⁶ There is no uniformity in our day, and different places (especially *yeshivot*) have different practices. However, the consensus is that one may use another's *sefarim* provided that he does not move them away from their place.

We will now re-ask your interesting question. Is it permitted for one who received a *p'sak* that it is permitted to borrow religious articles to make use of the property of one who received the opposite

10. 14:7.

11. Op. cit.

12. *Mishbetzot Zahav* 14:7.

13. *Orach Chayim* 14:11.

14. Ibid. 13.

15. Rama, *Choshen Mishpat* 292:20.

16. See *Kaf HaChayim* op. cit.

p'sak, and vice versa? Presumably, the reason there is a *machloket* on this issue is that owners' intentions are difficult to gauge and/or due to differences regarding the general methodological question of how much to adapt classical rulings when recent observers sense that the situation has changed somewhat. In standard cases, these questions are for the borrower and his rabbi to determine and do not depend on assumptions regarding a specific owner/lender. On the other hand, if a certain ruling becomes widely accepted among a particular group, then the *p'sak* becomes a self-fulfilling prophecy, itself creating a *min-hag* to allow or forbid others' use. In other words, if all know that in a particular locality permission to use someone else's *sefarim* is assumed, then even one who personally is inclined otherwise would probably decide to conform with the standard. Therefore, one who enters a *yeshiva* or a *shul* where there is a **stated policy** can assume that the *sefarim* owners who frequent those venues conform to that policy. Accordingly, the potential borrower should follow the owner's presumed position, not his own. (Since an owner is always entitled to have others use his property according to his preferences, it is a good idea to look at a *sefer's* inside cover, where some owner's leave instructions as to whether and to what extent they allow others to use their *sefer*.)

I-11: Monopolistic Practices and Halacha

Question: In a market with a very limited number of commercial properties, is the owner of one store allowed to prevent competition by renting and keeping empty another store that became available, thus allowing him to charge higher prices?

Answer: We will assume that this is not a question about an actual case, but rather an inquiry into the halachic view on issues of monopoly (if not, we will need more details). This is not the forum to write a complete treatise on the Jewish approach to monopoly law. The answer also depends on local laws, since on a matter of public welfare such as this, Halacha accepts the law of the land as binding.¹ Nevertheless, we will provide a basic approach based on classical rabbinic sources to help explain how a Torah-based society handles such issues.

The biggest problem posed by your question is the matter of mispricing. If the proprietor raises prices 20% above an item's going rate, he violates the Torah prohibition of *ona'ah*.² While the price may depend on different factors and may change, one may not create a monopoly, artificially changing the supply and demand equilibrium, and then claim that his price is the local going rate. (One may affect the prices mildly by deciding how much of **his own** produce to put on the market.³)

The *gemara*⁴ further forbids charging artificially high prices.⁵ How is this different from the laws of *ona'ah*? The *Aruch HaShulchan*⁶ understands that this is referring to manipulations to alter the market

1. See *Shut Chatam Sofer, Choshen Mishpat* 44, regarding the opposite question of too much competition.
2. *Vayikra* 25:14; see *Shulchan Aruch, Choshen Mishpat* 227:1–2.
3. See *Bava Batra* 90b.
4. *Ibid.*
5. So rule the Rambam, *Mechira* 14:6, and the *Shulchan Aruch, Choshen Mishpat* 231:25.
6. *Choshen Mishpat* 231:25; see also *Pitchei Choshen, Ona'ah* 14:(31).

price. The *gemara*⁷ also forbids creating a bogus scarcity of staple produce, irrespective of the pricing issue. Historically, there have been many regulations approved by leading rabbis to root out market abuses, including monopolistic practices.

Other than the impact on consumers, is there a problem of unfairness to competitors? The most acute issue in competition is when an “outsider” sets up shop where a local merchant is selling similar goods (*hasagat g’vul*⁸). Other than that, it is permitted to offer promotions or charge lower prices in order to gain more customers at the expense of others.⁹ The *gemara*¹⁰ explains that competitors can also offer promotions, and one cannot outlaw lowering prices because of the benefit to consumers.

An argument can be made that the situation you have presented is different, as seizing the available store prevents competition. Indeed, when one person’s business makes another’s untenable, the concept of *pasik l’chiyutei*¹¹ comes into play, which in some cases requires him to stop his activities. However, that occurs when the affected person already has a business and is financially pressured to give it up. In contrast, if a businessman simply arranges matters so that others decide it is not profitable to open a competing business, there is no prohibition.¹² It is even possible that the “monopolist” had valid reasons to fear that the planned competition would have made his business untenable or otherwise have used unfair practices. In that case, preventing such competition would not be halachically or morally objectionable.

There is an approach that assumes that even an ostensibly good market phenomenon can be objectionable when done in a way that has negative side effects. For example, the *Aruch HaShulchan*¹³ says

7. Op. cit.

8. *Bava Batra* 21b.

9. *Mishna, Bava Metzia* 60a.

10. *Bava Metzia* 60a–60b.

11. Stopping someone’s livelihood – *Bava Batra* 21b.

12. See *Pitchei Choshen, Geneiva* 9:(9).

13. *Choshen Mishpat* 228:14.

that lowering prices to an unsustainable level is unfair to other proprietors who cannot follow suit. After all, the *gemara*¹⁴ approved giving special incentives to the consumer only because it is possible for the other existing businesses to do likewise. Going a step further, one might contend that preventing a business from getting started (e.g., by making a potential venue unavailable) is also unacceptable. However, it is very questionable whether this would apply when the competition does not yet exist and therefore no one is impinging upon an **existing** livelihood. It is much more plausible, however, if the competing business already exists and is legitimately in need of a new venue.

14. *Bava Metzia* 60a.

I-12: Taking a Book Left to the Discretion of a Yeshiva

Question: In the yeshiva where I used to learn, I found a *sefer* with the name of someone who had learned there in the past. I tracked him down, and he said I could keep it, which I did. I have since moved away and began wondering whether the owner had the right to let me keep his *sefer*, since the yeshiva has a sign up saying that whoever leaves *sefarim* unattended for an extended period allows the yeshiva to take them.

Answer: It is not fully clear that signs of the type you refer to in *yeshivot* and *shuls* are halachically effective. However, several *poskim*¹ suggest putting up such signs, and many institutions do so to deal with an inundation of lost objects, so we will assume that they work. The understanding of **how** they work, which may depend on the specific wording, will help answer your query.

Some signs state that the books become *hefker* (ownerless). Various questions can be posed regarding whether *hefker* is possible in this case. One question is whether the **owner** must make a declaration in front of three people, as is ordinarily necessary to make something *hefker*.² Another is whether one can be *mafkir*³ something contingent upon the occurrence of some future circumstance (i.e., leaving the *sefer* unattended). Both of these halachic obstacles are surmountable.⁴ Still, the idea of *hefker* is tenuous, mainly because the signs will prompt only a few people to relinquish their rights clearly in the requisite way.

1. *Igrot Moshe, Choshen Mishpat* 11:45; *Shevet HaLevi* x:278; *Minchat Yitzchak* VIII:146.
2. *Shulchan Aruch, Choshen Mishpat* 273:7. The *Shulchan Aruch* refers to *hefker* of land, but the *K'tzot HaChoshen* ad loc. 3 says that the same is true for movable objects.
3. The verb form of *hefker* – the act of relinquishing one's rights to an object.
4. See *Meiri, Bava Metzia* 30b and *Bava Kama* 69a with *Tosafot* ad loc., respectively.

Let us explore another way the signs can be effective. Although the Torah affords people rights to be treated with particular consideration by other people, these rights can be waived (*mechila*). For example, a father can waive some of the respect due to him by his son. Similarly, one can forgo his rights to have lost objects returned to him (*hashavat aveida*), including in our case, in which *sefarim* were left in certain public places. Why should we assume that the owner was willing to waive this right? When two people, say Reuven and Shimon, are going to enter into a relationship with mutual obligations (including Torah-mandated ones), Reuven can stipulate to Shimon that he will do his part only on condition that Shimon is *mochel*⁵ certain rights. For example, a man can tell his prospective bride that he will marry her only on condition that she waives her right to financial support.⁶ Similarly, a yeshiva can open its doors to students and the public on condition that they waive their rights to have the *gabbaim* perform *hashavat aveida*, even when a *sefer* has a name in it. If one sees a sign to that effect and enters without protest, he implicitly accepts the condition to waive the finder's obligation of *hashavat aveida*.

At first glance, after completing his tenure in a yeshiva, a former student could say, "I won't come back to the yeshiva anymore, and now that the relationship is over, I expect the yeshiva to return my *sefarim*." (The nature of the *mechila* of the rights to *hashavat aveida* is such that one is not able to waive them in a way that he cannot subsequently "retrieve" them.) Additionally, even if he does not require anyone to return a *sefer* to him, he can decide to take his own steps to get it back. After all, assuming that *hefker* has not occurred, the *sefer* continues to belong to the original owner, even if the finder does not have to make efforts to return it while the *mechila* is in effect. Despite the **possibility** of these limitations, a finder may assume that the requested *mechila* is intact until he has specific reason to believe otherwise.

5. The verb form of *mechila* – to relinquish rights.

6. *Ketubot* 56a.

The system of suspended *hashavat aveida* seems to be more halachically effective and morally preferable than that of *hefker*. However, while *gabbaim* need not be burdened with tracking down owners of *aveidot* in addition to their other responsibilities, it is less clear that they deserve to obtain the rights to the books, especially when the owners' names are clearly displayed. The problem is that if we do not allow *yeshivot* and *shuls* the rights to the books, *sefarim* may accumulate to the point that their storage becomes onerous.

A third possibility is that the owner gives the yeshiva or *shul* the right to acquire the *sefarim* as a present at some point. This halachic construct is similar to that of one who tells a guest to help himself to snacks whenever he wants or to take food with him when he leaves.

