

Living the Halachic Process
Volume VI

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

Volume VI

Answers to Queries sent to the

ERETZ HEMDAH INSTITUTE

Headed by

Rabbi Yosef Carmel

Rabbi Moshe Ehrenreich

by

Rabbi Daniel Mann



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Eretz Hemdah Institute

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In Loving Memory of

Rabbi Emanuel and Pesha Gottleib ז"ר

our beloved grandparents

Their love for their children,
grandchildren, and great-grandchildren
was paralleled only by their love for
TORAH, LEARNING, and ERETZ YISRAEL

Shprintzy and Effy

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

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**

*This book is dedicated in memory of our
beloved parents and role models:*

Yaakov Ben Yitzhak Almosnino, A"H

Yitzhak Ben Chaim Gamel, A"H

Lea Bat Estrea Altzoya Almosnino, A"H

Hanula Bat Mazaltov Mezistrano Resnik, A"H

May their souls be blessed
and counted among the righteous.

With everlasting love,

Eli and Rebecca Almo

Seattle, Washington

In memory of

Rabbi Solomon and Mrs. Dora Einhorn,
alei hem hashalom.

שלמה בן גדליה דוד אינהורן
ח' באב תשע"ב (27 ביולי 2012)

דורה אינהורן (לבית בנדט)
ז' בתמוז תשע"ד (5 ביולי 2014)

The Einhorns were born and educated in Romania
but lived also in Israel
and in several communities in the US.
Rabbi Einhorn served in important roles in
Jewish education wherever they settled.

May their memory be a blessing

ת.נ.צ.ב.ה.

To my friend and teacher Harav Mann :

I continue to be in awe
of all that you do.
I am truly inspired by your teachings
and even more so
by your acts of chesed and tzedaka.
Most importantly you do it all with humility.
I am fortunate to know you
as a teacher and as a friend.
May you continue to be a leader
and teacher, ad meah v'esrim.

Alan Weichselbaum

In loving memory of

Meyer Penstein

מאיר יוסף בן אברהם ז"ל

His ahavat Torah knew no bounds.

Chani and JJ Hornblass

In Honor of
Rabbi Daniel Mann

In Memory of
Rabbi Sidney Goldstein, z"l
הרב שלום בן חיים נח הלוי ז"ל

from the families of

Roger & Rebecca Fine
Milltown, New Jersey
&
Rabbi David and Dr. Julie Fine
Modiin, Israel

Foreword

In regard to the menorah in the Temple, the *pasuk* says: “Six branches extended from its sides” (Shemot 37:18). The *menorah* is the symbol of the broad teaching of Torah and lighting up the material world through the spirit. The *menora*, which stood in the south of the Temple, was the symbol of wisdom, and therefore the Rabbis said, “He who wants to become wise should go to the south” (Bava Batra 25b).

Rav Daniel Mann and the Eretz Hemdah Institute both have the privilege to publish the sixth volume of *Living the Halachic Process*, taken from among the responsa of our Ask the Rabbi project. This project gives an important address for individuals throughout the world to receive halachic guidance according to the approach of Eretz Hemdah – “its paths are paths of pleasantness” (Mishlei 3:17). Rav Daniel Mann also serves as an *av beit din* (senior Rabbinical judge) in our network of *batei din*, Eretz Hemdah-Gazit, which serves society by solving monetary disputes even in a time of complex modern financial structures. Continuing the metaphor, in this way too we can say that the six branches of the *menora* gave their light opposite the middle candle, representing the Divine Presence which is based in the west. In that way, the words of the Rabbis that he who wants to be wise should study the laws of monetary affairs (Bava Batra 175b) finds expression.

In his responses, Rav Mann brings the various sources and possibilities for each question and strives to find the balance between all of the factors that influence the answer. This brings to fruition one of the most important matters in Judaism in general and in issuing halachic rulings specifically. This is walking on the “road of the king” or the golden path, as the Rambam refers to it.

LIVING THE HALACHIC PROCESS

It is our prayer that we will reach the “seventh candle” (i.e., the next volume) as well, which will enable us to continue spreading the great light of the Torah.

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 5771-5776.

When publishing a book, it is difficult to know what setting the future reader will be in and what he will know about the background of the author when he was writing or preparing the book. Matters that were in the forefront of the mind of the author and his generation may be unknown or unappreciated blips on the greater screen of history. One who knows the basics of the first century of Israeli history may guess that there was likely to have been some war or rash of terrorist activity at or around the time of the writing of this book. Indeed, this volume includes a question that arose from the danger that abounded at the time of Operation Tzuk Eitan. But for the most part, the questions and answers in this volume were written at mainly “normal” times.

In contrast, much of the last year of the preparation of this volume for publication was lived under an unprecedented time from the perspective of our generation – the period of the Coronavirus, which not only claimed many hundreds of thousands of lives around the world but transformed the daily life of our society. In Israel, older members of our community have gone many months practically without leaving their homes or greeting friends and even close relatives inside them. Younger people experienced weeks of lockdown and individual quarantines and months of heightened alert about everything they encountered outside their home. Many people lost their previous sources of livelihood.

Does this volume look any different than the previous ones because of the times during which it was prepared for print? I imagine it is not noticeably different. However, it is my belief that *sefarim*, especially ones within the genre of responsa, are testaments not only to the Torah studied but to the place in Jewish history that they represent. As one of the representatives of Eretz

Hemdah and its Ask the Rabbi service, I have had the fascinating privilege to witness our efforts to take the skills that we have collectively honed over decades and put them to the test. We have had to deal with new questions arising quickly and have taken part in the rabbinic community's efforts to rule quickly, sensitively, and responsibly. We have tried our best to think of new solutions. We have embraced the responsibility to use our understanding of the world of science and quickly expand it to deal with new findings in the world of epidemiology, in consultation with professionals in the field. We actually did quickly publish a work on questions related to the pandemic that we were involved in (our *yasher koach* wishes to Rav Ofer Livnat for heading that project). While this volume of *Living the Halachic Process* stays true to the time-period of 5771-5776 and does not include "Corona questions," we felt that it would be ignoring the Hand of Hashem to not mention this matter in the forum of the preface.

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 the project of an individual, 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 seventh collaboration. May HaShem grant us many more years of joint study and projects in good health. My sincere thanks to my dear friend and colleague Rabbi Menachem Jacobowitz for editing part of the volume, with his scholarship and care for precision.

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. Rut Saadon and Renana Piniss did a fine job on the typesetting, the graphic design, and arranging the source sheets, which are available online and upon request. We once again thank Riki Freudenstein who, from the beginning, has been proofreading 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 Rozenhak, 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 queriers and the staff of respondents, respectively, in a timely fashion.

Having been affiliated with Eretz Hemdah for more than 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. We note with sadness the recent passing of Moshe Wasserzug, our dedicated board member from the beginning of Eretz Hemdah until his passing.

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. 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 to and enthusiasm for *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. May the efforts of so many of our fellow Jews in various elements of the promulgation of Torah and a broad variety of good deeds help us nationally and globally merit HaShem's assistance in ending this painful pandemic.

Rabbi Daniel Mann
Eretz Hemdah Institute
Marcheshvan 5781, November 2020

Contents

TEFILLA (PRAYER)

A-1: Traveling Before <i>Davening</i>	1
A-2: Waking Up to <i>Daven</i>	3
A-3: Pressuring Participants in a <i>Minyan</i> Not to Miss	7
A-4: A Make-Believe <i>Minyan</i> for Children	10
A-5: <i>Davening</i> at the Same Time as a <i>Minyan</i>	13
A-6: Does One Starting <i>Shemoneh Esrei</i> with the <i>Chazan</i> Count for a <i>Minyan</i> ?	16
A-7: Priorities in Last-Minute <i>Shacharit</i> for Women	19
A-8: When the Tenth Man Will Leave Early	22
A-9: Short Pants for <i>Davening</i> on Shabbat	25
A-10: <i>Kri'at HaTorah</i> of <i>Shabbat Mincha</i> at Non-Standard Times	28
A-11: Giving a <i>Yisrael</i> an <i>Aliya</i> When a <i>Kohen</i> Remains in <i>Shul</i>	31
A-12: Running Out of <i>P'sukim</i> after the Second <i>Aliya</i>	34
A-13: Should a <i>Kohen</i> Prefer a <i>Minyan</i> with an Additional <i>Kohen</i> ?	37
A-14: Mistakes in the Order of <i>Kaddish</i> and <i>Barchu</i>	40
A-15: Children in Diapers in <i>Shul</i> During <i>Davening</i>	43
A-16: Reading <i>Kri'at Shema</i> With <i>Trop</i>	46

BERACHOT (BLESSINGS)

B-1: <i>Beracha</i> on Homeopathic Medicine?	51
B-2: The <i>Beracha</i> on Vegetable Soup Broth	54
B-3: The <i>Beracha</i> on Pureed Vegetable Soup	57
B-4: <i>Beracha Acharona</i> on Fruits of Different Categories	60
B-5: <i>Zimun</i> of Those who Ate Milk with Those who Ate Meat	63

LIVING THE HALACHIC PROCESS

B-6: <i>Shehecheyanu</i> on Fruit for a Visitor from a Place with Constant Access	66
B-7: Fulfilling <i>HaGomel</i> with a Different <i>Beracha</i>	69
B-8: Making <i>Berachot</i> upon Seeing Animals	72
B-9: <i>HaMapil</i> for those Who Go to Sleep Before Night	75

SHABBAT

C-1: Sunbathing on Shabbat	81
C-2: Doing Work for Someone for Whom it is Still Shabbat	84
C-3: Reheating Microwaved Food on Shabbat	87
C-4: Returning Food to an Oven with a Shabbat Mode	91
C-5: Use of a Ladle for Hot Soup on Shabbat	94
C-6: Use of a Crock Pot on Shabbat	97
C-7: Food Heated by a Non-Jew on Shabbat	100
C-8: Using a Blanket to Cover a Shabbat Hot Plate	103
C-9: Mashing and Mixing Avocado Salad on Shabbat	106
C-10: Mistake on Shabbat Regarding the Use of a Masher	109
C-11: Using Diapers with Disintegrating Markings on Shabbat	112
C-12: Using a Rickshaw on Shabbat	115
C-13: Wearing a Reflective Armband Without an <i>Eiruv</i>	118
C-14: <i>Muktzeh</i> in a Pocket	121
C-15: Folding a Page as a Marker on Shabbat	124
C-16: Coin Collection on Shabbat	127
C-17: One Who Lit Shabbat Candles Properly but Failed to Use Them	130
C-18: Removing Air from a Wine Bottle on Shabbat	133
C-19: Undoing Early Acceptance of Shabbat	136

MO'ADIM (FESTIVALS)

D-1: A Woman Blowing <i>Shofar</i> for a Man	141
D-2: Is it Wise to Keep <i>Teru'ot</i> to a Minimum?	144

ERETZ HEMDAH INSTITUTE

D-3: Eating on <i>Erev Yom Kippur</i>	148
D-4: <i>Avinu Malkeinu</i> when Yom Kippur Falls on Shabbat	151
D-5: Disqualification of an <i>Etrog – Pitam</i> and <i>Oketz</i>	154
D-6: <i>Kiddush</i> of <i>Yom Tov</i> that Falls on <i>Motzaei Shabbat</i>	157
D-7: The Need for a <i>Shamash</i> Candle Nowadays	160
D-8: Chanuka Lighting for those in Transit	163
D-9: Chanuka Lighting and <i>Havdala</i> – Which Comes First?	166
D-10: Women’s Obligation to Hear <i>Parashat Zachor</i>	169
D-11: Noise-Making during <i>Megilla</i> Reading	172
D-12: <i>Megilla</i> Reading for Visitors to Jerusalem	175
D-13: Checking Books for <i>Chametz</i>	178
D-14: Participation in a <i>Siyum</i> by Skype	182
D-15: Roasted Foods on Pesach	185
D-16: <i>Kitniyot</i> Observance for Vegetarians and Vegans	188
D-17: Special Preparations for a <i>Seder</i> on Shabbat	192
D-18: Lack of Confidence to Make a <i>Beracha</i> on <i>Sefirat HaOmer</i>	195
D-19: Tisha B’Av Restrictions after Tisha B’Av	199

KASHRUT

E-1: Eating <i>Chezkat Chalavi</i> Foods after Meat	205
E-2: <i>Pareve</i> Food Cooked in a Meat Utensil	209
E-3: <i>Pareve</i> Food in Meat Utensils and then Milk Utensils	212
E-4: Tasting Unsupervised Wine	215
E-5: Providing Non-Kosher Food for Non-Jewish Workers	218
E-6: Working in a Non-Kosher Establishment	221

HOLY ARTICLES

F-1: How to Tell When Your <i>Tefillin</i> Need Adjustment	227
F-2: Transferring Legal Ownership of a <i>Sefer Torah</i>	231
F-3: Changing a Shabbat <i>Tallit</i> into a Weekday One	234

LIVING THE HALACHIC PROCESS

F-4: Taking a <i>Yad</i> into a Bathroom	237
F-5: Disposing of Cups Used for <i>Netilat Yadayim</i>	240

MISCELLANEOUS

G-1: The Halachic Propriety of Cosmetic Surgery	245
G-2: Leaving <i>Eretz Yisrael</i> for a Trip	248
G-3: Fulfilling a <i>Mitzva</i> without Intention	251
G-4: Public Acknowledgment of Sin	254
G-5: Torah Knowledge for the Non-Observant	257
G-6: Paying a Debt for a Poor Borrower in Place of the Guarantor	260
G-7: Receiving Interest Payments from the Government	263
G-8: The Basis for a Meal of Thanksgiving	266
G-9: Respectful Disposal of Bread	269
G-10: Selling Property Used as a <i>Shul</i>	272
G-11: Removing Hair from Eyebrows	275
G-12: How Much Water to Use for <i>Netilat Yadayim</i>	278
G-13: Cutting Down Fruit Trees for Recreational Purposes	281
G-14: Irresponsible Halachic Responses?	284

FAMILY LAW

H-1: Therapeutic Disrespect Toward a Parent	289
H-2: Celebrating a Girl's Birth	294
H-3: Conflicting Commemorations	297
H-4: A Brit Mila Meal	300
H-5: How Can the Rabbi Make the "Groom's <i>Beracha</i> "?	303
H-6: Giving <i>Tzedaka</i> during <i>Aveilut</i>	306
H-7: Undesirable Stringencies in <i>Ketubot</i>	309
H-7: Filling in a Copy of the <i>Ketuba</i> After the Fact	312

MONETARY LAW

I-1: A Sales Price Based on False Information	319
I-2: Paying the Fee of a Technician Who Refused to Give an Estimate	322
I-3: A School's Responsibility for Confiscated Items	325
I-4: Paying a Matchmaker for a Child's Engagement	328
I-5: Paying for a Program Canceled due to a National Emergency	331
I-6: Causing a Person to Damage a Third Person	334
I-7: Halachic Ramifications of Ad-Blocks	337
I-8: Forcing a Seller to Make the House Legal	340
I-9: Allowing Misused Checks to Be Cashed	343
I-10: A Lost Item at a Large Public Gathering	346
I-11: Monetary Morality of Leftovers	349
I-12: Ethical and Procedural Questions for Litigants	352
Glossary/Index	357
Link to Index for Volume I-VI	385

Section A:
Tefilla (Prayer)

A-1: Traveling Before *Davening*

Question: There is no local *minyan* at which I can *daven* and still get to work on time. Is it permitted for me to travel to the area of my job and *daven* there with a *minyan*, or does that violate the ruling of the *Shulchan Aruch*¹ that does not allow traveling before *davening*? Would it be better to *daven* without a *minyan* before traveling?

Answer: There are a number of activities that one is to avoid before *davening*. The main issues are eating, drinking, doing work, traveling,² and greeting people.³ Each of these rules has exceptions, either due to need (e.g., one must greet a dangerous person⁴) or because a certain activity is too minor to be considered significant (e.g., drinking water⁵). It seems, however, that the rule is intrinsically more limited regarding traveling.

Indeed, if we were to understand the prohibition of traveling before *davening* too broadly, the *halachot* would end up being inconsistent, as traveling to *shul* is clearly not a bad thing to do. On the contrary, the *Mishna Berura*⁶ writes that if there are two *shuls* in town, it is preferable that one go to the *shul* that is farther away so that he can be rewarded for the extra travel. Furthermore, consider the *halacha* that if there is a *shul* within eighteen minutes from one's house, he is expected to go there to *daven* with a *minyan*, but he is not required to travel if it is farther away than that.⁷ We do not find any statement that if the *shul* is more than eighteen minutes away, it is preferable to *daven* at home because of the prohibition to travel before *davening*. In

1. *Orach Chayim* 89:3.

2. *Ibid.*

3. *Ibid.* 2.

4. See *Mishna Berura* 89:10.

5. *Shulchan Aruch* op. cit. 3.

6. 90:37.

7. *Shulchan Aruch, Orach Chayim* 90:16, with *Mishna Berura* ad loc. 49.

fact, if there is no *shul* in town and one is in any case going to be traveling in the direction in which there is a *shul*, he should wait to *daven* until he gets there if it is less than 72 minutes away.⁸ It therefore, seems that your traveling **to *shul***, even if in a different town or part of town, is permitted.

One might claim that there is a distinction: While it is fine to travel before *davening* if the primary purpose of the traveling is to go to a *shul*, if one is traveling to a place for personal reasons and, secondarily, there also happens to be a *shul* there, the situation could be problematic. If so, we would have to consider how to categorize your case. On the one hand, you need to travel to the area irrespective of *davening*, so maybe the traveling is really for your work obligations. On the other hand, the reason that you would travel at an earlier time is in order to get to a *minyan*.

We can ostensibly prove that traveling is permitted in this complex scenario, based on the *halacha* noted above that one who is traveling anyway waits up to 72 minutes to *daven* with a *minyan*. We see from here that an hour-plus of traveling before *davening* is preferable to *davening* first without a *minyan*, even though one is making a trip primarily for his personal, non-davening purposes. According to *Ohr L'Tziyon*,⁹ one might be able to deflect this proof, as he argues that it is only travel of at least 72 minutes that is problematic; accordingly, up to this distance the travel is fine and beyond this distance it is not only unnecessary, but also improper. However, assuming your commute is less than that, he too would permit and likely require you to travel to the *minyan*.

Therefore, our analysis indicates that traveling to another area before *Shacharit* so that one will be able to join a *minyan* is permitted and proper, even if that is not the only reason he is traveling. This is also the practice of many people.

The *Shevet HaLevi*¹⁰ discusses a case in which an individual can *daven* with a *minyan* near home but is reluctant to do so

8. Ibid.

9. II:7:6.

10. VIII:19.

because he will encounter **significantly** more traffic if he starts out later on. Instead, he would prefer to *daven* near his place of work, which is farther than 72 minutes away. The *Shevet HaLevi* recommends reciting *Birchot HaShachar* before traveling in this case, as the Rama¹¹ cites an opinion that the prohibition on travel does not apply after these *berachot* have been said. Although the Rama writes that it is “good to act stringently in the matter,” the *Shevet HaLevi* reasons that it is acceptable to be lenient in the event of need, and the ability to *daven* with a *minyan* is a valid need.

We argued above that in your case (where there is no option of a *minyan* before traveling and the *minyan* you wish to attend is presumably not that far away), it is appropriate to be lenient on fundamental grounds. Nevertheless, it is slightly preferable that you recite *Birchot HaShachar* before starting out, if this is not too difficult for you to arrange.

11. *Orach Chayim* 89:3.

A-2: Waking Up to *Daven*

Question: I will be on an overnight trans-Atlantic flight traveling east, so that during the time people normally sleep, the time for *Shacharit* will pass quickly. Is it necessary to get up to *daven*, or do we say that one who is sleeping is exempt from *mitzvot*?

Answer: You raise a fascinating question: Do *mitzva* obligations apply to a person while he is sleeping? Considering that while one is sleeping, he is not going to be making decisions, much halachic discussion focuses on what **others** should do when observing a sleeping person in a situation in which he is normally required to do something or to refrain from being in a forbidden state. However, we will also deal with one's obligation to plan ahead before going to sleep.

Certain sources indicate that when a person is sleeping, the laws of the Torah fundamentally do not apply to him. Nevertheless, there are several and stronger sources that prove that *mitzvot* do apply, at least on some level.

If rain forces one to sleep inside his house on Sukkot and the rain stops during the night, he does not have to return to the *sukka* at that point.¹ The *Beit Yosef* writes that a major part of this discussion pertains to the people of the household not being required to wake the sleeping person. The simple implication of the sources, however, is that this exemption is unique to *sukka*, since that *mitzva* does not apply to one who will be unusually bothered to be in the *sukka* under those uncomfortable circumstances.³ The classical commentaries do not speak of a sweeping rule that *mitzvot* do not apply to those who are sleeping, implying that there is no such rule.

1. *Sukka* 29a.

2. *Orach Chayim* 639; see also *Mishna Berura* 639:43.

3. Compare *Shulchan Aruch*, *Orach Chayim* 639:6 and 7.

On the other hand, Rav S.Z. Auerbach ruled that one is not obligated in *sukka*, or other *mitzvot* for that matter, when he is sleeping, and it is therefore (theoretically) permitted to remove a sleeping person from the *sukka*.⁴ In regard to what the friend of someone who is sleeping should do as the end time for reciting *Kri'at Shema* draws near, those who follow Rav Auerbach would not require waking him, though others would.⁵ Another important source involves a *kohen* sleeping in a room where someone had died. The Rama⁶ rules that people should wake the *kohen* so he can leave the premises.

In addition to the existence of distinctly different viewpoints as to the applicability of *mitzvot* to one who is sleeping, there is also logic to distinguish between fulfilling positive *mitzvot* and avoiding *aveirot*, in two directions. In some ways, being physically involved in a situation of *aveira* while sleeping may be more problematic than simply not doing a *mitzva* at that point.⁷ Conversely, even if one is exempt from a *mitzva* when sleeping, if he does not perform it, he will not be credited for what he did not do, such that there is certainly something to be gained by waking him. We may make other distinctions as well: whether a Torah-level *mitzva* (e.g., *Kri'at Shema*) or a Rabbinic one (e.g., *Shacharit*) is at stake;⁸ whether the specific person would want to be woken;⁹ and whether when the person went to sleep he realized that the problem would likely arise while he would be sleeping.¹⁰ This last distinction brings us to the crucial practical point regarding your question. It is forbidden for one to go to sleep in a manner that will likely cause him to miss a *mitzva*. In several cases, there are Rabbinical prohibitions regarding eating

4. See *Halichot Shlomo, Tefilla*, pp. 335-337.

5. See *ibid.*

6. *Yoreh Deah* 372:1.

7. *Ibid.*; see also *Shut R. Akiva Eiger* I:8.

8. See *Keren L'David, Orach Chayim* 18; *Shach, Yoreh Deah* 372:3.

9. See *Keren L'David op. cit.*; *Halichot Shlomo op. cit.*

10. *Ibid.*

or sleeping before performing a particular *mitzva*, even when one plans to perform the *mitzva* within its proper time.¹¹ This prohibition sometimes begins even before the *mitzva* applies.¹² Although *Chazal* obviously do not forbid going to sleep at night out of fear that one will wake up too late for *Kri'at Shema* and *Shacharit*, they had harsh things to say about those who are not careful to wake up in time.¹³ Therefore, irrespective of one's fundamental approach to obligations while a person sleeps, one should have a good plan **before going to sleep** to enable him to perform the *mitzva* when it becomes incumbent upon him.¹⁴

Although this may be more difficult to accomplish on a plane than at home, the difficulty does not reach the level that one can legitimately ignore the need to make a sincere effort (including asking people to wake him). If, as might happen, the plans do not succeed, then one's lack of fulfillment will be considered an *oness*,¹⁵ and he will not be deemed culpable for his failure.

11. See *Shulchan Aruch, Orach Chayim* 692:4 and *Mishna Berura* 692:15 for some examples.

12. See *Shulchan Aruch, Orach Chayim* 235:2; *Mishna Berura* ad loc. 17.

13. See *Avot D'Rabbi Natan* 21; *Pirkei Avot* 3:10 with *Bartenura*.

14. See *Halichot Shlomo* op. cit.

15. An extenuating circumstance.

A-3: Pressuring Participants in a *Minyan* Not to Miss

Question: We have a *minyan* of exactly ten men during the week, and everyone is committed to coming every day. Recently, a *tzaddik* came to town, and three regular participants in our *minyan* went to *daven* with him, leaving us without a *minyan*. There are many *shuls* in town, but we are trying to keep our *shul* going and hope it will grow. Was it right for our members to leave us without a *minyan*?

Answer: While a major component of the concept of *makom kavua* (having a set place for *davening*)¹ is to be consistent about *davening* in one's normal *minyan*,² one may certainly decide for himself when he is justified to *daven* elsewhere. Nevertheless, there is precedent for one's counterparts to prevent him from leaving them without a *minyan*.

After emphasizing the importance of *davening* with a *minyan*, the *gemara*³ states that one who does not *daven* with the community is called a “bad neighbor.” Partially based on this source, the Rivash⁴ maintains that when there is a problem putting together a *minyan*, the community can fine those who do not regularly take part in the *minyan*. The *Mishna Berura*⁵ cites the *Eliya Rabba*, who says that even those who learn and *daven* in a *beit midrash* (which is better for their learning and for their *davening*)⁶ should come to the community *shul* to make sure they have a *minyan*. The *Peulat Tzaddik*⁷ goes as far as to say that even if the local *beit*

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

2. See *Shulchan Aruch*, *Orach Chayim* 90:19.

3. *Berachot* 8a.

4. 518, accepted by the Rama, *Orach Chayim* 55:22.

5. 55:73.

6. See *Shulchan Aruch* and Rama, *Orach Chayim* 90:18.

7. (Salah) I:178 (I:176 in some editions).

knesset does not have a *sefer Torah* and some want to travel to a town that has one, individuals should not go if doing so will leave their town without a *minyan*.

What if there are other *shuls* in town, so that if one *shul* loses its *minyan* (in this case, temporarily), those remaining can find a *minyan* elsewhere? The *Aruch HaShulchan*⁸ rules that in that case, people need not go out of their way to ensure the viability of a *minyan* at a specific *shul*.

In contrast, Rav Moshe Feinstein⁹ declares that the *minyanim* at all *shuls* are worthy of preservation. His main source is the aforementioned *Eliya Rabba*, instructing the “learners” from the *beit midrash* to come to the *shul*. Since learners normally *daven* with a *minyan*,¹⁰ the *Eliya Rabba* must be talking about a case in which there is a *minyan* in the *beit midrash*, yet they are still to leave that place to make sure that the town’s *shul* has a *minyan*. Considering that there is a preference for one to *daven* in his own *beit midrash* over a local *shul*,¹¹ we further learn from the *Eliya Rabba* a concept that is very instructive for our case: Preserving an existing *minyan*, even when there are others in town, justifies giving up a religious preference.

Contemporary *poskim* concur with Rav Feinstein’s approach. The *Shevet HaLevi*¹² told yeshiva students in a town that did not have a stable *minyan* in the local *shul* to go there to ensure the *minyan* (and he considered doing so educational). Rav Moshe Shternbuch¹³ relates that he told someone who wanted to *daven* in a slow-paced *minyan* in the city instead of the fast-paced *minyan* in the suburb where he lived that he should stay with the fast *minyan*.

8. *Orach Chayim* 55:26.

9. *Igrot Moshe*, *Orach Chayim* III:16.

10. See Rama, *Orach Chayim* 90:18.

11. *Shulchan Aruch* ad loc.

12. X:9.

13. *Teshuvot V’Hanhagot* II:62.

The extent to which one should go to preserve an existing *shul* when there are others available may be related to the *halacha* that we may not demolish an existing *shul* until a new one is in place.¹⁴ The *Taz*¹⁵ writes that this *halacha* does not apply if there is another proper *shul* in town with room for the displaced. However, the *Magen Avraham*¹⁶ insists that even when there is another *shul* in town, we cannot take a *shul* out of use without a ready replacement for the affected group of people.

All of the aforementioned *poskim* discuss situations in which there will be people who will not find or agree to take part in an alternative *minyan* if the current *minyan* fails to thrive. If, in your case, everyone or almost everyone has little problem *davening* elsewhere for the day, it is not reasonable to “hold people hostage” and never allow them to miss occasionally even for a good reason. It is reasonable, however, to ask the absentees to look for people to replace them.¹⁷

14. *Shulchan Aruch, Orach Chayim* 152:1.

15. 152:1.

16. 152:5.

17. See the discussion in *Shulchan Aruch, Orach Chayim* 55:22, regarding when outsiders should be hired to complete a *minyan*.

A-4: A Make-Believe *Minyan* for Children

Question: When teaching children how to observe *mitzvot*, can they, among themselves, act as if they are *bar mitzva*? For example, can they recite *Barchu*, *Kedusha*, and *Kaddish* at a children's "*minyan*"?

Answer: There is a *machloket* among the *Rishonim* about the nature of the obligation of *chinuch* (education) for children at the appropriate ages to perform *mitzvot* that they will eventually be obligated to do as adults. Rashi¹ maintains that the child is not personally obligated, even on a Rabbinic level, to perform *mitzvot*; rather, his father is obligated to train him to perform the *mitzvot*. *Tosafot*² argues, however, that the child is personally obligated in the *mitzvot*, albeit on a lower level than an adult. There is an arguably related *machloket* as to whether the *chinuch mitzva* performance must meet formal halachic standards or whether it must simply be done in an educationally effective manner, so that the child will fulfill the *mitzva* properly when he becomes an adult.

This *machloket* is reflected in the following typical case. An adult must own the *lulav* and *etrog* that he takes on the first day of *Sukkot*³ (two days outside of Israel⁴). There is therefore a problem sharing a *lulav* and *etrog* set with one's child on that day, because when one transfers ownership to him, the child is not halachically capable of transferring ownership back.⁵ The *Shulchan Aruch*⁶ suggests that the child should use the *lulav* and *etrog* without

1. *Berachot* 48a.

2. *Ibid.* 15a.

3. *Shulchan Aruch, Orach Chayim* 649:2.

4. *Ibid.* 5 and *Bi'ur Halacha* ad loc.

5. *Sukka* 46b.

6. *Orach Chayim* 658:6.

the father transferring ownership to him, thereby avoiding the problem. The *Mishna Berura*⁷ cites two opinions as to whether the child has fulfilled his obligation under these circumstances. Rav Moshe Feinstein⁸ explains that the two opinions depend on our fundamental question: Is a child obligated to perform his *mitzvot* with all the regular detailed requirements that an adult needs, including the imperceptible requirement of ownership? In that case, the *mitzva* was not done properly, as a child must own the *lulav* and *etrog*, like an adult. Or do we hold that a child must perform the *mitzva* only so that he will know what to do when he is older, such that the imperceptible lack of ownership due to his youth is not a problem? Rav Feinstein demonstrates that the former approach to the obligation, placing the responsibilities of an adult on the child, is correct.

Turning to our case, according to the formal approach, there is no *minyan* without ten men, and the group of children is not authorized to say *devarim shebekedusha*,⁹ such as *Barchu*, *Kedusha*, and *Kaddish*.¹⁰ This case is different from that of *lulav*, where children are obligated in the *mitzva*. Here, there is no quandary for them to omit these special elements of *tefilla*, because children are not obligated to *daven* with a *minyan*. In fact, even according to the practical educational approach, having the children recite *Barchu* and the like is not a fulfillment of *chinuch*, as the educational element includes having a child becoming accustomed to recite *devarim shebekedusha* specifically with a real *minyan*.

One might argue that the general idea of getting children used to doing *mitzvot*, without necessarily fulfilling a formal *mitzva* of *chinuch*, justifies their reciting *berachot* and portions of *tefilla*

7. Ad loc. 28

8. *Igrot Moshe, Orach Chayim* III:95.

9. Particularly holy prayers that require a quorum of ten men in order to be recited.

10. *Igrot Moshe, Orach Chayim* II:98; *Nefesh HaRav*, p. 113.

that may not be recited voluntarily. The *Shulchan Aruch*¹¹ rules that one is allowed to have children practice making *berachot* even in a manner that is usually considered *l'vatala* (in vain), and an adult can answer *amen*. The *Mishna Berura*¹² adds that not only may the child pronounce HaShem's Name in an educational, non-*beracha* context, but the person teaching him can do so as well. It thus seems that one can teach children to recite *devarim shebekedusha* outside the context of a *minyan*.

However, this applies only when it is necessary to teach those specific elements to the children. One may not establish on a regular basis a “make-believe *minyan*” for children when they could learn what needs to be done in far fewer sessions. In fact, the most appropriate way to get the children used to a *minyan* is to enable them, when they are close to becoming *bar mitzva*, to join with adults or peers who are already *bar mitzva*. Staging a *minyan* on a regular basis is both halachically problematic¹³ and educationally unsound.¹⁴ (Exceptional circumstances can be discussed on an individual basis.)

11. *Orach Chayim* 215:3.

12. 215:14.

13. See *Yalkut Yosef, Tefilla* (5745 edition), pp. 189-190.

14. *Mishpetei Uziel* III, *Miluim* 2.

A-5: Davening at the Same Time as a Minyan

Question: The *Shulchan Aruch*¹ rules that one who cannot make it to a *minyan* should try to *daven* at the same time as a *minyan*. How is this to be carried out in places where there are multiple *minyanim*?

Answer: There are several sources about connecting one's *tefilla* to that of the *tzibbur* and the means of achieving that goal. Important sections of *tefilla* require a *minyan*, and it is more respectful to HaShem to join a group when turning to Him (the larger the better²). Additionally, *davening* with a group is more conducive to the *tefilla* being accepted favorably.³

The matter of *davening* at the same time that the *tzibbur davens* arises in the context of an exchange recorded in the *gemara*.⁴ The *gemara* relates that Rav Nachman told Rav Yitzchak that he had been too weak to come to *shul*. Rav Yitzchak asked why he did not have someone tell him when the *tzibbur* was up to *tefilla* (apparently *Shemoneh Esrei*), as he would then have benefitted from the resulting *eit ratzon*⁵ to help his *tefillot*. *Tosafot*⁶ writes that there are different levels of advantage, depending on the type of connection with the *tzibbur*. When one *davens* together with the *tzibbur*, his *tefillot* are “heard”; when he *davens* at the same time but in a different place, they are “not pushed away.”

Of course, we do not understand exactly what HaShem's “hearing” means, and there are also other factors that affect how HaShem views one's *tefilla*. However, these sources give us

1. *Orach Chayim* 90:9.

2. *Mishna Berura* 90:28.

3. *Berachot* 6a.

4. *Ibid.* 7b.

5. Time of good will.

6. *Avoda Zara* 4b.

some idea as to setting goals for proper *tefilla*, according to our circumstances.

In any event, scheduling one's *davening* alone at the time of a *minyan* is not a full halachic requirement; it is a preference of which one should try to avail himself when he is not able to make it to a *minyan*.⁷ It is similar in value to the opposite case – *davening* in a *shul*, but not at the same time as the *minyan*.⁸

Let us now address your question about determining what the time of *tefilla* is when there are multiple *minyanim* in one's locale. The *Semag*⁹ makes a comment that may shed some light on the matter. He says that if there is no local *minyan*, one should follow the time that “communities of Israel” *daven*. This implies that one should ideally follow the local *minyan*, but there could be some type of official average time. However, although we do not know the extent to which there was a uniform time for *davening* in the *Semag*'s day, we clearly cannot identify such a time nowadays. (Although there is a general preference for *davening* at the time of *vatikin*,¹⁰ if the *Semag* had that in mind, he would have said so. This is certainly not the most common time.)

The *Mishna Berura*¹¹ seems to say that in places where there are many *minyanim*, starting from early in the morning, all times are acceptable. However, he and his source, the *Chayei Adam*,¹² are discussing **refraining** from *davening* **before** the right time (i.e., not too early), and they maintain that this issue does not apply when there are many *minyanim*. What should one do if he specifically wants to avail himself of the full positive element of *davening* at the same time as the *tzibbur*? *Ishei Yisrael*¹³ claims that when there are multiple *minyanim*, all times are equally positive.

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

8. Ibid. When one is *davening* with a *minyan*, however, he must not begin *Shemoneh Esrei* before them (*Berachot* 28b).

9. *Aseh* 19, cited by the Rama, *Orach Chayim* 90:9.

10. Beginning *Shemoneh Esrei* as the sun rises.

11. 90:31.

12. I, 16:3.

13. 8:(32).

*Avnei Yashfeh*¹⁴ rules, based on an unidentified *gadol*, that in such a case, there is no preference (but he gives the impression that no time has a positive element).

We prefer the following compromise approach. Rav S.Z. Auerbach is quoted as arguing that the *gemara's* implication of preferring *davening* at the time of a *minyan* requires that one focus on an individual *minyan*.¹⁵ This claim works well with a position taken by his disciple, Rav Neuwirth,¹⁶ that if one usually *davens* with a specific *minyan* but cannot join it on a certain day, he gets the positive element of *davening* when he *davens* at the time of **that minyan**, irrespective of when other *minyanim* in town *daven*. (This makes particular sense if this matter depends more on psychology than on mysticism.) Rav Neuwirth cites an interesting example from the *Sha'ar HaTziyun*:¹⁷ If one is eating *fleishig* at *seuda shlishit* during the Nine Days (and therefore must finish eating by the end of Shabbat), he should stop when his **regular shul** has *davened Ma'ariv*. If one is not connected to a specific *minyan* and there are many *minyanim* in town, there is apparently neither any requirement nor any gain in trying to correspond to any individual *minyan*.

14. *Tefilla* 6:(12).

15. *Halichot Shlomo*, *Tefilla* 5:18.

16. Cited in *Ishei Yisrael* op. cit.

17. 551:56.

A-6: Does One Starting *Shemoneh Esrei* with the *Chazan* Count for a *Minyan*?

Question: I arrived at a small *minyan* for *Mincha* just as the *chazan* was waiting for one more person needed to start *chazarat hashatz*. The question arose whether I could be counted if I started my personal *Shemoneh Esrei* along with the *chazan*, considering that I was doing my own *davening* and not answering *amen*.

Answer: If eight people plus the *chazan* had already finished *Shemoneh Esrei*, they could have started without your active participation.¹ The main source for this assertion is the *Shulchan Aruch*² (in the context of *Kaddish*), who rules that someone who is sleeping or cannot answer because he is in the midst of *Shemoneh Esrei* can count as one of the ten people needed for a *minyan*. This is derived from the *Hagahot Maimoniot*³ and is based on opinions in the *gemara*⁴ that are lenient regarding the qualifications of the tenth person for a *minyan*.

This principle is not unanimous, however. On the lenient side, some *Acharonim*⁵ maintain that it suffices for there to be six people (including the *chazan*) actively involved in the *Kaddish*. Some distinguish between the case of sleep, in which case only one person can be counted, and a situation in which some people are reciting *Shemoneh Esrei*, in which case more can be counted towards the *minyan*, as they are involved in sanctifying HaShem

1. There are both more stringent and more lenient opinions, but this is the one that we consider the most accepted; see *Tzitz Eliezer* XII:9; *Living the Halachic Process*, vol. I, A-10.

2. *Orach Chayim* 55:6.

3. *Tefilla* 8:9.

4. *Berachot* 47b.

5. See *Eliya Rabba* 55:7.

and can stop their *tefilla* to at least listen. The *Mishna Berura*⁶ is inconclusive on the matter. In the other direction, the *Shulchan Aruch HaRav*⁷ holds that for *chazarat hashatz*, as opposed to *Kaddish* and most other matters that require a *minyan*, there must be **nine** people who actually respond to the *chazan*; neither one who is sleeping nor one who is *davening* counts.

Does someone who is starting with the *chazan* count as being involved in *chazarat hashatz*, or is he like anyone else who is in the midst of *Shemoneh Esrei*? It is cited in the names of Rav S.Z. Auerbach⁸ and Rav Ovadia Yosef⁹ that one who is reading along word for word with the *chazan* counts fully toward the *minyan*, as doing so is no worse than listening and answering *amen*.

There is a classical source and application of this concept about a person who is reading along. One is not supposed to start *Shemoneh Esrei* if he will not be able to respond to *Kedusha* and answer *amen* to a few critical *berachot*.¹⁰ However, he may recite these passages along with the *chazan*.¹¹ This is because reciting the *beracha* along with the *chazan* is like answering.

Following this logic, it would seem that more than one such person should count toward the *minyan*.¹² Could we thus go so far as to say that the entire *minyan* can be *davening Shemoneh Esrei* along with the *chazan*? It might appear that we have a similar practice in *heiche kedusha*,¹³ but that is conceptually different. In *heiche kedusha*, there is actually no *chazarat hashatz*, as the

6. 55:32.

7. *Orach Chayim* 55:7, in line with the simple reading of the *Shulchan Aruch*, *Orach Chayim* 124:4.

8. *Halichot Shlomo*, *Tefilla* 9:2.

9. *Yalkut Yosef* (5745 edition), *Tefilla* 10.

10. See *Shulchan Aruch*, *Orach Chayim* 109:1.

11. *Ibid.* 2.

12. Rav Auerbach and Rav Yosef discussed a case in which the *davener* was the only nonstandard participant.

13. A shortened version of *chazarat hashatz* in which the *chazan* starts out aloud, not preceded by a personal *Shemoneh Esrei*, and after the third *beracha*, everyone recites *Shemoneh Esrei* quietly; see Rama, *Orach Chayim* 124:2.

chazan himself does not repeat *Shemoneh Esrei* but says it only once. In our case, in contrast, we probably need a majority of a *minyan* to make *chazarat hashatz* meaningful, and the people who are reading along make it considered that a full *minyan* is participating.

We see in a related *halacha* that it is not crucial to have nine people **answering amen**; it suffices that they are involved. The Rosh,¹⁴ who is the main source that nine people must be listening, says that all should answer *amen*, but he assumes the *chazarat hashatz* is valid if others are following along intently, even if they are not answering *amen*. In general, saying *amen* is an important *mitzva*, but it is not required for one to be credited with a *beracha* to which he is listening with the intent to fulfill a *mitzva*.¹⁵ (In the context of *heiche kedusha*, the Rama¹⁶ says that there should be at least one person answering.)

Therefore, had you read along with the *chazan*, you could have counted toward the *minyan*. In fact, doing that would have shown better involvement than those who were up to different sections of *Shemoneh Esrei* at the time. Whether it pays to wait for additional people who have finished *Shemoneh Esrei* before starting *chazarat hashatz* depends on a few variables, including the extent of *tircha d'tzibbura*.¹⁷

14. *Shut HaRosh* 4:19.

15. See *Shulchan Aruch, Orach Chayim* 213:2.

16. Op. cit.

17. Inconveniencing the congregation, which is sometimes a significant halachic consideration; see Rama, *Orach Chayim* 124:3, for one example.

A-7: Priorities in Last-Minute *Shacharit* for Women

Question: During vacation, my teenage daughter is willing to get up to *daven* by *sof z'man tefilla*,¹ but she does not always leave enough time to say everything and still get to *Shemoneh Esrei* on time. What should she do?

Answer: We will leave the educational part of the question to you and address the halachic elements.

Women are certainly obligated in *tefilla*.² There is a minority opinion that women can suffice by fulfilling the Torah obligation minimally by making any request of HaShem during the day.³ However, most assume that there is a Rabbinic obligation for women that mirrors men's core obligation, which requires reciting *Shemoneh Esrei*, at least at *Shacharit*.⁴ If indeed a woman's obligation is equivalent to that of a man, she too should recite the *Shemoneh Esrei* of *Shacharit* by the end of the fourth hour (i.e., a third of daylight). If she has difficulty in doing so, she can *daven* until *chatzot* (astronomical midday),⁵ as a man can.⁶ (Because there are opinions that women have a lesser obligation than men do, and because women often have various time pressures that men do not, it is not uncommon for women to follow the more lenient position.)

Strictly speaking, women are exempt from reciting *Kri'at Shema*, because it is a time-based *mitzva*,⁷ but it is recommended that they make a point to accept the principles of faith included

1. The end of the proper time for reciting *Shemoneh Esrei*.

2. *Berachot* 20b.

3. See *Magen Avraham* 106:2.

4. *Mishna Berura* 106:4.

5. See *Halichot Bat Yisrael* 2:11.

6. *Shulchan Aruch, Orach Chayim* 89:1.

7. *Berachot* 20a.

therein by reciting at least part of it.⁸

Opinions range greatly regarding *birchot Kri'at Shema*.⁹ Since women are not required to recite *Kri'at Shema*, they ostensibly should not be required to say its *berachot* either, as the *Magen Avraham* posits.¹⁰ On the other hand, these *berachot* possess an element of *tefilla*, as is evident from the fact that they may be recited after *sof z'man Kri'at Shema* as long as it is still within the time of *tefilla*.¹¹ Rav Ovadia Yosef¹² rules that Sephardi women, who generally do not recite *berachot* on *mitzvot* from which they are exempt, should never recite *birchot Kri'at Shema* or even the *berachot* of *P'sukei D'Zimra* with HaShem's Name. Nevertheless, some *poskim* say that Sephardi women may voluntarily recite *birchot Kri'at Shema*,¹³ and this seems to be the more prevalent *minhag*. One justification for this view is that the issue of reciting a voluntary *beracha* arises only when the word “*v'tzivanu*” (He commanded us) is found in the *beracha*, as that formula is not appropriate if the *mitzva* is fulfilled voluntarily. However, that word is not included in *birchot Kri'at Shema*. Another argument is that the problem may not apply at all to *berachot* of praise.¹⁴

While women (certainly, Ashkenazi ones) are encouraged to recite as much of *davening* as they can, the aforementioned opinions are important in helping set priorities. Accordingly, recitation of *P'sukei D'Zimra* and *Kri'at Shema* and its *berachot*, which are voluntary for women, should not be the cause for a woman not to say *Shemoneh Esrei* by its proper time limit.

The next most important passage is *Emet V'Yatziv*, as it contains the *mitzva* of mentioning the Exodus from Egypt, in which women are likely obligated,¹⁵ and concludes with “*ga'al*

8. *Shulchan Aruch, Orach Chayim* 70:1.

9. The *berachot* that precede and follow *Kri'at Shema*.

10. 70:1. See below regarding *Emet V'Yatziv*.

11. *Shulchan Aruch, Orach Chayim* 58:6; see *Shut HaRashba* I:69.

12. *Yabia Omer* II, *Orach Chayim* 6.

13. See *Ohr L'Tzion* II:6:10.

14. See sources in *Yabia Omer* op. cit.

15. *Magen Avraham* 70:1.

Yisrael,” which is an important introduction to *Shemoneh Esrei*.¹⁶ Since saying the beginning of *Shema* is not very time consuming, doing at least that should precede *Emet V’Yatziv*, despite the woman’s technical exemption. The next priority is *P’sukei D’Zimra*, or at least a shortened version thereof,¹⁷ since it is possible that women are obligated to include it.¹⁸ If there is more time, a full *Kri’at Shema* and its *berachot* would be appropriate, followed in importance by a less-abbreviated *P’sukei D’Zimra*.¹⁹

Birchot HaShachar can be said after *davening* and after *z’man tefilla* if need be.²⁰ However, one should try to recite *Birkat HaTorah* before *davening*.²¹

16. *Berachot* 9b.

17. At least *Ashrei* and, if possible, *Baruch She’amar* and *Yishtabach*.

18. See *Mishna Berura* 70:2.

19. See *Halichot Bat Yisrael* 2:(7).

20. Rama, *Orach Chayim* 52:1; *Mishna Berura* ad loc. 10.

21. See *Shulchan Aruch*, *Orach Chayim* 47:8.

A-8: When the Tenth Man Will Leave Early

Question: My *minyan* for *Shacharit* was short one person. Someone who had already *davened* agreed to join us until the end of *chazarat hashatz*. Were we permitted to recite *Kaddish Titkabel* after he left, just like when a regular *davener* leaves a *minyan* early? Was it permitted for us to set up the *minyan* with someone who had to leave before the end?

Answer: As you seem to be aware, when there are ten men present to begin a part of *tefilla* and then someone leaves, the rest of the group can complete that unit of *tefilla*, as long as six men remain.¹ There is no indication in the *poskim* that this depends on whether all of the original ten had been *davening* with the *minyan* or that some were only responding. However, the *Yerushalmi*² states that it is a sin and a bad omen for the one whose departure is responsible for the lack of a *minyan*.

Several *Acharonim* discuss your question of whether the group can use the *halacha* of continuing when it knew from the start that it would lose the *minyan*.³ The *Rav Pe'alim*⁴ deduces from the *Yerushalmi*'s language (although one can argue) that a group must not start a unit of *tefilla* if it expects to lose its *minyan* before it reaches the unit's end. The logic is that since being left in the middle of a unit without a *minyan* is a negative situation, one may not knowingly create it. The *Pitchei Teshuva*⁵ is unsure. The *Levushei Mordechai*⁶ rules that it is generally permissible.

1. *Shulchan Aruch, Orach Chayim* 55:2-3, based on the *Yerushalmi, Megilla* 4:4.

2. Op. cit.

3. See references in *Ishei Yisrael* 15:(120) and *Piskei Teshuvot* 55:7.

4. I, *Orach Chayim* 5.

5. (Isserlin) 143:1.

6. *Orach Chayim* I:15.

A number of responsa deal with the matter from the perspective of a person who was asked to help complete a *minyán* but has only a few minutes to give. Should he put himself in the situation of leaving, and thus ostensibly be subject to a bad omen? The *Ohel Yissachar*⁷ assumes that his leaving would be problematic, and he is therefore justified in refusing to join the *minyán*. The *Shevet HaLevi*⁸ says that only if the “helper” has a very important reason to leave may he join the group and then leave in a way that they will no longer have a *minyán*. He posits that when one has justification to leave, the *Yerushalmi*’s criticism does not apply. This seems especially relevant in a case in which the one leaving was not *davening* as part of the *minyán*, but was only helping as much as he could.⁹ Similarly, Rav S.Z. Auerbach is cited¹⁰ as asserting that the ability to help create a *minyán* outweighs the negative elements of leaving it early.

Your case has a possibly lenient element that is absent from the cases that most of the *Acharonim* discuss – your helper stayed until the end of *chazarat hashatz*. The *Mishna Berura* writes that one is permitted to leave the *minyán* before the next unit is begun.¹¹ Although the end of *chazarat hashatz* might appear to be such a moment, the *Terumat HaDeshen*¹² and the Rama¹³ write that even after losing a *minyán* in the middle of *chazarat hashatz*, the group can say the first two *Kaddishes* afterward, because they relate to *chazarat hashatz*. Thus, we see that the unit that includes *chazarat hashatz* does not end until after the second *Kaddish* that follows it. The *Mishna Berura*¹⁴ writes that consequently, in order to avoid the *Yerushalmi*’s criticism, one should not leave the *minyán* before the second *Kaddish*. On the other hand, the *Eshel*

7. *Orach Chayim* 6.

8. IV:7.

9. *Kinyan Torah BaHalacha* II:111.

10. *V’Aleihu Lo Yibol* I:27.

11. *Mishna Berura* 55:12.

12. I:15.

13. *Orach Chayim* 55:3.

14. 55:19.

*Avraham*¹⁵ rules that leaving is forbidden only during *chazarat hashatz*, which consists of *berachot* that are justified only with a *minyan*, whereas reciting *Kaddish* without a *minyan* is less severe. Furthermore, logic dictates that concern for a *Kaddish* that will lack its full impact should not cause a group to miss out on a full *chazarat hashatz*, which is an older and stronger obligation.

We will conclude with an innovative idea that links stringency and leniency regarding your question. Since the helper is following the group's request within his limitations, it is the group more than the helper that is responsible for the *minyan* disappearing in the middle. (In the classic case discussed by the *poskim*, one leaves against the others' will.) Therefore, the fallout should be on the group, and to avoid it, **the group** should look for another "helper" to take the first one's place (there is no need for the same ten men the whole time). Realizing the stringency of avoiding a disappearing *minyan*, they should make a strong effort, and it is therefore reasonable for the group to assume it will find a replacement. If it is not successful, the situation is like the standard one in which a group expected to have a *minyan* the whole time but then lost it. (Of course, this argument will not work if there is no real possibility of finding a replacement.) Therefore, it was certainly worthwhile for you to have made use of the tenth man while you had him, and, in the future, one should not be deterred from agreeing to stay for as long as he can.

15. (Butchach) *Orach Chayim* 55.

A-9: Short Pants for *Davening* on Shabbat

Question: Someone in *shul* told me last Shabbat that I should not wear shorts to *shul*. When I told him I learned that it is permitted to *daven* in shorts, he said that Shabbat is different. Does Shabbat change the *halacha*?!

Answer: *Halachot* involving proper clothing tend to be more subjective than most areas of Halacha. However, the discussion must begin with an examination of the halachic philosophy and standard situations. We have previously written about wearing short pants for *davening*, with a focus on the *chazan*,¹ and we refer you there for additional sources.

When one *davens*, he stands before HaShem and, accordingly, should dress respectably.² The *Shulchan Aruch*³ writes that this includes covering one's legs, when this is how people dress before important people. The *Mishna Berura*⁴ adds that one should wear a hat, explaining that this is the way people dress in public. (In some circles, this is still true; in others, it does not apply at all.)

Even in surroundings in which one should cover his legs, the requirement is not as far-reaching as parallel requirements. One's *tefilla* is invalid *b'di'eved* only if his genitalia are uncovered⁵ or if there is no external separation between his heart and genitalia.⁶ There is some question as to whether it is better to *daven* or to refrain from *davening* if one is not able to cover his chest.⁷ In the case of other "improper attire," including short pants, one

1. See *Living the Halachic Process*, vol. V, A-6.

2. Shabbat 10a; *Shulchan Aruch, Orach Chayim* 91.

3. Ibid. 4.

4. 91:12.

5. *Shulchan Aruch, Orach Chayim* 91:1.

6. *Bi'ur Halacha* ad loc.

7. Ibid.

may *daven*. However, the *Shulchan Aruch*⁸ writes that when it is possible, one must be properly dressed.

Rav Ovadia Yosef⁹ rules that in places where shorts are commonplace (e.g., *kibbutzim*), it is permitted to *daven* in shorts.¹⁰ We accept that approach, which leads to the subsequent challenge of determining whether short pants are commonplace enough in specific venues.

Does Shabbat change matters? We certainly find halachic areas in which it does. For example, Shabbat raises the significance of the food being eaten, such that a meal warrants *sheva berachot* even in the absence of *panim chadashot*,^{11 12} and even snacking (*achilat ara'i*) is forbidden on Shabbat if *ma'aser* had not been taken from the food.¹³

In truth, the question regarding wearing shorts on Shabbat pertains not only to the time of *davening*, but also throughout the day, and the issue applies even if one prefers the comfort of less formal clothing. The mandate to wear nice clothing on Shabbat¹⁴ is not a matter of *oneg* (enjoyment), which lends itself to being influenced by personal preferences, but rather of *kavod* (honoring Shabbat).¹⁵ In this regard as well, societal factors are crucial in determining what types of clothes are proper. For example, the *Bi'ur Halacha*¹⁶ discusses whether wearing white clothes is considered being showy. In some circles, the same question could be raised about wearing a black hat, while in others a hat or even a *shtreimel* is expected. Factors such as age, weather, and venue (vacation resort, camp) may also play a role.

8. Op. cit. 5.

9. *Yechaveh Da'at* IV:8.

10. Although not as a *chazan*; see also the dissenters he cites.

11. The participation in the festivities of one who was not present at the wedding.

12. *Shulchan Aruch, Even HaEzer* 62:8.

13. Rambam, *Ma'aser* 3:4.

14. *Shulchan Aruch, Orach Chayim* 262:2.

15. *Mishna Berura* 262:6.

16. To 262:2.

Logic dictates that since we are taking a practical, subjective approach, one should combine factors in order to see what is considered normal for a given time and place. On average, people dress more formally at *tefilla* on Shabbat than they do either at *tefilla* during the week or on Shabbat outside of *shul*. The same observation is true regarding how one dresses when appearing before important people, which is the model for attire for *davening*. One is likely to dress more formally in a formal setting in the presence of an important person than at a casual setting with the same important person in attendance. It follows, therefore, that the standard for clothes one wears during *davening* on Shabbat may be higher than what is usual for either weekday *davening* or leisure time on Shabbat.¹⁷

In summation, if it is rare for people to come to *shul* in your community with short pants on Shabbat, we would certainly agree with what the person who spoke to you said. (Hopefully, he said it in an appropriate way, which is not always easy to do.) If it is not rare but also not common to wear shorts in *shul* on Shabbat in your community, one needs to know where to draw the line. A local rabbi with a finger on the pulse of the community can do a better job of determining that than we can. In general, however, it is appropriate for the norm to be to wear long pants in *shul* on Shabbat.

17. Of course, an individual's clothing for a weekday could meet the standard of his society for Shabbat *davening*. Nevertheless, it is proper to save his finest for Shabbat (*Shabbat* 113a).

A-10: *Kri'at HaTorah* of *Shabbat Mincha* at Non-Standard Times

Question: I am presently serving in the army, and it is not uncommon that we will not have access to a *sefer Torah* at the time we can *daven Mincha* on *Shabbat*. Can we perform the *kri'at haTorah* for *Mincha* in the morning after *Musaf* instead? If we *davened Mincha* without *kri'at haTorah* and then later have access to a *sefer Torah*, can we *lain* at that point?

Answer: The *poskim* discuss whether people who missed *kri'at haTorah* at *Shacharit* during the week can make it up at *Mincha*. On the one hand, the logic of *kri'at haTorah* during the week – not going three days without public Torah learning¹ – applies all day. On the other hand, once the Rabbis established the morning as the time to conduct the *kri'at haTorah*, as the Rambam² states, perhaps it cannot be changed. In practice, most Ashkenazi *poskim* permit the *Mincha* makeup.³ Sephardim are less likely to accept this practice.⁴

It is much more problematic to conduct the *kri'at haTorah* of *Shabbat Mincha* earlier in the day. The *gemara*⁵ states that a reading was instituted at *Mincha* because of “*yoshvei keranot*.” Rashi⁶ explains that these are people who do not hear *kri'at haTorah* on Mondays and Thursdays due to their work; they are given the opportunity to hear an additional reading on *Shabbat*. The *Shita Mekubetzet*⁷ says that since people are liable to get drunk during the day, *kri'at haTorah* was instituted to encourage

1. *Bava Kama* 82a.

2. *Tefilla* 12:1.

3. See *Mishna Berura* 135:1; this was Rav Soloveitchik's weekly practice.

4. See *Yosef Ometz* 27; *Yabia Omer* IV, *Orach Chayim* 17.

5. Op. cit.

6. Ad loc.

7. Ad loc.

them to go to *shul* for *Mincha*. According to the *Shita Mekubetzet*, the time of day is clearly an important part of the institution of *kri'at haTorah* at *Mincha*.

The *Tzitz Eliezer*⁸ claims that even according to Rashi, it appears that *kri'at haTorah* of *Mincha* was instituted as a distinct *laining* in terms of content and timing. Therefore, when the *gemara* says “at *Mincha*,” it means that the *kri'at haTorah* of *Mincha* can be done only then. The *Tzitz Eliezer* also cites kabbalistic reasons for having the *kri'at haTorah* (and reciting *U'va L'Tziyon*) at the time of *Mincha*. Based on the above, even if a community will not have the opportunity to *lain* at *Mincha*, they may not move the *kri'at haTorah* forward to the morning.

Conducting the *kri'at haTorah* in the half hour between *chatzot*⁹ and the time for *Mincha* listed on our calendars is far less problematic. There are several indications that the time for *Mincha* fundamentally begins with *chatzot*, but we wait half an hour to make sure *chatzot* has passed.¹⁰ Although the *Tzitz Eliezer*¹¹ assumes that this precaution applies to *kri'at haTorah* as well, we know of no proofs to that effect. Additionally, the *Mishna Berura*¹² raises the serious possibility that if one *davened Mincha* during the half-hour after *chatzot*, he fulfilled his *mitzva*. Therefore, if the latest that a group can *lain* is during this half-hour, they may do so, rather than miss out on this *kri'at haTorah*.

The *Eshel Avraham*¹³ is uncertain about having *kri'at haTorah* after *davening Mincha*. The *Yaskil Avdi*,¹⁴ however, assumes that people who have already *davened* may *lain* afterward. Indeed, during the week, it is very accepted to have *kri'at haTorah* after *davening* when it was not possible to conduct it in its place (e.g.,

8. X:20.

9. Astronomical/halachic midday.

10. See *Tosafot*, *Nida* 63b; *Magen Avraham* 458:1.

11. Op. cit.

12. 233:2.

13. Butchatch, 292.

14. VIII, *Orach Chayim* 38.10.

if people *daven* in a mourner's home without a *sefer Torah*).¹⁵ Our case is somewhat worse in that *kri'at haTorah* at *Mincha* is supposed to take place before the *amida*¹⁶ of *Mincha*, whereas at *Shacharit*, the *kri'at haTorah* is anyway after *Shemoneh Esrei*, which is the main part of *tefilla*.

However, there are strong indications that *kri'at haTorah* is a separate obligation from *tefilla*, even though it is preferably attached to it. One such source is the *Terumat HaDeshen*.¹⁷ He writes that if there was a *minyan* to start *chazarat hashatz* and then some people left, the remaining group (even of less than ten men) can continue with all parts of *tefilla* that are connected to *Shemoneh Esrei*,¹⁸ but they cannot *lain*, because *kri'at haTorah* is not intrinsically connected to *tefilla*. Consequently, we conclude that a *minyan* of men may *lain* after *Mincha* of Shabbat if a *sefer Torah* becomes available then.

15. See *Yalkut Yosef, Orach Chayim* 135:(6) of 5750 edition.

16. Commonly called *Shemoneh Esrei*, even though this is a misnomer for the *tefillot* of Shabbat.

17. I:15; see *Shulchan Aruch, Orach Chayim* 55:2.

18. Including *Kaddish Shalem*; see response A-8.

A-11: Giving a *Yisrael* an *Aliya* When a *Kohen* Remains in *Shul*

Question: In our *shul*, when we have multiple *chiyuvim*¹ during the week, we ask the *kohanim* to leave *shul* temporarily so that a non-*kohen* may receive the first *aliya*. One *minyán* participant is an elderly *kohen* who finds it taxing to leave. Since he does not mind giving the *aliya* to a *yisrael*,² may we call up a *yisrael* even if this *kohen* remains in *shul*?

Answer: The *gemara*³ presents possible sources for the *halacha* that a *kohen* is to be honored by receiving the first *aliya* and that this precedence applies to other matters as well. It continues that according to the basic rules of honoring a *kohen*, he could waive his rights to the first *aliya*, but we do not allow this out of concern that people will quarrel about when the *kohen* should be expected to do so.

When, if at all, is it legitimate to circumvent the *halacha* to honor the *kohanim* with the first *aliya* by having them step out prior to the *aliya*? The Maharik⁴ upheld a *minhag* to sell the first *aliya* of *Parashat Bereishit* to the highest bidder, a practice that showed appreciation of the Torah and raised money for *shul* maintenance costs. If none of the *kohanim* bought the honor, they were expected to *daven* elsewhere or step out before the first *aliya*. The Maharik ruled that a *kohen* could not protest such an arrangement and that he should be forcibly removed if necessary.

While the *Acharonim* do not disagree with the Maharik, several discuss limitations on the extent to which we expect a *kohen* to relinquish his rights. The *Chatam Sofer*⁵ and *Shivat*

1. Those who require *aliyot*.

2. One who has standard Jewish lineage (i.e., not a *kohen* or a *levi*).

3. *Gittin* 59b.

4. *Shut HaMaharik* 9.

5. *Shut Chatam Sofer, Orach Chayim* 24.

*Tziyon*⁶ objected to efforts to introduce regular bidding for *aliyot* at the expense of the *kohen's* *aliya*. On the other hand, the *Chatam Sofer*⁷ supported the idea of allowing a *chiyuv* to receive the first *aliya* in place of a *kohen* when there are multiple *chiyuvim*.⁸ Contemporary *poskim* concur.⁹

What is the rationalization of the practice of having the *kohanim* step out when the *oleh* is called up to the Torah (and return as the opening *beracha* is being made)? One basic explanation is that if the *kohanim* are not there, we are not shunning them by giving the *aliya* to a *yisrael*. Another factor is to avoid *pegama*, the appearance that we passed over the *kohen* because he is somehow unfit to serve as a *kohen*. In fact, if there is only one *kohen* in *shul* and he realizes that he will be unable to accept the call for an *aliya*, he should leave *shul* prior to the anticipated call. (This can happen, for example, if he is in the midst of reciting *Kri'at Shema*, which may not be interrupted,¹⁰ or if it is a fast day and he is not fasting, which disqualifies him from having an *aliya* at that time.¹¹)

Therefore, your general *minhag* stands on firm ground. Your added issue is whether you are allowed to give a *yisrael* the *kohen's* *aliya* when a *kohen* stays in *shul*. Even if he happily waives his rights, there still are the problems of the Rabbinic injunction to avoid arguments and the matter of *pegama*. The *Magen Avraham*¹² infers from the Maharik's ruling to have the *kohen* removed from *shul* that under no circumstances may one call up a *yisrael* when

6. 6.

7. Op. cit. 25.

8. The *Chatam Sofer* writes that the *kohanim* should be appeased to accept the idea and that once the *minhag* took hold, no *kohen* could protest in the future.

9. See *Igrot Moshe, Orach Chayim* II:34 and *Yabia Omer* VI, *Orach Chayim* 23.

10. Rama, *Orach Chayim* 135:5.

11. *Shulchan Aruch, Orach Chayim* 566:6.

12. 135:7.

a *kohen* is present. However, the *Beit Yosef*¹³ writes that whenever it is acceptable to give the *aliya* to a non-*kohen*, there is no issue of overlooking the *kohen* or of casting aspersions on him, and the *kohen* may thus remain in *shul*. Although the *Pri Chadash*¹⁴ and others agree with the *Beit Yosef*, it is worthwhile when possible to conform to the common practice of having the *kohanim* leave.¹⁵

There is another strong reason for leniency in your case. The *gemara*¹⁶ states that on Mondays and Thursdays, a *kohen* may allow a *yisrael* to receive the first *aliya*, because there are small *minyanim* at those *tefillot* and therefore less chance of quarreling. There is no mention that the *kohen* needs to step out. *Tosafot*¹⁷ and others maintain that the rationale for this distinction did not exist in their time, because many people came to *davening* during the week as well. However, some are of the opinion that such a post-Talmudic innovation is binding only when its reasoning applies, which is often not the case in our day.¹⁸

With so many indications for leniency, you may allow a *yisrael* to receive the first *aliya* during the week even if an elderly *kohen* will not be stepping out. On Shabbat, there is less justification to do so, as well as less need for leniency given that there is a possibility of *hosafot*.¹⁹ It thus would rarely be proper to skip the *kohen* on Shabbat. It is appropriate when calling up the *yisrael* that the *gabbai* announce that there is a *kohen* in *shul*.²⁰ In the call for the *aliya*, we suggest saying, “[The name of the *oleh*], *yisrael birshut hakohen*.”²¹

13. *Orach Chayim* 135.

14. *Orach Chayim* 135:3.

15. See *Yabia Omer* op. cit.

16. Op. cit.

17. Ad loc.

18. See *Igrot Moshe* op. cit.

19. Additional *aliyot* beyond the number required.

20. *Yabia Omer* op. cit.

21. With permission of the *kohen*.

A-12: Running Out of *P'sukim* after the Second *Aliya*

Question: At *Mincha* of Shabbat, the *ba'al korei* did not stop at the correct place to end the second *aliya*, but instead continued until the end of the prescribed *laining*. For the third *aliya*, should we have read the regular third *aliya* (as a repeat) or gone on beyond the normal reading?

Answer: We will begin with the possibility of repeating, which would have been easier for the *ba'al korei* if he was not fully prepared to *lain* any further.

Generally, Ashkenazi *poskim* do not allow an *aliya* that simply repeats what was already read.¹ The *Shulchan Aruch*² rules that it is permitted to repeat, but the *Mishna Berura*³ points out that even according to the *Shulchan Aruch*, such an *aliya* does not count toward the required number of *aliyot*. Therefore, in your case, where the third *aliya* has to count, the first option of simply repeating the *p'sukim* for the third *aliya* does not seem to be viable.

The *Shulchan Aruch*,⁴ citing Avudraham in the name of *Ge'onim*,⁵ writes that in order for an *aliya* that contains repeated *p'sukim* to be valid, it must include three new *p'sukim* or, when necessary, two new *p'sukim*. This conclusion is based on a dispute recorded in the *gemara*.⁶ *Ma'amadot* (representatives of the nation in the *Beit HaMikdash* during daily *korbanot*) had a special daily *kri'at haTorah* from the beginning of *Bereishit*, but it did not include enough *p'sukim* for three *aliyot*. According

1. See Rama, *Orach Chayim* 282:2; *Mishna Berura* 282:10.

2. Ad loc.

3. 282:9.

4. *Orach Chayim* 137:6.

5. See *Beit Yosef*, *Orach Chayim* 137.

6. *Ta'anit* 27b.

to Rav, they read the first five *p'sukim* as two *aliyot*, with both reading the third *pasuk*. Shmuel said that they each read two and a half *p'sukim*, splitting the third *pasuk*. From the fact that no one suggested having the second *aliya* repeat the previous one and start from the beginning again, we see that complete repetition is not a valid alternative. Furthermore, even when a need exists, if it the *aliya* does not include at least two new *p'sukim*, the *aliya* is not counted.

The *Pri Chadash*⁷ differs with the *Shulchan Aruch* and the *Ge'onim*. He maintains that just as one can make the *berachot* for a *hosafa* (extra *aliya*) that only repeats *p'sukim* (to which the *Shulchan Aruch* agrees, as noted above), an *aliya* that merely repeats *p'sukim* may similarly count as a necessary *aliya*. He brings a proof from the *gemara*⁸ about the case in which *Parashat Shekalim* – a reading for *maftir* from a passage in the Torah that directly follows *Parashat Tetzvah* – falls on *Parashat Tetzaveh*.⁹ In that scenario, if the *maftir* was one of the seven *aliyot*,¹⁰ there is a problem, as the *Shekalim* reading looks like a continuation of the *parasha*, not a separate reading. To resolve this problem, Abaye says that the next to last *aliya* should go up to and include the reading for *Shekalim*, and we then repeat *Shekalim*, which counts as the last *aliya* (details are beyond our scope). This proves the *Pri Chadash*'s claim that a repeated *aliya* counts towards the total number of necessary *aliyot*.

In addition, the *Pri Chadash* cites *Rishonim* who deflect the Avudraham's proof regarding why the *ma'amadot* did not start the second *aliya* from the beginning. They argue that this was not done because those who came or left in the middle might think that there were only two *aliyot*.

7. *Orach Chayim* 137:6.

8. *Megilla* 30a.

9. This scenario is precluded in our times due to the fixed calendar.

10. See *HaMo'adim BaHalacha*, p. 229.

In spite of these arguments, the *Bi'ur Halacha*¹¹ implies that we follow the *Shulchan Aruch*, not the *Pri Chadash*. Nevertheless, all agree that there are cases of *aliyot* that add nothing new (e.g., on Sukkot everywhere and on Chanuka in Israel). The Avudraham writes that this happens because *Chazal* had little choice but to set up those *lainings* that way.

