

Living the Halachic Process
Volume V

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

Volume V

Answer 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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ה"ל בהשתתפות המשרד לענייני דתות

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The learning in this book is dedicated

in loving memory and le'iluy neshama
of the beloved friend of Eretz Hemdah

Mr. Alfred S. Friedman

who loved Torah, respected its scholars
and was a man of many good deeds and chessed.

In Honor of
Rabbi Daniel Mann

from the families of

Roger & Rebecca Fine

Milltown, New Jersey

&

Rabbi David and Dr. Julie Fine

Modiin, Israel

In loving memory of

the

Almosnino, Aljoya

and

Sabetai families, A"H

who perished in the Holocaust.

May their souls be blessed
and counted among the righteous.

Eli and Rebecca Almo

Seattle, Washington

לע"נ

הרב משה צבי פולין

נשיא התאחדות הרבנים דאמריקה

רב בקהילות שייאן ויומינג, לואיוויל קנטקי,
סינט לואיס מיזורי, וברוקלין ניו יורק

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מוקדש על ידי אשתו וכל בני המשפחה

In Memory of our Beloved Parents

Leonard and Molly Naider
Joseph and Belle Serle

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

Anita and Fred Naider

In tribute to Rav Daniel Mann

and in loving memory of our grandparents

Debby and Max Sachs
Chaim Hirsch and Rachel Leah Mann

Dedicated to the memory of

Leah and Rabbi Jacob Mann

הרב יעקב ולאה מן ז"ל

Quincy, Mass.

Miriam and Abraham Roseman

אברהם אייזיק ומרים רוזמן ז"ל

Kew Gardens Hills, New York

Foreword

When Moshe was commanded to build the *Mishkan*, he was told: “You shall make bars out of *shittim* wood; five [of them] for the beams of one of the sides of the *Mishkan*” (*Shemot* 26:26). The bars provided stability for each of the sides of the *Mishkan*.

They connected the tens of beams and turned them into one wall. This is the way to build a Sanctuary for holiness. While every beam is holy in its own right, you have a structure of holiness only when all the beams are connected by the bars. Then there is even room for a miracle, with the central bar connecting all of the sides of the *Mishkan*, turning them into one.

We have the great privilege to publish the fifth volume of *Living the Halachic Process*. This provides a window in English to the work of our Ask the Rabbi project. This runs parallel to our Responsa Project in Hebrew, based on which we have published the *BeMareh HaBazak* series.

Rav Dayan Daniel Mann, a graduate of Yeshiva University and one of Eretz Hemdah’s first graduates, has merited being a most significant part of this critical project. The Ask the Rabbi project serves mainly the Jewish communities of the Diaspora, and indeed from wherever each Jew reaches us.

Rabbi Mann’s responsa excel in their clarity, their strong connection to the sources from the times of *Chazal* to the great contemporary *poskim*, the sensitivity they display, and the wonderful balance which he consistently succeeds in inserting into each answer. This is what makes the Torah a “Torah of life”!

This special style is what has made the *Living the Halachic Process* series popular, even among Torah teachers, many of whom use these questions and answers as a platform to teach the “Torah of life” in an interesting way. This sanctifies HaShem’s Name, makes the Torah beloved to many, and draws people toward our Father in the Heaven.

LIVING THE HALACHIC PROCESS

We wish Rabbi Daniel Mann and his wife, Natanya, and their dear parents, continued *nachat* with health, together with all of their descendants. May they have many more years involved in the teaching and spreading of Torah, in a manner that all who see will announce, “Fortunate are those who gave birth to him.” We wish him continued success in finding the “bars” that connect all the details of the Torah into one cohesive structure that serves as a “*Mishkan*” for the Divine Presence and a focal point of sanctity.

The administration of the OU (Orthodox Union), and especially Rabbi Menachem Genack, head of their Kashrut Division, have been important partners in enabling us to provide answers in English to Jews throughout the world. Phil Chernofsky has helped present this resource to the broader community. We take this opportunity to thank Rabbi Genack and the members of his important organization for this partnership.

With Torah blessings,

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



Preface

The questions and answers found in this volume are taken from the files of our responsa service and our weekly parasha sheets from 5771-5775. In the preface to vol. IV, I wrote about how the world of Halacha had changed since the beginning of this project. In this preface, I would like to discuss how the helpfulness of this project has developed over the years, and how we are advancing that trend in this volume. Let us start with some background.

When the first volume of *Living the Halachic Process* came out, I professed that its intended contribution was in exposing people to the process of coming to halachic rulings and hopefully increasing an appreciation of that process. Handbooks regarding Jewish practice are instructive, but it is hard for them to be eye-opening. We hope that we succeeded in that vein. With only a hundred plus questions discussed, and the subject matter varying greatly, even if each question raised several pertinent points, the volume was not able to provide a tremendous amount of information on any subject. At that point, if someone had a question about a certain topic and wanted to see how we handled it, he would have been unlikely to have found the answer in *Living the Halachic Process*, or on our website's Ask the Rabbi search engine, for that matter.

However, we recently started realizing that times had changed. With the publication of vol. V, we are approaching 600 questions answered in *Living the Halachic Process*, with these and several hundred more appearing on our website. We find that increasingly more new questions that come in have been addressed fully, or at least partially, in our books. This is coupled with the increasing awareness of the Torah-interested public that the halachic writing of Eretz Hemdah, with its combination of authentic scholarship along with Torah-based common sense and normalcy, resonates with many people. This not only provides a good feeling but also

an impetus to make our writings a more user-friendly source of answers to the public's questions.

Therefore, the *chiddush* (new feature) in this volume is an extensive index for the first five volumes of *Living the Halachic Process*. The index organizes the responses into topic by alphabet. Additionally, it lists responses in which key terms appear prominently and even features a thematic index for noteworthy concepts that arise. We hope this will enable the interested reader to explore entire topics and even halachic trends and approaches, from which we believe much can be learned.

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

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

more years of joint study and projects in good health. Because of the fast pace of publication (this is the first time volumes have come out in successive years), we expanded the staff of editors. We were blessed to be able to recruit two distinguished graduates turned staff members of Eretz Hemdah – Rabbi Menachem Jacobowitz and Rabbi Daniel Rosenfeld – to edit parts of the book. Their contributions in terms of content and writing were valuable.

The copy editing was provided once again by Meira Mintz with great wisdom, professionalism, and enthusiasm. My daughter Aviva Tropp did critical work in a few elements of the book’s preparation – specifically the multi-volume index and the glossary. Rut Saadon did a fine job on the typesetting, the graphic design, and arranging the source sheets, which will soon be available online and upon request. We once again thank Riki Freudenstein who has been proofreading, since the beginning, our weekly publication “Hemdat Yamim,” from which all the pieces in this book have been taken. The office staff at Eretz Hemdah, led by Yafa Rosenhak, have, as always, been supportive, skilled and helpful. Of note, we thank Rachel Harari-Raful, who has done a great job of getting the questions and answers to and from the staff of respondents and queriers, respectively, in a timely fashion.

Having been affiliated with Eretz Hemdah for more three decades, first as a student and then as a staff member who has been privileged to be included in many important projects, I would like to express my gratitude. The gratitude is both personal, as the recipient of spiritual and material support throughout the years, and on behalf of *Klal Yisrael*, before whom I can testify about the great efforts that Eretz Hemdah has dedicated on their behalf with great love. In addition to the deans, the board of the Institute, 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 writing 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. They have enhanced my thinking significantly. Of specific note, in addition to Eretz Hemdah's deans, are Rabbi Ofer Livnat and Rabbi Menachem Jacobowitz, colleagues at Eretz Hemdah, along with other fellows at Eretz Hemdah. My senior colleagues at Yeshiva University's RIETS Israel Kollel, Rabbi Dovid Miller and Rabbi Assaf Bednarsh also helped when I requested. Many of the questions were jointly studied with a group of my students at the RIETS Israel Kollel. I thank all of them for their time and insight. Special thanks to my long-time rebbe, Rabbi Mordechai Willig, who once again somehow found the time to review this volume.

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

Above all, we thank Hashem, the Giver of the Torah, for allowing us to teach His Torah to His nation. We are indeed privileged to live in a generation in which we can communicate with those so far away in a moment's time and are able to try to help them solve halachic dilemmas. We are further fortunate to be able to share the ideas of timeless Torah, applied to old and new situations, with a broad public of people who are thirsty to know how to follow Halacha and are interested in understanding the basis and rationale of what they need to do. May we all merit increasing that which is good and noble in our Torah-based lives.

Rabbi Daniel Mann
Eretz Hemdah Institute
Kislev 5779, November 2018

Contents

TEFILLA (PRAYER)

A-1: Shortening <i>P'sukei D'Zimra</i> in Order to Catch Up	1
A-2: Skipping to <i>Shemoneh Esrei</i> and Making up What Was Missed	4
A-3: Preference of <i>Davening</i> in a <i>Shul</i>	7
A-4: Making Up a <i>Tefilla</i> with No Net Gain	10
A-5: Eating Before <i>Davening</i> in Order to <i>Daven</i> with a <i>Minyan</i>	13
A-6: A <i>Chazan</i> Wearing Short Pants	16
A-7: A <i>Minyan</i> Split between Adjacent Rooms	19
A-8: Lack of Unity in a “Unified” <i>Minyan</i>	22
A-9: The Need for a <i>Mechitza</i> in the Absence of a <i>Minyan</i>	26
A-10: Delay between <i>Birkat Kohanim</i> and <i>Sim Shalom</i>	29
A-11: Reciting the Three <i>Parshiyot</i> of <i>Shema</i> Before <i>Davening</i>	32
A-12: The <i>Kaddish</i> after <i>Kri'at HaTorah</i>	35
A-13: Mistakes in the Reading of the <i>Haftara</i>	37
A-14: Listening to <i>Laining</i> during <i>Shemoneh Esrei</i>	40

BERACHOT (BLESSINGS)

B-1: Permissibility of a Personal <i>Beracha</i>	45
B-2: The Halachic Status of Gluten-Free Cakes	48
B-3: Continuing to Eat Based on an Initial <i>Beracha</i>	51
B-4: <i>Birkat HaMazon</i> for Those Who Have Left their Place of Eating	54
B-5: Reciting <i>Tefillat HaDerech</i> by Microphone	57
B-6: <i>Beracha</i> on a Newly Renovated Home	60

LIVING THE HALACHIC PROCESS

B-7: <i>HaMapil</i> for Those Who Take a Long Time to Fall Asleep	63
B-8: Time Limit on <i>HaGomel</i> After Birth	66

SHABBAT

C-1: Flying a Kite on Shabbat	73
C-2: Returning <i>Chulent</i> with Bones to the Fire	76
C-3: Heating Up Bread on Shabbat	79
C-4: Using a Shabbat Clock for an Urn	82
C-5: Using Salt to Absorb Spilled Wine on Shabbat	85
C-6: Giving an Envelope on Shabbat to Use for Donations	88
C-7: Removing a Licked Candy from Amongst Clean Ones on Shabbat	91
C-8: Keep the Beat?	94
C-9: Opening and Closing a Garden Parasol on Shabbat	97
C-10: Using a Whipped Cream Dispenser on Shabbat	100
C-11: Use of Kinetic Watches on Shabbat	103
C-12: Non-Jewish Worker Servicing Clients on Shabbat	106
C-13: Placing Delayed Stock Orders from Israel on Friday	109
C-14: Relighting Shabbat Candles that Went Out	112
C-15: Who Drinks <i>Kiddush/Havdala</i> Wine and Why?	115
C-16: How Can We Perform Matters of <i>Minhag Before Kiddush</i> ?	118
C-17: A <i>Melaveh Malka</i> for Women	121
C-18: Reciting <i>R'zei</i> after Ending Shabbat	124
C-19: Methods of Receiving Pay for Work on Shabbat	127

MO'ADIM (FESTIVALS)

D-1: Blowing <i>Shofar</i> After <i>Shul</i>	133
D-2: The Timing of <i>Shehecheyanu</i> on New Clothes on the Second Night of Rosh Hashana	136

D-3: Washing One's Face on Yom Kippur	139
D-4: Disqualification of an <i>Etrog</i> Based on Color	142
D-5: <i>Hagbaha</i> after Side- <i>Minyan Laining</i> on Simchat Torah	145
D-6: A <i>Ben Chutz La'Aretz</i> Flying Out of Israel on <i>Yom Tov Sheini</i>	148
D-7: <i>Hachnasat Sefer Torah</i> on <i>Chol HaMo'ed</i>	151
D-8: Festive Meals on Chanuka	154
D-9: Repeating Questionable Words in <i>Parashat Zachor</i> and <i>Megillat Esther</i>	157
D-10: Purim in Transit	160
D-11: Ranking <i>Mishlo'ach Manot</i> Stringencies	163
D-12: The Wisdom of Putting Out Pieces of Bread Before <i>Bedikat Chametz</i>	167
D-13: The Focus of Discussions at the <i>Seder</i>	170
D-14: The Significance of the Amount of <i>Karpas</i> Eaten	173
D-15: <i>Chametz</i> of an Intermarried Couple after Pesach	176
D-16: <i>Shehecheyanu</i> , New Clothes, and Renovations During <i>Sefirat HaOmer</i>	179
D-17: Is Acknowledgment of Lag BaOmer Considered Counting?	182
D-18: <i>Chanukat HaBayit</i> During the Three Weeks	185

KASHRUT

E-1: Buying Food without a <i>Hechsher</i> for a Friend	191
E-2: Does a Cutting Board Used for Onions Take on the Status of the Knife?	194
E-3: Using a Water Urn for <i>Milchig</i> and <i>Fleishig</i>	197
E-4: Discarding Separated <i>Challa</i>	200
E-5: Futures Contracts of Pigs	203
E-6: An Oven Used for <i>Chillul Shabbat</i>	206

HOLY ARTICLES

F-1: Protecting <i>Sefarim</i> but Aiding Terrorists	211
F-2: <i>Tallit</i> and <i>Tefillin</i> during <i>Selichot</i>	214
F-3: The Timing for the <i>Beracha</i> on <i>Tzitzit</i> after Being Up All Night	217
F-4: Status of <i>Tzitzit</i> When the Garment Rips and Is Repaired	220
F-5: The Permissibility of Selling Inherited <i>Tefillin</i>	223

MISCELLANEOUS

G-1: What Can Be Learned from the Silence of the <i>Poskim</i>	229
G-2: Disclosing Problems about Another Person's Apartment	233
G-3: What Type of Torah Study Should One Focus On?	236
G-4: Different Types of <i>Minhag</i> and their Levels of Flexibility	239
G-5: The Best Way to Spend Money on Israel	242
G-6: <i>Hatarat Nedarim</i> via Skype	245
G-7: Lighting a Candle When the <i>Ner Tamid</i> Is Out	248
G-8: A Fence for the Roof of an Apartment Building	251
G-9: A Loan/Investment that Requires a <i>Heter Iska</i> after its Inception	254
G-10: Solving a <i>Netilat Yadayim</i> Problem on a Plane	257
G-11: Burying Wisdom Teeth	260
G-12: Eating Contests	263

Family Law

H-1: Standing for Parents in our Times	269
H-2: Staging a Fake <i>Pidyon HaBen</i>	272
H-3: Standing for a <i>Chatan</i> and a <i>Kalla</i>	275
H-4: Wedding Spending	278
H-5: A Mistake in a <i>Ketuba</i>	281

H-6: A Fading <i>Ketuba</i>	284
H-7: How to Name the Child of a Gentile Father	287

Monetary Law

I-1: Payment for Uncompleted Work	293
I-2: Going to a Civil Court Where There Is No <i>Beit Din</i>	296
I-3: Buying With Intention to Return	299
I-4: Immoral Commercial Practices?	302
I-5: Stealing by Accident?	305
I-6: Returning a Lost Item that the Owner Knows About	308
I-7: Taking Bottles from Recycling Receptacles	311
I-8: Receiving Permission to Sublet	314
I-9: Dealing with Fallout from a Dishonest Middleman	317
I-10: Keeping Benefits from a Communal Purchase	320
I-11: Claiming Damages from an Employee	323
I-12: A Lawyer's Obligation to Take a Dangerous Case	326

Sample Accompanying Source Sheet

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

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

A-6

A Chazan Who Has Animosity Toward a Congregant



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

1. בית יוסף אורח חיים סי' נג

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

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

... אפילו יחיד יכול לעכב ולומר: "איני רוצה שפלוני יהיה חזן", אם לא שכבר הסכים עליו מתחלה. הגה: ודוקא שיהיה לאותו יחיד טעם הנון על פי טובי העיר, אבל בלאו הכי אין אחריו יכול למחות בשליח צבור. ואם הוא שונא, יכול למחות בו קודם שהסכים עליו.

3. רמ"א, אורח חיים סי' תקפ"א

וידקדקי לזהור אחר שליח צבור היתר הנון והיתר גדול בתורה ומעשים שאפשר למצוא, שיתפלה סליחות ימים נוראים, ויהא בן שלישים שנים, גם שיהא נשוי (כל בן). מזה כל שיהא כשרים הם, רק שיהיה מרצה לקהל; אבל אם מתחלה בתוקר, אין ענין אחריו "אפסן". וכן צריך שיצא כל אדם בתפלתו; ואם יהיה לו שונא ומכין שלא להצניא, אם גם הוא אינו יוצאים בתפלתו

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

שאלתו על דבר התוקע אם יחיד יכול למחות. הגה: מבודר בניו ומגן אברהם דעכשו אינו יכול למחות דהוי דבל אחר רוב פורעי המס, וכן המכס והיו' וכן ה"פרי מגדים בשם הגבונים, אך יש לומר דהמטרה הוי רק בשליח צבור ור"ב דאין מוציאן את החרים ידי חובתן אבל במועד שמוציא החרים, אין יוציאנו בעל כרחו; ובפס' בתקנה אם הוי התקנה גם על זה, אוקמוהו ארינא, ויש לומר יחיד יכול למחות ולומר רבין דכבר יש לו חוקה לתקוע, זה לא נחשב תקבולו כבר, דכל שנה הוי ענין מפני עצמו, דאינו דומה לשליח צבור, דשליח צבור הוי מנישו ומחיד להתפלה ויה וילית, לכך כיון דאין לו תפסן הוי מקבולו כבר, אבל בתקנות דמפסיק כל השנה כל חדוש כל שנה מקבלה חדשה ... ואף אם דומה לאם כבר קבלוהו, מכל מקום התם מיידי באם אין בו הרסן רק דנגעשה שונא, דאז כיון דמדינא כשר, לכך נהי דמתחלה יכול למחות גם בזה, מכל מקום אם כבר קבלוהו, אינו יכול למחות, אבל אם טוען בשביל איזה תקלוק מנישו שנתחדש בשליח צבור או נדעך עתה, אם רואין בני העיר שיש בו ממש, והאי יכול יהודי למחות אף שקבלוהו תחלה, דשליח צבור דומה לשלחן מביאה ואומנא, ולא כני התראה ומסקינן להו כלי התראה ... אך זה כנון אם אין הדבר נתייע לשליח צבור או או שיש שני אנשים אשר אפשר לקבם שיון הם להצבור זה כמו זה, או נהי והדבור רוצים בזה, ויכול יהודי למחות עד שימוטנו שיבא שליח צבור המרוצה לכולם או לקבל השני השנה לכולם, אך אם דבר נתייע לשליח צבור מיד וליכא אחר רק זה, או אף שיש אחר רק שאין הצבור רוצים בו רק בזה יהודי אומר להופך, ודאי אין יהודי מוכיני הצבור ... וילכו אחר הרוב; ולכך הכא נמי, אם יש תוקע אחר והצבור נחמד להו גם בו רק שרוצים גם בהראשון, בזה יהודי יכול למחות ויקבלו השני אם יש ליהודי טעם הנון התראה שיראשתי לקלל מנישו יותר מבראשונה, אבל אם אין הצבור רוצים בהשני רק דוקא בהראשון, או אין יהודי יכול למחות ויתקע הראשון יהודי יכול לצאת בתקיעתו, וכמו הדשליח צבור צריך לקבול להוציא שונא, כן יכוין התוקע להוציא המוחה והמוחה יכוין לצאת בתקיעתו;



Section A:
Tefilla (Prayer)

A-1: Shortening *P'sukei D'Zimra* in Order to Catch Up

Question: I have noticed in a few *shuls* that a minority of the *tzibbur* starts *Shemoneh Esrei* together, whereas many people who come in late or *daven* slowly (or both) do not try to catch up. Isn't it correct to skip parts of *P'sukei D'Zimra* in order to *daven Shemoneh Esrei* with the *minyan*?

Answer: In the *Shulchan Aruch*,¹ Rav Yosef Karo rules, based on *Geonim* and *Rishonim*, that one should shorten *P'sukei D'Zimra* in order to catch up to the *tzibbur*, detailing the order of precedence of what to say. The *Shulchan Aruch* permits skipping all of *P'sukei D'Zimra* if necessary for that purpose,² while most Ashkenazi *poskim* require a minimal amount of *P'sukei D'Zimra*.³ (Some maintain that it is important to finish *Yishtabach* along with the *tzibbur*,⁴ but starting *Shemoneh Esrei* together is the main issue.⁵)

Despite the halachic consensus regarding the propriety of skipping parts of *P'sukei D'Zimra* to catch up, further rabbinical discussion was prompted by a passage in the *Maggid Meisharim*⁶ in which Rav Yosef Karo's *maggid* (angel/teacher) warns him to come to *shul* early because skipping parts of *P'sukei D'Zimra* is like "turning around the pipes." The *Ba'er Heitev* writes that many pious people therefore do not shorten *P'sukei D'Zimra*, even if they come late.

1. *Orach Chayim* 52:1.

2. *The Yalkut Yosef* 52:5 accepts this ruling.

3. *Mishna Berura* 52:6.

4. See *Avnei Yashfeh*, *Orach Chayim* I:10.

5. *Mishna Berura* op. cit.

6. Quoted in *Ba'er Heitev* 52:1. This posthumously published work consists of notes that Rav Yosef Karo wrote about secrets and demanding practices he was taught by an angel who frequented him.

There are a few reasons to stick to the *Shulchan Aruch*'s explicit ruling, despite the story involving its author. First, the *maggid's* instruction was to come early to *shul*, which actually implies that if one did not come early, he **should** skip parts of *P'sukei D'Zimra*.⁷ Furthermore, we (i.e., those who are not kabbalistically inclined) do not follow sources of secret/special teachings that are contrary to a halachic consensus.⁸ Despite the fact that significant halachic authorities follow the *Ba'er Heitev's* understanding of the *Maggid Meisharim*, the pillars of contemporary Halacha do not.⁹

Cases that the classical sources did not discuss explicitly are riper for *machloket*. The *Sha'arei Teshuva*¹⁰ states that if one *davens* too slowly to keep up with the *tzibbur*, he is **allowed** (but apparently not required¹¹) to say everything at his own pace, which will lead him to miss *Shemoneh Esrei* with the *tzibbur*. The implication is that he is not required to start *davening* early to "build up a lead."¹² (He should, however, have his *tallit* and *tefillin* on and have recited *Birchot HaShachar* by the time the *tzibbur* begins *P'sukei D'Zimra*; failure to catch up is not the same as *davening* slower than the congregation.)

The *Eshel Avraham*¹³ maintains that it suffices to join the *tzibbur* at *chazarat hashatz*. Thus, one should not shorten *P'sukei D'Zimra* in order to start the silent *Shemoneh Esrei* together with the *tzibbur*. This opinion depends on the broad question of if, or to what extent, starting along with *chazarat hashatz* is considered *tefilla b'tzibbur*. Since our findings on this matter are not conclusive, it may be worthwhile to shorten *P'sukei D'Zimra*

7. *Eliya Rabba* 52:5.

8. *Shut Chacham Tzvi* 36.

9. See *Mishna Berura* op. cit.; *Yechaveh Da'at* V:5; *Halichot Shlomo* 8:41 (citing Rav S.Z. Auerbach).

10. 52:1.

11. See *Ishei Yisrael* 12:22.

12. *Ibid.*

13. (*Butchatch*) 52:1.

in order to join the *tzibbur*'s silent *Shemoneh Esrei*.¹⁴

This question also has an opposite ramification. Should one shorten *P'sukei D'Zimra* in order to catch up if he will be able only to make it to the beginning of *chazarat hashatz* and not the *tzibbur*'s silent *Shemoneh Esrei*? Each fundamental approach has a strong basis, but we prefer the approach that *davening* along with *chazarat hashatz* fulfills a **lower level** element of *tefilla b'tzibbur*, and shortening *P'sukei D'Zimra* is therefore worthwhile if and only if it will enable one to begin the silent *Shemoneh Esrei* with the *tzibbur*.¹⁵ Starting *Shemoneh Esrei* significantly later but while the *tzibbur* is still *davening* is probably at a level similar to joining at *chazarat hashatz*. Nevertheless, one should only begin *davening Shemoneh Esrei* later than the *tzibbur* if he will finish his *Shemoneh Esrei* by the time the *tzibbur* reaches *Kedusha*.¹⁶

In summary, we recommend that one skip as much of *P'sukei D'Zimra* as needed to give himself a good chance to start the silent *Shemoneh Esrei* (and preferably *Barchu*) together with the *chazan*. We respect other legitimate opinions, especially under certain circumstances, as noted above.

Having a *shul* start *Shemoneh Esrei* without a large percentage of the *tzibbur* joining together is regrettable. Although it is proper to slow down the communal *tefilla* to the average participant's *davening* speed, "holding back" those who come on time in order to accommodate latecomers is problematic.

14. See *Yabia Omer* II, *Orach Chayim* 7; *Living the Halachic Process*, vol. IV, A-8. The *Pri Megadim*, *Eshel Avraham* 52:1, posits that *davening* along with *chazarat hashatz* is of a lower level.

15. *Halichot Shlomo* op. cit. *Mishna Berura* op. cit. seems to assume this as well, and this is also implied by the simple reading of several classical sources.

16. *Shulchan Aruch*, *Orach Chayim* 109:1; *Pri Megadim* 109, *Eshel Avraham* 2; see *B'Tzel HaChochma* IV:3.

A-2: Skipping to *Shemoneh Esrei* and Making up What Was Missed

Question: Someone came into *shul* very late for *Shacharit*. He put on *tefillin* and started *Shemoneh Esrei* right away with the *tzibbur*. He asked me afterward whether he should make up *P'sukei D'Zimra* and *Kri'at Shema*. What should I have told him?

Answer: If you can find a way whereby your friend will accept your critique in the good spirit that you intend, tell him that next time he should not skip straight to *Shemoneh Esrei*.

Let us take a quick look at what can and cannot be skipped in *davening*.¹ Most of the pre-*P'sukei D'Zimra* section, including almost all of *Birchot HaShachar*, can wait to be recited after *davening* in order to enable one to say *Shemoneh Esrei* with a *minyán*.² The exceptions are *Elokai Neshama* and *Birkat HaTorah*, because under certain circumstances, about which there is not unanimity, their purpose may be fulfilled during *davening* (through the *berachot* of *Mechayei HaMeitim*³ and *Ahava Rabba*,⁴ respectively), such that they should not be recited afterward.⁵

Sephardim follow the opinion that one can indeed skip *P'sukei D'Zimra* entirely in order to be able to *daven Shemoneh Esrei* with a *minyán*.⁶ Ashkenazim follow the opinion that one can greatly shorten *P'sukei D'Zimra* in order to catch up, but he must recite at least its *berachot* (*Baruch She'amar* and *Yishtabach*), along with at least one *zimra*,⁷ before continuing.⁸

1. See response A-1 for more on what to do in such cases.

2. See Rama, *Orach Chayim* 52:1; *Yechaveh Da'at* V:5; *Ishei Yisrael* 5:9.

3. See *Mishna Berura* 6:12.

4. See *Shulchan Aruch*, *Orach Chayim* 47:7.

5. If one did not make a *beracha* on *netilat yadayim* before coming to *shul* (see *Living the Halachic Process*, vol. IV, B-10), he must do so before *Shemoneh Esrei* (*Mishna Berura* 4:1).

6. *Shulchan Aruch*, *Orach Chayim* 52:1; *Yechaveh Da'at* V:5.

7. *Ashrei*; see *Berachot* 4b.

8. *Mishna Berura* 52:6; *Ishei Yisrael* 16:21.

All agree, however, that one may not skip *Kri'at Shema* and its *berachot* in order to join the *tzibbur* for *Shemoneh Esrei*,⁹ even if there will be time afterward to recite *Kri'at Shema* before *sof z'man Kri'at Shema*.¹⁰ This is because of the great importance of *semichat geula l'tefilla*. *Birchot Kri'at Shema* end with the *beracha* of *Ga'al Yisrael*¹¹ (i.e., *geula*), and it is important that this *beracha*, being a particularly central praise of HaShem, lead into *Shemoneh Esrei* (the main part of *tefilla*). Indeed, this juxtaposition is more important than *davening Shemoneh Esrei* with a *minyan*. At *Ma'ariv*, at which *semichat geula l'tefilla* is less crucial, one who comes late should begin *Shemoneh Esrei* with the *minyan* and return to *Kri'at Shema* and its *berachot* afterward.¹²

Now let us move to your case, in which one already recited *Shemoneh Esrei* **improperly** by not having first completed *P'sukei D'Zimra* and *Kri'at Shema* and its *berachot*. *P'sukei D'Zimra* is a set of psalms and other *p'sukim*, sandwiched between the opening and closing *berachot* (*Baruch She'amar* and *Yishtabach*). While *P'sukei D'Zimra* existed in some format at the time of the *gemara*,¹³ the historical development of this section of *tefilla* and its exact function are not entirely clear. However, it likely relates to the idea of organizing one's praise of HaShem **before** *davening*.¹⁴ This seems to be the reason that Rav Notrai Gaon¹⁵ writes that after *Shemoneh Esrei* has been said, it is no longer proper to recite *P'sukei D'Zimra*. Although some maintain that *P'sukei D'Zimra* can be made up after *Shemoneh Esrei*,¹⁶ the *Shulchan Aruch*¹⁷ accepts Rav Notrai's approach as *halacha*, but only in regard to the *berachot*. In other words, he says that after concluding

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

10. See response A-11.

11. "He who liberated Israel."

12. *Shulchan Aruch, Orach Chayim* 236:3.

13. See *Shabbat* 118b.

14. As expressed in *Avoda Zara* 7b.

15. See Tur, *Orach Chayim* 52.

16. See *ibid.*

17. *Orach Chayim* 52:1.

Shemoneh Esrei, one may and should recite the *p'sukim* that he skipped (as there is no problem of *beracha l'vatala*). There is a kabbalistically inclined approach that maintains that even reciting the *p'sukim* is problematic after *Shemoneh Esrei*.¹⁸ However, the more accepted view is that one does recite the skipped portions later on without any *beracha*.¹⁹

Although it is important to go directly from the *berachot* of *Kri'at Shema* into *Shemoneh Esrei*, this does not mean that these *berachot* serve only as an introduction. Rather, there is a *mitzva* to recite the Torah's *p'sukim* of *Kri'at Shema*, and Chazal created *berachot* that share overlapping themes with *Kri'at Shema* and instituted that their recitation be adjacent to those *p'sukim*. Thus, just as there is still a *mitzva* of *Kri'at Shema* after *Shemoneh Esrei* has been recited, there is a *mitzva* to recite its *berachot* at that time.²⁰

Therefore, although your friend should ideally have acted differently, once he recited *Shemoneh Esrei*, he should then have recited *Kri'at Shema* with its *berachot* and *P'sukei D'Zimra* without its *berachot*.

18. See *Aruch HaShulchan, Orach Chayim* 52:5.

19. See *Yechaveh Da'at* op. cit.; *Tefilla K'Hilchata* 10:39.

20. See *Shulchan Aruch, Orach Chayim* 67:1; see aforementioned *Shulchan Aruch, Orach Chayim* 236:3 regarding *Ma'ariv*.

A-3: Preference of *Davening* in a *Shul*

Question: Is there a preference to *daven* in a *beit kneset* as opposed to a “house-*minyán*”? Does it matter if the place is not an actual *shul* but consistently hosts a *minyán*?

Answer: The short answer is that there probably is a small preference. The *gemara*¹ states: “A person’s prayer is heard only in a *beit kneset*, as the verse says: ‘... to hear the praise and the prayer’² – at the place of the praise, there should be the prayer.” Thus, there would seem to be an important reason to *daven* specifically in a *shul*. Indeed, the *Shulchan Aruch*³ writes: “A person should try to *daven* in a *beit kneset* with the community.” He continues that there is also a preference to *daven* in a *beit kneset* even if one will be *davening* there alone (although this is the subject of a *machloket Rishonim*⁴).

The question is whether one’s *davening* that does not occur in a *beit kneset* is inferior and to what extent. The *Magen Avraham*⁵ writes that the reason for the *Shulchan Aruch*’s recommendation is the idea of *b’rov am hadrat melech* (roughly, it brings glory to the King when there is a large group). The *Pri Megadim*⁶ posits that even without the factor of *b’rov am*, a *shul* is always preferred. In his view, a *shul* is not merely a place to find a *minyán*; the very fact that it is a *shul* makes it a better choice than a *minyán* out of a *shul*. However, not all agree with this view. The *Tzelach*⁷ says that the important thing is having one’s *tefilla* heard and that this can be accomplished **either** by *davening* in a *shul*, even as an

1. *Berachot* 6a.

2. *Melachim I* 8:28.

3. *Orach Chayim* 90:9.

4. See *Beit Yosef*, *Orach Chayim* 90.

5. 90:15.

6. *Ad loc.*

7. *Berachot* 6a.

individual, **or** by *davening* with a *minyan*, even out of a *shul*.

In another Talmudic source about *davening* in a *beit kneset*, the *gemara*⁸ says that whoever does not *daven* in a community's *shul* is called a "bad neighbor" and is doomed to exile. The Chida⁹ writes that this warning does not apply if the person *davens* elsewhere with a *minyan*, because the Divine Presence dwells wherever a *minyan* prays. However, he continues, in order to receive its full positive impact, the *davening* must be in a place that is "set for holiness."

The criterion of "set for holiness" is not clear. Private ownership does not seem to preclude a status of a *beit kneset*.¹⁰ Allowing the occasional use of a regular place of prayer for eating, especially when limited to the context of *mitzva*-related events,¹¹ also would likely not preclude it from being considered a place of holiness. However, regularly using one's living room for a *minyan* after a *shiur* or holding a daily *Mincha minyan* in a company board room does not turn these rooms into *batei kneset*.

While we accept the **preference** of *davening* in a *beit kneset* rather than somewhere else,¹² it is not an absolute requirement. This qualification is important not only to justify one opting not to *daven* in a *shul* due to a significant inconvenience, but also because other choices can have advantages that potentially outweigh those of *davening* in a *shul*. We will give some examples of other criteria for preference, with the caveat that the particulars of a given case can make all the difference as to which choice should prevail: 1) *Davening* in a place where one learns on a regular basis.¹³ 2) The speed of the *davening* and/or the congregants' behavior in a

8. *Berachot* 8a.

9. *Machazik Beracha* 90:4.

10. See Rama, *Orach Chayim* 153:7.

11. See the complex issue in *Shulchan Aruch*, *Orach Chayim* 151:11; *Igrot Moshe*, *Orach Chayim* I:45.

12. See *Mishna Berura* 90:38; *Ishei Yisrael* 8:2.

13. *Shulchan Aruch*, *Orach Chayim* 90:18.

particular *beit kneset* affects one's focus negatively.¹⁴ 3) The *shul* will not have a *minyán*.¹⁵

We are generally strong believers in the importance of **community**, on various grounds. We note, for example, that Rav Kook writes that it is important to show that one connects his prayer to the matter of publicizing HaShem's greatness, and this is actuated most profoundly in the communal setting.¹⁶ That being said, sometimes even the most communally-oriented people have recourse to *daven* outside of a *shul*.

14. *Mishna Berura* 90:28; *Ishei Yisrael* 8:(27); see *Aruch HaShulchan, Orach Chayim* 90:15.

15. *Mishna Berura* op. cit.

16. *Ein Ayah, Berachot* 1:48, 49, commenting on *Berachot* 6a.

A-4: Making Up a *Tefilla* with No Net Gain

Question: Consider the following scenario. Someone *davened* on *Rosh Chodesh* and left out *Ya'aleh V'Yavo*. He resolved the omission by repeating *Shemoneh Esrei*. However, this time he forgot to say “*v'ten tal u'matar*.” I heard that he does not have to say *Shemoneh Esrei* a third time because, all in all, he said all the necessary elements. Is the same true in the opposite case – if he left out “*v'ten tal u'matar*” in the first *tefilla* and forgot *Ya'aleh V'Yavo* in the second – or is leaving out “*v'ten tal u'matar*” worse? Also, what happens if one left out “*v'ten tal u'matar*” at Friday *Mincha*? Should he *daven* an extra *Shemoneh Esrei* of *Ma'ariv* to make up for the invalid *Mincha*? Or do we assume that since we do not say “*v'ten tal u'matar*” on *Shabbat*, one gains nothing by doing that?

Answer: We will start with a discussion that is connected to your cases. If one forgot to *daven Mincha*, he *davens* the *Shemoneh Esrei* of the following *Ma'ariv* twice, with the second one being a makeup for the missed *tefilla*.¹ This is also the *halacha* if the missed *tefilla* was the full *Mincha* of *Erev Shabbat* and the *tefilla* of *Ma'ariv* is the shortened version of *Shabbat*. Although both of the *Ma'ariv Shemoneh Esrei tefillot* that he is going to *daven* are of *Shabbat*, the second still makes up for the missed *Mincha*.²

However, the matter is more complicated in a situation in which one actually *davened Mincha* of *Rosh Chodesh* but forgot *Ya'aleh V'Yavo*, and the next *Ma'ariv* is after *Rosh Chodesh*, which, of course, does not include *Ya'aleh V'Yavo*. The *Tur*³ cites a *machloket Rishonim* whether he should recite a second *Shemoneh Esrei* at *Ma'ariv* to make up for the insufficient *Mincha*. The

1. *Shulchan Aruch, Orach Chayim* 108:2.

2. See *Shulchan Aruch, Orach Chayim* 108:9.

3. *Orach Chayim* 108.

Tur and the *Shulchan Aruch*⁴ rule that due to the doubt regarding which opinion to follow, one should say the second *tefilla* with the intention that, if it is not required, it should be considered a *tefillat nedava* (voluntary prayer).⁵ Accordingly, if one omitted *Ya'aleh V'Yavo* on Friday afternoon and this question arises at the time of *Ma'ariv* of Shabbat, one does not recite a double *tefilla*, because *tefillot nedava* are not said on Shabbat.⁶

The conceptual issue behind this *machloket* relates to the status of a *tefilla* in which a crucial section was omitted. That is, when one leaves out a necessary section of *Shemoneh Esrei*, is it considered a valid *tefilla*, just that it was missing an element that needs to be made up, or is it considered an invalid *tefilla*? If the lacking *Shemoneh Esrei* is a valid *tefilla*, there is no point in making up the *Shemoneh Esrei* if the omitted sections will not be added. If, however, the lacking *Shemoneh Esrei* is considered invalid, it should be made up regardless.

Rav Tzvi Pesach Frank⁷ connects this *machloket* to your first two cases, in which one omitted *Ya'aleh V'Yavo* and then “*v'tental u'matar*” and the reverse, without distinguishing between the cases. According to the opinion that a *tefilla* with an important omission is still considered a *tefilla*, but one repeats it in order to provide a framework in which to insert the omission, then between the two *tefillot* that the person recited, he said everything necessary. If, however, the lacking *Shemoneh Esrei* is not considered a *tefilla* at all, then each of the attempts was useless and a third *Shemoneh Esrei* is necessary.

As mentioned, this point is subject to a *machloket* that is not conclusively decided. Contemporary *sefarim* dispute whether a third *Shemoneh Esrei* as a *tefillat nedava* is proper,⁸ optional,⁹ or

4. *Orach Chayim* 108:11.

5. See *Mishna Berura* 108:33.

6. *Ibid.* 36.

7. *Har Tzvi*, *Orach Chayim* I:54.

8. *Ishei Yisrael* 39:30. This is also the opinion of Rav Frank op. cit.

9. *Tefilla K'Hilchata* 22:(25).

best avoided.¹⁰ We believe that it is proper.

Rav Chaim of Brisk is widely cited¹¹ as distinguishing between a case of forgetting *Ya'aleh V'Yavo* and one of forgetting “*v'ten tal u'matar*.” *Ya'aleh V'Yavo* is an addition, whereas “*v'ten tal u'matar*” is part and parcel of the *tefilla*'s format. Thus, if *v'ten tal u'matar* is omitted, it is as if that *tefilla* was not recited at all, and a third *tefilla* is needed to fix the *tefilla* that was valid in some ways but was lacking *Ya'aleh V'Yavo*. The order of omission (i.e., whether he first omitted “*v'ten tal u'matar*” or first omitted *Ya'aleh V'Yavo*) should not make a difference; either way, according to Rav Chaim, the *tefilla* missing “*v'ten tal u'matar*” was ineffective and cannot validate the *Ya'aleh V'Yavo* recited in that *tefilla*.

According to Rav Chaim, if one forgot “*v'ten tal u'matar*” on Friday *Mincha* (your third case), he should recite a double *tefilla* of *Ma'ariv* even on Shabbat, in spite of the fact that voluntary *tefillot* are not recited then.¹² However, there are strong questions on Rav Chaim's distinction and its application. We will mention only one: If “*v'ten tal u'matar*” is indeed central to its *beracha*, why is it halachically acceptable for one who forgot it at its usual spot to make it up later in the *beracha* of *Shomeiah Tefilla*?¹³ While there likely are answers to the questions on Rav Chaim's approach, *poskim*¹⁴ do not concur with him regarding your third case. Therefore, in the event that making up a *Shemoneh Esrei* that was said without “*v'ten tal u'matar*” would not add anything new, one repeats it only during the week, when it is permissible to recite a *tefillat nedava*.

10. *Piskei Teshuvot* 108:12.

11. Including in *Har Tzvi* op. cit.

12. See *Har Tzvi* op. cit.

13. See *Berachot* 29a.

14. Including the *Har Tzvi* op. cit. and *Kaf HaChayim, Orach Chayim* 117:33 – see *Ishei Yisrael* 30:(57).

A-5: Eating Before *Davening* in Order to *Daven* with a *Minyan*

Question: For medical reasons, I must eat early in the morning. Is it better if I eat before going to *daven* in *shul* or if I *daven* at home, eat, and then go to *shul* to answer *Kedusha*, etc.?

Answer: The *gemara*¹ cites and explains two *p'sukim* relating to eating before *davening*: 1) “Do not eat on the blood”² – meaning, do not eat before you have prayed for your blood (life). 2) “You thrust me after *gavecha*”³ – read as *gei'echa* (your haughtiness). In other words, one is criticized for demonstrating haughtiness (involvement in pleasures) before accepting *ol malchut shamayim* (the yoke of the Heavenly Kingdom).

The most convincing explanation of the relationship between these two derivations is that the second clarifies the first. In other words, there is no formal prohibition to eat before *davening*; rather, one should not eat in a manner that reflects haughtiness.⁴ Therefore, one may drink water, which Halacha classifies as the simplest beverage (the most humble, if you will), and one may similarly eat foods for medicinal reasons,⁵ even tasty foods that are normally eaten in standard contexts.⁶ The *Pri Chadash*⁷ adds that when one needs to eat for medicinal reasons, he may do so before *davening* even if he can wait until afterward.

At this point of the analysis, we would assume that since *davening* with a *minyan* is a real advantage and eating prior to *davening* in your circumstances is completely permitted, it is better to eat first than to give up on a *minyan*. However, the *Leket*

1. *Berachot* 10b.

2. *Vayikra* 19:26.

3. *Melachim I* 14:9.

4. See *Beit Yosef, Orach Chayim* 89; *Mishna Berura* 89:22.

5. *Shulchan Aruch, Orach Chayim* 89:3.

6. *Mishna Berura* 89:24.

7. *Orach Chayim* 89:3.

*HaKemach*⁸ writes that one who is not strong enough to wait to eat until after the *minyan* should forego the *minyan* and *daven* at home prior to eating. Although the omission of this opinion by such important codes as *Chayei Adam*, *Shulchan Aruch HaRav*, and *Aruch HaShulchan* **may** imply that they do not accept it, several eminent contemporary *poskim* do accept it.⁹

There are two approaches that one can take to explain the *Leket HaKemach*: 1) The serious (perhaps Torah-level) **problem** of eating before *davening* overrides the lesser obligation of *davening* with a *minyan*.¹⁰ 2) The service of HaShem demonstrated by *davening* first, despite one's need to eat, lends a strong **positive** force to the *tefilla*.¹¹

Nevertheless, for the following reasons, we believe that you may decide which of the options is more appropriate for you. In addition to the absence of the *Leket HaKemach*'s opinion from early sources, all the sources that do mention it describe it only as a preference, not a requirement.¹² Furthermore, in your case, the option of eating first and then *davening* with a *minyan* later is more compelling than in the *Leket HaKemach*'s case. He was discussing someone whose weakness made it **difficult to hold out** until after *davening*, whereas you have a medical **mandate** to eat. He also wrote primarily about the long Shabbat *davening*, where the complication is that it is too long to wait until the end of the *davening*; the solution is thus to shorten the first part of the *davening* and then eat. In contrast, you have standing medical orders to eat as soon as possible, after which it is time for normal *davening*. Furthermore, your situation affects your ability to *daven* with a morning *minyan* on an ongoing basis.

It is recommended for one who must eat before *davening* to recite at least *Kri'at Shema* first, preceded by *Birkat HaTorah*.¹³

8. Cited by the *Ba'er Heitev* 89:11 and the *Bi'ur Halacha* to 89:3.

9. Including *Yalkut Yosef*, *Orach Chayim* 89:38, and *Ishei Yisrael* 13:27.

10. See *Yalkut Yosef* op. cit.

11. See *Eretz HaTzvi* (Frumer) II:2.

12. See also *Magen Avraham* 90:21.

13. See *Bi'ur Halacha* op. cit., and see details in *Ishei Yisrael* 13:27.

According to prominent opinions,¹⁴ if you say a little more of the *berachot*, you avoid the full problem of involvement in personal affairs before *davening*. After all, you will have already fulfilled a minimal but basic *mitzva* of *tefilla*,¹⁵ and you will have accepted *ol malchut shamayim*.¹⁶

Therefore, it is legitimate for you to make the call on whether to *daven* at home first or eat before going to *minyan*. You can consider a variety of factors, including what improves your *davening*, embarrassment, etc.

14. Rama, *Orach Chayim* 89:3.

15. See *Magen Avraham* 106:2.

16. See *Keren L'David* (Greenwald), *Orach Chayim* 21.

A-6: A Chazan Wearing Short Pants

Question: I am the *gabbai* at a *minyán* (without a rabbi). In the summer, it sometimes happens that someone who is wearing short pants wants to be the *chazan*, and we have not allowed this in the past. This year, some have objected to my making/enforcing this rule. Are they right?

Answer: When an individual *davens*, he is standing before HaShem, and he should therefore be dressed respectfully.¹ The *Shulchan Aruch*² writes that this includes covering one's legs when this is how people dress in front of important individuals. The *Mishna Berura*³ adds that one should wear a hat, explaining that this is the way normal people dress publicly. (In some circles, this is still true; in others, it does not apply at all.) The *Shulchan Aruch*⁴ explains that since *davening* corresponds to bringing *korbanot*, one should have nice clothing for the occasion, just as a *kohen* does for his service.

The *mishna*⁵ maintains that a *pocheiach* (one who is dressed inappropriately) may not read *Kri'at HaTorah*, serve as a *chazan*, or perform *Birkat Kohanim*.⁶ When is one defined as a *pocheiach*? The Rambam⁷ says that it is when his shoulders are exposed, and the *Shulchan Aruch*⁸ rules that it is when one's clothes are so torn that his arms are exposed. This ruling generated discussion regarding if this limits someone from serving as a *chazan* while wearing a short-sleeved shirt.⁹ We accept the approach that the definition of inappropriate dress depends on whether one

1. *Shabbat* 10a; *Shulchan Aruch, Orach Chayim* 91:1-6.

2. *Ibid.* 5.

3. 91:12.

4. *Orach Chayim* 98:4.

5. *Megilla* 24a.

6. *Duchenen*.

7. *Tefilla* 8:12.

8. *Orach Chayim* 53:13.

9. See *Yechaveh Da'at* IV:8; *Yitzchak Yeranen* (Barda) I, *Orach Chayim* 18.

would dress that way before an important person (whom he sees regularly), and in most of our communities, serving as a *chazan* while wearing short sleeves¹⁰ is permitted.¹¹

In contrast to this, the broad consensus of *poskim* (that fits with the societal norms of our communities) is that wearing shorts is considered underdressed for any semi-formal setting, and such dress is thus unacceptable for a *chazan*.¹² Therefore, your community and you, as its agent, have every right to choose for a *chazan* only those who are wearing long pants.

What if the community wants to allow *chazanim* to wear shorts? Rashi¹³ says that the problem of *pocheiach* (presented explicitly in regard to *Birkat Kohanim*, but probably also for a *chazan*) is the matter of *k'vod hatzibbur* (the honor of the community). One can thus claim that if the community waives any complaints, it is permitted. However, the *Tiferet Yisrael*¹⁴ asserts that the limitation is not a matter of showing respect to the community, but of the community as a group showing respect to HaShem. It is important to recognize what public *tefilla* is. Instead of going about approaching HaShem individually, we join together, and this is expected to have a greater impact.¹⁵ It is therefore not surprising that the *halachot* of choosing a representative to lead the “delegation” are quite exacting.¹⁶ Our choice of a representative should send the appropriate message, and his being dressed in a manner that is at least presentable in the higher echelons of society is an important factor.

An argument can be presented that when the whole group shares a common shortcoming, having a *chazan* with the same

10. If a person is not wearing any sleeves at all, it is difficult to permit him to serve as *chazan*.

11. See *Ishei Yisrael* 14:10 and footnote 27, who unenthusiastically acknowledges leniency when this is standard attire.

12. *Yechaveh Da'at* op. cit; see *Sha'ar Shimon Echad* II:26.

13. *Megilla* 24a.

14. *Megilla* 4:45.

15. See sources in *Ishei Yisrael* 12:1.

16. See *Shulchan Aruch, Orach Chayim* 53.

shortcoming does not send the wrong message.¹⁷ In particular, one might reason that if (almost) the whole group is dressed in shorts (which happens not infrequently in camp or on a trip), then even if society as a whole does not view this as respectfully dressed, the *chazan* **might** be allowed to wear shorts, as this is the standard dress for this particular group in this circumstance. Nevertheless, this is not ideal and should be avoided when there are capable candidates to serve as *chazan* who are wearing long pants.

Of course, it is crucial to present the matter sensitively to your *minyán*. Nevertheless, people have a responsibility to respect the practices of a community, all the more so when this is the standard halachic indication. The *mishna* does distinguish between different parts of the *tefilla*, so it might be permitted and wise to let such a person be the *chazan* for *P'sukei D'Zimra*.¹⁸

17. See *BeMareh HaBazak* III:6.

18. The implication of the *Shulchan Aruch, Orach Chayim* 53:1, is that the laws that pertain to a *chazan* apply only from *Yishtabach*, which precedes the *Kaddish*, the first element of *tefilla* in which the *chazan* has a role in leading the congregation. See *BeMareh HaBazak* op. cit.

A-7: A *Minyan* Split between Adjacent Rooms

Question: In a small *shul* or in a *shiva*-house in which there is an overflow to an adjacent room, do ten men have to be in one room in order to form a *minyan*? Someone claimed that as long as everyone is under one roof, there is no problem.

Answer: First, we will deal with the “under one roof” claim. In the context of discussing the eating of the *Korban Pesach* within a certain area, the *gemara* in *Pesachim*¹ questions whether those who are within the doorway of the boundary are considered to be inside the area. The *gemara* notes that the same rule would apply to *tefilla* (i.e., *tziruf*² for a *minyan*). The *gemara* in *Eruvin*,³ in discussing a *minyan* split between adjacent courtyards of different sizes, records different rulings based on the relative sizes of the areas and of the groups located in them. Neither *gemara* suggests that it suffices to solve the quandary if the areas are under one roof. Although one might argue that these sources are simply not referring to cases in which the areas are under one roof, it is clear from *Rishonim*, the *Shulchan Aruch*,⁴ and many *poskim* that the guidelines for separate rooms inside a building are much the same as those that apply to separate courtyards.

In one relevant discussion, the Rashba⁵ asks why it is permitted for a *chazan* to stand on the *bima* when its dimensions make it a separate domain, thus separating the *chazan* from the *tzibbur*. He offers two answers: 1) A *bima* specifically functions as an integral part of the *shul*; 2) If some people in one domain see some people in the other, the two groups constitute one unit (as they do in the

1. 85b.

2. Joining together.

3. 92b-93a.

4. *Orach Chayim* 55:19.

5. *Shut* I:96.

context of a *zimun* for *bentching*⁶). The *Shulchan Aruch*⁷ cites the Rashba's first answer as *halacha* concerning *tziruf* for a *minyan*, while mentioning an opinion that this is valid only on condition that the *bima*'s partitions do not reach the ceiling. From this ruling, we see that although a *bima* is obviously under the same roof as the rest of the *shul*, other reasons are needed to justify the *tziruf* for a *minyan*. This source and those cited above are among many that debunk the claim that you heard.

Most practical cases depend on the extent to which we accept the Rashba's second answer – that a visual connection between the two groups suffices.⁸ The major question is whether the parameters for connecting groups regarding *zimun* (i.e., visual) also apply to forming a *minyan* for *tefilla*. The *Mishna Berura*⁹ is not conclusive on the matter. Therefore, when possible, it is best to have ten men in one room.

Once a *minyan* is achieved in one room, most opinions assume that those in the overflow room enjoy the benefits of a *minyan*, regardless of the visibility connection. The Radbaz,¹⁰ however, writes that those in the small room are deemed as *davening* with a *minyan* only if the small room can be accessed exclusively through the main room. In any case, those who are not in the room with the *minyan* may participate in the parts of the *tefilla* that require a *minyan*.¹¹ The logic is that ten men in one room create the setting (i.e., attract the *Shechina*¹²) for the matter of *kedusha*, at which point partitions do not prevent the sanctity from flowing beyond.¹³

6. *Berachot* 50a.

7. Op. cit.

8. Another scenario, based on the details of the aforementioned *gemara* in *Pesachim* op. cit. – in which those standing in the doorway do count – is rarely applicable.

9. 55:48 and 55:52.

10. *Shut* 650.

11. *Shulchan Aruch, Orach Chayim* 55:20.

12. The Divine Presence; see *Mishna Berura* 55:60.

13. See *ibid.* and *Pesachim* 85b. See further opinions in *Piskei Teshuvot* 55:27.

It seems that this logic allows for leniency in the following common scenario. Ten men are *davening* in the main room, but not all of them have finished *Shemoneh Esrei* when the *chazan* is ready to start *chazarat hashatz*. In a previous response,¹⁴ we prefer the view that it is necessary for eight people to have finished, not including the *chazan*, in order to begin *chazarat hashatz*. Some *poskim* do not require that many, as the presence of the ten men suffices to bring the *Shechina*, but others counter that *chazarat hashatz* requires a *minyan* that relates to the repetition. In the case of adjacent rooms, we should be able to combine factors. The presence of ten men in the main room brings the *Shechina*; at that point, we only need ten men who are connected to *chazarat hashatz*. Since those in the small room can fulfill their obligation via the *chazan*,¹⁵ they count toward the quorum needed to start.

14. *Living the Halachic Process*, vol. I, A-10.

15. *Mishna Berura* 55:61.

A-8: Lack of Unity in a “Unified” *Minyan*

Question: Occasionally, we assemble a *minyan* of 10-12 men for weekday *Mincha*, in which whoever leads the *davening* chooses the *nusach*.¹ Several *Nusach Ashkenaz* participants say *Tachanun*, even as a *Nusach Sephard chazan* is leading *Viduy* and *Yud Gimmel Middot*.² I imagine that this is problematic for two possible reasons: 1) It represents a noticeable lack of uniformity. 2) A *minyan* is required in order to recite *Yud Gimmel Middot*. Are they indeed doing something wrong, and if they are, does it justify someone pointing that out to them?

Answer: We will begin with some clarifications that should lower the partisan resolve of the different participants. On the one hand, the daily recitation of *Yud Gimmel Middot* is a post-Talmudic *minhag*, which is not even mentioned by the *Shulchan Aruch*. On the other hand, there is **absolutely no halachic problem** for a *Nusach Ashkenaz* devotee to recite *Yud Gimmel Middot* with a *minyan* on a regular day.³

Next we deal with the “hybrid-*minyan*” phenomenon. From a purist perspective, *chazanim* should follow a *shul’s minhag*, which is to be established based on the majority of the *shul’s* members.⁴ There is, however, a common *minhag* – primarily in the Israeli *Dati Leumi* community (and this is Eretz Hemdah’s practice as well) – that whoever ends up serving as *chazan* follows his own *nusach*, even if it is different from that of the majority

1. One of the versions of the text of the prayer. The three most common are *Ashkenaz*, *Sephard*, and *Edot HaMizrach*.

2. “*HaShem, HaShem, kel rachum v’chanun ...*”, recited twice daily by Sephardim and those who *daven Nusach Sephard*. Ashkenazim recite these verses only as part of *Selichot*, which are said several times throughout the year.

3. *Igrot Moshe, Orach Chayim* III:89.

4. See *BeMareh HaBazak* VI:2.

of the members of the *minyán*. This practice is based on a belief that showing **respect** toward “minority” groups within a *minyán* by allowing them to participate according to their customs fosters **unity** better than insisting on keeping the *nusach* consistent. The idea is to achieve a “We welcome you to join us as an equal” atmosphere, rather than one of “We force you to conform to us.”

Rav Moshe Feinstein writes that a *Nusach Ashkenaz* practitioner in a *Nusach Sephard shul* should say *Yud Gimmel Middot* with the *tzibbur*,⁵ citing the rule that one should avoid doing things that may cause *machloket*. In other words, refusing to follow what the *shul* is doing could cause discord. One might argue that a “unity-*minyán*” has no set *minhag* to uphold, and there should therefore be no issue of a *machloket* ensuing by some not joining in. However, we submit that snubbing another group (without halachic need, as in this case) when it is the turn of a *chazan* from that group to lead the *davening* may be insulting. If some participants refrain from saying *Yud Gimmel Middot* because they do not know it by heart, cards containing the text should be made available.

Aside from possible insult, how does the situation of some people not taking part affect matters? There is a *machloket* regarding whether *Yud Gimmel Middot* can be said without a *minyán*. The *Tur*⁶ cites Rabbi Natan Gaon as requiring one, and the *Shulchan Aruch*⁷ accepts this view. (The *Tur* himself disagrees.) Two reasons are given to require a *minyán*: 1) The Rashba⁸ infers from the *gemara*⁹ that describes the power of reciting *Yud Gimmel Middot* that it is like a *davar sheb'kedusha* (a recitation that requires a *minyán*). 2) Rav Amram Gaon¹⁰ explains that this “powerful ammunition” is fitting only when a *tzibbur* joins together in prayer and manifests behavior appropriate for those

5. *Igrot Moshe* op. cit.

6. *Orach Chayim* 565.

7. *Orach Chayim* 565:5.

8. *Shut* I:211.

9. *Rosh Hashana* 17b.

10. *Seder Ta'anit*.

seeking divine mercy.

According to the Rashba's approach, the parameters of the *minyan* in this regard should be like those for *Kaddish* and *Kedusha*.¹¹ While ten men are needed to usher in the sanctity needed for a *davar sheb'kedusha*, there are *poskim* who maintain that it is sufficient if six of the ten participate.¹² One can argue that six men suffice also for reciting *Yud Gimmel Middot*. However, it is not unanimous that a group of six men suffices even for *Kaddish/Kedusha*, and certainly not that it is *l'chatchila*.¹³

Furthermore, there are strong indications that according to Rav Amram Gaon, the necessary effect that justifies saying *Yud Gimmel Middot* requires a *minyan* that recites it together. Rav Moshe Feinstein¹⁴ seems to assume that ten participants are needed. In another responsum,¹⁵ in fact, Rav Moshe notes the practice that one should take a break from his learning to join in *Yud Gimmel Middot* recited by another *minyan*. This, he explains, adds to the power of that *minyan's* *Yud Gimmel Middot* by increased participation.

Let us turn this background information into a plan of action (or, perhaps, a lack thereof). The way you describe it, there are not always ten people reciting *Yud Gimmel Middot* together, which is unfortunate. However, if there are at least six men reciting *Yud Gimmel Middot*, they can continue doing so. If it is not possible to recite the *Yud Gimmel Middot* normally – e.g., if there are fewer than six participants or if people are concerned that their recitation is possibly unauthorized without ten participants¹⁶ – most *poskim* would allow reading the *p'sukim* of *Yud Gimmel Middot* with the

11. See *Torah Lishma* 96 and *Halichot Olam* I, *Ki Tisa* (2), who apply general rules of a *minyan* to *Yud Gimmel Middot*.

12. See *Mishna Berura* 55:32.

13. See *ibid*.

14. *Igrot Moshe*, *Orach Chayim* IV:34.

15. *Ibid*. III:89.

16. Although, as noted, the halachic stakes are not particularly high in this case, so that stringency *b'di'eved* is probably uncalled for.

trop.¹⁷ ¹⁸ However, we will not get into the details because we believe that this is a solution for a savvy individual, not for a *tzibbur*, and the situation should not get to that point.

How should one deal with those who do not join their fellow *daveners*? In our experience, it is often unwise to try to pressure them, as this may initiate a *machloket* that is worse than the original situation. If sharing our words with them helps, that is ideal. If not, we would surmise that it is best to leave things as they are. Ultimately, however, only one who knows the personalities and the dynamics can decide.

17. *Ta'amei hamikra*, the cantillation for Torah reading.

18. See *Shulchan Aruch, Orach Chayim* 565:5; *Yechaveh Da'at* I:47.

A-9: The Need for a *Mechitza* in the Absence of a *Minyan*

Question: Is there a need for a *mechitza* between men and women for *tefilla* when there is no *minyan*, or when there is a *minyan* but it is not in a *shul*?

Answer: We will begin our answer with some sources that serve as the basis for the need for a *mechitza*. Most explicit discussions on the matter are relatively recent, as the *mechitza* was taken for granted without halachic discussion until the 19th/20th century.

The *gemara*¹ tells of structural changes made in the *Beit HaMikdash* to deal with the growing recognition of problems of modesty in the context of interaction between the genders. Since structural changes in the *Beit HaMikdash* are prohibited without sufficient justification,² Rav Moshe Feinstein³ and other authorities surmised from this *gemara* that the need for separation between men and women must be a matter of Torah law.

The only context in which there is any halachic unanimity that a physical separation between men and women is necessary is when *davening* takes place in a *shul*. It appears that the requirement does not have to be linked specifically to *davening*, as the *gemara* records that the *Beit HaMikdash* renovators based themselves on a *pasuk* relating to a funeral.⁴ However, in practice, there is no history of anything close to universal separation between the genders. Rav Feinstein⁵ differentiates between settings that are private (i.e., one can enter by permission only), which do not require separation even when a *minyan* is being held, and between those that are open to the public, which require separation.

1. *Sukka* 51b.

2. *Ibid.*

3. *Igrot Moshe, Orach Chayim* I:39.

4. *Zecharia* 12:12.

5. *Igrot Moshe, Orach Chayim* V:12.

Since the setting of *davening* in a *shul* is the one clear-cut situation in which a *mechitza* is required, we should investigate which elements are responsible for the requirement. Does all *tefilla* require a *mechitza*? Does everything done in *shul* require it? How do we define a *shul*?

A man is not permitted to *daven*, learn aloud, or even make *berachot* when exposed to a lack of modesty, as it can reduce the proper purity of thought demanded for such spiritual activities.⁶ However, that does not necessarily mean that there must be a *mechitza* between him and a modestly dressed woman. In fact, it is agreed that there is no formal requirement of *mechitza* when one is *davening* in a place that is not designated for *tefilla*. Furthermore, there is more of an obligation to have a *mechitza* in appropriate places than there is a prohibition to *daven* without one. (The refusal of a group to erect a *mechitza* in a location where it is called for **might** be grounds for the sanction that it is inappropriate to *daven* there.) One obvious place where one does not need a *mechitza* is a plane, as there is no way to expect an airline servicing Jews and non-Jews to put up a *mechitza*. Furthermore, even if a *minyan* is assembled in places like a *sheva berachot* or a *shiva* house, there is no absolute requirement for a *mechitza*.⁷

If men are *davening* in a *shul* at a time when there is no *minyan*, it would seem that a *mechitza* is needed if women are present (one or two women are likely not a problem⁸). After all, they are *davening*, and the *shul* has sanctity that elevates *tefilla* even without a *minyan*.⁹

What about a place that is designated for *tefilla* without a

6. See *Shulchan Aruch, Orach Chayim 75*, with commentaries.

7. See *Igrot Moshe* op. cit. Rav Moshe writes, based on the aforementioned distinction, that since a *shiva* house is open to all who wish to come, there should be a separation between men and women. It is standard in our communities not to require separation, and certainly not a *mechitza*, in a *shiva* house, at least when a *minyan* is not taking place.

8. See *ibid.*; *Ishei Yisrael* 9:(72).

9. See *Shulchan Aruch, Orach Chayim 90:9*.

minyan? A statement of the *gemara*¹⁰ may be instructive in this case. In explaining the various positions on whether a communal *beit kneset* can be sold to become an individual's *beit kneset*, the *gemara* raises Rabbi Meir's claim that an individual's *shul* does not have *kedusha*. Rashi¹¹ and others explain that this is because *devarim sheb'kedusha* (i.e., those elements of prayer that require a *minyan*) are not recited there. On the one hand, this downplays the status of a *shul* without a *minyan*, but many posit that even according to Rabbi Meir, such an arrangement has **some** level of *kedusha*¹² and status of a *beit kneset*. However, we note that many locations that host semi-regular *davening* without a *minyan* usually have several other uses, which makes it less like the classic type of *shul* in which a *mechitza* is required.

Tying things together, we suggest the following approximate guidelines (there are many slightly varying cases). If a *minyan* assembles in a place that is not usually used for *tefilla*, a *mechitza* is not required. A room that is treated like a *shul* but belongs to such a small community that there is not usually a *minyan* should have a *mechitza* anyway. In a multi-use room that hosts semi-regular *davening* but without a *minyan*, *davening* should be done with a separation between men and women, even if they are not *davening* with a *minyan*, but a *mechitza* is not necessary. (As mentioned above, even when a *mechitza* is not needed, during their *tefilla*, men should not be able to see women whose attire creates halachic problems of immodesty.)

10. *Megilla* 27b.

11. Ad loc.

12. Ramban ad loc.

A-10: Delay between *Birkat Kohanim* and *Sim Shalom*

Question: I am a *kohen*, and after *Birkat Kohanim*, I usually turn around when the *chazan* starts *Sim Shalom*. Recently, a *chazan* chanted a tune between *Birkat Kohanim* and *Sim Shalom*. Was that proper? Were we supposed to turn around when he started chanting or when he began *Sim Shalom*?

Answer: The *gemara*¹ indeed states that the *kohanim* should not turn around until the *chazan* begins *Sim Shalom*. Therefore, it seems that you should have waited until he actually started *Sim Shalom*, as an introductory tune does not have halachic standing. However, the matter deserves a better look.

Rashi² describes the end of *Birkat Kohanim* as follows: The congregation finishes saying *amen* to the last *beracha*, the *kohanim* turn around and close their hands, the *chazan* starts *Sim Shalom*, and the *kohanim* begin reciting “*Ribono shel olam...*”³ This sequence places turning around after *amen* but before *Sim Shalom*, such that in the case you describe, you would not have had to wait.

How could Rashi contradict an apparently explicit *gemara*? The Maharshah,⁴ based on Rashi, explains that the *gemara* means that the *kohanim* wait until **the appropriate time for *Sim Shalom*** has come – that is, when the congregation has completed answering *amen*.

While *Tosafot*⁵ and the Ran⁶ quote Rashi without comment,

1. *Sota* 39b.

2. Ad loc.

3. In other versions, this prayer is “*Ribon HaOlamim ...*” or “*Ribbon HaOlam ...*”

4. *Chochmat Shlomo*, *Sota* 39b.

5. *Sota* 39a.

6. *Megilla* 16a in the Rif’s pages.

the Rambam⁷ and the *Shulchan Aruch*⁸ describe the *halacha* according to the simple reading of the *gemara* – that the *kohanim* wait until the *chazan* starts *Sim Shalom*. There is no indication in their wording or in the sources that the *Beit Yosef* and commentaries cite that they accept the somewhat novel approach of Rashi/Maharshal to the *gemara*.

Let us see if there is any halachic reason to have to wait literally for the beginning of *Sim Shalom* even when its recital is unusually delayed. The apparent logic for the *kohanim* not to turn around immediately is that they should not rush to finish their job before *Birkat Kohanim* is totally finished, perhaps thereby showing disrespect to the blessings and the blessed.⁹ If so, this logic might also dictate that beginning *Sim Shalom* is not necessary, as long as *Birkat Kohanim* is over.

Alternatively, we could explain that in general, one must begin the subsequent *beracha* in order to conclude the previous section, which in this case is *Birkat Kohanim*. This point seems to find support in a similar concept that we find in another halachic discussion. If, during the winter, one did not mention the phrase about rain in the second *beracha* of *Shemoneh Esrei* and did not realize this until after he completed that *beracha*, he must return to the beginning of *Shemoneh Esrei*.¹⁰ However, the *Shulchan Aruch*¹¹ writes that the *beracha* is not considered over in this regard until one begins the next *beracha*; before then, he can insert the mention of rain at the point he is up to when he realizes his omission. This provides a precedent that the end of one section (e.g., *Birkat Kohanim*) depends on the beginning of the next (e.g., *Sim Shalom*). Accordingly, it would be necessary to actually start *Sim Shalom* and not just be ready to do so.

There are also strong indications¹² that *Sim Shalom* is the

7. *Tefilla* 14:6.

8. *Orach Chayim* 128:15.

9. See *Birchot Horai* 12:(1).

10. *Shulchan Aruch*, *Orach Chayim* 114:4.

11. *Ibid.* 6.

12. Based on *Megilla* 18a.

natural continuation of *Birkat Kohanim* and may serve as a confirmation of the blessing.¹³ This makes it the appropriate time for the *kohanim* to commence the second stage of their blessing by saying “*Ribbono shel olam...*”¹⁴ Therefore, it makes sense to argue that the *gemara* means that the *kohanim* should turn around and say “*Ribbono shel olam*” only after *Sim Shalom* has actually begun.

Thus, *kohanim* should ideally follow the consensus of *poskim*¹⁵ and refrain from turning around until *Sim Shalom* has begun. *Chazanim* should not procrastinate or chant before *Sim Shalom*, as that confuses the *kohanim* and the congregation.

13. See *ibid.*; see Rav Nota Greenblatt in *Afikei Torah* (5766), p. 131.

14. See *Shulchan Aruch, Orach Chayim* 128:15 and *Mishna Berura* 128:55.

15. See *Magen Avraham* 128:28; *Mishna Berura* 128:70.

A-11: Reciting the Three *Parshiyot* of *Shema* Before *Davening*

Question: If I wake up soon before the end-time of reciting *Kri'at Shema* (*sof z'man Kri'at Shema*), must I say all three *parshiyot*¹ before *davening*? After all, regarding the third *parasha*, the Torah does not write, "... and when you rise"!

Answer: Actually, according to Torah law, one is not required to recite the *Parashat Tzitzit*, the third *parasha* of *Kri'at Shema*, at all. It is one way to fulfill the *mitzva* of mentioning *yetzi'at Mitzrayim*² daily,³ but this can also be accomplished in other ways⁴ and, ostensibly, at different times.

However, the *gemara*⁵ tells a story that complicates the matter. Rabbi Yehuda HaNasi would teach Torah publicly from early morning, in a manner that did not give him a chance to first *daven* or recite *Kri'at Shema*. In the midst of his lectures, he would cover his face and recite the first *pasuk* of *Kri'at Shema* in order to fulfill the *mitzva* of *Kri'at Shema* in an abbreviated manner without disturbing his teaching. The *gemara* continues that he also would teach a *halacha* in which he could mention *yetziat Mitzrayim* "at its time" – that is, the time of *Kri'at Shema*.⁶ This seems to indicate that mentioning *yetzi'at Mitzrayim*, which we fulfill with *Parashat Tzitzit*, should also be done before *sof z'man Kri'at Shema*.

However, there are also indications that one does not have to recite *Parashat Tzitzit* before *sof z'man Kri'at Shema*. For example, during the parts of the *tefilla* before *P'sukei D'Zimra* in

1. Sections: *Shema* (*Devarim* 6:4-9), *V'Haya Im Shamo'a* (*Devarim* 11:13-21), and *Parashat Tzitzit* (*Bamidbar* 15:37-41).

2. Liberation from Egypt.

3. See *Berachot* 12b.

4. See *Berachot* 21a.

5. *Berachot* 13b.