As we noted above, the answer to your question likely depends on the wording of the sign. If the sign works by means of *hefker*, it is likely that the *beit midrash* had already acquired the *sefer*, and you need their permission to keep the book, not that of the original owner. (The discussion of this point is beyond our present scope.⁷) If it works based on permission that was tacitly given to the institution to acquire it as a present, the matter depends upon whether they took control of the book (e.g., by stamping it or selling it). If the sign is simply stating that people agree to waive *hashavat aveida*, it remains the original owner's decision who should keep it.

In the final analysis, even if it is likely that you may keep the *sefer*, it is not a bad idea to ask an authorized *gabbai* or administrator whether he has any qualms about your keeping it.

7. See *Minchat Yitzchak* op. cit.

I-13: Questionable Relinquishing of Rights

Question: I heard the following surprising ruling in a *shiur* given by a *talmid chacham*. Someone bought milk and found it to be spoiled. He decided it was not worth the bother to go to the store to return it. Soon thereafter, his son announced that he was going to the store, and the father asked him to return the milk. The ruling was that he was forbidden to demand a refund or replacement because he was already *mochel* (relinquished) this right. Is that ruling correct?

Answer: It is not appropriate for us to determine whether the *talmid chacham* was right or wrong, all the more so because we do not know the exact case and all of his reasoning. However, we will gladly share our understanding of the matter of *mechila* in similar cases, which will shed light only on some of the possible scenarios.

The main issue here is *mechila b'lev* (mental relinquishment of rights). In contrast to most financial dealings, *mechila* does not require a *kinyan* (act of finalization).¹ Oral *mechila*, even in the absence of the person who is obligated, is binding, and one who was *mochel* can no longer demand payment.² The *K'tzot HaChoshen*³ cites the Maharshal, who says that *mechila* can even be accomplished mentally. As proof, he cites a *gemara*⁴ regarding a widow who did not request payment of her *ketuba* for twenty-five years after her husband's death. The *gemara* rules she can no longer demand payment because of the assumption that she was *mochelet*. Since there is no indication that she verbalized this *mechila*, the Maharshal concludes that *mechila b'lev* is effective.

1. *Shulchan Aruch, Choshen Mishpat* 12:8.
2. This is the opinion of the majority of authorities (see *Pitchei Choshen, Halva'ah* 12:8; *Halacha P'suka, Choshen Mishpat* 12:38). A notable, partially differing opinion is found in the *Aruch HaShulchan, Choshen Mishpat* 241:4, who says that if the *mechila* did not take place in the presence of the obligated party, it does not take effect until he finds out about it.
3. Ad loc.:1.
4. *Ketubot* 104a.

The *K'tzot HaChoshen* rejects the Maharshal's opinion due to the general rule that "matters of the heart are not binding."⁵ Instead, he accepts the following distinction of the Maharit.⁶ When there is a presumption throughout society of *mechila* (e.g., regarding the *ketuba*), it does not need to be verbalized. However, *mechila* that an individual may have contemplated in a situation in which others might not have is not effective without verbalization.

The rationale for this distinction is practical and logical.⁷ In many areas of life, one regularly vacillates between options before arriving at a decision. He might have been "sure" at one point but then later decided upon the opposite. It is unfair to bind someone to a decision unless he was aware that after a given point, he would be unable to change his mind. Regarding most monetary matters, only a *kinyan* indicates and effectuates finality. When it comes to *mechila*, however, speech is deemed sufficient; we expect a person to weigh his resolve before verbalizing his *mechila*. However, thought, which does not necessarily lead to a decision, is not enough. Only if a person is in a situation in which all would arrive at the same final decision and he provides no contrary indication can we assume that he was fully *mochel* like everyone else.

In spite of this rationale, there are significant opinions on both sides of the question of whether *mechila b'lev* is effective in cases in which it is not obvious.⁸ Our feeling is that the stronger position is that it is not binding. Note that even according to the Maharshal, the level of finality in one's mental *mechila* must be compelling. If one thought to himself, "I'm too tired to go now, so I guess I will forgo the money," it is meaningless. The Maharshal is talking about a case in which one decided at some point that he **will not** demand the money. It is questionable whether the person who planned not

5. *Kiddushin* 49b.

6. 11, *Choshen Mishpat* 45.

7. See also *Sha'ar Mishpat* 68:1.

8. See *Pitchei Choshen, Halva'ah* 12:(11).

to return milk because of the trouble involved had reached a sufficient level of finality.

On the other hand, an action that suggests *méchila* can be binding even if it is not performed explicitly for the purpose of expressing the *méchila*. A classic case is one in which the action would be improper if one were sticking to his rights. Applying this idea to our basic scenario, if the milk was barely edible and one put some in his coffee anyway, that would be an indication he was *mochel* his right to return the milk; otherwise, the milk would not be his to use.⁹

A final factor to consider is that even if *méchila b'lev* is generally binding, there is an exception in the case of *méchila b'ta'ut* (based on a false premise). In our scenario, for example, had the buyer known that his son was going to the store, he might not have been *mochel*. In general, processes that are done *b'ta'ut*, whether *méchila* or *kinyan*, are invalid.¹⁰ However, this happens only when the unknown circumstance existed at the time of the *méchila* or *kinyan*. If the circumstance developed afterward, the process would be valid.¹¹ As an example in our scenario, if the son decided to go to the store only after his father was *mochel*, the *méchila* would not be considered to be *b'ta'ut*.

To sum up, in the story in which you cite the *talmid chacham's* ruling, there are cases in which the buyer would have been *mochel* and therefore could not return the milk, but there are also cases in which his thoughts of not returning the milk would not constitute binding *méchila*.

9. See Rambam, *Méchira* 15:3.

10. Rama, *Choshen Mishpat* 241:2.

11. See *Ketubot* 97a.

I-14: Partial Pay for an Uncompleted Job

Question: We hired a contractor to do major home renovations. His prices for various jobs were relatively high, but he promised us that he would throw in **major** elements of the work as a free bonus. After doing about 75% of the total job, but relatively more of the standard items than the bonus items, he became sick and had to stop working. He has demanded 85% of the total price, pointing to the line items on the written work order that he has completed and their corresponding prices. He promises to make up for the bonus items with jobs of similar value after he recovers, but we do not want to settle for future services of questionable value to us. While we feel bad for him, not only has his illness complicated our lives, but we also had to pay another contractor good money (more than 25% of the first contractor's total projected charge) to finish up. How much should we pay?

Answer: We will answer your question with two reservations. First, we will limit ourselves to the letter of the law, not to considerations of compassion for a worker who got sick or to the intrinsic value of avoiding disputes. We leave these to you because they are voluntary elements and because there are too many subjective factors for us to relate to seriously without direct involvement. Second, we cannot rule conclusively on monetary matters without hearing both sides in the framework of a *din Torah*. We can only discuss your apparent rights and obligations based on your depiction. We hope this will give you a good point of reference.

It is now common for businesses to present package deals, as if you pay for one thing and get another free of charge. Sometimes, this is an accurate reflection of what the customer receives. For example, when one buys a car, he receives a key chain for free; the purchase is of the car alone and the key chain is a symbolic present. However, for example, if you agree with a contractor that he will provide twelve services in your home and he makes it worth your

while by promising that four major ones will be free, the agreement is a package deal with one price for the total job. The four “free” services are included in the total price. While there are cases that fall into a “gray area,” it seems that you do not have to pay the full listed line-item prices for the work that was done. Rather, you may make a deduction from that amount because the work that was not done was “free” in name only (more specific details follow below). You are also correct that you are not required to accept future services as compensation for work that the contractor had promised but will be unable to carry out.

What happens when people arrive at a package deal of which only part is carried out as designed? Consider a precedent in the realm of sales. Reuven agreed to buy land and date trees from Shimon, but Shimon did not provide the trees. The Rambam’s ruling,¹ accepted by the *Shulchan Aruch*,² is that in such a case, the whole deal is off. The buyer can return the field and does not have to agree to compensation for the lack of trees. The Rama³ accepts the opinion that the sale of the land stands, even though the full deal proved to be untenable, because we view the different elements as individual sales. In certain situations, however, all would agree that separate parts of a sale do not stand alone. For example, if someone tried to sell a large field but the sale could take effect only for some of it, the buyer can refuse to accept a purchase of the part of the field that is available, even at a reduced price.⁴

You, however, can certainly **not** void the entire deal at this point for a simple reason. Since you cannot “return” the services the contractor already provided, you must compensate him in some way for the work he did. Your situation is similar to the one described by the *gemara*,⁵ which discusses a case in which Reuven rented a

1. *Mechira* 24:13, as understood by the *Tur*, *Choshen Mishpat* 216.

2. *Choshen Mishpat* 216:5.

3. *Ad loc.*

4. *Shulchan Aruch*, *Choshen Mishpat* 182:8.

5. *Bava Metzia* 79a.

donkey from Shimon to transport wares and the donkey died along the way. Reuven has to pay Shimon for the part of the trip that the donkey carried out. The Rama⁶ limits this to cases in which Reuven can salvage the situation by selling the wares in the place the donkey reached or by finding alternative transportation for the remainder of the journey. Otherwise, he need not pay because the incomplete job provided him no benefit. However, if there was benefit, even if the cost of finishing the journey brings the total cost to moderately more than the agreed price for the whole trip, Shimon still gets paid for the work the donkey did. We do not deduct the added cost when factors out of his control are responsible for the job being incomplete.⁷ The same concept can be applied to work done by your contractor.

Therefore, in broad terms, the amount you halachically owe should be calculated as follows. Determine the relative market value of the work completed as a percentage of the whole job, including the bonus items. Multiply that percentage by the total price **agreed upon** (irrespective of whether it is the average price on the market). Use this amount as a basis for arriving at an appropriate agreement considering all the legal and human elements involved.

6. *Choshen Mishpat* 310:2.

7. *Tosafot, Bava Metzia* 79a. See also *Pitchei Choshen, Sechirut* 3:(33).

I-15: Malpractice for Extracting the Wrong Tooth

Question: A dentist removed the wrong tooth, and now the patient needs an implant. Is the dentist required to pay just for the damage of the missing tooth, or does he also have to pay for expenses, such as special food during recovery and the cost of an implant?

