

ASK THE RABBI VOLUME II

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VOLUME II

A Sampling of Real World Halachic Questions that Were
Sent to the Eretz Hemdah Beit Midrash
Headed by
Harav Moshe Ehrenreich and Harav Yosef Carmel

By
The Eretz Hemdah Students and Faculty



Eretz Hemdah
Institute for Advance Jewish Studies

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Eretz Hemdah Institute

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הוצא לאור בהשתתפות המשרד לענייני דתות

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It is our privilege to present the second volume of *Ask the Rabbi*. Each year, Eretz Hemdah, through its partnership with the Orthodox Union's "Ask the Rabbi" program, receives thousands of questions. The questions are sent from rabbis and laity in Israel, America, and across the world.

In Eretz Hemdah, a small group of extraordinary graduates from the finest National-Religious yeshivot learn to prepare for the Israeli Rabbinates' rigorous *Yadin Yadin* examinations. We believe that true greatness in Torah can never be disconnected from involvement with the needs and concerns of the broader Jewish community. Therefore, we require our young rabbis to devote some of their time to teaching and answering questions. As part of that vision, our young rabbis help answer some of the "Ask the Rabbi" questions we receive.

The "Ask the Rabbi" questions cover all imaginable issues. In this volume, we bring together some of the select questions and answers from the most relevant areas of halacha.

We hope and pray that this book will be used to teach and enlighten. That it will help people observe halacha, while giving them a sense of the impressive and infinite world of the Talmud and Shulchan Aruch, which serve as the basis and context for our halachic practice.

With Torah Blessings,

Rabbi Yosef Carmel

Rabbi Moshe Ehrenreich

Rabbinical Deans of Eretz Hemdah



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SHABBAT

1. Doing Work After Shabbat for Someone for Whom it Is Shabbat

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

Answer: We have permitted Israelis to make a stock order to be carried out on Friday afternoon in NY (Shabbat in Israel). We will review and see if this case is the same.

The gemara (Shabbat 151a) says that Reuven may ask Shimon to watch Reuven's fruit that are out of Reuven's techum Shabbat but within Shimon's. The Rashba (accepted by the Shulchan Aruch, Orach Chayim 263:17) extrapolates from this that if Reuven accepted Shabbat early, he may ask Shimon, who did not yet accept it, to do work on his behalf. Why don't we say that the action relates to the one who requested through shelichut (agency), as we do to forbid the work done by a non-Jew on behalf of a Jew on Shabbat (see Rashi, Shabbat 153a)?

Three answers appear in the poskim: 1) The prohibition to ask others was not instituted when one has or had (in the past) a way to not be forbidden to do the work himself (Beit Yosef, ad loc.; Magen Avraham 263:30). In the above cases, Reuven could have not accepted Shabbat and could have gone to the fruit via "burgenin." 2) One accepts Shabbat only regarding prohibitions he performs himself (Levush 263:17; see Shulchan Aruch Harav, K" A 253:8). 3) Reuven may request of Shimon something that is not a melacha in regard to Shimon (Taz 263:3; Levushei S'rad 307:12).

In our case, the Beit Yosef and the Levush would seem to forbid the matter, as the work is being done during Reuven's actual Shabbat, and ostensibly he has and had no way of doing the action at that time in a permitted way. In some ways our case is more lenient in that 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 (Rashi, Avoda Zara 15a), regarding the aforementioned element of shelichut there seems to

be a problem. According to the Taz, there should be no problem, as the important thing is that you were asked to do work on Motzaei Shabbat. Among the reasons we were lenient in the case of the stock orders was that the Taz's approach is the strongest and most accepted (see Mishna Berura 263:64; Minchat Shlomo I, 19; Ta'arich Yisrael 8). We also noted, as a few poskim did, that if we rule stringently, when the owner of a kosher bakery in NY visits Israel, his bakery must be closed 7 hours before Shabbat in NY.

However, my halachic intuition tells me that this case is worse. In the permitted cases, the work was intrinsically permitted even for Reuven, just that he was in an "artificial situation" that precluded his specific involvement (i.e., out of techum, early Shabbat). In our case, a person in America wants melacha, that he would normally do himself, done 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 is, from the requester's perspective, 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? This would seem to violate the Rambam's (Shabbat 6:1) logic for the prohibition of amira l'nochri: one who treats Shabbat lightly enough to have work done by a non-Jew may come to do those things himself. While important talmidei chachamim found "sympathy" for my logic of stringency, it is difficult to forbid such a thing without a source. Our Rosh Kollel, Rav Carmel, acknowledged 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). In the final analysis, you may fulfill your friend's request.

2. Relighting Shabbat Candles that Went Out

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

Answer: When the above occurs when a Sephardi woman or an Ashkenazi man lights, for whom Shabbat prohibitions do not begin after lighting me'ikar hadin (see Yalkut Yosef, OC 263:7 and Mishna Berura 263:42), he or she should certainly relight the candles. This is because (as opposed to the mitzva of Chanuka candles), the mitzva's action of lighting is not a replacement for the heart of the mitzva, the benefit from them on Shabbat. However, what does an Ashkenazi woman, who generally accepts Shabbat through the lighting (Rama, Orach Chayim 263:100), do.? Could a failed lighting preclude her from relighting?

There is a basis to say that candles that go out quickly are as if they were never lit. While the K'tzot Hashulchan (Badei Hashulchan 74:(14), cited by several poskim) makes this claim, it may not apply to our case. First, he is talking about a case where the flame never took hold of most of the wick (your description is unclear on this point). Second, he refers to a case where the beracha was not yet recited. Then, since the acceptance of Shabbat comes from the lighting, this does not occur until the lighting is completely over, including all planned candles and when it is clear they are properly lit. In fact, there is significant debate (see Shemirat Shabbat K'hilchata 43:(179)) as to whether it is the lighting or the subsequent beracha that ushers in Shabbat. Rav Shlomo Zalman Auerbach leans toward the "beracha approach," and Mishneh Halachot (VIII:31) who agrees, therefore permits blowing out the match before making the beracha (as opposed to letting it go out itself – see Shulchan Aruch, OC 263:10). Thus, since your wife already made the beracha, which includes an indication that she is finished lighting, she should not have relit the candles (Shemirat Shabbat K'hilchata 43:37).

However, there is a (usually) simple solution – to ask someone else to relight the candles, as one who accepted Shabbat significantly before sunset can ask those who have not done so to

do melacha for him (Shulchan Aruch ibid. 17). In general, members of the household are not bound by the wife/mother's acceptance of Shabbat (Rama, OC 263:10). They may (re)light as many as is desired to get to the normal number. If no Jews are available, one may ask a non-Jew to light, and this can be done up until the time of tzeit hakochavim (at least 13 minutes after sunset) and even when there is sufficient electric lighting (Shemirat Shabbat K'hilchata ibid.; see Mishna Berura 263:21). In the case of a non-Jew's lighting at twilight, it is not clear whether more than one candle should be lit.

In the various cases where candles are relit, one does not make another beracha (Shemirat Shabbat K'hilchata 43:37; see Chovat Hadar, p. 87; Yalkut Yosef ibid.). (The explanation is beyond our scope.)

If all the candles went out and you did not have any relit, your wife apparently did not fulfill the mitzva. The Shulchan Aruch Harav (263, KA 3) goes as far as to say that the benefit (which you were missing) one receives is the mitzva, and the lighting is just a preparatory act. Even if the lighting is the mitzva, it still appears that the benefit is a necessary condition for the mitzva's completion (see Shulchan Aruch, OC 263:9). In a case that none of the solutions were feasible, it is not one's fault, and she is credited for at least doing the right Friday actions (lighting and refraining from desecrating Shabbat). (We, of course, would not suspect your wife of gross negligence in the lighting.) Thus, the "penalty" of having to add an additional candle for the rest of one's life does not apply (Mishna Berura 263:7). The Shemirat Shabbat K'hilchata (43:(35)) is unsure on this point when no candles remained lit and one did not avail herself of the above solutions, but if this occurs because she did not know the halacha, we do not believe the penalty applies.

3. Diapers With Disappearing Ink

Question: Is it permitted to use on Shabbat a diaper with forms on the outside that disintegrate when the diaper is soaked, alerting parents to change the diaper?

Answer: There is a Torah-level violation to erase (mochek) writing or, according to many, a picture or figure (see Shulchan Aruch, Orach Chayim 340:3; Beur Halacha to 340:4). When the erasure does not serve a positive purpose such as enabling new writing, the violation is only rabbinic (Mishna Berura 340:17). Thus, the diapers in question would seem to have no more than a rabbinic prohibition. Another possible reason for no Torah prohibition is that the erasure's result may be "destructive" (mekalkel). It is debated whether, considering the side benefit that the disintegration provides desirable information, it is mekalkel (see Beur Halacha to 340:13).

The main cause for leniency relates to who and how the erasing is done. 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" children prohibited matters, he may allow a situation in which a baby might choose to do a forbidden action (see Yevamot 114a). Here it is even better, as the baby "violates" Shabbat without any knowledge of this consequence of his action, in which case it is not a fundamental Shabbat violation even for an adult (see Shut Rabbi Akiva Eiger I:8).

Thus, the question is whether the adult violates Shabbat by creating a situation in which a future event will set off a melacha. Specifically, putting the diaper on the baby creates a situation where erasure will occur. When the direct cause (urination) of the erasure has yet to occur at the time of the adult's action (diapering), we say that the adult acted through gerama (indirect action). 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 (Rama, OC 334:22).

In this case, there are often additional points of leniency. For parents who are not interested in the erasure, as they can easily

determine the “old way” when the diaper is soaked, the erasure is permitted as a *davar she’eino mitkaven* (an unintentional forbidden result of one’s action) of the diapering. It is true that when the forbidden result is a definite outcome (*psik reishei*), the action is forbidden by Torah law (Ketubot 6b). However, when the result is arrived at through *gerama*, many important *poskim* permit *psik reishei* (Shemirat Shabbat K’hilchata 12:18, based on Rav Auerbach; see discussion in Orchot Shabbat 29:(41)). Some say that *gerama* is permitted in cases where direct action is only rabbinically forbidden. Other opinions disagree, and in any case the leniency likely does not apply to every rabbinic prohibition (see Yabia Omer III, OC 17). Yet the above is probably not needed, as, in actuality, the erasure is **not** a *psik reishei*. For a variety of reasons, including the baby soiling with solids before the diaper is soaked, diapers do not always reach the point that forms are erased.

When there are not meaningful figures of letters but just a line or dots, there is even more room for leniency, as erasing such nondescript things is not a (full) violation of *mochek* unless the erasure uncovers or enables writing (see Shulchan Aruch, OC 340:3; Orchot Shabbat 15:59). We find this distinction in such cases as cutting cake with writing or clear figures vs. nondescript shapes (Rama, OC 340:3).

One may generally use diapers with disintegrating ink (Orchot Shabbat 15:52). However, note that many of the reasons for leniency are based on the assumption that one does not have **intention** when diapering for the erasure, which is a valid assumption when one did not intentionally buy diapers with this marginally useful feature. However, for one who values this function, use of such diapers on Shabbat may very well be forbidden and should be avoided. (Regarding a slightly stricter case of a color-changing strip, see the Star-K website, which has a similar ruling to the above.)

4. Undoing Mistaken Early Acceptance of Shabbat

Question: After davening at an early Shabbat minyan, I realized that I forgot to deliver a gift to my host (we have no eiruv). Can I undo my acceptance of Shabbat and daven Maariv again after delivering the gift?

Answer: The gemara (Berachot 27b) discusses the concept of an acceptance of Shabbat on false pretenses (b'ta'ut), specifically when people davened Maariv of Shabbat before the normal time due to darkness caused by heavy clouds. An amora allowed doing melacha when they discovered the mistake because acceptance of Shabbat b'ta'ut is invalid. Regarding a shul that similarly davened Maariv of Motzaei Shabbat early, it says that while we would have expected the tefilla to be invalid, there is a special leniency for a community to not have to repeat Maariv under these circumstances. Most Rishonim rule that melacha is permitted after an acceptance b'ta'ut (see Beit Yosef ad loc.). The Shulchan Aruch (Orach Chayim 263:14) cites this opinion, followed by (his understanding of) the Mordechai's opinion that ta'ut does not erase acceptance done by the action of lighting Shabbat candles, which is stronger. Therefore, we might think that that if you did not light candles (and the acceptance of early Shabbat was not community-wide – see Shulchan Aruch, OC 263:12), 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 (Magen Avraham 263:26; Mishna Berura 263:56). Furthermore, your case is very different from the gemara's case of ta'ut. In the latter, the entire basis for going through the motions of accepting Shabbat was misguided. You, though, did want to accept Shabbat early, just that an unknown factor was a counterbalance to that decision. In the former case, the acceptance was null even if people desired to leave things as is (e.g., an individual who davened Maariv early

under those circumstances must repeat it). That is appropriate only in cases where the mistake is objective and clear cut.

The Taz (600:2) seems to counter our argument. Concerning a community that accepted Shabbat early on 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 real reason, just that 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, 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 undo their mitzva obligation.) Your case, though, is qualitatively incomparable to the sources on ta'ut.

What can be considered is being shoel (a process of releasing oneself, done before three people) on the acceptance. Some, including the Levush (OC 263:17), compare early acceptance of Shabbat to a neder (acceptance of extra halachic obligations) and say that one can be sho'el. However, the majority opinion is that one cannot be shoel on acceptance of Shabbat (see Mishna Berura 263:65 and presentation in B'tzel Hachochma IV:96). The strongest explanation is that while a neder is a halachic reality that is totally created by a person, the Torah mandates accepting Shabbat early, with each person just deciding when that is for him. In your case, undoing Shabbat causes an extra problem in that it would invalidate your Maariv.

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, which seems to be missing in your case. (We will not get into other solutions, which ostensibly exist, to have dealt with your situation.)

5. Using a Shabbat Clock for an Urn

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

Answer: Although we accept the opinions among Rishonim that it is forbidden to reheat boiled water that has cooled down (Shulchan Aruch and Rama, Orach Chayim 318:4,15), you would not be considered cooking since this is done automatically.

The question is whether your setup violates the Rabbinical prohibitions of shehiya or chazara. Shehiya, leaving food on the flame from before Shabbat, is sometimes forbidden, out of a concern that one will raise the heat. It is permitted if the heat source is covered in a way that reduces its efficiency (Shulchan Aruch, OC 253:1) or (likely) regarding a non-adjustable heat source (Hilchot Shabbat (Eider), p. 340). However, neither lenient factor exists here (one can raise the heat from Shabbat to normal mode). It is usually permitted to use this urn when the water has already been boiled, as further boiling causes unwanted evaporation (see Shulchan Aruch *ibid.*). Your case could possibly be more problematic since one may desire the extra heat to heat the cold water.

Chazara, returning food on Shabbat that had been removed from the heat, has more stringency, including that it is forbidden on a normal, adjustable heat source even if raising the temperature is detrimental (*ibid.* 2). Is your case considered chazara, considering that the heat is returned to function by a machine rather than a person? The answer may depend on the reason of the stringency of chazara. Rabbeinu Tam says it is a heightened concern that one will raise the heat since the food was returned after time off the flame. The Ran says that returning cooked food to a heat source can be confused with cooking. In this case, Rabbeinu Tam's reason seems to apply, while the Ran's does not since you do nothing on Shabbat.

Let us examine discussion about a parallel case. The Pri Megadim (OC, EA 253:41) and the Chazon Ish (OC 37:21) wonder about the permissibility of various cases similar to what the Rama (OC 253:5) allows. A non-Jew may put, on Shabbat morning, cold cooked food near a fireplace, which a non-Jew will be permitted to light due to the great cold, thereby also heating the food. Why are we not concerned that, after the fireplace is on, a Jew will stoke the coals? The Pri Megadim suggests that those who permit must rely on the opinion that reheating liquids is permitted, and so too the reheating is not significant enough to prompt one to stoke the coals. The Chazon Ish gives a few possible answers. One is that we treat a case where the food is put down when there is no heat as equivalent to shehiya. This helps, since the Chazon Ish claims elsewhere (37:27) that the concern of raising the flame regarding shehiya does not apply to fully cooked food even if it is now cold. On the other hand, reheating cooled water may be worse than reheating other cooked foods (Orchot Shabbat 2:(11)). There is further room for leniency considering that Shabbat started with the urn operating and there was no action since then (see Am Mordechai, Shabbat, p. 51). Still, the Shemirat Shabbat K'hilchata (1:40) is stringent when the water has cooled off totally, and the Orchot Shabbat (2:(49)) is uncertain.

Your urn has a feature that provides further grounds for leniency – when the Shabbat mode is on, one cannot raise the heat. This is similar, in some ways, to one who seals an oven where food is heating, which is permitted even though the seal can be removed (Shabbat 18b). It is unclear if the Shabbat-mode button that is deactivated by a simple press is a sufficient deterrent (see cases in Orchot Shabbat 2:18-19). It is also unclear if this leniency applies when elements of chazara exist (see *ibid.* 55). However, combining this factor along with the aforementioned grounds for leniency, it is not difficult to justify leniency.

6. Using a Dishwasher on a Timer on Shabbat

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

Answer: At first glance, there would not seem to be fundamental problems with operating the machine on a timer, as the same activation of the electric device and the heating of the water will occur regardless of if you fill the racks with dishes. As for the removal of the grime from the plates by using hot water (which occurs only because you put the plates in), that is not considered borer (removing impurities) or bishul (cooking). The reasons this is true are beyond our present scope. Some say that the soap is being cooked and should be put in before Shabbat (Techumin XI, pp. 137-154).

However, a safety device usually changes everything. In order that hot water should not come out of the dishwasher, the system is designed so that the machine works only when the door is locked until the end of the cycle. Obviously, the door is open when you load the dishwasher on Shabbat, and then you must lock it in order for the timer to be able to activate the machine. Closing the door thus causes the prohibition of Shabbat to occur at a later point when the timer will activate the dishwasher. Such a delayed reaction is only gerama, which is not a full violation of Shabbat, and is permitted in certain special situations that warrant a low-level violation of Shabbat (see Shabbat 120b and Rama, Orach Chayim 334:22). However, in most cases, it is forbidden to cause such a delayed reaction. For example, we do not allow one to press the buttons of an air conditioner to make it go on when a timer activates the system.

There is a technical solution, albeit a problematic one, that one can arrange with an electrician's help. You can by-pass the aforementioned safety device (The Zomet Institute provides this service). Then, when you lock the door, it will make no difference

regarding the dishwasher's operation. Unless one can ensure that this will not cause dangerous situations (such as opening the door during operation), we would say this is forbidden because "danger is more severe than prohibitions." However, we cannot preclude the possibility that someone can create safeguards.

Regarding using the dishwasher a second time, when the dishes will not be reused, there is an additional problem. It is forbidden to prepare on Shabbat for after Shabbat (hachana), even if the preparation does not include a prohibited action. Filling the racks with dishes need not be preparation, as many people find it a good place to temporarily store dirty dishes. However, refilling detergent is clearly done to facilitate cleaning the dishes, and if they will be used only after Shabbat, it is hachana.

A final issue, which may or may not cause it to be forbidden to have the dishwasher go on, is called *avsha milta*. The Rama (Orach Chayim 252:5, as opposed to the Shulchan Aruch, ad loc.) forbids operating from before Shabbat a mechanism that is forbidden to operate on Shabbat if it makes noise. This problem certainly exists if the system went on by timer during Shabbat. It is permitted only if it is common for people to set up the mechanism in advance and thus there is no reason to suspect that one desecrated Shabbat in its regard (ibid, regarding a chiming clock). This could be a problem for a dishwasher. Rav Moshe Feinstein (Igrot Moshe, OC IV, 70) says that the forbidden level of noise is such that it is expected to be heard in the next room, which is borderline for a dishwasher. While Rav Ovadia Yosef (Yechaveh Da'at III, 18) and Rav Nachum Rabinowitz (Si'ach Nachum OC 15) say that *avsha milta* applies to dishwashers, regarding relatively quiet models, this issue would not be a problem. In short, while there may be a way to use dishwashers on a timer on Shabbat, a combination of technical and halachic problems make it not simple in practice.

7. Reheating Cooked Liquids Right Before Shabbat

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

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

There are two categories of cases regarding having foods on a flame (irrespective of the melacha of actually cooking): shehiya and hachazara.

Shehiya means leaving a pot/food on the flame, after putting it there to cook or to heat up before Shabbat. In certain cases (about which there is a major machloket for thousands of years), one must do something to the system to reduce the chance that he will “stoke the coals” or its equivalent. The bottom line is that blechs and non-adjustable hot plates fulfill the halachic requirement, when necessary.

Hachazara means returning a food/pot to a heat source after it had previously been removed. The classic case is when one does so on Shabbat. Hachzara is a more severe case than shehiya (for reasons beyond our present scope) and in order for it to be permitted in the classic case, five basic requirements must be met: 1) The food must be fully cooked before returning it. 2) The heat source must be covered. 3) The pot should remain in one’s hand since being removed. 4) The remover should have had in mind to return it. 5) The food should still be warm. Only condition #2 applies to shehiya.

The general assumption, that the difference between shehiya and hachzara is that the former is when the food is left from before Shabbat and the latter is on Shabbat, is challenged by the following gemara (Shabbat 38b). “According to the one who says people may do hachzara (as we pasken), he may do hachzara even on Shabbat.” This implies that there is a case of hachzara that is not on Shabbat

(and is easier to permit). Tosafot (Shabbat 36b) say that this refers to putting the food back on the flame so close to Shabbat that if the food were cold, it would not have a chance to become hot before Shabbat. Although several Rishonim disagree with Tosafot, the Rama (Orach Chayim 253:2) says that it is good to follow Tosafot's opinion.

If putting food on the flame at that time is hachzara, does that mean that all of the aforementioned five conditions of hachzara are needed? Your question raises the possibility that the food needs to be warm at the time of this Erev Shabbat hachzara or at least that the food has to be fully cooked. (While the soup is fully cooked, reheating liquid is forbidden like cooking uncooked solid foods.)

This is actually not the case. The five conditions of classic hachzara can be broken up into a few categories of the problems they solve. One is that putting the food on the flame should not violate bishul. This applies to condition #1 and #5. However, one will not violate bishul when he puts food on before Shabbat, and we have no source to extend this rabbinically to Erev Shabbat. Within the remaining three conditions, the covered flame (#2) is a matter of standard concern, whereas keeping the food in the hand and having intention to return it are special stringencies regarding hachazara. The Rosh (Shabbat 3:2) says that the stringency of hachazara soon before Shabbat applies to #2 no matter what state the food is in, which is not the case regarding shehiya (see Shabbat 36b and Shulchan Aruch, OC 253:1)) However, the other requirements do not apply before Shabbat (Mishna Berura 253:72). Since a non-adjustable hot plate is no worse than a blech (which solves #2), you do not have a problem

8. Eating Questionably Reheated Kugel

Question: Before our shul Kiddush, gabbaim noticed the hot plate (for kugel) was unplugged, so they had a non-Jew connect it (I don't know what they told him). I ate the kugel only after it cooled down. Was that necessary/allowed?

Answer: When a non-Jew does melacha on behalf of Jews, even without prompting, they may not benefit from it (Beitza 24b). While this suggests your compromise was right, we must consider various factors pointing to other conclusions.

First, might one be allowed to ask a non-Jew to plug in the hot plate, even though this is a Torah-level melacha? After all, the Rama (Orach Chayim 276:2) cites the minhag of some to have a non-Jew light a candle for a Shabbat meal because a proper Shabbat meal is a mitzva, and this includes having hot food (Mishna Berura 325:60). Where need justifies asking a non-Jew, benefit is also permitted. While the Rama condones this approach only for exceptional need, the Mishna Berura (276:25) permits it for a mitzva of the masses. However, heating up kugel is not critical for a shul Kiddush at least under normal circumstances.

A more promising way to use the non-Jew is with a “good hint.” A regular hint made to him on Shabbat to do melacha on Shabbat is forbidden (Rama, OC 307:22). However, Acharonim rule that a hint that mentions only a need without mentioning any action is permitted (Magen Avraham 307:20; Mishna Berura 307:76). Poskim point out that, for several reasons, this leniency cannot obviate the whole prohibition of amira l'nochri for those who use good hints (see Orchot Shabbat 23:(24)). However, some serious poskim permit it when the non-Jew's action provides no “halachic benefit” (see Shemirat Shabbat K'hilchata (30:3). Does heating up a fully cooked kugel provide halachic benefit?

When usage of an object is possible (a hard word to define) without the melacha, it is not considered benefit. One application is that if a non-Jew lights a second candle, it is permitted to do things that could have been done, even with difficulty, with the first light alone (Shulchan Aruch, OC 276:4; see Mishna Berura ad loc. 20). Arguably, since (almost any) kugel can be eaten at room

temperature, heating it up is not benefit. On the other hand, Igrot Moshe (YD III:43) limits this leniency to cases where the benefit (e.g., light) is provided by a different object (e.g., candle #1); one may not receive benefit (e.g., coolness) provided only by a non-Jew's melacha (e.g., putting on an air-conditioner) even if one can do the same thing (e.g., eat in the room) without that benefit. Rav Auerbach argues similarly and also distinguishes between Torah-level and rabbinic melachot (see Shemirat Shabbat K'hilchata 30:(167)). If this is correct, then when the non-Jew provides all the re-heating by plugging in the hot plate, a good hint would not help. (How one deals with the apparent contradiction regarding using shoes that a non-Jew finished preparing on Shabbat – see Mishna Berura 252:30, 327:16, and 253:98 (below) – may be crucial). Without exhausting the topic, it is questionable whether a good hint would allow heating up the kugel.

Does letting the kugel cool off solve the problem? The Rashba (cited by Beit Yosef, OC 253) discusses (almost exactly) our case and forbids eating the food even after it cools down (see Minchat Shlomo I:5), as a penalty for one who violated the rules of amira l'nochri. While the Rama (OC 253:5) paskens like the Rashba in a slightly modified case, the Mishna Berura (ad loc. 98) limits the stringency to the part of the food that is not readily eaten cold (unlike most kugels). The Rashba himself refers to a case where the Jew knew he was acting improperly.

We summarize as follows. It is unclear whether heating up kugel is halachic benefit, which determines whether one could have eaten it warm, irrespective of the gabbai's action's propriety. Eating it after it cooled off was permitted if the gabbai believed (all the more so, if he might have been correct – see Mishna Berura 318:2) he was acting correctly.

9. An Oven Used for Chillul Shabbat

Question: I want to use an otherwise kosher oven that was used for cooking food in a manner of clear chillul Shabbat. Has it become “treif”?

Answer: Food that is cooked on Shabbat is one of many examples of ma’aseh Shabbat (the result of chillul Shabbat), and as such is forbidden to be eaten. Your question is a good one: does such food treif up utensils?

The answer seems dependent on whether ma’aseh Shabbat regarding food is a prohibition against benefit (which, for food, is usually eating) or whether the food is considered ma’achalot assurot (what we call nonkosher). If the former, any residue in the oven will not bring you real benefit. If the latter, then the food is like any other that treif up an oven (we will not discuss how an oven becomes treif or how it is kashered).

One reason to not consider this food ma’achalot assurot is that it is prohibited for an external reason – not because of an intrinsic problem with the food per se, but due to its connection to a bad situation. The Ktav Sofer (Orach Chayim 50) compares ma’aseh Shabbat food to bishul akum, as that food is also not intrinsically problematic but tainted by a situation. There is a machloket Rishonim whether bishul akum treifs up a pot (see Tur, Yoreh Deah 113 – the Rashba is strict; the Rosh is lenient). The Shulchan Aruch (YD 113: 16) cites both positions, but prefers the stringent one (he is slightly lenient on how to kasher it).

Indeed, the Magen Avraham (318:1) cites the Rashba as saying that ma’aseh Shabbat food treifs the utensil in which it was cooked, and he and the Mishna Berura (318:4) accept this position. Regarding the above fundamental chakira, Rav Orbach (Minchat Shlomo I:5) sees this Magen Avraham as a proof that ma’aseh Shabbat food is ma’achalot assurot.

On the other hand, many disagree. Besides significant opinions that are lenient regarding a pot used for bishul akum, this case includes additional reasons for leniency. The Mateh Yehuda (cited by Livyat Chen 42) says that the Rashba only implies that according to R. Yochanan Hasandler (Ketubot 34a) who views

ma'aseh Shabbat as an intrinsic Torah law, a utensil would become treif. However, according to the Tannaim that ma'aseh Shabbat is a penalty, only the actual food, which gives real benefit, is forbidden. Some (see Teshuvot V'hanhagot II:196) point out that the Gra rules like R. Meir (Ketubot ibid.) that even the food itself becomes permitted after Shabbat.

Finally, there are strong indications that ma'aseh Shabbat does not create ma'achalot assurot. According to the opinion of R. Yehuda, which the Shulchan Aruch (OC 318:1) accepts, the food is forbidden forever only for the person who was mechallel Shabbat. This distinction is difficult if ma'aseh Shabbat is ma'achalot assurot, which are generally objective prohibitions (Ktav Sofer, ibid.). I would add that the fact that ma'aseh Shabbat applies to many nonfood melachot works more cleanly if they all share the categorization of prohibitions of benefit.

It is hard for an Ashkenazi posek to argue with the opinions of the Magen Avraham and the Mishna Berura, at least without other grounds for leniency (see Orchot Shabbat 25:53). Rav Ovadia Yosef (Livyat Chen 42), on the other hand, concludes that the basic halacha is to be lenient and views kashering utensils in this case as only laudable.

In your case, there is little room for concern. We forbid ma'aseh Shabbat after Shabbat only when the chillul Shabbat was intentional, and then only for the one who was mechallel Shabbat. According to most, it is not even forbidden for a person for whom it was done (see Magen Avraham 318:4); it is certainly permitted for others (see Orchot Shabbat ibid.). Therefore, since you had nothing to do with the chillul Shabbat, even the food and certainly its residue in the wall are permitted. (You did not ask and we will not discuss the topic of classic kashrut questions regarding an oven of one who is not Torah observant.)

10. How Can We Say Things of Minhag Before Kiddush?

Question: The Tur, Shulchan Aruch, Gra, Pri Megadim, etc. (Orach Chayim 271) all mention the need to rush to make Kiddush and eat as soon as Shabbat commences. Yet, I have never seen a household that doesn't first sing Shalom Aleichem (which contains problematic elements) and Eishet Chayil. Also, making Kiddush is a mitzva (d'oraita, for those who did not daven Maariv, and d'rabbanan for those who did) while the singing is just a very nice (recent) minhag. Since when does a minhag take precedence over a mitzva?! Shouldn't we make Kiddush (and Hamotzi) first?

Answer: Regarding presenting sources, as we like to do, we have little to add, but we will try to add a little perspective.

The Tur and Shulchan Aruch (OC 271:1) do say: "When one comes to his house, he should hurry to eat right away." Although the idea of hurrying does not seem to be found in the gemara or early Rishonim, these are still weighty sources. Let us understand the need for hurrying. The Beit Yosef (OC 271) explains that the issue is not the delay per se, and the meal is not the problem. Rather, since Kiddush is made to sanctify Shabbat as it enters, it should be close to the beginning of Shabbat (see Pesachim 106a with Rashi). The Taz (271:1) seems to understand it to also hint that one can make Kiddush even before nightfall. Thus, davening earlier, faster, or at a shul that is closer to home is as valuable in this regard as skipping the pre-Kiddush zemirot.

There also is no question that one can fulfill the mitzva of Kiddush any time during the night and, on a certain level, even during the day if he missed it at night (Shulchan Aruch ibid. 8; see Shemirat Shabbat K'hilchata 47:(31)). Considering that according to most Rishonim, those who have davened have already fulfilled the mitzva of Kiddush from the Torah (see Magen Avraham 271:1), one need not be as pressured by the matter as the simple language of the Shulchan Aruch implies. As one example, the Mishna Berura (271:1) says that if the family does not have much

of an appetite when people come home from shul, they do not need to make Kiddush and eat right away.

I do not claim to understand the full depth of the timing or even content of these zemirot, but it does not seem that they are given greater importance than Kiddush, but that they are intended to set the tone for the upcoming Kiddush. It is similar in that way to the p'sukim we say before a brit mila or the "Hineni muchan u'mezuman" that some say before performing mitzvot. Even the detractors of the latter minhag (see Noda B'yehuda I, YD 93), do so based on content, not on the issue of delaying the mitzva.

After completing the specific, technical part of the question, we will move on to the general, philosophical part, which we believe is the more instructive element of the answer to your question. Shalom Aleichem and Eishet Chayil were written/instituted for recital on Shabbat evening within the Kabbalistic community of 16th century Tzfat. This is a continuation of the work of that community which introduced to the world Kabbalat Shabbat, including Lecha Dodi. Not being Kabbalists, we cannot explain to you the full depth of all of these tefillot. I cannot explain why it was worthwhile to "fiddle around" with the tried and tested Shabbat tefillot or delay the beginning of Ma'ariv, Kiddush, etc. Who knows?! If we were 16th century rabbis, we might have spoken out against it, using your arguments. However, we are firm believers in the collective wisdom of the rabbinic and serious laity of Bnei Yisrael. As the gemara (Pesachim 66a) says: "Leave Israel alone. If they are not prophets, they are the sons of prophets." So, if (almost) all homes do it, it is a minhag we accept even without knowing why it is important. (While understanding is worthwhile, it is not necessary.) Making a statement by action or not careful words against an accepted practice (including the one in question) can raise issues of appearing "holier than thou" and sometimes causes machloket, and we are sure that this is not your intention.

11. Drinking Water Before Kiddush

Question: I often lain (read the Torah portion in synagogue), and sometimes my voice is scratchy in the morning, and I feel like I might need to drink water in between aliyot. Should I make Kiddush before drinking in those circumstances?

Answer: It is a common halacha that one may not eat too much before performing a mitzva that is incumbent upon him. However, usually one is allowed to eat fruit and certainly allowed to drink water before doing the mitzva (see Shulchan Aruch, Orach Chayim 232:3 and Mishna Berura 431:6). An exception is that before Kiddush one may not even drink water (Shulchan Aruch, OC 271:4; *ibid.* 289:1). Thus, your question is a good one.

The Magen Avraham (271:5) and the Mishna Berura (271:13) say that one may rinse his mouth out with water before Kiddush because he does not do so for the enjoyment of the taste. The Machatzit Hashekel (*ad loc.*) and Shemirat Shabbat K'hilchata (52:3) say that the same is true of water that one drinks in order to wash down medicine. The precedent, according to the two, is that one who drinks water for medicinal reasons does not make a beracha before or after drinking (Biur Halacha to 204:7). The mishna (Berachot 44a) says that one who drinks water out of thirst makes a beracha, and the gemara (*ibid.* 45a) says that this is in contrast to one who drinks because something is caught in his throat. The poskim assume that this exemption applies also to using water to wash down medicine. The same should be true if the water is itself the "medicine," as in your case. One can actually claim that dealing with a scratchy voice and with the coughing it can bring on during laining is analogous to food caught in his throat. So, if no beracha is required in your case, then Kiddush is not needed either. If you would need hot tea, that would be a different issue because if one washes down medicine with something that is considered to have a taste, he does make a beracha even though his main intention is therapeutic (Shulchan Aruch, OC 204:8). However, regarding water to sooth your throat before or during laining, you should not need Kiddush.

A possible issue might arise sometimes. If one drinks water in a medicinal setting but also enjoys it due to thirst, he does require a beracha even though the main purpose is medicinal (Mishna Berura 204:42). If so, he presumably requires Kiddush before it also. One who has drunk nothing or little since waking up is likely to be in that position and would require Kiddush.

Is it permitted to make Kiddush before Kri'at Hatorah? Making Kiddush before Shacharit without a special reason would seem to be a problem because it is forbidden to eat or drink things other than water (more or less) before davening, including the wine or grape juice of Kiddush (see Shulchan Aruch, OC 89:3). It is true that the Biur Halacha (to 289:1) says that one who, for reasons of weakness, must eat before davening should make Kiddush beforehand (see Igrot Moshe, OC II 26, who questions this but does not argue in practice). However, that is not the case when drinking water which is permitted before Shacharit, when it is not time for Kiddush. Before Mussaf, it is permitted to make Kiddush and eat a small amount of food (up to a k'beitza of any food and a larger amount of light foods (Shulchan Aruch, OC 286:3)). By having a k'zayit of cake or an additional cup of wine/ grape juice one can fulfill Kiddush and not eat too much (ibid. 273:5) and then he is able to drink water even when a beracha is required. Although few sources talk about making this Kiddush before Kri'at Hatorah, it is presumably permitted then too (see Beit Yisrael (Landau) 50). Of course, technically, there is not much time to do this.

Therefore, we suggest a technically easier solution for a case that you think you may be thirsty when you want to drink in between aliyot. Since it is permitted to drink water before davening (Shulchan Aruch, OC 89:3), drink enough water that you should not be thirsty during Kri'at Hatorah, and then Kiddush will not be an issue if you need to drink between aliyot also.

12. Who Drinks Kiddush/Havdala Wine and Why?

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

Answer: The sources leave room for much hypothesis but little conclusive evidence.

The Shulchan Aruch (Orach Chayim 271:14) deals with the way(s) to fulfill the requirement that a m'lo lugmav (enough to fill cheeks – approximately 2 fl.oz) of the Kiddush wine is drunk. Some say that one person has to drink the whole amount; others say we can add up that which different people drink. The Shulchan Aruch points out that either way, the choice way to perform the mitzva is for everyone to drink. It is sufficient for each person to have a small amount (Taz ad loc. 17), and if their drinking interferes with one person having a m'lo lugmav or leaving wine for the next day, the idea of everyone drinking is waived (Magen Avraham 30). Yet it is important enough to delay the mekadash between his beracha and drinking (see Shulchan Aruch, ibid. 16).

The Shulchan Aruch's source (see Beit Yosef) is the Rosh (Pesachim 10:16), who explains the goings on in the gemara's about people drinking Kiddush wine: "Although they are not required to drink, still it is a preferable mitzva to drink." He does not offer a source, or an explanation, nor does he mention if it is a special mitzva regarding Kiddush, which is the gemara's context.

The Rambam (Shabbat 29:7) says that after drinking a m'lo lugmav, one "gives to all the members of the group to drink." The Mirkevet Hamishneh (ad loc.) looks for a Talmudic source for the Rambam (who rarely includes a halacha that lacks one). He points to the gemara in Berachot (51a) that lists things one is supposed to do to enhance a kos shel beracha (cup of wine used in a mitzva context). Rav Avahu mentions ten things and then adds that some say to send it to the members of one's household. R. Yochanan argues that only four of the practices need to be kept. The Mirekevet Hamishneh says that R. Yochanan reduced the ten to four but did not take issue on sending to one's household. If this is

the source, then it should apply to all cups of beracha. Indeed, the Shulchan Aruch (OC 190:40) says so regarding wine for Birkat Hamazon, and it should ostensibly apply to Havdala. The logic is that drinking the wine bestows importance to this mitzva cup (Darchei Moshe, OC 182:1).

The Rambam (Berachot 7:15) while not stressing the matter, does talk about drinking the wine used for Birkat Hamazon in the plural. Within the halachot of Havdala, the Rambam (Shabbat 29:24) doesn't mention drinking at all, which could indicate that the drinking of Havdala wine follows the same rule as Kiddush. The Shibolei Haleket (64), accepted by the Magen Avraham (296:4), is an early source that says that our practice is to not give Havdala wine to others to drink. The Mishna Berura gives a technical explanation of why not. Since Havdala is not made in the framework of a meal, we want the mavdil to drink enough (a revi'it, which is more than m'lo lugmav) for a beracha acharona on the wine to be a certainty. Whether all agree and why the Shulchan Aruch does not mention this issue regarding wine for Birkat Hamazon is unclear (see Mishna Berura 190:17). Our minhag seems to be that not all drink that wine either.

One can suggest positive reasons for drinking specifically at Kiddush, which will also explain the minhag. Some claim that the obligation to make Kiddush over wine has a stronger basis than other cups of beracha (see Encyclopedia Talmudit, v. 27, col. 510). Also, Kiddush is connected to the meal in which all are partaking (there are different explanations of the connection). Since it is positive to drink wine during the meal (Shulchan Aruch, OC 250:2) and when one drinks wine at Kiddush, he is exempt from a beracha during the meal (Shulchan Aruch, OC 174:4), it makes sense to start drinking at Kiddush.

In any case, while halacha does not obligate everyone to drink Kiddush wine nor forbid it at Havdala, your observation has both sources and a variety of possible explanations.

13. How Much Does One Need to Eat From the Lechem Mishneh?

Question: Does one have to eat a k'zayit (size of an olive; assumed to be 1 fl. oz.) from the lechem mishneh (two loaves of bread for Shabbat)? What happens if the lechem mishneh is too small for everyone to get a sizable piece or if someone prefers another challa?

Answer: The Rama (Orach Chayim 167:1), in describing how much of a loaf one should properly cut off after reciting Hamotzi, says: "That which one should not pull off more than a k'beitza (the size of an egg) is only during the week when one is eating by himself. However, on Shabbat or when one is eating with many people and needs to give from the removed piece a k'zayit to everyone, one can pull off as much as he wants." Ostensibly then we assume that everyone should receive a k'zayit of the main bread upon which the beracha was made. However, let us put the matter in perspective based on the sources and issues.

The poskim (see Tur/Beit Yosef, OC 167) say that one should not normally cut off a large piece of bread from his loaf because it looks gluttonous (based on Berachot 39b). However, the gemara (ibid.) says that if one does so specifically on Shabbat, it is fine, as he is seen as one who approaches the mitzva to eat on Shabbat enthusiastically. The Rambam (Berachot 7:3) also says that one should not cut off too small a piece because that looks stingy. The Beit Yosef corroborates with a gemara that shows the importance of a host giving nice sized pieces to his guests. Thus, one can easily understand the Rama as just dealing with matters of manners with no implication about whether the guests are halachic supposed to eat a k'zayit from the main loaf (see Mishna Berura 167:15).

The Magen Avraham (167:7; cited ibid.), though, understands that there may be a beracha-related reason to have a k'zayit. He points out that the minhag is not to be careful on the matter but says it is preferable to have a k'zayit (see also Dagul Me'revava, ad loc.). That being said, these sources do not say that even preferably the whole k'zayit must come from the loaf upon which

the beracha was made. In fact, if the guests have bread in front of them, they can use the host's beracha and immediately eat from their own bread (Shulchan Aruch *ibid.*:15).