The *Shulchan Aruch*¹² discusses the situation in which one finished reading the *parashat hashavua* with the sixth, rather than the seventh, *aliya*. He concludes that we rely on the opinion that the *maftir*, which is usually simply a repetition of the *parasha*'s last few *p'sukim*, can count as the seventh *aliya*. The *Mishna Berura*¹³ clarifies that if one discovered the error before *Kaddish*, a seventh *aliya*, which is just a repeat of some of what had already been read, is read before *maftir*. Doesn't this contradict the above principle? The answer is that when the reading of a *parasha* has been completed, reading into the next *parasha* is generally unauthorized; repeating is therefore preferable to continuing on. However, the exact number of *p'sukim* read on Monday and Thursday is a relatively late and less important *minhag*.¹⁴ Consequently, reading beyond the normal allotment is not a problem on those days.

In conclusion, you should have read at least three *p'sukim* beyond the normal reading for the third *aliya*. If the *ba'al korei* was **unable** to read what he did not prepare, even with help, without significant embarrassment, you could have relied on the *Pri Chadash* and have him repeat the *p'sukim* of the normal third *aliya*.

11. To 137:6.

12. *Orach Chayim* 282:6.

13. 282:33.

14. See *Sha'arei Ephrayim* 7:3; *Mishna Berura* 137:4.

A-13: Should a *Kohen* Prefer a *Minyan* with an Additional *Kohen*?

Question: At one of the *minyanim* I attend, I am often the only *kohen*. Considering that this lowers the level of *Birkat Kohanim*, should I avoid *davening* there?

Answer: The *gemara*¹ derives from the Torah's language in the context of *Birkat Kohanim*, "say to **them**,"² that the *kohanim* are called upon to perform *Birkat Kohanim* only when at least two *kohanim* are present. In general, a *kohen* is **obligated** to perform *Birkat Kohanim* (i.e., not doing so is a halachic **failing**) only after he has been "called."³ Putting the two *halachot* together, Rabbeinu Peretz⁴ concludes that if there is only one *kohen* and he is not called, he does not violate his obligation by not doing *Birkat Kohanim*. The *Tur*⁵ disagrees and says that even one *kohen* can violate his obligation. However, the *Beit Yosef*⁶ explains that the *Tur* means that one *kohen* can violate his obligation if he was (unnecessarily) called. *Tosafot*⁷ raises another possibility: One *kohen* who is not called does not have a Torah obligation, but he is still required to perform *Birkat Kohanim* to satisfy a Rabbinic obligation.

You are apparently concerned by the opinions that the obligation of *Birkat Kohanim* with just one *kohen* is only Rabbinic. We will start by mitigating your concern. First, although we do not accept the *Yerushalmi*'s⁸ opinion that even one *kohen*

1. *Sota* 38a.

2. *Bamidbar* 6:23.

3. *Shulchan Aruch, Orach Chayim* 128:2.

4. Cited by the *Tur, Orach Chayim* 128.

5. *Ibid.*

6. *Ad loc.*

7. *Menachot* 44a.

8. *Berachot* 5:4.

is called to do *Birkat Kohanim*, the *Taz*⁹ and the *Pri Chadash*¹⁰ understand that one *kohen*, paradoxically, has a Torah obligation even **without** being called. One explanation of this ruling is that calling is needed only when there are multiple *kohanim*, so that no one can pass off the obligation to his fellow *kohen*, whereas a lone *kohen* is obviously obligated.¹¹ Admittedly, however, many *poskim*¹² understand that the obligation in that case is, as you assume, only Rabbinic.

However, even if the obligation/violation possibility is Rabbinic, logic indicates that one *kohen* who does *Birkat Kohanim* voluntarily fulfills a *mitzva* from the Torah according to all *Rishonim*. After all, since he does the same action in essentially the same manner, why should the lack of being prompted disqualify it? The Maharam Mintz,¹³ in explaining why one *kohen* makes a *beracha* on his *Birkat Kohanim*, posits that he is fulfilling a *mitzva* from the Torah, even if he is not culpable if he failed to do so, and the *Minchat Chinuch*¹⁴ agrees. The language of the *Bi'ur Halacha*,¹⁵ however, implies there is no Torah fulfillment.

Should a *kohen* take steps to fulfill the *mitzva* specifically as a full Torah obligation? The general rule is that performing *mitzvot* as an obligation is better than doing so voluntarily,¹⁶ although the extent of the preference is unclear. Arguably, the difference is less significant when one is generally obligated in the *mitzva* and there is also a Rabbinic obligation. (It may depend upon the reasons why the reward is greater when obligated.¹⁷ Further discussion is beyond our present scope.)

Finally, we must weigh the preferences in context. Even if

9. 128:3.

10. *Orach Chayim* 128:14.

11. See *Mishneh Halachot* III:197.

12. Including the *Magen Avraham* 128:16; *Bi'ur Halacha* to 128:25.

13. *Shut Maharam Mintz* 12, quoted by the *Magen Avraham* op. cit.

14. #378.

15. Op. cit.

16. *Kiddushin* 31a.

17. See *Tosafot* and *Ritva* ad loc.

we assume that the *mitzva* is more complete when done with other *kohanim*, consider that avoiding the *minyán*, which is often without another *kohen*, may leave it without *Birkat Kohanim* altogether. The following *halacha* shows that the upgrade from having no *Birkat Kohanim* to having *Birkat Kohanim* of one *kohen* is greater than the upgrade from having *Birkat Kohanim* of one *kohen* to that of two *kohanim*. The *Shulchan Aruch*¹⁸ rules that when a *kohen* is the *chazan*, he does not do *Birkat Kohanim* unless there are no other *kohanim*. Thus, a *kohen* who is the *chazan* usually gives up his individual *mitzva* of *Birkat Kohanim* so as to not interfere with his duties as *chazan*. However, the need for the *minyán* to have *Birkat Kohanim*, even of one *kohen*, overrides concerns about his duties as *chazan*. In contrast, the classical *poskim* do not mention a similar override in order to upgrade from *Birkat Kohanim* of one *kohen* to two.¹⁹

In the final analysis, all agree that the *Birkat Kohanim* of one *kohen* is a *mitzva* (otherwise he would not make a *beracha* before it), and all should agree that its sanctity and value is not substantively different from that of multiple *kohanim*. Considering the above, you should be gratified if your attendance at the *minyán* in question ensures that *Birkat Kohanim* takes place.

18. *Orach Chayim* 128:20.

19. *Az Nidberu* XIII:34 does rule that a *kohen* who is serving as *chazan* when there is one other *kohen* should do *Birkat Kohanim* to gain the advantage of a *Birkat Kohanim* as a *mitzva* from the Torah, but he was unable to find a previous *posek* who said so explicitly.

A-14: Mistakes in the Order of *Kaddish* and *Barchu*

Question: On *Motzaei Shabbat*, the *chazan* mistakenly recited *Kaddish Titkabel* and *Barchu* before *V'Yehi Noam* and *Kiddusha D'Sidra* (*V'Atah Kadosh*¹). After saying these *tefillot*, he repeated *Kaddish Titkabel* and *Barchu*. Similarly, one morning, a mourner said *Barchu* after the *Kaddish* of the *shir shel yom*,² instead of after *Ein Keilokeinu*.³ He then repeated it at its normal place. Were these repetitions warranted?

Answer: To answer these questions, we must first understand the roles of *Kaddish Titkabel* and *Barchu*.

Different *Kaddeishim* serve different functions. The unique component of *Kaddish Titkabel* (also called *Kaddish Shalem*) is the line beginning with the word “*Titkabel*” (it should be accepted), which is a request that HaShem accept our joint prayers favorably. This relates to the joint *Shemoneh Esrei*, either the silent one recited jointly at *Ma'ariv* or the *chazarat hashatz* at the other *tefillot*.⁴ Therefore, it would seem that *Kaddish Titkabel* should be effective *b'di'aved* any time after *Shemoneh Esrei*, and there should be no need or justification to repeat it, including in the first case about which you asked.

However, there might be a significant dissenter in the case of the recitation of *Kaddish Titkabel* before *Kiddusha D'Sidra*. The *Yalkut Yosef*⁵ assumes that *Titkabel* applies not only to *Shemoneh*

1. *V'Atah Kadosh* is a slightly shortened form of *Kiddusha D'Sidra*. *U'Va L'Tziyon* is the full form.

2. The psalm of the day, recited at or toward the end of *Shacharit*, depending on the local *minhag*.

3. This section of *tefilla* is recited at or near the end of *Shacharit* in Israel, and according to some *minhagim* abroad as well.

4. See Rama, *Orach Chayim* 55:3; *Mishna Berura* ad loc. 22.

5. *Orach Chayim* 132:8.

Esrei, but also to *U'Va L'Tziyon* (the *Kiddusha D'Sidra* of *Shacharit*). Thus, if one recited *Kaddish Titkabel* before *Ashrei/U'Va L'Tziyon*, he should repeat it after *U'Va L'Tziyon* – or, ostensibly, after *V'Atah Kadosh*, the *Motzaei Shabbat* version of *Kiddusha D'Sidra*. Indeed, we do find elsewhere that *Kaddish Titkabel* was instituted after a non-*Shemoneh Esrei* prayer – *Selichot*.

The *Yalkut Yosef's* support for his assertion that *U'Va L'Tziyon* warrants its own *Kaddish Titkabel* may not apply in many communities, however. He cites the *Eliya Rabba*,⁶ who writes that at *Ma'ariv* of Purim, *Kaddish Titkabel* is said twice – once before *Megillat Esther*, to cover *Shemoneh Esrei*, and once after the *Megilla*, for *V'Ata Kadosh*. The problem with this proof is that although the *Mishna Berura*⁷ does cite the *Eliya Rabba*, he also cites the *Magen Avraham*,⁸ who rules that *Titkabel* is said only in the *Kaddish preceding Megilla Esther*, and the *minhag* of the vast majority of communities follows the *Magen Avraham*.⁹ In other words, most communities assume that the *Kaddish Titkabel* recited before *V'Ata Kadosh/U'Va L'Tziyon* suffices and is not repeated after it. We thus posit that if one mistakenly recited *Kaddish Titkabel* on *Motzaei Shabbat* before *V'Yehi Noam* and *V'Atah Kadosh* – which include sections from *Tehillim* and elsewhere, as well as requests – they would be followed by *Kaddish Shalem without Titkabel* (which is the same as the mourner's *Kaddish*).¹⁰

Now let's look at your second question. The main reason to recite *Barchu* a second time, at the end of *tefilla*, is for the sake of latecomers who missed the main recitation.¹¹ For that reason,

6. *Orach Chayim* 693:5.

7. 693:1.

8. Introduction to *siman* 693.

9. See *Dirshu Mishna Berura* 693:3; *Piskei Teshuvot* 693:2. The *Yalkut Yosef* himself (*Mo'adim*, p. 310 of the 5748 edition) follows the Sephardi *minhag* that before *Megillat Esther*, only a *Chatzi Kaddish* is recited.

10. See the same conclusion and basic analysis in *Ishei Yisrael* 26:5.

11. Rama, *Orach Chayim* 133:1.

Nusach Ashkenaz does not repeat *Barchu* on Monday, Thursday, and Shabbat mornings, based on the assumption that latecomers have already responded to the *Barchus* of the *aliyot* of *Kri'at HaTorah*.¹² The fact that the community can rely on the *Barchu* recited in the context of the *aliyot* demonstrates that while it is customary (in Israel) to insert *Barchu* after *Ein Keilokeinu*, it is effective earlier as well. Therefore, in the case you describe of a slightly earlier than usual *Barchu*, that *Barchu* should be effective, and another recitation should be unnecessary.

Those who use *Nusach Sephard/Eidot HaMizrach* recite *Barchu* again despite the fact that there was *kri'at haTorah*, so that it will occur at the end of *davening*. Even then, the *Barchu* in your case would seem to be close enough to the end. (Since the *minhag* to repeat *Barchu* every day is rooted in kabbalistic considerations¹³ and we are not experts in Kabbala, we cannot rule out the possibility that it must be said at exactly the right place, but we doubt that.)

12. See *ibid.*

13. *Kaf HaChayim, Orach Chayim* 133:1.

A-15: Children in Diapers in *Shul* During *Davening*

Question: Is it permitted for young children in diapers (i.e. not capable of bowel control) to be in *shul* during the time of *tefilla*? I am bothered that in my *shul* not everyone is careful about this.

Answer: Your question about diapered children in *shul* during *tefilla* involves two possible issues: 1) Preserving the honor of a *beit kneset*,¹ which might apply even when it is not the time of *tefilla*. 2) *Davening* in the presence of excrement,² which is problematic outside of *shul* as well. (Although the main classical sources discuss *Kri'at Shema*,³ the *halachot* are relevant to *davening*, making *berachot*, and speaking *divrei Torah*.⁴) Your question involves both issues, but we do not believe that the combination of the two is more problematic than the elements separately.

We will first discuss the matter of the honor of a *shul*. Realize that if it were actually forbidden to bring a baby in a diaper into a *shul*, a toddler sibling of a baby having a *brit* in *shul* could not attend, and this is a stringency we have not heard of. In fact, we have found no indication that bringing a baby in a diaper is considered a disgrace to a *beit kneset*, and we have no reason to question the clear *minhag* to allow it.

Turning our attention to the second problem, the presence of excrement has the potential to greatly limit involvement in matters of *kedusha* in a house in which there are non-toilet-trained children. (Notably, the excrement of newborns during their first

1. See *Shulchan Aruch, Orach Chayim* 151, which cites a host of *halachot* regarding respect for a *shul*.

2. Addressed in great detail in *Orach Chayim* 76-87.

3. See *Berachot*, 3rd perek.

4. *Mishna Berura* 76:2.

several months is not an issue.⁵)

An important rule is that the problem of excrement is solved if it is covered.⁶ Thus, at first glance, a diaper should be sufficient to solve the problem. However, there are some complications. First of all, there must be no smell (the extent of which is hard to quantify) that escapes the covering,⁷ and the smell of excrement affects the area up to four *amot*⁸ beyond the furthest point it reaches.⁹ However, *poskim* rule that one does not have to constantly check to see whether there has been a bowel movement and a spreading smell.¹⁰ If one knows that the baby has eliminated,¹¹ and perhaps if sufficient time has passed to assume a baby has done so,¹² he should check for a smell.

Moreover, according to the concept of *graf shel re'i*, a utensil that is used for collecting excrement is considered soiled, and one is not allowed to *daven* when it is in his view or, if it is behind him or sufficiently to the side, within his four *amot*.¹³ Is a diaper a *graf shel re'i*, given that it is made to be a receptacle for holding excrement? Rav Moshe Feinstein¹⁴ rules that cloth diapers are not *graf shel re'i* once they are washed, implying that they are while they are soiled. Therefore, there is logic to require that a soiled diaper be covered (e.g., by the child's clothes), even if it does not smell.¹⁵

On the other hand, modern disposable diapers might

5. *Shulchan Aruch, Orach Chayim* 81:1.

6. *Berachot* 25b.

7. *Shulchan Aruch, Orach Chayim* 76:2; *Mishna Berura* 76:3.

8. Approximately six feet.

9. *Shulchan Aruch, Orach Chayim* 79:1. There are different opinions as to whether the additional four *amot* are needed when the excrement is covered but some smell escapes; see *Mishna Berura* 76:3; *ibid.* 87:8; *Dirshu Mishna Berura* 76:3.

10. *Ishei Yisrael* 52:18; *Ohr L'Tzion* II: 6:(14).

11. *Ohr L'Tzion* op. cit.

12. *Ishei Yisrael* op. cit.

13. *Shulchan Aruch, Orach Chayim* 87:1; see *ibid.* 79:1.

14. *Igrot Moshe, Orach Chayim* IV:106.

15. See *Dirshu Mishna Berura* 87:1.

not have this status, because they are not made to be used on an ongoing basis for excrement but are thrown out soon after becoming soiled. Some *poskim* point out that modern diapers have another advantage – they have their own nonabsorbent plastic covering.¹⁶ Rav S.Z. Auerbach reportedly did not accept this distinction, however, because the covering of *graf shel re'i* must be something external; the outside of the diaper cannot be considered a covering for the diaper itself.¹⁷ It is not clear what Rav Auerbach's full opinion was on this matter.¹⁸ In any case, his stringency is applicable only when the diaper is soiled, not if it is just wet.¹⁹

There is also an opinion that a covering is insufficient if the excrement is located at the anus.²⁰ However, the great majority of *poskim* say that the stringency of excrement at that spot affects only the soiled individual, not those *davening* in his presence.²¹

We conclude that the prevalent practice to allow matters of holiness to be spoken in the presence of a baby in a diaper is very well-grounded. It is laudable to check the diaper from time to time and to change it when the baby is dirty. If one wants to be more *machmir* than that, he should consider the price. However, he certainly should not impose his view on his fellow congregants.

16. *Avnei Yashfeh* III:70.

17. *Halichot Shlomo, Tefilla* 20:5.

18. See *Shemirat Shabbat K'Hilchata* 47:38; *Nishmat Avraham, Orach Chayim* 76:(9).

19. *Shulchan Aruch, Orach Chayim* 78:1; see *Halichot Shlomo, Tefilla* op. cit.

20. See *Magen Avraham* 81:1.

21. See *Ishei Yisrael* 52:9.

A-16: Reading *Kri'at Shema* With *Trop*

Question: Is there a preference or even a requirement to recite *Shema* with its *trop*,¹ or is any coherent mode of recitation acceptable?

Answer: We will begin our discussion with the main sources before moving on to practical considerations.

The *gemara*² criticizes the manner in which the people of Yericho would recite *Shema*. Rabbeinu Yona³ explains that they did not read it calmly, “with its *te'amim*,” which the *Tur*⁴ understood as referring to its *trop*, thus indicating that it is proper to say *Kri'at Shema* with its *trop*. The *Beit Yosef*⁵ questions whether the *Tur* understood Rabbeinu Yona correctly, considering also that few people in his time read *Kri'at Shema* with the *trop*, and suggests that Rabbeinu Yona simply meant that one should be careful to pause at the right places so that the text is properly comprehensible. Nevertheless, in his *Shulchan Aruch*,⁶ he accepts the *Tur*/Rabbeinu Yona’s idea that using the Torah *trop* is a requirement, although it is clear that *b'di'eved* one fulfills the *mitzva* without it. (It is interesting to note that the question of whether the *trop* is of Torah origin or was added at some later time is subject to *machloket*.⁷)

On the Ashkenazi side, the Rama also discusses the matter, but with slight differences between his two major works. In his *Darchei Moshe*,⁸ he writes that for many people, reciting *Kri'at*

-
1. Torah-reading cantillation.
 2. *Pesachim* 56a.
 3. *Berachot*, 8b of the Rif’s pages.
 4. *Orach Chayim* 61.
 5. Ad loc.
 6. *Orach Chayim* 61:24.
 7. *Nedarim* 37b.
 8. *Orach Chayim* 61:8.

Shema with the *trop* is liable to detract from their concentration. He further reports that the *minhag* is not to use *trop*. He views the practice as positive only for those who are confident that they are able to concentrate on the content and the *trop* at the same time. In his glosses on the *Shulchan Aruch*, however, the Rama is slightly less selective and notes, “In our countries, this is not the *minhag*. However, those who are exacting are stringent on the matter.”

Is there anything other than concentration that one may lose by using the *trop*? The *Ishei Yisrael*⁹ implies that a mistake in the *trop* is liable to change the meaning of the *pasuk*, which requires one to go back and recite it correctly, just as in the case of *kri'at haTorah*,¹⁰ and this might unnecessarily complicate matters. On the other hand, the same problem arises if one reads *Kri'at Shema* without the *trop* but recites it with incorrect punctuation.¹¹ The type of reading that is more likely to cause punctuation problems probably depends on the person. If one reads *Shema* at a mainly uniform pace, then even if his reading does not emphasize the correct meaning, he also does not reinforce the wrong meaning, unless he does not pause at all at major stopping places (classically, where there is a *sof pasuk* or an *etnachta*). Thus, reasonably accurate *laining* is likely to improve much of the comprehensibility, but mistakes could sometimes make things worse than reading simply at a uniform pace.

Other issues emerge if one reads audibly with the *trop*. One issue is *yohara* – i.e., the other *daveners* will view it as haughty if an individual reads in a manner giving the impression that he considers it a “better way” than the local *minhag*.¹² The other is that *laining* has a tendency to disturb the concentration of people around the *lainer*. While the major application of the issue of disturbing others applies during *Shemoneh Esrei*,¹³ when people

9. 21:(2).

10. See *Shulchan Aruch, Orach Chayim* 142:1; *Mishna Berura* ad loc. 4.

11. *Mishna Berura* 61:37.

12. See *Living the Halachic Process*, vol. V, D-1.

13. See *Shulchan Aruch, Orach Chayim* 101:2.

are especially silent and need total concentration, it could apply here as well.¹⁴

Some have a reasonable practice of using *trop* just for the first *parasha*, which, according to some, is the only part whose obligation is from the Torah.¹⁵ However, paradoxically, the first *pasuk*, which in some ways is most important,¹⁶ may not be the place to use *trop*. Its pace is meant to be uneven,¹⁷ since some of the words are pronounced at a slow speed or with great intensity,¹⁸ and this is more difficult to do with *trop*.

14. See *Michtam L'David, Orach Chayim* 10, regarding those who sing *Kri'at Shema* aloud on Shabbat.

15. See *Beit Yosef, Orach Chayim* 63.

16. See *ibid.*; *Shulchan Aruch, Orach Chayim* 60:5.

17. *Shulchan Aruch, Orach Chayim* 61:6.

18. *Ibid.* 4.

Section B:

Berachot (Blessings)

B-1: *Beracha* on Homeopathic Medicine?

Question: I understand that one does not make a *beracha* on medicine. This raises a question for those who use homeopathic medicines, which are usually sweet. Should they listen to homeopaths, who consider it medicine, in which case a *beracha* is not called for, or to conventional doctors, who say it is not medicine, in which case a *beracha* is mandatory?

Answer: The topic of alternative medicine is subject to much disagreement. As in most realms, extreme opinions are rarely correct. Clearly, some treatments under the umbrella of alternative medicine are helpful, while some are quackery and serve as a placebo at best. There are also significant numbers of medicines and treatments (homeopathic or conventional) whose efficacy or even safety is uncertain or varies greatly from person to person. We are not in the position to take a stand on the important question of which treatments fall into which category.

These questions are relevant regarding cases in which we want to do something to help heal the sick in a situation in which the action would otherwise be forbidden.¹ However, your question does not depend on the efficacy of the “medicine.” Although it is true that a *beracha* is not usually recited before ingesting medicine, as you assume, it is not the status of “medicine” that uproots the need for a *beracha*. Rather, *berachot* were instituted for the benefits one gets from food (primarily, taste), not for any medical benefits. If one receives both benefits – taste and healing – he must recite a *beracha*.² Therefore, if a medicine’s taste is good, a *beracha* on it would be required, regardless of if the medicine is actually effective or not. If something one is ingesting with medicinal intent does not have a good taste, then irrespective

1. See *Shulchan Aruch, Orach Chayim* 301:25-26; 328.

2. *Ibid.* 204:8.

of any medicinal value, there would be no *beracha*.

There is still a question regarding a *beracha* for something taken for medicinal purposes that has additives that give it a **somewhat** positive taste. The *Sha'ar HaTziyun*³ writes that medicinal food does not need to have a particularly good taste in order to warrant a *beracha*; the essential factor is that it does not have a bad taste. One might claim that the classic sources discuss cases in which the therapeutic agent has a reasonable taste; if the medicinal part tastes bad and a sweetener improves it, the sweetener is still the medicine's less important part and should not count regarding *berachot*.⁴ However, the rule that the *beracha* follows an item's more important ingredient applies only when the important part requires a *beracha*. Since the medicinal part does not, we should make a *beracha* on the sweetener.⁵

However, there are cases in which a *beracha* requirement is doubtful. If one **swallows** a pill, that is not considered a manner of eating for the purposes of *berachot*, even if the pill leaves a sweet taste on the tongue before swallowing.⁶

Furthermore, Rav S.Z. Auerbach is quoted by several works as minimizing the number of cases in which one makes a *beracha* on medicines. *Nishmat Avraham*⁷ quotes him as saying that if the sweetener is on the outside of a chewable pill and one enjoys the taste before getting to the medicinal part, a *beracha* should be recited, but if the tastes are all mixed together, there should be no *beracha*. This is based on the assumption that the mixture does not have a taste that would interest anyone as a food.

*V'Zot HaBeracha*⁸ cites and explains Rav Auerbach from a different angle. A **food** without positive taste can attain taste that

3. 204:37.

4. See *Berachot* 36a.

5. *Yalkut Yosef, Berachot* (5764 edition), p. 442; *V'Zot HaBeracha, Birur Halacha* 41, citing an opinion attributed to Rav Elyashiv.

6. *V'Zot HaBeracha* op. cit.

7. 5750 edition, IV, *Orach Chayim* 204:8.

8. Op. cit.

warrants a *beracha* even when eaten for medical purposes by means of external flavoring. However, an external taste cannot turn a non-food (e.g., a pure medicine) with negative taste into a food unless the medicinal mixture actually has a distinctly good taste.

Not all *poskim* agree with Rav Auerbach,⁹ and it is logical to say that as long as one appreciates the positive element, the fact that the negative element reduces the enjoyment of the taste does not eliminate the need for a *beracha*. However, especially considering that we do not make *berachot* in cases of doubt,¹⁰ it is difficult to require a *beracha* contrary to Rav Auerbach's opinion. According to every opinion, there will be borderline cases regarding how to halachically categorize the situation, and here too we should not make a *beracha* in a case of doubt. (It is laudable in such cases to first eat something else that requires the *beracha* of *Shehakol*, having in mind to cover the medicine.)

9. See *ibid.*

10. See Rama, *Orach Chayim* 210:2.

B-2: The *Beracha* on Vegetable Soup Broth

Question: What *beracha* do I make on vegetable soup when I consume just the broth?

Answer: We will not presently discuss soups with “*Mezonot* elements,” such as croutons or noodles, which introduce other halachic factors. We are also not referring to chicken soup that includes many more vegetables than pieces of chicken.

The *gemara*¹ states that the “water of boiled vegetables [has the same *beracha*] as the vegetables” (i.e., *Borei Pri HaAdama*). Ostensibly, this should answer your question. However, the *Rishonim* are bothered by an apparent contradiction, as the *gemara*² also states that the *beracha* on most fruit juices is *Shehakol* – not *Borei Pri HaEtz*, like the fruit themselves. The distinctions between the two cases that various opinions provide are crucial to answering your question.

The Rashba³ distinguishes between vegetables, which are normally eaten cooked, and pieces of fruit, which are normally eaten intact and raw, not squeezed or cooked. The Rosh⁴ distinguishes between the process of cooking and that of squeezing; cooking results in a more qualitative taste.

Another factor is the focus on the vegetables vs. on the broth. The Rosh⁵ states that the broth “deserves” *HaAdama* when it is normal for most people to cook the vegetables in order to eat them. (The *Mishna Berura*⁶ seems to allude to this opinion by requiring the **individual** to cook the broth with the intention to

1. *Berachot* 39a.

2. *Ibid.* 38a.

3. *Berachot* 38a.

4. *Berachot* 6:18.

5. *Shut* 4:15.

6. 205:10.

eat the vegetables in order for it to qualify for *HaAdama*.) The Rambam⁷ takes the distinction in the other direction: If one has in mind when cooking to drink the broth, it is considered important enough to merit *HaAdama*. The apparent indication of these *Rishonim*⁸ is that when one has in mind to both eat the cooked vegetables and drink the broth, *HaAdama* is appropriate for both elements. Thus, the classic ruling is that on soup that is based entirely on vegetables that are normally used in making soup, the *beracha* is *HaAdama*, even on the broth.⁹ Apparently, this was the practice of many *poskim*.¹⁰

On the other hand, several classical and contemporary *Acharonim* advise against this ruling, based on the following opinions and possible distinctions. The Mordechai¹¹ says that only vegetable broth that is used for dipping warrants *HaAdama*. The Ra'ah (cited but rejected by the *Mishna Berura*¹²) and a few others understand the *gemara*'s statement that water of boiled vegetables has the same *beracha* as the vegetables as meaning only that the *beracha* made on the soup's vegetables covers the broth; if the broth is eaten alone, one recites *Shehakol*.

This opinion was reason enough for some *poskim*, including the *Kaf HaChayim*,¹³ to invoke the rule that we avoid “going out on a limb” regarding *berachot*. The common application of this rule is that of *safek berachot l'hakel* – to refrain from a *beracha* when it is unclear whether a *beracha* is warranted. Its application here is that since *Shehakol* is valid *b'di'eved* for all foods, whereas *HaAdama* is not effective for a food whose *beracha* should be *Shehakol*, we recite *Shehakol* in such a case of doubt.

7. *Berachot* 8:4.

8. *V'Zot HeBeracha, Birur Halacha* 21, does cite some dissenters.

9. *Shulchan Aruch, Orach Chayim* 205:2.

10. See *Piskei Teshuvot* 205:6.

11. Cited by the *Magen Avraham* 205:6.

12. *Sha'ar HaTziyun* 202:66.

13. *Orach Chayim* 205:11.

Important contemporary *poskim* claim that the broths in today's vegetable soups often lack a strong enough taste to make them worthy of the *beracha* of *HaAdama*.¹⁴ Although many people would consider most vegetable soups they have eaten as full of vegetable taste, these opinions push the direction of practice toward reciting the "safer" *beracha*, *Shehakol*, on the broth. When one eats the soup's vegetables (at least a significant amount of them¹⁵) along with the broth, the consensus is that *HaAdama* covers the broth too.¹⁶

Nevertheless, one whose practice has been to recite *HaAdama* even on just the broth of vegetable soup is **not wrong** if he continues to do so. This is the fundamentally stronger opinion, and it is supported by important authorities.

14. See *V'Zot HaBeracha* op. cit. in the name of Rav Auerbach; Rav Elyashiv reportedly agreed.

15. See *V'Zot HaBeracha*, p. 119.

16. See *Mishna Berura* 202:54.

B-3: The *Beracha* on Pureed Vegetable Soup

Question: I read your recent response about the *beracha* on the broth of vegetable soup.¹ Is the *halacha* any different for pureed vegetable soup?

Answer: As we noted, according to most fundamental approaches, based on the *gemara*,² the *beracha* on clear broth of vegetable soup is *Borei Pri HaAdama*. On the other hand, there are enough factors against saying *HaAdama* to convince most contemporary *poskim* to prefer *Shehakol*. Pureed soup shares certain factors with broth, but other factors point in different directions.

We noted in the other response that the rule that vegetable soup requires *HaAdama* was limited to certain cases by some authorities due to the apparent contradiction between that rule and a *gemara*³ that states that the *beracha* on most fruit juices is *Shehakol*. Another reason to not make *HaAdama* on vegetable soup broth is the contention of Rav Shlomo Zalman Auerbach and others that these soups often lack sufficient vegetable taste to justify it. Some of these issues may not apply to pureed soup, because one is consuming not just juice/broth, but rather soup that consists of the whole essence of the vegetables in a pureed form.

However, from a different perspective, the situation points more toward *Shehakol* than toward *HaAdama*. We cited the opinion of the Rosh⁴ that the broth's *beracha* is *HaAdama* because it is normal for people to cook the vegetables in order to eat them. The *beracha* on the broth is thus dependent on the vegetables, which, in regular vegetable soup, remain intact even if one is eating only the broth. In the present case, in contrast, the vegetables cease

1. See response B-2 of this volume.

2. *Berachot* 39a.

3. *Ibid.* 38a.

4. *Shut* 4:15.

to exist as a solid, clearly recognizable entity. *V'Zot HaBeracha*⁵ entertains the possibility that the *beracha* should be determined as *HaAdama* based on the status it had when it was cooked, before it was pureed. However, he concludes that we follow the form in which it is eaten, all the more so if the intention when cooking it was to puree it before eating.

Since the soup is actually a semi-liquefied form of mashed vegetables, it is necessary to determine what the *beracha* is on mashed vegetables. The *gemara*⁶ states that when one takes dates and crushes them into “*terima*,” the *beracha* remains *Borei Pri Ha'etz*. What is *terima*? The Rambam⁷ and the *Shulchan Aruch*⁸ say it is totally crushed dates, to the point that it is “like dough,” and yet the *beracha* is unchanged. The same should apparently apply to a mashed vegetable. On the other hand, Rashi⁹ says that *terima* is only partially crushed, and based on this, the *Terumat HaDeshen*¹⁰ and the Rama¹¹ rule that mashed fruit (and presumably vegetables) should get the safer *beracha* of *Shehakol*. This does not result in a broad *machloket* between Ashkenazim and Sephardim, as the Rama (Ashkenazi) says that if one recited the *beracha* of the fruit/vegetable, he can assume he was *yotzei*. Additionally, Sephardi *poskim* disagree whether to follow the *Shulchan Aruch* or to also make the safer *beracha* of *Shehakol* in light of this *machloket Rishonim*.¹²

Based on the above, on the practical level, we should distinguish between different levels of puree. If the vegetables are pulverized to the point that there are no or few pieces of discernable vegetables, even if the soup is thick, then the more accepted *beracha* is *Shehakol*. However, if the soup is lumpy,

5. P. 404.

6. *Berachot* 38a.

7. *Berachot* 8:4.

8. *Orach Chayim* 202:7.

9. *Berachot* 38a.

10. I: 29.

11. *Orach Chayim* 202:7.

12. See *V'Zot HaBeracha*, p. 99; *Birkat HaShem* 7:26-29.

the *beracha* should be *HaAdama*.¹³ This distinction is similar to one made by many authorities regarding types of apple sauce and peanut butter.¹⁴ Those who make *HaAdama* even for smooth pureed soup have what to rely upon, especially considering the fact that the stronger fundamental opinion regarding mashed potatoes is to recite *HaAdama*, even if this is not usually suggested.¹⁵

One could put forward another logical distinction within the case of totally crushed vegetables. Some *poskim* say that if the vegetables are still recognizable based on their characteristics, it is enough to warrant *HaAdama*.¹⁶ According to this view, it might be argued that if the pureed soup has several vegetables that form its basis, it is more difficult to recognize its component parts and harder to justify reciting *HaAdama* unless there are many pieces of the vegetables remaining. However, it is very possible that the preservation of the vegetable's characteristics is not a matter of being recognizable, but rather an **indication** of how much the vegetables have changed from their original forms.¹⁷ If so, the question would be more of to what extent the blender pulverized the vegetables rather than whether one can discern what the ingredients are.

In summary, on finely pureed vegetable soup, Ashkenazim should recite *Shehakol* and many but not all Sephardim would recite *HaAdama*. If it remains lumpy, one recites *HaAdama*.

13. *V'Ten Beracha* (Bodner), p. 434.

14. See *ibid.* p. 409.

15. See *Mishna Berura* 202:42.

16. See *V'Zot HaBeracha*, *Birur Halacha* 16.

17. See *ibid.*

B-4: Beracha Acharona on Fruits of Different Categories

Question: Does the *beracha acharona* of *Al HaEtz* include ordinary fruit (not from the seven species) that was eaten? Is it preferable to recite the *beracha acharona* of *Al Hamichya/Al HaEtz* before *Borei Nefashot*?

Answer: The *beracha acharona* of *Al HaEtz*, the *Me'ein Shalosh*¹ for fruit of the seven species for which *Eretz Yisrael* is praised (olives, dates, grapes, figs, and pomegranates), is an interesting hybrid. On the one hand, it is similar to *Birkat HaMazon* in terms of content. On the other hand, it is a single *beracha*, similar to *Borei Nefashot*, albeit in long *beracha* form.² Yet, it begins and ends with a *beracha* form and is of a higher level (see below).

With this background, let us answer your first question. One who ate both fruit of the seven species and other fruit should recite only *Al HaEtz* to fulfill all the obligations.³ Since *Al HaEtz* thanks HaShem “for the tree and the fruit of the tree” generally, this stronger *beracha* can cover “lesser fruit” as well. In fact, the *Mishna Berura*⁴ rules that even if one mistakenly recites *Al HaEtz* after eating only ordinary fruit, he still exempts himself from *Borei Nefashot*. However, since this exemption is based on the language of *Al HaEtz*, it does not apply to fruit that does not grow on a tree, i.e., produce whose *beracha* is *Borei Pri Ha'Adama*.⁵ Other sources indicate that even “fruit of the ground” is included in “*tenuvat hasadeh*”⁶ and is exempted by *Al HaEtz*.⁷ The logic

1. The shortened version of the three *berachot* of *Birkat HaMazon*, often colloquially called *Al HaMichya*.

2. See *Ketubot* 7b.

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

4. 207:1.

5. *Sha'ar HaTziyun* 208:64.

6. “That which is produced by the field,” which is also part of the *Me'ein Shalosh* text.

7. *Yabia Omer* V, *Orach Chayim* 17.

is stronger for those who conclude *Al HaEtz* with the words “*al hapeirot*,” as opposed to “*al pri ha'eitz*,” as the former refers to fruit generically and not exclusively to fruit of the tree.

Regarding the order of the *berachot acharonot*, it is conceptually proper to recite the *Me'ein Shalosh* first because it is a higher level *beracha* than *Borei Nefashot* for one or more of the following reasons: According to some authorities,⁸ *Me'ein Shalosh* is actually a Torah-level obligation; it is longer and more extensive than *Borei Nefashot*; and it is more specific.⁹ However, some *poskim* say that because of the opinions that *Me'ein Shalosh* fulfills the obligation for all sorts of fruit (including fruit of the ground), it is preferable for one to say *Borei Nefashot* first, as it will otherwise be unclear whether he should recite *Borei Nefashot* afterward. If the *Borei Nefashot* is needed also for eating something that does not grow from the ground (e.g., meat, water, and, according to many, fruit juice, which loses its status of fruit regarding *berachot*¹⁰), this is not an issue,¹¹ and it would be preferable to recite the *Me'ein Shalosh* first.

Nevertheless, the accepted ruling and practice for Ashkenazim is to not be concerned with the opinion that one should say *Borei Nefashot* first, even in cases in which a fruit that does not grow on a tree was eaten.¹² For Sephardim, it is difficult to say. The *Shulchan Aruch* seems to maintain that “*HaAdama* fruits” cannot be included in *Me'ein Shalosh*. Rav Ben Tzion Abba Shaul¹³ employs additional strong logic: One who plans to say *Borei Nefashot* after *Me'ein Shalosh* is considered like one who has in mind **not** to have the *Al HaEtz* cover the *Borei Nefashot* fruit, in which case there are ample sources that indicate it is not effective for those foods. (One would do well to have this in mind

8. See *Beit Yosef, Orach Chayim* 209.

9. *Pri Megadim, Eshel Avraham* 202:26; *Bi'ur Halacha* to 202:11.

10. See *Mishna Berura* 208:63.

11. *Yabia Omer* op. cit.

12. See *V'Zot HaBeracha*, p. 54.

13. *Ohr L'Tzion* II:14:24 and footnotes ad loc.

explicitly.) On the other hand, the *Kaf HaChayim*¹⁴ says it is better to avoid the situation by reciting *Borei Nefashot* first, although if one did say *Al HaEtz* first, he would still recite *Borei Nefashot*.¹⁵ Rav Ovadia Yosef,¹⁶ basing himself on the rule he champions to avoid doubtful *berachot* even when the *Shulchan Aruch* approves of them, goes further. He rules that if one already said a *Me'ein Shalosh*, he should not make a *Borei Nefashot*. Given his authority, it is hard to tell a Sephardi to not follow his position, at least in regard to *l'chatchila* situations.

14. 208:73.

15. *V'Zot HaBeracha* op. cit. cites Rav M. Eliyahu as agreeing on both points.

16. *Yabia Omer* op. cit.

B-5: *Zimun* of Those who Ate Milk with Those who Ate Meat

Question: From what I understand, if three people eat together, with one eating dairy and two eating meat, the one who ate dairy leads the *zimun* because he can presently eat from both types of food, whereas the others cannot. Is the same true if four people ate together and three of them had meat and one had dairy, in which case the three do not require the dairy-eater in order to do the *zimun*? Also, in the first case, should the dairy-eater do the *zimun* even if one of the others is a *kohen*?

Answer: (Our answer does not address the precautions that should be taken when some are eating dairy while others are eating meat.¹)

The *tosefta*² states that *kohanim* and ordinary Jews can join together for *zimun*. The *gemara*³ notes that this seems obvious and therefore posits that the *tosefta* relates to a case in which *kohanim* ate *teruma* (which is forbidden for a non-*kohen* to consume) while the others ate regular food. The reason that they can join together to form a group for *zimun*, says the *gemara*, is that although the ordinary Jews may not eat a *kohen's teruma*, the *kohen* may eat their food. The *Shulchan Aruch*⁴ states that if a *kohen* ate something non-*kohanim* may not eat and the others ate bread baked by a non-Jew that the *kohen* is careful not to eat (as it is forbidden according to certain halachic opinions⁵), they do not form a *zimun* together.

The *Magen Avraham*⁶ raises the matter of dairy and meat,

1. See *Yoreh Deah* 88.

2. *Berachot* 5:14.

3. *Arachin* 4a.

4. *Orach Chayim* 196:3.

5. See *Yoreh Deah* 112.

6. 196:1.

which you related correctly, and points out that the meat-eaters and the dairy-eater can join together because the one eating dairy can still eat meat. (*Acharonim* discuss how this reasoning fits in with the various cases and opinions regarding the necessary break when eating meat after dairy.⁷) One might have thought that this point is actually irrelevant; after all, the eating that creates the obligation of *zimun* is of bread, which is classically *pareve*. Why should it matter that the “side dishes” of the respective eaters are dairy and meat? The *Magen Avraham* is sensitive to this question and points out that the discussion applies to a case in which the bread is “soiled” with meat and dairy, respectively. There is a *machloket* about a case in which the food that one ate was off limits to others but bread that everyone may partake of is available,⁸ but we assume that the matter is determined by what **was eaten**.⁹

The *Magen Avraham* is also the source for your assumption that since it is the dairy-eater who unites the individuals into a group for *zimun*, he should “make the *beracha* to exempt the others.”¹⁰ Once they form a group for *zimun*, it is not entirely clear why it makes a difference who leads the *zimun*.¹¹ Indeed, some *Acharonim* do not cite this ruling,¹² and even some who do cite it view it as a *minhag*, not an absolute requirement.¹³ It is also notable that the *Magen Avraham* cites the practice in a case in which only the *mezamen* does the *bentching* and **exempts** the others, whereas current practice is that all *bentch* separately and the *mezamen* only leads the beginning. In our day, then, the stakes regarding *zimun* are much lower. Therefore, it is not surprising

7. See discussion in *Piskei Teshuvot* 196:10.

8. See *Taz, Orach Chayim* 196:2.

9. See *Hitorerut Teshuva* III:61.

10. The *B'Tzel HaChochma* (IV:169) reasons that if one started his meal with a *k'zayit* of bread, thereby already creating the *zimun* obligation before eating any meat, this matter does not apply.

11. See *Aruch HaShulchan, Orach Chayim* 196:8.

12. See opinions in *Sha'ar HaTziyun* 196:12.

13. *Chayei Adam* I, 48:19; *Mishna Berura* 196:9; *Aruch HaShulchan* op. cit.

that the *Sha'ar HaTziyun*¹⁴ says that if one of the meat-eaters is a *kohen*, the more established *halacha* of giving respect to *kohanim* trumps the preference of the dairy-eater.

Regarding your case of four eating together, where there is a *zimun* of meat-eaters, the proper course of action probably depends on the *Magen Avraham's* reasoning, which is not spelled out. If we prefer that the person who is most connected to everyone be the *mezamen*, it still makes sense to have the dairy-eater lead the *zimun*. If the *Magen Avraham's* idea is to serve as a reminder that what the people ate can affect the viability of the *zimun*, then when the *zimun* does not depend on the dairy eater, it should not be necessary to choose him. However, one can raise counter arguments. In any event, as we have seen, the matter is not particularly significant, and it does not warrant worrying about which possibility is more likely, such that one can do as he prefers.

14. Op. cit.

B-6: *Shehecheyanu* on Fruit for a Visitor from a Place with Constant Access

Question: I live in England, where avocados are available all year long, and I am visiting Israel, where avocado is primarily a winter-spring fruit. Should I recite *Shehecheyanu* upon eating it in Israel?

Answer: We will begin with some background. The *beracha* of *Shehecheyanu* is a proper response to the happiness of something enjoyable **returning** to our lives. Therefore, in the context of eating produce, *Shehecheyanu* applies only when there are distinctive seasons for that produce during the course of the year.¹ The Rama elaborates that for this reason, we do not make a *Shehecheyanu* upon eating a vegetable, “for it stands in the ground all year.”² He expounds elsewhere³ that it is difficult to discern which particular vegetable is from the old crop and which is new.

A common question is what to do if there are different **growing seasons**, but some fruits are nevertheless **available** almost all year without interruption. This depends on how to understand the aforementioned Rama (“stands in the ground”). The *Mishna Berura*⁴ points out that almost every vegetable has a distinct growing season, making the Rama’s generalization about vegetables difficult to understand. (Notably, due to use of hothouses, it is now common for vegetables to be grown throughout the year.) One of the *Mishna Berura*’s explanations is that the Rama was referring to vegetables stored in the ground for long periods of time. In other words, even when something

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

2. *Ibid.*

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

4. 225:18.

does not grow all year long, if it is **available** throughout the year, we do not recite *Shehecheyanu* on it. However, when fresh produce is far superior to stored produce, there is likely cause to make a *Shehecheyanu* on the new fresh fruit.⁵ This is particularly understandable in light of the Rama's emphasis that the factor is whether it is noticeable that a given fruit is from the new season or the old. Certainly, if a species is available only canned, one makes a *Shehecheyanu* on new, fresh produce.

Another situation in which produce is available throughout the year is when it is imported from regions with different growing seasons, in which case we do not make *Shehecheyanu* on either local or imported fruit. Again, the determining factor is not the agricultural phenomenon of a new crop. It depends upon the consumers' experience upon reaching a new season of availability.

Is the determining factor the individual consumer or general society? The *Shulchan Aruch*⁶ writes that it must be a food that is renewed, i.e., there is an off season. In his discussion of the matter, the *Mishna Berura*⁷ writes that one should not recite the *beracha* if "although he did not eat it, others did." Thus, it is not enough that the fruit is new for certain individuals.

Your question relates to the opposite case, however; the fruit is new in the region in which you presently find yourself, but it is not personally new to you. *Teshuvot V'Hanhagot*⁸ and *Halichot Shlomo*⁹ rule that if one traveled from a place where the season had already begun to a place where there is a new season, he makes the *beracha* again in the new place. However, both require that thirty days of a lack of enjoyment from the fruit must pass in the interim. In other words, there has to be a basic period of unavailability both for the individual and for the local society.

5. See *V'Zot HaBeracha*, p. 161.

6. Op. cit.

7. 225:16.

8. II:151.

9. *Tefilla* 23:21 (based on Rav S.Z. Auerbach's writings).

If the fruit has been available without a minimum interruption either for the society or for the individual, then one does not recite *Shehecheyanu*.

The newcomer's thirty days can be a combination of time in his place of origin and in the new location. It is not clear, however, whether the individual's break starts from the time he last ate the fruit or from the time he last had access to it. While it would seem obvious that eating is the critical factor, this is not necessarily true, because the original *halacha* is that the *beracha* is made upon seeing the fruit, even though the *minhag* is to recite it only upon eating it.¹⁰ Since we refrain from making a *beracha* in a situation of doubt, we recommend that the traveler not make a *beracha* unless he spent a combination of thirty consecutive days without **easy access** to the fruit. In addition, locally, the fruit should be one that is not widely available all year long. In your case, only if you spent thirty days in Israel before the avocado season should you make a *beracha* when it becomes available.

10. *Shulchan Aruch, Orach Chayim* 225:3.

B-7: Fulfilling *HaGomel* with a Different *Beracha*

Question (part I): It has been a couple months since I had a baby. May I still recite *Birkat HaGomel*?

Answer (part I): [*We sent the new mother our previous response,¹ in which we posited that a woman can recite HaGomel up to twelve months from the time of the birth.*]

Question (part II): Before I sent you the question, I followed a ruling that I found online that if one is not sure whether he needs to recite *HaGomel*, he should have in mind during the morning *beracha* of “*hagomel chasadim tovim l’amo Yisrael* [Who grants good acts of kindness to His nation Israel]” that it should also serve as thanks in lieu of *Birkat HaGomel*. After having done that, can I still follow your ruling and recite the regular *HaGomel*, or would that now be a *beracha l’vatala*?

Answer (part II): The advice you found on the internet has complicated matters – not because it is illegitimate, but specifically because it has a significant basis.

The *Shulchan Aruch*² suggests that in the event that it is not clear whether one fulfilled the *mitzva* of making *Birkat HaGomel*, it is advisable to recite the content of the *beracha* without HaShem’s Name. The idea you saw – having intention during the morning *beracha* that resembles *HaGomel*’s language to also fulfill a requirement of *Birkat HaGomel* that is subject to doubt – seems to come from *Halichot Shlomo*,³ citing R. Shlomo Zalman Auerbach, which claims that it is a better alternative to the

1. See *Living the Halachic Process* vol. V, B-8.

2. *Orach Chayim* 219:3.

3. *Tefilla* 23:8. The *sefer* is posthumously arranged from writings and teachings of Rav S.Z. Auerbach.

Shulchan Aruch's idea. The two *berachot* indeed share the word “*hagomel*” (Who grants) and the root “*tov*” (goodness). There are differences between them, however, and only *HaGomel* is in full *beracha* form (including “*Elokeinu melech ha'olam*”). For support, *Halichot Shlomo* points out that the text of *HaGomel*, as found in the *gemara*⁴ and accepted by several *Rishonim*, is precisely “*gomel chasadim tovim.*” Although the *Beit Yosef* accepts the view of the *Rishonim* who use our present text, “*hagomel l'chayavim tovot,*” the other text is presumably valid at least *b'di'aved*. (There is flexibility in the language of *Birkat HaGomel*.⁵) Therefore, according to *Halichot Shlomo*, you have already fulfilled the *mitzva*, and if you were to recite the standard text at this point, it would be a *beracha l'vatata*.

Indeed, there is apparent great gain in the *Halichot Shlomo*'s suggestion, as a valid *beracha* must include HaShem's name,⁶ which the *Shulchan Aruch*'s suggestion omits. We know of two possible rationales for the *Shulchan Aruch*'s view: 1) According to a minority opinion, one fulfills the *beracha* in this form;⁷ 2) A non-*beracha* declaration in order to thank HaShem has value, even if it does not fulfill the formal *beracha* obligation.⁸

On the other hand, there are questions about the value of what you did in following the *Halichot Shlomo*'s idea. First, while it is possible, it is difficult for an authority, even of Rav Auerbach's great stature, to argue against the *Shulchan Aruch* and present an idea that is not directly based on a classical source.⁹ Furthermore, the proposition that the two *berachot* are similar is far from obvious. Note that *HaGomel* gives thanks for a personal

4. *Berachot* 54b.

5. See *ibid.*; *Mishna Berura* 219:4.

6. *Berachot* 40b.

7. See *Birkat HaShem*, IV, p. 453.

8. *Divrei Halacha* (Weber), *Orach Chayim* 214.

9. We must add that whenever a ruling is found in a posthumous compilation of writings, one has to consider the possibility that the “author” did not intend his idea to be a ruling for the masses.

salvation, as it concludes with words “*shegemalani kol tov*,”¹⁰ whereas the morning *beracha* mentions general “good acts of kindness to His nation Israel” but does not stress the welfare of the blesser. In fact, it is possible that the *Birkat HaGomel* text found in the *gemara* assumes that one would conclude with “*shegemalani kol tov*.”¹¹ *Halichot Shlomo*¹² suggests adding the phrase “*shegemalani kol tov*” to the end of the morning *beracha*, which could improve matters, but it does not sound like you did this (you would remember, as it would have entailed concentration). Moreover, you imply that you said the *beracha* normally, i.e., to yourself, and one is supposed to recite *HaGomel* in a manner that ten people can hear.¹³ The *Shulchan Aruch*¹⁴ cites two opinions as to whether one fulfilled his obligation *b’di’aved* if he did not do it in front of ten. Due to one or all of these reasons, it is possible that you did not fulfill *Birkat HaGomel*.

Despite our doubts about your implementation of Rav Auerbach’s idea, we would not tell you to make another *beracha*. According to almost all *poskim*, the rule that one does not make *berachot* in cases of doubt applies to *HaGomel*.¹⁵ Although you are not required to do anything further, the possibility of using the *Shulchan Aruch*’s approach of publicly reciting *HaGomel* without HaShem’s Name certainly exists. However, considering that you need not rush, there is a seemingly better and more convenient option for you, which is fully accepted and is also found in the *Shulchan Aruch*.¹⁶ Have someone else who needs to recite *HaGomel* have in mind for the *beracha* to apply to the two of you as she recites it, while you are present and intending the same.

10. Translated, “You did **for me** all that is good.”

11. Discussion of indications of this conjecture is beyond our present scope.

12. In a footnote, ad loc.

13. *Berachot* 54b.

14. Op. cit.

15. See *S’dei Chemed*, vol. VI, pp. 315-317, for notable exceptions when *berachot* might be made in cases of doubt.

16. See op. cit. 5.

B-8: Making *Berachot* upon Seeing Animals

Question: I have never made *berachot* upon seeing animals in the zoo, but it seems from *sifrei halacha* that one should. Should I start doing that, and, if so, what are the basic rules?

Answer: (We will not discuss the *beracha* for beautiful animals, which the *Mishna Berura*¹ writes is not in practice in our times.) A *baraita*² states that when one sees an elephant, a monkey, or a *kafof* (the exact species is unclear), he recites the *beracha* of “*meshaneh haberiyot*” (Who makes diverse creations). This *beracha* is also recited when observing abnormalities within humans.³ What is considered an abnormality is likely to involve an element of subjectivity, as we will discuss below.

Rav Shlomo Zalman Auerbach is cited as ruling that the *beracha* applies to any unusual animal.⁴ Others rule that this is a closed list.⁵ This may be true for a few reasons. First, perhaps *Chazal* saw unique characteristics in those particular animals.⁶ Furthermore, even if the *beracha* could theoretically apply to other animals, it is difficult to know what features are considered unusual, and it is therefore best to recite such *berachot* only when we are sure.⁷

There is also a question as to how often to make the *beracha*. Rav Auerbach is quoted as instructing a zoo-goer to recite the *beracha* on the first animal he finds unusual, intending with that

1. 225:32.

2. *Berachot* 58b.

3. *Ibid.*

4. *Halichot Shlomo* 23:35.

5. See *V'Zot HaBeracha*, 5769 edition, p. 156.

6. See *Meiri*, *Berachot* 58b.

7. It is not clear which type(s) of monkey *Chazal* were referring to as being unusual enough to warrant a *beracha*. Perhaps all are included, since they were not common in the places where *Chazal* lived.

to cover all the other animals.⁸ This approach can be justified on several grounds. First, when one expects to have different occasions in close proximity to each other in time and/or location in which a certain *beracha* applies, he is advised to make the *beracha* once for all of them (e.g., regarding eating⁹). Doing so also obviates any doubt that might arise if it is not clear later whether the *beracha* is again necessary for a certain animal. It is also logical to view the trip to the zoo as one experience. One could argue that it is not that each animal needs to be included in a *beracha*, as different foods do. Rather, seeing unusual animals makes one reflect on the wonder of creation, and that should be the focus of the entire trip to the zoo. This is different from happening to come across various unusual beings one after the other in one's normal setting.

It seems that most religious Jews do not make a *beracha* on animals in the zoo, including elephants and monkeys. Does this have any justification? The *Shulchan Aruch*¹⁰ writes that the *beracha* of *meshaneh haberiyot* should be made only the first time in a lifetime for each unusual sight, when it has its greatest impact.¹¹ If one neglected to make the *beracha* or was a child at the first opportunity, the *beracha* is not recited later.¹² The Rama¹³ says to “reset the clock” every time one has gone thirty days without seeing these animals,¹⁴ as is often the case regarding similar *berachot*.¹⁵ However, under such circumstances, the *Mishna Berura*¹⁶ suggests making the *beracha* without HaShem's

8. *Halichot Shlomo* op. cit., footnote 135. *Piskei Teshuvot* 225:21 cites those who rule that one should make the *beracha* on each relevant animal.

9. *Shulchan Aruch, Orach Chayim* 206:5; see *Yoreh Deah* 19 regarding *shechita*.

10. *Orach Chayim* 225:9.

11. See *Mishna Berura* ad loc. 29.

12. See *Birkat HaShem* IV:3:28.

13. *Orach Chayim* 225:9.

14. *Mishna Berura* ad loc. 31.

15. See *Shulchan Aruch, Orach Chayim* 225:1.

16. 225:30.

Name. Accordingly, most people probably would not be obligated to make the **full** *beracha*.

There is another idea to justify the prevalent practice of not making these *berachot* at the zoo. It is difficult to find explicit sources, but there is a fundamentally logical rationale if we assume that the *berachot* have a subjective nature. Once upon a time, a person could go a lifetime without seeing a monkey in the flesh or even in a picture, and the excitement/wonder of seeing one made reciting a *beracha* more appropriate. Nowadays, people go to the zoo periodically, whenever they want. Even before their first visit, they had seen pictures and images of elephants and exotic animals many times.¹⁷ Therefore, the excitement is not the same. (Seeing one in its natural habitat is likely different.)

Therefore, those who do not make the *beracha* at the zoo do not need to begin doing so. However, those who do say the *beracha* or want to start, especially those who get excited by the animal kingdom with whom HaShem has us share the world, do not have to fear they are making a *beracha l'vatala*,¹⁸ at least when reciting the *beracha* upon seeing monkeys, elephants, or astounding animals. One can certainly make the *beracha* without HaShem's name and should certainly think about Him often during the visit.

17. All agree the *beracha* can be said only when seeing them in the flesh.

18. See *Yabia Omer* IV, *Orach Chayim* 20.

B-9: *HaMapil* for those Who Go to Sleep Before Night

Question: Do people who go to sleep before nightfall (e.g., during the summer, night-shift workers, the old and the ill, etc.) recite *HaMapil* before going to sleep?

Answer: The *gemara*¹ mentions *HaMapil* for one “entering to sleep on his bed,” without noting the time of day. However, the Rambam² writes that the *beracha* is recited “when one enters his bed to sleep **at night**.” Despite varied opinions among the *Rishonim*,³ the condition of it being nighttime is accepted.⁴ However, this position’s rationale impacts your question.

The above *gemara* continues by mentioning the *berachot* recited upon awakening, starting with *Elokai Neshama*, which some view as a “bookend” with *HaMapil*.⁵ We recite these *berachot* only once a day. Although some authorities distinguish between them, in both cases there are questions as to whether these *berachot* are intended only for those who **sleep** or whether they are general praises to HaShem related to sleep and **awaking** at the **normal times**.

Most *poskim* rule that one recites *HaMapil* at night and only before serious sleep.⁶ The connection to night is that this is the average person’s time of serious sleep, based on which the *beracha* was instituted.⁷

The *B’Tzel HaChochma*⁸ understands the element of night very formalistically: There is no obligation, and thus no ability, to

1. *Berachot* 60b.

2. *Tefilla* 7:1.

3. See *Meiri*, *Berachot* 60b.

4. See *Bi’ur Halacha* to 239:1; *B’Tzel HaChochma* V:166.

5. See *ibid*.

6. See *Tefilla K’Hilchata* 20:2; *Piskei Teshuvot* 239:1.

7. This is apparently the Rambam’s basis.

8. *Op. cit*.

say *HaMapil* before night, even if one is planning a full allotment of sleep before nightfall. He compares reciting *HaMapil* before night to reciting the *beracha* on sitting in a *sukka* before *Sukkot* starts when one plans to remain there until the *chag* begins; a *beracha* is still not made before the relevant time.

However, other sources and logic indicate that night is a criterion for *HaMapil* on practical rather than fundamental grounds. The *Chayei Adam*⁹ writes that the *beracha* is not recited before daytime sleep, because we are concerned that one will not fall asleep, daytime sleep is improper, and/or it is not effective sleep. These reasons do not apply to the cases you raise of those who have a valid reason to start sleeping before nightfall. It is possible, however, to argue that based on these common issues, *HaMapil* was not instituted for the daytime across the board, with no distinctions (*lo plug*).¹⁰

Several *poskim*¹¹ explain why it might be proper to recite *HaMapil* before one's major sleep after dawn when one did not sleep at night (e.g., Shavuot morning). This is even more likely if one starts his **night sleep** during the daytime. One could add to the equation the opinion that one may recite a *birkat hashevach* (a *beracha* of praise) even when there is a doubt whether it is necessary, because the contents of such *berachot* are never inappropriate.¹² Nevertheless, the consensus is that the principle of *safek berachot l'hakel* (when in doubt about a *beracha*, refrain) applies to this situation as well.¹³

However, in cases in which the sleep is **primarily at night**, the argument to say *HaMapil* is much stronger. It makes sense to understand the Rambam's statement about reciting *HaMapil* before going to sleep at night as meaning that the **sleep done at night** is the type of sleep that justifies *HaMapil*, not that it is

9. I:35:4.

10. See *ibid*.

11. See *Teshurat Shai* I:82; *Teshuvot V'Hanhagot* I:198.

12. *Halachot Ketanot* I:264.

13. See *Mishna Berura* 221:7

inappropriate to make the *beracha* during the day. Thus, if the majority of one's sleep will be during the night, the fact that it begins earlier need not preclude saying *HaMapil*.

It is also worthwhile to discuss the situation of one who goes to sleep **soon before nightfall**. Many *halachot* of night begin at *plag hamincha*.¹⁴ Thus, one who begins his sleep for the night at that point might be considered to be extending slightly the time of night sleep. In fact, in summer nights in extreme latitudes, this is a common time to go to sleep. Note that one who wakes up after midnight may recite the morning *berachot*, including *Elokai Neshama*,¹⁵ presumably because morning wake-up time is flexible. Maybe the converse is true in the evening. On the other hand, maybe *Chazal* would not have extended a *beracha* for going to sleep for the night to a time when one cannot fulfill the *mitzva* of *Kri'at Shema* of the night.

The rules of practical *p'sak* point toward not risking reciting the *beracha* of *HaMapil* before nightfall, despite the strong indications that it is called for. However, one who does recite *HaMapil* before his major sleep that extends well into the night has what to rely upon.

14. A proportional hour and a quarter before sunset.

15. *Shulchan Aruch, Orach Chayim* 47:13.

Section C:
Shabbat

c-1: Sunbathing on Shabbat

Question: Is it permitted to sunbathe on Shabbat? Does it depend on the purpose of the sunbathing: health benefits, tanning, enjoyment?

Answer: We will focus here only on the Shabbat-related issues, about which you ask.¹ Relatively recent *poskim* have discussed this matter, and the main discussions concern the *halachot* of medicinal activity on Shabbat and the *melacha* of *tzovei'ah* (coloring).

The issues regarding one who wants to sunbathe due to a specific medical condition have too many variables to address in this forum. If the sunbathing is for (perceived) general health benefits, the matter is similar to the halachic discussion about vitamins on Shabbat. The *Shulchan Aruch*² rules that one may eat/drink medically-oriented foods that are eaten regularly by healthy people. However, the *Magen Avraham*³ contends that this is so only when one is eating the food for its food value, not when he is doing so specifically for its medicinal value. The *Igrot Moshe*⁴ maintains that this stringency applies only when the person, while not sick, needs strengthening, but not when he is simply trying to keep his body “well stocked” so that he will not weaken in the future. Some *poskim* are even more stringent than the *Igrot Moshe*.⁵ In any case, since medicinal activity is forbidden on Shabbat only when it is evident that the health benefit is the

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1. We will not relate to issues of *tzniut* that can arise from sunbathing, which are clearly important. Our discussion should also not be construed as a statement on the medical advisability of the practice. We will remind you that while a certain amount of exposure to the sun can be beneficial (vitamin D, etc.), overexposure can be dangerous.
 2. *Orach Chayim* 328:37.
 3. 328:43.
 4. *Orach Chayim* III:54.
 5. See conditions to permit consumption of vitamins in *Shemirat Shabbat K'Hilchata* 34:20.

objective,⁶ and since sunbathing is something that people in our times do not usually associate with health benefits, it is permitted, at least on this count.⁷

The question of coloring the skin is fascinating. The prohibition of coloring is relevant to the human body, as we infer from the fact that certain cosmetics are forbidden on these grounds.⁸ Despite the fact that it would certainly not be forbidden to go outside to a place where one **could** get a suntan, perhaps it is forbidden to **purposely** get one, especially if one takes steps to increase the extent of the coloring. Indeed, some *poskim* forbid intentionally getting a suntan.⁹ The *Shemirat Shabbat K'Hilchata*,¹⁰ however, implies that it is permitted because the person does not color his skin actively, but rather puts himself in a place where the sun does the work. Others add that the process is drawn out and the act itself has no **immediate** impact.¹¹ (Some *melachot*, such as cooking, always involve putting an object in a place where an outside force will have a gradual impact on it. Coloring, in contrast, is classically done by putting the coloring agent directly on the object; the question is whether coloring by tanning – a passive, gradual process – is also problematic.) Another claim is that tanning causes a natural, not artificial, color for the skin.¹²

It is hard to find conclusive proof from classical sources on these claims. However, from our perspective, a general principle of “halachic philosophy” tips the scale. Since it is unreasonable to assume that the Torah and *Chazal* forbade walking in the sun on Shabbat, it is difficult to imagine that the Torah/*Chazal* extended

6. *Shulchan Aruch, Orach Chayim* 328:44. Not all agree that not being evident is sufficient grounds to remove the prohibition of medicinal activity; see *Az Nidberu* II:30.

7. See *Yalkut Yosef, Orach Chayim* 328:78.

8. *Shulchan Aruch, Orach Chayim* 303:25.

9. *Minchat Yitzchak* V:32; *Az Nidberu* op. cit.

10. 18:(70), in the context of his permission to wear sunglasses that change colors in the sun.

11. See *Torat HaMelachot* 15:25.

12. *Nishmat Shabbat* V:215.

the *issur* of *tzovei'ah* to include coloring the skin in the sun, which often happens as a result of being outside, regardless of whether one likes tanning. Consequently, even intentional tanning would be permitted.

Therefore, while we are not particularly enthusiastic about the prospect of someone spending a good part of his Shabbat sunbathing, we would not forbid it on halachic grounds.

Do realize that according to the consensus of *poskim*, it is forbidden to smear sunscreen cream over one's body or part of it, due to the *melacha* of *memachek*.^{13 14} One cannot justify using sunscreen on the grounds of the medical importance of protecting one's skin from the sun if the need stems from one's desire to sunbathe (in other words, simply don't sunbathe). It is permitted to spray liquid sunscreen.¹⁵ This is not considered medicinal because its purpose does not involve healing.¹⁶

13. Smoothing out or spreading uniformly (*memare'ach*).

14. See *Orchos Shabbat* 17:20.

15. *Ibid.*

16. See *Shulchan Aruch, Orach Chayim* 328:27, which permits covering a healing wound with a bandage.

C-2: Doing Work for Someone for Whom it is Still Shabbat

Question: My friend called me from New York on Friday and asked me to do an internet check-in for him on *Motzaei Shabbat* in Israel (his Shabbat afternoon) before his Saturday night flight. Is it permitted for me to do so?

Answer: We have ruled in the past that Americans may carry out stock orders on behalf of Israelis on Friday afternoon in the United States, at a time that is Shabbat in Israel.¹ We will review the logic and sources in that case and examine how to apply the principles to this case.

The *gemara*² says that Reuven may ask Shimon to watch Reuven's fruit that is beyond his *techum Shabbat*³ but within Shimon's. The Rashba⁴ extrapolates from this that if Reuven accepted Shabbat early and Shimon has not yet accepted it, Reuven may ask Shimon to do work on his behalf. Why don't we say that Shimon's action relates to Reuven through the principle of *shelichut*,⁵ much as we forbid a Jew to have a non-Jew do work on his behalf on Shabbat?⁶

Three answers appear in the *poskim*: 1) The prohibition to ask others was not instituted when one presently has or at one point had a way in which it would not be forbidden to do the work himself.⁷ In the case of the fruit-watching, Reuven could

1. See *Living the Halachic Process*, vol. V, C-13.

2. *Shabbat* 151a.

3. The area around an individual's initial location when Shabbat started, in which he is allowed to move about.

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

5. Agency.

6. See Rashi, *Shabbat* 153a.

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

have checked on the fruit using “*burgenin*.”⁸ In the second case, Reuven could have chosen not to accept Shabbat early. 2) When one accepts Shabbat early, the acceptance applies only to prohibitions that one performs himself.⁹ 3) Reuven may ask Shimon to do something that is not a *melacha* for Shimon based on his situation, as opposed to asking a non-Jew to do something that would be forbidden for him if he were obligated in Shabbat.¹⁰

In our case, according to reasons #1 and #2, performing the internet check-in for your friend would seem to be forbidden, as the work you would do on *Motzaei Shabbat* would be done on your friend’s actual Shabbat, and ostensibly he has and had no way of doing the action at that time in a permitted way. One could argue that our case is more lenient, since the request was made before Shabbat. However, while that is helpful in regard to the issue of not involving oneself in matters that are forbidden on Shabbat,¹¹ the aforementioned element of *shelichut* would appear to pose a problem. After all, when the work is done, it is done on behalf of the one who requested it, irrespective of when the request was made.

According to reason #3, the approach of the *Taz*, there should be no problem, as the important thing is that you were asked to do work on what is *Motzaei Shabbat* **for you**. Among the reasons why we were lenient in the case of the Friday stock orders is this approach #3, which is the strongest and most accepted.¹² We also noted, as several *poskim* do, that if we were to rule stringently, then when the owner of a kosher bakery in New York visits Israel, his bakery must be closed 7 hours before Shabbat begins in New York.

However, my halachic intuition tells me this case is worse

8. Booths, which extend the *techum Shabbat*.

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

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

11. See Rashi, *Avoda Zara* 15a.

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

than those of the *gemara* and the Rashba, in which it is permitted for one to do work on behalf of someone who could not do it. In the permitted cases, the work was **intrinsically** permitted even for Reuven; he was simply in an “artificial situation” that precluded his specific involvement (i.e., out of *techum*, early Shabbat). In our case, a **person in America** wants a *melacha* done that he would normally not do himself, involving **activities in America** specifically during Shabbat. Modern technology allows him to find someone to do the work from a “halachic time warp,” from a place where Shabbat is out. Is it clear that the *Taz* and Rashba would extend their leniency to that which, from the requester’s perspective, is an intrinsic violation of Shabbat? Would we allow someone to have Jews in different places in the world run his life or his business by remote control from various continents on his Shabbat?! This would seem to violate the Rambam’s¹³ logic for the prohibition of *amira l’nochri*: One who treats Shabbat lightly enough to have things done by a non-Jew may come to do those things himself.

Although important *talmidei chachamim* with whom I shared this idea acknowledged the logic of my stringency, it is difficult to forbid such a situation without a source. Our *rosh kollel*, HaRav Yosef Carmel, acknowledges the problem of having someone “out of Shabbat” remotely operate household items during the requester’s Shabbat, but reasons that the “ethereal” world of internet follows the place of the person who enters it (*marit ayin* does not apply there). Since you want to enter it when it is not Shabbat for you, and your friend in America is uninvolved, even though he benefits, it need not be forbidden.

In the final analysis, you may fulfill your friend’s request.

13. *Shabbat* 6:1.

c-3: Reheating Microwaved Food on Shabbat

Question: I cook rice in the microwave. On Shabbat, I want to heat it up on the hot plate. Aside from the regular questions of reheating, is there a problem because the first cooking was irregular?