Answer: It is not clear whether you are talking about a theoretical question or a practical one. If it is the latter, realize that whatever we write based on hearing one side of a story is not halachically binding on the other party. We will briefly discuss the halachic background of the issue and not address every possible detail.

You assume that doctors are liable for damages they cause, but that is not a simple matter. It is true that one who physically damages another person is obligated to pay even if he did so accidentally.¹ If the damager was not particularly negligent, he only has to pay *nezek* – the decrease in the victim’s value from before the damage to afterwards, as measured by his worth if he were to be sold as a slave. If the damager was negligent, he also has to pay for *shevet*, *tza’ar*, and *ripuy* (lost earnings, pain, and medical expenses).² He is responsible for *boshet* (embarrassment) only if he damaged purposely.³ The expenses about which you asked are elements of the payment of *ripuy* and the others, which apply to the story you told of apparent negligence. (We are not discussing astronomical payments that do not correspond to any damage, which are awarded by some courts.)

However, the *tosefta*⁴ says: “An expert doctor who healed with *beit din*’s permission and damaged in the process is exempt from human law (i.e., a court-awarded payment) and his law is given over

1. *Bava Kama* 26a.

2. *Ibid.* 27a.

3. *Ibid.*

4. *Bava Kama* 6:6.

to the Heavens (i.e., he has a moral obligation).” This *halacha*, which is accepted by the *Shulchan Aruch*,⁵ is designed to benefit society by not giving doctors reason to refrain from healing out of fear of malpractice suits.⁶

The question is thus whether our doctors (and dentists) are included in this special exemption. All licensed doctors are presumably considered experts in their fields.⁷ (Complex procedures that require a higher level of expertise are beyond our present scope and, in any event, are not the issue here.) However, it is a matter of debate whether government licensing is the equivalent of *beit din*’s permission⁸ or whether only *beit din*’s explicit permission activates this special exemption.⁹

Usually, any expert who makes a mistake that causes damage is obligated to pay if he received wages for his services.¹⁰ However, the special exemption for a licensed doctor (assuming his status is equivalent to *beit din*’s approval) likely applies even if he receives pay. Rav Ariel¹¹ suggests that most doctors are not paid enough to offset the possibility of having to pay for damages.

However, in locations where doctors have malpractice insurance – an expense that at least to a great extent is passed on to the patient – it is doubtful that they would refrain from working because of a concern of being sued. On the other hand, one hears of doctors avoiding certain types of potentially beneficial procedures out of fear that they may lead to a malpractice suit. At any rate, it is realistically unlikely that the few cases of malpractice that end up before a *beit din* will affect doctors’ practices. Therefore, the question before us is perhaps most affected by an important general one: when a certain situation motivated the Rabbis to create a rule to improve the

5. *Yoreh Deah* 336:1.

6. *Tashbetz* III:82.

7. See *Aruch HaShulchan*, *Yoreh Deah* 336:2.

8. *Tzitz Eliezer* v, *Ramat Rachel* 23.

9. See opinions in *Encyclopedia Hilchatit Refu’it*, vol. VII, col. 278.

10. *Shulchan Aruch*, *Choshen Mishpat* 306:6.

11. *B’Ohalah Shel Torah* I, *Yoreh Deah* 55.

functioning of society and it is not clear to what extent that situation still exists, does the Rabbinic rule still apply?

The above dilemma pertains only to payment by doctors. In contrast, it is fully appropriate, when the conditions are met, to demand payment from an insurance company, which is paid specifically to cover such risks.

In the specific case you ask about, there is ample reason to obligate the dentist. First, removing the wrong tooth is an act of apparent gross negligence. Furthermore, it turns out that the dentist was not involved in an act of healing whatsoever. Therefore, many *poskim* would say that he is obligated to pay just like any other damager.¹²

12. *Tzitz Eliezer* op. cit.; see *Encyclopedia Hilchatit Refu'it*, vol. VII, col. 283–4.

I-16: Money Found in a House

Question: I saw the following story on the news. During renovations on a home that had been owned by several people over the years, a contractor found a package with \$182,000 stashed between the walls. The contractor took the money, but the homeowner complained that since the money was found in his house, it should be his. What does Halacha have to say about this?

Answer: For simplicity's sake, we will deal with this as if it were a theoretical case occurring in Israel and avoid factors that might arise elsewhere due to local considerations.

The *gemara*¹ discusses a situation in which one finds an object in an ancient wall and there are signs that it has been there since before the Israelites conquered the land. It says that the finder (even if he is not the property-owner) can keep the object. *Tosafot*² asks why the property (*chatzer*) did not acquire the object on behalf of its owner, even in the absence of his knowledge of the object's existence.³ *Tosafot* answers that a *chatzer* acquires objects for its owner only when it is expected that he will eventually find them.

In our case, it could very well be that the homeowner would never have found the object. Therefore, the money was un-owned (see discussion below), allowing the contractor to acquire it upon finding it. This basic idea is accepted as the *halacha* in the *Shulchan Aruch*.⁴ There are two possible explanations for this law. The *S'ma*⁵ says that a *chatzer* acquires only objects of *hefker* (ownerless status), but not lost objects, even when the objects' owner gave up hope of recovering them. The *Netivot HaMishpat*⁶ says that it depends entirely on

1. *Bava Metzia* 26a.
2. Ad loc.
3. See *Bava Metzia* 10b.
4. *Choshen Mishpat* 260:1.
5. Ad loc. 2.
6. Ad loc. 3.

whether the property-owner could be expected to find them someday, as *Tosafot* explains. Either way, the contractor would be correct in our case. (The fact that the contractor was working for the homeowner at the time he found the package does not change the *halacha*.⁷)

However, there is another factor that is likely to be overlooked in a society that does not operate according to Halacha. Even if we can assume that the owner of the money cannot be identified, does that mean that the finder can keep it? When the unknown person stashed the money away, he apparently planned to take it back at some time. We lack sufficient grounds to presume that at some later point, he decided never to retrieve the money. It is likely that he was unable to retrieve the money for some reason and became incapacitated or died without having informed someone about it. Since (virtually) everyone has some sort of inheritor, even if the owner died, there is a new owner. If, as is very possible, the new owner does not know that this money exists and is his to inherit, he could not have had *yei'ush* (give up hope). Since it is the presumption of *yei'ush* that allows a finder to take an object (including one without identifying signs), the finder ostensibly has to hold on to it and entertain the remote possibility that someone will come and prove his ownership.⁸

Why is it that in the *gemara's* case, the finder could take the old lost object? One opinion suggests that it was left over from the nations that were conquered long ago, making it not applicable to a regular case. However, a more fundamental explanation is called for. In a situation in which one loses something and it is unlikely that he will ever get it back, his lack of control prevents inheritance from occurring and it becomes *hefker* (ownerless).⁹ Therefore, if we could ascertain that the money was hidden long enough for us to presume that its owner died, the contractor could keep the money. If not, the matter would raise new, complicated questions that are beyond the scope of this theoretical discussion.

7. See *Shulchan Aruch, Choshen Mishpat* 270:3.

8. See Rama, *Choshen Mishpat* 260:10.

9. See *Netivot HaMishpat* 256:1 and *Pitchei Choshen, Aveida* 3:5 and 7:(10).

I-17: Damage to an “On Approval” Sales Item

Question: I found an apparently suitable cello to buy, and the seller gave it to me “on approval” (a purchase with a trial period during which one can return it without explanation). During this time, one of the strings broke while I was tuning the cello. I used the cello only to test it, and I did not use it after making the decision to return it. When I returned the instrument to the seller, she demanded payment for the broken string, and I paid. What does Halacha say? Was I a *sho'el* (borrower of an object)? Even if I was, would breaking the string obligate me to pay, as it seems to be a case of *meita machamat melacha* (“died” due to its normal use), for which a *sho'el* is exempt?

Answer: It appears that you are asking your question from the perspective of halachic curiosity and do not have plans to demand your money back. Thus, we do not have to be as rigorous as we normally would be in considering all relevant issues, some of which may be unknown to us since we are hearing from only one side. Your excellent question has an interesting provisional answer.

The *gemara*¹ tells of one who took a vessel from its maker to check it and keep it if he liked it. Shmuel says that even if something happened to the vessel *b'oness* (by no fault of his own), he is still obligated to pay. This is how the *Shulchan Aruch*² rules in a case in which the parties had decided on a price and the seller was not particularly anxious to get rid of the object.

In your case, it would ostensibly seem that you would be similarly obligated to pay. However, the point of *meita machamat melacha* is a good one. Even a *sho'el*, who is obligated to pay even when something went awry *b'oness*, is nevertheless exempt if the object died, broke, etc.

1. *Nedarim* 31a; *Bava Batra* 87b.
2. *Choshen Mishpat* 200:11.

as a result of being used in a normal manner,³ and a string breaking while tuning the cello seems to belong in this category.

However, we must understand the halachic mechanism that normally obligates the provisional buyer. The Rash⁴ explains that since the buyer is in the advantageous position of being able to buy or to return the object as he likes, Halacha places upon him the broad responsibilities of a *sho'el*, who also has the main benefit from his arrangement. Rashi⁵ says that the logic of the obligation is that the tentative sale makes the receiver of the object considered to be a buyer (*lokei'ach*), even if he has the ability to return it. When one buys an object and something happens to it after the sale is complete, the loss naturally is his. The *Netivot HaMishpat*⁶ maintains that actually both possibilities (*sho'el* and *lokei'ach*) exist, and which mechanism is the one that has impact depends on the particular circumstances.

There are practical halachic differences between the approaches. The *Machaneh Ephrayim*⁷ discusses one such difference: when the seller was working for the buyer at the time of the sale. This situation, when discussed in the laws of watchmen and particularly those of a *sho'el*, is called *b'alav imo* (literally, the owner is with him), and the Torah grants the *sho'el* a special exemption from payment in that case.⁸ Thus, if the provisional buyer's obligation is due to a status of *sho'el*, the exemption of *b'alav imo* will apply. If the obligation is based on *lokei'ach*, then *b'alav imo* will make no difference, as we are not obligating the buyer to pay for what happened to the object but are just saying that once he bought it, any loss is naturally going to affect him.