The question is on Shabbat, where everyone must be connected to the lechem mishneh and wait to receive a piece (*ibid.*). We find that on Shabbat it is best to cut off a big enough piece in the beginning to suffice for the whole meal (*ibid.* 274:2). However, there does not seem to be a requirement for individuals to eat specifically a k'zayit from the lechem mishneh. (A person should eat a k'zayit of bread for it to be a meal and recite Birkat Hamazon and a k'beitza to justify the beracha on *netilat yadayim*.) However, being connected to the lechem mishneh and the beracha made on it can be accomplished with eating any quantity (Igrot Moshe, OC V, 16; Teshuvot V'hanhagot II, 171).

This being said, there are sources that indicate that a piece less than a half of a k'zayit is not considered significant (see Eliya Rabba 174:2) and that one should show respect to the bread to which the mitzva is related (see Levush, OC 174:14). Therefore, people would do well to eat a half of a k'zayit (without exaggerating the size of k'zayit as many of us do on Pesach) from the lechem mishneh. However, one who dislikes the challa the host used for lechem mishneh or has health concerns with it can follow the basic halacha that he can go on to other bread after a small taste from the lechem mishneh. Similarly, hosts who make Hamotzi on a loaf that may not provide a k'zayit or even a half for all (e.g., with large groups or for those who use rolls or matza for lechem mishneh at seuda shlishit and then serve sliced bread or leftovers) need not feel guilty. One who is careful to provide a k'zayit to each guest from the lechem mishneh is praiseworthy (see Shemirat Shabbat K'hilchata 55:24 and footnote 15).

14. Methods of Receiving Pay for Work on Shabbat

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

Answer: S'char Shabbat (pay for permitted services one provided on Shabbat) is indeed forbidden Rabbinically like other commercial activity, lest one come to write (Shulchan Aruch, Orach Chayim 306:4).

The most common way to allow receiving money for work that was done on Shabbat is through havla'ah. That means having the Shabbat-related money "swallowed up" by combining it with weekday pay, as pay for a period of work that includes Shabbat (ibid.). You apparently assume that the applicability of havla'ah depends on the payment period. In other words, each payment has to include pay for work not related to Shabbat or Yom Tov. Therefore, you would forbid a paycheck for a payment period (month) in which there is no weekday work.

However, poskim point out that "havla'ah units" are determined not by the interval of payment but by the period of employment. The period of employment is the time during which there is a commitment to continue the employer-employee relationship, without the ability to back out under normal circumstance. This has ramifications for leniency and for stringency, respectively. If the employee is owed for work on Shabbat and the employer is not obligated to continue the employment during a period that includes weekdays, the work on Shabbat is viewed independently and it is forbidden to receive pay. One common application is a babysitter, who usually gets hired for each job on its own (Shemirat Shabbat K'hilchata 28:58; Orchot

Shabbat 22:94). Your situation is in all likelihood an example of the lenient ramification. A shul usually hires youth workers for “a year” (often, Sept.-June), which is the relevant time unit even if the payments are made in monthly installments. If that is the case, then since the year includes work on Tu B’Shevat and Purim, the pay is permitted.

Indeed, there is often another, related, leniency – another application of *havla’ah*. Some suggest (including Aruch Hashulchan, OC 306:12) that the preparations *chazanim* do during the week justifies their receiving pay for their work on Shabbat and Yom Tov due to *havla’ah*. For this to constitute *havla’ah*, it does not suffice for the preparation to be theoretical work, but obligatory work that is time-consuming enough to warrant pay (Orchot Shabbat 22:90 – he (*ibid.* (149)) doubts whether *chazanim* are considered to receive any pay for their preparations.) Similarly, there is often an assumption that youth workers, beyond their frontal work with the children on Shabbat and Yom Tov, have necessary preparatory work that is slated for weekday. This can include buying prizes or food, setting or cleaning up, or preparing props. The shul can ensure from the outset that there are serious weekday preparations by requiring the leaders to come to a training session or meeting or to call the children and/or parents with whom they will be working. As mentioned above, one such serious practice during the employment period suffices.

The matter of *chazanim* introduces a final potential justification for receiving pay. There are two opinions in the Shulchan Aruch (OC 306:5) whether the prohibition on *s’char Shabbat* applies to *mitzva* activities. While the Shulchan Aruch seems to lean toward stringency, the Mishna Berura (306:22) acknowledges that the more prevalent *minhag* is to be lenient on the matter. Contemporary *poskim* leave the matter open (Shemirat Shabbat K’hilchata 28:66). Whether or not a synagogue’s youth groups are considered a *mitzva* depends on the content of the activities.

15. Raising Charitable Funds on Shabbat

Question: I am one of the organizers of a charity that provides free transportation for a broad spectrum of underprivileged New Yorkers. May I try to drum up support for it among fellow Jews I see on Shabbat?

Answer: In general, it is forbidden to discuss monetary matters and prohibited activities on Shabbat (Shulchan Aruch, Orach Chayim 306). This is derived from the pasuk (Yeshaya 58:13, since the source is not from the Torah, it is a rabbinic, not a Torah-level, law) about the proper atmosphere of Shabbat, which requires refraining from “mimtzo cheftzecha v’daber davar” (tending to your interests and speaking of [forbidden] matters). However, the gemara (Shabbat 150a) derived that only “your interests” are forbidden, whereas “interests of heaven” are permitted. It is thus permitted to discuss money and other actions forbidden on Shabbat in the context of plans for mitzvot. Generally, mitzva opportunities do not override rabbinic prohibitions. Rather, *mimtzo cheftzecha* and *daber davar* are lesser prohibitions (see Shulchan Aruch Harav, OC 306:12). Furthermore, there is likely a more sweeping distinction. *Mimtzo cheftzecha* and *daber davar* are context-oriented, rather than objective rabbinical prohibitions, so that if the activity is for the sake of a mitzva, the context is appropriate for Shabbat.

Among the mitzvot that are explicitly mentioned as justifying discussing money (Shabbat 150a, Shulchan Aruch, OC 306:6) is pledging money for *tzedaka*. The Ran (Shabbat, ad loc.) is surprised by this application of the heter of interests of heaven. After all, the mishna (Beitza 36b) says that it is forbidden to be *makdish* (donate to the Beit Hamikdash) on Shabbat because this can be confused with commercial activity. Ostensibly, this should also apply to pledging to charity. The Ran answers that the prohibition of making *hekdes* refers to specific objects, whose transfer to *hekdes* is more similar to a monetary transaction than a pledge to charity is. The Beit Yosef (OC 306) extends the distinction and points out that even pledging an object to a shul or

the like is different from hekdes, for in the latter the pledge takes effect immediately.

There are times when one may get involved in semi-commercial discussion but is not allowed to mention a sum of money (see Shulchan Aruch *ibid.*, Rama *ibid.* 3). However, in regard to tzedaka pledges, the pledges may include specific amounts (Rama *ibid.* 6; Mishna Berura 306:33; Shemirat Shabbat K'hilchata 29:55). Of course, if one is allowed to make pledges, then it is also permitted to try to interest people in doing so.

The non-profit organization you are, *baruch Hashem*, involved in serves a cross-section of the New York population. One might think that raising money on Shabbat might be permitted only if the recipient is a Jew, who keeps the laws of Shabbat. However, this is not so (see the Magen Avraham 306:21). As long as the money is for a valid tzedaka cause it is under the category of the interests of heaven. Giving tzedaka to any human being, Jew or gentile, is a mitzva, as the baraita (Gittin 61a) states, and the Rambam (Melachim 10:12) so beautifully formulates. This is the case not only when the charity is given to a cross-section of society, which applies to Jews and non-Jews alike, but even if the charity would be for non-Jews exclusively (Shach, Yoreh Deah 251:2). Money that is raised for tzedaka, including from *ma'aser* funds, can be used for Jews and non-Jews alike. Therefore, your organization is worthy of the special dispensation to allow raising interest in it on Shabbat and even to receive specific oral pledges. Of course, our general focus on Shabbat should be on activities that are special for Shabbat. However, you do not seem to be describing anything of the nature of “a day at the office,” which would be troublesome even if involved in a fine charitable enterprise. So if you are talking about mentioning your fine activities in a way that interests others or even an occasional concerted effort, this is permitted and appropriate.

16. Coin Collection on Shabbat

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

Answer: This question reminds us of a similar one we answered years ago – whether a rock collection is muktzeh (see *Living the Halachic Process*, vol. I, C-15). We will summarize our discussion there and then see how a coin collection compares.

Rocks are muktzeh (Shulchan Aruch, Orach Chayim 308:21) because generally they do not have a use that would make them considered a kli (utensil). However, if one prepares them for a given purpose or if their owner decides to use them for a specific permitted purpose, they are not muktzeh (ibid.:21-22). Thus, rocks that were incorporated in a rock collection need not be muktzeh because they are to enjoy looking at.

The question we had was regarding a case where the rocks are on display in a manner that the arrangement remains untouched over long periods of time. Does that turn the collection into muktzeh machmat chisaron kis, something one is careful not to use for various uses that may come up? While the usual cases of muktzeh machmat chisaron kis are utensils that are basically for forbidden purposes, where other uses are ruled out, does it extend to an object whose purpose is permitted but one is careful to rarely move it (e.g., wall clocks and paintings)? Rav Moshe Feinstein (responsum #13 in “Tiltulei Shabbat”) said such things are not muktzeh; Shemirat Shabbat K’hilchata (20:22) said they are muktzeh machmat chisaron kis.

Coins are muktzeh (Shulchan Aruch, OC 310:7). This is not only because their use is related to a prohibited activity (commerce), for then their muktzeh status would be only partial. Rather, they are not considered utensils (see introduction of Mishna Berura to OC 308) because their value is not intrinsic but based on convention. However if one uses coins as something of interest they would not, on the basic level, be muktzeh (see Shemirat Shabbat K’hilchata 20:38, regarding coins incorporated into jewelry, which are not muktzeh).

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 are made to be handled. One keeps them in books, whose pages are turned to look at coin after coin. While 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, the Shemirat Shabbat K'hilchata should agree the coins are not muktzeh unless one keeps locked in a safe and rarely handle. If the collection is slated for sale and the owner is careful not to use it in the meantime, the coins would be muktzeh (see Rama, OC 308:1). However, we understand that you are talking about a collection for the owner's personal interest.

The one remaining issue is the Chazon Ish's opinion. The gemara (Shabbat 65b) says 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 to use the stone for that purpose before Shabbat (Shulchan Aruch, OC 303:22). The gemara says that, as opposed to a stone, intention for that purpose would not suffice for a coin. Most understand that this is only if the coin was not permanently set aside for the use before Shabbat (see Beit Yosef, OC 303, Mishna Berura 303:74). Thus, if coins are permanently on display and no longer act as "money," they would be permitted. However, the Chazon Ish (OC 42:17) says that coins cannot be considered as set aside for another purpose, as they are always candidates to be used again as money and remain muktzeh. You, though, do not have to be concerned with the Chazon Ish's opinion. Firstly, we follow the majority lenient ruling (Shemirat Shabbat K'hilcata 20:38). Secondly, the Chazon Ish's logic seemingly does not apply to a coin collection. Since the coins involved have a special collectors' value that exceeds their value as money, there is no reason to suspect they will revert to use as money.

17. Muktzeh Machamat Chisaron Kis

Question: I saw a situation on Shabbat in which, unexpectedly, a digital camera fell out of the carriage my friend was pushing, onto the sidewalk. The question arose whether she was allowed to move it or whether she had to leave it, with the likelihood it would being taken. If it is muktzeh machamat chisaron kis (= mmchk) an object that is so precious that its owner will use it only for its main purpose, one which is forbidden on Shabbat, then I assume there is no way to move it. However, if it is cheap enough that the owner would use it for other things, then as a kli shemelachto l'issur (= klshml- a utensil whose main use is for forbidden activity), would it be permitted to make up a use for the camera at home (e.g., as a paperweight) that would enable it to be moved?

Answer: The categorization of an object as mmchk depends on the specific owner, object, and circumstances. All we can say is that usually digital cameras fall under that strict category. Yet, according to most poskim, it is still possible to protect the object.

The gemara (Shabbat 43b) discusses whether tiltul min hatzad (moving something muktzeh by pushing it with a non-muktzeh item he is holding) is forbidden. We rule that it is permitted when one does the moving for the purpose of using an adjacent non-muktzeh object or to make the place of the muktzeh item available; it is forbidden when the muktzeh object is indirectly moved for its protection (Shulchan Aruch, Orach Chayim 311:8).

Rishonim are bothered by the mishna (Shabbat 141a) that says that if one wants to sleep on a bed where pieces of straw are laid out uncomfortably, he may not straighten them out with his hands but may do so with his body. Why isn't the latter tiltul min hatzad, which should be forbidden in order to use the rearranged straw? The Rosh (Shabbat 3:19), as understood by most poskim (see Shulchan Aruch ibid.; Mishna Berura 308:13), says that moving something with a part of the body one does not usually use for moving things is not forbidden tiltul and is permitted even to use or protect the muktzeh object. Ostensibly, then, one can kick the camera to a place where it will not be as vulnerable.

Two minority opinions will reject this leniency. The Pri Megadim (introduction to Mishbetzot Zahav 308) says that the leniencies regarding indirect tiltul do not apply to mmchk. This opinion is not widely followed by the poskim (see Shemirat Shabbat K'hilchata 20:(80)). A second problem is that the Chazon Ish (OC, 47:12) says that the Rosh is too widely applied, as he only explains why the mishna allows one to inadvertently move the straw while lying down on it but did not permit using unusual parts of the body to purposely move muktzeh for its protection. While some poskim adopt this opinion (Igrot Moshe, OC V, 22.6), most permit this type of moving (Mishna Berura 308:13, Shemirat Shabbat K'hilchata 22:34). One may certainly be lenient in a case of possible significant loss (Igrot Moshe, ibid.) like that of the camera.

Regarding your idea of employing the leniency of moving a klshmlī for a permissible function (Shulchan Aruch, Orach Chayim 308:3), this can be entertained if you can determine that the camera is not mmchk. Even when the main purpose is to protect the klshmlī, the Magen Avraham (308:8) allows moving it when it will be used for a permitted use. The Mishna Berura (308:16) accepts the premise of a secondary intention, but perhaps only for an existing need. The Machatzit HaShekel (to Magen Avraham ibid.) and Yalkut Yosef (Orach Chayim 308:3.7), though, allow contriving a need. However, your friend would have had to have a real plan to use the camera on Shabbat after bringing it home. Realize also that some poskim require that the situation is where there is no non-muktzeh object readily available for that use (Mishna Berura 308:12; the Shemirat Shabbat K'hilchata 20:8 is equivocal on the matter). In any case, if you can be creative enough, your idea could also solve the problem.

18. Moving Potted Plants on Shabbat

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

Answer: There is another issue to discuss before we get to the matter of muktzeh. The Shulchan Aruch (Orach Chayim 336:8) states: “A plant-pot (atzitz), even if it has no hole (eino nakuv), one should be careful not to take it from on the ground and hang it from pegs or vice versa whether it is made of wood or pottery.” This halacha is based on the fact that we consider an atzitz to be nourished from the ground. (Biur Halacha, ad loc., discusses the degree to which and why this is so for an atzitz she’eino nakuv). Distancing the atzitz from the ground and bringing it closer are forbidden on Shabbat under the categories of uprooting and planting, respectively.

Intuitively, one would assume that within one’s home, considering the space and materials in between the plant and the ground, the plant’s nourishment is only from the dirt in the pot. On the other hand, poskim say that one may not pull things off even those plants that are inside the house (see Mishna Berura ad loc.:41). There are various opinions as to what type of separation under the atzitz serves as a sufficient separation. Metal or glass certainly break the connection between the plants and the ground (Ketzer Hashulchan 142:(5)). There is much discussion regarding a case where the plant (not its roots) extends beyond the separation (see Orchot Shabbat 18:24). There is further discussion whether the floors in most homes form a separation (see Piskei Teshuvot 336:7). The Tehilla L’David (OC 336:6) infers from the Shulchan Aruch’s ruling that the problem of moving an atzitz is only when one moves it from the ground to a place above it or vice versa. It is permitted to move the atzitz in between two similar places, even if it passes through a different type of area in the process. This is a strong but certainly not simple or unanimous contention (see Ketzer Hashulchan, *ibid.*; Shemirat Shabbat K’hilchata 26:(5)).

If we can satisfy the aforementioned issue, we still must deal with the matter of muktzeh. Earth is a classic muktzeh item, as it is not a utensil, a food, or similar item that is slated for a Shabbat appropriate activity. Yet, if one sets aside dirt for a specific

appropriate purpose, it is not muktzeh (Beitza 8a). How do we consider the dirt in an atzitz? The Tehilla L'David (ibid.) infers from the discussion above, focused on planting issues, that muktzeh is not a problem. The rationale is that the earth serves to preserve the plants, which adorn the house. Some say that even if the dirt is considered having a function, it is like a *kli shemelachto l'isur* (utensil for a forbidden purpose). It helps plants live and grow, something one may not do on Shabbat. Such a utensil is permitted to be moved only to be used for its purpose or because the location it occupies is needed (see Shevitat Hashabbat, Zoreiah (4)). Others say that it is not muktzeh at all; still others say that it cannot be moved for any purpose. In general, there is a *machloket* whether vegetation, where there is no fear that one will uproot improperly, is muktzeh. The Taz 336:4 and Magen Avraham 312:6 say it is muktzeh; the Machatzit Hashekel ad loc. brings those who are lenient. The author of the Mishna Berura leaves the matter undecided (Sha'ar Hatziyun 336:38).

Two of our generation's major authorities rule that one should not move an atzitz on Shabbat (Rav Moshe Feinstein, cited in Tiltulei Shabbat pg. 86; Shemirat Shabbat K'hilchata 26:2). (Shemirat Shabbat K'hilchata 26: 25 sees no problem with moving a vase of flowers in water.) It is unclear to us what the exact basis of their ruling is. The simplest advice is to arrange matters before Shabbat so that there is no need to move the plant-pot and avoid the significant problems. On the other hand, we cannot fault one, who as a matter of course or, at least in a case of need, relies on the opinions that one can move an atzitz, especially *she'eino nakuv*, from place to place.

19. Using a Spoon with Holes on Shabbat

Question: Is it permitted, while serving on Shabbat, to transfer vegetables or kinaidalach from the soup to the bowls with the use of a special spoon that has holes in it?

Answer: The baraita (cited in Shabbat 74a) mentions cryptically that selecting (borer) some food from other types of food is sometimes forbidden and sometimes permitted. The following three distinctions that are brought to explain the various possibilities are accepted by the Shulchan Aruch (Orach Chayim 319:1-2) as halacha. 1) The selection is done by hand, not by a utensil whose purpose is selection. 2) The food which one wants to eat is removed from that which he does not want now. 3) The food which is removed will be used in the short term. Only if all three are satisfied will it be permitted to select (see also Tosafot, Shabbat 74a).

At first glance, our question fails the first test, as a utensil is being used, not hands. One could try to apply the following important rule which Rav Moshe Feinstein used (Igrot Moshe, Orach Chayim I, 124). One is allowed to remove food that he wants to eat from its surroundings with a spoon or fork if the selection could have been done as efficiently by hand and the utensil was used for a side reason (e.g., to keep his hands clean). One could claim that in our case one would use his hand if not for technical factors such as hygiene and not wanting to dirty or burn his hands. On the other hand, the spoon in question here is a special one which is made to have the effect of a strainer. It is likely that in such a case Rav Feinstein would not have been lenient.

However, we can permit using the spoon in this context for a combination of factors. The Maharitatz (Shut 203) says that it is not considered borer when one removes a solid from the medium of a liquid. He used this rule to explain his ruling that one may remove a fly that fell into a drink. It is true that many argue (including the Taz, Orach Chayim 319:13) and the more accepted halachic practice is to take out some liquid along with the fly (Biur Halacha to 319:4). The Yalkut Yosef (319:28) rules that the

halacha is like the Maharitatz, just that it is preferable to remove some liquid with the fly. Furthermore, the Shevitat Shabbat (Borer, 11) says that when the solid pieces inside the liquid are large, even those who argue on the Maharitatz should agree that removing the pieces is not borer.

In the standard case you refer to, there is another significant reason to be lenient. The person who takes out the vegetables presumably does not care if a modest amount of liquid is transferred along with the vegetables. His intention is just to efficiently move a large amount of vegetables from one place to another. Thus, even if liquid falls out along the way, it is not considered borer. Based on this concept, the Yalkut Yosef (ibid.:28) allows using a spoon with holes to remove pieces of meat from chulent even though some gravy slips out in the process. He bases himself partially on a similar ruling in Shemirat Shabbat K'hilchata (3:54). There, Rav Neuwirth says that one can use a ladle with holes to quickly remove wet spaghetti from a pot to a plate in such a way that he does not have a significant amount of water fall out in the process. In summary, there are several reasons for leniency to allow using a spoon with holes to move vegetables from the pot of soup to people's bowls on Shabbat, and it is permitted to do so.

20. Ice Cubes on Shabbat

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

Answer: The mishna (Shabbat 51b) says that one may not crush snow to get water but can put it in a cup of water to melt in. There are three main explanations of the prohibition (see presentation in Beit Yosef, Orach Chayim 318). Rashi says that it resembles a melacha, as one directly creates a new object. The Sefer Haterumah says that the problem is that the resulting water is nolah (a term meaning born, referring to a type of muktzeh). The Rambam places it under the category of the prohibition to squeeze fruit for juice.

A practical difference between the explanations exists when one warms congealed fat so that it becomes gravy. The Sefer Haterumah forbids this too as nolah. However, the Beit Yosef says that most authorities permit it, and this is how he rules in the Shulchan Aruch (OC 318:16). The Rama (ad loc.) says that the minhag is like the objecting, stringent opinion, while noting that one can be lenient in a case of need. The same disagreement should apply to putting ice in a warm place (not hot enough to be considered cooking) to melt (Mishna Berura 320:35).

Most poskim's point of departure is that the same machloket will also apply to the question of freezing water. If going from ice to water is changing an object, why should going from liquid to solid be any different? Therefore, for Sephardim, who follow the Shulchan Aruch, it should be permitted to make ice cubes on Shabbat, and for Ashkenazim, who follow the Rama, it should be permitted only in a case of need.

However, some poskim distinguish between the cases in different ways. The Dovev Meisharim (I, 55) infers from the Ramban that the reason to allow melting ice is that ice itself is considered a form of water. He claims, though, that in relation to water, ice is a new thing, which, if created, is nolah/muktzeh. However, most poskim (see a partial list in Piskei Teshuvot 320:(14)) reject this distinction and say that those who say that water melted from ice cubes is not nolah say one can make ice cubes in a freezer.

It is also possible that the Rama, who is equivocal regarding melting fats, might permit outright making ice cubes. The Tzitz Eliezer (VI, 34) points out that there are two supportable ways to explain the Sefer Haterumah, the source of the Rama's stringency. One is that the problem is that the water resulting from the melting is muktzeh, and it makes no difference what process created it. The other (Panim Meirot) is that the problem is that the process of putting fat near a fire is considered semi-actively turning solid into liquid. If that is the only problem, we could consider placing water in a freezer, where the process of freezing does not begin in earnest for a while, as too removed to be forbidden. Certainly, the Rambam's logic regarding crushing snow, that it is similar to squeezing, does not apply to turning liquid into solid (Shulchan Shlomo 320:18).

A consensus of poskim rejects the claim that creating ice is forbidden because it is similar to making cheese, which is an extension of building, for various reasons. First, building does not apply to water (Mishna Berura 320:36). Also, ice lasts only while it is kept cold and thus one has not built anything stable (see Shemirat Shabbat K'hilchata 10:(14) who sees this as a mitigating factor regarding nolad).

In summary, Sephardim can freely make ice cubes in a freezer. Ashkenazim have ample reason to be lenient, and certainly when there is significant need (recent poskim nuance this compromise differently). If one does not plan to use the ice cubes on Shabbat, muktzeh is not a problem, but there is usually a problem of hachana (preparations for after Shabbat). Certainly, one may put a drink in the freezer to quickly cool it, as even if he forgets and it freezes, it is not such a problem. (Automatic ice makers, where electrical systems are a factor, are beyond our present scope.)

21. Carrying a Child When There is no Eruv

Question: Is it permitted to pick up a child in a place that does not have an eruv? A friend told me that as long as the child can walk himself, one may pick him up.

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

The gemara (Shabbat 94a) quotes the following machloket among Tanna'im. R. Natan says that one who carries live animals is patur (exempt from a korban for violating Shabbat), because there is no Torah-level prohibition for carrying live things. Rabbanan, whose opinion we accept, say that he requires a korban after carrying even a live animal. However, Rava says that regarding a child, we say chai nosei et atzmo (the live carries himself), even according to Rabbanan and there is no Torah-level violation. On the other hand, R. Natan did not say his leniency regarding a tied up living being (ibid.). The Rambam (Shabbat 18:16) understands that a being that is incapacitated by illness is the equivalent of one that is tied up. This gemara justifies your friend's claim only partially because all agree that that it is at least rabbinically forbidden to carry even a capable and cooperative child (see Mishna Berura 308:154).

Before discussing practical ramifications of the various opinions, let us look, in this context, at the mishna in Shabbat (128b). The mishna says that one can help her baby "cruise" (walk while being supported and led) but may not drag him along. Rashi explains that dragging him is like carrying him, which is forbidden. The Ran (51b in the Rif's pages) says that the difference between leading and dragging is that the cruising baby is developed enough to be considered nosei et atzmo, whereas regarding the baby who needs to be dragged, Rabbanan say that it is considered Torah-level carrying. The most lenient, admittedly minority opinion is that of Tosafot (Shabbat 130a) that even an eight-day-old baby on the way to his brit (as opposed to the way back, when he is sick) is considered nosei et atzmo. (See Tzitz Eliezer XIII, 32 who

considers this an opinion which can be combined with other grounds for leniency to grant permission to carry under certain circumstances. His context dealt with carrying in a place where there is an eiruv but the individual in question does not rely upon it.) The Biur Halacha (to 308:41) brings Rishonim that hold that unless the child is able to actually walk, one who carries him violates a Torah violation.

The Mishna Berura (ibid.) cites the Pri Megadim, that it is permitted to tell a non-Jew to carry a child through an area that is not a full reshut harabim (public domain) but only a karmelit (public domain on a rabbinic level). (At least Ashkenazim assume that most of our streets are karmelits and not reshut harabims.) This is because the violation is only a shvut d'shvut (there are two reasons that it is not forbidden from the Torah but only rabbinically). It is unclear what level of need is required (mitzva; the welfare of the child) to allow such a leniency (see Bemareh Habazak III, 36:(5)). In general, though, a Jew should not carry even a child who can walk, even in a karmelit, as halacha usually equates between a karmelit and a reshut harabim. However, the Mishna Berura instructs not to correct those who anyway will not listen to a stringent ruling on this matter.

A case where poskim allow even a Jew to carry a child who can walk is when a small child tires out and/or refuses to walk anymore. The Igrot Moshe (Orach Chayim IV, 91) says that significant difficulty or crying of the child qualifies as the equivalent of the needs of a mitzva for which it is permitted to carry the child who is capable of walking through a karmelit. (See also the Tzitz Eliezer, ibid.).

22. Having Young Children do Melacha for Adults

Question: Sometimes I see people encouraging their toddlers to do things on Shabbat that would be chillul Shabbat for an adult because a need arose. Is this permitted?

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

Every mitzva has a stage at which a child is *higi'ah l'chinuch* (has reached the point at which it is practical to educate him), which his father is obligated to see to (Shulchan Aruch, Orach Chayim 343:1). Regarding negative commandments, at a relatively young age, a father should try to prevent his child from sinning (Mishna Berura 343:3). However, a toddler lacks the pertinent understanding, and a father can allow him to act as the toddler wills (*ibid.*).

Even when one need not stop a child from sinning, it is forbidden for anyone (according to most opinions, by the Torah—see Beit Yosef, OC 343) to feed him a forbidden food or encourage him to do a forbidden act (Mishna Berura 343:4). It is, though, permitted to put the child in a situation where he may, of his own accord and interest, decide to do something forbidden. For example, the gemara (Yevamot 114a) tells of one who lost keys to a shul in the public domain. R. Pedat told him to take children to play where they were lost, with the hope they would find, play with, and retrieve them. In contrast, the mishna (Shabbat 121a) requires one who sees a child extinguishing a fire to tell him to stop. The gemara (*ad loc.*) says that this refers to a case where he was acting on his father's behalf. The Mishna Berura (334:64) says that, in such a case, even a child who is not *higi'ah l'chinuch* should be stopped.

There are a couple of major pertinent *machlokot*. The Rashba (Yevamot 114a) and the Ran (1a of Rif to Yoma) say that one can prompt a child to do something that is forbidden only rabbinically. However, both refer to cases where the child acts for his own

purposes. The Rashba (Shabbat 121a), for example, claims that the mishna about a child who was stopped from extinguishing a fire involved a rabbinic violation, and yet it was forbidden because the child did not act for his own needs. The Rambam and Shulchan Aruch are presumed to forbid prompting a child to violate even a rabbinic prohibition even for his own purposes. However, many poskim justify relying on the Rashba and Ran, at least in a case of significant need (Shut R. Akiva Eiger I, 15; Shulchan Aruch Harav 343:6). R. Akiva Eiger (ibid.; see Biur Halacha to 343:1), for example, allows a child to take a chumash to shul to read from, and then an adult can also use it. However, this is far from agreed upon, at least when it is not dealing with the child's acute physical need (compare Shemirat Shabbat K'hilchata, ed. I, 32:32 and ibid.:39).

Another disputed case is where adults need the child's to violate a rabbinic law to enable the adults to fulfill a mitzva. There is a rule that one can ask a non-Jew to do what is rabbinically forbidden for Jews to allow a Jew to fulfill a mitzva (see Rama, OC 311:2) or for a great need (see Mishna Berura 313:56). The Taz (OC 343:6, based on the Mordechai) says the same applies to asking a child to do a rabbinical prohibition under those circumstances (e.g. carrying keys of a shul through a rabbinic-level public domain). Yalkut Yosef says that one need not protest against those who rely on this opinion if a non-Jew is not available. Rav Ovadya Yosef (Yabia Omer I, 4) rules that in a matter where there are legitimate opinions to permit an action for an adult and it is at worst a rabbinic prohibition, all would allow to prompt a child to do so for himself. He may even act so on behalf of an adult if the adult refrains from the matter just as a stringency (Yalkut Yosef, ibid.).

There are certainly groups of Jews who customarily use children more freely than others. As long as they do so in a careful way, including that it does not include Torah violations, they have legitimate halachic opinions to rely upon.

23. Indirectly Enabling a Grown Child to Violate Shabbat

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

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

Giving someone an object that is forbidden to him when it is expected that this will enable him to use it to sin violates the Torah prohibition of putting a stumbling block before the blind (Vayikra 19:14), which applies to spiritual as well as physical stumbling blocks (Avoda Zara 6b). Poskim discuss giving a person an object which is not forbidden per se but which he will use both in a permitted and a forbidden manner. See, for example, Igrot Moshe's (OC II, 66) discussion of why it is permitted to rent an apartment to a mechallel Shabbat, who will use the electricity even on Shabbat.

In depth analysis of the topic is beyond our present purposes. The important point to consider in this case is that you are not giving your son access to your home for Shabbat. Rather, he lives in your home, where his religious observance is apparently better than at other places. Leaving the house does provide him with more comfortable opportunities for chillul Shabbat, but that is not like actively giving him a forbidden object or directly "placing a stumbling block." For example, an attractive woman might cause a neighbor to think inappropriate thoughts when he comes in contact with her. However, one cannot forbid her from going into the street without a bag on her head for fear of placing a stumbling block. Rather, situations to sin exist, and one who goes about his life normally is not responsible for the prospect that others will use

them or their possessions for sin against his will. The matter would be very different if a non-religious neighbor asked you for permission to use your house for a party on Shabbat. (Please do not infer matters from what we did or did not say. In these matters, various factors and nuances play a major role in determining the halacha.)

The more applicable question for you is the obligation of *afrushei me'issura*, to distance your fellow Jew, certainly including your children, from sin. Most assume that the source of this obligation is the mitzva of *tochacha* (rebuke) (*Vayikra* 19:17). It is true that we are not accustomed to trying to prevent neighbors from sinning, that is because we are unlikely to be successful. However, according to your account, your presence alone prevents *averot*.

The question is to what extent you should go for the mitzva of *afrushei me'issura*. In general, one is supposed to go to significant lengths to fulfill positive commandments, but not like negative commandments, where one needs to give all of his money to avoid a violation (see Rama, OC 656:1). Would someone like you have to follow her son around all day and give up other activities? Clearly not, but it is hard to give precise guidelines as to the extent of the efforts that are appropriate. We would thus say that the likelihood your child's sinning should be a serious factor in planning your schedule, but you cannot be expected to simply not ever go away.

Again, your main question is how to use your relationship with your child to improve matters from their root, as opposed to avoiding problems on a case by case basis. Sources that are beyond our present scope mandate at least overlooking your child's religious and other shortcomings in order to maintain a positive relationship. One of the most far-reaching and important is Rav S.Z. Orbach's *teshuva* in *Minchat Shlomo*, siman 35. Make sure your handling of this matter promotes or at least does not set back the overall situation.

24. Using a Non-Jew to Shut Lights on Shabbat So a Jew Will Not

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

Answer: There are a few circumstances in which a non-Jew can do work on a Jew's behalf on Shabbat. Some involve using hints, as you mention. One possibility is to use a hint in which you mention only the need and do not use any active verb. For example, you could say, "It is too light in many of the rooms for people to fall asleep," as opposed to, "It would be nice if someone shut the lights before people go to sleep" (based on Rama, Orach Chayim 307:22 and Mishna Berura 307:66). Also, one can use even the latter type of hint before Shabbat so that the non-Jew will do the action on Shabbat (Shulchan Aruch, OC 307:2).

Despite the fact that these distinctions are quite accepted, there are certain problems with their application. The Magen Avraham (252:9) says that one is not supposed to allow a non-Jew to do melacha for a Jew with the latter's property, even when he does so of his own volition. This can be remedied by katzatz, i.e., having the non-Jew receive money by the piece of work done. However, even the leniency of katzatz does not work on a Jew's property when people are apt to think that the Jew may have paid him according to time, and even if the non-Jew starts doing the work of his own volition on Shabbat, he should be stopped (Shulchan Aruch, OC 244:1). Why, then, does it help to do a special hint to the non-Jew if, when push comes to shove, he is doing the work on the Jew's property? Acharonim struggle with this issue (see the

Sanctity of Shabbos, p. 24), but in general the minhag is to allow this type of non-commercial activity.

Even when it is considered that the Jew did not tell the non-Jew to do the work, it is prohibited to receive positive, direct benefit until after Shabbat from that which a non-Jew did on a Jew's behalf on Shabbat (Shabbat 122a). However, not everything is considered such benefit, and a classic example the poskim discuss is creating darkness, which is considered just removing light and is permitted.

In addition, there is an over-arching heter for allowing telling (even directly) a non-Jew to shut the lights under the circumstances you describe. Shutting a light is a rabbinic prohibition (Mishna Berura 278:3). Under quite a few circumstances of need, it is permitted to ask a non-Jew to do a rabbinic prohibition, including shutting a light to allow a child to sleep (Shemirat Shabbat K'hilchata 38:26). One of the examples is for a mitzva (Shulchan Aruch, OC 307:5) and here there is a double mitzva. One is the (albeit, small) chance that this act of the non-Jew will be a part of enabling your Jewish participant to embark upon a way of life of Shabbat/Torah observance. The other is the mitzva of afrushei me'isura (preventing one from sinning), even on a one-time basis. Although we do not usually say that one should perform a small sin to save someone else from a big sin (Shabbat 4a), the rules of instructions to non-Jews have a special built-in leniency for such cases.

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

25. Elevator Operated by Non-Jews on Shabbat

Question: I have an idea to enable Jews to have non-Jews operate an elevator for them in a permitted way. In a big building, maintenance workers do work on different floors throughout the day. If we get the management company to tell the workers to schedule work that has to be done on floors where shomrei Shabbat live at the time of day when they return from shul, it should be permitted. Is this correct?

Answer: We will deal only with your specific idea. Other factors that are involved in the use of a regular elevator are found in Bemareh Habazak II, 23.

A non-Jew may do melacha (work) for a Jew if he does so for his own purposes. One case is when he gets paid per-job (as opposed to per time). Then, even though the Jew benefits directly from the action, we say that the non-Jew does it for his wages (Shulchan Aruch, OC 243:1-2). However, even so, the Jew may not tell him to do the work specifically on Shabbat (ibid. 307:4). If the non-Jew does the work for his own direct benefit, a Jew may tell him to do it even if he also benefits. For example, if a Jew sees a flood in their joint building, he may tell his non-Jewish neighbor (at least before Shabbat) to fix it because the non-Jew will have his own welfare in mind.

This would seem to be true in your case. The question is whether the Jew may tell the non-Jew to do the work that he does for his own good but also for the Jew, specifically on Shabbat? While the non-Jew uses the elevator for his own purposes, he does so at the time the Jew desires it. There are sources that imply that when it is directly for the non-Jew's benefit, the timing is not a problem (see Taz 307:3 & Biur Halacha to 276:2 in the Nishmat Adam's name). However, it is difficult to rely upon this alone.

In the case you devise, the Jew need not have the non-Jew act because he said so. Rather, he can tell him to not do the work at another time on Shabbat so that the chances the Jew will benefit go up. The non-Jew might even decide not to do work at all on

Shabbat. The problem might exist though if the workers would have done their work later and move it up to the appointed time because the Jews asked.

The best approach to permit your idea is to say that the Jews do not ask the non-Jew to do work for them at all. The maintenance work will not be ordered by the Jews, and joint work is done for the majority (see Shulchan Aruch, OC 307:3). Regarding the fact that he takes an elevator in a way that Jews benefit from, one should consider the following. The Mishna Berura (276:27) says that one can ask a non-Jewish worker to do dishes on Shabbat (which need not include melacha) and it is not a problem that the non-Jew will light a candle to help. In fact, although a Jew may not benefit from melacha done by a non-Jew of his own accord on behalf of a Jew, here he may benefit from the candle later, as the non-Jew lit it for his own benefit. Although the Jew may not benefit immediately from the light (or in this case, the elevator) that is probably because he initiated the work. Furthermore, there must be a legitimate independent reason for the non-Jew to have gotten involved in the activity. Therefore, one cannot suggest to a non-Jew to go up together to a certain floor and have him use the elevator to get there (see Shemirat Shabbat K'hilchata 30:52). Therefore, if the workers understand the plan and purposely go with the Jew as a favor, it would be a problem to benefit from their service on his behalf. If it is a safek whether their intention was for the Jew, the matter is unclear (Mishna Berura 307:24 & 276:15, Biur Halacha, ad loc.).

There is more to say on the topic, but it appears that the plan has merit (especially for cases of great need) but is not always feasible for pragmatic and/or halachic factors.

26. A Group Eiruv Techumin

Question: A few friends of mine take turns going to a local rural community outside the techum Shabbat to lain on Shabbat. We have a place to put an eiruv techumin which will enable us to get there, but we don't want to have to do so every week. Also, what do we do about the fact that the eiruv is going to be needed by a different person each week?

Answer: It is possible to make an eiruv techumin for a period of many Shabbatot (Shulchan Aruch, Orach Chayim 413:1). (One has to use something with a long shelf life and ensure it is in a safe place.) When making the declaration that accompanies the placing of the eiruv (see Shulchan Aruch, OC 415:4) he should indicate that it should take effect only on the Shabbatot when he will want to make use of them (Biur Halacha to 413:1). This could be important for the following reason. An eiruv techumin does not increase the distance one may walk. Rather, it changes the central point around which the 2,000 amot radius is calculated. On a week that you are not going to lain, you might want mobility in a different direction. The same food that was put aside for that purpose for one week can be reused. You do not even need to know before a given Shabbat if you are going to activate it that Shabbat, but can rely on the original global declaration (Shulchan Aruch, OC 413:1). This is because we can say that certain details of a halachic process can be retroactively determined (b'reira) regarding rabbinic halachot. (Techum Shabbat on walking above 2,000 amot is rabbinic up to 24,000 amot. The eiruv is effective only up to a maximum of 4,000 amot.) In this case, the eiruv is functional based on the original declaration, and the days for which declaration will apply can be determined later (see Mishna Berura 413:8).

The next question is if everyone in the group can share an eiruv. The Shulchan Aruch (ibid., based on Eiruvim 82a) says that one can place an eiruv techumin on behalf of a group of people and that this works even if it is unclear who will be included in that group (e.g., all the people who will go to the house of mourning-mishna ibid.). This, again, can be determined by b'reira.

There are, though, a few conditions that must be met. First, the people to whom it will apply need to be made aware of their possible inclusion in the eiruv before the given Shabbat begins, even though they do not have to decide at that point whether they want to be included (gemara ad loc.- see Mishna Berura 413:7). Someone also must have acquired a requisite portion of the eiruv (even in the open-ended manner) for each person who is to be included. As the amount is enough food to eat for two meals (which, according to the standard opinion, is up to a little more than a pound of bread- Netivot Shabbat 31:(38)) this may be challenging.

There are at least two ways to solve the problem. One is to use a food that does not require much quantity. Unlike an eiruv chatzerot, which must be of bread, an eiruv techumin can use any food (Shulchan Aruch, OC 409:7). One only needs the amount of the given food that would be used in a classic meal (ibid.). For drinks, this is two revi'iot (approximately, a cup). Regarding foods that are used as relish with bread or other foods, including salty water, the amount is how much would be consumed in a meal, which is very little (Shulchan Aruch, OC 386:6). Thus, using salty water (ibid.), a bottle could probably be enough for the entire group of people who will end up going to lain. The other system is that each week, after using the eiruv, the person who used it does a kinyan (the easiest is a kinyan sudar, in which the transferred object does not have to be present) to pass it on to the next person or back to a central person who is in charge of making a kinyan on behalf of the relevant participants. According to the Shevet Halevi (VI, 44) it is not even necessary to make a kinyan back, as the present may be for only a Shabbat at a time.

Let us point out that regarding non-adjustable hot plates, important poskim allow returning fully cooked food (dry, or, if liquid, when it is still warm) even on Shabbat. Also, exactly what time one has to put up the food in order to avoid Tosafot's stringency is a topic that deserves discussion. However, in the case you described, you can ignore this stringency.