6. Rashi ad loc.

the beginning of *Shacharit*, we recite the first *pasuk* of *Shema*.⁷ The Rama⁸ recommends the *minhag* to say, “*Baruch shem k’vod ...*” following the *pasuk*, as usual. This indicates our interest that it serve as a fulfillment of *Kri’at Shema*, which is worthwhile since *sof z’man Kri’at Shema* sometimes passes before we reach *Kri’at Shema* in the *davening*.⁹ Notably, this arrangement does **not** cover the requirement to mention *yetziat Mitzrayim*.¹⁰ We must note, however, that this is what is advised in order to deal with the **chance** that one will miss *sof z’man Kri’at Shema*. When one **expects** to miss it, he should say all three *parshiyot* of *Shema* before the end-time of *Kri’at Shema* comes.¹¹

Interestingly, although there are different sources for reading each of the three *parshiyot*, the Rambam¹² discusses them as one unit, which is compatible with the *mishna*¹³ that explains the order of these *parshiyot*. The *Bi’ur Halacha*¹⁴ similarly posits that even if one recites the three *parshiyot* when they are not sandwiched between the *birchot Kri’at Shema*, he should not speak even between the *parshiyot*.

Fulfilling the *mitzva* of *Kri’at Shema* at its time by reciting it before *davening* is less than a perfect solution for several reasons, some of which can be remedied by waking up a little earlier. It is not ideal that when one recites *Kri’at Shema* in its normal place in *davening*, before *Shemoneh Esrei*, he is not simultaneously fulfilling the *mitzva* of *Kri’at Shema*,¹⁵ and certainly if it is too late at that point to do so. Also, it is generally problematic to

7. Most of our *siddurim* follow the *minhag* to recite the entire first *parasha* at that juncture (see *Magen Avraham* 46:16).

8. *Orach Chayim* 46:9.

9. *Mishna Berura* 46:31.

10. The *Shulchan Aruch HaRav*, *Orach Chayim* 46:9, claims that this is not a concern because the Exodus is referred to early on in *P’sukei D’Zimra*.

11. *Pri Chadash*, *Orach Chayim* 46:9; *Chayei Adam* I:8:7; and *Mishna Berura* 46:31.

12. *Kri’at Shema* 1:2.

13. *Berachot* 13a.

14. 66:5.

15. *Mishna Berura* 46:31.

recite the full text of *Kri'at Shema*, which includes a reference to *tefillin*, without having *tefillin* on,¹⁶ and this is usually the case for those who recite a last-minute *Kri'at Shema*. If, however, one is unable to both put on *tefillin* and make it to *Kri'at Shema* on time, he can recite *Kri'at Shema* anyway.¹⁷ Therefore, if one is able to start *davening* before *sof z'man Kri'at Shema* but will not get to *Kri'at Shema* on time, he should make the effort to at least put on *tefillin* before reciting *Kri'at Shema*.

Another matter to consider is *Birkat HaTorah*. One may not learn before saying *Birkat HaTorah*, and it is debatable whether reciting *Kri'at Shema* in order to fulfill that *mitzva* is tantamount to learning.¹⁸ It is thus preferable to say *Birkat HaTorah* beforehand.

16. *Berachot* 14b.

17. *Mishna Berura* 58:5; see *Yechaveh Da'at* VI:2.

18. See *Shulchan Aruch* and Rama, *Orach Chayim* 46:9; see *B'Tzel HaChochma* I:1.

A-12: The *Kaddish* after *Kri'at HaTorah*

Question: There are a number of points regarding the *Kaddish* after *kri'at haTorah* that I do not understand. I saw a past response¹ of yours stating that it might be acceptable for a mourner to recite the *Kaddish* after *kri'at haTorah*, but some *poskim* maintain that the *ba'al korei* should recite it. Why would we assume that it should be recited by the *ba'al korei*? Furthermore, I understand that the *Kaddish* on Shabbat morning is intended to separate the seven regular *aliyot* from the *maftir*. Indeed, at *Mincha* of Shabbat, since there is no *maftir*, there is no *Kaddish*. Why, then, is *Kaddish* recited after *kri'at haTorah* on Mondays and Thursdays?

Answer: We will begin by clarifying your second question, and that should help answer your first question as well.

There is a general idea that we should publicly sanctify HaShem's Name at least seven times daily by means of *Kaddish*, in line with the *pasuk*: "Seven [times] in the day I praised You."² Yet, each type of *Kaddish* has a specific function, as the *Pri Megadim*³ spells out. In particular, he notes that the purpose of *Chatzi* (abbreviated) *Kaddish* is to separate between different parts of *tefilla* (e.g., *P'sukei D'Zimra* and *Birchot Kri'at Shema*; *Ashrei* and *Shemoneh Esrei* of *Mincha*). After *kri'at haTorah*, there is a *Chatzi Kaddish* because *kri'at haTorah* was instituted as a special *mitzva* within *tefilla*. This is the case whether or not there is *maftir* at a given *laining*.

The notion of reciting *Kaddish* between the seven regular *aliyot* and *maftir* was a post-Talmudic innovation intended to show the distinction between the main Torah reading obligation and the added *aliya*, which does not count towards the requirement of

1. See *Living the Halachic Process*, vol. II, A-13.

2. *Tehillim* 119:164; see *Beit Yosef, Orach Chayim* 55.

3. *Orach Chayim, Mishbetzot Zahav* 55:1.

seven *aliyot*.⁴ However, that is not the reason for the existence of the *Kaddish*; it is simply the reason that it was placed in between the two. The reason for the *Kaddish* is that it is appropriate at the end of the *laining*.⁵ This explains why there is a *Kaddish* after *kri'at haTorah* even on Mondays and Thursdays, when there is no *maftir*.

Laining at *Mincha* of Shabbat is also followed by a *Kaddish*, although not immediately. The *Kaddish* before *Shemoneh Esrei* relates back to *kri'at haTorah*.⁶ The reason that it is delayed slightly is that we want people to know when *Shemoneh Esrei* is starting.⁷ We cannot have one *Kaddish* immediately after the *laining* and another one before *Shemoneh Esrei*, because there is not enough of a break to justify another *Kaddish*.⁸ The same holds true at *Mincha* of a fast day. Although a *haftara* is read, there is no *Kaddish* before the *haftara*. Rather, the *Kaddish* for *kri'at haTorah* is recited before the ensuing *Shemoneh Esrei*.

It should now be understood why the simple choice for the one to recite the *Kaddish* after *kri'at haTorah* is the *ba'al korei*. As stated, the function of the *Chatzi Kaddish* after *laining* is similar to that of the other occurrences of *Chatzi Kaddish*. In all of them, it is the *chazan* who recites the *Kaddish*. Since the *ba'al korei* is the one who leads the services of *kri'at haTorah*, albeit with the participation of the *olim*, he is the natural choice.

Nevertheless, we point out that there are those who infer from a statement of the Rashbetz that this *Kaddish* can be said by a mourner.⁹ We do not feel it is necessary to take a strong stand on the issue, as each *minhag* has a basis.

4. See *Tosafot, Megilla* 23a.

5. Originally, the *ba'al maftir* did not repeat the last few sentences of the *parasha*, but rather read new *p'sukim* and finished the *parasha*, at which point it was appropriate to say *Kaddish* (*ibid.*).

6. *Mishna Berura* 292:4.

7. *Pri Megadim* *op. cit.*

8. *Mishna Berura* *op. cit.*

9. See *Gesher HaChayim* 30:8.

A-13: Mistakes in the Reading of the *Haftara*

Question: In my *shul*, the *ba'al maftir*¹ reads the *haftara* from a *chumash*, but many people still do a poor job. No *gabbai* stands near him when he reads the *haftara*. People used to make corrections, but the *ba'alei maftir* so often ignored them that no one bothers anymore. How does this affect those who read along with the *haftara* and those who do not?

Answer: While we will discuss the issues regarding the various practices and paint a picture of halachic preferences, a *shul's* rabbi or other leadership must decide what works best overall for the *shul*.

Ideally, an expert *ba'al korei* should read the *haftara* from a *klaf* (scroll) of the appropriate *Navi*,² not from a *chumash*. Possible reasons, given by various sources, include: 1) The *haftara* was instituted to be read from a *klaf*. 2) It is improper to write unconnected segments of *Tanach*, and it is therefore likewise improper to read from them.³ 3) Reading from a *chumash* is considered like reading by heart.⁴ 4) One can only be *motzi* someone else in public Torah learning through reading from a *klaf*.⁵

Until a few hundred years ago, *Navi* scrolls were rare, and they are still not the norm. One alternative that is better than using a *chumash* is to read from a printed volume of the *Navi*, which may suffice for our purposes.⁶ Nevertheless, the practice of many *shuls* to read the *haftarot* printed individually in a *chumash* has

1. The one who receives the *aliya* of *maftir*.

2. See *Mishna Berura* 284:1 and *Yechaveh Da'at* V:26, based on *Levush, Orach Chayim* 284:1.

3. *Magen Avraham*, introduction to *siman* 284, based on *Gittin* 60a.

4. *Shut Chatam Sofer, Orach Chayim* 68.

5. *Ibid.*

6. *Magen Avraham* op. cit.

halachic supporters.⁷

Classical sources seem to indicate that everyone must follow the *haftara* reader and fulfill the *mitzva* through him. Based on this assumption, the *gemara*⁸ says that the reading of the *haftara* should not begin until *hagbaha* is finished, so that those involved with it will not miss the beginning of the *haftara*.⁹ The *Sha'arei Ephrayim*¹⁰ writes that everyone should listen to the person reciting the *haftara*, although he suggests also reading along quietly. He argues that the institution of the *haftara*, being an obligation of the community that requires a *minyan*, must be effected by listening to one reader, just like *kri'at haTorah*. He therefore opposes the *minhag* that everyone recites the *haftara* audibly and basically ignores the *ba'al maftir*.¹¹ The *Chatam Sofer*,¹² in contrast, explains that because we do not read from a *klaf*, individuals cannot be *yotzei* with the *ba'al maftir* in any case, and there is therefore no need to try to hear him.

Thus, when a *klaf* is not used for the *haftara*, there are different approaches regarding whether people should rely on the *ba'al maftir* to fulfill the *mitzva*. Those who just listen certainly seem to be relying upon the *ba'al maftir*; those who read along silently may be following the view that the *ba'al maftir*'s reading is not halachically significant. Moreover, the latter group may be “hedging their bets” on which approach is preferable by **both** listening to the *ba'al maftir* and reading themselves. Therefore, a proper reading **may** have some importance even for those in *shul* who are reading along. Not only does it add to the dignity of the public reading, but the listeners may also be able to make use of the reading, even if it is done from a *chumash*.

In general, any mistake in *laining* that changes the text's

7. *Shulchan Aruch HaRav, Orach Chayim* 284:4; *Tosefet Shabbat* 284:1.

8. *Sota* 39b; see Rashi ad loc.

9. See *Beit Yosef, Orach Chayim* 284; *Mishna Berura* 284:11.

10. 9:33.

11. The old *minhag* is still prevalent among some Chassidim.

12. Op. cit.

meaning should be corrected,¹³ although this is a difficult rule to apply. In some ways, individual mistakes may be more problematic during the Shabbat morning Torah reading. Since it is required to complete the entire *chumash* text over the course of the year, every *pasuk* must be read in a valid way.¹⁴ This ostensibly does not apply to the *haftarot*, as there is no parallel obligation to complete a certain text, and even the choice of the *haftara* is not always unanimous or critical. On the other hand, a minimum number of *p'sukim* is mandated for the *haftara*.¹⁵ If a *pasuk* is read with a serious mistake, the *pasuk* will not count, and the minimum number may not be reached.¹⁶ *Shuls* are often more lenient regarding the *haftara* than *kri'at haTorah*, which is understandable given that the former is a later and weaker institution. Nevertheless, sources indicate that serious mistakes compromise the *haftara* as well.¹⁷

For those in *shul* who read along correctly, the *ba'al maftir's* mistakes are much less of an issue. Considering those who do not read along, however, it is difficult to abolish the practice of correcting. Nevertheless, when incessant correcting causes embarrassment or conflict,¹⁸ a rabbi or *gabbai* who chooses to avoid “rocking the boat” has whom to rely upon.

13. Rama, *Orach Chayim* 142:1.

14. See *Bi'ur Halacha* ad loc.; *Igrot Moshe*, *Orach Chayim* IV:23.

15. It is usually twenty-one *p'sukim*; see *Shulchan Aruch*, *Orach Chayim* 284:1.

16. See *Igrot Moshe* op. cit.

17. See *Mishna Berura* 142:7; we have heard reports that this was also Rav Soloveitchik's opinion.

18. For a variety of reasons, it is difficult to demand as high a standard of adeptness from the reader of the *haftara* as is expected from the reader of the *parasha*, especially when the *haftara* is read from a *chumash*, in which case many readers **feel** overly confident.

A-14: Listening to *Laining* during *Shemoneh Esrei*

Question: If a person comes late to *davening*, should he continue with *Shemoneh Esrei* during *kri'at haTorah*, or should he interrupt it to listen? Does it make a difference if *sof z'man tefilla*¹ is coming soon?

Answer: This question is not found in classical sources, but there is much to learn from similar cases that are discussed.

Rashi² writes that one who is in the midst of *Shemoneh Esrei* when the *tzibbur* is up to *Kedusha* or *Kaddish* should listen silently to them and thereby fulfill the *mitzvot* of reciting these passages. This is effective because of the rule of *shomei'ah k'oneh* (one who listens is considered like one who recites). *Tosafot*,³ however, cites some authorities who forbid this, and their argument is based on this very same rule of *shomei'ah k'oneh* – since one is forbidden to recite other passages during *Shemoneh Esrei*,⁴ it is likewise forbidden to intently listen to them, which is equivalent to reciting. The *Shulchan Aruch*⁵ rules like Rashi, that one may and should listen. Thus, it appears that listening to appropriate things during *Shemoneh Esrei* is not a fundamental problem and can be helpful. Ostensibly, this should also apply to *laining*.

In fact, listening is arguably more justifiable for *laining*. It is possible that *Tosafot* objects to listening only to things like *Kedusha*, which constitutes a *mitzva* of recitation, since Halacha treats listening as **reciting**. In contrast, the *mitzva* of *kri'at haTorah* for the congregation is fulfilled by **listening**. Thus, it should not be equated to speaking to the point that it would be forbidden

1. The deadline for the proper time to recite *Shemoneh Esrei* of *Shacharit*.

2. *Sukka* 38b.

3. *Berachot* 21b.

4. *Shulchan Aruch, Orach Chayim* 104:6.

5. *Ibid.*

during *Shemoneh Esrei*.⁶ Indeed, the *Az Nidberu*⁷ permits listening to *kri'at haTorah* during *Shemoneh Esrei*.

On the other hand, there are several reasons to avoid listening to *laining* during *Shemoneh Esrei*. First, the need to listen to *Kaddish* and *Kedusha* may be more pressing than listening to *laining*, as there are significant opinions that maintain that the obligation of Torah reading falls upon the *tzibbur*, not the individual.⁸ Therefore, it may not be that critical for each individual found in *shul* to listen, at least during the week.⁹ Indeed, the *Shulchan Aruch*¹⁰ notes some opinions that exempt individuals from listening to *laining* in various circumstances, and avoiding a long pause in *Shemoneh Esrei* would seem to be at least as important a reason not to listen to the *laining* as those mentioned in the *Shulchan Aruch*.

We now must address a pertinent question. Why do we interrupt *Shemoneh Esrei* even for *Kaddish* and *Kedusha*, considering that “one who is occupied with a *mitzva* is exempt from another *mitzva*”?¹¹ *Teshuvot V'Hanhagot*¹² answers that divorcing oneself from praising HaShem with those around him is like disgracing Him. He posits that this logic is inapplicable to the case of *laining*. The *Lev Avraham*¹³ suggests that since *Kaddish* and *Kedusha* are forms of *tefilla*, just like *Shemoneh Esrei*, the *mitzva* of *Shemoneh Esrei* does not “knock off” its “brother *mitzva*.” Again, this would not apply to *kri'at haTorah*. Another distinction is based on the *halacha* that we actually do stop doing one *mitzva* in order to perform another *mitzva* when doing so

6. *Az Nidberu* XIV:29; see *Lev Avraham* (Weinfeld) I:26

7. Op. cit.

8. See Ran, *Megilla* 3a in Rif's pages; *Yabia Omer* VIII, *Orach Chayim* 54.

9. See discussion of a possible distinction between the *kri'at haTorah* of Shabbat and that of a weekday in *Living the Halachic Process*, vol. II, A-10, and *Yom Tov Shenit K'Hilchato* 9:(38),(41).

10. *Orach Chayim* 146:2.

11. *Sukka* 25a.

12. II:70.

13. Op. cit.

does not cause difficulties.¹⁴ Pausing to listen to the shorter, less confusing *Kedusha* and *Kaddish* is probably easier than pausing for a series of *aliyot* of *laining*. Finally, since part of the reason to rule like Rashi regarding *Kedusha* is *minhag*,¹⁵ a similar *minhag* might not exist in the case of *laining*.

In summary, it is not forbidden to listen to *laining* during *Shemoneh Esrei*,¹⁶ but it is likely inadvisable.¹⁷ The correct decision might have to do with making halachic common sense of the particular circumstances. Coming very late to *tefilla* is different from *davening* at a much slower pace than the *minyán* (although the latter is **not always** a good idea); in the latter case, there is more reason to avoid having one feel that he is missing out on *kri'at haTorah*.

In any event, if listening to *laining* will entail that one will finish *Shemoneh Esrei* after *sof z'man tefilla*, one should continue *davening*. Although it is more appropriate to listen to *laining* during *Psukei D'Zimra* and even *Kri'at Shema*,¹⁸ this too should not come at the expense of failing to *daven* before *sof z'man tefilla*.¹⁹ Skipping parts of *Psukei D'Zimra* for the purposes of *sof z'man tefilla* would be preferable, however, to missing *laining*.²⁰

14. See Rama, *Orach Chayim* 38:8.

15. See *Tosafot* op. cit.; *Bi'ur Halacha* to *Orach Chayim* 104:7.

16. Compare to *Yabia Omer* VII, *Orach Chayim* 12.

17. See *Halichot Shlomo*, *Tefilla* 12:4.

18. See *Mishna Berura* 66:26.

19. *Ishei Yisrael* 13:9.

20. See *Shulchan Aruch*, *Orach Chayim* 52:1; response A-1.

Section B:
Berachot (Blessings)

B-1: Permissibility of a Personal *Beracha*

Question: I am often overjoyed that HaShem granted me the *zechut* to live in Israel for many years, and it once caused me to make a “spontaneous” *beracha* expressing this feeling. A friend told me that it is forbidden to compose my own *berachot*, as one can only use those that *Chazal* composed. But isn’t Judaism all about thanking HaShem for all the wonders of creation and providence? Am I really not allowed to bless HaShem for my ability to live here?

Answer: Your assumption that one’s relationship with HaShem should be personal and overflowing is poignantly and refreshingly correct. On the other hand, one does not have free rein to serve HaShem as he desires, as is evident from such *halachot* as *bal tosif*¹ and the prohibition of a *beracha l’vatala*.² Let us seek perspective and guidelines.

The *gemara*³ says that one who already fulfilled a *beracha* requirement and then unnecessarily repeats it violates the prohibition of uttering HaShem’s Name in vain.⁴ *Tosafot*⁵ argues that uttering HaShem’s Name in order to praise Him cannot be considered in vain on the level of Torah law; rather, it is a Rabbinic prohibition that “leans” on the *pasuk* (an *asmachta*). In contrast, the Rambam⁶ seems to hold that making a *beracha l’vatala* is indeed a Torah prohibition.⁷

All agree that uttering HaShem’s Name without any purpose

1. Not adding on to the *mitzvot*.

2. Unwarranted *beracha*.

3. *Berachot* 33a.

4. *Shemot* 20:7.

5. *Rosh Hashana* 33a.

6. *Berachot* 1:15.

7. *Magen Avraham* 215:6.

is an *issur aseh*, a violation of a positive *mitzva*.⁸ Yet, using HaShem's Name in the context of praising Him is permitted and indeed positive, possibly even if one uses words that follow a *beracha* formula. In fact, the Rambam⁹ writes that if one mistakenly uttered HaShem's Name, he should immediately turn it into an appropriate praise of HaShem, and the Rambam's example of such a possible "spontaneous praise" actually puts the word "*baruch*" next to His Name.

Where do we draw the line between permitted and appropriate praise, on the one hand, and a *beracha l'vatala*, on the other? One approach is that the crucial factor is intention and context. If one intends to recite a required *beracha* when he is actually not required to do so, or if a mistake disqualifies what should have been an appropriately-recited required *beracha*, it is a *beracha l'vatala*. In contrast, if the same words are said as a self-initiated expression of personal gratitude, it is permitted.¹⁰ The *Chavat Da'at*¹¹ cites a precedent for this distinction: One is allowed to repeat *Shemoneh Esrei* (which is comprised of *berachot*) with the intention of reciting a voluntary *tefilla*, but one may not recite a questionably required *beracha* with the intention of fulfilling an obligation.¹²

Others draw a distinction based on the text used, focusing on whether or not one utters HaShem's main Name (*Ado...*). Some say that if one recites the *beracha* in a language other than Hebrew, so that the translated Name is equivalent only to a *kinuy*¹³ of HaShem, it has the benefits of a *beracha* without the possibility of being a *beracha l'vatala*.¹⁴ However, R. Akiva

8. The positive *mitzva* to treat HaShem with fear; see *Temura* 4a.

9. *Sh'vuot* 12:11.

10. *Chavat Da'at* 110, *Beit HaSafek* 20; see *Minchat Shlomo* II:31.

11. *Ibid.*

12. See *Rosh, Berachot* 3:15.

13. A descriptive reference.

14. See opinions cited in *Shut R. Akiva Eiger* I:25; *Pitchei Teshuva, Yoreh Deah* 328:1; *Piskei Teshuvot* 209:7.

Eiger¹⁵ and the Netziv¹⁶ argue that in the recognized, sensitive context and formulation of a *beracha*, even a *kinuy* or foreign language Name may be forbidden, as we find regarding an oath. The Netziv maintains that the problem is a Rabbinic prohibition of **appearing** to recite a *beracha l'vatola*. Therefore, the closer the text (and/or the context) is to that of a standard *beracha*, the more likely it is to be forbidden, but praises that do not mimic blessings are acceptable. The *Minchat Shlomo*¹⁷ explains that although one should not act in a way that challenges the rules that the Rabbis set, those rules were not set to forbid expression of personal thanks to HaShem.

We summarize as follows. Your desire to praise HaShem is commendable. Paradoxically, the more creative and original the text and style of your praise are, the clearer it is that your personal *beracha* is permitted. Convention is that an individual should generally refrain from using HaShem's main Names, which we leave primarily to *Chazal* and to great rabbis who have composed prayers and praises throughout history. If you plan to make some type of semi-formal praise, there are steps to take to make them relatively "safer." Using "*HaShem*," "*HaKadosh Baruch Hu*," "*Ribbono Shel Olam*," or a Name in a language other than Hebrew is safer than using one of HaShem's official Names and can be just as profound and meaningful. It is at least preferable not to recite anything that resembles a *beracha* of *Chazal* in terms of content, context/timing (e.g., adding one in *Birhot HaShachar*), and/or recitation with regularity. That still leaves you with room for much personal gratitude and self-expression.

15. Op. cit.

16. *Ha'amek She'ala* 53:2.

17. Op. cit.

B-2: The Halachic Status of Gluten-Free Cakes

Question: Because some of our family members are gluten-intolerant, we started baking two types of cakes, which look and taste almost identical, but one is made from grain flour and one is not. Is it acceptable to eat the “*Shehakol*” pastries instead of the “*Mezonot*” foods that are usually supposed to follow *Kiddush*?

Answer: Health experts generally agree that oats can be used as a wheat substitute for gluten-intolerant people (depending on the type/degree of sensitivity and the way in which the oats were processed).¹ According to the consensus of *poskim*, the *halachot* regarding oats are identical to those regarding the other four major grains.² The *beracha* for bread made from oat flour is thus *HaMotzi*, the *beracha* for cakes made from oats is *Mezonot*, and they are equal to other breads and/or cakes regarding being eaten after *Kiddush*. Therefore, our discussion below relates to the *halachot* that are essential only for those who may not eat even foods containing oat flour.

The *gemara*³ states that *Kiddush* must be recited in a place where “a meal” will follow. However, the same *gemara* refers to “tasting” after *Kiddush*, implying that a full meal is unnecessary. While some say that this tasting must include bread, the *Shulchan Aruch*⁴ rules like the *Geonim* that wine can also suffice. While there are opinions in either direction, the consensus is that wine (of the volume of at least a *revi'it*⁵) is sufficient.⁶

The *Magen Avraham*⁷ reasons that since the *Geonim* accept

1. Every individual should discuss the matter with his doctor.

2. Wheat, barley, spelt, and rye.

3. *Pesachim* 101a.

4. *Orach Chayim* 273:5.

5. Approximately 3 fl. oz.

6. See *Mishna Berura* ad loc. 22, 27.

7. 273:11.

even wine as sufficient in this context, any foods made from one of the five grains also suffice, since they are more “meal-like” than wine.⁸ This is the source of the common practice of using cake for the post-*Kiddush* “meal.” Along these lines, the *Pri Megadim*⁹ permits eating dates for this purpose, based on the *halacha* that if one mistakenly recited *Birkat HaMazon* after eating dates, this *beracha acharona* is valid after the fact, because dates are particularly filling.¹⁰ However, the *Tosefet Shabbat*¹¹ argues, and most *Acharonim* agree with him, that one should not generally rely on dates as one’s meal after *Kiddush*.¹²

While according to the “spirit of the law,” there may seem to be little difference between *Shehakol* and *Mezonot* pastries, the former do not fit the halachic parameters for the required eating after *Kiddush*. As we have seen, there are alternatives to establish the “meal,” especially wine/grape juice, after which *Shehakol* foods may be eaten as well. However, for cases in which wine or grape juice are not viable alternatives, we will mention two leniencies that are not generally accepted. One is an opinion that in a case of need, any food can be used to constitute the *Kiddush* meal.¹³ There is also an opinion that everyone assembled fulfills their *Kiddush* obligation even if only one person present eats the requisite amount.¹⁴ If one must rely on one of these leniencies, it would seem proper for him to at least eat something filling and “meal-like,” so as to thereby fulfill the spirit of the law.

This leads us to a related discussion, which is similarly important in terms of the spirit of the law (and possibly for the letter of the law as well). At the Shabbat meals, there are halachic

8. See *Shulchan Aruch, Orach Chayim* 291:5, regarding the laws of *seuda shlishit*.

9. *Eshel Avraham* 273:11.

10. *Shulchan Aruch, Orach Chayim* 208:17.

11. 273:15.

12. See *Kaf HaChayim, Orach Chayim* 273:42; *Yabia Omer* VII, *Orach Chayim* 35.

13. *Chayei Adam* II:6:22.

14. See *B'Tzel HaChochma* IV:2.

requirements to use two loaves of bread/*challa* made from halachic grain, to eat a *k'zayit*, and to recite *Birkat HaMazon* at the end. It would be regrettable for a gluten-sensitive person to consider himself as incapable of fulfilling the *mitzva* of *seuda*, which also might prompt him to not take his Shabbat meal seriously “if it does not count anyway.” It appears proper (although we cannot create an outright obligation) for him to have two nice loaves of bread, made of whatever flour he can use.

There actually is halachic precedent, albeit in a different halachic context, for considering as bread even a food that is not subject to *HaMotzi* and *Birkat HaMazon* because it is not made from the five grains. The *halacha* is that an *eiruv chatzeirot* must consist of “bread,” but this bread can be made from rice or lentils.¹⁵ This shows that on some level, a food can be considered legitimate bread even when it is made from alternative ingredients (although not just any ingredient).¹⁶ Notice also that the concept of loaves of bread is learned from the manna in the desert, and that was certainly not made from normal grain; what is important is that manna was the Jews’ bread. Similarly, for the gluten-intolerant, rice or corn bread are their breads.

While we would not suggest such an approach if one has the option of following the regular rules (including using oat *challa*), one who cannot do so should nevertheless view his meal as a *seudat Shabbat*. It is also worthwhile in such a situation to drink enough wine, or eat dates or another relevant food, to enable the recitation of the long *beracha acharona*, which contains the basics of *Birkat HaMazon* and mentions Shabbat. Again, it is best for such people to have as normal a Shabbat experience as possible; they should not view their situation as significantly different from that of others.

15. *Shulchan Aruch, Orach Chayim* 366:8.

16. *Mishna Berura* ad loc. 47.

B-3: Continuing to Eat Based on an Initial *Beracha*

Question: If I make a *beracha* on one food and only later decide to eat other foods of the same *beracha*, do I need to make a new *beracha*, or does the initial one cover them?

Answer: There are two basic halachic precedents and one major distinction regarding the *halachot* that apply in this case. *Poskim* maintain differing opinions regarding in-between cases.

Rav Pappa presents¹ rules as to which foods need their own *berachot* and at which stages of a meal. The Rashba and others² infer from these rules that foods brought to the table during a meal are generally covered by the original *beracha*. The *Beit Yosef*³ sees this as a source that *berachot*, including those recited outside the framework of a full meal, generally cover even foods that were not present at the time that the *beracha* was recited.

The *Taz*⁴ rejects broadening this rule to include any type of eating, maintaining that specifically a meal has the special ability to subsume many foods under one *beracha*. Both the *Taz* and the *Magen Avraham*⁵ cite a different precedent for the *halacha* regarding a *beracha* covering foods that are brought later. In the context of the discussion regarding a *shochet* who made a *beracha* before slaughtering several animals, and additional animals are then brought to him at a later point, the *Tur*⁶ cites several opinions as to whether a new *beracha* is needed on the slaughter of these new animals. Some maintain that it depends if the animals are of the same species as those on which the *shochet* initially recited the *beracha* (*Itur*). Others conclude that it depends if the new

1. *Berachot* 41b.

2. See *Beit Yosef*, *Orach Chayim* 206.

3. Op. cit.

4. *Orach Chayim* 206:7.

5. 206:7.

6. *Yoreh Deah* 19.

animals were brought before all of the original animals were *shechted* (*S'mak*). Still others rule that it depends if the *shochet* had in mind when reciting the *beracha* to cover animals that were not yet present. The *Shulchan Aruch*⁷ adopts the *S'mak*'s distinction, whereas the Rama⁸ follows the *Itur*. Presumably, claim the *Taz* and the *Magen Avraham*, the parallel rules should apply to *berachot* on food.

However, in the context of the laws of *berachot*, the *Shulchan Aruch* and the Rama do not make such distinctions. Given that the *Shulchan Aruch*⁹ mentions no distinctions, he apparently rules that one never makes a *beracha* on a newly brought food. The Rama,¹⁰ while not necessarily disagreeing, states that one should preferably have in mind that the *beracha* includes all the food that will be brought. Sephardi *poskim* agree that the Rama's suggestion is a good practice to follow, considering that the *Beit Yosef* cites differing opinions on the matter.¹¹

Let us now put things in perspective. All opinions agree that if one had in mind to eat only certain foods or only certain amounts of the foods (e.g., those with dietary goals), the *beracha* is then limited to what he had in mind.¹² All also agree that explicit intention to cover additional foods works in all but exceptional cases. The *machloket* between the *Taz/Magen Avraham* and the accepted reading of the *Shulchan Aruch* applies specifically to cases in which one did not give the matter thought or did not come to a clear decision when reciting the *beracha*.

Based primarily on distinctions in the context of *shechita*, Ashkenazi *poskim* rule that one must say a new *beracha* for foods regarding which he did not originally have clear intention, unless **one** of the following conditions exists: 1) The new food was in

7. *Yoreh Deah* 19:7.

8. *Yoreh Deah* 19:6.

9. *Orach Chayim* 206:5.

10. Ad loc.

11. *Yalkut Yosef*, *Orach Chayim* 206:21.

12. See *Shulchan Aruch*, *Orach Chayim* 174:5.

front of the person when he made the *beracha*.¹³ 2) The new food is of the exact same type as that upon which the person made the *beracha*.¹⁴ 3) The person had not finished eating the original food when he decided to eat the new food.¹⁵ 4) He originally sat down to eat a significant amount of this type of food.¹⁶ 5) He is dependent on others to determine what he will be offered to eat (e.g., a guest).¹⁷

Some of these factors do not help to exempt from a *beracha* in certain cases:¹⁸ 1) When the new food came from an unexpected place (e.g., a guest brought it after the *beracha* was made).¹⁹ 2) If, according to the rules of the order of *berachot*, the *beracha* should have been made on the second food, then only explicit intention allows the first *beracha* to cover it.²⁰

Since the detailed *halachot* are complex and difficult to remember, and many of them are subject to *machloket*, it is best to follow the view of the Rama and to have clear intention whenever making a *beracha* on one food to cover a wide variety of foods. If one has a broad intention on a regular basis, he does not need clear intention each time. (It is possible that not all *poskim* agree with this statement,²¹ but we believe it to be the correct ruling).

13. *Mishna Berura* 206:21.

14. *Ibid.* 22.

15. *Ibid.*

16. *Ibid.*

17. *Mishna Berura* 179:17; see *V'Zot HaBeracha*, p. 68.

18. For more details, see *V'Zot HaBeracha*, pp. 65-67; *Piskei Teshuvot* 206:18.

19. *Shulchan Aruch, Orach Chayim* 177:5.

20. Based on Rama, *Orach Chayim* 211:5; see *Mishna Berura* ad loc. 32.

21. See *V'Zot HaBeracha*, p. 65.

B-4: Birkat HaMazon for Those Who Have Left their Place of Eating

Question: If I leave the place where I was eating in the midst of a meal that included bread without first *bentching*,¹ can I come back to *bentch* when I remember? If so, how much time do I have in which to do so? If I had been eating with two other men and I return before the others have *bentched*, can I still join them for a *zimun*?

Answer: Regarding your first question of whether you are allowed to come back to *bentch* where you ate, the answer is that you certainly **may** come back and *bentch*. The more complex question is whether you are **required** to do so.

Beit Shammai² rules that if one **forgot** to *bentch* at the end of his meal and remembers to do so only when he is already in a different location, he is required to return to *bentch* in the place where he had eaten. Beit Hillel, on the other hand, maintains that one is permitted to *bentch* wherever he remembers. If one **purposely** left his place of eating without *bentching*, the *gemara*³ says that even Beit Hillel agrees that he must return to the location of his meal.

The *Shulchan Aruch*⁴ cites two opinions from the *Rishonim* as to whether we accept the ruling of Beit Shammai or Beit Hillel regarding returning after forgetting to *bentch*, and the *Shulchan Aruch* does not present a clear indication as to which opinion he accepts. The *Mishna Berura*⁵ comments that even the lenient opinion agrees that it is preferable to return to one's original place,

1. Reciting *Birkat HaMazon*.

2. *Berachot* 51b.

3. *Ibid.* 53b.

4. *Orach Chayim* 184:1.

5. 184:6.

and the *Mishna Berura* thus concludes⁶ that one should indeed return if it is not difficult to do so.

If one eats even a small amount⁷ of bread in his new location, then he need not return to *bentch* in his original place, because the new location becomes his place of eating.⁸ Indeed, he **preferably** should *bentch* in the last place he ate.⁹

Regarding until when one may still *bentch*, there is no difference whether he is in his original place or in a different one. The *mishna*¹⁰ says that one may *bentch* until the “food has been digested in his intestines.” The accepted explanation is that this means until a feeling of hunger has begun to return.¹¹ This time limit is obviously a function of how much one ate; in any event, it is difficult to pinpoint the exact moment at which one again “feels hungry.” Therefore, we usually work with the assumption that one has, from his last eating, the amount of time it takes to walk a distance of four *millin*, which most authorities hold is seventy-two minutes.¹²

There are other significant questions regarding a person who leaves his place of eating. One such question is what he should do when he wishes to continue eating upon his return. The *Shulchan Aruch*¹³ rules that unless one left behind others who continue eating in the original place, there is a break between the returner’s two eating sessions, and he therefore must first *bentch* for the first part and then recite a new *beracha* for the second installment. The Rama¹⁴ disagrees partially. He rules that if the food that one had eaten is of the type that mandates reciting a *beracha acharona* **before** leaving one’s location, then his meal is considered to continue, and additional *berachot* are not required. It is a matter

6. Ibid. 7.

7. Even less than a *k'zayit*; *ibid.* 9.

8. *Shulchan Aruch* op. cit. 2.

9. Ibid.

10. *Berachot* 51b.

11. *Berachot* 53b; *Shulchan Aruch* *ibid.* 5.

12. *Mishna Berura* 184:20.

13. *Orach Chayim* 178: 1, 2.

14. Ad loc.

of debate as to what exactly is included in this category of food,¹⁵ but all agree that a bread meal certainly is included. Nevertheless, it is improper to leave the place of one's meal for any extended period without first *bentching*, unless there is a pressing reason to do so, such as the need to perform a *mitzva* elsewhere.¹⁶

Although Sephardim generally accept the *Shulchan Aruch's* rulings over those of the Rama, this is an example of the counter-rule maintained by many Sephardi authorities – that one should not recite a questionable *beracha* even when the *Shulchan Aruch* says to recite it.¹⁷ Thus, for a Sephardi, it is especially important not to leave the location of one's meal with intention to return and continue eating, as this creates a situation in which he will not be able to comply with the *Shulchan Aruch's* ruling to make new *berachot*.¹⁸

If one had eaten with other people who remain in the original location, his connection to the original eating is certainly a strong one. Thus, the *Shulchan Aruch*¹⁹ agrees that in such a situation he does not require new *berachot*. Certainly, if before he left he had an obligation to join his counterparts for a *zimun*, he may do so upon his return.²⁰

15. Ibid. 5.

16. Rama *ibid*.

17. See *Kaf HaChayim, Orach Chayim* 178:1; *Yalkut Yosef, Orach Chayim* 178:(1).

18. See *V'Zot HaBeracha*, pp. 63, 142.

19. *Op. cit.*

20. See the related discussion in the *Shulchan Aruch, Orach Chayim* 194:2.

B-5: Reciting *Tefillat HaDerech* by Microphone

Question: I often take an intercity bus ride with a group of peers. One of us recites *Tefillat HeDerech* over a microphone, and everyone else answers *amen*. Are we properly fulfilling the *mitzva* when we use a microphone?

Answer: *Tefillat HaDerech* is an obligatory prayer asking for protection from the potential dangers of traveling.¹ Since it was instituted in *beracha* form, we assume that it follows the standard rules for fulfilling the obligations of *berachot* and prayers.

One of the most basic rules of being *yotzei* (fulfilling) one's obligation through listening to another person's recitation of a *beracha*, a required text, or *shofar* blowing is that the other person must be obligated as well.² Even the permissibility of answering *amen* to another's *beracha* requires that the *beracha* be a meaningful one.³ Therefore, all agree that one is not *yotzei* and should not answer *amen* to a *beracha* that he hears from a recording, as that which he hears from a machine is not significant in this regard.

Does hearing another person's recitation via microphone have more halachic significance than hearing it from a recording? Almost all *poskim* agree that one cannot fulfill the *mitzva* of hearing *shofar* via microphone, because one must hear the direct sound of a person who is obligated in the *mitzva* blowing the *shofar*.⁴ However, the ruling regarding hearing the *Megillat Esther* reading via microphone is less clear. Although one does not hear the actual voice of a valid *ba'al korei* when his voice is projected over a microphone, hearing the reading via microphone

1. See *Shulchan Aruch, Orach Chayim* 110:4-7.

2. *Rosh Hashanah* 29a.

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

4. See *Rosh Hashana* 27b.

is nevertheless certainly better than hearing it via a recording. This is for two reasons: First, the sound heard from a microphone is a direct transformation of the sound waves produced by the *ba'al korei*. In contrast, the sound produced by a recording is caused simply by someone pressing a button, thereby causing a machine to read a stored coding. Second, when using a microphone, the sound is heard essentially at the same time as the *ba'al korei's* reading, unlike the replaying of a recording. Due to these factors, a lenient position regarding fulfilling the *mitzva* via microphone is somewhat tenable (although most *poskim* nevertheless still maintain that one cannot do so).⁵

A *gemara*⁶ indicates that it is not always necessary to actually hear the voice of the person's recitation, as long as the listener knows what is being said. The *gemara* discusses a huge synagogue in Alexandria, in which many of the congregants could not hear the *sheliach tzibbur*; flags were therefore waved to inform those present when to answer *amen*. Thus, it might seem that one can fulfill his obligation even if he does not hear the actual words being recited. However, *Tosafot*⁷ limits this precedent to cases in which the participants are not attempting to fulfill any *mitzva* at the time; the *gemara's* discussion relates only to their answering *amen*. In any event, this source does indicate that at least in regard to answering *amen*, it is sufficient for one to know what is being recited, even without hearing the actual recitation.⁸

Of the different views, the much stronger position is that one cannot be *motzi* others in *mitzvot*, including the recitation of *Tefillat HaDerech*, via microphone. Nevertheless, while few Orthodox *shuls* use a microphone for reading *Megillat Esther*, it is more commonplace for people to say *Tefillat HaDerech*, for others as well, over a microphone. Can the two practices be

5. See *Igrot Moshe*, *Orach Chayim* II:108; *Tzitz Eliezer* VIII:11; *Minchat Shlomo* I:9 in the name of the *Chazon Ish*. See more on the topic in *Living the Halachic Process*, vol. IV, B-9.

6. *Sukka* 51b.

7. *Ad loc.* 52b.

8. See *Shulchan Aruch* and Rama, *Orach Chayim* 124:8.

reconciled?

The answer is that they arguably can be. First, it is generally assumed that the level of obligation in *Tefillat HaDerech* is of a lower level than that of set *tefillot*, thus making leniency in a case of *machloket* easier. Furthermore, when the *beracha* is recited on a bus, there are often additional grounds for leniency. Rav Ovadia Yosef assumes⁹ that whoever could possibly hear the recitation without the microphone can be *yotzei* even if in practice he hears the recitation primarily from the microphone. While one can take issue with this assumption, it is a reasonable one from an important *posek*.¹⁰ Applying this to your case of people on a bus, it is likely that most could hear the words of the *Tefillat HaDerech* without a microphone; they just might not hear them as well. Even if they could hear only most, but not all, of the words, that would often suffice for *Tefillat HaDerech* (unlike the case of *Megillat Esther*, for which one needs to hear (or read) every word).¹¹

It appears halachically preferable for people to recite their own *Tefillat HaDerech* along with the leader, especially those who could not have heard the words without the microphone. (One who does so noticeably, when others do not, might run into problems of *yohara*.¹²)

We note that in the case of many driving trips, there is actually a *machloket* whether *Tefillat HaDerech* should or should not be said, at least regarding its *beracha* ending. This means that in some cases, merely answering *amen* would actually be preferable to saying *Tefillat HaDerech* oneself, as a possibly unjustified *amen* is less halachically problematic than a questionably unjustified *beracha*.¹³ Therefore, the common practice (which we prefer justifying when possible) of one being *motzi* others in *Tefillat HaDerech* via microphone sometimes has a slight element of advantage.

9. *Yechaveh Da'at* III:54.

10. See *BeMareh HaBazak* I:26.

11. See more in *Living the Halachic Process*, vol. III, D-14

12. Appearing haughty.

13. See *Ishei Yisrael* 4:(10).

B-6: Beracha on a Newly Renovated Home

Question: After I complete major renovations in my home, should I recite *Shehecheyanu*?

Answer: The *mishna*¹ says that one who builds a new house or buys new “utensils” recites the *beracha* of *Shehecheyanu*. Although the *gemara*² cites an opinion that this *beracha* is to be recited only for the first such acquisition, which would exclude the possibility of a *beracha* on renovations, the *halacha* follows the opinion that it applies even if one built a second house.³

But are renovations comparable to a new house? The *mishna* and *gemara* in *Sota*⁴ discuss the *halacha* that one who has built a new house that he has not yet inaugurated returns from the battlefield. In that context, not every building project on one’s property necessarily qualifies as building a house. Rabbi Yehuda maintains that if one merely rebuilt his house on its previous site, he does not return from battle. However, the *gemara* posits that extending the height of one’s house does qualify. The *Mishna Berura*⁵ rules that this serves as a halachic precedent regarding the *beracha* of *Shehecheyanu* as well.

Contemporary *poskim* apply this rule to any significant **extension** of a house, even if one does not acquire new land. However, renovations that do not include expansion, but merely involve improvement of the house’s appearance or functionality, are not comparable to building or buying, and they therefore do not warrant *Shehecheyanu*.⁶ (We are not discussing here the new

1. *Berachot* 54a.

2. *Ibid.* 59b-60a.

3. *Shulchan Aruch, Orach Chayim* 223:3.

4. *Mishna*, 43a; *Gemara*, 44a.

5. 223:12 with *Sha’ar HaTziyun* ad loc. 14.

6. See *Halichot Shlomo* 23:14, in the name of Rav S.Z. Auerbach, and *V’Zot HaBeracha*, p. 166, in the name of Rav Mordechai Eliyahu.

furniture that often accompanies renovations, which themselves usually warrant a *beracha*.) The appropriate time for making the *beracha* on a new or extended house is when the new area is ready to be used, which coincides with the time for attaching a *mezuzah*.⁷

A few factors could raise questions about the *beracha*. The first is that there is a *minhag* cited by several Sephardi *poskim*⁸ to refrain from making a *beracha* on a new house. It is difficult to determine this *minhag*'s origin, reason, and extent. The *Pri Megadim*,⁹ an Ashkenazi authority, mentions a parallel *minhag* to not make *Shehecheyanu* on clothes or utensils, and he suggests that those who practice such a *minhag* must be relying on the opinion that *Shehecheyanu* in such circumstances is merely optional. The *Ben Ish Chai*¹⁰ is not impressed by this logic, but he confirms the *minhag* concerning a new house. He recommends solving the problem by following a different *minhag*: One should make a *chanukat habayit* upon entering the house, and at that point he should wear a new garment and recite *Shehecheyanu* with the intention that the *beracha* should relate to the house as well as to the garment. It is not clear to what extent there is a *minhag* of a *chanukat habayit* for renovations.¹¹ However, those who want to follow the *minhag*, as opposed to the established *halacha* to make the *beracha*,¹² can solve the issue with a new garment.¹³

Rav Chayim Palagi¹⁴ and the *Kaf HaChayim*¹⁵ maintain that one who bought a house on credit does not make a *beracha*, because of the trouble he may later have paying the cost and the possibility that, as a result, he might be forced to return it to the

7. *V'Zot HaBeracha*, p. 167.

8. See sources in *Yalkut Yosef, Orach Chayim 223:(2)*.

9. *Orach Chayim 223, Mishbetzot Zahav 4*.

10. I, *R'ei* 5-6.

11. The *Ben Ish Chai*, *ibid.* 7, writes that there is no need for one.

12. *Yalkut Yosef 223:2* and *Birkat HaShem 2:57* do not believe the *minhag* should uproot the *halacha* to make the *beracha*.

13. *Ibid.*

14. *Lev Chayim III:52*.

15. *Orach Chayim 223:18*.

seller. However, there are strong questions against this opinion.¹⁶ Furthermore, this is likely irrelevant regarding renovations, as even one who takes loans for that purpose rarely is nervous that he might not be able to pay them back, and he certainly need not be concerned that he might have to “return” the renovations.

A more fundamental question is whether *Shehecheyanu* is even the correct *beracha* for this discussion. The rule is that for acquisitions that benefit more than one person, *Shehecheyanu* is replaced by *HaTov V’Hameitiv*.¹⁷ The *gemara* specifically discusses the case of buying a house together with a partner, but this rule similarly applies to an acquisition that also benefits family members.¹⁸ However, if there is a question of doubt between the two *berachot*, *Shehecheyanu* is the safer one, as it can work even when *HaTov V’Hameitiv* is the appropriate *beracha*.¹⁹ This is apparent from the views cited above who suggest using the *beracha* on new clothes – which is *Shehecheyanu* – to cover the *beracha* on a new house, which is usually *HaTov V’Hameitiv*.

16. See *Birkat HaShem* 2:(251).

17. *Shulchan Aruch* op. cit. 5.

18. See *Shulchan Aruch* *ibid.* and *Bi’ur Halacha* to 223:3.

19. *Bi’ur Halacha* to 223:5.

B-7: HaMapil for Those Who Take a Long Time to Fall Asleep

Question: I recently discontinued the practice of saying *HaMapil*, because I don't fall asleep quickly, and I find that I sometimes end up talking after the *beracha*. Is this the correct approach?

Answer: Reciting the *beracha* of *HaMapil* before going to sleep is mandated by the *gemara*¹ and codified as *halacha*.² We say it prior to going to bed, in conjunction with the recitation of *Kri'at Shema*, which is also an obligation, and together with other *p'sukim* and texts that relate to our desire for divine protection while sleeping. There are different opinions as to the proper order of the recitation of these different texts, but the prevalent opinion is that one should say *Kri'at Shema*, then *HaMapil*, and then the other *p'sukim*.³ *HaMapil's* main content is to thank HaShem for the benefits of sleep and to request a pleasant sleep without fright or improper thoughts.

Let us examine the nature of the problem of speaking between *HaMapil* and falling asleep, which will help determine whether you made the right choice. The *gemara*⁴ says that one makes this *beracha* as he prepares to lie down in bed to sleep. The Rama⁵ writes that one should not eat, drink, or talk between *Kri'at Shema* and actually sleeping. Most assume that this applies as much, or more so, to interruptions between *HaMapil* and sleeping.

A break (*hefsek*) could be more problematic after *HaMapil* than after *Kri'at Shema* for two reasons. First, if one were to talk or eat after *Kri'at Shema*, he could always repeat *Kri'at Shema* later, with the hope that this time it would actually be right before

1. *Berachot* 60b.

2. *Shulchan Aruch, Orach Chayim* 239:1.

3. See *Mishna Berura* 239:2.

4. *Berachot* op. cit.

5. *Orach Chayim* 239:1.

falling asleep.⁶ However, one cannot repeat *HaMapil* at will, since it is a *beracha*.⁷

Another reason to be careful not to talk after reciting *HaMapil* relates to a fundamental question as to *HaMapil*'s function. The *Chayei Adam*⁸ says that the *beracha* was instituted as a general thanks to HaShem for providing sleep, and it is thus appropriate to recite it at night, when people generally go to sleep. He further suggests that the *beracha* has significance even if one does not end up falling asleep, because it is recited at the time that people in general do sleep. This is similar to the idea of a person reciting *Birchot HaShachar* to praise HaShem for things from which people benefit in the morning, even when the person himself did not benefit on that particular day from those specific things.⁹

On the other hand, many¹⁰ cite the *Seder HaYom*, who maintains that *HaMapil* should be said very close to the time that one falls asleep, as the *beracha* relates to one's personal sleep. The *Bi'ur Halacha*¹¹ strengthens this opinion by noting that *HaMapil* was composed in the first person, implying that it refers to the sleep of the one reciting the *beracha*.¹² Indeed, Rav Moshe Shternbuch¹³ suggests that the reason that some do not recite *HaMapil* is that it must be said close to falling asleep, and it is difficult to determine when that will be.¹⁴

The *Bi'ur Halacha* is uncomfortable deciding between these two approaches, and he therefore recommends that one not recite *HaMapil* if he is not confident that he will fall asleep. However, the *Bi'ur Halacha* does not completely uproot the obligation for the average person, in spite of the general concern that one might **unexpectedly** fail to fall sleep.

6. Ibid.

7. *Mishna Berura* 239:4.

8. I, 35:4.

9. Rama, *Orach Chayim* 46:8.

10. Including *Yechaveh Da'at* IV:21.

11. To 239:1.

12. See *Sha'arei Teshuva* 46:12.

13. *Teshuvot V'Hanhagot* II:131.

14. Rav Shternbuch himself disagrees with this approach.

We will suggest a similar approach for you. If you have specific reason to believe that you **will be unable** to refrain from speaking before falling asleep, then it may be safer to refrain from making the *beracha* (although the opinion that one's intention at the time he recites the *beracha* is the critical factor appears to us more correct¹⁵). If you recite *HaMapil* and a long time passes before you fall asleep, it is unclear how great the need has to be in order for you to be allowed to speak or eat.¹⁶ We believe that one can be lenient on the matter.¹⁷ If you want to avoid entering into the situation of doubt of whether you may eat or talk during this extended period of time, you may wait until you are getting closer to falling asleep before reciting *HaMapil*. If, as a result of waiting, you inadvertently fall asleep before reciting it, you are not to be blamed.

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

16. See *Ishei Yisrael* 35:9; *Piskei Teshuvot* 239:3.

17. See *Tzitz Eliezer* VII:27.

B-8: Time Limit on *HaGomel* After Birth

Question: My wife gave birth a few months ago and has not yet recited *Birkat HaGomel*. May she still do so?

Answer: Historically, there was a long-standing and prevalent *minhag* that women did not recite *Birkat HaGomel* at all.¹ Nowadays it has indeed become prevalent for women to recite *Birkat HaGomel* after birth, but it is still rare for a woman to say this *beracha* for other reasons, e.g., after travel, even when her husband recites it for the same trip.

The *Magen Avraham*² explains the practice of women not to recite *HaGomel* as based on the understanding that *HaGomel* is generally an optional *beracha*. The *Halachot Ketanot*³ suggests that according to the opinion that *HaGomel* cannot be recited without ten men, it makes sense that women would have been excluded from the obligation due to *tzniut* considerations.⁴ *Har Tzvi*⁵ suggests an interesting reason for new mothers in particular not to say *HaGomel* – the text of the *beracha* states that HaShem does good things “*l’chayavim*,” for the guilty. Usually, if a person finds himself in a state of danger, he could take this as a sign that he may be deserving of punishment due to some wrongdoing. However, the danger faced by a woman giving birth stems, on the contrary, simply from her participation in the most natural, wonderful *mitzva*.

One might argue that whatever the reason for exemption, a woman should not recite a possibly improper *beracha* in which she may not be obligated. Furthermore, there are “safer” alternatives.

1. *Mishna Berura* 219:3.

2. Introduction to *Orach Chayim* 219.

3. II:161.

4. The *Mishna Berura* op. cit. cites this issue but recommends that the new mother recite *HaGomel* in front of a group of ten, most of whom are women.

5. *Orach Chayim* I:113.

For example, there was a *minhag*⁶ that a man whose wife had recently given birth would get an *aliya* the first time that the woman returned to *shul*. The couple would have in mind to thank HaShem when the husband blessed HaShem with “*Borchu...*,” and she would answer his *berachot*. Such a practice avoids the recitation of a questionable *beracha*. Alternatively, a woman could wait for a man who in any event has to say *HaGomel* and have him recite it for the two of them.⁷

However, while we generally are not opposed to finding ways to obviate questionable *berachot*, we feel that the relatively new practice of following the simple halachic indication – that a woman should recite *HaGomel* herself after giving birth – should continue. Furthermore, even in your case, in which a few months have gone by, we are confident that it indeed is appropriate for your wife to recite *HaGomel*, as we will now explain.

The *Shulchan Aruch* rules⁸ regarding the timing of *Birkat HaGomel*: “If one delayed, he may [still] make the *beracha* **whenever he wants**; and it is correct **not to delay for three days**.” When the *Shulchan Aruch* states that the *beracha* may still be recited “whenever he wants,” does this actually mean that the obligation is completely open-ended? Considering that the *Shulchan Aruch* himself continues that “it is correct not to delay for three days,” it would, at first glance, seem logical that he would not extend the possible delay by months.

The source of the three-day period is the opinion cited in the *Beit Yosef*⁹ that maintains that after three days, it is too late to make the *beracha* even *b’di’eved*. Another opinion cited by the *Beit Yosef* rules that there is a five-day deadline.¹⁰ According to the *Shita Mekubetzet* and the *Ra’ah*,¹¹ one may recite *Birkat HaGomel* even more than a month after the obligation began.

6. See *Torat Chayim*, *Sanhedrin* 94a; *Mishna Berura* 219:3.

7. See *Living the Halachic Process*, vol. II, B-7.

8. *Orach Chayim* 219:6.

9. *Orach Chayim* 219.

10. The *Aruch HaShulchan*, *Orach Chayim* 219:7, cites it as a minority opinion.

11. *Berachot* 54b.

But even according to this last opinion, it seems logical that there should be some outer limit as to how long one can still recite the *beracha*.

It is important to note that the opinions limiting the recitation of *HaGomel* to three or five days relate to the recitation of the *beracha* after embarking on a trip, as the *Beit Yosef's* sources discuss how long is considered “after a trip.” In that context, this time limit makes sense, as a next trip may be soon upcoming. In contrast, births (other than those of twins) are usually considerably more than a year apart, and it therefore would make sense that one would have at least a year’s time to recite the *beracha*.

In addition, the *Aruch HaShulchan*,¹² referring to the *Shulchan Aruch's* language of “whenever he wants,” excludes cases in which such a long time has passed that the matter is already forgotten. Halachically, one prominent cutoff time for how long something is generally remembered is twelve months.¹³ Furthermore, while a trip is often forgotten relatively quickly, memories of a birth linger for much longer. Although the memories usually focus on the happy parts of the birth, whereas the *beracha* relates to the danger involved, these two aspects of childbirth are obviously related. Furthermore, thoughts of the labor itself also do indeed linger for a long time.

Yet another point to note is that the time from which one may first say *HaGomel* is also not clear. A sick person says *HaGomel* when he is fully recuperated.¹⁴ But when is a woman considered to have recuperated from birth? There are halachic cutoff points for the stages of when a woman during post-birth recuperation is still considered ill; one cutoff point is seven days (which is a common, but not unanimous, starting point presented regarding *HaGomel*),¹⁵ and another cutoff point is thirty days.¹⁶ Much may

12. *Orach Chayim* 219:7.

13. See *Berachot* 58b; *Bava Metzia* 24b; *Shut Chatam Sofer, Even HaEzer* I:119.

14. *Mishna Berura* 219:2.

15. *Kaf HaChayim, Orach Chayim* 219:7; see *Dirshu* 219:2.

16. See *Shulchan Aruch, Orach Chayim* 330:4.

also depend on the specific case.¹⁷ In any event, since the time when a new mother may first recite *HaGomel* is not particularly well defined, it is logical that there should be significant flexibility regarding the maximum time limit as well.

Considering all of the above, our inclination is that a woman within twelve months of birth can and should be encouraged to still recite *HaGomel* (barring a personal reason to the contrary).

17. See *Dirshu* op. cit.

Section C:
Shabbat

C-1: Flying a Kite on Shabbat

Question: Is it permitted to fly a kite on Shabbat?

Answer: The *mishna*¹ lists several *gezeirot* (Rabbinical injunctions) prohibiting certain actions on Shabbat and *Yom Tov* lest one come to inadvertently violate a Torah prohibition. Among other things, one may not climb a tree or ride an animal (in both cases, lest he pull off a tree branch), float in a body of water (lest he build a raft), or bang to a rhythm (lest he repair a musical instrument). We intuitively assume that if kites were prevalent in *Chazal*'s time, they similarly would have been forbidden on Shabbat. After all, kites often need adjustments, whether to the frame or in tying knots, many of which include Torah prohibitions.

But should we follow the spirit of *Chazal* and forbid things we intuit that they would have forbidden? Our general approach is that just as we do not dismiss *gezeirot* whose reasons are weak in our times, we do not institute new *gezeirot*. In other words, *gezeirot* are for the most part a “closed book” that we inherited from the Talmudic scholars.

Nevertheless, there are some activities – including riding bicycles – that almost all observant communities forbid, even though most of the reasons given resemble *gezeirot*. These are apparently matters that the general rabbinic community feels are contrary to the spirit of Shabbat or are very likely to cause violations if permitted. (There were times when bicycles were a major means of transportation, and the ability to use them on Shabbat could potentially make the nature of life on Shabbat more mundane. This concern is in addition to the possibility of contributing to Shabbat-desecrating mistakes.)

We do not expect the emergence of a consensus forbidding kite flying, given its recreational nature and our assumption that allowing it will not affect the nature of Shabbat observance. In

1. *Beitza* 36b.

searching for sources, we found a few short responses with the expected content: Some rabbis forbid flying kites because it is not in the spirit of Shabbat or because of the possibility of violations. Others say that there are no firm grounds to forbid it and that it is therefore permitted.

We add our voice to the latter approach, with certain simple instructions. One may fly a kite only in an area where there is an *eiruv*, so that the kite can be carried outside, and the kite, strings, and knots must not be adjusted on Shabbat. Additionally, if the kite becomes stuck in a tree, one may not pull it out.²

We would suggest that those who are not thoroughly familiar with the pertinent laws or are apt to forget themselves while in action should refrain from kite flying as a personal precaution. Those who take kite flying very seriously would do best to refrain from it so as to not infringe on the spirit of Shabbat. However, for others, we do not discourage it as an occasional activity, when it is presumably not taking them away from a better use of the precious gift of Shabbat. While we appreciate the opinion of those who feel that kite flying is not a proper Shabbat activity, we are not inclined to believe that our communities will be impacted negatively by permission to fly a ready-to-use kite.

In this context, let us deal with two further halachic questions that may arise during kite flying. What should be done if you fly a kite near the boundary of a *reshut hayachid*³ and the kite goes over the wall, so that it is now over a public domain? As long as the kite continues to fly above 10 *tefachim*⁴ off the ground, there is no problem because that region over a public domain is a *makom p'tur*.⁵ It is permitted to move an object from a *reshut*

2. See our “Ask the Rabbi” article in *Hemdat Yamim* and *Torah Tidbits*, *Bechukotai* 5778.

3. A private domain, which is fenced in or is surrounded by an *eiruv*. It is permitted to carry in a *reshut hayachid*.

4. Approximately one meter (three feet).

5. An area that is neither a public nor a private domain, a “halachic vacuum.” See *Shulchan Aruch, Orach Chayim* 345:12.

hayachid to a *makom p'tur*⁶ and to move items within the *makom p'tur*. However, transferring something from a *reshut hayachid* to a *reshut harabim*⁷ through a *makom p'tur* is forbidden,⁸ and this happens if the kite **lands** outside the *eiruv*. (A discussion of the topic of items repositioned by means of the wind is beyond our current scope.⁹) Nevertheless, provided that this is not a certain outcome and it is not your intention, you need not be concerned if it happens accidentally, based on the concept of *davar she'eino mitkaven*.¹⁰ (If it does happen, you should not retrieve the kite.)

The *Shulchan Aruch*¹¹ writes that one may not play with a ball on Shabbat; since a ball does not have a “real purpose,” it is considered *muktzeh*. The Rama¹² disagrees. Some Sephardim are stringent on the matter, and some extend the logic to games that have pieces of different sorts.¹³ If one is stringent in those cases, the stringency should also apply to a kite.

6. Ibid. 346:1.

7. Public domain.

8. Ibid.

9. See *Yabia Omer* IV, *Orach Chayim* 35.

10. When one does an action in order to produce permitted result A, but there is a chance that it can also produce forbidden result B, for which he does not intend; see *Shabbat* 29b.

11. *Orach Chayim* 308:45.

12. Ad loc.

13. See *Yalkut Yosef*, *Orach Chayim* 308,6: 26,27.

c-2: Returning *Chulent* with Bones to the Fire

Question: The *Shemirat Shabbat K'Hilchata* writes that in order to return a pot to its heat source on Shabbat, all the food must be fully cooked, even the bones.¹ I cook *chulent* (stew) on a low flame for hours before Shabbat and leave it on a hot plate for Shabbat. At night, I take it off the hot plate to remove and eat a little, and I then return the rest for the day meal. Although some of the bones are cooked by then, other bones become fully cooked only overnight. Must I stop returning the pot under these conditions?

Answer: We will begin our discussion with a fascinating *machloket* about cooking bones between two of the great *poskim* of the previous generation, Rav Moshe Feinstein and Rav Shlomo Zalman Auerbach.²

Rav Feinstein³ writes that the requirement that food that one wants to return to a heat source must be fully cooked does not apply to bones, as they are not considered food. He relies both on logic/observation (people do not eat bones) and on halachic sources (bones do not have a *halacha* of meat with regard to the laws of *kashrut*⁴). Therefore, making bones soft enough to be **theoretically** fit for consumption on Shabbat is not considered cooking.

Rav Auerbach – who lived in Israel, where it is much more common to eat at least some bones – maintains that bones are considered food with regard to the laws of Shabbat, even if they are not equivalent to meat in the context of *kashrut*.⁵ Accordingly,

1. 1:18.

2. In an exchange of letters that appear in the books of each, as cited below.

3. *Igrot Moshe, Orach Chayim* IV:76-77.

4. See *Shulchan Aruch, Yoreh Deah* 87:7, 99:1.

5. *Minchat Shlomo* I:6.

he says that one must make sure that the bones are fully cooked before doing anything that will hasten the cooking (e.g., returning them to the fire, moving them to a hotter part of a *blech*, or returning a pot cover that one had removed).

Since *Shemirat Shabbat K'Hilchata* was written by a close disciple of Rav Auerbach, it is no surprise that he is stringent on the matter. However, as we have seen, this opinion is not unanimous. Indeed, these two halachic giants argued to an extreme. Rav Feinstein maintains that even an individual who eats bones can have them cook on Shabbat; his nonstandard behavior does not turn bones into food. Rav Auerbach asserts that, on the contrary, even one who does not eat bones must be careful not to cook them; they are considered food, as many people do eat them.

We are torn as to which approach to accept. On the one hand, Rav Auerbach's general logic is compelling (halachic details are beyond our present scope). On the other hand, there are crucial indicators supporting the view of Rav Feinstein: 1) It has long been common practice to ignore the bones' status and 2) there are no explicit earlier sources on this frequent occurrence.⁶ Rav Auerbach himself does not take his thesis the whole way: Although one is not permitted to increase the heat on food if there is a doubt regarding whether it is fully cooked,⁷ Rav Auerbach permits those who do not plan to eat the bones to move food with bones to a hotter place.

In addition to the assumption that bones are not food, there are two other basic reasons for leniency:⁸ 1) One's intention is focused on the meat (keep it hot), rather than the bones (finish their cooking). 2) In many cases, it is possible that the bones are already considered cooked. (It is difficult to make this

6. Furthermore, if one were to take Rav Auerbach's position to its logical conclusion, he would end up with an untenable stringency (which I refuse to share out of concern that someone will adopt it or feel guilty about not doing so).

7. *Bi'ur Halacha* to 318:4.

8. See a citation of several contemporary *poskim* in *Melechet Shabbat* (Leitner), vol. II, pp. 67-76.

determination, especially considering that there is a *machloket* regarding whether cooking is forbidden after a food has reached the stage of *ma'achal ben d'rusai*.⁹)

We would certainly not criticize one who ignores the issue of bones, at least if members of his household do not generally eat bones. Even if you want to be *machmir* and follow the view of Rav Auerbach, you can be lenient in your case, in which the stew has been cooking for a long time (albeit on low heat). In that situation, any bones that are not ready at night are also not the ones that you (and presumably most others) would eat. Regarding such bones, Rav Auerbach presumably agrees with Rav Feinstein that the *halachot* of cooking do not apply.

9. Minimally cooked. See *Bi'ur Halacha* op. cit.

C-3: Heating Up Bread on Shabbat

Question: Is it permitted to heat up or defrost *challa* on a hot plate on Shabbat in such a manner that it can or does become crisp'?

Answer: There is much to say on the topic of reheating fully cooked foods on a hot plate on Shabbat, but we will deal here only with the issue that you raise of the baked bread becoming crispy.

Once an item is fully cooked,² it is not possible to violate the Torah prohibition of cooking it on Shabbat.³ However, putting the food on the flame could violate Rabbinic injunctions that were made to prevent transgression, such as out of the concern that one may adjust the heat source. Moreover, although baked goods⁴ are not subject to a prohibition of further baking, the *Yerei'im*⁵ maintains that it is prohibited to cook on Shabbat something that was already baked or bake something that was previously cooked.

Based on this, it seems logical to conclude that one may turn bread into toast, as that is simply further baking of the bread. Indeed, important *poskim* maintain this position.⁶ However, there are also important dissenters, for various reasons. The Rambam⁷ writes that turning a soft substance into a hard substance or vice versa is considered “cooking.” The *Sho'eil U'Meishiv*⁸ applies this concept even to food that is already edible if one changes its consistency significantly, e.g., making soft bread into toast.

1. We are not referring to cases in which the *challa* is reheated at low heat so that it cannot get crisp.
2. Cooking is accomplished through the medium of hot liquid; deep frying is in the category of cooking.
3. *Shabbat* 145b.
4. Baking is accomplished through the medium of hot air; roasting is like baking (see *Magen Avraham* 318:17).
5. 274.
6. See *Yechaveh Da'at* III:22; *Shevitat HaShabbat, Mevashel* (92).
7. *Shabbat* 9:6.
8. III:II:20.

This, however, is a problematic reading of the Rambam, who apparently makes hardness/softness a factor only for non-foods (metals and wax), or perhaps when the change in texture turns something into an edible food.⁹ The *Rav Pe'alim*¹⁰ maintains that hardening bread is forbidden as *makeh b'patish* (roughly, creating a new entity). However, making toast does not always entail a significant change, and most *poskim* disagree with the application of *makeh b'patish* to foods.¹¹

The strongest arguments to forbid making toast are found in *Orach LaTzaddik*:¹² 1) Making toast is a qualitatively different process from baking. 2) Since the tastes of toast and bread are so different from each other, this case is an exception to the rule that there is no violation of baking after baking. This view is cited and accepted by such important *poskim* as the *Shemirat Shabbat K'Hilchata*¹³ and *Kaf HaChayim*.¹⁴

According to the *Orach LaTzaddik*'s first distinction, if the *challa* is put in a pan, and apparently even if it is put directly on the hot plate, the new process is too similar to the original baking to cause the *challa* to be forbidden. It would be prohibited, however, to place the *challa* over an open flame. According to the *Orach LaTzaddik*'s second distinction, there would be a problem only if the *challa* is left heating long enough for the bread to take on "a new taste," but not if it simply becomes crispier.

In general, one may not put food in a place where it would cook if left for a long time, even if he plans to remove it sooner.¹⁵ However, in our context, in which the food is already objectively cooked (i.e., baked), the problem of taking it to the next stage may depend on the intention for that to happen.¹⁶ Therefore, one

9. See *Yechaveh Da'at* op. cit.

10. II, *Orach Chayim* 52.

11. *Bi'ur Halacha* to 318:4; see *Yechaveh Da'at* op. cit.

12. 6.

13. 1:62 and n. 183 of 5739 edition.

14. 318:78.

15. *Shulchan Aruch, Orach Chayim* 318:14.

16. See *Taz, Orach Chayim* 318:6, one of the *Orach LaTzaddik*'s main sources.

who plans to only defrost *challa* does not have to worry that he may forget it on the hot plate until it has turned into toast. Finally, when a whole *challa* becomes crispy on the bottom, the character of the *challa* is not significantly changed, and the reasons to prohibit toast, as cited above, do not apply.

It is important to note that if *challa* is not fully baked (based on the normal perception in society), which is more likely to happen if the *challa* is homemade, it is forbidden to put it in a place where even a small part of it could become fully baked if left long enough.¹⁷ However, we do not find that the *poskim* are concerned about such a possibility in normal situations in which food appears to be cooked or baked.

In summary, there is some logic for the stringency not to purposely make bread into toast on Shabbat. However, simply defrosting or heating up *challa* in a way that is neither likely nor intended to significantly change its character is permitted according to almost all authorities.

17. See Rambam, *Shabbat* 9:5.

C-4: Using a Shabbat Clock for an Urn

Question: My hot water urn has a Shabbat setting, in which the water is heated at a constant level and the switch for boiling the water is disabled. The socket in which I plug in the urn is on a Shabbat clock that is off at night. When the clock goes on in the morning, the water, which has become cold overnight, heats back up. Is that permitted?

Answer: Although we accept the opinion among the *Rishonim* that it is forbidden on Shabbat to reheat boiled water that has cooled down,¹ in the case you describe, you would not be considered to be cooking, since this is done automatically. The question is whether your setup violates the Rabbinical prohibitions of *shehiya* or *chazara*.

Shehiya, leaving food on the “flame”² from before Shabbat, is sometimes forbidden, out of a concern that one will raise the flame on Shabbat. It is permitted if the heat source is covered in a way that reduces its efficiency³ or (likely) regarding a nonadjustable heat source.⁴ However, neither lenient factor exists in your case; you can raise the heat of the urn by switching from the Shabbat setting to the normal mode. A common claim for leniency in the case of a water urn is that once the water has already been boiled, further boiling causes unwanted evaporation, and we therefore are not concerned that one will raise the heat.⁵ However, your case could possibly be more problematic since the Shabbat timer turns the urn on at low heat, and one may desire extra heat to return the cooled-off water to the desired temperature more quickly.

1. *Shulchan Aruch* and Rama, *Orach Chayim* 318:4,15.

2. Most heat sources are equivalent.

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

4. *Hilchot Shabbat* (Eider), p. 340.