Our case seems to be another one in which the *halacha* would depend upon the conceptual basis for the potential buyer's financial obligation. *Meita machamat melacha* is also a special exemption for a

3. *Shulchan Aruch, Choshen Mishpat* 340:1.

4. In *Tosafot, Bava Batra* 87b.

5. *Bava Metzvia* 81a.

6. 186:1.

7. *Shomrim* 24.

8. *Shulchan Aruch, Choshen Mishpat* 346:1, based on *Shemot* 22:14.

sho'el, as we noted above, but similar to *b'alav imo*, we do not expect it to provide relief for one who is considered a *lokei'ach*. Since the majority opinion is that a provisional buyer is a *lokei'ach*⁹ (and according to the *Netivot HaMishpat*,¹⁰ both types of obligation apply), you seem to have been obligated regardless of the fact that the cello broke in the course of its normal use.

However, one might be able to distinguish based on the following. How can one be considered a *lokei'ach* if he can exercise his right to back out of the sale? The *Tur*¹¹ implies that the condition is that he can back out if he returns the object intact. Regarding a classic damage, like a theft or an animal dying, which are total losses, there is no way to back out of the deal. Consequently, the purchase remains intact and the potential buyer turns into an actual one and is stuck with the worthless object. However, since you were able to return the cello with only minor damage, the seller could obligate you only through the rules of *sho'el*, by which you were exempt due to *meita machamat melacha*.

If you were to make that argument for an exemption in a *beit din*, you would apparently need to prove that the breaking of the string was a result of *meita machamat melacha*, i.e., that it occurred during normal use without fault, or swear that this was the case.¹² Because of the difficulty of doing so and since we cannot assure you that the above halachic analysis fits your exact case, reaching a compromise is a reasonable solution. Certainly, it would be difficult for you to legally force the seller to return a payment you already made.

9. *Pitchei Choshen, Kinyanim* 13:(43).

10. *Op. cit.*

11. *Choshen Mishpat* 200.

12. *Shulchan Aruch, Choshen Mishpat* 344:1.

Glossary

A

Acharonim – the Talmudic and halachic scholars who lived from the 16th century until our days.

afrushei mei'isura 1-8 – the responsibility to distance someone else from sin.

akar A-18 – “uprooting one’s legs” to approach the place where *Birkat Kohanim* is done.

Al HaEtz B-6 – the blessing recited after eating grapes, figs, pomegranates, olives, or dates.

al mitzvat tefillin F-9 – the blessing recited before putting on the *tefillin shel rosh* according to the practice of Ashkenazim.

al netilat yadayim G-7 – the blessing recited upon performing *netilat yadayim*.

Aleinu A-1, A-9 – a prayer concluding each of the three daily prayers.

aliya (pl. – **aliyot**) A-10, A-11, A-13, A-14, A-15, F-5 – when a man is called up to the Torah to bless before and after a section of its public reading.

alot hashachar A-3, D-1 – the halachic beginning of the morning, somewhat more than an hour before sunrise.

Amalek D-13 – the arch-enemies of the Jewish People.

amen A-1, A-2, A-10, A-16, B-2, B-10 – the response to a blessing, expressing agreement with its content.

Amida see *Shemoneh Esrei*

Amora – a rabbinic scholar of the Amoraic period (approximately 200–500 CE).

amot A-1, D-8, F-3, G-5, I-9 – cubits; a measurement with applications in several halachic contexts. The standard opinion is that each is approximately a foot and a half (45 centimeters).

- aron (kodesh)** D-6, F-1 – the closet-like chest in which Torah scrolls are kept.
- arvut** C-7 – the mutual obligation that one has for others, including in the context of fulfillment of religious obligations.
- Asara B'Tevet** C-8 – the fast on the tenth day of the month of Tevet.
- Asher Bachar** A-15 – the blessing recited by the *oleh* before his *aliya*.
- Asher Natan** A-15 – the blessing recited by the *oleh* after his *aliya*.
- Asher Yatzar** G-7 – the blessing recited after using the bathroom.
- Ashkenazi** (pl. – **Ashkenazim**) – Jew of Central or Eastern European origin.
- ashmoret haboker** D-1 – the few hours leading up to *alot hashachar*.
- ashmorot** D-1 – parts of the night.
- Ashrei** A-1, A-9, C-17 – an important prayer, recited three times a day.
- aveida mida'at** I-6 – an intentional loss.
- aveidot** (sing. – **aveida**) I-12 – lost objects.
- aveilut** A-6 – the period of mourning and the laws and atmosphere that apply at that time.
- aveira** C-2, I-8 – sin.
- Avinu** – our forefather.
- avoda** A-18 – sacrificial service; a reference to the *beracha* of *Retzei* in *Shemoneh Esrei*.
- avsha milta** C-6 – an act that is degrading for Shabbat due to the attention drawn to it by the noise it produces.

B

- ba'al korei** (pl. – **ba'alei kri'ah**) A-11, A-12, D-13, D-14 – one who publicly reads the Torah for the congregation.
- ba'al mum** A-6 – one who has a physical blemish.
- ba'al tokeiah** D-2 – one who blows the shofar.
- ba'alei dikduk** A-12 – experts of Hebrew grammar.
- ba'alei mesorah** A-12 – a group of scholars of the Torah text over a thousand years ago, who, among other things, created the symbols for the vowels in Hebrew.
- b'alav imo** I-17 – a situation in which the lender of an object worked

- for the borrower, in which case the borrower is not liable for damages to the object.
- bal yeira'eh ubal yimatzei** D-16, D-20 – the prohibition to possess *chametz* in one's domain on Passover.
- bar mitzva** B-10, F-7 – 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-1 – a responsive declaration of praise.
- bari v'shema** I-1 – a case in which a plaintiff claims to be certain (*bari*) that the defendant owes him money, while the defendant is not sure (*shema*) that this is correct.
- baruch Hashem** – thank God.
- Baruch hu u'varuch shemo** A-1 – “Blessed is He and blessed is His Name;” a phrase recited upon hearing God's name recited in the context of a blessing.
- basar b'chalav** E-4 – meat mixed with milk, a forbidden mixture.
- bassis l'davar ha'asur** C-11 – an otherwise permitted object that becomes *muktzeh* by serving as a base for something *muktzeh*.
- batel** E-7 – something halachically indistinguishable from its surroundings in a manner that it loses its halachic status.
- b'avidetei tarid** G-3 – the principle that one who is preoccupied with his professional activities will not be affected by seeing that which could otherwise arouse him.
- b'di'eved** A-11, A-14, A-15, C-15, D-14, E-3 – 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.
- bedika** D-15, D-16, D-20 – a search, in this case, a reference to *bedikat chametz*.
- bedikat chametz** D-15, D-16, D-20 – the *mitzva* to check one's house for *chametz* before the Pesach holiday.
- bein gavra l'gavra** A-10 – between *aliyot* during *kri'at haTorah*.

- beit din** I-3, I-4, I-5, I-7, I-15, I-17 – rabbinical court.
- Beit HaMikdash** A-6, A-13, D-10, F-1 – 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 midrash** (pl. – *batei midrash*) D-16, I-12 – study hall for Torah study.
- beit sha’ar** F-3 – a hut that serves as a gateway.
- ben Torah** G-8 – one who is careful to follow the laws of the Torah with all of their intricacies.
- bentch/ing** A-9, B-1, B-2, B-3, B-4, C-3, H-3, H-4 – 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-9, A-10, A-11, A-14, A-15, A-17, A-18, C-3, C-8, D-4, D-7, D-12, D-13, D-16, D-17, D-22, E-6, E-7, E-8, F-3, F-4, F-5, F-6, F-9, G-5, G-7, G-10, H-3, H-4 – blessing. There are a number of categories of *berachot*, and they may be recited periodically or under certain circumstances.
- beracha acharona** (pl. – *berachot acharonot*) B-4, B-6, B-7, C-8 – blessing recited after one eats.
- beracha l’vatala** A-11, A-15, B-8, C-8, D-7, D-16, F-6, G-10 – blessing recited in a manner in which it has no value, which is forbidden.
- beracha rishona** B-4 – a blessing recited before one eats.
- besamim** D-7 – fragrant herbs or branches. One smells them after Shabbat to “revive” the soul after Shabbat departs.
- bima** A-6, D-6, F-2 – the platform and/or table in the middle of the synagogue upon which the Torah is read.
- birkat eirusin** H-3 – the *beracha* recited over betrothal. In the time of *Chazal*, betrothal took place a year before the marriage, but nowadays, they are performed at the same time.
- Birkat HaGomel** B-9, B-10 – the blessing recited publicly after emerging safely from a potentially dangerous situation.
- Birkat HaMazon** A-9, B-1, B-2, B-3, B-4, C-3, H-3, H-4 – the series of blessings recited after eating a meal that includes bread.

- birkat hanness** B-9 – a blessing recited over the occurrence of a miracle.
- Birkat HaTorah** B-8 – the blessing recited before the study of Torah each new day or before and after the formal public reading of the Torah.
- birkat hazimun** see *zimun*
- Birkat Kohanim** A-13, A-16, A-17, A-18 – the priestly blessing recited during the repetition of *Shemoneh Esrei* (also known as *nesi'at kapayim* or *duchenen*).
- birkot chatanim** see *birkot nisuin*
- Birkot HaShachar** A-3 – the series of blessings recited before morning prayers, thanking God for providing the basic necessities of life.
- birkot nisuin** H-3 – the *berachot* recited over *nisuin*, the second and final halachic stage of the marriage process, after which the couple lives together as husband and wife. These seven *berachot* (six *berachot* in addition to the blessing over the wine) are also referred to as the *sheva berachot* and are recited at the wedding and during the ensuing period of celebration.
- bitul chametz** D-20 – nullification of *chametz*.
- blech** C-6, C-15 – a sheet of metal used to cover a flame on Shabbat in order to solve certain halachic problems.
- blorit** F-8 – a clump of hair in the front of the head.
- Bnei Yisrael** D-6, D-17, D-22, G-6 – lit., the Sons of Israel, often translated as Israelites; a common reference to the Jewish People.
- boneh** C-5 – building, one of the 39 forbidden forms of forbidden work on Shabbat.
- Borei Me'orei HaEish** D-7 – the blessing recited over fire during *Havdala* after Shabbat and after Yom Kippur.
- Borei Nefashot** A-15, B-4, B-6, B-7 – a blessing recited after eating certain foods.
- Borei Pri HaEtz** B-6 – the blessing recited before eating a fruit that grows on a tree.

