

ASK THE RABBI VOLUME I

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VOLUME I

A Sampling of Real World Halachic Questions that Were
Sent to the Eretz Hemdah Beit Midrash

Headed by

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By

The Eretz Hemdah Students and Faculty



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Institute for Advance Jewish Studies

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הוצא לאור בהשתתפות המשרד לענייני דתות

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It is our privilege to present the first 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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BERACHOT

1. Berachot Recited Over the Media

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

Answer: In order for one to be yotzei with a beracha he hears, it must come from a person who is obligated in the mitzva (Rosh Hashanah 29a). Even in order to answer amen, he must hear the beracha from a person whose beracha is meaningful (see Shulchan Aruch, Orach Chayim 215:3 regarding a small child's beracha). Therefore, all agree that one is not yotzei and does not answer amen to that which he hears on a recording, when no one is actually speaking.

Almost all poskim agree that one cannot fulfill the mitzvah of hearing shofar via microphone, telephone or radio, because one must hear the authentic sound of a shofar (Rosh Hashanah 27b). The ruling regarding megillah reading via microphone is not as clear. Although one does not hear the actual voice of a valid ba'al koreh, but a device-generated reproduction, it is better than a recording in two ways. First, the sound is produced directly based on the sound waves from the ba'al koreh. Secondly, the reproduction is heard at essentially the same time the ba'al koreh reads. Therefore, although most poskim believe one cannot fulfill the mitzvah via microphone, the lenient position is marginally tenable (see Tzitz Eliezer VIII, 11; Igrot Moshe (OC II, 108) leans toward permitting it, but he appears to be based on a lack of related scientific information.)

The gemara (Sukka 51b) minimizes the importance of hearing the voice of the person reciting, if one knows what is being said. It tells of a huge structure in Alexandria, where flags were waved to inform people when to answer amen. However, Tosafot (ad loc.) limits this precedent to cases where participants were not attempting to fulfill any mitzvah at the time. On the other hand, it does seem to indicate that one can answer amen without hearing the voice in a case where one knows what beracha it is and is not obligated to be yotzei (see Shulchan Aruch and Rama, OC 124:8).

Rav Shlomo Zalman Auerbach (Minchat Shlomo I, 9), while agreeing that one can answer amen to that which he hears in shul via microphone, disagrees regarding radio and telephone. The distinction is that the people in Alexandria were close enough to be connected to the berachot without hearing them. However, there is no physical connection between the person reciting and the one “listening” at a distance via telecommunication. One can raise the following counter argument to Rav Auerbach’s claim (which is based on logic, not sources). Even though, scientifically, the reproduced voice is new and is not the transfer of the original voice, the immediacy and realistic reproduction creates a palpable connection even over great distances. Although to be yotzei with someone one likely requires hearing the original sound emanating from the valid halachic entity, we learn from Alexandria that this is unnecessary in order to answer amen; a feeling of connection may suffice. Indeed, Rav Ovadia Yosef paskens that one cannot be yotzei via telephone but can answer amen and answer along with prayers that require a minyan (Yechave Da’at II, 68).

Another factor which might preclude answering amen is the possibility that the voice travels over a place that is filthy or contains idol worship (see Shulchan Aruch, OC 55:20). However, there are a few reasons to be lenient here. First, it is not clear that we pasken that this is a problem, especially when there are other points of leniency (see opinions in Yechave Da’at, ibid.). Also, even if it were certain that “the voice” travels over such a place, the fact that it travels as electrical signals alone may be reason for the halacha not to apply.

In conclusion, it is unclear whether one should answer amen to berachot heard via telecommunication. If one likes, he may rely on ample grounds to do so, realizing that the stakes regarding an unwarranted amen are lower than regarding berachot (see Igrot Moshe OC IV, 91). However, one need not feel halachically mandated to answer (see also Piskei Teshuvot 215:3).

2. Shehecheyanu on Vegetation

Question: Does one make Shehecheyanu on a vegetable from the new crop that he eats, or is Shehecheyanu just for new fruit?

Answer: We must clearly distinguish between the answer in principle and in practice. In principle, Shehecheyanu applies to anything that grows in clearly distinct seasons. In fact, the Talmudic source for Shehecheyanu regarding fruit is the gemara Eruvin 40b that discusses a kara (pumpkin). In practice, many of the possible criteria for Shehecheyanu are not met by almost all vegetables.

The beracha is a proper response to the happiness that comes when something we enjoy appears after being out of our lives for a while. We must explore specific issues with that basic concept in mind. The most basic criterion of Shehecheyanu is that there must be clearly distinctive seasons that are renewed during the course of the year (Shulchan Aruch and Rama, Orach Chayim 225:6). With this in mind the Rama (ibid.) says that “we do not make Shehecheyanu on new yerek (roughly, vegetables) because it stands in the ground all year.” The reason that the Rama cites (Darchei Moshe, OC 225:2) in the name of Mahari Weil is that it is hard to discern which yerek is old and which is new.

The critical question regarding many vegetables (and some fruit) is if, despite there being different growing seasons, they are available almost all year without interruption. This depends on the understanding of the Rama, as follows. The Mishna Berura (ad loc.:18) points out that almost every vegetable has distinct growing seasons, making the Rama’s generalization about vegetables hard to understand. (With the extensive modern use of hothouses, it is now common for many fresh vegetables to be grown throughout the year.) One explanation is that because of a concern that one would get confused between different types of vegetables, we do not make Shehecheyanu on any of them. The other explanation is that the Rama meant by “stands in the ground” that many vegetables were stored in the ground for long periods. Thus, many vegetables that grow seasonally are available all year anyway, thus exempting them from Shehecheyanu.

When fresh produce is very noticeably superior to refrigerated produce, there is likely cause to make Shehecheyanu on the new fresh fruit (B'er Moshe V, 65). This is particularly understandable in light of the reason for the Rama's limitation on Shehecheyanu: the fact that it was not noticeable what is from the new season and what is from the old (see V'zot Haberacha, pg. 161). (This situation seems more prevalent regarding fruits than regarding vegetables.) Certainly, if the produce is available only in cooked, marinated, and vacuum packed form one makes Shehecheyanu on the new, fresh produce. Another relevant situation is when produce is available throughout the year because it is imported from regions with different growing seasons. Here we do not make Shehecheyanu on the new arrivals.

Although in principle, there should be vegetables, at least in certain places, which should require Shehecheyanu, the minhag seems to be (at least for Ashkenazim) never to make it on them. Classical poskim already mention the idea of lo plug (not to distinguish) between different vegetables and thus withholding a beracha from all (see Mishna Berura 225:18). (Remember also that it is not an outright obligation to recite Shehecheyanu – Magen Avraham 225:6). Although the lo plug seems to be more limited than what we would call all vegetables, since the number of vegetables requiring Shehecheyanu has gone down, the expansion of the lo plug seems natural. Let us note that the distinction seems to be along the lines of what we consider vegetables vs. fruit, not what foods require borei pri ha'adama vs. ha'etz. Therefore, one should make Shehecheyanu on watermelon, strawberries, etc. when they are seasonal. It appears that some Sephardim have the minhag to make Shehecheyanu more freely on vegetables (see sources in V'zot Haberacha, pg. 160).

3. Men Fulfilling His Mitzva on a Woman's Beracha

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

Answer: Let us begin with a story, whose relevance should be clear later. An Ashkenzi boy got engaged to a Sephardi girl. At the engagement party, the girl's father wished the boy's father that soon he would have a grandchild named after him. The recipient of the "blessing" got upset, and the "well wisher" took it as a sign that he did not want to share grandchildren with the latter. It took some explaining for the Ashkenazi to realize that Sephardim covet grandchildren named after them while they are alive and he intended to bless his new mechutan. The Sephardi learned the hard way that Ashkenazim do not name after live grandparents, explaining the negative reaction.

The gemara (Berachot 42b) spells out when a person can make a beracha on behalf of others who are eating with him. Basically, there are two scenarios: they recline to eat together; they make a statement that they intend to eat together. The Shulchan Aruch (Orach Chayim 167:11) points out that nowadays when people rarely recline when eating, the first criterion depends on whether they sit down to eat at one table. In your case, both criteria were apparently met (one is sufficient) and, therefore, you had reason to consider it appropriate that one person would make Hamotzi and the others would only answer and eat. In fact, when starting the meal as one group, there is a benefit in one making the beracha on behalf of all, based on the concept of "with a multitude of people, it is a glory for the King" (Mishlei 14:28) (Bi'ur Halacha to 167:11). (Regarding Birkat Hamazon after the meal, only if there is a zimun (three reciting Birkat Hamazon as a group)

is it proper for one to listen and answer rather than recite separately (Shulchan Aruch, Orach Chayim 193:1).)

May a woman make Hamotzi on behalf of others? Only one who is fully obligated in a mitzva can perform it on behalf of others who are fully obligated (Berachot 20b). Women, who are not obligated in shofar blowing, cannot blow shofar for men to fulfill their mitzva (Rosh Hashana 29a). However, women are obligated (rabbinically, like men) to make berachot before eating and can exempt men. Indeed, in some fine families, the wife makes Hamotzi at the Shabbat meal.

It is understandable then that you might feel that your friend's husband acted on an insulting social/political basis by making his own beracha, but it may be similar to the story above. Without crawling into his head, it is likely that he just followed a broad minhag (which you apparently do not share), which is well over a century old, that people generally make their own berachot rather than suffice by listening to another. One reason given is that we fear that one will speak between answering the beracha and eating (Shulchan Aruch Harav, Orach Chayim 167:18). A convincing reason for the general custom regarding many berachot is that we are afraid that people will not focus in a manner that enables them to be exempted by another's beracha (Mishna Berura 8:13).

Only on Shabbat and Yom Tov is it still widely practiced that one person makes the beracha on everyone's behalf, and this is because there is usually only one set of lechem mishneh (double loaves) upon which the beracha is recited. If one makes his own beracha on a piece of bread, it is questionable whether he is connected to the two loaves (see Mishna Berura 274:8 and Shemirat Shabbat K'hilchata 55:19). Even then, there are communities where people make their own beracha after the central one was made (see *ibid.*).

4. Making Berachot on the Animals in a Zoo

Question: To date I have not made berachot on animals I have seen in the zoo, but it seems from sifrei halacha that one should. Should I start doing so, and, if so, what are the basic rules?

Answer: (We will not discuss the beracha for beautiful animals, which the Mishna Berura (226:32) already said is not really in practice in our times). A baraita (Berachot 58b) says that when one sees an elephant, a monkey, or a kafof (the exact species is unclear), he recites the beracha "...meshaneh haberiyot" (who makes diverse creations). This beracha is also cited regarding abnormalities within humans. Matters of abnormalities are likely to involve an element of subjectivity, as we will mention later.

Rav Shlomo Zalman Auerbach is cited as saying the beracha applies to any unusual animal (Halichot Shlomo 23:35). Others say that the list is a closed one (see V'zot Haberacha, p. 156), which can be true for a few reasons. Perhaps Chazal saw a unique characteristic in those animals (see Meiri, Berachot 58b). Even if it could theoretically apply to other animals, it is difficult to know what to consider unusual, and therefore it is best to recite such berachot only when we are sure. (I do not why we are sure what type of monkey Chazal were referring to – a gorilla looks quite different from a chimpanzee, or a mandrel, etc.)

There is also a question as to how often to make the beracha. Rav Auerbach is cited (Halichot Shlomo, *ibid.*) as instructing zoo-goers to recite the beracha on the first animal one finds definitively fascinating and intend to cover the other animals. This approach can be justified on several grounds. When one expects to have different occasions in close proximity where a certain beracha applies, it is often better to make one beracha for all of them (e.g., regarding eating; see Yoreh Deah 19 regarding shechita). It also removes doubt that will arise when it is not clear if a beracha is again necessary. There is also logic to view the trip to the zoo as one experience, as I will explain. Perhaps, it is not that each animal needs to have or be included in a beracha, as different foods do. Rather, seeing unusual animals makes one

reflect on the wonder of creation, and the entire trip to the zoo is focused on that.