Answer: From your question, it is evident that you are aware that once a food is fully cooked, cooking it further or reheating it is not a violation of *bishul* (cooking).¹ Your question is whether being fully cooked via a microwave oven is considered cooked. We will begin by examining a precedent regarding nonstandard cooking.

The *gemara*² states that the prohibition of cooking on Shabbat is in effect when something is cooked by heat that emanates from some sort of “fire,” whereas it is permitted to “cook” in the sun. Rashi³ maintains that the leniency is due to the fact that it is not normal to cook in the sun. The *Igrot Moshe*⁴ asserts that because of the abnormality of sun-cooking, we cannot extend the prohibition of cooking to it from the cases found in the context of the *Mishkan*, which are the models for what is forbidden on Shabbat. This *halacha*, however, is not a clear indication that the result of such abnormal cooking is any different from that of conventional methods. Others disagree, based on another *gemara*,⁵ which states that just as there is no Torah-level violation of Shabbat when one cooks something not through fire or its by-product (but, for example, in hot springs), *Korban Pesach* meat that was cooked in that manner is not subject to the prohibition

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

2. *Shabbat* 39a.

3. Ad loc.

4. *Orach Chayim* III:52.

5. *Pesachim* 41a.

of eating cooked *Korban Pesach* meat. Since it is the result, not the process, that is important regarding *Korban Pesach*, the *Avnei Nezer*⁶ and *Minchat Shlomo*⁷ say that *Chazal* must have posited that the unusual process produces a result that is different from standard cooked food.

Although the *halacha* is that there is no prohibition on Shabbat to cook food that was previously cooked, there is a *machloket Rishonim* regarding whether it is forbidden to cook (in liquid) something that was previously baked (with dry heat) or vice versa. We rule stringently regarding cooking after baking and vice versa, but not in an absolute manner.⁸ The *Pri Megadim*⁹ briefly discusses whether it is permitted to put something that has already been cooked in the sun through a conventional cooking process.

The *Pri Megadim*'s case and that of the *Rishonim*, cooking something that was already baked, are similar. In both, the food is already fully edible due to a process involving heat before the second process begins. However, the *Pri Megadim*'s case entails elements of both stringency and leniency in comparison to the case of the *Rishonim*. In the scenario of cooking/baking, the food already underwent **halachic** cooking, whereas food that was cooked in the sun did not, such that the *Pri Megadim*'s case of food that previously underwent nonstandard cooking may be more stringent. But one could also distinguish in the other direction. Cooking something that was previously baked or vice versa leads to a discernable change in the food. That does not seem to happen when one repeats basically the same process, except that the second time is considered halachic cooking. The *Pri Megadim*'s inclination is that there is certainly no Torah violation to recook food that was previously cooked in the sun,

6. *Orach Chayim* 163.

7. I:12 in footnote 4.

8. See *Shulchan Aruch*, *Orach Chayim* 318:5; *Shemirat Shabbat K'Hilchata* 1:(180).

9. *Orach Chayim*, *Mishbetzot Zahav* 318:6.

and it is likely permitted, apparently based on the idea that the cooking process is (fully) forbidden only when it changes and/or improves the food.¹⁰

If we equate microwave cooking to cooking in the sun, your question is equivalent to that of the *Pri Megadim*. However, that equation deserves evaluation. With the advent of microwaves, the question arose as to whether they produce a new-fangled but essentially standard form of cooking or whether they present a new application of *Chazal's* idea that cooking without fire is not considered halachic cooking. (Regarding the practical question of cooking with a microwave **on** Shabbat, the problems of using electricity essentially preclude it.) The *Igrot Moshe*¹¹ claims that since microwave cooking is now a normal form of cooking, its status is derivable from the *Mishkan*, and it is considered halachic cooking. Although, in context, this leads him to rule stringently and forbid cooking with a microwave on Shabbat as a full prohibition, his presentation implies that microwaving is considered full cooking across the board.¹² Therefore, it should be permitted to reheat microwaved foods.

In fact, even one who would be more stringent than the *Pri Megadim* regarding cooking items that were already cooked in the sun might agree to permit cooking after microwaving, as the results of microwaving are likely more similar to regular cooking than to cooking in the sun.

The relatively high heat of many of today's hot plates can make previously cooked rice crispy, and some people like rice like that. Creating such a situation on Shabbat is a problem even for rice that was cooked normally, as this is a significant act of **baking** after **cooking**, which is prohibited, as noted above.¹³ If

10. See Rambam, *Shabbat* 9:3.

11. Op. cit.

12. Note, however, that it is easier to rule stringently regarding the status of the Shabbat prohibition than to rule leniently regarding cooking after non-standard cooking; see Rashi, *Beitza* 2b.

13. See *Shemirat Shabbat K'Hilchata* 1:60.

one takes steps to make sure the rice will not become crispy, it should be permitted to reheat it on the hot plate on Shabbat.

There is a practical solution for one who wants to be more stringent than what we have spelled out, and especially if he likes crispy rice: He can briefly bake the rice in a regular oven after taking it out of the microwave (five minutes of significant heat should suffice). Then, it will be halachically cooked/baked before Shabbat.¹⁴

14. See *Bi'ur Halacha* to 318:5.

c-4: Returning Food to an Oven with a Shabbat Mode

Question: My electric oven has a “Shabbat mode,” which enables us to cancel the automatic shut-off (so that it will stay on for two days of *Yom Tov*) and keeps the exact heat you set, without fluctuation when the door is opened. On Shabbat, may we warm up fully-cooked, dry food in this oven?

Answer: In order to answer your question, we will try to clarify what the Shabbat mode does and what it does not do. In this context, we will provide only an overview of the most basic of the many complex *halachot* that are involved in this discussion.

The main purpose of the type of Shabbat mode you describe is to circumvent systems in modern ovens that cause problems on Shabbat/*Yom Tov*. However, although overriding the shut-off feature has technical value for the Shabbat observer so that the oven does not go off, it is irrelevant to the question of returning food to the oven on Shabbat.

The major feature of the Shabbat mode is that it prevents the direct impact that opening the door of the oven usually has on a variety of lights, sensors, etc. Some types of Shabbat modes also disable the thermostat and maintain a set amount of heat, regardless of the temperature that the oven has reached. In the case of such ovens, it is not a problem to open the door of the oven on Shabbat. In some ovens, even in Shabbat mode, the oven is kept at a set temperature by means of a thermostat, such that opening the door cools off the chamber and causes the oven to turn back on sooner and/or stay on longer than it would have had one not opened it. In such a case, there is a debate among the *poskim* as to whether opening the oven door is permitted.¹

1. See *Shemirat Shabbat K’Hilchata* 1:29 – stringent; *Igrot Moshe, Orach Chayim* IV:74.29 – lenient; *Yalkut Yosef, Orach Chayim* 253:5-6 – inconclusive.

There are two relevant halachic issues related to heating food in an oven on Shabbat: *shehiya* (having the food stay on the heat source) and *hachzara* (returning food to a heat source). The basic law of *shehiya* is that one may not leave food on a heat source on Shabbat when he may have an interest and the ability to raise the heat, unless he takes certain steps to reduce that concern.² A *blech*,³ for example, reduces the intensity of the heat on the food by covering the flame, and it thus serves as a reminder not to consider increasing the heat.⁴ Non-adjustable hot plates make it unfeasible to raise the heat and are therefore similarly permitted.⁵ Use of an oven, however, is problematic, because its heat is adjustable and it is difficult to effectively reduce the heat by covering the heat source, as one does with a *blech* on a stovetop.⁶ Leniency can be contemplated if one tapes up the controls⁷ or based on the Rama's⁸ *minhag* that in the case of foods that are nominally cooked, there is little interest in raising the heat, such that it is not required to cover the flame under the food.

Returning food to an oven on Shabbat is much more problematic, because it is more likely that one will adjust the flame and/or because it might look like cooking. The standard halachic presumption is that it is permitted only when the following six conditions are fulfilled:⁹ 1) The food must be fully cooked. 2) The heat source must be covered according to the aforementioned criteria. 3) If one takes food off the heat source, he must hold it

2. See some details in *Shulchan Aruch, Orach Chayim* 253:1.

3. A sheet (of metal) to cover the flame and/or the stove controls.

4. *Ibid.* and *Mishna Berura* ad loc. 14

5. *Shemirat Shabbat K'Hilchata* 1:25.

6. Whereas the heat deflected by a *blech* on a stovetop does not, for the most part, return to the pots on the stovetop, the heat deflected by a cover within an oven remains, for the most part, trapped in the oven.

7. Based on *Shabbat* 18b, that when something is sealed shut, we are not concerned that one will undo the seal and tamper with the contents in a manner that is forbidden on Shabbat.

8. *Orach Chayim* 253:1.

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

until returning it (not feasible in your case). 4) When removing the food, one must have in mind to return it to the heat. 5) The food did not cool down. 6) The food should be put onto an open area, not into an enclosed one (e.g., an oven), especially when it is a place where food is often cooked.¹⁰

An exception to these requirements is a heat source that is less hot than *yad soledet bo*¹¹ (approximately 45° C/113° F)¹² or one made for reheating, rather than cooking, in which it is also not feasible to adjust the heat. These include ovens that are presently off but maintain residual heat¹³ and, according to some *poskim*, non-adjustable hot plates made for Shabbat reheating.¹⁴

In your case, you will have to overcome the obstacles raised by conditions 2, 3, 5, and likely 6, which generally will not be met in the normal situation of returning food to an oven on Shabbat morning. The Shabbat mode will not be of help in this regard.

Under certain conditions, there are opinions that one can reheat food in an oven (including a ruling of Rav Soloveitchik, which requires much explanation), and you are free to ask the rabbi of your choice about his opinion on the matter. However, we believe it is clear that a Shabbat mode oven is no better with regard to reheating food than standard ovens of decades past.

10. See *Mishna Berura* 253:58; see *Yalkut Yosef, Orach Chayim* 253:8, who is quite lenient on this point.

11. Rama op. cit. 2; see *Mishna Berura* 253:93.

12. *Shemirat Shabbat K'Hilchata* 1:1.

13. Rama op. cit. 5.

14. See *Yechaveh Da'at* II:45.

C-5: Use of a Ladle for Hot Soup on Shabbat

Question: I know that there are opinions that a ladle that was put into a pot of soup on a heat source becomes a *kli rishon*. Is this true only of a metal ladle? What if the ladle is put into the soup only after it was taken off the heat source? At what point does the pot or ladle stop being a *kli rishon*? May one put the ladle back into the soup without wiping it off?

Answer: We will begin by reviewing the terminology and basic *halachot*. A pot sitting on the fire is termed a *kli rishon she'al gabei ha'eish*. When the pot is removed from the fire, it becomes simply a *kli rishon*, which is assumed to be capable of cooking as long as the food therein is at least the temperature of *yad soledet bo*,¹ which may be as low as 45°C (113°F).² A utensil into which hot food is transferred from a *kli rishon* is called a *kli sheni*. The *gemara*³ states that a *kli sheni* is not capable of cooking, even when its contents are *yad soledet bo*.⁴ However, this is likely not the case regarding foods that are particularly easily cooked,⁵ and it is not always clear which foods are in that category.⁶

The physical difference between a *kli rishon* and a *kli sheni* is that the former's walls start off hot and will keep its contents hot for longer than the *kli sheni* pot will, since the latter's walls start off cold and thus hasten the cooling of its contents.

There are some borderline cases in which it is difficult to determine whether a utensil is a *kli rishon* or a *kli sheni*. One

1. *Shulchan Aruch, Orach Chayim* 318:9.

2. This is the opinion of Rav S.Z. Auerbach; see *Shemirat Shabbat K'Hilchata* 1:1.

3. *Shabbat* 40b.

4. *Tosafot* ad loc.

5. *Shulchan Aruch, Orach Chayim* 318:5.

6. See *Mishna Berura* 318:39; *Chazon Ish, Orach Chayim* 52:18.

of those is your question, where the *kli* in which the food is now found (the ladle) spent some time in a *kli rishon*, thereby becoming hot not only from the food within it, but also from heat outside it. There is a *machloket* on the matter,⁷ and it is generally viewed as an unresolved issue that should be treated as a *safek*.⁸ The *Chazon Ish*⁹ posits that if the ladle is in a pot while it is on the fire, it certainly turns into a *kli rishon*. (In general, one should not use a ladle in a pot on the flame, because of the halachic problems of stirring.¹⁰) The consensus is that if the ladle sits in the *kli rishon* for a long time, it takes on halachic characteristics of a *kli rishon*.¹¹ How long this takes is arguably affected by how hot the soup is and the heat conductivity of the material. However, *poskim* generally do not distinguish in these contexts between the types of material the ladle is made of. It is only in tangentially related contexts that a possible distinction between metal and other materials exists.¹²

How we deal practically with the *safek* about the status of a ladle depends on what other factors are involved, and we will mention a few. The *Mishna Berura*¹³ implies that one should not pour from the ladle onto something that is forbidden to be cooked. However, even according to the ruling of the Rama¹⁴ that one may not put bread into a *kli sheni*, the *Mishna Berura*¹⁵ allows putting bread into a bowl into which soup was ladled. *Acharonim* explain that the leniency in this case is due to the fact that many do not agree that it is forbidden to **cook** bread that was already

7. See *Taz, Yoreh Deah* 92:30.

8. Doubt.

9. *Orach Chayim* 122:3.

10. See *Mishna Berura* 318:117.

11. *Mishna Berura* 318:87.

12. See *Shulchan Aruch, Yoreh Deah* 94:1, regarding the movement of material from side to side within a utensil that has absorbed the “taste” of food.

13. 318:87; see *ibid.* 45.

14. *Orach Chayim* 318:5.

15. *Mishna Berura* 318:45.

baked.¹⁶ Another case in which the *Mishna Berura*¹⁷ is lenient is pouring from a ladle onto the leftover soup in a bowl (e.g., when taking a second helping), even if the leftover soup already cooled down completely and is thus usually forbidden to reheat. The apparent logic here is that since it is not unanimously agreed that it is forbidden to reheat a liquid that was cooked and cooled off,¹⁸ we can be lenient to treat the ladle as a *kli sheni*.

If one wants to avoid the situation of the ladle becoming a *kli rishon* according to the consensus of *poskim*, he should leave it out of the soup pot between uses. However, if one leaves it out enough for the residue to cool off totally, there is a problem returning the ladle to the pot when one wants to serve more soup, unless one first cleans off the liquid residue. There are indeed some who recommend cleaning the ladle before putting it back into the soup pot.¹⁹ However, we feel that (at least Ashkenazim) may rely on the view of the *Igrot Moshe*²⁰ that insignificant quantities of already cooked liquid may be heated up again.

16. See *Orchot Shabbat* 1:(163).

17. 253:84.

18. See Rama, *Orach Chayim* 318:15.

19. *Shemirat Shabbat K'Hilchata* 1:48.

20. *Orach Chayim* IV:74.19.

c-6: Use of a Crock Pot on Shabbat

Question: I have heard of various different measures that people take in order to solve halachic problems related to the use of a crock pot on Shabbat: covering the heating element with foil; placing something to prop up the pot; covering or removing the knob. Which is correct? Also, may I add hot water on Shabbat if the *cholent* is drying out?

Answer: There are many legitimate positions. We will explain and put things in perspective regarding the three main issues: *shehiya*, *hachzara*,¹ and *hatmana*.

Shehiya (leaving on the “flame”): *Chazal* were concerned that if one were to leave food cooking directly on a flame, he might stoke the coals to hasten the cooking.² The *Tannaim*³ disagree as to whether this concern applies if the food was **minimally** cooked before Shabbat. The *Shulchan Aruch*⁴ and *Bi’ur Halacha*⁵ lean toward stringency, whereas the Rama⁶ seems to be inclined toward leniency. Rav M. Feinstein⁷ raises further logic for leniency: The fuel in our gas stoves⁸ does not resemble the coals of former ages, but rather is like the more lenient case of straw (where one raises the flame by bringing more fuel, not by stoking). In any case, the *minhag* is to follow the opinions that one should have a *blech* or the equivalent⁹ even if the food is minimally cooked; this is certainly **required** if the food is not minimally cooked.

1. Many call it *chazara*. The terms mean the same thing, and both are linguistically legitimate.

2. *Shabbat* 18b.

3. *Shabbat* 36b.

4. *Orach Chayim* 253:1.

5. Ad loc.

6. Ad loc.

7. *Igrot Moshe*, *Orach Chayim* 1:93.

8. Electric stoves are equivalent in this regard.

9. E.g., a non-adjustable hot plate, which, in many ways, is better.

Let us examine how the classic *blech* works halachically, which will help us apply the principle to modern situations. Rav Feinstein¹⁰ writes that one covers the heat source to remind himself that as he thereby is reducing the heat, he should not change his plan and raise it. Rav Aharon Kotler required covering specifically the knobs of the stove, the place where one would adjust the flame, as a reminder not to make any changes. While many *blechs* cover both, as Rav Feinstein recommends, the main opinion is that reducing the heat is the major objective.¹¹

In the case of a crock pot, putting foil over the heat source (inside the crock pot) is not discernable and, more importantly, does not significantly reduce the heat. The rocks or metal balls some use to lift the pot noticeably above the housing allow heat to escape and are thereby effective. If one does not use such a system, however, it is necessary and reasonable to rely on Rav Kotler's view (particularly if there are other indications for leniency, such as if the food is minimally cooked¹²) and cover the knobs. Removing the knobs or putting on enough tape to make them difficult to turn is even better.¹³

Hachzara (returning to a flame): If one removes the pot insert and wants to return it, there are many more necessary requirements, which are not specific to crock pots (the food must be fully cooked and still warm, one must hold the pot, having in mind to return it, and the fire must be covered).¹⁴ A major issue for crock pots is that one may not return a pot to a closed oven,¹⁵ which a crock pot resembles in some ways (as heat comes from the sides in addition to the bottom). There are grounds for leniency, which are beyond the scope of the present discussion.¹⁶

Hatmana (insulating): In one of his last rulings, Rav S.Z.

10. Ibid.

11. See *Orchot Shabbat* 2:8-9.

12. See above.

13. See *Shabbat* 18b.

14. See *Shulchan Aruch* op. cit. 2.

15. Ibid.

16. See *Am Mordechai, Shabbat* 4.

Auerbach claimed that a crock pot is a form of insulation, apparently because the pot (the ceramic insert) is surrounded relatively tightly by the housing.¹⁷ Since additional heat is entering the system during the time the food is insulated (*mosif hevel*), one may not leave the food there, even though it was set it up before Shabbat.¹⁸ This had not been the *minhag* among crock pot users for years, and the standard halachic assumption is that *hatmana* comes into play only when there is an extra covering on all sides (whereas a crock pot has only a single, standard cover).

One solution is to insert stones or metal balls to lift the insert, which makes the crock pot not considered insulation even according to Rav Auerbach. This is especially true when the crock pot is slightly tapered, as lifting the insert a couple of inches removes the level of closeness that may have made it *hatmana*. We would not require one to follow this stringency, but we would not scoff at one who follows Rav Auerbach, whose rulings, including many lenient ones, many of us follow.

Adding water: For Ashkenazim, it is permitted to add water to *cholent* as long as the *cholent* is fully cooked and the water is warm. Rav Ovadia Yosef¹⁹ forbids this for Sephardim. Some *poskim* advise that one should be careful to pour the water in gently to avoid the issue of mixing.²⁰ Some recommend removing the pot from the heat source (so that mixing is less of a problem) before pouring in water, at which point one may return it to the heat.²¹ However, we believe that one who is stringent in this regard loses elsewhere, because he creates the need for a greater leniency regarding *hachzara* (as above).

17. This was the standard scenario regarding the early models.

18. *Shulchan Aruch, Orach Chayim* 257:1.

19. *Yechaveh Da'at* IV:22. The difference between Ashkenazim and Sephardim stems from the more stringent ruling of the *Shulchan Aruch* (*Orach Chayim* 318:15) regarding reheating water that has partially cooled off. According to the Rama (ad loc.), it is permitted as long as the water has not totally cooled.

20. *Shemirat Shabbat K'Hilchata* 1:16.

21. See opinions in *Orchos Shabbat* 1:98 and footnote 196.

C-7: Food Heated by a Non-Jew on Shabbat

Question: Before our *shul kiddush*, the *gabbai* noticed that the hot plate (for *kugel*) was unplugged, so he had a non-Jew connect it. (I do not know what he told him). I ate the *kugel* only after it had cooled down. Was that necessary/allowed?

Answer: When a non-Jew does *melacha*¹ on behalf of Jews, even without their prompting, they may not benefit from it.² This might suggest that your compromise was correct, as the *kugel* was presumably already fully cooked and the benefit was in the heat, which you did not enjoy. However, we must consider various factors that point to other conclusions.

First, perhaps it is permitted to ask a non-Jew to plug in the hot plate, even though this is a Torah-level *melacha*.³ After all, the Rama⁴ cites the *minhag* of some to have a non-Jew light a candle (a Torah-level prohibition) in order to provide light for serving a hot Shabbat meal, because a proper Shabbat meal is a *mitzva*,⁵ and this should include having hot food.⁶ If so, in cases in which need justifies asking a non-Jew to do a *melacha*, the benefit is also permitted.⁷ Although the Rama condones this approach only for an exceptional need, the *Mishna Berura*⁸ permits it for a *mitzva* of the masses. However, heating up *kugel* is not critical for a *shul kiddush*, at least under normal circumstances.

1. Work that is forbidden to do on Shabbat.

2. *Beitza* 24b.

3. The electric coils of the hot plate become glowing red, which is a violation of *mavir* (burning); see *Maggid Mishneh, Shabbat* 12:1.

4. *Orach Chayim* 276:2.

5. Based on the opinion of the *Itur, Mila* 49a.

6. *Mishna Berura* 325:60.

7. See *Shulchan Aruch, Orach Chayim* 276:1.

8. 276:25.

A more promising way to use a non-Jew's services is with a "good hint." A regular hint made to a non-Jew on Shabbat to do a *melacha* on Shabbat is forbidden.⁹ However, *Acharonim* rule that a hint that mentions only a need without mentioning doing an action (a good hint) is permitted.¹⁰ *Poskim* point out that, for several reasons (beyond our present scope), the leniency of using good hints cannot obviate the prohibition of *amira l'nochri*¹¹ entirely.¹² However, there are distinguished *poskim* who permit it when the non-Jew's action provides no "halachically recognized benefit."¹³ Does heating up a fully-cooked *kugel* provide such benefit?

When use of an object is **possible** (a hard word to define here) even without the *melacha*, it is not considered that a benefit has resulted from the *melacha*. One application is that if a non-Jew lights a second candle, it is permitted to make use of its light to do things that could have been done, even if with difficulty, with the first light alone.¹⁴ Arguably, then, since (almost any) *kugel* can be eaten at room temperature, heating it up is not considered a benefit. On the other hand, the *Igrot Moshe*¹⁵ limits this leniency to cases in which the benefit (e.g., light) is already provided by a different object (e.g., candle #1). However, one may **not** receive benefit (e.g., cool air) provided **only** by a non-Jew's *melacha* (e.g., the cooling effect provided by the non-Jew putting on the air-conditioner), even if one could have done the same thing (e.g., eat in the room) without that benefit. Rav S.Z. Auerbach argues similarly regarding wearing shoes that a non-Jew polished on

9. Rama, *Orach Chayim* 307:22.

10. *Magen Avraham* 307:20; *Mishna Berura* 307:76.

11. Asking a non-Jew to do something that is forbidden for a Jew.

12. See *Orchot Shabbat* 23:(24).

13. See *Shemirat Shabbat K'Hilchata* 30:3.

14. *Shulchan Aruch, Orach Chayim* 276:4; see *Mishna Berura* ad loc. 20.

15. *Yoreh Deah* III:47.

one's behalf on Shabbat.¹⁶ If this is correct, then when the non-Jew provides all the reheating by plugging in the hot plate, it would be forbidden to benefit from it despite the good hint. Without delving further into the topic, it is questionable whether a good hint would allow heating up the *kugel*.

Does letting the *kugel* cool off, so that no benefit remains from the reheating, solve the problem? The Rashba¹⁷ discusses (almost exactly) our case and forbids eating the food even after it cools off, as a penalty for one who violated the rules of *amira l'nochri*. Although the Rama¹⁸ *paskens* like the Rashba in a slightly modified case, the *Mishna Berura*¹⁹ limits the stringency to food that is not readily eaten cold (unlike most *kugels*).²⁰

We summarize as follows: It is unclear whether heating up *kugel* constitutes a halachic benefit, which determines whether one could have eaten it warm, irrespective of the propriety of the *gabbai's* action. Eating it after it cooled off would certainly have been permitted if the *gabbai* believed he was acting correctly (all the more so if he might have been correct),²¹ but it likely was permitted right away.

16. See *Shemirat Shabbat K'Hilchata* 30:(146). How one resolves apparent contradictions on this issue may be crucial; see *Mishna Berura* 252:30, 327:16, regarding using shoes that a non-Jew finished preparing on Shabbat, and 253:98, regarding heating food that can be eaten cold.

17. Cited by the *Beit Yosef*, *Orach Chayim* 253.

18. *Orach Chayim* 253:5.

19. Ad loc. 98.

20. See *Minchat Shlomo* I:5. In a very complex presentation, Rav Auerbach posits that whereas a food that was prepared based on a violation can remain forbidden even after the benefit is gone, this occurs only when it was not readily fit to be used before the violation.

21. See *Mishna Berura* 318:2-3.

C-8: Using a Blanket to Cover a Shabbat Hot Plate

Question: I recently saw a product that I would call a “*plata blanket*” (a thick covering designed to go over the pot(s) that sit on a hot plate or *blech*). How can these be used on Shabbat without problems of *hatmana* (insulation)?

Answer: [*Before putting a fabric on a heat source, one should determine that there is no fire hazard.*]

Hatmana is forbidden Rabbinically on Shabbat (1) if the *hatmana* is done on Shabbat or (2) if the *hatmana* creates a situation in which heat is being added to the insulated food, even if it was set up before Shabbat.¹ Regarding your question, since the covered food is sitting on a heat source, even if you set things up before Shabbat, you must not allow the food to be covered in a manner of *hatmana*.

Insulation is forbidden as *hatmana* only when the covering is done in a relatively extensive manner. Two pertinent parameters are the percentage of the pot that is covered and the proximity of the covering to the pots.

The standard assumption is that a situation is considered *hatmana* only if virtually the entire pot is covered. It is sufficient for a somewhat significant amount of the pot to be exposed to prevent this problem.² (There is an opinion that if the majority of the pot is covered, it is *hatmana*, but this is against the consensus.³) Depending on the size of the pot(s) and of the covering, there are often sections of the pot towards the bottom of its side walls that are not covered. Certainly, one can be careful to arrange things this way and thereby avoid the problem altogether.

1. *Shulchan Aruch, Orach Chayim* 257:1.

2. See *Orchot Shabbat* 2:79.

3. See also response C-6.

Another factor in insulation is the degree to which the covering “hugs” the pots. The Rosh⁴ writes that if the covering does not touch the walls of the pot, such that there is significant space between them, then it is not *hatmana*, and we posit that this is so even if it touches some sides but not all of them.⁵

Let us analyze our case. One might argue that if there is more than one pot involved, the covering will never touch all the sides of all the individual pots, as there will be some sections facing inward, and the covering will probably not hug the whole exterior, considering the shape that will be formed. Nevertheless, we must consider the aggregate of the pots as a single unit, and if the pots as a unit are covered as normal when draping a covering over them, it is *hatmana*.⁶

There are at least three ways to have the *plata* blanket pass this second test: 1) Some such products are sufficiently stiff so that they cannot turn at an angle that allows them to hug the sides of the pots. 2) One could put a board on top, extending beyond the pots so that even if the blanket hangs down, it does so beyond where the pots reach.⁷ 3) One can put an empty pot on one side to separate the blanket from the relevant set of pots at least on that side.⁸

There is also room to present a more sweeping leniency when it comes to doing *hatmana* before Shabbat on hot plates. The *Ohr Zarua*⁹ says that if one seals the oven in which the *hatmana* is taking place before Shabbat, there is no prohibition of *hatmana*, because there is no longer a concern that he will forget and stoke the coals. This leniency is accepted by some *poskim*,¹⁰ and Rav

4. *Shabbat* 4:2, accepted by the *Shulchan Aruch*, *Orach Chayim* 257:8.

5. *Shemirat Shabbat K'Hilchata* 1:66.

6. *Orchot Shabbat* 2:(144).

7. See *Shulchan Aruch* op. cit.

8. This follows from the logic of the *Orchot Shabbat* op. cit.

9. II:8.

10. See *Mishna Berura* ad loc. 47, who is inconclusive.

Ovadia Yosef¹¹ maintains that the same leniency applies to a non-adjustable hot plate. Nevertheless, it is better to follow one of the steps above in order to preclude *hatmana* issues.

11. *Yabia Omer* VI:33. See there for other possible grounds for leniency.

C-9: Mashing and Mixing Avocado Salad on Shabbat

Question: Is it permitted to make guacamole (mashed avocado mixed with onions, oil, lemon juice, etc.) on Shabbat?

Answer: We will begin by discussing the permissibility of mashing avocados on Shabbat. The *gemara*¹ states that chopping a vegetable very fine is a violation of *tochein* (grinding). However, the Rashba² writes that doing so is permitted if it is done for immediate use, and this is how the Rama³ rules (provided that it is not done with a utensil designed for this purpose, but rather with something like a knife or a fork⁴). Rav Yosef Karo seems to accept this opinion in the *Beit Yosef*, but he writes that it is proper to leave the vegetable as “slightly large pieces.” In the *Shulchan Aruch*,⁵ however, he omits the Rashba’s opinion altogether. The *Chazon Ish*⁶ claims that not only do many *Rishonim* disagree with the Rashba, but that he meant that immediate use permits only cutting into small pieces – not actual grinding. On the other hand, Rav Moshe Feinstein⁷ understands the ruling of the Rashba to apply even to grinding and mashing.

Rav Moshe reasons that it is easier to be lenient regarding bananas, where there is additional logic for leniency. Classic *tochein* is taking grain and turning it into flour, or at least into finely cut particles. When one crushes bananas, in contrast, they remain as big clumps, not small pieces, with the change being in the consistency. Ripe avocado is equivalent to banana in this

1. *Shabbat* 74b.

2. *Shut* IV:75.

3. *Orach Chayim* 321:12.

4. *Mishna Berura* ad loc. 45.

5. See *ibid*.

6. *Orach Chayim* 57.

7. *Igrot Moshe*, *Orach Chayim* IV:74.

regard. Not all agree that this distinction changes the *halacha*,⁸ especially in light of the *tosefta*⁹ that states that it is forbidden to crush dried figs. However, the lack of consensus on the matter provides a further point of possible leniency.¹⁰ Rav Moshe therefore concludes that it is permitted to mash bananas on Shabbat. In practice, he says that when possible, one should do so with a *shinuy* (in an unusual way, e.g., with a spoon or the handle of a fork), in deference to the *Chazon Ish*, who permits mashing only in that manner.

A final point of leniency is a rejected but significant opinion¹¹ that *tochein* applies only to produce that is inedible until it is crushed, and perhaps even still needs to be cooked afterward. Although the *Shulchan Aruch* and later *poskim* do not accept this opinion, the existence of the opinion might encourage us to be lenient regarding a food like avocado, when the aforementioned, more accepted lenient opinions also apply.

As he often does in such cases, Rav Ovadia Yosef¹² combines the indications for possible leniency to confidently permit crushing bananas on Shabbat when one plans to **serve them soon thereafter**. In contrast, the *Shemirat Shabbat K'Hilchata*¹³ is willing to permit mashing only for the needs of a baby and only if it is done with a *shinuy*. The *Orchot Shabbat*¹⁴ cites the various opinions without taking a stand. *The 39 Melochos*¹⁵ falls in line with Rav Moshe's ruling of requiring a *shinuy* only when possible.

Regarding mixing in minced onions (whose preparation raises overlapping questions to those discussed above), oil, and/

8. *Chazon Ish* op. cit.

9. *Beitza* 1:13 (19 in *Bar Ilan Responsa Project* edition).

10. See *Shemirat Shabbat K'Hilchata* 6:(3).

11. See opinions in *Beit Yosef*, *Orach Chayim* 321; see also *Yechaveh Da'at* V:27.

12. *Yechaveh Da'at* ibid.

13. 6:8.

14. 5:8.

15. P. 461.

or lemon juice, the question is one of *lash* (kneading). There is a general dilemma of whether the prohibition of *lash* is limited to the creation of a pasty substance by mixing flour or other small particles with water, or whether creating all sorts of combinations of different substances is prohibited if the result is a somewhat unified mixture.¹⁶ Few *poskim* are willing to be lenient in the absence of other reasons to differentiate the process in question from classic kneading.¹⁷

In the case of guacamole, there is an additional, strong element of leniency in that the base of the guacamole (at least, the recipe you describe) is clearly the crushed avocado, and the additions are just for spicing.¹⁸ However, the explicit rulings we have found on this matter (most prominently, that of Rav Abba Shaul¹⁹) is to allow the mixing only with the important mitigating factor of a double change in procedure: 1) Put the onions, oil, etc., on the bottom and add the avocado on top. 2) Mix the ingredients in a crisscross, as opposed to a circular, motion.

16. See *Shemirat Shabbat K'Hilchata* 8:1; *Orchot Shabbat*, vol. I, p. 225.

17. See *Mishna Berura* 321:68.

18. See a similar idea in *Shemirat Shabbat K'Hilchata* 8:(81).

19. *Ohr L'Tziyon* II:33:5.

c-10: Mistake on Shabbat Regarding the Use of a Masher

Question: Is it permissible to use a hand vegetable-masher on Shabbat? Last Shabbat, I used one to mash potatoes that were well boiled and very soft. The question arose as to whether this was permitted, so we did not use the potatoes on Shabbat. Were we allowed to eat the potatoes after Shabbat?

Answer: The main issue involved in this question is the definition of *tochein* (grinding). Although the classic case is grinding wheat into grain flour, the *gemara*¹ states that it is forbidden even to cut up vegetables into fine pieces. In a response regarding the topic of making guacamole on Shabbat,² we cited different opinions as to whether the Rashba's leniency³ that one may cut vegetables finely soon before eating applies only when he leaves the vegetables in "slightly large pieces." We also cited Rav Moshe Feinstein's opinion⁴ that mashing bananas is not grinding, as one does not create new fine particles, but rather mashes the food into a softer form. On the other hand, the *Chazon Ish*⁵ rejects this distinction.

Skipping other possible leniencies mentioned in that context that can be applied to the potatoes you discussed, we will raise a leniency that applies to your potatoes that does not apply to guacamole. *Poskim*⁶ infer from the Rambam⁷ that one may take a food that was already made soft by cooking and soften it further by means of mashing. The *Chazon Ish*⁸ explains that the softness

1. *Shabbat* 74b.

2. See response C-9 in this volume.

3. *Shut* IV:75.

4. *Igrot Moshe, Orach Chayim* IV:74.

5. *Orach Chayim* 57.

6. See *Shulchan Aruch, Orach Chayim* 321:19.

7. *Shabbat* 21:13.

8. *Orach Chayim* 58:9.

created by the cooking causes the additional mashing to be too trivial to be forbidden by the *melacha* of *tochein*. Contemporary *poskim*⁹ discuss your case explicitly and rule that it is permitted to mash soft, well-boiled potatoes on Shabbat for this reason.

Unfortunately, however, you seem to have violated a rule that is an important part of this leniency. Specifically, when one grates a food that is not subject to the prohibition of *tochein*, it is nevertheless forbidden to use a utensil that is intended especially for mincing or crushing food items.¹⁰ The reason for this prohibition is that using such a utensil is *uvdin d'chol* (a weekday-like activity).¹¹ A hand-masher seems to fit the bill of a utensil intended for crushing; you should have used a fork. This stringency is relevant even to a food to which *tochein* does not apply, such as cheese,¹² and even if one does the mincing immediately before the use.¹³

On the other hand, as far as what to do with the potatoes after the fact, you were more stringent than Halacha mandates. There is a broad *machloket* among the *Tannaim* as to the extent to which the end result of a violation of a *melacha* is forbidden, and there are too many opinions and permutations to address here.¹⁴ We will deal with your case, where the violation was done *b'shogeg* (by mistake, i.e., not knowing the *halacha*). In such a case, the *Shulchan Aruch*¹⁵ rules that it is forbidden to benefit from the *melacha* done on Shabbat, but it is permitted right after Shabbat. (If necessary, there are opinions that can be relied upon to be lenient regarding benefitting even on Shabbat itself.¹⁶) This indeed seems to fit with your decision not to use the potatoes.

9. *Shemirat Shabbat K'Hilchata* 6:9; *Orchot Shabbat* 5:9.

10. *Shulchan Aruch, Orach Chayim* 321:10.

11. *Mishna Berura* ad loc. 36.

12. *Ibid.*

13. *Mishna Berura* 321:36; *Shemirat Shabbat K'Hilchata* 6:2.

14. See *Ketubot* 34a; *Shulchan Aruch, Orach Chayim* 318:1.

15. *Ibid.*

16. *Mishna Berura* 318:7.

However, the Gra¹⁷ posits that if an action done by mistake was prohibited only Rabbinically, there is no prohibition to make use of the result, even on Shabbat. (An important exception to this leniency is if one left food on the fire on Shabbat without proper precautions to avoid mistakes.¹⁸) Not only does the Gra's leniency apply fully to this case, but it is further strengthened by the fact that *uvdin d'chol* is a weaker Rabbinical prohibition than the average one. Therefore, despite your mistaken use of the hand masher, you could have eaten the mashed potatoes even on Shabbat.

17. To *Orach Chayim* 318:1. The *Mishna Berura* 318:3 and many others accept this ruling.

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

c-11: Using Diapers with Disintegrating Markings on Shabbat

Question: Is it permitted to use on Shabbat a diaper with forms on its outside that disintegrate as the diaper becomes wet, alerting parents to change the diaper?

Answer: There is a Torah-level violation to erase (*mochek*) writing or, according to many authorities, a picture or a figure.¹ When the erasure does not serve a positive purpose, such as enabling new writing, the violation is only Rabbinic.² One could argue that there is no Torah prohibition in your case, as the erasure's result is actually “destructive” (*mekalkel*); the pleasant-looking forms are being destroyed, and a better surface is certainly not created. Whether or not this constitutes *mekalkel*, however, would be the subject of debate, because the disintegration provides the side benefit of providing desirable information about the wetness of the diaper.³

The main reason for leniency relates to who is doing the erasure and in what manner. Directly, it is the baby who erases by urinating, but he is almost always too young to require training in Shabbat prohibitions. Although one must not “feed” (i.e., directly facilitate) children to do prohibited matters, he may allow a situation in which a baby might choose to do a forbidden action.⁴ Here the situation is even better, as the baby “violates” Shabbat without any knowledge of this action, in which case it is not a fundamental Shabbat violation even for an adult.⁵

Thus, the question is whether the adult violates Shabbat by **creating a situation** (putting on the diaper) wherein a future

1. See *Orchot Shabbat* 15:45; *The 39 Melochos*, vol. IV, p. 986.

2. *Mishna Berura* 340:17.

3. See *Bi'ur Halacha* to 340:13.

4. See *Yevamot* 114a.

5. See *Shut Rabbi Akiva Eiger* I:8.

event will set off a *melacha* (urination will cause the forms to deteriorate). When the direct cause of the erasure (urination) has yet to occur at the time of the adult's action (diapering), we say that the adult acted through *gerama* (indirect action). *Gerama* only sets up a situation in which an external factor will activate the Shabbat-forbidden result at some later time. Violation of Shabbat through *gerama* is a very low-level violation of Shabbat, to the extent that it is permitted in certain cases of need.⁶

Is your case forbidden if there is no special need? In this case, there are often additional points of leniency. For parents who are interested only in using a quality diaper and not in the special wetness indicator (there is an "old way" to know when the diaper is soaked), the erasure is permitted as a *davar she'eino mitkaven*.⁷ Although it is true that when the forbidden result is a definite outcome (*p'sik reishet*), the action is forbidden by Torah law,⁸ when the result comes about through *gerama*, many important *poskim* permit *p'sik reishet*.⁹ Some say that *gerama* is permitted in cases in which direct action is only Rabbinically forbidden, but others disagree; in any case, the leniency likely does not apply to every Rabbinic prohibition.¹⁰ This discussion is probably not necessary, however, since the erasure is likely **not** a *p'sik reishet*. For a variety of reasons, including that the baby may soil the diaper with solids before the diaper is soaked through, such diapers do not always reach the point that the forms are erased.

When there are no meaningful figures or letters on the diaper, but just a line or dots, there is even more room for leniency, as erasing such nondescript things is not a (full) violation of *mocheh* unless the erasure enables subsequent writing.¹¹ We find this distinction in such cases as cutting a cake with writing or clear

6. Rama, *Orach Chayim* 334:22. See Yabia Omer III, *Orach Chayim* 20.

7. An unintentional forbidden result of one's action.

8. *Ketubot* 6b.

9. *Shemirat Shabbat K'Hilchata* 12:18, based on Rav S.Z. Auerbach; see the discussion in *Orchot Shabbat* 29:(41).

10. See Yabia Omer III, *Orach Chayim* 17.

11. See *Shulchan Aruch*, *Orach Chayim* 340:3; *Orchot Shabbat* 15:(85).

figures vs. nondescript shapes.¹²

In summary, one may generally use diapers with disintegrating ink.¹³ However, note that many of the reasons for leniency are based on the assumption that one does not have the **intention** when diapering to rely on the erasure to indicate when the diaper should be changed. This is a valid assumption when one did not intentionally buy diapers with this marginally useful feature. On the other hand, for one who values this function, use of such diapers on Shabbat may very well be forbidden and should be avoided.¹⁴

12. Rama, *Orach Chayim* 340:3.

13. *Orchot Shabbat* 15:52.

14. Regarding the slightly stricter case of a diaper with a color-changing strip, we had seen a similar ruling to the above in an article on the Star-K website. However, by the time of the preparation of this book, we could no longer find the article on that site.

C-12: Using a Rickshaw on Shabbat

Question: I will be in India, and I want to know if a non-Jew can take me around on Shabbat by rickshaw (a carriage drawn by a person on a bicycle or by foot) if I pay him before Shabbat.

Answer: We will begin with the smaller problem – namely, using a bicycle on Shabbat, irrespective of the place in which it is being ridden. When bicycles became popular, many *poskim* discussed their use on Shabbat, and almost all forbade it for one or more of the following reasons: 1) *Uvdim d'chol* – It is a weekday-like activity. Among other examples, it is a mode of transportation that takes people to many places for many purposes, including non-Shabbat-appropriate ones.¹ 2) Bicycles are prone to require repairs that the rider often takes care of, which could cause him to transgress Shabbat prohibitions.² 3) One might ride beyond the *techum Shabbat* (boundaries of permitted travel outside the city).³ Although Rav Yosef Chayim of Baghdad⁴ dismissed these issues (some say he later changed his mind), the consensus of both Ashkenazi and Sephardi *poskim* and the broad *minhag* is to forbid use of bicycles on Shabbat.

One might claim that when a vehicle is ridden by a non-Jew for a Jewish passenger, one can be much more lenient, and a rickshaw thus operated might be too uncommon to have a clear *minhag*. While we do not totally dismiss this approach, the logic is somewhat difficult. After all, the Jewish participant is taking part in the weekday-like activity, he could (help) fix the rickshaw if necessary, and he could be taken out of the *techum Shabbat*.

These problems do not seem to apply to a man-driven rickshaw, which is conceptually similar to a baby carriage or a

1. See *Tzitz Eliezer* VII:30.

2. See *ibid.* and *Yaskil Avdi* III, *Orach Chayim* 12.

3. See *Tzitz Eliezer* *op. cit.*

4. *Rav Pe'alim* I, *Orach Chayim* 25, responding to the community of (then) Bombay, India.

wheelchair. While this type of “transportation” is also subject to discussion,⁵ the accepted consensus clearly permits it.

However, there is another problem of using a rickshaw in some places, including all of India: Pushing or pulling a carriage through the streets, by foot or by bicycle, is a form of carrying.⁶ Since there are no *eiruvim* in India, this is an additional problem on Shabbat. There are some mitigating factors, however. Carrying or pulling a person who is able to walk by himself is permitted on the level of Torah law because of a principle called “*chai nosei et atzmo*”,⁷ it is forbidden only Rabbinically. Although in our case the driver/puller is also transporting the rickshaw that the Jew is sitting in, we assert that the carriage is just an extension of the person.⁸ (To rely on this leniency, however, the Jew must not be carrying anything that he could not take into the streets himself.⁹) Another factor is that there is no Torah-level violation when the carriage is large enough to constitute its own “private domain.”¹⁰

Even after these factors are taken into account, there is still a Rabbinic prohibition to carry a person outside. You asked, however, about a case in which a non-Jew is doing the work. The *Rav Pe'alim*¹¹ permitted one to use the services of a non-Jew pedaling a rickshaw that was of the right dimensions, but only if the Jew needs this in order to enable him to do a “big *mitzva*.” In general, one is allowed to ask a non-Jew to perform a Rabbinic prohibition in order to facilitate a *mitzva*.¹²

Many disagree with the *Rav Pe'alim*'s application of these principles (including the issues of bicycles) when the Jew himself is involved, even if the non-Jew pedals.¹³ However, it is possible

5. See *Simchat Cohen, Orach Chayim* 78-79.

6. See *Shulchan Aruch, Orach Chayim* 346:1; *Ketubot* 31b.

7. *Shabbat* 94a.

8. See *Shabbat* 93b. See *Rav Pe'alim* op. cit.

9. See *Shulchan Aruch, Orach Chayim* 305:22.

10. See *Shabbat* 8a; the details are beyond our present scope.

11. Op. cit.

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

13. See *Yaskil Avdi* op. cit.

to **consider** using this leniency for a person-drawn rickshaw in the case of a specific *mitzva* that one cannot get to in another way, which is unusual for a healthy person.

If one pays a non-Jew for a job, this may sometimes make it permitted for him to do work on Shabbat, because it is considered as though he is doing it for himself to earn money. However, this does not apply if the Jew needs the non-Jew to do the work (that is forbidden for a Jew) specifically on Shabbat,¹⁴ and all the more so when it will be done with the active participation of a Jew. In this case, various forms of hinting will also not be effective. We understand that giving the non-Jew money in advance may be technically necessary for him to be willing to provide the service.

The rabbinic community might want to discuss having non-Jews transport Jews in rickshaws on Shabbat for extreme cases, like a special *mitzva* or for crucial needs of the sick or infirm. However, under normal circumstances, this system is forbidden, especially in an area that does not have an *eiruv*.

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

C-13 : Wearing a Reflective Armband Without an *Eiruv*

Question: If there is no *eiruv*, may I wear a reflective armband on Shabbat in a dimly lit area without sidewalks so that drivers of cars will be better able to see me at night?

Answer: There are two categories of situations in which one may have an object on his body without violating the prohibition of carrying on Shabbat in an area without an *eiruv*: *begeg derech malbush* (clothes worn normally) and *tachshit* (an adornment or accessory).¹ The category of *tachshit* includes things that are placed on the body to help it function properly, including slings, arch supports, and glasses.²

The first thing we need to examine is whether decreasing the chance of an external danger is a positive use regarding these *halachot*. The *mishna*³ and *gemara*⁴ discuss the circumstances in which one may wear an amulet in the public domain. (One's personal view about amulets is irrelevant to the question of what *halachot* can be learned from the sources that discuss it.) Rashi⁵ explains that when used appropriately, an amulet “is a *tachshit* for an ill person, like one of his garments.” This is true not only when the amulet is used for healing a particular illness, but even for warding off such an illness.⁶ By extension, since wearing an armband in a dark area without traffic lights and/or sidewalks can reduce the chance of one's getting hit by a car, Heaven forbid, it would seem to make the armband a *tachshit* that he is permitted to “wear” on Shabbat even without an *eiruv*. Indeed, the *Shemirat*

1. See *Shulchan Aruch, Orach Chayim* 301, at length.

2. See *Shemirat Shabbat K'Hilchata* 18:11-22.

3. *Shabbat* 60a.

4. *Shabbat* 61a-b.

5. Ad loc.

6. *Shulchan Aruch, Orach Chayim* 301:25.

*Shabbat K'Hilchata*⁷ rules that one is permitted to wear a reflective belt on Shabbat if he is wearing it in a manner that is a normal mode of dress, as wearing it for protection is a valid reason. It is not clear, however, if an armband is considered a normal type of attire.

It is important to note that two distinctions challenge the proof from the amulet case and similar sources. One distinction is that an amulet protects a person from dangers lurking from within, whereas a reflector helps avoid an external danger (cars). Nevertheless, logic dictates that the source of the danger should not make a difference in this regard.⁸

A stronger distinction is that one “uses” the amulet throughout the time in which there is a question regarding whether he is carrying or wearing it. In contrast, one may sometimes wear the reflector for a long walk in which only part of the time will be in a dark, dangerous place. What is the status of the reflector the rest of the time, when it is not serving a purpose? The *Shemirat Shabbat K'Hilchata*⁹ and *Yalkut Yosef*¹⁰ state that when outside, one should not wear reading glasses, which are often carried in a pocket, because of the Rabbinic concern that he may take them off and carry them. They do not posit an intrinsic problem (as the *Orchot Shabbat*¹¹ does) – that reading glasses are not used while on the street. Apparently, then, the fact that reading glasses are generally usable and/or will be used at a later time is sufficient to solve the intrinsic problem. Even the *Orchot Shabbat* may agree that it is sufficient for the glasses to be useful sometime during this walk.

There are, in fact, many cases of *tachshitim* that one should have been permitted to wear, but the Rabbis were concerned that a person might carry them in the public domain if he decided to

7. (5770 edition) 18:25.

8. *L'Horot Natan* VIII:18.

9. 18:16.

10. *Orach Chayim* 301:32.

11. 28:127.

remove them or if they fell off. In our case, must we be concerned that someone will remove the armband and carry it?

It is difficult to determine when we apply this Rabbinic concern and when we do not. Our case is somewhat reminiscent of the badges Jews were required to wear by law (centuries before the Nazis y''s decreed it). The Rama¹² states that they could be worn, but only if they were attached (not necessarily sewn) to the clothes. The reason given for leniency is that the badges are worn all week long, and one would not dare to take his badge off.¹³ That logic does not fully apply here, as many people would not be afraid to take off the reflective armband, especially in safer places or at the end of his walk.¹⁴ In general, however, the *minhag* is to be quite lenient regarding this Rabbinic law and many of its applications for a variety of possible reasons.¹⁵

We would certainly not tell someone who needs a reflective accessory for safety reasons to refrain from wearing it. However, from a halachic perspective, it is better to either have one permanently attached to a real garment, to wear a reflective vest (which is a normal garment, even if it looks funny), or to at least use a reflective belt (belts are semi-clothes, semi-accessories of necessity).¹⁶ If only an armband is available, one can be lenient, as the need can be great.

12. *Orach Chayim* 301:23.

13. See *Mishna Berura* ad loc. 83.

14. See *L'Horot Natan* op. cit., who is unsure about the matter, even regarding a reflective belt.

15. See *Shulchan Aruch*, *Orach Chayim* 303:18.

16. See *Shulchan Aruch* and Rama, *Orach Chayim* 301:36.

C-14: *Muktzeh* in a Pocket

Question: Last Shabbat, I wore a suit that I had not worn in a while. While walking to *shul* on Shabbat morning, I happened to find a \$20 bill in an inside pocket. Upon making that discovery, what should I have done (we have an *eiruv*)?

Answer: There are few questions to explore. Although the money is *muktzeh*, does it make the suit jacket *muktzeh*? Even if the jacket is not *muktzeh*, may one continue to carry around the money?

The matter has to do with the *halachot* of *bassis l'davar ha'asur*, an object that is intrinsically not *muktzeh* but is supporting a *muktzeh* object. The basic *halacha* is that the *bassis* is *muktzeh* and that if this situation existed when Shabbat began, it cannot be moved even after the *muktzeh* has been removed from it.¹ At first glance, your case satisfies this condition. However, there are many exceptions to the rule, and it is likely that at least one of them applied to your case and could have partially solved your problem.

Suppose that two fundamentally separate objects are firmly attached, and the more important part of the joint object is neither *muktzeh* itself nor does it have *muktzeh* directly on it. If the less important part is a *bassis l'davar ha'asur*, the joint object is not *muktzeh*.² A suit with pockets sewed onto it is a good example, as the suit is more important than the pocket attached to it. Therefore, if the pocket has money in it, the suit is not considered a *bassis* for the money or for the pocket, and the suit can be moved in spite of the fact that the pocket moves along with it. However, the pocket itself can still be a *bassis l'davar ha'asur*. Thus, one should not stick his hand into the pocket,³ even when the money was already removed after Shabbat had started and even in order to remove

1. *Shulchan Aruch, Orach Chayim* 310:7.

2. Rama ad loc.

3. *Mishna Berura* 310:29.

the money.⁴

There is a different type of pocket that is made by having part of the main fabric of the garment serve as part of the pocket. In such a case, if there is *muktzeh* in the pocket, the whole garment can be a *bassis l'davar ha'asur*.⁵ Shirt pockets are a classic example, but there are jackets that have some pockets that fit this description.

There are other reasons that a garment may not be a *bassis*. A basic requirement of that status is that the *muktzeh* was placed on the potential *bassis* with the intention that it stay there on Shabbat.⁶ If a garment is regularly worn on Shabbat, the assumption (without a need for cognitive thought) is that one did not intend for the *muktzeh* to remain there until Shabbat.⁷ In that case, even the pocket itself would not be *muktzeh*. In fact, even if the suit was meant to be used primarily during the week, it still would be unlikely for the pocket to be a *bassis*. Most people do not purposely leave \$20 bills in their pockets, irrespective of the laws of *muktzeh*. Assuming you meant to take the money out of the pocket either a few minutes after you put it there, or at most at the end of the day, there is no issue of *bassis l'davar ha'asur* whatsoever.

There is a *machloket* about whether one who is wearing a non-*bassis* garment with *muktzeh* in it should remove the *muktzeh* as soon as possible.⁸ We usually try to remove the object at the first opportunity.⁹ However, there are several legitimate excuses to delay doing so.¹⁰ Included in this category are: when a loss will likely occur to the *muktzeh* object (e.g., someone may take the

4. *Orchot Shabbat* 19:302

5. *Mishna Berura* 310:30; see *Shemirat Shabbat K'Hilchata* 20:71.

6. *Shulchan Aruch, Orach Chayim* 309:4.

7. *Shemirat Shabbat K'Hilchata* 20:72.

8. See *Mishna Berura* 310:29.

9. *Shemirat Shabbat K'Hilchata* 20:71.

10. See *ibid*.

money); it is difficult to do so without removing the clothing;¹¹ when it will be embarrassing for the *muktzeh* to fall out or it will be an eyesore. Therefore, if there was no issue of a *bassis* garment in your situation (as discussed above) and if, for example, it would have been difficult to remove the money in such a way that you could retrieve it after Shabbat, you could have waited until you got home or to a private place before emptying out the \$20 bill.

11. When the pocket is not a *bassis*, the easiest way to remove the money is by grabbing the pocket and shaking out the money.

C-15: Folding a Page as a Marker on Shabbat

Question: Is it permitted to fold the page of a book on Shabbat so that I will be able to find the page I left off on?

Answer: We will start with the related question of making simple marks in a book to highlight a specific place on the page, which is discussed in classical sources.

The *Tur*¹ says that it is permitted to make a noticeable impression in a book with one's fingernail, because the impression does not last. The *Bach*² disagrees because Rabbi Yossi³ maintains that the etchings made on the beams of the *Mishkan* were a classic example of *kotev* (the Torah prohibition of writing on Shabbat), and the lack of permanence only reduces the violation to a Rabbinic level. One strong response to the *Bach* is that we accept the opinion that disagrees with Rabbi Yossi and holds that a simple mark is forbidden only Rabbinically even when permanent; it is permitted when it is temporary.⁴ Other answers are given to lower the issue to no more than a Rabbinic level, which allows outright leniency regarding a temporary situation.⁵

The *Shulchan Aruch*⁶ allows making a mark in a book. The *Mishna Berura*⁷ views the matter more stringently and forbids making a scratch on paper (as opposed to parchment), as the *Taz*⁸ considers this a permanent mark. In our generation, the *Yalkut Yosef*⁹ permits making a mark, whereas the *Shemirat Shabbat*

1. *Orach Chayim* 340.

2. Ad loc.

3. *Shabbat* 103b.

4. *Eliya Rabba* 340:13.

5. See *ibid.*; *Taz*, *Orach Chayim* 340:4-5.6.

6. *Orach Chayim* 340:5.

7. 340:25 and *Bi'ur Halacha* ad loc.

8. *Orach Chayim* 340:4.

9. *Orach Chayim* 340:6.

*K'Hilchata*¹⁰ forbids it.

Folding a page to help one find the place later is significantly less problematic than making a mark. If one folds the page gently, the pressure of the book may eventually make a line whose impression becomes stronger over time. However, that indirect consequence is likely not considered a violation of Shabbat. Furthermore, even if one presses down hard, his intention is not to make a line, but rather to create the effect of a folded page (which helps both by “thickening” the page and by creating a tab-like indentation at the corner, where the folded part is “missing”). Several authorities¹¹ maintain that the mark that is left is an example of *p'sik reishai d'lo nicha lei*. In other words, although the ostensibly permitted action that one is doing (folding) causes a definite, direct, forbidden outcome (a line), the forbidden outcome is not desired (one has no interest in having the line). While most *poskim* forbid *p'sik reishai d'lo nicha lei*, many say it is permitted when the violation is only Rabbinic in the first place.¹² Additional support for leniency is the fact that even purposely making a mark is permitted according to many important authorities. Therefore, it is not surprising that the consensus of *poskim* is that it is permitted to fold the page.¹³

It seems that there is a more fundamental reason to permit folding pages. Some actions are inherently quite subjective, such that without a certain level of intent for its outcome is not considered a *melacha* at all. It makes sense, therefore, to posit that leaving an imprint that is neither a word nor a picture nor anything that conveys a specific content is such an example. In other words, an action has no element of *melacha* if it does not have significance. Thus, even according to the opinions that the

10. 28:15.

11. Including *Yalkut Yosef* op. cit. in a footnote.

12. See *Yabia Omer* V, *Orach Chayim* 28, who is lenient. The *Mishna Berura* 314:11 is among many who generally rule stringently.

13. See *Yalkut Yosef* op. cit.; *Shemen Afarsimon* (Elison) 7; *Piskei Teshuvot* 340:19.

principle that *p'sik reishet d'lo nicha lei* is forbidden applies to Rabbinic violations, folding without intent for the insignificant line is permitted. This thesis can explain why the line that is made when one folds a napkin is not considered writing.¹⁴ Similarly, we note that *poskim* struggle to explain why it is permitted to walk on soft ground with shoes that have writing on the soles that leave an imprint on the ground.¹⁵ Yet, the question is not even raised about shoes without writing on their soles, despite the fact they also leave a clear imprint on soft ground. Our thesis can explain the difference between these cases.¹⁶

Thus, for one reason or another, it is quite clear that it is permitted for one to fold the pages of a book on Shabbat in order to hold his place.

14. See *Shemirat Shabbat K'Hilchata* 11:40, who permits simple folding.

15. See *Yabia Omer* op. cit.

16. I would like to thank my son for presenting this idea to one of the leading authorities on *Hilchot Shabbat*, who agreed with the analysis.

C-16: Coin Collection on Shabbat

Question: Is it permitted for me to handle my modest, home-based coin collection on Shabbat?

Answer: This question reminds us of a similar one we answered years ago regarding whether a rock collection is *muktzeh*.¹ We will summarize that discussion and then see how a coin collection compares.

Rocks are *muktzeh* because they generally do not have a use that would make them considered a *kli* (utensil).² However, if one prepares rocks before Shabbat for a given purpose or if their owner decides to use them permanently for a specific permitted purpose, they are not *muktzeh*.³ Thus, rocks that are incorporated in a rock collection may not necessarily be *muktzeh*, as people enjoy looking at them.

In the question we considered, the rocks were on display in an arrangement that remains untouched over long periods of time. Does that turn the collection into *muktzeh machamat chisaron kis*, something one is careful not to use in various situations? The usual cases of *muktzeh machamat chisaron kis* are utensils that are meant mainly for forbidden purposes and whose permitted uses are not applicable at that time. Does this category extend to include an object whose purpose is permitted but one is careful to rarely move (e.g., wall clocks and paintings)? Rav Moshe Feinstein⁴ rules that such items are not *muktzeh*, but *Shemirat Shabbat K'Hilchata*⁵ maintains that they are *muktzeh machamat chisaron kis*.

1. See *Living the Halachic Process*, vol. I, C-15.

2. *Shulchan Aruch, Orach Chayim* 308:21.

3. *Ibid.* 21-22.

4. *Igrot Moshe, Orach Chayim* V:21:13.

5. 20:22.

Coins are *muktzeh*.⁶ This is not only because their use is related to a prohibited activity (commerce), in which case their *muktzeh* status of *kli shemelachto l'issur* would be only partial.⁷ Rather, coins are not considered utensils at all;⁸ their value is not based on what one can actually do with them, but rather on the fact that people have decided that they are valuable to possess. However, if one uses coins as objects to be admired, then, on the basic level, they could be turned into non-*muktzeh* items.⁹

In some ways, a standard coin collection is more likely to not be *muktzeh* than a rock collection, if we are correct in assuming that the coins in the collection are meant to be handled. One often keeps such collections in books, whose pages are turned to look at one coin after another. Although they are nestled within plastic coverings, turning the pages is still considered moving the coins, as the pages and the plastic serve the coins. Therefore, in contrast to rocks in a rock collection that is not moved, the *Shemirat Shabbat K'Hilchata* should agree that the coins are not *muktzeh* unless one keeps them locked in a safe or otherwise rarely handles them. If the collection is slated for sale and the owner is careful not to use it in the meantime,¹⁰ the coins would be *muktzeh*.¹¹ However, we understand that you are talking about a collection that is maintained for the owner's personal interest.

A remaining issue is the *Chazon Ish's* opinion. The *gemara*¹² states that if one attaches a stone to an article of clothing for a purpose of utility, it is permitted to move the stone along with the clothes, as long as he intended before Shabbat to use the stone for

6. *Shulchan Aruch, Orach Chayim* 310:7.

7. A *kli shemelachto l'issur* may be moved in order to use it or because its place is needed; see *Shulchan Aruch, Orach Chayim* 308:1.

8. See introduction of *Mishna Berura* to *Orach Chayim* 308.

9. See *Shemirat Shabbat K'Hilchata* 20:38 regarding coins incorporated into jewelry, which are not *muktzeh*.

10. *Mishna Berura* 308:7

11. See Rama, *Orach Chayim* 308:1.

12. *Shabbat* 65b.

that purpose.¹³ The *gemara* notes, however, that similar intention for that purpose would not suffice for a coin. Most understand this to apply only if the coin was not permanently set aside for the use before Shabbat.¹⁴ Thus, if coins are permanently on display and no longer act as “money,” it would be permitted to move them. However, the *Chazon Ish*¹⁵ says that coins cannot be considered as set aside for a purpose other than commerce, since they are always candidates to be used again as money. They consequently remain *muktzeh*.

You do not have to be concerned with the *Chazon Ish*'s opinion, however. First of all, we follow the majority, lenient ruling.¹⁶ Second, the *Chazon Ish*'s logic seemingly does not apply to a coin collection. Since the coins involved have a special collector's value that exceeds their value as money, there is no reason to suspect that one will revert to using them as money.

13. *Shulchan Aruch, Orach Chayim* 303:22.

14. See *Beit Yosef, Orach Chayim* 303; *Mishna Berura* 303:74.

15. *Orach Chayim* 42:13.

16. *Shemirat Shabbat K'Hilchata* 20:38.

c-17: One Who Lit Shabbat Candles Properly but Failed to Use Them

Question: A yeshiva student ate with us on Friday night. He lights candles with a *beracha* in his dorm room and usually spends a few minutes benefiting from them before the meal. When he realized that he had forgotten to do so, he took leave for several minutes because he did not think his candles would last until the end of the meal. Was this necessary?

Answer: The *Shulchan Aruch*¹ rules that single men who do not live with their families must light Shabbat candles in their rooms. The *Mishna Berura*² adds that this is so even if they eat elsewhere. (This topic is subject to a separate discussion.) Regarding your question, the *Mishna Berura*³ says that the candles should last long enough for the individual to use them when he returns; otherwise, his *beracha* is *l'vatala* (in vain). This seems to be based on the *Shulchan Aruch*'s⁴ ruling that if one lights in her house but eats in her courtyard and the candles will not burn sufficiently long for her to use them, her *beracha* is *l'vatala*. What many women who go out for the meal do when they are not confident that the candles will be lit when they return is to have some benefit from the candles during twilight.⁵ This works because women accept Shabbat upon themselves upon lighting. Presumably, however, your guest does not accept Shabbat with his lighting, which is common and the correct thing to do if he did not previously *daven Mincha*,⁶ and therefore he could not use this system. Consequently, at first glance, what your guest did was necessary to avoid the

1. *Orach Chayim* 263:6.

2. 263:29.

3. *Ibid.* 30.

4. *Ibid.* 9.

5. See *Mishna Berura* 263:41; *Mishneh Halachot* V:41.

6. *Mishna Berura* 263:42-43.

problem of *beracha l'vatala*.

However, the sources above discuss situations in which one had no intention to use the lights. The rulings of the *Shulchan Aruch* and *Mishna Berura* cited above do not apply here, because in their cases, there is no difference between what the lighter planned and what occurred. Given that your guest's regular practice is to benefit from the candles after he has accepted Shabbat, and something arose to alter that on the Shabbat in question, could he have fulfilled the *mitzva* based on his intention, even without having returned? The answer depends on which of the following formulations of the *mitzva* of lighting candles is correct: 1) The **act** of lighting candles is a matter of *k'vod Shabbat*, i.e., honoring Shabbat by **making preparations on Friday** to make it pleasant; 2) One must ensure that the **house** he occupies is **set** for pleasant usage on Shabbat; 3) The *mitzva* is *oneg Shabbat*, one's **personal enjoyment** of the light itself **on Shabbat** (parallel to eating tasty food), but on technical grounds, this must be prepared before Shabbat.

According to #1, your guest's visit at home was unnecessary. At the time of the lighting, there was an expectation that the light would be of value. Therefore, at that time he honored Shabbat, and this is not uprooted retroactively by changes in the situation. (If one **often** does not benefit from the candles, then his "plan" is disingenuous and his lighting is valueless.) The same is true according to #2. His room was properly lit, and it does not matter that he unexpectedly was not there at the relevant time. According to #3, however, your guest's actions were necessary, because if he did not actually benefit from the lights, it turns out that the *mitzva* was not fulfilled.

One can find a basis for all the formulations, but in this forum we can only scratch the surface. The simple reading of Rashi⁷ is that the *mitzva* is *kavod* (#1), whereas the simple reading of *Tosafot*⁸

7. *Shabbat* 25b.

8. Ad loc.

is that it is *oneg* (#3). The Rambam⁹ mentions *kavod* and *oneg*, but his language implies that #2 is more to the point. Possibly, whereas the *mitzva* was instituted with the expectation that people will benefit from a peaceful atmosphere (*shalom bayit*),¹⁰ the formal *mitzva* and its *beracha* relate to the **act** of *kavod*, which is accomplished by lighting candles.¹¹ This idea is bolstered (but not proven) by the facts that the *beracha* is recited well before the main benefit¹² and that if the candle was lit too early, it has to be relit even if it could have remained burning well into the night anyway.¹³ (One telling matter is the *machloket* between the *Magen Avraham*¹⁴ and R. Akiva Eiger¹⁵ regarding whether one can make a *beracha* if she needs a non-Jew to do the lighting for her. Although the act is performed by someone to whom the *mitzva* does not apply, the result is the same.¹⁶) However, it is difficult to deduce particulars conclusively from the general concepts that can be applied to every specific and somewhat uncommon situation, especially when it is not always clear to what extent the concepts are mutually exclusive or complementary.¹⁷

Since the simple readings of some of the *poskim* require your guest to return and it is difficult to prove them wrong, you can applaud his diligence, all the more so if he acted in a way that did not negatively impact others. On the other hand, we would not label failure to do so a breach of halachic responsibility.

9. *Shabbat* 5:1 and 30:5.

10. See *Shabbat* 23b.

11. *Beit HaLevi* I:11; *Az Nidberu* IX:1.

12. See *Yaskil Avdi* III, *Orach Chayim* 18.

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

14. 263:11.

15. Ad loc.

16. See *Shulchan Aruch HaRav* 263, *Kuntras Acharon* 3.

17. See *Shemirat Shabbat K'Hilchata* 43:(6).

C-18: Removing Air from a Wine Bottle on Shabbat

Question: Those who appreciate fine wine take steps to protect leftover wine from Shabbat to Shabbat. After I finish drinking, I use a special pump and bottle-top to remove the air in the bottle that causes oxidation. I can pump after Shabbat (there is no significant deterioration before a week), but I prefer to take care of it immediately out of concern I might forget. Is it permitted to pump on Shabbat, or is this *hachana*?¹

Answer: Our research indicates that at least some wine experts are more discriminating than you and say that, even with the pump, the wine can “survive” only 3-5 days. For them, we imagine there would be significant loss to wait until the end of Shabbat. We will start our answer with their assumptions.

The *Magen Avraham*² discusses the case of meat that has not yet been kashered and is in need of washing before its deadline.³ He posits that, in theory, if it were necessary to prevent loss, one would be allowed to rinse it on Shabbat without *hachana* being a problem. A source for this opinion is the *halacha* that one may move a non-*muktzeh* utensil on Shabbat to protect it from breakage or theft, even if he does not need it that day.⁴

In practice, however, the *Magen Avraham* forbids the rinsing, because even after the deadline has passed, one may still *kasher* the meat through broiling. Considering that some people prefer salting to broiling, we may infer from here that not all “losses” necessarily justify *hachana*. This, then, raises questions about maintaining the freshness of wine. On the other hand, there is certainly no requirement of total loss to justify taking steps on

1. Forbidden preparation from Shabbat to weekday.

2. 321:7; see *Mishna Berura* 321:21.

3. See *Shulchan Aruch, Yoreh Deah* 69:12.

4. *Shulchan Aruch, Orach Chayim* 308:4.

Shabbat. Even meat that can no longer be kashered at all can still be sold to a non-Jew, and yet were it not for the solution of broiling, rinsing would have been permitted. Therefore, those for whom their expensive wine will lose much of its value if they do not promptly pump the air out may do so on Shabbat.⁵

Let us now consider your question from the perspective of someone like you, for whom waiting until after Shabbat is not significant. As a contrary example, consider that a husband may revoke his wife's oaths on Shabbat only because it will be too late to do so if he waits until after Shabbat.⁶ In general, when there is an alternative way to avoid a loss that can be done after Shabbat, one must wait.⁷ We do not find a halachic precedent that, under normal circumstances, one's concern that he might forget to take care of something if he waits until after Shabbat is sufficient to justify doing the preparatory work on Shabbat.

Nevertheless, there are a few ideas that might justify pumping on Shabbat. The *Orchot Shabbat*⁸ maintains that an action whose only purpose is to prevent a loss is totally divorced from any issue of *hachana*. (He explains that in the case of rinsing the meat, we require alternatives because rinsing has a positive element to it other than avoiding loss.) Thus, in your case, you could claim that since one pumps only to avoid loss, it does not matter that you can do it after Shabbat.