- Borei Pri HaGefen** C-8, D-7, H-4 – the blessing recited before drinking wine or grape juice.
- borer** C-16 – selecting, one of the 39 forms of forbidden work on Shabbat.
- boshet** I-15 – the obligation of a damager to pay for the victim’s embarrassment.
- brit mila** A-5, D-4 – the *mitzva* and celebration of the circumcision of a Jewish male.
- brit** see *brit mila*
- b’rov am hadrat melech** A-4 – “The King’s honor is enhanced in large gatherings;” the principle indicating that it is best to perform *mitzvot* with a larger group.
- b’shogeg** see *shogeg*

C

- chag** D-10 – festival; see also *Yom Tov*.
- chakira** B-2, F-5 – an analytical dilemma.
- challa** E-8 – the piece of dough removed during *hafrashat challa*.
- chametz** D-15, D-16, D-18, D-19, D-20, E-5 – leavened bread or other grain-based food, which it is forbidden to eat or own on Passover.
- chametz she’avar alav haPesach** D-20 – *chametz* owned by a Jew over Passover, which it is forbidden to use after Passover.
- Chanuka** D-11, D-12 – 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 *menora* burned for eight days.
- chanukiya** (pl. – **chanukiyot**) D-11 – Chanuka *menora* (candelabrum).
- charoset** D-17 – a mixture including fruit, nuts, and wine into which foods are dipped during the Passover *Seder*.
- chatan** (pl. – **chatanim**) H-2, H-3, H-4 – groom.
- chatzer** I-16 – lit., courtyard; property.
- chatzitza** E-7, F-8 – a problematic obstruction between two objects that are supposed to come in contact with one another.

- chatzot** C-9, D-1, D-20 – the astronomical middle of either the day or night. This time has halachic significance in a number of contexts.
- chazaka** F-6, I-4, I-9 – a presumption based on the status quo and/or experience; an acquired right.
- Chazal** – a generic term for the Jewish scholars at the time of the Talmud (approximately 1–500 CE).
- chazan** (pl. – **chazanim**) A-2, A-4, A-6, A-8, A-9, A-10, A-18, G-9 – cantor or prayer leader.
- chazara** C-15 – returning foods to a heat source, which is Rabbini- cally prohibited on Shabbat under certain circumstances even for cooked foods.
- chazarat hashatz** A-2, A-4, A-9, A-10, A-16, G-9 – the repetition of *Shemoneh Esrei* by the cantor.
- chazeret** D-17 – a reference to *maror*.
- cheilev** E-5 – certain fatty sections of cattle that it is forbidden to eat.
- chesed** C-3, G-1 – an act of kindness.
- chiddush** E-4 – innovative statement.
- chillul Hashem** I-1 – the desecration of HaShem’s name, including when a person who is viewed as (particularly) religious acts improperly.
- chiyuv** (pl. – **chiyuvim**) A-4 – lit., obligation; a mourner or some- one who has a *yahrtzeit*.
- chiyuv latzeit y’dai shamayim** I-1 – a moral obligation (lit., an obli- gation to fulfill one’s responsibility to Heaven).
- Chol HaMo’ed** D-10 – lit., the mundane of the festival; the interme- diate days of the holidays of Pesach (Passover) and Sukkot (Tab- ernacles). These days includes some, but not all, of the halachic elements of the main days of the festival (*Yom Tov*).
- cholam** A-12 – a Hebrew vowel, pronounced like the “o” in the word “note.”
- cholent** C-15 – a traditional Jewish food, especially for the Shab- bat day meal.
- choresh** C-15 – plowing, one of the 39 forbidden forms of forbid- den work on Shabbat.

- Choshen Mishpat** – the section of *Shulchan Aruch* that discusses monetary law.
- chumash** A-11, G-6 – the Pentateuch; a printed edition of one or more of the five books of the Torah, often with the accompanying readings from the Prophets.
- chumra** A-11, D-11, D-18, F-3 – stringency.
- chupa** H-2, H-3 – the bridal canopy; part of the ceremony that effectuates Jewish marriage.
- chutz la'aretz** A-16, A-17, H-1 – the Diaspora (lands outside of the Land of Israel).

D

- Dati Leumi** G-2 – National Religious, a subgroup of Orthodox Jews, essentially parallel to what American Jews call “Modern Orthodox.”
- davar she'eino mitkavein** C-5, C-7, C-14, F-5 – a case in which one performs an action that is permitted on Shabbat that may, as an unintended consequence, cause a prohibited result as well.
- daven/ing** A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-9, A-10, A-16, A-17, C-2, C-4, C-9, C-12, D-6, D-21, F-1, F-6, F-7, G-2, G-9 – Yiddish for pray/ing. The term “*davening*” can also refer to a prayer service as a whole.
- dayan** (pl. – **dayanim**) I-1 – rabbinical judge.
- derasha** A-10 – sermon.
- dikduk** A-12 – Hebrew grammar.
- din** D-1, I-4 – strict judgment or law (as opposed to compromise).
- din Torah** I-3, I-4, I-5, I-14 – a court case adjudicated by a rabbinical court.
- divrei Torah** A-1, A-10 – Torah ideas that are discussed or studied.
- duchan** A-18 – lit., platform; the area in the front of the *shul* where *Birkat Kohanim* is carried out.
- duchenen** A-13, A-16, A-17, A-18 – Yiddish reference to the priestly blessing (*Birkat Kohanim, nesi'at kapayim*).
- D'vai haser** H-3 – an addition made to the *zimun* at a wedding and *sheva berachot* celebrations.

E

egg matza D-19 – *matza* that includes ingredients in addition to flour and water.

eino ben yomo E-3 – a utensil that has not been used in the past 24 hours.

eiruv (pl. – **eiruvim**) C-5, C-12, C-13, C-18 – one of a series of Rabbinic mechanisms that make it permissible to do what would otherwise be Rabbinically prohibited; used colloquially to refer to an *eiruv chatzeirot*.

eiruv chatzeirot C-5, C-13, C-18 – 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 C-12 – the food prepared before *Yom Tov* that allows one to cook for Shabbat on *Yom Tov* that falls on Friday.

eit ratzon D-1 – a time when requests are more readily accepted.

Elokai Netzor A-1 – a supplication recited at the end of *Shemoneh Esrei*.

Eretz Yisrael A-17, B-4, B-6, H-1 – 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.

F

fleishig E-1, E-2, E-3, E-4 – 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-6, A-10, A-13, D-2, I-12 – a person in charge of something (e.g. synagogue services, charitable funds).

gemara – the section of the Babylonian Talmud that contains the discussion of the *Amora'im*.

- gemilut chasadim** G-1 – acts of kindness; see also *chesed*.
- gerama** C-7 – indirect causation.
- gereira** B-6 – a principle allowing a *beracha* to be “dragged along” to other foods that one will eat.
- gezeirat hakatuv** E-5 – a “heavenly decree” (i.e., law of the Torah) without a known reason.
- gid hanashe** E-5 – certain sinews in an animal’s hind legs, which it is forbidden to eat.
- goy shel Shabbat** C-1 – a non-Jew who is available on a regular basis, for pay or as a favor, to do things for a Jew on Shabbat that a Jew is forbidden to do.
- gozez** C-14 – shearing, one of the 39 forms of forbidden work on Shabbat.
- g’raf shel re’i** C-11 – lit., portable toilet; *muktzeh* that may be moved because its presence is disturbing.
- g’ram kibbuy** D-3 – indirect extinguishing of a flame.

H

- hachnasat orchim** G-1 – hosting guests.
- hadacha** E-1 – rinsing the mouth with a liquid. This is required if one wants to eat meat soon after eating dairy.
- hafrashat challa** E-8 – the removal of a piece from dough, which, were it not for problems of ritual impurity, should have been given to a *kohen*.
- haftara** (pl. – **haftarot**) A-11, A-17 – the reading of a section from the Prophets after the Torah reading.
- hagala** E-3 – 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-1 – the third blessing in *Shemoneh Esrei*, in which we mention God’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.

- Hallel** A-17 – the series of psalms recited joyously on festivals.
- HaMavdil** C-2 – the short, semi-formal declaration made at the end of Shabbat that allows one to do actions that are forbidden on Shabbat.
- HaMotzi** B-1, B-4, G-7 – the blessing recited before eating bread.
- Haredi** G-2 – lit., fearful (of HaShem). The most accepted translation of the name of this large and varied group of Orthodox Jews is ultra-Orthodox.
- hasagat g’vul** I-11 – encroachment on commercial rights.
- hashavat aveida** I-6, I-8, I-12 – 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.
- HaShem, sefatai tiftach** A-1 – the phrase recited before beginning *Shemoneh Esrei*.
- havara** D-3 – causing something to burn; this is one of the 39 forms of forbidden work on Shabbat, but it is permitted on *Yom Tov* in certain forms.
- Havdala** C-2, C-3, D-4, D-7, H-4 – the blessing recited over wine at the end of Shabbat and *Yom Tov*, which acknowledges God’s part in the transition from these days to regular weekdays.
- HaZan** B-2 – the first *beracha* of *Birkat HaMazon*.
- hechsher** (pl. – **hechsherim**) D-9, E-5 – rabbinical certification.
- hechsher mitzva** D-12 – a necessary facilitator of the performance of a *mitzva*.
- hefker** D-16, I-6, I-12, I-16 – ownerless.
- hefsek** A-8, G-7, D-16 – a problematic interruption, often in the performance of a *mitzva*, recitation of a prayer or blessing, or between a blessing and that which it refers to.
- heiche kedusha** A-2 – a shortened *chazarat hashatz* in which the *chazan* says *Shemoneh Esrei* aloud through *Kedusha* before the congregation has said *Shemoneh Esrei*.
- 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.

hidur G-9 – a slight movement of the body that shows respect for an important person.