It seems that most religious Jews do not make a beracha on animals in the zoo, including elephants. Does this have any justification? First, it is far from clear that when the beracha is appropriate, it is obligatory (see a brief discussion in Yabia Omer IV, OC 20). Additionally, the Shulchan Aruch (OC 225:9) says that this beracha should be said only the first time in a lifetime for each unusual sight, when it has its greatest impact. If one neglected to make the beracha or was a child at the first opportunity, the beracha is not made up later (see Birkat Hashem, IV, 3:28). While the Rama (ad loc.) says that the clock is reset every thirty days, as is often the case regarding similar berachot, the Mishna Berura (225:30) suggests making the beracha without Hashem's name.

More fundamentally, we must recall the beracha's subjective nature and note that times have changed. Once upon a time, a person could go through a lifetime without seeing a monkey or even a picture of one, and the excitement of seeing one made a beracha more natural. Nowadays, people go to the zoo periodically and whenever they want, and they have seen images of elephants and exotic animals many times (all agree the beracha can only be said on seeing them in person). Therefore, the excitement is not the same. (Seeing one in its habitat is likely different.)

Therefore, those who do not make the beracha at the zoo do not need to begin doing so. However, those who do say or want to start, especially those who get excited by the animal kingdom with whom Hashem has us share the world, do not have to fear a beracha l'vatala (see Yabia Omer, *ibid.*), at least on monkeys, elephants or astounding animals. One can certainly make the beracha without Hashem's name and should certainly think of Him often during the visit.

5. Hamapil for Those Who Go to Sleep Before Dark

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

Answer: The gemara (Berachot 60b) mentions Hamapil for one “entering to sleep on his bed,” without noting time of day. However, the Rambam (Tefilla 7:1) writes “when one enters his bed to sleep at night.” Despite varied opinions of Rishonim (see Meiri, Berachot ad loc), this guideline is accepted (see Be’ur Halacha to 239:1; B’tzel Hachochma V:166). However, this position’s rationale impacts your question.

The above gemara continues with the berachot upon awaking, starting with Elokai Neshama, which some see as a bookend along with Hamapil (see B’tzel Hachochma ibid.). We recite these berachot only once a day. In both cases (although some distinguish), there are questions as to whether the berachot are only for those who sleep or they are general praises to Hashem related to sleep and awaking at the classic times.

Most poskim say that one recites Hamapil only before a serious sleep (see gemara above). The connection to night is that this is the average person’s time of serious sleep, based on which the beracha was instituted (which is apparently the Rambam’s basis).

B’tzel Hachochma (ibid.) understands the element of night very formalistically – there is no obligation and thus no ability to say Hamapil before night, even if one is embarking on a full night’s sleep before nightfall. He compares Hamapil before night to a beracha on sitting in a sukka before Sukkot starts when one plans to remain there (a beracha is not made there).

However, there are sources and logic that night is a criterion for Hamapil on practical rather than fundamental grounds. The Chayei Adam (35:4) says that regarding day sleep we are concerned he will not fall asleep, it is improper to sleep, and/or it is not effective sleep. These reasons do not apply to the cases you raise of one who

has a valid reason to start sleeping before nightfall (although sometimes we say lo plug- see ibid.).

Several poskim (see Teshurat Shai I:82; Teshuvot V'hanhagot I:198) explain why it might be proper to recite Hamapil before one's major sleep after dawn when one did not sleep at night (e.g., Shavuot morning). One could add to the equation the opinion that one may recite a birkat hashevach (of praise) even when there is a doubt whether it is necessary because the content of such berachot are never inappropriate (Halachot Ketanot I:264). However, the consensus is that safek berachot l'hakel (in doubt, refrain) applies to there as well (Yabia Omer VII, OC 29).

However, in cases where the sleep is primarily at night, the argument to say Hamapil is much stronger. Notice that the Rambam (ibid.) talks about Hamapil preceding going to sleep at night. My reading is that the point is that sleep done at night defines it as justifying Hamapil, not that it is forbidden to recite Hamapil during the day. Thus, if the majority of one's sleep will be during the night, the fact that it begins earlier need not preclude Hamapil.

Whether the case for reciting Hamapil is stronger or not if one goes to sleep soon before nightfall is interesting. Many halachot of night begin at plag hamincha, so perhaps one who sleeps then for the night is considered to be just extending slightly the time of night sleep, which in summer nights in northern latitudes is also common. Note that one who wakes up after midnight may recite the morning berachot including Elokai Neshama (Shulchan Aruch, OC47:13), presumably because morning regarding wake up is flexible. Perhaps the same is true in the evening. On the other hand, perhaps Chazal would not have extended a beracha for going to sleep for the night at a time when one cannot fulfill the mitzva of Kri'at Shema of the night.

The rules of practical p'sak point toward not risking reciting the beracha of Hamapil before nightfall, despite my inclination to the contrary. However, one who does so before his major sleep that extends well into the night has what to rely upon.

6. When to say Kri'at Shema Al Hamita When Working a Night Shift

Question: I work a night shift and, therefore, sleep in the day rather than at night. What do I do about saying Kri'at Shema Al Hamita (bedtime Shema) and Modeh Ani.

Answer: The gemara (Berachot 4b) instructs one who said Kri'at Shema at Ma'ariv to say it again before going to sleep. The gemara (ibid. 60b) mentions a beracha that is said at that time (Hamapil) and then lists berachot that are recited when one awakens, starting with Elokai Neshama and continuing with Birkot Hashachar to be recited as he goes through the activities of getting up and starting his day. Yet another gemara (Shvu'ot 15b) reports that R. Yehoshua ben Levi would say, before bed, certain psalms that are effective in warding off evil spirits.

Modeh Ani (Modah ... for a woman) is not mentioned in the gemara and in fact does not appear in the Shulchan Aruch, Rama or their earliest commentators. It has made its way into siddurim through a book called Seder Hayom, and the Mishna Berura (1:8) says: "It is good to say as soon as one gets up, Modeh ani ..." As it is a relatively recent minhag, it is not surprising that we find little halachic literature on "the rules of Modeh Ani" for those who sleep at unconventional times. On the other hand, the general concept of (ending and) starting one's day with holy thoughts is ancient and is at the heart of the various aforementioned sources and others. In fact, we find the following thesis (presented in Piskei Teshuvot (1:(22)) to be very logical. The recitation of the non-beracha thanks to Hashem of Modeh Ani developed because in our times we do not allow people who have woken to say Elokai Neshama and Birkot Hashachar before washing hands, as they once did (Shulchan Aruch, Orach Chayim 46:2). It enables one to immediately convey Elokai Neshama's basic idea of thanks for regaining full consciousness.

After that background, let us investigate your specific questions. Most poskim say that one may not recite the beracha of Hamapil before going to sleep in the daytime (Biur Halacha to OC

339:1; see also, B'tzel Hachochma V, 166). This is because (among other possible reasons) the beracha was instituted for sleeping at regular times. Likewise, he is not obligated to say Kri'at Shema (Ishei Yisrael 35, 12), as the halacha to do so before sleeping was apparently instituted in connection to the obligation of Kr'iat Shema at night (see Aruch Hashulchan, OC 239:3). Some recommend to recite Viyhi Noam and Yoshev B'seter before daytime sleep (Rama, OC 231:1), which is relevant for those who normally recite these protective sections of Kri'at Shema Al Hamita. These halachot are apparently true even if will wake up from the daytime sleep at night (see B'tzel Hachochma, ibid.).

We assume that the logic that applies to Elokai Neshama applies also to Modeh Ani. One who awakens from any reasonable night sleep (presumably, even if he began during the day) recites Elokai Neshama (Mishna Berura 46:24), although he should wait if possible until alot hashachar (dawn) (Mishna Berura 47:30). There is a minority opinion that one should say Elokai Neshama after any sizable sleep throughout the day (see Biur Halacha to OC 52:1; Ishei Yisrael 5:(43)). Some say that if one waits until the morning, then he can certainly say Elokai Neshama, as by then he has both slept and experienced a new morning. However, we do not suggest making the beracha under these circumstances, as many say that it was instituted for the normal type of sleep and awakening before a new day (see Ishei Yisrael, ibid.; B'tzel Hachochma V, 144). The big difference between Modeh Ani and Elokai Neshama is that the latter is a formal beracha which one may not recite when it is not called for, whereas the former is a praise that is not in beracha form. Therefore, while one is not expected to say Modeh Ani if he slept only during the daytime, he may say it either upon awakening or when the morning breaks if he so desires.

7. Beracha on Vegetable Soup

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

Answer: We will not presently discuss soup with mezonot elements (e.g., croutons, noodles), which complicates matters.)

The gemara (Berachot 39a) says that the “water of boiled vegetables [has the same beracha] as the vegetables (i.e., Borei Pri Ha’adama).” Therefore, we would think that this clearly answers your question. However, the Rishonim are bothered by an apparent contradiction, as the gemara (ibid. 38a) says that the beracha of most fruit juices is Shehakol. The distinctions various opinions provide are crucial to answering your question.

The Rashba (Berachot 38a) says that the gemara refers to vegetables that are normally eaten cooked, whereas fruit are normally eaten whole and not as juice. The Rosh (Berachot 6:18) says that cooking provides more qualitative taste of the source food than squeezing.

Another factor is the focus on the vegetables vs. on the broth. The Rosh (Shut 4:15) says that the broth “deserves” Ha’adama when it is normal for most people to cook the vegetables to eat them. (The Mishna Berura (205:10) seemingly cites this opinion as requiring the individual to cook it with the intention to eat the vegetables). The Rambam (Berachot 8:4) puts the stress in the other direction – if one has in mind when cooking to drink the broth, the broth is important enough to merit Ha’adama. The simple reading of these Rishonim (V’zot Heberacha, p. 270 cites dissenters, but apparently overstates their strength) is that when one has in mind to both eat the cooked vegetables and drink the broth, Ha’adama is appropriate for both elements. (One beracha suffices when they are eaten together.) Thus, the classic ruling is that on soup that is based entirely on vegetables, which are normal to be used for making soup, the beracha is Ha’adama, even on the broth (Shulchan Aruch, Orach Chayim 205:2), and my recollection of the minhag where/when I grew up was like that.

On the other hand, several classical and contemporary Acharonim advise against this ruling, based on other opinions and

possible distinctions, as follows. The Mordechai (cited by the Magen Avraham 205:6) says that only vegetable broth that is used for dipping foods warrants Ha'adama. The Ra'ah (cited, but rejected, by the Mishna Berura (Sha'ar Hatziyun 202:66)) and other important but minority Rishonim understand the gemara statement that water of boiled vegetables has the same beracha as the vegetables as just meaning that the beracha made on the soup's vegetables covers the broth, but if the broth is eaten alone, one recites Shehakol. This was enough for some poskim, including the Kaf Hachayim (OC 205:11; see Birkat Hashem 7:20), to invoke the rule that we avoid "going out on a limb" regarding berachot. The common application is to refrain from a beracha when it is unclear if it is warranted. Here its application is that since Shehakol works after-the-fact for all foods, whereas Ha'adama is ineffective for a food whose beracha should be Shehakol, we recite Shehakol in a case of doubt between the two.

Important contemporary poskim (see V'zot Haberacha p. 270 in the name of Rav Auerbach; Rav Elyashiv reportedly agreed) claimed that the vegetables in today's soup often do not provide discernible enough taste to make the majority water worthy of the beracha of Ha'adama. (Some cite the precedent that the beracha on beer is Shehakol rather than Mezonot.) Although I view most vegetable soups I have eaten as full of vegetable taste, these opinions push the direction of practice toward reciting the "safer" Shehakol on the broth of vegetable soup. (When one eats the soup's vegetables as well (at least a significant amount of them – see V'zot Haberacha, p. 119) the consensus is that Ha'adama covers the broth too (see Sha'ar Hatziyun 205:66).) However, one whose practice has always been to recite Ha'adama on the broth is not wrong if he continues, as this is the fundamentally stronger opinion, which is still followed by significant authorities.

8. Beracha on Pureed Vegetable Soup

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

Answer: You will remember that according to most fundamental approaches, based on the gemara (Berachot 39a), the beracha on the clear broth of vegetable soup is Borei Pri Ha'adama. On the other hand, there are enough factors against saying Ha'adama to convince most contemporary poskim to prefer Shehakol. Pureed soup shares certain factors, but other factors point in different directions.