Another possible leniency is based on a rule championed by Rav S.Z. Auerbach and cited by several contemporary works.⁹ Actions that a person does naturally, as a matter of course – without specific thought of doing it now in order to save time later – are permitted even if the results are meant for only after Shabbat. Some examples are taking home one's *tallit* and *siddur*

5. We also see from the *halacha* about protection from theft that preventing **possible** significant loss suffices.

6. *Shulchan Aruch, Orach Chayim* 341:1.

7. See *Shemirat Shabbat K'Hilchata* 28:83.

8. 22:(270).

9. See *Shemirat Shabbat K'Hilchata* 28:81.

after *shul* and putting food in the refrigerator. These actions are considered finishing off the previous usage. While pumping air from a wine bottle seems to me to be a deliberate action with a clear thought process, **perhaps** it can be argued that for serious wine connoisseurs, it is as natural as replacing the cap on a soda bottle.

In summation, those who deem that delaying pumping the air will cause a real loss are permitted to pump the air from a wine bottle on Shabbat. Other users have what to rely upon if they prefer not to wait. The strength of the leniency may depend on the level of their discrimination and the extent to which pumping is a standard, almost trivial action.

c-19: Undoing Early Acceptance of Shabbat

Question: After *davening* at an early-Shabbat *minyan*, I realized that I had forgotten to deliver a gift to my host (we have no *eiruv*). Could I have undone my acceptance of Shabbat, delivered the gift, and then *davened Ma'ariv* again?

Answer: The *gemara*¹ discusses the concept of acceptance of Shabbat based on mistaken information (*b'ta'ut*) – specifically, when people *davened Ma'ariv* of Shabbat before the normal time because they were misled by darkness caused by heavy clouds. An *Amora* allowed doing *melacha* when they discovered the mistake, because acceptance of Shabbat *b'ta'ut* is invalid. If a *shul* mistakenly *davened Ma'ariv* of *Motzaei Shabbat* early, although we would have expected the *tefilla* to be invalid, the *gemara* states that there is a special leniency for a community to not have to repeat *Ma'ariv* under these circumstances.

Most *Rishonim* rule that *melacha* is permitted after an acceptance of Shabbat *b'ta'ut*.² The *Shulchan Aruch*³ cites this opinion, followed by (his understanding of) the Mordechai's view that *ta'ut* does not erase acceptance done through **the action** of lighting Shabbat candles, which is stronger than *davening Ma'ariv*. Accordingly, we might conclude that if you did not light candles (and the acceptance of early Shabbat was not community-wide⁴), you could have done *melacha* after realizing your mistake.

However, this premise is flawed. First, several *Acharonim* rule that after one has accepted Shabbat with *tefilla*, one can no longer do *melacha* even if it was accepted *b'ta'ut*.⁵ Furthermore,

1. *Berachot* 27b.

2. See *Beit Yosef, Orach Chayim* 263.

3. *Orach Chayim* 263:14.

4. See *Shulchan Aruch, Orach Chayim* 263:12.

5. *Magen Avraham* 263:26; *Mishna Berura* 263:56.

your case is very different from the *gemara*'s case of *ta'ut*. There, the entire basis for *davening Ma'ariv*, and thus accepting Shabbat, was misguided, as they thought it was the normal time for doing so. You, in contrast, deliberately accepted Shabbat at an early time. The problem was that a factor that you did not consider (i.e., the need to carry a gift) turned out to make you regret that decision. In the other case, the acceptance of Shabbat was null even if people desired to leave things as they were (i.e., an individual who *davened Ma'ariv* early under those circumstances **must** repeat it⁶). That is applicable only when the mistake is objective and clear cut.

At first glance, the *Taz*⁷ seems to reject our argument. He writes about a community that accepted Shabbat early on a Friday that was the second day of Rosh Hashana, after which a *shofar* became available. He rules that they should blow *shofar* even though this is usually inappropriate on Shabbat. He compares their acceptance of Shabbat to a *ta'ut*; even though it was fundamentally done for a good reason, it was counteracted by a desire to blow *shofar*. However, study of the *Taz* shows that other factors are involved in his ruling and, more fundamentally, that the lack of fulfillment of *shofar* is an **objective factor** that applies to all communities in that situation. (The *Taz* goes as far as to argue that even if people want to accept Shabbat fully, they have no power to uproot their *mitzva* obligation.) Your case, in contrast, is qualitatively not comparable to the sources on *ta'ut*, as there was no objective need to bring the gift at that time.

What we can consider to deal with such a case is being *sho'el* on the acceptance, a process of releasing oneself, done before three people. Some authorities, including the *Levush*,⁸ compare early acceptance of Shabbat to a *neder* (an oath, by which one accepts extra halachic obligations) and maintain that one can be *sho'el* on the acceptance of Shabbat, just as he can annul a

6. *Shulchan Aruch, Orach Chayim* 263:14.

7. *Orach Chayim* 600:2.

8. *Orach Chayim* 263:17.

neder. However, the majority opinion is that one cannot be *sho'el* on acceptance of Shabbat.⁹ The most convincing explanation is that whereas a *neder* is a halachic reality that is created totally by a person, the **Torah mandates** accepting Shabbat early, with each person deciding for himself **when** that will be. In your case, undoing Shabbat causes an additional problem in that it would invalidate your *davening* of *Ma'ariv*.¹⁰

In short, nullifying acceptance of Shabbat due to a need that arises should be contemplated only if the need is unusually pressing or objective, such as an unfulfilled *mitzva* – not in a case like the one you raised. (We will not get into other solutions, which ostensibly existed, to have dealt with your situation.¹¹)

9. See *Mishna Berura* 263:65; *Orchot Shabbat* 27:20; see discussion in *B'tzel HaChochma* IV:96.

10. See *Igrot Moshe, Orach Chayim* IV:99.

11. These include asking someone who did not yet accept Shabbat to bring it for you; see *Shulchan Aruch, Orach Chayim* 263:17.

Section D:
Mo'adim (Festivals)



D-1: A Woman Blowing *Shofar* for a Man

Question: Why is it not acceptable for a woman to blow the *shofar* on Rosh Hashana on behalf of a man, given that he personally hears the *shofar* being blown?

Answer: First, let us confirm your assumption that a woman cannot enable a man to fulfill his *shofar* obligation on Rosh Hashana by blowing it for him. Indeed, the *mishna*¹ clearly states that the blowing of one who is not obligated in the *mitzva* of *shofar* cannot facilitate the fulfillment of the *mitzva* of one who is obligated in it, and all agree that women are exempt from the *mitzva* of *shofar* because it is time-bound.²

According to one understanding of the *mitzva* of *shofar* that many authorities share, your question is an excellent one. You apparently assume that the *mitzva* on Rosh Hashana is, as the Rambam writes,³ to **hear** a *shofar* blowing, not to **blow** the *shofar*. The *Tur*⁴ provides two indications that the *mitzva* is to hear the *shofar* blowing: 1) The language of the *beracha* is: "... Who... has commanded us to **hear** the sound of the *shofar*." 2) The *halacha* is that if one blows the *shofar* in a pit in such a manner that he is not able to effectively hear his own blowing, he does not fulfill the *mitzva*.⁵ According to the understanding that the *mitzva* is hearing the *shofar* blowing, your question is cogent: If one heard an authentic *shofar* sound, what difference does it make who produced it?

1. *Rosh Hashana* 29a.

2. See *Kiddushin* 33b; *Shulchan Aruch, Orach Chayim* 589:3.

3. See *Shofar* 1:1.

4. *Orach Chayim* 585.

5. See *Rosh Hashana* 28a.

On the other hand, there are authorities who disagree to different degrees with this approach. The Rosh⁶ cites Rabbeinu Tam as maintaining that the *mitzva* is to **blow** the *shofar*. Rabbeinu Tam is not troubled by the phrasing of the *beracha*, as his version of the *beracha* was indeed "... on the **blowing** of the *shofar*." Furthermore, we can explain the need to **hear** the blowing (as apparent from the *Tur*'s second proof) by arguing that while the **essence** of the *mitzva* is to blow the *shofar*, there is additionally a mere **condition** that one must also hear it in order to fulfill the *mitzva*.

If the *mitzva* is to blow the *shofar*, as Rabbeinu Tam argues, why do we not require each and every individual to blow it? The answer cannot be that the *ba'al tokei'ah* simply serves as the *shaliach* (agent) for the fulfillment of the *mitzva*, because if agency were fully effective here, then one should be able to have someone else blow the *shofar* for him without even being present to hear it! Rather, it must be that the *mitzva* of *shofar* is a *mitzva sheb'gufo*, a *mitzva* that one must perform personally. Nevertheless, according to Rabbeinu Tam, we apply to it the rule of *shomei'ah k'oneh* (one who hears is like one who recites), which we find in contexts such as the reading of *Megillat Esther*. Applied in our context, this means that one who hears the sound of the *shofar* being blown is considered as if he himself produced the sound.

The principle of *shomei'ah k'oneh* requires that the one who is doing the act (e.g., the one who actually *lays* the *Megilla*) must himself be obligated in the *mitzva*. Applying this concept to blowing the *shofar* would require that the one who blows the *shofar* must be obligated in the *mitzva*. Thus, according to Rabbeinu Tam, the answer to your question is obvious: A woman's blowing cannot be considered as if the man who is listening blew the *shofar* himself, since she is not obligated on the same level that he is.

6. *Rosh Hashana* 4:10.

The Rambam does not need to employ *shomei'ah k'oneh* in order to explain how the *mitzva* of *shofar* is fulfilled, since, in his view, the hearing of each individual person suffices. Therefore, as we noted above, your question is a good one according to the Rambam. The answer to your question is that while the Rambam maintains that the *mitzva* is to hear a *shofar* sound, it cannot be just any *shofar* sound; it must be a “*mitzva*-linked” *shofar* sound, which can be produced only by someone who is obligated in the *mitzva*. In this way, the *mitzva* of *shofar* is similar to that of *tefillin*. Although the *mitzva* is to wear *tefillin*, not to write them, only one who is obligated in the *mitzva* to wear *tefillin* is permitted to write them.⁷

(There is a notable difficulty according to the Rambam’s approach: The *gemara*⁸ states that if the *ba'al tokei'ah* blows *shofar* with only some of those listening in mind, then only those people can fulfill the *mitzva* through that blowing. But if the sound is *mitzva*-connected because the *shofar* blower is using it to fulfill his own *mitzva* or that of some of those listening, why can’t anyone who hears that *mitzva*-sound fulfill the *mitzva* by hearing it?⁹)

According to a third approach, the essential *mitzva* of *shofar* consists of both the blowing and the hearing of the *shofar*.¹⁰ A man who hears the sound of a *shofar* blown by a woman is missing the first element of the *mitzva* – that of being connected to the blowing of one who is obligated in the *mitzva* of *shofar*.

7. *Gittin* 45b.

8. *Rosh Hashana* 29a.

9. See one answer in the *Chazon Ish*, *Orach Chayim* 29:4.

10. See *Minchat Chinuch* #405.

D-2: Is it Wise to Keep *Teru'ot* to a Minimum?

Question: I am the *ba'al tokei'ah*¹ in my *shul*. The *makri*² often signals me to stop my set of *teru'ot* earlier than I would like (i.e., before I am fully confident that I have blown nine *teru'ot* blasts). He explained that he is concerned that if I blow more than nine *teru'ot*, the combined *shevarim-teru'ah* blasts might exceed the length of the *teki'ah* before or after them. I was not taught that this would be a problem. Is it?

Answer: The *gemara*³ states that the length of a single *teki'ah* blast is like that of a set of *teru'ah*. The *gemara* does not actually say that one is longer than the other, but it is obviously impossible for them to be of precisely the same length. Apparently, the *teru'ah*'s length is used as an objective point of reference for the *teki'ah*; the *teki'ah* must be at least as long as a normal set of *teru'ah*. This may be one of the reasons that there are no opinions found in the *Tur*, *Beit Yosef*, *Shulchan Aruch*, or classical commentaries that say that it matters whether the *teki'ah* or the *teru'ah* is the longer one during a given series. What matters is only that each one independently is as long as it is supposed to be. The length of the *teki'ah* is therefore unaffected by one making a longer *teru'ah* set than he needed to. We will note a few of many possible proofs to this thesis.

Poskim use an individual *teru'ah* blast (called a *tarmut*⁴) as the unit of reference for the lengths of the other blasts. For example, there is a *machloket* regarding whether each *shever* must be at least three *tarmutin* long or if, on the contrary, each *shever* must

-
1. The *shofar* blower.
 2. The person who calls out instructions to the *shofar* blower.
 3. *Rosh Hashana* 33b, according to the understanding of most *Rishonim*.
 4. This is alternatively referred to as a *trimut* or a *trumit*.

actually be no longer than three *tarmutin*.⁵ In practice, we accept the opinion that the *teki'ah* of a *teru'ah* series must be at least nine *tarmutin* long, and the *teki'ah* of a *shevarim-teru'ah* series must be at least eighteen or so, paralleling the eighteen *tarmutin* of the *shevarim-teru'ah*. Thus, the length of the *teki'ah* must each time be at least as long as the required length of the middle section of that particular series.⁶ But according to the approach your *makri* suggested, these lengths are of very limited relevance, as they need to be increased if the middle section is blown in a manner that is even only slightly longer than average.⁷

A major concern regarding the lengths of the *shofar* blasts is that blowing a longer than necessary *shever*; such that it reaches the minimum length of a *teki'ah*, would preclude its being defined as a *shever* and instead define it as a *teki'ah*. The *poskim* write that according to the opinion that a *teru'ah* set contains nine blasts (in contrast to the opinion that it contains only three), the length of the *teki'ah* must be at least nine *tarmutin*. Accordingly, an individual *shever* could be up to (but not including) nine *tarmutin*.⁸ In theory, then, in a *shevarim-teru'ah* series – in which the *teki'ah* is at least eighteen *tarmutin* long, as noted above – each individual *shever* should be allowed to extend up to eighteen *tarmutin*.⁹ But if one were to blow such lengthy *shevarim* and also posit that the middle section's length cannot exceed that of the *teki'ah*, as your *makri* argues, then the *teki'ah* of a *shevarim-teru'ah* series could end up being upwards of sixty *tarmutin* – a length found only in some blowers' *teki'ah gedola*.

5. See *Shulchan Aruch, Orach Chayim* 590:3.

6. See *Mishna Berura* 590:14.

7. Statistically, a slightly longer than average blast should occur close to 50% of the time.

8. See *Mishna Berura* 590:13.

9. In practice, the *Mishna Berura* (ibid.) recommends not to make the *shevarim* so long, but his reasoning is based on the fact that the sets of *shevarim* would otherwise be of different lengths during the different sections of the blowing, which would be confusing to those listening to the *shofar* blowing.

Regarding the debate as to whether it is proper to blow more than three *shevarim* blasts in a set,¹⁰ the *Perisha* says we avoid doing so because in a *shevarim-teru'ah* combination, one might run out of steam before getting to the end of the nine subsequent *teru'ot* blasts. In contrast, he notes, we are not concerned about extra *teru'ot* blasts,¹¹ as one can stop them whenever he gets tired. The *Perisha* does **not** say that we must be concerned that after an extra-long *shevarim* followed by a *teru'ah* or an extra-long *teru'ah* after a *shevarim*, the *ba'al tokei'ah* might not succeed in blowing a *teki'ah* that is as long as the *shevarim* and the *teru'ah* together. The reason is, once again, that the minimum length requirement of the *teki'ah* depends on the **standard** length requirement of the middle section; it is unaffected by the actual blowing of an unnecessarily long *shevarim* and/or *teru'ah*.

At least one contemporary *posek*, the *Mo'adim U'Zemanim*,¹² mentions a “practice of the stringent” to have the *tekiot* be as long as their adjacent middle section actually ends up being. He identifies one *Rishon*¹³ (not cited by the *Beit Yosef*) and one *Acharon*¹⁴ who share this opinion, but he concedes that this opinion is not found in the *poskim*.¹⁵

In general, we do not oppose unnecessary *chumrot* of fulfilling fringe opinions for those who desire to do so (perhaps especially on Rosh Hashana and regarding such a beloved and important *mitzva* as *shofar* blowing). The problem is that the way you describe your case, the tiny gain may cause greater problems than it is worth. As one who has served both in the capacity of a *ba'al tokei'ah* as well as that of a *makri*, I believe that a *ba'al tokei'ah* is much more reliable at counting *teru'ah* blasts than a *makri* is. If the *makri* tries to stop the *ba'al tokei'ah* after what he

10. See *Mishna Berura* 590:11.

11. See also *Shulchan Aruch* op. cit.

12. I:5.

13. *Orchot Chayim* I, *Teki'at Shofar* 11.

14. The *S'fat Emet*, *Rosh Hashana* 33b; this is not discussed in the context of a practical halachic ruling.

15. See *Mo'adim U'Zemanim* op. cit. in footnote ad loc.

perceives as nine or ten blasts, whereas the *ba'al tokei'ah* is not yet confident that he has blown that many blasts, it is not unlikely that nine blasts indeed will not have actually been blown, and this could disqualify the set.¹⁶ In fact, the *Mo'adim U'Zemanim*'s stringency assumes that the *minhag* is to blow longer *teru'ot* sets than necessary, and he therefore instructs lengthening the *tekiot* accordingly. He does not suggest being “stingy” with the *teru'ot*, certainly not to the point that a miscounting could cause there to be fewer than nine blasts.

While a *ba'al tokei'ah* should follow his *makri*'s stringencies, at least if he is the *shul*'s rabbi, in this case we suggest you show the *makri* the evidence we have presented. If he still does not change his opinion, you should, of course, follow whatever the rabbi says.

16. A full discussion of how likely it is that blowing fewer than nine *teru'ah* blasts would disqualify the set is beyond our present scope; see *Shulchan Aruch* op. cit. and *Mishna Berura* 590:15.

D-3: Eating on *Erev Yom Kippur*

Question: I understand that there is a *mitzva* to eat on *Erev Yom Kippur*. Considering that I certainly was not planning on fasting for two days straight, what practical ramifications are there of this *mitzva*?

Answer: The *gemara*¹ mentions the importance of eating on *Erev Yom Kippur*, stating that if one eats on this day, it is considered as though he fasted for two days. The *gemara* does not explicitly state whether this is mandated by the Torah or is a Rabbinic enactment with a Scriptural allusion in the Torah.²

Some *poskim*³ write that one ramification of this *mitzva* is that one should learn less Torah than usual on *Erev Yom Kippur* in order to leave time for eating. But how much should one eat? Regarding this issue, we must distinguish between the minimum and the preferred. Even if one eats only at the *seuda hamafseket*,⁴ he has minimally fulfilled the *mitzva*, and this is indeed what is suggested for one who wants to fast on this day due to a very ominous dream.⁵ However, the *Shulchan Aruch*⁶ and many other authorities mention that one should eat more than usual, and it is generally accepted that one should eat much more on *Erev Yom Kippur* than simply a *seuda hamafseket*.

Examining the main reasons suggested for this *halacha* will help us find the most appropriate practical approach. The *Rosh*⁷ and the *Tur*⁸ explain that we are supposed to eat on *Erev Yom*

1. *Berachot* 8b.

2. See discussion of the matter in *Kesef Mishneh*, *Nedarim* 3:9; *Lechem Mishneh*, *Shevitat Asor* 1:6.

3. *Magen Avraham* 604:1; *Mishna Berura* 604:1.

4. The meal directly preceding the fast.

5. *Magen Avraham* op. cit.

6. *Orach Chayim* 604:1.

7. *Yoma* 8:22.

8. *Orach Chayim* 604.

Kippur in order to make it possible to fast on Yom Kippur without undue difficulties. Rabbeinu Yona⁹ and the Ritva¹⁰ mention a different reason: It is appropriate to eat on *Erev Yom Kippur* because its proximity to Yom Kippur, the wonderful Day of Atonement, gives *Erev Yom Kippur* a semi-*Yom Tov* status. Other sources provide additional reasons,¹¹ including kabbalistic ones. There are a number of cases in which the question of whether one should eat **might** depend on the reason for this *mitzva*.

If the purpose of the *mitzva* to eat on *Erev Yom Kippur* is to facilitate an easier fast the next day, then the *mitzva* should not apply the night before, which is too removed from the fast to make a significant difference. However, if the reason for eating is that *Erev Yom Kippur* has a *Yom Tov* status, the *mitzva* might apply at night as well. The more accepted opinion is that there is no obligation to eat the night before, but it may be preferable to do so.¹²

At first glance, women should be exempt from the *mitzva* of eating on *Erev Yom Kippur*, since it is a time-based positive *mitzva*. However, there is logic to apply the *mitzva* to women, either because eating on *Erev Yom Kippur* is compared to fasting on Yom Kippur, in which women are clearly obligated, or because it is just as important that women have an easy fast on Yom Kippur as it is that men do. The standard assumption is that women are indeed obligated to eat on *Erev Yom Kippur*.¹³

Another possible consequence of the reasoning for the *mitzva* relates to whether one should eat food that one has a reason to believe will cause him to fast well, or whether he should eat food that is festive or otherwise appropriate for a *Yom Tov* (such as meat and bread). The *Minchat Chinuch*¹⁴ assumes that there is no

9. *Sha'arei Teshuva* 4:9.

10. *Rosh Hashana* 9a.

11. See *Yechaveh Da'at* I:58; *Piskei Teshuvot* 604:2.

12. See a ramification of this compromise position in the *Mishna Berura* 604:2.

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

14. #313.

need for any specific type of food; one fulfills the *mitzva* by eating any food. However, there are strong indications that the *minhag* on *Erev Yom Kippur* was, and still is, to eat meat¹⁵ and have a formal meal – one in which there is a feeling of *Yom Tov* or the imminent approach of *Yom Tov*. In current practice, there seems to be an emphasis on the quality of the food, coupled with an emphasis on food that is helpful for people who are about to fast (although it is difficult to know if the latter stems from religious or merely practical grounds).¹⁶

In most of our circles, the only eating performed on *Erev Yom Kippur* as religious ritual is the *seuda hamafseket*. Throughout the rest of the day, it is positive to eat more than usual, but in whatever format is convenient. There are significant numbers of people and communities who also have either a morning or early afternoon meal, similar in scope to the *seuda hamafseket*.¹⁷ It is difficult to argue that this is an obligation or something that one should necessarily impose upon the mother of the house or others, if they will find this difficult. The impetus for this practice seems to be kabbalistic¹⁸ and is not obligatory, unless one is part of a community (or a family) in which there is a clear *minhag* to have such a meal.

15. See *Magen Avraham* 604:1.

16. There are various foods that one should avoid eating before Yom Kippur for a variety of reasons; see *Shulchan Aruch* and Rama, *Orach Chayim* 408:4. However, we will not discuss this issue in the present context.

17. See *Piskei Teshuvot* 604:2.

18. See sources *ibid*.

D-4: *Avinu Malkeinu* when Yom Kippur Falls on Shabbat

Question: I understand that this year, when Yom Kippur falls on Shabbat, we will not be saying *Avinu Malkeinu* except at *Ne'ila*. Why is it that *Avinu Malkeinu*, of all the *tefillot* of Yom Kippur, is eliminated, and why is *Ne'ila* an exception?

Answer: Based on your question, we imagine you are Ashkenazi, as most Sephardi communities do, in fact, recite *Avinu Malkeinu* on Yom Kippur that falls on Shabbat, although many leave out the lines that mention sin.¹ Indeed, many Sephardim say *Avinu Malkeinu* even on Rosh Hashana that falls on Shabbat, and some do so even on *Shabbat Shuva*.²

However, almost all Ashkenazim, as well as some Sephardim, omit *Avinu Malkeinu* on Shabbat, even on Yom Kippur. The reason for this omission is that one is not generally allowed to make requests of HaShem on Shabbat.³ It is notable that we do recite other passages that contain special requests on Shabbat (e.g., *Zochreinu l'chayim* ...), the justification being that since these requests are phrased in the plural, they are considered needs of the community, which we are permitted to *daven* for even on Shabbat.⁴ Nevertheless, although *Avinu Malkeinu* is also recited in the plural, since it originated as a special prayer for fast days,⁵ it is treated as a particularly plaintive prayer that is inappropriate for Shabbat, despite the fact that it is a regular part of our *davening* throughout *Aseret Y'mei Teshuva*.

The *Aruch HaShulchan*⁶ offers a different explanation. He

1. See *Yechaveh Da'at* I:54; *Mikraei Kodesh* (Harari), *Yom Kippur* 5:12.

2. *Ibid.*

3. Rama, *Orach Chayim* 584:1; *Mishna Berura* ad loc. 4.

4. See *Tosafot*, *Berachot* 34a.

5. *Ta'anit* 25b.

6. *Orach Chayim* 619:8.

argues that it is fundamentally permitted to make any type of request on Yom Kippur even when it falls on Shabbat; indeed, the *Yud Gimmel Middot* and many Yom Kippur *piyutim* are no less plaintive than *Avinu Malkeinu*. However, the Rabbis chose to omit *Avinu Malkeinu* when Yom Kippur falls on Shabbat as a reminder that elements of Shabbat do exist on this day, despite the fact that this Shabbat is largely overshadowed by the outpouring of requests and the feeling of trepidation associated with Yom Kippur.⁷ Some compare our relinquishing of the right to use the “spiritual tool” of reciting *Avinu Malkeinu* in honor of Shabbat to our refraining from blowing the *shofar* when Rosh Hashana falls on Shabbat, based on the underlying realization that our display of regard for Shabbat itself “sweetens our judgment.”⁸

Avinu Malkeinu is considered an important prayer, and we do not easily give up on its recitation. Indeed, the Ran⁹ argues that *Avinu Malkeinu* should certainly be recited on Yom Kippur when it falls on Shabbat, because of the urgency of our having one last day of using it to help achieve atonement before the end of HaShem’s judgment. But the importance of the prayer still finds expression even according to the more common *minhag*. One practical indication of this is that we bend a rule somewhat to enable its recitation. Usually, we do not recite *Avinu Malkeinu* on *Erev Yom Kippur*. However, the Rama¹⁰ writes that when Yom Kippur falls on Shabbat, causing us to limit the recitation of *Avinu Malkeinu* on Yom Kippur itself, we do recite it in *Shacharit* of *Erev Yom Kippur*.

There are at least three explanations offered for why we do say *Avinu Malkeinu* at *Ne’ila* even on Shabbat. The *Levush*¹¹ says that by the end of *Ne’ila*, Shabbat is already technically over, so

7. The *Aruch HaShulchan* adds another contributing factor: Since *Avinu Malkeinu* was said throughout *Aseret Y’mei Teshuva* and it will be said again at *Ne’ila*, it is an appropriate *tefilla* to leave out as necessary.

8. See *Divrei Yehuda* (Scheinfeld), p. 201.

9. *Rosh Hashana* 9a in the Rif’s pages.

10. *Orach Chayim* 604:2.

11. *Orach Chayim* 623:5.

there is no longer a problem of reciting a petitionary prayer.¹² The *Magen Avraham*¹³ writes that even if those *davening* get up to *Avinu Malkeinu* before nightfall, they still recite it then, because this is the last chance to achieve atonement before the end of HaShem's judgment (applying the logic of the aforementioned Ran to this case). Finally, the *Mateh Ephrayim*¹⁴ cites the Maharil¹⁵ as saying that we want to recite *Avinu Malkeinu* in the only *tefilla* in which we insert "*chotmeinu ...*" (seal us) in place of "*kotveinu*" (inscribe us).

The *Tashbetz*¹⁶ emphasizes that there are various *minhagim* on these matters and that one should not change the local practice.

12. Even if night has fallen, it is not too late for atonement.

13. 623:3.

14. 623, *K'tzeh HaMateh* 8.

15. *Yom Kippur* 14.

16. *Shut* III:176.

D-5: Disqualification of an *Etrog* – *Pitam* and *Oketz*

Question: Why is it that when an *etrog*'s *pitam* breaks off, the *etrog* is *pasul*, whereas when the *oketz* falls off, it is still kosher?

Answer: The *mishna*¹ states explicitly that when the *pitam* is removed, the *etrog* is *pasul*, whereas when the *oketz* is removed, the *etrog* is still kosher. The simple explanation for this distinction is that the *pitam* is a more integral part of the *etrog* fruit than the *oketz* is. Therefore, it is specifically when the *pitam* has been removed that the *etrog* is considered incomplete (*chasser*), which makes it *pasul* (unfit)² on the first day of Sukkot.³ Alternatively, some maintain that an *etrog* without a *pitam* is not considered *hadar* (aesthetically pleasing); if so, such an *etrog* is disqualified throughout Sukkot.⁴

Nevertheless, matters are not as simple as they initially seem. First, we must ask what exactly the *mishna* means in referring to the *pitam*. The *gemara*⁵ describes the *pitam* as a *buchna* (pestle). Most opinions identify the *pitam* as what botanists call the citron's "style" – i.e., the thin protrusion at the top of the fruit, which is usually the same color as the fruit itself. At the end of the *pitam* is a brown, crown-looking piece known as the *shoshanta* (stigma). On the opposite side of the *etrog*, what we generally call the *oketz*, is simply that which happens to remain of the stem when the fruit is cut off from the tree. It is certainly logical to assume that the *pitam*, in this description, is more a part of the fruit than the *oketz*, and it is therefore logical to require only the *pitam* to be intact.

However, not all *Rishonim* agree with the above identification

1. *Sukka* 34b.

2. *Shulchan Aruch, Orach Chayim* 648:2.

3. Rama, *Orach Chayim* 649:5.

4. See *Mishna Berura* 649:36.

5. *Sukka* 35b.

of the *etrog*'s parts. Some say that the *mishna*'s *pitam* and *oketz* are both on the side of the *etrog*'s stem, i.e., the side where the fruit is connected to the tree.⁶ According to this opinion, the *pitam* is the part of the stem that extends into the indentation at the bottom of the fruit. If this part of the stem is missing, the *etrog* is *pasul*. The *oketz*, in this view, is the part of the stem that is somewhat removed from the fruit, and specifically this part of the stem does not need be intact in order for the *etrog* to be kosher. The *Tur*⁷ understands that according to this approach, if the part of the fruit that we call the *pitam* is missing, the *etrog* is still kosher. The apparent logic is that the “style” is not an integral part of the fruit, as it extends beyond the fruit’s fleshy section. In contrast, if the stem were to be completely removed, this would leave a hole in the surface area of the fruit itself.

The Rambam⁸ is among those who hold that if either what we call the *pitam* (the “style”) or what we call the *oketz* (the entire stem) is severed, the *etrog* is *pasul*. The case in which the *etrog* is kosher is when only some of the *oketz* is lost but enough remains for there not to be an indentation in the *etrog* itself. Most authorities understand that according to the Rambam, the loss of only the *shoshanta* does not disqualify the *etrog*, whereas if some of the more stick-like base of the *pitam* is missing, the *etrog* is invalid.⁹

In terms of the practical *halacha*, the basic ruling is that a missing *shoshanta* does not disqualify the *etrog*, although the Rama¹⁰ comments that it is preferable to avoid using an *etrog* whose *shoshanta* fell off. The *Shulchan Aruch*¹¹ rules that a missing *pitam* disqualifies an *etrog*, but he does not provide specifics. The *Mishna Berura*¹² does not clearly decide between

6. See *Tosafot, Sukka* 35b, in the name of Ri HaLevi.

7. *Orach Chayim* 648.

8. *Lulav* 8:7.

9. See *Maggid Mishneh* ad loc.

10. *Orach Chayim* 648:7.

11. Ad loc.

12. 648:30.

the differing opinions regarding the case in which only part of the *pitam* is broken off, such that enough remains for the top of the fruit to be whole without any indentation. If part of the remaining *pitam* protrudes beyond the fruit, it is likely kosher. Regarding the *oketz*, enough of the stem must remain to cover the indentation.¹³

The Rama¹⁴ points out that if the *etrog* never had a *pitam*, it is kosher, and he adds that this was, in fact, the most common situation in his time. In truth, an *etrog* always starts off with a *pitam*, but the *pitam* often dries up and falls off in the course of the *etrog*'s growth due to the effects of sunlight or other factors. The Rama's leniency applies at least to a case in which the *pitam* falls off at an early stage and the fruit continues to grow naturally without it. The *halacha* is less clear regarding cases in which the *pitam* fell off at a relatively late stage on the tree. If a light-color scab is found in place of the *pitam*, it suffices as a sign that the *pitam* did not fall off problematically late.¹⁵ If certification indicates that the *etrog* came without a *pitam*, then one may assume that certifiers checked the *etrog* and determined that it convincingly appears that the *pitam* fell off early enough.

Why do people express concern regarding a broken *pitam* and not regarding a missing *oketz*? It is probably because it is much more common for some or all of the thin, protruding *pitam* to fall off than for the relatively sturdy *oketz* to do so.

13. See descriptions in Rama, *Orach Chayim* 648:8 and *Mishna Berura* ad loc. 34.

14. Op. cit. 7.

15. See *Kashrut Arba'at HaMinim*, p. 28.

D-6: *Kiddush* of *Yom Tov* that Falls on *Motzaei Shabbat*

Question: Please review the unique *halachot* of *Kiddush* of *Yom Tov* that falls on *Motzaei Shabbat*.

Answer: First of all, we recommend that you take a good look in advance at the *siddur*, so as to review what you will be saying – the five *berachot* that follow the acronym of *yaknehaz* (*yayin-wine*, *Kiddush*, *ner-candle*, *Havdala*, *zeman-Shehecheyanu*). We will discuss some of the unique *halachot* of this *Kiddush*.¹

Pre-Havdala: After the time that *Shabbat* has concluded, if one wants to do work that it is forbidden on *Shabbat* but is permitted on *Yom Tov*, he/she must either first *daven Ma'ariv* with the addition of *VaTodi'einu* (the *Yom Tov* parallel to *Ata Chonantanu*) or recite the declaration of *HaMavdil*.² Regarding the latter, it is important to remember to replace the standard phrase, “*baruch hamavdil bein kodesh l'chol*,” with “*baruch hamavdil bein kodesh l'kodesh*.”

Wine: While both *Kiddush* and *Havdala* should preferably be made over wine (or grape juice), bread (*challa*) may be used for *Kiddush* but not for *Havdala* (the status of other beverages is beyond our present scope). Regarding this *Kiddush*, which also includes *Havdala*, the *Shulchan Aruch*³ cites two opinions as to whether bread may be used, and the *Rama*⁴ rules that it may.

1. Almost all of the *halachot* mentioned here can be found in *Shemirat Shabbat K'Hilchata*, vol. II, 62:9-22. We will omit most of the specific citations from there.

2. *Mishna Berura* 299:36.

3. *Orach Chayim* 296:2.

4. *Ad loc*.

Nevertheless, the *Mishna Berura*⁵ writes that one should make an extra effort to use wine, in deference to the opinions that using wine is indeed a requirement.

The *minhag* that many have for *Havdala* to pour enough wine into the cup such that some of it spills over does not apply to this *Kiddush/Havdala*.

Besamim: *Besamim* are not used in *Havdala* on this night, because the festivities of *Yom Tov* are sufficient “resuscitation” after the loss of the *neschama yeteira*.⁶ The *beracha* on *besamim* is similarly not recited after *Yom Tov* finishes.

If one mistakenly did use *besamim* (and made a *beracha* on them) in the midst of the *Kiddush/Havdala*, this does not constitute a problematic *hefsek* (interruption).⁷

Candle: The question of whether the *beracha* on fire justifies lighting a flame on *Yom Tov* to create the usual torch preferred for *Havdala* is a complex one, which we discussed in a previous volume of *Living the Halachic Process*.⁸ Our operative suggestion is to use the already lit *Yom Tov* candles, holding them in such a way that their flames interconnect for the *beracha*. In any event, it is important not to light a new flame (which is prohibited on *Yom Tov*), but rather to merely transfer one that already exists. One must also be careful not to directly extinguish the flame after the *beracha*.

Even those who usually turn off the electric lights in advance of *Havdala*, so as to receive more significant benefit from the *Havdala*-candle’s light, make this night’s *beracha* on the candle(s) with the electric lights on.

Women: As a rule, it is preferable for a woman not to make her

5. 296:15.

6. *Tosafot*, *Beitza* 33b; *Mishna Berura* 473:3.

7. *Shemirat Shabbat K’Hilchata* 62:21; *Nitei Gavriel*, *Yom Tov* 30:2.

8. Vol. III, D-4.

own *Havdala*, due to questions regarding whether she is obligated in *Havdala* and the *beracha* on the candle, as well as due to the *minhag* that women do not drink from *Havdala* wine.⁹ One of the reasons that a woman may make her own *Havdala* if necessary is that she has the possibility of making a *beracha* even if it is only optional for her.¹⁰ However, on *Yom Tov*, it is more difficult to apply this reasoning, as voluntarily reciting the *Havdala berachot* in the midst of a *Kiddush* in which she is certainly obligated might be deemed a problematic interruption.¹¹ Nevertheless, if necessary, a woman may recite the *Kiddush*, and she is then allowed, and indeed required, to drink from the wine after the *beracha* of *Havdala*. (In her *Havdala*, the order of *berachot* is different, as she makes the *beracha* on the candle after drinking the wine.¹²)

Mistakes: If one forgot to make the *Havdala beracha* during the *Kiddush* and remembered only in the middle of his meal, he should recite *Havdala* over a cup of wine before he continues to eat, as it is forbidden to eat before *Havdala*. If, when he recited the *beracha* of *Borei Pri HaGefen* during *Kiddush*, he did not anticipate drinking any more wine during the meal, he must make another *Borei Pri HaGefen* on the *Havdala* wine. Otherwise, he should drink the *Havdala* wine without an additional *Borei Pri HaGefen*.

If one concludes the *beracha* of *Havdala* with “*hamavdil bein kodesh l’chol*” instead of “*hamavdil bein kodesh l’kodesh*,” it is equivalent to not saying *Havdala* at all.

One who omitted *Shehecheyanu* on this night can make it up throughout the *chag*.¹³ However, a forgotten “*Borei Me’orei HaEish*” can be made up only that night.¹⁴

9. See our treatment of the topic in *Living the Halachic Process* II, C-8.

10. See *Mishna Berura* 296:35.

11. See the discussion in *Shemirat Shabbat K’Hilchata* 62:(27).

12. *Ibid.*

13. *Magen Avraham* 473:1.

14. See *Shemirat Shabbat K’Hilchata* 61:17.

D-7: The Need for a *Shamash* Candle Nowadays

Question: Now that we have plenty of electric light, is there a need for a *shamash* (extra candle) alongside our Chanuka candles?

Answer: The short answer is: yes and no. As always, we will start with background.

The *gemara*¹ states that it is forbidden to use the light of the Chanuka candles for one's personal needs. Rashi² explains that the reason for this prohibition is so that it will be clear that the candles were lit specifically in order to fulfill the *mitzva*. (The Ba'al HaMa'or and Ran³ explain differently, positing that since the candles are modeled after the miraculous burning of the oil of the *menora* in the *Beit HaMikdash*, we forbid their use for other purposes, just as it was prohibited to use the sanctified oil of the *menora*.)

In the beginning of its discussion regarding Chanuka lighting, the *gemara* does not mention the idea of a *shamash*, but it does come up later, in the context of the Chanuka lights being lit inside during time of danger.⁴ Rava says that in such a case, one must have an additional non-*mitzva* light burning, unless there already is a *medura*⁵ there. Here too, Rashi⁶ explains that the additional light is necessary so that the Chanuka candles will be clearly attributed to Chanuka.

The simple explanation of the above is that when the Chanuka candles were lit in places that usually did not have any other lights, it was clear to all that they had been lit for the *mitzva*

1. *Shabbat* 21b.

2. Ad loc.

3. *Shabbat* 9a in the Rif's pages.

4. Op. cit.

5. A large flame, often from multiple wicks.

6. Ad loc.

of publicizing the miracle. In addition, there was no particular concern that one would improperly use the light. Thus, there was no need for a *shamash*. However, when the Chanuka lighting moved inside, where light is needed to see properly, the *shamash* became necessary, as it was no longer obvious that the candles were lit specifically for the *mitzva*, and one would quite likely use the light for his own purposes.

The Meiri⁷ notes that although those who light the candles near their front door theoretically should not need a *shamash*, since they are unlikely to use the *chanukiya*'s light there for their personal needs, he personally still followed the *minhag* to have another light there. The *Beit Yosef*⁸ writes that even in places where logically we would not need a *shamash*, we nevertheless do light one because not everyone will properly distinguish between those places that require illumination and those that do not. The *Shulchan Aruch* and Rama⁹ both require an extra candle, with one difference between them: The *Shulchan Aruch* says that this candle is to be lit in addition to the candle one uses for lighting the candles used for the *mitzva*, whereas the Rama says that the candle used for lighting is itself placed down as the *shamash* after the lighting is finished.

Nowadays, when we have electric lights, people rarely use candles to light up a room. It would therefore seem that the situation should be equivalent to that of the *medura*, which the *gemara* says makes an extra candle unnecessary. The *Beit Yosef*'s logic of people not properly distinguishing does not seem to apply when the situation is uniform throughout society. Indeed, Rav S.Z. Auerbach is cited as positing that the *shamash* is not halachically needed in our times when the house's lights are on, although he nevertheless felt it was worthwhile to have one lit in case the electric lights would be shut.¹⁰

7. Ad loc.

8. *Orach Chayim* 673.

9. *Orach Chayim* 673:1.

10. See *Halichot Shlomo*, *Mo'adim* II:16:13, and footnote 59 ad loc.; *Nitei Gavriel*, *Chanuka* 20:9 agrees.

(Some sources¹¹ ascribe great importance to the *shamash* based on kabbalistic reasons, but these are extra-halachic concerns that we do not, as a rule, discuss in this forum.)

There is room to discuss whether nowadays we can relax certain parameters of the *halachot* of the *shamash*. The *Magen Avraham*¹² writes that when several people light, there should be a *shamash* next to each set of candles. The *Mishna Berura*¹³ explains that this is based on the *halacha* that each person should light in a distinct place so that it will be clear how many candles there are per person.¹⁴ It seems that nowadays, when we have clearly defined *chanukiyot*, the practice is to place them relatively close together, and it therefore does not seem as necessary for there to be multiple *shamashim*. On the other hand, the normal practice is still to have a *shamash* for each *chanukiya*, which creates a situation wherein if there is no *shamash*, people looking from a distance might think that one of the *mitzva* candles is only a *shamash*, and it will not be as clear how many candles there are.

The *Shulchan Aruch*¹⁵ rules that it is permitted to benefit from the Chanuka lights after their required time to be lit is over.¹⁶ The *Mishna Berura*¹⁷ cites those who are stringent on this matter lest someone make a mistake about whether the required time has passed. However, it would be a big stringency to require the *shamash* to last as long as the *mitzva* lights do, simply because of the remote chance that even in our days one might use the candles' light when it is probably even permitted to do so. This provides justification for the practice of some to light the *mitzva* lights with olive oil that will last a long time but to use for the *shamash* a simple wax candle that goes out after around half an hour.

11. See *Nitei Gavriel* op. cit.; *Piskei Teshuvot* 673:7.

12. 673:5.

13. 673:18.

14. Rama, *Orach Chayim* 671:2.

15. *Orach Chayim* 672:1.

16. See *Living the Halachic Process*, vol II, D-9.

17. 672:8.

D-8: Chanuka Lighting for those in Transit

Question: We live in Jerusalem but will be visiting New York. Our return flight is scheduled to leave New York at 1:15 PM on the day before Chanuka and to arrive in Israel on Chanuka morning. How can we fulfill the *mitzva* of Chanuka candles? (All of our kids live out of the house, and we live on a secluded street.)

Answer: In general, when one is away from home during an entire night of Chanuka and is unable to light in an alternative place, whether for technical or halachic reasons,¹ he can fulfill the *mitzva* of lighting Chanuka candles if someone else lights in his house. Ideally, one's spouse should be the one to light there, as a husband and wife are considered one unit.² However, any member of the household suffices,³ as does a valid *shaliach* (agent), even if he does not live in the house.⁴ Since you will be unable to light anywhere yourself at the proper time, you should look for a *shaliach* to light in your home.

However, time-zone issues present an interesting halachic question. At the proper time for lighting candles in Jerusalem, it will be morning in New York – before Chanuka and its *mitzva* of lighting begin. Is it possible for you to fulfill the *mitzva* by means of a *shaliach* even before it is Chanuka for you? (This question would also be relevant on subsequent days of Chanuka; even though it would indeed be Chanuka in New York as well, the obligation in Jerusalem would be that of a new day, whereas the obligation in New York would still be that of the previous day.)

1. The details of this discussion are beyond the scope of this piece.

2. See *Shabbat* 23a; *Eliya Rabba* 671:3.

3. *Taz*, *Orach Chayim* 677:1.

4. See *Minchat Shlomo* II:58:41 (5759 ed.); *Living the Halachic Process*, vol. IV, D-5.

Some *poskim*⁵ reason that the answer to this question depends on the nature of the *mitzva* to light Chanuka candles. Does the *mitzva* focus on the specific **person**, but in the family framework, one member may actively light on behalf of other household members, who are then credited with the *mitzva*? Or does the *mitzva* devolve upon the **home**, meaning that the house must have Chanuka lights lit in it, and then all are credited for their connection to a home that publicizes the miracle? If the nature of the *mitzva* is the former, then a traveler cannot fulfill the *mitzva* when someone else lights for him at a time when the *mitzva* does not yet apply to him. However, if the latter reasoning is true, then it is possible to argue that as long as the household had its required lighting, it does not matter if it occurred at “the wrong time” for a particular household member, as long as it was the right time in terms of the house’s location.

*Ta’arich Yisrael*⁶ discusses the matter at length, citing many opinions on either side, starting with the *Rishonim* (regarding the conceptual nature of the *mitzva*) and continuing through contemporary *poskim* (some discussing our time-zone question). While it is difficult to resolve the dilemma, we lean towards agreement with the *Minchat Yitzchak*,⁷ who posits that even if Chanuka candles are a *mitzva* on the household, the household *mitzva* cannot count for a person whose time of obligation has not yet arrived. Furthermore, the *poskim* who permitted fulfillment of the *mitzva* for one for whom it was not yet Chanuka discussed cases in which one’s spouse lit in their home, such that there was a proper lighting for at least part of the household. It is more difficult to claim that a *shaliach* can create a household lighting for you when your entire household is in pre-Chanuka New York. Therefore, we do not think that having a *shaliach* light at the regular time would suffice in your case.

However, your northeasterly first leg of the flight should

5. See *Mishneh Halachot* VI:119.

6. (Taplin), *siman* 22.

7. VII:46.

bring you to nightfall (in the location where you will actually be at the time) by around 10 PM Israel time.⁸ Thus, if you can find a *shaliach* to light in your home at around 10:30 PM Israel time, it will be at the correct time for you as well, wherever you will be at that point. Although the preferable time to fulfill the *mitzva* is when people normally frequent the street of the home where the candles are lit, and not many people frequent your quiet street at 10:30 PM, nevertheless, there are grounds to rule that the *mitzva* can be fulfilled when the person who lights the candles sees them himself.⁹ You should therefore have the *shaliach* stay in your house for half an hour before extinguishing the lights.¹⁰

The *shaliach* should not make a *beracha* on the lighting, due to a few doubts: Many rule that a *shaliach* does not make a *beracha* when the *meshale'ach* (the one who sends him) is not present;¹¹ not all agree that one should make a *beracha* when only the person lighting sees the candles;¹² your flight may be delayed, such that it will not be nighttime where you are until after the *shaliach* lights. You will also miss reciting that night's *beracha* on seeing the candles (*She'asa Nissim*), as well as *Shehecheyanu*.¹³ (You should recite *Shehecheyanu* when you light on the second night of Chanuka.)

8. There are now apps that help one determine the time more precisely.

9. See *Sha'ar HaTziyun* 672:17.

10. See *Mishna Berura* 672:6.

11. See *Minchat Shlomo* op. cit.

12. See *Sha'ar HaTziyun* op. cit.

13. See *Shulchan Aruch, Orach Chayim* 676:3.

D-9: Chanuka Lighting and *Havdala* – Which Comes First?

Question: I have never received a clear answer as to whether we are to light Chanuka candles before or after *Havdala* on *Motzaei Shabbat*. Can you clarify the matter?

Answer: In terms of practice, the *minhag* in *shuls* is to light Chanuka candles first.¹ Regarding the home, Sephardim recite *Havdala* before they light Chanuka candles.² Among Ashkenazim, some schools of thought have clear rulings, which vary from one another; we will not provide lists of the differing opinions. The standard approach, to which we subscribe, is that this is a case in which one may follow whichever practice he wants.³ We note that not only are both approaches well-grounded, but the question of which to perform first is only one of preferred practice; all agree that following the “incorrect” approach does not disqualify fulfillment of either *mitzva*. We will now survey some of the arguments presented by prominent proponents of both sides.

The *Terumat HaDeshen*⁴ argues that we should light Chanuka candles first. This is based on the *gemara*'s⁵ concept that under certain circumstances of a choice of order of *mitzvot*, we delay *Havdala*, because there is a positive element to having Shabbat exit later so that Shabbat not appear as a burden. The *Taz*⁶ counters the *Terumat HaDeshen*'s assumptions on two fronts. First, he argues that *tadir kodem* – the rule that a more common *beracha* is recited before a less common one – is a stronger principle than

1. Following the opinions of *Terumat HaDeshen* 60; *Shulchan Aruch* and Rama, *Orach Chayim* 681:2.

2. *Kaf HaChayim*, *Orach Chayim* 681:4; *Yalkut Yosef*, *Mo'adim*, p. 236; *Mikraei Kodosh* (Harari), *Chanuka* 11:10.

3. See *Mishna Berura* 681:3.

4. Op. cit.

5. *Pesachim* 105b, in a different context; see also Rashi, *Pesachim* 103a.

6. *Orach Chayim* 681:1.

that of delaying the end of Shabbat. In this case, *Havdala*, which is recited every week, is more common than Chanuka candles, which are lit only eight days a year. In addition, the *Taz* argues that lighting Chanuka candles before *Havdala* is not even a correct application of the principle of delaying the end of Shabbat; lighting the Chanuka candles itself contradicts the continuation of Shabbat, as it is forbidden to light a candle when it is still Shabbat.

A discussion in *Tosafot*⁷ may shed light on the relative strength of the factor of *tadir kodem*. The *gemara* states that if one has enough money only for either Chanuka candles or for wine for *Kiddush*, but not for both, the Chanuka candles take precedence because of the concept of *pirsumei nisa* (publicizing the miracle), despite the fact that *Kiddush* is more *tadir*. Considering this reasoning, *Tosafot* asks why we read the *haftara* of Chanuka on Rosh Chodesh during Chanuka because of the importance of *pirsumei nisa*, yet we read the Torah portion of Rosh Chodesh before that of Chanuka due to the principle of *tadir kodem*. *Tosafot*'s first answer, which the *Taz* cites as support for his position, is that the advantage of *pirsumei nisa* prevails specifically when only **one** of the *mitzvot* can be fulfilled, whereas *tadir kodem* is the key factor regarding their order when **both** are performed. Thus, the *Taz* argues, in the case of Chanuka lighting and *Havdala*, the more *tadir* – *Havdala* – should be done first.

However, the *Eliya Rabba*⁸ points out that according to *Tosafot*'s other two answers, there are specific exceptional reasons as to why we read the Torah portion of Rosh Chodesh before that of Chanuka. This implies that in general, a *mitzva* involving *pirsumei nisa* (such as the Chanuka candles) does have order precedence over a *mitzva* that is more common (such as *Havdala*).

Rav Yaakov Emden⁹ rejects the *Taz*'s claim that lighting Chanuka candles contradicts the idea of delaying the end of

7. *Shabbat* 23b.

8. 681:1.

9. *Mor U'Ktzi'ah* 681.

Shabbat. He points out that after *Havdala* in *davening* (*Ata Chonantanu*) or after the recitation of the words “*Baruch hamavdil bein kodesh l’chol*,” we are allowed to do *melacha* (including lighting *Yom Tov* candles and lighting a fire so as to recite the *beracha* of *Borei Me’orei HaEish*) before reciting *Havdala* over wine, and yet the concept of delaying *Havdala* still applies.

Some cite a proof that Chanuka lighting precedes *Havdala* from the *halacha* that one should not use the Chanuka candles for the *beracha* of *Borei Me’orei HaEish*,¹⁰ which implies that the Chanuka candles are lit first.

Is there any logic, other than *minhag*, to follow one order in *shul* and a different one at home, as Sephardim and some Ashkenazim do? The Maharal¹¹ presents as a reason to recite *Havdala* first the concern that if one did not say *Havdala* in *Shemoneh Esrei*, he would be lighting Chanuka candles in violation of Shabbat. The *Eliya Rabba* points out that in *shul*, we trust that the one appointed to light the Chanuka candles will be a diligent person who will not forget to say *Havdala* in his *Shemoneh Esrei*; however, in a regular person’s home, there may be more room for concern. It is also possible that we should light candles in *shul* as soon as possible, since the *pirsumei nisa* there lasts for only a relatively short time. Finally, the *Levush*¹² suggests that after one has already heard *Havdala* in *shul* and in that way has already ushered out the Shabbat, delaying *Havdala* at home is less important.

10. *Tur, Orach Chayim* 681, citing the *Yerushalmi*; *Shulchan Aruch* ad loc. 1.

11. *Ner Mitzva*, p. 28.

12. *Orach Chayim* 681:2.

D-10: Women's Obligation to Hear *Parashat Zachor*

Question: It is not always easy for me (a woman) to get to *shul* to hear *Parashat Zachor*. How much of an effort must I make?

Answer: There is a *mitzva* from the Torah to remember the actions of Amalek. This *mitzva* is related scripturally¹ and, as simple logic dictates, innately, to the *mitzva* to fight Amalek. (According to some *Rishonim*, remembering the actions of Amalek is in fact included in the *mitzva* to fight them.²) The question of how and when the Torah prescribes the *mitzva* might be a determining factor regarding the question of a woman's obligation in the *mitzva*.

The basic *mitzva* of remembering Amalek can ostensibly be performed at any time. This seems to preclude the possibility that a woman's exemption from time-based *mitzvot* would be relevant. Although there is a requirement to perform the *mitzva* on a specific Shabbat, that is only a Rabbinic obligation, and that added requirement would therefore not remove the Torah-level non-time-linked obligation. Nevertheless, for a long time the *minhag* was that women did not come to *shul* to hear *Parashat Zachor*.³ This practice prodded *poskim* to look for reasons as to why women might be exempt from this *mitzva*.

The connection between the *mitzva* to read about Amalek and the *mitzva* to fight them could be significant in this regard. The *Chinuch*⁴ maintains that since women as a group are not obligated to wage battle, they are not included in the *mitzva* to remember Amalek. The *Minchat Chinuch*⁵ argues with the

1. See *Devarim* 25:17-19.

2. See *Mikraei Kodesh*, Purim 5.

3. See *Torat Chesed*, *Orach Chayim* 37.

4. #603.

5. Ad loc.

Chinuch by pointing out that women can and often should take part in other war-related efforts.⁶ Furthermore, one's obligation in a *mitzva* does not usually depend on whether the *mitzva*'s assumed logic actually applies to that individual. On the other hand, the *Chinuch*'s logic is reminiscent of the *halacha* that Moavite women are not included in the prohibition against marrying into our community. That *halacha* is based on the premise that the reason for the prohibition does not apply to women, as women do not usually bring provisions to nations passing through. Due to the *Chinuch*'s stature and the ancient *minhag*, it is difficult to disregard the opinions that women are exempt.

It is also possible that even if women are obligated in the *mitzva*, they can fulfill it in other ways. The *gemara*⁷ derives that the remembering of the story of Amalek should be performed through a reading from a *sefer Torah*. The *Terumat HaDeshen*⁸ posits that there is a Torah obligation to read *Zachor* from a *sefer Torah* with a *minyan*. Regarding men, we accept this opinion; thus, we expect men to go to significant lengths to *daven* with a *minyan* on *Shabbat Zachor*.⁹ However, not all agree that Torah law requires a *minyan* for this *mitzva*, and perhaps it does not require even a kosher *sefer Torah*.¹⁰ If so, then the Rabbinic requirements as to how men must fulfill the Torah law on *Shabbat Zachor*, which indeed are time-based, might not be binding for women.¹¹ Given that women have an obligation for some type of remembrance but are not necessarily required to “remember” in the same manner that men must, it is not surprising that some authorities¹² maintain that women should take the opportunity of *Shabbat Zachor* to read those *p'sukim* from a *Chumash*.

There is another way through which women might be able to

6. See *Sota* 44b.

7. *Megilla* 18a.

8. I:108.

9. *Shulchan Aruch, Orach Chayim* 685:7.

10. See *Torat Chesed* op. cit.

11. *Ibid.*; *Mikraei Kodesh* op. cit.

12. Including *Teshuvot V'Hanhagot* II:344.

fulfill the *mitzva* that would not require any extra action on their part. Some *Rishonim* say that it is possible to fulfill the *mitzva* of *Zachor* by listening to *Megillat Esther*, which women anyway must do and usually even have a *minyan* for. However, it might be necessary that in addition to having in mind that they are fulfilling the *mitzva* of *Megillat Esther* itself, they also have in mind the *mitzva* of *Zachor* during that reading.¹³

In general, over the last few hundred years, the *minhag* has developed for women to try to make it to *shul* for the reading of *Parashat Zachor*.¹⁴ When this is practical, it is a positive practice. However, if a woman has difficulty doing so, she can rely on the several opinions and the old *minhag* that she does not have to fulfill the *mitzva* the way men do.¹⁵ (Some communities have a second “women’s reading.” Different communities do this in different ways, due to various halachic questions that such readings raise.¹⁶ However, whichever system is used should be fine for an individual who wants to hear the reading of *Parashat Zachor*.)

13. Ibid.

14. See *Binyan Tzion (Chadashot)* 8 in the name of Rav Natan Adler.

15. *Yechaveh Da’at* op. cit.

16. See *Minchat Yitzchak* IX:68.

D-11: Noise-Making during *Megilla* Reading

Question: On Purim, the degree of levity during the *Megilla* reading seems to be increasing from year to year. Whereas once there were only *graggers* and stamping after the reading of “Haman,” now there seems to be a competition for the most audacious antics. Is that in keeping with the *minhag* and in line with proper behavior in *shul*?

Answer: The Avudraham¹ is one of the earliest sources of the *minhag* of making noise when Haman’s name is read. Originally, people would write Haman’s name on rocks and bang them together to demonstrate that they were wiping out the name of Amalek (Haman’s ancestor). Thus, it was not a matter of noise per se, and certainly not of mere merriment. However, in codifying the *minhag* and strongly arguing not to oppose it, the Rama² presents it in a manner that seems closer to the current *minhag* of hitting anything to make noise.

In truth, there are other established *minhagim* of the *Megilla* reading that are directed towards promoting liveliness as well. The *minhag* to have the congregation read four *p’sukim* out loud before the *ba’al korei* reads them is explained by the *Hagahot Maimoniot*³ as “just for happiness, to make the youngsters happy, and encourage them to ... listen to the reading.” The idea of scoffing whenever Haman’s name is read (resembling the modern phenomena of booing an unpopular person or statement) seems to be appropriate for the mood of Purim and in accordance with several statements of *Chazal*. Furthermore, the idea of reveling in a manner that is normally inappropriate is reflected in a number of *halachot* of Purim, including, of course, that of drinking wine well

1. Cited by *Darchei Moshe, Orach Chayim* 690:4.

2. *Orach Chayim* 690:17.

3. *Megilla* 1:7.

beyond the norm.⁴ In addition, a person is exempt from payment for damages he has caused during his Purim celebration, because the wildness is part of the *mitzva* of celebrating.⁵

We should note that the classic time for wild merrymaking is at and around the *seuda*. *Davening* is *davening*, and the reading of the *Megilla* is an important *mitzva* with many *halachot* and is a fulfillment of saying *Hallel* to HaShem.⁶ Thus, while the *minhagim* we mentioned for happiness, interest, and demonstrativeness do exist,⁷ outright levity is likely inappropriate during the *Megilla* reading. Thus, we would suggest **to those who ask** that under **normal circumstances**, one should follow the *minhag* of making noise with lively but dignified moderation.

However, one must also consider how expression of the spirit of the day has evolved, as well as the role of *minhag* in our communal lives. We will note two central ideas behind keeping *minhagim* and not criticizing them.⁸ One is that a *minhag* is assumed to have been initiated, or at least approved, by great rabbis. Hundreds of years ago, the *minhag* of making noise during the *Megilla* reading was presumably instituted by such scholars. While we are not aware of which, if any, leading rabbis initiated the latest antics, it is fair to say that the phenomenon is approved of, or at least allowed, by a broad cross-section of the rabbinate. We might even suggest that the original *minhag* initiators, who broke the lines of strict decorum, intended that every generation and subsection of the religious community would find the balance appropriate for them. Indeed, a youth *minyán* or *kiruv*-oriented *minyán* for the *Megilla* is more likely enhanced by a livelier service than is an established, older community.

The second element regarding *minhagim* concerns the friction

4. See *Megilla* 7b.

5. Rama, *Orach Chayim* 695:2.

6. *Megilla* 14a.

7. Despite the opposition of some *poskim*, including the *Pri Megadim*, *Eshel Avraham* 690:21, on various grounds.

8. See also *Living the Halachic Process*, vol. I, pp. 32-33.

that is caused when one does not follow the local *minhag*. In our case, if there is a locally accepted manner of listening to the *Megilla*, which includes most people making some noise and a handful being more boisterous, then taking a clear stand against the latter is likely to cause hard feelings. This is not merely an extraneous consideration, but rather is at the heart of the type of communal atmosphere *Chazal* wanted us to maintain. As we have seen, Purim is a day on which we let people's spirits soar more freely than normal. Of course, even on Purim we should have some limits and, as usual, the local rabbi should have his finger on the community's pulse and be the main guide in these matters.

D-12: *Megilla* Reading for Visitors to Jerusalem

Question: This year, the 14th of Adar falls on Sunday. I will be having out-of-town guests in Jerusalem on the Shabbat before Purim, and they want to hear *Megillat Esther* right after Shabbat rather than look for a late *minyan* in their community. May I arrange a *Megilla* reading for them in Jerusalem? If so, is there anything special I need to know?

Answer: The first question is whether it is proper to read *Megillat Esther* in Jerusalem when it is not Purim there. In general, one should not take part in religious activity that is in conspicuous contrast to the prevalent local practice. This is based on the concept of *lo titgod'du*, the commandment not to break into different groups.¹

In discussing the parameters of *lo titgod'du*, the *gemara*² raises the question of how it is permissible to read the *Megilla* on different days in different cities. The *gemara*³ explains that Jews in different cities are generally allowed to maintain different practices. There is a *machloket* regarding whether different rabbinical courts (i.e., separate religious communities) within one city are allowed to have different practices,⁴ but different practices in different cities are certainly acceptable. Therefore, it is fine for different towns to read the *Megilla* at different times.

*Tosafot*⁵ is bothered by the apparent practice of villagers who would come to the big city twice a week to read the *Megilla* in the city itself on a different day than the one on which the city

1. *Yevamot* 13b, based on *Devarim* 14:1.

2. *Ibid.*

3. *Yevamot* 14a.

4. The Rambam, *Avoda Zara* 12:14, rules stringently.

5. *Yevamot* 13b.

dwellers would read.⁶ Indeed, because of this difficulty, *Tosafot* claims that we must conclude that the villagers actually did not read the *Megilla* **in the city**, so as to avoid a problem of *lo titgod'du*; rather, they would do so before leaving their villages for the city.

Although *Tosafot's* position might seem to forbid visitors from reading in Jerusalem on the 14th of Adar, we are not aware of contemporary *poskim* who take that approach. (In fact, common practice has generally become very lax in regard to *lo titgod'du*, as reflected, for example, in the prevalence of second-day-*Yom Tov minyanim* in Israel, but we will leave that topic aside for now.) Rather, contemporary *poskim* assume that one who needs to read the *Megilla* on the 14th can do so anywhere.⁷ There are a number of explanations of why *lo titgod'du* does not apply in this situation. These include: 1) *Lo titgod'du* applies to cases of conflicting local practices that are based on conflicting opinions regarding what the correct halachic opinion is; it does not apply when different locations are **supposed to have different practices**, e.g., different days for *Megilla* reading.⁸ 2) The separate reading of the villagers in the city is comparable to the case of two separate communities in one city.⁹ 3) The law of two different days of *Megilla* reading, the 14th and the 15th of Adar, is explicit in the *p'sukim* and therefore will not generate negative reactions. In contrast, *lo titgod'du* did apply to the villagers who read earlier than the city-dwellers, because they did so without **explicit** sanction from the *p'sukim*.¹⁰

Rav Tzvi Pesach Frank¹¹ writes that one who reads the *Megilla* on the 14th in Jerusalem needs a *minyan*, just as is required of

6. See the first *mishna* in *Megilla*.

7. See *Har Tzvi*, *Orach Chayim* II:128; *Ir HaKodesh V'HaMikdash* III:27.

8. Rosh, *Yevamot* 1:9.

9. *Ibid.* As noted above, some say that in these circumstances *lo titgod'du* does not apply.

10. *Meishiv Davar* I:17.

11. *Mikaraei Kodesh*, Purim 17.

anyone who reads the *Megilla* not at its normal time.¹² But even people who live in Jerusalem count toward such a *minyán*, as they too help publicize the miracle. However, most *poskim* do not require a *minyán* in this case.¹³

Another relevant question is whether a Jerusalemite can be the *ba'al korei* on the 14th in Jerusalem. The *Yerushalmi*¹⁴ raises this question with the following explanation of the dilemma: Although one who fulfills a *mitzva* on behalf of another must be obligated in the *mitzva*, perhaps the fact that a Jerusalemite who reads the *Megilla* on the 14th fulfills the *mitzva b'di'eved* is enough to make him be considered “obligated in the *mitzva*.” The *Pri Chadash*¹⁵ understands that the *Talmud Bavli*¹⁶ disagrees with the *Yerushalmi*'s assumption and posits that a Jerusalemite cannot fulfill *Megilla* reading on the 14th even *b'di'eved*. However, the *Pri Megadim*¹⁷ and the *Gra*¹⁸ maintain that the *Bavli* agrees that while a Jerusalemite **should** read only on the 15th, his reading on the 14th counts, and Rav O. Yosef agrees with this opinion. Thus, it is quite possible that a Jerusalemite could read the *Megilla* for the visitors on the 14th.¹⁹

We suggest that if there is no one who is obligated in a 14th-of-Adar reading who can serve as the *ba'al korei*, your guests should try to find late readings in their community. However, if this is not feasible, they can rely on the reading of a Jerusalemite. In that case, one of the visitors, not the *ba'al korei*, should make the *beracha* on the reading.²⁰

12. *Mishna Berura* 690:61.

13. See *Har'ei Kodesh* ad loc.

14. *Megilla* 2:3.

15. *Orach Chayim* 688:1.

16. *Megilla* 2b.

17. *Orach Chayim* 688, *Mishbetzot Zahav* 4.

18. To *Orach Chayim* 688:4.

19. *Yabia Omer* 1, *Orach Chayim* 43.

20. See *Yalkut Yosef, Mo'adim*, p. 306.

D-13: Checking Books for *Chametz*

Question: Do one's books need to be checked for *chametz* or sold before Pesach?

Answer: The *gemara*,¹ in discussing the need for *bitul* (nullification of) *chametz*, says that *peirurim* (small pieces or crumbs) do not require *bitul*; *bal yeira'eh* (the prohibition to possess *chametz*) does not apply to them, since they are insignificant. Important *poskim*² understand from this that there is no need to discard *chametz* crumbs before Pesach.

On the other hand, there are indications that we do indeed care about even small and not particularly prominent pieces of *chametz*. The *gemara*³ states that pieces of dough smaller than a *k'zayit* that are in various parts of a house must be discarded before Pesach, and the *Shulchan Aruch*⁴ requires *bitul* on small pieces of dough that fall while making *matza*. Several distinctions may be relevant to the question of whether one is obligated to remove small pieces of *chametz*, including the following: are we dealing with dough (which requires disposal) or with bread crumbs (which do not);⁵ are the pieces clean or are they soiled, etc.⁶

You did not ask about disposing of known *peirurim*, however, but rather about **searching** for them. It is notable that the *gemara*⁷ states that one must check only the type of room that one might have entered while holding a sizable piece of *chametz*; it is thus

1. *Pesachim* 6b.

2. Including Ritva, *Pesachim* 7a; *Pri Chadash*, *Orach Chayim* 444:4; these sources are reacting to practices of “those who are stringent” regarding this matter.

3. *Pesachim* 45b.

4. *Orach Chayim* 460:3.

5. *Magen Avraham* 260:2.

6. *Mishna Berura* 442:33. See additional distinctions in *Dirshu Mishna Berura* 460:24; *Shut Nitei Gavriel*, Pesach 1.

7. See *Pesachim* 8a with Rashi.

apparent that we are not concerned about the possibility of crumbs falling, which can happen anywhere in one's house. Furthermore, the *Shulchan Aruch*⁸ rules that if a toddler took *chametz* to a place where *bedikat chametz* was already performed and we then found *peirurim* where the toddler had been, we can assume that he ate the rest of the *chametz* and we do not need to re-check that area, despite the likelihood of at least some additional crumbs remaining. These sources indicate that it is not necessary to search for crumbs.

Perhaps the first major *posek* to **require** checking for crumbs (as a component of the actual letter of the law, not simply out of extra piety) is the *Chayei Adam*.⁹ He deduces from the requirement to check in crevices¹⁰ that *bedika* is required for crumbs, reasoning that despite the fact that crumbs will not lead to violation of *bal yeira'eh*, there is still concern that one may come to eat them on Pesach. The *Chazon Ish*¹¹ goes further, arguing that if one does not check for crumbs, then any crumbs found after Pesach will be forbidden. He is perhaps the first to say that one must check *sefarim* for crumbs. This conclusion is not obvious from the *Chayei Adam*, as one does not purposely put food on *sefarim*,¹² and it is also unlikely that one would come to eat crumbs stuck to a book or trapped in its binding. This is significant, as the *Mishna Berura*,¹³ for example, says that everyone agrees that a piece of soiled *chametz* that is smaller than a *k'zayit* does not need to be discarded; we do not need to check for any *chametz* that one will not plausibly come to eat.

8. *Orach Chayim* 438:1.

9. II:119:6.

10. *Pesachim* 7a.

11. *Orach Chayim* 116:18.

12. Which would make the book like a place into which one brings *chametz* and requires checking.

13. 442:33.

The *S'fat Emet*¹⁴ proposes other reasons to not require checking for crumbs: 1) It is too much work for *Chazal* to have required such a task; 2) It is impossible to succeed in removing all crumbs. Indeed, what many people call “cleaning” their books over the course of a few hours would not suffice if the obligation were rigorous; in many homes, it would take dozens if not hundreds of hours to accomplish a completely thorough checking. While one might argue that this is a problem that has arisen only recently¹⁵ and which therefore requires a new solution, it is still quite unlikely from the perspective of “halachic history” that discussion of the problem of checking books surfaces only in the 20th century **if** this situation were really a halachic problem that existed well before.

The practice of some to “shake out” books is reasonable as a **stringency** (or spring cleaning), but realize that checking books for *chametz* is indeed no more than a stringency.¹⁶ The idea that some distinguished contemporary *rabbanim* suggest of selling *sefarim* to a non-Jew is less wasteful of precious time than properly checking them is. However, this is a recent “innovation,” not even imagined by those who instituted *mechirat chametz* as a leniency to allow people to avoid discarding valuable *chametz*. How can one be required to sell a valuable collection of *sefarim* (thereby raising questions about the sale’s seriousness) and be required to not use them on Pesach, simply to avoid a problem that very few *poskim* believe exists?¹⁷

14. *Pesachim* 6b.