27. Removing a Detached Hair from One's Scalp on Shabbat

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

Answer: Our response to this question is very uncharacteristic of our approach to halacha. We have been unable to find explicit reference to this issue. While there seem to be ample grounds to forbid it, our thought-out, researched, yet greatly intuitive, answer, despite the lack of a clear source or a clear reason, is that it is apparently permitted. Now, the explanation.

There seem to be two problems with removing the hair. Firstly, the loose hair is unwanted, and it is forbidden to remove an undesired object that is mixed in among the desired because of borer (selecting - see Orach Chayim 319). Secondly, detached hair is not part of the human body and has no clear purpose; therefore, it should be muktzeh and forbidden to handle directly.

Yet, there are strong indications (but not full proof) that neither of these issues will forbid removing the hair. The Shulchan Aruch (OC 303:27) forbids combing one's hair normally on Shabbat because of the certainty that some hair will be uprooted from the scalp (shearing). The poskim (see Mishna Berura ad loc.: 86-87) say that one may go over the hair gently with a soft brush because it is uncertain if any hair will thereby be uprooted and it is not his intention. Poskim do not forbid the latter out of concern that if there are detached hairs on the hair, they will certainly be removed, which we hypothesized would be borer. The Shulchan Aruch (OC 316:9) also allows picking out lice or other insects from clothing or hair without the matter being considered borer. The Rama (OC 302:1), in discussing the prohibition of laundering, permits removing feathers stuck to clothes, which also would seem to be removing bad from the good and borer. Another indication is that women remove anything superfluous from the hair (including loose hairs) that could be a chatzitza before going to the mikveh, and the

major sources do not limit how this should be done on Shabbat, except for the matter of combing the hair, which, as above, is a problem of “shearing.”

It is harder to explain why there would not be borer. Possibly, some substances or circumstances are too distant from the classic cases of borer, which refer to separating different types of food. Perhaps, removing impurities from hair and fabrics fall under the categories of shearing and laundering, and when those do not apply, borer is not a factor. Similarly, Rav S.Z. Orbach (Minchat Shlomo I, 11) suggests that since it is normal for things to get on hair and fabrics, it is considered cleaning them rather than selecting. There may be other distinctions. The exact parameters of the explanation are important because there are likely test cases that can go either way depending on the explanation. However, our relatively strong halachic intuition, based on similar precedents, is that your case is permitted.

Regarding muktzeh, in some of the sources above (including Shulchan Aruch, OC 319:9), the poskim speak of removing the apparently unusable objects directly by hand. The most likely explanation is along the lines of the Chazon Ish (47:21) that when cleaning an object from unwanted “impurities” (e.g., washing dishes) the unwanted is subsumed under the non-muktzeh and we view the action as cleaning the useable object. So here you would be considered handling your head of hair rather than grabbing detached hairs. While apparently not everyone agrees with this thesis (see Shvut Yitzchak, Muktzeh, p. 308), this does seem to be a mainstream view (see Shemirat Shabbat K’hilchata 14:(149) and Orchot Shabbat, II, 19:207) and other possible explanations may also cover your case.

In summary, while we can conclusively neither prove nor explain exactly why we believe one may reach into her hair and remove a detached hair, indications for permitting it far exceed those for forbidding it.

28. Using Mother's Milk for an Infant With Conjunctivitis, on Shabbat

Question: My infant has conjunctivitis. A pediatrician I saw in shul on Shabbat morning suggested expressing mother's milk directly into the eye over standard eye drops (although he was totally fine with either system or beginning treatment at night). Is that permitted on Shabbat? [Ed. note- this was answered orally on Shabbat and transcribed afterward.]

Answer: According to the great majority of authorities, human nursing, not only milking a cow, is a Torah violation, at least in many cases. We obviously allow a baby to nurse on Shabbat, but usually it is the baby who performs the very important, "problematic" act. Is it permissible for a woman to express milk for her baby's needs, classically, or, in this case, for medicinal purposes? It is easiest to say it is forbidden. The Shulchan Aruch (Orach Chayim 328:34) says that a nursing mother may not express milk into a cup to feed her child (it is permitted to express to relieve an oversupply in a manner that the milk is immediately lost). However, there are instances where expressing milk is permitted, which may shed light on our case.

The Shulchan Aruch (OC 328:35) rules that a woman may express milk (into the baby's mouth - Mishna Berura 328:112) in order to interest him to nurse. Most understand that this is not a level of need that we can consider life threatening, so why is it permitted? Similarly, the Shibolei Haleket (123, see Beit Yosef, OC 328, and (slightly altered) the Rama, OC 328:35) says that a woman may not squirt someone who is under the influence of a strange malady because there is neither danger nor extreme pain. This implies that it would be permitted if there were such pain. Why?

The Magen Avraham (ad loc. 40) and Mishna Berura (ad loc.:113) explain the implied leniency by saying that this expressing is a *melacha she'eina tzricha l'gufa* (=mstlg), which usually means that the object that the Shabbat violation produces is not itself used in a classical, positive way. Once reduced to a

rabbinic violation, it is then permitted on Shabbat to relieve significant pain (see Shabbat 107a; Ketubot 60a). While it is difficult to understand how mstlg applies there, it is hard to dismiss an approach posited by such prominent proponents, and this seems to apply to our case (realize that even non-illness needs of a small child are equivalent to those of sick adults (Rama, *ibid.*:17)). In fact, the Kaf Hachayim (328:209) says, based on the above, that a woman may express milk into the ear of someone with a serious earache (assuming it has therapeutic value).

The Tosefet Shabbat (328:59), not seeing a mstlg in the above, suggests that expressing milk from a woman in a way other than nursing is an unusual form of mefarek, and thus rabbinic, similar to a person “nursing” from a cow (Ketubot 60a). Such reasoning would also make this case permitted. While the Mishna Berura is skeptical of this approach, the Magen Avraham’s explanation and leniency that he cited and this one are the main explanations of the Shulchan Aruch’s accepted leniency for expressing (see Sha’ar Hatziyun 81).

Other possible grounds for leniency may be related to the small amount of milk that will be expressed and the fact that it is being used immediately (see Yalkut Yosef, OC 328:(35)).

We have seen significant grounds to permit the pediatrician’s suggestion although it is far from unanimous (see Ketzot Hashulchan 138:30, for one; we have also spoken to important poskim whose initial reaction was to not allow it). Since the eye is an area where halacha tends to be liberal about the possibility of danger (Shulchan Aruch, *ibid.* 9) and we are also very careful regarding such a young baby, we would be lenient at the “bat of an eye” if there was any urgency to the suggestion. However, you indicate that other effective medicinal alternatives exist and the doctor does not think that it is of even remote importance to favor mother’s milk. Therefore, it is halachically preferable, because of doubt, and because it is better to avoid the rabbinic mefarek when there are good alternatives, to not use the system of expressing mother’s milk on Shabbat.

29. Sensors on Shabbat

Question: We are increasingly being exposed to movement sensors, related to security systems, internal and external light systems and the like. Is it permitted to pass by such sensors on Shabbat when one knows that his motion will be detected?

Answer: [The following is an adaptation of a responsum found in one of Eretz Hemdah's books of sh'eilot u'teshuvot, Bemareh Habazak IV, 40]

One must distinguish between cases, depending on what results from his passing by and the different ways that one activates the electric devices. Certainly we cannot discuss every possibility and "before the ink dries" there are likely to be new technologies, but we will address some major applications.

It is forbidden to step on a mat or pass by a sensor that directly activates the opening of a door (Shemirat Shabbat K'hilchata 23:53). (In a footnote, he does raise the possibility that in certain cases, one might just stop a flow of light that keeps the device deactivated, but the above is the bottom line.) In these cases, one should wait for a non-Jew to activate the opening of the door and follow him in.

Sensors that are part of fire alarm systems are not usually affected by normal movement in the room but by smoke that makes its way toward the system.

Regarding motion detectors on alarm systems that are used to notify that someone has entered the room, the best thing is to cover the system before Shabbat or have it work on a timer so that it is not picking up the movement during times of the day that people are meant to use the area. However, we are aware that this is not always possible.

It is important to know approximately how the system works. The system has a part that sends waves and a part that receives waves. There is then a part that analyzes any differences between that which was received during different times based on the movement of objects. The system can involve, among other things, the activation of a notification light and/or a sound alarm. (The alarm will be timed to not sound during times when people are

expected in the building or room.) If the light is deactivated, there is much less of a problem because according to the standard approach to electrical devices, the connection of electrical circuits does not by itself involve a Torah violation. Under these circumstances one can more easily apply the concept of p'sik reishei d'lo nicha lei. In other words, the person who is detected by the sensor does not intend to affect the electrical circuits and even if he is certain to do so, he does not benefit from this outcome. According to many authorities, this is permitted regarding rabbinic prohibitions.

In the case where a light on the system will go on, the matter is much less clear, as this can involve a Torah prohibition. Yalkut Yosef (Shabbat V, p. 216) leaves the matter as an unsolved question whether one is allowed to walk in a place where a light will go on when he passes. Although a Shabbat prohibition results, the opinion of the Rashba, permitting closing the door of a house where a deer is inside (and getting inadvertently trapped), is relevant. Some explain that this is so because the action the person does is not related to the object of the melacha (in his case, the deer), in which case it would be permitted unless he intended for the result. The situation is similar to one entering a building and tripping a light. Yalkut Yosef cites Rav Vosner as saying that a person simply walking is even less of a direct act than closing a house's door, which is an act of trapping under many circumstances. One could make the claim that our case is worse, as usually the people going into the area are those who operate the system, who might have in mind at times to check the system. Thus, one should detach all lights. However, if he failed to do so and not being able to enter the area would cause an embarrassing situation or an inability to enjoy Shabbat on a basic level, he has a right to rely on the lenient approach.

30. Melaveh Malka for Women

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

Answer: It is unclear to what extent melaveh malka is a weak but binding obligation, a proper practice (see Shulchan Aruch Harav OC 300:3; Mishna Berura 300:2), and/or a spiritual opportunity. It is also tricky to implement melaveh malka because there are many things mentioned by one or more poskim to enhance the practice (we will mention only some). The gemara mentions both (hot) bread and meat, which some, like your husband, see as matters to be makpid about (see Maharsha Shabbat 119b; Mishna Berura 300:1).

The gemara implies (as the Taz, OC 300:1 understood) that the main factor is actually the setting of the table, and the food seems an afterthought (“even ... a k’zayit”) or that which makes the table “the stage.” Many people who are machmir regarding eating ignore such elements mentioned by poskim as a nice tablecloth, place setting, and candles – matters of kavod modeled after Shabbat. On the other hand, some of the reasons given for melaveh malka do indeed focus on food, as does the ensuing passages of the gemara.

Some hiddurim mentioned are close to mutually exclusive. It is best to have melaveh malka soon after Shabbat; yet, it is best to cook for it after Shabbat. One idea is to eat something right away for melaveh malka, with Shabbat ambience, and have more serious eating later (Siddur Beit Yaakov (Emdin) p. 206b).

Is there room for leniency not to have a melaveh malka? Besides the possibility that it is not halachically required, there is a serious opinion (Eliya Rabba 300:1, quoted by many; see Shemirat Shabbat K’hilchata 63:6) that any eating at seuda shlishit after nightfall (whose exact time is unclear) counts as a melaveh malka. The Tehilla L’Dovid’s (300:1) cogent argument that since we treat that time as Shabbat, it cannot count for melaveh malka does not delegitimize the lenient shita (Shemirat Shabbat K’hilchata 63:6). Many poskim (including the Mishna Berura 300:1) say that one

can fulfill melaveh malka without a full meal, even with fruit, as makes sense from the legitimacy of doing so for the greater obligation of seuda shlishit (see Shulchan Aruch, OC 291:5).

Women do have some extra room for leniency because melaveh malka is ostensibly a time-based mitzva (see doubt of Pri Megadim 300, EA 1). On the other hand, we assume that women are obligated in such mitzvot when they relate to Shabbat, i.e., havdala and seuda shlishit (Machatzit Hashekel ad loc., based on Magen Avraham 291:11), as all agree regarding kiddush (Berachot 20b). Furthermore, many women will presumably desire and deserve their share of the aforementioned spiritual treasures (see Kaf Hachayim 300:2).

In summary, your husband's practices are positive, although there is room for doing more or doing less. You do have incrementally more room for leniency than he. However, we recommend that you have at least some food in an honorable setting in honor of Shabbat after it has departed (see Shemirat Shabbat K'hilchata 63:3).

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MOADIM

YOM TOV

31. Eruv Tavshilin on Thursday and Friday

Question: Are there differences for doing an eiruv tavshilin when Yom Tov falls on Thursday and Friday, compared to when it falls on Friday (and Shabbat)?

Answer: There are three types of eiruv: 1) tavshilin- for cooking on Yom Tov for Shabbat; 2) chatzeirot- to allow carrying on Shabbat; 3) techumin- to allow walking out of the area to which one should normally be limited on Shabbat and Yom Tov. A characteristic they share is that they permit something that, under present circumstances, is a rabbinic prohibition without the eiruv. Eiruv, which are rabbinic institutions to allow one to modify the way we view certain situations, cannot erase a Torah violation.

Due to the eruv tavshilin, the cooking on Yom Tov is viewed as only a continuation of that which began before Yom Tov. Therefore, one of the basic rules of eruv tavshilin is that it must have been made before Yom Tov began. This straightforward rule is a little more complicated when Yom Tov falls on Thursday and Friday. Generally, we say that there are not really two days of Yom Tov in Chutz la'aretz. Rather there are two days that we treat like Yom Tov because we are required to treat the matter as a doubt of which is the correct day (as it was when there was not a set calendar). Thus, when Yom Tov of, say, Sukkot falls on Thursday and Friday, we are not sure if Yom Tov should be Thursday or Friday. Therefore, if one forgot to make an eruv tavshilin on Wednesday, he can do so on Thursday with the following condition. If Thursday is really Yom Tov, then Friday is a regular day on which one can cook for Shabbat. If Friday is really Yom Tov, then the eiruv should take effect on Thursday which is actually Erev Yom Tov. This then would be a leniency for a Thursday/Friday as opposed to a Friday/Shabbat Yom Tov (Beitza 17a). It is important to realize, though, that this logic does not apply when the Thursday/Friday Yom Tov is Rosh Hashanah. Not only is Rosh Hashanah special as the only two-day Yom Tov in Israel, but it was also instituted as a definite two days of Yom Tov (albeit rabbinically). Therefore, one cannot make the eruv tavshilin

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on Thursday because that is after the beginning of the two-day Yom Tov (ibid. 6a).

A major question regarding eruv tavshilin is how it is permitted to cook on Yom Tov, which is, seemingly, a Torah prohibition except when it is done for ochel nefesh (a person's needs of the day), when the food will not be eaten that day. Rav Chisda says that, on a Torah level, just as one may cook on Yom Tov for Yom Tov, so too from the Torah he may cook from Yom Tov for the adjacent Shabbat. The rabbinic prohibition in that case is removed by the eiruv. Rav Huna says that in theory there is a Torah prohibition to cook from Yom Tov to Shabbat, except that we say that it is rarely clear that one is cooking for after Yom Tov, as it is possible that unexpected guests will come and eat that food on Yom Tov. Because of the theoretical guests, eruv tavshilin is justified.

Poskim point out that there should be a difference between the opinions in a case that one cooks on Yom Tov so close to the end of the day that no guests could benefit from it on Yom Tov. Rav Chisda's grounds for leniency apply, but Rav Huna's do not. Out of deference to Rav Huna, we should not rely on eruv tavshilin to cook too late in the day on Yom Tov (Magen Avraham 527; Mishna Berura 527:3). However, the minhag may not be to be so careful (Aruch Hashulchan, OC 527:3) and there is room to rely on Rav Chisda in a case of great need (Mishna Berura, ibid; Shemirat Shabbat K'hilchata 2:12). There is even more room for leniency on a Friday of a Thursday/Friday Yom Tov, as Friday is Yom Tov only rabbinically and there is no issue of a Torah violation (ibid.). In this regard, the grounds for leniency apply equally to the second day of Rosh Hashanah.

32. Special Halachot of Motzaei Shabbat Kiddush/Havdala

Question: Please review the unique halachot of Kiddush of Yom Tov night that falls on Motzaei Shabbat.

Answer: First of all, the most basic advice is to take a good look at the siddur before you start to see what you will be saying –the five berachot that follow the acronym of **yaknehaz** (wine, Kiddush, candle, Havdala, Shehecheyanu). Beyond that, we will divide some of the unique halachot into categories. (Almost all of the halachot we are mentioning can be found in Shemirat Shabbat K'hilchata (II) 62:9-22, and we will not list specific citations from there.)

Pre-Havdala: If one wants to do work that it is forbidden on Shabbat but permitted on Yom Tov and it is late enough, he/she should have davened Ma'ariv with the addition of Vatodi'einu (the Yom Tov equivalent of Ata Chonantanu) or made the declaration of Hamavdil. Regarding the latter, it is important to remember to say "... hamavdil bein kodesh l'kodesh."

Wine: While both Kiddush and Havdala should preferably be made over wine (or grape juice), bread (challa) can be used for Kiddush but not for Havdala (the status of other beverages is beyond our present scope). Regarding this Kiddush that also includes Havdala, the Shulchan Aruch (Orach Chayim 296:2) cites two opinions if bread suffices, but the Rama says that it does. Nevertheless, the Mishna Berura (296:16) says that an extra effort should be made to use wine in deference to the opinions that this is fully required.

The minhag that many have to pour enough wine for Havdala to spill over is not in effect in this case.

Besamim: There is no beracha on besamim, because the festivities of Yom Tov are sufficient "resuscitation" after the loss of the neshama yeteira (Tosafot, Beitza 33b). The beracha on besamim is not made after Yom Tov finishes either.

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If one mistakenly made the beracha on the besamim in the midst of the Havdala, it does not cause a problematic break (Shemirat Shabbat K'hilchata 62:(22) and Nitei Gavriel 30:2, contrary to the opinion of Shalmei Toda, p. 149).

Candle: There are major discussions as to whether the beracha on fire justifies lighting a new flame and combining flames to create a torch effect. We dealt with the matter in Living the Halachic Process III, D-4. Our operative suggestion is to take the Yom Tov candles and hold them together for the beracha. According to any system, it is important to not directly extinguish the flame.

Even those who usually shut the electric lights to get more significant benefit from the Havdala candle's light can make the beracha on the candle(s) with the electric lights on.

Women: On every Motzaei Shabbat, it is preferable for a woman not to make her own Havdala due to questions about whether she is obligated in Havdala and the beracha on the candle and due to the minhag that women not drink from Havdala wine (see our treatment of the topic in Living the Halachic Process II, C-8). Here, there is more of a problem because voluntarily making a beracha in the midst of a Kiddush in which she is certainly obligated and should not interrupt is questionable. However, if necessary, a woman may recite the whole Yaknehaz Kiddush, and she is then allowed and indeed required to drink from the wine.

Mistakes: If one forgot to make the Havdala beracha and he is in the middle of the meal, he should make it, over a cup of wine, before continuing to eat, as it is always forbidden to eat before Havdala. If, during Kiddush, he did not have in mind the possibility of drinking wine during the meal, he must make another beracha on the wine, but otherwise he drinks the wine without an additional beracha.

Finishing the beracha with "hamavdil bein kodesh l'chol" instead of "hamavdil bein kodesh l'kodesh" is equivalent to not saying Havdala at all.

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One who left out Shehecheyanu can make it up throughout the chag. A forgotten “Borei Meorei Ha’eish” can be made up only that night.

33. Burying on Yom Tov

Question: Why does the Shulchan Aruch say that a non-Jew can bury a Jew on the first day of Yom Tov (Orach Chayim 526:1) but that a non-Jew may not bury a Jew on Shabbat (ibid.:3)? Also does anyone bury on Yom Tov anymore?

Answer: The gemara (Beitza 6a) says that if one dies on the first day of Yom Tov, when melacha (forbidden work) is a Torah level prohibition, he is to be buried by non-Jews on that day. If he dies on the second day (or there was not an opportunity to do it on the first day), Jews do the burial on the second day of Yom Tov. The Shulchan Aruch's claim that on Shabbat (and Yom Kippur) Jewish burials are not performed is easier to prove than to explain. The gemara (Rosh Hashana 20a) says that one reason to avoid certain calendar arrangements is to avoid Yom Kippur falling right before or right after Shabbat, in which case there would be two days without burial, with the prospect of decay and disgrace to the deceased.

While the laws of Shabbat are significantly stricter than those of Yom Tov, when it comes to having the melacha done by non-Jews, there does not need to be a difference. Asking a non-Jew to do the work is only a rabbinic prohibition and there are several scenarios, including for the needs of someone who is sick but not dangerously so, that one may ask a non-Jew to do even a Torah level melacha (Shulchan Aruch, OC 328:17). Burial is one of the needs that is taken with utmost urgency by halacha (see Berachot 19b). So, halachically, there could have been room to allow non-Jew's doing the burial even on Shabbat. An early source who gives an explanation is the Ramban (Torat Ha'adam, pg. 80 in Mossad Harav Kook edition). He says that we do not want there to be a disgrace for the deceased in that Shabbat was desecrated for his burial. While one could make the same claim about Yom Tov, the Aruch Hashulchan (OC 526:4) explains that on Yom Tov there are melachot that are anyway permitted, so to permit this type of burial would not "raise eyebrows" in the same way.

On the second day of Yom Tov, as mentioned, Jews may do the burial themselves. However, Ashkenazic practice (Rama, OC

526:4) is that non-Jews, if available, do the full-fledged violations of Yom Tov. (The details of who does what are beyond our present scope.)

Regarding practice nowadays, there is not unanimity. One of the leading chevrot kaddisha in Israel told us they still follow the classic halacha with one caveat. They will perform a first day burial only if they are confident no one will violate Yom Tov in order to take part in the funeral. This brings us to the next point.

There are major authorities who oppose doing funerals on either day of Yom Tov. Of prominent note, Rav Moshe Feinstein (Igrot Moshe, OC III, 76) says that two things have changed from Talmudic times. One is that there is now refrigeration, which prevents serious decomposition and odors. He claims that had that been the case then, Chazal would not have allowed the burials and would have said that it would be disrespectful to the deceased to bury on Yom Tov. He admits that once they permitted the matter, it might not make a difference that times have changed. However, he points to another halachic phenomenon that was classically applied sparingly but now may apply more broadly. People from a certain town were forbidden to bury on Yom Tov because they were not careful in their Torah observance and thus the permission might be abused (Shabbat 139a). While this approach was not applied broadly in the past (see Tosafot 6a), Rav Feinstein felt that it should be applied in America of his time. As he acknowledged, not all agreed.

One can also point out that, nowadays, when people come from significant distances to take part in funerals and when, again, refrigeration makes waiting feasible, few people want to do a funeral on Yom Tov. Therefore, even if the gemara's and Shulchan Aruch's rules apply theoretically, you are correct that their implementation is uncommon.

MOADIM CHOL HAMOED

34. Hachnasat Sefer Torah on Chol Hamoed

Question: I have strong reasons to make a hachnasat sefer Torah on Chol Hamoed. Is it permitted to do so?

Answer: The main issue with the hachnasat sefer Torah for a new sefer Torah (as opposed to purchasing one or changing its venue) is writing its final letters, as the minhag is to do so on the day of the ceremony.

The mishna (Moed Katan 18b) says it is forbidden to write even a small part of a book on Chol Hamoed. The Rama (Orach Chayim 545:1) cites two opinions on whether it is permitted if the masses need the book after the chag and concludes that it is permitted if one uses simple, “non-artisan” writing. In other words, he understood that the mishna is referring to cases where there is not an acute need. These halachot follow the rule that simple work (ma’aseh hedyot) is permitted on Chol Hamoed for festival needs or communal needs, which are as significant even if they are for after the chag (Shulchan Aruch, OC 544:1).

Since writing a sefer Torah certainly needs an expert acting carefully (ma’asach uman), it should be forbidden on Chol Hamoed. The Shulchan Aruch (OC 545:2) does say that if there is no other sefer Torah for the community’s Torah reading, a sefer Torah can be finished on Chol Hamoed for that purpose. However, it does not sound like that is your predicament.

Despite the above, there has long been a phenomenon of hachnasot sefer Torah on Chol Hamoed. Some poskim (including Aruch Hashulchan, OC 545:5) criticize the practice. However, several poskim justify the practice when done in a certain way, which is anyway common.

Usually the main writing of the sefer Torah is complete days before the event, except that the last letters are written by the sefer’s owner and his honorees. To facilitate this, the sofer uses one of two systems: 1. Writes the letters in very light ink, so that the donor writes on top to darken it. 2. Writes hollow letters and have the donor fill them in. Some poskim suggest that in those cases the halachic writing already exists, in which case that which is left for the end is not a melacha (see discussion in B’tzel

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Hachochma IV:50). Moreover, even if it is a full melacha of writing, it is an example of ma'aseh hediot, as a non-expert can follow the tracing or fill in the hollow letters. In that case, it is permitted for a simple mitzva even of an individual or an enhancement of the chag.

What mitzva or enhancement of the chag applies here? Some say it is the mitzva of having a sefer Torah. While some of the leniencies of Chol Hamoed apply only if one had to do the work at that time (which might not apply in your case), festival and mitzva needs can be done even if they could have been done at different times. Some question (see Minchat Elazar III:2) whether in our days the writing of the sefer Torah is considered a mitzva, but that seems like a weak claim. In any case, since the whole celebration is such a joyous and chag-appropriate activity, all of its standard elements, which customarily include writing the last letters, are festival needs. (The poskim are not concerned with the possibility that the celebration impinges on the proper focus on the chag, which is the reason weddings are forbidden on Chol Hamoed (Chagiga 8a). A Torah celebration of this type is within the appropriate focus.) If the sefer Torah will be read from during the chag, including Simchat Torah, that should also be considered a mitzva purpose.

Thus, under the above conditions, it is permitted according to most poskim, including the Beit Yitzchak (Yoreh Deah II, addendum 20), Kaf Hachayim (545:6, based on the Sdei Chemed), and the contemporary Chol Hamoed K'hilchato (6:24). As mentioned, there is also some history of leniency. Some poskim (Shevet Halevi III:96, B'tzel Hachochma, ibid.) are willing to be lenient only in the case of real need, which you indicate you have. In summary, if the celebration is most appropriately done on Chol Hamoed, feel free to do it then. Make sure the sofer completes his part before Pesach and leaves any expert brush-up work for after chag. Mazal tov!

MOADIM

ELUL AND ROSH HASHANA

35. Reason for Blowing Shofar in Elul

Question: What is the reason for blowing shofar during the month of Elul and what halachot do I need to know about it?

Answer: The minhag is an old one that the Tur (Orach Chayim 581) brings based on Pirkei D'Rabbi Eliezer. The reason found there is connected to the historical event whereby Moshe went up to Har Sinai to receive the tablets a second time on Rosh Chodesh Elul. This was accompanied by the blowing of the shofar to warn the people that Moshe was leaving and that they mustn't make the type of mistake that they made the first time with the Golden Calf.

Of course, our minhag extends the blowing of the shofar beyond Rosh Chodesh to the entire month of Elul (minus Shabbat and the day before Rosh Hashanah). There are two further reasons that explain the extension of the minhag. One is that Elul is a time in which teshuva (repentance) is appropriate and the shofar helps rally people to this end. The connection between the two is evident from the pasuk (Amos 3:6): "Shall a shofar be blown in a city and the nation will not tremble" (Tur, *ibid.*). A final idea given is that blowing the shofar confuses the Satan regarding when Rosh Hashanah will be (*ibid.*) These reasons complement each other, as the former extends it past Rosh Chodesh (see Prisha, *ad loc.*), and the latter explains why it appropriate only until Rosh Hashanah and not until Yom Kippur, which is the end of the period of teshuva.

We only blow one series of blasts. This is despite the fact that there is one opinion that one must employ all of the series used on Rosh Hashanah, so that one not make a mistake on Rosh Hashanah when the mitzva is not a minhag but is of Torah origin. The minhag also seems to be to not be so careful that the sounds blown are halachically valid ones. Apparently the idea is that any reasonable type of reminder of teshuva, of a hint of Rosh Hashanah and/or the events of the historical Rosh Chodesh Elul is sufficient.

There is a significant difference between Ashkenazic and Sephardic practice in this matter. Ashkenazim blow the shofar at the end of Shacharit (morning davening) although there used to be a minhag to do so in the evening as well. Sephardim do it during Selichot instead. This is consistent with their minhag to start

Selichot in the beginning of the month of Elul like the shofar blowing. In fact, the Tur seems to view the practice of Selichot as an offshoot of that of shofar blowing, making the joining of the two appropriate according to this approach.

The fact that Ashkenazim blow the shofar in shul in the morning is significant according to two prominent, recent poskim. Rav Moshe Feinstein (Igrot Moshe, OC IV 21) says that we do it specifically during the day and not after the evening prayers because of sources that indicate that the first half of the night is not a good time for supplications to be made. The Tzitz Eliezer (XII, 42) also says that the minhag applies only in shul, as is the common practice and need not be done by one who missed shul. He explains that the historical shofar blowing was a public one and that the aforementioned pasuk that indicates the teshuva powers of a shofar was also referring to the blowing in a city, not in the home. Therefore, most women, who are not usually present in shul daily, do not generally hear shofar blowing.

There are different opinions and minhagim regarding which of the two days of Rosh Chodesh Elul to start the minhag. Without getting into too much detail, some of the arguments one way or the other relate to the day that Moshe went to Har Sinai for the 40-day period or how many days of shofar blowing we are interested in (see Bach, OC 581 and Magen Avraham 581:2). In any case, the more prevalent minhag is to start on the second day of Rosh Chodesh, which is 1 Elul.

36. Hatarat Nedarim by Skype

Question: Around the time of Rosh Hashana, I will not be in the proximity of people who can do hatarat nedarim for me. Can I do it via Skype?

Answer: While a general hatarat nedarim within days of Rosh Hashana is just a minhag (see Chayei Adam 138:8), it is good that you are looking for an opportunity to do it.

There is a machloket Rishonim (see Beit Yosef, Yoreh Deah 228 and Ran, Nedarim 8b) whether hatarat nedarim (annulling (a) specific oath(s)) requires the presence of the oath taker (noder). The gemara (Nedarim 8b) asks whether a husband can be an agent to request his wife's hatarat nedarim and concludes that he can. Some say (including R. Shimshon) that others, who are less impacted by it, are certainly effective based on the general rule that agents can carry out halachic processes. The Rambam (Shvuot 6:4), accepted by the Shulchan Aruch (YD 228:16), is among those who require the oath taker's presence.

We must see how absolute this ruling is, on a few levels. The Keren Ora (Nedarim 8b) and Kiryat Melech Rav (on the Rambam ibid.) suggest that it is a Rabbinic law, with the latter explaining that we want the noder to be self-conscious, to discourage making this a common practice. Rav Auerbach (Minchat Shlomo, Nedarim ibid.) suggests that it is to enable effective discussion of the grounds for the hatarat nedarim.

Classical poskim suggest exceptions. The Rama (YD 228:16, based on the Yerushalmi) says that the hatarat nedarim can be done through an interpreter, but the Shach (228:29) and Taz (228:21) say that this is only because the noder is present. More significantly, the Taz (228:20) cites the Rashba who says that even those who disqualify an agent allow the noder to submit his request to beit din in writing. The idea is that the request must be transmitted without using intermediaries, but it works even without formalistic interaction between the noder and the beit din. The Taz also cites the Rivash (370), who disallows writing. (The Rivash's proof is from the midrash about Yiftach's haughty refusal to go to Pinchas to undo his oath, which seems to indicate that a letter

would not have sufficed.) The Taz does not take a clear stand on *hatarat nedarim* by letter, and the *Pitchei Teshuva* (228: 9; see also *Kol Nidrei* 19:3) allows it in a case of significant need.

Poskim have discussed the use of telephones for halachic matters. One crucial issue is appointing the facilitators of a *get*. This a more difficult matter than ours because of the need to ascertain identity and for a possibly higher level of connection between the husband and the facilitators (see discussion in *Tzitz Eliezer* X:47 and article by Rabbi H. Jachter in *Techumin* XIV). Another area of interest is *berachot* heard via telephone. One cannot fulfill *mitzvot* through such a *beracha*, but leading poskim have argued whether one can (*Yechaveh Da'at* II:68) or cannot (*Minchat Shlomo* I:9) answer “Amen.” *Hatarat nedarim* by phone could follow the same logic, or can be more lenient (if a practical rather than formal connection between the two is enough) or more strict than other applications (if presence is a Torah requirement).

A Skype discussion is no worse than a written request for *hatarat nedarim*. After all, one's written word does not have a special status in this context (proof of this claim is beyond our present scope). Rather, the important thing is to convey the requester's message effectively without another person's intervention. In some ways, Skype is preferable. It allows for give and take between the parties and creates a personal connection that could provide a measure of self-consciousness (see above). In the latter, it might even be a slight improvement over telephone. Audio/video's greater improvement is in regard to cases (arguably, *gittin*) in which authentication is crucial, as it is easier to impersonate a voice than a voice and appearance.

In conclusion, when necessary, one can rely on *hatarat nedarim* by phone (see *Shevet Hakehati* IV:239) and by Skype. We note briefly that *hatarat nedarim* before Rosh Hashana may require less halachic precision, and therefore leniency is fully acceptable.

37. Is the Shofar Muktzeh After the Mitzvah is Completed

Question: After finishing blowing or hearing *shofar* blowing on Rosh Hashana, is the *shofar muktzeh* from that point on?

Answer: First we have to check if it is permitted to blow the shofar after the mitzva is completed. If it is permitted, then the shofar is a *kli shemelachto l'heter* (a utensil used for permitted purposes) and will be able to be moved for any reasonable purpose.

This matter is actually the subject of substantial *machloket*. The Rama (Orach Chayim 596:1) says that it is forbidden to blow the shofar for no specific need on Rosh Hashana after he has fulfilled the mitzva. He (in the Darchei Moshe, OC 588:2) refers to earlier sources that indicate this approach. The Tur (OC 589) cites an opinion that a man may not blow shofar on Rosh Hashana just for a woman after fulfilling the mitzva himself, since the mitzva does not apply to her and thus it is blowing without justification. We reject this opinion because we rule that there is a value for a woman, although she is exempt, to hear the shofar. Otherwise, though, it would have been forbidden. Another discussion (Tur 590) mentions that one who makes the shofar blower repeat blowing when he is not required is making him violate the rabbinic prohibition of blowing the shofar without a reason. The gemara (Rosh Hashana 33a) also talks about children blowing the shofar for practice for the future without a mitzva need, implying that an adult should not do this.

On the other hand, the Taz (596:2) argues that blowing shofar is forbidden only on Shabbat, out of concern he may carry it in the public domain, but it is permitted on Yom Tov, when carrying is permitted. He argues that the sources forbidding blowing for adults refer to Shabbat. The Ohr Zarua (II, 266) in fact explicitly permits blowing shofar all day long on Rosh Hashana that does not fall on Shabbat. In the final analysis, most *poskim* forbid blowing shofar without a specific purpose after fulfilling the mitzva. One may blow to fulfill the *minhagim* to add more blasts (100, for most) than are strictly required for the mitzva.

One of the Taz's arguments that it is permitted to blow after finishing the mitzva is that if it were forbidden, then it would be forbidden to move the shofar due to muktzeh. In fact, the gemara (Sukka 41b) assumes that it is permitted to carry a lulav after fulfilling the mitzva, and the Rama himself says only regarding Shabbat that a shofar is muktzeh. One might then argue that since we forbid blowing shofar after fulfilling the mitzva, it should also be forbidden to move. Furthermore, the Magen Avraham (588:2) says that a special type of muktzeh applies to a shofar, namely, muktzeh l'mitzvato (an object that is set aside for a mitzva may not be used for another, non-mitzva purpose). The Machatzit Hashekel (ad loc.) implies that this muktzeh not only precludes using the shofar for another purpose but even makes it forbidden to move. However, many assume that muktzeh l'mitzvato does not prevent moving the object (Tosafot, Shabbat 45a; see Tz'lach, Shabbat 44a and Mishna Berura 588:15).

In any case, the great majority of poskim assume that even though one may not blow the shofar beyond the mitzvah needs, one can move the shofar (Mishna Berura 596:3 in the name of Acharonim; Shemirat Shabbat K'hilchata (28:34)). The Mishna Berura (ibid.) explains that one cannot determine that a shofar is no longer slated to be used because it is possible that someone has not heard the shofar blowing and needs it. The Kaf Hachayim (OC 596:7) explains that since children may blow throughout the day, the shofar can be used for them.

The Shemirat Shabbat K'hilchata (20:(51)) wonders why we assume that one may move a shofar after finishing to use it but not move a brit mila knife after the mila (see the machloket between the Rama, Yoreh Deah 266:2 and Taz, ad loc.: 1). He suggests that it is more common to unexpectedly find someone that is in need of shofar blowing than to find an eighth day baby who unexpectedly needs a mila.

MOADIM YOM KIPPUR

38. Washing Hands with Soap on Yom Kippur

Question: Is it permissible to wash one's hands with soap after leaving the toilet on Yom Kippur or only with water?

Answer: It is a matter of debate whether afflictions other than eating and drinking, such as rechitza (washing hands with water) and sicha (classically, smearing the skin with oil) are of Torah origin or are Rabbinic (see Beit Yosef, Orach Chayim 611). Rechitza is permitted when it is not for enjoyment but to remove dirt (Shulchan Aruch, OC 513:1). The hygienic need for washing hands after use of the toilet is no less significant than of dirt.

Your question is a good one because sicha is more stringent than washing. The Yerushalmi (Yoma 8:1) says that sicha is forbidden even when it is not for pleasure. The gemara (Yoma 77ab) does permit putting oil on chatatim (a type of skin disorder) or for the needs of the sick. Our questions are: 1. Is using soap sicha? 2. If so, does the need for soap justify its use?

The gemara (Yoma 76b) talks of sicha in reference to oil. Tosafot (ibid. 77a) assumes that it applies also to smearing animal fats on the skin. Apparently, the two main ingredients in solid soap are vegetable oils and animal fat (although liquid soaps, which we use for halachic reasons, are more diverse). Yet soaps seem to be fundamentally different, in that the point of sicha is usually to have the skin absorb the substance. This is also evident from the gemara's (Yoma 76b) portrayal of sicha as being like drinking. In contrast, soap is intended to be applied and soon thereafter removed with only a tiny amount being absorbed. However, we do find very mainstream Acharonim, including the Mishna Berura (554:28) and the Aruch Hashulchan (YD 117:29), who assume that using soaps is sicha. The context of the latter is a discussion of whether it is permitted to use non-kosher soaps, which depends on how far we take the equation between sicha and drinking. On that topic, Rav Ovadia Yosef (Yechaveh Da'at IV:43) adds other reasons for leniency; the idea that using soap is "less than regular sicha, as it is immediately washed away with water." I do not know

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that he meant that such “less than regular” sicha is permitted on Yom Kippur, but the statement corroborates the salience of our distinction and adds at least slightly to the grounds for leniency.

Why is sicha stricter than washing (i.e., it is forbidden even without intention for enjoyment)? The Magen Avraham (614:1) says that it is because sicha generally provides greater enjoyment. Rabbeinu Manoach (Shvitat Assor 3:9) says that since most people wash off dirt with water, using oil looks like it is being done for enjoyment. Similarly, Tosafot Yom Hakippurim (Yoma 77b) says that since one can use water, the higher level of sicha was not permitted without special need. Since soap is rarely used for enjoyment, people are unlikely to be confused of his intentions, and it has a function that water does not provide, logic would seem to allow its use for hygiene just like water. Nevertheless, it is quite possible that anything that is under the category of sicha is forbidden even when it does not share the reasons for stringency. The Mishna Berura (554:28) might imply this, as does the common ruling/practice to forbid roll-on deodorant on Yom Kippur.

Still, the above makes it easier to permit the use of soap based on need. The Shulchan Aruch (OC 614:1) says that it is permitted to do sicha for a sick person. It is logical (albeit, arguable) that it should be similarly permitted to take action to prevent disease, which health experts say soap does. Certainly, circumstances impact the degree of need to use soap. It also seems hypocritical for one whose use of soap is inconsistent to pick Yom Kippur to be careful about it. However, we believe that halacha permits use of soap on Yom Kippur in cases where a basic level of hygiene calls for it. One should use simple, not luxurious, soap, and it is even better to dilute it to the point that it has a water-like consistency (see Dirshu 614:1 in the name of Ohr L'tzion).

39. Fitting in Birkat Kohanim of Neilah on Yom Kippur

Question: If it will be difficult to get to *Birkat Kohanim* (*duchening*) of *Neilah* on time, is it better to rush the *davening* or should we just not do it under these circumstances?

Answer: The practice of doing Birkat Kohanim (=BK) at Neilah is found in a mishna (Ta'anit 26a) and accepted by the Shulchan Aruch (Orach Chayim 623:5). The Rama (ad loc.), though, says that the minhag is not to do so. The Bach (OC 623) and Mishna Berura (623:8) say that this is because BK ends up being at night too often. The Gra (ad loc.; see Sha'ar Hatziyun 14) explains that since the mishna says to do BK also at Shacharit, just as our minhag is not to do it then, we do not do it at Neilah either. Ashkenazim outside Israel do not, for the most part, do BK at Neilah; in Israel, the minhag is to do so. This makes sense according to the Gra, who shaped many Israeli minhagim. Since BK is done every day, including at Shacharit of Yom Kippur, it is done at Neilah.

Is there a clear need, in light of the minhag in Israel, for BK to be done during the day, as you (and the Bach) assumed? The Yerushalmi (Ta'anit 4:1, cited by the Rosh, Yoma 8:20) brings a machloket as to whether Neilah is prayed after nightfall following Yom Kippur (Rav) or only during the day (Rav Yochanan). It asks on Rav from the fact that BK is said at Neilah, positing that BK cannot be done at night because it is compared to the service in the Beit Hamikdash, which is done in the daytime only. The Rambam (Tefilla 1:7) and Shulchan Aruch (OC 623:2) rule that Neilah must be done before the setting of the sun. According to the Yerushalmi's linkage, then, BK would also have to be during the day. The Maharil, though, says that BK can be done at night. He explains that parts of the service in the Beit Hamikdash could continue into the night. The Sheilat Yaavetz (51) supports the Maharil's position by pointing out that there are Rishonim who rule like Rav and thus do not accept the linkage between BK and the avoda. These opinions notwithstanding, a clear majority of

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poskim rule that BK may not be done at night (see Yechaveh Da'at VI, 40). The Magen Avraham (623:3) suggests skipping the piyutim said during Neilah in order to get to BK on time and going back to them after the Amida.