We dealt with an apparent contradiction with the gemara (ibid. 38a) that says that the beracha on most fruit juices is Shehakol. Another reason to not make Ha'adama on vegetable soup broth is the contention of Rav Shlomo Zalman Auerbach and others that these soups often lack sufficient vegetable taste to justify it. These issues do not apply to pureed soup because one is not consuming just the juice/broth but the whole essence and taste of the vegetables.

However, in another way, the situation points more toward Shehakol than toward Ha'adama. We saw the Rosh (Shut 4:15) who says that the broth's beracha is Ha'adama when and because it is normal for people to cook the vegetables to eat them. The broth is thus dependent on the vegetables, which generally exist even if one is eating only the broth. In this case, though, the vegetables cease to exist as a solid, clearly recognizable entity. V'zot Haberacha (p. 404) entertains the possibility that the beracha should be determined as Ha'adama when it was cooked, before it was pureed. However, he concludes that we follow the form in which it is eaten, certainly when the intention when cooking it was to puree it before eating. Since the soup is actually a semi-liquefied form of mashed vegetables, it is necessary to determine what the beracha is on mashed vegetables.

The gemara (Berachot 38a) says that when one takes dates and crushes them into terima, their beracha remains Borei Pri Ha'etz. What is terima? The Rambam and the Shulchan Aruch

(Orach Chayim 202:7) say it is totally crushed to the point that it is “like dough,” and yet the beracha is unchanged. The same should apparently apply to a mashed vegetable. On the other hand, Rashi (ad loc.) says that terima is only partially crushed, and based on this, the Terumat Hadeshen (29) and Rama (OC 202:7) say that mashed fruit (and presumably vegetables) should get the safer beracha of Shehakol. This does not necessarily turn into a clear machloket between Ashkenazim and Sephardim, as the Rama says that if one recited the beracha of the fruit/vegetable he can assume he was yotzei. Sephardi poskim also disagree whether to follow the Shulchan Aruch or to also make the safer Shehakol in light of this machloket Rishonim (see V’zot Haberacha, p. 99, Birkat Hashem 7:26-29).

Based on the above, we should, on the practical level, distinguish between different levels of puree. If the vegetables are pulverized to the point that there are no or few pieces of discernable vegetables, even if the soup is thick, then the more accepted beracha is Shehakol. However, if the soup is lumpy, then the beracha should be Ha’adama (V’ten Beracha (Bodner), p. 434). This distinction is similar to what many say regarding types of apple sauce and peanut butter. Those who make Ha’adama even for smooth pureed soup have what to rely upon, especially considering the fact that the stronger fundamental opinion regarding mashed potatoes, even if this is not usually suggested, is to recite Ha’adama (see Mishna Berura 202:42).

Another logical distinction within the case of totally crushed vegetables is whether they are still recognizable based on their characteristics, which is a major reason to warrant Ha’adama (see Birkat Hashem, p. 404-6). It would seem then that if the pureed soup has several vegetables that form its basis, then it is more difficult to recognize its component parts and harder to justify reciting Ha’adama unless there are many small pieces.

9. Time Elapsed Between Meal and Bentsching

Question: I left my meal (including bread) to daven Ma'ariv. It turned out that there was a long sicha (speech) before Ma'ariv. By the time I was able to return to eat an hour and a half had passed. Could I still bentsch (recite Birkat Hamazon) at that time?

Answer: The mishna (Berachot 51b) says that one must bentsch before the food is digested. The gemara (ibid. 53b) brings two opinions as to the signs of this cut off point. R. Yochanan says that it is until one becomes hungry. Reish Lakish says that it is as long as he is still thirsty from the eating or for 72 minutes, depending on how much he ate. We rule like R. Yochanan and assume that it refers to beginning to be hungry as the food is digesting (Shulchan Aruch, Orach Chayim 184:5). However, most poskim assume that R. Yochanan accepts a 72 minute minimum time limit, just that if one has not yet begun to become hungry, he can still bentsch after that point (see Biur Halacha, ad loc.). However, the problem is that this feeling is hard to quantify or determine with certainty (Magen Avraham 184:9). Therefore, one should be careful to bentsch no later than 72 minutes after finishing eating. You did not succeed in doing so this time and probably entered the realm of safek (doubt).

Ostensibly, your desired preference was the halachic preference as well. That is to continue your meal and bentsch afterward; just be sure that the continuation of your meal includes at least a k'zayit of bread (Mishna Berura 184:20). Thereby, Birkat Hamazon is in any case appropriate, and there is a reasonable hope that it is in time to cover the original eating also.

This, though, raises a new question. After taking a break possibly long enough for digestion to begin, making it too late for a beracha acharona, does one require a new beracha rishona? The Magen Avraham (ibid.) assumes that one requires a new beracha because the previous eating is a matter of the past. However, the Even Ha'ozar (Orach Chayim 179) argues that there is no source to indicate that digestion breaks the continuity regarding a beracha rishona. To the contrary, the Rambam (Berachot 4:7) says that a

beracha one makes when he begins eating can cover other foods “even if he breaks all day long” as long as he has not decided to stop eating. Although there are attempts to deflect the proof (see Tzitz Eliezer XII, 1) and some poskim agree with the Magen Avraham, the Even Ha’ozzer’s opinion is the more accepted one (see Mishna Berura 184:17; Yechave Da’at VI, 11). Furthermore, in a case like yours where there is doubt whether digestion occurred, even the Magen Avraham (ibid.) suggests eating more without a new beracha to get out of the doubt regarding Birkat Hamazon. Apparently, it is better to enter a situation where one might need to say Hamotzi and refrain from it because of doubt than to miss out on Birkat Hamazon which he might still be able to make (see Levushei S’rad, ad loc.).

The only reservation we must address applies if you made a significant change of location (the parameters of which are beyond our present scope) between your first and second sittings. We rule like the Rama (Orach Chayim 178:2) that one does not need a new beracha after moving locations in the midst of a meal that includes bread. As we discussed, we also rule like the Even Ha’ozzer that even a long break does not require a new beracha as long as one intends to continue eating. However, the Tzitz Eliezer (ibid) tries to prove that when one both changes locations and waits a long time, then we would accept the Magen Avraham’s opinion that one requires a new beracha. However, in our humble opinion, the case he presented is not convincing (beyond our scope). We accept that which is apparently the majority opinion that even with the combination of the passing of time and moving of location you can eat more bread without a new beracha. Doing so would have been the best way to salvage bentching in the case of doubt that arose.

10. Beracha on Dessert After a Meal

Question: Does one make a beracha on ice cream served as dessert at a meal with bread?

Answer: The gemara (Berachot 41b) presents the basic rules of berachot during a meal. Foods that “come due to the meal” do not require a beracha. Those not due to the meal require only a beracha before them. The Rosh (ad loc.) describes foods that come due to the meal as those that connected to the main part of the meal and are eaten with the bread. Fruit are prime examples of foods that are not due to the meal (Shulchan Aruch, Orach Chayim 177:1). These are normally eaten to give a sweet taste rather than to fill one up. Although poskim assume that anything eaten before Birkat Hamazon is during the meal, foods that are eaten specifically for dessert are generally not due to the meal (see Mishna Berurah 177:4).

The gemara (ibid.) asks: why, according to these rules, does one require a beracha on wine drunk during the meal. It answers: “Wine is different, as it causes a beracha for itself.” The most accepted explanation is that wine is unique in that we make a beracha on it in various mitzva contexts (e.g. Kiddush and Sheva Berachot) even when one is otherwise not interested in drinking it (Rashi, ad loc.). We see that, if not for this unique characteristic, wine would not have required a beracha during a meal. Therefore, most Rishonim and the Shulchan Aruch (ibid. 174:7) posit that drinks consumed during the meal, even toward its end, do not require a beracha. Many explain that eating contributes to one’s thirst; thus quenching thirst is an integral part of the meal. Let us note that some Rishonim learn the gemara differently and say that one makes a beracha on all drinks during the meal. The Shulchan Aruch (ibid.) even cites them as a minority opinion and suggests removing doubts by making a Shehakol before the meal to cover drinks. However, the practice is certainly not that way.

One might wonder what ice cream, a classic dessert, meant to finish the meal with a sweet taste in one’s mouth, has to do with drinks. It is not part of the main meal and is not intended to quench one’s thirst. Yet, a few poskim make the following claim. Ice

cream is a liquid that is served as a solid because people enjoy it at an artificially cold temperature. Since accepted practice is not to make a beracha on liquids during a meal, including during dessert, one should not make a beracha on ice cream. Yalkut Yosef (on OC167, 10) rules this way in the name of his father (Rav Ovadya). There are reports that Rav Moshe Feinstein ruled this way as well (see Vezot Haberacha, pg. 74). One could say that it is logical to call ice cream a liquid only when it is based heavily on milk and/or water, not when it is a mixture of eggs, soy products, and sugar (i.e., pareve ice cream) (see opinions in Piskei Teshuvot 177:(24)). Perhaps Rav Moshe was speaking about classic ice cream; however, Rav Ovadya does not accept this distinction. It is difficult to accept the above ruling (despite the rule of safek berachot l'hakel) for fundamental reasons. The great majority of poskim understand that the matter does not depend on halachic definitions of liquid vs. solid but on the function of the food; is it a drink or a dessert? (The reason we do not make a beracha on most cakes for dessert is that they may be considered like bread (Biur Halacha on 168:8.)) Even among drinks, the Mishna Berura (177:39) brings machlokot about a beracha for whiskey or coffee at the end of a meal, with the question being its function. Indeed, the gemara did not state a formal rule about liquids during a meal. So why should we lump all liquids together when their functions are so different?

Most leading poskim rule to make a beracha on ice cream, certainly the pareve type; some suggest dodging the issue by making a beracha on a food it is agreed requires Shehakol (e.g., chocolate) (see opinions in Piskei Teshuvot and Vezot Haberacha, ibid.). We recommend making a beracha on ice cream served as dessert unless one always follows Rav Ovadya's or possibly Rav Moshe's rulings.

11. Two Out of a Group Who Want to do a Zimun

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

Answer: The gemara (Berachot 45b) says that if three eat together, one stops to answer for two who want to bentch, but two do not stop for one. Rashi explains that one should show proper manners to answer, implying that there is no halachic imperative that he must take a break in his eating to do so. However, the Shulchan Aruch (Orach Chayim 200:1) rules like the Rishonim who say that it is halachically required for the third to answer, and even if he refuses to answer, the two (only) fulfill the requirement of zimun.

In order to answer your question, regarding two who want to use a third when there are more than three participants in the meal, we need to understand the reasoning behind the halacha above. Poskim explain that it is based on the concept of rov (majority) (Birkei Yosef, OC 200:5; Mishna Berura 200:2). The minority that is not yet ready to bentch has to follow the majority of the group that is interested. According to important poskim, this idea of rov can be extended to other groups. The Elijah Rabba (OC 200:6), for example, says that six who want to do a zimun with Hashem's Name also create a majority to force four to answer.

If the matter depends on rov, it does not appear that a minority of a group can force a majority or even two sub-groups of the same number of people cannot force one another to do a zimun. The Birkei Yosef (200:5) assumes simply that which the Elijah Rabba implies: five cannot make five answer. One could claim that the important thing is to have a majority of the necessary quorum who are ready to bentch and then they can use whomever they want. Thus two could force any one they wanted, while five, which is only half way to the zimun of ten, could not. However, the language of the poskim implies that it is a matter of deciding when the most appropriate time is for the group to do the zimun. There is

no reason to assume that two can select one from the main group and turn him into their minority.

The exact definition of what constitutes a rov in this regard is important for the following common case. One person wants to bentch, and a second is not yet finished but is interested in helping his friend and agrees to be the second. Can those two force the third? The Birkei Yosef (ibid.) (discussing five and five with one of the “non-bentchers” volunteering) leans toward the view that he cannot. The person who volunteers is still not an interested party who creates a rov who are bentching. On the other hand, Rav Kook (Orach Mishpat, OC 40) leans toward the approach that even when only one of the two is bentching now, the two can force the third. His impression is based on the following gemara (Berachot 45b). Rav Papa was eating with his son and a third person. Only his son was ready to bentch, and Rav Papa accommodated him. The gemara says that Rav Papa had gone beyond the letter of the law in agreeing. Rav Kook understands that once Rav Papa agreed, the third’s willingness was irrelevant. (One can deflect the proof and say that, given Rav Papa’s stature, it was clear that the third person would not object.) It seems that a majority of poskim accept the Birkei Yosef’s approach that only two who are actually bentching can force a third. In practice, most people do accommodate their friends anyway, which is good. (Vaya’an Avraham (OC 16) suggests the possibility that if the second agrees because he is halachically required to respect the person who wants to bentch, it would be considered a rov; he himself rejects the suggestion). It is worthwhile to recall that, for Ashkenazim, when someone answers zimun before bentching, he must wait until the end of the first beracha before resuming eating (Rama, OC 200:2).