15. A library of hundreds of bound books is harder to check than were a few scrolls that people owned hundreds of years ago.

16. Such shaking is both unnecessary and ineffective, as a sizable percentage of the crumbs will in any event remain inside the books.

17. See *Chazon Ovadia*, Pesach, p. 35.

My **personal** choice of *halacha/chumra* is to clean bookshelves, to be careful not to use books that I may have used while eating *chametz* at a table on which I eat on Pesach, and to sell *bentchers*.¹⁸ Although we should not belittle extra-halachic stringency regarding *chametz*,¹⁹ we oppose turning new *chumrot* with weak basis into standard practice.

18. I cannot use these *bentchers* anyway on Pesach, and they are likely to hold significantly more *chametz* crumbs than the average book.

19. See *Shulchan Aruch, Orach Chayim* 442:6.

D-14: Participation in a *Siyum* by Skype

Question: On *Erev Pesach*, I will be in a small Jewish community that will not have a *siyum*. Is it permitted for me – a *bechor*¹ – to break the *ta'anit bechorot*² based on a *siyum*³ in which I “participate” via Skype?

Answer: In the context of the *halacha* not to fast throughout the month of Nisan, *Massechet Sofrim*⁴ states that an exception is that *bechorot* fast on *Erev Pesach*. The *Tur*⁵ and *Shulchan Aruch*⁶ cite this practice as normative, and the *Tur* explains that it is in commemoration of the miracle that the Jewish firstborns were saved in Egypt.

The idea that one may eat at a *seudat mitzva* and thereby cancel the fast is debated among the *Acharonim*. The *Magen Avraham*⁷ does not allow firstborns to eat even at a *brit mila* on *Erev Pesach*. The *Mishna Berura*⁸ reports, however, that the *minhag* in his time was to allow eating at *seudot mitzva*, including the meal at a *siyum*. The idea that a *siyum* meal can serve this role as a *seudat mitzva* is found in the Rama⁹ regarding the permissibility of eating meat and drinking wine at a *seudat mitzva* during the Nine Days.

In these contexts, there is room to distinguish between those people who are the main individuals involved in the *seudat mitzva*, for whom the day is like a *Yom Tov*, and the other participants. For example, one who is a *sandek* on the day of his parent's *yahrtzeit*

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1. Firstborn.
 2. The fast of the firstborn.
 3. The completion of a significant section of Torah.
 4. 21:1.
 5. *Orach Chayim* 470.
 6. *Orach Chayim* 470:1.
 7. Ad loc. in the introduction to the *siman*.
 8. Ad loc. 10.
 9. *Orach Chayim* 551:10.

may eat on that day, even if he ordinarily follows the *minhag* of fasting on that day, whereas a simple participant in the *brit* may not.¹⁰ Similarly, even those who do not allow firstborns to eat at another's *seudat mitzva* are lenient regarding a firstborn who serves as the *mohel* or *sandek*, as well as the father of the circumcised baby.¹¹ In any event, the *minhag* is to allow all participants at a *siyum* to eat at the *siyum*'s meal, and as a result, to continue eating the rest of *Erev Pesach*.

The simple logic for this leniency is that each individual's participation makes the celebration more special, thus heightening the *ba'al simcha*'s¹² event. Therefore, participation in the *ba'al simcha*'s meal is what is crucial regarding our discussion. Indeed, some allow even a firstborn who missed the *siyum* itself to take part in the *seudat mitzva*.¹³ Following the logic that it is the enhancement of the *ba'al simcha*'s event that matters, the *Minchat Yitzchak*¹⁴ says that even the *Chavot Yair*,¹⁵ who rules that a meal held the day after the *siyum* was made is still considered a *seudat mitzva*, is discussing only a *seuda* in which the one who made the *siyum* participates.

The *gemara*¹⁶ relates that Abaye was especially emotionally involved in the Torah successes of others, to the extent that he would make a party for the rabbis when a young scholar finished a *massechet*. Some¹⁷ understand that the halachic status of such a party extends even to one who is not present at all at the celebration of the one who finished the Torah section; the vicarious joy of all those who are happy about the *siyum* is equivalent to their participation in the *seudat mitzva*. The *Minchat Yitzchak*¹⁸ writes

10. *Mishna Berura* 568:46.

11. *Ibid.* 470:10.

12. The person to whom the happy event is directly related.

13. See *Teshuvot V'Hanhagot* II:210.

14. VIII:45.

15. *Shut Chavot Yair* 70.

16. *Shabbat* 118b-119a.

17. See *Az Nidberu* XII:58.

18. IX:45.

that according to this approach (which he discourages relying upon but considers legitimate), one can be considered a “participant” in the *seudat mitzva* even if he does not actually eat together with the main party.

In most cases, it would not seem logical to consider one who “takes part” in a *seudat mitzva* via Skype as being a halachic participant, certainly in regards to increasing the *simcha* of the one who made the *siyum*. However, according to the approach that anyone connected to the *siyum* is entitled to celebrate his happiness due to the occasion, it is at least somewhat plausible to say that witnessing the event via Skype is sufficiently significant.

A number of authorities take a surprisingly lenient approach about *siyum* standards for *ta’anit bechorot*,¹⁹ relying heavily on the following two factors: 1) The fast is only a *minhag*. 2) For many people, fasting would have a significantly negative impact on the *Seder*. While not actually cancelling the *minhag*, some seem to lower the bar of who is included in the *siyum*, such that they enable almost anyone to eat. If one feels a need to be lenient, Skype participation can indeed be contemplated. If so, it is best to watch the *siyum* and celebrate it as a group, and/or to witness a *siyum* that brings one true *simcha* (e.g., based on one’s connection to the person or to the level of accomplishment).

19. Including *Az Nidberu* and *Teshuvot V’Hanagot* op. cit.; *Yabia Omer*, I, *Orach Chayim* 26, is quite stringent.

D-15: Roasted Foods on Pesach

Question: Is it permissible to eat roasted food at the *Seder*? If not, what is included in the prohibition?

Answer: The *mishna*¹ says that whether one may eat roasted meat at the *Seder* depends on the local *minhag*. However, there is presently quite a bit of uniformity in *minhag* among different *edot*² regarding this matter, as we will soon specify.

The *gemara*³ explains that we should not do things that look as if we have sanctified something as a *korban* in place of the *Korban Pesach*. The *gemara* adds that all agree that it is forbidden to eat a whole roasted lamb at the *Seder* or to say that an animal or a piece of meat is set aside for “Pesach,” as that can have two different meanings – the holiday or the *korban*. One *minhag* extends this concern further by forbidding eating **any** roasted meat at the *Seder*; another *minhag* allows eating most roasted meat. Interestingly, although the *Shulchan Aruch*⁴ presents both *minhagim*, and neither he nor the Rama takes a clear side on the issue, Ashkenazi⁵ and Sephardi⁶ *poskim* rule unequivocally that the *minhag* is to not eat any roasted meat at the *Seder*. (Yemenites do eat roasted meat on *Seder* night.)

There are a few important details to add here. The prohibition against eating roasted meat applies to all meat that requires *shechita*; this includes poultry, but not fish.⁷ The standard approach is that pot roast (without the addition of a significant amount of

1. *Pesachim* 53a.

2. Communities based on ethnic origin (e.g., Moroccan Jews and Hungarian Jews).

3. *Ibid*.

4. *Orach Chayim* 476:1-2.

5. *Mishna Berura* 476:1.

6. *Yalkut Yosef, Mo'adim, Hilchot Erev Pesach* 2.

7. *Shulchan Aruch* op. cit. 2.

liquid⁸) is considered roasted.⁹ When the meat is both roasted and cooked, we generally follow the last process that was performed, as that is what determines how the meat appears, which is the main issue involved here.¹⁰ This approach sometimes dictates strictness and sometimes leniency (depending on which process was performed last). In any event, there is room for leniency in certain cases of need,¹¹ which is understandable considering that the issue is no more than a *minhag* to begin with. (If meat was first totally cooked and was then heated up without gravy at a relatively low temperature, this is not a problem,¹² as long as the reheating did not alter its texture to the point that it now appears roasted.)

There is some question as to whether the prohibition applies only to the *Seder* (or to the *Sedarim* in *chutz la'aretz*¹³), or even to the next day(s) of *Yom Tov*.¹⁴ The consensus is that it applies only on the *Seder* night, since this is the time when the *Korban Pesach* would have been eaten.¹⁵

There is an interesting discussion regarding the foods of the *Seder* plate, specifically the *z'roah* (forearm) of an animal and the egg, which serve as reminders of the *Korban Pesach* and *Korban Chagiga*, respectively.¹⁶ The *Shulchan Aruch*¹⁷ writes that the *z'roah* is roasted, and the Rama writes that the egg is roasted as well. Because the *z'roah* is roasted, it should not be eaten at the *Seder*, whereas the egg may be eaten, as it is not meat.¹⁸ The *Pri*

8. See *Shevet HaLevi* IX:120.

9. *Magen Avraham* 476:1; *Mishna Berura* 476:1.

10. *Ibid.*

11. *Ibid.*

12. See similar ideas in *Shaarei Teshuva* 476:1 and *Chazon Ish, Orach Chayim* 37:14.

13. *Mishna Berura* op. cit.

14. See *Ben Ish Chai* I, *Tzav* 30.

15. *Mishna Berura* op. cit.; *Yechaveh Da'at* III:27.

16. *Shulchan Aruch, Orach Chayim* 473:4.

17. *Ibid.*

18. *Mishna Berura* 473:32.

*Megadim*¹⁹ says that even if one had cooked the *z'roah* instead of roasting it, it would still be forbidden to eat it at the *Seder*, because the fact that it represents the *Korban Pesach* increases the chance of confusion with it. He writes that we do not forbid eating the egg at the *Seder*, even though it represents the *Korban Chagiga*, because the egg also has an additional significance.²⁰ In practice, one may rely on the lenient opinions that allow one to eat the *z'roah* if it was cooked rather than roasted.²¹

The prohibition against eating the *z'roah* raises another issue. If one did not roast the *z'roah* before *Yom Tov*, may he roast it on *Yom Tov* night itself before the *Seder*? The *halacha* is that on *Yom Tov*, one may cook only foods that he will eat that day. The *Magen Avraham*²² therefore rules that in a case in which one did not prepare the *z'roah* in advance, he may roast it on *Yom Tov* night, but he should have in mind to eat it during the day. The *Maharshal*²³ posits that one should always **cook** the *z'roah* and egg, so that he will be able to eat both of them that night. While cooking the *z'roah* is not the common *minhag*, it is a valid option to rely upon if one did not roast it before *Yom Tov*.

19. *Orach Chayim* 473, *Mishbetzot Zahav* 4.

20. See Rama, *Orach Chayim* 476:2.

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

22. 473:8.

23. *Shut Maharshal* 88, cited in *Magen Avraham* *ibid*.

D-16: *Kitniyot* Observance for Vegetarians and Vegans

Question: I am Ashkenazi and vegan. Many of the foods I normally depend on for my nutrition (e.g., soybeans, rice, corn, and other *kitniyot*) are prohibited on Pesach. This makes finding food to eat during Pesach very difficult and somewhat decreases my holiday joy. Is there any halachic allowance for vegans to eat *kitniyot* on Pesach?

Answer: In general, we do not believe that a person's **choice** of diet, even if it is based on good reasons, is sufficient grounds to uproot his observance of such a venerable *minhag* as the Ashkenazi practice of not eating *kitniyot* on Pesach.¹ While this *minhag* allows dispensations for babies and for sick people,² a vegan usually has enough alternatives to be able to stick to his diet while still avoiding *kitniyot*, and he therefore may not eat that which is clearly forbidden, even if the prohibition is based only on *minhag*.

However, we posit that although a vegan's limitations are self-created, he can at times be considered to be in a *she'at hadechak*³ situation, because we view the practice he accepted as laudable.⁴ While we cannot expect all people to be vegans or vegetarians, there is a serious school of thought that vegetarianism is preferable.⁵ Therefore, we can allow a vegan to follow certain legitimate leniencies that are not universally practiced, as we will

1. See Rama, *Orach Chayim* 453:1.

2. *Mishna Berura* 453:7.

3. Difficult situation.

4. See *Living the Halachic Process*, vol. IV, G-10.

5. Rav A.Y. Kook wrote (in *Chazon HaTzimchonut*) of vegetarianism as being the philosophically ideal practice, practiced in the ancient past and in the ideal future, but not appropriate for the masses in our days. There is debate regarding to what extent he viewed it favorably as a practice to be followed by unique individuals in our times.

discuss below.

First, it is important to distinguish between various motivations for people choosing vegetarianism or veganism. The main motivations are: 1) Ethical (objection to the idea of killing or using animals for human purposes or concern about the treatment of commercially raised animals⁶); 2) Emotional (the psychologically-based difficulty of eating something that comes from an animal); 3) Health (the belief that such a diet is healthier); 4) Environmental (the various negative impacts that mass raising of animals has on the environment).⁷

In general, if a vegan motivated by health or environmental concerns feels that the challenge posed by the limited dietary choices is too difficult or otherwise negatively impacts too much on his enjoyment of Pesach, he should give precedence to the *minhag* over his veganism. A little flexibility for a short, well-defined time period need not compromise his general vegan approach (barring special health concerns). However, if a vegan sincerely feels that he will not be able to keep up his lifestyle if he starts compromising on it, such an idealistic person who takes special steps to care for his body and/or the world (which the Torah encourages⁸) deserves appropriate leniency. Those motivated by ethics or emotion are naturally less likely to be able and/or willing to make partial exceptions.

We believe that those for whom it is not feasible to make Pesach exceptions to their principle-kept diet can be considered as being in a situation of *she'at hadechak*. Therefore, we will refer to a ruling of ours elsewhere in which we identified areas in

6. There is broad recognition that in our times there are serious ethical/halachic concerns with the treatment of commercially raised animals, and there is therefore additional value in veganism now over that of times in the past.

7. See *Living the Halachic Process* op. cit. for more on our approach to these issues.

8. See *Devarim* 4:15; Rambam, *Rotzeiach U'Shemirat HaNefesh* 11:4-6; *Bereishit* 2:15; *Kohelet Rabba* 7:13.

which leniency can be justified for such a case:⁹

Species: *Igrot Moshe*¹⁰ presents the thesis that similarities of botanical characteristics, classification, or usage is not reason enough to add to the list of species prohibited on Pesach as *kitniyot*. Therefore, such foods as peanuts, soy and quinoa, which were not known in the time/place where the *minhag* developed, can be permitted. If there is another questionable food that is important to your diet, feel free to ask us.

Kitniyot Derivatives: Oil derived before Pesach from *kitniyot* was permitted by some *poskim*.¹¹ However, if the standard “Kosher for Pesach” alternatives are sufficient, as is likely, it is preferable to avoid such leniency.

Mixtures: The *Terumat HaDeshen*¹² rules that the Pesach stringencies of mixtures do not apply to *kitniyot*. The Rama¹³ applies this leniency even to a simple majority of non-*kitniyot*, as long as the *kitniyot* element is not discernable or the *kitniyot* food has been removed and only its taste remains in the mixture.¹⁴ While one may not create such a mixture on Pesach, there is room for leniency to buy it¹⁵ or prepare it before Pesach for Pesach use.¹⁶ If one is not sure if the majority is *kitniyot*, some allow adding – even on Pesach – enough non-*kitniyot* to remove doubt.¹⁷

Not exposed to water: Since even grain does not become *chametz* without water, if one can ensure that *kitniyot* did not come in contact with water, he can rely on the many classical *poskim* who permit eating such *kitniyot*.¹⁸

9. Based on *BeMareh HaBazak* IV:51. See there for more detail.

10. *Orach Chayim* III:63, discussing peanuts.

11. See *BeMareh HaBazak* op. cit.

12. I:113.

13. *Orach Chayim* 453:1.

14. *Mishna Berura* 453:8.

15. See *Darchei Teshuva* 108:20.

16. See *BeMareh HaBazak* op. cit.

17. *Ibid.*

18. See *Terumat HaDeshen* op. cit.; *Chayei Adam* II:127:1.

Even if the basic description of a product fits into one of the above categories, an unsupervised *kitniyot* product may possibly contain some amount of real *chametz*. Therefore, one must either ascertain the sources of all of the item's ingredients and determine how they were processed or, as is often more practical, buy products with a Sephardic "Kosher for Pesach" *hashgacha*.

D-17: Special Preparations for a Seder on Shabbat

Question: This year, when the *Seder* is on Friday night, is there a need for any special preparations before Shabbat begins?

Answer: There are two relatively minor issues that are worthwhile discussing. (We will not relate to general questions about the various activities, such as cooking, that are forbidden on Shabbat but not on a regular weekday *Yom Tov*.)

Preparing the saltwater for dipping the *karpas* – One is not allowed to prepare large quantities of saltwater on Shabbat for soaking vegetables.¹ This is because doing so was classically part of the process done to preserve vegetables for the long term, which is in turn similar to *ibbud orot* (tanning hides).² It is permitted to make small quantities of saltwater to put into food, to dip one's bread into, or the like, provided one does not use an amount of salt that is double the volume of the water.³

Based on the above, several *poskim*⁴ maintain that when the *Seder* falls on Friday night, one should prepare the saltwater beforehand. The *Magen Avraham*⁵ apparently maintains that it is unnecessary to prepare the saltwater before Shabbat, considering that the small quantity one uses for the *Seder* should not be problematic according to the regular rules of Shabbat. Those who are stringent are apparently concerned that people will not always appropriately discern between the permitted and forbidden amounts.⁶ If one did not prepare the saltwater in advance, there

1. *Shabbat* 108b; *Shulchan Aruch, Orach Chayim* 321:2.

2. *Mishna Berura* 321:9.

3. *Shulchan Aruch* op. cit.; see *Mishna Berura* ad loc. 11.

4. *Taz* 473:3; *Chok Yaakov* 473:13; *Mishna Berura* 473:21.

5. 473:5.

6. *Misgeret HaShulchan* (on *Kitzur Shulchan Aruch*) 118:4.

are different opinions as to whether it is preferable to dip the *karpas* into vinegar⁷ or to be careful to make a particularly small quantity of saltwater.⁸

In our discussion, we are assuming that this concern is unique to a year in which Pesach falls on Shabbat, not to the regular *Yom Tov* night *Seder*, despite the fact that *ibbud orot*, the root issue, is forbidden on *Yom Tov* as well as on Shabbat.⁹ This indeed is the position of most classical *poskim*.¹⁰ However, the *Chayei Adam*¹¹ and the *Kitzur Shulchan Aruch*¹² write that one should prepare the saltwater before *Yom Tov* even in a regular year, when Pesach does not fall on Shabbat, although they add that if one did not do so, he may still prepare it by changing the order of its preparation (by first putting in the water and only then the salt).

In summary, it is inconclusive whether it is forbidden to make saltwater for the *Seder* on Shabbat, as well as whether there is reason to prepare it before *Yom Tov* even when it is not on Shabbat. However, there is greater impetus to prepare it in advance when the *Seder* is on Shabbat.

Adding wine to the *charoset* – Some have a *minhag* to add wine to the *charoset* shortly before using it at the *Seder*.¹³ The mixing in of the wine may fall under the category of *lash* (kneading), but this is a *melacha* that is permitted on *Yom Tov*.¹⁴ However, *lash* is forbidden on Shabbat; therefore, when the *Seder* falls on Shabbat, adding the wine could be a problem. Indeed,

7. Simple reading of the *Mishna Berura* 473:21.

8. Simple reading of the *Taz* op. cit. Note that dipping the *karpas* in wine is also a possibility (*Mishna Berura* 473:54).

9. See Rambam, *Yom Tov* 3:4.

10. Including *Taz*, *Chok Yaakov*, and *Mishna Berura* 473:21; see *Misgeret HaShulchan* op. cit.

11. II:130:19.

12. 118:4.

13. *Tosafot*, *Pesachim*; see Rama, *Orach Chayim* 473:5.

14. *Shulchan Aruch*, *Orach Chayim* 506:3.

the *Mishna Berura*¹⁵ says that one should add the wine before Shabbat. (If one put in a reasonable amount of wine before Shabbat in a manner that makes it coalesce with the mixture, it is permitted to add more on Shabbat.¹⁶) If one forgot to add the wine before Shabbat, he must put it in in a manner that does not violate the prohibition of *lash*. One way to do so is to change the order of the mixing of the ingredients together by first putting in the wine on the bottom and only afterwards adding the *charošet* on top, as well as mixing them together either with a finger only or by shaking the utensil that holds them.

The *Mishna Berura* notes that one of the opinions in the *Shulchan Aruch* regarding permitted mixing on Shabbat requires that the mixture be watery. This raises a potential problem, as we want the *charošet* to be thick like mortar.¹⁷ This is another reason that one would want to avoid the problem and simply prepare the *charošet* before Shabbat.

15. 321:68.

16. *Mishna Berura* 321:65.

17. See *Sha'ar HaTziyun* 321:86.

D-18: Lack of Confidence to Make a *Beracha* on *Sefirat HaOmer*

Question: I rarely succeed in counting all 49 days of *sefirat ha'omer*. Considering that I seem to always discontinue making a *beracha* at some point,¹ should I refrain from making one from the outset?

Answer: Your idea to not say the *beracha* from the outset is based on the thesis that *sefirat ha'omer* is one long “all-or-nothing” *mitzva* – i.e., if you miss a day, you will not have fulfilled any *mitzva* at all, and you will have retroactively rendered all of your *berachot* to that point to have been *l'vatala*.² We will begin our discussion by considering this reasonable conclusion (before rejecting it).

*Tosafot*³ asks why a *zava*⁴ does not make a *beracha* upon counting seven days toward her purification. *Tosafot* answers that it is because “if she sees, the count will be undone” – i.e., if she sees an unclean flow during her count, she will need to begin the count all over again. (This is in contrast to *sefirat ha'omer* and *beit din*'s counting of 50 years toward *yovel*, where the count itself continues regardless of what happens along the way.) Some *Acharonim* infer from this that it is forbidden to make a *beracha* on a *mitzva* when there is real concern that it may later turn out that the attempt will fail. Indeed, in the context of *sefirat ha'omer*, the Chida⁵ warns people to take precautions not to forget a day of *sefira*, for if they do, their *berachot* will **retroactively** be *l'vatala*.

1. As one can continue with the *beracha* only if the counting is complete (*Shulchan Aruch, Orach Chayim* 489:8).

2. In vain and thus forbidden to have been said.

3. *Ketubot* 72a.

4. A woman with long-lasting menstrual bleeding, who must have seven clean days before going to a *mikveh*.

5. *Avodat Hakodesh, Moreh B'Etzba* 217.

Nevertheless, there are several reasons to allow one to begin counting the *omer* with a *beracha*, even **if we are certain** that he will be unable to finish counting all of the days. Two examples: *B'Tzel HaChochma*⁶ discusses a man who was told he had only a few days to live; *Shraga HaMeir*⁷ discusses someone scheduled for surgery that would totally incapacitate him for an entire day.

First, we note that the ruling that one cannot continue with a *beracha* after missing a day (the *Behag*'s opinion) is far from unanimous.⁸ The *Shulchan Aruch*⁹ accepts it only due to the rule that when it is not clear if one may recite a *beracha*, he is not allowed to. The *Shulchan Aruch* therefore says that if one is not sure if he missed a day, he should continue counting with a *beracha* due to the concept of *sefeik sefeika*, a "double doubt": Maybe he didn't miss the day's count, and even if he did miss it, maybe that does not disqualify the *mitzva*.¹⁰

Second, even if one may not continue counting with a *beracha* if he forgets a day, this does not necessarily mean that the count until then was worthless. Although some explain the *Behag*'s approach as positing that the 49 countings constitute a single *mitzva*, this may be an overstatement. One indication (albeit not a proof) that we are dealing with separate *mitzvot* is the fact that we make the *beracha* 49 times, a separate time each night we count.¹¹ Rav Soloveitchik¹² explains that the *Behag* agrees that there is a complete *mitzva* every day; he simply maintains that the counting must be **consecutive** in order to fulfill the *mitzva*. Accordingly, the *mitzva* ceases to be operative after one misses a day, but the previous countings are not disqualified retroactively.

Third, the *Rav Pe'alim*¹³ suggests that the reason we recite

6. V:45.

7. VI:31.

8. See *Tur, Orach Chayim* 489.

9. *Orach Chayim* 489:8.

10. *Mishna Berura* 489:38.

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

12. *Mesorah*, vol. III, p. 35.

13. III, *Orach Chayim* 32.

the *beracha* on *sefirat ha'omer* even though we cannot be sure that we will succeed in completing the *mitzva* is that there is value even in the partial fulfillment of a *mitzva* – so much so that this prevents the *berachot* from being retroactively *l'vatala*.

Why, then, does *Tosafot* say that concern about non-completion precludes a *beracha* on a *zava's* count? Some say that the *Behag* would, in fact, disagree with *Tosafot's* explanation; rather, according to the *Behag*, there would need to be a different reason to preclude a *zava* from reciting a *beracha* when she counts. Others argue that there is absolutely no value in a suspended count for a *zava*, unlike the case of *sefirat ha'omer*, where there is at least a partial fulfillment of a *mitzva*. Still others explain that a later event would not actually retroactively invalidate *berachot*; *Tosafot* was simply explaining the reason that the Rabbis chose from the very beginning not to institute a *beracha* for the *zava*.¹⁴

There are also philosophical arguments to reject the concern for the possibility that one will not count some of the nights. Consider the practical scenarios mentioned above. How can one be so sure that he will not survive to the end of the count or know definitively when the surgery will actually occur and whether it will indeed incapacitate him so as to give him a different *halacha* than his peers? The argument that one should not assume he is different from the standard case for which the Rabbis instituted a *beracha* is even stronger in cases in which there is no known specific cause that will prevent one from successful completion of the *sefira*. It is difficult to argue that one's concern based on past experiences of forgetting can serve as a rationale to omit the *beracha* in which the Rabbis obligated him.¹⁵

In practice, there is a clear consensus among *poskim*, and

14. See discussion of all these answers, as well as of others that we have not cited, in *Yabia Omer* I, *Yoreh Deah* 21.

15. This is especially true if one has the opportunity to adopt practices, such as *davening* with a *minyan* every night or signing up for technologically-based reminders to count, that mitigate the concern of forgetting.

a clear *minhag* among men,¹⁶ to start counting *sefirat ha'omer* with a *beracha*. Even the Chida, the most prominent apparent naysayer, did not write that one should start without a *beracha*; he only warned to be careful not to miss a day.¹⁷

16. See *Mishna Berura* 489:3.

17. See *B'Tzel HaChochma* op. cit., who points this out.

D-19: Tisha B'Av Restrictions after Tisha B'Av

Question: What restrictions of Tisha B'Av/Nine Days exist after Tisha B'Av, and until when?

Answer: From the perspective of the *gemara*,¹ the restrictions of the Nine Days end with the completion of the day of Tisha B'Av (9th of Av). This is not an obvious conclusion, as the majority of the burning of the *Beit HaMikdash* took place on the 10th of Av, and Rabbi Yochanan² said that he would have thought that the latter date is the more appropriate day for the fast. In fact, there were *Amora'im* who fasted on both days.³

Based on this background, post-Talmudic *minhagim* developed to continue certain prohibitions even after Tisha B'Av. The *Tur*⁴ writes: “It is a proper *minhag* to not eat meat on the night of the 10th and the day of the 10th ... so that it should be close to a fast.”⁵ The *Bach* understands this language as a double stringency: One should not eat any meat on the 10th of Av, and one should even limit his eating of other foods, as is befitting for a day that on some level should have been a fast. The *Bach*'s second stringency is not accepted; after Tisha B'Av, we eat non-meat foods without any limitations. (We can, however, relate to the *Mikraei Kodesh*'s⁶ discomfort with those who, for example, go out for ice cream every *Motzaei Tisha B'Av*.)

The *Shulchan Aruch*⁷ cites the *minhag* to not eat meat or drink wine the entire night and day of the 10th, but various *Acharonim*

1. *Ta'anit* 30a.

2. *Ibid.* 29a.

3. *Yerushalmi*, *Ta'anit* 4:6

4. *Orach Chayim* 558.

5. The exact translation and understanding of the last phrase is elusive.

6. (Harari) *Fasts*, 11:(29).

7. *Orach Chayim* 558:1.

limit this stringency somewhat. The *Bi'ur Halacha*⁸ says that it is permitted to eat a food that was only cooked with meat, as long as one does not eat meat itself. The *Magen Avraham*⁹ writes that it is permitted to eat meat at a *seudat mitzva*.¹⁰ And the Rama¹¹ sets the tone for Ashkenazim by limiting the *minhag* to avoid meat and wine as lasting only until midday of the 10th.

Regarding other restrictions, Ashkenazim are stricter than Sephardim. The *Shulchan Aruch* mentions only the restrictions on meat and wine, and the Rama does not argue. However, the Maharshah¹² writes that since the *minhag* is to extend the Nine Days restriction of wine and meat into the 10th, the same should be true of laundering, haircutting, and bathing. The *Mishna Berura*¹³ and the broad consensus of Ashkenazi *poskim* accept the Maharshah's stringency.

Although some prominent Sephardic *poskim* adopt this added stringency regarding laundering, haircutting, and bathing, it apparently was not widely accepted. Therefore, Rav Ovadia Yosef¹⁴ writes that Sephardim should follow the *Shulchan Aruch*'s opinion that only meat and wine are forbidden, whereas the rest of the restrictions cease when Tisha B'Av ends (although he admits that it is questionable whether one may recite *Shehecheyanu* at that point).¹⁵ The *Mikraei Kodesh*¹⁶ cites Rav Mordechai Eliyahu as extending the restriction on music throughout the 10th of Av.

Regarding laundering, haircutting, and bathing, there is room for leniency in cases of need, even for Ashkenazim. Reasons for this allowance include the following: First, this part of the

8. Ad. loc.

9. Ad loc. 1.

10. We will not discuss the question of whether one is allowed to get married during this time.

11. Ad loc.

12. *Shut Maharshah* 92.

13. 558:3.

14. *Yechaveh Da'at* V:41.

15. See *Torat HaMo'adim*, Fasts 11:5.

16. Op. cit. 18.

minhag is not only post-Talmudic, but is even post-*Shulchan Aruch*. Second, it is much more common for the continuation of these restrictions to be particularly difficult, especially as the hot summer takes its toll and the stacks of laundry pile up. In addition, all agree that one may perform any of these activities in honor of Shabbat when Tisha B'Av falls on Thursday.¹⁷ (According to the *Halichot Shlomo*,¹⁸ in such a case, one may start the washing on Thursday night and throw into the load of clothing needed for Shabbat even items that are not needed for Shabbat. However, haircutting should be postponed until Friday morning.) There are other situations in which stringency is likely beyond the call of duty, such as when one is leaving home soon after Tisha B'Av and needs a large supply of clean laundry,

When Tisha B'Av is pushed off from Shabbat to Sunday, *Motzaei Tisha B'Av* is the 11th of Av. In such a case, the only restriction that remains after Tisha B'Av has ended is to not eat meat or drink wine, and this applies only at night.¹⁹

17. *Mishna Berura* 558:3.

18. *Mo'adim* I, 15:16.

19. Rama, *Orach Chayim* 558:1.

Section E:
Kashrut

E-1: Eating *Chezkat Chalavi* Foods after Meat

Question: I wait six hours after eating meat before having dairy. Is it permitted to eat *chezkat chalavi* foods (*pareve* food that is assumed to have absorbed taste from dairy utensils) before the six hours are up?

Answer: The Torah forbids eating milk and meat together only when they are cooked together.² *Chazal* forbid eating them together in any situation, and after meat we must wait significantly before eating milk products.³ According to most *poskim*, one must wait six hours or so.⁴

Cases of *nat bar nat* (double-removed taste) are subject to dispute. Sephardim permit eating *milchig* food along with *pareve* food that was heated up in a meat pot (*chezkat besari*), whereas Ashkenazim forbid this if the *pareve* food was cooked or fried in a recently-used (*ben yomo*) meat pot.⁵ Your good question is whether it follows that a *chezkat chalavi* food – *pareve* food heated up in a dairy utensil – is considered *milchig* to the extent that one may not eat it within six hours after eating meat.

In the opposite case, the answer to this question is easier; after eating *pareve* food cooked in a meat pot, one does not have to wait six hours before eating dairy.⁶ The *Shach*⁷ asserts that this is so even if there was a small amount of meat residue left in the pot (and even when there was not 60 times more *pareve* food than

1. *Milchig*-leaning.

2. See *Shemot* 23:19; *Sanhedrin* 4b.

3. *Chulin* 104-105.

4. See *Shulchan Aruch*, *Yoreh Deah* 89:1.

5. See *Shulchan Aruch* and Rama, *Yoreh Deah* 95:2; see also response E-2.

6. Rama, *Yoreh Deah* 89:3.

7. Ad loc. 19.

meat gravy⁸). Rabbi Akiva Eiger⁹ says that even after eating a sharp food that was cut with a meat knife – which is treated like the direct taste of meat, not *nat bar nat*¹⁰ – one is not required to wait. The rationale for these leniencies is that not everything that is regarded as meat requires a six-hour wait before milk, as the reasons for waiting do not apply. We wait after eating meat out of concern for meat that remains between the teeth¹¹ or that a taste is left in the mouth.¹² Thus, if the meat component of a food is qualitatively weak, as in the case of *nat bar nat* with some residue and the case of a sharp food, it lacks the special qualities that make the six-hour wait necessary, just as we do not require one to wait after eating dairy foods.

However, if one wants to eat *pareve* food that has a *nat bar nat* milk component after eating real *fleishig* food, the logic for leniency is weaker. After eating meat, we assume that one has meat between his teeth and/or a taste in his mouth. Thus, his eating *chezkat chalavi* should be treated like eating milk and meat together. The *Yad Yehuda*¹³ further notes that in the case in which one ate the *pareve* food with a *nat bar nat* meat component first, the leniency is based on the assumption that one did not discern a meat taste. In contrast, in the case in which one wants to eat *nat bar nat* milk food after meat, one cannot assume **in advance** that he is not going to taste the milk.

Despite these indications for stringency, Rav Shlomo Kluger¹⁴ strongly rejects the possibility of a stringent ruling. He points out that the Rama and others rule only that one should not eat milk and *nat bar nat* meat **together**. If they had intended stringency in our case, they should have added that one should not eat *chezkat*

8. See *Pitchei Teshuva*, *Yoreh Deah* 89:7.

9. On *Shach*, *Yoreh Deah* 89:19.

10. Rama, *Yoreh Deah* 95:2.

11. Rambam, *Ma'achalot Assurot* 9:28.

12. Rashi, *Chulin* 105a.

13. 89:5.

14. *Tuv Ta'am VaDa'at* III:I:183.

chalavi within six hours of meat. Yet no classical works say that.¹⁵ Rav Kluger also claims that the standard practice (*minhag ha'olam*) is not to wait six hours between meat and *chezkat chalavi*.

But what is the halachic logic for such leniency? The first possibility is based on adding up the indications for leniency. Rav Kluger argues that we do not **know** there will be taste in one's mouth from the meat he already ate, just that there might be. In addition, even Ashkenazim do not maintain that *nat bar nat* food is **fully** *milchig* or *fleishig*; therefore, if it was already mixed into the other type of food, one may eat the combination.¹⁶ There is thus a "double doubt" – perhaps the *halacha* is that *chezkat chalavi* food is *pareve*, and even if not, perhaps the meat taste will not be in one's mouth when he eats the *chezkat chalavi* food (with the worst-case scenario being a Rabbinic violation, as the milk and meat were not cooked together). In such a situation, we can be lenient.

Rav Kluger suggests that there may be an additional halachic reason that there is no problem in our case: Eating a milk product after meat is forbidden because it resembles eating the two together. When the second food has at most a weak taste of milk but includes no actual milk, it no longer resembles eating milk and meat together.

The *Pri Megadim*¹⁷ writes that one may not eat a sharp *pareve* food cut with a dairy knife within six hours of eating meat. This ruling may be compatible with Rav Kluger's first reason for leniency in the case of *nat bar nat* – we add up the indications for leniency – as sharp food cut with a dairy knife is treated as *milchig* to a greater extent than regular *nat bar nat* is.¹⁸ However,

15. This type of derivation, based on the fact that an issue is not found in written halachic literature, is called *setimat haposkim*; see *Living the Halachic Process*, vol. V, G-1.

16. Rama, *Yoreh Deah* 95:2.

17. *Eshel Avraham* 494:6.

18. See Rama op. cit.

the *minhag* is apparently not to be careful about the *Pri Megadim*'s case either, and this can be justified by Rav Kluger's second reason – the absence of a strong taste. Regarding sharp foods that were sautéed in a dairy pan or were cut with a clean dairy knife when the utensils had not been used for 24 hours, there are additional sources and logic for leniency.¹⁹

19. See *Yad Yehuda* 89:5.

E-2: Pareve Food Cooked in a Meat Utensil

Question: I (an Ashkenazi) accidentally cooked meat in the pan I use to cook *pareve* eggs. Can I still use the pan to make *pareve* eggs that I plan to eat at a *milchig* meal?

Answer: At this point, until you *kasher* it, your pan is *fleishig*. A *fleishig* utensil contains kosher meat taste, but there is a concern that it or the food cooked in it could become not kosher if that taste combines with milk taste. However, this cannot happen once the taste is sufficiently weakened. In one such case, known as *nat bar nat*, hot *pareve* food that was **placed** in a *milchig* or *fleishig* utensil may be mixed with the opposite type of food.¹ However, the Rama² rules that if *pareve* food was **cooked or roasted** in a *milchig* or *fleishig* pot that had been used for its type within 24 hours, it may not be mixed with the other type of **food**. Thus, the first part of the answer to your question is that an Ashkenazi should not eat eggs that he prepared in a *fleishig* pan together with milk products. (See below about waiting 24 hours before using the pan.) On the other hand, the Rama does not treat the otherwise *pareve* food cooked in a *milchig* or *fleishig* utensil as totally *milchig* or *fleishig*, as he permits putting this food while hot into a **utensil** of the other type.

The eggs you would cook in the *fleishig* pan are such a *pareve/fleishig* food, known as *chezkat besari*.³ We will see what precautions you would have to take in order to eat them at a *milchig* meal by perusing laws dealing with necessary time separations between consuming milk and meat and applying the rules to this case.

1. *Chulin* 111b; *Shulchan Aruch* and Rama, *Yoreh Deah* 95:2.

2. Ad loc.

3. This might be translated as “*fleishig*-leaning.”

The *gemara*⁴ discusses waiting between eating meat and subsequently cheese but says that no waiting is required after cheese before meat. The *gemara* does state, however, that one should either check or wash his hands and also clean his mouth between eating cheese and then meat. The *Shulchan Aruch*⁵ rules that the above requirements apply only regarding actual meat and milk/cheese; between two *pareve* foods, one cooked together with meat and one with milk, there is no need to wait or wash. Nevertheless, in practice, the *minhag* is to wait even after eating otherwise *pareve* food that was **cooked together** with *fleishig food* if it tastes *fleishig*.⁶

However, the Rama⁷ states unequivocally that if one ate only *pareve* food cooked in a *fleishig pot*, he can eat cheese right afterward. This makes a lot of sense since, according to the *Shulchan Aruch*,⁸ one can even mix this *nat bar nat fleishig* (but basically *pareve*) food directly with milk. In fact, because the Rama's statement seems so obvious, some attempt to give it more of a *chiddush*,⁹ arguing that the Rama is talking about a case in which there was a little actual meat gravy in the pot¹⁰ or the food that was cooked in the pot had a sharp taste¹¹ (in which case the leniency of *nat bar nat* does not usually apply¹²). Certainly, in the case of normal *pareve* food cooked in a *fleishig* pot, one does not have to wait after eating it before eating dairy.

After eating a *nat bar nat* food, is there any need for washing and rinsing, which are required more widely than waiting (e.g., even after eating dairy)? While stringency could be contemplated,

4. *Chulin* 104b-105a.

5. *Yoreh Deah* 89:3.

6. Rama ad loc.

7. *Ibid.*

8. *Yoreh Deah* 95:2.

9. A new idea or a statement that is not obvious.

10. *Shach* 89:19.

11. R. Akiva Eiger ad loc.

12. Rama, *Yoreh Deah* 95:2.

the *Eliya Rabba*¹³ says that one does not have to take any of these steps, and this approach is accepted by the *Kaf HaChayim*¹⁴ and contemporary *poskim*.¹⁵ The *Badei HaShulchan*¹⁶ suggests that if the *pareve* food is sharp or if one actually sees or feels residue on his hands or mouth, he should wash and rinse. However, the *Badei HaShulchan* does not substantiate his claim with sources, and as the logic can go either way, we do not believe we should introduce further stringency than appears explicitly in the *poskim*. Thus, after eating any *pareve* food cooked in a *fleishig* pot, no washing is needed.

We have seen that after eating eggs cooked in your *fleishig* pan, you would not have to wait or wash before eating dairy, but you should not eat the eggs together with dairy. What constitutes eating together, which the Rama forbids? Two things are apparently included. First, the foods cannot be discernibly mixed before entering the mouth. Therefore, the same plate or flatware may be used only if it appears that the egg will not come in contact with any milk product. Second, if one has not finished chewing a bite of these eggs, he should not yet ingest anything *milchig*.

There is more room for leniency when the *fleishig* utensil is *eino ben yomo* (twenty-four hours have passed since it was used for *fleishig*).¹⁷ This is certainly the case of your pot, which was used for *fleishigs* during a one-time mistake. However, one may not rely on this leniency to **intentionally** use a utensil that is *eino ben yomo* of the other type of food.¹⁸ Therefore, assuming you want to avoid having to be careful about how you are going to eat the eggs at a dairy meal, it would be wise to *kasher* the pan (with *hagala* or *libun kal*; details are beyond our present scope). This is especially recommended if you would like to use it to prepare eggs or other *pareve* foods eaten regularly at milk meals.

13. *Orach Chayim* 173:4.

14. *Yoreh Deah* 89:61.

15. See *Halachos of Kashrus* (Forst), p. 204.

16. *Bi'urim* to 89:3.

17. Based on the Rama, *Yoreh Deah* 95:2.

18. *Chochmat Adam* 48:2.

E-3: Pareve Food in Meat Utensils and then Milk Utensils

Question: I want to make a big *pareve* vegetable soup in a meat pot (my largest) and later put some of it into *milchig* or *pareve* pots or bowls. Is this permissible?

Answer: Questions of *nat bar nat* (twice-removed taste, i.e., taste that goes from food into a pot and then from the pot into another food) are often complex due to the multiple permutations of *l'chatchila* (proper action) and *b'dieved* (after the fact). We will proceed from rules to details.

The *Amora'im* dispute whether hot *pareve* food that was **placed** on a *fleishig* utensil can be eaten with milk, and we rule leniently.¹ Accordingly, the *Shulchan Aruch*² states that one may mix *pareve* food **cooked** in a *fleishig* pot (*nat bar nat* of *fleishig*) into *milchig* food. However, the Rama (whom Ashkenazim follow) posits that *pareve* food that was **cooked** in a *fleishig* pot has a higher level of *fleishig* taste than hot food that was simply **placed** in a *fleishig* utensil, the case that the *gemara* discusses. He rules that in the case of cooking or roasting, the originally *pareve* food may not be mixed with *milchig* food.³

However, the Rama incorporates a few leniencies into his stringent ruling. If the food cooked in the *fleishig* pot was subsequently mixed into *milchig* food (***b'dieved***), it may be eaten. In addition, the hot *nat bar nat fleishig* food may be placed (***l'chatchila***) into a *milchig* **utensil** without affecting the status of the pot or the food.⁴ Thus, the soup you describe may be placed in a *milchig* pot or bowl.

However, there is a complicating factor – an additional level

1. *Chulin* 111b.

2. *Yoreh Deah* 95:1.

3. Ad loc. 2.

4. Ibid.

of *l'chatchila*. The *Beit Yosef*⁵ cites several *Rishonim* who maintain that one may not *l'chatchila* set up a situation of *nat bar nat* with the intention of treating the food as *pareve*, even according to the opinions that it is essentially *pareve*. Although his final opinion is unclear, most prominent Sephardi *poskim*⁶ say that one should not put hot *pareve* food in a *fleishig* pot if he **intends** to subsequently **mix** it in with *milchig* food.

There are, in fact, other cases (such as yours) in which a food would be treated *b'dieved* as *pareve* but should not be “created” in that way. One case in point is when a *fleishig* pot has not been used for *fleishig* food within the 24-hour period before the *pareve* use. The Rama rules that in such circumstances, the resulting food is *pareve* enough to mix with *milchig* food. The Gra⁷ goes further and says it is even permitted *l'chatchila* to cook *pareve* food in that *fleishig* pot with the intention to mix it later with *milchig* food. However, the *Chochmat Adam*⁸ writes that one should not cook *pareve* food in the *fleishig* pot with the intention to eat it with *milchig* food, and this is the more accepted position.

There is a *machloket Acharonim* regarding your specific question about making the soup in a *fleishig* pot with the **intention** to put it into a *milchig* **pot**. Among the earlier authorities, the *Bach*⁹ allows it, while the *Pri Megadim*¹⁰ forbids it. Among contemporary authorities, Rav Moshe Feinstein¹¹ leans toward leniency, whereas several less prominent authorities lean toward stringency.¹² (Realize that there are serious opinions, which we do not accept, that even *b'dieved* it should not be put into a *milchig*

5. *Yoreh Deah* 95.

6. See *Kaf HaChayaim*, *Yoreh Deah* 95:1.

7. *Yoreh Deah* 95:10.

8. 48:2.

9. *Yoreh Deah* 95.

10. *Yoreh Deah* 95, *Mishbetzot Zahav* 95:4.

11. *Igrot Moshe*, *Yoreh Deah* III:10.

12. See differences of degree of leaning toward stringency in *Badei HaShulchan* 95:30, *Ma'adanei HaShulchan* 95:23, and *Laws of Kashrus* (Forst), p. 242.

pot.¹³) It seems that a better policy is to have a large *pareve* pot for big soups to avoid this issue. However, when this is not readily feasible, leniency is legitimate.

In a situation in which there is an additional reason to be lenient, one can do so freely. An example is the second part of your question – when the second utensil is *pareve*, not *milchig*. Since nothing can go wrong with the food in this utensil, and it is just a question of making the utensil *fleishig*, we do not have to be as concerned. It also makes sense that if the *fleishig* pot has not been used within twenty-four hours, it is permissible to cook in it with the intention of **putting** the food in a *milchig* pot.

However, it is important to be aware that everything changes in the direction of stringency if the soup in question contains onions or other sharp-tasting vegetables.¹⁴ In various circumstances, there is more logic for leniency than in others; the details are beyond our present scope. Suffice it to say that it would be at least unwise, and more likely worse, to cook a soup that includes onions in a meat pot and then to reheat it in a milk pot.

13. See discussion in *Darchei Teshuva* 95:23.

14. Rama op cit.

E-4: Tasting Unsupervised Wine

Question: I will be touring France, and our group will be doing wine tasting with wine that has no *hashgacha*. Is it permitted to taste the wine if I spit it out afterwards?

Answer: We must deal with a few issues.

Some of the main *kashrut* concerns regarding agricultural produce pertain mainly in Israel – notably, land-based *mitzvot* (e.g., *teruma* and *ma'aser*; *Shemitta*, *orla*) – and are of little concern outside of Israel. But in the case of wine, *stam yeinam* is a major remaining issue. *Stam yeinam* is a Rabbinic prohibition on wine that was handled by non-Jews,¹ starting from the time the grapes are squeezed and even after it is produced (unless and until it has been *mevushal* – literally, cooked²). Unsupervised wine produced by non-Jews is therefore certainly forbidden as *stam yeinam*, whose complex nature we will now briefly highlight.

One part of the Rabbinic prohibition of *stam yeinam* is the concern that drinking such wine could lead down the line to social interactions and intermarriage.³ (This concern is also reflected in similar prohibitions, such as *bishul akum*.⁴) If, however, the wine was actually involved in idol worship, it could become *yayin nesech*, from which it is forbidden to derive any type of benefit. The latter is forbidden on the level of Torah law.⁵ Because these two prohibitions can be confused with each other, the Rabbis added a prohibition on receiving benefit from *stam yeinam* as well.⁶

1. See Rambam, *Ma'achalot Assurot* 11:3-4.

2. Ibid. 9; the parameters of *mevushal* wine are beyond our present scope.

3. *Avoda Zara* 36b.

4. Certain foods that were cooked by a non-Jew; see *Living the Halachic Process*, vol. II, E-10.

5. Rambam op. cit. 1.

6. See *Beit Yosef*, *Yoreh Deah* 123.

There are sources that indicate leniency regarding the Rabbinic prohibition on receiving benefit from *stam yeinam*. The *Shulchan Aruch*⁷ rules that wine of a non-Jew who is not involved in idol worship is forbidden only for drinking, not for receiving benefit, but it is not clear what category members of various religions fall under. The Rama⁸ writes that since it is not common for non-Jews to use wine for libations, not all agree that there is a prohibition on receiving benefit, and one can receive benefit if needed to avoid a monetary loss (e.g., when the wine is the main available asset of a non-Jewish debtor).⁹

Wine tasting, even if one spits the wine out, provides benefit due to the taste, and it is therefore forbidden if there is no potential loss. Not taking part in wine tasting is not a loss of money, and the loss of a pleasant opportunity is not considered a loss in this context. (Even being precluded from doing commerce in non-kosher wines is simply a lost opportunity, and it is thus forbidden.¹⁰)

If *stam yeinam* were only forbidden to be drunk, as in a case of monetary loss, we would have to analyze the *halacha* of putting forbidden food in one's mouth and then spitting it out. (It is considered cultured to spit out wine into a spittoon at wine-tasting events.) According to the great majority of sources, it is forbidden to taste foods that one is forbidden to eat.¹¹ One of the main sources for this concept is the *gemara*'s halachic advice for someone who is unsure whether a particular mixture of kosher and non-kosher foods is permissible. Since discernable taste of the non-kosher minority element would make it forbidden, the *gemara*¹² says that one should give it to a non-Jew to taste. This implies that a Jew may not taste the mixture, even if he plans to

7. *Yoreh Deah* 124:7.

8. *Yoreh Deah* 123:1.

9. See one application of these rules in *Living the Halachic Process*, vol. I, E-5.

10. Rama op. cit.

11. See *Pitchei Teshuva*, *Yoreh Deah* 98:1.

12. *Chulin* 97a.

spit it out. On the other hand, *Rishonim*¹³ allow a Jew to taste a piece of liver to see whether the animal has a hidden gallbladder (important for the laws of *tereifot*), even though the liver would be forbidden if one were to discover that the gallbladder is missing.

Several possible distinctions are raised to reconcile these sources, including the following: 1) One may taste the liver with his tongue to see if it is kosher, but he may not taste it in his mouth.¹⁴ 2) Since the liver in such a case is almost always kosher, it is permitted to taste it to make sure it is.¹⁵ However, the consensus is that it is forbidden to taste a fully edible prohibited food by putting it into the mouth, even if it is forbidden only Rabbinically.¹⁶ This is even clearer if one is sampling the food in order to enjoy the taste.

Therefore, for two reasons, you may not taste the non-kosher wine.

13. See *Beit Yosef, Yoreh Deah* 42.

14. *Taz, Yoreh Deah* 98:2.

15. *Shach, Yoreh Deah* 42:4.

16. See *Pitchei Teshuva* op. cit.

E-5: Providing Non-Kosher Food for Non-Jewish Workers

Question: Where I come from, it is common for employers to provide non-kosher food for their live-in household help. Is that permitted?

Answer: The *gemara* derives from a *pasuk*¹ that one may sell non-kosher species that come into his possession, but one may not actively acquire and then sell them. This is called the prohibition of *sechora* (commerce) with forbidden foods. This applies to most foods that are forbidden by Torah law (mainly meat and fish, but not wine).²

According to most *Rishonim*, the prohibition of *sechora* is from the Torah,³ although significant opinions among the *Rishonim* and *Acharonim* say it is Rabbinic.⁴ The Rashba⁵ maintains that the reason for the prohibition is to minimize the chance one will eat forbidden foods, whereas others say it is a *gezeirat hakatuv*.⁶ In any case, the prohibition applies only to items that are usually acquired for eating purposes⁷. The consensus of *poskim* is that this prohibition applies as long as a Jew owns the food in the framework of a commercial process, even if he is not expected to come in direct contact with the food.⁸

The Rama⁹ rules that it is forbidden to buy non-kosher food

1. *Vayikra* 11:11.

2. See *Shulchan Aruch, Yoreh Deah* 117:1.

3. See *Shut Chatam Sofer, Yoreh Deah* 104-106, 108; *Yabia Omer* VIII, *Yoreh Deah* 13.

4. See *Noda B'Yehuda* II, *Yoreh Deah* 62.

5. *Shut HaRashba* III:223.

6. Heavenly decree without a known reason.

7. *Shulchan Aruch* op. cit.

8. *Chatam Sofer* op. cit. 104.

9. *Yoreh Deah* 117:1.

in order to feed it to non-Jewish workers. The *Taz*¹⁰ explains that if one is required to feed his workers, buying cheaper non-kosher food for them is a commercial act, just like buying food to pay a debt. The *Shach*¹¹ disagrees with the Rama, apparently because in his view, the Jew is using the food for his own non-eating purposes, not using it commercially. He questions the Rama's ruling based on a *Yerushalmi* that states that one who bought pigs to give to his workers can sell them, implying that one is allowed to buy non-kosher animals for his workers. (The *Taz* counters that the *Yerushalmi* was discussing getting rid of items that were bought improperly.)

All agree that one may give money to his non-Jewish worker so that he can buy food for himself, even if he knows the non-Jew will buy non-kosher food.¹² Based on this, one could argue that since the Jew does not benefit by acquiring the food and then giving it to the worker (as opposed to giving the money to the worker), the prohibition of commerce should not apply.¹³ Those who are stringent can counter that the fact that there is another way of getting to the same situation does not mean that the direct acquisition is not considered a benefit.

There is logic to distinguish between cases in which the food is delivered to the Jew who then gives it to the non-Jew and cases in which he arranges for someone else to deliver it to the non-Jew. First, when the food is under the Jew's control, the concern arises that he might come to eat it, which some say helps define the prohibition's parameters.¹⁴ Additionally, it is more difficult to arrange or to make the claim that the Jew does not acquire ownership of the food (which might be at the heart of the problem¹⁵) when it is brought into his home. The details are

10. Ad loc. 2.

11. Ad loc. 3.

12. *Knesset HaGedola, Yoreh Deah* 117, *Beit Yosef* 20.

13. See *Chelkat Binyamin* p. 194.

14. See *Chatam Sofer* op. cit.

15. Ibid.

complex.

On the other hand, the *Aruch HaShulchan*¹⁶ agrees with the *Shach* that there is no prohibition to buy food to give to workers. The *Aruch HaShulchan* argues that if one has workers in his home whom he must feed, since the natural thing is that they should eat (the cheaper) non-kosher food, fulfilling that need in the natural way is not considered initiating commerce. According to this logic, if the worker lives and functions separately from his Jewish boss but they have included food in his “compensation package,” it is more likely to be considered initiating commerce. Giving non-kosher food as a present will not solve the problem; giving a present is, paradoxically, forbidden,¹⁷ because the investment in good relations is considered equivalent to selling the food to the non-Jew.

In the final analysis, there are respected opinions on this matter in either direction, and it is legitimate to acquire non-kosher food for a non-Jewish worker in cases of significant need. One should try, if feasible, to arrange that the Jew does not acquire the food, neither physically nor legally, but arranges its transfer from supplier to worker and thereby also avoids *marit ayin*.¹⁸

16. *Yoreh Deah* 117:19.

17. See *Shach* op. cit.

18. See *Teshuvot V'Hanhangot* II:394.

E-6: Working in a Non-Kosher Establishment

Question: Is it permitted for a Jew to do work that involves food in a non-kosher establishment?

Answer: The question is general,¹ and the answer follows suit. For the purpose of this halachic investigation, we are referring to a case in which one can assume that the customers are not Jewish.

It is permitted to benefit from most non-kosher foods. Some notable exceptions are *chametz*, wine with a concern of use for idolatry, and beef and milk that were cooked together. In such cases, one may not earn money from dealing with them, even if he does not own the food or derive direct physical benefit from it.² However, it is uncommon for these foods to be forbidden in benefit according to all opinions. Regarding wine, many are lenient about benefit in times (like ours) when libations for idolatry are rare,³ and many meat and milk combinations are permitted in benefit (e.g., poultry, meat from a non-kosher animal, and when the combination took place without cooking⁴). It is thus **possible** that one could work in a non-Jewish restaurant without violating a prohibition of benefiting from forbidden foods.⁵

Another issue is working professionally with food that it is forbidden to eat.⁶ The *gemara*⁷ derives that even concerning forbidden foods from which one may benefit, one may not seek to **obtain** them for commercial purposes (*sechora*), but he can

1. We do not know if the question was asked in regard to a specific practical case or whether it is a matter of seeking general Torah knowledge.

2. See *Taz, Orach Chayim* 450:6.

3. See response E-4.

4. See *Shulchan Aruch, Yoreh Deah* 87, especially 87:3.

5. See more in *Tzitz Eliezer* XVII:33.

6. See also response E-5.

7. *Pesachim* 23a.

sell that which came his way unintentionally. According to most *Rishonim*,⁸ this is a Torah-level law, although significant opinions among *Rishonim* and *Acharonim* maintain it is Rabbinic.⁹

The Rashba¹⁰ says that the prohibition's rationale is that one who does commerce with food might eat it. Indeed, the prohibition concerning animals applies only to those non-kosher animals, dead or alive, which one has that are slated for eating (e.g., pigs, as opposed to horses). However, most *poskim*¹¹ posit that the prohibition applies even if a specific owner of the right type of animal is not in a position in which it is feasible that he will eat its meat.

Your question relates to the opposite case – someone who does not own the food but is in a position in which he is liable to eat it. The *Pitchei Teshuva*¹² assumes that if the prohibition of *sechora* is intended to distance one from eating the food, we should follow that logic for stringency and not allow one to work with non-kosher food, even if he does not own it. However, many *poskim*¹³ do not extend the prohibition to include such a worker.

There are often additional grounds for leniency in certain situations. *Sechora* is prohibited only regarding food forbidden by Torah law.¹⁴ In many dairy eateries, the food is primarily forbidden Rabbinically, at least according to many opinions (further discussion is beyond our scope). When the commerce is mainly not the type to which the prohibition of *sechora* applies, then despite the fact that some of the commercial activity is problematic, it is likely not forbidden. A classic example pertains to one who raises animals for their kosher meat; he is allowed to

8. See *Shut Chatam Sofer, Yoreh Deah* 104-106, 108.

9. See *Noda B'Yehuda II, Yoreh Deah* 62.

10. *Shut III*, 223.

11. See *Chatam Sofer* op. cit.

12. *Yoreh Deah* 117:6, citing the *Chatam Sofer* op. cit. 104.

13. Including *Sho'el U'Meishiv I:III:122; Igrot Moshe, Yoreh Deah I:51*.

14. *Shulchan Aruch, Yoreh Deah* 117:1.

sell the forbidden parts of the animals to non-Jews.¹⁵ We see from this that when most of a worker's activity revolves around food that it is permitted to deal with commercially, the fact that he will have a small amount of activity with foods that are forbidden based even on Torah law should not present a problem.

Even when the prohibition of *sechora* does not apply, however, it might still be halachically required to refrain from situations in which one could easily come to eat non-kosher food.¹⁶ One interesting source is the Maharsha,¹⁷ who discusses a situation in which one separates the non-kosher part from the kosher part of an animal and then cooks both (not together) before selling the former to non-Jews. The practical concern of eating the non-kosher food may be influenced greatly by the type of contact one has with the food and the extent to which he has permission to eat freely from the food with which he is working.¹⁸

In cases of **great need**, some *poskim* were **reluctantly** lenient and allowed people to work in non-kosher settings. However, the severity of the issues and the level of need vary greatly (e.g., a nurse in a non-kosher hospital vs. a waiter in a non-kosher restaurant), and each instance **requires the specific ruling of a *rav***.

15. See *Shut Chatam Sofer, Yoreh Deah* 108.

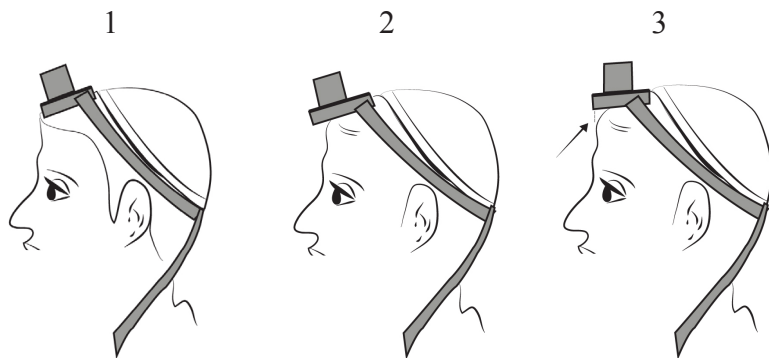
16. See a variety of opinions in *Yabia Omer* IV, *Yoreh Deah* 6.

17. Commenting on Rashi, *Chulin* 106a,

18. See *Yabia Omer* op. cit.

Section F:
Holy Articles

F-1: How to Tell When Your *Tefillin* Need Adjustment



[Periodically, we review with our readership the *halachot* of the proper position of the *tefillin shel rosh*. Many people motion to their friends to straighten their *tefillin* so that it will rest in the center of the head (i.e. in reference to right and left), although its being slight off-center is rarely a problem, whereas they do not realize that placement of the *tefillin* too far forward on the head is a significant and much more common problem. In *Living the Halachic Process*, vol. I, G-1, we discussed the *halacha* that the front edge of the *tefillin* must not go beyond the roots of the hair of the hairline.

I have visited many different shuls, representing a range of elements of the Jewish community, and it pains me to see large numbers of fine Jews who are definitely donning their *tefillin* improperly, and many others about whom it is hard to tell whether their *tefillin* is in the correct place, especially when they have receding hairlines. Since even some *talmidei chachamim*, who presumably know the *halacha*, get it wrong, apparently it can be challenging to **apply** the *halacha* to one's head. We will focus here on tricks to figure out how to do this.]

Question: How can one tell when his *tefillin shel rosh* needs adjustment?

Answer: The first rule of thumb is that someone who has not adjusted the knot of his *tefillin shel rosh* in several years almost certainly needs to adjust it now. *Tefillin* straps stretch slowly, as pressure is applied to them when the *tefillin* is fastened to the head (some apply more pressure than others). If one's hairline has not receded, he can easily check to see if that is indeed the case, and he should make sure that the *tefillin* rests on the head in such a way that the front of the box does not descend below the hairline.

What should one do if his original hairline is no longer recognizable? Let's take a quick layman's look at the anatomy of a normal human head. The skull is highest towards the middle (or slightly towards the back) of the head; going forward, the skull gradually slopes down. Near the front of the head, the slope increases, and then turns into a "cliff-like" change of direction (i.e., the forehead). The hairline usually ends somewhere in the increased downward slope. Normally, no hair (except eyebrows) is rooted in the forehead (see illustration #1).

Based on the above, the following are signs of incorrectly placed *tefillin*. If the end of the *tefillin shel rosh* looks like it is "hanging off a cliff," it is certainly much too far forward, as a line drawn downwards from the end of the *tefillin* would hit the forehead, and possibly even the nose (see illustration #2). Because of the head's increased slope, there may be a little space between the bottom of the *tefillin* and the head, even when the *tefillin* is stationed in the correct location. However, if there is too much room (e.g., if a finger fits in comfortably), the *tefillin* is very likely not in the right place (see illustration #3).

Another sign of misplaced *tefillin* is the *tefillin's* angle. The angle is determined primarily by where the *tefillin* is fastened to the head by the straps that extend from the back of the *tefillin*. Generally, *tefillin* positioned in the correct place will be basically upright, with a slight downward slant. If the *tefillin* has a serious

downward-facing slant, it is generally too far forward (unless one has a rounder head than most), such that its front is too far along the precipitous slope.

A final sign of misplaced *tefillin* relates to one's *kippa*. With average-sized *kippot* and *tefillin*, there should be little or no room between the front of the former and the back of the latter. One with a particularly large *kippa* or one who wears it on the top section of his head (as opposed to being partly on the top and partly on the back of the head) will have to move his *kippa* back to put the *tefillin* on properly.

When I look around in many of the *shuls* where I regularly *daven* or visit, I see too many people with apparent (or definite) problems in this regard. Among the older generation, I would estimate that well **above 50%** of the people have their *tefillin* too far forward. As I hate correcting people (not to mention the fact that most people hate being corrected), I am torn regarding the dilemma of in which situations the rectifiable problem is clear enough to halachically/morally require me to do the uncomfortable.¹ The following *limud zechut*² possibly lessens the problem. When most people don their *tefillin*, they first put it on their heads at a certain, temporary position and only then push it forward in the process of fastening it. Thus, many of those who wear the *tefillin* too far forward had it in the right place for a moment after the *beracha* was recited and before they fastened it (and therefore the *beracha* was not *l'vatala*), and they thereby may have fulfilled the *mitzva* for that short time.³

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1. Rav Kook, in *Chevesh P'er*, ch. 2 and 10, is very strict about the need to correct people when their *tefillin* is incorrectly placed.
 2. A logical point that demonstrates why someone's practice is not as problematic as it might appear.
 3. One does not fulfill the *mitzva* until the *tefillin shel rosh* is fastened in place (Rama, *Orach Chayim* 25:8), but it is not always obvious at which point it is considered sufficiently fastened.

LIVING THE HALACHIC PROCESS

More people should learn how to shorten the circumference of the head strap, which is often necessary for the *tefillin* to stay in the right place. You are invited to visit me or a *sofer* for help. (It may be easier to search online for “youtube tefillin head adjust.”) Then, you can help yourself and your friends do it yourselves.

F-2: Transferring Legal Ownership of a *Sefer Torah*

Question: I inherited a *sefer Torah* from my father, who had lent it to a *shul* with the condition that it remain his personally. In order to ensure that the *sefer Torah* is properly taken care of, I want to transfer ownership of the *sefer* to a trust, in which I will retain decision-making power during my lifetime, but through which trustees will eventually determine what is best for it. Is the transfer akin to selling a *sefer Torah*, with all the halachic questions that such a sale raises?

Answer: The rules limiting when and under what conditions one may sell holy objects are complicated; selling a *sefer Torah* has the most stringent requirements. These rules appear primarily in the context of a *sefer Torah* that is communally owned.¹ The *Shulchan Aruch*² cites two opinions regarding whether a private individual who owns a *sefer Torah* may sell it. Although even the more lenient of these opinions forbids selling a privately owned *sefer Torah* if it was given over to the community for their use, the *Magen Avraham*³ writes that there are exceptions. When the owner of the *sefer Torah* stipulates that he does not want the laws of communal items to take effect or when the *minhag* of that location is to treat a *sefer Torah* given over to the community as if it is still held privately, one is permitted to sell it. In general, one may rely on the lenient opinions in this matter.⁴ In addition, in your case there are grounds to be lenient even without resorting to those opinions, as we will now explain.

In general, there are two issues that limit when one is allowed to sell a holy object, but neither issue is a problem in your case.

1. See *Shulchan Aruch, Orach Chayim* 153:2.

2. *Orach Chayim* 153:10.

3. Ad loc. 22.

4. See *Achiezer* III:79.

The first of these issues is the prohibition to sell the object with the intent to use it for some mundane purpose (or even for a purpose less holy than the normal use of the object). For example, one may not sell a *shul* to be turned into a building of some regular use. In your case, we assume that your trustees will make sure the *sefer Torah* will not be used for anything other than for the regular uses of a *sefer Torah*. The other issue relates to what is done with the proceeds of the sale of the holy object. In your case, this issue as well is not relevant, since you will not be receiving any money at all during the transfer. Indeed, the *Mishna Berura*,⁵ basing himself on the Rama,⁶ says that if one simply gives someone else a *sefer Torah* as a present and the *sefer Torah* will continue to be used as a *sefer Torah*, there are no halachic limitations.

In truth, the trust you are describing⁷ would probably be viewed both halachically and legally as assigning the *sefer Torah* to charitable use (*hekdesh*). Just as you are allowed to take a *sefer Torah* and donate it to a *shul*, you may take one and donate it to a trust whose trustees will decide who will benefit from it in the future. Doing so to protect the *sefer Torah* from an uncertain future, which appears to be your concern,⁸ would seem to be a noble act.

There is an additional issue to consider, however – the *mitzva* to “write” a *sefer Torah*.⁹ The *Torat Chayim*¹⁰ says that the *mitzva* of writing a *sefer Torah* requires continued possession, and it is therefore improper to sell or donate it (fully), because that uproots one’s *mitzva*. If the trust takes effect during your lifetime, one could argue that the transfer indeed would be problematic (if you do not own another *sefer Torah*). On the other hand, not all agree

5. 153:68.

6. *Orach Chayim* 153:11.

7. There are different types of trusts.

8. We know nothing about the nature of these concerns in your specific case.

9. *Devarim* 31:19; see Rambam, *Sefer Torah* 7:1.

10. *Sanhedrin* 21b, cited by many subsequent *Acharonim*.

with the *Torat Chayim*. Furthermore, the *Seridei Aish*¹¹ posits that the *Torat Chayim*'s thesis is accepted only in regard to actually selling the *sefer Torah*. However, if one donates a *sefer Torah* to a *shul* or to some similarly good cause, it is considered as though he has used the *sefer Torah* for its proper *mitzva* use.

There is likely an additional, very different reason why uprooting the *mitzva* of writing a *sefer Torah* is not an issue in your case. One does not fulfill this *mitzva* by possessing a *sefer Torah* that he merely inherited.¹² Therefore, you presently are not fulfilling the *mitzva* anyway via this *sefer Torah*, because you did not write the *sefer Torah* by yourself (and did not pay a scribe to write it as your agent¹³); you merely received it in some other manner. If in any event you are not fulfilling the *mitzva*, there is presumably nothing to lose by transferring its ownership. However, this point is not agreed upon unanimously. Rav Moshe Feinstein¹⁴ claims that this *mitzva* actually includes two elements: both to write a *sefer Torah* and to possess one. According to this understanding, if one inherits a *sefer Torah*, he fulfills the element of possession, even though he is missing the element of writing. Accordingly, giving away such a *sefer Torah* indeed does deny one of the element of possessing a *sefer Torah*.

In summation, the issues of selling a *sefer Torah* per se do not apply to the creation of a trust of the type you describe. While one could claim that the founder of the trust uproots his *mitzva* of owning a *sefer Torah* in the process, we assume that in your case there are ample halachic reasons to counter that claim, and you may therefore do what you feel is best for the *sefer Torah*'s future.

11. II:77.

12. *Sanhedrin* 21b; Rambam op. cit.; *Shulchan Aruch, Yoreh Deah* 270:1.

13. Rambam, *Sefer Torah* 7:1. The question of whether one fulfills the *mitzva* by buying a *sefer Torah* is not a simple matter; see Rama, *Yoreh Deah* 270:1.

14. *Igrot Moshe, Orach Chayim* I:52.

F-3: Changing a Shabbat *Tallit* into a Weekday One

Question: After I purchase a new *tallit* to use on Shabbat, may I use the old one during the week?