Yet, the cutoff point is not as simple as many assume, because is not clear cut, in general and in this regard, that the day finishes at what we call sunset. The Shulchan Aruch Harav (623:8) says that daytime in this regard is until halachic night, tzeit hakochavim, which is at the very least thirteen and a half minutes after sunset. In general when the Shulchan Aruch talks about sheki'a he refers not to the "disappearance" of the sun under the horizon but around an hour later. It is difficult to rely on this latter opinion since most of us regularly do work on Motzaei Shabbat and eat at the end of Yom Kippur before this. However, during the time of bein hashemashot, which we usually assume starts at sunset and extends for approximately 20 minutes, there is more room for leniency. Yechaveh Da'at (ibid.) says that while BK should be skipped at Neilah rather than said after nightfall, it should be done during bein hashemashot if the congregation did not succeed to get it in by sunset. This is because of a sefeik sefeika (double doubt). Maybe BK can be done at night. Even if it cannot be done at night, bein hashemashot is viewed only as a safek of night. This is all the more logical considering that the source of not doing BK is probably only rabbinic.

While in theory, a congregation (in Israel) should consider steps, such as rushing and skipping piyutim, the psychological effect and the impact on the quality of tefilla may preclude going too far. If, then, the congregation gets up to BK modestly after sunset and has to choose between passing up BK or doing it at that time, we would suggest doing it – unless the matter would cause a fight.

40. Intravenous Nutrition on Yom Kippur

Question: How does the potential for nourishing oneself intravenously affect the laws of eating on Yom Kippur? May one who has trouble fasting have an intravenous drip? Should someone who needs to eat use intravenous instead?

Answer: We will start with a discussion of whether intravenous nourishment is a violation of eating on Yom Kippur, which will impact on both questions.

Generally, prohibitions of eating are fundamentally violated by swallowing (see Chulin 103b). However, some hold that in order to fully violate the prohibition of eating on Yom Kippur, a requisite amount must be sitting in one's digestive track (Chatam Sofer, Orach Chayim 127). Therefore, one could claim that it does not make a difference how one is nourished. Nevertheless, besides the Acharonim's strong questions against the Chatam Sofer (see Achiezer III, 61; Chelkat Yaakov, OC 215), all seem to agree that there must also be some normal process of eating (see *ibid.* and Tzitz Eliezer X, 22.21). Ingesting in a manner that one does not get normal enjoyment from the eating process is forbidden rabbinically (e.g., the food is scorching hot) (Rambam, Shevitat Assor 2:5). Several poskim treat intravenous ingestion as the same (Teshuvot V'hanhagot II, 290; Chelkat Yaakov, *ibid.*). However, since not only is it not normal eating but the food does not even go into the digestive track but straight into the blood, it might be even more lenient.

It is true that when pikuach nefesh (efforts to save a life) allows one to violate a Torah law, whether on Yom Kippur or if he must eat a forbidden food, he should do so in a manner that is least severely forbidden (Yoma 83a; Kritot 13a). Nevertheless, poskim do not require one to ingest intravenously instead of eating, and several reasons are given: 1) If one has to insert the catheter on Yom Kippur, this might be as severe a violation of halacha as the eating itself (Igrot Moshe, OC IV, 101.3). 2) It is likely more healthy to eat food through the mouth than intravenously (*ibid.*, OC III, 91). 3) It is possible that the chemicals, the pain and/or infection could be harmful (see Maharsham I, 123). 4) In general,

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when pikuach nefesh allows one to violate a Torah law, efforts to reduce the severity of the violation are likely only rabbinic (Kiryat Sefer, Ma'achalot Assurot 14). For this or other reasons, one does not have to find unnatural ways to obviate the need for pikuach nefesh (Minchat Shlomo I, 7). 5) It might even be considered obviating the Divine decree that one is too sick to fast by taking steps that are not medically indicated (Igrot Moshe, III, 90).

The question of whether someone may take intravenous nutrition on Yom Kippur to not be as affected by the fast is a good one and should be broken up into a few parts. We mentioned that many consider it a full-fledged rabbinic violation, which is certainly forbidden, and Teshuvot V'hanhagot (II, 290) makes an interesting (he admits it is unproven) claim that intravenous nutrition violates a Torah positive commandment to afflict oneself (Vayikra 23:29). Regarding a healthy person, then, there would be no justification. Even if there is no violation, it still seems like something novel against the spirit of the law, which would itself be a bad idea in general and certainly on Yom Kippur. However, if he is sick enough to be bedridden, which in general is enough to allow the violation of at least some rabbinic laws (see Shulchan Aruch, OC 328:17), it might be permitted to do so as well. Regarding such a person swallowing medicinal pills without water, such ingestion is indeed permitted (Shemirat Shabbat K'hilchata 39:8). Regarding one who is legitimately but not dangerously sick who may become sicker by fasting, pills or an intravenous line inserted before Yom Kippur or by a non-Jew might be permitted (Igrot Moshe, III, 91; Teshuvot V'hanhagot, *ibid.*). Someone who is in that situation or knows that he fasts horribly should discuss alternatives with his personal rabbi, as neither unnecessary "torture" nor improper leniency in this matter is appropriate.

41. Havdala on Yom Kippur Which Falls on Shabbat

Question: I know that Havdala after Yom Kippur is different than it is on Motzaei Shabbat. How do we treat matters when Yom Kippur falls on Shabbat?

Answer: How to treat Havdala after Yom Kippur that fell on Shabbat depends on the logic of each individual element of Havdala. We will proceed according to the order of Havdala.

In such a Havdala we do say the p'sukim that precede Borei Pri Hagefen like after a regular Shabbat (Mateh Ephrayim 624:5; Shemirat Shabbat K'hilchata 62:27).

The accepted reason for the beracha on besamim in Havdala is that one loses his neshama yeteira (literally, extra soul) when Shabbat ends and the besamim help revive him (Tosafot, Beitza 33b). After Yom Kippur this does not apply because there is no neshama yeteira on Yom Kippur (Shulchan Aruch, Orach Chayim 624:3; see Beit Yosef, ad loc.). The Shulchan Aruch (ibid.) says that even if Yom Kippur falls on Shabbat, the fact that it is a fast day means that there is no neshama yeteira (see Rashi, Beitza 16a who connects between neshama yeteira and eating). However, many (especially, Ashkenazic) poskim argue with the Shulchan Aruch, as the coinciding of Yom Kippur should not take away the innate kedusha of a regular Shabbat (see Mishna Berura 624:5 and Sha'ar Hatziyun 624:6). The Taz (624:2) points out that it is certainly not a beracha l'vatala to make the beracha on besamim, as one makes a beracha any time he purposely smells such a fragrance. The question is mainly on saying it in its regular place where it gets in between the beracha on the wine and its drinking (thus raising hefsek questions). Regarding practice, there is no right or wrong answer for Ashkenazim, as there are minhagim either way (see Mishna Berura ibid. and Shemirat Shabbat K'hilchata 62:28). If one smells the besamim and makes the beracha after drinking, there is little to lose (Shemirat Shabbat K'hilchata, ibid.). Sephardim certainly should not go against the Shulchan Aruch's ruling and should not make the beracha during

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Havdala. However, Sephardim may make the beracha after drinking if they like (see Kaf Hachayim 624:9; Mikraei Kodesh (Harari), p. 298).

A final issue is regarding the requirements of the fire for the beracha of Borei Me'orei Ha'esh. There are two reasons to make the beracha on Motzaei Shabbat. One is that fire was discovered on Motzaei Shabbat (Rosh, Berachot 8:3). The other is that it becomes permitted to use fire, which was restricted on Shabbat. The former does not apply after Yom Kippur that falls during the week, so that the latter becomes the main idea after Yom Kippur. Due to this distinction, specifically after Yom Kippur it is necessary that the light the beracha is made on existed on Yom Kippur and people refrained from using it (Pesachim 54a). That is why people use a flame that was lit from a 'yahrtzeit candle' which was lit throughout the day. When Yom Kippur falls on Shabbat and there is also the first reason to make the beracha, a new flame that was lit on Motzaei Shabbat should suffice (Ritva, ad loc.). However, opinions do exist (such as the Magen Avraham 624:7) that one should still use a light that existed and was not used on Yom Kippur, in order to stress the fact that on Yom Kippur it was forbidden to use fire. The Mishna Berura (624:7), while not being impressed by this argument (see Sha'ar Hatziyun 624:9), notes that the minhag is to be stringent on the matter. However, he says that if one makes the beracha not on a new fire that was created by friction but from a flame that was transferred from it, one may certainly be lenient. (Note that this condition is fulfilled normally when one uses a match to light the Havdala candle.) Nevertheless, there are still people who are careful to use the yahrtzeit candle system (Shemirat Shabbat K'hilchata 62:35). Unquestionably, one who does not have such a flame available should make the beracha normally.

MOADIM SUKKOT

42. Asking Someone to be His Shaliach (agent) to Hold the Arba Minim

Question: If a person is in a place where arba minim (lulav, etrog, etc.) are unavailable, can he fulfill his mitzva by asking someone to be his shaliach (agent) to hold the arba minim?

Answer: The mitzva of arba minim on Sukkot is a classic example of a mitzva sheb'gufo, a mitzva that devolves upon the body of the one who performs it, for which shelichut is ineffective (Tosafot Rid, Kiddushin 42b - see K'tzot Hachoshen 182:1). Thus, one must put the arba minim in his own hand. Likewise, one has to sit in a sukka himself and put tefillin on his body.

Follow-up Question: If anything that one needs to do with his body cannot be done by means of a shaliach, how can one make a shaliach to light Chanuka candles?

Follow-up Answer: We see you want us to get deeper into the lomdus (halachic analysis) of the concept and parameters of mitzva sheb'gufo. Firstly, we should admit that there is at least one opinion that when there are not enough arba minim to go around for a community, one person can hold it on behalf of the rest (Yad Hamelech, cited by Shut Chatam Sofer, Orach Chayim 182). This opinion is rejected, mainly because of the concept of davar sheb'gufo, as we explain further. Alternatively, the gemara (Sukka 41b) learns from the pasuk “u’lekachtem” (you [plural] should take) that every individual must take arba minim himself (see Chatam Sofer ibid.).

So, why does the Tosafot Rid consider arba minim a mitzva sheb'gufo, while lighting Chanuka candles is apparently not. The K'tzot Hachoshen (ibid.) makes the following distinction between various types of mitzvot in our regard. The main point of some mitzvot is to do an action. In such a case, we say that a shaliach's action on another's behalf relates to the meshale'ach (the one who asked him to do it), who fulfills his mitzva. Mitzvot whose fulfillment is m'meila (by itself) when a certain situation exists do not lend themselves to the transference principles of shelichut. One of his examples follows. It is true that if a shaliach attaches tefillin

to someone's head, we treat it as if the meshale'ach did the action. However, that is insufficient for fulfillment of the mitzva. If you were to put tefillin on your friend's head, he would fulfill the mitzva, not you, for the fulfillment is in the tefillin being on one's head. That is the case when a shaliach puts tefillin on his own head on your behalf. Although his action is like yours, his body remains his own, and the right action in the wrong place is of no value to you. The same is true with mitzva of arba minim, which requires them to be in your hand. (Mishneh Halachot III, 145 says that we know that the essence of arba minim is the situation, not the action, only from the limud of Sukka 41b).

One can distinguish this from the case of Chanuka candles in a couple ways. One way is to say that the main mitzva of Chanuka candles is the action of lighting (Mishneh Halachot, *ibid.*). However, your assumption is not exact. A shaliach cannot independently fulfill the mitzva of Chanuka lighting on your behalf; he must light the candles in your house (Minchat Shlomo II, 58). In that way, it is similar to someone else putting tefillin on your head, which works even for a mitzva sheb'gufo. (The difference is that Chanuka candles has an action element and thus requires a valid shelichut, whereas anyone may attach tefillin to your arm and head (see Har Tzvi, OC I, 23).)

A different formulation is found in Minchat Asher (Weiss), Bereishit 15. Rav Weiss distinguishes between a mitzva whose main purpose is the action, in which case a person must do it himself, and a mitzva whose main point is arriving at a result, in which case someone else can help him arrive at the result. (See there for further insight and distinctions, including treatment of "complex" mitzvot that include both elements).

43. Conditions on Keeping a Restaurant Open During Sukkot

Question: I own a kosher restaurant and would like to keep it open on Sukkot. However, there is no place for me to put a sukka. May it operate anyway, and, if so, are there conditions I must meet?

Answer: You do not want your restaurant to be responsible for people eating improperly. While a woman eating in a sukka is optional, a male is generally forbidden to eat a meal outside the sukka. On the other hand, is it your job to play police any more than you do regarding people making berachot on the food? Actually, there is a difference between the issues. Normally, you provide your customers with kosher food, which is the most you can do. Regarding many people, you can assume they will make berachot as they should, and if there is someone who you are sure will not, he would act the same wherever he eats! (This is a simplified treatment; see also *Minchat Shlomo* I, 35). Here, though, some of the customers would likely eat in a sukka at home or another kosher eatery if yours is closed.

Let us take a look at the prevalence of people who are exempt from eating in a sukka. Travelers, even for non-mitzva purposes, are exempt from sitting in the sukka during their travels (*Shulchan Aruch*, *Orach Chayim* 640:8). That may apply to many men who will visit your restaurant. There are limitations on the use of this leniency (see *Igrot Moshe*, *OC* III, 93, who is particularly strict). The most important one is that it must be that he does not have easy access to a sukka (*Mishna Berura* 640:40). Even if you can assume that most people do not need a sukka (which we cannot determine from here), it will not help when you recognize people as locals, who prefer your cuisine to their sukka.

Anyone may eat outside a sukka when he is not having a halachically recognized set meal (*Shulchan Aruch*, *OC* 639:2). This means eating bread the size of an egg, but also applies to foods from the major grains (foods upon which one makes *Mezonot*, except for rice) eaten in a serious manner (*ibid.*). Exactly how much one has to eat of non-bread products is a matter of

dispute, as is the question of whether other foods can be eaten in a meal-like manner outside the sukka (see Mishna Berura, ad loc.:16; Biur Halacha, ad loc.; Teshuvot V'hanhagot I,178). If you wanted to use this avenue of leniency, there is what to talk about with a reasonable amount of improvising (which we could try to help you with). If you set up a situation whereby you have reasonable options that can be eaten out of a sukka, then you could even serve some bread with a visible note that says that those who need a sukka should have less than x amount of bread. Then you can use the rule of teli'ah, that you may assume that an object you give someone will be used properly if there is a reasonable possibility that this is the case, even if the person may be apt to use it in a forbidden manner (see Avoda Zara 15b). This idea would help regarding most scenarios of take-out.

It is usually problematic to get paid for work done on Chol Hamo'ed, but it is permitted when done for ochel nefesh (to facilitate eating on the chag) (see Biur Halacha 542:1). While it might be against the spirit of the law to use a leniency for the needs of the chag in a manner that lessens the mitzva of sukka, halachically, it is still ochel nefesh.

Let us summarize as follows. If you are in a place that lacks kosher eateries, it would be religiously worthwhile to use legitimate leniencies to stay open and try to arrange things so that few if any people will violate their obligation to eat in the sukka. If there are plenty of options with a sukka (in which case, the volume of customers at a kosher restaurant without a sukka would not be that great), it would be best to give yourself and your workers a deserved rest on the chag. (We also would understand if your hashgacha would not allow you to open.) However, in these difficult economic times, we do not want to rule out the possibility of working things out, as we began to outline.

44. Problem with the Lulav and Etrog After the First Day

Question: Which of the problems with the *arba'at haminim* (“lulav and *etrog*”= 4 min) are problems after the first day and which are not?

Answer: The gemara (Sukka 29b) comments that the mishna implies that each p’sul (disqualification) it lists for a lulav applies even on “the second day of Yom Tov.” It says that a dry lulav is a problem on the second day because it lacks *hadar* (Rashi- doing the mitzva in a sufficiently aesthetic way). But, asks the gemara, why is a stolen lulav *pasul*, since the Torah writes the requirement that the 4 min be owned by the one performing the mitzva only in regard to the first day? It responds that stolen 4 min are *pasul* because of mitzva *haba’ah b’aveira* (a mitzva that was facilitated by the violation of a transgression). The apparent conclusion from this gemara is that lack of *hadar* is a problem throughout Sukkot, whereas matters of ownership are not when it does not involve an *aveira* such as stealing.

A later gemara tries to reconcile one Amora’s ruling with another’s action. According to one account, Rav said that an *etrog* that mice nibbled on is *pasul*. Yet, R. Chanina (believe it or not) bit from an *etrog* and then used it for 4 min, which should be a problem of an *etrog* that is missing a piece (*chaser*). The gemara explains that R. Chanina did so on the second day of Sukkot. Regarding the mice, there are two contrary suggestions. One is that Rav said it was *pasul* because it is particularly unseemly and unfit even on the second day. The other is that the nibbled *etrog* is sufficiently *hadar* and is fit on the second day. From this gemara we see that *chaser* does not make 4 min unfit beyond the first day of Sukkot.

The Rambam (Lulav 8:9) seems to posit that the latter gemara supercedes the former and states broadly that any p’sul that is based on a blemish disqualifies 4 min only on the first day. The Magid Mishneh (ad loc.) comments that problems related to the identification of the species (eg. grafted *etrog*, *hadas* without

tripled leaves) or its size item remain a problem. The Shulchan Aruch (Orach Chayim 649:5), whose rulings are accepted by the Sephardic community, accepts the Rambam's opinion.

The Rosh (Sukka 3:3) incorporates both gemarot and says that the only differences between the first day of Sukkot and the rest are borrowed 4 min and chaser. Lack of hadar always renders 4 min, pasul. He explains that the rabbis extended the p'sul of more central flaws of the species' status even to the days when the mitzva of 4 min is only rabbinic. (Why hadar, which the Torah mentions only in reference to etrog, is more central than chaser for all species is a good question. However, it is a fact, according to this approach.) The Rama (649:5), who reflects Ashkenazic practice, accepts the Rosh's opinion and disqualifies dry or blighted 4 min. The Rama says that in the famous case where the pitam (the etrog's stem) falls off, it is an example of chaser. However, the Mishna Berura (ad loc.:35) cites an opinion that a removed pitam is a matter of hadar and is a p'sul throughout Sukkot. He suggests being stringent except where another etrog is not available. Then one can rely on the combination of the opinions of the Rambam, who permits even a non-hadar, and the Rama, who says a fallen pitam is only a problem of chaser.

Another interesting machloket is the status of the second day of Sukkot, outside Israel. On the one hand, the mitzva of 4 min is only rabbinic that day. On the other hand, in most ways we treat the second day as if it might be the first day (most classically, by treating it like Yom Tov). Once again, the Rambam is lenient regarding the p'sulim that do not apply on the rest of Sukkot and the Rosh gives it all of the first day's requirements. The Shulchan Aruch and Rama treat it as a doubt (ibid.) and say that if that is all one has, he should take those 4 min without a beracha.

MOADIM CHANUKAH

45. Latest Time to Light Chanukah Candles

Question: I will be working late on Chanuka and will arrive home around 10 or 11 PM. Can I light with a beracha when I come home (note - I live alone)? If not, can I do so at work?

Answer: Firstly, one may not light at work with a beracha. The mitzva is really only in a home. Although a minhag extends the practice to a shul (Shulchan Aruch, Orach Chayim 671:7) and some apply it to large gatherings of Jews, such as weddings (see Piskei Teshuvot 671:15), at a simple workplace even with several Jewish workers one may not light with a beracha.

One option that you did not mention is to ask (or hire) someone to light for you as your agent in your house. This is possible if you have a place (practically, probably a window to the street lower than 30 feet) where passersby can see the lit menorah. However, this option has drawbacks. The Magen Avraham (676:4, accepted by most poskim, including the Mishna Berura 675:9) says that if a man lights a menorah for a woman in her house, he can make the berachot only if she is there. Different understandings of the rationale and parameters of this ruling exist. Mikraei Kodesh (Frank- Chanuka 23) says that the first beracha, which is a standard beracha before performing a mitzva, can be made in any case. The matter is only in regard to “she’asa nissim...” and Shehecheyanu (on the first day), which are connected to seeing the publicizing of the miracle. They thus can only be made by, or in the presence of, he to whom the mitzva applies. Igrot Moshe (OC I, 190), agreeing with the thesis, points out that if the agent already lit for himself, he may not make that beracha again and if he makes it first for his friend, he will be unable to make it in his own house. Others say that the Magen Avraham does not even allow the first beracha (Minchat Shlomo II, 56). Note though that even if the agent does not make the beracha out of doubt, the mitzva itself was certainly fulfilled (if people can see the candles). It is also generally preferable to do a mitzva oneself and therefore we will explore if you can fulfill the mitzva when you come home.

Regarding lighting late, there are two opinions in the gemara (Shabbat 21b) regarding whether there is a deadline for lighting

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during the night, namely when people stop walking around outside, which used to be half an hour into the night. The Shulchan Aruch (OC 672:2) says that one lights even if that time has passed, and many assume it is with a beracha (see Magen Avraham ad loc.:6). In contrast to Talmudic times, there is now more room for flexibility for two reasons. In many of our neighborhoods, people walk around late at night and thus it is possible that the deadline is later than 11 PM (we cannot judge from here). Secondly, for most people, who light inside their homes, the main element of the mitzva is to publicize within the home (Chayei Adam 154:19). Therefore, the Mishna Berura says that if people are awake in the home, one can light with a beracha even after the general deadline. However, he says, if everyone is sleeping and it is impractical to wake them for one's lighting, he should not make a beracha, although one who makes the beracha need not be stopped (Sha'ar Hatziyun 672:17). In your case, since you are the only one there, it should be like the situation of doubt. However, there are strong indications that since your household is regularly just one person, lighting for yourself would be considered a legitimate lighting under those circumstances and would warrant a beracha (see *ibid.* and Chemed Moshe 672:3).

In summary, if you light in a neighborhood where people do not walk around late at night and passersby can see your menorah, it would be good if possible for someone to light for you at the regular time and for you to light later, both without berachot. Otherwise, you can just light for yourself when you come home with a beracha.

46. Davening Mincha Before Lighting Candles on Erev Shabbat?

Question: I know that some people have begun being careful to daven Mincha before lighting Chanuka candles on Erev Shabbat, but shuls continue to have minyanim at the regular time as if it is not a requirement. Should one or should he not daven Mincha first?

Answer: There are prominent, albeit relatively recent sources that indicate that one should daven Mincha first on Erev Shabbat. (During the week, there is hardly an issue since one normally lights at night, which by definition is after Mincha.)

The Sha'arei Teshuva (679:1) says in the name of the Birkei Yosef that Chanuka lights should be done after Mincha because Mincha corresponds to the afternoon daily korban in the Beit Hamikdash and the lighting of the chanukiya/menorah is related to the miracle that occurred with the menorah in the Beit Hamikdash. Since, in the Beit Hamikdash, the menorah was lit after the afternoon korban, that should also be the order in our practice. This logic is not overwhelmingly compelling. First of all, Chanuka lighting is generally a mitzva of the night (which precedes by many hours the next Mincha), not one that is to follow Mincha. Secondly, it is far from agreed upon that the Chanuka menorah corresponds to the lighting in the Beit Hamikdash.

Another prominent source is the Pri Megadin (Eshel Avraham 671:10), who comments in the following context. The Darchei Moshe (OC 671:5) cites Rishonim who say that while usually the Chanuka lighting in shul is done in between Mincha and Maariv, on Erev Shabbat it should be done before Mincha. While the Rama (OC 671:7) says that the minhag is to light after Mincha even on Erev Shabbat, the Magen Avraham (ad loc. 10) says that when time before the beginning of Shabbat is short, one should light the candles first. The Pri Megadim points out that in general, for example when lighting at home, Mincha should be first. He raises the following interesting but difficult logic. Chanuka lighting is to be done at night, and while we do it somewhat early before an

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incoming Shabbat, lighting them makes it night-like, after which it is almost self-contradictory to daven Mincha.

The Tzur Yaakov (I, 136) objects to the Pri Megadim based on two strong questions. First, if the people whom the Rishonim discuss are davening Mincha in shul close to nightfall, apparently they already lit Chanuka lights at home previously – i.e., before Mincha. As far as the logic is concerned, he asks that if lighting Chanuka candles is like ushering in night, how can we light Shabbat candles afterward?

Besides the questions, we should remember the idea of davening Mincha first is not based on classical sources, nor is it clear that it was meant to be binding. Despite all of the above reservations, Acharonim (including the Tzur Yaakov) find it difficult to dismiss the prominent opinions. The Mishna Berura (679:2) roughly describes it as the preferable thing to do.

The great majority of poskim say that it is worthwhile only if one can daven earlier with a minyan (see Yechaveh Da'at I, 43). If one is dealing with a community which is very geographically centralized (certainly including yeshiva dorms), then it is possible to make the pre-Shabbat minyan some 20 minutes earlier than usual, thus allowing people to go back and light after Mincha. (One would not want to make that Mincha so early that people might mistakenly light before that Mincha, before the earliest time one can light.) If we are dealing with a large community, it is possible to have a very early minyan for Mincha, which can be used for those who want and are able to follow this stringency, and a regular minyan at around the regular time. We would suggest to the individual to make a small effort to attend the earlier minyan. (If he does, he also gains the advantage of probably having less pressure before Shabbat.) It would seem wrong, in standard communities, to have only a very early Mincha and thereby reject the quite accepted minhag (as apparent from several written sources and from personal experience) that one lights and then goes to shul for Mincha.

47. Chanuka Candles and Havdala – Which Comes First?

Question: I never got a clear answer as to whether, on Motzaei Shabbat, we light Chanuka candles before or after Havdala. Can you clarify the matter?

Answer: In terms of practice, we can clarify only a few things. The minhag in shuls is to light Chanuka candles first (based on Terumat Hadeshen 60, Shulchan Aruch and Rama, Orach Chayim 681:2). Regarding the home, Sephardim do Havdala before Chanuka candles (Kaf Hachayim, OC 681:4; Yalkut Yosef; Mikraei Kodesh (Harari), Chanuka 11:10). Among Ashkenazim, some schools of thought have clear rulings (which vary one from another); we will not provide lists of the opinions. However, the standard approach, to which we subscribe is that this is a case where one may follow the approach he wants (see Mishna Berura 681:3). We note that not only are both approaches well grounded, but also the question is only of preference; following the “incorrect” approach is not a “violation.” We will survey some of the indications presented by prominent protagonists.

The Terumat Hadeshen’s reason for lighting Chanuka candles first is the gemara’s (Pesachim 105b) concept that we delay Havdala (i.e., put it at the end of the series of berachot) and, thereby, the exit of Shabbat, so that Shabbat not appear as a burden. The Taz (OC 281:1) counters the Terumat Hadeshen’s assumptions on two fronts. First, he argues that tadir kodem – a more common beracha is recited before a less common one – is a stronger factor than delaying the end of Shabbat. Additionally, argues the Taz, doing Chanuka candles before Havdala is not even a correct application of delaying the end of Shabbat. This is because lighting candles itself contradicts the continuation of Shabbat, for if it were still Shabbat, lighting a candle would be forbidden.

The following discussion in Tosafot (Shabbat 23b) can shed light on the relative strength of the factor of tadir kodem. The gemara says that if one has enough money only for Chanuka

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candles or wine for Kiddush (which is more tadir), Chanuka has precedence because pirsumei nisa (publicizing the miracle) is more important. Tosafot asks why, regarding Rosh Chodesh on Chanuka, we read the haftara of Chanuka, yet read the Torah portion of Rosh Chodesh before that of Chanuka. Tosafot's first answer, which the Taz cites as support, is that the advantage of pirsumei nisa prevails when only one of the mitzvot can be fulfilled, whereas tadir kodem is the key factor regarding the order when both are done. However, points out the Eliyah Rabba (681:1), Tosafot's other two answers diminish the importance of pirsumei nisa only regarding the Torah/haftara readings. This implies that when pirsumei nisa applies, as it does to Chanuka candles, it has order precedence over the more common Havdala.

R. Yaakov Emden (Mor U'ktzi'ah 681) rejects the Taz's claim that lighting Chanuka candles contradicts the idea of delaying Havdala/end of Shabbat. He points out that after Havdala in davening or Hamavdil, we are allowed to do work (including Yom Tov candles and Borei Me'ore Ha'eish) before doing Havdala over wine, and yet we delay the beracha of Havdala.

Some cite a proof that Chanuka lighting precedes Havdala from the Yerushalmi (cited by the Shulchan Aruch, OC 581:1), that one should not use the Chanuka candles for Borei Me'ore Ha'eish. This implies that the Chanuka candles are lit first.

Is there any logic, other than minhag, to switch the orders in shul and at home, as Sephardim and some Ashkenazim do? The Maharal (Ner Mitzva, p. 28) cites, as a reason to do Havdala first, the concern that one who did not say Havdala in Shemoneh Esrei will light in violation of Shabbat. The Eliyah Rabba points out that in shul, we trust that the person appointed to light will be a diligent person who will not forget. It is also possible that since pirsumei nisa is a heightened element and exists for a shorter time in shul, we do it as soon as possible. The Kaf Hachayim (681:4) claims that after men have heard Havdala in shul, delaying the one at home is less important.

MOADIM

PURIM

48. Ranking Mishloach Manot Stringencies

Question: I have heard so many opinions about mishloach manot requirements (enough for a meal, different berachot, cooked food, etc.). Which are necessary?

Answer: We will refer to the practices you mention and a few others (not exhaustive), categorizing them according to our appraisal of the *chumrot*.

Proper to Be Careful (strong opinions require them)

Respectable quality/quantity – The *gemara* (Megilla 7b) tells of Amoraim sending simple foods and sharp spices, respectively, and a colleague implying that this was inappropriate. Many explain that *mishloach manot* are supposed to foster warm relations and/or that they are for *seudat Purim* use (see Shut Chatam Sofer, Orach Chayim 196). Therefore, it can be expected that *poskim* say the *manot* should have some importance (Aruch Hashulchan, OC 695:15) and perhaps that this is magnified by the giver and/or the recipient's affluence (Ritva, Megilla 7a; Chayei Adam 155:31; Be'ur Halacha 695:4). The opinions (see citations in Yalkut Yosef, Moadim, p. 329, Mikraei Kodesh (Harari) 12:4) that one person's *mishloach manot* should suffice for some level of an independent meal (as opposed to an enhancement) are fewer and weaker.

Ready to be eaten – The Magen Avraham (695:11) requires that meat that is given be cooked. The logic is that raw food misses the mark, as the recipient cannot enjoy it without effort. The Mishna Berura (695:19) cites this as the main ruling, while noting that there are distinguished lenient opinions. (Some mistakenly understand that one must give cooked food. Actually, the issue exists only for food that is inedible raw.) While important *poskim* are lenient (Yalkut Yosef, *ibid.* p. 318), it would be strange not to follow such an easily-followed logical stringency.

One May Want to be Careful (minority strict opinions with a measure of weight)

Drinks do not count – Some claim that *manot* refer to solid food, not drinks. However, the *gemara* (*ibid.*) that tells of a rabbi who sent a nice portion of meat and a barrel of wine indicates drinks are fine (Terumat Hadeshen I:111), as the Magen Avraham (*ibid.*) and

Mishna Berura (ibid.) rule. According to a minority opinion's reading of the Yerushalmi's version of the aforementioned story, those *manot* were insufficient because drinks do not count.

Kedushat shvi'it – The Ben Ish Chai (Torah Lishma 193) includes *mishloach manot* in the prohibition of using *Shemitta* produce for paying various debts (Rambam, Shemitta 6:10). He applies this not just to fulfilling the basic *mitzva* of *mishloach manot* but even to giving to those who have already given to you. Many are lenient (see Minchat Yitzchak X:57), apparently including our mentor, Rav Shaul Yisraeli (see Mikraei Kodesh 12:(31)). Some are *machmir* only to the extent that without the *shvi'it* produce, he has not fulfilled the *mitzva* (Mishnat Yosef, cited in Minchat Yitzchak ibid.).

Separate utensils – the Ben Ish Chai (I, Purim 16) says that whatever is in one utensil counts as one *mana*. This is difficult concerning foods that are, by their nature, unrelated (as opposed to something like assorted candies in a container – see Hitorerut Teshuva I:126). However, probably partially in deference to the Ben Ish Chai's stature, several Sephardic *poskim* endorse this stringency *l'chatchila* (Yalkut Yosef, ibid. p. 330).

Unwarranted Stringency

Foods of different *berachot* – The *manot* must be unique. Most *poskim* say not to suffice with one food separated into two portions (even if each is big). However, the idea that foods' *berachot* are an indicator of being separate is contradicted by many prominent sources and is illogical (meat and juice share a *beracha*; different types of potato chips do not).

The stringencies are meant to ensure one fulfills the formal *mitzva* and are not always indicative of the *mitzva*'s goals. Therefore, if you give “halachically *mehudar*” *mishloach manot* to one person, the idea of giving to many people to cultivate friendship (Shulchan Aruch, OC 695:4) can be done in any way that enhances the Purim spirit. Do not let *chumrot* stifle your energy or creativity.

49. Family Members Requirement in Mishloach Manot

Question: Should my wife and children give their own mishloach manot (=mm) or do the many mm we send suffice for everyone?

Answer: The Rama (Orach Chayim 695:4) says that women are also obligated in mm; they are to give theirs to women, as men give to men. Some poskim (Pri Chadash, ad loc.; see also Gra) disagree, as the megilla talks about a man giving his friend. The great majority of poskim, including Sephardim (Kaf Hachayim 695:56; Yalkut Yosef, Moadim p. 333), support the Rama.

The Magen Avraham (ad loc.:14) reports that women in his time rarely gave mm. He suggests that that only widows are required; a husband who gave to a few people fulfilled the mitzva on his wife's behalf. He implies that if the couple gave to two people (enough to fulfill two people's mitzvot), there is no need to distinguish which mm are whose or that each goes to the correct gender. He concludes that it is proper to be stringent (as does the Mishna Berura 695:25).

Recent Acharonim have discussed how exacting this stringency is. Neither woman nor man is ever required to hand deliver his own mm, which may be sent by a halachic agent or even a non-halachic courier. It is brought in Rav Orbach's name (Halichot Shlomo 19:17) that it is proper and sufficient to discuss with one's wife and mention to at least one recipient that the mishloach manot are [also] on her behalf (see footnote 27, ad loc.). He assumes no one needs to legally own the mm he gives (if he has permission to give it) (ibid.- see discussion in Hilchot Chag Bechag, 13:(16)). Rav Ovadia Yosef (see Yalkut Yosef, ibid.) prefers that the woman herself give a specific mm to a particular woman but does not mention making sure that the food she gives is halachically hers. Still others (see opinions stated in Mikraei Kodesh (Harari), Purim 12:(37)) suggest being more stringent and having the woman make a kinyan from her husband or have others do so on her behalf so that she will own the mm. Even if one is conceptually stringent on this point, in a great many of our families

it is probably not necessary, as spouses' normal arrangement is that their property is owned jointly. Thus, each spouse has a right to claim for him or herself that which she needs for a variety of purposes, including mitzvot (see Bava Batra 137b).

Where the matter is less simple is regarding children who are dependent on their parents for money. Some say that they are not required to give mm separately, as those with full financial dependency do not usually have monetary obligations. Here, it appears that it is more accepted to obligate the children, at least when they are over bar and bat mitzva (Mikraei Kodesh, *ibid.*:15). In this case, the children do not have joint ownership in the family's property and if one wants to follow the opinions that one must own the mm he gives, he or she should use his own money or receive permission from the parents to acquire for himself some food supplies for this purpose.

The Pri Megadim (Eshel Avraham 695:14) says that even children under bar mitzva should fulfill the mitzva as an obligation of chinuch (training). Some want to claim that we fulfill this by having the children deliver their parents' mm (see Piskei Teshuvot 695:15). However, it seems both halachically and educationally sound to give small children supplies to make and deliver their own mm to their own friends. (If they are incapable, they are too young to be obligated.)

In summary, where possible, every member of the family should preferably give at least one mm package. It is a worthwhile stringency to tell them that they, when taking the package, will be acquiring it for themselves to give. It seems unnecessary and, in some cases, is even insulting to tell one's wife that she has to first acquire the provisions before giving hers.

50. The Basis for Giving Machatzit Hashekel before Purim

Question: Please explain the basis and parameters of giving machatzit hashekel before Purim. Specifically, how much must I give, and does everyone in the family have to take part?

Answer: Let us first clarify a few things about the minhag before dealing with specifics. There is a mitzva from the Torah to donate every year (during the month of Adar) a half shekel for the upcoming year's public sacrifices. While this does not apply now, a minhag has developed to give a donation in memory (zecher) of the practice. (It should be clear though that it is only zecher; an attempt to make a real machatzit hashekel would produce hekdedsh coins that may not be used outside the Beit Hamikdash.) Notably, this old minhag (found in the Mordechai, over 700 years ago) was not cited by such basic sources as the Rambam and Shulchan Aruch but is in the Rama (Orach Chayim 694:1). At some point in history, Sephardim have adopted the minhag (see Kaf Hachayim, ad loc. and Yalkut Yosef, Moadim pp. 310-314).

One might have expected that one would give one half shekel coin (see Biur Halacha, ad loc.). However, since the Torah [in last week's maftir] mentions the word "terumah" three times (in the first year of donation, when the Mishkan was being assembled, there were three donations), the Rama says to give three coins. The standard practice is to give half denominations of the local currency; the Rama mentions specific coins appropriate in his time in different places. In our time, the Israeli half shekel and the American half dollar are appropriate, respectively. Since the classical coins from the Beit Hamikdash's times were made out of silver, there are shuls that provide old half dollar coins, which contain a sufficient amount of silver, but this is not a real requirement. These shuls usually allow people to buy the special coins for whatever price they like, and, of course, they donate the coins back to the "pot." Some say that one should give the value of three coins, each of which is worth the amount of a Torah half shekel (approximately 10 grams of silver, which comes out these

days to around \$6 per coin) (Kaf Hachayim 694:20; see Yalkut Yosef *ibid.*). Some people take the opportunity to make more significant donations. (Anything above the minimum amount, according to the various opinions, can be taken from ma'aser money- Yalkut Yosef, p. 314.)

The Rama says that only men above the age of 20 need to give the machatzit hashekel, as the pasuk (Shemot 30:14) seems to indicate (see Bartenura to Shekalim 1:3). On the other hand, the Tosafot Yom Tov (to Shekalim 1:4) says that involvement in the donation for the korbanot applies to all male adults, as the age limit refers to the one-time donation also referred to by the pasuk. The Mishna Berura (694:5) points out that it is customary to give even on behalf of women and young children. A reasonable compromise is for men over 20 to give the larger amount for themselves and give the smaller amount for those whose obligation is based on a stringent minhag.

There are various opinions about the optimal time to give the machatzit hashekel. Although the Mishna Berura cites an opinion to do it before the morning reading of Megillat Esther, the more prevalent minhag is to give it before (or after) Mincha on the day before Purim, which is usually Ta'anit Esther. Indeed, the Kaf Hachayim (694:25) says that the Mincha of the fast is the appropriate time to give this money, which will go to tzedaka. His implication is that even Jerusalemites, for whom the day before Purim is everyone else's Purim, would give the machatzit hashekel on Ta'anit Esther. However, the more prevalent practice seems to be for Jerusalemites to give it at the Mincha before their Purim, except on a Purim Meshulash year, when they give it on Ta'anit Esther (=Thursday- Purim Meshulash 2:1; see Riv'vot Ephrayim II, 194).

51. Purim in Transit

Question: I plan to fly from New York during the night of Purim (after Megilla reading) and arrive in Israel in the afternoon. Would I have to hear Megillat Esther in Yerushalayim before the end of the 14th of Adar, or is it enough that I will hear it there on the 15th?

Answer: If one is, at day break of the 14th of Adar, in a place which celebrates Purim then, he is obligated to hear both the day and night Megilla reading on that day (Megilla 19a). This is so even for a resident of Yerushalayim (sometimes intention makes a difference, but not in this case). This is learned from a pasuk (Esther 9:19) that discusses people who “are sitting in an un-walled city” in addition to residents of such cities. The same is true if he is in an uninhabited area (including a plane over the ocean), as the 14th is Purim for anywhere that did not have a wall at the time of Yehoshua (Rama, Orach Chayim 688:5). If he is subsequently in Yerushalayim on the 15th, he is obligated to hear the Megilla on the 15th as well (Yerushalmi, Megilla 2:3).

Not all agree with the apparent ruling of the Yerushalmi that one can be obligated to hear the Megilla for two days. The way the Korban Netanel understands the Rosh, the Bavli argues with the Yerushalmi and says that the place where one is at daybreak of the 14th sets his status and determines on which one day he will be obligated to read or hear. Therefore, Rav Ovadia Yosef says that one who starts Purim outside Yerushalayim and returns by daybreak of the 15th reads with a beracha on the 14th and without a beracha on the 15th (see Yalkut Yosef, Moadim, p. 306). Rav Frank (Mikraei Kodesh, Purim 19) goes further, saying that even the Yerushalmi required hearing the Megilla on the 15th after hearing on the 14th only if one moved permanently from one place to the other in between the respective reading times. However, we have not found any opinion that exempts one who is outside Yerushalayim on the morning of the 14th from hearing the Megilla on that day due to plans to hear the reading in Yerushalayim on the 15th.

The plan to arrange to hear the Megilla when you get to Yerushalayim toward the end of the 14th raises a few halachic issues. One is that only someone who is obligated in reading on the 14th can read for you. This is based on the Yerushalmi (ibid.), which says that one who celebrates Purim on the 14th cannot read the Megilla on the 15th for those keeping the 15th, because he is considered like one who is not obligated in the mitzva. Rav Frank's (Mikraei Kodesh, Pesach II:66) minority opinion is that the Bavli disagrees with this Yerushalmi, with the logic that the general obligation to read the Megilla along with the concept of responsibility for a fellow Jew's religious obligations suffices to be considered obligated. While there is some basis to claim that regarding the 14th, all are considered obligated (see Yabia Omer, OC I:43.17), the consensus is that the ba'al korei for the 14th should be one who is obligated that day (see Yalkut Yosef ibid.). (His having fulfilled the mitzva earlier is not a problem.)