5. See *Shulchan Aruch* op. cit.

Chazara, returning on Shabbat food that had been removed from the heat, is treated with more stringency. For example, it is forbidden to do *chazara* on an uncovered, adjustable heat source even when raising the temperature is detrimental to the food.⁶ Is your case considered *chazara*, given that the heat source starts functioning again through the action of a machine, rather than a person? The answer may depend on the reason for the stringency of *chazara* in comparison to *shehiya*. Rabbeinu Tam maintains that it is due to a heightened concern that one will raise the heat since the food was returned after being off the flame for a while.⁷ However, the Ran⁸ maintains that the added problem is that returning cooked food to a heat source may be confused with cooking. In your case, Rabbeinu Tam's reason seems to apply, as you may be inclined to raise the heat of the urn; the Ran's reason does not apply, since you are doing no action on Shabbat.

Let us examine a discussion about a parallel case. The Rama⁹ writes that on a winter Shabbat morning, a non-Jew may put cold cooked food near a fireplace, which a non-Jew is permitted to light for a Jew due to the extreme cold, thereby also heating the food. Why aren't we concerned that a Jew will stoke the burning coals? The *Pri Megadim*¹⁰ suggests that this ruling must rely on the opinion that reheating liquids is permitted. Consequently, the reheating is not significant enough to forbid due to the concern that one might stoke the coals. The *Chazon Ish*¹¹ suggests other possible answers. One is that if a food is put in a position with intention to heat it but there is presently no heat, we treat the situation as equivalent to *shehiya*. Since the *Chazon Ish* claims elsewhere¹² that the concern of raising the flame regarding *shehiya* does not apply to fully cooked food, even if it is now cold, this

6. Ibid. 2.

7. *Sefer HaYashar* 235; see *Tosafot, Shabbat* 38b; *Am Mordechai, Shabbat* 1.

8. *Shabbat* 17b in Rif's pages.

9. *Orach Chayim* 253:5.

10. *Eshel Avraham* 253:41.

11. *Orach Chayim* 37:21.

12. Op. cit. 27.

explains the Rama's ruling.

Despite the fact that this view of the *Chazon Ish* would seem to permit reheating in the situation that you describe, reheating cooled water may be worse than reheating other cooked foods.¹³ Although there is room for leniency given that the urn was operating when Shabbat began and no action was taken since then,¹⁴ the *Shemirat Shabbat K'Hilchata*¹⁵ is stringent when the water has cooled off totally, and the *Orchot Shabbat*¹⁶ is uncertain.

However, your urn has a feature that provides further support for leniency: When the Shabbat mode is on, one cannot raise the heat. This is similar, in some ways, to one who seals an oven that has burning coals inside where food is heating, which is permitted even though the seal can be removed.¹⁷ It is unclear whether the Shabbat-mode button, which is deactivated by a simple press, is a sufficient deterrent,¹⁸ and it is also unclear whether this leniency applies when elements of *chazara* exist.¹⁹ However, combining this factor along with the aforementioned grounds for leniency, it is not difficult to justify your practice.

13. *Orchot Shabbat* 2:(11).

14. See *Am Mordechai, Shabbat*, p. 51.

15. 1:40.

16. 2:(49).

17. *Shabbat* 18b.

18. See cases in *Orchot Shabbat* 2:18-19.

19. See *ibid.* 55.

c-5: Using Salt to Absorb Spilled Wine on Shabbat

Question: I have heard that if one spills red wine on a tablecloth, salt can be used to absorb the wine. Is that permitted on Shabbat, since the salt is only absorbing the wine and not actually cleaning the tablecloth?

Answer: The *melacha* of *melaben* (literally, whitening, but for our purposes, laundering) can be accomplished in different ways. We will investigate whether using salt this way fits into one of the prohibited types.

Melaben applies to cleaning fabrics but not to removing dirt that is on top of hard surfaces. Whether a certain means of removing filth is permitted can depend on the surface in question. For example, one may pour water over a dirty leather object,¹ whereas this is forbidden in the case of a fabric (even though it is permitted to wipe a fabric with a cloth).² In discussing this distinction, the *gemara*³ explains that regarding a fabric, “soaking it is laundering it.” Since a standard tablecloth falls under the category of fabric, it is forbidden to put water on it when it is soiled.

Removing liquid from a fabric may also be forbidden as laundering. The Rambam⁴ states that squeezing water out of a garment is included in the prohibition of laundering. There is disagreement among the *Rishonim* regarding whether this ruling includes all liquids or only water, which is the liquid normally used in the laundering process.⁵

1. *Mishna, Shabbat* 142b.

2. *Shulchan Aruch, Orach Chayim* 302:9.

3. *Zevachim* 94b.

4. *Shabbat* 9:11.

5. See *Kesef Mishneh* ad loc.

The permissibility of removal of dirt from a garment by means of shaking it is also a matter of dispute. The *gemara*⁶ says that if one is particular about the cleanliness of a certain garment, it is forbidden to shake it out on Shabbat. Rashi⁷ writes that the *gemara* is discussing shaking off dirt. *Tosafot*⁸ disagrees and argues that shaking off dirt cannot be considered laundering; rather, the reference is to shaking out water from the garment, which makes it considered part of the laundering process. The Rama⁹ states that one should try to follow the strict opinion (Rashi). With this background, let us now consider removing wine by absorbing it with salt.

Absorbing a wine spill with a napkin or even a cloth rag is permitted,¹⁰ on the condition that one is careful to avoid pressing on the tablecloth in a manner that would squeeze some liquid out of it, as well as to avoid squeezing the rag afterward.¹¹

In some ways, absorbing the wine with salt seems to be less of a problem, as it reduces the likelihood of squeezing the tablecloth and it is not feasible to squeeze the salt afterward. However, our research indicates that the salt does more than simply absorb surface liquid. In fact, it draws out wine that has already been absorbed in the tablecloth and would not be removed by, say, a paper towel. This is precisely why “home-cleaning” experts say that salt prevents the stain from setting and even removes at least some of it, which is more extensive than just absorbing surface liquid. Indeed, from the context of a *halacha* in a different realm, we know that salt is put on meat to draw out the blood from beneath its surface. In some ways, the salt acts similarly to water, which stops the dirt from setting and “encourages” some of the dirt to come out,¹² and, as stated above, it is forbidden to pour

6. *Shabbat* 147a.

7. Ad loc.

8. Ad loc.

9. *Orach Chayim* 302:1.

10. See *Mishna Berura* 302:60.

11. See *Shemirat Shabbat K'Hilchata* 12:37-38.

12. Of course, more complete results are reached through agitation/scrubbing.

water on the tablecloth. On the other hand, we have seen that not every action that helps make a fabric cleaner is forbidden.

With a dearth of classical sources on this case or exactly equivalent ones, our halachic intuition is that putting salt on the spill is considered like applying a stain-remover to a fabric and is therefore forbidden. This is in line with Rav Shlomo Zalman Auerbach's ruling¹³ that it is forbidden to put talcum powder on greasy clothes in order to soak up the fat. We concur with that ruling, and, as our case seems quite similar, we would not permit putting salt on the tablecloth on Shabbat to soak up wine. Rather, we recommend soaking up what one can with a rag or a paper towel on Shabbat and treating the tablecloth with cleaners after Shabbat.

13. Cited and accepted by *Shemirat Shabbat K'Hilchata* 15:24 and *Orchot Shabbat* 13:20.

c-6: Giving an Envelope on Shabbat to Use for Donations

Question: It is the practice in some *shuls* to give a self-addressed envelope to one who gets an *aliya* so that he can mail in a donation after Shabbat. Is the envelope *muktzeh*?

Answer: When we originally answered this question,¹ we reasoned that the envelope is a *kli shemelachto l'issur*,² which may not be moved without a Shabbat-focused purpose.³ We also posited that giving the envelope is forbidden *hachana*,⁴ as this is done to facilitate mailing or presenting a check after Shabbat. We suggested solving both problems by putting a *d'var Torah* in the envelope, thereby having it serve for a permitted use on Shabbat.⁵

However, it has been brought to our attention that there are legitimate, although in our opinion not conclusive, grounds to permit this practice. The *Bi'ur Halacha*⁶ cites a comment of the *Eliya Rabba*⁷ claiming that a utensil that was apparently made to be a *kli shemelachto l'issur* does not actually become *muktzeh* until it is used for that purpose. This is based on the rule of *hazmana lav milta*.⁸ However, *Tosafot*⁹ and the *Pri Megadim*¹⁰ apply this leniency only when the object has uses that are permitted on Shabbat. If from the outset the object will clearly be used primarily (perhaps, exclusively) for forbidden activities, it is *muktzeh* even before it is used.

1. See *Hemdat Yamim, Parashat Vayeitzei* 5773.

2. An object whose main purpose is for a use that is forbidden on Shabbat.

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

4. Preparation for after Shabbat.

5. See *Yalkut Yosef, Shabbat* II, p. 346 of the 5752 edition.

6. To 279:6.

7. 279:13.

8. Merely preparing something for a certain halachically significant purpose does not yet invest the object with its expected status.

9. *Shabbat* 44b.

10. *Eshel Avraham* 279:14.

The exact formulation of the above rule may be critical in determining the *halacha* in our case. Once the envelope has the *shul's* address printed on it, it is identifiable as being intended to be mailed or delivered (presumably, containing a check or cash). Nevertheless, according to the **simple** reading of *Tosafot* (and perhaps the *Eliya Rabba*), only items that have virtually no chance of being used first for permitted purposes are forbidden before use. According to several contemporary *poskim*,¹¹ however, it seems that an object is forbidden as *muktzeh* even if there is also a permitted use if it is clear that this is not the main intention. Each of these *poskim* gives a hammer as an example of being *muktzeh* even before usage, despite the famous *halacha* that recognizes and permits using a hammer to open nuts.¹²

Is our envelope halachically comparable to a hammer, or is it more likely to be used in a permitted way? One can argue that since, from the *shul's* perspective, a major function of the envelope is simply to serve as a hint/reminder to the *oleh* (*aliya* recipient) that he “owes the shul,” it would be permitted before its first forbidden use. Certainly, we see a more **valid halachic claim for leniency** in regard to *muktzeh* than we did originally.

What about the problem of *hachana*? First, we note that the practical parameters of *hachana* are among the most complicated matters to establish. In order to analyze *hachana* in regard to this specific case, we will divide the question into two: Is it *hachana* for the *shul* to **give** the envelope? Is it *hachana* for the recipient to **take** it home?

There is a long-standing, albeit controversial, practice to sell *aliyot* on Shabbat. As part of the process, it is permitted to create “pledge cards” (without writing, by attaching an object in the right place).¹³ Although the “notations” that are made will be

11. See *Shemirat Shabbat K'Hilchata* 20:13, *Orchot Shabbat* 19:30; *Tiltulei Shabbat* (Bodner), p. 43.

12. See *Shulchan Aruch, Orach Chayim* 308:3; *Shemirat Shabbat K'Hilchata* 20:8.

13. See *Mishna Berura* 323:20.

used to “enforce” payment of the pledge only after Shabbat has concluded, this is permitted in order to not lose the opportunity to ensure that the *mitzva* of the donation will be fulfilled. For the *gabbai* to give out envelopes as a hint and reminder to donate is ostensibly not worse than marking the pledge cards.

From the perspective of the recipient taking an envelope, there are different reasons for leniency. For one, it is not clear that he will use the envelope for donating, as he might not donate or he might donate without using the envelope. Thus, the recipient might use the envelope for something else, and the **possibility** that he will even do so on Shabbat should be enough to preclude a clear problem of *hachana*, even if in the end he decides to use the envelope for donating. The truth is that the main reason many people take the envelope is that turning it down could be insulting to the *shul* or make them look cheap. Such considerations provide **immediate** benefit to the *oleh*. Thus, in many or most circumstances, it is permitted for the *oleh* to take the envelope. Consequently, the *shul* may properly assume that taking the envelope will not introduce the issue of *hachana*.¹⁴

In summary, while we still think it is a good and nice idea to put something Shabbat-appropriate in the return envelope, we can justify the practice of giving the envelopes as is. Of course, a local rabbi, if available, should be approached to make the decision.

14. See *Avoda Zara* 15b.

c-7: Removing a Licked Candy from Amongst Clean Ones on Shabbat

Question: I was at a friend's home on Shabbat, and he brought out a platter of candies, all of the same type. My young daughter grabbed a candy and put it in her mouth. I chided her for her behavior, so she put the licked candy back in the platter. I was very embarrassed and took the candy out from the platter. My friend claimed that, in the process, I had violated the prohibition of *borer* (selecting). Is he correct?

Answer: In order for there to be a question of *borer*, there has to be a basic level of *ta'arovet*,¹ from within which one wants to choose between different types. Is this condition fulfilled here? In defining a *ta'arovet*, even relatively large objects, such as different pieces of fish on a platter, can be considered intermingled and subject to the laws of *borer* if they are not separate enough from each other.² While it is not always easy to determine to what degree items must be separate, a typical platter of candies is very likely a *ta'arovet*.

Let us now consider another factor that can eliminate the issue of *borer*: the lack of contrast between the items. According to the great majority of *poskim*,³ prohibited *borer* pertains only when at least two different types of objects are intermingled. If there is only one type and a person wants some of it now and some later, the laws of *borer* do not apply.⁴ In your case, there was only one type of candy in the *ta'arovet*, and you might thus claim that *borer* was not relevant.

However, even when there is only one type present, if some of the objects are considered *pesolet* (undesired objects), *borer*

1. Intermingling of different items.

2. Rama, *Orach Chayim* 319:3; see *Terumat HaDeshen* 57.

3. See *Mishna Berura* 319:15.

4. The *Taz*, *Orach Chayim* 319:2, is a minority stringent opinion on this matter.

applies to them. Accordingly, the Rama⁵ rules that it is forbidden to remove spoiled vegetable leaves (*pesolet*) from among good leaves of the same type. The *Magen Avraham*⁶ identifies several gradations in the matter. If the *pesolet* is inedible, there can be Torah-level *borer* when the proper procedure is not followed. If the *pesolet* is edible but not readily so, it is only Rabbinic-level *borer*. If the food is totally edible, but some pieces are less desirable than others, there is no *borer* in selecting among the more and less desired items of the same type.⁷

If the laws of *borer* indeed apply to your case (i.e., the licked candy was *pesolet*), you had a problem that needed to be solved, as one may not take out the undesired from the desired⁸ – which is what you did. Under what circumstances would the candy have been, or not been, considered *pesolet*?

If your daughter were to have removed the licked candy from the platter herself and she could have eaten it (even if in the end she did not), we could argue that from her perspective, it was a totally edible piece of candy, and there was thus no issue of *borer*. Moreover, you could have taken out the candy in order to give it to your daughter to eat, even if you personally would not eat it after it was licked.⁹ However, the fact that something is edible for one person does not lessen the *borer* problem when the selection is performed by and on behalf of one for whom it is not edible.¹⁰

If, as it sounds from your question, you did not want to let your daughter eat the candy, what could you have done? Even when one ideally prefers not to use something, he may take it out to use it due to the particular circumstances. For example, one

5. *Orach Chayim* 319:1.

6. 319:5; see *Machatzit HaShekel* 319:3.

7. See discussion of the status of whole and broken pieces of *matza* in *Shemirat Shabbat K'Hilchata* 3:28.

8. *Shulchan Aruch, Orach Chayim* 319:4.

9. See *Shemirat Shabbat K'Hilchata* 3:23, who permits someone who does not eat onions to remove onions from a salad to give to someone else for the latter's immediate consumption.

10. *Bi'ur Halacha* to 319:10.

may remove a bone from fish if he sucks the bone before throwing it out; it is not required for him to be enthusiastic about sucking fish bones.¹¹ Therefore, you could have taken out the candy and eaten it yourself. Even if you would not have eaten the candy as it was, you could have taken it out, washed it, and then eaten it soon thereafter.

According to the consensus of authorities, you also could have taken out a group of several candies, including the licked one. This is based on the *Taz*,¹² who says that one may remove a fly from a drink if he also removes some of the drink along with it.¹³

11. *Ibid.* to 319:4.

12. *Orach Chayim* 319:13.

13. See *Orchot Shabbat* 3:64.

C-8: Keep the Beat?

Question: I am a member of YU's a cappella group, The Maccabeats. We recently made a clip of the *zemer Dror Yikra*, in which we use *Kiddush* cups, hands, and a table as a means of creating a beat. While we obviously record during the week, someone suggested that we are encouraging our viewers to do a forbidden action on Shabbat by using an instrument to produce music. Is creating a beat on Shabbat in the way we do forbidden on Shabbat, and are we responsible for a viewer's possible halachic mistake?

Answer: The *mishna* forbids one to clap, bang with his hands on his thighs, or dance on Shabbat, and the *gemara* explains that this is out of concern that one will be *metaken* (lit., repair) a musical instrument.¹ The *gemara*² says that while there is a *machloket* regarding whether one may use a utensil to make non-musical sounds, one certainly may not use an instrument to produce pleasant sounds.

There has long been a disparity between these halachic sources and public practice. The *gemara*³ says that the reason that rabbis did not protest when people clapped and danced is that it is better that people err unknowingly than knowingly. The Rama,⁴ bothered by such practices in his time, comments that the concern of refusal to comply with this *halacha* still exists. It is also possible that people rely on *Tosafot's* opinion⁵ that since people do not know how to make musical instruments nowadays, the prohibition no longer applies. Although *Tosafot's* thesis is surprising and not widely accepted, the Rama cites it as a second possible explanation for the lenient practice.

1. *Beitza* 36b.

2. *Eiruvin* 104a.

3. *Beitza* 30a.

4. *Orach Chayim* 339:3.

5. *Beitza* 30a.

How far does the leniency go? The *Mishna Berura*⁶ is among those who maintain that the Rama (reluctantly) condones only clapping, thigh-banging, and dancing, but not the use of noise-making and musical instruments. In fact, the Rama elsewhere⁷ clarifies his position, writing that one may make a beat with non-instruments, whereas musical instruments may be played only by a non-Jew at a Jew's behest. (The Rama refers to wedding celebrations, which in the past sometimes continued into Shabbat.)

Our *minhag* nowadays is to not use musical instruments on Shabbat (even played by non-Jews for the sake of *mitzvot*). The *Mishna Berura*⁸ and contemporary *poskim*⁹ forbid use of non-classical instruments for music, including making an audible beat while singing (e.g., “drumming” on a table); we agree. Nevertheless, it is undeniable that many serious Jews do bang on tables during *zemirot*. They apparently rely on the lenient opinions and the assumption that an action that augments a Shabbat-enhancing activity (e.g., *davening*, *zemirot*) is grounds for leniency, as it is a case of a *mitzva*. (The latter assumption is far from simple,¹⁰ but further discussion and development are beyond our present scope.) We would neither permit this nor rebuke one who “drums” in this way.

Back to your cups. Cups are not musical instruments. Is banging cups on a table worse than banging hands on a table, given that, either way, the table is a makeshift drum? Actually, using cups might be slightly worse. When hands hit various things, including each other, they produce noise. Thus, banging hands on a table may be compared to clapping, whereas beating cups on a table more closely resembles a makeshift musical instrument. Importantly, the lenient practice relates to banging hands – not

6. 339:10.

7. *Orach Chayim* 338:2; *Shut HaRama* 125; see *Magen Avraham* 338:5.

8. *Op. cit.*

9. See *Shemirat Shabbat K'Hilchata* 28:41; *Yalkut Yosef* 338:1; *Orchot Shabbat* 21:33.

10. See *Tosafot*, *Sukka* 50a.

instruments – on the table.¹¹

You were filmed performing the song during the week, just like Jewish music artists often sing *zemirot* with orchestras during the week. Yet, because people might think that what you did is permitted on Shabbat (a mistake they presumably will not make regarding singing with a band), they could mistakenly imitate you on Shabbat. However, the prohibition of *lifnei iver*¹² does not apply to situations in which you neither facilitate nor encourage a violation. If beating with cups on a table were a clear violation of Shabbat, there would be more reason for disclaimers in order to avoid confusion. But since some rabbis would permit using the cups and most rabbis do not protest when people do something similar (i.e., banging with hands), any step you take to avoid confusion is laudable but not mandated.

11. *B'nei Banim* I:12.

12. The prohibition of placing a spiritual stumbling block before someone (i.e., leading them to do something forbidden).

c-9: Opening and Closing a Garden Parasol on Shabbat

Question: We were told that our new garden parasol (umbrella) may be ruined if it is left open in the wind. May we open and close it on Shabbat through the use of levers on a heavy, barely movable pole? The pole is not attached to the ground.

Answer: Since you do not keep this garden parasol open for long periods of time, there is no concern for a Torah violation of creating or dismantling a permanent tent, but there is a question of the Rabbinic prohibition of making a “temporary tent” (*ohel ara’i*).¹ The *halacha* of a temporary tent can depend on its use. If it is spread horizontally to serve or protect the empty area beneath it, it is forbidden even if its roof is only a *tefach* (a handbreadth) wide.² If it is placed to serve the area above it (e.g., placing a slab of wood to serve as a tabletop) and the fact that it also covers something else is incidental, it is forbidden only if the “roof” (e.g., the tabletop) is placed on top of vertical “walls.”³

At first glance, using your parasol seems to be forbidden on Shabbat, as it is a canopy used to shade the area beneath. However, we must take into account that the prohibition of making tents is a subcategory of the *melacha* of *boneh* (building). Consequently, when one makes an ostensible tent in a way that is not considered building something **new**, it is permitted.⁴ One example is when a person merely extends an existing covering that previously was at least a *tefach* wide.⁵ In your case, though, while the folded-up parasol has a width of a *tefach*, in that state the parasol is not extending over anything other than itself.

1. See *Shabbat* 138a; *Sha’ar HaTziyun* 315:6.

2. *Shulchan Aruch, Orach Chayim* 315:2.

3. *Ibid.* 3.

4. See *Shabbat* 138a-b.

5. *Shulchan Aruch* op. cit. 2.

An important category of leniency is when the “tent” is attached in a way that it is ready to be opened. Here are some examples. When a cloak has a string attached to it and is ready to be pulled open, it is permitted to do so.⁶ Another permitted case cited in the Talmud is a folded chair with a leather seat, where the leather becomes a horizontal surface when the chair is opened.⁷ The Rama⁸ similarly allows opening a retractable roof over a *sukka* to protect it from rain when the roof is attached by hinges to the wall.

Based on the above, it seems that it **should** be permitted to open an umbrella on Shabbat, as its “tent” is ready to be opened and closed easily. Why, then, is it accepted that doing so is forbidden? The *Noda B’Yehuda*⁹ is concerned for the Rif’s opinion that the leniency regarding the cloak with the string (mentioned above) is limited to cases in which there will not be a *tefach* of horizontal extension. He further writes that it is permitted to open the chair because this is not done to protect that which is underneath, whereas the umbrella obviously protects the person who holds it over his head.¹⁰ Many *poskim*¹¹ reject the *Noda B’Yehuda*’s strict analysis. The *Chazon Ish* argues that his distinctions do not apply when the leniency is based on the fact that the *ohel* already exists and is waiting to be opened.

Your garden parasol is essentially an umbrella, but as we have seen, many authorities view the umbrella prohibition largely as a stringency (with many nuances as to what halachic factors are behind the *minhag* to forbid it¹²). It is likely that this *minhag* does not extend to your parasol, which differs from an umbrella

6. *Shabbat* 138a.

7. *Ibid.*; *Shulchan Aruch* op. cit. 5.

8. *Orach Chayim* 626:3.

9. II, *Orach Chayim* 30.

10. The *Noda B’Yehuda* is further concerned because the slope of the umbrella should be considered like additional vertical walls.

11. See *Shut Chatam Sofer*, *Orach Chayim* 72; *Chazon Ish*, *Orach Chayim* 52:6.

12. See *Bi’ur Halacha* 315:8; *Shemirat Shabbat K’Hilchata* 24:15; *Chazon Ish* op. cit.

in several ways. Perhaps most significantly, when the parasol is opened, the fabric extends from a stationary pole, which is not comparable to picking up an umbrella and creating an *ohel* in its present location from scratch.¹³

The *Shemirat Shabbat K'Hilchata*¹⁴ rules that it is permitted to open garden parasols, a position with which we concur, and any object that can be opened on Shabbat can also be closed. Rav S.Z. Auerbach was “wary” of this leniency if the pole is attached to the ground,¹⁵ but from your description it seems that your apparatus is movable enough to be considered detached, such that it is even easier to be lenient in your case.¹⁶

13. See *Chazon Ish* op. cit.

14. Op. cit.

15. See ad loc. (55).

16. If the slope of the parasol is gradual, the *Noda B'Yehuda*'s concern that it is considered to have vertical walls (see n.10 above) would not apply.

c-10: Using a Whipped Cream Dispenser on Shabbat

Question: May one spray whipped cream from a store-bought canister on Shabbat?

Answer: First, let us understand what happens when you dispense whipped cream from the canister. When gas enters a fatty substance (like whipping cream), the fat traps much of the gas, causing the substance to fluff up and coalesce. A whipped-cream canister contains pressurized nitrous oxide. Pressing its button does two things more or less at the same instant: It forces gas into the fatty liquid and it forces the contents out of the canister.

There are several possible grounds, some stronger than others, upon which to base a prohibition of using such a dispenser on Shabbat. After a brief review of the issues involved, we will present what we believe is a practical answer. Combining two substances so that they form a mixture that is different in texture from each of them is defined as *lisha* (kneading),¹ and this arguably applies to creating whipped cream. However, trapping a gas inside a liquid (even if in unnoticeably small pockets) so that it turns into foam is quite different from standard *lisha*. Thus, it would be difficult to forbid this action without indications from classical sources.

The *Shemirat Shabbat K'Hilchata*² prohibits the hand-whipping of cream for a few reasons. One reason he presents relates this process to the scrambling of eggs, which is forbidden because it is usually a step in cooking food.³ While one can dispute whether this issue applies to whipping cream, the process is totally different when it is done by pressing the button on a

1. See *Shemirat Shabbat K'Hilchata* 8:1.

2. 11:31.

3. *Mishna Berura* 321:68.

canister. Thus, this issue would certainly not be grounds to forbid our case. Recent *poskim* discuss creating seltzer/soda on Shabbat, in the process of which a somewhat significant change occurs to a liquid by inserting a gas. One of the objections discussed is *uvdin d'chol* (weekday-like activities, such as producing things). While this principle might or might not apply to the process of inserting a gas canister and preparing the machine to make soda (or a similar device for making whipped cream), it is difficult to apply it to using a ready-to-use canister, which the average user views simply as a dispenser.

The most serious issue is *molid*, creating a new entity by changing the physical phase of an object. A *baraita*⁴ forbids crushing ice and snow, and Rashi explains that this is like a *melacha* in that one creates something new (i.e., a liquid from a solid). Some⁵ say that it is similarly prohibited to turn a liquid into a solid (e.g., freeze water to make ice cubes).⁶

The *Orchot Shabbat*,⁷ who permits our case, argues that even those who forbid making ice cubes could permit spraying whipped cream from a canister because the only purpose of the cream in the canister is to be turned into whipped cream. Thus, there is nothing “new” going on. However, one could distinguish in the other direction. Perhaps our case is worse than making ice cubes, as here one actively and directly, with the press of the button, creates the new foamy state, as opposed to putting water in a freezer, which only provides a cold setting for the slow process of freezing to begin.⁸ Rav Mordechai Willig told me another reason for leniency: The change from a thick liquid to foam is insufficient to be considered *molid*.

4. *Shabbat* 51b.

5. See *Doveiv Meisharim* I:55.

6. We dealt with this issue in *Living the Halachic Process*, vol. IV, C-12, and cited strong grounds for leniency.

7. 15:(45).

8. See the distinction in a parallel discussion in *Shemirat Shabbat K'Hilchata* 10:(14).

LIVING THE HALACHIC PROCESS

While one can make the argument that it is forbidden to spray whipped cream from its canister, common practice is to permit it. On the basis of the above halachic discussion, we do not feel that it is necessary to change that practice. (We have not dealt with the problem of using the cream to write words or make likenesses of specific objects.)

c-11: Use of Kinetic Watches on Shabbat

Question: Is it permitted on Shabbat to wear a kinetic (automatic quartz) watch, which is powered by the natural movement of the hand rather than by a battery or winding by hand?

Answer: It will be instructive to begin our discussion with old clocks, which were powered in a manner that is halachically equivalent to winding mechanical watches.

The *Shulchan Aruch*¹ says that one may set up such a clock before Shabbat even though it chimes loudly on the hour. We might have thought that doing so is forbidden due to the special issue of “*marit ayin*” of noises (i.e., it might lead people who hear it operating to believe that one improperly set it up on Shabbat), but the *Acharonim* explain that in this case, people will understand that he set the clock into motion before Shabbat.² There is a major discussion among the *poskim* regarding whether pulling the chains to begin the operation of such clocks is forbidden on Shabbat, as it constitutes creating or fixing a utensil,³ or whether doing so is considered a normal way of using an existing utensil, which is permitted.⁴ According to the first opinion, it is forbidden, very possibly on the Torah level, to set a clock or a mechanical watch into operation on Shabbat, and this is the consensus.

The next question is whether one may wind a watch that is already working to keep it operational longer than it otherwise would be. The *Ktav Sofer*⁵ explains why this can be considered making a change to the object, even though the change is not

1. *Orach Chayim* 338:3.

2. *Mishna Berura* 338:14.

3. *Chayei Adam* II:44:19.

4. *Panim Meiros* II:123.

5. *Orach Chayim* 55.

sensed until later. In contrast, the *Sha'arei Teshuva*⁶ supports the idea that the winding is simply extending the watch's efficacy, and it is therefore permitted. The *Ktav Sofer* also raises a possible distinction between extending the efficacy of clocks that chime and winding silent clocks and watches, where all that happens is that the gears and handles continue to move longer. In any event, the *minhag* developed to not allow winding a watch to extend the existing operation even if there is no chime, unless there are mitigating or extenuating circumstances.⁷

More recent *poskim* have dealt with the advent of self-winding watches, which are wound naturally by one's movements. The consensus has been that it is permitted to wear such a watch if it is still working.⁸ In this case, the aforementioned argument for leniency regarding purposely winding watches is bolstered by the fact that the person is not doing a discernable or intentional act of winding; it is happening as a side result of his activities (*p'sik reishai*).⁹ Additionally, regarding this relatively new item, a *minhag* to be stringent has not developed.

Automatic quartz watches, which are more recent inventions, are different from self-winding watches. The mechanism is based on a quartz system, which is normally operated by an ordinary dry-cell battery. Here, however, the wearer's movements generate electricity that is stored in a rechargeable battery. The small amount of electricity that the watch needs allows the watch to run, even unworn, for anywhere from days to months.

The relatively new question of a miniature mechanical electricity recharger is not a simple one, and we have found rabbis coming out on either side of the question.¹⁰ Our feeling is that such an incidental conversion of energy that is added to the stored

6. 338:1*. See also *Da'at Torah to Shulchan Aruch, Orach Chayim* 338:3, who develops this thesis.

7. See *Mishna Berura* 338:15; *Sha'ar HaTziyun* 338:17; *Shemirat Shabbat K'Hilchata* 28:19-21.

8. See *Shemirat Shabbat K'Hilchata* 28:28.

9. See additional explanations, ad loc. (61).

10. See *Peninei Halacha, Shabbat* 17.

electricity and will be converted again at some point well in the future into a “harmless” mechanical movement, **without creating new circuits**, is permitted.¹¹ We assume that it is not included in the prohibitions of electricity, in which new circuits are made and clear, new results take place on Shabbat, a set of circumstances that the halachic world has forbidden since the advent of the use of electricity. (We may reverse our decision if a consensus forms to forbid it.)

The matter is more complicated regarding automatic quartz watches with digital displays. In this case, one’s movements are involved in a halachically significant change, albeit indirectly. However, there are significant reasons for leniency in this case as well. The most important one is that the energy produced on Shabbat is rarely needed for the watch’s operation on Shabbat, as the stored charge lasts at least a few days.

11. *Orchot Shabbat* 26:50 reasons that the creation of even this limited electric current is forbidden.

C-12: Non-Jewish Worker Servicing Clients on Shabbat

Question: I have a business in which my workers and I visit clients' homes to provide a service. Sometimes a client wants the visit on Shabbat or *Yom Tov*. May I assign a non-Jewish employee to go? In general, our workers receive a set salary plus a commission per time they meet a client.

Answer: The *halachot* of what may be done at a Jew's business on Shabbat and *Yom Tov* are complicated, both in terms of the root concepts and in applying the rules to similar yet divergent cases. We spelled out many of the principles in *Living the Halachic Process*, vol. II.¹ We will focus here on applying the rules to your case and providing two practical suggestions. There may be other options; if you have suggestions that you prefer, we can analyze them for you and determine whether and how they would be permitted.

A non-Jew may do work for a Jew on Shabbat if he is paid per job (*katzatz*), as he is viewed as doing the work **for his own benefit** (i.e., for the money).² In contrast, if he is paid only according to the time he works, he is viewed as agreeing to do work **for the employer's benefit**, because of the money offered, and this is forbidden. Since your workers receive a commission for visiting clients' homes, this condition is fulfilled satisfactorily, despite the fact that they also receive a set salary. Nevertheless, another problem must be avoided: Even in the case of *katzatz*, one must not **require** the non-Jew to do this work specifically on Shabbat.³ If there is no such stipulation, the non-Jewish worker may do so on Shabbat, regardless of the fact that the Jewish employer clearly

1. C-23.

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

3. *Ibid.* 252:2.

gains and would like him to do so.⁴ It seems that you can conform to this requirement as well in the following manner.

Arrange with a non-Jewish worker that when there is a request for a visit on Shabbat or a Jewish holiday, the job will be his responsibility. It should be up to the worker to decide whether he will actually do the job on Shabbat or whether he will settle with the client to do it at a different time. However, the arrangement should be that the worker does not have to return authority as to who will be doing the visit, even if it can be done at a time other than on Shabbat. If you were to make that demand of him, it would be like saying that you are assigning the client to him with the understanding that he must do the work for you on Shabbat specifically, which, we have seen, is forbidden. (It would be permitted, however, if he has the right, without compunction, to tell the client that he cannot do the job as requested.) In contrast, when he can reschedule the visit for another time, it is comparable to a case in which it is likely but not a foregone conclusion that it will be done on Shabbat.⁵

Regarding payment, there are two systems that can be used. In the more straightforward method, the proceeds go to the non-Jewish worker alone. It does not matter if, from an accounting perspective, the client writes out a check to your company, as long as the worker receives all of the proceeds (minus real expenses, such as processing the taxes). This system divorces the service visit from you, and as we will see below, makes things halachically simpler. It can be financially worthwhile for you if, as a result, you can reduce his salary accordingly.

It is also possible for the company to be paid and for the worker to then share some of the profits of the company. This arrangement raises the issue of *s'char Shabbat*, which limits receiving payment for the use of one's property or assets on Shabbat.⁶ However, you may receive part of the money brought

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

5. See *Mishna Berura* 307:15.

6. See *Shulchan Aruch, Orach Chayim* 306:4.

in from the work on Shabbat because if one receives payment in one logical **lump sum** for Shabbat and weekday activities, it is not considered forbidden *s'char Shabbat*.⁷ In this case, a major part of the money coming to the company is for setting up the business, making the connection between the client and the worker who serviced him, etc., much of which takes place during the week. However, in this system, the company is connected to the work done on Shabbat,⁸ which introduces the issue of *marit ayin*.⁹ Therefore, it is permitted only if it is not known that it is a Jew's business or if it is common that one is compensated for such a service with a commission and not as a salaried worker.¹⁰

7. See *ibid*.

8. See distinction in *Igrot Moshe, Orach Chayim* II:64.

9. It looks like one is using his worker to violate Shabbat.

10. See *Mishna Berura* 252:25.

c-13: Placing Delayed Stock Orders from Israel on Friday

Question: I live in Israel and trade on the New York Stock Exchange (NYSE). One type of trade is a “limit trade order,” in which one sets a target price for a stock and when it reaches the target price, the order (buy or sell) is filled. May I place such an order on Friday, as most of the market day in New York is during Shabbat in Israel?

Answer: Usually, a non-Jew who is paid **by the job** may do work for a Jew on Shabbat, as he is considered to be working on his own behalf in order to receive the pay. However, he may not be told to do the work on Shabbat.¹ In this case, your instructions are that if the limit is reached on Shabbat, the non-Jew should make the transaction specifically then. Thus, at first glance it seems that there could be a problem with placing such an order in your case.

However, our research has shown that after one places an online order, there is rarely human intervention in its processing. When no *melacha* is being done on your behalf on Shabbat by a person, but only automatic computer activity occurs, the main question disappears. It is possible that someone at your brokerage will do *melacha* in sending you a confirmation notification or some other action. Nevertheless, even if this does happen, you presumably have not asked them to do this on the same day of the transaction, and thus you have not given instructions that someone should do work for you on Shabbat.

Furthermore, there is a much broader basis for not being concerned even when work would be done on Friday. The final bell on the NYSE is at 4:00 PM and the earliest sunset in New York is 4:28 PM. Therefore, there are no stock transactions taking

1. *Shulchan Aruch, Orach Chayim* 247:1.

place there on New York's Shabbat.² The question remains, however, whether the important factor is that they do their work for you before Shabbat **at their location** or that the work they do for you is not done when it is Shabbat **at your location**.

We will start with some halachic background. The *gemara*³ says that Reuven may ask Shimon to watch Reuven's fruit that are outside of his *techum Shabbat*⁴ but within Shimon's *techum*. The Rashba⁵ extrapolates from this that if Reuven accepted Shabbat early, he may ask Shimon, who did not yet accept it, to do work on his behalf. Why don't we assert that Shimon's action relates back to Reuven through the principle of *shelichut*,⁶ much as we forbid a Jew to have a non-Jew do work on his behalf on Shabbat?⁷

Three answers appear in the *poskim*: 1) The prohibition to ask others was not instituted when there is a way in which one would not be prohibited from doing the work himself or if he had such an option in the past.⁸ In the above cases, Reuven could have gone to the fruit via "*burgenin*"⁹ or he could have not accepted Shabbat. 2) One who accepts Shabbat early does so only regarding prohibitions that he performs himself.¹⁰ 3) Reuven may request of Shimon something that is not a forbidden *melacha* for Shimon based on his situation. This is different from the scenario of asking a non-Jew to do something that would be forbidden for him if he were obligated in Shabbat.¹¹ The third answer is the

2. Since the writing of this response, the prevalence of "after hours trading" has increased, and it could increase further in the future as well. This section of the response is predicated on there not being a chance of prohibited work being done after market hours.

3. *Shabbat* 151a.

4. The confines in which one is permitted to walk on Shabbat.

5. To *Shabbat* ad loc., accepted by the *Shulchan Aruch, Orach Chayim* 263:17.

6. Agency.

7. See Rashi, *Shabbat* 153a.

8. *Beit Yosef, Orach Chayim* 263; *Magen Avraham* 263:30.

9. Booths that extend the *techum Shabbat*.

10. *Levush, Orach Chayim* 263:17; see *Shulchan Aruch HaRav, Orach Chayim, Kuntras Acharon* 263:8.

11. *Taz, Orach Chayim* 263:3; *Levushei S'rad* to *Magen Avraham* 307:12.

strongest and most accepted one.¹² Therefore, even if someone would be doing work for you when it is Shabbat for you, since it is not a violation of Shabbat for the one doing it, you may have him carry out the work.

One issue remains. R. Akiva Eiger¹³ maintains that one may not have a transaction on his behalf **take effect** on Shabbat even when the practical dealings are already completed before Shabbat. Therefore, ostensibly, even though nothing is being done wrong on Shabbat, the fact that the transaction may be settled on Shabbat should be a problem. However, R. Akiva Eiger's theory is so novel that many *poskim* disagree with it, and others limit it to cases similar to the contexts that are the basis of his idea. Thus, his concern need not be applied here.¹⁴

A final observation is of critical importance. If we were to prohibit the described trade orders on Friday because they will likely happen when it is Shabbat for the owner, then there are even stronger reasons to apply the stringency to the following situation: During the time that the owner of a kosher bakery in New York is visiting Israel, the bakery should have to close seven hours before Shabbat begins there! As several *poskim* point out, we have never heard of such a *chumra*, and we have presented ample justification above for why it is unnecessary. The same logic, obviously, can be used to permit the much less severe case of an automatic transaction on amorphous entities known as shares.

12. See *Mishna Berura* 263:64; *Minchat Shlomo* I:19; *Ta'arich Yisrael* 8.

13. *Shut* I:159.

14. See discussion in *BeMareh HaBazak* V:37:(21).

c-14: Relighting Shabbat Candles that Went Out

Question: Soon after my wife lit Shabbat candles and made a *beracha*, the candles went out for no obvious reason. Did she fulfill the *mitzva*? Should she have relit them (with or without a *beracha*)?

Answer: The answer to this question depends on whether one accepts Shabbat with the lighting of the candles, as Ashkenazi women do, or one does not accept Shabbat then, as is true for Sephardi women and, *me'ikar hadin*,¹ for Ashkenazi men.² A person in the latter two groups should relight the candles, because the purpose of the *mitzva* is to benefit from them on Shabbat, and this is not accomplished if they go out before Shabbat. (This is different from the case of *Chanuka* candles, when the main element of the *mitzva* is the action of lighting.³) However, what should an Ashkenazi woman, who generally accepts Shabbat through the lighting,⁴ do in this case? Does a failed lighting preclude her from relighting?

There is a basis to argue that candles that go out quickly are considered as if they were never lit. Although the *K'tzot HaShulchan*,⁵ cited by several *poskim*, makes this claim, it may not apply to our case. First, he is discussing a situation in which the flame never “took hold of most of the wick” (and your description is unclear on this point). Second, he refers to a case in which the *beracha* was not recited yet. In such a case, since the woman’s acceptance of Shabbat depends upon the lighting, Shabbat for her will not occur until, at least, the lighting is **completely finished**,

1. According to the basic *halacha*, without stringency.

2. See *Yalkut Yosef, Orach Chayim* 263:7, and *Mishna Berura* 263:42.

3. See *Living the Halachic Process*, vol. III, D-12.

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

5. *Badei HaShulchan* 74:14.

including when all planned candles are properly lit.

In fact, there is significant debate⁶ as to whether it is the lighting or the subsequent *beracha* that ushers in Shabbat. Rav S.Z. Auerbach leans toward the “*beracha* approach.” The *Mishneh Halachot*⁷ agrees and therefore permits putting out the match, as opposed to letting it go out by itself, as long as it is done before making the *beracha*. (The *Shemirat Shabbat K’Hilchata*⁸ rules that even before the *beracha* was made, one should let the match go out by itself and should not relight a candle that went out after it had been lit effectively.)

Since your wife already made the *beracha*, which, among other things, signals that she was finished lighting and was accepting Shabbat, she should not have relit the candles, even if they might not have taken hold well to begin with. However, there (usually) is a simple solution; someone else should be asked to relight the candles. One who accepted Shabbat significantly before sunset may ask those who have not done so to do a *melacha* for him.⁹ In general, members of the household are not bound by the wife/mother’s acceptance of Shabbat,¹⁰ and they therefore may (re)light as many candles as is desired to achieve the usual number. If no Jews are available, one may ask a non-Jew to light up until the time of *tzeit hakochavim* (at least 13 minutes after sunset), even when there is sufficient electric lighting.¹¹ In the event of a non-Jew’s lighting during *bein hashemashot* (twilight), it is not clear whether more than one candle should be lit.

In the various cases in which candles are relit, one does not make another *beracha*.¹² (The explanation is beyond our current scope.)

6. See *Shemirat Shabbat K’Hilchata* 43:(179).

7. VIII:31.

8. Op. cit. 36-37.

9. *Shulchan Aruch, Orach Chayim* 263:7.

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

11. *Shemirat Shabbat K’Hilchata* 43:14; see *Mishna Berura* 263:21.

12. *Shemirat Shabbat K’Hilchata* 43:37; see *Chovat HaDar*, p. 87; *Yalkut Yosef* op. cit.

If all the candles went out and you did not have any relit, your wife apparently did not fulfill the *mitzva*. The *Shulchan Aruch HaRav*¹³ goes so far as to say that the *mitzva* is receiving **benefit** from the light (which you were missing), and the lighting is just a preparatory act. But even if one assumes that the **lighting** is the *mitzva*, it still appears that receiving the benefit is a necessary condition for the *mitzva*'s completion.¹⁴ If none of the solutions were feasible, it is not her fault, and she is credited for at least doing the correct Friday actions (lighting and refraining from desecrating Shabbat). Thus, the “penalty” for one who neglects to light candles – having to add an additional candle for the rest of her life – does not apply.¹⁵ The *Shemirat Shabbat K’Hilchata*¹⁶ is unsure about this when no candles remained lit and the woman did not avail herself of the above solutions. However, if this occurs because she did not know the *halacha*, we do not believe the penalty applies.

13. *Orach Chayim* 263, *Kuntras Acharon* 3.

14. See *Shulchan Aruch, Orach Chayim* 263:9; *Mishna Berura* 263:30.

15. See *Mishna Berura* 263:7.

16. 43:(35).

C-15: Who Drinks *Kiddush/Havdala* Wine and Why?

Question: Why is it that after *Kiddush* everyone drinks the *Kiddush* wine and after *Havdala* only the *mavdil*¹ does?

Answer: The sources lead us to many ideas, but none that we can prove. The *Shulchan Aruch*² deals with ways to fulfill the requirement that a *m'lo lugmav* (enough to fill the cheeks – approximately 2 fl.oz) of the *Kiddush* wine must be drunk. Some say that one person has to drink the whole amount; others say we can add up the amounts that different people drink. The *Shulchan Aruch* points out that no matter how the requirement is met, it is best for everyone to drink some of the wine. This recommendation³ that everyone should drink is based on the Rosh,⁴ who does not offer a source or an explanation. The Rosh also does not mention if this is a special *mitzva* regarding *Kiddush*, although that is the context of the *gemara* upon which he is commenting.

The *Shulchan Aruch* is understood as maintaining that it is sufficient for each person to drink a small amount,⁵ but if this results in not having enough wine for at least one person to drink a *m'lo lugmav* or for the next day's *Kiddush*, the idea of everyone drinking is waived.⁶ On the other hand, giving out some wine to everyone is important enough that the *mekadesh*⁷ may delay between the *beracha* and the drinking in order to pour for them.⁸

The Rambam⁹ writes that after drinking a *m'lo lugmav*, one

-
1. The one who recites *Havdala*.
 2. *Orach Chayim* 271:14.
 3. See *Beit Yosef*, *Orach Chayim* 271.
 4. *Pesachim* 10:16.
 5. See *Taz* ad loc. 17.
 6. *Magen Avraham* ad loc. 30.
 7. The one who recites *Kiddush*.
 8. See *Shulchan Aruch* op. cit. 16.
 9. *Shabbat* 29:7.

“gives to all the members of the group to drink.” The *Mirkevet HaMishneh*¹⁰ searches for a Talmudic source for the Rambam (who rarely includes a *halacha* that lacks one). He points to the *gemara* in *Berachot*,¹¹ which lists things that one is supposed to do to enhance a *kos shel beracha* (cup of wine used in a *mitzva* context). R. Avahu mentions ten things and then adds that some say to “send it to the members of one’s household.” R. Yochanan says that only four of the practices need to be observed. The *Mirekevet HaMishneh* reasons that R. Yochanan argued about the number (four rather than ten) but did not take issue with the importance of “sending” to one’s household. The logic is that drinking the wine bestows importance to the *mitzva* cup.

If this is the Rambam’s source, then the requirement should apply to all cups of *beracha*, not just *Kiddush*. Indeed, the *Shulchan Aruch*¹² writes that it is true regarding wine for *Birkat HaMazon*, and it should ostensibly apply to *Havdala*, although the *Shulchan Aruch* does not discuss it.¹³

The Rambam himself,¹⁴ while not emphasizing the matter, does use the plural in referring to those drinking the wine used for *Birkat HaMazon*. Within the *halachot* of *Havdala*, the Rambam¹⁵ does not mention drinking at all, even though it is clear that someone must drink. This could indicate that the drinking of *Havdala* wine follows the same rules as for *Kiddush*.

The *Shibolei HaLeket*¹⁶ is an early source that says that our practice is to not give *Havdala* wine to others to drink, and this view is accepted by the *Magen Avraham*.¹⁷ The *Mishna Berura*¹⁸ presents a technical explanation for this practice: Since *Havdala*

10. Ad loc.

11. 51a.

12. *Orach Chayim* 190:4.

13. *Darchei Moshe*, *Orach Chayim* 182:1.

14. *Berachot* 7:15.

15. See *Shabbat* 29:24.

16. 74.

17. 296:4.

18. 296:6.

is not made in the framework of a meal, we want the *mavdil* to drink at least a *revi'it* (which is more than *m'lo lugmav*) so that the requirement for a *beracha acharona* on the wine will be a certainty. While it is not clear whether there was an early consensus on this matter, our *minhag* indeed is that not all drink that wine.

There are some positive reasons for drinking specifically at *Kiddush*, which might also explain the *minhag*. Some claim that the obligation to make *Kiddush* over wine and/or to drink a certain amount of it has a stronger basis than for other cups of *beracha*.¹⁹ Also, *Kiddush* is connected to the meal in which all are partaking²⁰ (there are different explanations for the connection). Since it is recommended to drink wine during the meal,²¹ and when one drinks wine at *Kiddush* he is exempt from making a *beracha* during the meal,²² it makes sense to start drinking at *Kiddush*.

In any case, while Halacha does not **obligate** everyone to drink *Kiddush* wine and does not **forbid** anyone from drinking *Havdala* wine, your observation has both supporting sources and a variety of possible explanations.

19. See *Encyclopedia Talmudit*, vol. 27, col. 510.

20. *Pesachim* 101a.

21. *Shulchan Aruch, Orach Chayim* 250:2.

22. *Ibid.* 174:4.

C-16: How Can We Perform Matters of *Minhag* Before *Kiddush*?

Question: The *Tur*,¹ *Shulchan Aruch*,² *Gra*,³ *Pri Megadim*,⁴ etc. all mention the need to rush to make *Kiddush* and eat as soon as Shabbat commences. Yet, I have never seen a household that does not first sing *Shalom Aleichem* and *Eishet Chayil*. Making *Kiddush* is a *mitzva* (*d'oraita*⁵ for those who did not *daven Ma'ariv* and *d'rabbanan*⁶ for those who did), while the singing is merely a nice (recent) *minhag*. Since when does a *minhag* take precedence over a *mitzva*?! Shouldn't we make *Kiddush* (and *HaMotzi*) first?

Answer: Regarding reviewing sources, as we usually do, we have little to add to what you listed, but we will attempt to give some perspective.

The *Tur* and *Shulchan Aruch* indeed write: “When one comes to his house, he should hurry to eat right away.” Although the idea of hurrying does not seem to be found in the *gemara* or early *Rishonim*, these are still weighty sources. What is the need for hurrying? The *Beit Yosef*⁷ explains that the problem is not the delay per se, and neither is the meal the issue. Rather, since the intent of *Kiddush* is to sanctify Shabbat as it enters, it should be recited close to the beginning of Shabbat.⁸ (The *Taz*⁹ seems to understand this to also hint that one can make *Kiddush* even before nightfall.) **If** this is as pressing as the simple reading would seem to indicate, *davening* earlier, faster, or at a *shul* that is closer to one's home

1. *Orach Chayim* 271.

2. *Orach Chayim* 271:1.

3. Ad loc.

4. *Eshel Avraham* 271:1.

5. Of Torah origin.

6. Of Rabbinic origin.

7. *Orach Chayim* 271.

8. See *Pesachim* 106a with Rashi.

9. *Orach Chayim* 271:1.

would seemingly be as appropriate in this regard as skipping the pre-*Kiddush zemirot*.

There is no question that one can fulfill the *mitzva* of *Kiddush* at any time during the night and, on a certain level, even during the day if he missed it at night.¹⁰ According to most *Rishonim*, those who have *davened Ma'ariv*¹¹ have already fulfilled the *mitzva* of *Kiddush* on the Torah level.¹² It is thus not clear why, based on regular halachic rules, there should be any pressure to hurry in the simplest sense of the term. Indeed, there are some cases in which it is legitimate to wait. For example, the *Mishna Berura*¹³ says that if the family does not have much of an appetite when people come home from *shul*, they need not make *Kiddush* and eat right away.

The fact that the pre-*Kiddush zemirot* are recited before *Kiddush* is not an indication that they are in any way more important than *Kiddush*. Rather, they are intended to set the tone for the upcoming *Kiddush*. In this sense, they are similar to *P'sukei D'Zimra* (the passages that precede the halachically more important sections of *tefilla*) or to the *p'sukim* that we say before a *brit mila*.

After completing the specific, technical part of the question, we move on to the general, philosophical part, which we believe is the more instructive element of our answer. *Shalom Aleichem* and *Eishet Chayil* were written/instituted for recitation on Shabbat evening within the Kabbalistic community of 16th century Tzfat. This is just one liturgical contribution of that community, which introduced the world to *Kabbalat Shabbat*, including *Lecha Dodi*. Not being Kabbalists, we cannot explain to you the full depth of all of these *tefillot*. We cannot explain why it was worthwhile to “fiddle around” with the tried and tested Shabbat *tefillot* or delay

10. *Shulchan Aruch* ibid. 8; see *Shemirat Shabbat K'Hilchata* 47:(31).

11. It may even be possible to fulfill the Torah-level *Kiddush* by making a *beracha* on the Shabbat candles or making simple declarations that positively acknowledge Shabbat; see *Shemirat Shabbat K'Hilchata* 47:(19)

12. See *Magen Avraham* 271:1.

13. 271:1.

the beginning of *Ma'ariv*, *Kiddush*, etc.

Indeed, if we were 16th century rabbis, we might have spoken out against these additions based on your arguments. However, we are firm believers in the **collective** wisdom of the rabbinic and serious laity of *Bnei Yisrael*. As the *gemara*¹⁴ dictates: “Leave Israel alone. If they are not prophets, they are the sons of prophets.” Thus, if (almost) all homes follow this routine, it is a *minhag* that we have accepted, even if we do not know why it is important. (Understanding is worthwhile, but not necessary before following a good practice.) Making a statement against an accepted practice (including the one in question), whether through an action or through not carefully chosen words, can raise issues of appearing “holier than thou.” This, in turn, sometimes causes *machloket*, which we are sure is not your intention.

14. *Pesachim* 66a.

C-17: A *Melaveh Malka* for Women

Question: My husband is careful to have a *melaveh malka* that includes bread and meat. I do not have one at all. Should there be a difference between men and women on this matter?

Answer: The *gemara*¹ says: “One should always set his table on *Motzaei Shabbat*, even if he needs only a *k'zayit* [of food].” Rashi explains that it is an honor to Shabbat to “escort” it, just as one escorts a king when he leaves. Various authorities add esoteric reasons for *melaveh malka*. Some say there is a crucial bone in the body (involved with *techiyat hameitim*²) that is nourished by food eaten on *Motzaei Shabbat*.³ Another idea is that eating after Shabbat extends the sanctity of Shabbat meals onto weekday eating.⁴ Some say it is a *segula* for women for easy childbirth.⁵ Despite all the sources and benefits attributed to it, however, *melaveh malka* has a long history of not being observed by the masses, as acknowledged by authorities who emphasized the importance of adhering to it.⁶

It is unclear to what extent *melaveh malka* is a minor but binding obligation, a proper practice,⁷ and/or a spiritual opportunity. It is also tricky to implement *melaveh malka* because there are **many** things mentioned by one or more *poskim* to enhance the practice (we will mention only some) but little about which there is a consensus.

The *gemara*, after the above quote, mentions both (hot) bread and meat, which some people, like your husband, consider factors

1. *Shabbat* 119b, accepted by the Rambam, *Shabbat* 30:5, and *Shulchan Aruch, Orach Chayim* 300:1.

2. Resurrection of the dead.

3. See *Beit Yosef, Orach Chayim* 300.

4. See *Kaf HaChayim, Orach Chayim* 300:2.

5. See *ibid.* 4.

6. See *Aruch HaShulchan, Orach Chayim* 300:3.

7. See *Shulchan Aruch HaRav, Orach Chayim* 300:3; *Mishna Berura* 300:2.

to be careful about.⁸ However, the *gemara* implies⁹ that the main factor is actually the setting of the table; the food seems to be an afterthought (“even ... a *k'zayit*”) or that which makes the table “the stage.” Nevertheless, many people who are *machmir* regarding eating ignore such elements mentioned by *poskim* as a nice tablecloth, place setting, and candles – essentials of *kavod* modeled after Shabbat. On the other hand, some of the reasons given for *melaveh malka* do indeed focus on food, as do the stories the *gemara* tells about the practice of *melaveh malka*.

Some of the preferred ways mentioned to fulfill *melaveh malka* seem to be mutually exclusive. For example, it is **best** to have a *melaveh malka* soon after Shabbat, and it is **best** to cook for it after Shabbat. One solution that satisfies both is to eat something right away for the *melaveh malka* with Shabbat ambience and to start preparing in order to continue eating later on.¹⁰

Is there room for leniency not to have a *melaveh malka*? Besides the possibility that it is not halachically required, there is a respected opinion¹¹ that any eating at *seuda shlishit* that takes place after nightfall (whose exact time is unclear) counts as a *melaveh malka*. The *Tehilla L'Dovid*¹² presents a cogent argument that since we treat that time as Shabbat, *seuda shlishit* cannot count for *melaveh malka*, but this does not delegitimize the lenient opinion.¹³ Many *poskim*¹⁴ say that one can fulfill *melaveh malka* without a full meal, even with fruit. This is logical considering the important opinions that maintain that this suffices even for the greater obligation of *seuda shlishit*.¹⁵

Women do have some extra leeway for leniency because *melaveh malka* is a time-based *mitzva*.¹⁶ On the other hand, we

8. See *Maharsha, Shabbat* 119b; *Mishna Berura* 300:1.

9. As understood by the *Taz, Orach Chayim* 300:1.

10. *Siddur Beit Yaakov* (Emden), p. 418.

11. *Eliya Rabba* 300:1, quoted by many authorities.

12. 300:1.

13. *Shemirat Shabbat K'Hilchata* 63:6.

14. Including the *Mishna Berura* 300:1.

15. See *Shulchan Aruch, Orach Chayim* 291:5.

16. See the discussion in *Pri Megadim, Eshel Avraham* 300:1.

assume that women are obligated in such *mitzvot* when they relate to Shabbat (e.g., *Havdala* and *seuda shlishit*¹⁷), as all agree regarding *Kiddush*.¹⁸ Furthermore, many women will desire their share of the aforementioned spiritual treasures.¹⁹

In summary, your husband's practices are positive, although there is flexibility for doing more or doing less. You have incrementally more room for leniency than he does, but we recommend that you have at least some food in a respectable setting in honor of Shabbat after it has departed.²⁰

17. *Machatzit HaShekel* 300:1, based on *Magen Avraham* 291:11.

18. *Berachot* 20b.

19. See *Kaf HaChayim, Orach Chayim* 300:2.

20. See *Shemirat Shabbat K'Hilchata* 63:3.

C-18: Reciting *R'tzei* after Ending Shabbat

Question: After finishing *seuda shlishit*, I forgot to recite *Birkat HaMazon* until I came back from *Ma'ariv*. Was I supposed to say *R'tzei* in *Birkat HaMazon* at that point?

Answer: This case, in which one has ushered in *Motzaei Shabbat* but still wants to recognize Shabbat in *Birkat HaMazon*, tests the hierarchy of two competing halachic rules: 1) Once a person becomes obligated in one of the additions to *Birkat HaMazon* for special occasions, he recites it even after the occasion has passed. 2) When a point in time can relate to either of two consecutive periods, we do not allow an internal contradiction (*tartei d'satrei*) by relating the time to both. Let us survey sources and applications of each rule before coming to an answer to your question.

The first rule is actually not unanimously held. The Rosh¹ says that if one starts *seuda shlishit* before sunset but *bentches*² after the day is over, he does not recite *R'tzei*. In the opposite situation, if he ate a meal before Shabbat but recited *Birkat HaMazon* on Shabbat, the Rosh posits that he should recite *R'tzei*. The *Tur*³ writes that according to the Rosh (his father), one who did not *bentch* for his Purim *seuda* until nightfall after Purim would not recite *Al HaNisim*. In other words, the time at which one is ready to make the pronouncement determines whether an addition to *Birkat HaMazon* is included.

However, we do not adopt the Rosh's opinion as standard *halacha*. Rather, if the timing of one's meal caused an obligation of a special addition, such as *R'tzei* or *Al HaNisim*, one should

1. *Shut* 22:6.

2. Recites *Birkat HaMazon*.

3. *Orach Chayim* 695.

include it even when the occasion ostensibly is over.⁴ (An exception to this is *Sheva Berachot* that finish after the week has been completed, as one cannot make independent *berachot* after their time period has passed.⁵)

The next rule, that we do not allow *tartei d'satrei* situations, has far too many applications to address in this context, so we will stick close to our topic. One application concerns a person who started a *seudat Purim* on *Erev Shabbat*, continued it on *Shabbat*, and made *Kiddush* in the middle. When he eventually recites *Birkat HaMazon*, there is reason to say both *Al HaNisim*, due to the food that he ate during the day, and *R'izei*, due to the food that he ate after *Kiddush*. The *Chayei Adam*⁶ maintains that you cannot say both *Al HaNisim* and *R'izei* in the same *Birkat HaMazon* when they relate to two different days. Thus, in the *Purim* case, one should say *R'izei*, which is more important.

Another case of *tartei d'satrei* regarding *R'izei* arises when one starts eating on *Shabbat* and continues eating bread after nightfall and *Rosh Chodesh* begins. There are grounds to say both *R'izei* and *Ya'aleh V'Yavoh* in this case, but again, they belong to two different days. The *Magen Avraham*⁷ asserts that one cannot say both, and since it is clear that there is more of an obligation of *Ya'aleh V'Yavo*, which applies at that moment, than there is an obligation of *R'izei*, one says only *Ya'aleh V'Yavo*. On the other hand, the *Taz*⁸ is of the opinion that one may say both despite the apparent contradiction, whereas the *Mishna Berura* does not come to a clear conclusion.

There is some logic to say that *tartei d'satrei* comes into play only when one has to say two contradictory things in the same context, such as within *Birkat HaMazon*. If so, in your case, since there is nothing in *Birkat HaMazon* that indicates that it is already *Motzaei Shabbat*, saying *R'izei* would not be a problem. However,

4. *Shulchan Aruch, Orach Chayim* 188:10.

5. See *Sha'arei Teshuva* 188:7, based on the *Ginat Veradim*.

6. II:155:32.

7. 188:18.

8. *Orach Chayim* 188:7.

the consensus of *poskim* is that *davening Ma'ariv* is such a strong indication of ending Shabbat that it is not possible to say *R'tzei* in *bentching* afterward.⁹ Some major *poskim*¹⁰ express uncertainty regarding whether reciting *HaMavdil*¹¹ without *davening Ma'ariv* precludes saying *R'tzei*.

In any case, the omission of *R'tzei* is not a critical matter because of the following ruling. Since not all agree that one has to eat bread at *seuda shlishit*, if one forgets *R'tzei* at *sedua shlishit*, he does not repeat *Birkat HaMazon*.¹²

9. See implication of *Beit Yosef, Orach Chayim* 188, *Magen Avraham* 188:17; *Mishna Berura* 188:32; *Aruch HaShulchan, Orach Chayim* 188:27.

10. *Magen Avraham* 263:33; Rabbi Akiva Eiger to *Magen Avraham* 188:17.

11. A declaration of *Havdala* that permits work after Shabbat has finished.

12. *Shulchan Aruch, Orach Chayim* 188:8.

c-19: Methods of Receiving Pay for Work on Shabbat

Question: I work in the youth department of a local *shul* on Shabbat. They occasionally have activities during the week (e.g., Purim, Sukkot, Tu B'Shvat). Some of my co-workers believe that one of the intentions of these activities is to solve the problem of *s'char Shabbat* (pay for a Jew for permitted services he provided on Shabbat). I am skeptical for two reasons. First, would that work, considering that there are several months when we get paid without any weekday activities? Second, aren't there better solutions?

Answer: Receiving *s'char Shabbat* is indeed Rabbinically forbidden,¹ like commercial activities in general, lest one come to write.²

The most common method that allows one to receive money for work that was done on Shabbat is through *havla'ah*. This means having the Shabbat-related earnings “swallowed up” by combining them with weekday pay for a period of employment that happens to include Shabbat.³ You apparently assume that the applicability of *havla'ah* depends on the **payment period**. In other words, each payment has to include pay for work not related to Shabbat or *Yom Tov*. Therefore, you would forbid a paycheck for a payment period (e.g., month) in which there is no weekday work.

However, *poskim* point out that “*havla'ah* units” are determined not by the period of **payment** but by the period of **employment**.⁴ The period of employment is the time during which there is a commitment to continue the employer-employee relationship,

1. *Nedarim* 37a-b; *Shulchan Aruch, Orach Chayim* 306:4.

2. *Mishna Berura* ad loc.

3. *Nedarim* op. cit.; *Shulchan Aruch* op. cit.

4. *Shemirat Shabbat K'Hilchata* 28:58; *Orchot Shabbat* 22:91.

without the ability to back out under normal circumstances. This has ramifications both for leniency and for stringency, depending on the particular situation. If the employee is owed for work on Shabbat and the employer is not obligated to continue the employment during a period that includes weekdays, the work on Shabbat is viewed independently and the worker is forbidden to receive the pay. One common example is a babysitter, who usually gets hired for each job individually. Therefore, getting paid at one time for separate babysitting jobs, one during Shabbat and other(s) during the week, is forbidden.⁵ Your situation, in contrast, is in all likelihood an example of the lenient ramification. A *shul* usually hires youth workers for “a year” (often Sept.-June), which is the relevant time unit even if the payments are made in monthly installments. If that is the case, then since the year includes work on Tu B’Shvat and Purim, the pay is permitted, as your friends surmised.

There is often another, related leniency in the application of *havla’ah*. Some suggest⁶ that the preparation that a worker does during the week (e.g., a *chazan*’s practice or a waiter’s setting up before *Shabbat* or cleaning up afterwards) justifies his receiving pay for his work on Shabbat and *Yom Tov*. However, for this to constitute *havla’ah*, it does not suffice for there to be a theoretical possibility of preparation or an insignificant amount thereof. It is necessary that there be obligatory work that is time-consuming enough to warrant pay.⁷ In this vein, there is an assumption that youth workers, beyond their observable interactions with the children on Shabbat and *Yom Tov*, have necessary preparatory work that is slated to be done on a weekday. This can include buying prizes or food, setting or cleaning up, or preparing props. The *shul* can ensure from the outset that there will be significant

5. *Shemirat Shabbat K’Hilchata* op. cit.; *Orchot Shabbat* 22:94.

6. Including *Aruch HaShulchan*, *Orach Chayim* 306:12. The *Orchot Shabbat* 22:(149) doubts that *chazanim* are considered to receive any pay for their preparations.

7. *Orchot Shabbat* 22:90.

weekday components of their jobs by requiring the leaders to come to a training session or a meeting or to call the children and/or parents with whom they will be working. One such significant responsibility during the employment period suffices.

The matter of *chazanim* introduces one more potential justification for those in your position to receive pay. There are two opinions in the *Shulchan Aruch*⁸ regarding whether the prohibition on *s'char Shabbat* applies to *mitzva* activities. While the *Shulchan Aruch* seems to lean toward stringency, the *Mishna Berura*⁹ acknowledges that the more prevalent *minhag* is to be lenient. Contemporary *poskim* leave this question open.¹⁰ Whether or not a synagogue's youth groups are considered *mitzva* activities depends on the content of the activities.

8. *Orach Chayim* 306:5.

9. 306:24.

10. See *Shemirat Shabbat K'Hilchata* 28:66; *Orchot Shabbat* 22:105; *Dirshu* 306:18.

Section D:
Mo'adim (Festivals)

D-1: Blowing *Shofar* After *Shul*

Question: The hundred *shofar* blasts that we blow on Rosh Hashana are much more than the Torah requires. Yet, some people blow even more after *shul*. Isn't there a point at which enough is enough?

Answer: We will start with a look at what could possibly be wrong with blowing *shofar* after *shul* on Rosh Hashana.

It is Rabbinically prohibited to blow *shofar* on Shabbat,¹ and this prohibition presumably applies to *Yom Tov* as well. Thus, if not for the *mitzva* of blowing *shofar*, we would not be allowed to do so at all on Rosh Hashana. The Rama² therefore rules that an adult is not allowed to blow *shofar* “for no reason” on Rosh Hashana. What does “no reason” include? The *Tur*³ cites an opinion that goes as far as to say that one may not blow a *shofar* only on behalf of a woman on Rosh Hashana, because she is not obligated in the *mitzva*. (The *Tur* himself argues with this view because it is still an optional *mitzva* for her to hear the *shofar* blasts.) Another discussion⁴ raises the possibility that if, out of incorrect stringency, one makes the *tokeiah* repeat a blast when Halacha does not require it, he violates this Rabbinical prohibition. Thus, it appears that extra blowing “just to be on the safe side” could be a negative thing. (The *Taz*⁵ does say that the prohibition against unnecessary *shofar* blowing on Rosh Hashana only applies when it falls out on Shabbat, due to the Rabbis' concern that *shofar* blowing could lead to carrying outside without an *eiruv*. However, his opinion is not widely accepted.)

Another issue is the prohibition of *bal tosif*, i.e., of not

1. *Tosafot*, *Rosh Hashana* 30a.

2. *Orach Chayim* 596:1.

3. *Orach Chayim* 589.

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

5. *Orach Chayim* 596:2.

adding on to the *mitzvot* of the Torah.⁶ Indeed, *Tosafot*⁷ wonders why the accepted practice of blowing during the *amida* (or *chazarat hashatz*⁸) does not violate *bal tosif*. *Tosafot* answers that performing a *mitzva* an additional time beyond what the Torah requires on the day when the *mitzva* is to be performed is not a violation of *bal tosif*. We could apply that answer to our case as well. However, we should note that although *Tosafot*'s rule is quite accepted, the Rashba⁹ disagrees and maintains that *bal tosif* is violated through repetition of a *mitzva*'s performance unless there is a Rabbinic institution to add on to the *mitzva*. Therefore, according to the Rashba, in our case there would have to be some type of Rabbinic mandate in order to justify blowing more than necessary.

What indeed is the reason that some people do extra blowing? One reason is that they are concerned (on some level) that the blowing in *shul* might not have fulfilled the *mitzva* according to all opinions, arguably leaving an obligation out of doubt (*safek*). This idea has precedent. The Torah requires only three sets of three blasts, for a total of nine; we arrive at our minimum of thirty blasts because of a *safek* regarding how to blow the *shevarim*.¹⁰ While the *Tanna'im* considered thirty blasts sufficient to be safe from doubt, there are disputes among post-Talmudic authorities on several points that were once clear. Perhaps covering these opinions is a legitimate need that justifies extra blowing. It is possible to vary the blasts during the hundred blown in *shul* in order to fulfill the major differing opinions,¹¹ but some *shuls* do no variations at all, and few *shuls* do many variations.

6. *Devarim* 4:2.

7. *Rosh Hashana* 16b.

8. There are different *minhagim* as to when this set of *shofar* blasts is carried out.

9. *Rosh Hashana* 16b.

10. *Rosh Hashana* 34a.

11. The *Shulchan Aruch* and Rama, *Orach Chayim* 590:4, argue regarding "one or two breaths" (see n. 12); another question is how long the *shevarim* should be (see *Shulchan Aruch* op. cit. 3).

Another reason that some wish to blow after *shul* is that the *tokeiah* does not always do a good job of blowing accurately, and the rabbi is sometimes lenient about making him repeat blasts. Some people therefore wish to hear extra blasts just in case the ones during davening were not sufficient. Thus, it is difficult to make a generalization as to whether extra blowing is prudent or close to frivolous.

Our recommendations are as follows: If there is a real fear that the *tokeiah* did a very poor job, or if he does not do even the basic variation of the breaths,¹² there is significant reason to want to hear more blasts in order to cover one's bases. (Of course, one should avoid insulting the *tokeiah* or the rabbi.) Otherwise, stringency is problematic, not only for the reasons noted above, but because of *yohara* (being "holier than thou") and/or casting aspersions on what others are doing. Therefore, we recommend to the average person to suffice with the hundred done in *shul*, which almost certainly cover the needs for nine appropriate blasts.

This being said, one should also not cast aspersions on those who believe in being "extra stringent." Blowing *shofar* is a particularly beloved *mitzva*,¹³ and it is not unreasonable to want to cover **all** of one's bases on the Day of Judgment. There are *poskim*¹⁴ who support this approach. Regarding *yohara*, it can make a difference if one acts openly or tries to be discreet about his practice. This is also less of an issue for one who consistently tries to be meticulous in his observance.¹⁵ We certainly do not want to judge sincere people negatively on the Day of Judgment.

12. This refers to the dispute regarding whether the blower should or should not break long enough to take a breath in between the *shevarim* and the *teru'ah* of the "*teki'ah-shevarim-teru'ah-teki'ah*" blows; see *Shulchan Aruch, Orach Chayim* 590:4.

13. *Rosh Hashana* 27a.