12. Minhagim about Bentching With a Zimun

Question: I have seen many minhagim about bentching after zimun. Sometimes, everyone bentches to himself; sometimes, the mezamen does the beginning out loud; sometimes, he waits for people to finish before saying a beracha ending out loud so that people answer amen. What are the issues and what is the proper method?

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

In all likelihood, a mezamen would not only introduce bentching with what we call zimun but would recite all of the Birkat Hamazon, while the others would listen and answer amen (see Bach, Orach Chayim 193; Mishna Berura 201:15). This most fully accomplishes the idea of praising Hashem together (see Berachot 45a). The minhag has developed for everyone to bentch himself, apparently out of concern that people will not listen well enough to the mezamen (see Beit Yosef, OC 183) or because one may have to understand the text he is hearing even if it is in Hebrew (see Shulchan Aruch, OC 193:1 and Mishna Berura 193:5).

What, if anything, is left to the idea of a joint bentching? When the Shulchan Aruch (OC 183:7) says that everyone bentches himself, he writes that they do so quietly. In this way, they can still hear the mezamen (Mishna Berura 183:27). The Rama (ad loc.) adds that the others should go ahead toward the end of the beracha to enable answering amen to the mezamen's berachot (which one cannot do if he just finished the beracha himself, with not more than a few exceptions- see Shulchan Aruch and Rama, OC 215:1). Many people practice the Rama's idea (usually the mezamen waits for the others rather than their speeding up, but it's the same idea).

The Mishna Berura (183:28) points out that in his time it was common for everyone to bentch out loud so that no one heard the mezamen (now it is more common for everyone, including the mezamen, to do so quietly). He says that it is important for all to hear the mezamen at least for the first beracha (until "hazan et

hakol”) because of the idea that this is the end of the zimun. The main ramification of this idea is that those who interrupt their meal to answer zimun are supposed to wait until after that point before resuming their meal (Rama, OC 200:2). The matter depends on a machloket Amoraim in Berachot (46a) whether zimun ends at “hazan et hakol” or at “u’mituvo chayinu,” the addition to bentsching that is inserted when there is a zimun. Sephardim follow the latter opinion (Shulchan Aruch, ad loc.). The Mishna Berura, ruling for Ashkenazim, posits that people must hear the mezamen until “hazan et hakol” for zimun to be done properly. The Magen Avraham (183:12) went a step further, saying that until that point, people should only listen to the mezamen and only afterward bentsch themselves. The Mishna Berura (ibid.) says that only people who can concentrate on and understand the first beracha should follow the Magen Avraham.

As you observed, people do not always listen to the mezamen for even the first beracha. Because it is difficult to argue on a prevalent practice that has been followed by some knowledgeable people for a long time (see S’dei Chemed, cited in Kaf Hachayim, OC 183:38) different rationales for the leniency have been given. One is that, in regard to this manner, Ashkenazim rely on the Shulchan Aruch that zimun ends with “u’mituvo chayinu” (ibid.). The Tzitz Eliezer (XVI, 1) also cites an opinion that, generally, it is better to bentsch separately. The Chazon Ish also points out that regarding a zimun of ten, where Hashem’s name is invoked in the first part of the zimun, it is not necessary to listen to the mezamen until “hazan et hakol” (see Mishna Berura 200:10).

In summary, we recommend following the Mishna Berura’s position where there is not a clear minhag to the contrary. However, we do not discredit the other systems you have seen.

13. Beracha Acharona on Foods that Require Different Berachot Acharonot

Question: If I have half a k'zayit of one food that gets a Me'ein Shalosh (the long beracha acharona that summarizes the elements of Birkat Hamazon; it is often called Al Hamichya, for one of its possible openings) and half a k'zayit of another food that gets Borei Nefashot, what beracha acharona do I make, if any?

Answer: We will focus on only a few of this question's many permutations. We first assume that you refer to foods that are eaten as separate entities (e.g., a piece of cake and a piece of apple), not in a combined manner (e.g., a k'zayit of cake that has fruit filling).

The general rule is that one cannot fulfill the obligation of Me'ein Shalosh by reciting Borei Nefashot or vice versa, even b'dieved (Mishna Berura 208:62). (An exception is that if one is already making an Al Ha'etz on fruit of the seven species, this exempts him from Borei Nefashot on fruit of trees that are not of the seven species- Shulchan Aruch, Orach Chayim 208:13). Therefore, when one is not sure whether he should recite Me'ein Shalosh or Borei Nefashot, he is in a bind because if he guesses wrong, he will be making an inappropriate beracha (see Rama, Orach Chayim 208:18 and Mishna Berura 208:80). We do not say that Borei Nefashot is a generic beracha (as its text may imply) that works b'dieved for any food as we do regarding Shehakol (Magen Avraham 208:26). Some Acharonim (Igrot Moshe, Orach Chayim I, 74; Kaf Hachayim 202:79) argue at least partially and say that if it will be impossible (for halachic or technical reasons) to recite Me'ein Shalosh, then saying Borei Nefashot is not a beracha levatala and is better than saying nothing.

Nevertheless, the Magen Avraham (210:1) says that if one ate half a k'zayit of Me'ein Shalosh food and half a k'zayit of a Borei Nefashot food, he makes a Borei Nefashot. The Machatzit Hashekel explains that Borei Nefashot does apply on a basic level to all foods. If a food is of a higher level of importance, so that it receives a Me'ein Shalosh, Borei Nefashot becomes the wrong beracha, and one is not yotzei with it. However, if there are

certainly not grounds for Me'ein Shalosh (i.e., he had less than a k'zayit of that type of food) then the basic applicability of Borei Nefashot can connect it to another food to warrant a joint Borei Nefashot. The Sha'ar Hatziyun (210:2) adds another justification for the Magen Avraham's ruling. That is that some Rishonim say that just as one must make a beracha before eating any amount of food, so must one recite at least the simple beracha of Borei Nefashot after eating any amount of any food where a higher beracha acharona is not recited.

In order to recite Borei Nefashot on less than a shiur (the amount one needs to eat to require the beracha) of foods that join together to be a shiur, it is necessary that the two foods share a shiur. Therefore, half a k'zayit of a food and half a revi'it of a liquid do not join to require Borei Nefashot (Magen Avraham 210:1).

Regarding foods that combine two different ingredients (regarding beracha) in one food, there are different opinions and minhagim. Regarding a beracha rishona, as long as there is a significant amount of flour from the major grains, one makes Mezonot, but regarding beracha acharona one needs to have a k'zayit of the major grains without the help of other grains (Shulchan Aruch, OC 208:9). The question is, though, if the flour is joined by only supplementary foods such as sugar and spices, whether one would make Al Hamichya only if there is a k'zayit of flour or even a k'zayit of cake is sufficient. (The Mishna Berura 208:48 takes the latter opinion, but some argue. Further discussion is beyond our present scope.)

14. Pat Haba'ah B'kisnin

Question: How can it be that whether or not you wash on pizza depends on how much you eat? I would think that either it is bread or it is not bread.

Answer: The gemara (Berachot 42a) discusses a category of food called pat haba'ah b'kisnin (phbbk), which is a baked grain-based food that shares qualities with bread but also is distinguished from normal bread. The gemara says that whether one recites Hamotzi or Mezonot on it depends on whether one is kovei'a seuda (sets a meal) on it. The Shulchan Aruch says that the other special halachot of bread apply to phbbk when one is kovei'a seuda, namely, that one recites Birkat Hamazon on it (Orach Chayim 168:6) and has to wash before eating it (ibid. 158:1). Let us now discuss pizza.

For something to be a candidate for bread status, it must be made from the five main grains and be baked or look like bread (corn bread and spaghetti are not treated like bread no matter how much one eats of them - see Shulchan Aruch, OC 168:10). Of foods that pass those tests, there are still characteristics that can make a food phbbk instead of bread. The Shulchan Aruch (ibid.:7) cites three opinions: it has a pocket of sweet filling; its dough contains significant amounts of ingredients such as sugar and oil, besides flour and water; it is thin and crisp. It is unclear whether these opinions are mutually exclusive or whether any significant non-bread characteristic makes it phbbk (see Biur Halacha to 168:8).

Pizza might be phbbk for one of the following reasons: 1) its dough may contain a lot of liquid other than water (e.g., oil, apple juice, milk); 2) it is baked together with pizza sauce and cheese, which make it similar to the pocket of filling above. However, it might not be phbbk. #1 requires that there to be a lot of other liquids (for Sephardim, enough to taste; for Ashkenazim, a majority of the non-flour element - Shulchan Aruch and Rama, OC 168). This is often not the case. Regarding #2, it is not clear that all fillings remove the bread status. The Shulchan Aruch (ibid.:16) says that a pashtida (knish-type food) filled with meat, fish, or

cheese receives the beracha of Hamotzi on any amount. The Mishna Berura (ad loc.:94) explains that classic phbbk is made from sweet fillings that make it dessert-like (e.g., cake), as opposed to these that are more meal-like. The Taz (168:20) says that all fillings are the same, and the matter is usually treated like a doubt.

Furthermore, the Beit Yosef (OC 168; see also the Aruch Hashulchan, OC 168:25) says that phbbk is something that, because of its characteristics, one does not usually center a meal around. One can argue that people eat regular pizza as the main food for a meal, rather than as a minor part of the meal or as a snack between main meals. So, indeed, this respondent treats pizza like bread, for any amount (see Am Mordechai, Berachot 25). Many distinguish between water vs. fruit juice based dough or treat the matter as a doubt to be avoided (see V'zot Haberacha, p. 217). In any case, according to the prevalent custom that pizza is phbbk, how much does one have to eat to require the halachot of bread? The Shulchan Aruch (OC 168:6) says that one has to eat the amount that most people consider having for a meal. In another halachic context, the size of 3 or 4 eggs suffices. It is a question whether that suffices here or a full meal's worth is needed (the Mishna Berura 168:24 leaves the matter open). There is also a question whether in the meal discussed the phbbk by itself is filling, or whether it is sufficient for it to be a filling meal that is centered around the phbbk (Mishna Berura ibid.) Rav M. Feinstein (Igrot Moshe, OC III, 32) goes a step further, saying that nowadays, when bread's role in meals is less than it once was, even a small amount of phbbk in the midst of a meal would require washing, Hamotzi, and Birkat Hamazon. Nevertheless, the most famous practice is that only two or perhaps three slices of average sized pizza are treated like bread.

15. Saying Birkat Hagomel After Using a Makeshift System

Question: Question (part I): It has been a couple months since I had a baby. May I still say Birkat Hagomel? Answer (part I): [We sent the new mother an earlier response, in which we explained that a woman can recite Hagomel at least up to twelve months from the time of the birth.] Question (part II): Before I sent you the question, I followed a ruling I found online that if one is not sure whether he needs to recite Hagomel, he should have in mind during the morning beracha of "... hagomel chasadim tovim l'amo Yisrael" that it should also serve as thanks in lieu of the regular Hagomel. After doing that, can I still follow your ruling and recite the regular beracha or would that now be a beracha l'vatala?

Answer: The advice you found on the Internet has complicated matters, not because it is illegitimate, but because it has a significant basis, as we will explain after viewing the background.

One is supposed to recite Hagomel in front of ten people including two scholars (Berachot 54b). What happens if there was not a minyan? The Shulchan Aruch (Orach Chayim 219:3) cites two opinions as to whether he fulfilled his obligation after the fact and concludes that in this situation of doubt, he should recite Hagomel without using Hashem's names. As far as what one gains with such a declaration considering that berachot must include Hashem's name, there are two main answers: 1. According to a minority opinion, one fulfills the beracha in this form (see Birkat Hashem, IV, p. 453); 2. There is a value to a non-beracha declaration in order to thank Hashem, even if it does not fulfill the formal obligation (Divrei Halacha (Weber) 214).