Eating is also an issue. It is forbidden to eat a meal before fulfilling the obligation to hear the Megilla (Shulchan Aruch, Orach Chayim 692:4), both at night and during the day (Mishna Berura 692:15). While one is allowed to snack, some say that this is only in the case of significant need (ibid. 692:14) and while snacking sometimes means anything less than a k'beitza of bread (ibid.), some say that one should not eat more than a k'beitza of anything (Mikraei Kodesh (Harari) Purim 4:6 in the name of Rav M. Eliyahu). Certainly you would not be allowed to have the Purim Seuda, which you will need, until after Megilla reading. (For mishloach manot and matanot la'evyonim, appointing an agent in advance is likely a wise step – see Living the Halachic Process, vol. I, D-13 regarding some timing issues.)

Due to these complications, most people would probably avoid a trip such as the one you are planning or at least try to arrange to read or hear a valid reading from a kosher Megilla on the plane.

MOADIM

PESACH

52. Checking Books for Chametz

Question: Do one's books need to be checked for chametz or sold before Pesach?

Answer: The gemara (Pesachim 6b), in discussing the need for bitul (nullification of) chametz, says that peirurim (small pieces or crumbs) do not need bitul, as there is no bal yeira'eh (prohibition to possess) because they are insignificant. Important poskim (including Ritva, Pesachim 7a; Pri Chadash, Orach Chayim 444:4; each refers to those who are stringent) understand from here that there is no need to discard crumbs.

On the other hand, the gemara (Pesachim 45b) says that pieces of dough under the size of a k'zayit that are stuck to a utensil (even one not used on Pesach) need to be discarded. The Shulchan Aruch (OC 460:3) requires bitul on pieces of dough that fall while making matza. Several distinctions may impact on the need to remove small pieces and help answer contradictions: dough (requires disposal) vs. bread crumbs (do not) (Magen Avraham 260:2); whether the pieces are clean (Mishna Berura 442:33); whether they are in a prominent place (see Shut Nitei Gavriel, Pesach 1).

You ask not about disposing known peirurim but searching for them, and we note the following halachot. One must check only the type of room that one would enter holding a piece of chametz (see Pesachim 8a with Rashi); we are not concerned about crumbs falling. If a toddler took chametz to a place where bedikat chametz was done and we found peirurim, we can assume the rest was eaten and do not need to re-check (Shulchan Aruch, OC 439:1), despite the likelihood of additional crumbs.

Perhaps the first major posek to require (not just out of piety) checking for crumbs is the Chayei Adam (II:119:6). He learns from the idea of checking in crevices (Pesachim 7a) that bedika is needed for crumbs, reasoning that despite the lack of bal yeira'eh, there is concern one may come to eat them. The Chazon Ish (OC 116:18) goes further, saying that if he does not check for crumbs, they are forbidden after Pesach, and he is perhaps the first to say that one must check his sefarim. This is not obvious from the Chayei Adam, as one does not purposely put food on sefarim and it

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is also unlikely that one would come to eat crumbs stuck to a book or trapped in its binding. The Mishna Berura (442:33), for example, says that everyone agrees that a piece of less than a k'zayit of soiled chametz does not need to be discarded.

The S'fat Emet (Pesachim 6b) proposes other reasons not to check for crumbs: 1) It is too much work for Chazal to have made it necessary; 2) It is anyway impossible to succeed in removing all crumbs. These points lead us to the following observation. What many people call “cleaning” their books in a few hours would not suffice if the obligation was rigorous; it would take tens if not hundreds of hours. While that might be a modern problem (a modern library of bound books is harder to check than a few scrolls), it is still illogical from the perspective of “halachic history” that discussion of the problem of checking books surfaces only in the 20th century.

The practice of some to “shake out” books is reasonable as a stringency (or spring cleaning), but realize that checking books for chametz is no more than that. The idea that some illustrious contemporary rabbanim suggest of selling sefarim to a non-Jew is less wasteful of precious time than properly checking them. However, this is a recent invention not imagined by those who instituted mechirat chametz for selling valuable chametz. How can one be required to sell a valuable collection of sefarim (and raise questions about the sale's seriousness) and take them out of use for Pesach to avoid a problem very few poskim believe exists (see Chazon Ovadia, Pesach p. 38)? My personal choice of halacha/chumra is to clean bookshelves, not to use the same books at the table for during the year and for Pesach, and to sell bentchers. Important sources (see Shulchan Aruch OC 442:6) say not to belittle extra-halachic stringency regarding chametz. However, we oppose making new chumrot with a weak basis.

53. Stovetop Grates for Pesach

Question: How does one prepare stovetop grates for Pesach use?

Answer: As is common for Pesach, the halacha is particularly strict on this matter, and the practice of many is more stringent than the classical sources indicate.

During the regular year, the almost universal practice is to use the same stovetop grates without even cleaning them between milchig and fleishig use. This surprising leniency is based on one or more of the following possibilities. 1) Even if the grates have absorbed taste from spilled milk and meat (and are thus treif), there is no transfer from the grates to the pots that sit on them. In general, there is no transfer from one utensil to another without food or liquid in between them (Shulchan Aruch, Yoreh Deah 92:8). Although when there is spillage there is liquid in between the two, the Chavat Da'at (92:20) says that only the presence of significant liquid has an impact. This does not occur on stovetops, as excess liquid quickly falls down. 2) The ongoing use of the stove with its fire serves as a kashering between the different uses (see Hagalat Keilim (Cohen) 13:(85)). 3) That which falls on it is expected to be burnt up before it can affect the grate (based on a similar concept in Shulchan Aruch, YD 92:6; this is an extremely optimistic assumption in most cases).

We might expect that one could likewise use the same grates without problem on Pesach. Yet, the Rama (Orach Chayim 451:4) says that a chatzuva (tripod, which people used like our grates) requires libun for Pesach (the form of kashering that employs extreme dry heat). There are various attempts to explain the stringency on Pesach. One is that, as opposed to year-long prohibitions where only a discernable influx of taste ruins food, on Pesach, even the smallest transfer of absorbed material renders the food not kosher for Pesach (Shulchan Aruch, OC 447:1). Furthermore, some claim that it is more likely that one will put matza directly on the grate, as opposed to milchig or fleishig during the year. However, the Rama's source, the Mahari Weil (193), seems to justify this by the fact that chametz is a particularly severe prohibition and we are not used to staying away from it.

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Apparently, this is the real and only difference (see Hagalat Keilim ibid. at length).

Because this is a stringency, the Mishna Berura (451:34) says that it is sufficient to do the easier form of libun, known as libun kal, a level of heat that most ovens are presumed to reach at their maximum heat within half an hour. He also says that if one put a pot on a non-kashered grate used during the year, it would not become chametzdic.

Many poskim say that one can choose between kashering the grates and cleaning them from any residue on the outside and then covering them (Hagalat Keilim 13:89). The suggested way of kashering is described by Rav Shimon Eider (Halachos of Pesach, pg. 178) as follows. One cleans the grates, then puts all of the burners on high for 15 minutes with a blech covering them so that they reach a very high temperature throughout. It is also possible to put them into an oven on high for around half an hour. If one puts them in a self-cleaning oven (if this is safe for them), then he covers every imaginable halachic base.

There should be no need to both kasher and cover the grates. (The stove top itself is harder to clean and questionable to kasher and is a different story. Most say to cover it, and we will leave the analysis for some other time.) However, our holy nation is at its most stringent mode on Pesach, and many fine Jews cover the grates with aluminum foil after kashering (Rav Sheinberg is among those who cites this as the standard practice). While we certainly don't mandate this, we do not scoff at the idea either. If only from the perspective of time, it is likely worthwhile to purchase replacement grates for Pesach and spare ourselves of the significant time and work over many years of Pesach preparations.

54. Removing Chametz from "Out of Reach" Places

Question: Often during Pesach cleaning, I am aware of chametz that is in places where it is very hard to get to. Am I required to make every possible effort to get the chametz out?

Answer: Gemaras talk about cases where it is questionable whether one must get rid of chametz that is not readily accessible. The gemara (Pesachim 8a) states, regarding a hole in between the property of two Jews, that each one must put his hand as far as it reaches in search of chametz. Whatever might remain may remain, and bitul (a declaration of nullification) suffices. Similarly, the mishna (Pesachim 31b) says that one does not have to worry about possible chametz underneath rubble. Again, the gemara adds that one should do bitul. If it is known that chametz exists there, he must take steps necessary to remove it unless there are three tefachim (approximately, 9 inches) of rubble on top of it (Tosafot 8a; Shulchan Aruch, Orach Chayim 433:8).

Perhaps the most pertinent gemara for our case is the list of questions about chametz in out-of-the-way places in Pesachim 10b. The gemara presents two possible sides regarding chametz on top of rafters. Perhaps the Rabbis did not inconvenience one to bring a ladder to get it since he is unlikely to come and eat the chametz; or, perhaps it is necessary because the chametz could fall. The gemara then asks that if we are stringent in the former case, perhaps it is unnecessary if the chametz fell into a pit (from which it will not “fall up”). One might still be stringent there because it is possible that he will go down to the pit and eat the chametz.

The Rambam and Shulchan Aruch (OC 438:2) rule stringently on the question of the rafters. Regarding the pit, they are lenient but with the provision that one will do bitul. The Beit Yosef (ad loc.) explains that by doing bitul, one lowers the issue to a maximum of a rabbinic level problem, and then one need not remove the chametz. We do not make him remove that chametz before or during bedika because it is referring to a case where it will take a lot of toil to get the chametz and the fact that it is out of access

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makes it like the aforementioned case of rubble (ibid.; see Mishna Berura 438:15). One cannot put chametz into such a situation purposely (Beit Yosef, ibid.).

In describing the case of the rafters where one has to go to the trouble of removing it, the Rambam and Shulchan Aruch talk about there being a k'zayit (the size of an olive) of chametz. There are poskim who say that if there is less inaccessible chametz than that, there is certainly not a need to go to the trouble of removing it (see Mishna Berura 438:12 and Sha'ar Hatziyun 438:11). Anyway, all of the sources we have seen clearly indicate that if the chametz is in a place where one will not have access to it on Pesach and there is significant difficulty getting to it, one may rely upon bitul chametz (which we do as a matter of course) and leave it where it is.

However, many (most?) of us seem to be more stringent on ourselves in these matters than we might need to be. Why are we so apparently “masochistic”? The source or explanation for the fixation with perfection in our Pesach cleaning is apparently related to the following source. “People have the practice of scraping walls and chairs that chametz touched, and they have what to rely upon [for being arguably needlessly stringent], and if there is chametz in a crevice that one cannot reach he should put a little cement over it” (Shulchan Aruch, OC 442:6). Along the lines of this approach, many normal people do more than what is halachically required to remove every piece or even trace of chametz from different places. So, if you spend several minutes reaching into the recesses of your sofa to get out chametz, you may be more machmir than required, but you are also in good company. Even chumrot should have limits, but these are hard to quantify.

55. Siyum Participation Via Skype

Question: I will be in a small Jewish community in which there will not be a siyum on Erev Pesach. Is it permitted for me (a bechor) to eat based on a siyum in which I “participate” via Skype?

Answer: In the context of the halacha not to fast throughout Nisan, Massechet Sofrim (21:1) says that an exception is that bechorot fast on Erev Pesach. The Tur (Orach Chayim 470) and Shulchan Aruch (OC 470:1) cite this practice as normative, and the Tur explains that it is a remembrance of the miracle that the Jewish firstborns were saved in Egypt.

The idea that seudot mitzva cancel the fast is debated among the Acharonim. The Magen Avraham (ad loc.) does not even allow firstborn to eat at a brit mila; the Mishna Berura (ad loc. 10) reports that the minhag in his time was to allow eating at seudot mitzva, including a siyum. The idea that a siyum can play this kind of role is found in the Rama (OC 551:10), who says that one can eat meat and drink wine at a siyum during the Nine Days.

In these contexts, there is room to distinguish between principals to a seudat mitzva, for whom the day is like a yom tov, and other participants. For example, a sandek can eat on the day of his parent’s yahrtzeit, but a simple participant in the brit may not (Mishna Berura 568:46). Similarly regarding ta’anit bechorot, those who do not allow firstborns to eat at another’s seudat mitzva are lenient regarding a mohel, sandek, and the father of the circumcised baby (Mishna Berura 470:10). Nevertheless, the minhag is to allow all participants to eat at a siyum.

The simple explanation is that their participation makes the celebration more special, thus heightening the ba’al hasimcha’s event. Therefore, participation in the ba’al hasimcha’s meal is the crucial thing. Indeed, some allow even one who missed the siyum to take part in the seudat mitzva (see Teshuvot V’hanhagot II:210). The following distinction would follow the same logical lines. The Minchat Yitzchak (VIII:45) says that when the Chavot Yair (70) allowed having a seudat mitzva the day after a night siyum, he was discussing only a seuda in which the one who made the siyum participates (see also Magen Avraham 568:10).

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There is a gemara which is understood by some (see Az Nidberu XII:58) as turning the participants in the siyum into ba'alei simcha. The gemara in Shabbat (118b-119a) tells of those who were especially emotionally involved in the Torah successes of others, including one who would make a party for the rabbis when a young scholar finished a Massechet. This implies that he was not just helping the learner celebrate, but that he felt the joy to initiate the party. The Minchat Yitzchak (IX:45) says that according to the latter approach (which he discourages relying upon but considers legitimate), it is not required for the participant to eat along with the main party.

It does not seem logical to consider one who “takes part” in a seudat mitzva via Skype as being a halachic participant, certainly not in regards to embellishing the simcha of the one who made the siyum. According to the approach that the observer has a right to celebrate his happiness, it is uncertain but at least plausible to say that witnessing the event via Skype is sufficiently significant. Those who take a surprisingly lenient approach about siyum standards for ta'anit bechorot (including Az Nidberu and Teshuvot V'hanhagot *ibid.*; Yabia Omer, I, OC 26 is quite stringent) rely heavily on the following two factors. 1) The whole fast is a minhag. 2) For many people in our time, fasting would have a significant negative impact on the Seder. While not cancelling the minhag, some seem to lower the bar of who is included in the siyum to enable most anyone to eat. If one feels a need to rely on this approach, Skype participation can also be contemplated. If so, it is better to watch and celebrate as a group and/or to witness a siyum that brings true simcha (e.g., based on connection to the person or level of accomplishment).

56. Shabbat Erev Pesach

Question: What do you suggest we do on Erev Pesach this year, which is on Shabbat, regarding when and what to eat?

Answer: Challa, the staple of the first two Shabbat meals, is also preferred for seudah shlishit (Shulchan Aruch, OC 291:5), which should be held in the afternoon (ibid.:2). Since the prohibition to eat chametz begins after "four hours" (around two hours before halachic midday- consult a local calendar) something must give. Among the valid solutions to the challenges of Erev Pesach on Shabbat, people must determine the most practical solutions, as much as their rabbis have to present the halachic possibilities. One practical assumption is that people will use only Pesachdik and/or disposable utensils, keeping remaining chametz separate. Let's take a meal-by-meal look.

Friday night meal - Halachically, almost anything goes. Those who don't want to worry about keeping chametz around can eat matza according to most poskim. If one has the minhag not to eat matza from the beginning of Nisan, matza ashira, often called "egg matza," is an alternative.

Shabbat morning meal - If one finishes eating chametz (not necessarily the whole meal) by the end of the 4th hour, accomplished by davening very early, matters are halachically simple. (How to get rid of crumbs or leftovers by the end of the 5th hour is very solvable, but beyond our present scope.) Matza is desirable for situations when it is hard or nerve-racking to deal with chametz. However, Chazal forbade eating matza on Erev Pesach, according to most, from the beginning of the morning, so that when we eat it at the seder, it will be clear that it is for the mitzva (see Rambam, Chametz U'matza 6:12). It is permitted to eat matza that cannot be used for the mitzva (Shulchan Aruch 471:2). Matza ashira, which is kneaded with liquids other than water, is the main example (see Pesachim 35a). If it contains no water, then most Rishonim rule that it cannot become chametz, which could take away the need to rush.

Yet there are two issues. Firstly, as Ashkenazim are stringent to treat matza ashira as possible chametz, which is

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permitted to eat on Pesach only in cases of great need (Rama 462:4), the time issue reawakens. (Some poskim rely on the Noda B'yehuda (I, OC 21) that it is sufficient to be wary of matza ashira no earlier than midday of Erev Pesach). Secondly, matza ashira may have a status of pat haba'ah b'kisinin, similar to cake, making it a questionable substitute for challa. (Igrot Moshe OC I, 155 explains that this is not a problem on Shabbat, but still seems to prefer challa when it is convenient. To see Rav Ovadia Yosef's preferred solution, see Yechave Da'at I, 91).

Seuda shlishit - We mentioned the two preferred opinions about how to perform seuda shlishit, which conflict this Shabbat. One is to eat bread at seuda shlishit. The other is to have seuda shlishit after midday, at which time chametz and matza are forbidden, and even matza ashira is a problem for Ashkenazim. The Rama (444:1) says that we eat other foods, such as fruit or meat, at this seuda shlishit. The Mishna Berura (444:8) cites a different solution, of breaking up the morning meal into two, so that one can fulfill seuda shlishit on challah or matza ashira at that time. He points out that there should be some break between the two meals, to avoid a problem of an unnecessary beracha. However, he does not say how long that should be. Opinions range from a few minutes to half an hour, with some suggesting taking a short walk in between (see Piskei Teshuvot 444:6). One who is not usually careful to have challa at seuda shlishit throughout the year need not consider this idea. He can eat a normal seuda shlishit for him (no bread) in the afternoon, preferably earlier than usual to leave a good appetite for the seder. Even those who are stringent about seuda shlishit can feel fine about following the Rama over the Mishna Berura's suggestion, which is somewhat counter-intuitive and not without halachic problems. Sephardim, who can use matza ashira, must do so before 3 hours before sunset (Shulchan Aruch 471:2).

57. Forgetting to Drink Wine While Reclining

Question: What do I do if I forget to drink one of the seder's cups of wine while reclining?

Answer: Our main focus will be on Ashkenazi men. (Many Ashkenazi women do not drink reclined in the first place. Even one who does recline has more room for leniency if she forgot - see Rama, Orach Chayim 572:4. We will present the simpler instructions for Sephardim at the end.)

The gemara (Pesachim 108a) says that, in principle, one needs to recline only for two of the four cups of wine. However, since it could not conclude whether they are the first two or the last two, it instructs to recline for all four. The Rosh (Pesachim 10:20) says that if one was supposed to recline (for matza or for wine) and did not, he did not fulfill the mitzva properly and must eat or drink again. (One does not repeat the element of the seder related to the cup, just the drinking.) However, the Rosh wonders whether it is proper to repeat the third or fourth cup for the following reason. Chazal instituted drinking four cups, not more. Since one is not allowed to drink wine after the third or fourth cup (see Shulchan Aruch, Orach Chayim 479:1 & 481:1), drinking more looks like he is adding a fifth official cup of wine. On the other hand, the Rosh reasons that since he who drank without reclining did not fulfill the mitzva properly, that cup did not count, and one can and should drink another. Therefore, he leaves the question open.

The situation is more complex nowadays for Ashkenazim. The reason to eat and drink while reclined is that it is a manner of showing we are a liberated people, as important people at leisure eat in that manner. The Ra'avya (cited in the Tur, OC 472) says that since, nowadays, important people eat sitting erect, reclining no longer accomplishes the correct effect. The Rama takes this argument seriously. He uses it to explain the minhag of women in his time not to recline (472:4) and as a reason to not require a man who forgot to recline to repeat the eating or drinking. However, the Rama concludes that one should implement the Rosh's distinction. For the first two cups, where one loses little by drinking more, he should repeat. For the latter cups, where there is a problem of

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looking like adding on cups, one should rely on the Ra'avya that drinking erect is sufficient and avoid further drinking which would thus be improper.

The Magen Avraham (ad loc.:7) raises another issue. We discussed that drinking a cup of wine which he normally should not be drinking makes it look like a mandatory cup. It is logical that if one makes an additional beracha on the wine, then it looks formal. Even though one may drink wine between the first two cups, we no longer do so (see Shulchan Aruch 473:3). Therefore, one's intention with the beracha over the first cup is on that cup alone. Since repeating the cup would entail making another beracha, we should rely on the Ra'avya rather than repeat the cup with an additional beracha. Regarding forgetting to recline for the second cup, if one had any thoughts of drinking wine during the meal, another beracha would not be necessary, and it would be preferable to repeat the cup (ibid.). The Magen Avraham says that it is best when drinking the first cups to have in mind that the beracha should apply to any further drinking. The Mishna Berura (ad loc.:21) seems to endorse the Magen Avraham's thinking. Given that the Magen Avraham's criteria are subjective and hard to determine and since the matter is a rabbinic one with a few mitigating doubts, one can resolve ambiguity on the side of leniency (not to repeat).

For Sephardim, the situation is simpler. The Shulchan Aruch does not rely on the Ra'avya regarding women and/or one who forgot to recline. Sephardim also have the beracha on the first and third cups exempt the beracha on the second and fourth. Therefore, a Sephardi who forgets to recline always repeats and does not need a new beracha, at least on the first three cups. (If and when one does repeat, drinking grape juice is a wise choice.)

58. Must One Own Their Own Matza at the Seder?

Question: Someone showed me a gemara that says that one has to own his matza on seder night. Yet I have never seen people being careful to acquire ownership when they have the seder in someone else's home. Can we reconcile the practice with the sources?

Answer: The gemara (Pesachim 38a) does appear to say that one must own his matza. In discussing matza that is made from ma'aser sheni (produce that can be eaten only in Yerushalayim when it possesses a status of kedusha), it says that according to the opinion that ma'aser sheni is considered Hashem's property, one cannot use it to fulfill the mitzva of eating matza. This is derived from the textual comparison between matza and challa taken from dough, which applies to one's own dough. We accept the opinion that ma'aser sheni is owned by its human owner, and thus the question is moot in that regard. However, the concept finds expression in the halacha that one does not fulfill the mitzva with stolen matza, which, according to the Mishna Berura (454:15), is due to a lack of ownership over stolen matza. Therefore, even if one "steals" matza unintentionally and no one cares (e.g., two people mix up their matzot), there is a problem to rectify (*ibid.*).

Why then do we not find people being careful to make a halachic acquisition (*kinyan*) on the matza? In regard to general approach to halacha, it is crucial not only that standard practice ignores the issue but also that the classical poskim are silent on the subject. This phenomenon, called *setimat haposkim*, is also a major halachic factor. Therefore, we do not suggest going out of one's way to be stringent and make a *kinyan* because creating a *chumra* that is clearly a new one on a common matter is not warranted. (Regarding unusual occurrences, it is more reasonable to say that the lack of a source or a *minhag* of stringency is due to a dearth of discussion about rare cases ... but that cannot be said here). Let us, then, explore why there is no problem.

The Sefat Emet (Sukka 35a) suggests that we can apply the Rosh's position that when a groom borrows a ring to effectuate a

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marriage, we assume it was given to him to halachically acquire it, for if not, the marriage cannot take effect. This explanation is somewhat difficult, as many people are not aware that they need to own matza and so the assumption of intention may be unreasonable.

Another idea is that one acquires matza when he makes a change to it by chewing it. He fulfills the mitzva later when swallowing. This does not help for stolen matza (Shulchan Aruch, Orach Chayim 454:4) because there, the chewing, which begins the mitzva, is forbidden. Since the chewing is necessary to acquire the matza, the entire mitzva is disqualified (see Mishna Berura 649:3). This explanation is difficult, because changes to an object alter ownership only in cases like that of a thief, who already did an action of bringing the object into his control; this is missing here. Some poskim (Imrei Bina, Pesach 23; Tzitz Eliezer II, 37) argue with the premise that one needs to own matza. They argue, based on the comparison to challa, that one needs only full permission to freely eat the food, not ownership. Guests and family members certainly have this.

The Mishna Berura (454:15) hints at a strong answer. Intention for acquisition is pertinent when one could either be acquiring or borrowing. If the object will return to its original owner, it is borrowing unless something makes it an acquisition. When one receives matza with permission to eat it, the piece will not return; thus there is effective intention to acquire it. Putting food into or onto one's body is a kinyan (see Gittin 77a). Thus one acquires matza before he swallows it.

So as long as you're not stealing someone's matza, eat it without worries on this account.

59. The Effect of Sleeping on the Afikoman

Question: At our seder, during the meal, some people start dozing off, and some have considered taking a nap so that they will have strength to finish the seder. Isn't there a problem that if you fall sleep, you can't eat the afikoman? Is there a way around that?

Answer: Your assumption has some basis in the sources, but halacha l'ma'aseh, the ruling is much more lenient than you imagine. We will take a look at the primary source and several machlokot (halachic disagreements), and then sum up the practical halacha.

The mishna (Pesachim 120a) says: "If some slept, they may eat; if all, they may not eat. Rabbi Yossi says: If they dozed off, they may eat; if they fell asleep, they may not eat." The mishna certainly refers at least to the eating of the Korban Pesach, and, explains the Rashbam (ad loc.), it is a stringency based on the idea that, after the break of sleeping, it looks as if he is eating in two different places, which is forbidden for the Korban Pesach.

The first machloket to consider is whether this applies only to the Korban Pesach or even to afikoman, the matza we eat at the end of the meal, which is modeled after the korban, which was eaten on a relatively filled stomach. Most Rishonim (including the Rashbam, *ibid.*) say that it applies also to the afikoman, and the Shulchan Aruch (Orach Chayim 478:2) rules this way. The gemara (120b) strongly indicates that this is so, as it tells of an exchange between Abaye and Rabba about whether the latter slept too much to continue eating. Since they lived after the time of the Beit Hamikdash, this would indicate that the halacha lives on regarding afikoman. Tosafot (Pesachim 119b) differs, saying that it applies only to Korban Pesach and says that the gemara was exploring only the parameters of sleeping based on a parallel but different application (the beginning of a fast).

Another machloket is whether Rabbi Yossi, like whom we pasken, who introduced the distinction between dozing off and sleeping, added a leniency, namely, that only when everyone fully sleeps is it a problem (Rambam, Chametz U'matza 4:14). The Rosh (Pesachim 10:34) says he came to be stringent, that if even a

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minority of the group fully sleeps, they may not continue. The latter approach reads more easily in the aforementioned story, and although several opinions agree, the Shulchan Aruch (ibid.) says that only if everyone (or one person eating alone) sleeps is there a problem. Thus, this is not much of a problem, as it is rare that a whole group at a seder actually falls asleep (deeply enough that if one asked him a question, he would not respond- gemara ibid.).

Let us present yet another strong reason that this matter is almost never a problem. Almost all authorities agree that the problem of being in two places applies only to the Korban Pesach and its modern counterpart of the afikoman. However, if everyone falls asleep before the afikoman, they can get up and eat the afikoman (Rama, OC 478:2). Although the Shulchan Aruch sounds like he is stringent on this point, it is apparent from the Beit Yosef that he agrees, as Sephardic poskim understand and rule (see Kaf Hachayim, OC 478:9). Additionally, the Pri Chadash claims that only if one already ate his required k'zayit of afikoman would we tell him to stop eating.

While the problem regarding not being able to eat the afikoman is basically theoretical, it still might be better not to nap. The Kaf Hachayim (OC 473:133) says that it is improper to take a serious break, which includes sleeping, from the beginning of the seder until the end of Hallel. However, this is only a preference and one would have to balance the pros and cons according to his situation. Recall that one who sleeps during a meal should do netilat yadaim without a beracha when he awakens, and if he goes to sleep in bed, he must make Hamotzi again as well (Mishna Berura 178:48).

On the subject of afikoman unnecessary stringencies, we remind afikoman snatchers and snatchees that a lost afikoman may be replaced by another matza (Rama, OC 477:2).

MOADIM

THE SEFIRAT HAOMER PERIOD

60. Does Acknowledging Lag Ba'omer Count as Counting?

Question: If one mentions, before counting omer, that “tonight is Lag Ba’omer” (= the statement), can he subsequently count with a beracha?

Answer: This is one of the cases where we prefer to not have fulfilled a mitzva, so that we can perform it properly with a beracha. While the statement includes the basic elements needed to fulfill the mitzva of sefirat ha’omer, it may not do so for a few reasons.

First, there is an unresolved machloket whether gematria, which is a secondary but accepted way of expressing numbers, is valid for sefirat ha’omer (see Sha’arei Teshuva 489:6; see applications in Living the Halachic Process, I:D-19). The statement (Lag) is thus questionable for fulfilling the mitzva.

Second, the weeks are not mentioned. Acharonim debate whether one who has mentioned only days, has completed his mitzvah, after day seven. The matter relates to Ameimar’s opinion (Menachot 66a) that there is no need to count weeks at a time that there is no Beit Hamikdash in which to offer the korban omer. The Mishna Berura (489:7) concludes that one who says just the days should count again, but this ruling lacks the level of certainty to justify a new beracha (see Sha’ar Hatziyun 489:9). (According to Eliya Rabba (489:14), the full force of missing weeks applies only on days when the number of weeks changes – e.g., 28, 35).

The strongest reason to disregard the statement’s impact is that it is almost certainly said while not having in mind to fulfill the mitzva of sefirat ha’omer. The Shulchan Aruch (OC 60:4) rules that one does not fulfill a mitzva without intent to do so, and therefore the statement should not prevent one from counting afterwards with a beracha. However, the following halacha in the Shulchan Aruch (OC 489:4) seems to contradict this. If one is asked before counting what day of the omer it is, he should answer what day yesterday was, for stating the current day compromises his ability to count later with a beracha. The Taz (489:7) says that

the Shulchan Aruch must mean that avoiding saying the day's count is just a stringency, but, due to the lack of intention, he would b'dieved count with a beracha later anyway. Yet many point out that the Taz's claim does not fit the Shulchan Aruch's language. The Magen Avraham (489:8) says that one would not make a beracha because of the opinion that intention is not critical, and some say that sefirat ha'omer is fulfilled without intention because it is only a Rabbinic obligation (see Yechaveh Da'at VI:29).

While each individual reason to allow counting with a beracha after the statement is arguable, the combination of reasons makes that prospect convincing in two possible ways. First, poskim (including Be'ur Halacha 489:4, Eliya Rabba ibid.) say, in different cases, that when there are specific indications that one intends to not fulfill the mitzva, he indeed does not fulfill it. In the standard case, when "Lag Ba'omer" is used as the name of a semi-holiday as opposed to the gematria of the count, the statement would be precluded from fulfillment of the mitzva, and a beracha could be made later (Kaf Hachayim 489:30). (Note that in gematria, we usually say "Lamed gimmel," not "Lag," and that halachic declarations are not supposed to be made in a mix of languages.) The Mishna Berura (489:22) says that we would accept the aforementioned Taz's logic in cases in which the week should have been mentioned and was not. Second, the coinciding of factors may create enough doubts against the chance the mitzva was fulfilled to justify a beracha. Indeed, we find cases of beracha on sefirat ha'omer when s'feik s'feika indicates its appropriateness (Shulchan Aruch, OC 489:8; Mishna Berura 489:38). On the other hand, that halachic phenomenon likely does not apply to every set of doubts (see Yabia Omer IV, OC 43).

In short, it is unlikely that one has fulfilled sefirat ha'omer by noting the day is Lag Ba'omer. However, it is worthwhile to avoid such a statement before counting and, where easily feasible, to use someone else's beracha if he did.

MOADIM SHAVUOT

61. Eating Dairy on Shavuot

Question: Need one eat milchig on Shavuot? If so, when is one supposed to do so? What steps must he take regarding meat and milk? There are many minhagim and little clarity on the issue.

Answer: We can give you only partial clarity - and an assurance that there are many legitimate ways to fulfill the minhag. The minhag to eat milchig food on Shavuot seems to have emerged in Ashkenazic lands in the time of the Rishonim and is accepted by the Rama (Orach Chayim 494:3). It has begun to be more accepted among Sephardim, at least in Israel, where the dairy industry pushes the minhag aggressively (we wonder why?). The problem is that there are many educated guesses as to the rationale behind the minhag, which impacts on the optimal way to follow it. Also, some good ways of fulfilling it raise halachic problems. It is not surprising then that both rabbis and laymen have developed varied systems. This variety and the phenomenon that people often do as they feel on this not overly crucial matter are reasonable.

The Rama (ibid.) understands that the minhag is to remind us of the Shte Halechem (two loaves of wheat), offered on Shavuot in the Beit Hamikdash. The Magen Avraham (ad loc.:8) explains that by eating both milk and meat in a meal, there will be two loaves of bread with which to eat the food. He says that in keeping with this reason, it is best to bake some milchig bread. Although bread is supposed to be pareve, loaves that are small or are made in a special shape, both of which were customary on Shavuot, are permitted (Rama, Yoreh Deah 97:1). This approach explains why many eat milchig and fleishig at the same meal despite the complications (see below).

Another reason to split a meal between milchig and fleishig parts is that many require a meat meal at night and in the day of Yom Tov (see Rosh, Berachot 7:23 with Ma'adanei Yom Tov; Sha'arei Teshuva 529:2). Others say it is sufficient to have meat in the day. Therefore, those who have one fully milchig meal on Shavuot, do so at night (see Piskei Teshuvot 529:11 & 494:11).

Other reasons for the minhag are based on kabalistic ideas regarding milk (Magen Avraham 494:6), hints of its acronym

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(Aruch Hashulchan OC 494:5), and the idea that after receiving the Torah, Bnei Yisrael required time to be able to prepare kosher meat (Mishna Berura 494:12). According to these approaches, it may be sufficient to have milchig food at any point during Yom Tov, including a snack or kiddush after Shacharit.

One should not compromise the laws of meat and milk in order to fulfill this minhag. Therefore, if eaten in succession, milchig is obviously eaten first. In between the two, one should clean the mouth by eating pareve food and rinsing his mouth and either rinse or inspect his hands (Shulchan Aruch, Yoreh Deah 89:2). He should also change the tablecloth (Mishna Berura *ibid.*: 16). (Most people simply eat the milchig food on a plastic tablecloth on top of the regular one.) Some people are careful to make a full break between milchig and fleishig with Birkat Hamazon (or a beracha acharona for the many who fulfill the minhag with cake) between them (Pri Megadim on Shach 89:6). However, that is a special chumra, not halachically required (*ibid.*; see Mishna Berura *ibid.*; Melamed L'ho'il II, 23). If one does bentch, then there are varied opinions as to how long one should wait before starting the meat meal (beyond our present scope). In brief, it is all but impossible to accept the most stringent approach to the integration of milk into a meat meal while following all the stringencies of the prohibitions of milk and meat (see Igrot Moshe, OC I, 160). Some systems are cumbersome enough for many people to take away from their simchat Yom Tov, cause them to make mistakes, or unnecessarily delay the minhag of learning all night. Therefore, people should continue a family minhag they are comfortable with or adopt one which works for them. One who wants to figure out the most machmir way to do so may be blessed but should be aware of "collateral damage."

62. Morning Berachot on Shavuot

Question: After staying up all night on Shavout, we have someone who slept say the morning berachot on everyone's behalf. Why is this necessary? What happens if we cannot find anyone?

Answer: We must address different categories of berachot, with different reasons and details.

Netilat yadayim and "Asher yatzar"- There are three possible reasons (see Beit Yosef, Orach Chayim 4) for washing our hands with a beracha upon waking in the morning, before davening: 1) Our hands probably got dirty as we slept (Rosh); 2) Because in the morning we are like a new being, we set out on a process of purification and blessing Hashem (Rashba; see Mishna Berura 4:1); 3) We are affected by a ruach ra'ah (evil spirit), which is remedied by netilat yadayim.

Reason 1 does not apply if one did not sleep and kept his hands clean. It is not fully clear whether reasons 2 & 3 apply if one did not sleep. The Rama (4:13) says that although one should wash his hands as usual, he should not make the beracha out of doubt. By listening to the beracha of one who slept, on behalf of others, we avoid the doubt. One who did not sleep but "went to the bathroom" and in so doing touched covered parts of the body also makes a beracha (Mishna Berura 4:30). Reason 1 certainly applies to such a person and the others are likely to apply, as the night passed by the time of alot hashachar (break of dawn, 72 minutes before sunrise). "Asher yatzar" can be said by anyone who recently went to the bathroom.

Birkot hashachar- Most of the series of berachot thanking Hashem for different elements of our lives were originally described as being done as one received the benefit (e.g. putting on shoes, clothes, straightening the body) (Berachot 60b). Nevertheless, our practice is to make the berachot at one time and whether or not we recently received the benefit (Rama 46:8; see Yalkut Yosef regarding Sephardic practice). Therefore even one who did not sleep and did not renew these benefits can recite the berachot, because the praise of Hashem is true in regard to other people. The main issue is with the berachot of "hama'avir sheina" and "elokai

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neshama,” which both focus specifically on awaking from sleep and are recited, at least partially, in the first person. The Mishna Berura (46:24) rules that one should hear these berachot from one who slept. On the other hand, one who makes these berachot despite not sleeping has whom to rely upon (see *Ishei Yisrael* 5:(40) & *Piskei Teshuvot* 494:7), especially if no one who slept is available.

Birkot hatorah (=bht- before the study of Torah)- It is unclear whether the reason one is obligated to make bht every morning is the fact that it is a new day or that his sleep ended the efficacy of the old beracha. Due to this doubt, the Mishna Berura (47:28) rules that one who was up all night does not make bht at daybreak, but hears them from someone who slept. (*Yechave Da’at* III, 33 argues.) However, he accepts R. Akiva Eiger’s idea that if one took a reasonably long nap during the previous day, he makes berachot the next morning despite staying up in the night, assuming he did not make the bht since he got up. This is because he is obligated according to both approaches, as he has slept and a day has passed since his last bht. It is better to use such a person (who are common on Shavuot) than one who put his head down for a few minutes at night. Note that one who sleeps at night makes bht before resuming learning. Thus, he is available to recite them on others’ behalf only if he came to shul when they are ready for the bht or if he did not recite them when he arose. (Note- everyone recites the Torah texts after the bht starting with “Yevarechea”).

Tzitzit- It is unclear if we are obligated in tzitzit at night, and thus whether we need a beracha in the morning. One should be yotze with the beracha on his or another’s talit (Mishna Berura 8:42). What is considered significant sleep may depend on where (bed or chair) and/or how long (opinions range from a minute to a half hour and beyond) he sleeps. The halacha may change from one of the above topics to another (see *Ishei Yisrael* 6:(64)).

63. The Timing on the Beracha on Tzitzit After Being Up All Night

Question: Most people, after learning all night on Shavuot, do not make a separate beracha on their tzitzit but use the beracha on their tallit, when they start davening. Since I do not wear a tallit, should I make a beracha on my tzitzit as soon as it becomes halachically possible?

Answer: We will first discuss the practice of many men to always use the beracha on their tallit to cover the tzitzit they put on earlier.

The Shulchan Aruch (Orach Chayim 8:10) says that one who puts on tzitzit when his hands are dirty from the night should recite their beracha only later – after purposely handling the tzitzit or when he puts on another pair of tzitzit. The Darchei Moshe (OC 8:3) relates the minhag to make a beracha only on the tallit he wears at Shacharit, which also covers the tzitzit. The Mishna Berura (8:24) cites various reasons for the Darchei Moshe's practice. One is that it is wrong to make two interchangeable berachot in close proximity, as one could suffice (beracha she'eina tzricha). The Darchei Moshe (ibid.) was bothered by the possibility that the tzitzit garment will be too small to fulfill the mitzva and warrant a beracha. The Mishna Berura adds other factors that could make a beracha inappropriate for the tzitzit.

This practice does raise problems. Berachot are supposed to precede a mitzva's fulfillment, whereas here the beracha on the tzitzit comes afterwards. Rabbeinu Yonah (see Beit Yosef, OC 8) says that it is sufficient that the beracha precedes part of the performance of the mitzva, i.e., the continuation of wearing them. The Taz (8:9) adds that when one cannot make the beracha right away because his hands were dirtied during the night, the delay is justified.

You have a different reason not to make a beracha when their time comes (app. 50 minutes before sunrise). The Shulchan Aruch and the Rama (ibid. 16) rule that one who wore tzitzit all night makes a new beracha on them in the morning (as they remain on him) because nighttime, which is not the time of tzitzit, is a break

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in the mitzva. However, many poskim argue, based on Rishonim who posit that the mitzva continues and there is no need or justification for a new beracha. The accepted practice, at least for Ashekenazim (Yalkut Yosef, OC 8:49 cites both opinions), is to not make a separate beracha due to doubt (Mishna Berura 8:42; Tzitzit (Cohen), p. 66)). While there are other possible ways to deal with the doubt, the Mishna Berura recommends the system of using the beracha on the tallit. What is different in your case is that you do not have a tallit to make that beracha. On Shavuot night, when many people are together and with the phenomenon of certain berachot being said by one on behalf of others, someone usually says his beracha on the tallit out loud (those with their tallitot have no need to be yotzei with a central person).

In one way, there is actually an advantage to being yotzei with another's tallit in comparison to the daily practice of many to having their own beracha on the tallit go on the tzitzit. One should have intention to include the tzitzit, which is easy to forget when preparing to put on the tallit. While some recommend solving by mentioning the tzitzit (Ben Ish Chai, I, Bereishit II) or handling them at that time (see opinion in Tzitzit, p. 42), few do so. There are strong grounds to say that, b'di'eved, the intention for the tzitzit does not have to be cognitive when it is one's standard practice (ibid., p. 43). In any case, in the ceremonious manner it is done by many on Shavuot morning, people are generally reminded that the recited beracha on one person's tallit is for the tzitzit of all who need it.

Regarding timing, while one could argue to have a beracha made as soon as possible, it is easy to justify the minhag to wait until it is time to daven (Minchat Yitzchak II:4.1). If the daily minhag allowing one to actively put on tzitzit well before the beracha will be made is fine, one who just keeps them on has less problem waiting for the beracha (see Taamei Haminhagim, p. 8).

MOADIM
THE THREE WEEKS,
TISHA B'AV
AND OTHER FAST DAYS

64. Meat During the Nine Days

Question: Is it forbidden to eat meat during the Nine Days or is it just a minhag (custom)?

Answer: The gemara (Ta'anit 26b) says that on the day before Tisha B'Av one should not eat meat; the Shulchan Aruch (Orach Chayim 552:1) paskens that this refers only to the seuda hamafseket (the meal right before Tisha B'Av). Clearly the gemara assumes there was no prohibition to eat meat during the Nine Days.