14. See discussion in *Mishneh Halachot* VIII:206; he himself advises against an exaggerated amount of blowing.

15. See the standards recorded in the *Shulchan Aruch, Orach Chayim* 34:3, regarding those for whom it is appropriate to don a second pair of (Rabbeinu Tam) *tefillin*.

D-2: The Timing of *Shehecheyanu* on New Clothes on the Second Night of Rosh Hashana

Question: If I want to solve the problem of *Shehecheyanu* on the second night of Rosh Hashana by wearing a new suit,¹ when should I put it on? If I put it on before *Ma'ariv*, it seems to be *hachana* (preparation) for the second day of Rosh Hashana. And in any case, shouldn't the *beracha* be made right after putting on the new garment? Should I instead put it on right before *Kiddush* or even put on the jacket during *Kiddush* right before *Shehecheyanu*?

Answer: Let us first dismiss the question of *hachana*. Although it is prohibited to prepare on one day of *Yom Tov* for another, there is no prohibition of *hachana* if there is a purpose to the action on the first holy day itself, even if the main benefit is for afterward.² Putting on a new article of clothing has an immediate benefit; it makes no difference how long one will wear it now or how important it is for him to wear it on the next day.

The question of whether it is too early to put on the clothes a couple hours before reciting *Shehecheyanu* has two parts: First, is the *beracha* still valid? Second, is one permitted to wait so long before reciting the *beracha*?

Let us review the reasoning for having new clothes (or fruit) on the second night of Rosh Hashana. In deference to the minority opinion that *Shehecheyanu* should not be said at *Kiddush* on this evening, the accepted practice is to try to have an additional reason to recite it anyway.³ That way, the *beracha* will certainly not be

1. See Rama, *Orach Chayim* 600:2.

2. *Shemirat Shabbat K'Hilchata* 28:70.

3. *Shulchan Aruch*, *Orach Chayim* 600:2; see *Beit Yosef* ad loc.

l'vatala.⁴ This goal is fully attained even if the *beracha* should have ideally been recited earlier, as long as it is still definitely appropriate **at the time of Kiddush**. Indeed, the *halacha* is that if one did not recite *Shehecheyanu* on an article of clothing as soon as he put it on, he can still recite it until he takes it off,⁵ at least if he still feels happiness from its being new.⁶ One who was happy to put on a new suit before *Ma'ariv* still feels good when he thinks about it at *Kiddush* of the first meal at which he wears it. Thus, the effectiveness of the *Shehecheyanu* is not an issue (not to mention that the need for the new clothes is itself only a *chumra*, as many authorities maintain that the *Shehecheyanu* may be recited simply because of *Yom Tov*).

The next question is whether one may purposely delay reciting *Shehecheyanu* on the garment, and the answer is that it is permissible. The accepted opinion is that there is no actual **obligation** to make a *beracha* of *Shehecheyanu* upon happy occasions.⁷ If the *beracha* is not obligatory, waiting cannot be forbidden, and it indeed is proper when there is a valid reason for the delay. There are indeed other halachic contexts in which we delay *berachot* to solve problems, such as waiting to say the *beracha* on *tzitzit* to subsume it under the *beracha* on the *tallit*.⁸

Keep in mind that the practice of using new fruit/clothing probably entails a halachic compromise, as we see from the following question that many *poskim* raise. The entire reason for using new fruit/clothing is the concern that otherwise the *Shehecheyanu* is uncalled for, in which case its recitation will relate to the fruit/clothing. But if the *Shehecheyanu* relates to clothes, isn't the *beracha* a *hefsek*⁹ between the *Kiddush* and drinking the wine? There are many nuances of answers to

4. In vain.

5. *V'Zot HaBeracha*, p. 167.

6. *Kaf HaChayim*, *Orach Chayim* 223:31.

7. *Magen Avraham* 225:6; see also *Yechaveh Da'at* III:15.

8. *Shulchan Aruch*, *Orach Chayim* 8:10.

9. Improper interruption.

this question,¹⁰ but according to most of them, the situation of having the *beracha* relate to the fruit/clothing is not optimal, but only acceptable – **considering the gain**. Essentially, a halachic compromise is called for due to necessity in any case, and waiting with *Shehecheyanu* is not a bigger compromise than the matter of possible *hefsek*. We do the best we can.

Let us consider alternatives. Putting the jacket on in the middle of *Kiddush* is not only strange, but also inappropriate for a number of reasons. Might it be better to put on the clothes right before *Kiddush*? Maybe. But the combination of the fact that it is not natural to do so with the fact that we found no authoritative source that mentions this suggestion¹¹ strengthens our impression that the standard practice is to put the new clothes on before going to *shul*. Although we understand the tendency toward stringency on Rosh Hashana, we do not consider it worthwhile to be innovative and “holier” than the very reasonable practice of putting on the clothes before *Ma’ariv*.

10. See, for example, *Minchat Shlomo* I:20.

11. See response G-1.

D-3: Washing One's Face on Yom Kippur

Question: I have great difficulty being alert if I do not wash my face in the morning. May I do so on Yom Kippur, considering that I am not doing so for enjoyment, but rather to allow me to function properly?

Answer: It is true that only washing “for enjoyment” is forbidden on Yom Kippur.¹ Therefore, one may use water to wash off dirt² or to carry out a required washing before *davening*,³ and one also may get wet if he needs to pass through a body of water for an important purpose.⁴

Why the prohibition is so limited is a good question. After all, it clearly is not permitted to violate other *aveirot* simply because one does so for reasons other than enjoyment; one may not eat or drink on Yom Kippur for similar reasons, short of *pikuach nefesh*.⁵ The simplest explanation is that the *innuyim*⁶ of Yom Kippur, other than the prohibitions against eating and drinking (the two labeled as the major *innuyim*), are only Rabbinically mandated, and it is not uncommon for logical leniencies to be built into Rabbinical prohibitions. Indeed, several *Rishonim*, including Rabbeinu Tam,⁷ cite such leniencies as proof that the minor *innuyim* are Rabbinic. The Rambam,⁸ however, is among those who maintain that all the *innuyim* are of Torah origin. The Ran⁹ explains that according to this view, we have here an example of Torah laws whose

1. *Shulchan Aruch, Orach Chayim* 613:1.

2. *Ibid.*

3. *Ibid.* 2.

4. *Ibid.* 5.

5. Danger to human life.

6. Self-afflictions.

7. See *Tosafot, Yoma* 77a.

8. *Shevitat Assor* 1:5.

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

parameters were given over to the Rabbis to establish.

With that background, we will address your specific question. The Rosh¹⁰ cites the following ruling of a *Gaon*: “If someone wants to wipe his face on Yom Kippur, if he is an *istanis*¹¹ and his mind is not at rest throughout the year until he wipes with water ... he may wipe; but for others, it is forbidden.” In addition to apparently distinguishing between applying water for pleasure and fulfilling a specific need, this opinion considers the subjective frame of mind of the individual. The *Shulchan Aruch*¹² accepts this leniency. However, some *Rishonim* and *Acharonim* argue that there are problems with the application of the *Gaon*’s statement. The Maharil¹³ cites but rejects the ruling, without mentioning why he does so. As often happens, the Rama¹⁴ and Ashkenazi communities follow the Maharil. The Bach¹⁵ posits that the *Gaon* and the Rosh (as well as the Tur) permitted wiping with water only in a case in which there is actual dirt on one’s face. (The *Shulchan Aruch*, however, apparently reasons that if the *Gaon*’s ruling referred to a case of actual dirt, there would be nothing noteworthy in his ruling. He must therefore mean that an *istanis* with a clean face is equivalent to a normal person with a dirty face.¹⁶)

The *Aruch HaShulchan*¹⁷ argues that the Rosh must be understood in context, which greatly lessens the leniency’s scope. The *gemara*¹⁸ speaks about one who would dip a towel in water **before** Yom Kippur and then run that towel over his face **on** Yom Kippur, when it was less wet. (The Rama rejects using this system in our times out of concern that one might squeeze out water from

10. *Yoma* 8:7.

11. A person who is particularly sensitive to certain physical situations.

12. *Orach Chayim* 613:4.

13. *Yom Kippur* 1.

14. See Rama, *Orach Chayim* op. cit.

15. *Orach Chayim* 613.

16. See *Beit Yosef*, *Orach Chayim* 613.

17. *Orach Chayim* 613:7.

18. Op. cit. 78a.

the towel on Yom Kippur.¹⁹) The *Aruch HaShulchan* understood that the *Gaon* limited the *gemara*'s leniency, such that a regular person could use this system only to run the towel over his eyes, a most sensitive area that needs cleaning; only an *istanis* may use that system for the entire face. According to this view, the *Gaon* is not conveying a leniency, but actually somewhat of a stringency.

In any case, while Sephardim may be lenient as you suggested, Ashkenazim should not.²⁰ The practical logic for Ashkenazim seems to be that the refreshing feeling that wakes one up is considered washing of pleasure, even if the long-term interest of that pleasure is to help one concentrate on his *davening*. After all, being hungry is also often not conducive to *kavana* for *davening*, and a physically subdued feeling is not a contradiction to the Yom Kippur spirit. Only removal of negative extraneous materials from the body and incidental contact with water are included in the leniency of lack of enjoyment.

For you, we suggest considering putting your face next to an open freezer or placing something cold but dry on your face.²¹ This may help.

19. *Orach Chayim* 613:9.

20. See *Mikraei Kodesh* (Harari), *Yom Kippur* 7:11.

21. See *Shulchan Aruch*, *Orach Chayim* 613:9.

D-4: Disqualification of an *Eetrog* Based on Color

Question: When does discoloration of an *etrog* render it not kosher?

Answer: The *mishna*¹ discusses an *etrog* upon which a *chazazit* (a blister-type formation, which is uncommon in our times) appears. The *mishna* states that a *chazazit* disqualifies the *etrog* only if it covers the majority of the *etrog*. However, the *gemara*² says that a *chazazit* can disqualify an *etrog* even if it is only on a minority of the skin when: 1) the blemishes are in a few places, making the *etrog* look spotted; or 2) the blemish (of any size) is on the *chotem* (literally, the nose; see below).

When a blemish has a serious visual impact, the *etrog* is not considered *hadar*³ (pleasing to the eye), which is the word the Torah⁴ uses to describe an *etrog*. If the blemish is located on the top part of the *etrog* or if it is spread out like a leopard's spots, the *etrog* fails the "*hadar* test." A major question is whether blemishes (or other cases of lack of *hadar*) disqualify the *etrog* only on the first day of Sukkot, when the *mitzva* is of Torah origin,⁵ or even throughout the seven days of Sukkot.⁶

The *Rishonim* extended the laws that we find regarding *chazazit* to other changes of color and visible form, such as when part of the *etrog* is black or white⁷ or very dry (according to most opinions).⁸ Black spots can come from different sources, but one

1. *Sukka* 34b.

2. *Ibid.* 35b.

3. See *Beit Yosef, Orach Chayim* 648.

4. *Vayikra* 23:40.

5. Rambam, *Lulav* 8:9; *Shulchan Aruch, Orach Chayim* 649:5.

6. Rosh, *Sukka* 3:4; Rama, *Orach Chayim* 649:5; see *Mishna Berura* 649:35-36.

7. *Shulchan Aruch, Orach Chayim* 648:16; see *Mishna Berura* 648:45.

8. See *Shulchan Aruch* op. cit. 12 and *Mishna Berura* op. cit. 47.

should assume that any black spot that does not come off with rubbing is problematic.⁹ (If one tries to remove such a spot, one should be careful not to rub off some of the skin of the *etrog* itself in the process.) However, spots that are too small to be noticed through looking casually do not count.¹⁰

Another common situation is *bletlach* (scab-like formations, which occur at spots of the *etrog* that a leaf was touching while the *etrog* was growing). There is no consensus among *poskim* regarding whether *bletlach* are considered blemishes if they protrude from the *etrog*'s surrounding skin.¹¹ It is possible that since *bletlach* are common parts of the normal growth of an *etrog*, they are not considered blemishes, but rather part of the normal appearance of an *etrog*.¹² Similarly, the normal appearance of an *etrog* is yellow. However, although a dark green color disqualifies an *etrog*,¹³ there may be green spots in sensitive areas if they have **started** to turn yellowish, and this is acceptable.¹⁴

Where is the *chotem*, in which small blemishes are a special problem? There are four opinions among the *Rishonim*,¹⁵ three of which are identified in the sketch below. Some say that it is the area above the *etrog*'s widest spot. The accepted opinion is that it is where the *etrog* starts angling toward its point at the *pitum* (#1).¹⁶ The *Bi'ur Halacha*¹⁷ writes that all agree that the *chotem* can begin only in the top half of the *etrog*.

Most authorities maintain that the disqualification based on multiple blemishes applies only if the total area in which the blemishes appear (measured by encircling them) covers the majority of the *etrog*. According to most authorities,¹⁸ this

9. *Kashrut Arba'at HaMinim*, p. 21.

10. *Ibid.* p. 199; see *Shut HaRadbaz* IV:111.

11. Rama, *Orach Chayim* 648:13; *Mishna Berura* 648:50.

12. Rama *ibid.*

13. *Shulchan Aruch* *ibid.* 21.

14. See *Mishna Berura* *ibid.* 65.

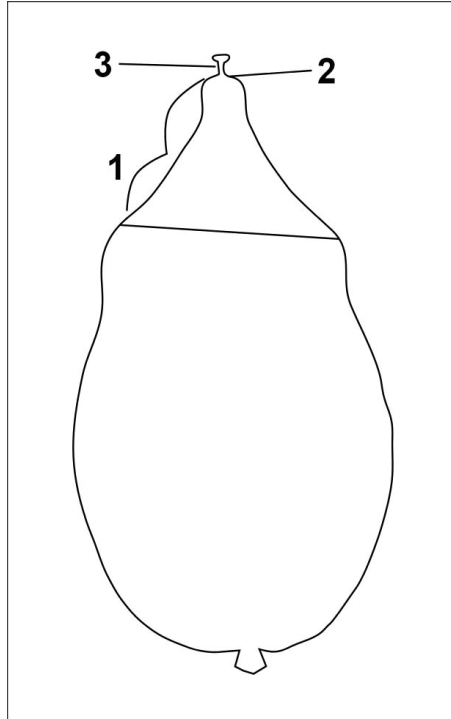
15. See *Beit Yosef*, *Orach Chayim* 648; *Kashrut Arba'at HaMinim*, p. 79-80.

16. *Shulchan Aruch* *ibid.* 12.

17. To 648:9.

18. See *Magen Avraham* 648:12; see *Machatzit HaShekel* ad loc.

disqualification applies even if these blemishes cover a majority of only the **width** of the *etrog* and do not cover a majority of the entire surface area.¹⁹



19. The *Chazon Ish*, *Orach Chayim* 147:5, disagrees.

D-5: Hagbaha after Side-Minyan Laining on Simchat Torah

Question: At “side *minyanim*” for *laining* on *Simchat Torah* (in an Ashkenazi *shul*), should *hagbaha* be done when each group finishes its reading, before the *sefer Torah* is returned to the main *shul*?

Answer: Our impression is that there is not a clear *minhag* regarding this question. Nevertheless, tracing the *minhagim* of *hagbaha* should provide some insight, although complete clarity may be elusive.

The *gemara*¹ discusses the laws and importance of *gelilla*, but it is actually more like what we call *hagbaha*. *Massechet Sofrim*² describes *gelilla* as the opportunity **before** reading from the *sefer Torah* for everyone to see the *sefer Torah*’s writing, bow, and say several *p’sukim* in recognition of the Torah’s veracity and importance. The practice seems to have been first recorded in connection to Ezra’s moving public reading of the Torah.³ There too, the lifting of the Torah to show it to the people was apparently done before the reading. Many Sephardim point the *yad* at the place in the *sefer Torah* from which the reading will begin, further stressing the element of introducing the ensuing reading.

Why do Ashkenazim do *hagbaha* at the end of the *laining*,⁴ and what impact does this have on the way we view the process? The change took place by the end of the period of the *Rishonim*, as the Maharik⁵ takes for granted that *hagbaha* is done after *laining*. The most authoritative source justifying the change is actually

1. *Megilla* 32a.

2. Chapter 14. There are different versions of the text, but this is the way most sources, including *Darchei Moshe*, *Orach Chayim* 147:4, understand it.

3. *Nechemia* 8:5.

4. See Rama, *Orach Chayim* 134:2.

5. *Shut* 54.

Sephardic. The *Sheyarei Knesset HaGedola*⁶ praises the change, saying that is worthwhile because people get more excited about *hagbaha* than about *kri'at haTorah*, so that putting *hagbaha* at the end of the *laining* makes it more likely that people will remain in *shul* until then.

The *Sheyarei Knesset HaGedola*'s explanation provides a technical reason to do *hagbaha* after *laining*, but even if this was the original motivation, it still seems that the nature of *hagbaha* has developed away from being a preparation for the reading. For Ashkenazim, *hagbaha* has become the major focus of the *gelilla* process.⁷ As we complete the Torah reading, we honor it by enabling the congregation to properly “take leave” of the *sefer Torah*, along with readying it for proper storage. The Rashba⁸ already was cognizant of the fact that *minhagim* were going in the direction of showing more *kavod* to the Torah during *hagbaha* than is normally halachically necessary.⁹

Let us return to your question of whether it is necessary or preferred to do *hagbaha* after even a semi-formal Torah reading or whether *hagbaha* is to be performed only in the classical forums of public Torah reading. Ashkenazim take for granted that on days when multiple *sifrei Torah* are read, *hagbaha* is done to each *sefer Torah*, but this is actually the subject of varied *minhagim* among Sephardim. Furthermore, at least some Sephardim who do *hagbaha* for each *sefer Torah* lift them all before reading from even the first one. We can learn from the existence of these diverse *minhagim* that the basic idea is that the people should experience *hagbaha* in honor of the *sifrei Torah*, which is more important than there being a set procedure of lifting a *sefer Torah* before reading. If we are correct that for Ashkenazim *hagbaha* has become the honorable way to conclude using the *sefer Torah*

6. *Hagahot Beit Yosef, Orach Chayim* 134:2.

7. Rama, *Orach Chayim* 147:4, and *Mishna Berura* ad loc. 19.

8. *Shut* III:281.

9. The Rashba's context is standing when the *sefer Torah* is being held in a separate domain (the *bima*) from where the people are.

and prepare it to be put away, then it should be done any time the *tzibbur* has finished reading from a given *sefer*, no matter how many *sefarim* are used.

It is difficult to prove whether or not there must be *hagbaha* at the end of *laining* at side-*minyanim* on Simchat Torah. We would recommend that in the case of a *sefer* that will be used shortly as one of the three *sefarim* in the main *minyan*, we can view its temporary closing as a pause, such that the later *hagbaha* will suffice. However, it appears appropriate that if the use of a *sefer Torah* is finished, this should be accompanied by *hagbaha*. On a day in which we dance with and around the *sefarim*, it does not make sense to be stingy regarding a classic way to show our reverence for them. However, it is difficult to call this an absolute requirement. Thus, for example, if there is no one left at the *minyan* who is strong enough to lift the *sefer Torah* reliably, *hagbaha* may be skipped.

D-6: A *Ben Chutz La'Aretz*¹ Flying Out of Israel on *Yom Tov Sheini*

Question: May an American visiting Israel who keeps only one day of *Yom Tov* fly on the day after Pesach in Israel (*Yom Tov Sheini* abroad) if he will land at his destination after *Yom Tov Sheini* is over there?

Answer: Before addressing your question itself, we will touch on the question of whether a *ben chutz la'aretz* should observe one or two days of *Yom Tov* in Israel. There is a difference of opinion on this issue. We believe that both opinions (and their offshoots) are defensible and legitimate, and we are glad that the *machloket* has not become divisive. Having a basic understanding of the issues involved in that question is critical before we deal with your question.

Bnei chutz la'aretz keep two days of *Yom Tov* outside *Eretz Yisrael* because of the binding *minhag* – even after the calendar was set – to treat the day following *Yom Tov* as if it might be the actual day of *Yom Tov*.² Those *bnei chutz la'aretz* who keep two days even in Israel reason that this *minhag* applies even when they are in Israel,³ since the *minhagim* and accepted stringencies of a person's community are binding upon him even while he is visiting elsewhere.⁴ The *Chacham Tzvi*⁵ differs, arguing that the rule of observing the practices of one's community does not apply to matters that are dependent on the place in which one finds himself. If the person's community were to move to Israel, they would not need or even be allowed to keep an extra day of *Yom Tov*; thus, the individual in that situation should also not keep

1. A Jew who lives in the Diaspora.

2. *Beitza* 4b.

3. *Mishna Berura* 496:13. See survey of opinions in favor of this approach in *Yom Tov Sheini K'Hilchato* 2:(3)-(4).

4. See *Pesachim* 50a.

5. *Shut Chacham Tzvi* 167.

a second day in Israel.

Let us analyze the unique situation of the flight to which you refer. Israeli travelers do not have a problem flying on the day after *Yom Tov*, because they are not obligated to keep a second day of *Yom Tov* unless they move permanently to the Diaspora. Although there is a prohibition for Israelis to perform *melacha* in *chutz la'aretz* on the second day of *Yom Tov*, this prohibition applies only when they are within the limits of a Diaspora Jewish community (and the plane does not qualify as such).⁶ In contrast, an American traveler is himself a *ben chutz la'aretz*, and he is therefore fundamentally obligated to keep a second day. The *Chacham Tzvi's* logic to exempt him in Israel no longer applies while he is in the air, as a plane flying over *chutz la'aretz* is not in Israel even if it took off from there. The visitor would therefore enter into his natural obligation of *Yom Tov Sheini* on the plane.

One might argue that one's *Yom Tov* status cannot change in the middle of the *Yom Tov* day. However, there is ample precedent that one's status can indeed change. The accepted opinion is that one who makes *aliya* (e.g., by boat) on *Yom Tov Sheini* or makes the decision, in the midst of *Yom Tov Sheini*, to remain permanently in Israel does change his status in the middle of the day.⁷ (The logic of the minority who disagree seems to apply only to removing a positive status of *Yom Tov* that was already accepted, not to preventing from starting *Yom Tov* in the middle of the day.⁸) We similarly find the idea of halachically changing one's calendrical day in the middle of a day in the context of the laws of *sefirat ha'omer* and other *halachot* for those who cross the International Date Line.⁹

Is it permitted to put oneself in a situation in which he will experience *Yom Tov* on a plane for several hours? The *Shulchan*

6. *Shulchan Aruch, Orach Chayim* 496:3.

7. See *Yom Tov Sheni K'Hilchato* 4:6.

8. See *B'Tzel HaChochma* I:53.

9. See our *teshuva* in *BeMareh HaBazak* V:29 and the article by Rav Z. Ryzman, *Techumin* XXXII, p. 30.

*Aruch*¹⁰ rules that it is permitted for one to board a ship even though he will be on it on Shabbat if the trip is needed for *mitzva* purposes, but we cannot provide a blanket ruling as to how to categorize the needs of those who feel they must leave Israel right after *Yom Tov*. In some ways, the situation on a plane is even better than that on a ship, but in other ways it is worse.¹¹ However, in any case, there are so many difficulties with this arrangement (purely halachic problems as well as technical ones that are created by the *halacha*) that we strongly discourage taking such a flight except in case of extreme necessity. Among many examples of difficulties are: One may not lock the door to the bathroom, as doing so causes the light to go on. One also may not look at the television screen. *Muktzeh* prohibitions are relevant to such items as passports, boarding passes, and customs declarations. It is likely that such a person would even be obligated to recite the *Yom Tov davening* and the full *Kiddush*, and he would be required to have *lechem mishneh*. On the eighth day of Pesach, he would be prohibited to eat *chametz*.

In summation, even those *bnei chutz la'aretz* who keep only one day of *Yom Tov* in Israel should not take off from Israel while it is still *Yom Tov Sheini*. If they do, they should treat that time on the plane as *Yom Tov*. We would be happy to give more detailed advice to one who finds himself in a situation in which he has little choice but to fly then.

10. *Orach Chayim* 248:1.

11. The details are beyond our scope. See aforementioned article by Rav Ryzman in depth.

D-7: *Hachnasat Sefer Torah*¹ on *Chol HaMo'ed*

Question: I have strong reasons to hold a *hachnasat sefer Torah* on *Chol HaMo'ed*. Is it permitted to do so?

Answer: The main issue at hand, relevant specifically to a *hachnasat sefer Torah* for a new *sefer Torah*,² is the permissibility of writing the *sefer Torah*'s final letters, as the *minhag* is to do so on the day of the ceremony.

The *mishna*³ states that it is forbidden to write even a small part of a book, including holy scrolls, on *Chol HaMo'ed*. The Rama⁴ cites two opinions as to whether this is permitted if the masses need the book after the *chag*, and he concludes that it is permitted if one uses simple, “non-artisan” writing. In other words, according to the lenient opinion, the *mishna* refers specifically to cases in which there is no acute need to write on *Chol HaMo'ed* itself. These *halachot* follow the rule that simple work (*ma'aseh hedyot*) is permitted on *Chol HaMo'ed* for festival needs or for communal needs that are sufficiently significant, even if they are only for after the *chag*.⁵

Since writing a *sefer Torah* certainly requires an expert acting carefully (*ma'aseh uman*), it should be forbidden on *Chol HaMo'ed*. The *Shulchan Aruch*⁶ does rule that if there is no other *sefer Torah* for the community's Torah reading, a *sefer Torah* may be finished on *Chol HaMo'ed* for that purpose. However, it does not sound like that is your predicament.

Despite the above, there has long been a phenomenon of

1. A party upon the completion of the writing of a *sefer Torah* and/or its being brought to the place it will be held.

2. As opposed to one simply purchased or whose venue is being changed.

3. *Mo'ed Katan* 18b.

4. *Orach Chayim* 545:1.

5. *Shulchan Aruch*, *Orach Chayim* 544:1.

6. *Orach Chayim* 545:2.

hachnasot sefer Torah held on *Chol HaMo'ed*. Some *poskim*⁷ criticize the practice. However, several *poskim* justify the practice when it is performed in a particular – and anyway common – fashion, as we will now discuss.

Usually, the main writing of the *sefer Torah* is completed days before the event, except for the last letters, which are written at the *hachnasat sefer Torah* itself by the *sefer's* owner and his honorees. To facilitate this, the *sofer* uses one of two systems: 1) He writes the letters in very light ink, so that the donor/honorees write on top to darken them. 2) He writes “hollow letters” and has the donor/honorees fill them in. Some *poskim* suggest that in these cases, the halachic writing already exists, in which case the writing that is left for the end does not constitute a *melacha*.⁸ Moreover, even if this is a full *melacha* of writing, it is an example of *ma'aseh hedyot*, as even a non-expert can follow the tracing or fill in the hollow letters, and in such a case, writing is permitted even for a simple *mitzva* of an individual or for an enhancement of the *chag*.

What *mitzva* or enhancement of the *chag* applies here? Some say⁹ it is the *mitzva* of having a *sefer Torah*. Although some of the leniencies of *Chol HaMo'ed* apply only if one had to do the work at that time (a condition that **might not** apply in your case), festival and *mitzva* needs can be done even if they could have been done at other times. Some question¹⁰ whether the writing of the *sefer Torah* is considered a *mitzva* in our days, but the argument that it is not a *mitzva* seems weak. In any case, since the whole celebration is such a joyous and *chag*-appropriate activity, all of its standard elements, which customarily include writing the last letters, are festival needs. (The *poskim* are not concerned with the possibility that the celebration might impinge on the proper focus on the *chag*, which is the reason that weddings are forbidden on

7. Including *Aruch HaShulchan, Orach Chayim* 545:5.

8. See discussion in *B'Tzel HaChochma* IV:50.

9. *S'dei Chemed*, vol. IX, p. 39.

10. See *Minchat Elazar* III:2.

Chol HaMo'ed.¹¹ A Torah celebration of this type is within the appropriate focus.) If the *sefer Torah* will be read from during the *chag*, including *Simchat Torah*, that should also be considered a *mitzva* purpose.

Thus, under the above conditions, a *hachnasat sefer Torah* is permitted according to most *poskim*, including the *Beit Yitzchak*,¹² *Kaf HaChayim*,¹³ and the contemporary *Chol HaMo'ed K'Hilchato*.¹⁴ As mentioned, there is also some history of leniency. Some *poskim*¹⁵ are willing to be lenient only in the case of real need, which you indicate you have.

In summary, if it will be most appropriate for the celebration to take place on *Chol HaMo'ed*, feel free to do it then. Make sure the *sofer* completes his part before *Yom Tov* and leaves any expert brush-up work for after the *chag*. *Mazal tov!*

11. *Chagiga* 8b.

12. *Yoreh Deah* II, addendum 20.

13. *Orach Chayim* 545:6, based on the *S'dei Chemed* op. cit.

14. 6:24.

15. *Shevet HaLevi* III:96; *B'Tzel HaChochma* op. cit.

D-8: Festive Meals on Chanuka

Question: Is one supposed to celebrate Chanuka with festive eating? How and why is it different from Purim?

Answer: There is no set obligation to have a meal in honor of Chanuka,¹ as there is on Purim.² Let us begin by discussing why there is such a difference.

The broadly accepted general distinction between the two holidays in this regard is based on the difference between the types of danger that were involved. In the Purim story, there was danger of physical annihilation. In contrast, in the Chanuka story, the Jews' ability to keep the Torah was attacked, but had they agreed to forsake the Torah, there would not have been a physical danger. According to the *Taz*'s³ understanding of the *Levush*,⁴ the Chanuka salvation was therefore less important and thus did not warrant as much festivity. The *Taz*, however, disagrees based on the idea that one who causes someone else to sin is worse than one who kills him.⁵

The *Taz* himself argues that physical salvation, which relates to "this world," is most appropriately celebrated with physical celebration, whereas spiritual salvation is to be celebrated in a spiritual manner (i.e., the Chanuka lights). However, this idea seems inconsistent with other sources. For example, a festive meal is required on Shavuot because it is the day on which the Torah was given.⁶ Furthermore, the Rama⁷ writes that there should be some festivity on Chanuka and gives as the reason that it was the time of the dedication of the *mizbe'ach* (altar), which was

1. *Shulchan Aruch, Orach Chayim* 670:2.

2. *Ibid.* 695:1.

3. *Orach Chayim* 670:3.

4. *Orach Chayim* 670:2.

5. *Bamidbar Rabba* 25:4.

6. *Pesachim* 68b.

7. *Orach Chayim* 670:2.

a spiritual event, and the *Taz* himself⁸ seems to agree. Perhaps the *Taz* meant that the **preservation** of life deserves physical celebration; regarding spiritual matters, one celebrates physically only if there is something **new**, as occurred on Shavuot and in the dedication of the *mizbe'ach*.

*Mishnat Ya'avetz*⁹ adds halachic reasoning to explain why there actually could be a preference **not** to have a full obligation of a festive meal on Chanuka. He points out that a full obligation could have caused a problem of *bal tosif* (the prohibition of adding on to the *mitzvot* of the Torah) for creating a day significantly akin to *Yom Tov*.¹⁰

Nevertheless, there are sources that seem to indicate that there is a *mitzva* of having festive eating on Chanuka. The Rambam¹¹ refers to the days of *Chanuka* as “days of *simcha* (joy) and *hallel* (songs of praise),” and the former term usually relates to festive eating.¹² At the very least, this includes a prohibition of fasting during Chanuka.¹³ The *Shulchan Aruch*,¹⁴ who rules that there is no obligation to have festive meals, implies that there does indeed exist a practice to have them, but that they are *reshut* (voluntary). The Rama,¹⁵ as mentioned, cites an opinion that there is a slight *mitzva* to have special meals for Chanuka, with the reason relating, as above, to the dedication of the *mizbe'ach*.

The Rama adds that the practice is to sing and praise HaShem at special meals made in honor of Chanuka, and if one indeed does so, then the meal is a *seudat mitzva*. The status of *seudat mitzva* can mean one of two things: One is that there is a *mitzva* to have the meal; the other is that the meal has religious significance

8. Ad loc. 4.

9. *Orach Chayim* 79.

10. See *ibid.* regarding how Mordechai and Esther dealt with this issue regarding Purim.

11. *Chanuka* 3:3.

12. *Yam Shel Shlomo, Bava Kama* 7:37.

13. *Shabbat* 21b

14. *Op. cit.*

15. *Orach Chayim* 670:2.

when one has it, even if it is not required. For example, on *Yom Tov*¹⁶ or after a *brit mila*,¹⁷ one is required to have a festive meal. In contrast, if one completes a unit of learning that warrants a *siyum*, he is not obligated to make a celebration, but if he does celebrate, the celebration has a special status – which, for example, allows one to eat meat during the Nine Days.¹⁸ On Chanuka, there is no requirement to have a *seuda*; there is simply an obligation not to fast. However, if one does have a special *seuda*, it is quite clear that he has fulfilled a *mitzva* by so doing.¹⁹

This makes sense particularly when there is some sort of praising of HaShem at the *seuda*. After all, if one does not praise HaShem, then what makes it a Chanuka party? Since, as the Rambam writes, these are days of *simcha* and *hallel*, a *simcha* that is not accompanied by some sort of *hallel* lacks significance. It is possible that mentioning or having in mind that one is eating a little more or nicer food in honor of Chanuka suffices, but going beyond this is at least appropriate.

16. *Shulchan Aruch, Orach Chayim* 529:1.

17. See *Shulchan Aruch, Yoreh Deah* 265:12.

18. Rama, *Orach Chayim* 551:10.

19. See *Torat HaMo'adim* (Rav David Yosef), *Chanuka* 9:(10).

D-9: Repeating Questionable Words in *Parashat Zachor* and *Megillat Esther*

Question: In *Parashat Zachor* and *Megillat Esther*, there are words with variant readings, and most *shuls* read them twice. In doing so, should one repeat the word, the phrase it is in, or the whole *pasuk*?

Answer: First, it is not clear that it is necessary to repeat any of the above. The repetition of *zeicher/zecher* (for the Ashkenazim who distinguish between the vowels *tzeirei* and *segol*) in *Parashat Zachor*¹ is based on the concern that this variance might change the meaning of the *pasuk*, which is the determinant factor of when a mistake must be corrected.² The word for “memory” is apparently “*zeicher*.”³ The question is whether the word is changed to *zecher* when it means “memory of.” The more accepted position (found in most *Chumashim* and the one employed in reading the same *pasuk* during *Parashat HaShavua*⁴) is “*zeicher*,” but the Radak⁵ and the Gra⁶ maintain that “*zecher*” is correct. The *Mishna Berura*⁷ recommends the *minhag* to read both words, which seems to have emerged based on the *Chatam Sofer*’s⁸ practice.

However, it is not clear that reading the “wrong choice” out of the two possibilities actually changes the meaning. Consider the great similarity between the words, the fact that the Radak agrees that in other places in *Tanach* “*zeicher*” is used to mean “memory

1. *Devarim* 25:19.

2. *Shulchan Aruch, Orach Chayim* 142:1.

3. See *Tehillim* 111:4.

4. Admittedly, *Igrot Moshe, Orach Chayim* V:20.32, writes that it should be read both ways then as well.

5. *Sefer HaShorashim*, “*zachor*.”

6. Cited in multiple sources, although some have different accounts.

7. 685:18.

8. Died 1839.

of,” and the fact that the context of the *pasuk* makes the correct meaning clear.⁹ The two traditional changes in *Megillat Esther* also do not seem to change the meaning.¹⁰ In any case, probably due to our great regard for *Parashat Zachor* and *Megillat Esther*, the idea of repeating is **now** a strong *minhag*, which is effectively untouchable in most communities.¹¹

The matter of how many words to repeat enjoys much less consensus. To start with, there are three different accounts of what the *Chatam Sofer* repeated regarding *zeicher/zecher*: only the word, the full phrase from “*timcheh*,” or the whole *pasuk*. The *minhag* decades ago was to repeat the phrase, which is what Rav Moshe Feinstein¹² and apparently Rav Yosef D. Soloveitchik recommended.¹³

Some raise issues with the practice of repeating just the phrase. When we *lain* a word wrong, we fix just the word. If the mistake was adding a word, we reread the phrase in which the word had been inserted without the extraneous word. The simplest explanation of how this works is that by repeating the phrase correctly, one “erases” that which was said before and starts the phrase again. In that vein, the *Shulchan Aruch*¹⁴ rules that if one accidentally recited “*borei pri hagafen*” on beer and then immediately added “*shehakol ...*,” the correction works to replace the mistaken part of the *beracha* (at least enough to not have to repeat the *beracha*). Thus, saying “*zecher*” (the second reading) may erase “*zeicher*,” and that is not our intention given that we do not believe that “*zeicher*” is actually wrong; we are simply acting with extra stringency to be sure. (There is some

9. Context is apparently a factor in determining what needs to be corrected.

10. See *Mishna Berura* 142:4. Grammatical and halachic arguments are beyond our scope.

11. Whether or not it should be that way is a good question, but we will not address it further. See article by Rav Menachem Breuer in *Megadim* X, pp. 97-112.

12. *Igrot Moshe* op. cit.

13. See *P'nei HaRav*, p. 148; I have heard differing accounts.

14. *Orach Chayim* 209:2, based on some *Rishonim* to *Berachot* 12a.

logic to saying “*zeicher*” second, but that is not the *minhag*.) It therefore makes sense to finish the *pasuk* before repeating. Once the *pasuk* is finished, it is like “money in the bank” that cannot be ruined by an altered recitation.

However, those who suffice with repeating the phrase can defend themselves and “counterattack.” The defense is that erasure may happen only if one **intends to replace** that which was wrong, but not if one only wants to **add an alternative** reading just in case the first reading was wrong. The counterattack is that the Ramban¹⁵ understands the *gemara*¹⁶ as being unsure about the *halacha* in the case of one who said a *beracha* correctly and immediately **after finishing it** added the wrong ending. Is he credited for the *beracha*, or was it “erased”? Thus, we see that even finishing the *pasuk* might be problematic. This argument actually strengthens the approach of those who choose what they believe is the correct reading and do not repeat anything (as *shuls* did for centuries). There are halachic arguments to support either side (which we leave out for brevity’s sake), but no conclusive proof. We will not share an idea to solve the problem according to all opinions (as we do not want to introduce more *chumrot* than, for better and/or for worse, already exist).

In conclusion, we believe that those following any of the many *minhagim* fulfill their *mitzva* of *zechirat Amalek*¹⁷ and recommend that each *shul* should keep to its own *minhag*.

15. *Milchamot HaShem*, *Berachot* 6b in the Rif’s pages.

16. *Berachot* 12a.

17. Remembering what *Amalek* did (and what should be done in response).

D-10: Purim in Transit

Question: I plan to fly from New York during the night of Purim (after *Megilla* reading) and arrive in Jerusalem in the afternoon.¹ Would I have to hear *Megillat Esther* in Jerusalem before the end of the 14th of Adar, or is it enough that I will hear it there on the 15th?

Answer: If, at daybreak of the 14th of Adar, one will be in a place that celebrates Purim on that day, he is obligated both to hear the *Megilla* reading the previous night, as well as to hear it again on the 14th during the day.² This is true even for a resident of Jerusalem. (Intention to travel elsewhere on Purim itself sometimes makes a difference, but not in this case.) This is deduced from a *pasuk*³ that states that people who “are **sitting in** an un-walled city,” in addition to **residents of** such cities, observe Purim on the 14th. One who is located in an uninhabited area (including a plane over the ocean) at daybreak of the 14th also reads the *Megilla* on the 14th, as this is Purim for anywhere that did not have a wall at the time of Yehoshua.⁴ If such a person is subsequently in Jerusalem at daybreak of the 15th, the *Talmud Yerushalmi*⁵ apparently rules that he is obligated to hear the *Megilla* on the 15th (night and day) **as well**.

Not all agree with this ruling that one can be obligated to hear the *Megilla* on both days. According to the way that the *Korban Netanel* understands the Rosh,⁶ the *Bavli* argues with the *Yerushalmi* and maintains that the place where one is at daybreak of the 14th sets his status and determines on which **single day**

1. In most of the world, *Megillat Esther* is read on the 14th of Adar. Jerusalem is one of the only places in which it is read on the 15th of Adar instead.

2. *Megilla* 19a.

3. *Esther* 9:19.

4. Rama, *Orach Chayim* 688:5.

5. *Megilla* 2:3.

6. *Megilla* 2:3.

he will be obligated to read or hear the *Megilla*. Accordingly, Rav Ovadia Yosef says that one who is outside Jerusalem at the beginning of the 14th and returns to Jerusalem by daybreak of the 15th reads the *Megilla* with a *beracha* on the 14th but without a *beracha* on the 15th.⁷ Rav Frank⁸ goes further, saying that even the aforementioned *Yerushalmi* required hearing the *Megilla* on the 15th after hearing it on the 14th only in the case of one who is a resident of Jerusalem or who moved there permanently in between the respective reading times, not for one who merely visited Jerusalem. In any event, we do not know of any opinion that exempts one who is outside Jerusalem on the morning of the 14th from hearing the *Megilla* on that day due to plans to hear the reading in Jerusalem on the 15th.

The plan to arrange to hear the *Megilla* when you get to Jerusalem toward the end of the 14th raises a few halachic complications. One is that only someone who himself is obligated in reading on the 14th can read for you on that day. This is based on the idea that someone who is not obligated in a certain *mitzva* cannot facilitate the fulfillment of that *mitzva* for one who is obligated.⁹ Thus, reasons the *Yerushalmi*,¹⁰ since a Jerusalemite has no obligation to read the *Megilla* on the 14th, he cannot read for someone who does have an obligation on that day. Rav Frank¹¹ cites a minority opinion that the *Bavli* disagrees with this *Yerushalmi*, with the logic that the general obligation to read the *Megilla* along with the concept of responsibility for a fellow Jew's religious obligations suffice for all Jews to be considered obligated. Although there is some additional basis to claim that all are considered obligated regarding the 14th,¹² the consensus is that the *ba'al korei* for the 14th should be someone who is obligated

7. See *Yalkut Yosef, Mo'adim*, pp. 305-6.

8. *Mikraei Kodesh, Purim* 19.

9. *Rosh Hashana* 29a.

10. *Op. cit.*

11. *Mikraei Kodesh, Pesach* II:66, in a parallel context.

12. See *Yerushalmi op. cit.*; *Yabia Omer* I, *Orach Chayim* 43.17.

that day.¹³ (If the reader is from the correct place, the fact that he has already fulfilled the *mitzva* earlier is not a problem.¹⁴)

Needing to hear the *Megilla* reading in the afternoon of the 14th will also raise an issue regarding eating, as it is forbidden to eat a meal before fulfilling the obligation to hear the *Megilla*,¹⁵ both at night and during the day.¹⁶ Although one is allowed to snack before the reading, some say this is permitted only in a case of significant need.¹⁷ Moreover, while a “snack” sometimes means anything less than a *k'beitza* of bread,¹⁸ some maintain that one should not eat more than a *k'beitza* of anything.¹⁹ Certainly you would not be allowed to have the Purim *seuda*, in which you will be obligated, until after *Megilla* reading. (For *mishlo'ach manot* and *matanot la'evyonim*, appointing an agent in advance is likely a wise step.²⁰)

Due to these complications, most people would probably prefer to avoid a trip such as the one you are planning or to at least try to arrange to read or hear a valid reading from a kosher *Megilla* on the plane.

13. See *Yalkut Yosef* op. cit.

14. *Shulchan Aruch, Orach Chayim* 692:3.

15. *Ibid.* 4.

16. *Mishna Berura* 692:15.

17. *Ibid.* 14.

18. *Ibid.*

19. *Mikraei Kodesh* (Harari), *Purim* 4:6, in the name of Rav Mordechai Eliyahu.

20 See *Living the Halachic Process*, vol. I, D-13, regarding some timing issues.

D-11: Ranking *Mishlo'ach Manot* Stringencies

Question: I have heard many opinions about *mishlo'ach manot* requirements (enough for a meal, different *berachot*, cooked food, etc.). Which of these so-called requirements are actually necessary?

Answer: We will refer to the practices you mention and a few others (although this list is not exhaustive), categorizing them according to our appraisal of the *chumrot* (stringency). The most basic unanimous requirement (i.e., not a *chumra*) is that *mishlo'ach manot* must include two food portions, as indicated by the plural *manot*.¹

Proper to Be Careful (strong opinions require them)

Respectable quality/quantity – The *gemara*² tells of two *Amora'im*, one who sent simple foods and another who sent sharp spices, and of a colleague who implied that this was inappropriate. Many explain that *mishlo'ach manot* are supposed to foster warm relations and/or that they are for *seudat Purim* use.³ Therefore, it is not surprising that *poskim* maintain that the *manot* should have some importance⁴ and perhaps that the affluence of the giver and/or of the recipient affects what is considered sufficient.⁵ However, the opinions⁶ that one person's *mishlo'ach manot* should suffice for some level of an entire independent meal (as opposed to simply being a nice enhancement to a meal) are fewer and weaker.

1. *Shulchan Aruch, Orach Chayim* 695:4.

2. *Megilla* 7b.

3. See *Shut Chatam Sofer, Orach Chayim* 196.

4. *Aruch HaShulchan, Orach Chayim* 695:15.

5. *Ritva, Megilla* 7a; *Chaye Adam* II, 155:31; *Bi'ur Halacha* to 695:4.

6. See citations in *Yalkut Yosef, Mo'adim*, p. 329; *Mikraei Kodesh* (Harari), *Purim* 12:4.

Ready to be eaten – The *Magen Avraham*⁷ requires that if one gives meat as *mishlo'ach manot*, it must be given already cooked. The logic behind this is that raw food misses the mark, as the recipient cannot enjoy it without effort. The *Mishna Berura*⁸ cites this as the primary ruling, while noting that there are also distinguished lenient opinions. (Some mistakenly understand that one must always give cooked food, but in truth, this is an issue only for food that is inedible raw.) While important *poskim* are lenient,⁹ this is an easily-followed and logical stringency that most people should adopt.

One May Want to be Careful (minority strict opinions with a measure of weight)

Drinks do not count – Some claim¹⁰ that *manot* refer to solid food, not drinks. This is based on a minority text of a Talmudic story about a complaint of insufficient *manot*, which identifies the problem as a drink having been given instead of a second food item. However, an explicit *gemara*¹¹ tells of a rabbi who sent a nice portion of meat and a barrel of wine, indicating that drinks are fine.¹² The *Magen Avraham*¹³ and *Mishna Berura*¹⁴ rule that drinks do count.

Kedushat shvi'it – It is forbidden to pay debts by giving fruit that has *kedushat shvi'it*.^{15 16} Some say that fulfilling one's religious obligation to give *mishlo'ach manot* is like paying a debt, and it is therefore prohibited to fulfill the *mitzva* by using *shvi'it* fruit.

7. 695:11.

8. 695:20.

9. See *Yalkut Yosef* op. cit., p. 318.

10. See *Afarkasat D'Ania* I:25.

11. *Megilla* 7a-7b.

12. See *Terumat HaDeshen* I:111.

13. Op. cit.

14. Op. cit.

15. Fruit that grew in *Eretz Yisrael* during the *Shemitta* year in a manner that gives the fruit special sanctity.

16. Rambam, *Shemitta* 6:10.

(This applies only to the first valid *mishlo'ach manot* that one gives that year, through which he fulfills his obligation).¹⁷ Others say that using *shvi'it* fruit is prohibited specifically when one gives *mishlo'ach manot* as reciprocation for having received something from someone, as the need to reciprocate is like a debt.¹⁸ However, many are lenient,¹⁹ including, apparently, our mentor, Rav Shaul Yisraeli.²⁰

Separate utensils – The *Ben Ish Chai*²¹ says that whatever is in one utensil counts as only one portion. This opinion is difficult to maintain concerning foods that are by their nature unrelated (as opposed to foods such as assorted candies in a container²²). However, probably partially in deference to the *Ben Ish Chai*'s stature, several Sephardic *poskim* endorse this stringency *l'chatchila*.²³

Unwarranted Stringency

Foods of different *berachot* – The two *manot* must indeed be unique units. Many *poskim* say not to suffice with one food that is merely separated into two portions (even if each is large).²⁴ However, the idea that foods' *berachot* are an indicator of being separate is contradicted by many prominent sources and is, in fact, illogical; note that meat and juice share a *beracha*, whereas different types of potato chips may not.

These stringencies are meant to ensure that one fulfills the formal *mitzva*; they are not always indicative of the *mitzva*'s goals. Therefore, as long as you give “halachically *mehudar*”

17. *Shevet HaLevi* VII:183.

18. *Torah Lishma* 193.

19. See *Minchat Yitzchak* X:57.

20. See *Mikraei Kodesh* op. cit. (31).

21. I, *Purim* 16.

22. See related application in *Hitorerut Teshuva* I:126.

23. *Yalkut Yosef* op. cit., p. 330.

24. See *Aruch HaShulchan, Orach Chayim* 695:14.

LIVING THE HALACHIC PROCESS

mishlo'ach manot to one person, the idea of giving to many people²⁵ to cultivate friendships and make people happy on Purim can be done in any way that enhances the Purim spirit. Do not let *chumrot* stifle your energy or creativity!

25. *Shulchan Aruch, Orach Chayim* 695:4.

D-12: The Wisdom of Putting Out Pieces of Bread Before *Bedikat Chametz*¹

Question: Should one follow the *minhag* to put out ten pieces of bread before *bedikat chametz*? I have heard people question the *minhag*'s logic.

Answer: This *minhag* is an old one. It was mentioned (and rejected) by the Ra'avad² over 800 years ago as a safeguard that the *beracha* on *bedikat chametz* should not turn out to be *l'vatala*³ if no *chametz* is found. This concern seems to assume that the *beracha* is recited over the **finding** of *chametz*.

Note that the *beracha*'s text is "*al bi'ur chametz*" (usually translated as "on the destruction of *chametz*"). This is a surprising phrase to use considering that the *beracha* is made before the *bedika*, rather than immediately prior to the burning, which is done only the following day.

There are at least four explanations as to the purpose of the *beracha*: 1) It refers primarily to the next day's *bi'ur* but is recited before this important preparation for it.⁴ 2) The *beracha* is primarily on the *mitzva* (perhaps Rabbinic) to search for *chametz*.⁵ 3) The *beracha* includes the *bitul chametz*⁶ performed after the *bedika*.⁷ 4) The *beracha* is primarily on the removal of the *chametz* from one's mind, which one does before the *bedika* commences.⁸ The possibility of a problem of *beracha l'vatala* if no *chametz* is

1. Checking/searching for *chametz*.

2. *Temim De'im* 29, cited by *Chok Yaakov* 432:14 and others.

3. In vain.

4. *Taz, Orach Chayim* 432:4.

5. See Rosh, *Pesachim* 1:10.

6. Nullification of *chametz* by means of declaration.

7. See *ibid*.

8. Rambam, *Berachot* 11:15.

found (but known *chametz* will be disposed of tomorrow) arises only according to the second approach, and only if one further assumes that the search must turn up some *chametz*. Nonetheless, it is reasonable for a *minhag* to deal with a possible problem even if the concern is based only on a minority opinion, and this is the simple reading of the Rama,⁹ who records the practice to put out bread before the *bedika*.

Some *Acharonim* reject the rationale and the practice of this *minhag*. The *Taz*¹⁰ says that not only is it unnecessary to put out pieces of bread, but it is even detrimental, because one might not find everything that was put out. This concern is mitigated by the usual care exercised by whoever puts the pieces out to know the number (traditionally, ten) and location of the pieces. And after all, even irrespective of this *minhag*, it is always possible that *chametz* will be missed, and after doing a responsible *bedika* and *bitul*, one is not culpable for *chametz* that inadvertently remains.¹¹ Some suggest that one should put out pieces of specifically less than a *k'zayit*, so that if he misses one, it will not be large enough to cause him to violate the prohibition of possessing *chametz*.¹² Incidentally, there is an interesting *machloket* regarding whether people will take *bedikat chametz* more or less seriously due to the presence of the ten pieces; this may depend on where the pieces are placed.¹³

Other reasons are given for putting out the pieces of bread. The Mahari Weil¹⁴ cites the *gemara*'s¹⁵ insistence that *bitul* be performed at the time of *bedika* because we are concerned that one might otherwise forget to do the *bitul*. The Mahari Weil then argues that this association works well only if one actually finds some *chametz*; when he puts away the *chametz* that he found

9. *Orach Chayim* 432:2.

10. *Op. cit.*

11. See *Living the Halachic Process*, vol. I, D-16.

12. *Zera Emet* I:48; *Yechaveh Da'at* V:31.

13. See *Chok Yaakov* 432:14; *Ish Matzliach* I, *Orach Chayim* 37.

14. *Shut Mahari Weil* 193.

15. *Pesachim* 6b.

during *bedikat chametz*, he will remember to do *bitul* at that point. There are also Kabbalistic reasons, attributed to the Arizal, for the *minhag*.¹⁶

Another factor makes the *minhag* particularly appropriate in our times. In years past, people had much smaller houses and less property, and *bedikat chametz* was the main Pesach cleaning. Nowadays, in contrast, people spend weeks cleaning seriously in a manner that makes the *bedika* (almost) a formality, in which they do not actually look for real *chametz*.¹⁷ Without the pieces of bread, then, the *bedika* is not a fully obligatory search, and the *beracha* is more problematic.¹⁸

Although there have been, over the centuries, *poskim*¹⁹ who thought that this *minhag* is superfluous or detrimental, one should practice it unless he has specific reason not to.²⁰ An ancient *minhag* that is still in practice by the overwhelming majority of religious Jews deserves the appellation “the *minhag* of Israel is Torah,” all the more so when the logic behind it is readily understandable, even if debatable.

16. See *Ba'er Heitev, Orach Chayim* 432:8.

17. See *Living the Halachic Process*, vol. III, D-15, for a discussion of whether this is justified.

18. *Emek Halacha* 128, cited by *Kaf HaChayim, Orach Chayim* 432:31. The *Emek Halacha* explains that even though the person who put out the pieces knows where they are, the one who is searching is the relevant person in this regard, and he does not know. The *Tzitz Eliezer* (IX:17:9) brings an interesting proof that looking for something that one knows is there would still be considered *bedika* in our context.

19. See a short survey in *Yechaveh Da'at* op. cit.

20. The *Minchat Yitzhak* VIII:35 writes that the *minhag* does not apply to one who is doing *bedikat chametz* before the night of the 14th of Nisan.

D-13: The Focus of Discussions at the Seder

Question: In many homes, the *Seder* conversation is based on children telling linguistic *pilpulim*¹ and adults arguing about Halacha. Yet, the Torah's intention seems to be that we focus on extolling HaShem for His greatness and kindness. Where should the emphasis be placed?

Answer: We must distinguish between the basics of the *Seder* and additional enhancements. Your idea of extolling HaShem captures the Torah's basic *mitzva* to tell about *yeti'at Mitzrayim*² on *Seder* night, as formulated by the Rambam³ and indeed expressed explicitly by *p'sukim* throughout the Torah. Let us add other central points.

The account of *yeti'at Mitzrayim* is not only an example of Divine kindness; its associated miracles serve as a linchpin of our belief system,⁴ similar to *matan Torah*.⁵ Regarding both of these great historical events, the Torah stresses the importance of the inter-generational chain of tradition and belief, including parents and grandparents, which confirms our deep belief.⁶ I have made a point at the *Seder* to have my children's great-grandmother recall a *Seder* with her grandparents. I had her recall that she was certain that her grandparents truly believed what had been told to them through an unbroken chain of testimony. I urged my children to tell this to their great-grandchildren. Such a link in the generational chain of tradition can easily extend over 200 years! Whether or not a family does this so methodically, this phenomenon adds a profound element to the *Seder* experience.

1. Intricate detail-based analysis.

2. The Exodus.

3. *Chametz U'Matza* 7:1.

4. See Ramban, *Shemot* 13:16.

5. The giving of the Torah at Sinai.

6. See *Shemot* 10:2 and *Devarim* 4:9.

Chazal found it important to **connect** the remembrance of *yeti'at Mitzrayim* to both *p'sukim* in *Tanach* and the *mitzvot* of the day. The core of the *Maggid* section of the *Seder* consists of the Rabbinic elucidation of a four-*pasuk* summary of Jewish history related to *yeti'at Mitzrayim*.⁷ Rabban Gamliel says that in order to fulfill one's obligation, one must mention *pesach*, *matza*, and *maror*, the objects behind the major physical *mitzvot* of the day, and explain their connection to the story of *yeti'at Mitzrayim*. All of these basic goals can be accomplished by joint reading of the *Haggada* with basic comprehension.

However, the Rabbis tell us that whoever increases the scope of talking about *yeti'at Mitzrayim* is praiseworthy.⁸ How is this done best? The simplest way is to continue speaking about the miracles and events.⁹ Yet, this is not easy to do. There are rarely detailed family traditions (as there certainly were in the first generations) of what our ancestors experienced, other than the accounts of the Torah and *Chazal*. And there is no consensus of what texts one should use to provide additional stories of miracles.

Let us examine some of the popular alternatives. You referred to analyzing the text of the *Haggada*. The model for doing so is in fact the *Haggada* itself, which quotes classical texts (i.e., *p'sukim*) and analyzes them, not just to introduce new stories of events that occurred but also to connect concepts to the texts. In Talmudic study, *Amora'im* analyzed statements of the *Tanna'im*, who themselves analyzed *p'sukim*, and we analyze all the above. It likewise makes sense to analyze the *Haggada*, which is for us **the** classical source on the topic. Consider that thousands of *talmidei chachamim* have written commentaries focusing on various types of analysis of the *Haggada* text. Obviously, they expected and hoped that these ideas would be shared at the *Seder*.

Our children are supposed to be the focus of the *Seder*, and we should strongly consider their needs and interests. You refer

7. "Arami oved avi ..." (*Devarim* 26:5-8).

8. Text of the *Haggada*.

9. Rambam op. cit.

to children who are excited to share *pilpulim*. If this is the case, then this is positive. Generally, the abilities and religious needs of the speaker¹⁰ and the audience play a major role in determining what is most worthwhile.¹¹ Some people internalize the message of Pesach best through theatrics, song, emotional expression, or art, and these can all be employed as appropriate.

The Rambam does not mention halachic discussion in this context, but the Rosh¹² and *Shulchan Aruch*¹³ do, as the answer to the Wise Son implies. Considering the aforementioned idea of connecting the story to the performance of the *mitzvot*, it makes sense that the details of the *mitzva* have not only practical but also conceptual value. Therefore, halachic discussion of Pesach is in the spirit of the evening, as long it does not qualitatively detract from sufficient focus on relating the story deeply.¹⁴

As *Hallel* and the custom to read *Shir HaShirim* after the *Seder* indicate, focusing on our relationship with HaShem is also in the spirit of the night.

In summary, there are many facets and possibilities to choose from in one's focus at the *Seder*. After doing a proper job of understanding what *Chazal* have set out for us, there is room for doing that which speaks to the participants – with balance, as usual, being a good tool for the wise.

10. Rambam, *Sefer HaMitzvot, Aseh* 157.

11. As we see in the *Haggada* narrative of the “Four Sons.”

12. *Pesachim* 10:33.

13. *Orach Chayim* 481:2.

14. See *B'Tzel HaChochma* VI:47.

D-14: The Significance of the Amount of *Karpas* Eaten

Question: I know that we are supposed to eat less than a *k'zayit* of *karpas* at the *Seder*, but I am not sure why. What happens if someone does eat a *k'zayit*?

Answer: To answer this question, we will need to touch on a few different areas of Halacha.

The first question we will address is: Why is it **sufficient** to eat less than a *k'zayit* of *karpas*, considering that in general, such an amount is not considered halachic “eating”?¹ The Rambam² actually does require eating a *k'zayit* of *karpas*. However, we accept the opinion of the Rosh,³ who maintains that this is unnecessary because the *mitzva* is not a classic one of eating, but rather merely entails incorporating *karpas* into the order of observances.⁴

We specifically avoid eating a *k'zayit* of *karpas* in order to avoid questionable issues regarding *berachot*. One such issue is whether it would be necessary to recite a *beracha acharona* after the *karpas* if one were to eat a *k'zayit*. We will need to present a few introductory steps to explain this point.

Normally, one recites a *beracha rishona* before eating any amount of food, but one recites a *beracha acharona* after eating only if he ate a *k'zayit*.⁵ If one eats food before a meal, he usually recites a *beracha acharona* before beginning the meal; he does not use the subsequent *Birkat HaMazon* to exempt himself from all outstanding *berachot*.⁶ However, one of the exceptions to this rule is when the *beracha* made on the pre-meal food serves to

1. See *Torat Kohanim, Acharei Mot* 12:2.

2. *Chametz U'Matza* 8:2.

3. *Pesachim* 10:25.

4. See *Beit Yosef, Orach Chayim* 473.

5. *Shulchan Aruch, Orach Chayim* 210:1.

6. *Mishna Berura* 176:2.

exempt the person from a *beracha* on a food he will eat during the meal that normally receives a *beracha rishona* during a meal. The *beracha* linkage of these foods eaten before and during the meal connects the pre-meal food to the meal, which thereby allows *Birkat HaMazon* to relate to it and exempt it from a *beracha acharona*.⁷

To apply this rule to our case, we must discuss the *machloket* about the reason for the consensus that we do not recite a *beracha* of *Borei Pri HaAdama* before eating *maror*, which is eaten after the *matza* – i.e., during the meal. The Rashbam⁸ says that it is because the *beracha* made on the *karpas* covers the *maror*.⁹ Accordingly, the *karpas* is connected to the meal, making a *beracha acharona* on it unnecessary even if one ate a *k'zayit* of it. Indeed, the *Shulchan Aruch*,¹⁰ while suggesting to eat less than a *k'zayit* of *karpas*, says that no *beracha acharona* is made even if one did eat a *k'zayit*.¹¹

However, not all agree with the Rashbam. The Gra¹² claims that the Rama does not accept that there is a *beracha* connection between *karpas* and *maror*, because the delay during the *Maggid* section of the *Seder* is considered a halachic break. Evidence for this understanding is the Rama's ruling that a new *beracha* of *Borei Pri HaGefen* is required before the second cup of wine.¹³ According to this approach, the reason that the Rama does not require a *Borei Pri HaAdama* on *maror* is *Tosafot's*¹⁴ opinion that the *maror* is subsumed under the meal since it is eaten after *HaMotzi*. Thus, there is no connection between the *berachot* on *karpas* and on *maror*, and if one were to eat a *k'zayit* of *karpas*,

7. Ibid.

8. *Pesachim* 114b.

9. The Rashbam assumes that the *maror* is not eaten as a normal part of the meal and therefore is not naturally exempted with the *beracha* on the *matza*.

10. *Orach Chayim* 473:6.

11. See *Mishna Berura* 473:56.

12. To *Orach Chayim* 473:6.

13. See *Shulchan Aruch* and Rama, *Orach Chayim* 474:1.

14. *Pesachim* 115a.

he would need to recite a *beracha acharona* on it.

Another reason to require a *beracha acharona* on the *karpas* if one were to eat a *k'zayit* is that the break between eating the *karpas* and the meal is too long for the *Birkat HaMazon* to relate back to it.¹⁵ Even after a full meal, one should normally *bentch* within 72 minutes of the end of the eating, and certainly one should do so if he ate only a little bit of a vegetable.¹⁶ Since we are not sure whether *Birkat HaMazon* will be able to count as a *beracha acharona* on the *karpas*, we prefer eating an amount sufficiently small such that a *beracha acharona* is certainly not needed.¹⁷

Based on what we have seen, there is an additional benefit of not eating a *k'zayit* of *karpas*. If we were convinced that a *beracha acharona* were required for the *karpas*, then according to most *poskim*,¹⁸ making this *beracha acharona* would end the efficacy of the *beracha rishona*, and the *Borei Pri HaAdama* on *karpas* would accordingly not cover the *maror*. We would then be in doubt as to whether to recite *Borei Pri HaAdama* on the *maror*. If the aforementioned *Tosafot* is correct, a new *Borei Pri HaAdama* is unnecessary because the *maror* is subsumed under the meal. However, if the *halacha* is that it is not subsumed and we would normally rely on the *beracha* of the *karpas* to cover it, then if one were to make a *beracha acharona* on the *karpas*, a new *beracha* for the *maror* would be necessary. Thus, by eating too little for a *beracha acharona* on the *karpas*, we increase the chance that the *beracha rishona* on *maror* will be taken care of by the *beracha* recited on the *karpas*.¹⁹

15. *Ohr Zarua*, cited in *Shut Chazon Ovadia* 18.

16. *Shulchan Aruch*, *Orach Chayim* 184:5; *Mishna Berura* ad loc. 20.

17. *Mishna Berura* 473:53.

18. The *Magen Avraham* 190:3 is a notable exception; see *Living the Halachic Process*, vol. II, B-4.

19. See *Shut Chazon Ovadia* op. cit.

D-15: Chametz of an Intermarried Couple after Pesach

Question: I am a *yeshiva* student who will be home after Pesach. My father is not Jewish, and my mother does not keep kosher for Pesach. Do I have to be concerned regarding eating packaged *chametz* that I find around the house? May I ascribe the ownership of the *chametz* to my non-Jewish father and say that it is not a problem, or should I assume that my mother owns (some of) the *chametz*, which makes it a problem?

Answer: As you note, *chametz* that was owned by a Jew over Pesach is forbidden for him or any other Jew to eat or benefit from, but not *chametz* that was owned by a non-Jew.¹

According to classic *halacha*, in a Jewish marriage, the husband receives his wife's salaries, owns the "family property," and controls the property his wife brought into the marriage while they remain married. However, this is not an intrinsic law, but rather an arrangement that the Rabbis instituted, assuming the wife agrees, in return for the husband's obligation to his wife of full support and other obligations.² Your parents are not halachically married. Furthermore, the Rabbis did not get involved in the financial arrangements of non-Jewish marriages. Thus, ownership of property of a non-Jewish or intermarried couple depends on individual agreement, societal norms, and/or secular law. It is safe to assume that when a 21st century, Western-society spouse buys crackers in the supermarket from joint finances, the crackers are to be legally considered as jointly owned.

Therefore, at first glance, your mother has a share in the *chametz*, and this share will thus be forbidden to you, while your father's share will be permitted to you. How is one to know whose share he is eating from? According to the relevant

1. *Shulchan Aruch, Orach Chayim* 448:3.

2. *Ketubot* 47b.

application of the principle of *bereira* (where it applies), when joint owners of property divide it amongst themselves, we say that the part that each person received was his all along. We apply *bereira* regarding matters of Rabbinic, not Torah, law.³ Although *chametz* is a Torah law, the prohibition of eating *chametz* after Pesach is a Rabbinically instituted *k'nas* (penalty) against those who were lax regarding the prohibition of possessing *chametz* on *Pesach*.⁴ Therefore, whatever turns out to be your father's part of the household *chametz* is permitted.⁵

Accordingly, if a system could be arranged such that your father would take *chametz* articles for himself and then give them to you, the problem would be solved.⁶ However, the guidelines of activating *bereira* are difficult to explain, and we do not recommend this approach in practice.

If your parents are willing to cooperate with your halachic lifestyle, it makes more sense for your mother to appoint you as her agent to sell her (part in the) *chametz* before Pesach and to ask her to avoid buying on Pesach at least *chametz* that will last until after Pesach. As far as the possibility of a mistake in determining which food items were sold and which were not, one can be quite lenient – at least in situations of need – regarding assumptions of which food was obtained when.⁷

There are lenient opinions regarding *chametz* possessed by a totally irreligious Jew. The *Taz*⁸ and *Mishna Berura*⁹ say that if a Jew sold *chametz* to a non-religious Jew, the latter can sell it after Pesach to a non-Jew and give the money to the Jew instead of having him incur a great loss. However, they do not allow a

3. *Beitza* 38a.

4. See *Pesachim* 30a.

5. See *Mishna Berura* 448:2.

6. The *Sha'agat Aryeh* (90) argues that even the Jew's part should be permitted because he may have gotten the non-Jew's part, and we are lenient regarding doubts of this nature. However, both this position and its application are difficult to rely upon; see *Mekor Chaim* 448:1.

7. See *Chulin* 4b.

8. *Orach Chayim* 448:4.

9. 448:11.

Jew to eat the actual *chametz* that the irreligious Jew possessed over Pesach. There is a fringe opinion that the injunction to discourage people from possessing *chametz* does not apply to those who disregard their halachic responsibilities as Jews.¹⁰ In your case, there is one further point for leniency [which would not be appropriate to discuss publicly].

We imagine that in order to eat in your parents' house, you anyway must have different utensils and food. If so, buying packaged *chametz* after Pesach from appropriate sources would seem not to change things so much. However, if there is a strong need for leniency, please contact us again so that we can discuss your specific needs and options.

10. See *She'eilat David (Karlin)*, *Orach Chayim* 5.

D-16: *Shehecheyanu*, New Clothes, and Renovations During *Sefirat Ha'Omer*

Question: May one buy and wear new clothes, do work on his house, and recite *Shehecheyanu* during the *sefirat ha'omer* period?

Answer: The *gemara*¹ discusses the *halachot* of *aveilut* (mourning) for a deceased relative and for the national mourning over the destruction of the *Beit HaMikdash* during the period before Tisha B'Av. However, the *minhagim* of national mourning during *sefira* over the death of Rabbi Akiva's students are not found in the *gemara*. There are both overlap and differences between the rules for these different periods of mourning.

Regarding the *aveilut* of the *sefira* period, the *Shulchan Aruch*² mentions prohibitions on marriages and hair cutting (as well as on work after sunset, but this is not widely accepted). The *Mishna Berura*³ further mentions the *minhag* of not dancing, which many have extended to include refraining from all forms of instrumental music.⁴ These standard sources make no mention, in the context of *sefira*, of the practices about which you inquire.

Let us look briefly at *minhagim* regarding *Shehecheyanu*, new clothes, and work on the house as they appear in the context of the period before Tisha B'Av. One should curtail certain activities before Tisha B'av, including building projects,⁵ but according to the *Shulchan Aruch*,⁶ this applies only during the Nine Days and not throughout the entire Three Weeks.⁷ There

1. See *Ta'anit* 29b.

2. *Orach Chayim* 493.

3. 493:3.

4. See *Igrot Moshe*, *Orach Chayim* I:166.

5. *Yevamot* 43a.

6. *Orach Chayim* 551:2.

7. See response D-18.

is also a recommendation, which not all accept,⁸ not to recite *Shehecheyanu* during the Three Weeks.⁹ The logic is that the *beracha* of *Shehecheyanu* expresses our gratefulness for having made it to “this **time**,” which may not be appropriate at such a particularly sad time of the year.

While the standard sources do not mention these issues during the *sefira* period, there are some sources that do, especially in regard to reciting *Shehecheyanu*.¹⁰ There is basis to extend these prohibitions to the *sefirat ha'omer* period on two grounds. First, there is logic in doing so, as this is a nationwide sad period (as opposed to *aveilut* over a relative, the sad nature of which is only personal¹¹). Second, it is relatively easier to transfer *minhagim* when there is a model for such *halachot*, by doing, so to speak, a “copy and paste” from one time period to another (i.e., from the Three Weeks to *sefira*).

However, paradoxically, the logic and the model are also reasons to ignore the minority strict opinions and the practice of some to refrain from some or all of the matters you mentioned. The reason is that people may have gotten confused as to which practices apply when. They remembered that there is a concept of not saying *Shehecheyanu* and not doing renovations during national mourning periods, and they may have heard of someone knowledgeable who says to act this way during *sefira*. They then may have started adopting the practice, but not based on a decision with knowledge of the sources and a desire to accept the stringency. Rather, they thought these are the standard *minhagim*. This is called a *minhag ta'ut*. In such a case, even one who has already followed the stringent practice may suspend it without *hatarat nedarim*.¹²

Rav Ovadia Yosef has an interesting approach to these

8. See opinions in *Mishna Berura* 551:98.

9. *Shulchan Aruch* op. cit. 17.

10. See several opinions cited in *Bein Pesach L'Shavuot* 16:(2).

11. See *Mishna Berura* 551:98.

12. *Shulchan Aruch* and Rama, *Yoreh Deah* 214:1.

questions. First, he explains¹³ that one cannot call *sefira*, which is actually the bridge between the joyous holidays of Pesach and Shavuot, a tragic period of time, as we term the period leading up to Tisha B'Av. Therefore, he is against refraining from recitation of *Shehecheyanu* on fruit at that time. He is not, however, against the stringency to avoid wearing new clothing that warrants *Shehecheyanu*, out of extra mourning. Regarding moving into a new home or doing work on an existing one, he unequivocally permits the matter.¹⁴ The *Tzitz Eliezer*¹⁵ is perhaps more resolute in rejecting stringency in these matters.

Thus, one need not be stringent with regard to the practices you mention. If one has acted stringently in the past, he may continue **if he likes**, but he should consider whether his (family's) practice is more based on confusion than on a conscious decision to accept minority stringencies.

13. *Yechaveh Da'at* I:24.

14. *Ibid.* III:30.

15. XVIII:41.

D-17: Is Acknowledgment of Lag BaOmer Considered Counting?

Question: If one mentions, before intentionally counting the *omer*, that “Tonight is Lag BaOmer,” can he subsequently count with a *beracha*?