The idea you saw – having intention during the morning beracha to fulfill a doubtful Birkat Hagomel – seems to come from Halichot Shlomo 23:8 (put together from writings and teachings of Rav S.Z. Auerbach), as a "better alternative" to the Shulchan Aruch. The language of the beracha shares with the accepted beracha the word "hagomel" (who grants) and the root "tov" (goodness), but differences exist. However, Rav Auerbach noted that our text of

the gemara (Berachot 54b) uses the words of the morning beracha, “gomel chasadim tovim,” for Birkat Hagomel. Although the Beit Yosef accepts the Rishonim who use our present text, Rav Auerbach reasons that the other text must be valid at least b’dieved. (There is flexibility in the language of Hagomel – see Berachot ibid.; Mishna Berura 219:4). If so, you were already yotzei and should certainly not say the standard text at this point.

On the other hand, there are a few problems. First, you said the text to yourself, and as mentioned, there is a doubt whether that works for Hagomel. Second, we did not find an earlier mention of Rav Auerbach’s idea. While it has logic and he does not need “permission” to present a good novel idea, there is something fundamentally missing in the language of the morning beracha. That is, there is no mention of a personal chesed that the blesser received but rather the general “good kindnesses to His nation Israel.” Perhaps even the text in the gemara assumes one would finish off with “for He has granted me all good.” Halichot Shlomo (ibid.) in fact suggests adding that phrase to the end of the morning beracha (was that mentioned online?).

Despite our doubts with your implementation of Rav Auerbach’s idea, we would not tell you to make another beracha considering that according to almost all poskim, the rule that one does not make berachot in cases of doubt applies to Hagomel (see S’dei Chemed, vol. VI, p. 315-7 for notable exceptions). Although you are not required to do anything further, the possibility of using the Shulchan Aruch’s approach of publicly reciting Hagomel without Hashem’s name certainly exists. A seemingly better and fully accepted option (see Shulchan Aruch ibid. 5), which may be more convenient for you considering you need not rush, is to have another new mother who makes Hagomel have you in mind

16. Permissibility of a Personal Beracha

Question: I am often overjoyed that Hashem granted me the zechut to live in Israel for many years, causing me to make a “spontaneous” beracha. A friend told me it is forbidden to compose my own berachot, as one can only use those Chazal composed. Is Judaism not all about thanking Hashem for all the wonders of creations and providence? Would I be precluded from thanking Hashem for something important to me?

Answer: Your assumption that one’s relationship with Hashem should be personal and overflowing is poignantly and refreshingly correct. On the other hand, one does not have free reign to serve Hashem as he desires, as evident from such halachot as bal tosif (not adding on to the mitzvot) and beracha l’vatala (unwarranted beracha). Let us seek perspective and guidelines.

The gemara (Berachot 33a) says that one who fulfilled a beracha requirement and then made an unnecessary one violated the prohibition of saying Hashem’s Name in vain. Tosafot (Rosh Hashana 33a) argues that uttering Hashem’s Name to praise Him cannot be in vain, but that it is a Rabbinic prohibition that “leans” on the pasuk. The Rambam (Berachot 1:15) seems to hold that beracha l’vatala is a Torah prohibition (Magen Avraham 215:6).

All agree that uttering Hashem’s Name without any purpose is an isur asah (low-level Torah prohibition – Temura 4a). Yet, using Hashem’s Name in the context of praising Him is positive and permitted. In fact, the Rambam (Shvuot 12:11) says that if one mistakenly uttered the Name, he should immediately turn it into an appropriate praise of Hashem, and one of his suggested texts of spontaneous praise begins with “baruch.”

Where do we draw the line between appropriate praise and a beracha l’vatala? One approach is that the crucial factor is intention and context. If one intends to recite a required beracha when he is actually not required or if a mistake disqualifies the beracha, it is a beracha l’vatala. If the same words are said as an expression of personal gratitude, it is permitted (Chavat Da’at 110, Beit Hasafek 20; see Minchat Shlomo II:3). The Chavat Da’at cites a precedent for the distinction: one is allowed to repeat Shemoneh

Esrei (which is comprised of berachot) with the intention that it is voluntary, but not with an intention for an obligation (see Rosh, Berachot 3:15).

Others distinguish based on the text used, which is most severe when one utters a classic name of Hashem. Some say that if one recites the beracha in a language other than Hebrew so that the Name is equivalent only to a kinuy (a descriptive reference) of Hashem, it has the benefits of a beracha without the fear of beracha l'vatala (see opinions cited in Shut R. Akiva Eiger I:25, Pitchei Teshuva, YD 328:1, Piskei Teshuvot 209:7). R. Akiva Eiger (ibid.) and the Netziv (Ha'amek She'ala 53:2) argue that in the recognized, sensitive context of a beracha, even a kinuy or foreign language Name can be forbidden, as we find regarding an oath. The Netziv says that the problem is a Rabbinic issue of appearing to recite a beracha l'vatala. Therefore, the closer the text (and/or the context) is to that of a beracha, the more likely it is to be forbidden. The Minchat Shlomo (ibid.) explains that one should not act in a way that challenges the rules the Rabbis set. However, those rules were not set to forbid expression of personal thanks to Hashem.

We summarize as follows. Your desire to praise Hashem is commendable. Paradoxically, the more creative the text and style are, the clearer it is that it is permitted. Convention is that an individual should generally refrain from using Hashem's main Names, which we leave primarily to Chazal and to great rabbis who have composed prayers and praises throughout history. Saying "Hashem," "Hakadosh Baruch Hu," "Ribbono Shel Olam," or a Name not in Hebrew is safer and as profound. It is at least preferable not to recite anything that resembles a beracha of Chazal by content, by context (e.g., in Birkot Hashachar) and/or by regularity. That still leaves you with room for much self-expression.

17. Beracha on a Newly Renovated Home

Question: If I did major renovations in my home, do I recite Shehecheyanu on it?

Answer: The mishna (Berachot 54a) says that one who builds a new house or buys new “utensils” recites Shehecheyanu. While the gemara (ibid. 59b-60a) cites an opinion that this beracha is only for the first such acquisition, which would exclude the possibility of a beracha on renovations, we follow the opinion that it applies even if one built a second house (Shulchan Aruch, Orach Chayim 223:3).

But are renovations comparable to a new house? The gemara in Sota (mishna, 43a; gemara, 44a) discusses the halacha that one who builds a new house that he has not inaugurated returns from the battlefield. The first opinion identifies building projects on his property that do not qualify as building a house. Rabbi Yehuda says that even if one rebuilt the house on its previous site, he does not return from battle. However, the gemara posits that extending the house’s height does qualify. The Mishna Berura (223:12) says that this serves as a halachic precedent for Shehecheyanu as well. Contemporary poskim (see Halichot Shlomo 23:14 in the name of Rav S.Z. Auerbach and V’zot Haberacha, p. 166 in the name of Rav M. Eliyahu) assume the same is true for any significant extension of the house, even without acquiring new land. However, renovations that do not include expansion, but just improvement of the house’s appearance or functionality, are not comparable to building or buying and do not warrant a beracha (ibid.). The time for the beracha is when the new area is ready to be used, which coincides with the time for attaching a mezuzah (V’zot Haberacha ibid.). (We are not relating to the new furniture that often accompanies renovations, which itself likely warrants a beracha.)

A few factors could raise questions about the beracha. The first is that there is a minhag cited by several Sephardi poskim to not make a beracha on a new house. It is hard to determine this minhag’s exact origin, reason, and extent. The Pri Megadim (223, Mishbetzot Zahav 4), who is Ashkenazi, suggest that there is a

minhag to not make Shehechyanu on clothes and utensils, and he suggests that these people must rely on the opinion that Shehechyanu for such events is merely optional. The Ben Ish Chai (I, R'ei 5-6) is not impressed by this logic, but he confirms the minhag concerning a new house. He recommends solving the problem by following a different minhag. One makes a chanukat habayit upon entering the house, at which point he wears a new garment and recites Shehechyanu with intention for the house in addition to the garment. I do not know if there is such a minhag of a chanukat habayit for renovations. However, those who want to follow the minhag, as opposed to the established halacha to make the beracha (Yalkut Yosef 223:2 and Birkat Hashem 2:57 do not believe the minhag should uproot it), can solve the issue with a new garment.

Rav Chayim Palagi and the Kaf Hachayim (OC 223:18) say that one who bought a house on credit does not make a beracha because of the trouble he may have paying up and the possibility he might have to return it to the seller. Besides the strong questions on the basic opinion (see Birkat Hashem 2:(250)), the situation is uncommon regarding renovations, as even one who takes loans for that purpose rarely is nervous about his ability to pay, and the renovations will not be “returned”.

Is Shecheyanu the correct beracha? The rule is that for acquisitions that benefit more than one person, Shehechyanu is replaced by Hatov V'hameitiv (Shulchan Aruch, *ibid.* 5). The gemara talks about buying a house with a partner, but this also applies to family members (see Shulchan Aruch *ibid.* and Be'ur Halacha to 223:3). If there is a question of doubt between the two berachot, Shehechyanu is the safer one, as it can work even when Hatov V'hameitiv is appropriate (Be'ur Halacha to 223:5). This is apparent from those (including above) who suggest using the beracha on new clothes to cover the beracha on a new house.

18. Birkot Hamitzva Regarding Netilat Yadayim

Question: How can we make the beracha on netilat yadayim in shul some time after we washed our hands, as birkot hamitzva are always recited at the time the mitzva is performed?

Answer: The gemara (Berachot 60b) describes the morning berachot as being recited as one performs each action the berachot relate to (e.g., opening one's eyes, putting on shoes, washing hands, putting on tzitzit, etc.). These days, we make the birkot hashachar, which praise Hashem for providing us with our physical needs, at one time, usually at the beginning of davening. The Shulchan Aruch (Orach Chayim 46:2) provides two reasons for our present practice: our hands are dirty when we get up, making it improper to make a beracha; some people cannot make the berachot themselves, so in shul the chazan says it on their behalf. Your query revolves around the question whether the beracha on netilat yadayim stays in its place, at the time of the washing, or also moves.

The Beit Yosef (OC 6) cites two approaches to the matter. The simpler one, which he accepts (Shulchan Aruch, OC 6:2) is, as you argued, that the beracha should be close to the mitzva. Admittedly, unlike other birkot hamitzva, the beracha on netilat yadayim is recited after the mitzva, as before the washing, one's hands are likely to be too dirty to make the beracha (see Tosafot, Pesachim 7b). However, it still can be done either before one wipes his hands or soon thereafter, as opposed to after a long break (see Mishbetzot Zahav, OC 6:4). However, the Beit Yosef justifies the minhag to make the beracha on netilat yadayim in shul, which Ashkenazim accept (Rama, ad loc.), based on the Rashba's approach to the reason for netilat yadayim. He says that as one embarks on the day as a new creation, he must thank Hashem and wash his hands like a kohen in preparation for these thanks. As the washing is related to these birkot hashachar, just as they are done in shul, the beracha on netilat yadayim is also done there. The Perisha (6:3) understands that this beracha is not a standard birkat hamitzva.

The Rosh (Berachot 9:23) says that netilat yadayim and its beracha were instituted as a preparation for tefilla. Therefore, says the Chayei Adam (7,6), if one were to wash his hands when waking up and then went to the bathroom and washed his hands again before tefilla, it is the second washing that must receive the beracha. While he only seems to make an issue of this when one expects to use the facilities between netilat yadayim and davening, the Gra (Maaseh Rav 3) says that the Rosh's approach mandates making the beracha specifically in shul before tefilla (he appears not to require another netilat yadayim if he does not use the facilities in between). However, the Gra is an extreme opinion in this matter, as he accepted the Rosh so much as to require netilat yadayim with a beracha before Mincha and Maariv (ibid.), which we do not.