Answer: We find in several contexts the concept of *ma'alin bakodesh v'ein moridin*¹ – one may only raise the status of a sacred object (or person) but not diminish it. The question is thus if this principle is relevant to your case regarding the Shabbat *tallit*.

The *Beit Yosef* cites the *Mordechai*,³ who says that an object that was used for the purposes of a *mitzva*, such as a candelabrum in *shul*, may be switched to another *mitzva* use, even if the latter is of a lower level of importance than the former. He explains that *ma'alin bakodesh v'ein moridin* applies to *tashmishei kedusha* (objects that “serve holiness,” especially sacred scrolls), but not to *tashmishei mitzva* (objects that are not holy, even though they are used for *mitzvot*). Some *Acharonim*⁴ posit that since *tzitzit* is a classic *tashmish mitzva*,⁵ *ma'alin bakodesh v'ein moridin* does not apply to it; one may switch it to another *mitzva* use and need only avoid disgracing it.⁶ However, these *Acharonim* do note that there are important sources that apply the principle of *ma'alin bakodesh v'ein moridin* to *tzitzit* as well. Those sources may argue with the *Mordechai*⁷ or may represent practices of extra stringency.⁸

1. See *Menachot* 99a.

2. *Yoreh Deah* 259.

3. *Bava Batra* 492.

4. Including *Maharsham* II:39 and *Yabia Omer* II, *Orach Chayim* 1.

5. *Megilla* 26b.

6. *Shulchan Aruch*, *Orach Chayim* 21:1-4.

7. See *Darchoi Moshe*, *Yoreh Deah* 259:3; the *Shach*, *Yoreh Deah* 259:11, supports the *Mordechai*.

8. *Maharsham* op. cit.

The *Shulchan Aruch*⁹ rules that one may remove kosher *tzitzit* from his garment as long as he will put it on another one. In addition, most *Acharonim*¹⁰ permit moving the *tzitzit* from a *tallit gadol* (what we call a *tallit*) to a *tallit katan* (what we call *tzitzit*). However, there is a minority opinion that does forbid doing so, invoking the concept of *ma'alin bakodesh v'ein moridin*, as based on halachic or kabbalistic factors, a *tallit* is of a higher level than *tzitzit*.¹¹ Furthermore, not all proponents of the majority opinion dismiss the relevance of *ma'alin bakodesh v'ein moridin* to a *tallit* or *tzitzit*; some agree that it is relevant but deny that there is a fundamental difference between the two garments regarding the *mitzva*. Moreover, the *Magen Avraham*¹² and the *Mishna Berura*¹³ explain the *minhag* of having an *atara*¹⁴ on the *tallit* as aiding one to keep the two front *tzitzit* in their more prominent position, the importance of which is due to the principle of *ma'alin bakodesh v'ein moridin*. While they note that the Ari's practice was not to be careful to maintain the positions of the *tallit*'s sides, the stringent opinion that one should be careful appears to be quite accepted. Thus, we see that it is not always obvious how to determine when a change to a *tallit* is a prohibited diminishment. It is therefore worthwhile to seek additional grounds for leniency.

The *Taz*¹⁵ suggests that if one has decided to stop using a holy object for its designated purpose, making it a candidate for *geniza*, it is better to “lower” its usage than to totally take it out of use. Based on this, since it is appropriate to periodically upgrade a Shabbat *tallit*, it actually would be preferable to use the old Shabbat *tallit* during the week, rather than to stop using it

9. *Orach Chayim* 15:1.

10. Including *Artzot HaChayim* 15:1; *Mishna Berura* 15:1.

11. See discussion in *Yabia Omer* op. cit.; *Tzitzit* (Cohen), p. 286.

12. 8:6.

13. 8:9.

14. Literally, a crown; this refers to a special addition attached to one side of the *tallit* to show that this is the side that goes on or near the head.

15. *Orach Chayim* 154:7.

completely. However, the *Taz*'s opinion is not widely accepted.¹⁶

One strategy that might prevent your question from being a real issue is to stipulate, when you initially purchase the *tallit*, your intention to eventually transfer it to weekday use.¹⁷ However, usage of the idea of stipulations in such matters is not a simple matter.¹⁸

Despite scant authoritative discussion of the topic, we would confidently permit one to transfer a *tallit* from Shabbat use to weekday use for the following reasons: It is unclear to begin with that a Shabbat *tallit* has any more *mitzva* importance than a weekday one does. First, the fact that the weekday *tallit* is used six days a week as opposed to only once may have halachic significance and actually give the **weekday** *tallit* more *mitzva*-importance. More fundamentally, even if a Shabbat *tallit* is more prominent than a weekday one, this is not in regard to the *mitzva* of *tzitzit* but rather because wearing nicer **garments** is a means of honoring Shabbat.¹⁹ Therefore, one could claim that buying a new *tallit* and using the old one for weekdays is comparable to buying a new suit for Shabbat and using the old one for weekdays – a practice we have never heard questioned on the grounds of *ma'alin bakodesh v'ein moridin*.

Thus, based on several reasons, one should have no compunctions about using a former Shabbat *tallit* for weekdays.

16. See *Sha'ar HaTziyun* 154:23.

17. See *Shulchan Aruch, Orach Chayim* 42:2.

18. See *Shut Maharam Shick, Orach Chayim* 24; *Yoma* 12b; *S'dei Chemed*, vol. V, p. 109.

19. Rambam, *Shabbat* 30:3.

F-4: Taking a *Yad* into a Bathroom

Question: I have a *yad*¹ for a *sefer Torah*, which is a family heirloom. I like to use it when I *lain*, so I bring it with me to *shul*. May I enter a bathroom while it is in my pocket?

Answer: We must first investigate the halachic status of a *yad*.

The *Terumat HaDeshen*² forbids using support rods of the *parochet* (curtain) of an *aron kodesh* as “*pachim* with which to mark the *sefer Torah* for the obligation of the day,” as this would constitute a depreciation in the status of the objects. The Rama,³ in accepting this opinion, explains that *pachim* are “the [pieces of] wood used to mark the *sefer Torah* ...” It appears to me that this refers to tags that some *shuls* hang on *sifrei Torah* to indicate which *sefer Torah* is open to which reading (weekly *parasha*, Rosh Chodesh, fast day, etc.).⁴ The *Magen Avraham*⁵ explains: “They are not for adornment or to dress [the *sefer Torah*], but rather for a sign that they should not err.” However, he concludes: “But now the practice is to hang them from the *sefer Torah* for adornment.” In other words, when one hangs such a marker from a *sefer Torah* in a manner that it is decorative, this use has importance, and therefore one may use the *parochet*’s support pole for that purpose.⁶

However, the *Machatzit HaShekel*⁷ is unsure whether the *Magen Avraham* is referring to the tags, as we understand in the *Terumat HaDeshen*, or whether he refers to a *yad*. The *Pri*

1. The pointer that helps the *ba'al korei* and/or the *oleh* keep the place.

2. II:225.

3. *Orach Chayim* 154:6.

4. The reader is encouraged to see the original rather than my translation.

5. 154:14, commenting on this Rama.

6. *Mishna Berura* 154:31.

7. To *Magen Avraham* op. cit.

*Megadim*⁸ and the *Mishna Berura*⁹ understand that the *Magen Avraham* is indeed referring to a *yad*. This interpretation works well with the language of the *Magen Avraham* because he implies that the item in discussion is something that only over time started to be hung on the *sefer Torah*; a tag would, by its nature, always be hanging from the *sefer Torah* while in the *aron kodesh*. It follows, then, that the *Magen Avraham* maintains that in times when a *yad* is an adornment that is hung from the *sefer*, it has the status of *noyei kedusha* (things that adorn a holy object). Among the *halachot* of a *noy kedusha*, which is a form of *tashmish kedusha*,¹⁰ are the laws that it requires *geniza*¹¹ and that it may not be brought into a bathroom.¹²

However, your case may be different. If the *yad* was never used for hanging on a *sefer Torah* as an adornment, but rather is always brought by members of the family to use in whatever location necessary and is then taken home, there is no basis to consider it *noyei kedusha*.¹³ We would then apply to it the status that the *Terumat HaDeshen* and Rama attributed to it – that of a lesser *kedusha* than something that is used in a *shul* in a manner not directly related to holy texts (*tashmishhei mitzva*). Even if the *yad* is beautiful, it is an adornment of **the mitzva of reading** the Torah, not of the *sefer Torah* itself, as it is not designed to hang from or even touch the *sefer Torah*.

That being said, we should apply the balanced approach that *poskim* used in relation to non-*kadosh* religious objects. Neither *tzitzit* nor a *tallit* have *kedusha*.¹⁴ Yet, the *Mishna Berura*¹⁵ rules that although *tzitzit* may be brought into a bathroom, a *tallit*,

8. *Eshel Avraham* 154:14.

9. Op. cit.

10. An object that serves a holy article.

11. *Megilla* 26b.

12. See *Shulchan Aruch, Yoreh Deah* 282:16; *Shach, Yoreh Deah* 283:6.

13. *Shevet HaLevi* VI:63.

14. *Megilla* op. cit.

15. 21:14.

which is used exclusively for the *mitzva* of *davening*, should not be brought there. It would seem that a *yad*, which relates to the *sefer Torah* and aids in the *mitzva* of its public reading, is no less deserving of dignity than a *tallit*, and a *yad* should therefore not be brought uncovered into a bathroom.

Nevertheless, if indeed your *yad* was never hung from the *sefer Torah* as an adornment, we propose that proper halachic balance requires limiting this stringency. The ruling against bringing a *tallit* into a bathroom is a recommendation, not a full-fledged *halacha*,¹⁶ and the *yad* in question should not have a more stringent status than that of a *tallit*. One might also claim that it is not clear that a modern bathroom, with the hygienic conditions enabled by plumbing, is considered a “filthy place.”¹⁷ Considering these two halachic factors, one could argue for leniency.

Still, we discourage you from taking the *yad* **exposed** into a bathroom. However, whereas a *sefer Torah* and *tefillin* may be brought into a bathroom only if covered with two covers, and at least one of these covers must not be the usually used cover,¹⁸ significant opinions hold that one cover suffices for holy texts of lower level holiness.¹⁹ In the case of your *yad*, then, we think that you may bring it into a bathroom if you keep it fully covered.

16. *Mishna Berura* 8:37; see *Living the Halachic Process* vol. II, G-5.

17. See *ibid.* H-10.

18. *Shulchan Aruch, Orach Chayim* 43:6.

19. *Magen Avraham* 43:14; see *Mishna Berura* 43:25; *Living the Halachic Process* II, G-4.

F-5: Disposing of Cups Used for *Netilat Yadayim*

Question: I have plastic cups that we had used for *netilat yadayim* and *neigel vasser*,¹ but we no longer need them. Should I put them in *geniza*,² just keep them, or dispose of them (and, if so, how)?

Answer: The *gemara*³ states that *tashmishei mitzva*⁴ may be thrown away, as opposed to *tashmishei kedusha*,⁵ which require *geniza*. The examples given for *tashmishei mitzva* are *sukka*, *lulav*, *shofar*, and *tzitzit*.

However, the *Tur*⁶ cites the *She'iltot* as saying that as long as *tzitzit* strings are still attached to their garment, they must be treated with respect and may not be used for non-*mitzva* purposes. Although they lack intrinsic sanctity, using them for other purposes while they are still slated for *mitzva* use constitutes a *bizuy mitzva*.⁷

Does the concept of *bizuy mitzva* apply even after one has finished using the object for the *mitzva*? The *Shulchan Aruch*⁸ rules that *tzitzit* strings may be discarded in the garbage (although they may not be **used** for something disgraceful⁹). On the other

1. These are the main ritual uses of washing cups. *Netilat yadayim* refers to the more formal obligation of washing before eating bread, and *neigel vasser* is the term used regarding washing one's hands upon awakening after the night's sleep.

2. The burial of holy articles when they will no longer be used, so that they will not be disgraced.

3. *Megilla* 26b.

4. Objects used to facilitate a *mitzva*.

5. Objects that serve holy articles, especially sacred texts.

6. *Orach Chayim* 21.

7. Disgrace of a *mitzva*.

8. *Orach Chayim* 21:1.

9. See *Mishna Berura* 21:3.

hand, the *Kolbo*, cited by the Rama in his *Darchei Moshe*,¹⁰ says that the *gemara* means only to exempt *tzitzit* strings from *geniza*. One may still not disgrace them, including, posits the Rama,¹¹ by throwing them out in a disgraceful place. The Rama also cites the Maharil's more stringent practice to put *tzitzit* strings in *geniza* as a preferable but not binding practice.

The fact that different objects appear to have different levels of *tashmishei mitzva*, depending primarily on the level of the object's connection to the *mitzva*, adds complexity. For example, the *Shulchan Aruch*¹² rules that although one may not disgrace a *tallit*, the garment itself does not require *geniza* but may be thrown into the garbage. Although, as we saw, the Rama ruled more strictly regarding the *tzitzit* strings, he agrees that the garment itself does not require *geniza*.¹³ This is because although *tzitzit* are meaningless without the garment, the strings are the main part in terms of fulfillment of the *mitzva*.

A similar distinction exists regarding a *sukka*. The *Mishna Berura*¹⁴ forbids throwing *s'chach* into a garbage dump or even into a place where many are likely to trample on it. Regarding the walls of the *sukka*, he cites the *Pri Megadim* as saying that one should not use them directly for something disgraceful,¹⁵ but he mentions no limitations on throwing them out. Here too, although walls are needed for a *sukka* and are set aside for its exclusive use during the *chag*,¹⁶ the *s'chach* has a higher *mitzva* status, and this fact may increase how much care is required for them even after the *mitzva* is over.

10. Commenting on the *Tur/Beit Yosef, Orach Chayim* 21:1.

11. *Orach Chayim* 21:1.

12. 21:2.

13. Understanding of the *Mishna Berura* 21:13; see practical complexity in *Living the Halachic Process*, vol. II, G-8.

14. 21:6; 638:24.

15. In *Mishbetzot Zahav* 21:2, he is uncertain on the matter.

16. *Shulchan Aruch, Orach Chayim* 638:1.

What is the level of a *netilat yadayim* cup's *mitzva* status in this regard? Our halachic intuition is that it is similar to that of a *tallit* and the walls of a *sukka*, rather than to that of *tzitzit* strings and *s'chach*. After all, while a utensil (or a body of water) is required for *netilat yadayim* before a meal, the specific qualifications for this utensil are very broad and general; one does not need to use a special *netilat yadayim* cup.¹⁷ Therefore, we posit that there is no halachic prohibition to throw such a cup into the garbage, just as in the case of *sukka* walls.

Simple cups that are also used for other kitchen purposes besides *netilat yadayim* do not assume any halachic status whatsoever. If the cup is a special one used specifically for the *mitzva*, however, it would be laudable to avoid putting it directly into the garbage, especially if the cup has identifying elements that link it to the *mitzva*.¹⁸ Placing the washing cup into an opaque bag before throwing it out sufficiently removes any *bizuy*. Placing it in a recycling bin (if feasible) is a cleaner and more dignified solution than putting it into a regular garbage.¹⁹ *Geniza* is certainly not required, and keeping it "around," without disgraceful use, is indeed fine.

The status of a cup that is used primarily for *neigel vasser*, after using the bathroom, or before *davening* should be even more lenient, as there is no real halachic requirement to use a cup for these.²⁰

17. See *Shulchan Aruch, Orach Chayim* 159.

18. See this distinction in *Ginzei HaKodesh* 20:(9) in the name of HaRav Chaim Kanievsky.

19. See distinction between a "cleaner" and a "dirtier" garbage in *Shevet HaKehati* IV, *Orach Chayim* 10.

20. See *Shulchan Aruch* and Rama, *Orach Chayim* 4:7.

Section G:
Miscellaneous

G-1: The Halachic Propriety of Cosmetic Surgery

Question: What does Halacha have to say about cosmetic surgery, such as rhinoplasty¹?

Answer: From both a halachic and a philosophical perspective, there is a significant difference between cases of needless surgery and cases of gross malformations. We will survey halachic elements of the topic that relate to cases in which it is readily understandable why a serious observant Jew might feel a need or a strong desire to undergo cosmetic surgery.

The fundamental issue that *poskim* discuss is that of injuring oneself as part of the process of surgery. The *gemara*² refers to a *machloket* among *Tannaim* regarding whether one is allowed to injure himself, and the Rambam³ and *Shulchan Aruch*⁴ rule that it is forbidden. The question is whether elective surgery that is done for an understandable reason is included in the prohibition. On the one hand, surgery entails cutting the body, and *Tosafot*⁵ writes that one may not damage himself even for gain. On the other hand, *Chazal* allowed cutting the skin for certain purposes, including bloodletting⁶ and removing splinters.⁷

Some *poskim* rule that a procedure done to correct a blemish, even if it is just a significant aesthetic one, is considered healing and is included in the doctor's mandate to heal, even though the procedure is not intended to correct a classic medical problem.⁸ Others infer from the Rambam's language that only violent

1. Often called "a nose job."

2. *Bava Kama* 91b.

3. *Chovel U'Mazik* 5:1.

4. *Choshen Mishpat* 420:31.

5. *Bava Kama* 91b.

6. See *Yevamot* 72a.

7. *Sanhedrin* 84b.

8. *Mishneh Halachot* IV:246, based on *Ketubot* 74b.

damage to the body is forbidden, not constructive incisions done to improve it.⁹ There is a difference between these two lenient approaches in a case in which the situation is not one of an outright blemish, yet the surgery can still provide significant improvement. Rav Ovadia Yosef¹⁰ reasons that it is important that one distinguish between different levels of gain.

Another issue is the potential danger to life posed by surgery, specifically one that requires general anesthesia.¹¹ In our times, the chance of death from simple surgery is minute (assuming a responsible choice of medical practitioners). While we do not generally take stands on medical questions, one could say that the danger is roughly equivalent to having a fatal accident when driving a few hundred miles. While there have been *poskim*, at least decades ago,¹² who have forbidden cosmetic surgery that requires anesthesia on those grounds, it is a difficult position to maintain today.¹³

Some *poskim* suggest an interesting distinction between the genders that can be considered. Instances in which men are concerned about their appearance to a degree that is not normal for a man raise the question of the prohibition of *lo yilbash gever simlat isha*.¹⁴ While this literally refers to cross-dressing, *Chazal* apply it to several activities that are considered normal specifically for the opposite gender.¹⁵ For example, the *gemara*¹⁶ states that it is permitted for a man to remove certain scabs from his face that cause him pain, but it is forbidden for the purpose of beautification. Rashi¹⁷ explains that the problem is *lo yilbash*.

9. *Igrot Moshe*, *Choshen Mishpat* II:66; see *Minchat Shlomo* II (5759 edition):82 and *Minchat Yitzchak* VI:105.

10. *Yabia Omer* VIII, *Choshen Mishpat* 12.

11. Nowadays, general anesthesia is not always necessary.

12. *Minchat Yitzchak* op. cit.; *Aseh Lecha Rav* IV:65.

13. See *Yabia Omer* op. cit.

14. *Devarim* 22:5.

15. See *Shabbat* 94b; *Nazir* 59a.

16. *Shabbat* 50b.

17. Ad loc.

*Tosafot*¹⁸ comments that the pain that justifies the procedure does not have to be physical. On the contrary, if a man is embarrassed to be seen among people in that state, then “there is no greater pain than that.” Therefore, although there is likely to be a difference between genders regarding the extent of a blemish that justifies surgery, it can be permitted for a man whose aesthetic problems would be disturbing for the average man.¹⁹

The *Tzitz Eliezer*²⁰ claims that undergoing surgery to change one’s God-given appearance (excluding consequences of illness or injury) is an improper intervention in the way HaShem created the world. Most of his contemporaries reject or ignore this position in situations in which a person’s feelings are understandable. However, it is worthwhile to add this philosophical point to the above halachic discussion regarding cases in which there is nothing objectively wrong with a person’s appearance.

18. Ad loc.

19. *Mishneh Halachot* IV:247; *Minchat Shlomo* op. cit.

20. XI:41.

G-2: Leaving *Eretz Yisrael* for a Trip

Question: May one leave Israel for a short trip – for example, to enjoy HaShem’s creations that can be seen abroad?

Answer: The issue of leaving *Eretz Yisrael* has been discussed in many contemporary works written since we have been blessed with the ability to live in our own state in *Eretz Yisrael*. In the present response, we will not address the possible impact of the differences between the borders of Biblical/historical *Eretz Yisrael* and of the State of Israel, which are quite similar, although the matter is worthy of discussion. We will present here an introduction to the discussion, classical sources, and halachic indications.

There are three possible halachic problems with leaving *Eretz Yisrael*, which themselves can be explained in different ways: 1) uprooting oneself from fulfillment of the *mitzva* to live in *Eretz Yisrael*¹; 2) violating an (apparently) lower-level prohibition of leaving²; 3) for a *kohen*, the imperative to avoid being contaminated by the Rabbinic-level impurity of *chutz la'aretz*.

There are a number of Talmudic sources that discuss this issue. The *gemara* in *Ketubot*³ states that it is forbidden to “leave *Eretz Yisrael* for [even] Bavel” and also tells of Rabbi Chanina directing someone not to leave to perform the *mitzva* of *yibbum*. However, these sources are likely referring to leaving permanently or for an extended period of time,⁴ whereas a short trip is far less of a problem. Not only is the possible problem of such an absence more short-term, but it is also likely that one does not uproot the *mitzva* of living in *Eretz Yisrael* even during the time he is abroad; where one lives is not determined by where he is at a given moment.

1. See Ramban on Rambam’s *Sefer HaMitzvot*, Omitted Positive *Mitzvot* 4.

2. In some sources, it is not clear which issue is under discussion.

3. 111a.

4. See *Tosafot*, *Avoda Zara* 13a.

Another *gemara*⁵ tells of how Rabbi Yochanan was reluctant to let Rav Assi leave *Eretz Yisrael* in order to greet his approaching mother. He eventually agreed, stressing that Rav Assi should return thereafter. It is possible, however, that the issue there was that Rav Assi was a *kohen*.⁶

The *gemara* in *Avoda Zara*,⁷ which explicitly addresses a *kohen*, states that he may not leave *Eretz Yisrael* without special justification. The examples given are to learn Torah in a qualitatively better way than in *Eretz Yisrael*, to get married, and to adjudicate with a non-Jew. *Tosafot*⁸ states that only these *mitzvot* are important enough to justify leaving (whereas the *She'iltot*⁹ maintains that all *mitzvot* are). Even so, *Tosafot* emphasizes the permission was only to leave temporarily.

A final *gemara*¹⁰ we will cite is about permission to shave on *Chol Hamo'ed* after returning from a trip to *chutz la'aretz*.¹¹ Shaving is not permitted if the trip was improper. The guidelines in this regard are that it is permitted to travel abroad for livelihood and forbidden to go “*lashut*,” which we will translate as going for the sake of travel. There is a *machloket* regarding a case in which the purpose of the trip was to make money that one did not **need**, and we rule leniently.¹² Apparently, a temporary trip (how long is unclear) **can** be inappropriate, but it is not very difficult to justify one.

The most prominent post-Talmudic source is the Rambam,¹³ who seems to take guidelines from several *gemarot*. He writes that it is permitted to leave *Eretz Yisrael* to marry, to learn Torah, and to adjudicate, but one must return. He then adds that one may

5. *Kiddushin* 31b.

6. See *Mishpat Kohen* 147.

7. 13a.

8. Ad loc.

9. Cited by *Tosafot* *ibid*.

10. *Mo'ed Katan* 14a.

11. See *Shulchan Aruch, Orach Chayim* 531:4.

12. *Ibid*.

13. *Melachim* 5:9.

also go temporarily to engage in commerce.

The consensus among *poskim* of the contemporary era,¹⁴ with slight variations, is that it is permissible to travel abroad for any significant reason (that is no less important than commerce). What this entails seems subjective and may depend on a *posek's* philosophy. The *Magen Avraham*¹⁵ mentions seeing a friend; presumably, taking part in a friend's significant *simcha* is at least as important. The *Shevet HaLevi*¹⁶ says there is room to be lenient in order to see the wonders of HaShem's work in nature, especially if one approaches that properly. Rav Lichtenstein¹⁷ is of the opinion that cultural enrichment is no less important than business opportunities. In *BeMareh HaBazak*,¹⁸ after emphasizing the feeling one should have for being in Israel, we gave as examples of legitimate reasons educational trips and family vacations that do not have a viable alternative in Israel.

While there are too many sources and scenarios to analyze exhaustively, we hope our survey is useful.

14. Rav Yisraeli, *Eretz Hemdah* I:10; *Yechaveh Da'at* V:57; *Shevet HaLevi* V:173.

15. 531:7.

16. Op. cit.

17. Cited on the Yeshivat Har Etzion website.

18. IV:140, based on Rav Yisraeli's view.

G-3: Fulfilling a *Mitzva* without Intention

Question: Does one fulfill the *mitzva* of *yishuv Eretz Yisrael* (inhabiting the Land of Israel) if he lives there without *kavana* (intention to fulfill the *mitzva*)?

Answer: The *gemara* discusses the question of whether *mitzvot tzrichot kavana* (a *mitzva* is valid only if performed with the intention to fulfill it) with regard to a number of *mitzvot*, including reading *Kri'at Shema*¹ and blowing *shofar*.² The *Shulchan Aruch*³ rules that *kavana* is required, but there is significant discussion about whether this applies to *mitzvot* that are only Rabbinically mandated.⁴ Thus, one could conjecture that the possibility of fulfilling the *mitzva* of *yishuv Eretz Yisrael* without having *kavana* depends on whether the *mitzva* is from the Torah (Ramban⁵) or is Rabbinic (simple understanding of the Rambam⁶).

There are several opinions, however, that the issue of *mitzvot tzrichot kavana* does not apply to all *mitzvot*. The Ran⁷ writes that even the opinions that usually require *kavana* do not necessarily require it for *mitzvot* that involve the physical enjoyment of eating, such as eating *matza*. This distinction is rooted in the *gemara*'s statement that the exemption from bringing a *korban* for an unintentional sin does not apply to sins from which physical enjoyment is derived⁸; a significant act has been performed, regardless of intent. *Yishuv Eretz Yisrael* apparently

1. *Berachot* 13a.

2. *Rosh Hashana* 28b.

3. *Orach Chayim* 60:4.

4. See *Mishna Berura* 60:10.

5. Ramban's comments on the Rambam's *Sefer HaMitzvot*, Omitted Positive *Mitzva* #4.

6. See discussion in *Amud HaYemini* 22.

7. *Rosh Hashana* 7b in Rif's pages.

8. See *Kritot* 19b.

does not fit into this category, as the *mitzva* is fulfilled by living in the Land, not by receiving physical enjoyment. However, others⁹ understand that one is not required to have *kavana* for any *mitzva* that is done via a classic physical action (including the *mitzva* of *lulav*¹⁰), as opposed to a *mitzva* fulfilled by speech (e.g. *Kri'at Shema*) or hearing (e.g. *shofar* blowing). According to this distinction, perhaps one would not need *kavana* to fulfill *yishuv Eretz Yisrael*, which calls for the presence of one's body, not speaking or hearing.

A similar distinction is found in *Kovetz Shiurim*,¹¹ in which Rav Elchanan Wasserman argues that one fulfills *mitzvot* that are conceptually result-oriented even without intention; the important thing is that the result was achieved. Examples he gives include repaying debts and *pru u'revu* (procreation). *Yishuv Eretz Yisrael* is tricky from this perspective. On the one hand, one does not reach a result due to which he can say the *mitzva* is complete. However, the *mitzva* is apparently to be in the state of living in the Land (the parameters are beyond our present scope). Thus, it is a *mitzva* of a result, but it is an ongoing state/result. Accordingly, *yishuv Eretz Yisrael* would not require *kavana*.

Rav Asher Weiss¹² explains this distinction as follows. The requirement of *kavana* applies to *mitzvot* that are significant only when done as service to HaShem. If, however, the result of the *mitzva* is intrinsically significant, the *mitzva* obligation is satisfied even if that result was reached without intent for the *mitzva*. Having children, for example, is significant even when it does not result from overt intent for service of HaShem, and the same is presumably true of *yishuv Eretz Yisrael*.

Despite the above, it is important to note that there are two elements in fulfilling a *mitzva*: 1) technical fulfillment, the greatest ramification of which is that it exempts one from

9. See *S'dei Chemed*, vol. IV, p. 305.

10. *Ibid.* p. 306.

11. II:23.

12. Heard in a public lecture.

repeating an action for the *mitzva*; and 2) the reward one receives for its fulfillment. The various halachic discussions focus on the first element – the operative question of whether the *mitzva* needs to be repeated. But what happens regarding reward if one “performed” the *mitzva* without intent?

There is no way for human beings to determine HaShem’s reward system, but it is clear that HaShem will not give the same reward to one who accidentally performed a *mitzva* or did it solely for an extraneous reason as He will give to one who did it for the right reasons.¹³ The *Imrei Binah*¹⁴ cites the formulation of the author of the *Chochmat Adam*: Even if and when one is credited with fulfillment of a specific *mitzva* without *kavana*, he nevertheless fails to perform the general *mitzva* “to serve Him with all your heart.”¹⁵ With regard to living in *Eretz Yisrael*, there are different reasons that one might not have *kavana* to fulfill the *mitzva*, including a lack of belief in HaShem, a Satmar ideology, not knowing there is a *mitzva*, or not thinking about it specifically, even though he is aware that it is a good thing to do. These possibilities and many other variables impact on a person’s virtue and thus on his reward for the *mitzva*.

Regarding what was mentioned above that the element of fulfillment exempts one from repeating the *mitzva* action, the question here is totally moot. One never **completes** the *mitzva* of *yishuv Eretz Yisrael*. Whether or not one fulfilled the *mitzva* yesterday, the *mitzva* exists today and will exist tomorrow. And as the *mitzva* continues, it is certainly better to do it with *kavana*. Note that *kavana* is not needed during every moment of the performance of the *mitzva*. If one reflects on the *mitzva* at some point and nothing arises to change that or if it is clear from his behavior that he is doing the action because of the *mitzva*, then this is considered basic *kavana*.¹⁶

13. See a parallel idea in *Nazir* 23a.

14. *Orach Chayim* 4.

15. *Devarim* 11:13.

16. *Mishna Berura* 60:10.

G-4: Public Acknowledgment of Sin

Question: It seems that we do not follow the Rambam's opinion¹ that a sinner should publicly announce his sins that are "between man and his fellow." If my observation is correct, why is this?

Answer: The *gemara*² discusses the appropriateness of two related steps a person might include in the *teshuva*³ process. One question is whether he should specify the *aveira*⁴ he transgressed, which is the subject of a disagreement among *Tannaim*. The other question is whether one should publicize the sin. Regarding the second question, the *gemara* raises an apparent contradiction between *p'sukim*. One *pasuk* says, "Praiseworthy is one who ... covers up sin"⁵; the other states, "One who covers up his sins will not succeed."⁶ The *gemara* provides two distinctions to reconcile the *p'sukim*: 1) One should publicly acknowledge publicized sins; he should conceal unpublicized sins. 2) One should publicize sins between man and his fellow man; he should keep quiet about sins between man and HaShem. The Rambam you cited mentions only the second distinction and speaks positively about publicizing sins one did to his fellow, as part of the *teshuva* process.

The *Shulchan Aruch*⁷ recommends specifying one's sins, especially quietly, but does not require doing so. If one does not have to specify a sin, he obviously does not have to publicize it (publicizing refers to specific sins⁸). Indeed, the *Shulchan Aruch* does not mention publicizing sins as part of the process. All he says about involving others is that if one is trying to appease

1. *Teshuva* 2:5.

2. *Yoma* 86b.

3. Repentance.

4. Sin.

5. *Tehillim* 32:1.

6. *Mishlei* 28:13.

7. *Orach Chayim* 607:2.

8. See *Bach*, *Orach Chayim* 607.

someone he slighted, if the aggrieved party does not forgive him at first, he should take three people along with him up to three times.⁹

In truth, while the Rambam does require specifying sins,¹⁰ he does not **require** publicizing them. Rather, he writes: “It is very **praiseworthy** for one who repents to admit the matter in public ... and whoever is haughty and does not inform others but conceals his sins does not have complete *teshuva*.”¹¹ The previous *halacha* recommends the repenting sinner to “scream constantly before HaShem in tears ... and go into exile” In order to warrant such extreme steps, the Rambam must be referring to one who perpetrated a particularly grievous sin and decided to perform a very high level of *teshuva*. My preferred reading of the Rambam is that the *halacha* about publicizing one’s sins is referring to similar situations. Accordingly, in the case of simple sins that most people perpetrate, we would not expect a public pronouncement of remorse and apology.

There are other factors that justify not publicizing sins toward one’s fellow man. Rashi¹² says that one publicizes his sin in order to be embarrassed. Apparently, the embarrassment makes him more likely to attain atonement. On the other hand, embarrassment can also restrain people from taking action. In certain monetary contexts we find the concept of *takanot hashavim*, special dispensations made for those who sinned. Were they to be held to the strict law, many would lack the moral commitment to repent.¹³ Similarly, when the letter of the law requires only privately appeasing the aggrieved party, demanding the sinner to reach high levels of *teshuva* by publicizing his sin may be counterproductive.

Moreover, there is sometimes embarrassment not only for the

9. *Orach Chayim* 606:1.

10. *Teshuva* 2:3.

11. *Ibid.* 2:5.

12. *Yoma* 86b.

13. See one example in *Gittin* 55a.

sinner but for the aggrieved party as well. Making a big deal of the affront may cause the aggrieved party to painfully relive the event. Also, focusing the public's attention on what took place may be detrimental to the aggrieved party in a variety of different ways. Elsewhere,¹⁴ we explained that one who sinned against his counterpart should not hurt him further in order to facilitate the *teshuva* process. Indeed, the *Mishna Berura*¹⁵ writes that one should not specify the *aveira* while appeasing the aggrieved party if it will cause him pain. If pain to the aggrieved party is sufficient reason for the sinner to omit specifying the sin, which is generally a **required** part of the *teshuva* process, certainly it is reason for him to omit publicizing it, which is only **recommended**.

In summary, the Rambam apparently only recommended publicizing sins for people seeking the highest level of *teshuva* and/or for severe affronts, both of which are not very common. (Indeed, on rare occasions, there are public apologies.) In any case, basic *teshuva* does not require publicizing one's sins, which explains why the *Shulchan Aruch* does not mention it. In cases in which the prospect of publicizing will either discourage repentance or cause the aggrieved party pain, it is actually counterproductive.

14. *Living the Halachic Process*, vol. I, H-5.

15. 606:3.

G-5: Torah Knowledge for the Non-Observant¹

Question: I was raised as a secular Jew. One branch of my family is Charedi, and I enjoy spending time and learning with them. I do my best to observe *mitzvot* when I am with them, but at home I act the way my family does. One of my cousins voiced a concern that if I continue studying, I will lose my “protected” status as a *tinok shenishba*² and become a “*rasha*,”³ as I will then be failing to fulfill obligations that I know about. Another cousin said that studying Talmud cannot make you a *rasha*. I am not sure that the answer to this disagreement will affect my behavior, but it means a lot to people I care about, so I would appreciate your insight.

Answer: Your question is very thoughtful, and the open communication with your cousins is fascinating.

We must distinguish between issues. The broad use of the term *tinok shenishba* is perhaps most famously used by the Rambam,⁴ who distinguishes between people who themselves left traditional Judaism and their children, who were brought up with their parents’ viewpoints, even if they are aware of the traditional system. The Rambam posits that sanctions against those who undermine the accepted religious system do not apply to the second generation. In addition to not being penalized, he writes that the children should be engaged peacefully to enable their possible return to traditional Judaism. Although the Rambam does not assume that a successful outreach is ensured, he does not raise qualms that the outreach process, which must include elements

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1. The sources for this response were added during its preparation for publication and were not sent to the querier.
 2. Literally, one who was kidnapped as a child. In context, the term refers to one who is primarily not responsible for his religious shortcomings.
 3. An evil person.
 4. *Mamrim* 3:3.

of learning and Jewish inspiration, suspends the *tinok shenishba* status. This is the standard approach in our times as well.

The more important question, which your cousins probably have in mind, is how HaShem views the individual who was largely not to blame for his religious shortcomings, due to lack of knowledge, and then begins to learn. However, employing the concept of *tinok shenishba* in framing their dilemma is mistaken on at least two counts.

On the one hand, to a significant degree, the question is coming too late. You already know that there is what to learn and what to observe, and you have a good idea how you could go about learning much more. Just because you do not know all the details does not make you immune from responsibility for your actions from a Jewish perspective. There is a famous non-Jewish legal principle that ignorance of the law is not an excuse (*ignorantia juris non excusat*), and a major part of the rationale is that one has the ability to find out. To decide not to learn the specifics and use it as an excuse to HaShem is like telling a policeman, “I did not know the speed limit because when I approached the signs, I looked away.”

On the other hand, we must not minimize the extent to which HaShem factors in the difficulty for one who is from a “secular” background to embrace observance. Sometimes, he is not philosophically convinced of the need to observe Judaism the way Orthodox Jews do. In addition, it is challenging, on various planes, to be significantly more observant than one’s family and surroundings, and the change rarely happens overnight. These problems exist even if he learns Torah.

Realize that the idea that more education will increase divine expectations is not just for a “*tinok shenishba*.” “Observant Jews” always have room to improve, and further education and inspiration can help. If it were true that it pays to reduce Torah knowledge and inspiration in order to minimize culpability, Orthodox Jews should not provide their children with a top-notch education! Rather, we are expected to be realistically optimistic

and give everyone the best chance at improving, no matter his starting point.

If one is aware that an individual is sinning unknowingly and will not take steps in the right direction if corrected, it is better that he not to tell him.⁵ However, this is only in regard to limited details of observance and when it can be assumed that the knowledge will not help him. Not to give a person the opportunity to increase his connection to HaShem through Torah unfairly deprives one who lacked a fair chance to accomplish this goal. (Only someone who uses his studies to mock or fight against the Torah should be excluded.⁶)

Choosing the “Torah curriculum” should be done logically. For example, it makes sense to put more emphasis on philosophical ideas and practical laws that do not conflict with practice at home or can be implemented at least partially in the short term. Note that the Torah is very broad and includes not just highly ritual matters, but issues of basic law and ethics.

We wish you many opportunities to study HaShem’s Torah and maximize its wide variety of benefits. May your cousins be wise teachers, and may you enjoy being an active participant.

5. *Beitza* 30a.

6. *Ta’anit* 7a and *Tosafot* ad loc.

G-6: Paying a Debt for a Poor Borrower in Place of the Guarantor

Question: My *shul* has a *gemach*,¹ which gives loans only with an *arev* (guarantor). One borrower (we will call him Reuven) experienced serious financial and medical problems sometime after receiving a loan. Realizing that he was not going to be able to pay back the loan, some friends (we will call them the donors) decided to pay the loan on his behalf, and they want to use their *ma'aser kesafim*² money for this purpose. The question arose: Considering that the *arev* (we will call him Shimon) would be obligated to pay, given that Reuven cannot, and that the donors are thus actually not sparing the needy Reuven but rather Shimon, who is not poor, can *ma'aser* money be used?

Answer: This is a case in which halachic intuition shouts from the outset that it must be permitted to use *ma'aser* money, as the money is being given with the intention of helping Reuven. Our goal here is to provide several specific reasons why this intuition is indeed correct.

We begin with a simple *halacha*. After a guarantor has paid the loan back in lieu of the borrower, based on the agreed terms, the borrower is required to reimburse him.³ This *halacha* impacts our question in two ways. First, on the practical level, even if you look at the donors as directly excusing Shimon from his present need to pay the *gemach*, they are also extricating Reuven from his otherwise soon-to-be debt to Shimon. Second and perhaps more significantly, the above and other *halachot* are instructive

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1. Free loan society.
 2. Money one accumulates by the proper practice of giving one-tenth of his income for *tzedaka* causes.
 3. *Shulchan Aruch, Choshen Mishpat* 130:1. Although the actual payment will be made only when Reuven is financially capable, the obligation begins right away.

in understanding the nature of the complementary obligations of a borrower and an *arev* when the latter is compelled to pay. It is not that the *arev* turns into the borrower; indeed, the borrower remains obligated to the creditor, even if he lacks the ability to pay him. Therefore, if the donors pay, they are relieving Reuven's debt. The fact that this will, in effect, benefit Shimon greatly does not preclude the fact that their act was one of *tzedaka* to the needy Reuven.

Under certain circumstances, there are additional reasons to allow the donors to use their *ma'aser kesafim* funds. Assuming Shimon took on the responsibility of *arev* as a *chesed* (and not for some personal gain), he may have planned that if Reuven were to be unable to pay, he would count his payment of the loan as *tzedaka/ma'aser*, as he is permitted to do.⁴ Consequently, if the donors relieve Shimon of paying, they are saving money for Shimon's *ma'aser* fund, which is equivalent to a donation to it. There is no reason why one who puts aside *ma'aser* money cannot entrust it to a reliable person to disperse it for him. In fact, this is precisely what we do whenever we donate our money to *tzedaka* organizations rather than giving it directly to poor individuals. It is not halachically necessary for the disperser to be a recognized non-profit organization. Thus, even if we were to view the situation (incorrectly, in our opinion, as above) as giving money on behalf of Shimon, it could still be considered giving **on behalf** of Shimon's *ma'aser* fund, which is as valid as giving to any other *tzedaka* fund.

Another way of viewing the donation as a valid use of *ma'aser* is to consider the donors as replacing Shimon as the *arev*. While one could claim that this was an unnecessary step, as Shimon does not need to be replaced, in the final analysis, the donors are paying for Reuven in the same way that Shimon had been prepared to. Just as Shimon could consider his payment on Reuven's behalf as a legitimate *tzedaka* outlay (even if he

4. See *Tzedaka U'Mishpat* 5:(50).

originally hoped it would not come to that),⁵ the new donors, who are acting in an altruistic manner at least as much as Shimon did, can also consider it *tzedaka*. We do not find that giving a donation that someone else was planning to make causes the actual donor to not deserve credit. In this case, it is certainly a more complete *chesed* if Shimon would have expected Reuven to pay him back and the donors have no such expectation.

Finally, it may be possible to view the money as a donation to the *shul's gemach*, to which the money is being given directly. Admittedly, the *gemach* is not gaining that much, as the purpose of this gift is to let Reuven “off the hook.” However, it is not far-fetched to regard it as assisting the charitable interests of the *gemach*. After all, despite the requirement of having an *arev*, the *gemach* is not interested in forcing payment from the likes of Reuven if he has extreme difficulty in returning the loan, nor are they interested in taking money from the well-intentioned Shimon. A *gemach* is a charitable institution, not a bank. The *gemach* is simply concerned that if they let borrowers off too lightly, they will lose the funds to continue lending to others. The donors are assuring the *gemach* that Reuven’s debt can be excused because they are replenishing the *gemach's* resources commensurately.

Thus, we have been able to find five halachic possible alternative constructs to support the intuitive conviction that the donors’ philanthropy should be considered a proper use of *tzedaka* funds. In our view, the first two arguments are the most straightforward, and the rest are just possible ways to look at the matter.

5. Ibid.

G-7: Receiving Interest Payments from the Government

Question: When a taxpayer receives a refund after the tax year, the Israeli government gives the refund with interest, according to the time that has passed. Is receiving such an interest payment a violation of *ribbit* (usury)?

Answer: We will begin by summarizing a previous response¹ that explains why it is permitted to buy Israeli bonds and thus take interest from the Jewish State, as the topics overlap. We will then focus on some differences between the two cases.

Several *poskim*² permit taking interest from Jewish-owned corporations because *ribbit* is forbidden only when a borrower has personal liability. Even some who disagree with that halachic thesis³ permit lending to the Israeli government (i.e., buying its bonds), because a government has no clearly defined owners, but is rather an amorphous representation of an ever-changing population.⁴ The Israeli Treasury also has a general *heter iska*.⁵

Although one might think that it makes no difference what the basis for permissibility is, if the *heter iska* is indeed required, matters are not as simple as they would be were there no problem of *ribbit* at all. While many view a *heter iska* as some sort of “magic formula” that erases the prohibition of *ribbit*, it actually is a real financial document that changes the rules governing how the money that is due is to be returned. (Based on the *heter iska*, not always will all the expected “interest” be paid, and it is

1. See *Living the Halachic Process*, vol. I, F-6.

2. Including *Igrot Moshe, Yoreh Deah* II:62-63.

3. See *Brit Yehuda* 7:(66).

4. See *Har Tzvi, Yoreh Deah* 126.

5. A halachic device that turns an ostensible loan, where interest is forbidden, into an investment of sorts, in which the additional money returned is to be viewed as a return on a successful investment.

even possible that not all the principal will have to be returned.) Since a *heter iska* is an agreement to a nonstandard investment arrangement, both sides to the transaction must agree to its terms for it to be valid. When one decides to buy government bonds, he agrees to the rules that govern them, including the *heter iska* that apply to the bonds (even if he never bothered to “read the fine print”). Similarly, when one deals with a bank, he accepts the terms of their general *heter iska*, the agreement between the bank and its customers, which includes principles of *iska*. But when does a person whose income is withheld for income taxes accept the terms of a *heter iska* agreement? (It is difficult to claim that it is when he decides to live and/or work in Israel. However, it is possible that since **practically** the *heter iska* is for his good, it can be assumed that he is agreeable, even though **in theory** it could cause him to lose money.)

In addition to the grounds for leniency that we have seen above, there are other reasons for leniency that apply to tax refunds that do not apply to government bonds. One of the basic rules of *ribbit* is that the Torah forbids a borrower from paying interest specifically to the one who lent him the money.⁶ When a worker has taxes withheld, which is the normal manner in which most of one’s income tax is paid by law, the worker does not actually give money to the tax authorities. Rather, the government requires the employers to give them the money (which entitles the employers to pay the worker less than his gross salary). In fact, if the employer fails to withhold the money properly, he is legally accountable. Thus, when the Treasury pays the excess to the employee with interest, it is not paying money to a lender, but equitably completing the payment process of income tax collection in a manner that differs from returning loans. This idea will not work for prepayment of taxes by self-employed individuals, however, as they themselves do the paying.

The most significant leniency that applies in this case results from the distinction we made above: The taxpayer does not

6. *Bava Metzia* 69b.

choose to pay the tax authorities, nor does he agree to the timing of the payment and the refund. All decisions are made unilaterally by the government, and they are permitted, barring an unusually corrupt system of levying taxes, to make up rules under which they increase or reduce taxes. Several *poskim*⁷ use this logic to allow the government to take “interest” from a taxpayer who is late in paying taxes (i.e. owes money). Since the government can take additional money as it sees fit, we do not consider their decision to impose a late fee as equivalent to interest on a loan, but as part of the unilateral rules of taxation. Similarly, the government is permitted to give discounts for early payment of taxes,⁸ which is common regarding municipal tax. The same logic applies to the government’s decision to return more money than is actually due to those from whom too much was withheld, without it being considered forbidden *ribbit*.

By means of any combination of the arguments above, it is certainly permitted to accept an income tax refund with interest.

7. See *Netivot Shalom* 176:6:25 (p. 615).

8. *Torat Ribbit* 10:69. Discounts for early payments between parties in normal business transactions can often be forbidden; see *Shulchan Aruch, Yoreh Deah* 173:7.

G-8: The Basis for a Meal of Thanksgiving

Question: Please explain the sources in the Torah and Halacha for the custom to make a *seudat hodaya* (meal of thanksgiving) following recovery from a serious illness or surgery.

Answer: One of the *korbanot* the Torah describes is a *Korban Todah* (sacrifice of thanksgiving).¹ However, the Torah does not stipulate when one offers it. In the context of discussing *Birkat HaGomel* (the blessing recited after surviving a dangerous situation), the *gemara*² states that “survivors” of any of the following four situations have to give thanks: a voyage at sea, traversal of a desert, illness, and captivity. The *gemara* demonstrates how each of these situations is described in *Tehillim* 107, the *mizmor*³ that deals with thanks after being saved from a difficult situation. Even at the time of the *Beit HaMikdash*, it appears that people in such circumstances were not **obligated** to bring a *Korban Todah* as their means of thanksgiving. Rather, these are included among the appropriate occasions to **volunteer** bringing one.⁴

Eating is a major element of the *Korban Todah*. This *korban* included 40 loaves of meal-offerings, 36 of which were to be eaten. The Abarbanel⁵ and the Netziv⁶ famously explain that the Torah required a lot of eating in a short amount of time to encourage the thankful person to bring together many people, who would hopefully facilitate proper public thanks to HaShem.

1. *Vayikra* 7:12.

2. *Berachot* 54b.

3. Psalm.

4. See Rashi, *Vayikra* 7:12. See a thorough presentation of the topic in *Nishmat Avraham, Orach Chayim* 219:1.

5. *Vayikra* 7.

6. *Ha'amek Davar, Vayikra* 7:13.

What do we do nowadays, since we are without a *Beit HaMikdash* in which to bring a *Korban Todah*? The *Rosh*⁷ and the *Tur*⁸ write that *Birkat HaGomel* was instituted in place of the *Korban Todah*. While the simple reading of the *gemara* implies that *HaGomel* is an obligatory *beracha*, the *Magen Avraham*⁹ suggests that it might be optional. In any case, it provides a defined opportunity to thank HaShem publicly (as it must be recited before a *minyán*, preferably including two distinguished people¹⁰).

Whether or not the *Korban Todah* or *Birkat HaGomel* is obligatory, a *seudat hodaya* for being saved from a dangerous situation is certainly not obligatory. This may explain its absence from explicit discussion in most classical works (including the *Shulchan Aruch*). However, significant sources provide precedent and support for the idea of doing something more than saying *HaGomel*, including making a *seuda*. The *Mishna Berura*¹¹ suggests what one who was saved from possible death should do (apparently even if the salvation was natural). He should: 1) set aside money for *tzedaka* and declare that he wants it to be considered as if he spent the money on a *Korban Todah*; 2) donate things that help the public, and do so also on every anniversary; 3) find a special setting in which to thank HaShem, speak His praises, and rejoice. Certainly, a *seudat hodaya* is an appropriate setting for the latter, even though it is not part of a set formula of thanksgiving.

The *gemara*¹² relates that when Rabbi Zeira was sick, Rabbi Avahu promised that he would make a festive meal for the rabbis if Rabbi Zeira recovered, which, *baruch HaShem*, occurred. Some commentators say that having the meal is not only significant in

7. *Berachot* 9:3.

8. *Orach Chayim* 219.

9. Beginning of 219; *Pri Megadim* ad loc. disagrees.

10. *Shulchan Aruch*, *Orach Chayim* 219:3.

11. 218:32, in the name of “*Acharonim*.”

12. *Berachot* 46a.

and of itself, but the promise at the time of danger to make a *seuda* if the sick person recovers is a *segula* (good omen) for recovery.¹³ Presumably, such a pledge would be meaningful only if a *seuda* of that nature is desirable.

The *Chavot Yair*,¹⁴ in discussing different meals that are considered *seudot mitzva*, mentions a *seuda* after having been saved from danger. This does not necessarily mean that he posits that this is an obligatory meal, however, as some *seudot mitzva* are voluntary and are called *mitzvot* because they are connected to the performance of a *mitzva* or are positive ways to give prominence to noteworthy events.

We will end off on a *hashkafic* note. Rav S.Z. Auerbach explained¹⁵ that eating in the context of thanksgiving to HaShem reflects the idea that one should know and show that the goal of his existence and the physical world that he is enjoying after his recovery is to serve as a medium through which to further his spiritual life and to give thanks to HaShem.

13. See *Gilyonei Ephrayim* ad loc.

14. *Shut Chavot Yair* 70. See also *Pri Megadim, Orach Chayim* 444, *Mishbetzot Zahav* 9.

15. See *Mizmor L'Todah* (Travis), p. 185.

G-9: Respectful Disposal of Bread

Question: What are the *halachot* regarding disposal of bread at the end of a meal?

Answer: First, we should mention that if one plans carefully, there should be little unusable sizable pieces of bread (or other foods) remaining at the end of a meal. Leftover bread can be frozen, used for breadcrumbs (while taking care to avoid meat/milk issues), or left for birds. However, this is often difficult to arrange after *semachot*, since there can be half-eaten rolls remaining, etc.

There are clear *halachot* stated in the *gemara*¹ and *poskim*² regarding the “respect” due to food in general and especially bread. Two related issues are involved: not causing food to be wasted and not degrading food.

One is not allowed to involve food in non-eating activities in a way that is likely to soil it to the point that it will become unappetizing.³ It is forbidden to throw **any food** that could get soiled upon falling, and it is forbidden to throw bread even if it will not become soiled, due to bread’s extra importance.⁴ The *gemara* in *Berachot*⁵ explains that the reason for Beit Shammai’s opinion that one should clean the eating area before using *mayim acharonim*⁶ is concern that the water might fall on and ruin the food. Beit Hillel is not concerned about this, because those in charge of clearing the table will know they should remove *k’zayit*-sized pieces of bread. We are not troubled about smaller pieces, since, as Rabbi Yochanan says, these may be destroyed. Based on this, sizable pieces are due respect, while small ones are not. This

1. *Berachot* 50b, 52b.

2. *Shulchan Aruch, Orach Chayim* 171, 180.

3. *Ibid.* 171:1 and *Mishna Berura* ad loc. 3.

4. *Shulchan Aruch* *ibid.* and *Mishna Berura* ad loc. 9. See *Beit Yosef, Orach Chayim* 171.

5. 52b.

6. Water used for cleaning one’s fingers at the end of a meal.

is indeed how the *Shulchan Aruch*⁷ rules.

However, the matter is complicated. The *gemara* in *Shabbat*⁸ states in the name of Rabbi Yochanan that one may not destroy even pieces of bread smaller than a *k'zayit*. Furthermore, the *gemara* in *Chulin*⁹ states that failure to be careful with small pieces of leftover bread may result in poverty. To reconcile the apparently contradictory *gemarot*, *Tosafot*¹⁰ maintains that our text in the *gemara* in *Shabbat* is incorrect, as the *gemara* in *Berachot* clearly says in Rabbi Yochanan's name that one is not required to care about small pieces. *Tosafot*¹¹ further reconciles the *gemarot* in *Berachot* and *Chulin* by arguing that even if there is no prohibition to disgrace small pieces of bread, it could still cause poverty, and this is how the *Shulchan Aruch*¹² rules. The *Magen Avraham*¹³ distinguishes between different types of lack of care: One is not required to preserve small pieces, but he may not disgrace them, e.g., by having people trample them. Water falling on smaller pieces of bread, thereby making them unusable, is not sufficient disgrace to constitute a problem, whereas larger pieces must not even get soiled by water. The *Pri Megadim*¹⁴ claims that according to the Rambam, there are no halachic limitations on small pieces, although perhaps there is a danger of poverty.

If one has decided with reasonable cause not to eat some large pieces of bread and there is no issue of wasting them, what should one do with them? Presumably, one should discard them without disgracing them, but what is considered a disgrace? Is putting them in the garbage, the normal place to discard things, a disgrace? Every written source I found on the topic¹⁵ states

7. *Orach Chayim* 180:3.

8. 143a.

9. 105b.

10. *Shabbat* 143a.

11. *Berachot* 52b.

12. Op. cit. 4.

13. 180:3.

14. Ad loc.

15. See *V'Zot HaBeracha*, p. 18; *Etz HaSadeh* 19:4; Rav E. Melamed, online.

(without citing classical sources) that one must put *k'zayit*-sized pieces in a bag before throwing them into the garbage, and many people, especially in Israel, are particular about this.

Is there any explanation for why most members of the American Jewish community where I grew up are not careful about this? We have written in the past¹⁶ that Rav Yisraeli ruled one may put food with the sanctity of *Shemitta* in a bag and place it in the garbage, even together with foods without sanctity, **as long as those other foods are not spoiled**. Touching and even getting a little soiled by other foods before being thrown into the local garbage dump may not be considered a disgrace. Based on this ruling, one could claim that since most kitchen garbage bins contain just leftover food, cans, and other items that are not disgusting, putting bread in them may not be a disgrace. However, the easier position to justify here, in regard to both Halacha and avoiding poverty, is to put bread leftovers (especially, larger pieces) that cannot be salvaged in a separate bag before putting them in the garbage.

16. *Living the Halachic Process*, vol. III, C-16.

G-10: Selling Property Used as a *Shul*

Question: I own a property that I have been renting out to a *shul* for years, but now I want to sell it. The members of the *shul* say that since a sale will likely effectively close down the *shul*, which is forbidden, I must continue the rental. Are they correct?

Answer: Without being presented with the details by the two sides,¹ we must not and will not discuss “*Choshen Mishpat*”² questions of when a landlord can remove a tenant from a rental property.³ Rather, we will deal with the “*Orach Chayim*”⁴ questions relating to closing down a *shul*, which you present as the basis for the renters’ grievance.

The first question is if and when it is permitted to sell a *shul*. Doing so is, in fact, sometimes permitted,⁵ but one basic condition is that the decision must be made in a serious manner by community leaders who conclude that the step is in the community’s best interest.⁶ In this case, since the community wants to keep the *shul*, we must evaluate whether it makes a difference that the property is owned by someone other than the community and is only rented by them.

The *gemara*⁷ cites the Rabbanan’s ruling that the part of town in which prayers are held on public fast days lacks sanctity, because praying is done there on an ad hoc basis. The *Beit Yosef*⁸ cites Mahari Ibn Chaviv as saying that the *batei knesset* of his time/place lacked *kedusha*, as they were expected to be used for a limited time, secretly, and until closed by the authorities.

1. See Rama, *Choshen Mishpat* 17:5.

2. Matters of monetary law.

3. Many issues are discussed in *Shulchan Aruch*, *Choshen Mishpat* 312.

4. Matters of ritual law, including the laws of *shuls*.

5. See *Shulchan Aruch*, *Orach Chayim* 153:2, 6, 7.

6. See *ibid.* 7.

7. *Megilla* 26a.

8. *Orach Chayim* 154.

Some sources⁹ say that the critical factor in this situation is the lack of even short-term security. The *Shulchan Aruch*¹⁰ implies that regarding any rental, when the congregation's ongoing use of the premises depends on the landlord's agreement, there is no *kedusha*.¹¹ Various *poskim* make distinctions, including based on the duration of the rental¹² and whether the rental is for a set time or open-ended.¹³ However, all seem to agree that when the rental period is over, the status of *beit kneset* ceases.¹⁴

Similarly, *poskim* also assume that the temporary status of a *beit kneset* cannot prevent a landlord from legally discontinuing the rental. Although some of the sources' deliberations involve non-Jewish landlords,¹⁵ who naturally are not bound by these *halachot*, several discuss Jewish landlords, who could have been bound by the previous use as a *beit kneset*.¹⁶

In certain cases, another factor arguably plays a role. The *gemara*¹⁷ states that a community may not dismantle a *shul* before they secure its replacement. This is not due to the problem of removing the sanctity from a place of *kedusha*, as it applies even if they are just renovating the *shul* for future, improved use.¹⁸ Rather, it is due to the concern that the community will be without a proper *beit kneset* for a short or possibly long time.¹⁹ One might argue that this concern should prevent a landlord from closing a *shul* if there is no proper alternative.

In fact, the *Mishna Berura*²⁰ cites several *Acharonim* as

9. Including *Shut Chatam Sofer, Yoreh Deah* 225.

10. *Orach Chayim* 154:2.

11. See *Mishna Berura* 154:4.

12. *Pri Megadim, Mishbetzot Zahav* 154:1.

13. See opinion cited by *Piskei Teshuvot* 154:2.

14. *Divrei Yatziv, Orach Chayim* 78; see *Chatam Sofer* op. cit.

15. See *Chatam Sofer* op. cit.

16. Including *Divrei Yatziv* *ibid.*; the basic sources make no distinction.

17. *Bava Batra* 3b.

18. See *Mishna Berura* 152:2.

19. See *gemara* op. cit.

20. 152:3.

extending the above Rabbinic enactment to a rental. In other words, a community that rents a *beit kneset* may not terminate the rental arrangement before securing a replacement location. However, this relates to the permissibility of the community's actions, not those of the landlord. One cannot infer from this whether or not there is a prohibition on the landlord to terminate the rental in an otherwise legal manner, because this *halacha's* primary source²¹ relates to a non-Jewish landlord, who obviously has no obligation to be concerned about *batei kneset*. Logic seems to dictate, however, that there are no special limitations on the landlord. It is the community's obligation to search for alternatives; the concern need not fall on the landlord. Landlords generally cannot evict a tenant without giving him sufficient opportunity to find another option.²² Once the community is forewarned, **they** are obligated to find an alternative, such as acquiring their own *shul* or renting at a different location. Assuming this can be done, a landlord would not be bound by the concern that the congregation will be left without a place to *daven*.

That being said, there may be circumstances in which at least the spirit of the law would require giving the community an especially long warning period to ensure their ability to find a reasonable option.

21. The *Eliya Rabba* 152:1 in the name of the *Nachalat Shiva*.

22. *Shulchan Aruch*, *Choshen Mishpat* 312:5.

G-11: Removing Hair from Eyebrows

Question: I am a young man with a unibrow, which I find very embarrassing. May I remove the hair from that area with tweezers? Also, may I remove some hair from my eyebrows to make them less bushy?

Answer: The *gemara*¹ forbids a man to shave his pubic and underarm hair. If the shaving is done with a razor, it is a violation² of the law forbidding a man to do things for the purpose of aesthetics that are considered feminine (“*lo yilbash gever simlat isha*”³). The *gemara* further discusses whether this prohibition includes cutting close to the skin with scissors.

The *gemara*⁴ recounts that Rav Ami gave a special privilege to one who did not remove underarm hair. The Ran⁵ reasons that the story must have occurred in a place where most men removed such hair, such that this person was special for not following the standard practice. The implication of this story is that when it is the norm, such hair removal is permitted, but the pious avoid it anyway. This is how the Rama⁶ rules. The Rambam⁷ writes that in that case, it is not a severe Rabbinic violation that would warrant flogging. The *Shulchan Aruch*, based on his understanding of the Rambam,⁸ states that it is nevertheless forbidden to cut such hair. The *Rav Pealim*,⁹ after declaring that Sephardim should rule like the *Shulchan Aruch* on this matter, justifies the widely held practice in Baghdad in his time for men to remove hair from one

1. *Nazir* 58b-59a.

2. The *gemara* *ibid.* discusses whether it is a violation of Torah law or a Rabbinic extension.

3. See *Devarim* 22:5.

4. *Op. cit.*

5. *Avoda Zara* 9b in the Rif's pages.

6. *Yoreh Deah* 182:1.

7. *Avoda Zara* 12:9.

8. See *Beit Yosef*, *Yoreh Deah* 182.

9. III, *Yoreh Deah* 18.

of the problematic places using chemicals, based on the fact that women removed their hair in a different way.

There is a *machloket* among the *Rishonim* regarding whether there is any problem with hair removal from other parts of the body.¹⁰ The *Shulchan Aruch*¹¹ rules that in these other places, it is forbidden only with a razor; it is permitted even to cut hair short with scissors. Presumably, tweezing eyebrows falls under the category of permissible acts.

Even in a part of the body that generally does not pose a problem, however, there are specific circumstances that can make hair removal forbidden. For example, the *gemara*¹² forbids a man from removing individual white hairs from among dark hair of his head or beard¹³ in order to make himself look younger, as women do. Furthermore, just as changed norms can turn that which earlier sources forbade as a feminine practice into a permitted action, new norms can also change actions from permitted to forbidden. Thus, whereas the classical sources do not discuss removing facial hair as feminine, *poskim* of our era have generally assumed that grooming eyebrows is a feminine practice and thus usually forbidden for men.

Nevertheless, fixing a unibrow is permitted according to rabbinic consensus.¹⁴ Although many men are willing to keep a unibrow (in some cultures, it is a desired feature), many, including you, consider it an embarrassing blemish. Just as the *Shulchan Aruch*¹⁵ permits hair removal that would otherwise be forbidden when it is done to alleviate skin pain, it is similarly permitted to relieve emotional distress, even if it is not extreme. The main rationale is not that the need enables waiving minor prohibitions

10. See *Beit Yosef* op. cit.

11. *Yoreh Deah* 182:1.

12. *Makkot* 20b.

13. Even in a manner that is not included in the prohibitions of hair removal; see *Yoreh Deah* 181.

14. Including Rav S.Z. Auerbach, cited in *Nishmat Avraham, Yoreh Deah*, p. 140.

15. *Yoreh Deah* 182:4.

or relying on lenient opinions. Rather, the prohibition is based on the assumption that a man is acting with a degree of care for beautification that is generally reserved for women.¹⁶ Removing a unibrow, in contrast, is not considered as acting to look one's absolute best, but simply to avoid sticking out negatively, and this is not within the prohibition's parameters.

Regarding bushy eyebrows, the matter is less clear-cut and depends not only on the time and place but likely also on the degree of grooming one is considering. Extreme bushiness could reach the point of being considered a blemish. Regarding cases that are within the bounds of normal, a few decades ago, it was deemed forbidden. Nowadays, however, it has become increasingly common for men to groom eyebrows. (The norms of non-Jews in one's surroundings are, according to many, taken into account in determining its prevalence.¹⁷) Accordingly, it is likely now permitted in many places. We would add, however, that a man should do the grooming in the way men do it, if it is different from the way women do.

16. See *Igrot Moshe*, *Yoreh Deah* II:61, permitting a man to dye his hair in order to get a job for which he looks too old.

17. *Prisha*, *Yoreh Deah* 282:5.

G-12: How Much Water to Use for *Netilat Yadayim*

Question: Based on what I have learned, our standard washing cups hold much more water than is needed for *netilat yadayim*. We in Israel certainly cannot afford to waste water. How much water must the cup hold, and how much must one pour over each hand?

Answer: There is a huge difference between the basic *halacha* and the practical application in this matter, and it is important to try arrive at a reasonable perspective.

The required volume of a cup used for *netilat yadayim* is a *revi'it*.¹ There is a well-known *machloket* as to the volume of a *revi'it*. The most prominent opinions are those of Rav Chayim Na'eh – that it is 86 cubic centimeters (cc. or milliliters – approximately 3 oz.) – and of the Chazon Ish – that it is 149 cc. (approximately 5 oz.).² While this is an important *machloket* regarding such issues as *Kiddush*, it is usually not crucial regarding the cup for *netilat yadayim*, as it is difficult to find a cup for that purpose that does not hold the volume of the most stringent opinion.

Regarding the amount of water needed for washing, one does not have to use an entire *revi'it*. However, there are advantages to using a *revi'it*. When one pours less than a *revi'it* on the hands, the water becomes *tamei*,³ and if the water goes beyond the area that needs washing and then returns to the critical part of the hands, the hands become *tamei* again.⁴ This requires one to keep his hands raised the whole time so that any water that runs off will not return. If, however, a *revi'it* is used at one time, even if it

1. *Shulchan Aruch, Orach Chayim* 159:1.

2. See *Shemirat Shabbat K'Hilchata* (5770 edition), p. 40.

3. Ritually impure.

4. *Shulchan Aruch, Orach Chayim* 162:1-2.

is one *revi'it* for both hands together, the water does not become *tamei* and it is not a problem if the water goes beyond the hand area and comes back.⁵ According to most opinions,⁶ when a *revi'it* is used, there is also no need to wash the hands twice.⁷

In truth, however, using even significantly **more** than a *revi'it* of water is beneficial, as water must reach the entire area that needs to be washed at one time.⁸ There is significant discussion concerning how much of the hand must be washed. One opinion is that it is only the fingers, up to their connection to the palms. The other opinion, which is the accepted practice under normal circumstances, is to wash all of each hand, until its connection to the wrist.⁹ The *Bi'ur Halacha*¹⁰ advises that since one washes the entire hand, “it is prudent to be careful not to use an exact amount of water. Rather, he should wash with an abundance [of water], for if he uses exactly a *revi'it*, it is very likely that part of a hand will remain unwashed.”

There is a famous story (which comes in many versions) about Rav Yisrael Salanter, who was observed using a minimal amount of water for *netilat yadayim*. He did not want his fulfillment of the *mitzva* in the preferred way to come at the expense of someone else – i.e., the household help *schlepping* the water. This might support your suggestion that in our situation of limited water supply,¹¹ we should curtail our ritual use of water to the minimum amount required. Indeed, under the correct circumstances (it is likely that Rav Salanter **usually** used a larger quantity, and the case of the story was one in which someone was uniquely

5. Ibid.

6. Ibid.

7. See *Mishna Berura* 162:21, who explains the advantages of our *minhag* to wash twice anyway.

8. *Shulchan Aruch* op. cit. 3.

9. Ibid. 161:4.

10. Ad loc.

11. This volume is being published as two unusually rainy winters replenished the Israeli water supply, but we do not know what the future holds.

affected), this is a very laudable approach. But although it is true that using ridiculously large amounts of water, which might cause others to have to wait on line until the person finishes washing, is likely more a sign of psychological compulsion or ignorance than righteousness, we should avoid being judgmental.

Furthermore, we would urge even those who are sensitive to the benefits of conservation to employ some balance and perspective. We would guess that the average religious family expends less than 1% of its water usage on *netilat yadayim*. If this is indeed the case, cutting back on other uses by a mere 0.5% will save as much water as cutting back on *netilat yadayim* by 50%. If one is already cutting back on water usage to his maximum in general, and he wants to include *netilat yadayim* as well, his idealism is praiseworthy, and it is fine to concentrate on washing the entirety of his hands with less water than most people need. But the great majority of the members of our society, who use water with less idealism, should not make a special issue of water conservation regarding the moderate amounts of water used for *netilat yadayim*.

G-13: Cutting Down Fruit Trees for Recreational Purposes¹

Question: May one cut down a fruit tree in order to make room for improvements to his backyard for recreational purposes, such as to put in a pool or a basketball court?

Answer: The Torah forbids cutting down fruit trees,² which is the strictest application of the concept not to be destructive.³ It is thus not surprising that the *gemara* and *poskim* identify “non-destructive” cases in which it is permitted to cut down fruit trees.

The *gemara*⁴ grants permission in the following cases: 1) The tree no longer produces a *kav* (a relatively small amount) of fruit. 2) It is worth more for wood than for fruit.⁵ 3) It is significantly damaging a more valuable tree. 4) It is damaging someone else’s property.⁶

The Rosh⁷ deduces from the above that one may cut down a fruit tree if he needs to use its location, which the *Taz*⁸ applies to building a home. Most *poskim* rule that this includes expanding a home, at least when the addition is objectively more valuable than the tree.⁹ However, the *gemara* tells of an *Amora*’s son who died because he cut down a fruit tree prematurely, and Rav Yehuda HaChasid also warned about it. Therefore, even when it is apparently permitted, some prefer that the work be done by a

1. See a more general discussion on cutting down fruit trees in *Living the Halachic Process*, vol. I, H-10.

2. *Devarim* 20:19.

3. See Rambam, *Melachim* 6:8.

4. Primarily *Bava Kama* 91b-92a.

5. See Rashi ad loc.

6. *Bava Batra* 26a.

7. *Bava Kama* 8:15.

8. *Yoreh Deah* 116:6.

9. See *Chayim Sha'al* 1:22; *Yabia Omer* V, *Yoreh Deah* 12.

non-Jew¹⁰ and/or that the tree be transplanted rather than disposed of.¹¹

To what extent can we rely on the Rosh's thesis that making room available for something else is a legitimate excuse for cutting down a fruit tree? The *Beit Yaakov*¹² claims that *Tosafot* and others disagree with the Rosh. The *Meishiv Davar*¹³ adds that it is difficult to be certain that after cutting down the tree, the building project will actualize. However, many *Acharonim*¹⁴ strongly reject the *Beit Yaakov* and adopt the leniency of the Rosh/*Taz*.