Answer: As you assume, if one makes a declaration that nominally fulfills the *mitzva* of *sefirat ha’omer* – even without making a *beracha* and without the intention to thereby serve HaShem – he subsequently may not recite *sefirat ha’omer* with a *beracha*.¹ This is one of the cases in which we prefer to not have fulfilled a *mitzva*, so that we can still perform it properly by reciting a *beracha*.

However, although the statement, “Tonight is Lag BaOmer” (henceforth, “the statement”) does include basic elements ordinarily needed to fulfill the *mitzva* of *sefirat ha’omer*, it is possible that in this case one has not fulfilled the *mitzva* for a number of reasons.

First, there is an unresolved *machloket* regarding whether counting *sefirat ha’omer* by stating the day’s numerical *gematria* (*lag* = *lamed gimmel* = 33),² which is a secondary but accepted way of expressing numbers, is valid for *sefirat ha’omer*.³ It is therefore questionable whether the statement fulfills the *mitzva*.

Second, the statement does not include mention of the weeks of *sefira*. The *Acharonim* debate whether one who has mentioned only the days and not the weeks has fulfilled his *mitzva* (starting with day seven). The matter relates to Ameimar’s opinion⁴ that there is no need to count weeks at a time that there is no *Beit*

1. *Shulchan Aruch, Orach Chayim* 489:4.

2. Use of the letters of the Hebrew alphabet as representations of numbers.

3. See *Sha’arei Teshuva* 489:6; see applications in *Living the Halachic Process*, vol. I, D-19.

4. *Menachot* 66a.

HaMikdash in which to offer the *korban ha'omer*.⁵ The *Mishna Berura*⁶ concludes that one who mentions only the days should count again properly, but this case lacks the level of certainty to justify a new *beracha*.⁷ (According to the *Eliya Rabba*,⁸ the problem of leaving out weeks, which requires one to count again, applies only on days when the number of weeks changes – e.g., 28, 35).

The strongest reason to discount the statement as a possible fulfillment of the *mitzva* is that when one says it, he almost certainly does so without having in mind to fulfill the *mitzva* of *sefirat ha'omer*. The *Shulchan Aruch*⁹ rules that one does not fulfill a *mitzva* in the absence of intent to do so, and the statement therefore should not prevent one from counting afterwards with a *beracha*. However, another *halacha* in the *Shulchan Aruch*¹⁰ seems to contradict this: If one is asked before counting what day of the *omer* it is, he should answer what day yesterday was, because stating the current day compromises his ability to count later with a *beracha*. The *Taz*¹¹ says that the *Shulchan Aruch* must mean that avoiding saying the day's count is just a stringency; if one were to say the current day, due to the lack of intention, he would *b'di'eved* count with a *beracha* later. However, many point out that the *Taz*'s claim does not fit the *Shulchan Aruch*'s language. The *Magen Avraham*¹² says that one should not make a *beracha* if he mentions the day's count without intention to fulfill the *mitzva*, due to the opinion that intention is not critical for *mitzva* performance and the view that *sefirat ha'omer* is fulfilled without intention because it is only a Rabbinic obligation.¹³

5. The sacrifice brought on the second day of Pesach as the first sacrifice from the year's new grain.

6. 489:7.

7. See *Sha'ar HaTziyun* 489:9.

8. 489:14.

9. *Orach Chayim* 60:4.

10. *Orach Chayim* 489:4.

11. *Orach Chayim* 489:7.

12. 489:8.

13. See *Yechaveh Da'at* VI:29.

While each individual reason to allow counting with a *beracha* after the statement is debatable, the combination of these reasons makes that prospect convincing in two possible ways. First, in other contexts, *poskim*¹⁴ maintain that when there are specific indications that one intends to not fulfill a *mitzva*, he indeed does not fulfill it. In the standard case, when “Lag BaOmer” is used as the name of a semi-holiday, as opposed to as the *gematria* of the count, the statement would be precluded from fulfillment of the *mitzva* and a *beracha* could be made later.¹⁵ The *Mishna Berura*¹⁶ says that we would accept the aforementioned logic of the *Taz* in cases in which the week should have been mentioned and was not. Second, the coinciding of factors may create enough doubts against the chance that the *mitzva* was fulfilled to justify a *beracha*. Indeed, according to many opinions, we find cases in which we make a *beracha* on *sefirat ha'omer* when *s'feik s'feika*¹⁷ indicates its appropriateness.¹⁸ (However, that halachic phenomenon likely does not apply to every set of doubts.¹⁹)

In short, it is unlikely that one has fulfilled *sefirat ha'omer* by noting that the day is Lag BaOmer. Therefore, one who has done so may still subsequently count with a *beracha*. However, it is worthwhile to avoid such a statement before counting and, when easily feasible, to rely on someone else's *beracha* if he did.

14. Including *Bi'ur Halacha* to 489:4; *Eliya Rabba* op. cit.

15. *Kaf HaChayim, Orach Chayim* 489:30.

16. 489:22.

17. A double doubt, i.e., a certain halachic ruling is correct unless two doubts are **both** resolved in a manner that indicates otherwise.

18. *Shulchan Aruch, Orach Chayim* 489:8; *Mishna Berura* 489:38.

19. See discussion in *Yabia Omer* IV, *Orach Chayim* 43.

D-18: *Chanukat HaBayit*¹ During the Three Weeks

Question: May I make a *chanukat habayit* celebration in Israel during the Three Weeks, before Rosh Chodesh Av and the beginning of the Nine Days?

Answer: Of the different periods of national mourning leading up to Tisha B'Av, the one with the lowest level of intensity is the first part of *Bein HaMetzarim* (the Three Weeks), from the 17th of Tammuz until Rosh Chodesh Av. No restrictions are mentioned in the *gemara* regarding this period. Even the well-known restriction of marriage during the Three Weeks² is post-Talmudic before Rosh Chodesh, and Sephardim do not even subscribe to this restriction.³

Questions regarding customs of this period of national mourning are difficult to analyze halachically. On the one hand, the more religiously significant a particular event is, the more we would like it to take place in the nicest way possible. It is for this reason that it is acceptable and even preferable to eat meat at a *siyum*, even during the Nine Days when Ashkenazim usually do not eat meat.⁴ On the other hand, the stronger an event's joyous character, the more likely it is that the celebration itself is significant enough to be forbidden during this period, even if it is a *mitzva* and even if it is celebrated without extra flourishes. Therefore, it is forbidden to get married even without a celebratory meal.⁵

A *chanukat habayit* is an expression of joy and gratitude over moving into a home that is new for its inhabitants. There are restrictions regarding joyful practices involving the home.

1. Lit., the inauguration of a home; the celebration of moving into a new home.

2. Rama, *Orach Chayim* 551:2.

3. *Shulchan Aruch* ad loc.

4. Rama op. cit. 10.

5. *Mishna Berura* 551:15.

During the Nine Days (and perhaps during the Three Weeks⁶) it is forbidden to perform non-essential beautification work on a home.⁷ Along the same lines, we avoid entering a new home during this time unless this is necessary so as to avoid a significant loss.⁸ Since one may enter a new home before the Nine Days,⁹ the problem presented by a *chanukat habayit* is only from the perspective of the added activities of the celebration.

The nature of the celebration is relevant here. Many Sephardim have the *minhag* to perform a ceremony, with specific Torah texts recited, on the day that they enter the house; some will not even sleep in the house before doing so.¹⁰ Here, the words of Torah are the main component of the ceremony, whereas the accompanying festivities are only ancillary; such an event is certainly permitted.

A further reason for leniency is the fact that many consider a *chanukat habayit* in Israel to be a celebration of the fulfillment of the *mitzva* of *yishuv Eretz Yisrael*, which then allows for the leniencies connected to a *seudat mitzva*. Indeed, the Torah¹¹ views inaugurating a home as significant enough to allow someone to leave the battlefield, but only in *Eretz Yisrael*.¹² While one can distinguish between actually living in the house in *Eretz Yisrael* and the celebration over the building of a home there, the *B'er Sheva*¹³ says that even the celebration over the building of a home is a *seudat mitzva* in *Eretz Yisrael* (but not abroad). While it is not simple to allow this celebration during the Nine Days,¹⁴ the *chanukat habayit* per se is permitted before Rosh Chodesh.

If the celebration is not on the actual day that one enters the home, there are two reasons to be more stringent. One is that the

6. See *Bi'ur Halacha* 551:2; *Living the Halachic Process*, vol. II, D-23.

7. *Shulchan Aruch, Orach Chayim* 551:2.

8. See *BeMareh HaBazak* III:60.

9. *Ibid.*

10. See *Yalkut Yosef, Sova Semachot* I, pp. 283, 290.

11. *Devarim* 20:5.

12. *Yerushalmi, Sota* 8:4.

13. 70.

14. See *Levushei Mordechai, Orach Chayim* 101.

level of the *mitzva* to perform such a celebration may be lower when it is not on the same day. The other is that if one is already delaying the celebration, it makes more sense to delay further until after Tisha B'Av. That being said, since there is no classical source to forbid a *chanukat habayit* before the Nine Days, if one has good reasons to do it specifically at that time, we would not forbid it. (We would urge one in this situation to remember to put a stress on *divrei Torah* and thanks to HaShem.)

Keep in mind that certain possible parts of the celebration may pose a problem. Some people ordinarily make *Shehecheyanu* as they enter their new home, which is problematic during the Three Weeks; we do not say “*Shehecheyanu ... laz'man hazeh*” during the Three Weeks because “this time” is a sad one.¹⁵ However, we anyway maintain¹⁶ that this is not the correct *beracha* to make for an Ashkenazi family moving in to a new home. (*Yalkut Yosef*,¹⁷ based on the *Shulchan Aruch*,¹⁸ writes that *Shehecheyanu* is the correct *beracha*. He is therefore opposed to having a full-scope *chanukat habayit* during this time, as *Shehecheyanu* would be included. On the other hand, he allows a meal with ten people reciting the appropriate passages according to one's *minhag*.)

In addition, it is accepted not to play music or dance during the Three Weeks.¹⁹ Therefore, it is proper to forgo music²⁰ or dancing at the celebration at a *chanukat habayit* at this time, since those are not an integral part of such an event.²¹

15. *Shulchan Aruch, Orach Chayim* 551:17.

16. See *BeMareh HaBazak* op. cit.

17. Op. cit. p. 493.

18. *Orach Chayim* 223:3.

19. *Mishna Berura* 551:16.

20. Certainly live music, which is more problematic than recorded music.

21. See *Yalkut Yosef* op. cit.; *Shemen Afarsimon, siman* 10.

Section E:
Kashrut

E-1: Buying Food without a *Hechsher*¹ for a Friend

Question: A friend asked me to buy for her a food product that does not have a *hechsher*. May I do so?

Answer: In order to properly answer this question, we need more information about both your friend and the food.

If your friend keeps kosher, try to determine whether she is making a mistake (and tell her nicely if she is) or whether there are some legitimate grounds to believe that the food does not need a *hechsher*.

If she is a Jew who does not keep kosher, the situation presents an issue of the Torah prohibition of *lifnei iver* [*lo titen michshol*] – i.e., one may not provide someone with the opportunity to sin. Buying someone non-kosher food would be an example of a violation of this rule. If the other person could do the forbidden act himself or ask another person (non-Jewish, according to some²) to do so, most authorities agree that the one assisting does not violate *lifnei iver*.³ Nevertheless, several *poskim*⁴ maintain that there is a Rabbinic prohibition to aid a Jew in performing a forbidden act even if he can do so without the assistance.

This issue may be overcome through combinations of mitigating factors, but we will focus on one in particular. The *gemara* teaches that if it is unclear whether the recipient will use the object improperly, one may give it to him based on the optimistic possibility.⁵ There is disagreement regarding whether this is true when he **certainly will do** something that **might be**

1. *Kashrut* certification.

2. See *Mishneh LaMelech, Malveh V'Loveh* 4:2.

3. See Rama, *Yoreh Deah* 151:1, with commentaries.

4. See Shach ad loc., based on *Tosafot, Shabbat* 3a, and other *Rishonim*.

5. *Avoda Zara* 15b.

forbidden.⁶ This appears to be the situation in your case; while we know that your friend will be eating the food, we do not know with certainty that the food is not kosher. Even if this special leniency of *lifnei iver* does not apply, it is reasonable to be lenient because of the possibility that no Torah-level prohibition is entailed (because she could attain the food without your help). If the food is clearly forbidden, however, you should, under normal circumstances, refuse to buy it.

In the event that the friend is not Jewish but the food is forbidden by **Torah law**, the question becomes whether the prohibition of commerce in such items applies.⁷ There is significant discussion regarding the reason for this prohibition. Is commerce with non-kosher food prohibited as a limited *issur hana'ah*⁸ or is it in order to prevent a situation in which one may eat the food that he is dealing with? Most of the discussion relates to cases in which it is a Jew's business (such that he benefits) but the food is handled only by non-Jews (such that the Jew is unlikely to eat it). Most *poskim* are stringent regarding such cases in the absence of other grounds for leniency,⁹ but this does not describe your case.

The *Pitchei Teshuva*¹⁰ does write that the concern that one may eat the food suffices to forbid one from being employed to work with a non-Jew's "*treif*" food. Following this line of reasoning, we might argue that it is forbidden for you to handle the food you are buying on behalf of a non-Jew. However, this is incorrect. First and foremost, it is **commerce** that is forbidden, not **contact**, and commerce must include elements of financial benefit. Although some forbid buying non-kosher food that will be given as a present to a non-Jew, that ruling is based on the assumption that it is being done because of a financial interest.¹¹ In contrast, in a situation like yours, in which you are but a simple

6. See *Shut P'nei Yehoshua*, *Yoreh Deah* 3, and *Beit Shmuel* 5:18, who disagree.

7. See *Shulchan Aruch*, *Yoreh Deah* 117:1.

8. Prohibition to benefit.

9. See *Shut Chatam Sofer*, *Yoreh Deah* 108; *Pitchei Teshuva*, *Yoreh Deah* 117:6.

10. *Op. cit.*

11. See *Shach*, *Yoreh Deah* 117:3.

agent, handling without intention to gain is permitted.¹²

Another support for leniency in your case is based on the *halacha* that one is permitted to sell non-kosher food normally if he did not obtain it on purpose. (The classic example is of a fisherman of kosher fish into whose net some non-kosher fish entered.¹³) We can put you in the same category since your friend's request placed you in a one-time situation in which the natural response is to obtain and transfer the food. This can be considered "chancing upon" the food.

Because of complicated issues of agency on behalf of a non-Jew and the impact of ownership on this question, it is proper for one to have in mind not to take ownership or responsibility for the non-kosher food that he buys for a non-Jew.

Regarding the problem of *marit ayin*¹⁴ presented by buying non-kosher food, your situation would not face an across-the-board prohibition. However, in all of the possible circumstances outlined above, you should avoid a situation in which your purchase will be noticeable and suspicious to fellow Jews. (The details are difficult to delineate in this forum.)

12. See *Taz, Yoreh Deah* 117:2.

13. *Shvi'it* 7:4.

14. Appearing as though one is transgressing a violation.

E-2: Does a Cutting Board Used for Onions Take on the Status of the Knife?

Question: I cut an onion with a *fleishig* knife on a *pareve* plastic cutting board. I know that the knife makes the onion *fleishig*, but does the knife make the cutting board *fleishig* as well?

Answer: Had you cut most foods with a *fleishig* knife, they would not have become *fleishig* for up to three reasons: 1) Transfer of taste from a utensil to a food requires heat.¹ 2) The taste expelled into a *pareve* food from a utensil that absorbed that taste from a kosher *fleishig* food (*nat bar nat*²) is too far removed, and thus too weak, to be a building block of *basar b'chalav*³ status.⁴ 3) If the most recent absorption of taste had remained in the walls of the knife for 24 hours, it would be assumed to give a negative taste (*notein ta'am lifgam*) to the food that it subsequently enters, and it therefore would not change the food's halachic status.⁵

Poskim derive from two *gemarot* that these leniencies do not apply to a *davar charif* (a sharp food) – including onions, according to most opinions. The *gemara* in *Avoda Zara*⁶ says that one may not eat *chiltit* (a very sharp food) bought from non-Jews because they cut it with non-kosher knives. The *gemara* posits that there is a transfer of taste from a non-kosher knife to this *davar charif* even in the absence of heat and that it is prohibited even if the knife had not been used in the past 24 hours. The

1. *Shulchan Aruch, Yoreh Deah* 105:1.

2. Twice-removed taste.

3. A prohibited combination of milk and meat.

4. *Shulchan Aruch, Yoreh Deah* 95:2. According to the Rama ad loc., there are certain elements of *fleishig* status that would be imparted to the food unless other mitigating factors are present.

5. *Shulchan Aruch, Yoreh Deah* 103:1.

6. 39a.

gemara in *Chulin*⁷ states that a radish cut with a *fleishig* knife may not be eaten with *milchig* food. In addition to the fact that taste transfer without heat is a factor, we learn from this source that it is forbidden to eat a *pareve davar charif* food that has a *nat bar nat fleishig* taste together with a *milchig* food.

It is possible that the rules in these *gemarot* are somewhat limited. Some *poskim* maintain that only the ultra-sharp *chiltit* overrides the leniency of *notein ta'am lifgam*, such that it absorbs taste from a knife and that taste is deemed positive even though the knife has not been used in 24 hours.⁸ Furthermore, some say that the problem with a radish cut with a *fleishig* knife is based on the assumption that the blades of most knives have caked-on fat,⁹ and it is likely that we keep knives cleaner in our day.¹⁰ Nevertheless, the *Shulchan Aruch* and Rama¹¹ are stringent on all the points. Therefore, you are correct that the onion is *fleishig* in the case that you describe.

However, your question regarding the cutting board entails two additional points of possible leniency. First, the *gemarot* discuss a **food** that is a *davar charif* absorbing the taste in question; the sharpness likely heightens the taste's absorption and/or how people sense it.¹² In your case, the question is not simply about the onion becoming *fleishig*, but rather whether it is unusually capable of making **other things** (e.g., the cutting board) *fleishig*. The *Magen Avraham*¹³ does write that if ginger was cut with a *fleishig* knife and was subsequently ground, the mortar, as well as spices that are later ground in it, becomes *fleishig*. In contrast, the *Even HaOzer*¹⁴ argues that *fleishig* taste that leaves a *davar charif* loses its special qualities, and the mortar therefore remains

7. 111b.

8. See *Beit Yosef, Yoreh Deah* 96.

9. See Rashi, *Chulin* 112a.

10. See *Badei HaShulchan* 96:10.

11. *Yoreh Deah* 96:1.

12. See Rashi op. cit.

13. 451:31.

14. *Yoreh Deah* 96:3.

pareve. Another factor is the *gemara's* statement that transfer of taste without heat occurs only due to the combination of “the knife’s pressure” and the *davar charif*. Is a cutting board subject to this special pressure that the *gemara* discusses? The cutting board does not seem to be affected by the friction of cutting, as the blade goes on top of, not into, the board. On the other hand, there is downward pressure on the board, and there are differing opinions regarding whether this is equivalent to the friction of cutting.¹⁵

Considering the reasons for leniency, it is difficult to argue that hard, smooth surfaces like glass or glazed material would become *fleishig* due to the cutting that occurs on top of them. On the other hand, in the case of a plastic cutting board that is rough and has multiple deep serrations from repeated use, taste from the onion can accumulate and be difficult to remove. In that case, there is also a certain amount of friction during cutting. Therefore, one should at least scrub the surface of the plastic cutting board before non-*fleishig* use, and, while we do not require it, *kashering* it would be an understandable stringency.

15. See *Badei HaShulchan* 96:7. The *Shulchan Aruch*, *Yoreh Deah* 96:3, assumes that crushing with a mortar and pestle also creates a transfer of taste, but in that case the pressure seems to be much stronger than when one simply cuts on top of a cutting board.

E-3: Using a Water Urn for *Milchig* and *Fleishig*

Question: I read somewhere that a hot water kettle is considered either *milchig* or *fleishig*. In other words, once one pours from it into a *milchig kli* (utensil), it may no longer be used to pour into a *fleishig kli*. Can you remind me of this *halacha's* source?

Answer: We can provide you with a source for what you heard, but we also must tell you that we do not agree with its application in the case that you describe.

The Rama¹ writes: “It is prohibited to pour from a *kli* that contains kosher fats into a lit candle cup that contains forbidden fat.” His source is a statement of the Mordechai² based on a *mishna* in *Machshirin*,³ which states that when one pours a cold pure liquid into a hot impure liquid, the liquids are connected in the process, such that the contents of the pouring *kli* become impure. It is possible that a contemporary *kashrut* guide that you saw inferred from this ruling that one may not use an urn for both *milchig* and *fleishig keilim*. However, we will present you with the consensus of the *poskim* to the contrary and the logic behind that view.

The strongest argument against the Mordechai's thesis is that one cannot compare the laws of transfer of impurity, which revolve around contact, to the laws of *kashrut*, which depend on imparting taste.⁴ Indeed, given the fact that several *Rishonim* disagree with the Mordechai, we can understand why the Rama in the quote above concludes, “and if was already done, one need not be concerned.” The question in the *poskim* is thus whether one should **avoid pouring**, not what happens to the *kli* if one already

1. *Yoreh Deah* 105:3.

2. *Chulin* 715

3. 5:10.

4. *Terumat HaDeshen* II:103.

poured.

Furthermore, your case is more lenient than that of the Rama in several ways. One is that the *mishna* says (according to the accepted opinion) that the stringency applies only when pouring **from cold to hot**, because the hot liquid on the bottom emits steam.⁵ In contrast, in your case, one is pouring **from hot** into either hot or cold, and this situation is probably more lenient.⁶

There are further points of leniency as well. Rav S.Z. Auerbach is quoted⁷ as saying that the Rama was speaking only about when forbidden foods are in one of the utensils, not about milk or meat. There are several leniencies with regard to taste from milk or meat food entering a *pareve* food and/or utensil.⁸ Even if we were to rule that when hot water is poured from an urn onto milk, all the water becomes *milchig*, new water subsequently heated in that urn would be only *b'chezkat chalavi* (“*milchig*-leaning”). Regarding such water, there is a *machloket* between Ashkenazim (stringent) and Sephardim as to what extent and under what circumstances it can be consumed together with meat.⁹ Therefore, it is logical to argue that the stringency of transfer through pouring into non-kosher need not be applied to more lenient areas. In our opinion, extending the stringency of not pouring from kosher to non-kosher to not pouring from a *pareve* utensil into actual milk or meat is reasonable but **unnecessary**.

In any event, it is certainly permitted to pour from a *pareve* urn into a *milchig* cup when the cup does not presently contain milk. After all, even Ashkenazim – who do not eat *pareve* food that was cooked in a *fleishig* or *milchig* utensil with food of the other type – agree that *pareve* food cooked with *milchig* or *fleishig* can be put while still hot into a *kli* of the other type.¹⁰

5. See *Shach*, *Yoreh Deah* 105:11; *Taz*, *Yoreh Deah* 105:6; *Pri Megadim* ad loc.

6. See *Pleiti* 105:8.

7. See *VaYizra Yitzchak*, *Basar B'Chalav*, *Birur Halacha* 5.

8. See *Yoreh Deah* 95.

9. See *Shulchan Aruch* and Rama, *Yoreh Deah* 95:2, with commentaries.

10. *Ibid.*

Based on the above analysis, we feel that it is perfectly acceptable to have one hot water kettle to be used with both milk and meat. One should keep in mind, however, that when a significant amount of hot steam reaches a *kli* from a food, it can change the *kli*'s status,¹¹ such that if an urn gets close enough to relatively thick steam of milk or meat, the type of issues we are discussing may exist.¹² Thus, in addition to making sure that the urn is not soiled by *milchig* and *fleishig* substances, it is proper to avoid putting foods that contain actual meat or milk too close to it, because of the steam that may arise from them.¹³ However, one does not have to assume that the steam problem will certainly arise simply because he uses one urn with both types of utensils. Unless one makes a mistake, the *kli* will remain *pareve*. Further precautions beyond what we have mentioned are, in our opinion, unwarranted. However, you can check with your own *rav* to clarify his stance.

11. Rama, *Yoreh Deah* 108:1.

12. *Darhei Teshuva* 105:101.

13. See *HaKashrut* (Fuchs) 1:69.

E-4: Discarding Separated *Challa*

Question: What is the preferred manner of disposing of the piece of *challa* that one takes from dough – burning it or wrapping it up and throwing it in the garbage? If one burns it, where should this be done?

Answer: In principle, the portion of dough designated as *challa* is supposed to be given to a *kohen* to eat. This is one of many ways that the laws of *challa* are related to the laws of *teruma*.¹ If *teruma* becomes *tamei* (impure), it may not be eaten, and the *gemara*² reasons that just as there is a *mitzva* to burn *kodashim* (sacrifices) that are *tamei*, *teruma* that is *tamei* is burned, and this is true of *tamei challa* as well.³ All *challa* is *tamei* in our days because we all are *tamei*; although food does not become *tamei* before it is touched by one of seven liquids, including water, *challa*, which is taken from dough, is by definition always touched by water. Accordingly, the Rama⁴ gives standard instructions to remove a *k'zayit* for *challa* and burn it.

Where should one burn the *challa*? It is forbidden for a non-*kohen* to eat *challa*, and one might therefore logically conclude that it should not be burned in one's regular oven, which obviously needs to remain kosher. The Rama⁵ does say that one should make a separate fire to burn the *challa*, but for an unexpected reason – namely, that a non-*kohen* must not get any benefit from the heat that the burning *challa* produces. The Rama continues that the *minhag* is to burn the *challa* in the oven before baking the bread. It is important to note that in the Rama's time, ovens had a separate chamber with fuel and fire, and one could throw the *challa* in with the fuel. Nowadays, in contrast, gas or electric ovens have

1. See Rambam, *Bikurim* 5:13-14.

2. *Shabbat* 25a.

3. See *mishna*, *Challa* 4:8.

4. *Yoreh Deah* 322:5.

5. *Ibid.*

one chamber in which items bake and do not usually burn (unless one sets the temperature very high and/or leaves the oven on for a long time). Nevertheless, most *poskim* seem to prefer burning the *challa* in the oven to simply discarding it. Why doesn't baking this forbidden-to-eat food create a *kashrut* problem?

Indeed, whatever surface touches the hot but not yet burnt *challa* will need to be *kashered*, and one should therefore have a separate “*treif*” tray to put it on. But why don't the *challa* vapors pose a problem? While the *Shulchan Aruch* and Rama⁶ rule that *reicha* (odor) from non-kosher meat does not forbid kosher meat that was roasted in the same large oven, this applies only *b'di'eved*.

There are two situations in which the issue of *reicha* is mitigated – when the foods are not fatty and when the two foods are not in the oven at the same time, which is what should be done in the case of burning *challa*. May we set up this situation in the first place? The *Shach*⁷ maintains that it is permitted to bake Rabbinically forbidden, non-fatty food together with kosher food. (*Challa* is a Rabbinic law outside of the Land of Israel; in our times, it is Rabbinic even in Israel because a majority of Jews do not live in it.⁸) However, in light of the fact that not all agree with the *Shach*'s premise, many suggest wrapping the *challa* in foil. Keep in mind that it takes longer for the *challa* to burn that way and that the dough expands when heated, so that it may burst through its wrapping before it burns. Many are concerned that the chance of a mishap when burning the *challa* in the oven is great, as well as inconvenient. (Burning on the stovetop has some advantages, but the smell of burnt bread and the remote possibility of a fire are issues.)

Given these concerns, some say that one may dispose of *tamei challa* by discarding it in the garbage, after wrapping it to avoid disgracing it. (Some require a double wrap, which seems to be a

6. *Yoreh Deah* 108:1.

7. Ad loc. 1, citing the *Issur V'Heter*.

8. *Shulchan Aruch*, *Yoreh Deah* 322:2.

chumra.) The major justification for this approach is based on an explanation in Rashi⁹ that there is no obligation to burn the *challa* per se; there is simply a need to preclude the possibility that someone will eat it. Accordingly, throwing it out could actually be preferable to waiting for a chance to burn it. Additionally, there are certain circumstances under which it is forbidden to burn *teruma/challa*, and it is possible to confuse the situations.¹⁰ In this forum, we cannot do justice to the halachic analysis of this view. However, we will say that despite the fact that Rashi's opinion is the minority and is difficult, use of this option has become increasingly common (including in kosher bakeries) and is accepted by many *rabbanim* (some of whom suggest other mitigating factors as well). Thus, in the event that one finds it problematic to settle upon a feasible and safe way (both physically and *kashrut*-wise) of burning the *challa*, she should not feel guilty if she simply wraps up the *challa* and discards it in the garbage.

9. *Shabbat* 25a; see *Tosafot* ad loc.

10. *Minchat Yitzchak* IV:13, based on the *Chazon Ish*, *Ma'asrot* 7:13.

E-5: Futures Contracts of Pigs

Question: Is it permitted to buy futures contracts of hogs? When you do so, you are not buying pigs; rather, you receive a “paper” by means of which, if you hold on until a certain date, you will receive the hogs. I will certainly sell the rights before that date.

Answer: In the course of discussing the prohibition of commerce in non-kosher food in *Living the Halachic Process*, vol. I,¹ we touched on the topic of “ownership on paper” through the stock market. Futures trading has elements of both stringency and leniency in comparison to standard stock transactions. We will begin with some basic background.

The *gemara*² derives from the *pasuk*, “*v’sheketz yiheyu lachem*”³ that one may sell non-kosher animals that come into his possession, but one may not make efforts to acquire and then sell them.⁴ This law also applies to some other foods forbidden by Torah law.⁵

According to most *Rishonim*, the prohibition of trading in forbidden foods is on a Torah level.⁶ The Rashba⁷ maintains that the reason for the prohibition is to minimize the possibility of eating forbidden foods; others say that it is a *gezeirat hakatuv* (Heavenly decree without a known reason).⁸ In any case, the prohibition is associated with eating, as it applies only to items that are usually owned for eating purposes.⁹

1. E-6.

2. *Pesachim* 23a.

3. *Vayikra* 11:11.

4. See response E-1 in this volume.

5. See *Shulchan Aruch, Yoreh Deah* 117:1.

6. See *Shut Chatam Sofer, Yoreh Deah* 104-106, 108; *Yabia Omer* VIII, *Yoreh Deah* 13.

7. *Shut* III:223.

8. See *Chatam Sofer* op. cit.

9. *Shulchan Aruch, Yoreh Deah* 117:1.

The consensus of *poskim* is that this prohibition applies as long as a Jew owns the food, even if he is not expected to have direct contact with it.¹⁰ It is debatable, however, whether it is prohibited for one to hold a small amount of stocks of a company – in other words, whether we should treat him like a partial owner – especially when the business is not built specifically on forbidden foods.¹¹

Let us analyze how futures contracts differ from stocks. A futures hogs contract acquires for its buyer the (usually theoretical) right to obtain that commodity at a future date. Should this come to fruition, he will become the outright owner and controller of the pigs, which is certainly forbidden by Halacha. From this perspective, futures are worse than stocks. When in possession of the latter, one only has financial rights – but not control – over the company’s individual assets; a stockholder of McDonalds cannot demand 1,000 hamburgers for his part in the business. On the flip side, in the commodities futures markets, the average trader has no interest in obtaining the commodity, but rather plans to sell it to another buyer (hopefully at a profit) while it is still “on paper.”

Based on standard halachic rules, a futures transaction is often a *davar shelo ba la’olam* (something that is not presently fit to be transferred from the seller to the buyer). The pigs that an eventual buyer will get on the delivery date have not yet been born at the time of most of the transactions. Thus, although the sale takes effect based on *situmta* (societal consensus),¹² the contract is not viewed legally as the sale of pigs, but rather as a commitment to provide the pigs at the specified time of delivery.

Ostensibly, this resembles the *Terumat HaDeshen*’s¹³ case of a Jew who wanted to lend money to a non-Jew, with pigs being used as collateral for the loan. The *Terumat HaDeshen* suggests

10. *Chatam Sofer* op. cit. 108.

11. See *Mishneh Halachot* V:102; *Living the Halachic Process*, vol. I, E-6.

12. See *Bava Metzia* 74a.

13. I:200.

that this might be permitted because a Jew does not acquire immediate ownership of the collateral that he receives from the non-Jew. Similarly, in our case, a process through which one can receive pigs has commenced, but it is not clear that this will happen.

The Rama¹⁴ rules that, in general, one may not lend with forbidden food used as collateral, which might imply that our futures sales are prohibited. However, in the situation described by the Rama, the lender takes the collateral under his control and also foresees a situation in which he will take ownership of the collateral.¹⁵ The logic of those who permit taking the non-kosher collateral is that the lender does so in order to protect himself from a loss.¹⁶ In our case, in contrast, an average trader foresees no scenario in which he will ever become the owner of the pigs or have any physical contact with them. This case is not similar to the one that the Torah forbade – owning and/or controlling non-kosher food sources with commercial intent.

It is true that in some of the similar cases in which *poskim* were lenient, it was only reluctantly, when there was great financial need.¹⁷ However, in our case, in which one is involved in a form of speculative trade on paper of mainly theoretical rights to future commodities, it is proper to permit the transactions without hesitation.¹⁸

14. *Yoreh Deah* 117:1.

15. See *Chatam Sofer* op. cit.

16. See Rama op. cit.

17. See, for example, *Chatam Sofer* op. cit.

18. See *Pitchei Teshuva*, *Yoreh Deah* 117:6.

E-6: An Oven Used for *Chillul Shabbat*

Question: I want to use a kosher oven that was previously used for cooking food in a manner of intentional *chillul Shabbat*. Has the oven become “*treif*”?

Answer: Food that is cooked on Shabbat is one of many examples of *ma’aseh Shabbat* (something produced as a result of *chillul Shabbat*), and as such is forbidden to be eaten.¹ Your question is a good one: Does such food make utensils *treif*?

The answer seems dependent on whether *ma’aseh Shabbat* regarding food is simply a prohibition against benefiting from it (in the case of food, usually by eating) or whether the food is considered *ma’achalot assurot* (what we call non-kosher food). If the former is true, there is no need for concern about the oven, as any residue in the oven will not bring you real benefit. If the latter reasoning is true, however, the food is like any other forbidden food that “*treifs* up” an oven. (In this context, we will not discuss how an oven becomes *treif*, how it affects foods that are cooked in it, or how it is *kashered*.)

Logically, one reason that we should not consider food that is cooked on Shabbat to be *ma’achalot assurot* is that it is prohibited for an external reason – due to its connection to an improper situation – and not because of an intrinsic problem with the food. The *Ktav Sofer*² compares *ma’aseh Shabbat* food to *bishul akum*,³ another case of food that is not intrinsically problematic but is “artificially tainted” by an unwanted situation. There is a *machloket Rishonim* regarding whether *bishul akum* causes the utensils that were used to become not kosher.⁴ The *Shulchan*

1. *Ketubot* 34a.

2. *Orach Chayim* 50.

3. Food that was cooked by a non-Jew.

4. See *Tur*, *Yoreh Deah* 113; the Rashba is strict, while the Rosh is lenient.

*Aruch*⁵ cites both positions, but prefers the stringent one (although he is slightly lenient regarding how to *kasher* such utensils).

Indeed, the *Magen Avraham*⁶ cites the Rashba as saying that *ma'aseh Shabbat* food *treifs* up the utensil in which it was cooked, and he and the *Mishna Berura*⁷ accept this position. Rav S.Z. Auerbach⁸ considers the *Magen Avraham*'s ruling to be proof that *ma'aseh Shabbat* food is indeed viewed as *ma'achalot assurot*, which *treifs* up utensils.

Many authorities disagree, however. Aside from significant opinions that are lenient regarding a pot used for *bishul akum*, *ma'aseh Shabbat* has additional reasons for leniency. The *Mateh Yehuda*⁹ says that the Rashba implies that a utensil would become *treif* due to *ma'aseh Shabbat* only according to the opinion of R. Yochanan HaSandler, who views *ma'aseh Shabbat* as an intrinsic Torah law.¹⁰ According to the opinion of R. Yehuda, which the *Shulchan Aruch*¹¹ accepts, the food is forbidden forever **only for the person** who was *mechallel Shabbat* by cooking. It is difficult to make such a distinction if *ma'aseh Shabbat* food is actually *ma'achalot assurot*, which are generally objective prohibitions that apply equally to all Jews.¹² Finally, some authorities¹³ note that the Gra¹⁴ rules like R. Meir, who is even more lenient than R. Yehuda and maintains that the food becomes permitted after Shabbat even for the one who violated Shabbat. According to that opinion, there is certainly no problem in your case.

We would add that since *ma'aseh Shabbat* applies to many non-food-related *melachot*, in which case the category of *ma'achalot assurot* does not apply, the concept of *ma'aseh Shabbat* is better

5. *Yoreh Deah* 113:16.

6. 318:1.

7. 318:4.

8. *Minchat Shlomo* I:5.

9. Cited in *Livyat Chen* 42.

10. *Ketubot* op. cit.

11. *Orach Chayim* 318:1.

12. *Ktav Sofer* op. cit.

13. See *Teshuvot V'Hanhagot* II:196.

14. *Ketubot* op. cit.

understood if all the items share the categorization of prohibitions of benefit.

Nevertheless, it is difficult for an Ashkenazi *posek* to argue with the opinions of the *Magen Avraham* and the *Mishna Berura*, at least without other grounds for leniency.¹⁵ Rav Ovadia Yosef,¹⁶ on the other hand, concludes that the basic *halacha* is to be lenient regarding utensils used for *ma'aseh Shabbat*, although he views those who do *kasher* such utensils as acting laudably.

Despite these considerations, in your case there is little room for concern. We forbid *ma'aseh Shabbat* after Shabbat only when the *chillul Shabbat* was intentional, and even then only for the one who was *mechallel Shabbat*. According to most *poskim*, the *ma'aseh Shabbat* is not even forbidden for a person for whose benefit the Shabbat desecrator did the work,¹⁷ and it is certainly permitted for others.¹⁸ Therefore, since you had nothing to do with the *chillul Shabbat*, the food and certainly its residue in the oven are permitted for you. (You did not ask, and we will therefore not discuss, the topic of trusting the *kashrut* standards of one who does not observe Shabbat.)

15. See *Orchot Shabbat* 25:53.

16. *Livyat Chen* 42.

17. *Mishna Berura* 318:5; see *Magen Avraham* 318:2.

18. *Shulchan Aruch* op. cit.; see *Livyat Chen* ad loc.

Section F:
Holy Articles



F-1: Protecting *Sefarim* but Aiding Terrorists

Question: I read a news report that ISIS has looted rare Jewish artifacts, such as old scrolls of various *sefarim*, to help finance their operations. Is it appropriate to save the *sefarim* by buying them, or is it forbidden because it would mean supporting ISIS?

Answer: As a practical question, this hinges on many issues that are beyond our strategic-political expertise. Although one's initial response might be that one obviously may not do **anything** that would help murderers such as ISIS, that may be simplistic. Consider that one who follows this approach to its logical conclusion would have to get rid of his car because ISIS is financed significantly by oil sales and usage affects the market. Since we have no idea to what extent ISIS sales of Jewish artifacts are an issue, this response is a **theoretical analysis** – not in any way practical guidance for any individual or group.

First we must consider whether there is a *mitzva* to save these artifacts. There are two possible *mitzva* reasons to “redeem” them. One is to save holy articles from being disgraced. Another is to save Torah information for the Jewish people. People are often motivated to buy such items because of their desire to possess coveted Judaica, but it is difficult to consider a personal reason like that a *mitzva*.

Saving holy scrolls from being disgraced is recognized as a value for which it is worthwhile to pay a halachically significant price. Accordingly, it is permitted to violate certain Rabbinic laws of Shabbat in order to save from a fire holy writings that have sufficient sanctity to require *geniza*,¹ whether they are halachic

1. The placement of holy articles in a safe, dignified place until they are eventually buried.

sifrei Torah, remainders thereof, or even other Torah writings.² On the other hand, we do not find sweeping leniencies or an **obligation** to seek out such items to save. It therefore does not seem that this factor can overcome such an obvious wrongdoing as helping a terrorist organization.

The second consideration, the matter of saving vital information, comes up in the discussion of *pidyon shvuyim*.³ The *mishna*⁴ says that despite the great *mitzva* of redeeming captives, the Rabbis prohibited paying more than the captive's "market value." The apparently accepted explanation is that paying excessively encourages the taking of more captives. Accordingly, *Tosafot*⁵ asks how it was permitted for R. Yehoshua ben Chananya to pay an exorbitant price to free a certain youngster to whom he took a particular liking.⁶ One of *Tosafot*'s answers, which the *Shulchan Aruch*⁷ accepts, is that it is permitted to pay a high price for someone with the potential to make great Torah contributions. The same logic should apply to redeeming a valuable Torah work.

However, "redeeming" Torah works is apparently not included in formal *pidyon shvuyim*, the goal of which is to alleviate human suffering.⁸ In some ways, this may lessen the *mitzva* to redeem them. On the other hand, if *sefarim* do not fall within the formal realm of *pidyon shvuyim*, they also are not within the formal Rabbinic prohibition of overpaying. Thus, if one wanted to extend the prohibition involving ransom to any especially dangerous "seizer of Torah scrolls," we would say that neither the *mitzva* to pay something nor the prohibition to pay too much applies formally. The absence of a formal prohibition, however, does not imply that one should not use moral common sense.

2. *Shulchan Aruch, Orach Chayim* 334:12; *Mishna Berura* 334:39; Rama, *Orach Chayim* 334:17.

3. Paying ransom to free captives.

4. *Gittin* 45a.

5. Ad loc.

6. *Gittin* 58a.

7. *Yoreh Deah* 252:4.

8. See *Bava Batra* 8b.

The price that people are willing to pay for valuable Judaica often has little to do with its practical importance for Torah information, but rather relates to its historical, sentimental, or even artistic value. In the case of a terrorist organization, it seems inexcusable to pay even the “going rate” for such an artifact if it means helping an “organization” like ISIS, which perpetrates atrocities.

Let us put things in perspective. The Rabbis sometimes forbade commerce that might be used to further sinful activity.⁹ On the other hand, the Rabbis were careful not to forbid more than society is able to handle; there is a limit to how many things we can boycott (remember our example above about cars). Yet, in a case as stark as the one you raised, the spirit of the law suffices to preclude buying even important holy **objects** when there is a rational concern that **people** could be put in mortal danger as a result. Only in exceptional cases might one **contemplate** that the cost-benefit consideration makes redemption morally feasible.

9. See *Avoda Zara* 2a.

F-2: Tallit and Tefillin during Selichot

Question: I say *Selichot* before my regular *Shacharit minyan*. Should I put on my *tallit* and *tefillin* before *Selichot*?

Answer: Traditionally, people did not wear *tallit* and *tefillin* during *Selichot*, for the simple reason that the appropriate times for *Selichot* are after midnight or **very** early in the morning,¹ at both of which one is not supposed to put on his *tallit*² and *tefillin*.³ Therefore, wearing *tallit* and *tefillin* could not be an **integral part** of the institution of *Selichot*.⁴ This logically remains the case even when *Selichot* are recited when there is enough daylight to put them on. It is therefore not proper to miss some of the *Selichot* because one is putting *tallit* and *tefillin* on before starting *Selichot*.

However, it is a good question whether there is a positive effect for one to wear *tallit* and *tefillin* for *Selichot* when possible. *Selichot* are a special type of *tefilla*⁵ that overlaps with elements of our daily *tefilla* (especially for those who say *Yud Gimmel Middot* daily). Thus, our question essentially depends on whether *tallit* and *tefillin* enhance *tefilla* in general. Let us consider *tallit* and *tefillin* individually.

We have discussed elsewhere⁶ the reasons that married men wear a *tallit* at *Shacharit* even when they are already wearing *tzitzit* (as well as why these reasons may not be sufficiently important to compel single men do so⁷). One approach we cited is that it is sensible to make sure that one is wearing valid *tzitzit* (our “*tzitzit*” garment might be too small), which has special

1. See *Shulchan Aruch, Orach Chayim* 581:1. See *Living the Halachic Process*, vol. III, D-1, for a longer discussion of the appropriate times for *Selichot*.

2. See *Mishna Berura* 581:6; wearing a *tallit* at night puts one in a situation in which it is unclear if a *beracha* is called for.

3. *Shulchan Aruch, Orach Chayim* 30:1-2.

4. See below regarding the *chazan* for *Selichot*.

5. See *Rosh Hashana* 17b.

6. See *Living the Halachic Process*, vol. III, F-7.

7. This, of course, depends on one's *minhag*.

significance at *Shacharit*, when we recite the Torah section on *tzitzit*.⁸ According to this reasoning, *Selichot*, in which we do not mention *tzitzit*, is not a time when a *tallit* is called for. Another possibility is that a *tallit* enables one to cover his head, which helps improve his concentration. Consequently, perhaps one could argue that there is a preference for one to cover his head with a *tallit* during *Selichot*.⁹ On the other hand, why is this more important at *Selichot* than at *Mincha*, at which we do not wear a *tallit*? A possible rejoinder is that since one is going to wear the *tallit* for the subsequent *Shacharit*, he might as well put it on prior to *Selichot*.

The *Taz*¹⁰ discusses the *minhag* that the *chazan* for *Selichot* wears a *tallit*, noting the proper way for him to do so without needing the corresponding *beracha*, which one is not allowed to say at night. The *Taz* argues that since we recite the *Yud Gimmel Middot* at *Selichot*, there is cause for the *chazan* to be properly cloaked, especially in light of the *gemara*¹¹ that states that Moshe saw HaShem “wrapped up like a *chazan*” when He taught Moshe how to recite the *Yud Gimmel Middot*. Other authorities discuss whether this *minhag* is advisable, considering the kabbalistic reasons not to put on *tzitzit* at night.¹² All the discussants seem to assume that only the *chazan* wears a *tallit* for *Selichot*. One could argue, however, that the reason that these classical *poskim* assumed that most people were not wearing a *tallit* is because in their time, *Selichot* were recited at night, when wearing a *tallit* poses a problem. If so, in the case of contemporary **morning** *Selichot*, all participants might be encouraged to wear one.

Shacharit is the chosen time for *tefillin* because we need to wear them during the day, in a state of cleanliness and pure

8. See *Darchei Moshe, Orach Chayim* 8:3.

9. Likely, primarily during the sections of *Yud Gimmel Middot* (see *Rosh Hashana* 17b).

10. *Orach Chayim* 581:2.

11. *Ibid.*

12. See *Beit David* (Solonica), *Orach Chayim* 9.

thought, and because they are mentioned in *Kri'at Shema*.¹³ There is a connection, although a weak one, between *tefillin* and *tefilla*.¹⁴ While one might presume that the connection should apply to *Selichot* as well, we again note that the connection to *Selichot* does not appear to be more important than the connection to *Mincha*. (There is an opinion that it is proper to don *tefillin* at *Mincha* as well,¹⁵ but that is clearly not a common practice). Again, it is possible to make a case that if one is putting *tefillin* on soon anyway, he might as well put them on for *Selichot* (as opposed to *Mincha*, when one would have to bring his *tefillin* specifically for the prayers).

In summary, we have seen that it is not important to wear *tallit* and *tefillin* during *Selichot*. However, we raised the possibility, without successfully confirming or contradicting it, that there is **some** value in putting them on before *Selichot*. Therefore, no matter how it works out practically for you (including time and concentration considerations), putting on the *tallit* and *tefillin* either before or after *Selichot* is fine.

13. See *Berachot* 14b.

14. See *Shulchan Aruch, Orach Chayim* 37:2; see also *Living the Halachic Process*, vol. IV, A-3.

15. See *Bi'ur Halacha* 37:2.

F-3: The Timing for the *Beracha* on *Tzitzit* after Being Up All Night

Question: After learning all night on *Shavuot*, most people do not make a separate *beracha* on *tzitzit*, but rather rely on the *beracha* on the *tallit* recited when they start *davening* to “cover” the *tzitzit*. Since I do not wear a *tallit*, should I make a *beracha* on my *tzitzit* as soon as it becomes halachically possible?

Answer: We will first discuss the practice of many men to always use the *beracha* on the *tallit* to cover the *tzitzit* that they put on earlier.¹

The *Shulchan Aruch*² writes that one who puts on *tzitzit* when his hands are dirty from the night should wait to recite the *beracha*, which should then be recited after purposely handling the *tzitzit* or when he puts on another pair of *tzitzit*. The *Darchei Moshe*³ refers to the *minhag* to make a *beracha* only on the *tallit* that one wears at *Shacharit*, which also covers the *tzitzit* he had put on earlier. The *Mishna Berura*⁴ cites various reasons for this practice. One is that it is wrong to make two interchangeable *berachot* in close proximity to each other, as one suffices (*beracha she'eina tzricha*). The *Darchei Moshe*⁵ himself is bothered by the possibility that the *tzitzit* garment may be too small to be actually obligated in *tzitzit*, such that one would not fulfill the *mitzva* and the *beracha* would be *l'vatala*.⁶

This practice does raise problems, however. *Berachot* are supposed to precede a *mitzva*'s fulfillment; waiting to make the *beracha* on the *tzitzit* until one puts on his *tallit* afterward thus

1. See further in *Living the Halachic Process*, vol. IV, F-1.

2. *Orach Chayim* 8:10.

3. *Orach Chayim* 8:3.

4. Ad loc. 24.

5. Ibid.

6. Of no value and therefore forbidden.

raises questions. Rabbeinu Yonah⁷ says that it is sufficient that the *beracha* precedes part of the performance of the *mitzva* – the continuation of wearing them. The *Taz*⁸ adds that when one cannot make the *beracha* right away because his hands were dirtied during the night, the delay is justified.

In the case that you raise, you have a different reason not to make a *beracha* when the time to put on *tzitzit* comes (50-60 minutes before sunrise⁹). The *Shulchan Aruch* and the Rama¹⁰ rule that one who wore *tzitzit* all night should make a new *beracha* on them in the morning (without having to remove them first). This is rooted in the assumption that the night is not a time when the *mitzva* of *tzitzit* applies and therefore constitutes a break in the fulfillment of the *mitzva*. However, many *poskim*¹¹ argue with this ruling based on *Rishonim*¹² who posit that the *mitzva* continues at night, and there is therefore no need or justification for a new *beracha*. Due to the doubt, the accepted practice is to not make a separate *beracha* on *tzitzit* if one wore them all night.¹³

While there are other possible ways to deal with this doubt, the *Mishna Berura* recommends the system of using the *beracha* on the *tallit* to cover the *tzitzit* as well.¹⁴ As you mentioned, you do not have a *tallit* on which to make that *beracha*. However, when the learning on *Shavuot* night concludes, many people are readying to *daven* together, and the common practice is that certain *berachot* are said by one on behalf of others.¹⁵ It therefore should not be difficult to find someone to recite the *beracha* on his *tallit* while having your *tzitzit* in mind as well. In fact, usually

7. See *Beit Yosef, Orach Chayim* 8.

8. *Orach Chayim* 8:9.

9. See additional opinions in *Dirshu* 18:12.

10. *Orach Chayim* 8:16.

11. Including the *Eliya Rabba* 8:18.

12. Including the *Tur, Orach Chayim* 8.

13. *Mishna Berura* 8:42; *Tzitzit-Halacha P'suka*, 8:91; *Yalkut Yosef, Orach Chayim* 8:6.

14. This is in fact one of the cases that the aforementioned *Mishna Berura* cites in which there is a preference that one make the *beracha* on the *tallit*.

15. See *Living the Halachic Process*, vol. II, D-20.

someone does so out loud in any case.

From one perspective, there is actually an advantage to being *yotzei* with another person's *beracha* on his *tallit* over the daily practice of many men to have their own *beracha* on the *tallit* cover the *tzitzit*. When one recites the *beracha* on the *tallit*, it is proper to have the intention that it include the *tzitzit* as well, but this is easily overlooked or forgotten.¹⁶ Although some recommend solving this problem by mentioning the *tzitzit*¹⁷ or handling them at that time,¹⁸ few men actually do so. (There are strong grounds to contend that *b'di'aved*, the intention to include the *tzitzit* does not have to be cognitive when it is one's standard practice.¹⁹) In contrast, the matter of intention is rarely a problem on Shavuot morning, given the ceremonious manner in which the *berachot* are recited by one man for others. People are generally reminded that the *beracha* recited on one person's *tallit* is intended for the *tzitzit* of all who need it.

Regarding timing, while one could argue that the *beracha* should be made as soon as possible,²⁰ it is easy to justify waiting the relatively short time until *davening* begins. If the daily practice of **putting on tzitzit** well before the *beracha* is acceptable, then one who simply **keeps them on** certainly has less of a problem waiting for the *beracha*.²¹

16. See discussion in *Tzitzit-Halacha P'suka* 8:52.

17. *Ben Ish Chai* I, *Bereishit* 2

18. See opinion in *Tzitzit-Halacha P'suka*, p. 42.

19. *Ibid.* 8:52

20. *Minchat Shlomo* II:4:1.

21. See *Ta'amei HaMinhagim*, p. 8.

F-4: Status of *Tzitzit* When the Garment Rips and Is Repaired

Question: My *tallit katan*¹ sometimes rips a little around the neck area and I don't know if it is still kosher. If I sew it back up, do I have to undo and retie the *tzitzit*?

Answer: The first question, which we will only touch upon, is whether wide shoulder pieces are necessary to connect the two sides (front and back) of the *tzitzit*. The earliest stringent source on the matter is the Maharil, quoted by the *Magen Avraham*.² The simple reading of this source indicates that if the neck hole is bigger than either one of the shoulder pieces, the *tallit katan* is considered two separate small garments with two sets of *tzitzit* each, and it is therefore invalid. The *Chazon Ish*³ understands the Maharil this way and suggests that one should try to follow his opinion. The *Machatzit HaShekel*⁴ argues that it suffices that the shoulder pieces be wide enough to be deemed real parts of the garment and not just thin connectors; they do not have to be wider than the hole.

There are also questions of what counts toward the minimum size of a garment. Do the front and back parts combine, or must each one separately be the minimum size? What impact does the hole for the head have? The *Mishna Berura*⁵ posits that the hole for the head does not count, and he seems to assume that the requisite size is necessary in both the front and back. If the hole is relatively small in comparison to the shoulder pieces, it is easier to contemplate counting that section or at least combining the front and the back sections. In any event, we will assume the

1. The four-cornered garment that we usually call *tzitzit*.

2. Introduction to *siman* 16.

3. *Orach Chayim* 2:9.

4. On the *Magen Avraham* op. cit.

5. 16:4.

worst case scenario – that the remaining width of the shoulder piece that is not ripped would not be enough to have a kosher *tallit katan* garment.

The question that arises when repairing a *tallit katan* is whether the principle of *ta'aseh v'lo min he'asuy* applies. This rule means that something that the Torah says to make, such as *tzitzit*, must be turned into a halachic entity by a **direct action**; it cannot come about indirectly through a situation that emerged incidentally. A classic application is when one attaches three *tzitzit* fringes to a three-cornered garment (which is not required to have *tzitzit*) and only afterward forms a fourth corner. In that case, we disqualify the three existing *tzitzit* fringes because they were not made into halachic *tzitzit*, but rather became significant indirectly when the part of the garment to which they were attached later required *tzitzit*.⁶

Let us consider a *tallit* that was severed into two, with each side retaining two *tzitzit* fringes and with each side including enough fabric to be considered a valid *tallit* that requires *tzitzit*. The *Shulchan Aruch*⁷ writes that *ta'aseh v'lo min he'asuy* is not a problem here. The logic is that all the *tzitzit* were made properly, as they were required at the time they were tied. The *Taz*⁸ says that if one reattaches the garment, the *tzitzit* of only one side are considered valid, whereas the part that is considered reattached needs to have its *tzitzit* removed and redone. According to the *Magen Avraham*,⁹ however, nothing has to be redone when the garment is reconnected, as the situation is just a return to the garment as it used to be with properly attached *tzitzit*. The *Acharonim* infer that if, when severed in two, a *tallit katan* turned into two pieces in a manner that neither constituted a halachic *tallit katan* garment (which is usually the case according to some

6. *Shulchan Aruch, Orach Chayim* 10:5.

7. *Orach Chayim* 15:3.

8. *Orach Chayim* 15:3.

9. 15:4.

opinions), all the *tzitzit* must be redone.¹⁰

Our case is more lenient. First, only one side is affected, and there is a *machloket* among *Acharonim* when a *tallit katan* is not severed into two separate garments but instead remains connected on one of the two sides.¹¹ Furthermore, there is a *machloket* regarding whether to view a garment that is ripped a majority of the way but is still somewhat connected as being severed or not. The *Lechem Mishneh* and *Mishneh LaMelech* write that even a small amount of connection is sufficient, whereas the *Artzot HaChayim*,¹² who cites them, says a majority connection is required. In your case, the rip is not significant and is unlikely to be a majority of the fabric. On the other hand, when one adds the rip to the significant opening for the head, it may not leave enough connection.

Nevertheless, there is a widely accepted leniency that applies regarding this point.¹³ The *Chazon Ish*¹⁴ says that if the shoulder pieces of a *tallit katan* are clearly intact but are somewhat ripped, the ripped part counts toward the amount of garment needed to connect the sides, despite the hole for the head. Thus, the *tallit katan* can halachically be used as is. Consequently, sewing it (which is a good idea if for no other reason than to prevent further ripping) introduces no problem of *ta'aseh v'lo min he'asuy*.

10. See *Mishna Berura* 15:17.

11. See opinions in *Tzitzit-Halacha P'suka* 15:31.

12. 15, *Eretz Yehuda* 3.

13. See *Tzitzit-Halacha P'suka* 15:32.

14. *Orach Chayim* 3:19.

F-5: The Permissibility of Selling Inherited *Tefillin*

Question: I inherited a pair of *tefillin* from my grandfather, but I already have a pair of *tefillin* that I view as more *mehudar*. May I sell the *tefillin*? (As a *kollel* student, I could use the money.)

Answer: There are strict *halachot* about what can be done with the money earned from the sale of a holy article. The *mishna*¹ says that when one sells an article of *kedusha*, he must use the proceeds to buy something of higher *kedusha*. However, the *gemara*² says that if the city's leadership sells the item in the presence of the populace, thereby obtaining maximum authority, the money can be used freely. The *Tur*³ maintains that since every individual controls his own property, he can similarly sell it and use the money freely.

On the other hand, the *gemara*⁴ asserts that one may sell a *sefer Torah* **only** to enable him to learn Torah or to get married. The *Beit Yosef* infers from the fact that the *gemara*'s source and other sources are written in the singular that this directive is referring to a privately owned *sefer Torah*; nevertheless, it is permitted to sell it only under very specific circumstances. The *Shulchan Aruch*⁶ cites two opinions regarding whether, under normal circumstances, it is permitted to sell a privately owned *sefer Torah*. (If a privately owned *sefer* was dedicated to community use, the matter is more severe). While there is no consensus in deciding between the opinions, many have been lenient.⁷

The question of selling privately owned *tefillin* is significantly

1. *Megilla* 25b.

2. *Ibid.* 26a.

3. *Orach Chayim* 153.

4. *Op. cit.* 27a.

5. *Yoreh Deah* 270.

6. *Orach Chayim* 153:10.

7. See sources cited in *Piskei Teshuvot* 153:19.

simpler. Besides the fact that the sanctity of a *sefer Torah* is greater than that of all other religious articles, there is a special *mitzva* to write/possess one. Thus, if one sells his only *sefer Torah*, he may be uprooting the fulfillment of that *mitzva*, and it is usually forbidden to do so. However, if the *sefer Torah* was acquired in a manner in which one did not fulfill the *mitzva*, it is more likely to be permitted to sell it.⁸ Likewise, if one has another *sefer Torah* and thus will continue to fulfill the *mitzva* even after the sale, there are greater grounds for selling it.⁹ In any case, the *Magen Avraham*¹⁰ says that the prohibition for an individual to sell does not apply to holy articles other than a *sefer Torah*, such as *tefillin*. While not everyone agrees,¹¹ the consensus seems to be on the lenient side.¹²

In your case, there are further reasons for leniency. Obviously, it cannot always be forbidden to sell *tefillin* for normal profit. If it were, what would a producer or merchant of religious articles do? The *Beit Yosef*¹³ writes that they are permitted to sell because those holy articles were always slated for sale and not for their own personal use. The *Kaf HaChayim*¹⁴ applies this logic to other cases, such as one who receives a *sefer Torah* as payment of a debt or as an inheritance. He reasons that the permissibility to sell depends on the owner's intent when the article entered his possession. In the case of inheritance, we consider the inheritor's intent upon receiving the *sefer Torah*. If he planned to use it, then the aforementioned questions arise about switching its designation and selling it. If when he received it he had in mind to sell it, he would not be changing its designation, and selling would therefore be permitted. Since you fit into the latter category, leniency is indicated again, and even more so since we are referring to *tefillin*

8. See *Pitchei Teshuva, Yoreh Deah* 282:16.

9. See *Igrot Moshe, Yoreh Deah* 163.

10. 153:23.

11. See *Bi'ur Halacha* to 153:10.

12. See *Shevet HaLevi* 1:41.

13. *Yoreh Deah* 270.

14. *Orach Chayim* 153:90.

rather than a *sefer Torah*.

Your financial situation can also be a significant factor. If your financial situation is very difficult, it is **possible** that you need the money so that you can continue learning Torah with the regularity that you desire, and the *gemara* states that this is justification for selling even a *sefer Torah*. If your situation is less dire and you have the merit of giving significant *tzedaka*, you **may prefer** not to sell your grandfather's *tefillin* and instead donate them to someone in need. The money you save the recipient can be credited as *tzedaka*, thereby lowering your out-of-pocket *tzedaka* expenses.

Section G:
Miscellaneous

G-1: What Can Be Learned from the Silence of the *Poskim*

Question: In one of your articles, about whether a guest has to make an act of acquisition for the *matza* at the *seder* (you said he does not), you used the concept of *setimat haposkim* (the silence of halachic authorities) as a proof for your argument.¹ Can you explain how this is a convincing argument and when it can be applied?

Answer: *Setimat haposkim* is a post-Talmudic tool for helping decide *halacha*. A search of the Bar Ilan Responsa Project turns up several hundred occurrences of the phrase, especially among *Acharonim*.

The thesis of *setimat haposkim* is that if a certain common halachic issue or a distinction within a halachic subject is not raised, or if it is raised in only a handful of sources, one can assume that the consensus of *poskim* opposes it. The logic is that if the halachic argument had been accepted to a reasonable degree, it would have found its way into additional rabbinic sources.

How do we know, then, what the *halacha* is when there are no sources at all on a specific case, neither in one direction nor in another direction? In the absence of halachic discussion, one should assume that the **simple** or **straightforward** understanding or practice is correct. If there is an accepted *halacha* in case X but there is logic, without sources, to limit the *halacha* to X.1 and X.2, to the exclusion of X.3 and X.4, *setimat haposkim* likely indicates that there is no halachic distinction. If the *halacha* is a certain way in X in general, then it is presumably the *halacha* in all standard subcases of X.

Regarding a matter such as ownership of *matza*, where the question is whether a special act is required (i.e., an act of

1. Published in *Living the Halachic Process*, vol. IV, D-13.

acquisition of the *matza*), *setimat haposkim* is a reason to **not require** an act that is not mentioned by *poskim*. If an act were truly necessary, it should be mentioned, whereas there is little reason to mention not requiring an act. *Setimat haposkim* is often used to reject a new stringency, as it would have been irresponsible for a large number of *poskim* to have omitted a warning on the matter if it were indeed called for. It can also be used, to a lesser extent, to reject a **novel** leniency that people would not have known about without being told.

Scholars in many areas of research can and often do use this type of tool. For example, if a researcher studying the history of a particular neurological disorder made an extensive study of medical records of a certain era and found no evidence of relevant symptoms, he might safely conclude that this disorder did not exist then or that it was extremely rare.

There are certain conditions that must be met in order to employ *setimat haposkim*. First, one must have searched through a sufficient number of sources. Sample size is always important, especially when drawing conclusions from what is **not** written. The volume necessary for drawing a conclusion depends on a few factors. If the situation at hand is common, relatively fewer sources are needed. Regarding responsa literature, common issues would be expected to come up more often than rare cases, again making the volume of literature to be surveyed dependent on the case. Regarding codes, since the codifiers choose what to discuss, as least to a certain extent,² we would expect them to put extra focus on more common cases, thus making silence on such cases more telling.

Another factor is the similarity of the issue to topics in halachic literature. If there are detailed sources about cases similar to the issue at hand, the absence of discussion is more significant. Returning to our example, a medical textbook that surveys 150 medical conditions can be “forgiven” for not mentioning a given

2. The basis of the discussion of most codes stems from Talmudic discussion.

neurological disorder, but a detailed textbook on neurological conditions would not have omitted it if it were prevalent.

One must be experienced and careful in using *setimat haposkim* and must know how to analyze the background. It is possible that the topic is not discussed for some other reason. In our medical example, perhaps in the studied era the disorder was viewed as a psychological disorder, not a neurological one, thus explaining its absence in the neurological contexts. In the context of Halacha, perhaps the issue is common nowadays but was not common in the past. For example, one should not dismiss the validity of pre-nuptial agreements due to a lack of source material on their past use since there were, in the past, fewer recalcitrant husbands and there was consequently less of a need for such agreements. Sometimes an issue is barely discussed because its existence and parameters were taken for granted. For example, the laws of a *mechitza* in *shul* became a relevant topic only when some people tried to do away with them and, even then, only in certain communities. Previously, the *mechitza*'s existence and requirements were a given that did not raise halachic questions. Using grape juice for the Pesach *seder* was not discussed in previous generations because grape juice was not available in the spring before the days of vacuum packaging and refrigeration.

In our day and age, *setimat haposkim* is a more compelling tool than ever. We have access to far more *sefarim* than our predecessors did because of greater access to larger libraries. In particular, new electronic "libraries" enable access from anywhere in the world. There are works on virtually all major halachic topics that survey centuries of halachic discussion with extensive footnoting and indexing. With the powerful computer search engines that now exist, an experienced researcher can be more confident in coming to conclusions based on what he **does not find**.

LIVING THE HALACHIC PROCESS

There is a phenomenon in which a certain opinion or practice was conspicuously absent until the ruling of a lone respected halachic authority popularized it. The resulting conflict between the *setimat haposkim* of one era and the accepted approach of another era requires a separate discussion.

In summary, the experienced, responsible student of Halacha can learn much not only from what is written, but also from what is not written.

G-2: Disclosing Problems about Another Person's Apartment

Question: I am renting an apartment whose owners are trying to sell it. Potential buyers come to see the house. Should/may we inform the potential buyers of the mold problems that exist?

Requested Follow-up Information: The problems are within the norm, and the owners did not take steps to hide them.

Answer: It is difficult to say that it is categorically forbidden by the laws of *lashon hara* to inform the buyers of the problem. The *Chafetz Chayim*¹ writes that one **should** tell his counterpart who is about to enter a business relationship that doing so will likely cause him to incur a loss, if the following conditions are met: The one informing considered the resulting damage carefully; he does not exaggerate the problem's extent; his intentions are noble and not out of dislike for the subject of his criticism; there is no other way to achieve the same result; the subject of his criticism will not be unduly harmed.² The *Chafetz Chayim* proves that one is in fact obligated to inform the person who stands to lose due to his lack of information, because of the *mitzva* to not stand idly by when someone is in danger. This *mitzva* applies not only to danger to life, but also to potential monetary loss.³

However, based on your description, it seems that you should not tell the potential buyer about the mold. First, buying an apartment with a normal amount of mold does not constitute a financial loss, as many people would buy such an apartment in any case. Although it is true that such a condition might justify a reduction in price, considering that the price for a particular house is not exact, it is not very likely that such a problem would make

1. II:9:1.

2. Ibid. 2.

3. *B'er Mayim Chayim* ad loc. 1.

the price clearly inappropriate. In general, a person who does not perform a thorough check of the apartment should assume it is not perfect, and that seems to be the extent of the problem – imperfection, not a bad apartment.

Second, you also are not **required** to take steps to save someone from damage when he himself does not bother to take such steps to easily protect his interests. The *Chafetz Chayim*⁴ writes that one who did not bother to have a potential son-in-law tested for Torah proficiency, even when that is important to him, “caused the loss to himself,” and someone who was not asked should not offer a negative report on his own.

One who is asked by both sides to give an appraisal should do so honestly.⁵ Therefore, the buyer can ask permission of the seller to ask you about the apartment. In that case, giving the impression that it is better than it is would be a violation of *lifnei iver* (giving someone bad advice).

If a potential buyer asks someone about an apartment without the owner’s permission, the person asked may tell the truth in a case in which his answer will affect the object’s price. This is clear from Talmudic precedents. For example, if someone overpaid for an object, he can take action only within the amount of time it takes to go to an appraiser to check its true worth.⁶ We do not consider the possibility that the appraiser will refuse to tell the buyer the truth due to concern about *lashon hara*. In a parallel vein, another source discusses a case of neighbors with inside information. If a woman with physical blemishes gets married and her husband wants to void the marriage due to misrepresentation of her physical characteristics, such a claim is not accepted if they live in a place with public bathhouses. This is because we assume that the husband checked out her physical condition by asking

4. Ad loc., section of examples, par. 6.

5. Ibid.

6. *Bava Metzia* 49b.

female relatives.⁷ The Rambam⁸ cites two opinions regarding whether we expect the groom to ask friends to ask their wives if he has no relatives in town. Apparently, Halacha does not require people to hold back such information.

As stated above, however, you do not need to do the work for the buyer unless you think that the buyer cannot find out for himself. We have seen that if there is an extreme problem that one would not know to ask about, an individual who possesses this information should step forward and provide it. Even so, the act of tattle-telling is so frowned upon that it should be avoided when there are alternatives. For example, when Yehoshua asked HaShem who was responsible for *Bnei Yisrael's* defeat at the city of Ay, HaShem told Yehoshua that He is not a tattle-tale, and Yehoshua should cast lots to determine who it was.⁹ Therefore, when there is no great need to save someone from a deep, dark secret (as explained above), it is improper to volunteer information that paints one's counterpart or his merchandise in a negative light.

7. *Ketubot* 75b.

8. *Ishut* 25:3.

9. *Sanhedrin* 11a.

G-3: What Type of Torah Study Should One Focus On?

Question: What is the biblical source for the *mitzva* to learn Torah? Why does HaShem want me to study laws regarding damages, for instance, which do not seem related to spirituality? Studying just because HaShem commanded it, without understanding the reason, has never made me particularly attached to Him or inclined to continue learning!

Answer: There are several biblical verses that refer to the obligation to study Torah. The Rambam¹ cites “You shall teach them thoroughly to your children”² as the source for teaching Torah to students (non-biological children) and “you shall learn [the statutes] and guard them to fulfill them”³ as the source of the *mitzva* to study it oneself.⁴ He counts these two elements (learning and teaching) as one *mitzva*.⁵ This seems to indicate that the *mitzva* is not just to treat Torah as something that one must know in order to apply it to his own life. Rather, it is imperative that as many members of our nation as possible master and pass along Torah knowledge and values so that the Torah will eternally remain the guiding force of our nation’s life.

Many statements of *Chazal*⁶ laud, in the highest possible terms, one who studies Torah *lishmah* (for its sake) – in other words, for the right reasons. Yet, different classical sources put the stress on different elements of Torah study. While acknowledging the beauty of studying in order to teach, the *mishna* in *Avot*⁷ seems to indicate that study in order to fulfill the *mitzvot* is of an even

1. *Talmud Torah* 1:2-3.

2. *Devarim* 6:7.

3. *Devarim* 5:1.

4. Rambam, *Talmud Torah* 1:3.

5. *Sefer HaMitzvot, Aseh* 11.

6. Including *Avot* 6:1.

7. 4:5.

higher level. This is not referring to merely reading the Torah as an instruction manual before performing a *mitzva*. Rather, one should fill himself with a broad level of knowledge so that he knows how to deal appropriately with whatever situation might come up in the future. The *Bach*⁸ is one of the supporters of the minority view that the best intention one can have while studying Torah is to study it in order to cling to HaShem. Rav Chayim of Volozhin popularized the widely accepted approach that *Torah lishmah* is that which is learned for the sake of the Torah knowledge itself, after understanding the religious – not merely intellectual – value of that knowledge.⁹

This does not necessarily mean that knowledge of Torah is more important than closeness to HaShem. Closeness to HaShem is emphasized in other *mitzvot*, such as the *mitzva* to love HaShem, fear Him, cling to Him, etc., and the performance of many *mitzvot* fosters these feelings. But Torah study has multi-faceted value. Knowledge of HaShem’s word connects one to Him and can and should ennoble one’s behavior.¹⁰ It also enables one to fulfill the *mitzvot* properly. Furthermore, it insures the continuity of our religious community.

HaShem wants “us” to study **all** of the Torah, including the laws of damages. That being said, since only a handful of people are able to master the entire gamut of Torah, a person has to choose the style and subject matter that will bring him the greatest gain. Certain basic texts (including the *Chumash*) are a must for anyone who takes his Judaism seriously. There is also a basic (not small) amount of practical Halacha that is required so that one does not constantly make mistakes. However, beyond that, one should experiment and get advice in finding the subject matters that are practically usable for him and/or inspire him. Some are enthralled by the intellectual rigor of the intricacies of Talmudic/halachic matters (including the laws of damages), while others

8. *Orach Chayim* 47.