In these matters, we would suggest that Ashkenazim and Sephardim follow their respective minhagim. The question is when a lot of time passes between netilat yadayim upon arising and tefilla. The Chayei Adam suggests that the person go to the bathroom again, making the beracha after the second time. However, the Biur Halacha (to 4:1) raises the issue that, according to the Rashba, the beracha will not relate to the netilat yadayim that requires it, upon awakening. This appears to be an issue if a long time goes by, even if he did not use the facilities in between (see ibid.). The Rama (6:2) leans toward making the beracha earlier in this case, whereas the Biur Halacha leans toward the Chayei Adam. The safest thing, in the case of a long break, is to make the beracha on netilat yadayim at home, followed by birkot hashachar, which is the beginning of davening (Mishna Berura 6:9). (Realize that, according to all opinions, a long time goes by between the beracha on netilat yadayim and Shemoneh Esrei).

NETILLAT YADAYIM:

19. Stains on Hands and Netilat Yadayim

Question: During some volunteer painting I (a teenage girl) was doing for a tzedaka organization, I had a mishap that caused a significant amount of oil paint to get on my hand and arm. After an initial washing of the hand, there was still a significant amount of paint left. What I am to do about netilat yadayim?

Answer: The general rule is that whatever is a chatzitza (a separation between the skin and the water) for various required tevillot is a chatzitza for netilat yadayim as well (Chulin 106b; Shulchan Aruch, Orach Chayim 161:1). The most basic sub-rule is that something that is stuck to the skin is a chatzitza if either: it covers most of the skin, or one is makpid on it (cares to have it removed) (Shulchan Aruch, *ibid.*). It sounds like after the initial washing, the paint was not on most of your hand.

The Shulchan Aruch (*ibid.*:2) says that paint is the type of object that can or cannot be a chatzitza, depending on the person. If most people in the world are makpid on a given object stuck to their body, then it is a chatzitza even for the minority that is not makpid (Shulchan Aruch, Yoreh Deah 198:1). However, if the one who is not makpid has that attitude because he is a member of a profession who, by virtue of their work, regularly have such a stain, it is not a chatzitza (*ibid.*). Then we say that the minority is the norm, for if others were in this profession they too would not be makpid. However, you are not a professional painter and probably would appreciate the paint off sooner rather than later.

There is another potential ground for leniency regarding discolored skin that will not help in your case. One of the reasons that hair coloring is not a chatzitza for women is that the coloring is not considered to have any substance (*mamashut*) to it (see Rashba and others, cited in Beit Yosef, Yoreh Deah, corresponding to 198:17). However, even after washing, oil paint residue does have substance. (Note that dried ink is an example of a chatzitza (Shulchan Aruch, *ibid.*:15)).

When you have the chance to work in a more serious way on removing the paint but there is a little that you cannot get off, then the situation will change for a few possible reasons. It is

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possible that so little remains that it will not be makpid anymore (I wouldn't be too optimistic that this will happen too quickly by the sound of things.) The remaining color may reach the state of lacking substance, which is hard to quantify. Finally and probably most importantly, let us introduce a new concept. When one has a bandage on a wound that cannot be removed because it is too painful to do so, one can wash the hand except for the area covered (Shulchan Aruch, Orach Chayim 162:10). (Note that this cannot be done for tevilla d'orayata – Shulchan Aruch, Yoreh Deah 198:10). Similarly, if one has a wound with a scab on it, that part of the scab that cannot be removed due to pain is not a chatzitza (even in regard to the more strict laws of tevilla d'orayata - Shulchan Aruch, Yoreh Deah 198:9). While there is room for comparing and contrasting the different cases, in a case where one has removed everything that will come off without damaging or peeling off the skin, that which remains is not a chatzitza (see also Piskei Teshuvot 162:1).

What does one do before she can remove all that she can? The Shulchan Aruch (Orach Chayim 163:1) says that when one does not have any water available, he eats after covering his hands in a handkerchief (or anything else- Mishna Berura 163:5). Similarly, the Mishna Berura (162:69) says that when one cannot wash his hands for a medical reason, he uses this system. Under the circumstances that you do not have an opportunity to do a proper job of removing the great majority of the paint within 72 minutes of when you want to eat (see Shulchan Aruch, *ibid.*) you could do the same thing.

20. Drying One's Hands With an Electric Hand Dryer Instead of a Towel after Netilat Yadayim

Question: After washing one's hands for netilat yadayim before eating bread, is it permitted to dry one's hands with an electric (blow) hand dryer instead of a towel?

Answer: Your assumption that there is a need for niguv (drying of the hands) is basically correct, but the reason behind it will impact on the requirements for this niguv.

One of the rationales that Tosafot (Pesachim 7b) gives for the practice of making a beracha on netilat yadayim after the washing occurs (usually the beracha precedes the mitzva) is that netilat yadayim is not finished until after the niguv. This seems to give a halachic status to the practice, but Tosafot does not explain why this is so. One suggestion has to do with the fact that the water one uses for netilat yadayim can become tameh (impure) after the first washing and steps need to be taken to remove it. The main solution is to wash a second time, but some understand that niguv is a final part of the removal process (see Beit Yosef, Orach Chayim 158).

The gemara (Sota 4b) discusses how to make sure that water of netilat yadayim should not pick up impurity and then return to make the hands impure. The gemara then says: "Whoever eats bread without drying his hands is like eating impure bread." It brings a pasuk that talks about impure hands, and according to Rashi, we see from it that matters of mi'us (unsightliness) can be called impure. The simple understanding, then, is that niguv is a matter of manners (wet hands make bread soggy) which, in this case, Torah sources equate with impurity.

It is difficult, though, to say that mi'us is the only issue. The Tosefta (Yadayim 2:1) says that niguv is required only after netilat yadayim, not tevillat yadayim (immersing hands). If the issue is the halachic issues of tumeh, the matter is understandable, as after immersion, all the water is pure. However, according to the approach of mi'us, why should there be a difference between

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moisture from washing or immersing? (The Taz (158:13) rejects the possibility that the gemara argues on the Tosefta).

Therefore, a third approach is suggested (Taz *ibid.*, based on the Maharshal), which includes elements of the first two. The heart of the problem is *mi'us*, but the Rabbis instituted that their rabbinic mechanism of *netilat yadayim* would be incomplete until *niguv* is done. However, in regard to *tevillat yadayim*, which is a throwback to the Torah laws of *tevilla*, the need for *niguv* was not formalized.

A difference between the approach of removing *tumah* and that of a formal requirement related to *mi'us* is in regard to one who does *netilat yadayim* with at least a *revi'it* (3-4 ounces) of water for the first washing. The Shulchan Aruch (OC 158:13) says that since in that case, there is no impure water, *niguv* is unnecessary. The Maharshal says that since there is an issue of *mi'us* and since this is under the framework of *netilla*, *niguv* is required. The latter approach is the prevalent one (Mishna Berura 158:46), and, therefore, even after *netilat yadayim* with a lot of water (which is now commonplace), *niguv* is needed.

The Levush (OC 158:13) makes a claim that is pertinent to our question. He says that the Tosefta never denied a need for dry hands after immersing, but meant only that it need not be done in a formal and more halachically effective drying, using something absorbent. Rather, after *tevilla*, one can allow the hands to dry by themselves in order to avoid *mi'us*. In contrast, in order to remove *tameh* water, an absorbent material must be used. Several *poskim* (see Shulchan Aruch Harav, OC 158:17; Kaf Hachayim, OC 158:87) accept the Levush's stringency (the Chazon Ish, OC 25:10 does not). In all probability, using an electric dryer is considered a means of speeding up the natural process of hands drying themselves and would not suffice according to the Levush. However, if a *revi'it* of water was used on the first washing and the issue is only *mi'us*, the Levush's concern does not apply and all would agree that an electric dryer is fine (B'tzel Hachochma IV, 141).

TEFILLA:

21. Shortening Psukei D'zimra to Catch Up

Question: I have noticed in a few shuls that a minority of the tzibbur starts Shemoneh Esrei (=SE) together and many people who come in a few minutes late do not try to catch up. Isn't it correct to skip parts of P'sukei D'zimra (=PDZ) in such a case?

Answer: The Shulchan Aruch (Orach Chayim 52:1), based on Geonim and Rishonim, rules that one should shorten PDZ in order to catch up to the tzibbur and details the order of precedence. The Shulchan Aruch allows skipping all of PDZ if needed for that purpose (Yalkut Yosef (PDZ 24) concurs), while most Ashkenazi poskim require a minimal PDZ (Mishna Berura 52:6). (Some say it is important to finish Yishtabach with the tzibbur (see Avnei Yashfeh, OC I:10), but starting SE together is the main issue (Mishna Berura ibid.).)

Discussion was awoken by a passage in the Maggid Meisharim (quoted in Ba'er Heitev 52:1) in which Rav Yosef Karo's angel warned him to come to shul early because skipping parts of PDZ is like "fiddling with the pipes." The Ba'er Heitiv continues that many pious people thus do not shorten PDZ even if they come late.

There are few reasons to stick by the Shulchan Aruch's ruling despite the story involving its author. First, the maggid's instruction was to come early to shul, which actually implies that if he did not come early, he should skip parts of PDZ (Eliya Rabba 52:4). Furthermore, we do not follow kabbalistic sources against a halachic consensus (Chacham Tzvi 36). It may be different for people who follow all kabbalistic practices (see Ma'amar Mordechai 52:1), [few of whom read our column]. While significant halachic authorities follow the Ba'er Heitev's understanding of Maggid Meisharim, the pillars of contemporary halacha do not (see Mishna Berura ibid.; Igrot Moshe OC, IV:91; Yechaveh Da'at V:5; Halichot Shlomo 8:41).

Cases that the classical sources did not discuss explicitly are riper for machloket. The Sha'arei Teshuva (52:1) says that if one davens too slowly to keep up with the tzibbur, he is allowed (apparently not required – see Ishei Yisrael 12:22) to say

everything at his own pace and miss SE with the tzibbur. The implication is that he is not required to start davening early to “build up a lead” (ibid.). (He should, though, have his tallit and tefillin on and have recited Birkot Hashachar by the time the tzibbur starts PDZ.)

The Eshel Avraham (Butchatch- 52) says that it suffices to join the tzibbur at chazarat hashatz, and one should not skip PDZ to start the silent SE together. This depends on a broad question of if or to what extent chazarat hashatz counts as tefilla b’tzibbur (see Yabia Omer II, OC 7); the Pri Megadim (EA 52:1) says it does not. This question has an opposite ramification in a different case in our issue – does one shorten PDZ to make it on time to chazarat hashatz when he anyway will miss silent SE? Each fundamental approach has a strong basis, but we prefer the approach that davening along with the chazarat hashatz fulfills a lower level element of tefilla b’tzibbur, but that regarding our context the crucial point is only the beginning of silent SE (Mishna Berura 52:6; Halichot Shlomo 8:41 (citing Rav S.Z. Auerbach)). (It is very difficult to read the classical sources any other way.) Starting SE significantly late but while the tzibbur is still davening is probably a similar level as that of joining chazarat shatz, and it is also permitted only if one will finish his SE by Kedusha (Shulchan Aruch, OC 109:1; Pri Megadim 109, EA 2; see B’tzel Hachochma IV:3).

In summary, we recommend to skip as much of PDZ as needed to give one a good chance to start silent SE (and, in most cases, Barchu) together. We respect other legitimate opinions, especially under certain consequences (see above). Having a shul start SE without a large percentage of the tzibbur joining together is regrettable. While it is proper to slow down to the average participant’s davening speed, “holding back” those who come on time to accommodate latecomers is also problematic.

22. Kedusha for Slow Daveners

Question: I daven slower than most people in shul and, therefore, usually miss answering Kedusha. What can/should I do to remedy the situation?

Answer: We are working with the assumption that it is worthwhile to continue davening at your minyan. In our opinion, this depends on too many subjective factors to address in this forum.

The simplest possibility is to daven faster. Yaskil Avdi (I, OC 3) suggests speeding up (within reason) at the end if it will enable him to finish in time. However, almost all poskim reason that one's kavana is so critical to his tefilla that he should not tamper with it even to "catch" Kedusha.

The gemara (Berachot 21b) says that one who comes to shul late and will be unable to finish Shemoneh Esrei (=SE) in time for Kedusha should not start at that time. Yet, a consensus of poskim reasons that one who starts SE on time but davens slowly should start normally even at the expense of Kedusha. However, the different explanations to reconcile this assumption with the gemara impact our case.