However, there is an old minhag to forbid eating meat earlier. The Tur (Orach Chayim 551) says that this is one version of a minhag mentioned in the Talmud Yerushalmi as starting at the beginning of the month of Av. The Shulchan Aruch (OC 551:9) brings various opinions of when the minhag begins: the week in which Tisha B'Av falls; the beginning of the month; from the fast of the 17th of Tammuz (i.e., the Three Weeks). The Mishna Berura (ibid.:58) points out that the minhag of Ashkenazim is from the beginning of Av. Several Sephardic poskim agree in principle but say that the prohibition does not apply on Rosh Chodesh, which is normally a festive day (Kaf Hachayim, OC 551:126; Yalkut Yosef, Moadim p. 567).

Your question is whether this is a real law or a minhag. This is hard to answer clearly. The long answer is too long for this forum; the short answer is that it is both, as we will explain. Once a minhag develops and is accepted broadly throughout a community (which can be of different sizes) it becomes incorporated in halacha and is binding on the community or even in the entire Jewish world.

Note the Aruch Hashulchan's (OC 551:23) wording regarding our question: "... our fathers already accepted hundreds of years ago not to eat meat or drink wine from Rosh Chodesh until after Tisha B'Av, except on Shabbat. This is to remember the sacrifices and the libations that were ceased due to our sins... Now in our great sins how people take this prohibition lightly. It is not only that they violate a Torah law through a vow, for since our fathers accepted it as a minhag, it is an oath of the nation of Israel. Besides this, how can we not be disgraced ... a nation about which it was

said 'you shall be holy' will not agree to restrain themselves eight days a year as a remembrance of their house of holiness ...” Granted that this is a notably strong stand on the halachic status of a minhag generally and this issue particularly. However, it highlights the idea that the assumption that a minhag by its nature is unimportant is not simple, especially in regard to an old, established one.

What is lenient regarding minhagim is that often they are accepted (explicitly or by means of historical development) with incorporated leniencies. The minhag/prohibition of eating meat during the Nine Days is no exception. Following is a partial list of leniencies (or lenient opinions) which may be related to the fact that it stems from a minhag, not a regular prohibition. Whereas one may not feed non-kosher food to even an infant, he may give meat or wine to a child who is too young to understand mourning for Jerusalem (Magen Avraham 551:31), at least when this is needed to fulfill a mitzva (Mishna Berura 551:70). One who is even slightly sick may eat meat during the Nine Days (Rama, OC 551:9; see Mishna Berura ad loc.). One may make a seudat mitzva (mitzva-related meal) with meat, including a meal upon finishing a tractate of Talmud (siyum) (Rama, ibid.). Note that, regarding the parameters of when it is permissible to make such a siyum and whom can be invited, the custom has developed to be more lenient than the classical poskim envisioned. We feel that it is appropriate when possible to give credence to the minhag as it develops (in this case, toward leniency) in this regard, as well. This is part of the system of halacha as well as halachic minhagim.

65. Tisha B'Av Pushed Off till Sunday

Question: What is done differently when Tisha B'Av falls on Shabbat and is pushed off to Sunday?

Answer: Seuda Shlishit: The baraita (cited in Ta'anit 29a) says that one may eat an extravagant meal on Shabbat even when Tisha B'Av falls on Motzaei Shabbat. The Tur (Orach Chayim 552) cites minhagim that one is allowed and would do best to curtail the Shabbat meal. This is especially so at seuda shlishit, which is, in effect, the seuda hamafseket (the last meal before Tisha B'Av, which usually has strong elements of mourning). However, these considerations are countered by the need to avoid displaying mourning on Shabbat. Therefore, there are no real restrictions, even at seuda shlishit (Shulchan Aruch, OC 552:10). However, the mood should somewhat reflect the coming of Tisha B'Av, as long as it does not bring on clearly noticeable changes (Mishna Berura 552:23). One important halachic requirement is that one must finish eating before sunset (Rama, ad loc.).

Havdala: One says Havdala in tefilla or separately in the declaration of "Baruch Hamavdil..." which enables him to do actions that are forbidden on Shabbat. Havdala over a cup of wine is done after Tisha B'Av (Shulchan Aruch, OC 556:1). If one forgot to mention Havdala in Shemoneh Esrei, he does not repeat Shemoneh Esrei even though he will not make Havdala over wine until the next day. Rather, he makes the declaration of Baruch Hamavdil (Mishna Berura 556:2). Unlike Havdala during the Nine Days, where we try to give the wine to a child (Rama 551:10), after Tisha B'Av an adult can freely drink that wine (Mishna Berura 556:3). The beracha on besamim is not said this week. On Tisha B'Av it is not appropriate, because it is a reviving pleasure, and one can make this beracha only on Motzaei Shabbat.

The beracha on the fire is specific to Motzaei Shabbat, is not a pleasure, and does not require a cup. Therefore, we recite the beracha on fire in shul after Ma'ariv, before reading Eicha (Mishna Berura 556:1). There are those who say that a woman should, in general, avoid making Havdala. A major reason is the doubt whether a woman is obligated in the beracha on fire, which is not

directly related to Shabbat and thus is a regular time-related mitzva, from which women are exempt (Be'ur Halacha 296:8). Therefore, it is better for one whose wife will not be in shul at the time of the beracha to have in mind not to fulfill the mitzva at that time, but to make the beracha on the fire together with his wife (Shemirat Shabbat K'hilchata 62:(98)).

Taking off shoes: As mentioned, one may not do a noticeable act of mourning before Shabbat is over. While finishing eating before sunset or refraining from washing need not be noticeable, taking off shoes is. There are two minhagim as to when to take them off: 1) One waits until after Shabbat is out, says Hamavdil, and then changes clothes and goes to shul. One can do so a little earlier than the regular time listed for Shabbat ending, which is usually delayed a little bit beyond nightfall to allow for a significant extension of Shabbat. The exact time is not clear and depends on the latitude of one's location. It is advisable to start Ma'ariv a little late in order to allow people to do so and make it to shul (ibid.:40; Torat Hamoadim 9:1), unless the rabbi has ruled that everyone should take the following approach. 2) One takes off his shoes after Barchu of Ma'ariv. One who takes the second approach should bring non-leather footwear and Eicha/Kinot to shul before Shabbat to avoid hachana (preparations for after Shabbat). However, if one uses these sefarim a little in shul before Shabbat is out, he may bring them on Shabbat (Shemirat Shabbat K'hilchata ibid.:41).

Restrictions after Tisha B'Av: Since much of the Beit Hamikdash burnt on 10 Av, the minhag developed to not eat meat or drink wine on this day. Some are stringent on laundering, bathing, and haircutting until midday of the 10th. On a year like this, only meat and wine are restricted and only at night (Rama, OC ibid.; Mishna Berura ad loc. 4).

66. Doing Dishes on Tisha B'Av

Question: When I have dirty dishes from the seuda hamafseket (meal before the fast) and from feeding children on Tisha B'Av, may I wash them on Tisha B'Av?

Answer: Washing one's skin is forbidden on Tisha B'Av, including even putting one's finger in water without justification (Shulchan Aruch, Orach Chayim 554:7). When there is justification, such as for the need of a mitzva, it is permissible to wash as much as is necessary (ibid.:8). There are other justifications besides mitzvot, as the gemara (Yoma 77b) says that one whose hands are dirty may wash his hands normally on Yom Kippur (and thus certainly on Tisha B'Av). In explaining this halacha, the Tur (Orach Chayim 554) says that only washing for enjoyment is forbidden.

Thus, there is logic to say that since few people intend to have washing enjoyment from doing dishes, it should be permitted to wash dishes normally. However, there are strong indications that we permit non-enjoyment washing only under circumstances that justify it. For example, the gemara (ibid.), when allowing one to wade through water on Yom Kippur to visit his rabbi (a mitzva), leaves it as an open question whether the rabbi may go to visit his student. We are stringent on the matter (Shulchan Aruch, OC 613:7). One can claim that this is perhaps a more objectively enjoyable form of real bathing, which thus requires a more serious justification. However, even when allowing one to wash the hands for a mitzva need, he is required to wash the minimum area of the hand, not the whole hand as we normally prefer (Shulchan Aruch, OC 554:11). This does not seem to be such a clear objective enjoyment, and thus it seems that there must always be a clear need.

We do find that preparing a meal is a legitimate justification to get one's hand wet. The gemara (Shabbat 114b) allowed doing keniva of vegetables toward the end of Yom Kippur, so that one will have the presence of mind that he will be ready to eat when the fast ends. The Rashba and Ramban explain that keniva is washing and thus the fact that one's hands will undoubtedly get wet in the process does not prohibit it. (We do not practice this leniency, but

for an unrelated side reason (ibid.; Shulchan Aruch, OC 611:2)). Also, the Magen Avraham (554:11, cited by the Mishna Berura 554:19) says that women who are cooking on Tisha B'Av may wash meat even though their hands will get wet.

On the other hand, getting the hands wet in that context is somewhat of an issue. The Pri Megadim (ad loc.) makes two comments on this Magen Avraham. One is that it is talking about one who needs meat. The Machazeh Eliayhu (87) understands that he was bothered by the fact that it is forbidden to eat meat until the next afternoon. The fact that he must point out that he needs the meat earlier is a sign that it would be forbidden to wash one's hands while cooking on Tisha B'Av for the next day's meal. The second point is that one should not use warm water, which is a higher level of enjoyment. The Kaf Hachayim (OC 554:46) takes issue on the second point, at least in cases where warm water is necessary, and it seems logical to be lenient in that case.

The position of avoiding touching water when possible is the topic of the following disagreement. The Beit Yosef (OC 615) and Taz (615:1) say that when a child needs to be washed, a non-Jew should do it, so the Jew can avoid the pleasure of the water. The Magen Avraham (ad loc.:1) and most authorities say it is permitted for a Jew to wash him.

In the final analysis it is proper to wash only those dishes that need to be washed on Tisha B'Av. This can be to avoid flies and odors or to make sure there are as many dishes as are needed for those who need to eat on Tisha B'Av or to break the fast right afterward. In other cases, one should either use rubber gloves or wait until after Tisha B'Av. Also, unless one cannot wait, housekeeping type activities should be done after chatzot (midday), even when issues of washing do not apply (Rama, OC 554:22).

67. Restrictions of Motzaei 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* (Ta'anit 30a), the restrictions of the Nine Days end with the completion of Tisha (9th of) B'Av. This is not obvious, as the majority of the burning of the *Beit Hamikdash* was on the 10th of Av, and Rabbi Yochanan (ibid. 29a) said that he would have thought that the latter date is the more appropriate day for the fast. In fact there were Amoraim who fasted both days (Yerushalmi, Ta'anit 4:6).

Based on this background, post-Talmudic *minhagim* developed to forbid certain matters after Tisha B'Av. The Tur (Orach Chayim 558) writes: "It is a proper *minhag* to not eat meat on the night of the 10th and the day of the 10th, just to relieve the spirit, so that it should be close to a fast." The Bach understands this language as a double stringency: one should not eat any meat on the 10th; even regarding other foods, one should limit his eating as is befitting for a day that on some level should have been a fast. The second stringency is not accepted, as we eat non-meat foods normally after Tisha B'Av (although we can relate to Mikraei Kodesh's (Harari – Fasts, 11:(29)) discomfort with those who, for example, go out for ice cream every Motzaei Tisha B'Av).

The Shulchan Aruch (OC 558:1) cites the *minhag* to not eat meat or drink wine the whole night and day of the 10th. Various *Acharonim* limit the stringency somewhat. The Be'ur Halacha (ad. loc.) says that it is permitted to eat a food that was cooked with meat as long as one does not eat the meat itself. The Magen Avraham (558:1) says it is permitted to eat meat at a *seudat mitzva* (we will not get into the question of whether one is allowed to get married at that time). Finally, the Rama (ad loc.) sets the tone for Ashkenazim in limiting the *minhag* against meat and wine until midday of the 10th.

Regarding other restrictions, Ashkenazim are stricter than Sephardim. The Shulchan Aruch mentions only meat and wine, and the Rama does not argue. However, the Maharshal (Shut 92) 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 (558:3) and the broad consensus of Ashkenazi *poskim* accept the Maharshal.

Regarding Sephardim, the Chida and some other prominent *poskim* also accept this stringency. However, this part of the *minhag* was apparently not widely accepted, and therefore Rav Ovadia Yosef (Yechaveh Da'at V:41) says that Sephardim should follow the Shulchan Aruch's opinion that only meat and wine are forbidden, whereas the rest of the restrictions cease right after Tisha B'Av. (The recitation of *Shehecheyanu* is questionable – see Torat Hamoadim, Fasts 11:5. Mikraei Kodesh (ibid. 18) cites Rav Mordechai Eliyahu as extending the restriction on music throughout the 10th.)

There is room for leniency in cases of need regarding laundering, hair cutting, and bathing, even for Ashkenazim, for a few reasons. First, this part of the *minhag* is not just post-Talmudic, but even post-Shulchan Aruch. Secondly, it is much more common for there to be difficulty in continuing these restrictions, especially as the hot summer takes its toll and the stacks of laundry pile up. All agree that one can do any of these things in honor of Shabbat when Tisha B'Av falls on Thursday (Mishna Berura 558:3). (Halichot Shlomo I, 15:16 says that one can start washing on Thursday night and throw into a load of things needed for Shabbat even things that are not needed for Shabbat, but that haircutting should wait for Friday.) There are other situations, such as people leaving home soon after Tisha B'Av who need a supply of laundry, where stringency is likely beyond the call of duty.

(When Tisha B'Av is pushed off from Shabbat to Sunday, Motzaei Tisha B'Av is the 11th, and there is only a restriction on meat and wine and only at night – Rama, OC 558:1).

68. How Long Must One Fast When Flying on the 17th of Tammuz

Question: I will be flying from Israel to America on the afternoon of the 17 of Tammuz. The plane departs at 7:15 pm, before the fast has ended in Israel. Will I have to keep on fasting until the fast ends in America (or when it has ended in the place I am flying over), or can I break it when it has ended in Israel?

Answer: There are two basic approaches amongst the poskim regarding what to do in your situation. Rav Moshe Feinstein (Shu"t Igrot Moshe Orach Chaim 3:96) writes that when starting a fast in one time zone, and finishing it in another, one always follows the time in the place where one currently is. In this case, the fast would continue until it has ended in the place over which one is flying (similarly, if one started a fast in America, and then flew to Israel, the fast would end earlier, once it has ended in the place one is flying over, but see Shu"t Yaskil Avdi 8:38 who holds that one must continue fasting in such a case until one has fasted an entire day's worth). Other poskim (see for example Shu"t Shevet Halevi 7:76) also hold that the fast should theoretically end based on the time of the place that one is flying over, but they suggest that Chazal presumably did not intend to decree that the fast should be extended when flying, if that would thereby increase the length of the fast by many hours. In addition, they suggest that, but the time the fast has ended in Israel, one would often be considered like someone who is ill, and can therefore eat food then as needed, like a sick person during the fast.

The other approach (see Shu"t Siach Nachum #37) is that the end time of the fast is determined by the times in Israel, which was the last place where one was on the ground, and therefore the "halachic clock" continues ticking based on Israel time, even when one is in the air.

Since there are several opinions who permit eating in your scenario, they may be relied upon, especially in the case of the fast of the 17th of Tammuz, which is only rabbinic.

FAMILY LAW

69. A Fading Ketuba

Question: In our ketuba, the witnesses' names have faded over the years to the point that they are barely legible. Is this a problem (we got married in Israel, so the Rabbanut has a copy of the ketuba)? Can I (the husband) ask the witnesses to resign their names? If not, what should be done?

Answer: It is forbidden for a couple to be together without the husband's basic ketuba obligation to the wife, which includes a lien on his property so that the wife can feel a certain level of security (see Ketubot 39b & 56b). While ideas are raised to minimize the need for a ketuba document in our days (see Rama, Even Haezer 66:13; Shulchan Aruch, EH 66:1), practically we require that a valid ketuba exist.

The Rabbanut's practice to hold a copy of the ketuba makes one's "home ketuba" much less critical, but it was not intended to be relied upon by itself l'chatchila. The existence of two documents for one obligation is problematic, as it may enable one to collect double. While some thus opposed making "copy" documents (Shut Harosh 68:21), others permitted it if proper precautions are taken (Shut Mahari Ibn Lev 55 based on Sefer Haterumot), as Rav Zalman Nechemia Goldberg rules (Techumin XXVI). A copy document probably only prevents a full denial of the obligation, but without the original document, the debtor could still claim he already paid (Urim 41:28). Likewise, one could not extract payment via the lien.

If so, does the Rabbanut ketuba give the woman the level of protection that permits the couple to live together? Indeed, some say that if the main ketuba is lost, the one at the Rabbanut is insufficient (see Teshuvot V'hanhagot, I:760; Ketuba K'hilchata, p. 163, in the name of Rav Elyashiv – no convincing reason is provided). Nitei Gavriel (33:6) argues cogently that since it is rare in our days (certainly in Israel) for the wife to be paid her ketuba without beit din's involvement, the husband cannot make that claim, and the Rabbanut ketuba is effective. Therefore, he and Nisuim K'hilchatam (11:225) say that one may rely on the

Rabbanut copy until the couple has an opportunity to remedy the situation, and we concur.

There is a special document called a shtar ketuba d'irchasa that a couple can ask a rabbi to create when a ketuba is lost. It tells the story of the past obligation and the loss of the ketuba, and the new document replaces the lost one from the time of its issuance. This is done with the husband's involvement. The gemara (Bava Batra 168b) and Shulchan Aruch (Choshen Mishpat 41:1) discuss a replacement document produced by beit din for one who possesses a document that has become (or is becoming) illegible. Even the witnesses themselves of the original document may not reissue an identical copy of the old one (Shulchan Aruch *ibid.*) because their authorization to produce a document ceased when they signed the first one (see S'ma *ad loc.* 5). Even with the lender's (or, in this case, the husband's) reauthorization, the lien stemming from a new document would be valid only from the time of the reissuance (Shach, CM 41:3).

Your idea of resigning the document (which is parallel to rewriting other parts of the ketuba that faded) is interesting, but since it is not raised in all the discussions of the parallel cases, it is apparently not feasible. If the rewriting replaces something that is illegible, it is like writing a new document, which, as stated, cannot be done with the old date (a predated document is invalid – Shvi'it 10:5). Even if it is legible, it is still apparently a problem to write over it because people will be reading the new writing that covers the original (making it different from the discussion in Gittin 19a). We suggest that you find an opportunity to ask a rabbi with experience with such documents to prepare an appropriate new ketuba. In the meantime, you can rely on the Rabbanut ketuba. (If your wife is troubled by the situation, you should act immediately.) If you want to fix the old ketuba, you can make any changes you like after you mark clearly (if discreetly) as not for payment.

70. Time of Chupa

Question: I am about to have my wedding invitation printed, and I am not sure for what time to call the *chupa*. The *mesader kiddushin* is presently very busy with personal matters and I do not want to bother him, but I am afraid that I may choose wrong as to whether the wedding should be before or after sunset, which I guess should be his decision. Is it right to decide on the time without consulting with him?

Answer: A wedding can take place right before sunset or right after sunset, and it is not necessary to know in advance which it will be, as we will explain. A chatan and kalla have enough (happy) headaches to worry about. Considering that this matter of time is not always something they can totally control, it is the *mesader kiddushin* who can and usually should arrange to accommodate the couple's preferences.

The main reason people assume that they need to know in advance if their wedding will be before or after nightfall (we will assume that this follows sunset, although this is not as simple as it sounds) is the date on the ketuba. Indeed, a pre-dated ketuba is *pasul*. The reason for the *p'sul* is actually quite mundane. A ketuba is a monetary document, designed to provide the wife with some financial stability under unfortunate circumstances. This ketuba can be used to extract payment from the husband's property, including that which he sold after the time he obligated himself to its terms. Therefore, one who buys property from a man has a right to search for liens on the property, including from a ketuba, which at least in theory, can be of any face value the couple decides on. If one were allowed to pre-date a ketuba, it is possible that one would buy a field when there was not yet a lien from a ketuba, yet a woman could come to *beit din* and falsely "show" that her husband had made a lien on his property before the sale.

This problem can be overcome when preparing a ketuba. While the ketuba is meant to accompany a wedding, a chatan can create the obligations included in it and the related liens before the marriage ceremony. In that case, if the date on the ketuba is the pre-nightfall date and the wedding was delayed until after nightfall,

the ketuba is fine as long as the chatan made a kinyan sudar on the obligation before nightfall. Except for those who have a custom (notably, many in Yerushalayim) to hold off with the kinyan sudar until the kiddushin has taken place under the chupa, this anyway takes place a good half hour before the chupa takes place (and it can be done even days before).

In a case where the couple thought the chupa would take place at night and it ended up happening in the day (theoretically possible even at a Jewish wedding) there also would not be a problem according to almost all opinions. In this case, the bride foregoes her lien for one day, which does not render the ketuba invalid. She still has a valid ketuba, and, additionally, by the time the couple is in the yichud room (the cut off point might be even later anyway), the date has probably already come (see Shulchan Aruch, Rama, and Ezer Mikodesh, Even Haezer 66:1).

We would suggest to a mesader kiddushin to ask the couple to choose a time for the chupa, add 15 minutes (to be realistic) and prepare a ketuba based on the date at that time. (He may want to keep the date blank until things become clearer. The date on the invitation and the bentcher are not relevant). While it is generally respectful to discuss the time issues with him before the invitation is printed, if it is unfair to disturb him now, you can safely assume that he can handle the timing issues later.

The issue that remains for you is that the Jewish date the chupa takes place sets the last day of Sheva Berachot, particularly in regard to the berachot at the end of bentching. If you can live with that uncertainty (a party may be held without the berachot, which anyway sometimes happens if the bentching gets drawn out until after sunset of the seventh day), you should be okay.

71. Sheva Berachot Confusion

Question: At Sheva Berachot, the person who was supposed to recite Sos Tasis started to recite Samei'ach Tesamach (the following beracha). People tried to get him to switch, which confused him. I told him to continue, and the next mevarech (blessor) went back to So Tasis. Afterward, someone pertinently remarked that since he did not yet mention Hashem's Name, "no harm had been done" and he should have reverted to the correct beracha. What is the correct thing to do in that situation?

Answer: Let us start with your assumption that switching the order of Sheva Berachot does not present a problem. This is indeed the predominant opinion of poskim (see Ba'er Heitev, Even Ha'ezer 62:1, based on the Rambam; Otzar Haposkim ad loc. 3:2). (The matter is less clear regarding one who switches Yotzer Ha'adam and Asher Yatzar (ibid. and Hanisu'in K'hilchatam 10:(149))).

However, a good question was raised: when the mevarech was just a few words into the beracha, was it too early to have given up on the preferred order? We were, surprisingly, unable to find direct references to this common scenario. We must base our inclination on parallel precedent, although, admittedly, one could suggest distinctions between the cases.

Sos Tasis and Samei'ach Tesamach do not begin with the classic "Baruch ata Hashem Elokeinu..." because each is a beracha hasemucha l'chaverta. In other words, a beracha can use the beracha template of the previous, adjacent beracha and suffice with "Baruch ata Hashem" at its end (see Pesachim 104b with commentaries). The question then is: what is the status of a beracha which one started without saying "Baruch" or uttering Hashem's Name. Is it "harmless," allowing one to switch to a preferred beracha, or is it the midst of a beracha, which should be finished, if possible?

One who, in his Shabbat Shemoneh Esrei, starts saying the weekday berachot (beginning with Ata Chonen) should finish the beracha he started (Berachot 21b; Shulchan Aruch, Orach Chayim 268:2). One can continue because the weekday berachot are not antithetical to Shabbat. Why, though, should we continue the

weekday beracha, since, in the final analysis, Chazal instructed us not to recite them? Recall that all but the first beracha of Shemoneh Esrei begin with “harmless words” (and Ata Chonen does not mention Hashem’s Name until the end). Apparently, once one begins a beracha in a string of berachot hasemuchot l’chavertan, it is best not to stop even if Hashem’s Name has not been uttered. The same should ostensibly apply in our case, meaning that your instruction to continue the beracha was correct. However, one can minimize or deflect the proof. Several poskim say that if one began Ata Chonen in chazarat hashatz, he would not continue because of the toil to the congregation. Also, perhaps it is a disgrace for Ata Chonen to be stopped. In contrast, in our case, Samei’ach Tesamach will shortly “get its turn.”

However, one can bring further support for you from another precedent. The Mishna Berura (59:7, based on the Derech Hachayim) says that if one made a critical error in Yotzer Or and began Ahava Rabba before realizing, he should finish Ahava Rabba before returning to Yotzer Or. This precedent has some advantages over the previous one. Firstly, he could revert to Yotzer Or and end up with Ahava Rabba, which is usually preferable, in that the latter would then follow a proper beracha. Also, there it refers to berachot whose order is not critical, and the linkage between the previous and present berachot is arguably weaker (see Rasha, Berachot 11a), and still he finishes the “open-starting” beracha he started.

In conclusion, it appears that one who started saying a beracha of Sheva Berachot that should have come later should preferably finish up the beracha before returning to the one he missed. It does not matter if he said Hashem’s Name in a normally beginning beracha or he recited a word or two of a beracha hasemucha l’chaverta. However, even if we are correct, it does not seem that stopping before Hashem’s Name would be a grievous mistake.

72. Previously Married Groom and Tachanun

Question: We had a chatan (groom) in shul the week after his wedding, and thus we omitted Tachanun and Av Harachamim, respectively. Someone suggested this was incorrect because the bride and groom had both been previously married. Who is right?

Answer: A minyan omits Tachanun in the presence of a chatan, whether it is held in the chatan's home or he comes to shul (Shulchan Aruch, Orach Chayim 131:4). This is because the feelings of those properly joining the chatan's simcha should make the morose subject matter of Tachanun inappropriate. The Beit Yosef (OC 131) points out that it is possible to omit Tachanun because its recitation is regarded as relatively optional.

Generally, a couple is in a festive state during the shivat y'mei hamishte (seven days of celebration, commonly called Sheva Berachot) (see Shulchan Aruch, Even Ha'ezer 62:6). However, the Rama (Orach Chayim 131:4) says that the chatan eliminates Tachanun only on his wedding day. The Shiyarei Kneset Hagedolah (131:16) suggests that the Rama only intended to say that it does not begin prior to the wedding day, but he agrees that it lasts beyond. In any case, the minhag is that Tachanun is omitted for the full seven days (ibid; Mishna Berura 131:26).

The issue is that Sheva Berachot is curtailed in the case of those who were previously married (even to others). There are two main elements to the status of the week of Sheva Berachot. First, meals the couple takes part in are considered festive ones, warranting special berachot. Additionally, the husband must remain home from work and provide his wife with an atmosphere of simcha (Shulchan Aruch, Even Ha'ezer 64:1). The berachot are recited when either newlywed is in his or her first relationship. However, regarding a couple both of whom had been married, the berachot are recited for only one day (Ketubot 7a; the discussion of how to count that day is beyond our present scope). Regarding staying home, the period of time is reduced to three days, at least regarding a couple who were both previously married. There is a machloket regarding a man who was never married with a woman who was (Shulchan Aruch, ibid.:2).

So we must ask which element determines the exemption from Tachanun? It is generally agreed that when one of them is in a first relationship there is no Tachanun for seven days, as it is considered the days of festivities, as is evident from the berachot. Regarding both spouses who were previously married, although there is only one day of Sheva Berachot, the fact that they are to be happy together is sufficient to eliminate Tachanun for three days (Mishna Berura, *ibid.*). Haelef Lecha Shlomo (OC 60) explains as follows. The reason that a chatan eliminates Tachanun from an entire shul is that he is like a king. He posits that the comparison is in regards to the fact that the ascent to the new status of each causes his sins to be forgiven, which, as is evident from the gemara, applies even in a later marriage.

The Chesed L'Avraham (I, OC 10) takes the comparison to the king differently. The king's special status finds expression in the halacha that he is not able to relinquish his right to be honored. So too a first time couple has an objective status that cannot be relinquished; therefore, the chatan brings the whole congregation along with him. Regarding a second marriage for both, the bride can waive the rabbinically imposed obligation for the chatan to create simcha for her (Rama, EH 64:2). Therefore, in this non-objective state of simcha, the chatan cannot bring others along. He rules then that only if the minyan takes place at the place of celebration would Tachanun be omitted. However, other poskim do not accept the Chesed L'Avraham's chiddush.

In summary, in the case you referred to, Tachanun should have been omitted for three days. When Tachanun is left out, Av Harachamim and Tzidkatcha, at their respective times, follow suit (see Shulchan Aruch, OC 284:7; 292:2).

73. How Many Times Can a Person Serve as a Sandek

Question: Can someone serve as a *sandek* more than once for the same family? Are there any halachic/minhag issues involved?

Answer: The Rama (Yoreh Deah 265:11) cites from the Maharil (Mila 1, based on R. Peretz) and accepts the minhag to not have one person be the sandek for more than one child in a family.

The Maharil explains the matter as follows. The sandek, who holds the baby during the brit, is like one who offers the daily ketoret (incense) in the Beit Hamikdash. Regarding the ketoret service, the mishna (Yoma 26a) says that only a kohen who had never offered ketoret in the past was a candidate. The gemara (ad loc.) explains that this is because the bringing of the ketoret makes one rich. Thus, we “spread the wealth.” The same, say the Maharil and the Rama, is true of a sandek.

However, very important Acharonim question how authentic and binding this minhag is. The Noda B’Yehuda (I, YD 86) starts off by saying that there is no Talmudic source for it and that the rationale provided was not the source but helped justify post facto a custom that had developed. The Gra also questions its Talmudic logic. He asks that if the comparison to ketoret were true, then one should not be sandek twice, even for babies from different families, whereas the minhag allows it. He also argues that the lack of anecdotal evidence of a correlation between serving as a sandek and wealth raises questions about the sources. (Some respond that wealth can come in different forms.) The Gra, though, does not reject the minhag but says that the real source for it is the kabbalistic “Will of Rav Yehuda Hachasid.”

The Noda B’Yehuda also accepts the minhag and suggests the following midrash as a source for the comparison to ketoret. The midrash (Yalkut Shimoni, Lech Lecha) says that when Avraham’s household underwent mila, they piled up the foreskins. Hashem remarked that the resulting stench was as welcome before Him as ketoret. He notes (based on Yoma 26a) that ketoret’s enriching factor is the fact that it is a rare mitzva. On the one hand, that does

not apply to mila, which are abundant in K'lal Yisrael. On the other hand, though, since the pool of potential sandeks is so great, it is a rare occurrence for the individual to be a sandek, just as it is for a kohen to bring ketoret. In contrast, because the small number of mohelim each perform britot frequently, it is not enriching for them, and there is no need to limit a mohel to one per family. Despite his explanation, the Noda B'Yehuda claims that not all communities accept the minhag and mentions that some communities have the rabbi be sandek at all britot.

The Chatam Sofer (Shut OC 158) deflects some of the questions and finds his own midrashic source. He responds that the minhag of having the rabbi be sandek at all the britot does not weaken the minhag. Just as regarding ketoret, the kohen gadol can bring it as he desires, so too one community leader can be the permanent choice, whereas regular people would be limited to once.

This brings us to the matter of possible exceptions to the rule. There are minority opinions that: 1) relatives can be sandek more than once (Yad Shaul 265, cited in Yechave Da'at III, 77); 2) only during a single year should one not be a sandek twice (according to some, even for different families) (Birkei Yosef, citing the minhag of Solonika); 3) the father serving as sandek himself, who thus is not giving the honor to anyone, can do so for as many of his children as he likes (Torat Chayim (Zonnenfeld) 15) (however, it is rare these days for the baby's father be sandek even once).

In summary, those who do not have a kabbalistic orientation need not take this matter so seriously, and one need not intervene if another decides to ignore the minhag. However, except when there is a pressing need to reuse a sandek (e.g., in a remote location, where there are very few G-d fearing people), it makes most sense to follow the accepted minhag of one nuclear family having a different sandek for each child.

MONETARY LAW

74. Merchandise Received by Accident

Question: I had an Israeli supermarket send me a delivery. After they left, I realized that they gave me two cases of expensive beer I had not bought. I have asked them several times to pick them up, but they haven't yet. The cases are in the way and two bottles have been broken. When I last nudged them, the woman said that it is hard for them to arrange, and if I don't want to bring them back, I should keep them. As it is hard to shlep the cases by bus (with children), what should I do? I wouldn't mind drinking the beer, but their value to me is far less than their price.

Answer: Your simple case raises many, difficult Choshen Mishpat questions that we cannot do justice to in this forum. We will touch on a few major points and give our suggestion of how to proceed.

When you discovered the beer, you became obligated in hashavat aveida (returning lost objects). (We assume it ideally would have been returned to another customer, although, depending on a few halachic doubts and questions of the sequence of events, it is possible that the store still owned the products.) As such, you became responsible to protect them from harm (Shulchan Aruch, CM 267:16) and return them. If the adults in your home broke the bottles or they were otherwise broken because of your lack of care (there is a machloket between the Shulchan Aruch and Rama, *ibid.* regarding the required level of care), you became obligated to pay for them.

The main question is whether a finder is obligated to actually return a lost object or whether it is sufficient to enable the owner to retrieve it. The gemara (Bava Metzia 30a), in illustrating the differences between the mitzva of hashavat aveida and those of helping one load or unload his animal, describes hashavat aveida as being done when the owner is absent. This seems to imply that if the owner is around to take the object, the finder is not responsible to take it home for him. Yet, the Derisha (CM 265) derives from Rishonim that the mitzva extends until it is returned to the owner's possession. (See also Bava Metzia 31a and Shut Ben Yehuda I, 118, which strengthen the Derisha's claim.) Thus, it seems that you did not complete hashavat aveida with the phone calls. The Derisha

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does point out that if the owner improperly wants to use the finder's mitzva to have him do all the work, the finder can refuse, just as one can refuse to load another's donkey alone as the owner watches. However, in this case, we can understand why a busy supermarket finds it difficult to send someone specially to pick up two cases of beer.

There are a couple of possibilities to exempt you from storing the cases until they are retrieved or returning them on your next visit to the store. We are assuming that the person who paid for the beer has or will be reimbursed. Thus, he drops out of the picture, and you deal with the store. It is unclear whether he can and did halachically return ownership to the store (see R. Akiva Eiger's notes on CM 120:1 and Divrei Chayim II, YD 112). Therefore, one can make the claim that you are not formally obligated in hashavat aveida. The store's interest in the beer may not be sufficient if they do not own it (see Pitchei Choshen, Aveida 1:(55)).

More directly, the woman on the phone said that you could keep the beer. There is a broad, important question to what extent a worker can relinquish his employer's rights. In practice, it depends on the worker's level of authority and the logic of making the concession. Your case involves a relatively modest amount of money, and they have reason to be considerate of a customer who was caused reasonable trouble because of their mistake. However, you may want to be wary of a half-hearted concession that might have been caused by what sounded like reluctance to perform hashavat aveida to its fullest.

We suggest getting the store's agreement to a compromise. For example, find someone to buy it at a good price and give the store the money or drink it for around half the price.

75. How Much Effort Must one Expend to try to Return a Lost Object?

Question: I rent out an apartment, primarily for tourists for short stays. Often when I straighten up after they have left, I find articles of varying values left behind. I have spent numerous hours tracking down people and figuring out how to return items, many of which I know they do not care about. Do I have to continue expending funds (including mailing, writing checks instead of sending cash) and an excessive amount of time?

Answer: First we commend you for doing the mitzva of hashavat aveida (returning lost objects) so diligently. It is possible that some of the returning was unnecessary (for reasons beyond our scope), but one of the major applications of acting beyond the letter-of-the-law is in this area (see Bava Metzia 30b). The letter of the law is open-ended, applying even to an object worth a perutah (a few cents) and not clearly limiting the amount of toil one needs to expend (see Pitchei Choshen, Aveida 8:1). You may demand compensation for related expenses and lost revenues (Shulchan Aruch, Choshen Mishpat 265:1), but we doubt that you feel comfortable doing so. However, the essence of the mitzva is to help others, and, at times, the amount of effort is disproportionate to the recipient's benefit, to the extent that he would not have wanted you to bother. It seems that in such cases, the spirit-of-the-law is that you should not have to bother. The only reason we bring up the spirit-of-the-law is that in cases when it does not apply, then one need not feel bad about devising a valid halachic device to exempt himself from the mitzva, as we will discuss.

Often shuls are inundated with unclaimed objects left behind, many of which will never be returned to their owners. Many deal with the problem by posting a sign stating that items that remain unclaimed for x days will be deemed hefker (ownerless). In fact, several prominent poskim have given this advice (Igrot Moshe, Choshen Mishpat II, 45; Minchat Yitzchak VIII, 146; Shevet Halevi IX, 308). In your case, where it is relatively easy to track down some owners, it seems wrong to make the matter a function

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of time alone. Rather, we suggest writing in a lease or stating clearly before the renter's occupy the apartment the following: "Anything that is worth less than \$20 and is apparently not of sentimental value will be held for two weeks. The renter exempts the landlord from making efforts to report finding such items, and the renter hereby relinquishes ownership to them as of two weeks after the end of the rental." For more valuable items, you should continue "going the extra mile."

Let us briefly explain the mechanism of this provision, something that the aforementioned poskim did not spell out. The gemara (Bava Kamma 69a) discusses one who did not want the poor to be guilty of thievery if they took more produce than the laws of *matnot ani'im* allowed. He, therefore, wanted to declare in the morning that whatever extra they would take was *hefker* retroactively to the moment of the declaration. The complication is that it is not clear which pieces of produce would be the extra ones slated for *hefker*. Therefore, *bereirah* (retroactive determination) is needed for the *hefker* to take effect, and this depends on the *machloket* among Tannaim whether *bereirah* works (*ibid.*). We rule that *bereirah* does not work in regard to Torah laws (Beitza 38a). How then can one be *mafkir* an undetermined object that will be lost to exempt from the Torah law of *hashavat aveida*? The answer is that *bereirah* applies only when the matter must take effect retroactively. If the *hefker* can take effect on delay at the time the matter is determined, it works (Tosafot Bava Kamma 69a; see Shut Harashba II, 82).

We also included an exemption from *hashavat aveida* prior to the *hefker*, so that you should not be required to make efforts on insignificant matters during the two weeks. This works based on the rule that the intended recipient of *mitzvot* between man and man can exempt another from performing the *mitzva* on his behalf (see Tosafot, Shavuot 30b; Shut Harashba I, 18).

76. Returning a Lost Item That the Owner Knows About

Question: Neighbors on an upper floor have several little kids who regularly throw toys and even heavy objects onto our ground floor garden. For years we have picked up and returned the items and dealt with a mess, as they have refused to put up screens or come promptly to pick them up. We believe that if we leave the toys, they will change their behavior. Is that permitted?

Answer: We will explore a few possible ways to exempt you from returning the items.

Let us assume that your neighbors are improperly taking advantage of you. Does that justify your stopping to retrieve their toys to get them to change their behavior? At first glance, this seems like nekama (revenge) – refusing to do for your counterpart a favor that you would normally do because of grievances against them (see Rambam, Deiot 7:7). On the other hand, several sources indicate that nekama applies when one is punishing another for past behavior, whereas it is permitted to take unpleasant steps to try to dissuade him from his improper behavior or for another positive, not spiteful, reason (see Rama, Choshen Mishpat 388:7; Mitzvot HaLevavot p. 32; Torat Ha'adam La'adam, from p. 172). Precedents for this rule include telling lashon hara to protect one's legitimate rights (see Chafetz Chaim, Lashon Hara 10 where he also discusses the conditions) and steps that David Hamelech took against those who tried to harm him. In this realm, there is likely a distinction depending on the level of need and the steps contemplated and between refusing to do a favor and acting in a way which would normally violate a Torah law, e.g., hashavat aveida (see Torat Ha'adam La'adam ibid.). Therefore, it is important to determine if the mitzva of hashavat aveida is obligatory in this case.

There is a question as to what hashavat aveida requires of a person: return the object to the owner, or enable him to retrieve it (see discussion in Mishpat Ha'aveida, p. 21). The stronger position in our view, which is reportedly endorsed by Rav Moshe Feinstein

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and the Chazon Ish, is that the finder does not have to deliver the object (Pitchei Choshen, Aveida 7:(1); Torat Ha'aveida, p. 58). You imply that making them come pick up the toys would suffice, so there is a second reason to allow you to take that step.

Even if one wants to be stringent on the above issues, we should consider whether the pattern of behavior falls under the category of aveida mida'at ("intentional loss"). There are different levels of aveida mida'at. One is when the owner demonstrates he does not care if the object gets lost. In that case, there is even an opinion (Rama, CM 261:1; the Shulchan Aruch ad loc. disagrees) that one is allowed to take the object for himself. Your case does not fall into this category, as your neighbor wants the toys back and is not overly concerned about their being thrown from her home because she relies on you. However, the Shulchan Aruch (ibid.) assumes that the owner is not mafkir the object and yet understands that by not taking precautions to protect its disappearance, he loses his right to require the finder to bother to return it. This seems to apply in your case, although she could argue that she tries to limit the children's throwing of toys and that you cannot blame her for lack of success and are required to help your counterpart, as hashavat aveida requires (even a hundred times – Bava Metzia 31a). Even so, it appears that, in this case, there is no aveida because your neighbor always knows where to find her objects, and she has the responsibility to come get it. (This is better than the case where one informed the owner where his lost object is, because there the mitzva took effect previously.) Thus, there is another reason to exempt you.

In summation, there are ample reasons to allow you to tell your neighbor that she will have to come collect the toys. That being said, we urge you (who knows the dynamics) to consider whether the situation is acute enough to justify the steps and whether your idea is the wisest way to deal with the issue.

77. An Agent Who Bought More than he Was Authorized

Question: Three friends asked me to get “duty-free” cigarettes for them. I asked my roommate, who was traveling, to buy two cartons each of three brands of cigarettes. He saw packages of three cartons and decided to buy one of those for each of the three types rather than ask for individual cartons, figuring I would appreciate the better price. On the way out, customs stopped him and confiscated six of the cartons, as there is a limit of two (neither of us knew). My three friends (who are poor) are willing to pay only for what they received, and I am resigned to absorbing the loss of the three additional cartons I asked for, of the six cartons that were taken. My roommate expects me to pay even for the three extra ones he bought with good intentions but beyond my instructions. Since I also acted with good intentions and have lost plenty of money for the favor, I do not feel that I should pay for his unauthorized purchase. I do not think that I would have agreed that the extra three cartons be bought had I been asked, and at this point, in any case, it turns out to be a bad idea. (It is even possible that, had he had bought only six, customs would have let it go). [Note: The respondent, who knows both sides, heard both sides in an informal and non-binding din Torah.]