9. See *Nefesh HaChayim* 4: 2, 3, 18.

10. See *Yoma* 86a.

are inspired by the more philosophical ideas. Trying to “force-feed” large amounts of study of areas that are not appealing to the learner is doomed to failure. As *Chazal* teach, “A person learns only from a place that his heart desires.”¹¹

Our suggestion to you is to find the subjects, teachers, books, etc. that further your own personal spiritual quest, while keeping your mind open to all genuine words of Torah. At the same time, realize that the very subjects that do not seem to produce the results you desire or need most at this point may do wonders for someone else or may even satisfy you yourself in the future.

11. *Avoda Zara* 19b.

G-4: Different Types of *Minhag* and their Levels of Flexibility

Question: It is said that *minhag* turns into *halacha* and that *halacha* cannot be changed. Yet, I find that there is a lack of consistency. The *Bais Yaakov* movement changed the *minhag* of girls' education. Some *minhagim* replace or greatly alter *minhag/halacha*, such as rewording agreements to allow receiving pay for work done on Shabbat. Why, then, can't we create new *minhagim* to obviate the *minhagim* that make *agunot* "chained" to their marriages?

Answer: You lumped together different types of *minhagim* that have very different characteristics. We will not deal in depth with the specific issues themselves, but we will touch on the issue of which types of practice have more flexibility than others and why.

First we must consider the source and authority of different types of Jewish religious laws and practices. We encourage you to read our *Introduction to the History and Process of Halacha in Living the Halachic Process*, vol. I.¹ Some *halachot* are from the Torah and cannot be changed. There may sometimes be changes in the **implementation** of certain Torah laws, but this is a rarity, and this can occur only when there are very specific reasons and parameters that allow for change. One example: The Torah forbids cross-dressing, but exactly which types of clothing are considered the dress of the opposite gender changes with time and place.² Although the practical question of what can be worn changes, the Torah principle behind the issue does not change one iota.

Rabbinic laws (up to the completion of the Talmud) are binding and do not change much. Some of these Rabbinic laws were not accepted broadly enough by the Jewish People and were thus discontinued (e.g., the prohibition on consuming oil

1. It is also available on Eretz Hemdah's website.

2. *Devarim* 22:5.

produced by non-Jews³). Sometimes the Rabbis provided a device to obviate a previously accepted Rabbinic prohibition in certain cases (e.g., a *pruzbol* document to allow collection of debts after a Rabbinic-level *Shemitta* year⁴).

Minhagim are more flexible than Torah or Rabbinic *halachot* for several reasons. One such reason is that they are often not formally instituted, making them more closely linked to circumstances, which change. Also, what some call a *minhag* may just be a standard practice that never had halachic standing. (No, bagels and lox are not actually required at a *brit mila*!) There is another type of *minhag* to consider. This is something that was not instituted as a new *minhag*, but rather relates to how to act in the face of different opinions about a full Torah law or Rabbinic law. Sometimes a *minhag* develops as to which of the opinions should be accepted and followed.

Let us now look at your examples. Women are required to learn Torah, although the nature of their obligation is different from that of a man.⁵ Curriculum, venue, and style of study have changed dramatically due to changing situations, but the same is true of men's Torah education (although in different ways). This is an example of a change in practice as to how to best perform a Torah law. When the matter has great religious significance, the guidance of great rabbinic leaders is crucial to ensure that the changes are implemented by the right people, at the right time, in the right way, and for the right reasons. The *Bais Yaakov* movement's founders⁶ sought out the approval of the highly revered Chofetz Chayim. The introduction of Talmudic study for women was encouraged and initially mentored by the great Rav Soloveitchik.

Regarding *agunot*, we must clarify what seems to be a misconception on your part. The questions of *agunot* are almost

3. See *Avoda Zara* 35b-36a.

4. *Gittin* 36a.

5. See *Beit Yosef, Orach Chayim* 47.

6. First and foremost, Sarah Schenirer.

always questions of Torah law and occasionally Rabbinic law – not *minhag*. Due to increased need, steps to reduce the scope of the problem have become more prevalent; when they appropriately use **existing halachic principles**, we strongly support the steps and the trend to look for additional effective and responsible methods. But we certainly cannot “wave the wand” of *minhag* to make the issues of *agunot* disappear.

G-5: The Best Way to Spend Money on Israel

Question: I have enough money to buy an apartment in Israel, but I do not plan to live there in the near future. I could also use the money to help support people or programs in Israel. Which is the preferred way to fulfill *yishuv Eretz Yisrael*?

Answer: According to almost all opinions, there is a *mitzva* in our times to live in Israel (*yeshivat Eretz Yisrael*),² although there is significant discussion as to whether the *mitzva* is from the Torah³ or is Rabbinic.⁴ In all likelihood, one fulfills this *mitzva* only by being a permanent resident of Israel, but not by being merely a tourist or even a landowner who visits often.⁵ Some even say that the living must be a normal, healthy inhabitation.⁶ In any case, none of the options you mentioned would constitute a fulfillment of a full-fledged *mitzva* of *yeshivat Eretz Yisrael*.

There is a second part of the *mitzva*, which the Ramban⁷ calls *kibush* (conquest) – to bring *Eretz Yisrael* under Jewish control. While doing so by military conquest in our times was at one point hotly debated due to the concept of the “Three Oaths,”⁸ it is all but unanimous that there is a *mitzva* to obtain control by buying land. This is the basis for the famous leniency, for the goal of

1. The *mitzva* to live in and strengthen the Jewish community of Israel.

2. When referring to *yeshivat Eretz Yisrael*, we put the stress on the individual living there. *Kibush Eretz Yisrael* refers to taking control over the Land. *Yishuv Eretz Yisrael* is a general term that can refer to either or both elements.

3. Ramban, Additions to *Sefer HaMitzvot*, *Aseh* 4.

4. See discussion in Rav Yisraeli's *Eretz Hemdah* I, 1:4, about the opinion of the Rambam, who does not mention *yishuv Eretz Yisrael* in his list of *mitzvot*.

5. *Shut HaMaharit* II, *Yoreh Deah* 28.

6. See different applications in *Shut HaRashbash* 2; *Amud HaYemini* 22.

7. Op. cit.

8. See *Ketubot* 111a and many contemporary sources.

yishuv Eretz Yisrael, of having a non-Jew draw up on Shabbat a contract for purchasing land in *Eretz Yisrael*.⁹ However, this applies specifically when a Jew buys land in *Eretz Yisrael* **from a non-Jew**.¹⁰ Similar logic may apply to buying land or building a home in areas where Jewish settlement is not a given. Buying a home in Ramat Gan is unlikely to contain that element of the *mitzva*. Nevertheless, acquiring a home from a Jew in order to enable *aliya* is a *hechsher mitzva*¹¹ of *yeshivat Eretz Yisrael*, as are steps to strengthen the ability to remain in the Land.¹²

The matter of supporting the poor in Israel is not brought in the *poskim* in reference to the *mitzva* of *yishuv Eretz Yisrael*. Rather, the *Sifrei*¹³ derives from the *pasuk* dealing with the *tzedaka* priorities (e.g., relatives, neighbors, before others) that the poor in *Eretz Yisrael* have precedence over the poor elsewhere. The *Shulchan Aruch*¹⁴ records this precedence as the *halacha*, while the Rambam, for some reason, does not mention it. We would view giving money to the poor of Israel as a proper **fulfillment of *tzedaka***, for which one may certainly use *ma'aser kesafim*¹⁵ money. Indeed, one could not use such funds for supporting the poor of Israel if we viewed it **only** as a means to formally achieve one's own fulfillment of *yishuv Eretz Yisrael*. After all, that is a personal *mitzva*, like buying an *etrog* or, for that matter, buying his own home in Israel. Helping **others buy homes** in Israel so that they can afford to make *aliya* is helping them with their *mitzva* and, according to the accepted opinions, it is a legitimate use of *ma'aser* money.¹⁶

9. *Gittin* 8b.

10. Rashi, ad loc.; Rambam, *Shabbat* 6:11; *Shulchan Aruch, Orach Chayim* 306:11.

11. Facilitation of a *mitzva*.

12. *Shut HaRashbash* 1.

13. *R'ei* 116.

14. *Yoreh Deah* 251:3.

15. The money set aside for the recommended practice of giving one tenth of his income to charity.

16. See *Living the Halachic Process*, vol. I, F-4.

Just because something is not a full-fledged *mitzva* does not mean that it does not have significant value. It is certainly laudable to want to connect oneself to *Eretz Yisrael* by owning a home here. It is something one does for his Jewish soul and from his own funds. Supporting different projects in Israel may be at least a partial fulfillment of taking part in the **national** *mitzva* of *yishuv Eretz Yisrael*, and one may use *tzedaka* funds for this purpose.

Practically, concerning your dilemma, it makes a lot of sense to combine the elements as follows. One can buy a home and hope to some day move into it oneself or have his children do so (which would make future *aliya/yeshivat Eretz Yisrael* more likely). It is best if one can rent it out in the meantime; rental subsidies for the needy are a wonderful form of *tzedaka*. In this way, not only will Israeli society gain from the infusion of funds, but you will avoid the problematic phenomenon of absentee homeowners (especially prevalent in Jerusalem). When fine Jews leave empty apartments during the majority of the year, they unwittingly raise housing costs and drive Jews out of town, thereby hurting the day-to-day economy, exacerbating the national housing shortage, and harming demographics. These factors do not make it wrong to buy in such a manner, but they take away from the positive effect the buyer was hoping to create.

G-6: *Hatarat Nedarim*¹ via Skype

Question: Around the time of Rosh Hashana, I will not be in the proximity of people who can do *hatarat nedarim* for me. Can I do it via Skype?

Answer: While performance of a **general** *hatarat nedarim* within days of Rosh Hashana is just a *minhag*,² it is good that you are looking for an opportunity to do it.

There is a *machloket Rishonim*³ regarding whether *hatarat nedarim* requires the physical presence of the *noder* (oath taker) himself. The *gemara*⁴ asks whether a husband can be an agent to request his wife's *hatarat nedarim* and concludes that he can. Some (including R. Shimshon⁵) posit that even other people can act as agents to annul an oath, even when they are less impacted than a husband by the oath that they are trying to cancel, based on the general rule that agents can carry out halachic processes. However, the Rambam⁶ is among those who require the *noder*'s actual presence, and this ruling is accepted by the *Shulchan Aruch*.⁷

How absolute is this ruling? The *Keren Ora*⁸ and the *Kiryat Melech Rav*⁹ suggest that the inadmissibility of an agent for *hatarat nedarim* is a Rabbinic law; the latter explains that the objective is to make the *noder* self-conscious so as to discourage him from making this a common practice. Rav S.Z. Auerbach¹⁰

1. Nullification of oaths, which can be done by need, but is also done standardly before Rosh Hashana.

2. See *Chayei Adam* II:138:8.

3. See *Beit Yosef, Yoreh Deah* 228, and Ran, *Nedarim* 8b.

4. *Nedarim* 8b.

5. See *Beit Yosef, Yoreh Deah* 228.

6. *Shvu'ot* 6:4.

7. *Yoreh Deah* 228:16.

8. *Nedarim* 8b.

9. On the Rambam op. cit.

10. *Minchat Shlomo, Nedarim* 8b.

suggests that the point is to enable effective discussion of the grounds for the *hatarat nedarim*.

Classical *poskim* suggest some exceptions. The Rama¹¹ says that *hatarat nedarim* can be done through an interpreter, but the *Shach*¹² and *Taz*¹³ say that this is true only when the *noder* is present. More significantly, the *Taz*¹⁴ cites the Rashba's ruling that even those who disqualify an agent for *hatarat nedarim* allow the *noder* to submit his request to *beit din* in writing. The idea is that the request must be transmitted without using intermediaries, but it works even without formalistic interaction between the *noder* himself and the *beit din*. The *Taz* also cites the Rivash,¹⁵ who does not allow writing. (The Rivash's proof is from the *midrash* about Yiftach's haughty refusal to go to Pinchas to undo his oath,¹⁶ which seems to indicate that a letter would not have sufficed.) The *Taz* himself does not take a clear stand on *hatarat nedarim* through correspondence, and the *Pitchei Teshuva*¹⁷ allows it in a case of significant need.

Poskim have discussed the use of telephones with regard to several halachic matters. One such matter is the crucial issue of appointing the facilitators of a *get*. This is a more difficult matter than ours because of the need to ascertain identity and the likely requirement of a high level of connection between the husband and the *get*'s facilitators.¹⁸ Another area of interest is *berachot* heard via telephone. One cannot fulfill *mitzvot* through such a *beracha*, but leading *poskim* have debated whether one can¹⁹ or

11. *Yoreh Deah* 228:16, based on the *Yerushalmi*.

12. *Yoreh Deah* 228:29.

13. *Yoreh Deah* 228:21.

14. *Yoreh Deah* 228:20.

15. *Shut HaRivash* 370.

16. See *Bereishit Rabba* 60:3.

17. *Yoreh Deah* 228: 9; see also *Kol Nidrei* 19:3.

18. See discussion in *Tzitz Eliezer* X:47 and an article by Rabbi H. Jachter in *Techumin* XIV.

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

cannot²⁰ answer *amen*.²¹ *Hatarat nedarim* by phone could possibly follow the same logic, or it might be more lenient (if a practical rather than formal connection between the two parties is enough) or more strict than other applications (if presence is a Torah requirement).

A Skype discussion is no worse than a written request for *hatarat nedarim*. After all, one's written word does not have any special status in this context; what is necessary is simply to convey the requester's message effectively without another person's intervention.²² In some ways, Skype is preferable to a written letter. It allows for give and take between the parties and creates a personal connection that could provide an increased ability to properly discuss the matter, as well as a measure of self-consciousness. In the latter regard, it might even be a slight improvement over use of a telephone. Audio/video's greater advantage is apparent in cases in which authentication is crucial (arguably including *gittin*), as it is easier to impersonate a voice than a voice and an appearance simultaneously.

In conclusion, when necessary, one may rely on *hatarat nedarim* via Skype and even by phone.²³ We note briefly that *hatarat nedarim* before Rosh Hashana may require less halachic precision than *hatarat nedarim* for a specific oath that one wants to absolve,²⁴ and leniency is therefore fully acceptable when necessary.

20. *Minchat Shlomo* I:9.

21. See *Living the Halachic Process*, vol. IV, B-9.

22. Proof of this claim is beyond our present scope.

23. See *Shevet HaKehati* IV:239.

24. Development of this argument is beyond our present scope

G-7: Lighting a Candle When the *Ner Tamid* Is Out

Question: There was recently a power outage in our area while I was in my *beit kneset*. Emergency lights went on, but the *ner tamid* (eternal flame) was off. Were we required to go get a candle to serve as a *ner tamid*, or could we have waited until the lights came back on?

Answer: The idea of having a *ner tamid* is both an ancient practice, first mandated in the Torah¹ for the *Mishkan*²/*Beit HaMikdash*, and a more recent practice, as we will see. In the *Beit HaMikdash*, the “western lamp” of the *menora* was supposed to always be lit.³ Now that there is no *Beit HaMikdash* and our *shuls* have assumed some of its place in our lives,⁴ some say that the *ner tamid* is among the specific *Mikdash*-like features that have been adopted.⁵

I have been unable to find a reference to a special “*ner tamid*” in a *shul* before the *Terumat HaDeshen* (15th century Germany). On the other hand, lights in *shuls* are discussed well before that, and they are an important part of a *shul*, to which some specific *halachot* pertain. For example, they cannot have any connection to idol worship or worshippers.⁶ This, however, refers to lights in general, and not specifically to a *ner tamid*.

Some sources refer to the practical need of being able to see and read in the *shul*, especially at night. Others, including the Rambam⁷ and the Rosh,⁸ refer to good lighting as one of the

1. *Shemot* 27:20.

2. The temporary sanctuary first erected in the desert and brought into *Eretz Yisrael*.

3. *Sifrei*, *Bamidbar* 59.

4. *Megilla* 29a.

5. See *Binyan Tziyon*, II:12; *Terumat HaGoren* I:37.

6. *Shulchan Aruch* and Rama, *Orach Chayim* 154:11.

7. *Tefilla* 11:5.

8. *Shut HaRosh* 5:8.

ways to show honor (*kavod*) to the *shul*. But the contemporary *ner tamid* is found even in *shuls* that have extensive lighting and expensive chandeliers; it is usually in the front of the *shul*, and it stays on even when other lights are off.

Is it indeed required for there to be a light in *shul* at all times? The *Shulchan Aruch*⁹ rules that it is permissible on *Yom Tov* to light candles in *shul*, as the *mitzva* purpose justifies doing *melacha*.¹⁰ The Rosh¹¹ says that it is permitted even to light these candles in the afternoon, so as to have them last into the next day (e.g., into Shabbat or the second day of *Yom Tov*), because the immediate *kavod* that the candles bring suffices. Although the Rashba¹² is not convinced that this type of benefit justifies performance of *melacha* on *Yom Tov*, he agrees that it is generally proper to have light to enhance the *kavod* of the *shul*, apparently beyond that which is practically necessary for reading and the like. The *Magen Avraham*¹³ writes that it is even permitted to light candles on *Yom Tov* when people are not in *shul*, as the honor to the *shul* still applies.

Indeed, it is usually assumed that it is worthwhile to have light in a *beit kneset* even when it is empty, but that does not necessarily mean that there is an obligation or even a purpose for it to be literally *tamid* (constantly). The *Rav Pe'alim*¹⁴ discusses the case of a *shul* whose members were afraid, for safety reasons, to leave candles lit all night in *shul* and wanted a non-Jew to extinguish them and relight them the next morning (Shabbat). He states that even when they put out all the lights, they must certainly keep at least one candle lit in a safe place because it is not *kavod* for the *shul* for it to be pitch dark. He seems to assume that during the day, when it will anyway not be totally dark, a single candle does

9. *Orach Chayim* 514:5.

10. Actions that are fundamental prohibitions on Shabbat and *Yom Tov*.

11. *Op. cit.*

12. *Shut HaRashba* III:277.

13. 514:14.

14. II, *Orach Chayim* 43.

not make a difference and is in fact not needed.¹⁵

Putting things together, nowadays there is a *minhag* to have a specific *ner tamid* in *shul* at all times. Since it is so easy, due to electricity, to just leave it on always, it is unclear whether the *minhag* mandates that it remain on during the day as well or just that no one bothers to shut it. However, the *minhag* does not appear to be strongly modeled after the *Beit HaMikdash*. One of several signs that it is intended for a more practical rather than ritual *kavod* is the fact that we use electricity rather than olive oil.¹⁶ There are few if any sources that indicate that there is a problem if a relatively short period goes by without a specific *ner tamid*. Therefore, in your case it does not seem that it was necessary to get candles, especially during the daytime and certainly when emergency lights went on.

15. The *Magen Avraham*, op. cit, is likely talking about several candles, which are noticeable and thus add honor even during the day.

16. See *Maharam Shick, Orach Chayim* 83.

G-8: A Fence for the Roof of an Apartment Building

Question: I reside in a building with over 200 housing units. The vast majority of the residents are not Jewish. The building is owned by a condominium association comprised of the building's apartment owners, and over half of the building's apartments belong to a Jewish-owned real estate company. Are we obligated, as residents or owners, to build a *ma'akeh* (fence) for the roof (it is flat)? It is likely that a decision to build one would cause animosity among the non-Jewish owners, as the fence will be expensive for such a large roof.

Answer: There are a few cases in which roofs are not required to have a *ma'akeh* around them. Regarding some, the ruling is unanimous; regarding others, there are different opinions.

The *gemara*¹ says that although the word “*gagecha*”² seems to imply that a jointly owned roof does not require a *ma'akeh*, the continuation of the *pasuk*, “lest the faller fall,” indicates that partners indeed are obligated, since someone could fall from a jointly owned roof as well. It is less clear whether this applies even when there are non-Jewish partners, who are not personally obligated in the *mitzva*. The *Shach*³ writes that although the Maharshal obligates a Jew who has a partnership in a house with a non-Jew to build a *ma'akeh*, the Rama,⁴ who rules that such a house is exempt from a *mezuzah*, might exempt him from a *ma'akeh* as well. The *Shach* hints that the comparison between *mezuzah* and *ma'akeh* is not self-evident. We note that one of the reasons given for the *mezuzah* exemption is the non-Jew's possible reaction to what he might consider a strange ritual;⁵ this does not

1. *Chulin* 136a.

2. “Your [singular] roof”; *Devarim* 22:8.

3. *Choshen Mishpat* 427:2.

4. *Yoreh Deah* 286:1.

5. See *Shach*, *Yoreh Deah* 286:6.

apply to a *ma'akeh*.

Although the more accepted opinion is to obligate a Jewish homeowner with a non-Jewish partner to construct a *ma'akeh*, the matter remains somewhat unclear.⁶ The *poskim* do not distinguish between cases in which the Jewish-owned portion or the non-Jewish portion is the majority, making moot one part of your excellent question – whether the determinant of the majority follows ownership or residency.

This question actually could be different if it were asked not by a resident like you, but by the Jewish-owned real estate company. The *gemara*⁷ says that the renter who is obligated to erect a *ma'akeh*. Most assume that his obligation is Rabbinic.⁸ The *Minchat Chinuch*⁹ raises the question of whether the renter's obligation is exclusive or whether the owner of the house is also obligated, and possibly even more obligated.

You did not state whether the roof is used at least semi-regularly or if it is basically accessed only for the purpose of repairs. Presumably, if the roof were used extensively, everyone would understand the safety benefits of some sort of barrier. (Also, note that a *ma'akeh* only needs to be 10 *tefachim* tall.¹⁰) Most *poskim*¹¹ rule that a roof that is not frequented does not require a *ma'akeh*. It is possible that even the stringent opinion on this matter would not apply his stringency to a renter or to a case in which there is a partnership in the house. Since the obligation for those who are classical owners of the house is likely based on the practical consideration of danger, it **might** not apply when the roof is rarely used.

What should you one do if your case is such that you are obligated in a *ma'akeh* but you cannot get others to agree unless you

6. *Birur Halacha* (Zilber), *Even HaEzer/Choshen Mishpat*, p. 249.

7. *Bava Metzia* 101b.

8. *Chazon Ish*, *Choshen Mishpat*, *Likutim* 18:7; see *Pitchei Teshuva*, *Choshen Mishpat* 427:2.

9. #546.

10. Approximately three feet. See *Shulchan Aruch*, *Choshen Mishpat* 427:5.

11. *Bi'ur Halacha* to *Orach Chayim* 540:1; *Chazon Ish* op. cit. 1.

and/or a small group agree to pay for it (which would presumably be prohibitively expensive)? The rule is that one does not have to pay an exorbitant amount of money to fulfill a *mitzvat aseh*,¹² but one does have to spend all of his money to avoid the violation of a *mitzvat lo ta'aseh*.^{13 14} The *mitzva* of *ma'akeh* includes both types of *mitzva*, but it is primarily a *mitzvat aseh*,¹⁵ and there may be times that the *aseh* applies while the *lo ta'aseh* does not.¹⁶ On the other hand, the existence of a *lo ta'aseh* would seem to strengthen the *aseh*. In the final analysis, however, according to many *poskim*,¹⁷ the amount that one must pay depends not on how the *mitzva* is formulated, but on whether it is violated by action or inaction. In this case, since the violation is done by **not building** the fence, a handful of people would not be expected to pay an exorbitant price to build the *ma'akeh* to prevent the passive lack of fulfillment of the *mitzva*.

12. Positive *mitzva*.

13. Negative *mitzva*.

14. Rama, *Orach Chayim* 656:1.

15. See *Chiddushei HaRamban*, *Kiddushin* 34a.

16. See *Tosafot*, *Kiddushin* 34a.

17. See *Pri Megadim*, *Eshel Avraham*, *Orach Chayim* 656:8; *Pitchei Teshuva*, *Yoreh Deah* 157:4.

G-9: A Loan/Investment that Requires a *Heter Iska*¹ after its Inception

Question: I have an ongoing arrangement by which a friend loans me thousands of dollars to use for my business at a fixed rate of interest. I think (but am not sure) that we agreed to have a *heter iska*, but I cannot find it, and it is possible that it was only agreed orally. Some money has been paid and some is still owed. What should I do at this point?

Answer: If there was a valid *heter iska*, it is not a problem to be unable to find it. That is because a *heter iska* sets the nature of the transaction as having an element of investment (subject to profit or loss, at least theoretically) from the outset, such that there is no problematic loan to begin with.

Let us briefly explain the reason that a *heter iska* can be used to allow payment at a fixed rate of interest/theoretical profit, irrespective of actual profits. When a *heter iska* is in place, the loan is halachically viewed as an investment that does not provide a guaranteed return on the money advanced. The reason that it **resembles** a fixed-rate loan is the provision in the *heter iska* that the investor can demand verification (witnesses to say there was loss or an oath that there was less gain than expected) if and when the investment recipient claims that he does not have to pay as much as expected. Therefore, the fixed rate of “assumed profit” (known as *d’mei hitpashrut*) in lieu of verification of a different amount of payment is a legitimate part of a *heter iska*. We do not view it as assured interest, even though it is almost always the amount that is paid irrespective of actual profits.

According to most *poskim*, an oral *heter iska* agreement

1. An agreement that turns what would have been a situation of *ribbit* (forbidden usury) into a joint investment between the two parties.

is essentially valid.² Why, then, do we bother with a written agreement? The most cogent reason has to do with the weakness of the *heter iska* in general. While we certainly do not intend to cast aspersions on a halachic system that the rabbinic community has accepted **broadly**, most admit that it **borders on** halachic fiction. In all honesty, the parties basically agree to a loan that is to be returned with interest (i.e., *ribbit*) even if the borrower did not profit. In order to redefine the transaction to conform to halachic requirements, it makes sense to be assisted by the written word to bring the provision to a proper minimum level of seriousness. Indeed, there is halachic precedent that written agreements are taken more seriously than oral ones.³

Additionally, many people do not understand the conditions of the *iska*. Most *poskim* do not require a high-level understanding of the mechanism, but it is unclear what the minimum level is. When agreements are in writing, there is more chance that the sides will understand the conditions.⁴ Furthermore, there is a broad rule that when an agreement is in writing, we do not enable a party to claim that he did not understand it; he has to realize that he is accountable for whatever is written.⁵ This element is missing when the “agreement” is oral. There are also different types of *heter iska* that can be used, and not everyone knows how to specify which version he is agreeing to. Thus, it is important to have a written *heter iska*, and you should prepare one now. However, if there was an oral agreement to follow the conditions of a classic *heter iska*, then if the business transaction was already performed, you may assume the agreement had the proper halachic effect.

What if there was no agreement? Interest that was already paid would be in violation of a Torah prohibition, and in such a situation the creditor is required to return the interest to the borrower.⁶ However, the borrower is allowed to waive the right

2. See *Brit Yehuda* 40:9; *Torat Ribbit* 16:2.

3. See *Ketubot* 56a; *Shut Tzemech Tzedek* (Lubavitch), *Yoreh Deah* 88.

4. See *Brit Yehuda* 35:4 and ad loc. n. 13; *Shut Tzemach Tzedek* op. cit.

5. See *Netivot Shalom* (Gelber), pp. 725-726.

6. *Shulchan Aruch*, *Yoreh Deah* 161:5.

to have the money returned,⁷ as you are apparently interested in doing.⁸ Regarding the future, it is possible to create an *iska* at this point. This can be accomplished by transferring to you potentially profit-producing assets by means of a *kinyan sudar*⁹ or through a written *heter iska* (although it would be preferable to slightly modify parts of its language). This new *iska* arrangement cannot change the nature of the loan retroactively, and it would therefore be forbidden to make new interest payments that correspond to the time that has already passed.¹¹ Some allow compensating for the lost profit to the lender by making the *d'mei hitpashrut* higher than what was originally planned.¹² However, others counter logically that it is clear that the added payment is *ribbit* for the past and not incidental. The matter may depend on the willingness of the one who gave the money to waive compensation for the missed *d'mei hitpashrut* of the past.¹³ The less exact and less clear the compensation is, the more reasonable leniency is on this point.

[Since each case entails its own details and dynamics, we suggest you speak to us or another rabbi about arriving at the best arrangement for your case.]

7. Ibid. 160:5.

8. There is more to be said on this matter, but it is beyond our present scope.

9. A symbolic act of finalization involving the giving of a utensil from one side to the other.

10. *Dagul Merevava to Shach, Yoreh Deah* 177:41.

11. *Torat Ribbit* 16:28-29.

12. Ibid.; *Netivot Shalom*, p. 721.

13. Ibid.

G-10: Solving a *Netilat Yadayim* Problem on a Plane

Question: Airline kosher food packages often contain “*Mezonot* rolls,” and I used to, conveniently, not do *netilat yadayim* on the plane. Nowadays, many rabbis have come out against this concept, and the rolls are often labeled as “*HaMotzi*.” Considering that during mealtime on an airplane, it is not feasible to wash, what should I do?

Answer: We will start with a brief view of the contemporary *machloket* regarding “*Mezonot* rolls,” about which so much has been said and written.

The *gemara*¹ discusses *pat haba’ah b’kisnin*, a baked grain-based food that shares some qualities with bread but in some ways is different from normal bread. The *gemara* says that whether one recites *HaMotzi* or *Mezonot* on such a food depends on whether one is *kovei’a seuda* (sets a meal) on it. The *Shulchan Aruch* writes that when one is *kovei’a seuda* on *pat haba’ah b’kisnin*, the other *halachot* of bread also apply to it – namely, one has to do *netilat yadayim* before eating it² and recite *Birkat HaMazon* after eating it.³

What are the characteristics that make a baked product of flour from the five main grains *pat haba’ah b’kisnin* instead of bread? The *Shulchan Aruch*⁴ cites three opinions: 1) It has a pocket of sweet filling. 2) Its dough contains significant amounts of ingredients such as sugar and oil (in addition to flour and often water). 3) It is thin and crispy. It is not altogether clear whether we treat a food that has some but not all of these characteristics as definite *pat haba’ah b’kisnin* or as possible bread, and the

1. *Berachot* 42a.

2. *Orach Chayim* 158:1.

3. *Ibid.* 168:6.

4. *Ibid.* 7.

practical ruling may depend on the specific halachic ramification that is being considered.⁵

The idea of “*Mezonot* rolls” is to make it *pat haba’ah b’kisnin* by kneading the flour with juices and with little or no water. But does this succeed in creating the desired halachic status? There are three main claims against this application, although each one is debatable.

One claim is that these rolls are usually served on the airplane in a manner such that they constitute the main part of the meal; i.e., one is *kovei’a seuda* on the roll. We have written elsewhere⁶ our belief that pizza should be treated as bread no matter how much of it one eats because it is normally eaten as the main part of the meal. Similarly, one can argue that airline rolls should be viewed as bread. On the other hand, the prevalent *minhag* is to treat only a large amount of pizza as bread, and one is not served that much of the *Mezonot* rolls on the plane. Furthermore, the rolls are less central to meals than a slice or two of pizza is.

Another claim is that nowadays, when people normally eat only a little bread at a meal, even a relatively small amount of *pat haba’ah b’kisnin* should be treated as bread when it is eaten as part of a full meal.⁷ However, according to that logic, one should make *HaMotzi*, wash, and *bentch* even for borekas and some kugels during a meal, and that certainly is not the accepted *minhag*.

A third claim is that this roll greatly resembles a regular roll, and we are more interested in the way the food looks and tastes than in its actual ingredients. However, one can deflect this claim as well. One can easily tell that a *Mezonot* roll is not a regular roll, and the airline food chefs and the travelers are willing to use it as a roll mainly to save them from the problem of *netilat yadayim* on a plane.

Our opinion, based on the combination of the above factors, is that one should wash, recite *HaMotzi*, and *bentch* on most

5. See *Bi’ur Halacha* to 168:8.

6. *Living the Halachic Process*, vol. IV, B-3.

7. Based on *Igrot Moshe, Orach Chayim* III:32.

Mezonot rolls, although we do not discount the ruling that treats them like *pat haba'ah b'kisnin*.

If you bring real bread with you on the plane, you will be able to solve the *netilat yadayim* issue and also obviate any doubt as to which *berachot* to make on these questionable rolls.⁸ Before the stewardesses start giving out the food (special orders, including kosher, are usually served first), go to do *netilat yadayim* and make *HaMotzi* on the bread. (It is best to use a permanent cup. Also, if you wash in the sink of the little kitchenette, you will be able to recite the *beracha* right away. If necessary, you can wash in the bathroom, but dry your hands and make the *beracha* outside of it.) Then continue the meal with what they bring you later, with or without the *Mezonot* roll. If you do not have a chance to wash when the aisles are clear, you can first eat the meal without the bread and roll and make the appropriate *berachot acharonot*. Some time later (right away would raise problems of unnecessary *berachot*), when the aisle traffic eases, wash and have the bread and/or roll.⁹

It is important to emphasize that while we do not want to compromise halachic requirements while on a plane, we also do not want to make a *chillul Hashem* or unfairly inconvenience others (i.e., by going into aisles that are full with food carts). It is legitimate to be lenient, and it is praiseworthy to inconvenience **ourselves** but eat in the most halachically sound manner, when one is under less than ideal conditions.

8. Another practical note: It is a good idea to bring bread with you for the situations in which there is a problem with your kosher food order.

9. If you save some spread from the meal, the bread and roll will likely be more appealing.

G-11: Burying Wisdom Teeth

Question: I am having wisdom teeth removed. Do I need to bury them?

Answer: There are a few reasons to bury parts of the human body, and we will have to examine each one to see whether it applies to the tooth of a live person.

There is a major question regarding whether the obligatory *mitzva* of *kevura* (burial) applies even to an individual limb of a deceased person.¹ (If the majority of the corpse is present, all agree that the *mitzva* applies to every part of it.) Some maintain that while there is a *mitzva* of burial for an individual part of the body, this applies only to a dead person. Since all parts of his body should be buried, it is a disgrace for part of his body to go unburied. In contrast, when a person continues living without a part of his body, burial might not be necessary for that part.² The *Igrot Moshe*³ attempts to prove that there is an obligation of burial even for an individual limb or a sizable amount of flesh of a live person, based on the fact that the *gemara*⁴ needs a *pasuk* to deduce that a *kohen* may not make himself *tamei* in order to bury a limb of his live father. However, it appears that the majority opinion is that there is no obligation of *kevura* for a live person's limb.⁵

Even if the *mitzva* of burial does not apply, there are additional issues that may put limitations on what to do with a part of a body. A dismembered limb of even a live person is *tamei* (ritually impure).⁶ As such, it is not proper to allow such a limb to be left out in the open, where a *kohen* might come in contact with it. Another issue that could create requirements for proper disposal

1. See *Mishna LaMelech*, *Avel* 14:21.

2. Compare *Noda B'Yehuda* I, *Yoreh Deah* 90, and *ibid.* II, *Yoreh Deah* 209.

3. *Yoreh Deah* I:231.

4. *Nazir* 43b.

5. See *Ateret Paz* III, *Choshen Mishpat* 7.

6. Rambam, *Tumat Meit* 2:3.

of the body part is the prohibition to receive benefit from it.⁷

Let us now look into the matter of a tooth. The *gemara*⁸ relates that R. Yochanan would walk around and show people a bone from his tenth son to have died. (*Tosafot*⁹ explains that he did so to console others who were distraught over tragedy.) Commentators are troubled how R. Yochanan could have acted in this way, as he ostensibly should have buried the bone. Rashi¹⁰ posits that it was a tiny bone, smaller than the size of a grain of barley, whose *halachot* are different than those for a larger bone. The Rashbam¹¹ says that the “bone” was actually a tooth, which is not *tamei*. Indeed, a *mishna*¹² states that neither hair, nor nails, nor teeth that are separated from the human body are *tamei*. Although not everyone explains that it was a tooth that R. Yochanan kept, we do not have an indication that there is any fundamental *machloket* on a tooth’s status regarding burial. It is not clear whether it is permitted to benefit from a tooth from a deceased person,¹³ but one certainly may benefit from the tooth of a live person. Therefore, we are not aware of any halachic source or strong reason to place restrictions on what may be done with an extracted tooth.

There is a venerable source that does discuss what one should do with extracted or fallen teeth, but it is apparently not following halachic lines. The Chida¹⁴ wrote to someone who was upset that his tooth, which he had been saving to have buried with him, was lost. The Chida told him that although the custom of saving a tooth for eventual burial is mentioned in *Ma’avar Yabok*, it is not clear that the author agreed with that practice, and it appears to contradict the story of R. Yochanan cited above. The *Tzitz Eliezer*¹⁵

7. See *Binyan Tzion* 119.

8. *Berachot* 5b.

9. Ad loc.

10. Ad loc.

11. *Bava Batra* 116a.

12. *Ohalot* 3:3.

13. See *Chidushei HaRan*, *Chulin* 122a; *Yabia Omer* III, *Yoreh Deah* 21.

14. *Yosef Ometz* 30.

15. X:25:8.

seems to dismiss the practice. It is also interesting that even this uncommon *minhag* does not require one to bury the tooth right away, as many require for limbs, but rather to specifically wait until the burial of the person himself. This actually seems to discount the potential halachic stringencies, as we posited above. Therefore, we see no reason to take any special measures in regard to a tooth that is removed or falls from a live person.¹⁶

16. The matter of disposing of cut nails is an entirely technical matter (i.e., it could cause damage) that does not apply here; see *Mo'ed Katan* 18a.

G-12: Eating Contests

Question: I am interested in your opinion regarding whether eating contests violate any prohibitions, such as *bal tashchit* (lit., not destroying). (I am a reporter writing an article.) Is there a difference between contests of volume (e.g., eating dozens of hot dogs in ten minutes) and of speed (e.g., eating three hot dogs the fastest)?

Answer: Presumably, one with a Torah-based mindset will react negatively to the idea of such contests (with good reason). However, we do not believe in using words like “forbidden” without honestly weighing halachic issues.

We will begin with the issue that you raised – *bal tashchit*. Beyond the context of destroying trees, in which this prohibition appears in the Torah,¹ it is difficult to delineate the violation. The Rambam² describes it as applying not to wasting, as many assume, but to destroying things, including “*me’abed ma’achalot derech hashchata*” (causing the loss of food in a destructive manner). The emphasis on the destructive manner opens the door to permitting arguably wasteful usage of objects of value for such purposes as recreation.³ In the question at hand, we are discussing eating, and it is harder to claim that the ingestion of the food is destructive even if it is done in a less than dignified manner.

Some claim that Rashi would consider stuffing oneself as *bal tashchit*. In discussing the case of one who is bloated and yet continues to eat, the *gemara*⁴ describes such action as considered not “eating,” but “damaging,” and Rashi⁵ says that such a person damages both the food and himself. If eating in this manner is considered damaging the food, it is likely *bal tashchit*. However,

1. *Devarim* 20:19.

2. *Melachim* 6:10.

3. See *Etz HaSadeh* (Shtesman) 11:2.

4. *Yoma* 80b.

5. Ad loc.

since the context there is the parameters of prohibited eating (e.g., Yom Kippur, forbidden food) and not *bal tashchit*, it is difficult to be sure what Rashi would say in our context.

Another related issue is *bizuy ochlin* (disgrace of food).⁶ Regarding this issue, Halacha distinguishes between foods.⁷ Most foods are considered “disgraced” only when they are soiled and made unappetizing prior to eating. It is difficult to apply that to eating itself, even if it is done in an unnatural way. Bread, however, may not be handled disrespectfully (e.g., by throwing it), even when it is unaffected by such handling. Thus, while it is difficult to consider overeating an objective *bizuy ochlin* for most foods, it is **reasonable** to forbid stuffing bread (including hot dog rolls) down one’s throat in the context of extreme overeating, as situational *bizuy*.

Safety concerns are also relevant. A small number of people have died (mainly from choking) at eating contests, and eating in such a fashion is not wonderful for one’s digestive system. We find in *Chazal* particular concern to avoid eating in a dangerous or even unhealthy manner, e.g., speaking while eating;⁸ eating while standing.⁹ On the other hand, in addition to our reluctance to taking stands on medical matters, we do not want to be hypocritical by forbidding eating contests on health grounds when so many people eat very unhealthily on a regular basis without significant rabbinic comment.

There are a few semi-halachic, semi-philosophical areas about which people can argue whether they apply. Here we simply mention one issue that we believe eating contests – at least those of volume – clearly violate: *bal teshaktzu*.¹⁰ A secondary application of the *pasuk* is that one should not put his body in a situation in which he feels disgusted. Classic examples include

6. See Rashi, *Ta’anit* 20b.

7. See *Shulchan Aruch, Orach Chayim* 171:1.

8. *Ta’anit* 5b.

9. *Gittin* 70a.

10. *Vayikra* 11:43.

holding in a strong need to eliminate and eating in a manner that disgusts the eater.¹¹ It is true that *poskim* permit such situations for certain needs (e.g., for one who is in public without access to a bathroom;¹² for a sick person who needs to ingest a medicine that disgusts him¹³). However, the anyway dubious practice of an eating contest is not adequate justification to allow for such violations.

Regarding an eating “sprint” of three hot dogs, we lack the expertise to determine whether contestants necessarily disgust themselves or whether fast swallowing is simply a technical skill of swallowing a normal amount of food unusually fast. The food, assuming it will eventually get digested, can be used by the body like other hot dogs. Therefore, objections to such a contest might be based more on philosophical/ethical grounds than on halachic ones.

11. *Makkot* 16b.

12. *Mishna Berura* 3:17.

13. See *Pri Megadim, Sifteï Da'at* 81:3.

Section H:
Family Law

H-1: Standing for Parents in our Times

Question: Most people do not stand up when their parents enter the room. Is this due to the opinion that it is enough to stand for them once in the morning and once at night?

Answer: We believe, as do you apparently, in the great significance of the common practices of upstanding Jews and in looking for halachic justification for them. However, there has to be a good fit between sources/logic and the practices in question.

The *gemara*¹ gives examples of *kibud* (honoring) and of *mora* (awe) for parents. While standing is not on either list, it is evident from *gemarot* that it is expected.² This is logical considering the *mitzva* from the Torah³ to stand before the elderly and scholars.⁴

Now let us take a look at the idea of standing once during the day and once at night, which you mention. The *gemara*⁵ cites R. Yannai as saying that a *talmid chacham* is not permitted to stand up for his *rebbe* more than once in the morning and once in the evening to avoid giving more honor to him than to HaShem. The Rif does not cite this ruling, and the Rosh⁶ explains (and agrees) that the *gemara*'s subsequent discussion indicates that this idea is rejected. The Rambam,⁷ on the other hand, does accept R. Yannai's opinion not to stand for one's *rebbe* more than twice daily.

The *Shulchan Aruch* does not cite R. Yannai's *halacha*, thereby demonstrating that he rules like the Rif/Rosh, and this

1. *Kiddushin* 31b.

2. See *Beit Yosef, Yoreh Deah* 240.

3. *Vayikra* 19:32.

4. *Kiddushin* 32b.

5. *Ibid.* 33b.

6. *Kiddushin* 1:56.

7. *Talmud Torah* 6:8.

is the ruling accepted by Sephardim.⁸ The Rama,⁹ in contrast, accepts R. Yannai's view, but not according to its simple reading; rather, one is **not obligated** to stand for his *rebbe* more than twice a day, but he **may** stand more often.¹⁰ (The Rama also rules that when one is among people who did not see him stand previously, he must stand again.)

Most *Acharonim*¹¹ assume that the exemption of standing only twice daily applies to parents as well, although the *Aruch HaShulchan*¹² suggests that the obligation to stand for one's parent may exceed the obligation toward his *rebbe*. (According to the Rambam's presentation of the *halacha* – that it is **not permitted** to stand for one's *rebbe* more than twice a day – it is plausible that it is still permitted to stand for one's parents more than twice, but we cannot develop this discussion in the current forum.)

It is difficult to argue that the Rama's opinion would **justify** the common practice of laxity about standing for parents. After all, do people really consider whether they already stood for their parent that day before deciding to remain seated? Nevertheless, the Rama's view may still help us **understand** the common practice. Consider the following *chakira*¹³ regarding the Rama's ruling, which we will examine through a practical question. According to the Rama, must one stand at the **first** opportunity of the day, after which there is an exemption, or is it enough that there is a mode of behavior in which one stands roughly once in the morning and once at night? This might depend on if standing is part of the *mitzva* of *mora*, which incorporates the acts that must be avoided in order to demonstrate proper awe, or the *mitzva* of *kibud*, which refers to positive acts performed to demonstrate honor.¹⁴ If we stand for parents due to the negative element of

8. See *Yalkut Yosef, Kibud Av* 4:8.

9. *Yoreh Deah* 242:16.

10. See *Darchoi Moshe, Yoreh Deah* 242:11; *Semag, Aseh* 13.

11. See *Chayei Adam* I:67:7; *Shevet HaLevi* II:111; *Yalkut Yosef* op. cit.

12. *Yoreh Deah* 240:24.

13. Analytical dilemma.

14. *Yalkut Yosef* op. cit., in a footnote, is unsure to which category it applies.

mora, remaining seated would be forbidden unless one stood already; if it stems from the positive element of *kibud*, the exact timing of the performance would be less crucial. According to the latter approach, we could justify a certain amount of laxity if the child stands not infrequently, but that is not always the case.

Another factor that minimizes our apparent lacking is the opinion recorded in the *Aruch HaShulchan*¹⁵ that one must stand only when a parent comes in from outside the house, not when he moves from place to place in the home.

The most plausible explanation for the common laxity in this regard is the idea that a parent can be *mochel* (waive rights to) *kibud*.¹⁶ In our times, parents do not usually expect their children to stand up in their honor, and they often do not even find it to be positive. If that is the case in a specific household, then the child is indeed not required to stand.

Let us clarify a few things. Even after a parent's *méchila*, it is still a *mitzva* for a child to stand for his parents, just not an obligatory one.¹⁷ Also, some say that one must make some gesture of respectful acknowledgement.¹⁸ Finally, if the reason that parents are *mochel* starts from the children (i.e., parents are so used to their not standing that they no longer demand or expect it), this is not a good thing. Therefore, in **most cases**, it is **better** for children (of all ages) who try to do things properly to stand for their parents more often than is presently common.

15. Op. cit.

16. *Kiddushin* 32a. Regarding being *mochel* requirements of *mora*, especially in a case that can be considered a disgrace, see *Living the Halachic Process* III, G-4.

17. *Pitchei Teshuva, Yoreh Deah* 240:16.

18. See *Kiddushin* 32b.

H-2: Staging a Fake *Pidyon HaBen*

Question: I often serve as the *kohen* for a *pidyon haben*. A friend told me that he was a *kohen* at a fake *pidyon haben*. The mother had previously miscarried and they were embarrassed to tell people, so they faked the *pidyon*. If such a situation arises, what should I do?

Answer: *Poskim*¹ discuss the case of a woman who had been pregnant from another relationship before her marriage. Her husband did not know this and assumed that their firstborn son required a *pidyon haben*. Could the woman allow her husband to do a *pidyon haben* for their son, including making two *berachot l'vatata*, to avoid embarrassment and possible repercussions to their marriage? The consensus is that considerations of *k'vod haberiyot* (preserving human dignity)² allow her to not reveal the truth.

One factor in the leniency is that most *Rishonim* maintain that a standard *beracha l'vatata* is only a Rabbinic violation,³ and *k'vod haberiyot* overrides Rabbinic laws.⁴ (After all, the content of the *beracha*, which says that HaShem commanded **us** [plural] in the *mitzva* of *pidyon haben*, is always a true and positive statement.) Furthermore, the wife was passive in this case; she **did not stop** her husband from making a **mistake**. The *Rosh*⁵ says that under such circumstances, *k'vod haberiyot* supersedes even a Torah law.

The case you present, in contrast, is worse in several ways. First, the father knowingly is making a non-mandated *beracha*. It is true that he can technically get around that problem by making the *Shehecheyanu* over new clothing and by mumbling

1. See *Yabia Omer*, VIII, *Yoreh Deah* 32; *B'er Moshe* VIII:237.

2. See *Berachot* 19b.

3. See *Tosafot*, *Rosh Hashana* 33a; *Mishna Berura* 215:20.

4. *Berachot* 19b.

5. *Kilei Begadim* 6.

the beginning of the main *beracha* on the *pidyon haben*, while not uttering HaShem's Names. However, there is another issue: Those assembled will answer *amen* to a *beracha* that is invalid, which is forbidden.⁶ This ostensibly violates the Torah-level prohibition of *lifnei iver lo titen michshol* (facilitating a person's act of sin), certainly when one consciously causes others to do so unwittingly.⁷ One cannot invoke the ruling of the aforementioned Rosh in this case because the father is actively presenting, rather than passively not stopping, a "*beracha*" to which it is forbidden to respond.

Nevertheless, it should still be permitted. Consider the following. It is forbidden to *daven* when one has to use the facilities, and if the need is acute, his *tefillot* and *berachot* are invalid.⁸ Still, the *Bi'ur Halacha*⁹ states that a *chazan* in that condition, who will be very embarrassed to walk out in the middle, may continue leading the *tefilla*. In that case, the *chazan* knowingly improperly makes *berachot* to which people will answer *amen*, and yet it is permitted due to *k'vod haberiyot*. This seems to be a pertinent precedent for our case. The explanation apparently is that just as the *chazan* is allowed to violate a Rabbinic law for the sake of *k'vod haberiyot*, he is allowed to make others violate the Rabbinic law for that purpose. Since it is permitted under the circumstances, *lifnei iver* does not pertain. Similarly, in our case, if in the face of a severe concern for *k'vod haberiyot*, it would be permitted for the father to actually make a *beracha l'vatala*, it would likewise be permitted to cause people to answer an improper *amen* in unintentional violation of a Rabbinic prohibition.

6. See *Shulchan Aruch, Orach Chayim* 215:4. One might argue that it is worse to answer *amen* to an improperly made *beracha* than to answer *amen* to what he thinks is a *beracha* and really is not, as when the father mumbles something instead of HaShem's Name. However, see *Minchat Shlomo* I:9 regarding a case that is parallel to the latter, which he says is forbidden.

7. See *Dagul Merevava to Shach, Yoreh Deah* 151:6.

8. *Shulchan Aruch, Orach Chayim* 92:1.

9. Ad loc.

In spite of the above, it is worthwhile to encourage people not to make a fake *pidyon haben* when not extenuatingly necessary. The fact that a few close friends and relatives find out about a miscarriage is not always as embarrassing as it seems to some or at first. It is also possible for a couple in this situation to say that the birth was a caesarean delivery, which exempts from a *pidyon haben*,¹⁰ or that the delivery was with forceps, which calls for a *pidyon* without *berachot*.¹¹ However, every case is unique, as is every person, and you should therefore look into and ask for halachic advice regarding each case if and when it arises.

10. *Yoreh Deah* 305:24.

11. *Otzar Pidyon HaBen* 1:13.

H-3: Standing for a *Chatan* and a *Kalla*

Question: Is there a reason to stand for a *chatan*¹ and a *kalla*² as they walk toward the *chupa*³?

Answer: The practice of standing as the *chatan* and *kalla* walk past those who are seated is a relatively new phenomenon. The traditional approach to new practices in a religious setting is to be wary of them, for several reasons. One reason is that some new practices are against the spirit or even the letter of Halacha or Jewish thought. Another is that new practices create confusion, as it is difficult to distinguish between important *minhagim*, which one **should** (preferably) keep and from which one can learn and gain, and spiritually meaningless practices. A third dimension is a feeling many have that if the practice in question is a proper one, generations before us would have initiated it. A related idea is that initiating a new *minhag* gives the impression of arrogance and dismissal, as if to say: “We know better than our predecessors.”

Let us analyze the practice of standing for the *chatan* and *kalla* in light of the above. It is difficult to find anything significantly objectionable about standing for a *chatan/kalla*. Although some people may be irked by the tendency toward attributing special powers to the *chatan* and *kalla*,⁴ there are a staggering number of sources that indicate that the idea of standing is generally appropriate. After all, we are commanded to stand for various people whom we are required to honor,⁵ and we find numerous sources about giving great regard to the *chatan/kalla*. These include such *halachot* as halting Torah study to escort the *kalla*

1. Groom.

2. Bride.

3. Wedding canopy.

4. See the scant sources regarding their power of prayer in *Nitei Gavriel* 9:15, indicating that it is not a mainstream approach.

5. See *Kiddushin* 32-33.

and giving precedence to a wedding procession over a funeral procession.⁶ One could argue that these reflect a *mitzva* to make them happy rather than to honor them per se. However, numerous sources⁷ refer to *kavod* (honor) for them and compare it to the *kavod* due to others.

There are different ways of showing *kavod* to different people. For example, a husband and wife should honor each other greatly,⁸ yet we do not find a *halacha* that they should stand for each other. The main honor for a *chatan* and *kalla* is acting in a manner that expresses interest in and excitement about their marriage and future home. Certainly, it is more appropriate to sit in rapt attention than to rise while continuing to talk to a friend. However, standing would also seem to be a reasonable expression of honor.

Some people quote the concept of *chatan domeh l'melech* (a groom resembles a king) as grounds for standing. This phrase is found in the *Pirkei D'Rabbi Eliezer*,⁹ along with examples of similarities between a *chatan* and a *melech*: They both are praised for seven days; they wear nice clothing; they are involved in partying (regarding a *chatan*, for seven days, and some understand this to mean that he may not go to work); they do not go in the street alone. The latter two points are brought as *halacha* in the Rama.¹⁰ The *gemara*¹¹ makes another interesting comparison: A *chatan* is like a *kohen*, and he therefore sits at the helm. However, we did not find a classical source **requiring** standing before a *chatan*.

There are semi-classical sources that speak about standing for the *chatan* as he goes to get an *aliya* during the week before and

6. *Ketubot* 17a.

7. Including *Tosafot* ad loc. and the *Beit Yosef, Yoreh Deah* 360.

8. Rambam, *Ishut* 15:19-20.

9. 16.

10. *Even HaEzer* 64:1.

11. *Moed Katan* 28b.

after the wedding.¹² The lack of similar sources about standing specifically on the way to the *chupa* should not be surprising, as for hundreds of years, weddings were held outside and indications (including in old paintings) are that seating was not the norm.

In summation, we find nothing compelling to require standing for the *chatan/kalla*, but we agree that it has some logic and is not intrinsically objectionable. Out of respect for our predecessors who did not do so, we would not have initiated the practice, but out of respect for present-day peers who do it (and perhaps *chatanim/kallot* who already expect it), we encourage joining along.

12. See *Nitei Gavriel* 2:7 and *Chashukei Chemed*, *Gittin* 62a, who are not overly impressed by the case for standing in that context.

H-4: Wedding Spending

Question: What is the maximum that one should spend on a wedding?

Answer: We have to seek a balanced approach when providing general guidelines for the tricky matter of wedding spending. (Of course, every family has leeway to determine how it wants to proceed.) We will start with reasons to spend **significantly** and then temper that with counter considerations.

The major expenses that *Chazal* foresaw as a couple prepares for marriage are intended to enable the establishment of a viable home (i.e., the dowry). The bride's father was expected to set aside one tenth of his net worth for this purpose.¹ When parents are unable to properly equip their children, it is a great *mitzva* to help the parents and/or the young couple directly to reach a reasonable level of financial preparedness for marriage.²

Chazal attributed great importance to the wedding celebration, including giving it preference over some other significant values. The term *hachnasat kalla* classically refers primarily to the procession of the bride from her father's home to the home where the couple would live. In one such context, the *gemara*³ says that Torah study is suspended for people (in addition to friends or family) to join the procession and that if the procession meets up with a funeral procession, the wedding party takes precedence.

The meal that follows the *chupa* is a *seudat mitzva*, and one is even allowed to plan its technical details on Shabbat.⁴ Therefore, one can apply the directive that it is praiseworthy to plan the meal generously.⁵ There are strong indications that the outlay of energy and expenses is presumed to be substantial. Indeed, one of the

1. See *Ketubot* 68-69.

2. See *Sukka* 49b; *Shulchan Aruch, Yoreh Deah* 249:15.

3. *Ketubot* 17a.

4. *Ketubot* 5a.

5. See *Bava Kama* 9b.

explanations for the ancient, Rabbinically-instituted custom that weddings take place on Wednesday is to make sure there are three days available (uninterrupted by Shabbat) to prepare the meal.⁶

There is a remarkable *halacha* that shows how challenging having a materially appropriate wedding could be and how important it is to protect that goal. If the father of the groom or the mother of the bride dies right before the wedding, the burial is delayed until after the wedding ceremony and meal. Then the burial takes place, followed by a week of *Sheva Berachot* and finally a week of *shiva*.⁷ Rashi⁸ explains that the groom's father and the bride's mother are primarily responsible for the wedding's material arrangements and that if the wedding were to be delayed after the preparations had already been made, we are concerned that the postponed wedding would not be up to par. This *halacha* is in significant contrast with *Chazal's* view of burial expenses. Rabban Gamliel felt that too much was being spent on funerals, and he therefore ordered his family to bury him in cheap shrouds. This became the standard for shrouds, a rule that all are supposed to abide by regardless of financial ability, in order to ease the financial strain on families.⁹

The *Shulchan Aruch*¹⁰ writes that if the groom is not interested in having a proper meal but the bride's family is, the latter can force him to make a feast "according to his and her honor." This ruling hints at one reason we cannot make an exact calculation of appropriate expenses: The matter depends on the subjective standards of both families. Someone who has fancy cars and a fancy house should make a relatively fancy wedding. Those who are more modest in their means and spending can honor the event accordingly.

6. *Ketubot* 2a.

7. *Ketubot* 4a.

8. Ad loc. 3b.

9. See *Ketubot* 8b.

10. *Even HaEzer* 64:4.

Despite this conclusion, it is only one side of the coin. The other side is that a wedding should not be a reason for ruining a family's financial situation or harming the couple's prospect of beginning their joint lives in tranquility and with reasonable provisions. Children should also not impose expenses upon parents that are beyond their responsibility, interest, and capability. On a communal level, there have been numerous examples of *takanot* (enforced guidelines) with rabbinic blessing and/or initiative to curb spending even when the families are willing and happy to pay for a lavish wedding.¹¹ This can be especially important during hard financial times. But it also applies during times of prosperity if spending starts to get out of hand in a way that affects some individuals adversely or if weddings become so gaudy that they exceed Jewish good taste.

How an individual or a community is to know where to draw the line is, as they say, "the \$64,000 question" (and we pray that weddings remain well below that price tag).

11. See sources in *HaNisu'im K'Hilchatam* 13:56.

H-5: A Mistake in a *Ketuba*

Question: A recently married friend of mine noticed that one of the times the *kalla*'s name is mentioned in the *ketuba*, it is written as “Sarah *ben*¹ Avraham,” instead of “*bat*² Avraham.” Is the *ketuba* kosher, which, I understand, determines whether the couple may live together?

Answer: There are two elements to a *ketuba*. One is that it is a binding monetary document that obligates the husband or his inheritors monetarily to the wife. Additionally, there is a religious requirement for the woman to possess a valid *ketuba*; without it, the couple is forbidden to live together.³ The reason for the latter rule is that a woman must have at least a minimum feeling of security that her husband cannot divorce her without a reasonable monetary consequence.⁴ Thus, it is critical for her to be confident that she has a valid *ketuba*. (There is a basis to say that if the wife believes that the *ketuba* is valid, even when it has a mistake that invalidates it, they are permitted to live together if she is unaware of the mistake.⁵ There are other elements of leniency to consider to allow their living together without a valid *ketuba* document,⁶ but these have problems and are beyond our present scope.)

The two elements of the *ketuba* are connected. If it can be used as a valid legal document, it also serves the religious function. Although we try to make the *ketuba* as complete as possible, and some invoke some of the stringencies of a *get* document, the basic requirement is that the *ketuba* can stand up to a review in *beit din*.

Does the mistake that you raise invalidate a *ketuba*, or some other document for that matter? There is a rule regarding

1. Son of.

2. Daughter of.

3. *Shulchan Aruch, Even HaEzer* 66:1; see there the *machloket* with the Rama regarding what living together includes.

4. *Ketubot* 39b.

5. See *Minchat Yitzchak* IX:139.

6. See *Shulchan Aruch* and Rama, *Even HaEzer* 66:1,3.

documents that distinguishes between different types of mistakes. A *ta'ut d'muchach* (when it is clear from the context what was intended to have been written, despite the mistake) does not invalidate a document.⁷ The writing of “son of” instead of “daughter of” in the place of the *ketuba* that relates to the bride is possibly one of the clearest examples of a *ta'ut d'muchach*. In addition, since the name of the bride, including her father's name, appears correctly elsewhere in the *ketuba*, there is even more reason to ignore the mistake, as this shows clearly that the mistake is a *ta'ut d'muchach* and how the name should have been written.⁸

The *Itur*⁹ does maintain that a minor mistake in the names in a document should be corrected. However, it appears that the motivation for this is that a name could be anything and it is hard to know what was intended. However, although the word “*ben*” or “*bat*” could be confused in a regular document because of the possibility of a unisex name, this does not apply to a *ketuba*, where there is a distinct place for the name of the groom and for the bride, respectively. Furthermore, the *Rosh*¹⁰ confirms the validity of the document in a case of a clear mistake regarding names. Therefore, the *ketuba* is valid, and the couple can continue to live together with the *ketuba* as is.

Usually, there are ways of fixing mistakes (this is too detailed to discuss here), but they become more complicated the later in the process they are discovered. The *mesader kiddushin*, who apparently made the mistake (as he is human), can be contacted regarding the proper steps to take. There is a possibility of replacing the *ketuba* with a new one. However, in general, replacement *ketubot* have altered texts, at least when signed on a later date than the first one.¹¹ These changes make things more complicated and, in addition, will look strange to those who read the new *ketuba*'s

7. See Rama, *Choshen Mishpat* 49:2.

8. See *Nitei Gavriel*, *Nisu'in* 1:29:4.

9. Cited in the *Beit Yosef*, *Even HaEzer* 126.

10. *Shut HaRosh* 68:32.

11. See *Shulchan Aruch*, *Choshen Mishpat* 41:1, and *Shach* ad loc.:4.

content. Your friends and the *mesader kiddushin* can discuss what to choose from among the different options. However, the couple has the halachic right to decide to leave things as they are.

H-6: A Fading *Ketuba*

Question: In our *ketuba*, the witnesses' names have faded over the years to the point that they are barely legible. Is this a problem? We got married in Israel, so the *Rabbanut* has a copy of the *ketuba*. Can I (the husband) ask the witnesses to resign their names? If not, what should be done?

Answer: It is forbidden for a couple to live together without the husband's basic *ketuba* obligation to the wife. This includes a valid *ketuba*, which includes a lien on his property, so that the wife can feel a certain level of security.¹ While ideas have been raised to minimize the need for a *ketuba* document in our days,² in practice, we require that a valid *ketuba* exist.

The *Rabbanut*'s practice to hold a copy of the *ketuba* makes one's "home *ketuba*" much less critical, but it was not intended to be relied upon by itself *l'chatchila*. In fact, the existence of two documents for one obligation is problematic, as it could enable one to collect double. While some authorities thus oppose making "copy" documents,³ others permit doing so if proper precautions are taken,⁴ as Rav Zalman Nechemia Goldberg rules.⁵ A copy document probably only prevents a full denial of the obligation; without the original document, the debtor could still claim he already paid,⁶ thus precluding the concern that the woman will collect double. Likewise, one could not extract payment via the lien using the copy.

If so, does the *Rabbanut ketuba* give the woman the level of protection that permits the couple to live together if the main copy is lost? Some indeed maintain that if the main *ketuba* is lost, the

1. See *Ketubot* 39b, and *ibid.* 56b.

2. See Rama, *Even HaEzer* 66: 3; *Shulchan Aruch, Even HaEzer* 66:1.

3. *Shut HaRosh* 68:21.

4. *Sefer HaTerumot*, cited by *Shut Mahari Ibn Lev* 55.

5. *Techumin* XXVI.

6. *Urim* 41:28.

one at the *Rabbanut* is insufficient.⁷ However, the *Nitei Gavriel*⁸ argues cogently that since it is rare in our days (certainly in Israel) for the wife to be paid her *ketuba* without *beit din*'s involvement, the husband cannot make the claim that he already paid, and the *Rabbanut ketuba* is therefore effective. Accordingly, he rules that one may rely on the existence of the *Rabbanut* copy **until** the couple has an opportunity to remedy the situation, and we concur.⁹

If a *ketuba* is lost, there is a special document called a *shtar ketuba d'irchasa* that a couple can ask a rabbi to produce. It tells the story of the past obligation and the loss of the *ketuba*, and the new document replaces the lost one from the time of its issuance. The document is composed with the husband's involvement. The *gemara*¹⁰ and the *Shulchan Aruch*¹¹ discuss the creation of a replacement document by *beit din* for one who possesses a document that has become (or is becoming) illegible. The witnesses of the original document may not reissue an identical copy of the old one,¹² because their authorization to produce a document ceased when they signed the first one.¹³ Even with the borrower's (or, in this case, the husband's) reauthorization, the lien stemming from a new document would be valid only from the time of the reissuance.¹⁴

Your idea of resigning the document (which is parallel to rewriting other parts of the *ketuba* that faded) is interesting. However, since it is not raised in all the discussions of the parallel cases, it is apparently not feasible, for the following reason. If the rewriting replaces something that is illegible, it is like writing

7. See *Teshuvot V'Hanhagot* I:760; *Ketuba K'Hilchata* 2:15, in the name of Rav Elyashiv.

8. 33:6.

9. This is also the conclusion of *HaNisu'im K'Hilchatam* 11:225. In fact, he does not even write that they are required to write a new *ketuba*, although it is likely that this is his intent.

10. *Bava Batra* 168b.

11. *Choshen Mishpat* 41:1.

12. *Ibid.*

13. See *S'ma* ad loc. 5.

14. *Shach, Choshen Mishpat* 41:3.

a new document, which cannot be done with the old date (as a predated document is invalid¹⁵). Even if the original writing is legible, it is still apparently a problem to write over it because people will be reading the new writing that covers the original.

We suggest that you ask a rabbi with experience with such documents to prepare an appropriate special new *ketuba*. In the meantime, you can rely on the *Rabbanut ketuba*. (If your wife is troubled by the situation, you should act immediately.) If you want to fix the old *ketuba* for sentimental purposes, you can make any changes you like **after** you mark it clearly (if discreetly) as not for payment.

15. *Shvi'it* 10:5.

H-7: How to Name the Child of a Gentile Father

Question: As a *mohel*, I sometimes perform a *brit* for a baby whose mother is Jewish but whose father is not Jewish. When giving the baby's name, which usually includes "...*ben* (son of) ...," what should be said?

Answer: In the case of intermarriage, not only does the mother determine the child's religion, but the child is considered related only to her, not to his or her father.¹ The question of how to refer to someone whose biological father cannot be used for Jewish identification arises in several cases and contexts, from which we can extrapolate.

Regarding the writing of names in a *get* for a convert (who loses his halachic relationship to his parents²) and for one whose father's identity is unknown (a *shtuki*), the *Shulchan Aruch*³ says to write just the person's given name, without mentioning a parent. Elsewhere, the *Shulchan Aruch*⁴ writes to refer to a convert in a *get* as "... the son of Avraham Avinu," the forefather who is a catch-all father for people of any lineage who embrace HaShem in a Jewish manner. The *Levush*⁵ says that we can also mention Avraham Avinu in the case of a *shtuki*. However, the *Get Pashut*⁶ writes that this should not be done, as it gives the false impression that the *shtuki* is a convert (and such an inaccuracy can invalidate a *get*).

1. *Kiddushin* 68b.

2. See *Yevamot* 62a.

3. *Even HaEzer* 129:9.

4. *Ibid.* 20.

5. *Even HaEzer* 129:9.

6. 129:48.

Regarding calling up for *aliyot*, the Rama⁷ says that we should refer to a *shtuki* as the son of his maternal grandfather. The *Taz*⁸ objects because it is inaccurate and is liable to cause a future problem. If the *shtuki* becomes accustomed to this form of self-identification and someday gives a *get* in which he is so described, the *get* would be invalid. The *Taz* therefore suggests calling him “the son of Avraham.” (It is not clear whether he means to say “Avraham Avinu” or just “Avraham.”)

The *gemara* raises another possibility in the course of a narrative. Rachel, the daughter of the *Amora* Shmuel, was captured by non-Jews and was raped by one of them. She had a son, Mari, from that incident, and he became a *talmid chacham*.⁹ The *gemara* consistently calls him Mari bar Rachel, identifying him as the son of his mother. The *Dagul MeRevava*¹⁰ initially suggests doing the same for a *shtuki*, but he concludes that the case of a *shtuki*, who has an unknown halachic father, is not comparable to the case of Mari bar Rachel. He argues that when there is a halachic father (who is simply unknown), one cannot use the mother’s name in a halachic context (certainly regarding a *get*), whereas when one has no halachic father at all (as the father is not Jewish), it is appropriate to identify him by means of his mother.

The *Get Pashut*¹¹ and *Chatam Sofer*¹² take as a given that one should use the mother’s name when she is Jewish and the father is not, and they claim that using the mother’s name is even appropriate for a *shtuki*. However, the *Igrot Moshe*,¹³ in the context of a *ketuba*, says not to write the mother’s name for a *shtuki*, because that is the system to use when the mother is Jewish and the father is not. He maintains that it is important not to confuse

7. *Orach Chayim* 139:3.

8. *Orach Chayim* 139:1.

9. See *Bava Batra* 149a and *Rashbam* ad loc.

10. To *Even HaEzer* 129:9.

11. 129:51.

12. *Shut Chatam Sofer* IV:41.

13. *Yoreh Deah* III:106.3.

between the two because they have different halachic statuses.¹⁴

To summarize, the most accurate way to identify a child of a Jewish mother and non-Jewish biological father is as the mother's child. In regard to being called for *aliyot*, which is not very formal or halachic, the factor of embarrassment plays a major role.¹⁵ However, at a *brit*, not only is the matter more formal, but whoever is present is usually aware of the child's lineage. Therefore, there need not be problematic sensitivities of acknowledging that his Jewish identity is only through his mother. (Obviously, the union itself is highly problematic). Therefore, using the mother's name is the correct approach. (You can inquire again regarding exceptional cases, e.g., if the father converted after conception, *brit* for an adult, etc.)

14. See *Kiddushin* 69a.

15. See Rama, *Orach Chayim* 139:3.

Section I:
Monetary Law

I-1: Payment for Uncompleted Work

Question: I hired a contractor to build a stairway in a deserted building belonging to the State of Israel. I told him that I do not have a permit and that there might be disturbances by the neighborhood Arabs (par for my foundation's course). We agreed on a price for the job, not by time (expected to be a day). In the midst of the work, the police surprisingly arrived and took us all for questioning until night. Although we were not charged with a crime, we were ordered to stop building. The contractor now wants to be paid for the whole job minus his savings in material that was not used, since he did nothing wrong and he was "occupied" for a whole day, as was expected. I countered that he did only about half the job, and he knew there was a chance of disturbances, even though we did not consider that the police would stop us. How much should I pay?

Answer: We cannot tell you anything definitive after hearing from only one side. However, we will advise you how to proceed under the circumstances and why. In addition, since we do not know more details or have authority to deal with such questions, we will address only the considerations between you and your worker, not the legal issues between you and various authorities.

The *gemara*¹ tells of one who hired a worker to irrigate a field using a local river but the river dried up in the middle of the work. The *gemara* says that if the worker is from the town, he is paid only for what he did and not what he was hired to do but was prevented from doing. Since the worker should have known as well as the owner about the state of the local river, he should have anticipated the problem; he cannot shift the blame on the owner, and he therefore does not deserve to be paid for what he did not do. The worker is also not entitled to receive pay in a case in which neither he nor the owner should have known of the situation that

1. *Bava Metzia* 77a.

made the work undoable.² If, however, the worker did not know of the potential problem but the owner did, the worker is entitled to be reimbursed.

Let us analyze your case. Although you informed the contractor that there might be problems, you did not warn him about the police; if you were surprised, he certainly was. If the *oness* (extenuating circumstance) that actually occurred was unknown to the worker, it does not make a difference that other dangers were known. It does not make sense to argue that the police are just another example of a disturbance, which the contractor was aware could occur, because (regardless of one's political views) this "disturbance" is different with regard to its origin and its implications (i.e., it can prevent further work, as opposed to merely delaying or complicating).

The main remaining question seems to be about your ability to have been aware of the threat of police involvement. You indicated that you were surprised that the police intervened. However, since your background information indicates that you do this type of work often, and we know nothing about the contractor, you have to ask yourself the following question: Did you have more reason to be aware of the possibility of the police stopping the work than the contractor did? If so, based on the aforementioned rules, you should have to pay.