The Pri Megadim (OC 109, EA 2) says that tefilla b'tzibbur (saying SE along with a minyan) is more important than answering Kedusha. The gemara (ibid.) instructs not to miss Kedusha because one who starts SE late anyway lacks the full effect of tefilla b'tzibbur. (B'tzel Hachuchma IV, 3 discusses how close to the beginning of SE one needs to be to get the full effect.) In contrast, one who starts with everyone else has greater benefit from tefilla b'tzibbur than he loses by not answering Kedusha. The Biur Halacha (on 109:1) raises an additional possibility. When one is ready to begin SE along with the tzibbur, he is faced with the obligation of tefilla b'tzibbur, whereas the obligation of Kedusha is off in the future. In general, we do not push off mitzvot in the present because they may preclude mitzvot in the future. (For a reason unclear to this writer), once the tzibbur is well along in SE, there is not the same type of obligation for another to join them. Az Nidberu (VIII, 41) raises a third possibility. Only when one is late and presumably negligent do we require him to wait; however,

if one davens slowly (which is not negligence), we let him start SE when he is ready. A fourth distinction is that on a one-time basis, one must sacrifice his tefilla b'tzibbur to enable him to answer Kedusha. However, one who davens slower than his surroundings should not be deprived of tefilla b'tzibbur on an ongoing basis (Aruch Hashulchan, OC 109:5).

What is the halacha of one who would start and finish SE late because Kri'at Shema and its berachot take him a long time? While skipping the analysis, we point out that according to the first two reasons above, he should wait until chazarat hashatz to start SE (for details, see Ishei Yisrael 33: 2-3). However, according to the latter approaches, he can start SE and listen quietly to Kedusha in the middle (see Shulchan Aruch, OC 104:7). All considered, it is best to avoid starting late, where one misses out on a full tefilla b'tzibbur and/or on answering Kedusha.

One solution is to start SE before the congregation. However, the gemara (Berachot 28b) warns not to begin one's tefilla before the congregation. This can be because one thereby misses tefilla b'tzibbur (see Mishna Berura 90:35). If so, we have to determine whether this is a problem when missing SE's critical first part but finishing up with the tzibbur. It could also be because of a disgrace to the tzibbur (see *ibid.* :34). If so, one must analyze if this applies to our situation where his actions are understandable. Some poskim allow this (see analysis in Yabia Omer II, OC 7), but we feel that the negative usually outweighs the positive. The best solution is to start the berachot of Kri'at Shema before the tzibbur so that one can start SE with them at his natural pace. During Birchot Kri'at Shema, one answers Amen Y'hei Shmei ... and the last Amen of Kaddish and Borchu (Mishna Berura 66:17; see Ishei Yisrael, ch. 19).

23. Singing Kedusha Along With the Chazan

Question: When we sing sections of Kedusha, some people sing along with the chazan and some just hum the tune. Is there a right or a wrong way in this matter?

Answer: Let us first note that Kedusha is a series of three important p'sukim (Kadosh, Baruch k'vod, and Yimloch), each preceded by an introductory passage (Nekadesh, or Nakdishach for Sephard, Le'umatam, and U'vidivrei), with additions for Shabbat. Many hummers are concerned that it is forbidden to say the words along with the chazan.

The Shulchan Aruch (Orach Chayim 125:1, based on Shut Harosh 4:19) says that no one but the chazan should recite Nakdishach at all. The Machatzit Hashekel (to Magen Avraham 125:1) and Mishna Berura (125:1) explain that this passage was instituted for the chazan, as shaliach tzibbur (representative of the congregation), to prompt the congregation, who would respond with the p'sukim alone. The Beit Yosef is uncertain as to whether this idea applies to the other introductory passages as well. In practice, we do say Nekadesh (and Sefardim often sing it together—see Yabia Omer, VII, OC 14). This can be attributed to a few things: 1) The Taz (125:1) questions what the issue could be about saying these passages, especially as the Shulchan Aruch (OC 109:2) rules that one who starts Shemoneh Esrei along with the chazan's chazarat hashatz says Kedusha with him word for word. 2) The Ari (cited in Ba'er Heitev 125:1) says that one should recite all of Kedusha along with the chazan silently. 3) The minhag is to say Nekadesh. (The Aruch Hashulchan 125:2 says that the minhag is to say only Nekadesh and not Le'umatam and U'vidivrei; on Shabbat, the minhag is to say the long additions).

What about repeating these words a second time? The Rama (OC 125:1) says that one should not speak during Kedusha. The Magen Avraham (125:1) says that one should not even learn without speaking but should listen to the chazan. However, he says that this restriction does not apply when the chazan is singing tunes without words or during the extended passages for Shabbat, which are not critical to Kedusha. If so, restrictions on saying extraneous

things or usurping the chazan's role at that point are also not likely an issue. Although the poskim advise not to talk until the end of the beracha after Kedusha (see Mishna Berura 125:9, in the name of the Maharil), it appears that the issue is of disrespect to Kedusha. The poskim on the above issue do not say that unnecessary recitation is a hefsek (formal interruption). Only when words are repeated nonsensically to fit in with a musical piece is that an issue (see Yabia Omer, VII, OC 14; Igrot Moshe, OC II, 22). Singing the words of Mimkocmcha, for example, should not have that problem.

There is an issue when, with religious/musical fervor, the congregation drowns out the chazan. One problem, disgrace to the words, should apply to all of Kedusha (as above). This should not be such a problem when people say the appropriate words, albeit not in the classical manner of the chazan alone being audible, but in a way many feel inspiring. Presumably, it is a problem when people are "stringent" to hum, but so loudly that the words are not heard clearly from anyone. Another problem is that those who are in the midst of Shemoneh Esrei need to hear Kedusha, as they cannot recite it. It is a machloket (Az Niddbaru II, 60 - yes; Igrot Moshe, OC III, 4 - no;) whether they can fulfill this by hearing people other than the chazan say the words, considering that they do not have in mind to do it on the davener's behalf. However, this applies specifically to the p'sukim of Kedusha (see Halichot Shlomo, Tefilla 8:38), which are less commonly sung.

The following is our advice. During Kadosh and Baruch k'vod (and perhaps the final words of L'umatam and U'vidivrei), the chazan should be heard clearly, and the congregation should do no more than hum quietly. During the longer Shabbat additions, people may sing along as they like, and if this competes with the chazan's voice, they should recite the words. (If one plans to do this, it is preferable to refrain from saying it while the chazan is waiting).

24. Birkat Kohanim in the Middle of Shemoneh Esrei

Question: I am a Kohen. I often have to speed up my Shemoneh Esrei in order to be finished in time for Birkat Kohanim (duchening). Someone told me that I could actually go up even if I am still in the midst of Shemoneh Esrei. Is this true? In general, I am interested in suggestions of how to deal with the situation.

Answer: The idea of going up for Birkat Kohanim in the middle of Shemoneh Esrei exists, and we will explain it before discussing its limitations.

The Radvaz (IV, 293) says that if there is no other kohen who will be doing Birkat Kohanim, then a kohen who is still in Shemoneh Esrei should stop to go up and do it. He says that since Birkat Kohanim is from the Torah, while any specific tefilla is only rabbinic, the kohen should make sure that Birkat Kohanim is done. The precedent for that is the halacha that when a kohen serves as a chazan, if he is able to return to his tefilla afterward, he can stop for Birkat Kohanim (Shulchan Aruch, Orach Chayim 128:20). If, on the other hand, there are other kohanim, there is no need to disrupt Shemoneh Esrei, and although a kohen has a personal obligation to duchen, that is activated only when he is called to do so (see Shulchan Aruch *ibid.*:4). The Radvaz assumes that when someone calls out to the kohanim, he does so with the intention that only those who are available should come up. The Magen Avraham (128:40) says that if an individual kohen still davening was specifically told to go, his obligation would be activated and he would have to stop his tefilla and fulfill it in any case. One requirement is that the kohen at least started slightly to move in the direction of the place of Birkat Kohanim during the beracha of R'tzei, which he may do (Shulchan Aruch *ibid.*:8).

The Mishna Berura (128:106), after citing the Magen Avraham, cites significant opinions that say that the strictness with which Chazal treated Shemoneh Esrei precludes interrupting it even if he is the only kohen and even if he is called. Only if he is up to the same part of Shemoneh Esrei as the chazan at the time of

Birkat Kohanim would he be allowed to proceed. In that case, neither walking to the front of shul nor reciting Birkat Kohanim at its appointed place in Shemoneh Esrei is a significant break. The Kaf Hachayim (OC 128:56) also paskens this way.

When he may not go up, the kohen does not leave shul. The matter of leaving is either to avoid being called, which we saw does not apply, or is a non-crucial step so people will not think he is pasul (Terumat Hadeshen II, 22), which is not justified here.

If you are already up to Elokai Netzor, you can skip or shorten it, as is suggested regarding answering Kedusha (Shulchan Aruch, OC 122:1). If you are not able to take the steps back in time, you can go up during Elokai Netzor, as we have seen that this is no worse a break than answering Kedusha, which is permitted in that situation (ibid.). In these cases, you should remember to take a minimal step toward the duchan during R'tzei and make sure to keep your hands clean as of the last time you washed, which according to most, can even be the morning washing (Va'ani Avarcheim p. 165; see Yalkut Yosef, OC 128:(11)).

It is obviously not an optimal situation to have to possibly miss Birkat Kohanim or to have to deal with timing matters, which, among other things, is probably disturbing to one's concentration. If you feel that it is easy to speed up your tefilla with little to no concentration loss, we suggest doing so, especially if we are talking about missing by a matter of seconds. Another possibility discussed by the poskim is to start Shemoneh Esrei somewhat early and thus finish at a workable time. Although it is good to start Shemoneh Esrei with everyone else, many permit starting a little early if there are significant gains by doing so (see Yabia Omer II, OC 7; Ishei Yisrael 33:(25)). While you are certainly not required to do so, if it puts you more at ease in your Shemoneh Esrei, you may do so.

25. Birkat Kohanim When Wearing a Cast

Question: I broke my arm and it is covered with a soft cast. May I (a *kohen*) do *nesiat kapayim* (*duchenen*) in this state (my arm is mobile)?

Answer: The *mishna* (Megilla 24b) says that a *kohen* with blemishes on his hands should not do *nesiat kapayim* (=nk) because it causes people to look at him. Rashi (ad loc.) says that the problem is that the *kohen*'s hands during *nk* have the Divine Presence upon them and seeing them could be dangerous. Tosafot (Chagiga 16a) argues convincingly that the Divine Presence was present only in the *Beit Hamikdash*. Rather, staring at a peculiarity of the *kohanim* hinders one's concentration. Either way, it is not the blemish per se that is the problem but it is the result thereof.

It is questionable whether a cast meets the requirements of a something unusual (see Mishna Berura 128:109) that distracts people. On the other hand, it is "interesting" to see *nk* with a cast and perhaps it does draw attention. Realize that even one whose hands are colored does not do *nk* (Megilla, *ibid.*). Let us thus examine other elements of the issue.

The *gemara* (*ibid.*) says that even one who should be prevented from doing *nk* due to a blemish may do so if he and it are familiar to the people of the town. The Shulchan Aruch (Orach Chayim 128:30) rules that this is the case if one is in his own city for 30 days. After people become accustomed to the condition, they will not be tempted to look at him during *nk* (Mishna Berura *ibid.*:111). Thus, after the cast has been on for 30 days (assuming you are in a place where you are a "regular") there is no issue.

There is another major factor that may allow you to do *nk*. The Shulchan Aruch (*ibid.*) rules that if the local custom is for *kohanim* to hang their *tallitot* over their faces, then even one with blemishes may do *nk*. The Rama clarifies that covering the face is insufficient if the affected part of the hand protrudes. It does not help that the congregations avoids looking because people are more likely to be drawn to look when there is blemish to see (Mishna Berura *ibid.*:115, arguing on the Taz 128:28). Thus, if your local *minhag* is

that the *kohanim* cover enough of their hands/ arms so that your cast is not visible (usually the case), you would be able to do *nk*.