I

ikar B-5 – the main part of a food. This generally determines the appropriate blessings to recite.

Ivrim (sing. – **Ivri**) G-6 – Hebrews; reference to the family/tribe started by Avraham and continued by his descendants.

K

kablan C-12 – a worker paid a set amount for a job.

Kaddish (pl. – **Kaddeishim**) A-1, A-4, A-10 – a prayer (in which we sanctify God’s Name) that is recited by a member or members of the congregation, often by mourners.

kalla H-2, H-3, H-4 – bride.

kamatz A-12 – a Hebrew vowel, pronounced like the “u” in the word “nut” in classic Ashkenazic pronunciation and like a *patach* in Sephardic/Modern Hebrew pronunciation.

kamatz katan A-12 – a Hebrew vowel that resembles the *kamatz* but is grammatically different.

kasher/ing E-3 – 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*) D-9, D-17, D-19, I-7 – the field dealing with keeping kosher; also used to refer to the acceptability of ritual objects.

katan B-10 – lit., small; a minor.

kavod G-4 – honor, respect, dignity.

kavod haberiyot H-2 – [maintaining] human dignity.

kavod hatzibbur A-6 – the public’s honor.

k’beitza B-1 – the size of an egg.

k’bol’oh kach polto E-3 – lit., just as it absorbs, so it expels; the

- principle that a utensil is *kashered* using the same medium through which it absorbed taste.
- k'dei achilat pras** B-1, B-7 – the amount of time that it takes to eat a half of a loaf of bread, roughly in the range of 4–9 minutes.
- k'dei sevi'a** B-3 – a quantity of food that is sufficient to satiate.
- kedimut** A-4, B-6 – prioritization in the assigning of the role of prayer leader or other functions; prioritization in reciting *berachot* over food.
- Kedusha** A-1, A-2, A-10, A-18, D-6 – a prayer recited during the repetition of *Shemoneh Esrei*.
- kedusha** F-2 – sanctity.
- kedushat shvi'it** C-16 – food with the sanctity of *Shemitta* that therefore may not be disgraced.
- ketuba** H-2, I-13 – a formal marriage contract that, among other things, ensures a Jewish wife financial support during and after her marriage.
- kibbuy** D-3 – extinguishing a flame, one of the 39 forbidden forms of forbidden work on Shabbat.
- Kiddush** C-3, C-8, C-12 – the blessing through which we sanctify Shabbat, recited over wine before the Shabbat meal both at night and during the day.
- kinuach** E-1 – Eating a solid food to absorb taste that remains in the mouth. This is required if one wants to eat meat soon after eating dairy.
- kinyan** H-2, I-1, I-13 – an act of finalization of a transaction.
- kinyan sudar** H-2 – an act in which one party hands over some utensil to his counterpart in order to finalize an agreement.
- kipa** G-5 – a traditional head covering for men, often referred to as a yarmulke.
- klaf** A-11, D-14 – parchment; a Torah-like scroll, sometimes used for the books of the Prophets.
- Klal Yisrael** G-2 – the Jewish People.
- kli** (pl. – **keilim**) C-11, D-9, E-3, E-6, E-7, I-7 – utensil.
- kli seuda** (pl. – **klei seuda**) E-6 – a utensil used in a meal.
- kli shemelachto l'issur** C-18 – a utensil whose normal use is

forbidden on Shabbat and *Yom Tov*, which is *muktzeh* but may be moved under certain circumstances.

k'ma'achal ben d'rosai C-6, C-15 – nominally edible.

kohen (pl. – **kohanim**) A-6, A-13, A-16, A-17, A-18, F-8 – a member of the priestly tribe (who descend from Aaron). Members of this tribe have special religious obligations, roles, and privileges.

kohen gadol F-1 – High Priest.

korban (pl. – **korbanot**) A-18, B-10, D-5, D-10 – sacrifice.

korban toda B-10 – sacrifice of thanksgiving.

kri'at haTorah A-10, A-11, A-12, A-14, A-15, C-9, D-13, D-14, D-15, F-1, G-10 – the reading of the Torah during services in the synagogue.

Kri'at Shema A-1, A-5, A-8, A-9, A-15, F-7 – three sections of the Torah containing basic elements of our faith. The Torah commands us to recite these sections every morning and evening.

k'zayit B-1, B-3, D-5, D-16, D-18 – the size of an olive. This measurement has many halachic ramifications.

L

Lag BaOmer D-21 – the thirty-third day of the period of *sefirat ha'omer*.

lain/ing A-10, A-11, A-12, A-14, A-15, C-9, D-13, D-14, D-15, F-1, G-10 – Yiddish for reading the Torah (*kri'at haTorah*).

lashon hara D-2, H-2, I-8 – improper speech that causes damage to others, especially by tarnishing their reputation.

P'hatchila A-14, B-4, D-18 – lit, in the first place; the ideal way of acting.

lechem hapanim C-18 – the special breads placed on the table in the Holy Temple.

lev beit din matneh aleihem F-2 – 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.

levi (pl. – **levi'im**) A-13, A-16 – a descendant of the tribe of Levi. Members of this tribe have certain roles and privileges.

Phaniach tefillin F-9 – the blessing recited before putting on the *tefillin shel yad*.

libun E-3 – a process of *kashering* a utensil with very high “dry” heat.

libun kal E-3 – a process of *kashering* a utensil with dry heat, but with less heat than full *libun*.

lifnei iver [lo titen michshol] C-2, D-19, E-5 – lit., do not put a stumbling block before the blind; the prohibition of facilitating another’s sin.

l’maaseh – in practice.

lo p’lug E-1 – a concept indicating that we do not distinguish between similar cases that fall into the same category.

lokei’ach I-17 – a buyer.

lulav I-10 – a palm branch, one of the four species used on the holiday of Sukkot.

l’vatala see *beracha l’vatala*

M

Ma’ariv A-7, A-9, C-2, D-21 – the evening prayer.

ma’aser (pl. – **ma’asrot**) A-13, G-1 – one of a number of tithes in which one gives a tenth.

ma’aser kesafim G-1 – the recommended practice of giving one tenth of one’s earnings to charity.

ma’aser rishon A-13 – a tithe given to a *levi*.

machloket (pl. – **machlokot**) – disagreement, in our context, concerning matters of scholarship.

machmir D-11 – follow the stringent opinion; see also *chumra*.

mafkir I-6, I-12 – the act of relinquishing one’s rights to an object; see also *hefker*.

maftir A-11 – the last portion of the public Torah reading on Shabbat and festivals.

makom kavu’a A-4 – a set place where one prays.

makpid E-7 – being particular and disturbed about a certain situation.

marit ayin C-12 – giving an impression that one is doing something forbidden.

- maror** D-17 – bitter herbs eaten at the Passover *Seder*.
- mashgiach** D-19 – *kashrut* supervisor.
- matza** (pl. – **matzot**) D-17, D-18, D-19 – unleavened bread. We are commanded to eat *matza* on Passover.
- matza ashira** D-19 – lit., rich *matza*; *matza* made with ingredients in addition to flour and water.
- mayim acharonim** C-11 – water used to wash one’s hands after a meal.
- mazal** D-22 – good fortune.
- mechila** I-12, I-13 – relinquishing of rights.
- mechila b’lev** I-13 – mental relinquishing of rights.
- mechila b’ta’ut** I-13 – relinquishing of rights based on a false premise.
- mechirat chametz** D-20 – the sale of *chametz* before Passover.
- Me’ein Shalosh** B-4 – 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).
- megilla** (pl. – **megillot**) A-11, D-14 – a Torah-like scroll.
- Megillat Esther** A-6, C-3, D-13, D-14 – The Book of *Esther*, read on Purim, which is written on a Torah-like scroll.
- meguneh** A-8 – unseemly.
- mehadrin** F-3, I-7 – optimal; colloquially used to refer to something with high halachic standards, often in the realm of *kashrut*.
- meigis** C-15 – stirring, which can be part of the cooking process on Shabbat.
- me’ila** F-2 – misappropriation of Temple property.
- meita machamat melacha** I-17 – an object that “died” due to its normal use.
- meizid** C-15 – intentional performance of a forbidden act.
- mekabel tumah** D-9 – capable of becoming ritually impure.
- Mekadesh HaShabbat** C-8 – a blessing recited on Friday night as part of *Kiddush*.
- melacha** (pl. – **melachot**) C-2, C-4, C-5, C-6, C-7, C-12, C-14, D-3 – 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.
- menschlichkeit** C-1, I-1 – common courtesy.
- mesader kiddushin** H-2 – the rabbi responsible for arranging the halachic requirements of a Jewish wedding.
- mevatel kli meihechano** C-11 – causing a utensil to be unusable, which is forbidden on Shabbat.
- mevushal kol tzorko** C-15 – fully cooked.
- mezamen** (pl. – **mezanim**) B-2, H-3 – one who leads a *zimun*, the introduction to a joint recitation of *Birkat HaMazon*.
- Mezonot** B-5 – the blessing recited before eating a non-bread food made of one of the five major grain species.
- mezuzah** (pl. – **mezuzot**) F-3, F-4 – a scroll containing certain fundamental Torah passages. There is a *mitzva* to attach *mezuzot* to the doorposts of one's house.
- midras** D-9 – sitting or lying.
- mikveh** A-17, E-6, E-7 – a specially constructed pool for the ritual immersion of people and utensils.
- mila** see *brit mila*
- milchig** E-1, E-2, E-3, E-4 – 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.
- min** (pl. – **minim**) E-8 – type.
- Mincha** A-2, A-5, A-7, A-9, A-17, C-4, C-9, D-1, D-21 – the afternoon prayer.
- minhag** (pl. – **minhagim**) A-1, A-4, A-10, A-11, A-12, A-13, A-14, A-16, A-17, B-5, D-1, D-2, D-6, D-7, D-11, D-15, D-18, D-19, D-21, E-1, E-4, E-5, E-6, E-8, F-1, F-4, F-6, F-7, F-9, G-9, H-2, H-3, I-10 – a custom or general practice.
- minhag ha'olam** F-3 – a widely accepted practice.
- minyan** (pl. – **minyanim**) A-1, A-2, A-3, A-4, A-9, A-13, A-16, A-17, B-4, B-9, C-9, D-13, D-14, F-1, H-4 – a quorum of ten men

who pray together. A *minyan* is required in order to recite certain prayers.

mishna (pl. – **mishnayot**) – the most authoritative teachings of the *Tanna'im* (c. 1–200 CE)

mitzva (pl. – **mitzvot**) – a commandment; a good deed.

mitzva d'orayta F-7 – a commandment of Torah origin.

mitzvot bein adam la'chaveiro G-1 – interpersonal *mitzvot*.

mitzvot tzrichot kavana A-9 – *mitzvot* are valid only if performed with the proper intent.

mochel/et G-9, I-12, I-13 – relinquish rights.