Assuming there are grounds for payment, there are a couple of factors to be considered. First, the contractor is correct in deducting the savings of material. Second, there is a *machloket* regarding the reason for payment in the case of aborted work. Is payment rendered because the owner is considered to have damaged the worker in the form of the lost wages, or must the owner pay because once a worker begins the job, the owner is obligated based on the agreement to pay for the job that was agreed to?³ There should be a practical difference between these opinions in a case in which the worker would not have had a

2. Ibid.; see *Shulchan Aruch* and Rama, *Choshen Mishpat* 334:1.

3. See *Machaneh Ephrayim*, *Sechirut Po'alim* 4.

different job to do anyway. According to the former opinion, since there was no loss incurred due to the aborted work, there is no payment. According to the latter view, a deal is a deal, and the worker must be paid regardless of whether he would have had other work if not for this job.

As there are a few elements of the question that are not clear to us and are probably not conclusive, we recommend that you offer a real compromise. In the context of a compromise, the following question is very pertinent. How did the price you agreed upon compare to that for the same job in a less “challenging” work setting? If it is similar, then if you do not pay a very significant portion of the fee, it turns out that you gave him a bad deal, which is improper.⁴ If you offered him a high price, however, that could indicate that you were both aware of the risks involved with the job. Under certain circumstances, the price agreed upon can even be an indication of what we can assume the tacit understanding was for conditions that were not explicitly discussed.⁵

Finally, we urge you to set clear guidelines with future workers, especially in similarly complex jobs, to cover a wide variety of possible surprises.

4. *Shulchan Aruch, Choshen Mishpat* 227:36.

5. See *K'zot HaChoshen* 331:1.

I-2: Going to a Civil Court Where There Is No *Beit Din*

Question: I am a lawyer in a country with a small Jewish population. When we need a *din Torah*, we fly a *beit din* in from another country. A Jew who is suing another Jew recently asked me to represent him. The dispute relates to a modest amount of money, which is less than the cost of bringing a *beit din*. May we sue in a non-Jewish court?

Answer: Although we respect and value local governmental courts,¹ Jews are required to seek adjudication specifically in a *beit din*.² There are two main rationales for this *halacha*: 1) When the judgment is rendered by a non-Jewish court, it is possible that the incorrect litigant, from the perspective of Torah law, will win the case. 2) Seeking a different system of justice is a severe affront to the Torah, as doing so questions the Torah's pertinence in the critical realm of justice.³

Factor #1 does not apply if the two sides agree to go before the non-Jewish court, as they are entitled to mutually decide on forms of dispute resolution other than a ruling of *beit din* (e.g., mediation, flipping a coin, etc.). However, factor #2 is still a problem. If adjudicating in a *beit din* is unfeasible, then factor #2 should not be a concern; in that case, one is not rejecting Torah justice, but is rather dealing with a situation in which it is not an option. Indeed, the *gemara* discusses adjudication before unknowledgeable Jews when no local Jews are capable of functioning as a proper *beit din*.⁴ The implication, however, is that an unqualified court of Jews is preferable to going to the local

1. See *Avot* 3:2.

2. *Shulchan Aruch*, *Choshen Mishpat* 26.

3. See *Beit Yosef*, *Choshen Mishpat* 26; *S'ma* 26:4.

4. *Sanhedrin* 23a, adopted by the Rashba, cited in *Beit Yosef*, *Choshen Mishpat* 8.

non-Jewish court. Nevertheless, it is possible to argue that the *gemara*'s conclusion was based on the assumption, which is not as prevalent in our days as in the past, that the non-Jewish courts were corrupt and were dangerous places for Jews and the Jewish community.⁵

What should one do if a city has no Jewish tribunal at all? The Rama⁶ says that this is grounds for going to a different city from the one in which the case would otherwise have been heard. However, an out-of-town alternative may sometimes be practically unfeasible, as it appears to be in your case.

Most *poskim* posit that when there is no *beit din* that can adjudicate, it is permissible to go before a non-Jewish court,⁷ as the Rivash⁸ implies. The *Shulchan Aruch*⁹ rules that although even a contractual stipulation does not allow a lender to take payment from a borrower's property without involving *beit din*, the lender may do so if he cannot find a *beit din* to adjudicate. The Maharikash¹⁰ broadens this concept to allow a Jew to sue in non-Jewish court when a local *beit din* is unwilling to hear the case. There is discussion among the *poskim* about the conditions under which such action is justified¹¹ and regarding whether a *beit din* must at least grant permission. However, in cases in which there is **no alternative**, it is permitted to go to non-Jewish courts.

Spending more money on transportation than the claim warrants is one case in which it is considered that there is no alternative to using the local option.¹² On the other hand, there are often reasonable alternatives to litigation in court. Mediation and non-judicial arbitration are often good ideas in any case. Nowadays, there are recognized *batei din* that will adjudicate

5. See *Shut HaRashba* II:290.

6. *Choshen Mishpat* 14:1.

7. *Chukot HaChayim* (Palagi), *Choshen Mishpat* 6.

8. *Shut HaRivash* 216.

9. *Choshen Mishpat* 61:6.

10. *Erech Lechem* ad loc.

11. See *Chukot HaChayim* op. cit.

12. See *Sanhedrin* 31b.

via video-conferencing, as our *beit din* has done successfully. While a standard hearing is more effective, there are precedents for compromising effectiveness in a case of need. For example, when one side wants to go to an expert regional *beit din* and the other prefers a local, lower-level one, they adjudicate locally, and the *beit din* sends questions to experts if and as needed.¹³

We suggest that your client propose one of the above alternatives. If the other party rejects them, this case is like any case in which the defendant refuses to submit to *beit din* and *beit din* grants permission to go to a non-Jewish or secular court. It would be legitimate for the plaintiff to refuse to offer one of these options if he truly believes that they will take away from his right to justice. In any case, it would be permitted for you to represent him as a lawyer in court.

13. Ibid.; *Shulchan Aruch*, *Choshen Mishpat* 14:1.

I-3: Buying With Intention to Return

Question: I liked a dress that I saw in a store, but it was too expensive. I am an amateur seamstress, so I am considering buying it, learning its cut, and then returning it, which Israeli law permits within 48 hours of the purchase. May I buy the dress with the intention to return it? (I certainly would not buy it to keep.)

Answer: In the absence of special governmental provisions,¹ the *halacha* is that after making a *kinyan*² on a sales item, a buyer cannot back out of the deal unless either: 1) The object was seriously blemished; 2) It was very overpriced; 3) A condition was made to allow it. However, we will work under the assumption (whose guidelines are beyond our present scope) that the ordinance that allows no-fault return is indeed binding. That ordinance was certainly not instituted to help people who are acting with intentions such as yours. Furthermore, even assuming that the law would apply to this case, you seem laudably aware that this does not mean that you are morally and halachically permitted to buy the dress with the intention to gain from it and then return it.

While we are not experts on this ordinance, our research indicates that it includes relevant limitations. For one, the consumer can return the item only if he has not used it. It is a good question whether handling a dress minimally in order to determine its cut is considered using it. We would assume that a use is a use, even if it is not a standard one and it does not wear out the dress.³ Thus, if you hide your “use” of the dress, this would

1. The provision in question is not a law of the Knesset, but rather a ministerial *takana* (ordinance) – *Takanot Haganat HaTzorchan*, 2010.

2. Act of acquisition.

3. See *Bava Metzia* 30a, which says that one may not display, for the purpose of beautifying his home, a fabric that one has found and that he must return. However, some factors apply in that case that do not apply in the present one.

be misapplying the law. Another provision of the law is that the seller can demand, as a charge for returning, either 5% of the sales price or 100 shekels, whichever is lower. We will see that this provision may actually help you from a moral standpoint, but first we will look at the *halachot* of *ona'at devarim* (non-physical abuse), which are relevant to your question.

It is forbidden for one to ask a merchant the price of a sales item if he has no intention of buying it.⁴ While some describe the classical problematic case as one in which the supposed buyer intends to upset the seller,⁵ others refer to the psychological damage caused to the seller through the disappointment of losing a sale, irrespective of the buyer's intentions. The *Meiri*⁶ notes the possibility that the discussion of price may take away from others' interest to buy the item at that price, and he writes that even if no one else is present, the discussion still causes the seller pain and toil. Although any negotiations with a proprietor can lead to disappointment, this is justified in a normal process of commerce (i.e., there is some chance he will buy). (Indeed, one who is overly sensitive should not be a storeowner.) However, when the proprietor has nothing to gain, it is forbidden, according to the second approach, to engage him for no reason.

It is not clear to what extent a salesperson who is an employee would be overly put out by the effort exerted to make the sale and/or be upset by its return, although we cannot rule that out. In any case, there are a few potential scenarios of loss for the owner when you buy the dress without intention to keep it. By occupying the salesperson, you may discourage others from buying or prevent her from doing something else of value; while the dress is out of the store, it cannot be sold; and handling the dress may take away from its freshness, etc. While such concerns are not very strong, they may be enough to qualify as a violation of the *halacha* not to feign interest in buying.

4. *Bava Metzia* 58b.

5. See *Mayim Chayim* II:83.

6. *Bava Metzia* 58b.

On the other hand, if indeed you will have to pay, albeit modestly, for returning the dress (or if you will volunteer to do so), it stands to reason that this compensates for the small concerns and logically overcomes the problem of *ona'at devarim*. However, this does not solve the problem that the ordinance does not allow return after “usage.” In any case, we would urge you, if it seems possible (depending on the owner or worker’s personality), to be open and honest on the matter – request permission to do what you want for a modest, agreed-upon price.

I-4: Immoral Commercial Practices?

Question: I would like to ask about two elements of the business venture of which I am a partner. 1) Our products have a large profit margin (often five times their cost to us), but this is in accordance with their market price in the US. 2. Like many companies, we use high-pressure sales tactics in our marketing. Are these ethical/halachic problems?

Answer: We are very pleased that you care and ask about the propriety of business tactics that apparently are earning you significant money. We will discuss some basics regarding each question, which you can try to apply to your business, and/or you can ask us more specific questions.

1) The *gemara*¹ states that a salesman should not have a profit margin of more than one sixth above the price at which he acquired the product.² This is surprising considering that the prohibition of *ona'ah* (mispricing) focuses on straying significantly (a sixth) from the **market price**; **profit margin** does not arise in that context. Since market price usually includes a healthy profit margin, how can a profit margin of a sixth be a problem if the price is certainly less than a sixth above the market price?

Indeed, several classical halachic statements limit the scope of the restriction on profit margin. The *gemara* itself stipulates that the limited profit margin is applied only after one factors in his expenses and the intensity and value of the salesman's labor. The Rambam³ limits the restriction to staple foods, as opposed to luxuries.⁴ Significantly, he writes that it is the obligation of *beit*

1. *Bava Batra* 90a; *Bava Metzia* 40b.

2. We will not discuss how to calculate that percentage in this forum. Regardless, it appears that you are exceeding any manner of calculation; see *Pitchei Choshen, Ona'ah* 14:(28).

3. *Mechira* 14:1-2.

4. An attempt to itemize is beyond our scope.

din to enforce proper pricing policy. The Ramah,⁵ following those lines, says that if *beit din* is unable to enforce their goal price, then an individual proprietor is not restricted to a price level that his competitors are not following. On the other hand, the *Aruch HaShulchan*⁶ writes that if *beit din* feels that if some merchants conform, others will be forced to follow suit, the *beit din* should demand compliance from those who will listen.

2) There is a parallel to high-pressure sales tactics that is discussed in classical Jewish sources – pressuring the owner of an object to sell when he does not want to do so. This practice is forbidden by the last of the Ten Commandments, *lo tachmod* (do not covet).⁷ The full violation of this prohibition occurs when the desire to have someone’s object culminates in pressuring him to sell it, even at a fair price to which he agrees.⁸ Some claim that the prohibition applies in the opposite direction as well; one may not strongly pressure someone to buy something that he does not want to buy.⁹ It is somewhat difficult to accept that we can make an exact comparison between the cases without classical sources, especially considering that the prohibition begins with the **desire** for his counterpart’s **specific possession** (e.g., his wife), which ostensibly does not apply to wanting money from anyone who is willing to buy what one is selling, which is quite innocuous. However, it does seem logical that, on some level, there is an overlap in the impropriety.

There are classical sources that forbid practices that have a strong similarity to high-pressure sales techniques. It is forbidden to trick someone into buying something that he otherwise would not want by making it look better than it really is,¹⁰ apparently

5. Cited by the *Tur*, *Choshen Mishpat* 231.

6. *Choshen Mishpat* 231:20.

7. *Shemot* 20:14.

8. *Sefer HaChinuch* #38.

9. *Pitchei Choshen*, *Geneiva* 1:(26); *Case Studies in Jewish Business Ethics* (Levine), pp. 96-98.

10. See examples in *Bava Metzia* 60a-b; *Shulchan Aruch*, *Choshen Mishpat* 228:9.

even when the product is not overpriced.¹¹ Thus, psychological techniques that cause one to buy something that he would refuse to buy if left to his own better judgment should be forbidden. The same basic idea applies to high pressure as well,¹² especially if a certain percentage of the people really do not want the item.

The combination of the two factors about which you ask is particularly troubling. Why don't the forces of supply and demand lower the profit margin? One possible answer is that the prevalence of manipulation artificially raises the price. In many cases, this is forbidden,¹³ and it should bother someone of your moral sensitivity. However, if you can sell the items at the standard, albeit high, price **without pressure**, it is permitted. If you sell at a moderately lower price, you likely will be able to sell enough to make a healthy living without moral/halachic problems.

11. See *Pitchei Choshen, Ona'ah* 15:16.

12. While one could theoretically distinguish between misrepresenting an item, which leads to a lack of knowledge of the facts, and creating an environment in which, due to the high pressure, there is difficulty in making a decision based on one's best interests, in our opinion, there is little difference practically and morally.

13. See *Shulchan Aruch, Choshen Mishpat* 231:21.

I-5: Stealing by Accident?

Question: If one accidentally took and used a friend's similar coat, is he considered a *ganav* (thief)? Is he obligated to pay *kefel* (double)?¹ Must he pay the owner if something happens to the coat in a manner that is beyond his control (*oness*)? [*The questioner then presented sources that he found about geneiva b'shogege (unintentional theft).*] How can there possibly be *geneiva b'shogege* considering that one needs intention to acquire something?

Answer: We will only scratch the surface of the scholarship on whether one is obligated for *geneiva b'shogege*, and we will relate to some of the issues that you raise.

The *K'tzot HaChoshen*² is among those who posit that a *ganav b'shogege* is exempt from responsibility to pay if something happens to the object. He infers this from *Rishonim*, but his main rationale is based on an inference from a *pasuk*. He explains that the concept of culpability for accidental financial harm to one's friend is limited to a *mazik*, one who physically damages another's property, because that culpability is derived from a *pasuk* specifically regarding a *mazik*; the liability is not extended to other causes of obligation. Thus, if one accidentally takes another's object without damaging it and then something happens to it through *oness*, he is not responsible to pay for it. Of course, he has to return the object when he finds out the truth, but if it was lost, damaged, or passed on to someone else in the interim, the accidental thief is not held responsible.

The *Machaneh Ephrayim*³ presents various opinions among the *Rishonim*, but he agrees with those who obligate a *ganav b'shogege*. One of the strong indications that he relies upon to decide that *geneiva b'shogege* is obligated to pay is a *gemara*⁴

1. See *Shemot* 22:3.

2. 25:1.

3. *Geneiva* 7.

4. *Pesachim* 32a.

concerning payment made by one who **accidentally** ate *teruma*. The *gemara* says that if the food's price went down after he ate it, he nevertheless pays the higher price of the time that he ate it, because "it is no less than **one who steals**."

Let us now discuss your question about the need for intention. The *gemara*⁵ indeed speaks of a *kinyan* (an act of acquisition) as a necessary step in defining a *ganav* and his subsequent obligations, and *kinyanim* require a certain level of intent. However, the intent needed for a *kinyan* regarding *geneiva* is not identical with the intent needed to acquire in general. For example, if one lifted up an object that was in his way with the intention to relocate it nearby, he would clearly neither acquire it nor be considered to be stealing it. But if he wanted to use the object without ever returning it, this would be considered intention for theft even if he tried to be clever by having in mind to "not acquire it." Furthermore, even one who intended to briefly borrow something without permission is considered a *ganav*.⁶

The *Machaneh Ephrayim* makes a relevant fundamental distinction. One may be culpable for *geneiva b'shoge* when he intended to bring the object from another's "possession" into his own. Such cases would include unknowingly buying a stolen object or even borrowing an object from someone who is not its owner. However, if one thought that the object that he was taking was his own, such that he did not intend to make any change, this would not be considered an act of stealing.⁷ According to this, the accidental coat-switcher is not even a *ganav b'shoge* and does not have, as of the time that he took the object, the accompanying responsibilities for its welfare.

The *Marcheshet*⁸ posits that a *ganav b'shoge* has the basic

5. See *Bava Kama* 79a.

6. *Shulchan Aruch, Choshen Mishpat* 359:5.

7. There is an interesting halachic parallel. When one performs an act of acquisition on something that he can acquire, but he did the act while thinking that the object was already his, there is no legal acquisition (see *Yevamot* 52b).

8. II:32.

obligations of a *ganav*. In fact, he views the very source cited by the *K'tzot HaChoshen* to exempt a *ganav b'shogeg* – the obligation of an unintentional *mazik* – to obligate him as a *ganav*. Whereas the *K'tzot* interpreted the *pasuk's* specific reference to a *mazik* as implying an exclusion of other forms of unintentional causes, the *Marcheshet* views the *mazik* as a prototype to actually obligate a *ganav b'shogeg*. If *mazik* is the model, then just as a *mazik* is exempt *b'oness* (under extenuating circumstances), a *ganav b'oness* is also exempt. In our case, taking another's coat is usually *shogeg* rather than *oness*. Thus, according to this approach, it could be considered *geneiva*. Regarding intention, the coat-switcher does intend to use something that turned out to actually belong to someone else.

All agree that the disqualifications of a *ganav* (e.g., from suitability to testify) do not apply to an individual who accidentally took someone else's object. *Kefel* is never levied in our days, and it is thus not discussed much by *poskim*. However, logic and implicit statements indicate that this *k'nas* (penalty) of the Torah, which applies in a limited manner (e.g., to only certain types of theft and only when one is exposed by witnesses) is predicated on full culpability and does not apply *b'shogeg*.

I-6: Returning a Lost Item that the Owner Knows About

Question: Neighbors on an upper floor have several young children who regularly throw toys and even heavy objects into our ground floor garden. For years we have picked up and returned the items and dealt with a mess, as they have refused to install screens to prevent the throwing, and they do not come promptly to retrieve the items. We believe that if we leave the toys at our house, they will change their behavior. Is that permitted?

Answer: We will explore a few possible ways to exempt you from returning the items.

Let us assume that your neighbors are improperly taking advantage of you. Does that justify your stopping to return their toys in order to get them to change their behavior? At first glance, this seems like *nekama* (revenge), refusing to do a favor that you would ordinarily do for your counterpart because of grievances against him.¹ On the other hand, several sources indicate that *nekama* applies only when one is punishing another for past behavior, whereas it is permitted to take unpleasant steps to try to dissuade someone from continuing his improper behavior or for another positive, not spiteful, reason.² Precedents for this rule include the permissibility of telling *lashon hara* to protect one's legitimate rights³ and steps that *David HaMelech* took against those who tried to harm him.⁴

Thus, since you have a need to stop your neighbors from abusing your goodwill and detracting from your tranquil use of your property, you could claim that you are allowed to take the

1. See Rambam, *De'ot* 7:7.

2. See Rama, *Choshen Mishpat* 388:7; *Mitzvot HaLevavot* p. 32; *Torat HaAdam LeAdam* (Tzfat, 5759), pp. 177-185.

3. See *Chafetz Chaim, Lashon Hara* 10, where he also discusses the conditions.

4. See *Torat HaAdam LeAdam* op. cit.

measured but unusual (for you) step of not promptly returning the things thrown into your garden. However, in this realm, there is likely a distinction depending on the level of need and the nature of the steps contemplated. There is also a difference between refusing to do a favor and acting in a way that would usually violate a Torah law, e.g., refusing to do *hashavat aveida*.⁵ Therefore, it is important to determine if the *mitzva* of *hashavat aveida* is obligatory in this case.

There is a question as to what *hashavat aveida* requires of the finder. Is he obligated to **return** the object to the owner, or must he simply **enable** the owner to retrieve it?⁶ The stronger position, in our view – which is reportedly endorsed by Rav Moshe Feinstein and the *Chazon Ish*⁷ – is that the finder does not have to deliver the object.⁸ You imply that letting your neighbors know that they have to come pick up the toys would suffice as impetus for them to change their ways,⁹ and there appears to be a halachic basis to allow you to take that step.

Even if one wants to be stringent on the above issues, we should consider whether your neighbors' pattern of behavior falls under the category of *aveida mida'at* ("intentional loss"). There are different levels of *aveida mida'at*. One is when the owner of an object demonstrates, by allowing it to be in a precarious situation, that he does not care if the object gets lost. In that case, there is even an opinion that one is allowed to take the object for himself.¹⁰ Your case does not fall into this category, as your neighbors want the toys back; they are not overly concerned about the fact that the toys are being thrown from their home because they rely on you. However, the *Shulchan Aruch*¹¹ writes that although we assume

5. Ibid.

6. See discussion in *Mishpat HaAveida*, p. 21.

7. See *Torat HaAveida* 5:1.

8. *Pitchei Choshen, Aveida* 7:(2).

9. Presumably, based on experience they should know that this needs to be done periodically.

10. Rama, *Choshen Mishpat* 261:1; the *Shulchan Aruch* ad loc. disagrees.

11. Ibid.

that an owner is generally not *mafkir*¹² his object, if he does not take precautions to protect it from disappearance, he loses his right to require the finder to bother to return it. This seems to apply in your case. Your neighbors could argue that they try to limit the children's throwing of toys, that you cannot blame them for lack of success, and that you are therefore required to help your counterpart, as *hashavat aveida* requires (even a hundred times¹³). Even so, it appears that in this case, there is no *aveida* at all because your neighbors always know where to find their objects, and they therefore have the responsibility to come get them. Thus, there is another reason to exempt you from doing more than returning the toys when they come for them.

In summation, there are ample reasons to allow you to tell your neighbors that they will have to come collect the toys. That being said, we urge you (who know the dynamics of the case and the relationships involved) to consider whether the situation is acute enough to justify those steps and whether your idea is the wisest way to deal with the issue.

12. Relinquish ownership rights.

13. *Bava Metzia* 31a.

I-7: Taking Bottles from Recycling Receptacles

Question: I am a preschool teacher, and I would like to do a project with my students using a few dozen large empty soda bottles. May I take bottles from the recycling receptacles we have in Jerusalem and “recycle them” in that way?

Answer: It is good that you are sensitive to both the ecological elements of recycling and the halachic propriety of what you take from where. This question requires research in two areas: monetary Halacha and the attitudes of the people in charge of the recycling effort.

We will start with Halacha. When the bottles are placed in the receptacles, does the recycling company or authority acquire them immediately, which would make it necessary to receive the explicit or implicit permission of the owner? Or is it possible for you to take the bottles before any employee acquires them on behalf of the authority?

A *kinyan*¹ via *chatzer*, i.e., when an object is on the property of the acquirer, has a rare quality – it can work without the involvement, presence, or knowledge of the acquiring party.² A variation of *kinyan chatzer* is a *kinyan* through a *kli* (utensil); if an object is placed in someone’s utensil, he acquires that object.³ While this does not usually work if the *kli* is in the public domain, that is because people do not have the right to leave their personal utensils in the public domain to use as they like. However, when they have permission to keep their *kli* in a given area, the *kinyan* works even in the public domain.⁴ Recycling receptacles are certainly put out with permission and thus fall into this category.

1. Act of acquisition.

2. *Bava Metzia* 11a.

3. *Shulchan Aruch, Choshen Mishpat* 200:3.

4. See *ibid.*

Another requirement for *kinyan chatzer* is that if the acquirer is not present, the *kli* must be located in a place that is guarded on behalf of the acquirer.⁵ While there are various explanations for this *halacha*, the basic idea is that in the acquirer's absence, the *chatzer* has to serve as a *shaliach* (agent) of sorts, and to fit the role, it must be a reliable guarantor that the object will not be taken by any passerby.⁶ On the other hand, many authorities maintain that if someone is giving the object to the acquirer (as opposed to a case in which a lost or un-owned article finds its way into the *chatzer*), it is sufficient that the giver is watching it at the time that he puts it in the utensil.⁷ Furthermore, the *Netivot HaMishpat*⁸ says that if the *kinyan* is done in a utensil with walls, there is no further need for it to be guarded.

Based on what we have learned, the recycling authorities acquire the bottles that are put in the receptacles. Therefore, we need to determine whether the people in charge of the recycling efforts allow you to take the bottles. (In truth, even if there was a halachic deficiency in the recycling authority's *kinyan*, it would be best not to take the bottles against their will, but it is worthwhile to know the *halacha* for cases regarding which you are not confident about what they would say.)

The most important research conducted on many "halachic" questions is determining the simple facts. I contacted the recycling authority, and I was told that at present (I cannot tell you about the past or the future), the Jerusalem **municipality** operates the collection efforts and owns the recycling receptacles. The municipality workers in charge of the collection told me that the Jerusalem municipality is not bothered at all if people take bottles and reuse them. In general, my research indicates, recycling is not particularly financially rewarding these days; it is done primarily to alleviate the need for landfills or pollution through incineration.

5. *Bava Metzia* 11a.

6. *S'ma* 200:1.

7. Rama, *Choshen Mishpat* 200:1.

8. 200:3.

Thus, when someone takes the “usable garbage” home, it does not at all harm the national recycling efforts. One of the officials thought that it would be educational to have the children bring bottles themselves, but we leave that to your educational and logistical wisdom.

We do have a slight concern that, in certain settings, some people might view you as “raiding” the recycling bin, and thus there could be a *chillul Hashem* entailed. However, in most cases, that is not necessarily true. We cannot give an absolute assurance that in other municipalities or in other times the situation will be the same, but in Jerusalem of the foreseeable future, you may take the bottles without fear of stealing.

I-8: Receiving Permission to Sublet

Question: I work on a campus in Israel, in a project funded by an outside foundation. As part of my employment agreement with the foundation, they rent an apartment on the campus on my behalf throughout the period of my employment, including vacations. I did not sign the contract, and I am not involved in payment. I will be abroad during vacation and would like to make a little money by subletting the apartment to a nice family. Do I need permission, and who should get the money?

Answer: Based on your description, the halachic/legal status appears to be that the foundation rents the apartment from the campus and rents it out (with the campus' permission) to you in the form of part of your compensation package.

The first question we must discuss is whether one who rents is allowed to sublet. One who rents a movable object is not allowed to give it to someone else without permission from the owner.¹ However, when it comes to real estate, the renter is generally permitted to sublet.² The Rambam explains that since the renter has full rights to use a rented item in any non-damaging way that he wants during the time of the rental, there has to be a good reason to disallow him to rent it out to someone else. Regarding movable objects, such a reason exists; there is a concern that something will happen to the object, and the owner has the right to not trust the second person's honesty about telling what transpired. This is less of a concern regarding real estate. The Rambam makes a practical, common-sense distinction – one may not sublet to a family that is larger than the renter's family.³ The Rama⁴ adds that one may sublet only to an upstanding person.

1. *Shulchan Aruch, Choshen Mishpat* 307:4.

2. *Shulchan Aruch, Choshen Mishpat* 316:1, based on Rambam, *Sechirut* 5:5.

3. See *S'ma* 316:1. Further distinctions are needed to deal with an apparent contradiction within the Rambam on this topic.

4. *Choshen Mishpat* 312:7.

In matters of this type, the local *minhag* supersedes classical Halacha.⁵ Unless there are strong indications otherwise, we assume that a local (in this case, Israeli) law sets the standard. Clause 22 of the Law of Renting and Borrowing states that one must ask permission from the owner before subletting, but if the owner objects on unreasonable grounds, his objections may be ignored.

You should not sublet the apartment without discussing the matter with **at least** one of the parties. Both the law/*minhag* and probably Halacha mandate that you give the owners (the campus) the opportunity to express any objections, which might include matters you did not consider. Furthermore, the foundation cannot give you more rights than they have themselves, and since it is common for a rental contract to disallow subletting without permission, you need to ascertain what the foundation's agreement with the campus was.

Assuming that you receive permission from the campus, the more difficult question is whether you have to receive permission from the foundation. The foundation cannot, unless previously stipulated, force you to let them rent out the apartment during your vacation and keep the money themselves, as it was put at your disposal for the entire period of your stay. However, what if they say, "If you want to sublet, we want (some of) the money"? Since the potential problem of subletting is a matter that affects mainly the owner (his property could get damaged), if the campus does not have concerns, the foundation can probably not raise issues, unless they are renting it long-term and will want it in good condition for the use of a different worker after you.

The question relates more to your compensation package. The foundation might be able to claim that the apartment rental was included in your salary only as necessary for you to have a place on campus in which to live and out of which to work. They may not have meant to include it as an additional money-maker for

5. *Pitchei Choshen, Sechirut* 4:(22).

you. We cannot tell for sure who would be right if such a claim were made without hearing both sides' claims. We also do not know if there could be any sensitivities regarding the relationship between the campus and the foundation. Therefore, even if for no other reasons than *menschlichkeit* and to maintain good favor in your employer's eyes, we feel that you should inform both the campus and the foundation of your intention to sublet and ask if it is acceptable to them.⁶ (You do not have to suggest sharing the proceeds.) If there is an objection, hopefully you can work it out, or you can ask the question again based on the new situation.

6. If someone particularly trustworthy at the foundation tells you that their agreement with the campus authorizes them to give such permission, you may trust him.

I-9: Dealing with Fallout from a Dishonest Middleman

Question: For the last few winters, neighbors and I have been ordering heating oil through Shimon, who used to live in the community. We would pay Shimon, and he would send a supplier – whom I had never seen – to deliver the oil to our tanks. This year, I did not succeed in contacting Shimon, so I looked for a supplier myself and came upon Levi. Levi told me that he had been our supplier through Shimon, and he said that before delivering the oil this year, he wants payment for last year, as Shimon had told him that I did not pay (a lie). I tracked down Shimon, who said that he stopped handling the oil two years ago (another lie). I trust Levi's honesty. If I (or Levi) cannot recover the money from Shimon, do I have to pay Levi for using his oil last year? [*The querier gave additional details, but there were several questions about the arrangement that he could not answer.*]

Answer: We will divide this question into the following different possible models of business interaction and analyze each one according to its halachic logic and sources: 1) Shimon acted as a *shaliach* (an agent) on your behalf, for free or, more likely, for some form of profit; 2) Shimon acted as Levi's *shaliach* to make agreements with customers and collect and deliver the money; 3) Shimon acted as a business, which paid Levi for oil and its delivery to destinations of his choice and received money from consumers for assuring the same.

If Shimon was your *shaliach*, you have a natural obligation toward Levi due to the fact that he gave you his oil at your request (through your agent, Shimon). The question is whether anything exempts you from having to pay Levi under the current circumstances. The *mishna*¹ says that if Gad asks Asher to send him an object that he wants to borrow by means of Yissachar,

1. *Bava Metzia* 98b.

once the object enters Yissachar's hands, Gad assumes full responsibility for it. If Gad did not instruct Asher how to send the object, Gad is not responsible for it until it enters his possession. The lesson from the *mishna*, which can be applied to various scenarios, is that the party represented by the middleman who transfers the object is responsible for it while it is "in transition." The *poskim*² apply this idea to sending payment for a loan through a courier. Similarly, in the case at hand, if Shimon served as **your** agent to bring your money to Levi and instruct him to deliver oil to you, then if Shimon stole the money, he stole it from you; there is thus nothing to exempt you from owing Levi. However, if Shimon served as **Levi's agent** to arrange for his sales and collect his charges, then once Shimon received the money, it is as if you had paid Levi; the fact that Levi's representative pocketed money due to Levi is Levi's problem.

Let us consider the possibility that Shimon is a separate business entity, serving as a middleman. In that case, he would have two business relationships: between you and him and between Levi and him. If so, he got what he wanted from you (the money) and provided you with the service you deserved (a delivery of oil). Shimon's wrongdoing was in his relationship with Levi. He received what he requested from Levi (oil for **his** customer), but did not keep his part of the deal with Levi (paying him). It follows, then, that Shimon stole from Levi, not from you, and Levi has to deal with the consequences.

But don't you owe Levi directly in any case because you benefitted from his oil? Consider the following case discussed in the *gemara*.³ Dan told Naftali to work in Zevulun's field, and it was Dan, not Zevulun, who took responsibility regarding Naftali's pay. Dan has to pay Naftali at the rate they discussed, and Zevulun has to pay Dan for the benefit Dan brought him (which might be a different amount than what Dan promised Naftali). Zevulun does not have a direct obligation to pay Naftali, even though Naftali

2. See *Beit Yosef, Choshen Mishpat* 121.

3. *Bava Metzia* 76a.

did the work in his field. It is true that if Dan runs away without paying Naftali, Zevulun will have to pay Naftali for the benefit he received, but that is because there is no reason for Zevulun to benefit without paying while Naftali remains uncompensated. In contrast, in your case – while there are some similarities between you and Zevulun (as you received the oil) – you already paid for the benefit you received. Therefore, Levi would have to go after Shimon, who promised him payment.

We cannot give a ruling without hearing both sides, but we will make a suggestion. Only according to possibility #1 would you be halachically obligated to pay Levi. Because you might not be able to determine which of the models applies to your case, and because it seems like the proper thing to do, we recommend that you offer Levi that if the money is not recovered, you will pay him a sizable minority of the money he has lost. If the two of you do not agree to an amount, you will have to go to a suitable form of dispute resolution.

I-10: Keeping Benefits from a Communal Purchase

Question: I was asked to buy an air conditioning system (for several thousand shekels) for my *beit kneset*. I received money to put in my account, and I made the purchase with my credit card. A few weeks later, I received, as a result of that sale, a 500 shekel gift certificate (in my name) for purchases at a certain outlet. Must I pass on the benefit to the *beit kneset*?

Answer: The *gemara* discusses the question of who gains when a *shaliach* (agent) receives a special deal as a result of buying something for his *meshaleiach* (the one on whose behalf the agent acts).¹ The basic rule is that when the commodity does not have a set price, we treat the low price or extra quantity received as part of the purchase, which goes to the *meshaleiach*. If there is a set price and the purchase ended up being out of the norm, the extra is split between the *shaliach* and the *meshaleiach*.

Before categorizing your case in this regard, we must discuss the logic behind the *gemara*'s ruling. Rashi² explains that while we view the special rate as a present, we do not know who the intended recipient is, and we therefore split it between the two parties out of doubt. The Rif³ maintains that we objectively view the benefit as being joint between the two people responsible for the profitable transaction. The *shaliach* is the one who was given the “present”; on the other hand, the *meshaleiach*'s money and request to buy were the trigger for the “present.” The *Hagahot Oshri*⁴ explains that the good fortune that brought about this profit is naturally attributable to the *shaliach* and the *meshaleiach*, and

1. *Ketubot* 98b.

2. Ad loc.

3. *Ketubot* 57b in the Rif's pages; see Ran ad loc. and *Beit Yosef, Choshen Mishpat* 183.

4. To Rosh, *Ketubot* 11:15.

so they split the profits.

Poskim discuss variations of the case that depend upon the rationale behind the rule. The Ran⁵ writes that if the seller said explicitly that the special rate was due to the *shaliach*, then Rashi would award the gain entirely to the *shaliach*, as he is clearly the intended recipient of the “present.” The Rif, in contrast, would say the *meshaleiach* still gets half for his critical role in the whole process. Rashi’s logic would also not apply to a case in which the extra resulted from the seller’s mistake (of the type that does not require return of the money paid in error); in such a case, he would award the “present” to the *meshaleiach*. It would be less clear who would deserve the extra according to the Rif’s approach, but the *Hagahot Oshri*’s argument of good fortune certainly still applies; in his view, the extra would be split.⁶ The *Shulchan Aruch*⁷ seems to hold like the Rif, and that view is also the preference of the *Shach*,⁸ whereas the Rama⁹ accepts Rashi’s view. The major *poskim* do not follow the *Hagahot Oshri*.

The application of these rules to your case depends on certain factors that you did not mention. If the company clearly advertises the gift certificate along with the sale of this item or large purchases in general, then it would seem that you do not deserve any part of it. In that case, the gift certificate is not a special present, but rather part and parcel of the transaction. Just as if there were a 20% sale on a certain day, you would not claim the reduction for yourself, the same is true for another set benefit that the seller provides. If, however, the bonus was a discretionary decision of the store with no known reason, it would be similar to the present, which is subject to the 50-50 split. If you were entered into a lottery of buyers and your name was selected, then according to Rashi, you should pass on the profit; there was no

5. On the Rif op. cit.

6. See *K’tzot HaChoshen* 183:8.

7. *Choshen Mishpat* 183:6.

8. Ad loc. 12.

9. *Choshen Mishpat* 183:6

intention to give it to you, and profits from the sale naturally go to the buyer. According to the *Hagahot Oshri*, you are part of the good fortune and should receive some of it; the Rif's approach in this case would be open to debate.

Since it is important to act in a manner beyond reproach and suspicion in dealings with community needs,¹⁰ we suggest discussing the matter with the powers that be in the *beit kneset*. Even though the strict law is similar to that regarding standard monetary rights, you must make sure there will be no conflict. You can share the pertinent elements of our presentation to help you come to an agreement with them.

10. See *Tzedaka U'Mishpat* 7:7.

I-11: Claiming Damages from an Employee

Question: I hired a teenager to do deliveries with my van. He backed into a tree and moderately damaged my car. I do not want to report the collision to insurance, because it will raise my insurance rates. May I demand that the driver pay for the damage?

Answer: We cannot rule what the driver must do without hearing his side of the story. We can give you tentative guidelines about what we think **you** should do, although we are limited by partial information, including regarding the specific laws and practices of your locale.

People often decide not to inform their insurance company regarding minor damages; we leave that decision to you. While someone who causes you damage cannot force you to receive money from insurance and exempt him,¹ it is nevertheless sometimes the right thing to do.

A paid worker is a *shomer sachar* (a paid watchman) over the employer's property that he is working with,² which means that he is obligated to pay even when damage is only marginally his fault. The *gemara* explains that the worker is considered a paid watchman because he benefits from the object being under his guard, as it enables him to earn his wages. Therefore, even if the accident was not an outright act of negligence, the driver should ostensibly be responsible in your case.

However, other sources present an additional perspective. Until now we have discussed the *halacha*, but there is also the spirit of the *halacha*. The *mishna*³ and *gemara* discuss the case of one who was hired to transport a barrel and broke it along the way. R. Eliezer says that the porter must swear that he was not negligent,

1. See *Ohr Sameiach*, *Sechirut* 7:1.

2. *Bava Metzia* 80b.

3. *Bava Metzia* 82b.

and he is then exempt. R. Yochanan⁴ explains that according to the strict law, the porter should have been obligated to pay, as a *shomer sachar* is exempt only from *oness* (circumstances beyond his control), which is not usually the case when breaking a barrel. However, the Rabbis instituted a possibility for the porter to be able to exempt himself by means of an oath, because otherwise people would not agree to transport barrels. In parallel, there is a discussion among *poskim* regarding a household worker who damages an object in the house during her activities.⁵ The *Aruch HaShulchan*⁶ writes that according to strict *din*,⁷ the worker would be obligated to pay, but “the *minhag* of upstanding homeowners” is to not make a claim unless the negligence approached the level of purposeful damage. The extent to which one can apply these rulings to your case is up for debate, and a *dayan* would have to sort through all the details and indications if asked to rule based on strict *din*.

However, there is yet another element of the case to consider. We understand that the standard ruling in the United States (although there are likely differences between states) is that one who borrows a car with permission and then causes damages is exempt from damage payment, and the liability falls on the insurance company. This is relevant because Halacha is more likely to apply the law of the land in monetary disputes between individual Jews in cases in which the two entered in an agreement in such a manner that they implicitly accepted the local standards, which are based on local law.

Without hearing the claims of the two sides, we cannot make a determination on the matter here. However, we will say the following in a general manner.

Let us assume that you paid the youngster as you would an experienced driver who you could trust with your valuable car

4. Ibid. 83a.

5. See *Pitchei Choshen, Pikadon* 1:(17).

6. *Choshen Mishpat* 331:7.

7. Law.

and that you paid him enough that it would be worth his while to take the job even considering the possibility of having to pay car damages (without your insurance kicking in). If that is the case, it is fair to demand payment for his apparent negligence. However, if you paid minimum wage (or perhaps less), having in mind that it was still worth a youngster's time to get paid for a little menial work, it is evident that he would not have taken the job if he knew that his hard work could be wiped out by a simple mistake. If that is the case, we feel it is not *menschlich* to make a claim against him for the damage, and this is even clearer if you could charge your insurance if you so desired. If the negligence was of a reckless nature, of course, the story would be different.

There is an additional pertinent question in the *gemara's* case – whether the porter who broke the barrel is paid for the job that he ended up not doing successfully.⁸ However, in your case, the job for which the young man was hired (the deliveries) was completed, and he therefore clearly deserves his pay.

8. See *Bava Metzia* 83a; *S'ma* 304:1; *Taz* to *Choshen Mishpat* 304:1.

I-12: A Lawyer's Obligation to Take a Dangerous Case

Question: I am a lawyer. A potential client asked me to help sue someone who is known to be part of the underworld. Should I agree based on the commandment of *lo taguru* (“Do not be afraid of a man”¹), or is it okay for me to turn down the request?

Answer: The formal prohibition of *lo taguru* does not apply in your case for a few reasons. First, it refers to *dayanim*, as is evident not only from the context of the *pasuk*, but also from the context in which it is cited in classical sources.² Although some sources extend *lo taguru* somewhat further,³ it is too far of a stretch to apply it to require a lawyer to take a case, as a lawyer does not have a halachically formal part in the judicial process. Moreover, even in the case of a *dayan*, the prohibition applies only if he has heard the case to the extent that he has an idea regarding what the ruling should be.⁴

In general, it is problematic to assist a particular side in adjudication.⁵ While there is an opinion that this warning is only to a *dayan*,⁶ most *poskim* posit that no one should take sides without a valid reason.⁷ What are grounds for taking sides? The *gemara*⁸ says that it is proper to advise a litigant if he is a relative, invoking a *pasuk*⁹ stressing the importance of helping relatives,

1. *Devarim* 1:17.

2. The *Sefer HaChinuch* #415 is explicit on this point; see *Minchat Chinuch* ad loc.

3. *Sanhedrin* 6b, regarding assistants to *dayanim*; inference of the *Meiri*, *Sanhedrin* 89b, regarding one who withholds prophecy out of fear.

4. *Sanhedrin* 6b.

5. *Avot* 1:8.

6. See *Shiltei Giborim*, cited by the *Shach*, *Choshen Mishpat* 66:82.

7. See *Sha'ar Mishpat* 17:5; *Pitchei Teshuva*, *Choshen Mishpat* 17:15.

8. *Ketubot* 86a.

9. *Yeshaya* 58:7.

as long as the advisor is not a prominent person. The Maharshah¹⁰ applies this approach to helping a widow who is a litigant. Logic dictates that permission could also be given to help a litigant fight hardened criminals in court,¹¹ a task that the average individual cannot handle alone.

In cases in which giving advice is appropriate, is there an obligation or *mitzva* to help out as a lawyer? When the lawyer is (honestly) convinced that his client is correct, there should be a *mitzva* of *hashavat aveida* to help him win his case.¹² Thus, in the cases in which it is permitted to get involved, doing so should be included in that *mitzva*. However, the *mitzva* of *hashavat aveida* does not require one to put himself in a position of loss or hardship to save money for another.¹³ This is all the more clear if there are any number of other people who can do the job, which makes the individual lawyer less specifically obligated than a person who spots a lost item.¹⁴

Returning to the case of the fearful *dayan*, the *Shulchan Aruch*¹⁵ rules that a *dayan* who has a set public role is required to hear the case even when others would be able to refuse to hear the case out of fear. While the Radbaz¹⁶ explains that this is because the public will help the *dayan* in such a case, the *Beit Yosef*¹⁷ seems to understand that it is because someone who has responsibility cannot shirk it even in the face of reasonable concern. That logic would seem to apply to a lawyer with a role of district attorney, for example.¹⁸ In a parallel case, the *Tzitz Eliezer*¹⁹ allows and encourages a doctor to expose himself to patients

10. *Shut HaMaharshah* 24.

11. See *Yeshaya* op. cit. 6.

12. See part of the breadth of the *mitzva* in *Bava Kama* 81b.

13. *Bava Metzia* 30a.

14. See one of many applications of this distinction in *BeMareh HaBazak* I:32.

15. *Choshen Mishpat* 12:1.

16. *Sanhedrin* 22:1.

17. *Choshen Mishpat* 12.

18. As we have said above, the formal prohibition to act based on fear in such matters may be limited to *dayanim*.

19. IX:17.5.

with infectious diseases as part of his job. That being said, the job description of an average lawyer does not necessarily include angering dangerous criminals, and he therefore should not have to feel obligated to do so. If a lawyer wants to accept such a case anyway, there is generally permission for someone to put himself in at least moderate danger as part of his pursuit of livelihood.²⁰

In summary, a lawyer need not feel an obligation to take on a case in which he will be up against a dangerous opposing litigant. He may choose to do so, preferably after discussing the matter with his family. This is a noble step if he has a unique opportunity to help someone who needs and deserves it.

20. *Bava Metzia* 112a.

Glossary

A

Acharonim – the Talmudic and halachic scholars from the 16th century until our days.

agunot – women who are in a non-functional marriage and are unable to get remarried.

Ahava Rabba – the second blessing before *Kri'at Shema* in the morning prayers.

Al HaNisim – an additional section of praise in *Shemoneh Esrei* and in *Birkat HaMazon* on Chanuka and Purim.

aliya (to Israel) – moving to live in Israel.

aliya (pl. – **aliyot**) – when a man is called up to the Torah to recite the blessings before and after a section of its public reading.

Amalek – the arch-enemies of the Jewish People.

amen – the response to a blessing, expressing agreement with its content.

amida – see *Shemoneh Esrei*.

Amora (pl. **Amora'im**) – a rabbinic scholar of the Amoraic period (approximately 200-500 CE).

Ashkenazi (pl. – **Ashkenazim**) – a Jew of Central or Eastern European origin.

Ashrei – an important prayer, recited three times a day.

asmachta – a law of Rabbinic origin to which a verse from the Torah is attributed as a source of sorts.

Av – month in the Jewish calendar, in which we commemorate the destruction of the Holy Temples.

aveirot – sins.

B

ba'al korei – one who publicly reads the Torah for the congregation.

ba'al maftir – one who receives the *aliya* of *maftir*.

bal teshaktzu – a prohibition on a person eating certain foods or doing things that are disgusting to him.

bal tosif – the prohibition on making additions to the performance of a *mitzva*.

baraita – a Talmudic text from the time of the *Tanna'im* that was not incorporated in the *Mishna* or the *Tosefta*.

Barchu – a declaration of praise that calls for a response.

Baruch – blessed.

Baruch She'amar – the blessing that precedes *P'sukei D'Zimra* (in the morning prayers).

Baruch shem k'vod – a statement recited in praise of God after mentioning His Name.

b'di'eved – 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.

beit din (pl. – **batei din**) – rabbinical court.

Beit HaMikdash – the Holy Temple in Jerusalem. The first was destroyed c. 2,600 years ago; the second was destroyed c. 2,000 years ago. We pray for the building of the third and final one.

beit kneset – synagogue.

bentch/ing – Yiddish for reciting *Birkat HaMazon*. The term “*bentching*” often refers to *Birkat HaMazon* itself.

beracha (pl. – **berachot**) – blessing. There are a number of categories of *berachot*, and they may be recited periodically or under certain circumstances.

beracha acharona (pl. – **berachot acharonot**) – blessing recited

after one eats.

beracha l'vatala – blessing recited in a manner that has no value, which is forbidden.

beracha rishona – a blessing recited before one eats.

bima – the platform and/or table in the middle of the synagogue upon which the Torah is read.

Birkat HaGomel – the blessing recited publicly after emerging safely from a potentially dangerous situation.

Birkat HaMazon – the series of blessings recited after eating a meal that includes bread.

Birkat HaTorah – the blessing recited before the study of Torah each day and before and after the formal public reading of the Torah.

Birkat Kohanim – the priestly blessing recited during the repetition of *Shemoneh Esrei* (also known as *nesi'at kapayim* or *duchenen*).

Birhot HaShachar – the series of blessings recited before morning prayers, thanking God for providing the basic necessities of life.

Birhot Kri'at Shema – the blessings recited before and after *Kri'at Shema*.

blech – a sheet of metal used to cover a flame on Shabbat in order to solve certain halachic problems.

Bnei Yisrael – lit., the Sons of Israel, often translated as Israelites; a common reference to the Jewish People.

Borei Pri HaAdama – the blessing recited before eating foods that grow from the ground, like vegetables.

Borei Pri HaGefen – the blessing recited before drinking wine or grape juice.

brit mila – the *mitzva* and celebration of the circumcision of a Jewish male.

C

- chag** – festival; see also *Yom Tov*.
- challa** – the piece of dough removed, that ideally should have been given to a *kohen*; a type of bread, primarily eaten on Shabbat and festivals.
- chametz** – leavened bread or other grain-based food, which one is forbidden to eat or own on Passover.
- Chanuka** – 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* for eight days.
- chanukat habayit** – the celebration of moving into a new home.
- Chassidim** – a subgroup of observant Jews with certain distinct characteristics and customs.
- chatzer** – lit., courtyard; property.
- Chazal** – a generic term for the Jewish scholars at the time of the Talmud (approximately 1-500 CE).
- chazan** (pl. – **chazanim**) – cantor or prayer leader.
- chazara** – returning foods to a heat source on Shabbat, which is Rabbinically prohibited under certain circumstances even for cooked foods.
- chazarat hashatz** – the repetition of *Shemoneh Esrei* by the cantor.
- chillul Hashem** – the desecration of HaShem’s name, including when a person who is viewed as (particularly) religious acts improperly.
- chillul Shabbat** – the desecration of the sanctity of Shabbat by violating its negative commandments. This is one of the most serious violations of Halacha.
- Chol HaMo’ed** – lit., the mundane of the festival; the intermediate days of Pesach (Passover) and Sukkot (Tabernacles). These

days include some, but not all, of the halachic elements of the main days of the festival (*Yom Tov*).

chulent – a traditional Jewish food, especially for the Shabbat day meal.

chumash (pl. – *chumashim*) – the Pentateuch; a printed edition of one or more of the five books of the Torah, often with the accompanying readings from the Prophets and *megillot*.

chumra (pl. – **chumrot**) – stringency.

chutz la'aretz – the Diaspora (places outside of the Land of Israel).

D

Dati Leumi – National Religious, a subgroup of Orthodox Jews, essentially parallel to what American Jews call “Modern Orthodox.”

daven/ing – Yiddish for pray/ing. The term “*davening*” can also refer to a prayer service as a whole.

dayan (pl. – **dayanim**) – rabbinical judge.

din – strict judgment or law (as opposed to compromise).

din Torah – a court case adjudicated by a rabbinical court.

divrei Torah – Torah ideas that are discussed or studied.

duchenen – Yiddish reference to the priestly blessing (*Birkat Kohanim, nesi'at kapayim*).

E

eiruv – one of a series of Rabbinic mechanisms that make it permissible to do what otherwise would be Rabbinically prohibited; used colloquially to refer to an *eiruv chatzeirot*.

eiruv chatzeirot – 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.

Eishet Chayil – *Mishlei (Proverbs) 31*.

Elokai Neshama – one of the first blessings recited in the morning.

Eretz Yisrael – the Land of Israel. This can refer to its boundaries at various times in Jewish history, from biblical times until today. It is noteworthy that the current boundaries of the State of Israel are similar to the boundaries described in the Bible.

Erev Shabbat – Friday, before the beginning of Shabbat.

etrog – a specific citrus fruit (citron), which one is obligated to hold in his hands on the holiday of Sukkot.

F

fleishig – Yiddish for a food that comes from or has absorbed taste from meat (including fowl). 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 – a person in charge of something (e.g., synagogue services, charitable funds).

gelila – the rolling up of the Torah scroll after the Torah reading has been completed.

gemara – the section of the Babylonian Talmud that contains the discussion of the *Amora'im*.

gematria – the numerical value of Hebrew letters and words. These values are used as hints of various concepts.

Geonim – the Talmudic and halachic scholars who lived during the period from approximately 500-1000 CE.

get (pl. **gittin**) – a religious bill of divorce.

H

haftara (pl. – **haftarot**) – a section from the Prophets that is read after the Torah reading.

hagbaha – the lifting of the Torah scroll after the Torah reading has been completed for the congregation to see.

Haggada – the text recited at the Passover *Seder*.

HaGomel see *Birkat HaGomel*.

HaKadosh Baruch Ho – God (lit., the Holy One, Blessed be He)

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 – the series of psalms recited joyously on festivals; praise.

HaMapil – the blessing recited before one goes to sleep.

HaMotzi – the blessing recited before eating bread.

hashavat aveida – returning a lost object.

HaShem – lit., “The Name.” Common practice is to use this term to refer to God in order to avoid using His Name in inappropriate settings.

hatarat nedarim – the process of annulling oaths, also used by those who want to stop adhering to a commendable religious practice that they accepted explicitly or implicitly.

HaTov V’Hameitiv – the blessing recited when certain things that are beneficial to a group of people occur.

Haydala – 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.

heter iska – an agreement between two parties that turns what would have been a situation of *ribbit* (forbidden usury) into a joint investment. This usually brings about the same financial outcome through a very different, permitted mechanism.

K

Kabbalat Shabbat – the psalms and songs recited to usher in Shabbat.

Kaddish – a prayer (in which we sanctify God’s Name) that is

recited by a member or members of the congregation, often by mourners.

karpas – the vegetable eaten near the beginning of the Passover seder as a historical remembrance.

kasher/ing – 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 – the field dealing with keeping kosher; also used to refer to the acceptability of ritual objects.

kavana – intent and concentration.

k'beitza – the size of an egg.

Kedusha – a prayer recited during the repetition of *Shemoneh Esrei*.

kedusha – sanctity.

ketuba – a formal marriage contract that, among other things, ensures a Jewish wife financial support during and after her marriage.

Kiddush – the blessing through which we sanctify Shabbat, recited over wine before the Shabbat meal both at night and during the day.

kohen (pl. – **kohanim**) – a member of the priestly tribe (who descends from Aaron). Members of this tribe have special religious obligations, roles, and privileges.

kollel – a rabbinical seminary for married men.

korbanot – sacrifices.

korban ha'omer – the sacrifice brought from barley on the second day of Passover.

Korban Pesach – the Paschal Lamb. The sacrifice that, in Temple times, was offered on the afternoon before Passover and was eaten as a central part of the *Seder* on the first night of Passover.

kosher – fit, especially for eating.

kri'at haTorah – the reading of the Torah during prayer services.

Kri'at Shema – 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 – the size of an olive. This measurement has many halachic ramifications.

L

Lag BaOmer – the thirty-third day of the period of *sefirat ha'omer*.

lain/ing – Yiddish for reading the Torah (*kri'at haTorah*).

lashon hara – improper speech that causes damage to others, especially by tarnishing their reputations.

l'chatchila – lit., in the first place; the ideal way of acting.

Lecha Dodi – a song recited as part of *Kabbalat Shabbat*.

lechem mishneh – the two loaves of bread eaten at the meals of Shabbat and festivals.

lifnei iver [lo titen michshol] – lit., do not put a stumbling block before the blind, the prohibition of facilitating another's sin.

M

Ma'ariv – the evening prayer.

machloket – disagreement, in our context, concerning matters of scholarship.

machmir – follow the stringent opinion; see also *chumra*.

maftir – the last portion of the public Torah reading on Shabbat and festivals.

Maggid – the section of the Passover *Seder* in which the story of the Exodus is related.

marit ayin – one giving an impression that he is doing something forbidden.

maror – bitter herbs eaten at the Passover *Seder*.

matanot la'evyonim – the mitzva on Purim of giving a donation to the poor.

matza – unleavened bread. We are commanded to eat *matza* on Passover.

mazal tov – a blessing that means “have good fortune.”

Mechayei HaMeiteim – the second blessing of *Shemoneh Esrei*.

mehitza – a separation between the men’s and women’s sections in a synagogue.

Megillat Esther – The Book of *Esther*, read on Purim, which is written on a Torah-like scroll.

mehudar – of a high quality, often in a halachic sense.

melacha (pl. – **melachot**) – an activity that the Torah prohibits on Shabbat.

melaveh malka – meal eaten after the end of Shabbat.

menschlach/menschlichkeit – common courtesy.

mesader kiddushin – the rabbi responsible for arranging the halachic requirements of a Jewish wedding.

Mezonot – the blessing recited before eating a non-bread food made of one of the five major grain species.

midrash – Rabbinic works that analyze verses from *Tanach* and discuss moral and philosophical ideas.

mezuzah – a scroll containing certain fundamental Torah passages. There is a *mitzva* to attach *mezuzot* to the doorposts of one’s house.

Milchig – 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 products and the state of one who has eaten milk products.

Mincha – the afternoon prayer.

minhag (pl. – **minhagim**) – a custom or general practice.

minhag ta’ut – a practice one adopted based on misinformation.

minyan (pl. – **minyanim**) – a quorum of ten men who pray together. A *minyan* is required in order to recite certain prayers.

mishloach manot – the mitzva to send food goods to a friend on Purim.

mishna – the most authoritative teachings of the *Tanna'im* (c. 1-200 CE).

mitzva (pl. – **mitzvot**) – a commandment; a good deed.

m'lo lugmav – roughly, a cheek full that looks like two cheeks full, or approximately 2 fl. oz.

mohel – one who performs a circumcision.

Motzaei Shabbat – Saturday night, after the conclusion of Shabbat.

motzi – perform a mitzva in a manner that enables another person to fulfill the mitzva.

muktzeh – something that does not have the type of function or status on Shabbat that allows it to be moved.

N

Navi – the Prophets (a section of the Holy Scriptures).

netilat yadayim – the procedure of washing one's hands in a certain way in various circumstances, such as before eating bread.

Nine Days – the period of national mourning leading up to and including Tisha B'Av.

nusach – specific texts and tunes used in the synagogue services, which may differ from community to community.

O

omer – the seven-week period between Pesach and Shavuot, during which it is a mitzva to count the days.

P

parasha (pl. – **parshiyot**) – a section of Torah text; the weekly Torah portion read on Shabbat.

Parashat Tzitzit – the third section of *Kri'at Shema*.

Parashat Zachor – the special Torah portion (*Devarim* 25: 17-19) read on the Shabbat before Purim.

pareve – 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.

pasuk (pl. – **p'sukim**) – a Biblical verse.

Pesach – Passover, the festival that celebrates the liberation of the young Jewish Nation from slavery in Egypt.

pidyon haben – redemption of the firstborn, a ritual performed for a male child who is the firstborn of his mother.

posek (pl. – **poskim**) – scholar who regularly renders halachic rulings.

p'sik reishet – an action that will necessarily, although unintentionally, cause a forbidden result.

P'sukei D'Zimra – 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*.

Purim – the holiday celebrating the salvation of the Jews of the Persian Empire from a cruel oppressor.

R

Rabbanut – the rabbinical officials of the Israeli government.

rav (pl. – **rabbanim**) – rabbi.

rebbe – Torah teacher.

revi'it – a measure of liquid of approximately 3-4 ounces.

Ribbono shel Olam – God; lit., Master of the Universe.

Rishonim – Talmudic or halachic scholars who lived between 1000-1500 CE.

Rosh Chodesh – the beginning of a Jewish month (lunar).

Rosh Hashanah – the holiday that is both the Jewish New Year and the Day of Judgment.

R'tzei – a prayer recited as part of *Birkat HaMazon* on Shabbat.

S

s'char Shabbat – earnings from Shabbat.

Seder – the “order” of religious observances and the feast on the first night(s) of Passover.

sefarim (sing. – **sefer**) – books (that deal with Torah topics).

sefer Torah (pl. – **sifrei Torah**) – Torah scroll.

sefira/sefirat ha'omer – the daily counting of forty-nine days from the second day of Pesach until Shavuot; the time period between those two holidays, during which practices of national mourning are observed.

segula – a spiritual/mystical positive device.

Selichot – special prayers of supplication recited at appropriate times during the year, most notably before the High Holy Days (Rosh Hashana and Yom Kippur).

Sephardim– Jews from the communities of North Africa, the Middle East, and the Near East.

seuda – a meal.

seuda shlishit – the third Shabbat meal.

seudat mitzva – a meal that is connected to a noteworthy religious event.

seudat Purim – the festive meal eaten on Purim.

Shabbat – the Sabbath; the time from sundown Friday until Saturday night. This day is marked by its special observances, prayers, and many restrictions on different types of work.

Shacharit – the morning prayer.

- shaliach** – an agent whose actions are halachically considered as if they were done by the person who appointed him.
- Shalom Aleichem** – a song recited before Kiddush and the meal on the evening of Shabbat.
- Shavuot** – Pentecost, the holiday during which we celebrate the giving of the Torah on Mount Sinai.
- shechita** – ritual slaughter.
- shecht** – ritually slaughter.
- Shehakol** – the most general blessing, recited before eating foods which do not have a more specific text.
- Shehecheyanu** – the blessing recited upon experiencing certain new and significant or cyclical events.
- shehiya** – leaving food on the fire on Shabbat.
- sheliach tzibbur** – cantor.
- Shemitta** – the Sabbatical year, during which there are special agricultural restrictions.
- Shemoneh Esrei** – the main section of the daily prayers, during which one “stands directly before God” to praise Him and make important requests.
- sheva berachot** – 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.
- shevarim** – the triple blast that is part of the shofar blowing on Rosh Hashana.
- Shir HaShirim** – *Song of Songs* (one of the books of the Holy Scriptures).
- shiva** – the seven-day period of mourning after the death of a close relative.
- shochet** – one who performs ritual slaughter.
- shofar** – the ritual “musical instrument” made of a ram’s horn that is used to blow certain types of blasts on Rosh Hashana.

Shomei'ah Tefilla – blessing in the *Shemoneh Esrei* in which we address God as the “One Who hears prayer.” Personal requests are often inserted in this blessing.

shul – Yiddish for synagogue.

siddurim – prayer books.

Sim Shalom – the final blessing of *Shemoneh Esrei* at *Shacharit*.

Simchat Torah – the holiday at the end of Sukkot, in which we celebrate the completion of the Torah reading cycle.

siyum – the completion of a large section of Torah study and the related celebration.

semichat geula l'tefilla – the juxtaposition of the last blessing of *Kri'at Shema* and the beginning of *Shemoneh Esrei*.

sof z'man Kri'at Shema – the latest time one can recite *Kri'at Shema* at its proper time.

sof z'man tefilla – the latest time one can recite *Shemoneh Esrei* at its proper time.

sofer – scribe who writes Torah scrolls, *tefillin* and *mezuzot*.

sukka – the booth one sits in on Sukkot (Tabernacles).

T

Tachanun – a prayer of supplication recited after *Shemoneh Esrei*.

tallit – a four-cornered garment worn during prayers. As required by the Torah, it has special fringes.

talmid chacham (pl. – **talmidei chachamim**) – Torah scholar.

tamei – halachically impure.

Tammuz – a summer month, in which there is a fast day and the beginning of a period of national mourning.

Tanach – an acronym for the three sections of the Holy Scriptures, Torah (The Five Books of Moses), *Nevi'im* (The Prophets), and *Ketuvim* (The Writings).

Tanna'im – rabbinic scholars of the Tannaic period (approximately

1-200 CE).

tefilla (pl. – **tefillot**) – prayer.

tefilla b'tzibbur – a prayer service that is held in a communal setting, with a quorum of ten adult males.

Tefillat HaDerech – prayer requesting divine protection while traveling.

tefillin – 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.

teruma – tithes given to a *kohen*.

Three Weeks – 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.

Tisha B'Av – the fast day that marks the destruction of the first and second Holy Temples in Jerusalem.

tokeiah – the one who blows the *shofar* on Rosh Hashana.

treif – colloquial term for something that is not kosher.

tzedaka – charity.

zeit hakochavim – lit., the emergence of stars; the halachic beginning of the night, which ushers in a new Jewish calendar day.

tzibbur – a community (of different sizes, depending on context).

tzitzit – 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 – modesty (either with regard to dress or personality).

V

Viduy – the recitation of admission of sins.

v'ten tal u'matar – the request (within *Shemoneh Esrei*) for rain.

Y

Ya'aleh V'Yavo – an addition to *Shemoneh Esrei* and *Birkat HaMazon* on special days of the Jewish calendar.

yad – a pointer used in Torah reading.

yeshiva – academy of Jewish study.

Yishtabach – the blessing after the completion of *P'sukei D'Zimra*.

yishuv Eretz Yisrael – settling in and/or developing the Land of Israel.

Yom Kippur – the Day of Atonement, the fast day that is the holiest day of the year.

Yom Tov – the main day(s) of Jewish festivals, during which it is forbidden to engage in most of the activities that are forbidden on Shabbat.

Yom Tov Sheini – the second day of *Yom Tov*, primarily observed outside of Israel.

Yud Gimmel Middot – the thirteen divine attributes (taken from *Shemot* 34:6-7), recited in *Selichot* and throughout the services on Yom Kippur.

Z

zechut – merit.

zemer/zimra – a (religious) song.

zimun – the responsively recited introduction to *Birkat HaMazon*, performed when at least three men eat together.

Index to *Living the Halachic Process* – Vol. I-V

Format – The entries (which appear in the left-hand column) include topics that are covered in the books' responses and words that appear in them. When an entry is at the heart of response(s), each response's title either follows the entry or appears indented in the line(s) beneath it. When an entry arises less prominently, no title is written, and only the location(s) in the volumes in which it appears is listed. The location(s) are always in the right-hand column. Some entries have both types of occurrences, so that the first line contains the entry and the minor occurrences and the following lines contain the focused occurrences. (Responses in which an entry appears in passing are omitted from the index.)

The locations in the books are presented using Roman numerals for volume number followed by the response notation (section, number within section – as it appears in each book). For example, IV, G-7 means the fourth volume, section G, response 7).

Some of the entries stand independently. Others are parts of a section of index topics, of which there are two types. Minor topics fit in within the alphabetical flow of the index. Major topics are separated by empty lines from the alphabetical flow of the index, and contain alphabetically ordered subtopics. When we instruct to see elsewhere, we refer to major topic and subtopic, separated by a backslash (e.g., see Pesach/Bedikat Chametz means to look under letter P for Pesach, within which to look for the subsection for bedikat chametz).

At the end of the index, we present a unique **thematic index**, which highlights responses that have a special characteristic to them, whether in terms of halachic, moral, or societal interest.

Search strategies:

1. For the most part, halachic topics are presented according to the Hebrew term used in the books.
2. When a halachic matter that you are seeking is a subset of

a broad topic, look in the broad topic before looking for the specific matter within the alphabetical flow. For example, look for Shemoneh Esrei, under Tefilla/Shemoneh Esrei. Some topics do not fit obviously under a broader topic or belong to more than one; these usually do not appear as subsets of broad topics. Some minor occurrences were also removed from the topics in order to make the topics more easily traversed. For example, pesolet is found under “P” and **not** in its natural place (Shabbat/Melachot/Borer).