Answer: We will not discuss potential claims of negligence in not ascertaining the customs’ rules, nor the question of whether it is permitted to buy cigarettes for someone and how that could impact on the case. You have understandably not raised either issue, as you were a partner to both decisions. While it is plausible that the extra three cartons prompted customs to act, that is too theoretical a possibility to base oneself on.

The Shulchan Aruch (Choshen Mishpat 183:6, based on Bava Kama 99a) says that if a shaliach (agent) sold more property than he was authorized to, the sale is valid but only in regard to the amount he was authorized. As there is no reason to distinguish between buying and selling, we should say that the extra three cartons should be your roommate’s loss. (We would calculate your

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six cartons according to the price it would have cost, not two-thirds of the discount price.) However, perhaps since he bought them on your behalf and assuming you would have accepted them had he made it safely through customs, it was, for all intents and purposes, your cigarettes that were confiscated.

The Shulchan Aruch (CM 183:5) says that if a shaliach bought barley instead of wheat, then, if there is gain from the change, the meshale'ach (the one who appointed the agent) gains and if there is loss, the agent loses. The Shach (ad loc.:9, citing the Mabit 179) says that the shaliach loses when the loss is from price fluctuations but if an oness (faultless circumstance) unrelated to the mistake caused the incorrectly obtained object to be lost, the meshale'ach absorbs the loss. The Mabit exempts the shali'ach in a case where bandits took merchandise, some of which was not requested. This is difficult because, until he agrees to accept that which was bought, the meshale'ach would seem to not own the merchandise. Some commentaries argue with the Mabit (see K'tzot Hachoshen 183:5) or apply his ruling to limited cases (Netivot Hamishpat 183:7). In any case, the Mabit will not help your roommate, as here the oness, would not have affected the three extra cartons had they not been purchased. Therefore, you have every right to reject the purchase, which ended up causing you a loss.

We might have suggested that since your roommate did you a favor, it is not morally proper to charge him for an honest mistake / reasonable decision he made with noble intentions. However, since you too were just doing a favor (and your three friends are, for whatever reason, not going to pay) and you are already incurring a significant loss, you may hold your roommate to the apparent halacha that he will have to absorb the loss between the price of six cartons and what he paid.

78. Payment for One Who Collects for a Group Present and Loses Money

Question: I agreed to collect money for a teacher's gift in my daughter's fifth grade class. We decided that everyone would pay 40 NIS. Most families contributed fully, while some paid partially or not at all. What do I do about money that is unaccounted for? Two examples: 1) My daughter is sure she brought home money from a certain family, but it did not make it to where I am keeping the money. 2) Someone paid in part and says they paid the remainder later, but it appears to us that they never did.

Answer: At first glance, you are a shomer chinam (an unpaid workman) and thus are responsible for losses that occurred through peshiya (negligence). Whether you fit that bill is a judgment call you may be able to make yourself. However, there are additional reasons to exempt you.

It is not clear that there is anyone to whom you are obligated to pay. The teacher, the intended future recipient of the gift, is not owed the money and presumably has no rights to it even after money has been collected. Regarding individual parents, they have presumably permanently transferred money to your discretion, which is to watch the money for the group of parents toward the goal of giving a present, and not to return to anyone. If you were to, Heaven forbid, misappropriate the money, they could collectively require you to return the money to a new representative (see Even Haezel, Sh'eila U'pikadon 5:1). However, in your case, there is no reason to believe that the group as a whole would want to replace you over a few dozen understandably missing shekels.

One could question the above analysis based on the following. The gemara (Bava Kama 93a) learns that a shomer is obligated to pay as a shomer only when he watches something for someone who expects it back, but not if he is watching in order to give to the poor. Yet, the Shulchan Aruch (Choshen Mishpat 301:6) says that if there is a set group of poor recipients, the shomer is obligated. Seemingly, this is because those paupers can say that they have a

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specific claim on the lost money. In your case, then, we might say that the teacher is the clear recipient of the money and you would be obligated to her.

Yet, the cases are different, as the teacher can only hope to receive the money. The parents can change their minds and not give the present (e.g., if the teacher loses favor in the parents' eyes). This is different from the tzedaka collector, where once money reaches his hands, it cannot be taken away from those poor people (see Arachin 6a and Shita Mekubetzet, Bava Kama 93). Thus, the teacher would not have a claim (at least if she is not deserving of tzedaka). Possibly, the parents as a group could complain that they are not getting the full value of good will from their present (based on Rashi, Gittin 54a, see Machane Ephrayim, Shomrim 16), but presumably they should not have that claim, given that the quality of the present need not change significantly.

In the case where your daughter received money, your daughter, who is a minor, is the shomeret, and she is too young to be obligated. However, if you told the parents that they should give it specifically through your daughter, then you would apparently be obligated (see Shulchan Aruch, CM 182:2 and Netivot Hamishpat 340:11). Regarding the case where you are not sure if you ever received the money, according to the strict law, one who is not sure if he was ever obligated to pay is exempt (Shulchan Aruch, CM 75:10).

In the final analysis, it is unlikely that if you were sued, you would have to pay. Therefore since the average person would thank you for your efforts, which are probably worth more than the missing money, and let you off, you are not obligated to replace the money. If the amount is less than your planned contribution, you can certainly have in mind to give it in lieu of payment.

79. Searching Another's Belongings

Question: In our religious summer camp, some items were apparently stolen, and there were grounds to suspect a specific camper. We considered searching the camper's belongings to try to catch him, return the stolen objects, prevent future thefts, and perhaps educate the offender. We decided not to do the search but could we have?

Answer: Psychological and educational issues need to be addressed in such a case by those who are familiar with the case's dynamics. We will concentrate on the halachic principles.

Moving another's possessions around while searching is not stealing, which is defined as taking something away from its owner, even temporarily (Rambam, Gezeila 1:3) or using it physically without permission (ibid. 3:15). Simply moving an object to another place where its owner maintains access is not stealing. However, going through another's belongings compromises his right to privacy, a right that halacha defends. The gemara (first perek of Bava Batra) discusses in detail the concept of avoiding hezek re'iya (damage by seeing sensitive matters). Rabbeinu Gershom rendered a cherem (ban) against reading a friend's letters without permission. According to many poskim, the prohibition to do so preceded the ban, which just strengthened the matter (see Encyclopedia Talmudit on Cherem Rabbeinu Gershom, 18).

May one invade a thief's privacy in order to catch him? As a rule, one may take the law into his own hands to legitimately protect his interests. One who recognizes his stolen object in the thief's property may enter his property and take it forcibly, if opposed (Bava Kamma 27-28; Shulchan Aruch, Choshen Mishpat 4:1). (According to one opinion, he should not do so surreptitiously and thereby look like a thief.) Presumably, this allows suspending other of the thief's "civil rights," including his privacy. The Chikekei Lev (I, Yoreh Deah 49) leaves as an unsolved question whether beit din can allow one who suspects that a letter contains improperly damaging information about him to read it in order to know how to act. The prominent dayan, Rav Shlomo Daichovsky

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(Techumin, vol. XI, pp. 299-312) discussed the matter regarding listening devices. He says that the Chikekei Lev would agree that one who has strong grounds to expect being damaged can use such a device to protect his interests. He says that this is all the more so when one has the opportunity to prevent another from sinning. In our case, it is a sin to possess stolen goods or steal more, and the staff might have been able to help facilitate the youngster's receiving counseling that he likely needs.

One problem is that barring definite knowledge of the suspect's guilt, one could be acting improperly toward the innocent. However, we have precedent in this regard, as well. The gemara (Bava Metzia 24a) tells of Mar Zutra, who suspected a certain yeshiva student of stealing a silver goblet, because he showed disregard for someone else's property. Mar Zutra physically pressured the student until he admitted to the crime. Panim Meiorot (II, 155) brings some more recent rulings in this vein of physical steps based on strong suspicions.

Another issue is that, classically, it is the one with the personal interest who may take steps to protect himself, whereas others should not (see Halacha Pesuka, Dayanim 4:16). However, this is apparently to prevent people who should not be involved from "sticking their nose in" without judicial authority. In our case, it is improper to allow an apparent victim to act based on his suspicions alone (see warning in Chafetz Chayim, Lashon Hara 7:14). The camp's responsible staff members, who are mandated to supervise the campers' welfare and conduct, are the proper people to be involved.

Thus, if the staff's higher echelon, in consultation with its rabbi(s), were convinced that the suspicions justified a search, they could have halachically done so. (We would urge people to consult legal counsel regarding the legality of their actions and consider all relevant concerns.)

80. Obligations and Intentions of Purchasing from a Store

Question: I have been looking for a specific sefer that a rabbi of mine needs and have gone to a few stores which did not have it. I called a store with limited hours, whose owner offered to try to order it. Meanwhile, I am pressed for time and will anyway be in Meah Shearim today, with its many sefarim stores (before the other store opens). Can I try to buy the sefer in Meah Shearim, or am I bound to give a fair chance to the one who said he would order?

Answer: When two people not only agree on a sale in theory but make a valid kinyan (act of acquisition) neither side can back out of the deal. When money is paid but no valid kinyan is made, it is possible for either side to back out of the deal, but he is subjected to a severe, curse-like sanction, known as a *mi shepara* (Bava Metzia 44a). When only the sides' words are given, R. Yochanan and Reish Lakish disagree whether there is still a moral obligation, known as *mechusar amanah* (lacking credibility) to go through with the sale (ibid. 49a). We accept R. Yochanan's opinion that this obligation exists (Shulchan Aruch, Choshen Mishpat 204:7). At first glance, we would say that if you agreed to buy the sefer you should follow through, but if you just indicated that you would likely buy the sefer if he receives it, you need not.

However, there are other halachic factors to consider. Perhaps *mechusar amanah* applies only to a case where a kinyan is possible but was not yet carried out. In our case, in contrast, where the storeowner did not own the sefer and thus ostensibly could not transfer it, the matter is too far from a kinyan for any obligation to exist. The Rosh (Shut 102:10) seems to say just that. On the other hand, the Rambam (Mechira 22:3, accepted by the Shulchan Aruch, CM 209:6) says that if one made a kinyan on an item the seller does not yet possess and it has a set price, the seller must acquire it on the buyer's behalf or be subject to a *mi shepara*. The S'ma (ad loc.:23) says that this refers to a case where the object is readily attainable, in which case it is as if it was already in seller's possession (see Kesef Mishne on Rambam, ibid.). The Shach (ad

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loc.:13) says that there is always a *mi shepara* in such a case even if the item was not readily attainable. Your case sounds as if the *sefer* is hard to come by. Therefore, if you agreed to buy the *sefer*, whether the agreement is semi-binding would depend on this *machloket* (see *Pri Yitzchak* I, 50).

There is also a *machloket* whether it is *mechusar amanah* to back out when the item's price has changed after the agreement (*Rama*, CM 204:11). One can investigate whether your need to obtain the *sefer* without delay is a comparable excuse to back out of the agreement. In any case, there is another reason to exempt you from going through with the purchase. It appears that you did not agree on a price. If so, besides issues of accessibility, the agreement is not yet complete. Therefore, it is not *mechusar amanah* to not go through with the purchase (*Pitchei Choshen*, *Kinyanim* 1:2).

One can ask whether you must compensate the storeowner for buying the *sefer* based on your request. It is far-fetched to say that he was acting as your agent if and when he bought it. However, spending money based on another's assurance at times obligates the assurator to compensate. For example, if two are planning to travel to have a dispute adjudicated at a distant *beit din* and one tells the other: "Go and I will follow," and he does not, the former has to pay the latter's travel expenses (*Rama*, CM 14:5). While we cannot do the topic justice, let us mention but one way our case is different and why you are exempt. Here, the storeowner has not lost money, as the *sefer* has value and can be expected to be sold some day.

In summary, you are not required to buy from the store that intended to order the *sefer* for you. Nevertheless, all things being roughly equal, you should try to keep your word or inform the storeowner not to order, apologize, and allow him to raise a grievance we are unaware of.

81. Receiving Multiple Offers When Selling a Car

Question: I am selling my car. A friend connected me with Reuven, who expressed serious interest in buying at the price I quoted, without seeing it. However, the completed sale depended on a few things. I have to find another car; he has to see the car and have it tested. The expectation was that these things would work out. In the meantime, a good friend, to whom I not only prefer to sell, but who also offered me more money, wants it. Am I obligated to sell the car to Reuven?

Answer: After making a kinyan (act of finalization), one cannot back out of a transaction. If the buyer gave money for the object but did not make a valid kinyan, he can back out, but a serious curse-like process called a *mi shepara* is applied if he insists on doing so (Bava Metzia 44a). When neither took place, there is a *machloket* in the gemara (ibid. 49a) whether the parties are bound by an oral commitment based on a concept called *mechusarei amana* (lack of trustworthiness). The Shulchan Aruch (Choshen Mishpat 204:7) rules that one is morally bound to complete the sale (see the sources cited in Pitchei Choshen, Kinyanim 1:(2), which attribute a moderately strong level of severity to the matter).

It is doubtful whether your friend's offer makes a difference. The Rama (CM 204:11- see commentaries' discussion, *ad loc.*) cites two opinions whether *mechusarei amana* applies when the object's going price goes up after the time of the agreement. However, when the price is the same but the seller just gets a better offer, the matter is more problematic (see Pitchei Choshen *ibid.*:(5)). The Chatam Sofer (Shut, CM 102) says that when the entire desire to sell was based on a lack of information, one is not bound by *mechusarei amana*. However, a case where one did not know that a friend wants to buy the car is not comparable to a case where the entire sale proved unnecessary. However, there are other factors involved.

Halacha deals with two fundamental elements of a transaction. First, there must be a clear decision to make the transaction.

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Second, legal steps are taken to finalize the matter, thus preventing people from backing out. The gemara (4th perek of Bava Metzia) and the Shulchan Aruch (CM 204) discuss differences in the steps of finalization, oral commitment being the weakest. However, when even the decision was not at the point of certainty that a transaction could be completed, there is no halachically meaningful commitment to uphold. What are signs of lack of certainty?

Regarding a *mi shepara*, the Shulchan Aruch (ibid.:6) seems to require that the final price was set in order for the sanctions to apply. The same appears to be the case for *mechusarei amana* (Pitchei Choshen ibid.:2). Regarding *mechusarei amana* when one promised a small present and no longer wants to go through with it, B'tzel Hachochma (V, 158) says that when the matter depends on a condition that the party cannot fully control, the required definiteness that creates *mechusarei amana* does not exist. Some distinctions that are cited there are hard to apply to our case, but in general we say as follows. It is possible (you are more aware of the details than we are) that you would not find a car quickly enough to accommodate the buyer, making the matter like a condition that negates *mechusarei amana*. Furthermore, since the potential buyer did not see or test the car, it is difficult to call the sale decided upon, even if your car is in good shape. He could decide he doesn't like it. At the very least, the price quoted was not fully meaningful, as even when two parties are certain they will go through with a car sale, blemishes affect the final price.

It is wonderful that you are concerned with the appearance or feeling that you are not acting in good faith, and you can take that into consideration. However, according to your description of the case, halacha does not seem to mandate (to any degree) that you to sell the car to the first person.

82. Reacting to Summons from a Beit Din

Question: I have a monetary dispute with someone, which I have tried to settle through compromise. Last week, I received a hazmana (summons) from a beit din to appear as a defendant on the matter on a certain date. I do not know that I want to use that beit din, and I also do not know the extent of the claim. If it is reasonable, I may pay to avoid machloket and headache. Do I have to come to the beit din who summoned me unconditionally, as their letter implies?

Answer: Your attitude is healthy in several ways. You are willing to compromise to avoid machloket, and you seem aware that any adjudication should be before a beit din, regardless of your chances to win (see Choshen Mishpat 26). We wish more people had your approach and are happy to share the clear halachot regarding your situation.

Regarding the choice of a beit din, when the problem is that the litigants live far from each other, the defendant has precedence (see Shulchan Aruch, CM 14:1). When the lack of agreement has to do with the sides' feelings towards the different batei din, neither side can force the other to accept a specific beit din. Rather, the system of zabla, in which each party picks a dayan and the two dayanim select a third, is employed (ibid. 3:1).

There are two primary limitations on zabla. One exception is that if the plaintiff's beit din is a "set beit din," to the exclusion of others in the area, the set beit din has jurisdiction (Rama ad loc.). This situation is generally uncommon in major, contemporary Jewish communities. Additionally, if the beit din that summoned feels that one party's "zabla dayan" is unfit to serve that role, they can disallow him (ibid. 13:1). In any case, the staff of the first beit din comprises the "point men" until a valid panel is chosen for the purpose of binding adjudication. You should respond to them promptly and respectfully and follow their procedural instructions unless there is a reason to suspect their credentials. Although you need not accept them to hear the case, it is not necessarily fair to discount them just because the other side chose them.

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In theory, it is sufficient that a hazmana contain the identity of the plaintiff and the beit din and the time and place of the summons (see Halacha Psuka, Choshen Mishpat 11:(7)). In practice, many batei din expect the sides to present their respective claim and counterclaim in significant detail prior to the hearing in order to make matters run more smoothly. The question arises when the defendant demands information that the plaintiff is unwilling to divulge before the hearing. The B'er Sheva (cited by the Shach, CM 13:1) learns from the concept that one does not divulge all of his claims outside court (Bava Batra 31a) that one is not required to divulge any details of his claim. This is to not allow the defendant time to fabricate a defense. The Shach deflects the B'er Sheva's proof and explains that a defendant has the right to know something about the case, so that he can consider complying with the plaintiff's demands rather than go to court. Most poskim (including the Netivot, ad loc.; see Pitchei Teshuva, ad loc.:4) accept the Shach's opinion.

How much detail must the plaintiff divulge in order to satisfy the defendant's demands for information? Does it apply to the amount of money, as you inquire? The Shach's reasoning certainly applies to the amount of money, which is crucial to determine whether he will bother to adjudicate. In fact, the Urim (13:1) says that even those who do not accept the Shach's opinion agree that one has to at least divulge the amount of the claim. The Pitchei Teshuva (ibid.) adds that one has to tell what type of claim it is (loan, damages, etc.). The plaintiff certainly does not have to divulge his evidence (Shach, ibid.).

In summary, while the beit din's hazamana appears legitimate, you can demand a different beit din (at least a zabla) and you can make your response dependent on knowing the extent of the plaintiff's demands.

83. Damages to a Borrowed Chair on Purim

Question: My friend borrowed chairs for a Purim seuda. One of his “happy” guests jumped on a chair and broke it. Does one have to pay for damages he makes during mitzva-sanctioned revelry?

Answer: We need to address two issues: 1) Does the damager have to pay? 2) Does your friend, who borrowed the chairs (a sho’el) and is thus responsible for damages to them, have to pay? We must point out that we cannot rule conclusively regarding a specific case without being authorized to hear the claims of each side.

Damages on Purim: The mishna (Sukka 45a) tells of the practice that on the last day of Sukkot, adults would joyously grab lulavim from youngsters. Tosafot (ad loc.) and others derive from there that when the practice is to act out of appropriate joy (such as at a wedding) in a manner that causes damages to others, people are exempt from paying for resulting damages. The Rama (Orach Chayim 695:2) applies this rule to damages that result from reveling on Purim. Several sources explain that the key matter is that there is an accepted practice to act wildly (see Rosh, Sukka 4:4; Terumat Hadeshen II, 210). Rabbeinu Yerucham understands that this sets up an assumption of mechila (relinquishing of rights to payment) should damage occur. Therefore, the limitations that poskim place on this exemption, such as that the damage was unintentional (Mishna Berura 695:14) and not too great (ibid.:13) are logical. Although the Aruch Hashulchan (OC 695:10) says that it is no longer accepted to act on Purim in a way that justifies the exemption, this appears to be a minority opinion. In our case, therefore, the reveler who unintentionally damaged a single chair on Purim is apparently exempt.

The Sho’el’s Obligations- One who borrows an object is obligated to pay for it even if it disappeared or was broken b’onesh, under circumstances beyond his control. The gemara (Bava Metzia 96b) posits that an exception to this obligation is meita machamat melacha: if the object broke (literally, [the animal] died) due to the work for which it was borrowed. One could claim that since the chair was meant to support a person and it broke under those circumstances, the sho’el would be exempt. On the other hand,

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meita machamat melacha applies only when the object was used responsibly, not abused (i.e. by jumping) (Shulchan Aruch, Choshen Mishpat 340:1).

We must determine the extent of the exemption of meita machamat melacha. The Shulchan Aruch (CM 340, 3) accepts the Ramah's approach that the main point is that the damage occurred during the regular work, regardless of the cause. However, the Rama (ad loc.) rules like the Ramban (Bava Metzia 96b) that the exemption is because we can "blame" the owner of the object for giving the sho'el something that cannot withstand the job it was given to do. When the object does not fail to withstand its task, the borrower remains obligated to pay. The Shach (ad loc.) accepts the latter ruling. In this case it is hard to blame the chair owner, as chairs are not meant to withstand adults jumping on them, so the ruling would depend on the machloket between these opinions.

On the other hand, in addressing damages during reveling, the Levush (CM 378:9) raises the possibility that when one lends something to be used during wild activities when it is likely to get damaged, meita machamat melacha might apply. This would be another reason to exempt your friend. However, our case is not exactly the same. The Levush is talking about a case where the borrowed object is in the "direct line of fire." In our case, while many people act uncharacteristically wild on Purim, the consequences are not usually focused on chairs used in the seuda. In the final analysis, it is far from clear that a beit din would obligate your friend, the sho'el, to pay. However, the most logical conclusion from the halachic sources indicates that he would be best to pay.

84. Returning a Security Deposit with a Different Currency

Question: Three years ago, I rented out an apartment in Beit Shemesh. I received a security deposit of \$1,000 to ensure my rights. The contract designated all payments in US dollars but, for the payer's convenience, I accepted payment of the deposit in shekalim. The rental period is over. I want to return the \$1,000 deposit but he wants to receive the amount of shekalim that he gave, which is now worth much more than \$1,000 written in the contract. How much do I owe him?

Answer: CLARIFICATION: Usually a security deposit is given as an undated check, and no monies are transferred if all goes smoothly. Apparently you actually cashed it. When and why did you do so? Was it part of the agreement? If so, please forward the relevant part of the contract.
RESPONSE: The payment was in cash, although not stipulated in the contract, because the renter did not have an Israeli bank account and I didn't mind.

A security deposit is usually a deposit (pikadon) that neither party, depending on how things work out, will cash. The mishna (Bava Metzia 43a) says that if Reuven gives cash to Shimon to watch, Shimon can take it for himself only if he is a money changer and, even then, not if Reuven demonstrates that he wants the money to remain intact. The explanation is that one who gives funds for the purpose of safekeeping probably wants its maximum availability (a money changer has constant cash flow). Thus, it might have been expected for you to have kept and returned the same bills you received and it may have been improper to have used the deposit. In such a case, one has to pay at least the value of what he took at the time he took it (Bava Kama 65a) according to the local currency, which, in Israel, is the shekel. Thus, you would pay the amount of shekalim you received and used, irrespective of the value of \$1,000.

However, it is possible that in modern times, we treat the standard person like a money changer in this regard (S'ma 292:18;

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see Shulchan Aruch, CM 292:7, Pitchei Choshen, Pikadon 5:15). When one uses pikadon money with permission, he becomes fully responsible for it. The Shach (292:9) views such use as a loan, not as free use of an object. Consequently, if the currency goes out of circulation, he cannot return the currency he received. You might make a similar argument. You borrowed \$1,000, as described in the contract, even though it was given in shekalim, and this is what you should return. Although one usually may borrow a set sum of money only in the local legal tender, Rav Moshe Feinstein's p'sak (Igrot Moshe, YD III 37) that the dollar's special status in Israel makes it equivalent to the shekel has been accepted for decades. (It is questionable whether this is still true in the present financial situation in Israel, but when you made the agreement it was.)

However, unless your contract is unusual, the above is not relevant. Generally, the designation of US dollars is only to determine the amount of shekalim one gives when payment is due or paid. However, the payment is still, in Israel, in and of shekalim. Therefore, even if we look at the deposit as a loan (which is unclear), it is a shekel loan to be returned in shekalim or their equivalent unless specified otherwise, which does not seem to be the case here. The assumption that the deposit be viewed in shekalim is even stronger since you received shekalim. Presumably you could have hid the money and returned it three years later. Had the dollar gone up (as it did for years), would he have been able to demand that you return more than you received? Now that it went down, you may not return fewer shekalim than you received. Using the money doesn't change it from shekalim to dollars, even if you tend to view your finances in dollars. Thus, your counterpart is correct.

85. Accountability for Damages when Moving Items

Question: [The following is adapted from part of a din Torah ruling under our beit din's auspices.] Reuven hired Shimon to move household items. The large quantity of items required, in addition to the moving truck, a trailer pulled by a car. The packers improperly put more and heavier things in the trailer than in the truck, apparently beyond its legal weight. This could have caused the tires to blow out or increase the likelihood of an accident, which could have caused minimal damage to the load, considering the trailer's contents, which were mainly not breakable. During the moving, a fire broke out in the trailer, which destroyed almost all of its contents within minutes despite diligent effort to put out the fire and save items. Neither side was able to provide a logical explanation of how the fire started. Part of the question was whether Shimon's negligence (p'shiya) in regard to one element of his work obligates him to pay for the eventual damage.

Answer: A fire that could not have been anticipated and/or prevented by reasonable care is an oness (extenuating circumstance), for which even a shomer sachar (paid watchman) like Shimon is exempt (Bava Metzia 93a). There is a major machloket, which appears in different applications throughout Shas, regarding one who was negligent in his efforts but the damage eventually came through an oness. The topic is called techilato b'pshiya v'sof b'oness (=tbpvsbo). The halacha is that in tbpvsbo, one is obligated to pay (Shulchan Aruch, Choshen Mishpat 291:6) provided there is a chance that the damage, unexpected as its manner ended up being, would not have happened had the p'shiya not been done (S'ma ad loc.:10).

In our case, the fire does not seem to have been related to the overloading of the trailer. However, in regard to the extra items that should not have been added to the trailer, had they been put in the truck as they should have, rather than the trailer, they would not have been burnt. The simple rules of tbpvsbo would, then, seem to obligate Shimon.

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One can ask, though, what the halachic logic of obligating *tbpvsbo* is. Why should one pay for damages that were related to the *p'shiya* only by chance and not logically? The two main possibilities are as follows: 1) When one is negligent, he becomes potentially obligated to pay, although he is exempt if no damage results or occurs in a manner totally unrelated to the *p'shiya*. The latter is not what obligates him. 2) An oness that happens in the aftermath of *p'shiya* is a continuation of the *p'shiya*, which obligates him. It is, thereby, the time of damage that obligates him. The practical difference could be in a case like ours, where the damage that could have been feared to come from the *p'shiya* would have caused limited damage, whereas the eventual oness caused much greater damage. According to #1, the monetary obligation does not exceed that which should have come from the *p'shiya*, which in our case is minimal. According to #2, the eventual damage should be considered done by *p'shiya* and obligate Shimon fully.

Tosafot (Bava Kama 23a) posits that if one did a *p'shiya* in which he would have shared responsibility with another and then an oness happened that related to him alone, he pays no more than he would have for the *p'shiya*. Rav Soloveitchik (R. Reichman's Notes to Lectures, ad loc.) and Rav Charlop (Beit Z'vul, Bava Kama p. 62) say that Tosafot assumes like #1. We have not found those who explicitly argue on Tosafot. Yet there are indications that others posit #2. R. Akiva Eiger (to Bava Metzia 36a. 29) understands that Abaye and Rava dispute which approach is correct. Rava, like whom we pasken, posits #2. The Netivot Hamishpat (292:13) assumes that we estimate the damaged object's value according to the time of damage, not of *p'shiya*, which also seems to support #2.

[Further deliberation is beyond our scope. We hope you enjoyed considering some issues.]

86. Whether one Must Repay a Debt Where There is a Dispute about Prior Payment

Question: In my yeshiva, one of the madrichim is our middleman with a laundromat. He usually keeps a ledger of how much we owe. We usually pay after they return the laundry, and he then crosses out the entry in the ledger. Recently I used the system and am sure I paid but he didn't erase the debt. He is sure I did not pay. Must I pay a second time? I am asking this with my madrich's blessing. While we may work things out on our own, we want to know the halacha.

Follow-Up Questions: 1) When one incurs a debt to the madrich, does he sign to this on the ledger? 2) Does the madrich have a policy that one who owes the money must make sure himself that the debt entry is erased? 3) Did anyone see you incur this debt or admit to it prior to your claim that you returned the money? 4) Does the madrich get paid for this service?

Response to Follow-Up Questions: 1) There are no signatures, as we trust each other. 2) There is no stipulation about the erasures. He usually takes care of it quickly. 3) We do not think that anyone saw me incur the debt. 4) He does not get paid.

Answer: There is a machloket in the gemara (Bava Kama 118a) whether a plaintiff who is certain a defendant owes money can extract money when the defendant is unsure. We rule that he is not required to pay (Shulchan Aruch, Choshen Mishpat 75:9). However, if there had been a definite debt, the plaintiff is sure it still exists, and the defendant is unsure if he paid, the defendant must pay (ibid.). When the defendant is confident he does not owe money, he is exempt from paying, whether he claims that he never incurred the debt or that he paid it back. This is so even if there are witnesses he once owed the money and he just claims he paid back (Shulchan Aruch, CM 70:1).

If a lender wants to ensure that the borrower cannot claim he paid, he has a few options. He can tell the borrower that he must

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pay in front of witnesses (ibid.). He can draw up a shtar (contract). Then the borrower either has to have the shtar ripped up when he pays, have witnesses of the payment, or have a valid receipt drawn up. In your case, there was no IOU, contract, or even witnesses. Therefore, it is clear that you are not obligated “straight out” to pay money.

Nevertheless, when it is one person’s word against another’s, the defendant must make a rabbinic level oath that he does not owe the money (Shulchan Aruch, CM 75:7). Since the minhag of batei din is to not administer oaths, beit din can impose a compromise in which the oath is “redeemed” with a minority but more than symbolical payment of a percentage of the money claimed. This is especially true in a case like this where your madrich’s claim is not something you would dismiss as a ploy to extract payment, but a sincere belief with reasonable grounds that you do owe money. We would add that it seems somewhat morally problematic for people to make free use of your madrich’s efforts on the group’s behalf and leave him possibly losing money (either of you could be remembering wrong) when there are questions of this sort. While he might want to protect himself better, the right thing for you would be to pay at least most of the money.

87. How to Write a Halachically Valid Will

Question: I am working on a client's will. He wants the contents of his home to be divided among his children in the following manner. They should divide the contents by consensus. Regarding items about which agreement is not reached, a system of lots should be used, whereby whoever wins the lottery gets the object. How can this be phrased so that it will be halachically binding, as there seems to be a problem of *bereira* (retroactive determination) when giving objects to an unknown person?

Answer: There are four theoretical ways to go about accomplishing this end result. We will explore very briefly which one(s) works and suggest how to proceed most simply.

The manner that you seem to be assuming is that the father will transfer his property during his lifetime to his children in a manner that what he is giving to whom will be determined based on some later event (the lots). This does appear to be an issue of *bereira* - that it is a problem to give something to a person whose identity is yet to be determined. One example is when one gives rights in a Korban Pesach only to the son who arrives first in Yerushalayim, which works only if one posits that *bereira* works (Pesachim 89a). We assume that *bereira* does not work in regard to Torah laws (Beitza 38a). The same applies when the people are determined (e.g., his children) but the objects they will receive is not. A famous application is close to home. The Land of Israel was divided by lot to the first generation and, after death, divided among their descendants. The gemara says that if we hold that *bereira* does not work, we will not say that each one received the part that was destined to him, but that each inheritor "sold" his rights to the other (Gittin 25a). Thus, this system is problematic.

There is a concept that one can, before he dies, create a duty upon his inheritors to follow his instructions regarding dividing his estate. This concept is called *mitzva l'kayeim divrei hamet*. However, this is a moral obligation, not a legal transfer of monetary rights and the cases to which this applies are limited (see Shulchan Aruch, Choshen Mishpat 252:2 and Shach ad loc.:7). Thus, this too is an unreliable system.

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Another potential approach is to give the children all the property as equal partners but impose upon them a certain system of dividing the property. If partners can create conditions for their mutual rights in the partnership, then one who gives them their joint rights should be able to impose the same conditions. On the other hand, the gemara (Bava Batra 3a) says that it is too abstract (*kinyan devarim*) for partners to promise to divide land in a certain manner that is otherwise not halachically prescribed. Since development of this issue is complicated beyond our scope, let us present the following straightforward solution.

The whole idea of wills in which the division will not follow the Torah's standard guidelines (e.g., daughters receive a portion; the firstborn does not get double) has for several hundred years employed a system called a *shtar chatzi zachar* (which you probably use in writing halachic monetary wills). (See Rama, CM 257:7, whose ruling is a main basis of the practice.) It basically works by the father admitting that he owes a large sum of money (or creating the obligation) to each of the desired "inheritors." The obligation becomes payable right before his death and is binding on his inheritors unless they fulfill the instructions that he leaves behind in a written will. The inheritors choose between paying the large sum and following the instructions. The instructions are not bound by halachic issues such as *bereira* because the straightforward monetary obligation already exists and they only determine whether the conditions of removing it have been fulfilled. Therefore, you can use a regular "halachic will" format and have the specific part of the instructions clear in conforming to your client's interests.

88. Is a Professional Believed About the Time He Put In

Question: I sent my computer to a technician to repair serious problems. He was unwilling to tell me his charge in advance, claiming it depended on how long it would take him, to which he would not commit. After fixing the computer, he charged me what I consider an exorbitant price. I am not sure I trust him on 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 asker that we cannot say anything conclusive after hearing only one side, as even two honest people can have different viewpoints of the same events. This is all the more so in this case in which you yourself are in the dark about what happened. While we often say that the two sides have to be heard in *beit din* or another permitted arbitral setting, we cannot ignore your question – whether you should make an issue 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 (Shulchan Aruch, Choshen Mishpat 89:4). However, if the client is uncertain of how much he owes, he should have to pay because he is unable to take the serious oath in which he is obligated (see *ibid.* 75:13). If he is incapable of knowing how much he has to pay, this logic does not apply (Shach, CM 75:54).

In work such as this, where it is clear that one is going to know how much time he put in and the other will not, the rules are somewhat different. Mishnayot regarding a particular agent who claims he made expenditures on behalf of another (Sh'vuot 45a) and a husband who made improvements in his wife's field before divorce (Ketubot 79b) say that the plaintiff swears how much he spent and is reimbursed. The Mordechai (Ketubot 209), Maharik (10), and Rama (CM 91:3) understand this as a broad rule regarding claimants who know about the expenditures and

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defendants who do not – the claimant is believed to receive payment with an oath.

The above appears contradicted by the halacha that one who seeks reimbursement for expenditures due to unreasonable steps taken by his counterpart in litigation must prove how much he spent (Rama, CM 14:5). The S'ma (91:16) distinguishes between cases where the claimant worked for the benefit of the other side and where he acted against his will. The Shach (ibid. 23) distinguishes between cases where the defendant requested of the claimant to make the outlays and cases where he 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 in effect grants trust in the veracity of Shimon's charge.

The obligation to pay wages is equivalent to that to pay expenses. In your case, the S'ma and Shach should agree that you should believe the person whom you authorized to work and bill you. Certain cases could arguably be exceptions. One is when you have strong grounds to believe he is lying (see Pitchei Teshuva, CM 91:4). Another is where the technician should have informed you when he figured out the extent of the cost, enabling you to decide whether it is worthwhile to have it fixed. (Often, he will not know until well into the process, when informing you is irrelevant. Furthermore, he can claim that you should have requested an update. Such matters change from case to case.)

It is generally best to research a professional's reliability before you hire him and if you heard favorable reports, to trust him. While it is your prerogative to not use him in the future, refusing to pay in full is drastic. Some situations may lend themselves to expressing (in a mentchslach 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 hard to give firm advice as to what to do, and without hearing the other side, it is certainly wrong to attempt to tell you who is right.

89. Charging for Incidental Work Not Originally Discussed

Question: I give a handyman a lot of work and pay him at a generous hourly rate, trusting him to report the hours. It has now come to my attention that he charges me for things that I do not think are right. This includes the time he spends asking experts how to do things and the time and “wear and tear” on the car when he picks up things for me. I told him that I thought those things, which are not his work itself should be on his account, yet he keeps on charging me. Can he do that after I told him that he should not be charging?

We cannot give you a definitive answer not only because we have not heard the handyman’s version but also because many of the issues may depend on nuances that we are not aware of. After learning some of the principles, you should be reasonably equipped to work out a system of dealing with past and future questions through communication.

The standard obligation to a worker requires the employer’s explicit or at least implicit agreement that he provide a service. However, there is another possibility to be obligated even without agreement, based on the concept of *neheneh* (benefit).

The Rama (Choshen Mishpat 264:4) talks about one who, along with a friend, was in jail and used his resources to secure not only his own release but his friend’s also. The Rama says that if he added resources to include his friend’s release or if he made the outlays with both of them in mind, his friend must pay him. He then creates a general rule: “Anyone who does an action or a favor for his friend, [the friend] cannot say: ‘You did it for free because I did not tell you to do it,’ but rather he must pay his wages.” Since no pay was discussed, he would have to pay according to the lower end of the range of salaries (K’tzot Hachoshen 331:3). The exception to the rule is when that which was done is something that is generally done for free (Pitchei Choshen, Sechirut 8:31). Thus to the extent that the “extra” things the handyman did were of value

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to you, you would have to pay, but if they were beyond the scope of what you had asked, not at the usual generous rate.

After your initial protest, it is possible that your stance improves. The Rama discusses a case where the recipient of the favor said nothing in advance regarding payment, but you said that you did not want to pay for the extras, which could change matters. Although he raises that possibility, the Pri Tevu'ah (cited in Pitchei Teshuva, *ibid.*:3) rules that if the worker intended to get paid and there was *neheneh*, the recipient still has to pay (unless the provider of the benefit could be forced to provide the service, e.g., if it required no sacrifice on his part).

On the other hand, Shut Mahariya Halevi (151) says that it does not make sense that one must pay after he told his counterpart in advance that he refuses to do so. If there are differing halachic opinions, it is difficult to extract money. The Pitchei Choshen (Sechirut 8:(64)) says that the Pri Tevu'ah was talking about a case where the recipient expressed dissatisfaction at the idea of paying, but wanted the work done, but if there were a conclusive refusal to pay, all would exempt him.

This distinction is likely pertinent in your case, as you may have only protested but not refused. On the other hand, there is likely a distinction in your favor in your case. The aforementioned sources discussed cases where the recipient wants not to pay anything. In contrast, you are paying for services generously. Therefore, it makes sense to interpret your protest as follows: "As long as I am generous with the rate of pay, I expect you to be generous at not running up the bill by counting incidental time expenditures. If you want to charge for *neheneh*, then let's use a low rate for everything." Especially if there are standard practices in this area of work, one should not generalize in one person's favor or the other regarding all charges but look at each type of charge. A compromise about the past and guidelines for the future (for example, that he must ask you in advance about certain types of work) is probably best.

90. Finding a Credit Note

Question: I found a credit note of an (Israeli) supermarket in that supermarket. May I use it?

Answer: First one needs to do determine from whom the note likely fell. The gemara (Bava Metzia 26b) talks about finding lost items in a store and distinguishes between the part of the store that is frequented by customers and the proprietor's area. Assuming you found it in the customer area and especially considering that credits are usually ripped up after being redeemed, you can assume it fell from a customer (unless you found it next to some counter on the worker's side).

Next, we must discuss whether you should try to return the note to the person who lost it. This depends on whether it has a siman (a distinguishing characteristic, so that one can prove that it was he who lost it). Assuming the credit note is for an amount that corresponds to the value of a specific item (as opposed to a coupon that is like a gift certificate of a set denomination), it seems that this is a siman (based on Bava Metzia 23b). If so, you should put up a note in an appropriate place in or around the store or give a customer service worker your phone number in case someone comes to look for it. If the store is being unhelpful or it is clear from the type of store it is that you will not be able to return it, you can assume that the person who dropped the note will give up hope of finding it. (It would have been nice if you waited a few moments to see if someone was looking around the store for it, although this was probably not halachically required.)

The credit note is like a partially open check (i.e., regarding its recipient) of the store. This type of "document" was prevalent in previous centuries, and the poskim called it a mamrani. It was usually written by a borrower who gave it to a lender to ease collecting the loan, as he could collect directly from the borrower or easily sell it to someone else. The Pitchei Teshuva (Choshen Mishpat 54:1) has a lengthy discussion of the Acharonim's opinions about a case where a lender was given a mamrani, lost it, and asked the borrower, who knew he had not paid him even though he was unable to return the mamrani. One of the main

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issues was whether the lender could write a shovar (receipt) that effectively said that whoever would present the mamrani for payment would no longer be able to receive payment, thus saving the borrower from paying twice. He cited the Tzemach Tzedek as acknowledging a custom that in such cases, an announcement would be made in the local shul/community that anyone who possessed this mamrani of the borrower in question must produce it within a certain amount of time or no longer be able to. The poskim's general orientation is that a mamrani is not like cash or an object of value but a device for having loans paid, either to the lender or to the person who bought the mamrani from him. Thus, it was improper, albeit possible, for a finder to receive payment.

This situation is likely to continue to exist regarding credits at local or small stores, where there is a relationship between the proprietor and at least many customers. In such a case, if the customer said he lost the note, the proprietor is likely to believe him and honor it. If that happens, the note is not like money, which if lost is lost, but rather is a reminder of a debt. In that case, one who uses someone else's credit is cheating the store. In contrast, in large, impersonal supermarkets, if one loses the note, he will not receive the credit, and the supermarket has "gained" by not paying its debt to the customer. Another who redeems it just replaces the deserving recipient and is not causing the store a loss. The store views their note as something of value, which can be used, sold to someone else, or lost and found. If the finder cannot return it to the one who lost it, he may keep it and use it as he does if he finds a normal object that has no simanim.