Modim D'Rabbanan A-10, G-9 – the paragraph recited by the congregation when the *chazan* reaches the blessing of *Modim* in *chazarat hashatz*.

Modim G-9 – one of the blessings in *Shemoneh Esrei*.

mohel A-5 – one who performs a circumcision.

mora G-4 – awe; the obligation to treat one's parents with exceptional respect.

Motzaei Shabbat A-4, C-2, D-1, D-4, D-7 – Saturday night, after the conclusion of Shabbat.

m'taltelin I-3 – moveable objects.

muchzak/muchzeket I-4 – one for whom the status quo is in their favor.

muktzeh C-5, C-10, C-11, C-13, C-18 – something that does not have the type of function or status on Shabbat that allows it to be moved.

muktzeh machamat chisaron kis C-18 – lit., *muktzeh* due to loss of money; objects that are *muktzeh* because of concern that their overly broad use will cause significant financial loss.

muktzeh machamat gufo C-11 – an object that is *muktzeh* because it is not fit for use on Shabbat.

Musaf A-5 – the additional prayer on special days.

N

nat bar nat E-3, E-4 – abbreviation for *notein ta'am bar notein ta'am*.

navi C-17 – prophet.

- Ne'ila** D-6 – the fifth and final prayer service on Yom Kippur.
- ne'itza b'karka** E-2 – the process of plunging a knife repeatedly into firm earth in order to properly clean it.
- neshama yeteira** D-7 – lit., extra soul; the spiritually elevated status experienced during Shabbat.
- nesi'at kapayim** A-13, A-16, A-17, A-18 – lit., the lifting of the hands; the priestly blessing (*Birkat Kohanim, duchenen*).
- netila** – short for *netilat yadayim*.
- netilat yadayim** B-1, C-11, G-7 – the procedure of washing one's hands in a certain way in certain circumstances, such as before eating bread.
- neveila** E-5 – an animal that died without proper *shechita*, which it is forbidden to eat.
- nezek** I-15 – damage; the obligation of a damager to pay the decrease in the victim's basic “monetary value.”
- Nine Days** D-22 – the period of national mourning leading up to and including Tisha B'Av.
- Nisan** D-15, D-16 – the month in which Passover falls.
- nizkei shecheinim** D-8 – damages caused by neighbors.
- notein ta'am bar notein ta'am** E-3, E-4 – the situation in which a weak taste is twice removed from its halachically significant source.
- notein ta'am lifgam** E-3 – detrimental taste.

O

- ochel** C-16 – lit., food; the desired element of a mixture.
- ohel mo'ed** D-6 – the Tent of Meeting.
- oleh** A-10, A-11, A-14, A-15, D-13 – one who is called up for an *aliya* to the Torah.
- ona'ah** I-11 – charging or paying above or below the market norm.
- oness** D-20 – an extenuating circumstance; a case in which one is not at fault.
- orlah** E-5 – fruit of new trees, which it is forbidden to eat or benefit from.

oter Yisrael b'tifara G-5 – one of the morning *berachot*, blessing the
“One who crowns Israel with glory.”

P

pach Shemitta C-16 – a receptacle in which produce of *Shemitta* that will not be eaten is placed to decay instead of being placed in a disgraceful place.

panim chadashot H-4 – lit., a new face; someone who has not yet participated in the wedding festivities.

parasha D-13 – the weekly Torah portion read on Shabbat.

Parashat Zachor D-13 – the special Torah portion (*Devarim* 25:17–19) read on the Shabbat before Purim.

pareve E-1, E-2, E-3, E-4 – 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.

pasik l'chiyutei I-11 – “stopping” someone’s livelihood by improper competition.

pasken – Yiddish for rendering a halachic ruling.

pasuk (pl. – **p'sukim**) – a Biblical verse.

pasul A-14, D-14 – unfit for use.

Pesach D-15, D-16, D-17, D-18, D-19, D-20, D-21 – Passover, the festival that celebrates the liberation of the young Jewish Nation from slavery in Egypt.

pidyon haben A-13 – redemption of the firstborn; a ritual performed on a male child who is the firstborn of his mother and is not a *kohen* or *levi*.

piku'ach nefesh C-18 – a situation of danger to life, in which case almost all prohibitions may be violated to save the life.

piyutim D-1 – liturgical pieces.

po'el C-12 – a worker paid on the basis of time.

posek (pl. – **poskim**) – scholar who regularly renders halachic rulings.

p'sak – a halachic ruling.

p'shara G-8 – compromise.

p'sik reishai C-5, C-7, C-14 – an action that will necessarily, although unintentionally, cause a forbidden result.

p'solet C-16 – lit., waste; the undesired element of a mixture.

P'sukei D'Zimra C-9 – lit., The Verses of Song; a major part of the *Shacharit* prayer service, composed of selections from *Psalms* and other biblical passages.

p'sukim see *pasuk*

R

Rabbanan – the name given to the consensus of the rabbis in a Talmudic discussion.

rav (pl. – **rabbanim**) A-16 – rabbi.

rebbe B-10, I-2 – Torah teacher.

reshut D-18 – optional.

reshut hayachid (pl. – **reshuyot hayachid**) C-5 – private domain.

revi'it B-7, D-10 – a measure of liquid of approximately 3–4 ounces.

ribbit G-8 – forbidden interest payment on a loan or other monetary obligation.

ribbit meucheret G-8 – interest that was not stipulated in the original loan agreement but was paid upon or after payment of the loan, which is Rabbinically forbidden.

ripuy I-15 – the obligation of a damager to pay for the victim's medical expenses.

Rishon (pl. – **Rishonim**) – A Talmudic or halachic scholar who lived between 1000–1500 CE.

Rosh Chodesh A-17 – the beginning of a Jewish month (lunar).

Rosh Hashanah D-1 – the holiday that is both the Jewish New Year and the Day of Judgment.

R'tzei A-9, A-18 – a prayer recited as part of *Birkat HaMazon* on Shabbat; a blessing in *Shemoneh Esrei* in which we pray for the return of the Holy Temple and its service to Zion.

S

safek B-6, B-7, C-18 – a situation of doubt.

- safek berachot l'hakel** B-6, B-7 – the principle that in situations of doubt, we refrain from reciting possibly unnecessary blessings.
- safek piku'ach nefesh** C-18 – a remote but rational chance that a situation is life threatening.
- s'chach** D-9 – the special roof placed on top of the *sukka* during the festival of Sukkot.
- schnitzel** B-5, E-1 – breaded cutlets.
- s'chum** C-17 – lit., total; one of the matters that may not be discussed on Shabbat.
- Seder** D-17, D-18, D-19, G-7 – the “order” of religious observances and the feast on the first night(s) of Passover.
- sefarim** (sing. – **sefer**) F-2, I-10, I-12 – books (that deal with Torah topics).
- sefer Torah** (pl. – **sifrei Torah**) A-6, A-10, A-11, A-14, D-6, D-13, F-1, F-2, G-10 – Torah scroll.
- sefira/sefirat ha'omer** D-21 – 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.
- segol** A-12 – Hebrew vowel pronounced like the “e” in the word “set.”
- Selichot** D-1 – special prayers of supplication recited at appropriate times during the year, most notably before the High Holy Days (Rosh Hashana and Yom Kippur).
- semichut** A-12 – construct state of Hebrew words, in which they are attached to other words or syllables, as in “Bnei Yisrael” (The Sons of Israel) .
- Sephardim** – Jews whose origin is from the communities of North Africa, the Middle East, and the Near East.
- se'uda shlishit** H-3, H-4 – the third Shabbat meal.
- seudat hodaya** B-10 – meal of thanksgiving.
- s'fek s'feika** F-8 – double doubt.
- sha'atnez** F-5, H-2 – a fabric made of wool and linen, which it is forbidden to wear.
- Shabbat** (see table of contents for section C on Shabbat) A-9, A-13, A-14, A-17, B-1, D-1, D-3, D-4, D-7, D-12, D-13, E-8, F-6, G-2,

- G-4 – 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.
- Shabbat Zachor** D-13 – the Shabbat before Purim, on which *Parashat Zachor* is read during the public Torah reading.
- Shabbos goy** see *goy shel Shabbat*
- Shacharit** A-2, A-5, A-7, A-9, C-9, F-6, F-7 – the morning prayer.
- shalmei simcha** D-10 – sacrifices offered in the Temple on the festivals.
- Shalom Rav** A-9 – the last blessing of *Shemoneh Esrei* at *Mincha* (in *Nusach Ashkenaz*) and *Ma'ariv*.
- shamash** (pl. – **shamashim**) D-16 – person in charge of much of the technical running of a synagogue.
- Shavua tov** C-2 – “A good week,” a greeting used after the conclusion of Shabbat.
- shechita** C-13, E-5 – ritual slaughter.
- shecht** C-13, E-5 – ritually slaughter.
- Shehakol** A-15, B-5 – the most general blessing, recited before eating foods which do not have a more specific text.
- shehasimcha bim'ono** H-3 – an addition made to the *zimun* at a wedding and *sheva berachot* celebrations.
- Shehecheyanu** A-5, D-10, D-22 – the blessing recited upon experiencing certain new and significant or cyclical events.
- shehiya** C-6 – leaving food on the fire on Shabbat.
- sheki'ah** D-12 – sunset.
- Shema** A-8 – the first verse of *Kri'at Shema*.
- shema** I-1 – a claim made by one who is not certain that it is correct.
- Shema Koleinu** B-8 – one of the blessings in *Shemoneh Esrei*, in which personal requests can be inserted.
- Shemitta** C-4, C-16 – the Sabbatical year, during which there are special agricultural restrictions.
- Shemoneh Esrei** A-1, A-2, A-3, A-6, A-7, A-9, B-8, C-9, G-9 – the main section of the daily prayers, during which one “stands directly before God” to praise Him and make important requests.
- sheva berachot** C-8, H-3, H-4 – 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.

shevet I-15 – the obligation of a damager to pay for the victim’s lost wages.