How important must the need for the spot be? Although the *gemara*'s cases do not refer to huge benefits (e.g., the fruit is worth less than the wood), they relate to situations in which the tree's existence itself is relatively directly wasteful. In contrast, in the Rosh's case (and yours), the tree is fully viable; it simply precludes another future use of the area. It is therefore not surprising that some authorities who accept the Rosh's view say that the need must be substantial. For example, the *She'eilat Ya'avetz*¹⁵ writes about a *shul* that was too small and needed to be extended to an area occupied by fruit trees. The *Chavot Yair*,¹⁶ while allowing cutting down a fruit tree that darkens one's house, forbids doing so just to create a place to walk around or to simply increase space and light there. Several *Acharonim*, including important *poskim* such as the *Aruch HaShulchan*¹⁷ and *Yabia Omer*,¹⁸ adopt this middle-of-the-road approach.

Appraising the cases you raised is tricky. On the one hand,

10. *Yabia Omer* *ibid.* Non-Jews are not commanded on the matter and should not be subject to negative consequences.

11. *Chatam Sofer, Yoreh Deah* 102.

12. *Shut* 140.

13. II:56.

14. See *Chayim Sha'al* *op. cit.*; *Yabia Omer* *op. cit.*

15. I:76.

16. 195.

17. *Yoreh Deah* 116:13.

18. *Op. cit.*

building a swimming pool or a basketball court is expensive. Consequently, if one wants to build such a structure, it shows how important it is to him,¹⁹ in which case the existence of a fruit tree should not preclude the project. On the other hand, some *poskim*²⁰ indicate that the value of the change should be an objective one that applies to the average person. Swimming pools and basketball courts are not likely to qualify in that regard (even if we focus on the positive and permitted uses of those facilities). It is difficult to ignore the warning that one who uses honest but faulty judgment in this case could be punished severely (as mentioned above²¹). Another factor is that it might be possible, even if less convenient, to build what is desired without cutting down the fruit tree.

Therefore, we suggest that if you are willing to have a professional, preferably a non-Jew, transplant the tree, you may do so.²² Otherwise, we would have difficulty permitting removing the fruit tree unless we were convinced that the benefit/need and the lack of an alternative were absolutely clear.

19. See *Minchat Asher*, *Devarim* 33.

20. See *Yabia Omer* op. cit.

21. See also *Shut Chatam Sofer*, *Yoreh Deah* 102; *She'eilat Ya'avetz* op. cit. is more extreme regarding this issue.

22. See *Chatam Sofer* *ibid*; *She'eilat Ya'avetz* *ibid*.

G-14: Irresponsible Halachic Responses?

Question: A couple of times recently, I have been troubled by your columns when you entertain leniencies that I view as dangerous or against the spirit of Halacha. Although you acknowledge that such leniency is only for great need, since those cases are rare, isn't it wrong to share this with a broad readership, which includes people who might misunderstand or abuse the grounds for leniency? In one particular column that troubled me,¹ you discussed the possibility of a religious Jew serving food in a non-kosher establishment, which is at least inappropriate.

Answer: The good point you make is one that we do indeed consider very seriously, both in the responses we send to individuals and in the weekly column in which we share selected responses. You have prompted us to highlight for our readership the background and goals of our column.

The joint OU/Eretz Hemdah "Ask the Rabbi" service provides an address to a **wide variety** of people **throughout the world** to submit questions that, for whatever reasons, they are not directing to a local or personal rabbi.² Some questions have only one "cookie-cutter" answer that fits all circumstances, irrespective of venue, level of need, etc. Other questions have different legitimate answers that, additionally, are apt to be affected by circumstances, including the querier's halachic orientation.

We have several goals in sharing some of our answers with the public. One is to inform the masses how to act when they encounter the same circumstances that are addressed in the response. However, there are other important goals. We treasure teaching Torah *lishma* (for its own intrinsic purpose), including

1. Response E-6 of this volume.

2. In some cases of people who send many questions, we do serve as (one of) their personal rabbi(s).

conceptually significant issues and cases, even when few are likely to encounter them.

We also strive to expose our readership to a multi-faceted and, we pray, properly balanced approach to rendering halachic decisions. We aim for an approach that is traditional on the one hand but, in addition, is open to innovative problem solving. We aim for high halachic standards, but with a realization that an objective or even a subjective need often plays an important role even **according to these high standards**. We view implementation of this balance as one of the most exciting and important elements of *p'sak halacha*, and we think it is appropriate to share responses that display these characteristics, considering our broad readership.

We will illustrate with an example from a great *posek* whom we often try to emulate – Rav Moshe Feinstein. In a set of *teshuvot* written over the course of one week,³ Rav Moshe wrote **ostensibly** contradictory rulings to the same rabbi on the same case, regarding a *shochet* who publicly did something that constitutes *chillul Shabbat* according to **almost** all *rabbanim*. The rulings are not actually contradictory because Rav Moshe begins the second responsum: “If we will forbid him ... it will negate all that you have fixed with toil in the *kashrut* [situation] and the peace in the city.” He follows with a novel leniency to allow the *shochet* to continue in his vocation with certain provisions. It is fascinating that Rav Moshe was willing to publish the two responsa back-to-back without hiding his change of mind due to the circumstances.⁴ The first responsum remains the basic one, for standard situations. The second one demonstrates how he could “stretch” to be lenient when needed. It also teaches that when Rav Moshe ruled stringently, even in the face of great need, it was not out of a lack of effort. He apparently believed that the lessons of the two responsa outweighed any confusion there might be on

3. *Igrot Moshe, Yoreh Deah* II:4, 5.

4. The volume was published in 1973, ten years after the responsa were written

their implementation.

We estimate that a clear majority of our column's readers are solidly Orthodox English-speaking *olim*. Under normal circumstances, we would not consider being (or allow our child to be) a waiter in an Israeli non-kosher restaurant. However, not only did Rav Ovadia Yosef allow someone in great financial distress to be a cook in a non-kosher restaurant, with certain provisos and until he could find another job, but he published the ruling.⁵ Rav Moshe allowed a delivery man in Europe (in 1929) to deliver pork.⁶ The *Tzitz Eliezer*⁷ permitted a hospital nurse to serve/feed non-kosher food to non-Jewish patients. Parallel circumstances that require analysis of the same issues/sources discussed by these great *poskim* arise more frequently than one might imagine.

We want our readership to enjoy the Torah's richness and hone their halachic sophistication to know what to ask and how. We want them to know that religious sensitivities and general sensibilities **should often** preclude certain matters that may not be clearly prohibited. Nevertheless, we subscribe to the approach of many rabbis, from a variety of traditions, who search for solutions to "non-cookie-cutter" cases. Sometimes such rulings should be kept quiet; sometimes they should be publicized. May HaShem protect us from mistakes, both in content and in choice of presentation!

5. *Yabia Omer* IV, *Yoreh Deah* 6.

6. *Igrot Moshe*, *Yoreh Deah* I:51.

7. XVII:33.

Section H:
Family Law

H-1: Therapeutic Disrespect Toward a Parent

Question: Psychologists sometimes believe that a patient's symptoms – depression, anger, poor functioning, etc. – are a result of his parents' destructive behavior toward him. Is it permissible to encourage a patient to express his resentment to the offending parent in a controlled, appropriate manner? The goal of this intervention is to help the patient alleviate his symptoms, which likely stem from suppressed hatred toward the parent. This can help improve the relationship in the long term, but in the short term the negative feelings are legitimized and brought to the fore in a manner that is unpleasant.

Answer: We cannot address every pertinent factor or provide full guidelines, but we will use halachic sources and logic to present certain general recommendations. As always, a psychologist must be very careful in his treatments, and in many cases should also consult a well-versed rabbi about the relevant halachic restrictions. In this piece, we will specifically discuss cases of normal parents with shortcomings, not of criminals or sadists.

In addition to honoring one's parent through performing positive actions (*kavod*), one is obligated to revere him or her by avoiding certain actions that would be considered appropriate in relationships with others (*mora*).¹ The *gemara*² states that a son should not disgrace his parent even in a scenario in which the latter throws a significant amount of money into the sea. The *gemara* seems to assume that according to the opinion (which is accepted as *halacha*³) that honoring parents may be done with the use of the parent's money, the child's restraint is required only when

1. *Kiddushin* 31b.

2. *Ibid.* 32a.

3. *Shulchan Aruch, Yoreh Deah* 240:5.

the father throws away his own money. However, the Rambam⁴ extends the obligation even to a case in which the father discards the son's money. The *Beit Yosef*⁵ explains that although a son does not have to spend his own money to honor his parent, he must give up all his money before disgracing him.

On the other hand, the Ri⁶ maintains that a son is not obligated to let his father cause him financial damage. The Ramah⁷ agrees with the Ri that in a case in which the son is able to stop his father before he causes the damage, he may do so even if this will cause the father embarrassment; after the damage is done, however, he cannot scold his father, although he may sue him.

The *Shulchan Aruch*⁸ accepts the Rambam's application of *mora* as requiring the son's self-restraint even in the face of significant loss. The Rama, on the other hand, rules like the opinions that a son may protect his monetary rights. It is not clear how far one is expected to go to avoid suing his parent or whether the Rambam could agree to the possibility of such a suit.⁹

The *machloket* between the *Shulchan Aruch* and Rama seems to impact on our case. According to the *Shulchan Aruch*, a child likely may not stand up for his rights, financial or psychological, by emotionally hurting his parents. According to the Rama, however, if one can sue his father in court, he presumably may accurately criticize his father if necessary to protect his own psychological needs (which are no less important than his monetary rights), even at the expense of upsetting the parent.

Another pertinent discussion is whether one may be directly critical of one's parent as part of the performing the *mitzva* of the *tochacha* (rebuke) for the parent's improper actions. The

4. *Mamrim* 6:7.

5. *Yoreh Deah* 240.

6. Cited by the *Tur*, *Choshen Mishpat* 240.

7. Cited by the *Tur* *ibid.*

8. *Yoreh Deah* 240:8.

9. See *Birchei Yosef* *ad loc.* and *K'tav Sofer*, *Yoreh Deah* 108.

*gemara*¹⁰ instructs a son who sees his father violating the Torah to only carefully hint to him that it is wrong. Yet, certain laws of *tochacha* are learned from Yonatan's rebuke of his father, Shaul.¹¹ Apparently, while *tochacha* should be given as gently as possible, a child may, and even should, rebuke his parent under certain circumstances and in certain manners.

Does *tochacha* extend to a parent's sins against his child? The simple reading of the *pasuk* regarding *tochacha*¹² is that if one wrongs you, you should air your grievance rather than harbor hatred, and the Rambam¹³ rules in accordance with this reading. Given that a child may rebuke his parent under certain circumstances, a child should be permitted to rebuke his parent for wronging him.

However, the extent to which **any** person giving rebuke may upset the offender is limited,¹⁴ and it is laudable to let the matter go if the victim can overcome and remove his feelings of enmity by himself.¹⁵ It makes sense that when the offender is a parent, if the victim/child is indeed permitted to say anything, it should be only if there is great need, and even then only with "kid gloves." On the other hand, although disgracing parents is a particularly severe sin,¹⁶ harboring hatred toward them is also severe.¹⁷ Thus, if needed to fix a greatly strained relationship, it would seem that one may raise certain criticisms, but should do so carefully.

To summarize, it appears that a psychologist may encourage a patient (at least an Ashkenazi one) to **appropriately** air grievances to his parent. But we need to clarify the guidelines on this sensitive matter as best as we can.

10. *Kiddushin* 32a.

11. See *Arachin* 16b.

12. *Vayikra* 19:17.

13. *De'ot* 6:6.

14. *Ibid.* 8.

15. *Ibid.* 9.

16. *Devarim* 27:16; *Shulchan Aruch, Yoreh Deah* 241:6.

17. *Aruch HaShulchan, Yoreh Deah* 240:8; see *Chashukei Chemed, Sanhedrin* 84b.

The *gemara*¹⁸ tells of Rav Assi's mother, whose mind deteriorated to the point that she viewed her son romantically. Rav Assi ran away so as to sever their relationship. The Rambam¹⁹ rules that while one should try to tend to a parent whose cognition is impaired, if the parent's behavior is bad enough, the child may leave the parent and instruct others to tend to him. The Ra'avad²⁰ disagrees because he does not believe there is a viable alternative to the child's care. The *Kesef Mishneh*²¹ rejects the Ra'avad's argument, based on the story of Rav Assi.

The Ra'avad seems to understand that the Rambam's ruling that the son leaves is referring to **permission** to leave because the task is not doable; the Ra'avad differs with the Rambam and argues that there is no better alternative for the parent. The Radbaz²² and the *Aruch HaShulchan*,²³ however, explain that the Rambam's point is that the child specifically **should not** be the caregiver. Rather, others can deal more forcefully (which may be necessary), in a manner that a child is forbidden to do. Thus, the child will find someone else to take the necessary actions that the child is not allowed to do. We see, then, that even when a parent's state demands non-respectful behavior, the child should preferably find someone else to do it. Therefore, in our case, it is best (if it does not undermine the therapeutic process) for someone other than the child (e.g., the psychologist) to raise the grievances with the parent. The parent can then approach the child, and they can focus on ways to improve things.

Another halachic advantage of the psychologist broaching the topic is that it gives the parent an opportunity to be *mochel* (waive) his honor before discussion with the child ensues. The

18. *Kiddushin* 31b.

19. *Mamrim* 6:10.

20. Ad loc.

21. Ad loc.

22. Ad loc.

23. *Yoreh Deah* 240:32.

*gemara*²⁴ states that a father's relinquishing of his rights to *kavod* is effective. Some authorities²⁵ maintain that he can only waive his rights to receive honor, but he cannot allow his child to disgrace him. Some equate a parent allowing such disgrace to a parent allowing the child to hit him,²⁶ whereas others distinguish between the two.²⁷ In any case, based on the following story recounted in the *gemara*,²⁸ it is clear that some level of negative interaction is permitted if the father agrees. The *gemara* describes that an *Amora* purposely did something to upset his son in order to test his reaction. The *gemara* asks how he could have (potentially) caused his son to violate the obligation to honor his father, and the *gemara* answers that the father waived his honor.²⁹

When the psychologist prepares his patient for a conversation with his parent, he should teach him to raise the issues in a way that heals, not creates feuds. Presumably, he should say things like, "I know you love me, but when you act in a certain way, it hurts me." While even such statements are not pleasant to hear, they likely do not constitute the type of disgraceful behavior for which *méchila* is not effective according to some opinions.

In summary, a child should be encouraged to complain to his parents about their parenting only when it is truly necessary for the patient's mental health and/or the parent-child relationship. Even then, it is better for the psychologist to relay some of the harsher criticism instead of the child. The parent's willful participation in the process, which hopefully will not be overly disgraceful, is helpful not only psychologically but also halachically.

24. *Kiddushin* 32a.

25. Ra'avad, cited by *Shut HaRivash* 220; *Beit Yosef, Yoreh Deah* 334.

26. See *Turei Even, Megilla* 28a, who writes that a father cannot do either; see also the discussion in *Living the Halachic Process*, vol. II, I-5, regarding a parent who wants his child to give him an injection.

27. *Pri Yitzchak* 54.

28. *Kiddushin* 32a.

29. See *Birkei Yosef, Yoreh Deah* 240:14.

H-2: Celebrating a Girl's Birth

Question: What are the sources for, and purposes of, making a *Kiddush* upon the birth of a girl?

Answer: Presumably, you are referring to the colloquial usage of the term “*Kiddush*” – a celebration involving food, which ideally also involves words of thanks to HaShem and/or *divrei Torah*. This term is borrowed from the communal “*Kiddush*” held (usually) in *shuls* after the *tefilla* of Shabbat morning, which consists of a small meal prefaced by the Shabbat *Kiddush*. (As we will see below, there may actually be some significance to scheduling the *Kiddush* upon the birth of a girl to take place after the Shabbat morning *tefilla*.)

In general, it is a *mitzva* to thank HaShem for joyous and/or miraculous events. One of the applications of this concept is *Birkat HaGomel*, which we recite after being saved from danger.¹ While there is no requirement to have a meal in addition to the recitation of this *beracha*, sources indicate that it is a nice idea,² such a meal would parallel the eating of the *Korban Todah*³ in the time of the *Beit HaMikdash*.⁴

It is unclear whether one should have a celebratory meal in honor of the **birth** of a child. After a boy is born, there is a *seuda* at the time of the *brit mila*, and there is another one at the *pidyon haben* (when applicable). However, these meals celebrate the fulfillment of those *mitzvot*; while they are normally held not long after birth, they are not celebrations of the birth per se.

The *gemara*⁵ mentions two celebrations upon the birth of a boy, *shevua haben* and *yeshua haben*. While some explain that these terms refer to the celebrations held after the *brit* and

1. See specific rules in *Shulchan Aruch, Orach Chayim* 219.

2. See *Berachot* 46a; see also *Living the Halachic Process*, vol. IV, G-3.

3. Sacrifice of Thanksgiving.

4. See *Vayikra* 7:12.

5. *Bava Kama* 80a.

the *pidyon haben*,⁶ there are opinions that one of them is what Ashkenazim call a *shalom zachar*.⁷ Although it might appear that a *shalom zachar* is certainly a celebration of the baby's birth, this is unclear. There are three basic approaches regarding the purpose of a *shalom zachar*: 1) it is a celebration of the safe extrication of the child from his mother's womb at birth.⁸ 2) It is held to console the baby for the loss of the Torah learned during gestation.⁹ 3) It is related to the upcoming *brit*.¹⁰ The *Dagul Merevava*¹¹ argues that the *shalom zachar* must be related to the *brit mila* rather than to the birth itself, because if it were related to the birth then perforce there would be a similar event upon the birth of a girl. For this reason he says that the *shalom zachar* should be held the night before the *brit*, which is indeed the Sephardic practice (called a *brit Yitzchak*). Many Ashkenazim also have special observances on that night (in Yiddish, *vach nacht*). If so, it is unclear whether even a *shalom zachar* is a birth celebration.

There is a Sephardi *minhag* of a *zeved habat*, which normally includes giving her a name.¹²

For Ashkenazim, there is no set time or formula for the celebration of a girl's birth, and the consensus is that one is not **obligated** to have such a celebration. In some circles, people try to have some celebration on the day of her naming; this naming is normally done as part of a *Mi Sheberach* in conjunction with *kri'at haTorah* (and is an event to which some attribute tremendous meaning¹³). Some name a baby girl specifically on Shabbat, when typically more people are present.¹⁴ (The presence of many people is generally desirable for thanksgiving to

6. Rashi ad loc.

7. See *Tosafot* ad loc.; *Terumat HaDeshen* I:269; Rama, *Yoreh Deah* 265:12.

8. *Tosafot* op. cit.

9. See *Taz*, *Yoreh Deah* 265:13.

10. *Dagul Merevava* to *Shach*, *Yoreh Deah* 178:6.

11. *Ibid*.

12. *Rav Pe'alim* I, *Even HaEzer* 12.

13. See *Ta'amei HaMinhagim* 929.

14. See *Teshuvot V'Hanhagot* I:609.

HaShem¹⁵). This common practice of naming a girl on Shabbat and then celebrating immediately after the *davening* may explain why people commonly call such an informal meal a “*Kiddush*” no matter when it takes place.

There is a *baraita*¹⁶ which refers to a *shevua habat* as a female parallel to the *shevua haben* (see above). This could serve both as a source for the practice of a celebration upon the birth of a girl, as well as being a possible reason for having it sometime on Shabbat. The *gemara*¹⁷ discusses Boaz making 120 celebrations in honor of his children, and Rabbeinu Gershom¹⁸ says that 30 of those celebrations were held after the births of his 30 girls.

The truth is that while there is no specific obligation, timing, or setting, for such a celebration, simple logic dictates that one should thank HaShem for such a monumentally joyous occasion.¹⁹ In addition, some stress the importance of the *berachot* people give the baby and parents at the celebration,²⁰ and there are some “legends” that attribute great importance to this.

In summary, there is abundant basis for a “*Kiddush*” in honor of the birth of a girl being appropriate, and there are some sources that imply an established practice on the matter. It is our opinion that making such a *Kiddush* should not become a **necessary** burden on the heads of new parents, by having them feel they must do it at a specific time or a specific way. It certainly should not necessarily include large amounts of expense or toil, which may cause the parents difficulty at an often stressful, even if joyous, time. Hopefully, the parents will be able to find an appropriate, and not too challenging, opportunity to publicly share their joy and gratitude to HaShem.

15. *Ha'amek Davar*, *Vayikra* 7:13.

16. *Massechet Semachot (Avel Rabbati)* 2:3.

17. *Bava Batra* 91a.

18. Ad loc.

19. See *Teshuvot V'Hanhagot* op. cit.

20. Ibid. II:132.

H-3: Conflicting Commemorations

Question: For many years, I have been hosting a festive thanksgiving meal for family and friends to celebrate my being saved from grave danger. I recently discovered that I had miscalculated the Jewish date of that salvation, and it turns out that it actually coincides with what later became my father's *yahrtzeit*. Can the two commemorations coexist on one day? If not, which takes precedence?

Answer: On the *yahrtzeit* that completes the twelve months of *aveilut* for a parent, the full laws of the year's *aveilut* apply.¹ In subsequent years, the laws of *aveilut* technically do not apply on the *yahrtzeit*. There is an old *minhag*, recommended but not binding, to fast during the daytime portion of a parent's *yahrtzeit*.²

The Rama³ writes that that one should not take part in festive meals even during the night that begins the halachic date of the *yahrtzeit*. The *Levush*⁴ disputes this ruling based on his understanding of the logic for the *yahrtzeit* fast – namely, that the *yahrtzeit* is a day of bad omens for the deceased's offspring, and one fasts so that the *teshuva* that accompanies the fast will help protect him. The *Levush* posits that since this fast has nothing to do with *aveilut*, there should not be any restrictions on attending festivities the night before. According to the *Levush*, your situation has a simple solution: The celebration should be held at night, while the somber practices of *yahrtzeit* should be during the day.

However, the *Shach*⁵ and others maintain that the *minhag* follows the Rama's opinion. Although nowadays it is very common to **not** fast on a *yahrtzeit*, there is still a *minhag* to avoid,

1. Rama, *Yoreh Deah* 395:3.

2. *Shulchan Aruch, Orach Chayim* 568:7; Rama, *Yoreh Deah* 376:4.

3. *Yoreh Deah* 391:3.

4. *Yoreh Deah* 402:12.

5. *Yoreh Deah* 391:8.

or at least lessen, one's participation in weddings, and the *Taz*⁶ posits that *aveilut*-type behavior is indeed part of the *yahrtzeit* experience.

There are several grounds for leniency, besides the aforementioned *Levush*. Many authorities⁷ quote the *Magen Avraham* as saying that the restrictions apply only on the first *yahrtzeit*, which ends the twelve months of *aveilut*. Additionally, the *Pitchei Teshuva*⁸ writes that the restriction against participating in a festive meal applies only to the meal of a wedding, at which the intensity of *simcha* activity exceeds that of other celebrations. In fact, several *poskim* maintain that even an *avel* is permitted to take part in a *seudat mitzva* such as a *siyum*.⁹ Although the *Shach*¹⁰ cites the Maharil as not allowing a person to eat at a *siyum* on his parent's *yahrtzeit*, that is only when his *minhag* is to fast. Even then, the Maharam Shick¹¹ rules that one who accepted the practice to fast may still eat at **his own** *siyum*, and in your case, you are the celebrant of the thanksgiving meal.

What, though, is the status of your self-created salvation holiday? The *Chayei Adam*,¹² who instituted such a holiday when his family survived a fire, says that it is a *mitzva* to observe such a day. While the *Pri Chadash*¹³ says that the ability to institute semi-holidays ended with the retraction of *Megillat Ta'anit*,¹⁴ a clear majority of *poskim* disagree.¹⁵ Therefore, all of the aforementioned reasons for leniency exist in your case, and it is fully reasonable to celebrate your salvation on the *yahrtzeit*, preferably at night.

6. *Yoreh Deah* 395:3.

7. Including *Chochmat Adam* 171:11.

8. *Yoreh Deah* 391:8.

9. See *Shach*, *Yoreh Deah* 246:27.

10. *Ibid.*

11. *Shut Maharam Shick*, *Yoreh Deah* 367.

12. II:155:41.

13. *Orach Chayim* 496:14.

14. A list of semi-holidays, from pre-Talmudic days, on which it was forbidden to fast.

15. See presentation in *Yabia Omer* X, *Orach Chayim* 53.

However, it is apparent from your question [only partially presented here] that you are understandably uncomfortable with the confluence of these very different days. Therefore, we do not recommend that you move your celebratory day from when you have been holding it to the *yahrtzeit*. Although a meal instituted on a day of personal salvation is likely a *seudat mitzva*, one is **not obligated** to institute it. While it is not a simple matter to undo the institution of such a day (beyond our present scope), this is not a problem for you, as long as you do not move it to the *yahrtzeit*.

Perhaps it was *min haShamayim* (divinely ordained) that the date on which you have been celebrating until now does not cause a conflict. Realize that there are no set rules as to when and how to hold such a celebration. Even Purim, after which this celebration concept is modeled, is not held on the actual day on which the Jews were saved. Some well-known “family Purims” consisted of a fast day on the day of salvation and a feast on a different day. Thus, you can continue celebrating on the day you instituted your celebration (or on a different one), so that the celebration and the *yahrtzeit* do not cast a shadow on each other.

H-4: A Brit Mila Meal

Question: Is there an obligation to eat at a *brit mila*?

Answer: This question can be divided into two parts. One is whether there is a *mitzva* to have a *seuda* (meal) in honor of a *brit mila*. The other issue is whether invited guests are required to take part in such a *seuda*.

The *Shulchan Aruch*¹ states: “It is the practice to make a *seuda* on the day of the *mila*.” The Rama adds: “And it is the practice to have a *minyán* for the *seuda* of a *mila*, and it is called a *seudat mitzva*.” One source in support of this practice of making a *seuda* is *Pirkei D’Rabbi Eliezer*,² which derives it from the *brit* that Avraham performed for Yitzchak. The Torah writes that Avraham made a “big party” on the day that “**higamel** et Yitzchak.”³ Although the simple translation of *higamel* is that he was weaned, *Pirkei D’Rabbi Eliezer* apparently interprets that the reference is to the day of the *brit mila*. The *Orchot Chayim*⁴ understands that this derivation is based on interpreting the word *higamel* as **heh-gimel-mal**. The numerical values of the first two letters (*heh* and *gimel*) are 5 and 3, which together add up to 8, and **mal** means “he circumcised.” Thus, the day that *higamel* is understood to mean the eighth day, on which Yitzchak was circumcised; his *brit mila* was the event that prompted the party.

Another source is the *gemara* in *Ketubot*,⁵ which seems to assume that there is a special meal at a *brit mila*, comparable to that of *sheva berachot*, as implied by the fact that it needs to point out the difference between the *bentching* at the two. Specifically, the *gemara* states that before *Birkat HaMazon* of *sheva berachot*, one says “*shehasimcha b’me’ono*” (that the joy is in His abode),

1. *Yoreh Deah* 265:12.

2. 29

3. *Bereishit* 21:8.

4. *Mila* 9.

5. 8a.

whereas this is not recited before *Birkat HaMazon* at a *brit mila*, due to the pain of the child.

One of the ramifications of the fact that the meal for a *brit mila* is considered a *seudat mitzva* is that it allows invitees to this meal to eat meat and drink wine even during the Nine Days.⁶ However, the Rama cautions that one should not artificially include people in this meal who are not naturally part of the festivities.

There is a well-known, but apparently somewhat misapplied, concept relating to the invitees to a *brit mila*. The *gemara*⁷ lists people with the dubious distinction of being *menudim lashamayim* (roughly, shunned in Heaven) as a result of what they do (or refrain from doing) improperly. One such person is he who “does not recline (i.e., set himself to eat) with a group of a *mitzva*.” *Tosafot*⁸ says that this refers to one who does not eat in the *seuda* of a *brit mila*. *Tosafot* adds that participation in such a *seuda* saves one from being sent to *gehinom* (purgatory). Based on this idea, the practice developed of not explicitly inviting people to a *brit mila*,⁹ so that people will not be in the situation in which they should be attending and yet refrain from doing so. Rav Moshe Feinstein¹⁰ explains that the issue is not the obligation to take part in the *mitzva* itself; after all, we do not find regarding the many other *mitzvot* that one can attend that one who chooses not to attend them is *menudeh lashamayim*. Rather, what is inappropriate is the lack of honor that one shows toward a great *mitzva* when he is invited to its celebration but nevertheless does not attend. It is related in the name of Rav Feinstein that one discharges the minimum obligation by eating anything at the meal or smaller reception. One need not eat bread (which the core participants are supposed to do¹¹), nor stay for the meal itself.

6. Rama, *Orach Chayim* 551:10.

7. *Pesachim* 113b.

8. *Pesachim* 114a.

9. *Pitchei Teshuva*, *Yoreh Deah* 265:18.

10. *Igrot Moshe*, *Orach Chayim* II:95.

11. See *Sefer HaBrit* 165:161.

It is of note that many people are aware of the *minhag* not to invite regarding a *brit*, but they apparently do not follow it correctly. Many people simply inform about rather than invite to the *brit mila*, but once people come to the *mila* itself, they invite all assembled to the meal, even though they know that many will not be staying. As we have seen, the sources regarding turning down an invitation refer to not attending the meal, rather than to not attending the performance of the *mila*. Moreover, some people who merely “inform” others about the meal make it very clear that they want, and even **expect**, those others to come. Although they avoid using the word “inviting,” it would appear that the spirit of the invitation (i.e., clearly transmitting the expectation that they attend) is the actual issue; there is nothing intrinsic about the word “invite.”

H-5: How Can the Rabbi Make the “Groom’s *Beracha*”?

Question: I was told that the *berachot* made by the rabbi (*mesader kiddushin*) under the *chupa* are *berachot* that the *chatan* should be making, but because some *chatanim* do not know how to recite them, the rabbi does so in his stead. But how is it possible for someone who is not obligated in the recitation of a certain *beracha* to recite it on behalf of someone else who is obligated?

Answer: There are different approaches as to the function of the *berachot* recited under the *chupa*, and these differing approaches impact on the question of who is supposed to recite them. We will focus on *birkat eirusin*, the *beracha* recited before the giving of the ring, the text of which is, “...*asher kid’shanu b’mitzvotav v’tzivanu al ha’arayot...*” We will not discuss here the separate, albeit related, topic of how the rabbi, who usually does not drink any of the wine, may recite the *beracha* of *Borei P’ri Hagafen* before the *birkat eirusin*. We will also not discuss here the *birchot nisuin* (seven *berachot* at the end), as it seems that it is not the *chatan*’s responsibility to recite them in the first place, and your question therefore does not apply to them.¹

The Rambam² states that the *chatan* (or his agent, if the agent performs the act of *kiddushin*) is the one who recites the *birkat eirusin*. This is logical considering that the Rambam’s position is that getting married is a *mitzva*.³ Thus, the person who performs the *mitzva* act recites the *mitzva*’s *beracha* immediately before doing so.

However, the practice for the past several hundred years has been that a different person (usually the *mesader kiddushin*) is the one who makes this *beracha*. Indeed, this *minhag* is cited by the

1. See *Yabia Omer* VII, *Even HaEzer* 17; *Living the Halachic Process*, vol. III, H-3.

2. *Ishut* 3:23.

3. *Ibid.*; *Shut HaRambam* 288.

Rama.⁴ The *Derisha*⁵ explains that this practice is based on the Rosh's thesis⁶ that *kiddushin* is not a *mitzva* per se. It follows, says the Rosh, that the *birkat eirusin* is not a *birkat hamitzva* (a *beracha* on the *mitzva* act itself), but rather is categorized as a *birkat hashevach* (a *beracha* of praise). Its function is to praise HaShem for providing us with *halachot* and procedures to navigate the union of a couple. If the *beracha* is a *birkat hashevach* and is not connected directly to the **performance** of the *mitzva*, it is fully understandable why someone other than the *chatan* may recite it.

Some authorities⁷ suggest that these divergent approaches to the *mitzva* status of marriage and that of the accompanying *birkat eirusin* also explain another *machloket*. The Rambam⁸ rules that if the *beracha* was not recited before the *kiddushin*, it may not be said afterward, while the Ra'avad⁹ maintains that it may still be recited. The Rambam's ruling is consistent with his opinion that marriage is a *mitzva*; since a *beracha* on the action of a *mitzva* must precede the *mitzva*,¹⁰ he rules that the *birkat eirusin* may not be recited after the *eirusin* act has been performed. In contrast, the Ra'avad may follow the Rosh's approach that the *birkat eirusin* is a *beracha* of praise, and it is therefore appropriate to recite it even after the marriage has taken effect, as long as it is connected to the marriage process.

The *Noda B'Yehuda*¹¹ argues that the *minhag* that the *mesader kiddushin* recites the *beracha* is valid even according to the Rambam's view that the *beracha* is a *birkat hamitzva*. He posits that this *minhag* is based on the rule that one who is **generally** obligated in a *mitzva* (*mechuyav badavar*) may make the *beracha* – even if he is not performing it at the present time –

4. *Even HaEzer* 34:1.

5. *Even HaEzer* 34:1.

6. *Ketubot* 1:12.

7. See *Tuv Ta'am VaDa'at* III, *Yoreh Deah* 98; *Har Tzvi*, *Yoreh Deah* 1.

8. *Ishut* 3:23.

9. *Ad loc.*

10. *Pesachim* 7b.

11. II, *Even HaEzer* 1.

on behalf of someone who is presently fulfilling it.¹² However, we do require that the one on whose behalf the *beracha* is recited (e.g., the *chatan*) hear the *beracha* being recited.

One *nafka mina* (practical difference) between these approaches is that according to the Rambam/*Noda B'Yehuda*, if the *chatan* and *kalla* are deaf, such that they cannot hear the rabbi's *beracha*, he may not make the *beracha* on their behalf. (The *Noda B'Yehuda* raises a dilemma whether it would be enough for the *kalla* to be able to hear the *beracha*, as it is not clear whether a woman, who is not obligated in the *mitzva* of *pru u'revu* (procreation), nonetheless has a *mitzva* to get married.) Rabbi Akiva Eiger¹³ and the *Tevuot Shor*¹⁴ follow the Rosh's approach and rule that the rabbi may make the *beracha* for a deaf couple.

Another possible *nafka mina* is whether the *chatan* and the rabbi should have specific intent that the rabbi's *beracha* is being recited on behalf of the *chatan*. According to the Rosh/*Derisha*, such intention is not required.¹⁵

In truth, not only is it permitted for someone other than the *chatan* to make the *beracha*, but it has become customary that the *chatan* should **not** make it. The Mordechai¹⁶ says that a *chatan* who recites his own *birkat eirusin* would appear as showing off. In addition, the *Beit Shmuel*¹⁷ writes that we do not let any *chatanim* do so, in order to avoid embarrassing those *chatanim* who do not know how to recite the *beracha* properly.

12. See *Rosh Hashana* 29a.

13. To *Taz*, *Yoreh Deah* 1:17.

14. *Yoreh Deah* 1:(59).

15. See *Har Tzvi* op. cit.

16. *Ketubot* 131.

17. 34:2.

H-6: Giving *Tzedaka* during *Aveilut*

Question: I was told that an *aveil* should not give others monetary gifts. Is it permitted for him to give *tzedaka* freely during his *aveilut* period, or are there limitations on this?

Answer: Your question did not specify to which stage of *aveilut* you are referring. We will begin our discussion with the most severe stage – *shiva*.

The Maharil¹ says that one may not give *mishloach manot* to a mourner during the year of his *aveilut* for a parent, because doing so is considered like *sh'eilat shalom* (inquiring about the mourner's welfare), which is forbidden during this period.² If giving *mishloach manot* to an *aveil* is equated with *sh'eilat shalom*, it follows that the mourner's giving *mishloach manot* to someone else is like his *sh'eilat shalom* to that other person. The *halacha* is that a mourner may not do *sh'eilat shalom* to other people during his *shiva*, whereas it is permitted thereafter.³ Thus, it would seem logical to forbid an *aveil* from giving *mishloach manot* during *shiva*.

Nevertheless, the *Shulchan Aruch*⁴ rules that an *aveil* does give *mishloach manot* during *shiva*, because even during this period he is required to fulfill *mitzvot*, including this one.⁵ (Note that the *Magen Avraham*⁶ writes that such *mishloach manot* should not include special “treats” that evoke particular delight when received.) However, an *aveil* during *shiva* is forbidden to give presents if they are not *mitzvot* that must be performed during that specific period.

1. *Shut HaMahril* 31, cited in the *Darchei Moshe, Orach Chayim* 696:4, and in the Rama, *Orach Chayim* 696:6.

2. *Shulchan Aruch, Yoreh Deah* 385:1.

3. *Ibid.*

4. *Orach Chayim* 696:6.

5. See *Darchei Moshe* op. cit.; *Mishna Berura* 696:17.

6. 696:11.

As we mentioned, after the *shiva* is completed, an *aveil* is allowed to do *sh'eilat shalom* to others. It is therefore reasonable to assume that the *aveil* is allowed to give presents at that point. Although some *Acharonim* forbid a mourner for a parent to give presents throughout the entire year of *aveilut*,⁷ this stringency does not seem to have a strong basis. Even if one wants to be stringent on the matter, it seems clear that this is only when the present is conspicuous in its ceremoniousness, but not when the nature of the gift or the relationship between the mourner/giver and the recipient make the gift a matter of course.⁸ Only a festive type of gift would be parallel to the *Magen Avraham*'s ruling that an *aveil* should not give the type of *mishloach manot* that evokes special joy.

Let us turn our attention to your question regarding giving *tzedaka*. It is very appropriate for a mourner to give *tzedaka* throughout the various stages of mourning, both for the merit of the *aveil*⁹ and for that of the deceased.¹⁰ Indeed, it is difficult to find a good argument why an *aveil* should not give *tzedaka* after the *shiva* is over. Although giving *tzedaka* should bring the donor joy, the joy of doing a *mitzva* is not something the Rabbis prohibited for a mourner; only actions that are joyful by their very nature, irrespective of their religious/moral content, are problematic. Furthermore, if one gives money to a *tzedaka* organization, it is unlikely that there will be any interpersonal interaction that might even raise a question of *simcha* or *sh'eilat shalom*.

Even during *shiva*, the *aveil* is obligated to fulfill *mitzvot* like anyone else, and this includes giving *tzedaka*. Indeed, *tzedaka* is considered a good way to bring merit for the deceased. As the *Mishna Berura*¹¹ comments, if a mourner during *shiva* is obligated to give *mishloach manot*, he certainly should give

7. See *Divrei Sofrim* 385:22.

8. See *Nitei Gavriel*, *Aveilut* II, 14:10.

9. *Shabbat* 156b.

10. *Shut HaRashba* VII:539.

11. Op. cit.

matanot la'evyonim. The same applies to giving other *tzedaka*. The only difference is that *matanot la'evyonim* must be given on a specific day, whereas some donations of *tzedaka* can just as well be given afterward. Although we would not recommend that a mourner during *shiva* occupy himself with the periodic writing of *tzedaka* checks or the like, if a particular need arises (e.g., a collector comes to the door or there is some pressing need, etc.), the mourner is not precluded from donating appropriately. In addition, we might suggest that *shiva* is a good time to **decide** to give significant donations, whereas the actions of actually giving the money would be carried out after the *shiva* is over.

There is one *tzedaka*-related limitation that we do suggest a mourner observe throughout the year of *aveilut*. Large donors are periodically honored at dinners and in other ways. While the year of *aveilut* is an appropriate time to donate enough to be honored, it would seem inappropriate for the donor to accept the accompanying festive honors during this period.

H-7: Undesirable Stringencies in *Ketubot*

Some of the questions that we answer are not appropriate to share with the public. Regarding the question dealt with here, we believe that the approach found in our answer is important to share with others. However, few people would think on their own of the logical stringency suggested by the question, and we do not want some of those to whom it applies to needlessly upset themselves by reading about the issue. Therefore, we have omitted the specifics of the case and focus only on the general approach to the laws of *ketubot*.

Question: Why shouldn't issue XX in situation YY affect the validity of a standard *ketuba*? I have researched the issue and found that Rabbi ZZ says the issue is problematic. What is your opinion?

Answer: Although your question is excellent from a theoretical perspective, we strongly recommend not making any *halacha l'ma'aseh* (practical halachic) changes based on the issue you raised.

A *ketuba* functions in two basic areas. First and foremost, it is a legal document, which must be capable of being used in *beit din*. *Chazal* insisted that a husband provide his wife with a minimum level of financial security, both during their marriage and after its termination, and much of the details designed to guarantee this security are spelled out in the *ketuba*. Additionally, the signing of the *ketuba* and its presentation to the bride are important parts of a Jewish wedding. But unlike a *get*, in which a slight mistake could disqualify it and have quite serious halachic ramifications,¹ the likelihood that a mistake would disqualify a *ketuba* is far lower.

1. See *Gittin* 5b; *ibid.* 80a.

The main point of the *ketuba* is that the wife should legally be able to collect the sum of money written in it upon divorce or being widowed. It is extremely rare for a “less laudable” version of a *ketuba* to serve as justification for *beit din* to not award the woman this money.²

In addition, the possible consequences if a *ketuba* is indeed disqualified are far less severe than those of an invalid *get*. In addition to a possible difficulty for the wife in receiving payment with the dissolution of marriage,³ the Rabbis instituted that it is forbidden for the couple to live together without a *ketuba*.⁴ Nonetheless, if a couple reasonably believes that their *ketuba* is valid, then even if in truth it is not, this does **not** mean that they were living in sin.⁵ Although any mistake discovered must certainly be dealt with seriously, this should not cause hysteria or concern about the sanctity or success of the marriage.

Of course, it is generally proper to attempt to perform everything of religious importance in the most appropriate manner, and one should therefore try to write the *ketuba* as accurately as possible. However, in our opinion, it is no less important to follow the standard *minhag* and to not implement new ideas that were not found in the *ketubot* of one’s parents or *roshei yeshiva*. This is so even if there are respected opinions that prefer a different practice and even if such a practice indeed was or is the standard *minhag* in a different time or place. The important thing is not to stray from the common current practice in the community of the *chatan* and *kalla*. A change in *minhag* can appear to cast aspersions on our predecessors and our peers, as if implying that their *ketubot* were not (as) good.

We will give one example of not introducing logical *chumrot* into the practice of writing *ketubot*. In the case of a *get*, in which

2. See discussion in *Living the Halachic Process*, vol. V, H-5.

3. In truth, in our times, it is uncommon for the *ketuba* document to be the basis of post-marriage financial settlements.

4. See *Ketubot* 39b, 56b.

5. *Minchat Yitzchak* IX:139.

clear, accurate identification of the couple is crucial, there are complicated *halachot* regarding how to incorporate not only the Jewish name received after birth, but also secular names and nicknames.⁶ Some sources recommend that a *ketuba* also follow these rules, especially considering the possibility that the names from the *ketuba* may be used when writing a potential future *get*. Nevertheless, as the *Minchat Yitzchak*⁷ points out, this is clearly not the *minhag*; rather, in a *ketuba* we generally write only the names given to the bride and groom shortly after their births. Therefore, we strongly discourage officiating rabbis from changing the *minhag* and adding secular names and nicknames, thereby creating unnecessary new complications in the writing of the *ketuba*. This is despite the fact that adding these names appears halachically preferable.

The point that you raised does indeed appear more important from a halachic perspective than many other issues. However, there are only a handful of sources that recommend implementing that *chumra*, and we found none that says that failure to follow it renders the *ketuba* invalid. Although the situation you describe does not always arise, and we therefore would naturally expect it to be discussed less than other issues, the fact that we have **never** heard of this *chumra* being implemented indicates that it is clearly not the *minhag* even in such situations. Since implementing the *chumra* would create significant complications and would cast aspersions on those who do not do so, we feel that one should not implement it.

6. See *Shulchan Aruch* and Rama, *Even HaEzer* 129:1.

7. VII:117.

H-8: Filling in a Copy of the *Ketuba* After the Fact

Question: A mistake was made in filling out the identical “copy” of our *ketuba*, and we therefore have only one kosher *ketuba* filled out at the time by the rabbi and witnesses. We now need to send the copy in to the *beit din*. May I (the groom) now ask the witnesses, several days after my wedding, to sign a copy with the same information, including the date of the wedding? (The *mesader kiddushin* and witnesses are *talmidei chachamim* but not *poskim*, and they encouraged me to ask this *shayla*.¹)

Answer: It is best, if feasible, to ask the *beit din* in charge of authorizing your marriage how they want the matter handled. However, we can understand why the parties involved apparently want to avoid that headache, and we will discuss with you the halachic issues regarding your preferred plan of filling the copy out now, so that you can share this discussion with the rabbi and the witnesses.

Your description hints that you did not use the Israeli governmental *Rabbanut* to register your wedding, as the *ketuba* copy they provide is a special form that is different from a regular *ketuba*. One such difference is that their form states explicitly that it is a copy, which has some halachic advantages.²

The *ketuba* must be a valid financial document. If the first *ketuba* was invalid (not every mistake invalidates a *ketuba*³), it is necessary to write a new one as soon as possible, although the

1. Halachic query.

2. We will not get into the issue of the propriety of having two identical *ketubot*, with one not being for payment. See a parallel discussion in *Living the Halachic Process*, vol. V, H-6.

3. See *Living the Halachic Process*, vol. V, H-5, and response H-8 of this volume.

couple could go into the *yichud* room⁴ before it is done.⁵ Having a copy of the *ketuba* is a contemporary rabbinic idea and not a halachic obligation. It primarily serves to keep information on the wedding and *ketuba* in the archives of the State of Israel or a *beit din*, which can prove valuable in several ways. There is a *machloket* among *poskim* regarding whether a woman who lost her *ketuba* can later secure payment (after divorce or being widowed) based on this copy.⁶ This, in turns, impacts on the question of whether a couple may continue living together in the fullest sense when the couple's *ketuba* is lost or disqualified but the *Rabbanut* has a valid copy, prior to arranging a replacement *ketuba*.⁷

May one predate a standard *ketuba* so that it can serve as a duplicate for the main *ketuba*, which was already signed? One of the things that disqualify a legal document is its being predated.⁸ This is because of the laws of liens, which enable extracting payment from real estate that had been owned by the debtor. In the case of a *ketuba*, all of the groom's property is designated for the possible payment of the related debt to his wife. A predated *ketuba* could therefore theoretically be used to seize property from one who bought the property from the groom **before** the obligation found in the document was actually created, even though in that case, the lien did not in truth take effect on that property. Therefore, a predated *ketuba* may not be used for collecting liens,⁹ which a *ketuba* must be capable of doing;¹⁰ in fact, it is possible that such a *ketuba* may not be used for any collection at all.¹¹ In your case, if we accept the view that in any event the copy *ketuba* cannot be used for payment but just provides information, it might not

4. The secluded room to which the groom and bride go after the wedding ceremony, which completes the marriage process for Ashkenazim.

5. See *Living the Halachic Process*, vol. III, H-2.

6. See *Living the Halachic Process*, vol. V, H-6.

7. See *ibid*.

8. *Mishna, Shvi'it* 10:5.

9. *Shulchan Aruch, Choshen Mishpat* 42:7.

10. *Shulchan Aruch, Even HaEzer* 66:1.

11. See *Shulchan Aruch* and Rama, *Choshen Mishpat* 42:7-8.

be viewed as a financial document that must not be predated – **as long as** it is discernable that it is the copy.

According to the opinions that the *ketuba* copy can be used for payment, or in the case of a *ketuba* copy that is not at all discernable as being a mere copy, it is generally forbidden to predate it even if the *chatan* requests it. While he is ostensibly only obligating himself by agreeing, he actually is authorizing a false document that can potentially harm others (i.e., those who previously bought property from him).

But is your case really one of a predated *ketuba*? After all, one could argue that you actually did accept the *ketuba* obligations at the time of the wedding and created the lien, just that the obligation, at its inception, was not expressed in the piece of paper you want to sign now, but in the kosher *ketuba*. However, the fact that the lien exists still does not mean that witnesses are permitted to freely sign such a document. Consider that witnesses who signed a document that was lost or faded may not write an identical replacement to attest to the obligation they witnessed, because their authority regarding the document ended with the writing of the first document.¹² Even with the debtor's reauthorization, the witnesses can only write it with the date of the reauthorization.¹³

However, if the witnesses did not carry out their job validly, they can sign a new, valid document,¹⁴ because they were implicitly authorized at the time to sign a second **valid** document. Regarding predating the document to the time the obligation took place, we can learn the *halacha* from a parallel case. The *Shulchan Aruch*¹⁵ rules that if one obligated himself to his friend with a *kinyan*¹⁶ in front of witnesses (as a *chatan* does), the witnesses can write a document confirming this, as was expected of them, with the

12. *Shulchan Aruch*, *Choshen Mishpat* 41:1; *S'ma* ad loc. 4; *Shach* ad loc. 3.

13. *Shach* *ibid.*

14. *Ibid.* 4.

15. *Choshen Mishpat* 39:3.

16. An act of formalization.

date being that of the *kinyan* – even if they did not get around to writing the document until a later date. In our case, while the witnesses already signed a valid *ketuba*, they did not finish their job with that, since their *kinyan* on the terms of the *ketuba* was designed to result in a duplicate *ketuba* copy as well. Therefore, they can finish their job by writing the copy with the date of the time of the *kinyan*/wedding.

Our mentor and teacher Rav Zalman Nechemia Goldberg (*shlita*) [*zt"l*] agreed with this analysis and recommended that you explicitly ask the witnesses to sign the copy.

Section I:
Monetary Law

I-1: A Sales Price Based on False Information

Question: While pricing computers, a proprietor of one store promised me, “I will beat any price you find.” I informed him of a cheap quote I had received, and he indeed agreed to a price slightly lower than that. When I checked the other quote, I realized it was for a cheaper computer. Do I need to tell the proprietor about my mistake, or can I go with the agreed-upon price?

Answer: It is forbidden to deceive someone (*geneivat da’at*).¹ Although you presumably are aware of this, your question is probably premised on the mitigating circumstances: 1) You cited the price with honest intentions. 2) By the time you realized the error, he had already agreed to the price, indicating that the price was reasonable and worthwhile for him.²

We will divide our discussion according to whether you found out before or after the transaction was halachically complete.³

Geneivat da’at applies even when one said nothing false, but just acted in a manner that created a misconception.⁴ The *gemara*⁵ says that acting in a manner that gives a false impression is considered a violation of the requirement to distance oneself from a lie, even if one said nothing. Thus, if you complete the transaction after realizing that you gave false information, then you are deceiving the seller at that point. Going through with the transaction without correcting the mistake is not much different from lying in the first place.

1. *Chulin* 94a.

2. It is conceivable, but probably unlikely, that it was not acceptable to him, but that he did not want to be in the position of not keeping his word that he would beat any price.

3. This occurs, in the standard case, when one takes physical possession of the computer (see *Bava Metzia* 44a).

4. *Chulin* op. cit.

5. *Sh’vuot* 31a.

What if the transaction was already completed before you discovered your mistake? The rules of *ona'ah* (mispricing) deal with situations in which the transaction already occurred and the question is whether the sale should be voided or the price differential returned. The general rule is that if the difference between the actual sales price and the proper one is less than one sixth, one does not have to return the difference.⁶ In your case, if we could determine that the price was not off by that much from the range of normal prices, there **ostensibly** should be no consequences after the fact due to your questionable discount. Furthermore, when the “victim” of the unfair price was told the proper price but still agreed to the “wrong” one, the agreement stands as is.⁷ Since the proprietor arguably knew the costs and prices in his field, he might be equivalent to a buyer who was told the real price and still agreed.⁸

Nevertheless, there is a fundamental distinction between the regular rules of *ona'ah*, which deal with appraisal of value, and a factual mistake. The leeway of a sixth given for *ona'ah* is based on the fact that setting an exact price is an inexact science, making modestly differing prices marginally legitimate.⁹ However, if someone gives false information regarding something exact – such as measurements of size, weight, or number – *ona'ah* applies even for a difference of less than a sixth and even for objects that are excluded from the standard laws of *ona'ah*.¹⁰ As the *Shulchan Aruch*¹¹ explains, this is considered a *kinyan b'ta'ut*, a transaction made under false pretenses. In the same vein, if the price in your case was based on an exact fact – i.e., the price you

6. See *Bava Metzia* 49b.

7. *Shulchan Aruch, Choshen Mishpat* 227:21.

8. See a discussion in *Pitchei Choshen, Ona'ah* 10:(34) of whether it is enough for the party to know the real price or whether there must be an explicit stipulation.

9. See Rosh, *Bava Metzia* 4:20.

10. *Shulchan Aruch, Choshen Mishpat* 232:1; *S'ma* ad loc. 2.

11. *Ibid.*

said was quoted by a different vendor – *ona'ah* applies even if it is off slightly. The fact that the proprietor agreed to a low price reflects a calculated concession on his part, but the parameters of that concession are predicated on the buyer's presenting accurate competing quotes. Additionally, in the case of a *kinyan b'ta'ut*, it makes no difference whether the one who provided the wrong information did so intentionally or accidentally.¹²

An important distinction is crucial here. Sometimes a buyer or seller will try to make a deal look better through information he provides (e.g., “the going rate is X, but I am giving you a discount”). Untruths about the going rate are not always grounds for invoking *ona'ah* if other factors are missing.¹³ However, if a seller sets the price **strictly based on**, for example, the price he gives other customers, and he lied about that price, *ona'ah* does apply in spite of the fact that the price he sets is objectively reasonable.¹⁴ In such cases, one has to analyze the language of the agreement: Was the price they agreed upon one they could have arrived at without inaccuracies, and the false information was simply an attempt to convince the buyer, or was the price for others **the basis** for the price here?¹⁵

Let us apply this reasoning to your case. The way the seller worded your discussion on the price (“I will beat any price...”) indicates direct linkage to the quote you presented. Therefore, even if the transaction had been completed before you realized the mistake, you would have to initiate the return of any price distortion created by your mistake.¹⁶

12. See *Shulchan Aruch* and Rama, *Choshen Mishpat* 232:18.

13. See *Taz* to *Choshen Mishpat* 332:4.

14. See Rama, *Choshen Mishpat* 332:4.

15. See *Netivot HaMishpat* 332:4.

16. See the harsh words of the *Shut Maharashdam*, *Choshen Mishpat* 433, regarding an agreement to a certain profit margin, in which the seller gave the wrong information about the cost of supplies.

I-2: Paying the Fee of a Technician Who Refused to Give an Estimate

Question: I sent my computer to a technician to repair serious problems. He was unwilling to tell me his fee in advance. He claimed that it depended on how long the job would take him and that he could not commit to an expected maximum. After fixing the computer, he charged me what I consider an exorbitant price. I am not sure I trust him regarding how much work he put in. Must I pay without making an issue of it?

Answer: In all questions of this nature, we warn the querier that we cannot give a conclusive answer after hearing only one side, as even two honest people can have different viewpoints of the same events. While we often refuse to answer at all and say that the two sides must either be heard in *beit din* or employ some other permitted dispute resolution framework, we cannot ignore your question of whether you should make an issue of the matter at all. Therefore, we will briefly discuss general sources and factors.

The client has the advantage in a disagreement between a client and a worker over the amount that was set for payment, due to the rule that one who wants to extract payment requires proof.¹ The client would be obligated, however, to take a serious oath that he does not owe more than he admits. Thus, if the client claims that he is **uncertain** how much he owes, he should have to pay, because he is unable to take that oath.² Nonetheless, when he is **incapable of knowing** how much he has to pay, the rule that one who cannot take the oath must pay does not apply.³

In a situation such as yours, in which it is clear that the side that is claiming payment will know how much time he put in and the one who is being asked to pay will not know, the rules

1. *Shulchan Aruch, Choshen Mishpat* 89:4.

2. See *ibid.* 75:13.

3. See *Shach, Choshen Mishpat* 75:54.

are somewhat different. According to a *mishna* that discusses a particular agent who claims he incurred expenditures on behalf of someone,⁴ as well as another *mishna* that discusses the case of a husband who made improvements in his wife's field before divorce,⁵ the plaintiff swears about how much he spent and is then reimbursed. The Mordechai,⁶ Maharik,⁷ and Rama⁸ understand this as a broad rule regarding plaintiffs who know about their expenditures and defendants who do not. The plaintiff is believed and receives payment upon taking an oath supporting the veracity of his claim.

The above appears contradicted by the *halacha* that one who seeks reimbursement for expenditures that resulted from unreasonable steps taken by the other litigant must actually prove how much he spent; merely taking an oath is not sufficient to justify his claim.⁹ The *S'ma*¹⁰ distinguishes between cases in which the plaintiff worked for the benefit of the other side, in which case he takes an oath and is reimbursed, and cases in which he acted against the other side's will, in which case he must prove his expenditures. The *Shach*¹¹ distinguishes between cases in which the defendant requested of the plaintiff to make the outlays and cases in which the plaintiff acted on his own accord. Part of the logic is that when Reuven asks Shimon to do something that deserves reimbursement without demanding proof from the outset, he is in effect granting trust in the veracity of Shimon's charge.

The obligation to pay wages is equivalent to that of paying expenses. In your case, the *S'ma* and *Shach* would agree that you should believe the technician, who worked on your behalf and

4. *Sh'vuot* 45a.

5. *Ketubot* 79b.

6. *Ketubot* 209.

7. *Shut HaMaharik* 10.

8. *Choshen Mishpat* 91:3.

9. Rama, *Choshen Mishpat* 14:5.

10. 91:16.

11. *Ibid.* 23.

based on your request. Certain cases could arguably be exceptions. One is when you have **strong** grounds to believe the technician is lying.¹² Another is if the technician should have informed you when he figured out the extent of the cost, enabling you to decide whether it was worthwhile to have the computer fixed.¹³

It is generally best to research a professional's reliability before you hire him, and if you have heard favorable reports, to trust him. While it is your prerogative to not use this technician in the future, refusing to pay in full is a drastic step. Some situations may lend themselves to expressing (in a *menshlich* way) your displeasure and suggesting that your willingness to use him again depends on a reduction in price. There are so many unclear factors that it is difficult to give firm advice as to what to do, and without hearing the other side, it is certainly wrong to even attempt to tell you who is right.

12. See *Pitchei Teshuva, Choshen Mishpat* 91:4.

13. Often, he will not know until well into the process, at which time informing you will already be irrelevant. Furthermore, he can claim that you should have requested an update. Such matters change from case to case.

I-3: A School's Responsibility for Confiscated Items

Question: We are a school whose policy is to confiscate items that disrupt the running of the school. Recently, someone broke into our safe and stole confiscated cell phones, and parents are demanding that we pay for them. Are we halachically required to pay?

Answer: First, we must caution you that nothing that we write here is to be seen as a ruling that would exempt you from adjudication with parents who might (hopefully, not) sue you, as we have not heard their specific claims. We are simply trying to help you set a general policy of how you believe things should run in this regard.

First, we must briefly address your confiscation policy. There is halachic discussion whether (and/or for how long) a school may confiscate a student's property as a preventive or punitive measure.¹ Our opinion is that it is permitted as part of the leeway that Halacha gives parents and teachers who need reasonable measures to enforce discipline appropriately. You can more or less put the halachic debate to rest by taking two steps, which are usually worthwhile in any case. One is to have the parents explicitly give their agreement to clearly stated school policies, including a teacher's right to confiscate items from the students. The other is to instruct the teachers not to grab the objects, but instead to firmly inform the students that they are either to hand over the item or face strong disciplinary measures. In any case, however, the school has a right to responsibly confiscate property that students bring or use contrary to the rules of the school.

Now we will deal with the question of liability for the theft of the cell phones. Your school receives funds primarily to teach, but

1. See *Techumin*, vol. VIII.

your responsibilities extend naturally to other services, including guarding the property that you decide to confiscate. This is similar to a craftsman, whose main job is to work on his customer's property but who also is expected to make an effort to ensure that the property does not disappear. In fact, the *mishna*² states that a craftsman has the status of a *shomer sachar* (a paid watchman), who is obligated to pay for objects that are stolen or lost under his watch.³

What if a *shomer sachar* watches the object as well as he can, but it is stolen anyway? Would we say that since he is exempt from damages that happen due to *oness* (extenuating circumstances beyond one's normal control),⁴ he is also exempt in such a case, or would we say that he is obligated because he is responsible for thefts? There is a *machloket* among *Rishonim*⁵ regarding if a *shomer sachar* is obligated to pay in a case of theft that took place despite his doing a proper professional job of guarding. Among the classical *poskim*, the *Shulchan Aruch*⁶ rules that the *shomer sachar* must pay unless the loss occurred due to armed robbery,⁷ whereas the *Shach*⁸ says that he is exempt from any *oness*, including one that ends up in a theft.

There is another reason for exemption. The Maharshach⁹ distinguishes between different kinds of *shomrei sachar*. A professional *shomer* is obligated to do an especially professional job and must pay for any type of theft. However, one who is considered a *shomer sachar* because of side benefits he receives (e.g., a craftsman¹⁰) is not obligated when he did as good a job as

2. *Bava Metzia* 80b.

3. *Bava Metzia* 93a.

4. *Shulchan Aruch, Choshen Mishpat* 303:3.

5. See *Beit Yosef, Choshen Mishpat* 303.

6. *Choshen Mishpat* 303:2.

7. *Ibid.* 3.

8. *Ad loc.* 4.

9. *Shut Maharshach* II:169.

10. See *Bava Metzia* 80b.

one can expect. Not all authorities agree with the Maharshach,¹¹ but his approach is another possible reason to exempt a *shomer* who is not guarding property as his primary task, as is the case of your school.

In short, at first glance, it is not clear cut whether a school that had children's property stolen from its safe is responsible to pay. This is in addition to what we mentioned above that we are not allowed to give a definite ruling without the other litigants being able to present their side of the story, which can introduce surprising insights. This case, like many others, begs for some sort of agreement or compromise.

On the other hand, it is inappropriate for “your hands to be tied” educationally by a fear of liability. Therefore, we recommend that you receive the parents' formal agreement that in the case of confiscation, the school will not be responsible for the loss of the property. Generally, it is possible for one who has someone else's item in his possession to refuse to take responsibility as a watchman.¹² This can happen even when the owner is not happy to surrender the object. For example, if a lender requests collateral for a loan and says that he is taking it on condition that he does not accept the obligations of a *shomer*, by giving the collateral, the borrower shows he is agreeing to the condition.¹³ In contrast, one who is a *shomer* over an object he found, in which case the Torah obligates him, cannot make such conditions. Similarly, if the school forcibly confiscates an object from a child, such that there is no agreement at the time the school takes possession of the object, it cannot make conditions at that time to avoid responsibility. However, if the aforementioned agreement with parents includes an exemption from payment in the event the confiscated item is lost or stolen, and the parents agree, even if reluctantly, then this arrangement is valid.

11. *K'zot HaChoshen* 72:5; see *Pitchei Choshen, Pikadon* 2:(5).

12. See *Bava Metzia* 81b.

13. *Shulchan Aruch, Choshen Mishpat* 72:7.

I-4: Paying a Matchmaker for a Child's Engagement

Question: Our daughter, who became Charedi and moved to Israel, got engaged. She just told us that we have to pay \$1,000 for the *shadchanit* (matchmaker), and we cannot afford it. We were not informed of such an expense, and from what we know, a modest present is standard. What can we do?

Answer: First and foremost, *mazal tov!*

Traditionally, a *shadchan* is paid – like an agent in various fields of endeavor these days. The Rama¹ raises a question only of whether one pays at the time of the engagement or of the marriage. The Rama's rule, one of the main rules in monetary law,² is that we follow the “*minhag* of the state.”

As we know in many areas of Halacha, the local custom is not always determined by geographic grounds. When dealing with monetary law, one has to consider the appropriate milieu for determining what unspoken assumptions people were working under. In some issues, the assumptions of different segments of the population are clearly defined, certainly including the Charedi community in regard to a *shadchan's* fee. In that community, the widespread practice is to pay a *shadchan*, whether a professional one or even a mutual friend. There may be different practices concerning how much to pay, and there may be certain conditions, but \$1,000 per side is quite standard.

1. *Choshen Mishpat* 185:10; see also *Pitchei Teshuva, Even HaEzer* 50:16.

2. See, as an example, *Bava Metzia* 83a.

The fact that in the Dati Leumi/Modern Orthodox community, a *shadchan* does not usually get paid, other than by receiving a present at the couple's discretion, is fine.³ According to the Rama, the *minhag* is the determining factor, and clearly this applies to whether there should be payment at all, and not just to its conditions.⁴

Your question relates to the broader question regarding when two people from different communities with different practices happened to interact without prior discussion. We dealt with this question in a different context in an Eretz Hemdah court ruling.⁵ Without getting into the details, we explained that the matter depends upon the reason that having to pay for a service without explicit agreement is based on custom. Is it because of an assumed agreement or because of the benefit one received? However, that issue is probably not relevant here. If your daughter operated within the Charedi "*shidduch* scene," she was bound by its rules unless she specified otherwise.

Formally, it is unlikely that **you** specifically have to pay, as your daughter is the one who "hired" the *shadchanit*, not you. While parents usually pay for such expenses, your daughter did not act as your agent unless you gave her carte blanche for all dating-related expenses. For that matter, you are not obligated to finance the wedding (although *Chazal* did expect it⁶). However, if you do not pay, then your daughter must.

In the Charedi world, there is a belief that not properly fulfilling an obligation to a *shadchan* is a bad omen for the marriage. We are not experts on bad omens and will neither confirm nor dismiss this concern. In any case, monetary obligations must be

3. There are several good sociological reasons for the difference between the communities in this regard, and there would also probably be an advantage for the *Dati Leumi* community to have professional *shadchanim* alongside the free services of friends and family. However, we were asked for a halachic response, not an essay in sociology.

4. See *Shut Rabbi Eliyahu Mizrachi* 16.

5. *P'sak Din Eretz Hemdah-Gazit* 70003.

6. See *Ketubot* 4a.

paid based on Halacha and ethics. One difference that may result from one's belief about the omen, however, relates to whether it is a good idea to ask for a delay in payment. It is halachically legitimate for one who has difficulty paying immediately to ask for a delay (although caterers and photographers rarely agree), but many avoid doing so with a *shadchan*. Depending on family dynamics, this might be something to discuss with your daughter.

We understand that it is hard enough to pay for wedding expenses that one expects, and it is upsetting to have surprises of this nature thrust upon the scene. On the other hand, the fact that this wedding is catering to a different clientele with different standards than you are used to does present some opportunities. For example, you can find out about ways to save money on things that you are accustomed to but are not necessary in your daughter's new circles.

We do not need to tell you that life brings unexpected expenses, and it is better that those be related to joyous events than other types. Even without surprises, many people have real trouble paying for weddings, and many difficult decisions have to be made regarding priorities and means of obtaining funds. *Tefilla* is one response, and "Hashem has many messengers." Those who are truly in need are allowed to ask for and receive financial help from outside the family, and certainly from within it. However, we must emphasize that whether or not the *shadchanit* needs the money as badly as you do, someone has to pay her.

I-5: Paying for a Program Canceled due to a National Emergency

Question: During Operation *Tzuk Eitan* (Protective Edge),¹ summer camps were cancelled because their locations were not “missile-proof.” Must the parents pay for them anyway? Does it make a difference if they already paid?

[*We responded to this question during the fighting, but the halachic and moral concepts can be applied even after its conclusion.*]

Answer: We will begin with a few halachic sources in order to put this serious issue into halachic perspective, and we will then conclude with an important moral message.

The *gemara* in *Bava Metzia*² sets down the general rule regarding a work agreement that became unfeasible to carry out. If one side is assumed to have been aware of the possibility that the work might be stopped in the middle, whereas the other was not, the side that knew loses (and therefore must pay or does not receive payment, depending on the case) because of his failure to stipulate regarding extenuating circumstances. If the degree of awareness of the two sides was comparable at the time of the agreement, however, the worker cannot demand to be paid. There are different opinions as to whether the worker loses because he has the more difficult legal task of extracting money or because in order for a worker to receive pay even if he will not end up doing the work, he must make such a stipulation in advance.³ One practical difference between these two explanations is in a case in which the worker was pre-paid.

Another pertinent source⁴ discusses a case in which Reuven

1. The Israeli counterattack on Gazan terrorists in the summer of 5774 (2014), launched so as to stop the firing of rockets at Israeli civilians.

2. 77a.

3. See *Terumat HaDeshen* 1:329; *Bi'ur HaGra*, *Choshen Mishpat* 334:5.

4. *Bava Metzia* 79a-b.

rented a boat from Shimon to transport wine, and the boat and wine sank midway. Does Reuven have to pay Shimon the boat's rental fee? There are four different halachic conclusions (Reuven is obligated, he is exempt, they split the money, it depends if Reuven already paid), in four different permutations of the case. The crucial factor is what exactly the legal nature of the agreement was – whether Reuven is entitled to provide other wine for transport and whether Shimon is entitled to provide a different boat.

Finally, we must consider the concept of *makat medina* (an impediment that affects a broad population). The *mishna* and *gemara*⁵ state that a field's sharecropper is entitled to partial relief from his payment obligation if crops are destroyed by a regional infestation. The Maharam Padua⁶ explains that in such a case, we cannot say that one of the two sides simply had “bad fortune,” as everyone is suffering. The Maharam Padua and the Rama⁷ both apply this concept also to a worker who was prevented from working due to a *makat medina*, although there are differences between their applications of the concepts.⁸ The Mordechai⁹ cites the Maharam as ruling that if the government suspends schools, parents must still pay the teachers.

There is great debate¹⁰ regarding if and under what circumstances we accept the Rama's ruling on this matter. In reference to a situation in which teaching was suspended for weeks due to war, the *Chatam Sofer* wrote¹¹ that he found it nearly impossible to determine whether the teachers must be paid according to strict halachic principles, and he urged the various sides to reach compromises.

5. Ibid. 105b.

6. *Shut Maharam Padua* 86.

7. *Choshen Mishpat* 334:1; *ibid.* 321:1.

8. See *S'ma* 321:6.

9. *Bava Metzia* 343.

10. See *S'ma* *op cit.*; *Shach* 321:1; *Netivot HaMishpat* 321:1.

11. In his book, *Sefer HaZikaron*, p. 51.

If a specific case were to come to our doorstep (which would require that both sides present their claims in front of the *beit din*), we would likely find it difficult to be more certain than the *Chatam Sofer* was. If the question is general, as yours appears to be, it is even harder to answer, because many fluid factors are not addressed. Among other questions, we would have to explore the following: Is the camp in question in a region in which some such activities are continuing, or are all such activities suspended? Is it possible for the camp to make other arrangements? Was the problem known at the time of payment, and if so, by whom?

One of the great national assets going into and up until the current stage of Operation *Tzuk Eitan* is a palpable feeling of solidarity. Especially around Tisha B' Av time, we should recall the *gemara*¹² that says that Jerusalem was destroyed because people were unwilling to go beyond the strict law and give of themselves beyond the letter of the law. In most cases, both parents and camp directors will have legitimate claims. It is our hope that all people involved in such disputes will be willing to offer their fellow Jews a compromise, if not the benefit of the doubt. One of our *dayanim* likes to tell of an ancestor of his who was sued in *beit din* for **refusing to receive** more payment than he thought he deserved for his job. While our *beit din* has not yet adjudicated such a case, we will happily do so.

In the merit of mutual understanding and concern, may we defeat our enemies and see a *geula shleima*.