91. Payment for Deficiencies in Handling Items One Ships for a Friend

Question: [The following is adapted from a din Torah at Eretz Hemdah's beit din with the litigants' permission. We are sharing only portions of the deliberations.] The Cohens were making aliya from the US. In order to make it more financially feasible to send a lift in a large container (where one saves money if he can come close to filling it), which they could not fill with their own items, they decided to rent space to acquaintances. The Levis (also olim) were among those who accepted the offer and ended up paying \$1,500 (out of a total of app. \$10,000) for their things. They were told that in the professional packing process, their items (especially breakables) would take up much more room than one would expect. The Levis brought over many household items in marked boxes, where they were placed in a corner of the Cohens' basement. The Levis took up the Cohens' offer to insure part of their goods, but underpriced the value for insurance because they heard that the companies do not always pay. The Levis had no contact with the companies involved in the shipping; everything was in the Cohens' name. The movers did not pack all of the breakables with bubble wrap and did not separate different families' items as instructed. As a result, several of the Levis' things were broken, and they had to return to the Cohens' Israel home several times to look for things. Although the Cohens sent claim sheets to insurance three times, the insurance evaded dealing with it and the Cohens have given up. The Levis want the Cohens to pay for the lost and broken items. They also want a refund of part of the shipping fee due to the poor service they received and the fact that their items were not packed in the bulky way that justified the \$1,500 fee. How much, if at all, should the Cohens pay?

Answer: The Cohens are shomrei sachar (paid watchmen) for the shipment, even if they only charged per space, as defrayal of costs is of value and a shomer sachar need not receive formal payment (Bava Metzia 80b).

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If a shomer hands over responsibility for the items to another shomer, within expectations, shomer 1 is exempt from responsibility (Shulchan Aruch, Choshen Mishpat 291:21). If shomer 2 did an insufficient job, shomer 2 has to pay (ibid. 24). There is a machloket (two opinions in Rama, ad loc.) whether, when shomer 2 has no money to pay, shomer 1 assumes responsibility to pay. Since, according to the arrangement, the Levis cannot approach the shippers or the insurance, this case seems parallel. However, when owners knew who would be serving as shomer 2, shomer 1 is not obligated if shomer 2 fails to pay (Shach, CM 291:32; see Pitchei Choshen, Shomrim 4:(44)). That is the case here. In fact, the Levis' description of why they insured as they did displays their understanding that the insurance company would be the address for such common problems. They should have raised the issue of the Cohens' responsibility if they thought they should be responsible. Both sides realized the Cohens were obligated to do their part by filing a claim, which they seemed to have done. Thus, the Cohens are, on a certain level, exempt.

However, there are claims with some basis, that the Cohens were deficient in performing their part of the job, which includes giving the packers firm instructions how to pack, supervising the job, and filing with the insurance in a way that they would not evade payment. The gemara (Bava Metzia 42b) teaches us that even when giving responsibility over to shomer 2, how it is given over can obligate shomer 1. Even if their performance was not negligent (pshiya) given the difficulty involved, it is far from clear that they took all of the precautions a shomer sachar is obligated in. Since in any case, a shomer has to, in theory, swear that he fulfilled his obligation, and in lieu of oaths in our times a compromise is enforced instead, we obligate the Cohens to pay [a certain amount – the calculation is beyond our scope, as are other elements of the analysis].

92. Returning Gifts After a Broken Engagement

Question: Our daughter was engaged, and her chatan broke off the engagement with complaints we know are untrue. We paid for many wedding expenses, and his side has not agreed to pay their share. The chatan had given our daughter an engagement ring and other jewelry, and we have received word that his family wants them back. Are we required to return them, or may we hold on to the jewelry until we have been compensated?

Answer: This question has two elements, one specific to Even Haezer (laws related to marriage) and another that is classic Choshen Mishpat (monetary law).

The mishna (Bava Batra 146a) says that certain *sivlonot* (presents that a chatan gives to a kalla before their marriage) return to the chatan if they do not get married. The basic distinction is as follows. Those presents (including food stuffs) that were meant to be used up during the pre-wedding celebration were appropriately given even if the end goal of marriage was not met and need not be returned. However, presents that were to last into the future are deemed to be done on the condition of marriage and must be returned if they do not get married (see also, Shulchan Aruch, Even Haezer 50:3). Although, usually, we say that conditions that undo a transaction must be verbalized, when it is clear that a present is based on future expectation, it is deemed conditional. This is true even if the kalla is not at fault at all, including if one of the parties dies (*ibid.*). In fact, if the kalla backs out, then her side has to pay for the money the chatan wasted on the celebrations. (Similarly, a chatan is required to return the presents that he received from the kalla's side- *ibid.* 4). Thus, on the basic level, you are required to return the jewelry.

However, on the second level, your claims are likely to have merit. You spent a lot of non-refundable money on wedding preparations, which now, by his backing out, is a loss to you. It is likely somewhat complicated to figure out how much of the above the other side owes you, and it may depend on specific elements of

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agreements and the chain of event that we are unaware of. We will not express an opinion without hearing both sides, and it might require a formal beit din setting to determine an exact solution. However, since the other side has resisted dealing with the matter, the question is about taking the law into your own hands by withholding the jewelry.

Taking things of value in lieu of payment one believes he deserves is known as tefisa, and its laws are very complicated. The biggest limitations are against unilaterally taking something as collateral for a loan, which the Torah forbids (Devarim 24:11), causing damage during the tefisa, and when one takes something he cannot prove he deserves (Rama, Choshen Mishpat 4:1). However, the main problem is in the act of taking. If the other party had voluntarily given the object (as in this case), he can hold on to it as a guarantee until his rights have been properly addressed (whether by agreement, mediation, or arbitration) (see Yam Shel Shlomo, Bava Kama 3:5). While it is problematic to obtain the object through deception (K'tzot Hachoshen 4:1), that is certainly not the case here.

Legal tefisa can also be an advantage where it is unclear to a beit din which side is correct, as the one holding the object in hope of payment is no longer the only one trying to extract payment from the person in possession. (The details are too complex to discuss seriously in this context, but one can see Klalei Tefisa (CM 25), par. 7, 17).

All of this being said, it is extremely important from a personal, spiritual, and practical perspective to allow the painful matter of a broken engagement to heal with as good terms as possible. Extended recriminations and posturing can cause all sorts of problems for the chatan's and the kalla's futures. Therefore, one should make certain sacrifices to do what is smart, not just what is right.

93. A Roommate Paying for Failing to Lock the Door

Question: My roommate (=Reuven) and I disagreed whether it is necessary to lock our dorm rooms when leaving, and he often does not bother or remember to do so. Recently, things were stolen from our room after he left it unlocked. I think he should pay, as his approach was proven overly optimistic at my expense. Am I right?

Answer: First, let us see whether Reuven, who as a roommate was able and arguably responsible to help guard your items, when applicable, should be obligated as a negligent shomer (watchman). One does not become obligated as a shomer unless he accepts responsibility, which probably did not happen in your case. It is not sufficient to be aware that the object's owner left the object in his proximity (Bava Metzia 81b).

Yet, there may be grounds for obligation as a shomer, as follows. The Rambam (Sechirut 2:3) says that even in cases (such as guarding land) where the laws of a shomer do not apply, one is still obligated to pay for negligence because "negligence is like damaging." We can suggest similarly that the negligence of not locking the door obligates one even if he does not do a damaging act and he does not have the obligations of a shomer. True, commentators (see Shach, Choshen Mishpat 66:126) say that this is true specifically to one who accepted being a shomer, as the moral obligation to watch exists, just without a shomer's halachic obligations. Thereby one who fails to guard on the most basic level must pay. However, in our case, he never promised to guard. Yet, our case is more stringent, as roommates have a relationship of interdependency and responsibility (e.g., if you had complained to the school, they probably would have instructed Reuven to lock the door). Therefore, the Rambam's opinion should apply to this case. Regarding halacha, the Shulchan Aruch and the Rama (Choshen Mishpat 301:1) cites the Rambam's as the minority opinion, while the Shach (op. cit.) accepts his opinion. In short, it is unlikely that a beit din would extract money from Reuven based on this logic, despite its significant merit.

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Another avenue to explore is damages. The gemara (Bava Kama 55b) says that if one breaks his friend's flimsy wall that was holding back his friend's animal, beit din cannot make him pay, but he has a moral obligation to do so. There is a machloket whether he is forced to pay when he knocked down a strong wall causing the animal to get lost (see Shulchan Aruch, CM 396:4). The Yam Shel Shlomo (Bava Kama 6:3) says that even one who obligates there does so because felling the wall that holds back an animal is like removing the animal. In contrast, one who opens a door that allows a thief to come in, only introduces a new, potentially damaging factor. The latter is gerama (indirect damage) and one is not obligated, although there is likely a moral obligation to pay (gemara, *ibid.*). Our case is even more lenient, as Reuven has every right to open the door, and the problem is his failure to lock it later (it might depend on if he purposely did not lock it).

A final category, which is a mix of the two above, is nizkei scheinim (damages among neighbors). The Tur (CM 157) cites a machloket. The Ramah compares the case of a neighbor who warns another that his failure to close a door allows robbers in to the case where one warns his friend that his wall fell and the mingling of their different vegetations will render them forbidden and he does not act, where he must pay (Bava Kama 100a). The Rosh counters that in the latter case, the mechanism that creates the prohibition begins working immediately, which is different from the possibility that robbers may come from elsewhere to damage. The Rama (CM 155:44) cites both opinions regarding one neighbor who asked the other to remove an indirect damager and he did not. In our case, then, it is hard to extract money but also hard for Reuven to wipe the slate clear. Therefore, we think that it is proper for you to suggest a compromise with Reuven about payment and have him accept the responsibility to lock the door seriously in the future.

94. Requirement for the Seller to Fix the Situation

Question: I bought an apartment from the project's developer's brother. My lawyer did not discover that the project's building permits were incomplete. Now, the municipality is "making noise" about kicking out the residents and/or allowing us to stay with limitations. I have tried to smooth things with the municipality but have not yet succeeded. The developer has the best chance of getting the municipality to complete the permits after the fact, and the seller, who admits he did not tell me of the problem, can make him to 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. (He points out that he still has an apartment in the project, and many who knew of the problem bought). He is willing to buy back the apartment but not take action. Can I force him to fix the situation?

Answer: This case undoubtedly contains many unclear elements, which require either a settlement or adjudication in *beit din*, but we will address your main inquiry in general terms.

Fundamentally, a sale is the transfer of an object from the ownership of one person to another, as opposed to obligating the seller to give or do something for the buyer. Thus, the seller has a good point, when refusing 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 (see Shulchan Aruch, Choshen Mishpat 232:3).

Some sources do indicate that the seller is required to act to fulfill the buyer's basic expectations from the purchase. For example, there is an opinion that if one made a purchase before a document was written but pledged to write one, he can be forced to write it and cannot opt to nullify the sale (Shulchan Aruch, CM 243:9). The Imrei Yosher (II:52) explains that the document is part of the process of the purchase.

However, these sources are quite different from your case. For one, there the buyer pledged to write the document. Here, even if

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(we do not know) the seller said or implied the property had a complete permit, he did not pledge to take further steps to get it to that point. If he gave a false picture of the present situation, there may 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 sale process (when buying from the developer, the contract usually states what his legally required steps are).

The Rosh (Shut 96:6) says that if one buys an object with a flaw that can nullify the purchase, the seller can, under certain circumstances (see Shulchan Aruch and Rama, CM 232:5), say that he is willing to fix it rather than allow the purchase to fall. Our question is the opposite situation: can the buyer say: “Rather than have to nullify the sale, I demand of you to fix the flaw.” The Ulam Hamishpat (ad loc.) understands from the Rosh that he can demand that the seller either fix the problem or reduce the price so the buyer can. However, some Acharonim (including Lev Meivin, CM 144) disagree. I believe that the latter opinion is correct. Realize also that the Rosh says (Bava Batra 5:14) that a seller who overcharges by enough that the sale can be nullified cannot be forced to return the overcharging if he prefers to cancel the sale. Similarly, the Shulchan Aruch (CM 232:4) says that a seller can opt to nullify a sale rather than reduce the price due to the flaw. The Ulam Hamishpat is also clear that he is only referring to cases where that which 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 is readily accomplished (see S’ma 209:23). Therefore, in your case, it does not appear that you can compel the seller to take complicated steps that may or may not rectify the situation, although there may be various claims that can be made on him.

95. Stealing by Accident

Question: If one accidentally took and used a friend's similar coat, is he considered a ganav (thief)? Is he obligated to pay kefel (double)? Must he pay the owner if something happens to it (onsin)? [The asker then presented sources he found about geneiva b'shogeg (unintentional theft).] How can there be geneiva b'shogeg considering one needs intention to acquire something?

Answer: We will only scratch the surface of the scholarship on whether one is obligated for geneiva b'shogeg and relate to some of the issues you raise.

The K'tzot Hachoshen (25:1) is among those who posit that a ganav b'shogeg is exempt. He infers this from Rishonim, but his main rationale is that the concept of culpability for accidental financial harm to his friend is limited to mazik (one who physically damages another's property), because it specifically is derived from a pasuk. Thus, if one takes another's object without damaging it, he is not responsible to pay for it. Of course, he has to return it when he finds out the truth, but the matter is important if it was lost, damaged, or passed on to someone else.

The Machaneh Ephrayim (Geneiva 7) cogently presents opinions of Rishonim, but agrees with those who obligate a ganav b'shogeg. He is particularly impressed by the gemara (Pesachim 32a) concerning payment made by one who accidentally ate teruma, which says that if the food's price went down after he ate it, he pays the higher price because "it is no less than one who steals." The Machaneh Ephrayim sees this as proof that there is payment for geneiva b'shogeg.

Let us now discuss your quandary about the need for intention. The gemara (see Bava Kama 79a) does speak of a kinyan (an act of acquisition) as a necessary step for the obligations of a ganav, and kinyanim require a certain level of intent. However, not all of the levels of intent pertinent to geneiva are equal to those regarding other acquisitions. If one lifted up an object to move it out of his way, he would clearly neither acquire nor be considered stealing it. If he wanted to use it without ever returning it, this would be intention for theft even if he tried to be "shrewd" by

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having in mind to “not acquire it” (it indeed would not become his). Furthermore, even one who intended to briefly borrow something without permission is considered a ganav (Shulchan Aruch, Choshen Mishpat 359:5).

The Machaneh Ephrayim makes a relevant fundamental distinction. Geneiva b’shogeg can be culpable when one intended to bring the object from another’s possession into his own. If one thought he was just continuing using his own, that would not be considered an act of stealing. (This idea is indeed parallel to the halacha regarding intention to acquire something legally (see Yevamot 52a).) According to this, the accidental coat switcher is not even a ganav b’shogeg and does not have, as of the time he took the object, the accompanying responsibilities for its welfare. Cases in which geneiva b’shogeg applies include unknowingly buying a stolen object or even borrowing one.

The Marcheshet (II:32) posits that a ganav b’shogeg has the basic obligations of a ganav. He sees the K’tzot Hachoshen’s source to exempt – the obligation of an unintentional mazik – as the source to obligate an unintentional ganav as well. As such, though, just as a mazik is exempt b’oness (under extenuating circumstances), so too a ganav b’oness is exempt. In our case, taking another’s coat is usually shogeg rather than oness. According to this approach, it could be considered geneiva. Regarding intention, he does intend to use something that turned out to actually belong to someone else.

All agree that one is not disqualified for anything (e.g., testimony) due to such an unintentional aveira. Kefel is never levied in our days, and it is thus not discussed much by poskim. However, logic and implicit statements indicate that this k’nas (penalty), which applies to only certain types of theft and when one is exposed by witnesses, is predicated on full culpability and does not apply b’shogeg.

96. Immoral Commercial Practices?

Question: I want to ask about two elements of my business venture. 1. Our products have a large profit margin (often five times their cost to us), but this is in accordance with their market price on the US market. 2. Like many others, we use high-pressure sales tactics in our marketing. Are these ethical/halachic problems?

Answer: We are very pleased that you care and ask about the propriety of business tactics that apparently are earning you significant money. We will discuss some basics, which you can try to apply to your business, and/or you can ask us more specific questions.

1. The gemara (Bava Batra 90a; Bava Metzia 40b) states that a salesman should not have a profit margin of more than one sixth above the price at which he received the product. This is surprising considering that the prohibition of ona'ah (mispricing) focuses on straying significantly (a sixth) from the market price; profit margin does not arise in that context.

Actually, several classical statements limit the scope of the restriction on profit margin. The gemara points out that the said profit margin is applied after one factors in expenses and the intensity of the salesman's labor. The Rambam (Mechira 14:1) limits the restriction to staple foods, as opposed to luxuries (an attempt at itemization is beyond our scope). More fundamentally, he says that the profit margin is not an obligation of the individual but of beit din to enforce proper pricing policy. The Ramah (Choshen Mishpat 231), following those lines, says that if beit din is unable to enforce their goal price, then an individual proprietor is not restricted to a price level that his competitors are not following. On the other hand, the Aruch Hashulchan (CM 331:20) says that if beit din feels that by some merchants conforming, others will be forced to follow suit, they should demand compliance from those who will listen.

2. There is a parallel to high-pressure sales tactics— someone who pressures the owner of an object who does not want to sell it to do so. This practice is actually forbidden by the last of the Ten Commandments – lo tachmod (do not covet). The desire to have

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someone's object, which culminates in pressuring him to sell it, even at a fair price to which he agrees, is forbidden (Shulchan Aruch, Choshen Mishpat 359:9). Some claim that the prohibition applies in the opposite direction – to pressure someone to buy that which he does not want to buy (Pitchei Choshen, Geneiva 1:(26), article by prominent business ethicist, Rabbi Dr. Aaron Levine). I find it somewhat difficult to accept that we can make an exact comparison between the cases without classical sources, especially considering that the prohibition begins with the desire for his counterpart's specific possession (e.g., his wife). However, it seems perfectly logical that, on some level, there is an overlap in the impropriety.

There are classical sources that forbid practices that have a strong comparison to high-pressure sales techniques. It is forbidden to trick someone into buying something he otherwise would not want by making it look better than it really is (see examples in Bava Metziah 60a-b; Shulchan Aruch, CM 228:9), apparently even when the product is not overpriced (see Pitchei Choshen, Ona'ah 15:15). Thus, psychological techniques that cause one to buy something that, when left to his own better judgment, he would refuse, is forbidden. This should apply to high pressure as well.

The combination of the two factors about which you ask is particularly troubling. One wonders why the forces of supply and demand do not lower the profit margin. One answer is that the prevalence of manipulation artificially raises the price, which is, in many cases, forbidden (see Shulchan Aruch, CM 231:21), and should bother someone of your moral sensitivity. However, if you can sell the items at the standard, albeit high, price without pressure, it is permitted. If you sell at a modestly lower price, you likely will be able to sell enough to make a healthy living without moral/halachic problems.

97. Use of Food from School Events

Question: My yeshiva entrusted me (a kollel student) to arrange an oneg Shabbat 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 untouched. Can I or other participants use that food, or should I give it to the yeshiva. If I keep it, may I ask full reimbursement for the purchases?

Answer: There are a few models to the possible nature of your arrangement with the yeshiva, which would impact elements like the ones you ask about.

You could have been serving as an agent (shaliach), buying food on the yeshiva's behalf. If so, they have to 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 after the time during which they clearly gave permission (during the oneg). One may assume they would be happy that you finish small amounts from 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 until the next event. Even in cases where one is confident that the owner of an object would be happy with a friend taking his object, there is an unresolved machloket whether it is permitted (Shach 359:5) or forbidden (Tosafot, Bava Metzia 22a) to do so (see *Living the Halachic Process* vol. II, J-2, where we preferred refraining from use).

Another possibility is that you bought the food for yourself with a promise of compensation. If that is the case, the food is yours, and you can do whatever you want with it. However, it raises a different question: how much compensation can you ask from the yeshiva? If you do not take the food for yourself, then they probably have to compensate you for all you bought and cannot require you to use that which was not eaten at the oneg on your account. However, leftovers that you do want to use turn out to be things that you did not spend on the group, and it does not seem that you should ask for compensation for them. On the other

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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 in the store. Therefore, you would not have to reduce the full face value from your request of a refund.

We encourage stringency on matters of monetary ethics. The wisest stringency is often to raise the issue with the relevant authorities with a smile, *hakarot hatov*, and willingness to pay or forego, respectively. In cases of good relations and only a few shekels at stake, each side is usually generous. Asking permission not only removes a question of impropriety but likely gets the best deal in the present and builds trust 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. The generous budget enabled me to buy more expensive vegetables than I would normally buy for myself. After further planning, I think a different salad will be more appropriate, which would make the expensive vegetables unnecessary. If I decide to not use them, I should “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. 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. I am sure it will be fine, and it is worth it to avoid the moral dilemma

98. A Teacher's Responsibility for Theft of Phones

Question: In my son's class, a teacher forced the children to put their smartphones in the front of the classroom. On the first day of the policy, one of the phones was stolen. Apparently, the parents are considering demanding that the teacher to pay, and the kids are talking about it. What does halacha say?

Answer: In my school days, such discussions focused on baseball cards. School distractions are now more expensive ... and addictive. Our answer cannot be applied to a case whose specifics have not been presented by both sides, but we can discuss halachic indications.

Tannaim disagree whether one, who suggests to another to put an object in his proximity without clearly accepting responsibility, is obligated as a watchman (see Bava Kama 47b, Bava Metzia 81b). The halacha is generally that he is not obligated (Shulchan Aruch, Choshen Mishpat 291:2). Sometimes circumstances dictate that he accepts responsibility without stipulation (ibid.). In this case, on the one hand, the fact that the teacher commands the students to put the phones in a certain place increases the chances he accepts responsibility. On the other hand, if the phones were in a place where the whole class could keep "one eye" on them while the teacher taught, this decreases the chances that he intended to be responsible.

If the teacher accepted responsibility, it seems that he was a shomer chinam (unpaid watchman), who is exempt in cases of theft. One could claim he is a shomer sachar since this happened as part of his job. However, since watching cellphones is not (yet) considered part of a teacher's obligation, the connection to teaching is incidental, and he is a shomer chinam.

Even a shomer chinam is obligated to pay when an object is stolen due to his negligence (ibid. 1 with commentaries). We thus must address the question (see below, as well) whether the setup (phones visible to all but otherwise not guarded) is valid or negligent. Our general feeling is that, unless the school is crime-

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ridden, this is quite an innocuous, standard situation. (Kids playing ball often leave bags on the side in the open. Airlines assume people won't try to slip out with another's luggage.)

Assume that the teacher is not obligated as a watchman for one of the above reasons. Does forcing a situation of lower supervision of another's object, which led to theft, obligate him as one who damages? Let's view related cases. Regarding one who breaks a wall, enabling an animal to escape (Bava Kama 56b), there is a machloket whether he must or at least has a moral obligation to pay for the animal (see Rama, CM 396:4; Gra ad loc.; S'ma ad loc. 8). However, there it is very common that breaking the wall will cause the animal's disappearance, unlike in our case. The gemara (Bava Kama 56a) also says that if one maneuvers someone's stalks so that they are burnt by an existing fire, he must pay if it was expected for the fire to reach it, and there is a moral obligation if only an unusually strong wind would cause the fire to get there.

These sources indicate that here there would be no more than a moral obligation. Even a moral obligation does not apply here for a few reasons. In the latter case, the person had in mind to harm the object (see Shulchan Aruch, CM 418:11, Meiri Bava Kama 56a). Also, the list of cases of moral obligations is apparently a primarily closed one, and it applies where the nature of the act is considered damaging, even if indirectly. In contrast, here, while the confiscation of phones might have upset the children, it likely was not considered damaging to the phones. Finally, we find that teachers are exempt from damages caused in the course of necessary educational discipline (see Pitchei Teshuva 424:4). On the other hand, we do not want to give teachers too much leeway. The teacher probably should have warned the children/parents of this policy and have them decide whether to bring phones. Still, trying to obligate a teacher to pay dearly for dealing with an issue that many educators are finding unavoidable to ignore, is wrong and educationally problematic.

99. Buying With Intention to Return

Question: I, an amateur seamstress, liked a dress I saw in a store, but it was too expensive. I wanted to buy it, learn its cut, and then return it, which Israeli law permits within 48 hours of the purchase. May I buy the dress with the intention to return it? (Additional information – in any case, I will not buy the dress; the saleswoman is a hired worker, and so neither she nor the owner loses by my actions.)

Answer: Without the special governmental provisions (not a law of the Knesset, but a takana (ordinance) of the relevant minister), the halacha is that after making a kinyan (act of acquisition) on a sales item, a buyer cannot back out of the deal unless: 1. The object was seriously blemished; 2. It was very overpriced. 3. A condition was made to allow it. However, we will work under the assumption (whose guidelines are beyond our present scope) that this law of the land is binding. Certainly, the ordinance was not instituted to help buyers in cases like yours. Furthermore, even assuming that the law would apply to this case, you seem laudably aware that this does not mean that you are morally and halachically permitted to buy the dress with the intention of returning.

While we are not experts in this ordinance (Takanot Haganat Hatzarchan, 2010), perusal shows it includes pertinent limitations. For one, the consumer can return the item only if he has not used it. It is a good question whether handling a dress minimally in order to figure out its cut counts as using it. We would assume that a use is a use, even if it is not a standard one and it does not wear out the dress. (See Bava Metzia 29b-30a, which says that one may not display to beautify his house a lost fabric that he must return. Admittedly, some factors apply there and not here.) Thus, if you disguise your “use” of the dress, this would be misapplying the law. Another provision of the law is that the seller can demand, as a charge for returning, the lower of: 5% of the sales price or 100 shekels. We will see how this may actually help you morally, but first we will look at the halachot of ona’at devarim (non-physical abuse).

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It is forbidden to ask a merchant the price of a sales item if he has no intention of buying it (Bava Metzia 58b). While some describe the classical problematic case as when the “buyer” intends to upset the seller (see Mayim Chayim II:83), others refer to damage caused to the seller. The Meiri (Bava Metzia 58b) talks about the possibility that the discussion of price may take away from others’ interest to buy the item at that price and says that even if no one else is present, he still caused the seller pain and toil. These considerations do not depend on bad intentions. While any negotiations with a proprietor can lead to disappointment, a normal process of commerce (i.e., there is some chance he will buy) justifies it. (One who is overly sensitive should not be a storeowner.) However, when the proprietor has nothing to gain, it is forbidden to engage him for no reason.

In your case, it is not clear to what extent a worker is upset by the return, although we would not rule it out. In any case, there are a few scenarios of loss for the owner. By occupying the salesperson, you may discourage others from buying or prevent her from doing something else of value; while the dress is out of the store, it cannot be sold; handling the dress may take away from its freshness, etc. While such concerns are not very strong, they may be enough for the halacha, of not faking interest in buying, to apply.

On the other hand, if indeed you will have to, or you will volunteer to pay, albeit modestly, for returning the dress, it stands to reason that this compensates for the small concerns and logically makes it permissible. That, though, would not solve the problem that the law does not apply after “usage.” In any case, we would urge, if it seems possible (depending on the worker’s personality) to be open and honest on the matter - request permission to do what you want for a modest agreed price.

100. Compensating for Losses Due to Interest

Question: My son is buying a house and I said that, please G-d, I would give him a present of \$10,000 (= \$10K) to help, but he now needs another \$20K to complete the transaction. He is unable to get financing from a bank, but I am. I understand that it is forbidden for me to take a \$20K loan in my name and have him pay the bank the interest or reimburse me. (Correct?). May I, instead, reduce the \$10K present to compensate for the losses on the \$20K loan, considering my pledge of the present was just an oral statement?

Answer: First, let us praise you for the halachic sophistication of the question. Indeed, there is an apparent prohibition for your son to pay the interest on a loan that you will take and transfer the money to him (Shulchan Aruch, Yoreh Deah 168:1). This is because two loans will actually exist. The bank will give you \$20K. Then you will be lending your son \$20K, and he will return to you \$20K plus interest, which is forbidden whether he pays it to you directly or to the recipient of your choice (e.g., the bank). (There is a possible avenue of leniency if matters can be arranged so that it is not viewed halachically as his paying you interest but reimbursing the expenses you incur to getting the money for him. We have an unpublished tentative leniency along those lines, but the conditions are complicated enough that we prefer providing simpler solutions.)

First, we will deal with your excellent suggestion. Not only is it forbidden for the borrower to give money beyond the principal to the lender, but it is forbidden for the lender to receive from him any extra service or benefit of even moderate value. A borrower certainly must not be *mochel* (relinquish rights to) money due to him from the lender in appreciation for the loan (see Bava Metzia 64b). The question is how to view the pledged \$10K present.

If one pledges to give a present to someone without doing an act of *kinyan* that concretizes the pledge, he cannot be compelled to honor his pledge. However, if it is a small present, he is considered to be *mechusar amana* (lacking in trustworthiness) if

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he does not do so (Bava Metzia 49a). Since authorities may take some steps to pressure him to fulfill this moral obligation (see Pitchei Choshen, Kinyanim 1:1), if the projected recipient waives the payment, this is considered doing a favor of monetary value. However, \$10K is not a small present. (The determination of big and small is likely subjective (B'tzel Hachochma V, 158) and should depend not only on the giver's wealth but also on the level of his relationship with the recipient. However, your question implies that a \$10K present to your son is something that you do not take lightly.) If you have no obligation to pay, then even if you would have been embarrassed to back out, your son's forgoing of part of the present to receive the loan is probably not considered ribbit (implication of the Chatam Sofer, YD 135 regarding a lender to the community who was exempted from their rotation of taking in guests). If your son is considered poor, there is a problem because a promise of even a large present to an ani is binding as a vow (Shulchan Aruch, YD 258:12).

There are two ways to allow you to receive more than \$20K back from your son (allowing you to leave the present). 1) Make a heter iska, the standard solution for framing what might have been a loan into a (partial) investment. Your son will be required to give you profits (according to your written forecast, equal to what the bank is charging) from the investment of \$20K on your behalf unless he can bring corroboration that these profits were not achieved. 2) (Somewhat advantageous when the use of the money is known) Write a document whereby the \$20K makes you a part owner of the house. Your son's payments will be a gradual buying out of your partnership plus rent corresponding to your part (Igrot Moshe, YD II 62). For more details about such documents, see The Laws of Ribbit (Reisman), especially pp. 259-260.

101. A Loan/Investment that Needs a Heter Iska after Its Inception

Question: I have an ongoing arrangement by which a friend loans me thousands of dollars to use for my business at a fixed rate of interest. I think (but am not sure) that we agreed to have a heter iska (I can't find one), but it is possible it was only agreed orally. Some money has been paid, and some is still owed. What should I do at this point?

Answer: If there was a valid heter iska, you have no problems even if you cannot find it. That is because a heter iska sets the nature of the transaction as having an element of investment (subject to profit or loss, at least theoretically) from the outset, and therefore there is no problematic loan. [The reason that a heter iska can be used to pay at a fixed rate, irrespective of actual profits is connected to the halacha that the investor can demand verification (witnesses, oath) that the investment did not earn more than stated. The heter iska states that a fixed rate can be paid as "assumed profit" (d'mei hitpashrut) in lieu of verification.]

According to most poskim, an oral heter iska agreement is valid b'dieved (see Brit Yehuda 40:9; Torat Ribbit 16:2). Why then do we bother with a written agreement? While we certainly do not intend to cast aspersions on a halachic system that the rabbinic community has accepted broadly, most will admit that it borders on halachic fiction. The sides basically agree to a loan to be returned with interest even if the borrower did not profit. It is therefore worthwhile to be able to lean on the halachic precedent that the written word can raise doubtful agreements to the minimum level required (see Ketubot 56b; Tzemech Tzedek, Yoreh Deah 88). Additionally, many people do not understand the conditions of the iska. Most poskim do not require a high-level understanding of the mechanism, but it is unclear what the minimum level is. When things are in writing, there is more chance one understands (see Brit Yehuda 354). Also, there is a broad rule that when something is in writing, we do not enable one to claim he did not understand; he is to realize he is accountable for whatever is written (see

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Netivot Shalom p. 726). This element is missing when the “agreement” is oral. Also, there are different types of heter iska which can be used, and not everyone knows how to specify which version they are agreeing to. In summary to this part of the question, it is important to have a written heter iska, and you should prepare one now. However, if there was an agreement to follow the conditions of a classic heter iska, under the circumstances you can assume the agreement had the proper halachic effect.

What if there was no agreement? Interest that was paid already would be the violation of a Torah prohibition, which the creditor is required to return to the borrower (Shulchan Aruch, YD 161:5). However, the borrower is allowed to waive the right to have the money returned (ibid. 160:5), as you are apparently interested in doing. (There is more to be said on this matter, but it is beyond our scope.) Regarding the future, it is possible to create an iska at this point. This can be accomplished by transferring to you potentially profit-producing assets by means of a kinyan sudar (Dagul Me’revava to Shach, YD 177:41) or through a written heter iska (slightly modified language is preferable). This new iska arrangement cannot change the nature of the loan retroactively, and thus it is forbidden to make new interest payments to correspond to the time that passed (Torat Ribbit 16:29). Some allow compensating for the lost profit by making the d’mei hitpashrut higher than what was planned (ibid.; Netivot Shalom, p. 721). However, others counter logically that it is clear that the added payment is ribbit for the past and not incidental (ibid.). The less exact and less clear the compensation is the more reasonable leniency is on this point.

[Since each case has its own details and dynamics, we suggest you speak to us about arriving at the best arrangement for your case.]

102. Going to the Courts Where There Is No Beit Din

Question: I am a lawyer in a country with a small Jewish population, in which, when we need a din Torah, we fly someone in from another country. A Jew who is suing another Jew asked me to represent him, and the dispute is on a modest amount of money, which is less than the cost of bringing a beit din. May we sue in non-Jewish courts?

Answer: Although we respect and value local governmental courts (see Avot 3:2), Jews are required to seek adjudication specifically in a beit din (Shulchan Aruch, Choshen Mishpat 26). There are two main rationales for this halacha: 1. It is wrong if the incorrect litigant, from the perspective of Torah law, would win the case. 2) Seeking a different system of justice is a severe affront to the Torah's pertinence in the critical realm of justice (see Beit Yosef, CM 26; S'ma 26:4).

Factor #1 does not apply if the two sides agree to go before the non-Jewish court, as they can decide on other forms of dispute resolution, e.g., mediation, flipping a coin ... However, factor #2 is still a problem. If adjudicating in a beit din is unfeasible, then factor #2 should not be a problem because one is not rejecting Torah justice but is just dealing with a situation where it is not an option. Indeed, the gemara talks about adjudication before unknowledgeable Jews when no local Jews are capable of functioning as a proper beit din (Sanhedrin 23a, adopted by the Rashba, cited in Beit Yosef, CM 8). The implication is that this is preferable to going to the local non-Jewish court. On the other hand, there is room to argue that this was based on an assumption, which is not as prevalent in our days as in the past, that the courts were a corrupt and a dangerous place for Jews and the Jewish community (see Rashba, Shut II:290).

What does one do when a city has no Jewish tribunal at all? The Rama (CM 14:1) says that this is grounds for going to another city from the one in which the case should have been heard.

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However, as the discussion above implies, out-of town alternatives may be deemed practically unfeasible.

Most poskim posit that when there is no beit din that can adjudicate, it is permissible to go before a non-Jewish court (Chukot Hachayim (Palagi) 6). The Rivash (216) implies this. The Shulchan Aruch (CM 61:6) says that, although a contractual stipulation does not allow a lender to make payment from a borrower's property without involvement of beit din, he may do so if he cannot find a beit din to adjudicate. The Maharikash (Erech Lechem, ad loc.) broadens this concept to allowing a Jew to sue in non-Jewish court when a local beit din is unwilling to hear the case. There is discussion about the conditions under which such action is justified (see Chukot Hachayim *ibid.*) and on whether a beit din must at least grant permission, but in cases where there is no alternative, it is permitted to go to the courts.

Spending more money on transportation than the claim warrants is one such case (see Sanhedrin 31b). On the other hand, there are often reasonable alternatives. Mediation and non-judicial arbitration are often good ideas in any case. Nowadays, there are recognized batei din that will adjudicate via video-conferencing, as our beit din has done successfully. While a standard hearing is more effective, we find precedents for compromising effectiveness, in a case of need. For example, when one side wants to go to an expert regional beit din and the other prefers a local lower-level one, they adjudicate locally, and the beit din sends questions to experts (*ibid.*; Shulchan Aruch, CM 14:1).

We suggest that your plaintiff propose one of the above alternatives. If the other side rejects them, it is like any case in which the defendant refuses to submit to beit din and beit din grants permission to go to court. It would be legitimate for the plaintiff to refuse to offer one of these options if he truly believes that they will take away from his right for justice. In any case, it would be permitted for you to represent him as a lawyer in court.

103. Pay for Cancelled Summer Camps

Question: During Operation Tzuk Eitan, when summer camps were cancelled because campsites were not “missile-proof,” do the parents have to pay anyway? Does it make a difference if they already paid?

Answer: We start with a few halachic sources and conclude with an important moral message.

Bava Metzia 77a records 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 of work stoppage and the other was not, the side that knew, loses (by paying or not paying, respectively), because of his failure to stipulate otherwise. If the two sides’ degrees of awareness are comparable, the worker is not paid. There are different opinions as to whether the worker loses because he has the more difficult task of extracting money, or because only under special circumstances does a worker deserve pay without performing the work (see Terumat Hadeshen 329 and Be’ur Hagra, Choshen Mishpat 334:5). One difference between the opinions is if the worker was pre-paid. Another pertinent source discusses a case where Reuven rented a boat from Shimon to transport wine and the boat and wine sank midway. Does Reuven have to pay Shimon the rental fee? There are four different halachot (obligated, exempt, split the money, depends if he already paid) in four different permutations of the case (the factors are: whether Reuven can provide other wine; whether Shimon can provide a different boat).

Finally, we present the concept of makat medina (an impediment that affects a broad population). The mishna/gemara (ibid. 105b) says that that a field’s sharecropper is entitled to partial relief from his payment if crops are destroyed by a regional infestation. The Maharam Padova (86) explains that, in such a case, one cannot say the “bad fortune” relates to a particular person, and he and the Rama (CM 334:1) apply the concept also to a worker who was prevented from working due to a makat medina. The Mordechai (Bava Metzia 343) cites the Maharam as saying that if the government suspends schools, parents still have to pay

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teachers. There is great debate (see S'ma 321:6; Shach 321:1; Netivot Hamishpat 321:1) if and under what circumstances we accept the Rama. The Chatam Sofer wrote, regarding teaching that was suspended for weeks due to war, that he found it nearly impossible to determine whether strictly halachically, the teachers must be paid, and he urged for the various sides to reach compromises.

If a specific case came to our doorstep (which would require the presentation of two sides), we would find it hard to be more certain that the Chatam Sofer was. If the question is general, as it appears, it is even harder to answer because many fluid factors are not addressed. A partial list of questions follows. Is the camp in question in a region where some such activities are continuing or are all suspended? Is it possible for the camp to make other arrangements? Was the problem known at the time of payment and by whom?

One of the great national assets going into and to this point of Operation Tzuk Eitan is a palpable feeling of solidarity. Especially around Tisha B'av time, we should recall the gemara (Bava Metzia 30b) that says that Yerushalayim was destroyed because people were unwilling to go beyond the letter of monetary law. In most cases, both parents and camp directors will have legitimate claims. Let us hope that all people involved in such issues will be willing to offer their brother a compromise if not the benefit of the doubt. (One of our dayanim likes to tell of a Yerushalmi ancestor who was sued in beit din for refusing to receive more payment than he thought he deserved. 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.

104. Indirect Fire Damage

Question: We went away and lent out our apartment for Shabbat. Due to the guest's gross negligence, a fire broke out that caused significant damage. Our sefarim were actually more damaged from water than fire/smoke, as I will explain. Good-hearted people (=sprayers) sprayed down the sefarim with water in a way that may have been unnecessary. I will not make claims against them, but can I demand that the guests pay for water damage they did not do? (They feel very bad and, despite not being rich, want to pay everything they should.)

Answer: May Hashem make up your losses and reward both parties for their good intentions under trying circumstances.

We will assume in this discussion what we do not know – that the guests were at least causatively responsible (gerama) for the damage, including from water, which was at least an understandable course of action by the sprayers. In many cases of gerama, the damager (mazik) has a moral obligation to pay (chiyuv latzeit y'dei shamayim – see Bava Kama 56a). However, one should not demand pay unequivocally when there is only a moral obligation (K'tzot Hachoshen 75:4). Therefore, you must determine before making claims how much you believe the guests owe in legal, not just moral, terms. Of course, realize that we have heard only your presentation and can say nothing conclusive, other than what we think you can ask for based on your version of the story. Your guests have every right to present their version to a halachic expert of their choice, and you will then see if there is a need for dispute resolution. This is very healthy when people do it in the right spirit.

If the sprayers acted in a way that professional firefighters would have, then the guests would be obligated to pay even for water damage. It is not only the direct damage one causes that one is responsible for, but even the continuing naturally results. This is similar to the halacha of one who wounds another and must pay for new medical problems that develop later from the old ones (Bava Kama 85a).

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What if the spraying was uncalled for? The closest Talmudic precedent we found regarding such third-party damage is the gemara (Sanhedrin 74a) regarding damage done while trying to prevent murder. The attempted murderer is exempt from payment due to the fact that he is simultaneously subject to being legally killed to save his would-be victim (see Sanhedrin 72a). If a third-party savior damages someone's property during his efforts, he is exempt due to a special rabbinic enactment to not discourage people from helping. This implies that according to standard halachic rules, he is considered the mazik. Similarly your sprayers appear to be the mazikin regarding water, although they likely fall under the exemption of the above enactment (see Chiddushei Anshei Shem, 44a of Rif, Bava Kama). The simple reading of the sugya is that the attempted murderer who precipitated the need for strong action is not a candidate for being obligated to pay. Thus, in your case, the mazikin for waterlog damage are the sprayers rather than the guests.

However, there is a different reason to obligate the guests – they were shomrim (watchmen). While shomrim are generally not obligated for damage to land, including houses (Shulchan Aruch, Choshen Mishpat 301:1), that applies only to that which is connected to the ground. However, there is cause to obligate them for the sefarim, which are movable. If guests' negligence caused valuables to be stolen, they would be obligated to pay, as this 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 sefarim that their negligence caused. (The mechanism is halachically complex – see Shulchan Aruch, CM 291:5; Pitchei Choshen, Pikadon 2:(47)).

One thing to be careful about when making demands is estimating value. Halacha grants compensation for the drop in value of the damaged property, which often does not suffice to replace with new items (Shulchan Aruch, CM 387:1).