Shira Chadasha A-2 – a paragraph recited soon before the beginning of *Shemoneh Esrei* during *Shacharit*.

shitrei hedyotot C-17 – written texts that one is forbidden to read on Shabbat, such as accounts of transactions.

shiur D-5, E-8, I-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-4, B-6 – the seven species for which the Land of Israel is praised (wheat, barley, grapes, figs, pomegranates, olives, dates).

shmura matza D-18 – *matza* whose grain/flour is supervised from an early stage to ensure that no water touches it until minutes before the baking.

sho’el I-17 – borrower of an object.

shofar D-2 – the ritual “musical instrument” made of a ram’s horn that is used to blow certain types of blasts on Rosh Hashana.

shogeg C-15, D-20 – a forbidden act that was performed unintentionally.

Shomei’ah Tefilla A-1 – blessing in the *Shemoneh Esrei* in which we address God as the “One Who hears prayer.” Personal requests are often inserted in this blessing.

shomer I-2 – a watchman.

shtiebelization A-4 – a trend in which centralized prayer and community has given way to smaller community structures based on personal preference and convenience.

shul A-4, A-10, A-12, A-14, A-16, A-17, A-18, C-4, D-4, D-6, D-13, D-14, D-16, F-1, F-6, G-2, G-4, G-5, I-10, I-12 – Yiddish for synagogue.

Shushan Purim C-3 – the 15th of Adar, the day on which Purim is celebrated in Jerusalem and a few other ancient cities.

siddurim I-10 – prayer books.

Sim Shalom A-1, A-9 – the final blessing of *Shemoneh Esrei* at *Shacharit* (and *Mincha*, in *Nusach Sefard*).

simcha D-10 – happiness; the requirement on the festivals to do enjoyable things, which cause happiness.

siyata dishmaya G-2 – divine assistance.

sukka D-8, D-9, F-3, G-10 – the booth one sits in on Sukkot (Tabernacles).

T

ta'am E-2, E-3 – absorbed taste, which can be transferred between foods and/or utensils under certain circumstances.

tachanunim A-1 – additional requests appended to the end of *Shemoneh Esrei*.

tadir kodem A-5 – the principle that more frequently occurring *mitzvot* are performed before less frequent ones.

takana A-13 – a practice of Rabbinic origin intended to improve a certain element of life in the Jewish community.

tallit (pl. – **tallitot**) F-5, F-6, F-7, I-10 – a four-cornered garment worn during prayers. As required by the Torah, it has special fringes.

tallit gadol F-7 – the more complete name of a *tallit*.

tallit katan F-5, F-6, F-7 – the small garment with *tzitzit* attached to its corners, colloquially referred to as “*tzitzit*.”

talmid chacham (pl. – **talmidei chachamim**) A-16, D-6, F-7, G-9, H-3, I-10, I-13 – Torah scholar.

tamei B-7, G-7 – halachically impure.

Tanna (pl. – **Tanna'im**) – a rabbinic scholar of the Tannaic period (approximately 1–200 CE).

tashlumin A-7, A-9 – a make-up for a missed prayer.

tashmish kedusha F-2 – an article that is intended to serve an object of *kedusha*.

- tefilla** (pl. – **tefillot**) (see table of contents for section A on *tefilla*) B-8, C-2, C-9, D-6, G-9 – prayer.
- Tefillat HaDerech** B-8 – prayer requesting divine protection while traveling.
- tefillin** D-2, F-7, F-8, F-9, G-10, G-11, I-10 – 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-8, F-9 – the phylacteries placed on the head.
- tefillin shel yad** F-9 – the phylacteries placed on the arm.
- Tehillim** A-1 – Psalms.
- Teimanim** A-12 – Yemenites.
- tekiot** D-2 – shofar blasts.
- tenuah gedola** A-12 – long vowel (e.g., *kamatz* and *tzeireh*).
- tenuah ketana** A-12 – short vowel (e.g., *patach* and *segol*).
- tereifa** E-5 – an animal with a life-threatening blemish, which it is forbidden to eat even after proper *shechita*.
- teruma** (pl. – **terumot**) A-13 – tithes given to a *kohen*.
- teshuva** – responsum.
- tevilla** E-6, E-7 – immersion of a person or a utensil in a *mikveh*.
- tevillat keilim** E-6, E-7 – immersion of certain newly acquired utensils in a *mikveh*.
- Three Weeks** D-22 – 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.
- tiltul b'gufo** C-10 – 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-10 – moving a *muktzeh* object by pushing, pulling, or carrying it with the use of a non-*muktzeh* item.
- tircha d'tzibbura** A-4, A-10 – inconveniencing the community, especially by delay.
- Tisha B'Av** D-22 – the fast day that marks the destruction of the first and second Holy Temples in Jerusalem.
- t'liya** D-19 – the principle that it is sometimes permissible to make

- an optimistic halachic assumption regarding what did or will happen.
- toch k'dei dibbur** F-9 – within the amount of time it takes one to greet his rabbi.
- tosefet** C-4 – extension of holy time periods, such as Shabbat, Yom Kippur, and *Shemitta*.
- tosefet Shabbat** C-3, C-4, C-12 – the extension of Shabbat.
- tosefta** – compilation of halachic rulings from the period of the Tanna'im.
- tovel** E-6, E-7 – immerse a utensil in a *mikveh*.
- treif** E-3 – colloquial term for something that it is not kosher.
- tza'ar** C-7, I-15 – pain or suffering; the obligation of a damager to pay for the victim's pain.
- tzedaka** B-9, B-10, G-1 – charity.
- tzeireh** A-12 – Hebrew vowel pronounced like the “a” in the word “day” in classic Ashkenazic pronunciation and like a *segol* in Sephardic/Modern Hebrew pronunciation.
- zeit hakochavim** C-11, D-12 – lit., the emergence of stars; the halachic beginning of the night, which ushers in a new Jewish calendar day.
- tzibbur** A-2 – a community (of different sizes, depending on context).
- tzitzit** F-5, F-6, F-7 – the special fringes that are attached to the corners of four-cornered garments. Colloquially, this also refers to the garments to which the fringes are attached.
- tzniut** G-3 – modesty (either with regard to dress or personality).
- tzorech gufo** C-18 – the need to use a certain object, which allows one to move *muktzeh* items under certain circumstances.
- tzorech mekomo** C-18 – the need to use a place that is presently occupied by another object, which allows one to move *muktzeh* items under certain circumstances.

U

- U'Va L'Tzion** C-9 – a prayer recited in *Shacharit* on weekdays and at *Mincha* on Shabbat.

uvdin d'chol C-5 – activities on Shabbat or a festival that are characteristic of weekday activity and therefore problematic.

Y

Ya'aleh V'Yavo A-1, A-9 – an addition to *Shemoneh Esrei* and *Birkat HaMazon* on special days of the Jewish calendar.

yad soledet bo E-3 – the temperature at which one would withdraw his hand – approximately 45°C/113°F.

yahrtzeit A-4, A-6, D-4, D-7, H-1 – Yiddish for the anniversary of a death, often in the context of observances by close relatives.

Yamim Nora'im D-1 – High Holy Days (Rosh Hashana and Yom Kippur).

yei'ush I-16 – giving up hope.

yeshiva (pl. – **yeshivot**) A-18, C-17, G-2, I-10, I-12 – academy of Jewish study.

yichud H-2 – seclusion of a man and woman, including that of a bride and groom.

Yiheyu Pratzon A-1 – the sentence with which one completes *Shemoneh Esrei*.

yisrael A-13 – a Jewish male who is not a *kohen* or *levi*.

yohara H-3 – haughtiness.

Yom Kippur B-7, C-4, D-1, D-5, D-7, F-1 – the Day of Atonement, the fast day that is the holiest day of the year.

Yom Tov (pl. – **Yamim Tovim**) A-11, A-13, A-17, B-1, C-4, C-12, C-13, C-17, D-3, D-4, D-10 – the main day(s) of Jewish festivals, during which it is forbidden to engage in most of the activities that are forbidden on Shabbat.

Yoreh Deah G-8 – The section of *Shulchan Aruch* that deals primarily with ritual law.

yoshvei keranot C-9 – a phrase used to refer to those involved in matters that are very different from the study of Torah (its literal explanation is not fully clear).

yotzei A-8, A-9 – fulfilled an obligation.

Yud Gimmel Middot D-1 – the thirteen divine attributes (taken

from *Shemot* 34:6-7), recited in *Selichot* and throughout the services on Yom Kippur.

Z

zilzul F-1 – degradation of something deserving of honor.

zimun B-2, H-3 – the responsively recited introduction to *Birkat HaMazon*, recited when three men eat together.

z'rizin makdimin l'mitzvot A-5 – “The diligent do *mitzvot* early;” the principle indicating that *mitzvot* should be performed promptly.