12. *Bava Metzia* 30b.

I-6: Causing a Person to Damage a Third Person

Question: We went away and lent out our apartment for Shabbat. Due to the guests' gross negligence, a fire broke out that caused significant damage. Brave, good-hearted neighbors entered our house before firefighters arrived and sprayed down books with water, out of concern that they would burst into flames, but it is unclear if that was necessary. The books, which are not covered by insurance, were actually more damaged by the water than by the fire/smoke. I will not make claims against the neighbors, but can I make a claim against the guests for water damage that they did not actually cause themselves? (They feel very bad, and despite not being well-off, they want to pay everything they should.)

Answer: May HaShem make up your losses and reward all parties for their good intentions under trying circumstances.

We will assume in this discussion what we do not actually know – namely, that the guests were responsible for the fire. Of course, realize that we have heard only your presentation and can say **nothing conclusive**, other than what we think you may **ask** for based on your version of the story. Your guests have every right to see things differently, and they are entitled to present their version to a halachic expert of their choice. If you and your guests receive different answers, you will then have to decide if there is a need for dispute resolution, which is very healthy when people go about it responsibly in the right spirit.

According to your understanding, the guests indirectly caused (i.e., *gerama*) the water damage to the books, which resulted from a course of action that was at least understandable on the part of the neighbors. In many cases of *gerama*, the indirect damager has a moral obligation to pay (*chiyuv latzeit y'dei shamayim*¹).

1. See *Bava Kama* 55b.

However, one should not unequivocally demand pay when there is only a moral obligation.² Therefore, before making any claims, you must determine how much you believe the guests owe in legal, not just moral, terms.

If the neighbors acted in a way that professional firefighters would have under the circumstances, the guests would be obligated to pay even for the water damage. One is not responsible only for the direct damage he causes, but even for the continuation of the process that naturally results. This is similar to the *halacha* that one who wounds another must pay for new medical problems that develop later as a result of those he caused.³

What if the spraying was uncalled for? The closest Talmudic precedent we found regarding such third-party damage is the *gemara*⁴ regarding damage done during an attempted murder. The attempted murderer is exempt from payment due to the fact that at the time he caused the damage, he was simultaneously subject to being legally killed in order to save his would-be victim. If a third-party savior damages someone's property during his efforts to save the victim, he is exempt due to a special Rabbinic enactment that was made so as not to discourage people from helping. But the fact that such a special enactment was necessary implies that according to standard halachic rules, the savior is considered the damager. Similarly, your neighbors appear to be the damagers regarding what the water caused, although they likely fall under the exemption of the above enactment.⁵ The *gemara* implies that the attempted murderer, who precipitated the need for the savior's strong action, is not a candidate for being obligated to pay. Therefore, in your case, the damagers for waterlog damage are the sprayers rather than the guests.

However, there is a different reason to obligate the guests: They were *shomrim* (watchmen) over the apartment and its

2. *K'zot HaChoshen* 75:4.

3. *Bava Kama* 85a.

4. *Sanhedrin* 74a.

5. See *Chiddushei Anshei Shem*, *Bava Kama* 44a in Rif's pages.

contents. While *shomrim* are generally not obligated to pay for damage caused to land,⁶ including houses,⁷ this applies only to that which is connected to the ground. Since one can become obligated to watch objects based on implied understandings based on context,⁸ there are grounds to obligate the guests for the books, which are movable.⁹ If the guests' negligence were to cause valuables to be stolen, for example, they would be obligated to pay for them, as preventing theft is within the implied responsibilities of one who "borrows a house." Similarly, the guests are obligated for both fire and water damage to the books that their negligence caused. (The mechanism is halachically complex.¹⁰)

One thing to be careful about when making a claim is estimating the value of the property. Halacha grants only compensation for the drop in value of the damaged property,¹¹ and people often do not realize that the amount they should be receiving will usually not be enough for them to replace such property with new items.¹²

6. *Shulchan Aruch, Choshen Mishpat* 301:1.

7. Rama ad loc.

8. See *Shulchan Aruch, Choshen Mishpat* 306:1

9. See *Chevel Nachalato* XVII:43.

10. See *Shulchan Aruch, Choshen Mishpat* 291:5; *Pitchei Choshen, Pikadon* 2:(47).

11. Usually, from used to either used and damaged or worthless.

12. *Shulchan Aruch, Choshen Mishpat* 387:1.

I-7: Halachic Ramifications of Ad-Blocks

Question: I went on a religious website, and it detected that I have an ad-block program. They gave me a choice to either disable my ad-block or to continue while “violating *geneiva*,”¹ because ad-blocking takes away their livelihood. Would it really be forbidden to continue with ad-blocking?

Answer: We are not addressing the general question of the desirability of avoiding internet advertisements, some of which are not appropriate. Hopefully, ads on a religious site are appropriate.

At first glance, your question seems to depend on the broader question of intellectual property rights, which means the following. Reuven produces something of value to the masses and, due to financial considerations, attaches conditions to its use even for those who pay for the item. The most prevalent such condition is forbidding someone from copying the content (e.g., of a book) and passing it on to others. In your case, the site owner, who spent money on and would like to profit from it, wants to make use of the site and its content conditional on your allowing advertisements on your screen, because he gets paid according to the number of people who see the advertisements.

Much has been written on the topic of intellectual property rights.² Our opinion³ is that there is halachic basis for guaranteeing such abstract rights in various contexts. There are three main halachic claims to uphold copyright rights, although none of them is both unanimously held and applicable in all circumstances:⁴ 1) It is a form of theft, which can apply even though no physical object

1. Theft.

2. See articles in *Techumin*, vol. VI.

3. See *Living the Halachic Process*, vol II, J-1; *Techumin*, vol. XXXII, pp. 233-237.

4. We will not get into the sources and analysis at this time.

is taken. 2) There is a requirement to pay for benefit received from another's property (*neheneh*), which the copyright abuser does not plan to do. 3) *Dina d'malchuta dina* – the law of the land upholds many of the creators' claims to ownership.

Ad-blocking causes great losses to many website owners. On the other hand, historically, most technological innovations, including the internet itself, have enriched some and impoverished others. Furthermore, the legal and halachic logic behind intellectual property rights does not support every claim by every "owner." We will analyze your case through the prism of the three claims in support of such rights listed above.

Let us start with #3. As far as we have seen,⁵ ad-blocking is not illegal,⁶ and thus it is unlikely that the website's warning has any legal standing. Thus, it is very questionable whether *dina d'malchuta* will forbid using the site with an ad-blocker, which may be why the site warns using religious terminology.

Neheneh is complex to apply in this case. We rule that in a case of *zeh neheneh v'zeh lo chaser* (the user gains without the owner losing), the user is generally exempt from payment.⁷ However, if the owner incurs any damage from the usage, the user has to pay for the entire benefit he received.⁸ In your case, the site owner apparently sustains a loss when people use the site, in that it slows down the server, making the site less attractive to those who bring in revenue. While each individual person's impact is negligible, the owner can argue that he treats ad-block users as a group he is unwilling to allow "for free." On the other hand, it is possible that users cause more gain to the site owner than damage even with ad-block (analysis of the commercial logic is beyond our expertise), but the site owner wants to pressure the users to provide even greater advantage. If the user indeed

5. Such matters can, of course, change from time to time and place to place.

6. As of the time of publication of this volume, there seem to be more legality issues with use of ad-block detectors than with use of ad-blockers.

7. *Shulchan Aruch, Choshen Mishpat* 363:6.

8. *Tosafot, Bava Kama* 21a; see *Noda B'Yehuda II, Choshen Mishpat* 24.

provides benefit for the owner, in addition to the benefits that the user himself receives from the arrangement, there is no *neheneh* obligation.⁹ If the content the user is seeking is readily available on other sites that do not make demands on the user, there may not be enough user benefit to warrant pay in the first place. However, it is difficult to be conclusive on this matter. Regarding #1, it is also far from clear that simply entering an open site and reading the content could be considered stealing its content.

Although we are not confident that the above issues make it forbidden to use ad-blocking software against the wishes of the website, we still believe that the owner can make it forbidden to use the site. Even in a case of *zeh neheneh v'zeh lo chaser*, if the owner says up front that he forbids usage without payment, it is forbidden for someone else to use his property even if the owner loses nothing.¹⁰ At first glance, this restriction applies in your case only according to those (far from unanimous) opinions that maintain that intellectual property is “owned,” such that the prohibition of stealing applies. However, here the owner is in a stronger halachic position than, say, the composer of music. This is because the user is connecting to a physical server, owned by the site owner or, more likely, by a web host that he pays for its services. Therefore, usage is like using a remote control to use someone else’s equipment against his will, which is forbidden.

Based on the above, our tentative position in the standard case of a site that protests against the ad-blocker is that an owner has the halachic power to forbid the ad-blocker to use his site. (What one can surmise from a situation in which the site can prevent access, yet chooses not to do so and just writes that it is forbidden, is a pertinent question that we are not going to attempt to determine.)

9. See *Bava Kama* 21a.

10. See *Shulchan Aruch* op. cit.

I-8: Forcing a Seller to Make the House Legal

Question: I bought an apartment from the project developer's brother. My lawyer did not realize that the project's building permits were incomplete. Now, the municipality is "making noise" about kicking out the residents or allowing us to stay only with limitations. I have tried to smooth things out with the municipality, but I have not yet succeeded. The developer has the best chance of getting the municipality to complete the permit after the fact, and the seller, who admits he did not tell me of the problem, can make him do it. The seller says that it is uncertain that anyone can get the permits, but that if people act wisely, the municipality will not evict us. (The seller points out that he still has another apartment in the project and that many who knew of the problem bought there anyway.) The seller is willing to buy back the apartment but not to take action. Can I force him to fix the situation?

Answer: This case contains many unclear elements, which require either a settlement or adjudication in *beit din* where both sides will be heard. Nonetheless, we will address your main inquiry in **general terms** so that you do not waste your time on a worthless legal battle.

Fundamentally, a sale is the **transfer of an object** from the ownership of one person to that of another. Although it sounds similar, a sale is **not** the seller's acceptance of an obligation to do something for the buyer. Thus, the seller has a good point regarding his refusal to take a course of action, despite the flaws in the property and his behavior. Rather, the buyer's general recourse regarding purchases that turn out to be seriously flawed is to nullify the sale.¹

1. See *Shulchan Aruch, Choshen Mishpat* 232:3.

Some sources do indicate that the seller is required to act in order to fulfill the buyer's basic expectations from the purchase. For example, there is an opinion that if one made a purchase before a sales contract was written, but the seller pledged to write one, the seller can be forced to do so and cannot opt to nullify the sale instead.² The *Imrei Yosher*³ explains that the document is part of the process of the purchase, which the seller has already obligated himself to complete.

However, the cases discussed in those sources are quite different from your case. For one, in those cases the seller pledged to write the document. But here, even if the seller said or implied that the property had a complete permit, he did not pledge to take any steps to get it to that point. If he presented a false picture of the present situation, that may very well be grounds for nullifying the sale, but not to force him to take the action you desire. Second, in the case of buying property second-hand, dealing with building permits is not part of the basic sales process.⁴

The Rosh⁵ maintains that if one buys an object with a flaw that can nullify the purchase, the seller can, under certain circumstances,⁶ say that he is willing to fix it rather than allow the purchase to be nullified. Our question is about the opposite situation. Can the buyer say: "Rather than having to nullify the sale, I demand that you fix the flaw"? The *Ulam HaMishpat*⁷ understands from the Rosh that the buyer can demand that the seller fix the problem. This is not a simple premise. The Rosh⁸ writes elsewhere that a seller who overcharges by enough such that the sale can be nullified cannot be forced to return the

2. Ibid. 243:9.

3. II:55.

4. When buying from the developer, the contract usually states what steps the developer is committed to take.

5. *Shut HaRosh* 96:6.

6. See *Shulchan Aruch* and Rama, *Choshen Mishpat* 232:5.

7. Ad loc.

8. *Bava Batra* 5:14.

overcharge, and thereby eliminate the problem that endangers the sale, if he prefers to cancel the sale instead. Similarly, the *Shulchan Aruch*⁹ rules that a seller can opt to nullify a sale rather than reduce the price due to a flaw in the sold item. Furthermore, the *Ulam HaMishpat* seems to be referring only to cases in which whatever needs to be done is readily accomplished. In fact, even if one promises as part of a sale to do something, he can only be forced to do so if it can be readily accomplished.¹⁰

Therefore, in your case, while there may be grounds to annul the sale, it does not appear that you can compel the seller to take complicated steps that may or may not rectify the situation.

9. *Choshen Mishpat* 232:4.

10. See *S'ma* 209:23.

I-9: Allowing Misused Checks to Be Cashed

Question: A neighbor of mine (Reuven) was having problems providing for his family, and some stores, including a grocery store (owned by Shimon), were unwilling to sell him goods on credit. I gave him personal post-dated checks to solve the problem, and the stores would periodically draw on my account. My arrangement with Reuven was that he would get me funds before the date of the check he used. When I saw that checks had been deposited that he had not paid me for, I cancelled (stopped) the remaining checks and told him not to use them anymore. Shimon called me and demanded that I pay him the amount of a check that Reuven had given him. I told Shimon that he should demand payment from Reuven, not me. Am I right?

Answer: First, we must emphasize that we cannot tell you whether you are right without hearing the other side's arguments. We can only explore the topic generally from a halachic perspective, and we will not get into certain legal questions that may differ from case to case and jurisdiction to jurisdiction. On a practical level, we will share our preliminary opinion about scenarios in which we think you should follow Shimon's request and others in which we think you have the right, according to the details you provided, to refuse to pay and instead seek proper dispute resolution.

In general, the halachic status of checks is subject to serious debate. There are three basic approaches: 1) Giving a check is considered payment.¹ 2) A check is like a promissory note to the recipient of the check and to additional parties who receive it thereafter.² 3) A check is only a request of the bank, unless instructed otherwise later, to give money to the one who holds it.³

1. See *Igrot Moshe*, *Choshen Mishpat* II:15.

2. *Minchat Yitzchak* V:119.

3. *Shevet HaLevi* VII:222.

These different approaches can affect many legal questions. In our general context, according to approach #3, one can cancel, for a good reason, checks that he has already given; doing so is more difficult according to approaches #1 and #2.⁴ In your case, according to #3, Shimon, with whom you had no direct dealings, ostensibly has no claims against you, but only against the person who gave him the checks.

However, based on the way checks are commonly used in practice and the legal systems we are aware of, we believe that a check should be treated as a promissory note.⁵ Consequently, one may not cancel a check once it has been given, except to prevent its illegal use. You feel that your neighbor has, in fact, done just that by not following the conditions you set out for the use of your checks. We cannot investigate why he did not follow your arrangement, whether he still deserves your help,⁶ or whether you can be morally expected to provide that help. We will deal only with the monetary halachic legality.

In the case of checks that Reuven gave to Shimon before you ended the arrangement, you clearly are obligated to allow payment to Shimon. First of all, at the time Reuven was making legal use of the checks, as was Shimon, you became obligated to pay Shimon. Furthermore, you apparently wrote the checks as a way of convincing Shimon and others to give Reuven products on credit. In other words, your promise to pay Reuven's bills, by means of your checks, secured loans for him. This makes you an *arev kablán*,⁷ a strong type of guarantor, who agrees to pay the

4. In Israel, one is technically able to cancel the check, in that the bank will not transfer money from the payer's account to that of the payee. However, the payee has the ability to have *Hotza'ah Lapo'al* (an arm of the courts) extract payment unless the payer can demonstrate strong grounds that justify cancelling it. This does not mean that it is halachically acceptable to cancel a check, however.

5. See *Pitchei Choshen, Halva'ah* 10:(21).

6. Perhaps he needs help even more than before.

7. See *Bava Batra* 174a; *Shulchan Aruch, Choshen Mishpat* 129:15.

creditor even if the borrower is able to pay himself.⁸ Although one who promises to be a guarantor can back out of his promise, that is only possible before the loan based on his guarantee takes place.⁹

The situation regarding the checks that Reuven used after you told him to stop doing so is complex. Reuven, in effect, stole your checks and “sold” them to an unsuspecting Shimon in return for the goods he gave Reuven. The general rule is that if a buyer had no reason to suspect he was getting a stolen object, when the owner comes to retrieve it, he has to reimburse the buyer for his purchase.¹⁰ This practice was instituted to prevent uncertainty in the markets (*takanat hashuk*). Although the *takana* does not usually apply to stolen documents,¹¹ it does apply to a *mamrani* (equivalent to an open or transferable check).¹² Thus, at first glance, the *takana* would require you to pay Shimon for the money he lost by accepting your checks. (If Reuven used your checks to pay past debts to Shimon, the *takana* does not apply, and you would not be required to pay Shimon.¹³)

On the other hand, the *takana* requires payment before one extracts his object **from the buyer**. It apparently does not stop you, the owner of the bank account, from preventing Shimon from extracting money **from you** based on a stolen check.¹⁴

Other legal and moral factors may play a role here, but we have set out the basic halachic principles.

8. Usually, a guarantor pays only if the borrower defaults.

9. *Shulchan Aruch, Choshen Mishpat* 131:1.

10. *Bava Kama* 115a; *Shulchan Aruch, Choshen Mishpat* 356:2.

11. *Shach, Choshen Mishpat* 50:7.

12. *Ibid.*

13. *Ibid.* 6.

14. *Pitchei Choshen, Geneiva* 3:(22); see *Shach, Choshen Mishpat* 356:4.

I-10: A Lost Item at a Large Public Gathering

Question: At the *Siyum HaShas* at MetLife Stadium,¹ I saw an umbrella on the floor near seats whose occupants had left a while before. Before leaving, I asked people who were sitting nearby, but no one knew whose it was, so I took it. Later on, I noticed a first name on it, but I have failed to figure out how to identify its owner. What should I do now?

Answer: The umbrella was probably purposely placed on the floor. You were right to leave it there initially, as the owner could have returned for it.² However, after a while, it was fine to pick it up, as security forbade people who left the stadium to return. If there were no *siman* (identifying sign), you could keep it (if we could assume the owner realized the umbrella was missing before you picked it up³). However, between the name and the location (there were seat numbers), there are *simanim*. Therefore, at first glance, you would be required to effectively publicize your find, and if no one responded, you would have to keep it indefinitely until you find the owner.⁴

One might argue that since people came to this event from many different places and people are usually not especially careful with their umbrellas, the owner would not believe he could retrieve it, despite the *simanim*. It is a good question whether we would follow standard rules or accept such a claim; consider that in Talmudic times, it also was difficult to retrieve lost objects.⁵ However, the claim is not clearly applicable in practice either.

1. In New Jersey, in August 2012.

2. *Shulchan Aruch, Choshen Mishpat* 260:9.

3. Giving up hope after the object was picked up does not allow the finder to keep the object; see *Bava Metzia* 21b.

4. *Shulchan Aruch, Choshen Mishpat* 267:15.

5. See *Bava Metzia* 28b.

MetLife Stadium has a lost-and-found service and asks people to give found articles to a worker. (When that is the most practical system, one need not be concerned that workers do not know the proper rules for returning lost objects.⁶) Also, the owner might have called a friend still at the stadium and asked him to retrieve it.

In general, if one loses something in a public place with a majority of non-Jews, we assume the owner had *yeiush*,⁷ and there is no obligation to return it.⁸ In your case, this is a somewhat tricky question. On the one hand, the area was occupied overwhelmingly by Jews at the time of the loss, so perhaps we should not assume *yeiush*. On the other hand, if Jews are there only infrequently, whereas a majority of non-Jews are usually in attendance (including the workers who cleaned up after the *siyum* was over) and are more likely to notice the object than the Jews were, perhaps we should assume *yeiush*.⁹ Moreover, we can consider whether in this case, the participants were riveted to the event,¹⁰ such that they were not looking to the floor for *mitzvot* (or free umbrellas), and it is more likely that people who were there after the event would find a lost object. Also, an umbrella on the floor is not initially a sign of a lost object, so Jews might not know they have to return it. Thus, it can be plausibly argued that there was *yeiush* in this case.

It is important to note that the Rama¹¹ says that when local law requires returning lost objects, one is obligated even when classical Halacha does not require it. It is not clear what New Jersey law is in a case like this. In the final analysis, you probably may keep the umbrella, but there is an element of going beyond the letter of the law to return it when feasible.¹²

6. See *Pitchei Choshen, Aveida* 2:(53).

7. He lost hope to get the object back.

8. *Shulchan Aruch, Choshen Mishpat* 259:3.

9. See Rama, *Choshen Mishpat* 259:8.

10. See *Nimukei Yosef to Bava Metzia* 24a.

11. *Choshen Mishpat* 259:7.

12. See *Bava Metzia* 24b.

Can you find the owner? Announcing the find in a local *shul*¹³ is all but futile, and it is very unlikely that MetLife would have details of someone looking for an umbrella that was lost on a particular date. There is a website for reporting lost and/or found objects in Israel, but I did not find one in the NY/NJ area.¹⁴

What if we could not assume initial *yeiush*, but you do not want a stash of objects waiting for *Mashiach* with unrealistic chances of returning them now? Since an umbrella is readily replaceable, you could record its value and *simanim* to cover the remote possibility someone will step forward with *simanim*.¹⁵ It might be nobler, however, to give it to someone in need so that the owner can receive some merit of *tzedaka*.¹⁶

13. As suggested by the *Shulchan Aruch*, *Choshen Mishpat* 287:3.

14. By the time this book was being prepared for publication, such a site, under Jewish auspices, does exist in the United States.

15. See *Pitchei Choshen*, *Aveida* 7:(10).

16. *Ibid.*

I-11: Monetary Morality of Leftovers

Below are two similar questions that we received in close chronological proximity from people who are nobly very careful about other people's money.

Question 1: My yeshiva entrusted me (a *kollel* student) to arrange an *oneg Shabbat*¹ for the *talmidim*. I was to responsibly buy refreshments and be reimbursed based on receipts. There is a significant amount of leftover food, some of it in open packages and some in closed ones. May I or other participants use that food, or should I give it to the yeshiva? If I keep it, how do I handle asking for reimbursement for the purchases?

Answer 1: There are a few possible halachic/legal models for the nature of your arrangement with the yeshiva, which would impact elements like those you ask about.

It is possible that you were an agent (*shaliach*), buying food on the yeshiva's behalf. If so, they must reimburse you in full for what you bought as their agent, and the food is theirs. Then you would have to determine whether they allow you to eat their food even after the time during which you and all other invitees clearly had permission to eat as much as desired (i.e., during the *oneg*). One may assume the yeshiva does not care what happens with small amounts left over in open packages. Regarding the rest, it likely depends on various factors, including the management style of the yeshiva and the extent to which it is worthwhile for them to store the food for a future event, refreshments for workers, etc. Even in cases in which one is confident that the owner of an object would be happy with a friend taking his object, there is an unresolved *machloket* regarding whether it is permitted² or

1. A Shabbat evening get-together.

2. *Shach*, *Choshen Mishpat* 359:5.

forbidden³ to do so without the owner's knowledge.⁴

Another possibility is that you are viewed as one who bought the food for himself, with a promise of compensation. If that is the case, the food is yours, and you may do whatever you want with it. However, this raises a different question: How much compensation may you ask from the yeshiva? If you do not take the food for yourself, then they probably have to compensate you for all that you bought, and they cannot require you to use, on your own account, that which was not eaten at the *oneg*. However, leftovers that you do want to eat turn out to be food that you did not use for the group, and it does not seem that you should be entitled to ask for compensation for them. On the other hand, the value to you of the leftovers (certainly the open packages, but likely even some closed packages) may be less than the amount you paid for them in the store. Therefore, you would not have to reduce the full face value from your request of a refund, although likely close to it.

The first possibility, that you acted as an agent, seems more likely, but you likely know better than we do.

We encourage stringency on matters of monetary ethics. The wisest stringency is often to raise the issue with the relevant authorities, together with a smile, *hakarot hatov*, and willingness to either forego taking the leftovers or to pay for them. In cases of good relations and only a few shekels at stake, it is normal for people to be generous. Asking for permission or for guidance as to how they want you to handle the situation not only removes the question of impropriety but likely will get you a good arrangement in the present and builds trust and removes doubt for the future.

Question 2: I am a teacher who received 500 shekels to spend on a party for a group of my students. I am clearly expected to keep the leftovers. Due to the generous budget, I bought more

3. *Tosafot, Bava Metzia 22a*.

4. See *Living the Halachic Process* vol. II, J-2, where we stated our preference for refraining from use without permission.

expensive vegetables than I normally buy for myself. However, upon further consideration, I decided that a different salad would be more appropriate, but that would make the expensive vegetables unnecessary. If I decide to not use them, I would consider it appropriate to “buy them” from the school, but they are not worth their cost to me. What should I do?

Answer 2: While the school might allow it, it is not so nice to ask the school to pay money for something that its students did not benefit from at all. On the other hand, you acted with good intentions, and there is no reason for you to lose money trying to do the nicest thing for your students and being honest with the school.

Sometimes “practical advice” augments halachic advice importantly. We suggest that you make the expensive salad even if you now think that you have a better idea. We are sure it will be sufficient, and it will be worth doing so as to avoid the moral dilemma. While we generally are in favor of asking the appropriate authorities what they want you to do, in this situation asking them your question may put them in an uncomfortable situation.

I-12: Ethical and Procedural Questions for Litigants

This question is my own, as a *dayan* who sees litigants struggle with, or have preconceptions about, issues such as these.

Question: Must a potential defendant agree to come to *beit din* if he knows he is right? Must a defendant be open about parts of the story that might work to his detriment if the plaintiff has no proof of what transpired, or do we say *hamotzi meichaveiro alav ha're'aya* (the plaintiff shoulders the burden to prove his case)?

Answer: Ostensibly, one who is sure (and is in a position to genuinely **know**) that he does not owe money is not required to volunteer to go to *beit din* to prove it to the other side. In certain cases,¹ one may even actively “take the law into his own hands” without resorting to the hassle of adjudication to obtain his rights. Likewise, if one knows he does not owe money, he may make things difficult for the plaintiff with the hope that he will give up and/or agree to a compromise.²

However, this makes more sense if the other side is aware of the truth, not if he is sincere but is making a legal or factual mistake. Furthermore, the *halacha* is different in regard to a response to a *beit din* that summons the person while operating within its authority. Its instructions must be followed, as we see from the fact that if one does not do so, the *halacha* is³ that he is to be put in *cherem*.⁴ *Beit din* is justified to take this step even though it is possible that the refusing side is actually correct in his merits regarding the case. Although in our days many *batei din* (including ours) do not resort to *charamim*, this does not mean

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1. See complicated *halachot* in *Shulchan Aruch, Choshen Mishpat* 4.
 2. *Tumim* 12:5, cited by *Pitchei Teshuva, Choshen Mishpat* 12:8.
 3. *Shulchan Aruch, Choshen Mishpat* 11:1.
 4. A “ban,” which includes elements of a curse on one who violates it.

that it is acceptable to fail to conform to the instructions of a neutral, authorized (by Halacha) *beit din*.

A litigant may certainly raise legitimate objections to a summons (e.g., wanting to go to a different *beit din*;⁵ asking for an itemized claim;⁶ requesting time to work out a compromise), but he should do so appropriately and follow the *beit din*'s instructions. A defendant's claim that he need not come because the plaintiff has no proof is invalid. First of all, only time will tell if the plaintiff actually has sufficient proof. Second, a litigant has the right to make the other side deflect his claims and arguments when interrogated before and by *beit din*; often, the greatest proof is explicit⁷ or even implicit⁸ admission, and this may come out when the sides hammer out the claims and accounts. Third, logical claims may convince *beit din* to employ compromise, including in cases in which one of the sides is halachically required to take an oath, which we no longer administer.⁹

We now move on to proceedings within *beit din*. If a litigant possesses information that is valuable to the other side, *beit din* is required to prevail upon him to produce it.¹⁰ He cannot simply say: "You did not prove your case, so you lose." On the other hand, a litigant should realize that providing self-damaging information or an admission regarding an element of the litigation does not always mean that he will lose the case. In fact, he will **sometimes** be able to use a *migo* – i.e., "since I was honest enough to give up a false but potentially winning claim, believe me regarding a different claim without further proof."¹¹

In **limited** cases, there are opinions that it is permitted to

5. *Shulchan Aruch, Choshen Mishpat* 14.

6. *Shach, Choshen Mishpat* 11:1.

7. *Gittin* 40b.

8. Including when making mutually exclusive arguments (*Shulchan Aruch, Choshen Mishpat* 79:1).

9. *Shulchan Aruch, Choshen Mishpat* 12:2.

10. *Ibid.* 16:3.

11. The complicated parameters of this rule are discussed in many places, including *Choshen Mishpat* 82.

make claims that are not true but are equivalent to the truth.¹² However, the general rule is that litigants must tell everything as it is and let the *dayanim* decide.¹³ It is not valid to rationalize that “since the other side is lying or exaggerating about certain things, I should do the same.” This is all the more so considering that often (based on my experience) litigants who are convinced they are right are really not. (Mistakes can be attributed to a lack of halachic knowledge in often complicated matters and on the natural tendency to see things in a way that advances one’s personal interests.) Thus, one rarely **knows** when there are righteous ends that **might** justify certain means. Finally, a warning: *Dayanim* often uncover or sense a litigant’s attempt to “improve” his claims, which weakens his case rather than strengthens it.

We pray that litigants will cooperatively and truthfully join *dayanim* in searching for a correct ruling based on an honest process – which is HaShem’s will.

12. See *Mishpat Aruch* 75:1:30-34.

13. See *Shach, Choshen Mishpat* 75:1.

Glossary/Index

A

Acharonim – the Talmudic and halachic scholars who lived from the 16th century until our days.

al ha'etz – B-4 – the blessing recited after eating grapes, figs, pomegranates, olives, or dates.

aliya (pl. – **aliyot**) A-11, A-12 – when a man is called up to the Torah to bless before and after a section of its public reading.

Amalek D-10, D-11 – the arch-enemies of the Jewish People.

amen A-4, A-6 – the response to a blessing, expressing agreement with its content.

Amida see *Shemoneh Esrei*.

amira l'nochri C-2, C-7 – a Jew telling a non-Jew to do something that is forbidden for the Jew to do. This is often rabbinically forbidden.

Amora (pl. – **Amora'im**) – a rabbinic scholar of the Amoraic period, from approximately 200 – 500 CE.

amot A-15 – cubits; a measurement with applications in several halachic contexts. The standard opinion is that each one is approximately a foot and a half (45 centimeters).

arev G-6 – a guarantor (to a debt).

arev kablán I-9 – a guarantor who accepts a specially high level of obligation to pay.

aron (kodesh) F-4 – the closet-like chest in which Torah scrolls are kept.

Aseret Y'mei Teshuva D-4 – The Ten Days of Repentance, starting on Rosh Hashana and ending on Yom Kippur.

Ashkenazi (pl. – **Ashkenazim**) – a Jew of Central and Eastern

European origin.

Ata Chonantanu D-6, D-9 – the prayer added to the fourth blessing of *Shemoneh Esrei* to indicate the end of Shabbat and usher in the week.

atara F-3 – an adornment on the top of a *tallit*.

aveil H-6 – a mourner.

aveilut H-3, H-6 – the atmosphere and/or laws of a period of mourning.

aveira (pl. – aveirot) A-2, G-4 – sin.

Avinu Malkeinu D-4 – a special plaintive prayer, in which we turn to “our Father our King.”

B

ba'al korei A-12, D-11, D-12, F-4 – one who publicly reads the Torah for the congregation.

ba'al simcha D-14 – a celebrant.

ba'al tokeiah D-1, D-2 – one who blows the *shofar*.

bal yeira'eh D-13 – the prohibition to possess *chametz* in one's domain on Passover.

bar mitzva A-4 – one who is old enough and competent to be obligated to perform *mitzvot*. This term also refers to the point at which one reaches that stage and the celebration that accompanies it.

baraita – a Talmudic text from the time of the *Tanna'im* that was not incorporated in the *Mishna* or the *Tosefta*.

Barchu A-4, A-14 – a responsive declaration of praise to HaShem.

baruch hamavdil bein kodesh [l'chol/l'kodesh] D-6, D-9 – the essential words of the declaration or *beracha* ending Shabbat or festival.

baruch HaShem – thank God.

bassis [l'davar ha'asur] C-14 – an otherwise permitted object that becomes *muktzeh* by serving as a base for something

muktzeh.

b'di'eved A-9, A-14, A-16, D-12, E-3 – after the fact; a situation that one is supposed to avoid but, after the situation has already occurred, may be halachically acceptable under the circumstances.

bechor (pl. – **bechorot**) D-14 – a first born.

bedika see *bedikat chametz*.

bedikat chametz D-13 – the *mitzva* to check one's house for *chametz* before the Pesach holiday.

beged derech malbush C-13 – a garment worn in the normal manner of clothes.

beit din (pl. – **batei din**) D-18, H-7, H-8, I-2, I-5, I-8, I-12 – rabbinical court.

Beit HaMikdash A-12, D-7, D-19, G-8, H-2 – the Holy Temple in Jerusalem. The first was destroyed c. 2,600 years ago; the second was destroyed c. 2,000 years ago. We pray for the building of the third and final one.

beit kneset (plural – **batei kneset**) A-3, A-15, G-10 – Hebrew for the Yiddish, shul – a synagogue, where Jews assemble to pray.

beit midrash A-3 – a study hall for Torah study.

ben yomo E-1, E-2 – a utensil that has been used in the past 24 hours.

bentchers D-13 – booklets containing *Birkat HaMazon* and/or songs for Shabbat.

bentch/ing B-5, H-4 – Yiddish for reciting *Birkat HaMazon*. The term “*bentching*” often refers to *Birkat HaMazon* itself.

beracha (pl. – **berachot**) (see table of contents for section B on *berachot*) A-1, A-4, A-6, A-7, A-8, A-11, A-13, A-15, C-17, D-1, D-6, D-8, D-9, D-12, D-18, G-8, F-1, H-2, H-5 – blessing. There are a number of categories of *berachot*, and they may be recited periodically or under certain circumstances.

- beracha acharona** (pl. – **berachot acharonot**) B-4 – a blessing recited after one eats.
- beracha l'vatala** A-4, B-7, B-8, C-17, D-18, F-1 – a blessing recited in a manner in which it has no value, which is forbidden.
- besamim** D-6 – fragrant herbs or branches. One smells them after Shabbat to “revive” the soul after Shabbat departs.
- Birchot HaShachar** A-1, A-7 – the series of blessings recited before morning prayers, thanking God for providing the basic necessities of life.
- Birchot Kri'at Shema** A-7 – the blessings recited before and after *Kri'at Shema*.
- birchot nisuin** H-5 – the *berachot* recited over *nisuin*, the second and final halachic stage of the marriage process, after which the couple lives together as husband and wife. These seven *berachot* (six *berachot* in addition to the blessing over the wine) are also referred to as the *sheva berachot* and are recited at the wedding and during the ensuing period of celebration.
- birkat eirusin** H-5 – the *beracha* recited over betrothal. In the time of *Chazal*, betrothal took place a year before the marriage, but nowadays, they are performed at the same time.
- Birkat HaMazon** B-4, H-4 – the series of blessings recited after eating a meal that includes bread.
- Birkat HaGomel** B-7, G-8, H-2 – the blessing recited publicly after emerging safely from a potentially dangerous situation.
- birkat hamitzva** H-5 – a blessing recited before performing a *mitzva*.
- birkat hashevach** B-9, H-5 – a blessing of praise of HaShem.
- Birkat HaTorah** A-7 – the blessing recited before the study of Torah each new day or before and after the formal public reading of the Torah.
- Birkat Kohanim** A-13 – the priestly blessing recited during the

repetition of *Shemoneh Esrei* (also known as *nesi'at kapayim* or *duchenen*).

bishul C-3 – cooking, one of the forbidden actions on Shabbat.

bishul akum E-4 – food that is forbidden because it was cooked by a non-Jew.

bitul chametz D-13 – the declaration that one does not want to have rights over *chametz* in his possession.

bizuy [mitzva] F-5 – a disgrace done to a *mitzva* or an object connected to it.

blech C-4, C-6, C-8 – a sheet of metal used to cover a flame on Shabbat to solve certain halachic problems.

Borei Me'orei HaEish D-6, D-9 – the blessing recited over fire during *Havdala* after Shabbat.

Borei Nefashot B-4 – a blessing recited after eating certain foods.

Borei Pri HaAdama B-2, B-3 – the blessing recited before eating foods that grow from the ground, like vegetables.

Borei Pri HaEtz B-2 – the blessing recited before eating a fruit that grows on a tree.

Borei Pri HaGefen D-6, H-5 – the blessing recited before drinking wine or grape juice.

brit mila D-14, H-2, H-4 – the *mitzva* and celebration of the circumcision of a Jewish male.

b'shogeg C-10 – when a forbidden act was performed without intention to sin.

b'ta'ut C-19, I-1 – done by mistake.

brit Yitchak H-2 – a celebration the night before a *brit mila*.

buchna D-5 – pestle, a part of the *etrog* fruit.

burgenin C-2 – booths.

C

chag B-9, D-6, F-5 – festival; see also *Yom Tov*.

- chai nosei et atzmo** C-12 – see referenced response.
- challa** D-6 – a loaf of bread that is the basis of the Shabbat/*Yom Tov* meals.
- chametz** D-13, D-16, E-6 – leavened bread or other grain-based food, which it is forbidden to eat or own on Passover.
- Chanuka** A-12, D-7, D-8, D-9 – the eight-day holiday in the early winter that commemorates the Hasmoneans’ triumph over the Greeks over 2,000 years ago and the subsequent miracle that a small amount of oil burned in the Temple *menora* burned for eight days.
- chanukiya** (pl. – **chanukiyot**) D-7 – a Chanuka *menora* (candelabrum).
- Charedi** (or **Haredi**) G-5, I-4 – a subsection of the Orthodox community, often described as “Ultra-Orthodox.”
- charoset** D-17 – a mixture including fruit, nuts, and wine into which foods are dipped during the Passover *Seder*.
- chasser** D-5 – missing. The situation whereby part of an *etrog* has somehow been removed.
- chatan** (pl. – **chatanim**) H-5, H-7, H-8 – a groom.
- chatzot** A-7, A-10 – the astronomical middle of either the day or night. This time has halachic significance in a number of contexts.
- Chazal** – a generic term for the Jewish scholars at the time of the Talmud (approximately 1-500 CE).
- chazan** A-6, A-9, A-13 – a cantor or prayer leader.
- chazarat hashatz** A-6, A-8, A-10, A-14 – the repetition of *Shemoneh Esrei* by the cantor.
- cherem** I-12 – a ban.
- chesed** G-6 – an act of kindness.
- chezkat besari** E-1, E-2 – food heated up in a meat utensil.
- chezkat chalavi** E-1 – food heated up in a dairy utensil.
- chiddush** E-2 – an innovative statement.

chillul Shabbat G-14 – the desecration of the sanctity of Shabbat by violating its negative commandments.

chinuch A-4 – the obligation to educate a child; the field of Jewish education.

chiyuv (pl. – **chiyuvim**) A-11 – lit., obligation; a mourner or someone who has a *yahrtzeit*.

chiyuv latzeit y'dei shamayim I-6 – a moral obligation (lit., an obligation to fulfill one's responsibility to Heaven).

Chol HaMo'ed G-2 – lit., the mundane of the festival; the intermediate days of the holidays of Pesach (Passover) and Sukkot (Tabernacles). These days includes some, but not all, of the halachic elements of the main days of the festival (*Yom Tov*).

cholent C-6 – a traditional Jewish food, especially for the Shabbat day meal.

Chumash D-10 – the Pentateuch; a printed edition of one or more of the five books of the Torah, often with the accompanying readings from the Prophets.

chumra (pl. **chumrot**) D-2, D-13, H-7 – stringency.

chupa H-5 – the bridal canopy; part of the ceremony that effectuates Jewish marriage.

chutz la'arets D15, G-2 – the Diaspora (lands outside of the Land of Israel).

D

davar she'eino mitkavein C-11 – a case in which one performs an action that is permitted on Shabbat that may, as an unintended consequence, cause a prohibited result as well.

daven/ing (see table of contents for section A on *tefilla*) C-17, C-19, D-4, D-6, D-10, D-11, F-1, F-4, F-5, G-10, H-2 – Yiddish for pray/ing. The term “*davening*” can also refer to a

prayer service as a whole.

dayan (pl. – **dayanim**) I-5, I-12 – a rabbinical judge.

devarim shebekedusha A-4 – those particularly holy prayers that require a quorum of ten men in order to be recited.

dina d'malchuta dina I-7 – the concept that the law of the land, even though it is neither Divine nor Rabbinic in origin, is halachically binding.

divrei Torah A-15, H-2 – Torah ideas that are discussed or studied.

E

Eidot HaMizrach A-14 – Jewish communities from Near Eastern countries.

Ein Keilokeinu A-14 – a prayer recited at the end of the morning prayers.

eino ben yomo E-2 – a utensil that has not been used in the past 24 hours.

erusin H-5 – another name for *kiddushin*, the first part of the marriage process.

eiruv (pl. – **eirubin**) C-12, C-13, C-14, C-19 – one of a series of Rabbinic mechanisms that make it permissible to do what would otherwise be Rabbinically prohibited; often refers to an *eiruv chatzeirot* specifically, which allows one to carry in an enclosed public area on Shabbat.

eit ratzon A-5 – a time when requests are more readily accepted.

Elokai Neshama B-9 – one of the first blessings of the morning.

Emet V'Yatziv A-7 – the blessing after *Kri'at Shema* in the morning prayers.

Eretz Yisrael B-4, G-2, G-3 – the Land of Israel. This can refer to the boundaries at various times in Jewish history, from Biblical times till today. It is noteworthy that the current boundaries of the State of Israel are similar to the boundaries described in the Bible.

Erev D-3, D-4, D-14 – eve of ...

etnachta A-16 – a symbol in the Torah reading cantillation, which

indicates a moderate pause.

etrog A-4, D-5 – a specific citrus fruit (citron), one of the four species used on the holiday of Sukkot.

F

fleishig A-5, E-1, E-2, E-3 – Yiddish for a food that comes from or has absorbed taste from meat. It is forbidden to eat such a food together with milk products. This term is also often used to describe utensils used for meat and the state of one who has eaten meat and therefore may not eat dairy for the time being.

G

gabbai A-11, C-7 – a person in charge of something (e.g. synagogue services, charitable funds).

gehinom H-4 – purgatory (hell).

gemach G-6 – a free loan society.

gemara – the section of the Babylonian Talmud that contains the discussion of the *Amora'im*.

geneiva I-7 – theft.

geneivat da'at I-1 – deceit.

geniza F-3, F-4, F-5 – the burial of sacred scrolls and objects.

Ge'onim – the Talmudic and halachic scholars who lived during the period from approximately 500-1000 CE.

gerama C-11, I-6 – indirect causation.

get H-7 – a religious bill of divorce.

geula shleima I-5 – the full redemption of the Jewish Nation with the coming of *Mashiach*.

gezeirat hakatuv E-5 – a “heavenly decree” (i.e., law of the Torah) without a known reason.

g'raf shel re'i A-15 – lit., a portable toilet, in whose presence one should not recite holy utterings.

gragger D-11 – a noisemaker.

H

- HaAdama** B-2, B-4 – the blessing recited before eating vegetables and other foods that grow from the ground (excluding processed grains and tree fruits).
- hachana** C-18 – the Rabbinic prohibition of preparing on a holy day for the needs of a different day.
- hachzara** C-4, C-6 – returning a pot of food onto a fire on Shabbat.
- hadar** D-5 – the element of minimum beauty that must exist in the four species used on Sukkot.
- hagala** E-2 – a process of *kashering* a utensil with boiling water. This method removes problematic residue absorbed in a utensil through a liquid medium.
- HaGomel** see *Birkat HaGomel*.
- hakarat hatov** I-11 – recognition of receiving something good.
- 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.
- halacha l’ma’aseh** H-7 – the halacha as expected to be practiced, as opposed to a theoretical halacha that is unlikely to be implemented.
- Hallel** D-11 – several psalms that are recited joyously on festivals.
- Haman** D-11 – the villain of the story of *Megillat Esther*.
- HaMapil** B-9 – the blessing recited before one goes to sleep.
- hamotzi meichaveiro alav ha’re’aya** I-12 – see referenced response.
- hashgacha** D-16, E-4 – rabbinic supervision, usually to ensure the *kashrut* of food.
- hatmana** C-6, C-8 – the Rabbinic prohibition of insulating hot food on Shabbat.
- Havdala** D-6, D-9 – 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.
- hefsek** D-6 – a problematic interruption, often in the performance of a *mitzva*, recitation of a prayer or blessing, or between a blessing and that which it refers to.

heiche kedusha A-6 – a shortened *chazarat hashatz* in which the *chazan* says *Shemoneh Esrei* aloud through *Kedusha* before the congregation has said *Shemoneh Esrei*.

hekdesch F-2 – something that was set aside for sacred or charitable use.

heter iska G-7 – an agreement that turns what would have been a situation of *ribbit* (forbidden usury) into a joint investment between the two parties. This usually brings about the same financial outcome through a very different, permitted mechanism.

hosafot A-11 – when an additional person is called to read from the Torah.

I

ibbud orot D-17 – tanning hides.

issur C-1 – a prohibition.

K

Kabbala/kabbalistic A-10, A-14, D-3, D-7 – esoteric mystical Jewish teaching and literature related to them.

Kaddish A-4, A-6, A-8, A-10, A-12, A-14 – a prayer (in which we sanctify God’s Name) that is recited by a member or members of the congregation, often by mourners.

Kaddish Shalem A-10, A-14 – the “full” *Kaddish*, which is said at the end of a *tefilla*.

Kaddish Titkabel A-8, A-14 – a form of *Kaddish* said at the completion of a prayer service.

kadosh F-4 – holy.

kafof B-8 – an animal species considered by the Talmud to be unusual.

kalla H-5, H-7 – a bride.

karpas D-17 – a vegetable eaten during the Passover *Seder*.

kasher/ing C-18, E-2 – the process by which halachically significant taste absorbed in a utensil is removed and/or neutralized, thereby allowing the utensil to be used without

- halachic concern.
- kashrut** (see table of contents for section E on *kashrut*) G-14 – the field dealing with keeping kosher; also used to refer to the acceptability of ritual objects.
- kav** G-13 – a measure of volume.
- kavana** G-3 – intent.
- kavod** A-9, C-17, H-1 – honor, respect.
- Kedusha** A-4, A-6, A-15 – a prayer recited during the repetition of *Shemoneh Esrei*.
- kedusha** F-4, G-10 – sanctity.
- ketuba** (pl. **ketubot**) H-7, H-8 – a formal marriage contract that, among other things, ensures a Jewish wife financial support during and after her marriage.
- Kiddush** D-6, D-9, G-12 – the blessing through which we sanctify Shabbat. It is recited over wine before the Shabbat meal both at night and in the daytime.
- kiddush** C-7, H-2 – a Jewish get-together, after services or for informal celebration.
- Kiddusha D'Sidra** A-14, C-7 – a prayer.
- kiddushin** H-5 – the first part of the marriage process.
- kinyan** H-8 – an act of finalization of a transaction.
- kinyan b'ta'ut** I-1 – a transaction made based on false pretenses.
- kipa** (pl. **kipot**) F-1 – a traditional head covering for men (yarmulke in Yiddish).
- kiruv** D-11 – religious outreach.
- kitniyot** D-16 – legumes and other foods that are not *chametz* but have some similarity to grains that can become *chametz*. Ashkenazic custom forbids eating these foods on Pesach out of concern of confusion between the two.
- kli rishon** [**she'al gabei ha'eish**] C-5 – a utensil in which food was [or is being] heated.
- kli sheini** C-5 – a utensil into which food was transferred from a *kli rishon*.
- kohen** (pl. – **kohanim**) A-2, A-11, A-13, B-5, G-2 – a member of the priestly tribe (who descend from Aaron). Members of this

tribe have special religious obligations, roles, and privileges.
kollel I-11 – a rabbinical seminary for married men.

korban (pl. – **korbanot**) A-12, D-15, G-3, G-8 – sacrifice (in the Holy Temple, may it be rebuilt soon).

Korban Chagiga D-15 – a festive sacrifice offered during holidays.

Korban Pesach C-3, D-15 – the Paschal Lamb. The sacrifice that, in Temple times, was offered on the afternoon before Passover and was eaten as a central part of the *Seder* on the first night of Passover.

Korban Todah G-8 – a sacrifice of thanksgiving.

kosher – (see table of contents for Section F on *kashrut*), C-2, D-5, D-10, G-14, H-8 – fit, especially for eating.

kotev C-15 – writing, one of the prohibited actions on Shabbat.

kri'at haTorah A-10, A-12, A-16, H-2 – the reading of the Torah during services in the synagogue.

Kri'at Shema A-2, A-7, A-11, A-15, A-16, B-9, G-3 – three sections of the Torah containing basic elements of our faith. The Torah commanded us to recite these sections every morning and evening.

kugel C-7 – a Jewish food that resembles a casserole or soufflé.

k'vod Shabbat C-17 – actions done to bring honor and dignity to the atmosphere of Shabbat.

k'zayit B-5, D-13, G-9 – the size of an olive. This measurement has many halachic ramifications.

L

lain/ing A-10, A-12, A-16, F-4 – Yiddish for reading the Torah (*kri'at haTorah*).

lash C-9, D-17 – kneading, one of the prohibited actions on Shabbat.

l'chatchila B-4, E-3 – lit., in the first place; the ideal way of acting.

libun kal E-2 – a process of *kashering* a utensil with dry heat, but with less heat than full *libun*.

limud zechut F-1 – an idea that indicates that a practice that is difficult to justify might be permitted.

lishma G-14 – for its own sake.

lo plug B-9 – a concept indicating that we do not distinguish between similar cases that fall into the same category despite the presence of logic to distinguish.

lo titgod'du D-12 – a prohibition against acting differently from others in the community in a manner that can cause tension.

lo yilbash [gever simlat isha] G-1, G-11 – the prohibition of cross-dressing and equivalent activities.

lulav A-4, F-5, G-3 – a palm branch, one of the four species used on the holiday of Sukkot.

l'vatata see *beracha l'vatata*.

M

ma'alim bakodesh v'ein moridin F-3 – one may not lower the level of sanctity for which an object was used.

ma'amadot A-12 – see referenced response.

Ma'ariv A-5, A-14, C-19, D-6 – the evening prayer.

ma'aser A-9, E-4 – one of a number of tithes in which one gives a tenth.

ma'aser kesafim G-1 – the recommended practice of giving one tenth of one's earnings to charity.

machloket – disagreement, in our context, concerning matters of scholarship.

machmir A-15 – follow the stringent opinion; see also *chumra*.

maftir A-12 – the last portion of the public Torah reading on Shabbat and festivals.

makat medina I-5 – a situation that prevents normal activity of an entire region.

makom kavu'a A-3 – a set place where one prays.

makri D-2 – the one who calls out instructions to the *shofar* blower.

mamrani I-9 – the equivalent, in previous times, of an open check.

- marit ayin** C-2, E-5 – giving an impression that one is doing something forbidden.
- Mashiach** I-10 – the Messiah.
- massechet** D-14 – a tractate (volume) of Talmud.
- matanot la'evyonim** H-6 – the *mitzva* on Purim of giving a donation to the poor.
- matza** D-13, G-3 – unleavened bread. We are commanded to eat *matza* on Passover.
- mayim acharonim** G-9 – water used to wash one's hands after a meal.
- mazal tov** I-4 – a congratulatory blessing that means “have good fortune.”
- mechila** H-1 – relinquishing of rights.
- mechuyav badavar** H-5 – someone who is obligated to perform a certain *mitzva*.
- medura** D-7 – a relatively large flame.
- Me'ein Shalosh** B-4 – condensed form of *Birkat HaMazon* recited after eating foods made from one of the seven species for which *Eretz Yisrael* is praised (wheat, barley, grapes, figs, pomegranates, olives, dates).
- megilla** D-1, D-11, D-12 – a Torah-like scroll.
- Megillat Esther** A-14, D-1, D-10, D-12 – The Book of *Esther*, read on Purim, which is written on a Torah-like scroll.
- mekalkel** C-11 – an otherwise prohibited act on Shabbat whose violation is not complete because the action is destructive.
- melacha** (pl. – **melachot**) C-1, C-2, C-7, C-9, C-10, C-11, C-15, C-19, D-9, D-17 – an activity that the Torah prohibits on Shabbat.
- memachek** C-1 – smoothing out, one of the prohibited actions on Shabbat.
- menora** D-7 – the candelabra in the Holy Temple.
- menschlich** I-2 – common courtesy.
- menudim lashamyim** H-4 – shunned in Heaven.
- mesader kiddushin** H-5, H-8 – the rabbi responsible for arranging the halachic requirements of a Jewish wedding.

- meshaneh haberiyot** B-8 – the blessing on seeing an unusual animal.
- mevushal** E-4 – cooked. Once wine is cooked, it does not become *stam yeinam*.
- mezamen** B-5 – one who leads a *zimun*, the introduction to a joint recitation of *Birkat HaMazon*.
- Mezonot** B-2 – the blessing recited before eating a non-bread food made of one of the five major grain species.
- mila** see *brit mila*.
- milchig** E-1, E-2, E-3 – Yiddish for a food that comes from or has absorbed taste from milk products. It is forbidden to eat such a food together with meat products. This term is also often used to describe utensils used for milk and the state of one who has eaten milk products.
- min haShamayim** H-3 – divinely ordained.
- Mincha** A-6, A-10, A-12, C-17 – the afternoon prayer.
- minhag** (pl. – **minhagim**) A-7, A-11, A-12, A-14, A-15, A-16, C-4, C-6, C-7, C-12, D-2, D-3, D-4, D-6, D-7, D-9, D-10, D-11, D-14, D-15, D-16, D-17, D-18, D-19, E-1, F2, F-3, H-2, H-3, H-4, H-5, H-7, I-4 – a custom or general practice.
- minhag ha’olam** E-1 – a widely accepted practice.
- minyan** (pl. – **minyanim**) A-1, A-3, A-4, A-5, A-6, A-8, A-10, A-11, A-13, C-19, D-10, D-11, D-12, G-8, H-4 – a quorum of ten men who pray together. A *minyan* is required in order to recite certain prayers.
- Mishkan** C-3, C-15 – the Tabernacle.
- mishloach manot** H-6 – the *mitzva* to send food goods to a friend on Purim.
- mishna** (pl. – **mishnayot**) – the most authoritative teachings of the *Tanna'im* (c. 1-200 CE).
- mitzva sheb’gufo** D-1 – a *mitzva* one must perform personally.
- mitzva** (pl. – **mitzvot**) – a commandment; a good deed.
- mitzvot tzrichot kavana** G-3 – the concept/opinion that *mitzvot* are valid only if performed with the proper intent.
- mizmor** G-8 – psalm.

mochek C-11 – erasing, one of the prohibited actions on Shabbat.

mochel H-1 – relinquish rights.

mora H-1 – awe; the obligation to treat one's parents with exceptional respect.

mosif hevel C-6 – a medium in which heat is being added to the system of hot food.

Motzaei Shabbat A-14, C-2, C-19, D-6, D-9 – Saturday night, after the conclusion of Shabbat.

muktzeh C-14, C-16, C-18 – something that does not have the type of function or status on Shabbat that allows it to be moved.

Musaf A-10 – the additional prayer on special days.

N

nafka mina H-5 – the practical difference between two possibilities/opinions.

nat bar nat E-1, E-2, E-3 – an abbreviation for *notein ta'am bar notein ta'am* (twice removed taste).

neder C-19 – an oath.

neheneh I-7 – one who benefits from his friend or his property.

neigel vasser F5 – the washing of hands after awaking.

Ne'ila D-4 – the fifth and final prayer service on Yom Kippur.

neshama yeteira D-6 – lit., extra soul; the spiritually elevated status experienced during Shabbat.

netilat yadayim F-5, G-12 – the procedure of washing one's hands in a certain way in certain circumstances, such as before eating bread.

Nine Days A-5, D-14, D-19, H-4 – the period of national mourning leading up to and including Tisha B'Av.

noyei kedusha F-4 – things that adorn a holy object.

Nusach Ashkenaz A-14 – the text of the prayers used by non-Hasidic Ashkenazi Jews.

Nusach Sephard A-14 – the text of the prayers used originally by Hasidic Jews.

O

- oketz** D-5 – the part of the *etrog* that is left over from its stem.
- oleh** A-11, F-4 – one who is called up for an *aliya* to the Torah.
- olim** G-14 – those who moved to Israel.
- omer** D-18 the seven-week period between Pesach and Shavuot, during which it is a *mitzva* to count the days.
- ona'ah** I-1 – charging or paying above or below the market norm.
- oneg** A-9, C-17 – physical enjoyment.
- oneg Shabbat** C-17, I-11 – the physical enjoyment one is to experience on Shabbat
- oness** A-2, I-3 – extenuating circumstances that prevent a person from acting in the manner halacha normally requires.
- orla** E-4 – fruit from a tree that is less than three years old. One may not eat or derive benefit from these fruit.

P

- panim chadashot** A-9 – lit., a new face; someone who has not yet participated in the wedding festivities.
- parasha** A-12, A-16, F-4 – a section of text from the Torah.
- parashat hashavua** A-12 – the weekly Torah portion read on Shabbat.
- Parashat Zachor** D-10 – the special Torah portion (*Devarim* 25: 17-19) read on the Shabbat before Purim.
- pareve** B-5, E-1, E-2, E-3 – 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.
- parochet** F-4 – the curtain in front of the holy ark
- pasuk** (pl. – **p'sukim**) – a Biblical verse.
- pasul** D-5 – unfit for use.
- pegama** A-11 – the appearance that a person is of a problematic status.
- peirurim** D-13 – crumbs.
- Pesach** D-13, D-15, D-16, D-17 – Passover, the festival that celebrates the liberation of the young Jewish Nation from

slavery in Egypt.

pidyon haben H-2 – redemption of the firstborn; a ritual performed on a male child who is the firstborn of his mother and is not a *kohen* or *levi*.

pirsumei nisa D-9 – the publicizing of a miracle.

pitam D-5 – the upper stem-like tip of the *etrog*.

piyutim D-4 – liturgical pieces.

plag hamincha B-9 – a time slightly more than an hour before sunset.

plata blanket C-8 – a covering that goes over pots to insulate them.

posek (pl. – **poskim**) – scholar who regularly renders halachic rulings.

pru u'revu G-3, H-5 – the *mitzva* to have children.

p'sak – a halachic ruling.

p'sik reishet [**d'lo nicha lei**] C-11, C-15 – an action that will necessarily, although unintentionally, cause a forbidden result [that he is not interested in].

P'sukei D'Zimra A-7 – 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 A-14, D-11, D-12, H-3 – the holiday celebrating the salvation of the Jews of the Persian Empire from a cruel oppressor.

R

rav (pl. – **rabbanim**) – rabbi.

Rabbanut H-8 – the rabbinical officials of the Israeli government.

rasha G-5 – a wicked person.

revi'it G-12 – a measure of liquid of approximately 3-4 ounces.

ribbit G-7 – forbidden interest payment on a loan or other monetary obligation.

Rishon (pl. – **Rishonim**) – A Talmudic or halachic scholar who lived between 1000-1500 CE.

Rosh Chodesh D-9, F-4 – the beginning of a Jewish month (lunar).

Rosh Hashana C-19, D-1, D-2 – the holiday that is both the Jewish New Year and the Day of Judgment.

rosh kollel – a head of rabbinical institute for married men.

roshei yeshiva – heads of rabbinical institute.

S

safek C-5 – a situation of doubt.

safek berachot l'hakel B-2, B-9 – the principle that in situations of doubt, we refrain from reciting possibly unnecessary blessings.

sandek D-14 – the one who holds the baby during a *brit*.

s'chach F-5 – the special roof placed on top of the *sukka* during the festival of Sukkot.

schlepping G-12 – Yiddish for dragging.

sechora E-5, E-6 – commerce.

Seder D-14, D-15, D-17 – the “order” of religious observances and the feast on the first night(s) of Passover.

sefarim (sing. – **sefer**) D-13, F-4 – books (that deal with Torah topics).

sefer Torah A-3, A-10, D-10, F-2, F-4 – Torah scroll.

sefeik sefeika D-18 – double doubt.

sefirat ha'omer D-18 – the daily counting of forty-nine days from the second day of Pesach until Shavuot.

Selichot A-14 – special prayers of supplication recited at appropriate times during the year, most notably before the High Holy Days (Rosh Hashana and Yom Kippur).

semachot see *simcha*.

seuda D-11, G-8, H-2, H-4 – a meal.

seuda hamafseket D-3 – the meal immediately before a fast.

seuda shlishit A-5 – the third Shabbat meal.

seudat hodaya G-8 – meal of thanksgiving.

seudat mitzva D-14, H-3, H-4 – a meal in honor of something that the Torah deems worthy of celebration.

Shabbat (see table of contents for section C on Shabbat) A-5, A-9, A-10, A-11, A-12, A-14, D-4, D-6, D-9, D-10, D-17, D-19, F-3, G-9, H-2 – the Sabbath; the time from sundown Friday until Saturday night. This day is marked by its special observances, prayers, and many restrictions on different types of work.

Shabbat Shuva D-4 – the Shabbat before Yom Kippur.

Shacharit A-1, A-2, A-7, A-8, A-10, A-14, D-4 – the morning prayer.

shadchan (f. – **shadchanit**; pl. – **shadchanim**) I-4 – a matchmaker.

shaliach D-1, D-8, I-11 – an agent whose actions are halachically considered as if they were done by the person who appointed him.

shalom bayit C-17 – domestic harmony.

shalom zachar H-2 – a party on the first Friday night after a boy's birth.

shamash D-7 – an extra Chanuka candle used for lighting or for benefitting from its light.

shayla H-8 – Yiddish for question.

She'asa Nissim D-8 – the blessing made on miracles associated with holidays.

she'at hadechak D-16 – extenuating circumstances.

shechita D-15 – ritual slaughter.

Shehakol B-1, B-2, B-3 – the most general blessing, recited before eating foods which do not have a more specific text.

Shehecheyanu B-6, D-6, D-8, D-19 – the blessing recited upon experiencing certain new and significant or cyclical events.

sh'eilat shalom H-6 – greeting or inquiring about the welfare of another.

shehiya C-4, C-6 – leaving food on the fire on Shabbat.

shelichut C-2 – the halachic concept of one serving as an agent for another.

Shema see *Kri'at Shema*.

Shemitta E-4, G-9 – the Sabbatical year, during which there are special agricultural restrictions.

- Shemoneh Esrei** A-5, A-6, A-7, A-10, A-14, A-16, D-9 – the main section of the daily prayers, during which one “stands directly before God” to praise Him and make important requests.
- sheva berachot** A-9, H-4 – the days (usually seven) of celebration after a wedding; the individual festive meals during this period; the seven blessings that are recited after those meals and at a wedding.
- shevarim** (sin. – **shever**) D-2 – the triple blast that is part of the *shofar* blowing on Rosh Hashana.
- shevua habat** H-2 – a celebration on the birth of a girl, mentioned in the Talmud.
- shevua haben** H-2 – a celebration on the birth of a boy, mentioned in the Talmud.
- shidduch** I-4 – dating.
- shinuy** C-9 – a change from the normal in the way an act of potential Shabbat desecration was done.
- shir shel yom** A-14 – see referenced response.
- shiva** H-6 – the seven-day period of mourning after the death of a close relative.
- sho’el** C-19 – undoing the acceptance of a halachic status.
- shochet** G-14 – a ritual slaughterer.
- shofar** C-19, D-1, D-2, D-4, F-5, G-3 – the ritual “musical instrument” made of a ram’s horn that is used to blow certain types of blasts on Rosh Hashana.
- shomei’ah k’oneh** D-1 – the halachic concept that one who hears is as if he created the sound.
- shomer sachar** I-3 – a paid watchman.
- shomer** (pl. **shomrim**) I-3, I-6 – one who is entrusted with guarding another’s object.
- shoshanta** D-5 – stigma, top part of the *etrog* protrusion.
- shтреimel** A-9 – a fur hat worn by Hasidic men.
- shul** A-1, A-3, A-5, A-9, A-10, A-11, A-15, C-7, C-14, C-19, D-2, D-9, D-10, D-11, F-1, F-2, F-3, F-4, G-6, G-10, G-13, I-10 – Yiddish for synagogue.

- siman** (pl. – **simanim**) I-10 – an element of an object that identifies its owner.
- simcha** (pl. – **semachot**) D-14, G-9; H-3, H-6 – happiness; a happy event.
- siyum** D-14, H-3, I-10 – the completion of a large section of Torah study and the related celebration.
- Siyum HaShas** I-10 – the completion of the study of all of the Babylonian Talmud.
- sof pasuk** A-16 – a symbol in the Torah reading cantillation, which indicates the end of a verse.
- sof z'man tefilla** A-7 – the latest time one can recite *Shemoneh Esrei* at its proper time.
- sofer** F-1 – a scribe who writes Torah scrolls, *tefillin*, and *mezuzot*.
- stam yeinam** E-4 – see referenced response.
- sukka** A-2, B-9, F-5 – the booth one sits in on Sukkot (Tabernacles).
- Sukkot** A-2, A-4, A-12, B-9, D-5 – Tabernacles, the holiday during which we celebrate the Divine protection of the Jewish people during their sojourns in the wilderness, as well as the yearly harvest.

T

- ta'anit bechorot** D-14 – the fast day of firstborn males on the day before Pesach.
- ta'ut** C-19 – a halachic process done due to mistaken information.
- tachshit** C-13 – an adornment or accessory.
- tadir kodem** D-9 – the principle that more frequently occurring *mitzvot* are performed before less frequent ones.
- takanat hashuk I-9** – a special rabbinical implementation that enables commercial affairs to run more smoothly than they would according to the strict law.
- takanot hashavim** G-4 – special rabbinical implementations that make it easier for people to repent for their sins by lowering the consequences.
- tallit** F-3, F-4, F-5 – a four-cornered garment worn during prayers. As required by the Torah, it has special fringes.

- tallit gadol** F-3 – the more complete name of a *tallit*.
- talmidei chachamim** C-2, F-1, H-8 – Torah scholars.
- talmidim** I-11 – students.
- tamei** G-12 – halachically impure.
- Tanna'im** – rabbinic scholars of the Tannaic period (approximately 1-200 CE).
- tarmut** D-2 – the measure of a short *shofar* blast.
- tashmishei mitzva** F-3, F-4, F-5 – an article that lacks sanctity but serves in the performance of a *mitzva*.
- tashmish kedusha** F-3, F-4, F-5 – an article that serves an object that has sanctity.
- techum Shabbat** C-2, C-12 – the confines of a city, where one is permitted to walk on Shabbat.
- tefilla** (see table of contents for section A on *tefilla*) C-19, D-4, H-2, I-4 – prayer.
- tefillin** D-1, F-1, F-4 – phylacteries, specially made boxes containing hand-written scrolls upon which four sections of the Torah are written. Jewish men wear them during weekday morning prayers.
- tefillin shel rosh** F-1 – the phylacteries placed on the head.
- tefillin shel yad** F-1 – the phylacteries placed on the arm.
- Tehillim** A-14, G-8 – Psalms.
- teki'ah** (pl. – **tekiot**) D-2 – a long blast of the *shofar* that is part of the *shofar* blowing on Rosh Hashana.
- teki'ah gedola** D-2 – a particularly long *shofar* blast at the end of a section.
- tereifot** E-4 – the laws of sick or injured animals, rendering them non-kosher.
- terima** B-3 – see referenced response.
- teruma** B-5, E-4 – tithes given to a *kohen*.
- teru'ah** (pl., **teru'ot**) D-2 – a long series of short *shofar* blasts that is part of the *shofar* blowing on Rosh Hashana.
- teshuva** D-3, G-4, H-3 – repentance.
- teshuvot** G-14 – responsa.
- tinok shenishba** G-5 – see referenced response.

tircha d'tzibbura A-6 – inconveniencing the community, especially by delay.

Tisha B'Av D-19, I-5 – the fast day that marks the destruction of the first and second Holy Temples in Jerusalem.

tochacha H-1 – rebuke.

tochein C-9, C-10 – grinding, one of the forbidden actions on Shabbat.

Torah – teachings of Jewish law, Bible, and ethics; the Five Books of Moses.

trop A-16 – Yiddish for Torah reading cantillation.

tzaddik A-3 – a righteous person.

tzedaka G-6, G-8, H-6, I-10 – charity.

tzibbur A-5 – a community.

tzitzit F-3, F-4, F-5 – 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 C-1 – modesty (either with regard to dress or personality).

tzovei'ah C-1 – coloring, one of the prohibited actions on Shabbat.

U

U'Va L'Tzion A-10, A-14 – a prayer recited in *Shacharit* on weekdays and at *Mincha* on Shabbat.

uvdin d'chol C-10, C-12 – activities on Shabbat or a festival that are characteristic of weekday activity and therefore problematic.

V

V'Atah Kadosh A-14 – a shortened version of *U'Va L'Tzion*, recited on Saturday night.

vatikin A-5 – a preferred time to pray the morning prayer, in which *Shemoneh Esrei* begins at sunrise.

VaTodi'einu D-6 – the form of *Havdala* in prayer recited on *Yom Tov*.

V'Yehi Noam A-14 – a psalm recited on Saturday night and morning.

Y

- yad** F-4– a pointer used in Torah reading.
- yad soledet bo** C-4, C-5 – Hot enough to prompt one to withdraw his hand. Opinions range from 110°-160°F = 43°-71°C.
- yahrtzeit** D-14, H-3 – Yiddish for the anniversary of the death, often in the context of observances by close relative.
- yayin nesech** E-4 – wine used in idol worship.
- yeiush** I-16 – giving up hope to find a lost object.
- yeshiva** A-3, C-17, I-11 – academy of Jewish study.
- yeshua haben** H-2 – a celebration, mentioned in the Talmud, after the birth of a boy.
- yibbum** G-2 – the *mitzva* to marry a sister-in-law whose husband died without children.
- yichud** H-8 – seclusion of a man and woman, including that of a bride and groom.
- yishuv Eretz Yisrael** G-3 – the *mitzva* to live in the Land of Israel.
- yisrael** A-11 – a Jewish male who is not a *kohen* or *levi*.
- yohara** A-16 – haughtiness.
- Yom Kippur** D-3, D-4 – the Day of Atonement, the fast day that is the holiest day of the year.
- Yom Tov** C-4, D-3, D-6, D-9, D-12, D-14, D-15, D-17 – the main day(s) of Jewish festivals, during which it is forbidden to engage in most of the actions that are forbidden on Shabbat.
- yoshvei keranot** A-10 – a phrase used to refer to those involved in matters other than study of Torah (its literal explanation is not fully clear).
- yotzei** B-3 – fulfilled an obligation.
- yovel** D –18 – the jubilee year (not presently in practice), which has many special halachic elements.
- Yud Gimmel Middot** D-4– the thirteen divine attributes (taken from *Shemot* 34:6-7), recited in *Selichot* and throughout the services on Yom Kippur.

Z

Zachor see *Parashat Zachor*.

zava D-18 – a woman with an abnormal menstrual flow.

zeh neheneh v'zeh lo chaser I-7 – when one party gains from using another's property without the latter losing from it.

zeved habat H-2 – a celebration of the birth of a girl.

zimun B-5 – the responsively recited introduction to *Birkat HaMazon*, recited when three men eat together.

z'roah D-15 – forearm of animal used symbolically in the Passover *Seder*.

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