Below find a list of topics (of at least five lines) in the index. (The major topics are bolded):

Aveilut

Berachot

Brit Mila

Chanuka

Chinuch

Fast Days

Hashkafa (Jewish Outlook)

Holy Articles

Kashrut

Katan

Kibbud Av Va'em

Lifnei Iver

Marriage

Mezuza

Mo'adim

(excluding those listed separately)

Monetary Law

Netilat Yadayim

Pesach

Purim

Ribbit

Rosh Hashana

Sefer Torah

Shabbat

Sheva Berachot

Sukkot

Tefilla

Tzedaka

Tzitzit

Women and mitzvot

Yom Kippur

Index

ad shetichleh regel min hashuk	II, D-9
af hein hayu b'oto hanes	I, A-15
Afrushei mei'isura	
Guidelines on warning people about forbidden actions	IV, G-5
Preventing a son's chillul Shabbat	IV, C-3
Stopping fare-beaters	III, I-8
Agricultural laws	
Kilayim (mixed planting) outside Israel	II, H-7
Marketing orla	I, H-11
aguna	V, G-4
ahavat chinam	II, K-2
ahavat Yisrael	II, K-2
Al HaMichya	I, B-5
al yeshaneh mipnei hamachloket	IV, A-7
aliya (at Torah reading)- see Tefilla/aliya; (to Israel)- see Eretz Yisrael/aliya	
alot hashachar	II, D-19; III, A-3; III, D-1; IV, A-1
amen	II, A-6; II, H-13; IV, B-9; V, B-5
amen l'vatala	V, H-2
amira l'nochri	I, D-8; II, C-22
amot (2000)	II, C-12
Animals- see also Shabbat/animals	
Permissibility of pet dogs	II, H-2
Tza'ar ba'alei chayim- Jewish attitude towards veganism	IV, G-10
Anshei K'nesset HaGedola	II, A-1

arel	II, I-3
aron (kodesh)	II, H-6; III, D-6; III, F-1
Arvut (responsibility for the <i>mitzvot</i> of others)	I, D-18
Making Kiddush for others before accepting Shabbat	III, C-3
Blowing shofar for homebound women	II, D-2
Asher Bachar/Asher Natan	III, A-15
Asher Yatzar - see also Berachot and Tefilla	II, H-10; III, G-7
ashmoret haboker	III, D-1
asmachta	I, J-4
assur b'hana'ah - see issur hana'ah	
atzitz	IV, C-11
Av HaRachamim	IV, H-5
aveida mida'at	III, I-6; V, I-6
Aveilut/Aveilim	I, D-22; I, D-23; II, A-13; V, D-16
Separate minyan for multiple mourners	III, A-4
Kaddish HaGadol for burial and a siyum	IV, A-19
A mourner moving place in shul on Shabbat	II, I-2
A mourner davening at a minyan in the same building	IV, H-1
avsha milta	III, C-6; IV, C-6
ba'al korei	II, A-7; II, A-15; III, A-11; III, A-12; III, D-14; IV, A-12; IV, A-13; IV, A-14; IV, B-9; V, A-12; V, A-13
ba'al maftir	V, A-13
ba'al mum	III, A-6
bal tashchit	IV, G-10

bal yeira'eh ubal yimatzei	III, D-16; III, D-20
Bar Mitzva	
Bar mitzva during the Nine Days	II, D-22
When to commemorate halachic anniversaries in leap years?	II, H-12
bari v'shema	III, I-1
bassis l'davar ha'asur	III, C-11
b'avidetei tarid	III, G-3
bedikat chametz- see Pesach/Bedikat Chametz	
Behab	II, D-21
bein gavra l'gavra	III, A-10; IV, A-10
bein hashemashot	IV, D-2
Beit HaMikdash	I, D-6; II, D-11; III, A-13; III, D-10; IV, D-10; V, A-9; V, G-7
ben Eretz Yisrael	II, A-11; II, D-7; II, D-8
Berachot	
amen- see amen	
Asher Yatzar- Morning berachot after staying up all night	II, D-20
Beracha Acharona	II, B-3; III, B-4; V, D-14; V, G-10
Beracha acharona after ice cream and ices	III, B-7
Berachot on fruit salad	I, B-3
Combining small amounts of foods for a beracha acharona	IV, B-7
Does Birkat HaMazon cover cake eaten before the meal?	I, B-5
How often should one make berachot on drinking during a hike?	II, B-4

Beracha coverage- Continuing to eat based on an initial beracha	V, B-3
Beracha L'vatala	I, G-10; IV, A-13; V, D-2; V, D-12; V, H-2
Permissibility of personal beracha	V, B-1
Beracha on food before meal- Cake after Kiddush at night	III, C-8
Beracha on food- Berachot made by a katan for a gadol	I, B-7
Beracha subsuming other foods- Does the beracha on grape juice exempt other drinks	II, B-3
Beracha on food within meal- Beracha on ice cream for dessert	IV, B-4
Beracha on miracle- At place one was saved	III, B-9
Beracha on mitzvot	
When can beracha on tallit count for tzitzit?	IV, F-1
Reciting sefirat ha'omer for others after missing a day	I, D-18
Beracha on tzitzit- Sleeping with tzitzit on	II, G-11
A beracha on writing a sefer Torah	III, G-10
Berachot made by a katan for a gadol	I, B-7
Talking between netilat yadayim and eating	II, B-1
Readjusting tefillin that has slipped	IV, F-4
Relighting Shabbat candles that went out	V, C-14
Lighting Chanuka candles when coming home late	IV, D-7
Timing of beracha on morning netilat yadayim	IV, B-10
The berachot and mitzvot of the mentally challenged	II, H-13
Beracha on wrong tallit and tefillin	I, G-10
Beracha Rishona	II, B-3; III, B-4; IV, B-1; V, D-14

Does a mistaken beracha exempt other foods?	I, B-6
Beracha on solution drunk for diagnostic purposes	II, B-6
Relying on another person's beracha	IV, B-2
The beracha on schnitzel	III, B-5
Birkat HaGomel	
HaGomel for a child who was saved	III, B-10
Thanking HaShem after a "false alarm"	IV, G-3
Time limit on HaGomel after birth	V, B-8
Which comes first- Kaddish or HaGomel?	II, A-15
Reciting Birkat HaGomel for a group	II, B-7
Birkat HaMazon- see also Berachot/Zimun	
	III, B-9; III, C-3; III, H-4; V, B-2; V, D-14
A chatan doing zimun at sheva berachot	III, H-3
Birkat HaMazon after significant delay	IV, B-1
Birkat HaMazon for those who have left place of eating	V, B-4
Does Birkat HaMazon cover cake eaten before the meal?	I, B-5
How long to wait after zimun to resume meal	III, B-2
One who is uncertain if he recited Birkat HaMazon	III, B-3
Reciting R'tzei after ending Shabbat	V, C-18
Birkat HaTorah	
Birkat HaTorah for one who wakes up during the night	I, A-12; IV, G-13 I, B-4
Morning berachot after staying up all night	II, D-20
Birchot HaShachar	
	III, A-3; IV, A-9; IV, B-10
birchot hashevach	IV, B-10
birchot Kri'at Shema	V, A-2

birkat eirusin	III, H-3
Birkat Kohanim- see Tefilla/Birkat Kohanim	
birchot nisuin	III, H-3
Borei Nefashot	III, B-4; IV, B-7
Bread- Should one start a meal with bread?	III, B-1
Electronically produced sounds- Reciting Tefillat HaDerech by microphone	V, B-5
Electronically produced sounds- Answering amen to an electronically heard beracha	IV, B-9
gereira	III, B-6
Gluten, grain- The halachic status of gluten-free cakes	V, B-2
Grape juice- Does beracha on grape juice exempt other drinks?	II, B-3
HaMapil for those who take a long time to fall asleep	V, B-7
HaMapil- Pre and post-sleep recitations for those who sleep by day	IV, A-9
HaMotzi	IV, B-2; V, B-2; V, G-10
HaShem's Name- Permissibility of personal beracha	V, B-1
HaTov V'Hameitiv	V, B-6
Hesech hada'at- A new beracha after planning to finish eating	II, B-2
Ikar- The beracha on schnitzel	III, B-5
k'dei achilat pras	III, B-1; III, B-7
k'dei sevi'a	III, B-3
kedimut	III, B-6
kovei'a seuda	IV, B-3
Mezonot	V, B-2; V, G-10
Mixture of food- Berachot on fruit salad	I, B-3
Moving places	

Berachot/Moving places - End of Berachot

How often one makes berachot on drinking during a hike?	II, B-4
Birkat HaMazon for those who have left place of eating	V, B-4
Pizza- The beracha on pizza	IV, B-3
Precedence in berachot- Determining factors	III, B-6
Renovations- Beracha on a home renovation	V, B-6
Shehakol	V, B-2
Shehecheyanu	II, D-23; II, E-3; III, D-22; IV, D-7; V, D-18
Beracha on home renovation	V, B-6
Shehecheyanu the first time one dons tefillin	I, B-2
Shehecheyanu on vegetables	IV, B-8
Eating new fruit during the Three Weeks	I, D- 22
The timing of Shehecheyanu on second day of Rosh Hashana	V, D-2
Shehecheyanu during sefirat ha'omer	V, D-16
Tefillat HaDerech	
Reciting Tefillat HaDerech by microphone	V, B-5
Repeating Tefillat HaDerech during an ongoing trip	III, B-8
Water- Beracha on solution drunk for diagnostic purposes	II, B-6
Zimun	
How long to wait after zimun to resume meal	III, B-2
How to proceed with Birkat HaMazon after zimun	IV, B-6
Unique characteristics of the third to a zimun	II, B-5
Two out of a group who want to do zimun	IV, B-5
End of Berachot	

Bereira - Chanuka/Chanuka lighting

bereira	IV, C-14; IV, I-4; IV, I-9; V, D-15
berya	II, E-9
besamim	III, D-7
beyado	I, E-4
bikur cholim	II, D-2
bizuy (ochlin)	II, G-1; II, G-8; V, G-12
Bnei Yisrael	III, G-6
Brit Mila	IV, D-1; V, H-7
Brit or Mincha- which should be done first?	III, A-5
A woman performing a brit mila	I, I-3
Scheduling a delayed brit	II, I-3
Sandek : multiple times for one family?	IV, H-2
b'rov am hadrat melech	I, D-12; III, A-4; V, A-3
b'tzina	II, D-7
Burial	
Honoring a request to bury outside of Israel	III, H-1
Burying wisdom teeth	V, G-11
Calender- see Moadim	
chag	III, D-10
challa- see Kashrut/Hafrashat Challa	III, E-8; IV, C-9
chamata meruba mitzilata	II, D-5
chametz- see Pesach/Chametz	
chametz nuksheh	II, D-16

Chanuka

Chanuka lighting

How long to keep Chanuka candles lit	II, D-9
Public lighting- lighting candles before dismissal from school	II, D-11

Chanuka/Chanuka lighting - Chinuch

Lighting Chanuka lights on Friday	III, D-12
Mincha before Chanuka lighting on Friday	IV, D-8
Lighting Chanuka candles when returning home late	IV, D-7
Where to light- inside or outside?	III, D-11
Women lighting Chanuka candles	II, D-10
Lighting Chanuka candles away from home	I, D-11
Chanukiya (menora)- The validity of artistic chanukiyot	I, D-10
Seudat mitzva - Festive meal on Chanuka	V, D-8
chanukat habayit	V, B-6; V, D-18
Charedi	III, G-2
chatzitza - see Tefillin; Kashrut/Tevillat Keilim	
chatzot (of day or night)	I, C-11; I, D-14; III, D-1 IV, D-18
chazaka	III, I-4
chazan - see Tefilla/Chazan	II, A-7; II, A-9; II, A-11; V, A-10
chazarat hashatz - see Tefilla/Chazarat HaShatz	
cherem	II, H-1; IV, I-2
cheresh/shoteh/katan	II, H-13
chesed	III, G-1
children - see Katan	
chillul HaShem	III, I-1; IV, I-3
Chinuch	II, H-13
A child assembling a train-track set on Shabbat	II, C-13
Are children obligated in Mishlo'ach Manot?	IV, D-9
Benefiting on Shabbat from work done by a child	I, C-14

Separate lulavim for boys under bar mitzva	I, D-7
Children fasting on Yom Kippur	I, D-4
Crossing at a red light	I, H-2
Dealing with the tensions of a complex upbringing	III, G-2
Preventing a son's chillul Shabbat	IV, C-3
Teaching berachot over non-kosher food	I, B-1
The violation of Shabbat by small children	IV, C-1
chiyuv (to lead tefilla as merit for deceased)	III, A-4
chiyuv latzeit y'dei shamayim	III, I-1
Chol HaMo'ed - see Mo'adim/Chol HaMo'ed	
choresh	III, C-5
Chukot hagoyim - Use of phrase whose etymology is from another religion	IV, G-13
Chukot hagoyim - Standing for memorial siren	I, H-7
chumash (text that is not on klaf)	V, A-13
chumra - see also Thematic Index/chumrot	II, E-4
chupa - see Marriage	
chutz la'aretz	I, H-11; II, A-10; II, A-11; II, H-7; III, A-17; III, H-1; IV, D-6; V, D-6; II, D-7
customs - see minhag	
Damaging one's body - Removing tattoos before conversion	III, G-11
Dati Leumi	III, G-2
davar ha'aveid	II, D-8
davar she'eino mitkaven	III, C-5; III, C-7; III, C-14; V, C-1
davar shelo ba la'olam	V, E-5
dayan	V, I-12

Death- Wearing the clothes of the deceased	II, I-1
dei machsoro	II, F-3
derech erez	I, A-2
dikduk	III, A-12
din	III, D-1
divrei Torah (treatment of written version)	II, G-4
Dreams- Reacting to bad dreams	I, H-4
duchan, duchen- see Tefilla/Birkat Kohanim	III, A-18
eiruv (of different types)- see Shabbat and Mo'adim/Yom Tov	
eit ratzon	III, D-1
End of Days- Kaddish HaGadol for burial and a siyum	IV, A-19
Eretz Yisrael- see also ben Eretz Yisrael,	III, H-1
Aliya: Making aliya during Chol HaMo'ed	II, D-14
The best way to spend money on Israel	V, G-5
Chanukat habayit during the Three Weeks	V, D-18
Fast Days	
Caffeine pills on fast days	I, D-24
Continuing after mistakenly breaking fast	II, D-21
Hatarat nedarim to suspend self-imposed fast	I, H-14
Fasting if a sefer Torah falls	I, G-7
Father's obligation- Does it apply to pidyon haben of adult son?	I, I-5
Fence (ma'akeh)	
A fence for the roof of an apartment building	V, G-8
Building a proper guardrail	I, H-8
Fruit trees- Cutting down fruit trees	I, H-10

ga'ava	II, K-4
gabbai	II, F-2; II, F-4; III, I-12
gematria	V, D-17
gemilut chasadim	III, G-1
geniza- see Holy Articles/Geniza	
gerama (on Shabbat and regarding damages)	IV, C-6; IV, C-7; IV, I-8
Get (divorce)- Public sanctions against one refusing to give a get	I, I-1
gezeira l'gezeira	II, E-4
gezeirot	V, C-1
gezel sheina	IV, G-1
goy shel Shabbat	III, C-1
graf shel re'i	III, C-11
g'ram kibbuy	III, D-3
grape juice- see Berachot and Shabbat/ Kiddush	
gud oh agud	II, J-3
guest- see Hachnasat Orchim	
hachana- see Shabbat/hachana	
hachnasat kalla	V, H-4
Hachnasat Orchim (hosting guests)	
Hosting a difficult guest	IV, G-1
Does hosting count as giving tzedaka?	III, G-1
hachnasat sefer Torah	V, D-7
hagbaha	V, D-5
Halacha	
Our approach to the gray areas of Halacha	I, H-6
Learning from the silence of poskim	V, G-1
harchaka d'Rabbeinu Tam	I, I-1

hasagat g'vul	III, I-11
hashavat aveida- see Monetary Law/Hashavat Aveida	
HaShem's Name	II, A-7, V, B-1
A donor's name above HaShem's Name	I, G-8
Treatment of abbreviations of His Name	I, G-9
How to pronounce HaShem's Names in semi-formal contexts	II, G-3
Hashkafa (Jewish Outlook)	
Anava- Reconciling modesty with self-promotion	II, K-4
Balance in adherence to mitzvot- Why certain halachic issue seem overly stressed	I, K-4
Bitul Torah- A choice of professions	II, K-1
Disagreement done properly	II, K-2
Jewish Education as a profession	I, K-2
Precedence in mitzvot- Choosing the most appropriate mitzvot	I, K-5
Predetermination- Can divine decrees be changed?	II, K-3
Professions- A choice of professions	II, K-1
Remedies for the sick	I, K-1
Tzedaka from money earned in a prohibited manner	I, K-3
Public needs vs. private needs	I, H-3
Hatarat nedarim	I, H-12; V, D-16
Hatarat nedarim by Skype	V, G-6
Hatarat nedarim to suspend a good practice	I, H-14
hatavat chalom	I, H-4

Havdala- see Shabbat/Havdala; Mo'adim/Yom Tov/Havdala	II, D-24
havla'a- see also Shabbat/S'char Shabbat	I, D-9
hazmana (lav) milta	I, G-2; V, C-6
Hebrews	III, G-6
hechsher	III, D-9
hechsher mitzva	III, D-12; V, G-5
hefker	III, D-16; III, I-6; III, I-12; III, I-16; IV, I-4
hefsek- see also Tefilla/Hefsek	II, B-1; II, D-18; III, D-7; III, D-16; V, D-2
heter iska	I, F-6; III, G-8; IV, G-8
hezek re'iya	II, H-1; IV, I-2
hikon likrat Elokecha	IV, A-1
Holidays- see Mo'adim; major holidays have separate sections	

Holy Articles

Bima- Placing books on a bima	III, F-2
Geniza	V, F-1
Disposal of packaging of holy books	II, G-6
Disposal of Torah publications	II, G-7
Disposal of old tzitzit	II, G-8
Holy scrolls- Using holy scrolls as art	I, G-2
Honor of Torah Book	II, G-6
Folding the page of a sefer in place of a bookmark	II, G-1
Writing in holy texts	II, G-2
Protecting sefarim but aiding terrorists	V, F-1

Lowering status of holy article- Using holy scrolls as art	I, G-2
Mezuzot- see Mezuzot	
Parochet- Permissibility of a mesh parochet	II, H-6
Selling- May one sell inherited tefillin?	V, F-5
Shulchan- Leaning on the shulchan	IV, F-7
Tefillin/Tzitzit- see Tefillin/Tzitzit	
Names of HaShem- see HaShem's Name	
Kissing a sefer Torah with a siddur	I, G-6
Wearing jewelry containing Torah content	II, G-4
Honoring Parents- see Kibbud Av VaEm	
Honoring Important People	
Standing for a chatan and a kalla	V, H-3
Partial standing for talmidei chachamim	III, G-9
human dignity- see k'vod haberiyot	
insurance policy	V, I-11
ishto k'gufo	II, D-10
Israelites	III, G-6
issur hana'ah	I, E-5; IV, E-1
istanis	V, D-3
itchazek issura	I, E-4
Ivrim	III, G-6
kablan	I, C-18
Kaddish- see Tefilla/Kaddish	
kalla- see Marriage/chatan v'kalla	
karmelit	IV, C-13

Kashrut

Bishul Akum	II, E-6; V, E-6
Bishul akum regarding pancakes	I, E-11
Food cooked by a non-Jew	II, E-10
Cooking done by non-Jewish caregiver	II, H-9
Bitul (b'shishim)	I, E-8; II, E-2
Kashrut of tequila with a worm	II, E-9
Blood- Swallowing blood from a cracked lip	I, E-9
Bread knife- Pareve bread knife	II, E-5
challa – see Kashrut/Hafrashat Challa	
cheilev	III, E-5
Commerce/Contact with Non-kosher Food	I, E-6
Buying food without a hechsher for a friend	V, E-1
Futures contracts of pigs	V, E-5
What may a slaughter house do with non-kosher by-products	III, E-5
Attending a non-kosher culinary school	II, E-8
Davar Charif (sharp food)	
The status of a cutting board used for onions	V, E-2
The status of onions chopped in a dairy food processor	II, E-7
eino ben yomo	III, E-3
hadacha	III, E-1
Hafrashat challa- When part was baked and part is dough	III, E-8
Hafrashat challa- Discarding separated challa	V, E-4
Hagala- For how long should hagala be done?	IV, E-4
Human body- Swallowing blood from a cracked lip	I, E-9
Insects- Children checking food for insects	I, E-4
Kashering	I, E-10
For how long should hagala be done?	IV, E-4
Kashering china	I, E-2

Kashering a water kettle that came in contact with cheese	III, E-3
Kashering utensils from meat to dairy	I, E-3
Kilayim (mixed planting)- Eating the product of kilayim	II, E-3
Kilayim - Kilayim outside Israel	II, H-7
kavush k'mevushal	II, E-9
k'bol'oh kach polto	III, E-3
k'dei netilla	I, E-8
kinuach	III, E-1
libun/libun kal	I, E-7; III, E-3; IV, D-14
Lifnei iver (causing someone to sin)	
Buying food without a hechsher for a friend	V, E-1
What may a slaughter house do with non-kosher by-products	III, E-5
Ma'aseh Shabbat - An oven used for chillul Shabbat	V, E-6
Meat and Fish	
Prohibition of eating meat and fish together	II, E-2
Roasting chicken and fish together in oven	IV, E-3
Meat, Milk, and Pareve	
Cooking together- Attending a non-kosher culinary school	II, E-8
The status of a cutting board used for onions	V, E-2
Does food stay pareve in a cooking bag?	IV, E-2
Does tasting a fleishig crumb make one fleishig?	III, E-1
Kashrut of an animal fed meat and milk	IV, E-1
Milk that fell on hot meat	I, E-7
Poultry- Why is it considered meat?	I, E-1
Rejecting a stringency regarding milk and meat	II, E-4

Rinsing after eating pareve food cooked in a fleishig pot	III, E-4
Use of a fleishig oven for pareve food	I, E-6
Using a knife sharpener for milchig and fleishig knives	III, E-2
Using a water urn for milchig and fleishig	V, E-3
Waiting between meat and milk	II, E-1
Why certain halachic issues seem to be overly stressed	I, K-4
A pareve bread knife	II, E-5
minhagim of kashrut- Kashering utensils from meat to dairy	I, E-3
nat bar nat	I, E-7; II, E-7; III, E-3; III, E-4; IV, E-2; V, E-2
ne'itza b'karka	III, E-2
Non-Jews and Kashrut- see also Kashrut/Bishul Akum	
What a slaughter house may do with non-kosher by-products	III, E-5
Exchanging non-kosher wine	I, E-5
notein ta'am lifgam	III, E-3; V, E-2
Onions- The status of onions chopped in a dairy food processor	II, E-7
Oven- Roasting chicken and fish together	IV, E-3
Oven- Use of a fleishig oven for pareve food	I, E-6
pareve- see Kashrut/Meat, Milk, and Pareve	
pat akum	II, E-6
reicha	IV, E-3; V, E-4
Tasting non-kosher- Attending a non-kosher culinary school	II, E-8
ta'am	III, E-2; III, E-3
Teaching berachot over non-kosher food	I, B-1
Tevillat Keilim	

Tevillat keilim when there is an air pocket	III, E-7
Tovelling commercial food-producing equipment	III, E-6
Using a non-toveled utensil one time	II, E-11
Tevillat keilim with a chatzitza on a handle	II, E-12
What to do when tevillat keilim is not feasible	IV, E-5
What utensils require tevillat keilim?	I, E-10
klei seuda	I, E-10; II, E-11; II, E-12; III, E-6
Terumot and ma'asrot on spices	IV, G-12
Wine- Exchanging non-kosher wine	I, E-5
End of Kashrut	
Katan (minor child)	I, J-3
HaGomel for a child who was saved	III, B-10
Tzitzit attached by a katan	IV, F-2
Berachot made by a katan for a gadol	I, B-7
The violation of Shabbat by small children	IV, C-1
Children checking food for insects	I, E-4
k'beitza	III, B-1
kedusha (sanctity)	II, G-4; II, G-6; II, G-7; III, F-2; IV, F-6
kedushat shvi'it	II, D-6; III, C-16; V, D-11
ketav ashuri	I, G-9
ketoret	IV, H-2
Ketuba- see Marriage/Ketuba	
Kevura- see Burial	
Kibbud Av Va'em (respect for parents)	
Giving an injection to one's parent	II, I-5

Making children pay for household damage	I, J-3
Refraining from sitting in a parent's seat	III, G-4
Standing for parents in our times	V, H-1
Veto power for parents on choice of spouse?	IV, G-2
kibush	V, G-5
kida	II, D-3
kiddushin	I, I-2
kilei (hakerem/harkava/zera'im)	II, H-7
kinuy	V, B-1
kinyan (general and specific forms)	I, D-7; I, J-4; II, C-17; II, F-2; III, I-1; IV, D-13; IV, I-3; V, I-3, V, I-7;
Kipa - Origin of the practice of men to cover their heads	III, G-5
klaf	III, D-14; V, A-13
Must the oleh for maftir read along?	III, A-11
Klal Yisrael	III, G-2
kli - see also Kashrut/Tevillat Keilim; Shabbat/Muktzeh	I, C-15; II, C-13; II, E-11; II, E-12; III, C-13; III, D-9; III, I-7
kli cheres	I, E-2
kli (rishon/sheni/shlishi)	I, C-12
k'nas	I, C-14; V, D-15
kohen gadol	I, G-8; III, F-1
Korban Pesach	I, D-14
korban tamid	IV, A-5
korbanot	III, D-10
Kri'at Shema Al HaMita - see Berachot/Hamapil	
K'tav Ashurit	II, G-4

k'vod haberiyot	I, C-16; I, D-18; II, H-5; III, H-2; V, H-2
k'vod hatzibbur	III, A-6
k'zayit	I, B-3; IV, B-7; IV, C-9; IV, D-11; V, D-14
Lashon Hara	
Stopping fare-beaters	III, I-8
Disclosing problems of another's apartment	V, G-2
lev beit din matneh	III, F-2; IV, F-7
levi	III, A-13; III, A-16
Lifnei Iver	II, C-20; II, C-22; II, E-3; V, H-2; V, G-2
Buying food without a hechsher for a friend	V, E-1
Guidelines on warning people about forbidden actions	IV, G-5
Making egg matzot available at a hotel	III, D-19
Preventing a son's chillul Shabbat	IV, C-3
Using a driver who did not make Havdala	III, C-2
What may a slaughter house do with non-kosher byproducts?	III, E-5
lishmah	V, G-3
lo tachmod	V, I-4
lo taguru	V, I-12
lo titgod'du	II, H-8
ma'achalot assurot	V, E-6
ma'akeh- see Fence	
ma'aser kesafim- see Tzedaka/Ma'aser Kesafim	
ma'aser sheni- see also Agricultural Law	IV, G-12
ma'asrot	III, A-13
makom kavua	I, A-1

makom p'tur	V, C-1
makpid	III, E-7; IV, G-11
mamrani	IV, I-11
marit ayin	I, E-9; I, H-13; II, C-22; II, C-23; III, C-12; V, C-11; V, C-12; V, E-1

Marriage

chatan v'kalla	III, H-3; III, H-4; IV, H-4; IV, H-5
chatan domeh l'melech	V, H-3
Differences in second marriage- Tachanun in the presence of the recently remarried	IV, H-5
Ketuba	
A fading ketuba	V, H-6
A mistake in a ketuba	V, H-5
A mistaken ketuba at a wedding	III, H-2
The date in ketuba at early evening wedding	IV, H-3
mesader kiddushin	I, I-4; III, H-2; IV, H-3; V, H-5
Giving a wedding band before the wedding	I, I-2
Standing for a chatan and a kalla	V, H-3
Sheva Berachot- see Sheva Berachot	
Sivlonot	I, I-2
Holding on to jewelry after a broken engagement	IV, H-4
Veto power for parents on choice of spouse?	IV, G-2
Wedding spending	V, H-4
Witnesses- Which relatives are invalid witnesses?	I, I-4

End of Marriage

mashgiach	III, D-19
mayim acharonim	II, B-2
mechila- see Monetary Law/Mechila	V, H-2
mechusar amana	IV, I-3
mehadrin	III, I-7
mehadrin min hamehadrin	II, D-10
mehudar	V, D-11; V, F-5
me'ila	III, F-2
mekabel tumah	III, D-9

Mezuzah

Affixing an unrolled mezuzah	IV, F-8
Making a new beracha when replacing mezuzah	II, G-10
Beracha when returning a mezuzah	I, G-5
Leaving mezuzot when vacating a house	II, G-9
Mezuzah in the workplace	I, G-4
Mezuzot at an office complex shared with non-Jews	I, G-3
Mezuzah at a Jewish-owned commercial establishment	III, F-4
Does an elevator require a mezuzah?	III, F-3

microphone	V, B-5
midda (personal attribute)	II, K-4
mikra bikurim	II, A-8
mikveh	I, E-10; II, E-12
milchig- see also Kashrut/Meat, Milk, and Pareve	IV, D-16
Mincha/Ma'ariv	III, D-21
Minhag	
Creating a new shul or changing customs	II, H-8

Types of minhag and their level of flexibility	V, G-4
Family minhag	
A divorced woman reverting to pre-marriage minhagim	IV, G-4
Changing family traditions of pronunciation	II, A-7
Following a father's practices on halachic matters	I, H-12
Minhag to curtail mitzva - An Ashkenazi doing Birkat Kohanim in a Sephardi Minyan in chutz la'aretz	III, A-17
minhag hamakom	I, H-12
mitzva haba'ah b'aveira	II, D-4
mitzva l'kayeim divrei hamet	IV, I-9
mitzva sheb'gufo	IV, D-5
mitzvat aseh/lo ta'aseh	V, G-8
Mitzvot	
Balance - Why certain matters seem overly stressed	I, K-4
Delaying mitzva - Scheduling a delayed brit	II, I-3
Eating before - Women eating before Kiddush	II, C-4
Fulfilling mitzva by means of another	
Purim in transit	V, D-10
Reciting Tefillat HaDerech by microphone	V, B-5
Levels of obligation - Reciting sefirat ha'omer for others after missing a day	I, D-18
The berachot and mitzvot of the mentally challenged	II, H-13
Choosing the most appropriate mitzvot	I, K-5
For which mitzvot does shelichut work?	IV, D-6
Sacrifices - Veto power for parents on choice of spouse?	IV, G-2

Without intention- Is acknowledgment of Lag BaOmer considered counting?	V, D-17
mitzvot tzrichot kavana	III, A-9
mi'us	IV, G-9
m'lo lugmav	V, C-15

Mo'adim (Special Days During the Year)

Chanuka, Fasts, Pesach, Purim, Rosh Hashana, Sukkot, Yom Kippur have separate sections

Calendar- Why is Shavuot two days?	I, D-21
Calendar- Why is Simchat Torah after Sukkot?	I, D-5
Chol HaMo'ed	
Making aliya during Chol HaMo'ed	II, D-8
Drinking wine on Chol HaMo'ed	III, D-10
Hachnasat Sefer Torah on Chol HaMo'ed	IV, D-4
Categories of forbidden work on Chol HaMo'ed	I, D-8
Going to work on Chol HaMo'ed	I, D-9
ma'aseh hedyot/uman	I, D-9; II, D-8; V, D-7
tzorchei mo'ed	I, D-9
Eiruv Tavshilin	II, D-7
Eiruv Tavshilin and the second day of Yom Tov	IV, D-6
Elul- Shofar blowing during Elul	IV, D-19
Lag BaOmer	III, D-21
Leap years- When to commemorate halachic anniversaries	II, H-12
Machatzit hashekel- The practice of machatzit hashekel	II, D-14
Nine Days- Bar mitzva during the Nine Days	II, D-22
Nine Days- Eating meat during the Nine Days	IV, D-17

ochel nefesh	IV, D-4; IV, D-6
Parashat Zachor - Missing Parashat Zachor	III, D-13
Parashat Zachor - Repeating questionable words	V, D-9
Sefirat Ha'Omer	
Reciting for others after missing a day	I, D-18
Changing one's custom regarding the days of omer	III, D-21
Counting in a non-standard base system	I, D-19
Counting when one is unsure of the count	II, D-18
Sefirat ha'omer for intercontinental travelers	II, D-19
Is acknowledging Lag BaOmer considered counting?	V, D-17
Shehecheyanu/new clothes/renovations during omer	V, D-16
Wedding on Yom Ha'atzma'ut/Yom Yerushalayim	I, D-20
Selichot - Tallit and tefillin during Selichot	V, F-2;
Selichot - The timing of Selichot	III, D-1
Simchat Torah - Why is it celebrated after Sukkot?	I, D-5
Hagbaha after side-minyan laining on Simchat Torah	V, D-5
Simcha - Drinking wine on Chol HaMo'ed	III, D-10
Simchat Yom Tov	
Simchat Yom Tov- Being a vegetarian	II, H-3
Three Weeks	
Chanukat habayit during the Three Weeks	V, D-18
Eating new fruit during the Three Weeks	I, D- 22
Remodeling during the Three Weeks and Nine Days	III, D-22
Renovations during the Three Weeks	II, D-23
Tisha B'Av	II, D-22; III, D-22

Afflictions/washing- Doing dishes on Tisha B'Av	IV, D-18
How to spend Tisha B'Av	I, D-23
The transition from Shabbat into Tisha B'Av	II, D-24
Yom HaZikaron- Standing for memorial siren	I, H-7
Yom Tov- Lighting a Havdala candle on Yom Tov	III, D-4
Yom Tov- Causing a flame to be extinguished on Yom Tov	III, D-3
Yom Tov Sheini- A ben chutz la'aretz flying out of Israel	V, D-6
Yom Tov Sheini- An Israeli abroad doing work privately	II, D-7

End of Mo'adim

Modeh Ani	IV, A-9
Modesty- Full body scans	III, G-3

Monetary Law

Searching the property of a suspect	II, H-1
Stopping fare-beaters	III, I-8
Question of whether payment was made	IV, I-7
Non-refundable enrollment fee	I, J-4
Making children pay for household damage	I, J-3
Discount for a kashrut mistake	III, I-7
A roommate paying for failing to lock the door	IV, I-8
Finding a credit note	IV, I-11
Money found in a house	III, I-16
Immoral commercial practices	V, I-4
Is one obligated to enable someone to sue him?	III, I-5
Beit din- Going to court when there is no beit din	V, I-2

Beit din- Responding to a nondescript summons to beit din	IV, I-1
Borrowing	IV, I-5
Damage to an “on approval” sales item	III, I-17
Using other people’s religious articles	III, I-10
Borrowing without explicit permission	II, J-2
chazaka	III, I-4, III, I-9
Commitments- Buying from a store that ordered for you	IV, I-3
Damages	
Claiming damages from an employee	V, I-11
Damage to an already damaged object	I, J-6
Damages to a borrowed chair on Purim	IV, I-5
Malpractice for extracting the wrong tooth	III, I-15
Reimbursement through additional services	III, I-3
Paying for damage of an object one was unaware of	II, J-5
Dina d’malchuta (law of the land)- Crossing at a red light	I, H-2
Dina d’malchuta- Respecting intellectual property rights	II J-1
Forms of payment- Matchmaker’s demand of non-standard fee	I, J-2
Forms of payment- Reimbursement through services	III, I-3
Hashavat aveida	II, J-5
A lawyer’s obligation to get involved in sticky cases	V, I-12
Difficulty returning objects left behind	IV, I-4
Protecting a bicycle that had to be moved	III, I-6
Returning a lost item the owner knows about	V, I-6
Stopping fare-beaters	III, I-8
Taking a book left to a yeshiva’s control	III, I-12
Industry practice	II, J-7

Inheritance- Heirs who disagree about what to do with estate	II, J-3
kefel	V, I-5
Liability for actions of minors- Paying for damage of an object one was unaware of	II, J-5
Malpractice for extracting wrong tooth	III, I-15
Mechila	I, J-7; III, I-12; IV, I-5
Questionable relinquishing of rights	III, I-13
Keeping money that was returned in anger	II, J-9
mekach ta'ut	II, J-9
meita machamat melacha	III, I-17; IV, I-5
Mispricing- Charging a fixed price that may prove inaccurate	I, J-5
Monopolistic- practices and Halacha	III, I-11
Neighbors- Sharing expenses for a wall	III, I-9
Ona'at devarim- Buying with intention to return	V, I-3
Partnership- Heirs who disagree about what to do with estate	II, J-3
Pressuring people- Immoral commercial practices	V, I-4
Privacy- The morality of searching for a thief	IV, I-2
P'shara- When is compromise appropriate?	I, J-1
Shadchan- A matchmaker's demand for non-standard fee	I, J-2
Shelichut- Dealing with the fallout from a dishonest middleman	V, I-9
Shelichut- Keeping benefits from a communal purchase	V, I-10
Shomer (watchman)	
A roommate paying for failing to lock door	IV, I-8
Damages to a borrowed chair on Purim	IV, I-5

Is a watchman responsible for more than he expected?	III, I-2
Paying for damage of an object one was unaware of	II, J-5
Responsibility for damage by mysterious fire	IV, I-6
Responsibility of one carrying his friend's property	II, J-4
Stealing- Stealing by accident	V, I-5
Returning a stolen object bought from a thief	II, J-6
Subletting- Receiving permission to sublet	V, I-8
Taking bottles from recycling receptacles	V, I-7
Tefisa- Holding on to jewelry after a broken engagement	IV, H-4
Unilateral steps- Protecting a bicycle that had to be moved	III, I-6
Wills- Systems to make a will binding	IV, I-9
Workers- Claiming damages from employee	V, I-11
Worker's payment	
Allocation of partial payment to multiple recipients	II, J-7
Charging for incidental work not originally discussed	IV, I-10
Paid vacation for Yom Kippur	II, J-8
Partial pay for an uncompleted job	III, I-14
Paying for a cancelled taxi order	III, I-1
Payment for incomplete work due to external factors	V, I-1
Realtor fee for an altered purchase	III, I-4
Receiving full pay for reduced work	I, J-7
End of Monetary Law	
m'sayei'a	II, E-3
muchzak	I, J-4

muktzeh l'mitzvato	IV, D-1
mutav sheyiheyu shog'gin v'al yiheyu mezin	I, C-16; IV, G-5
nachat ruach	IV, H-1
Names	
The origins and nuances of our nation's names	III, G-6
Naming after a live grandparent	II, H-4
Changing the names of the sick	I, H-1
How to name the child of a gentile father	V, H-7
neder	II, F-2
neheneh (benefit)	IV, I-10
ner tamid (eternal flame)	V, G-7
neshama yeteira	III, D-7
Netilat yadayim (also see Berachot/Berachot on Mitzvot)	
Drying hands after netilat yadayim with a hand dryer	IV, G-9
Must netilat yadayim be done near bed?	I, H-9
Netilat yadayim and hygienic concerns	III, G-7
Morning berachot after staying up all night	II, D-20
Chatzitza - netilat yadayim on paint stained hands	IV, G-11
Washing hands after leaving the bathroom	II, H-10
Talking between netilat yadayim and eating	II, B-1
Solving netilat yadayim problem on a plane	V, G-10
neveila	III, E-5
Nevi'im	II, A-3
nizkei shecheinim	III, D-8
Non Jews - see also Non Jews on Shabbat	
Partnership with non-Jew - Marketing orla	I, H-11
Chametz of an intermarried couple after Pesach	V, D-15

Non-Jews - Pesach/Bedikat chametz

Non-Jews delivering mishlo'ach manot	V, D-15
nusach	II, H-8
Nusach Ashkenaz/Sephard	V, A-8
ochel	I, C-17; I, C-19; III, C-16
ol malchut shamayim	V, A-5
ona'ah	III, I-11
onen	I, C-5
oness	IV, I-6; V, I-1
Orla	III, E-5; IV, G-12
Marketing orla	I, H-11
osek b'mitzva patur min hamitzva	II, A-2
otzar beit din	II, D-6
parents- see Kibbud Av Va'em	II, D-4; III, A-14
pasul	
pat haba'a b'kisnin	I, B-5; II, C-3; IV, B-3; IV, D-15; V, G-10
pat Yisrael	II, E-6
Pesach	
Afikoman- Rushing to eat afikoman	I, D-14
Bedikat Chametz	I, D-16; I, E-4; III, D-10
Bedikat chametz in shul	III, D-16
Cleaning the house before going away for Pesach	II, D-12
How thoroughly should bedikat chametz be done?	III, D-15
Putting out pieces of bread before bedikat chametz	V, D-12

bitul chametz	I, D-16; V, D-12
Chametz	III, E-5; IV, D-15; IV, E-1
A doctor's use and sale of chametz medication samples	II, D-16
Chametz of an intermarried couple after Pesach	V, D-15
Chametz that is difficult to reach	IV, D-11
Forgotten chametz found after Pesach	III, D-20
chametz she'avar alav haPesach	I, D-16; II, D-16; III, D-20
charoset - How much charoset goes on the maror?	III, D-17
Erev Pesach - Erev Pesach that falls on Shabbat	IV, D-15
Haggada	V, D-13
Heseba - One who failed to recline while drinking wine on Pesach	IV, D-12
Karpas - The significance of the amount of karpas eaten	V, D-14
Kashering - Stovetop Grates for Pesach	IV, D-14
Kitniyot - An Ashkenazi eating from pots used for kitniyot	I, D-15
maror	III, D-17; V, D-14
Matza	I, D-14; IV, D-12
Does one need to own the matza he eats?	IV, D-13
Eating matza for those with a wheat allergy	II, D-15
Eating shmura matza all of Pesach	III, D-18
Making egg matzot available at a hotel	III, D-19
Mechirat chametz	II, D-16; III, D-20
Timing of the sale when Pesach follows Shabbat	II, D-17
Cleaning the house before going away for Pesach	II, D-14

Time of selling chametz for a traveler	I, D-17
Medicine- A doctor's use/sale of chametz drug samples	II, D-16
Seder- The focus of discussions at the Seder	V, D-13
sipur yetzi'at Mitzrayim	I, D-14
Wine- One who failed to recline while drinking wine on Pesach	IV, D-12
End of Pesach	
pesolet	I, C-17; I, C-19; III, C-16; V, C-7
Pidyon HaBen	III, A-13
A delayed pidyon haben at night	I, I-6
Pidyon haben for an adult- still his father's mitzva?	I, I-5
Staging a fake pidyon haben	V, H-2
Pikuach Nefesh- see also Shabbat/Pikuach nefesh	I, C-8; I, D-3
Intravenous nutrition on Yom Kippur	IV, D-3
pirsumei nisa	I, D-11; I, D-12; II, D-11
pishut yadayim v'raglayim	II, D-3
pitam	II, D-4
plag haMincha	II, C-2
pocheiach	V, A-6
po'el	I, C-18
po'el batel	I, J-7
Pruzbol	V, G-4
Which debts require a pruzbol?	II, H-11
p'shara/p'shara hakerova ladin	I, J-3; III, G-8
p'shi'a	II, J-4; IV, I-6

p'sik reishet II, C-10; III, C-7;
III, C-14

Purim

Matanot La'Evyonim

Giving matanot la'evyonim before Purim I, D-13

Which donations do not count toward
ma'aser kesafim? II, F-1

Megillat Esther

V, B-5

Minyan for Megillat Esther- Is it required? I, D-12

Reading Megillat Esther from a scroll III, D-14

Reading Megillat Esther- Purim in transit V, D-10

Mishlo'ach Manot

I, D-13

Are women and single children obligated in
mishlo'ach manot? IV, D-9

Non-Jews delivering mishlo'ach manot II, D-12

Ranking mishlo'ach manot stringencies V, D-11

Parashat Zachor/Megillat Esther- Repeating
questionable words V, D-9

Purim Meshulash IV, D-10

Rules and rationale of Purim Meshulash II, D-13

Refuah I, C-13

reshut (voluntary) V, D-8

reshut harabim/reshut hayachid II, C-16; III, C-5;
IV, C-13; V, C-1

Retzuot (of tefillin) IV, F-5

revi'it III, B-7; IV, G-9

Ribbit IV, G-6

Ribbit - Safek

Is buying Israel Bonds ribbit?	I, F-6
A loan/investment that needs a heter iska after its inception	V, G-9
Reframing a transaction to avoid ribbit	IV, G-8
Returning a security deposit with a different currency	IV, G-7
Returning more of a commodity than one took	II, F-5
d'mei hitpashrut	V, G-9
Discount on rent for an apartment for its buyer	III, G-8
ribbit meucheret	III, G-8

Rosh Chodesh V, A-4

Rosh Hashana

A ba'al tokeiah who has animosity towards a congregant	IV, A-6
The timing of Shehecheyanu on second day of Rosh Hashana	V, D-2
Shofar	V, B-5
Blowing shofar after shul	V, D-1
Blowing shofar on behalf of women	I, D-2
Blowing shofar on the left side of the mouth	III, D-2
Toiling to blow shofar for homebound women	II, D-2
Is a shofar muktzeh when not in use?	IV, D-1
Sleeping on Rosh Hashana	II, D-1
Tashlich on Shabbat	I, D-1

ruach ra'ah II, H-10

safek V, D-1

safek berachot l'hakel	I, B-2; I, B-4; I, G-5; II, D-18; III, B-6; III, B-7; IV, B-4
Safety	
Building a proper guardrail	I, H-8
Crossing at a red light	I, H-2
sefer	II, G-1; III, I-10; III, I-12
 Sefer Torah	 I, A-7; III, D-6; III, F-2; IV, A-10; IV, F-8
A beracha on the mitzva to write a sefer Torah	III, G-10
Covering the Torah during the aliya's concluding beracha	I, A-12
Fasting if a sefer Torah falls	I, G-7
Hachnasat sefer Torah on Chol HaMo'ed	V, D-7
Hagbaha after side-minyanim on Simchat Torah	V, D-5
Kissing sefer Torah with a siddur	I, G-6
Opening the wrong sefer Torah	I, A-14
Selling sifrei Torah that are too heavy for an aging community	IV, F-6
Rules of selling a sefer Torah	V, F-5
The propriety of a traveling sefer Torah	III, F-1
A mistake found in a sefer Torah during laining	III, A-14
 sefirat ha'omer - see Mo'adim/Sefirat Ha'Omer	
segula	I, J-2; IV, G-3; V, C-17
semichat geula l'tefilla	V, A-2
setimat haposkim	V, G-1

seudat hoda'a	III, B-10; IV, G-3
seudat mitzva	II, D-22; II, I-3; IV, D-17; V, D-18; V, H-4
s'feik s'feika	V, D-17
sha'atnez	II, H-7; IV, F-3

Shabbat

Accepting Shabbat (early)

Making Kiddush for others before accepting Shabbat	III, C-3
Workers in the house of one who has accepted Shabbat early	III, C-12
When and how to accept tosefet Shabbat	III, C-4
Making early Shabbat	II, C-2
Do children have to accept Shabbat along with their mother?	II, C-9

Animals on Shabbat

Are pets muktzeh on Shabbat?	III, C-13
Violating Shabbat to save an animal	II, C-6
Using a bird feeder on Shabbat	II, C-15

Aveilut on Shabbat- A mourner changing his place in shul II, I-2

Benefit from work done on Shabbat

Using milk that was milked on Shabbat	I, C-4
An oven used for chillul Shabbat	V, E-6

Blech

II, C-18; IV, C-4

Candle lighting- Relighting Shabbat candles that went out V, C-14

Shabbat candles- How long should Shabbat candles last? I, C-1

chazara III, C-15

challa- see Shabbat/Lechem Mishneh

Chillul Shabbat	I, C-4; II, C-1; V, E-6
Chinuch (educating a child)	I, C-14
A child assembling a train set on Shabbat	II, C-13
Preventing a son's chillul Shabbat	IV, C-3
Giving a baby a rattle on Shabbat	I, C-7
The violation of Shabbat by small children	IV, C-1
cholent	II, C-14; III, C-15
Commercial activity on Shabbat	
Allowing a vending machine to operate on Shabbat	II, C-20
Buying on credit on Shabbat	III, C-17
Giving presents of food on Shabbat	II, C-17
Paying for work performed by a non-Jew on Shabbat	II, C-5
chai noseh et atzmo	IV, C-13
Using a dishwasher on a timer on Shabbat	IV, C-6
Davening of Shabbat	
Recting R'tzei after ending Shabbat	V, C-18
Making up missed portions of kri'at haTorah at Mincha	II, A-16
Starting Mincha of Shabbat slightly early	III, C-9
Ma'ariv - Making early Shabbat	II, C-2
Kabbalat Shabbat (the prayer)	V, C-16
Eiruv (chatzeirot)	III, C-5; IV, C-13; V, B-2; V, C-1
Need for an eiruv on an island	II, C-16
Eiruv techumin	II, C-12; IV, C-14
Electricity on Shabbat - Use of kinetic watches on Shabbat	V, C-11
Ending Shabbat - Recting R'tzei after ending Shabbat	V, C-18
Erev Shabbat	IV, D-8

Fasting on Shabbat- Eating on Shabbat before midday	I, C-11
Hachana	IV, C-6; IV, C-12; V, D-2
Clearing a table not needed for Shabbat	I, C-9
Giving an envelope on Shabbat to use for donations	V, C-6
Havdala	
Doing work before Havdala	I, C-10
Drinking sheva berachot wine at se'uda shlishit	III, H-4
Havdala after Yom Kippur that fell on Shabbat	III, D-7
Making Havdala on Sunday	I, C-5
Using a driver who did not make Havdala	III, C-2
Who drinks Kiddush/Havdala wine?	V, C-15
Women making Havdala	II, C-8
Kiddush	I, C-1; I, C-11; V, D-2
Cake after Kiddush at night	III, C-8
How can we perform matters of minhag before Kiddush?	V, C-16
Making Kiddush for others before accepting Shabbat	III, C-3
The halachic status of gluten-free cakes	V, B-2
Using grape juice for Kiddush	I, C-6
Using white wine for Kiddush	II, C-7
What one must eat after Kiddush	II, C-3
Who drinks Kiddush/Havdala wine?	V, C-15
Women eating and drinking before Kiddush	II, C-4
Lechem Mishneh	IV, B-2
How much of lechem mishneh must one eat?	IV, C-9
Lifnei iver (causing someone to sin)	

Preventing a son's chillul Shabbat	IV, C-3
Producing a video that might encourage banging to a beat	V, C-8
Using a driver who did not make Havdala	III, C-2
Melachot (primary Shabbat prohibitions)	
Bishul	IV, C-6
Cholent cooking further on Shabbat	III, C-15
Making tea on Shabbat	I, C-12
Heating up bread on Shabbat	V, C-3
Returning cholent with bones to the fire	V, C-2
mevushal kol tzorko	III, C-15
Use of a coffee maker with a timer on Shabbat	III, C-6
Shehiya/(ha)chazara	III, C-6
Heating up food before Shabbat	IV, C-4
Using a Shabbat clock for an urn	V, C-4
ma'achal ben d'rusai	III, C-6; III, C-15; V, C-2
Erasing- Cutting the writing on a cake	II, C-10
Boneh/Ohel (building/tent)	I, C-3; III, C-5
A child assembling a train-track set	II, C-13
Opening and closing a garden parasol	V, C-9
Borer (sorting)	I, C-12; IV, C-5; IV, C-6
Removing a licked candy from among clean ones	V, C-7
Removing excess milk from cereal	I, C-17
Removing food with a slotted spoon	IV, C-10
Separating Shemitta food before clearing plates	III, C-16
Sorting silverware	I, C-19
Dash/Mefarek	
Expressing milk for medicinal purposes	IV, C-7

Squeezing lemons on Shabbat	II, C-11
Gozez (shearing)	
Removing loose hair on Shabbat	IV, C-5
Itching flaky skin on Shabbat	III, C-14
Hotza'ah - Carrying a child where there is no eiruv	IV, C-13
Korei'a - Guest who does not find pre-cut toilet paper	I, C-16
Kotzer - Moving a potted plant	IV, C-11
Killing mosquitoes on Shabbat	I, C-8
Killing - Closing a door to a closet containing mothballs	III, C-7
makeh b'patish	II, C-13; II, C-19; V, C-3
Melaben - Using salt to absorb spilled wine	V, C-5
tzad (trapping)	I, C-8
melacha she'eina tzricha l'gufa	I, C-8; III, C-7; IV, C-7
melaveh malka for women	V, C-17
metaken kli (making a utensil)	I, C-3; I, C-16
mevatel kli meihechano	III, C-11
mosif hevel	I, C-21; II, C-14
Motzaei Shabbat	III, C-2; III, D-7
molid	V, C-10
Muktzeh	I, C-3; I, C-7; I, D-8; I, D-16; IV, C-5; V, C-1
muktzeh machamat gufo	III, C-11
Are pets muktzeh on Shabbat?	III, C-13
Categories of muktzeh and ramifications	IV, C-8
Giving an envelope on Shabbat to use for donations	V, C-6
Is a car seat muktzeh?	II, C-21

Is a phone carried as a precaution muktzeh?	III, C-18
Is a shofar muktzeh when not in use?	IV, D-1
Is raw food that one expected to be cooked muktzeh?	III, C-10
Permissibility of pet dogs	II, H-2
Rock collection- Is it muktzeh?	I, C-15
Using a utensil to catch muktzeh	III, C-11
Nolad- Making ice cubes on Shabbat	IV, C-12
Non-Jews on Shabbat	
A non-Jew selling for a Jew at a weekend fair	II, C-23
Calling a non-Jew where it is still Shabbat	II, C-22
Encouraging a non-Jew to buy tickets on Shabbat	I, C-18
katzatz	II, C-23; IV, C-2; V, C-12
Non-Jewish worker servicing clients on Shabbat	V, C-12
Paying for work performed by a non-Jew on Shabbat	II, C-5
Use of a non-Jew on Shabbat	III, C-1
Using a non-Jew to shut lights so that a Jew will not	IV, C-2
Workers in the house of one who accepted Shabbat early	III, C-12
oneg Shabbat	II, H-3
Pikuach nefesh- Is a phone carried as a precaution muktzeh?	III, C-18
Pikuach nefesh- An expectant woman staying near the hospital	II, C-1
Rabbinic and minhag prohibitions	
Flying a kite on Shabbat	V, C-1
Hatmana (insulating food)	
Insulating a warm challa before Shabbat	I, C-21

Insulating food taken from an oven on Shabbat	I, C-20
Cooking in a cooking bag within chulent	II, C-14
Transferring food from a hot plate that shut off	II, C-18
Hearing aid on Shabbat	I, C-3
Making ice cubes on Shabbat	IV, C-12
Medicine- Lactase pills on Shabbat	I, C-13
Noise-making instruments	
Giving a baby a rattle on Shabbat	I, C-7
Producing a video that might encourage banging to a beat	V, C-8
Use of a door knocker on Shabbat	II, C-19
Swimming on Shabbat	I, C-2
Using a whipped cream dispenser	V, C-10
uvdin d'chol (weekday-like activity)	I, C-7; I, D-9; III, C-5; V, C-10
Recreational activities- Playing baseball on Shabbat	III, C-5
seuda shlishit	II, D-24; III, H-4; IV, D-15
S'char Shabbat	II, C-20; II, C-23; V, C-12
Methods of receiving pay for work on Shabbat	V, C-19
Shabbat meal- Eating before midday	I, C-11
The basic principles of techumin on Shabbat	II, C-12
Timer- Using a dishwasher on a timer	IV, C-6
Timer- Use of a coffee maker with a timer	III, C-6
Time-zone issues- Placing delayed stock orders on Friday from Israel	V, C-13
umbrella	V, C-9
Women and Mitzvot	
Melaveh malka for women	V, C-17

Women eating and drinking before Kiddush	II, C-4
Women making Havdala	II, C-8
End of Shabbat	
Shaliach	I, C-18; V, I-9; V, I-10
For which mitzvot does shelichut work?	IV, D-5
Non-Jews delivering mishlo'ach manot	II, D-12
shaving	IV, A-1
Shavuot	
Eating dairy on Shavuot	IV, D-16
Morning berachot after staying up all night (e.g., on Shavuot)	II, D-20
Why are there two days of Shavuot?	I, D-21
She'asa Nissim	IV, D-7
Shechina	I, A-8; V, A-7
shechita	III, E-5
sh'eila (undoing created sanctity/obligation)	II, F-2
sheki'a	III, D-12; IV, D-2
Shemitta	
Which debts require a pruzbol?	II, H-11
Buying lulav and etrog after Shemitta	II, D-6
shemitat kesafim	II, H-11
Sheva Berachot	
A chatan doing zimun at sheva berachot	III, H-3
Drinking sheva berachot wine at se'uda shlishit	III, H-4
Omitting Tachanun in the presence of the recently remarried	IV, H-5
Sheva berachot that finish after the week	II, I-4
The date in ketuba at early evening wedding	IV, H-3
shitrei hedyodot	III, C-16
shiur (amount)	III, D-5; IV, B-7
shiva - see Aveilut	

shivat haminim	III, B-6; IV, B-7
sh'nayim mikra v'echad Targum	II, A-10
shochet	V, B-3
sho'el- see Monetary Law/Borrowing	
Shofar- Shofar blowing during Elul	IV, D-19
shogeg	III, C-15; III, D-20; V, I-5
sholet bishtei yadav (ambidextrous)	II, G-12
shomei'a k'oneh	II, A-6; II, A-9; IV, A-13; V, A-14
shomer chinam	II, J-4
shomer sachar	IV, I-6; V, I-11
shtar	IV, I-7
shtar chatzi zachar	IV, I-9
shtar ketuba d'irchasa	V, H-6
shtei halechem	IV, D-16
shtuki	V, H-7
sh'vuat heset (oaths)	IV, I-7
siddur	I, A-4; I, G-6; III, I-10
sifrei kodesh	II, G-6
Sim Shalom	V, A-10
siman (on lost object)	IV, I-11
simcha	V, D-8
sinat chinam	II, K-2
Simchat Torah- see Mo'adim/Simchat Torah	
siyum	II, D-21; IV, A-19; IV, D-17
stam yeinam	I, E-5

Sukkot

Arba'a minim (lulav and etrog)	III, I-10
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For which mitzvot does shelichut work?	IV, D-5
Buying lulav and etrog after Shemitta	II, D-6
Differences in requirements after the first day of Sukkot	II, D-4
Disqualification of etrog based on color	V, D-4
Buying a separate lulav and etrog for boys under bar mitzva	I, D-7
Taking a lulav and etrog to the Kotel	I, D-6
hadar	II, D-4; V, D-4
hadasim	II, D-6
Sukka/S'chach	
Cutting the obstructing branches of a neighbor's tree	III, D-8
S'chach that rests on a pergola	II, D-5
The purpose of the hechsher on s'chach	III, D-9
Keeping a kosher restaurant without a sukka open	IV, D-4
ta'anit bechorot	II, D-21
ta'aroret	II, E-9; V, C-7
ta'aseh v'lo min he'asuy	V, F-4
tadir kodem- A brit mila or Mincha - which is done first?	III, A-5
takanat hashuk	II, J-6
tallit- see Tzitzit/Tallit	II, G-4; III, F-6; III, I-10
tallit gadol	III, F-7
tallit katan	III, F-5; V, F-4
talmid chacham	II, K-4
Incomplete standing to honor talmidei chachamim	III, G-9
tamei	IV, G-9; V, G-11
tartei d'satrei	II, C-2; V, C-18

tashlumin (in davening)	I, A-9; III, A-7; III, A-9
tashmish d'tashmish	II, G-6; II, H-6; IV, F-7
tashmish kedusha	II, G-1; II, G-6; II, H-6; IV, F-7
tashmish mitzva	II, G-8
tata'ah gavar	I, E-8
Tattoo	
Removing tattoos before conversion	III, G-11
Use of permanent cosmetics	I, H-13
ta'ut d'muchach	V, H-5
tavlin (spices)	IV, G-12
techilato b'pshiya v'sofo b'oness	IV, I-6
techiyat hameitim	V, C-17
tefach	II, H-7; V, C-9

Tefilla

Activity Before Davening

Shaving before Shacharit	IV, A-1
Eating before davening	I, H-14
Davening without a minyan vs. working before davening	III, A-3
Eating before davening in order to daven with a minyan	V, A-5
Aliya (to the Torah)	II, A-15; IV, A-10
A new beracha when the oleh was shown the wrong place	II, A-12
Giving the second aliya to one with a doubtful levi status	III, A-13
Honors for the younger congregants	IV, A-11
Leaning during an aliya	IV, A-14

Oleh reading along with the ba'al korei	IV, A-13
Dealing with a mistake found in a sefer Torah during laining	III, A-14
Correcting a mistaken opening beracha for Torah reading	III, A-15
Covering the Torah during the aliya's concluding beracha	I, A-12
Hosafot on Yom Tov that falls on Shabbat	I, A-11
hosafa	I, A-11
Aveilim - Forming a separate minyan due to multiple mourners	III, A-4
beit kneset - see Tefilla/Place of Prayer	
Birkat Kohanim	IV, A-4
An Ashkenazi doing Birkat Kohanim in a Sephardi minyan in chutz la'aretz	III, A-17
Must levi'im wash the hands of kohanim?	III, A-16
Birkat Kohanim of Ne'ila after sunset	IV, D-2
Birkat Kohanim with a cast	IV, A-15
Delay between Birkat Kohanim and Sim Shalom	V, A-10
Steps to enable a kohen to be ready for Birkat Kohanim	IV, A-16
When to go up for Birkat Kohanim	III, A-18
Chazan	II, A-7; II, A-9; II, A-11; V, A-10
Qualifications- a wheelchair bound chazan	III, A-6
A chazan wearing short pants	V, A-6
A chazan who has animosity towards a congregant	IV, A-6
Chazan repeating words	III, A-8
Separate minyanim due to multiple mourners	III, A-4
Honors for younger congregants	IV, A-11
Singing along with the chazan	II, A-6

Chazarat HaShatz

Continuing a minyan with less than ten	IV, A-4
Number of people needed for chazarat hashatz	I, A-10
At what points during davening may a gabbai speak?	III, A-10
Responding to adjacent minyanim	II, A-2
Singing along with the chazan	II, A-6
How to carry out Heiche Kedusha (short chazarat hashatz)	III, A-2
Standing during chazarat hashatz	IV, A-7
Communal changes- Creating a new shul or changing customs	II, H-8
Concentration in tefilla- Davening by heart	I, A-4
Concentration in tefilla- Reading parasha sheets during tefilla	I, A-2
How do converts refer to the patriarchs?	II, A-8
Devarim shebekedusha	I, A-10; V, A-8; V, A-9
Continuing a minyan with less than ten	IV, A-4
Responding to adjacent minyanim	II, A-2
Disturbing others- Walking in front of someone who is davening	I, A-8
Elokai Neshama	II, D-20; IV, A-9
Elokai Netzor	III, A-1; IV, A-16
Gabbai- At what points during davening may a gabbai speak?	III, A-10
geula	IV, A-3
Haftara	IV, A-10
Mistakes in the reading of the haftara	V, A-13
The origin and meaning of the haftara	II, A-3
Must the oleh for maftir read along?	III, A-11
Hefsek (interruption)	I, A-2

Stopping during tefilla to use the bathroom	IV, A-17
Accompanying the chazan with singing or humming	IV, A-2
At what points during davening may a gabbai speak?	III, A-10
Tefilla while babysitting	I, A-13
Chazan repeating words	III, A-8
Steps to enable a kohen to be ready for Birkat Kohanim	IV, A-16
Kaddish	III, A-4; IV, A-4
Kaddish D'Rabanan when parents are alive	I, A-6
The Kaddish after kri'at haTorah	V, A-12
Who says the Kaddish following kri'at haTorah?	II, A-13
Which comes first- Kaddish or HaGomel?	II, A-15
Kaddish HaGadol for burial and a siyum	IV, A-19
Kedusha	III, A-2; IV, A-8; V, A-1
Accompanying the chazan with singing or humming	IV, A-2
Listening to Kedusha during one's silent Shemoneh Esrei	II, A-9
Kibudim - Honors for younger congregants	IV, A-11
Kri'at HaTorah - see also Tefilla/Aliya	III, A-10; III, D-13; III, F-1; IV, A-4; V, D-5
A mistake in a pasuk with HaShem's Name	IV, A-12
Dealing with a missed parasha when traveling to Israel	II, A-10
Making up missed part at Mincha of Shabbat	II, A-16
Opening the wrong sefer Torah	I, A-14
Repeating questionable words in Parashat Zachor and Megillat Esther	V, D-9
Starting Mincha of Shabbat slightly early	III, C-9

The Kaddish after kri'at haTorah	V, A-12
Dealing with a mistake found in a sefer Torah during laining	III, A-14
When during Torah reading may one not talk?	IV, A-10
Which comes first- Kaddish or HaGomel?	II, A-15
Who says the Kaddish following kri'at haTorah?	II, A-13
Going to a place where group will miss Torah reading	I, A-7
Kri'at Shema Al Hamita- Recitations for those who sleep by day	IV, A-9
Kri'at Shema	III, A-9; III, F-7; IV, A-17; V, A-2; V, F-2
Davening when waiting for tefillin	IV, A-3
Reciting the three parshiyot of Kri'at Shema before davening	V, A-11
Steps to ensure Kri'at Shema is recited at the right time	II, A-14
Maftir	IV, A-10
Must the oleh for maftir read along?	III, A-11
Mechitza- The need for a mechitza in the absence of a minyan	V, A-9
Me'ein Sheva (Magen Avot) at a minyan not held in a shul	IV, A-18
Mincha	II, A-16; IV, D-8
A brit mila or Mincha- which is done first?	III, A-5
Starting Mincha of Shabbat slightly early	III, C-9
One who davened Mincha instead of Ma'ariv	III, A-9
A woman who missed Mincha	III, A-7
Minyan	II, D-13; II, H-8; III, F-1; IV, D-8

A minyan split between adjacent rooms	V, A-7
Continuing a minyan with less than ten	IV, A-4
Davening with a minyan vs. vatikin	II, A-5
Davening without a minyan vs. working before davening	III, A-3
Eating before davening in order to daven with a minyan	V, A-5
How long to wait for a minyan	I, A-3
Lack of unity at “unified” minyan	V, A-8
Minyan for Megillat Esther- Is it required?	I, D-12
Number of people needed for chazarat hashatz	I, A-10
Preference of davening in shul	V, A-3
Responding to adjacent minyanim	II, A-2
Taking time off from work to daven with a minyan	I, A-5
Separate minyanim for multiple mourners	III, A-4
Mistakes in kri’at haTorah	II, A-16; V, A-13
Modim D’Rabbanan- Incomplete standing	III, G-9
Non-Jewish caregiver accompanying infirmed to shul	II, H-9
Nusach hatefilla- Lack of unity at “unified” minyan	V, A-8
Parashat Tzitzit- Reciting all of Kri’at Shema before davening	V, A-11
Place of prayer- Preference of davening in shul	V, A-3
Place of prayer- Set seat in shul	I, A-1
Pronunciation- Changing family traditions of pronunciation	II, A-7
Pronunciation- The correct pronunciation of a kamatz katan	III, A-12
P’sukei D’Zimra	IV, A-17; V, A-14
Shortening Psukei D’Zimra to catch up	V, A-1

Skipping to Shemoneh Esrei and making up what was missed	V, A-2
Rain- When an Israeli traveler abroad starts asking for rain	II, A-11
Respect for tefilla- A chazan wearing short pants	V, A-6
Sefer Torah	
Covering the Torah during the aliya's concluding beracha	I, A-12
Opening the wrong sefer Torah	I, A-14
Dealing with a mistake found in a sefer Torah during laining	III, A-14
Shacharit	III, F-7
Latest time to daven Shacharit	I, A-9
Shemoneh Esrei	
Davening when waiting for tefillin	IV, A-3
How to carry out a shortened chazarat hashatz	III, A-2
Individual requests in Shemoneh Esrei	II, A-1
Listening to Kedusha during one's silent Shemoneh Esrei	II, A-9
Making up a tefilla with no net gain	V, A-4
One who davened Mincha instead of Ma'ariv	III, A-9
One who is unsure where he is in davening	II, A-4
Repeating Shemoneh Esrei by mistake	IV, A-5
Shortening P'sukei D'Zimra to catch up	V, A-1
Skipping to Shemoneh Esrei and making up what was missed	V, A-2
Steps to enable a kohen to be ready for Birkat Kohanim	IV, A-16
Walking in front of one who is davening	I, A-8
What one can do while waiting to take three steps back	III, A-1

Shomeiah Tefilla	V, A-4
standing/leaning	IV, A-7; IV, A-14
sof zman Kri'at Shema	II, A-14; IV, A-3; V, A-2; V, A-11
sof z'man tefilla	V, A-14
Tachanun- Omitting Tachanun in the presence of newlywed	IV, H-5
tefilla b'tzibbur	I, A-5; II, A-9; IV, A-8; V, A-1
tefillat nedava	I, A-9; IV, A-5; V, A-4
Timing Issues	
Latest time to daven Shacharit	I, A-9
Starting Mincha of Shabbat slightly early	III, C-9
The time of Selichot	III, D-1
Priorities for a slow davener	IV, A-8
Vatikin- Davening with a minyan vs. vatikin	II, A-5
Yehiyu l'ratzon	III, A-1
Zechirat yetziat Mitzrayim- Is it from the Torah? Are women commanded?	I, A-15

End of Tefilla

Tefillin	II, A-5; II, G-10; III, I-10; V, A-11
Berachot for one who took the wrong tefillin	I, G-10
Chatzitza- Tefillin on an immobilized arm	IV, F-5
Chatzitza- Is long hair a problem for tefillin?	III, F-8
Davening when waiting for tefillin	IV, A-3
Non-Jewish caregiver attaching tefillin for infirm	II, H-9
One who makes the wrong beracha on tefillin shel yad	III, F-9
Proper position of tefillin shel rosh	I, G-1

Tefillin - Tzedaka

Readjusting tefillin that slipped	IV, F-4
Shechecheyanu the first time one puts on tefillin	I, B-2
Tallit and tefillin during Selichot	V, F-2
Tefillin for questionably left-handed man	II, G-12
The permissibility of selling inherited tefillin	V, F-5
Wearing tallit or tzitzit in the bathroom	II, G-5
Telecommunication- Hatarat nedarim by Skype	V, G-6
tereifa	III, E-5
teruma(ot)	III, A-13; IV, G-4
teshuva	I, H-5; IV, D-19
Thanking HaShem after a “false alarm”	IV, G-3
tiltul b’gufo/min hatzad	III, C-10; IV, C-8
t’liya	III, D-19
toch k’dei dibbur	III, F-9
Tochacha	IV, C-3
Guidelines on warning people about forbidden actions	IV, G-5
Torah study- What type to focus on?	V, G-3
tovat hana’a	I, F-2
Travelers’ questions	I, D-17; II, A-10; II, A-11; II, D-19; III, F-1
tumah	IV, G-12
tza’ar ba’alei chayim- see Animals	
tzara’at	II, E-2
Tzedaka	V, F-5
Adoption- which child has precedence?	I, F-3
Changing tzedaka recipients	II, F-2
Guidelines for distributing tzedaka	II, F-3

Tzedaka - Tzitzit

Making change from a tzedaka box	II, F-4
Pressuring a business to contribute	I, F-1
The best way to spend money on Israel	V, G-5
Tzedaka expenses	I, F-5
Tzedaka if a sefer Torah falls	I, G-7
Tzedaka from money earned in a prohibited manner	I, K-3
Ma'aser kesafim	IV, D-10
Calculating ma'aser kesafim	IV, G-6
Does hosting count as giving tzedaka?	III, G-1
Giving ma'aser in a friend's name	I, F-2
Spending tzedaka to visit the sick	I, F-4
Various ma'aser kesafim issues	I, F-5
Which donations do not count toward ma'aser kesafim?	II, F-1
tzeit hakochavim	II, D-9; III, D-12; IV, D-2
tzibbur	III, A-2; V, A-1; V, A-7; V, A-14
Tzidkatcha	IV, H-5
tziruf	V, A-7
tzitz	I, G-8
Tzitzit	
Beracha on tzitzit/tefillin after break in performance	II, G-10
Dealing with loosened tzitzit knots	IV, F-3
How to dispose of old tzitzit	II, G-8
Respect for tzitzit- sleeping with tzitzit on	II, G-11
Tzitzit when ripped garment is repaired	V, F-4

The timing for the beracha on tzitzit after being up all night	V, F-3
Trying on a tallit katan without tzitzit	III, F-5
Tzitzit attached by a minor	IV, F-2
Wearing tallit or tzitzit in the bathroom	II, G-5
When can the beracha on a tallit count for tzitzit?	IV, F-1
Tallit	
Berachot a one who took the wrong tallit	I, G-10
Checking the tzitzit of a shul tallit	III, F-6
Should a single man wear a tallit?	III, F-7
Tallit and tefillin during Selichot	V, F-2
tzniut- see Modesty	
tzorech gufo/tzorech mekomo	III, C-18
Veganism- Jewish attitude towards veganism	IV, G-10
vegeterianism	II, H-3
v'ten tal u'matar	II, A-11; V, A-4
Wedding- see Marriage, Sheva Berachot	
Women and mitzvot	
Women lighting Chanuka candles	II, D-10
Women making Havdala	II, C-8
Women eating and drinking before Kiddush	II, C-4
Melaveh malka for women	V, C-17
A woman who missed Mincha	III, A-7
Remembering the Exodus- Are women commanded?	I, A-15
Blowing shofar on behalf of women	I, D-2
Blowing shofar for homebound women	II, D-2
Tzitzit attached by a woman	IV, F-2
Ya'aleh V'Yavoh	V, A-4
yad soledet bo	II, C-18; III, E-3

Yahrtzeit- When to commemorate in leap years	II, H-12
Yamim Nora'im	III, D-1
yei'ush	II, J-6; III, I-16
yeiush shelo mida'at	II, J-2
yerek (vegetable)	IV, B-8
yeshiva	III, I-12
yeti'at Mitzrayim	V, D-13
yichud	III, H-2
yishuv Eretz Yisrael	V, D-18; V, G-5
yohara	III, H-3; V, D-1
Yom Ha'atzma'ut/Yom Yerushalayim- see Mo'adim/Sefirat HaOmer	
Yom Kippur	II, D-21
Children fasting on Yom Kippur	I, D-4
One who must eat- how careful about the amount	III, D-5
Intravenous nutrition on Yom Kippur	IV, D-3
Outlook of one who must eat on Yom Kippur	I, D-3
Havdala after Yom Kippur that fell on Shabbat	III, D-7
Kaparot- Which donations do not count toward ma'aser kesafim?	II, F-1
Korim- Precautions for bowing down on a stone floor	II, D-3
Ne'ila- Birkat Kohanim of Ne'ila after sunset	IV, D-2
Ne'ila- Must one stand throughout Ne'ila	III, D-6
Paid vacation for Yom Kippur	II, J-8
Asking forgiveness when it hurts the victim	I, H-5
Washing one's face on Yom Kippur	V, D-3
Yom Tov- see also Moadim/Yom Tov	V, G-7

Yud Gimmel Middot	III, D-1; V, A-8; V, F-2
zabla	IV, I-1
zecher	IV, D-10
zechirat Amalek	V, D-9
zechirat yetziat Mitzrayim	I, A-15; V, A-11
zeh v'zeh goreim	IV, E-1
zeiah	I, E-7; IV, E-3
zilzul	III, F-1
zimun- see also Berachot/Zimun	III, H-3; V, A-7; V, B-4
z'rizin makdimin l'mitzvot	II, I-3

Thematic Index

ability to contribute	I, K-2
actions of those who are not obligated	IV, F-2
asking permission in a case of doubt	V, I-7
atmosphere in tefilla	I, A-2
avoiding "holier than thou"	II, A-14
avoiding "holier than thou", excessive chumra	V, D-1
avoiding <i>machloket</i> (disputes), unity	II, A-13; V, A-8
avoiding embarrassment	V, A-13
baby	I, A-13
bad omen	I, A-6; II, H-4
behavior that sanctifies His Name	II, J-7; II, J-8
changing minhag with changing situation	I, D-1
changing needs of a community	IV, F-6
chillul HaShem (desecrating HaShem's Name)	I, A-3; I, H-2
choice between mitzva preferences	II, A-5
chumrot (stringencies)	V, D-11; V, D-16
clarifying misunderstandings	IV, B-2
communal responsibility	I, I-1
compassion for handicapped	III, A-6
complexity of Torah life, dealing with insensitivity	III, G-2
concern for animals	II, C-15
concern for chillul Shabbat	I, D-1
concern for health	II, H-3
concern for others	I, A-1; I, A-8; II, C-3
consideration of great need	I, C-3; I, E-2
considering differing circumstances	IV, E-4

Thematic Index continued

cost of mitzva	I, A-5
dealing with doubt	II, A-4; II, A-11; II, A-12; II, B-3; II, B-6; II, D-18; III, B-3; III, B-7; III, B-8
dispensations in the case of mitzva	II, C-17
eating before a mitzva	I, C-5
embarrassing father	I, I-5
embarrassing people, family relationships	II, H-5
embarrassing people, guest/host relationship	I, C-16; I, D-18; II, C-7
embarrassing the handicapped	II, H-13
fitting in with the public	I, H-6
impact of law and common practice on monetary halacha	V, I-3; V, I-8
individuality in service of Hashem	V, B-1
influence of Kabbala	V, A-1; V, A-2
intention to cover other matters	I, B-6
interaction with non-Jews	II, H-9
involvement of community in davening	IV, A-2
Israel/diaspora issues	II, D-7; II, D-8; III, A-17; III, H-1; III, H-7; IV, D-6; V, D-6 V, D-10
Jewish national history	III, G-6
kabbalistic practices vs. halachic preferences	II, G-11
leniency to avoid loss	I, C-9
levels of mitzva obligation	I, B-7; III, C-3; V, C-16
menschlichkeit	III, C-1; V, I-8 V, I-11
minimizing the need for necessary leniency	II, C-1
mitzvot bein adam lachaveiro	III, G-1

Thematic Index continued

moral high ground in monetary matters	III, I-1
mysterious danger	II, I-1
non-standard ceremonies	I, H-1; I, H-4
origin and development of Jewish practices	II, A-3; III, G-5
people with different rulings	III, I-10
personal and communal obligations	II, A-10
privacy	II, H-13
prohibitions based on danger	II, E-2; II, H-2
rationalizations	I, K-3
regard for accepted minhag	V, C-16
rejecting unwarranted stringency	II, E-4
relations with the non-religious	IV, C-2; IV, C-3
relations with the non-religious, educational challenges	I, B-1
relationship with children	I, J-3
relationships with others	I, H-5
respect for parents	I, A-6
respect for sefer Torah	I, A-14
rules of minhag	III, D-21
setimat haposkim	IV, D-13
State of Israel	I, F-6
steps to avoid chillul Hashem	IV, G-10
time-zone issues	I, D-17; II, D-19
tircha d'tzibbura (inconveniencing a community)	II, A-16; II, B-7
wisdom and practicality in applying halacha	IV, G-2
work ethic	I, A-3; I, A-5
yohara (holier than thou)	IV, A-7