What if the local *minhag* is not to cover that much but you want to do so? If you cover the cast with a sleeve (even if you do not usually do so), there should be no problem, as that is a personal, not a *minhag*-oriented decision. The question is if you cover the cast with a *tallit*, against the *minhag*. The implication of the Shulchan Aruch (ibid.) is that one would not be able to do so, but it is not clear why not. The Igrot Moshe (OC II, 32) explains that it is not because of a prohibition to change the *minhag* regarding use of the *tallit*. Rather, differing from the practice because of a blemish draws attention to it. It stands to reason that if one is in a community where some *kohanim* cover more and some cover less, you could cover more now to keep the cast out of view.

In summary, you should evaluate your situation based on the above guidelines. If you come to the conclusion that you should not do *nk*, realize that there is a question whether you should walk out before *nk* so that people do not suspect that something is wrong with your *kohen* status (see parallel case in Shulchan Aruch ibid.:43). Some say that this is not necessary because your visible blemish “informs” others why you are not doing *nk*. However, the standard approach is that, more or less across-the-board, when a *kohen* does not do *nk* he should leave (see Biur Halacha to 128:30).

26. Standing During Chazarat HaShatz

Question: Should one stand during chazarat hashatz (repetition of Shemoneh Esrei)? I see that most people do not stand, but some people do. Is there a right or wrong on the matter, or is it just a matter of one's personal style?

Answer: We will probably have to find wording that is somewhere between “should” and “personal style,” as will be clearer after we discuss the matter based on the sources.

The Darchei Moshe (Orach Chayim 124:1) cites an opinion (Hagahot U'minhagim) that everyone should stand during chazarat hashatz. [When one leans, if the level of his leaning is such that he would fall if the object were quickly removed, he is not considered to be standing (Ishei Yisrael 24:(66), based on Mishna Berura 94:22-3).] In the Rama (OC 124:4) he cites this idea, on one hand, as an opinion but, on the other hand, does not cite those who argue. The language is of something that people are expected to do, but it is not clear that it is an absolute requirement, as standing is during Shemoneh Esrei itself. The Mishna Berura (124:20) explains that the reason it is the right thing to do is that, since one should listen and listening is like speaking, one should stand as he does during Shemoneh Esrei. Extending the logic further, one might conclude that one must keep his feet together, but the major poskim do not mention this and very few practice it. Indeed, one can prove from many sources that chazarat hashatz is not a duplicate of Shemoneh Esrei.

At first glance, the Rambam (Tefilla 9:3) says that during chazarat hashatz “all are standing (omdim) and listening.” However, Yechave Da'at (V, 11) points out that from the fact that the Rama and others did not bring this as a source, it is apparent that one can understand the Rambam as referring, not to the position of the body, but to stopping activity.

The opinions behind the following summary of the consensus of poskim vary, but the primary thrust is as follows. The historically normative preferred practice is to stand during chazarat hashatz unless there is good reason not to. Clearly there were times and places where very respectable people and communities did not

stand. Also, the matter should not be seen as an outright obligation (see Yechave Da'at, *ibid.*).

Let us mention some cases where the straightforward advice is not to stand. If one is weak or sick (even when the same person can and will push himself to stand for Shemoneh Esrei), he can feel free to sit (Ben Ish Chai, I, Terumah 10). If, by people standing, it encourages them to roam around and detract from their own and/or others' ability to concentrate on chazarat hashatz, it is better to sit and follow along in a focused manner (based on Yaskil Avdi II, OC 2).

The case you speak of, a congregation where a clear majority sits is a tricky situation. Is it yohara (haughtiness) and thus undesirable to stand? It appears that there are two related concepts. Classic yohara is where one does something that is a clear stringency in a context that can be construed as haughtiness. Despite the lack of urgency to the halachic preference of standing, it is hard to consider one who stands in accordance with the Rama and many others' suggestion, under that category. The other factor is *al yeshane mipnei hamachloket* (do not act differently than others because it can cause conflict). The gemara applies this idea, not only to cases where one is more lenient than his surroundings, but sometimes even where he is more strict than his surroundings (see Pesachim 51b). If you are in a community where there is not a sizable minority of people who stand and it is the type of community that is (overly?) sensitive to matters of possible yohara, we would discourage being a trailblazer by standing. We point out that even if one sits, he should not do so until after the beracha of Hakel Hakadosh, following Kedusha, and that he should stand during Modim D'rabbanan, when he is supposed to be bowing (Yechave Da'at, *ibid.*).

27. Which Tefillot to Say While Waiting to Borrow Tefillin

Question: When you don't have your tefillin and someone will lend his to you during chazarat hashatz, what davening should you be doing while you wait?

Answer: The gemara (Berachot 14b) says that one who says Kri'at Shema without tefillin is like one who says false testimony about himself. Rabbeinu Yona (8a of Rif to Berachot) explains that since he reads in Kri'at Shema the commandment to lay tefillin, it looks bad to read it and not put on tefillin. There are several sources that say that, for positive and/or to avoid negative issues, it is important to have tefillin on during Shemoneh Esrei also (Shulchan Aruch, Orach Chayim 25:4; Tosafot, Berachot 14b; see China D'chayei 30). Therefore, people do not give up their tefillin until at least after Shemoneh Esrei and indeed usually not until after Kedusha. So, as you ask, the person waiting will have to choose between davening without tefillin and davening Shemoneh Esrei without a minyan. (Davening at a later minyan that makes the crucial times of tefilla is, of course, best.)

There is close to a contradiction on the matter between critical sources on your question and the standard practice concerning a related one. Many people who go to a late minyan "solve" the problem of missing sof z'man Kri'at Shema by reciting it before shul. Yet, several poskim are bothered by the fact that these people usually do so without tefillin (during the week), which, as we have seen, is a problem. Rav Ovadya Yosef (I, OC 4) justifies the practice by citing those who say that it is not false testimony if one will be putting on tefillin later in the day. (Rav Shlomo Kluger (Ha'elef Lecha Shlomo 47) says that it is legitimate to rely on putting on tefillin later only if that will be during the recitation of Kri'at Shema at the right time.) One can add to the picture the opinion of the Meiri that Kri'at Shema without tefillin is a problem only when it is done in a manner that shows disregard for tefillin and the fact that the whole issue is only rabbinic.

Standard practice, thus, is to not be overly concerned about the false testimony when tefillin will be put on later.

In apparent contradiction, the Magen Avraham (66:12) says that if one has to choose between davening Shemoneh Esrei with a minyan and Kri'at Shema and Shemoneh Esrei with tefillin, we choose the tefillin. His main source is reminiscent of the transitive property of inequality. If one comes into Shacharit when the congregation is about to start Shemoneh Esrei, he does not skip straight to Shemoneh Esrei because the importance of tefilla following the mention of geula (redemption) is greater than that of Shemoneh Esrei with a minyan (Shulchan Aruch, OC 111:3). Yet, if one's tefillin arrive right between geula and tefilla he stops to put them on despite the break (Shulchan Aruch, OC 66:8). Thus, tefillin must certainly be more important than Shemoneh Esrei with a minyan. This proof is suspect because putting on tefillin between geula and tefilla is not necessarily a full break (Maharsham III, 359). We can actually use similar logic in the opposite direction. One can say Kri'at Shema without tefillin in order to do so like vatikin even though many hold that tefilla with a minyan is greater than vatikin (see discussion in Yabia Omer, op. cit.). Thus, there is significant halachic logic to say that one should daven normally and put on the tefillin during chazarat hashatz (see Minchat Yitzchak II, 107, who connects the matter of Kri'at Shema before davening and our question). Yet, it is hard to rule against the Magen Avraham, who is accepted by the Mishna Berura (66:40). Assuming that one is going to follow the Magen Avraham, some suggest that he should wait until after Yishtabach, which is reasonable since the Rama (OC 54:3) says that one may put on tefillin at that time. However the poskim do not see this as an optimum time and considering that this person is anyway not reciting the critical passages of Kri'at Shema and Shemoneh Esrei with a minyan, it is preferable to wait before starting Baruch She'amar.

28. Listening to Laining During Shemoneh Esrei

Question: If a person comes late to davening, is he allowed to continue with Shemoneh Esrei during Kri'at Hatorah (=laining). Does it make a difference if z'man tefilla is coming soon?

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

Rashi (Sukka 38b) says that one who is in the midst of Shemoneh Esrei when the tzibbur is up to Kedusha or Kaddish should listen to them, without speaking, and thereby fulfill the mitzvot of answering these passages. Tosafot (Berachot 21b) forbids this, since listening to fulfill these mitzvot is equivalent to reciting them, which is forbidden during Shemoneh Esrei (Shulchan Aruch, Orach Chayim 104:6). The Shulchan Aruch (ibid.) rules like Rashi, that one may listen. Thus, we seem to assume that listening to things during Shemoneh Esrei is not a fundamental problem, and listening to laining is ostensibly the same.

Arguably, listening is more justifiable for laining. Perhaps, Tosafot objects to listening only to things like Kedusha, which needs to count like speaking in order to fulfill the mitzva. For laining, listening alone suffices, and it should thus not be equated to speaking (Az Nidberu XIV:29; see Lev Avraham (Weinfeld) I:26). Indeed, Az Nidberu allowed a yeshiva in which many talmidim took a very long time for Shemoneh Esrei to continue their practice of stopping to listen to laining.

On the other hand, there are several reasons against listening to laining during Shemoneh Esrei. First, the need to listen to Kaddish and Kedusha may be more pressing than to laining, as there are serious opinions that the obligation of Torah reading is on the tzibbur, not the individual (see Ran, Megilla 3a of Rif's pages; Yabia Omer VIII, OC 54). Indeed, the Shulchan Aruch (OC 146:2) cites some opinions that exempt individuals from listening to laining in various circumstances. While not discussed in that

context, a desire to not take a long pause in Shemoneh Esrei is at least as important a reason not to listen to the laining.

Why do we interrupt Shemoneh Esrei even for Kaddish and Kedusha, considering that “one who is occupied with a mitzva is exempt from another mitzva” (Sukka 26a)? Teshuvot V’hanhagot (II:70) says that divorcing oneself from the praise of Hashem going on around him is like disgracing Him; he posits that this logic does not apply to not listening to laining. Lev Avraham (ibid.) suggest that since Kaddish and Kedusha are also forms of tefilla, the mitzva of Shemoneh Esrei does not “knock off” its “brother mitzva.” Another distinction is based on the halacha that we do stop mitzva #1 to perform mitzva #2 when it is not difficult to do so (see Rama, OC 38:8). Arguably, stopping for the shorter, less confusing Kedusha and Kaddish is easier than for a series of aliyot of laining. Finally, since part of the reason to rule like Rashi regarding Kedusha is minhag (see Tosafot ibid.; Be’ur Halacha to OC 104:7), the minhag might not exist for laining.

In summary, it is not forbidden to listen to laining during Shemoneh Esrei (compare to Yabia Omer VII, OC 12), but it is likely inadvisable (see Halichot Shlomo, Tefilla 12:4). There are different accounts of the practices of important rabbanim (see Dirshu notes 104:36; Ishei Yisrael 32:(56)), but probably a lot has to do with the halachic common sense of the circumstances (see Az Nidberu ibid.). Being very late to tefilla may be different from davening much slower than one’s surroundings (although the latter is not always a good idea) and in the former case, perhaps one does not deserve to fulfill laining in such a strange manner.

In any case, if listening means finishing Shemoneh Esrei after sof z’man tefilla, one should continue davening. While otherwise it is more appropriate to listen to laining during Psukei D’zimra and even Kri’at Shema (see Mishna Berura 66:26), this should not be at the expense of z’man tefilla (Ishei Yisrael 13:9). Skipping parts of Psukei D’zimra would be preferable, though, to missing laining (see Shulchan Aruch, OC 52:1).

29. Leaning On the Bima During the Aliya

Question: I often see people getting aliyot who lean on the bima during their aliya. Isn't that a problem? Shouldn't I tell them to stop?

Answer: The mishna (Megilla 21a) says that one may read Megillat Esther standing or sitting. The gemara (ad loc.) says that, in contrast, Torah reading must be done standing. As support, the gemara cites the pasuk regarding the transmission of the Torah from Hashem to Moshe: "You [Moshe] stand here with Me" (Devarim 5:27). Just as, symbolically, Hashem was "standing," so too later transmitters of the Torah should do the same. Our questions are: what the nature and severity of this requirement are, whether leaning is considered like standing in this regard, and whom it applies to.

The Tur (Orach Chayim 141) says that if one does not read the Torah standing, he has not fulfilled the mitzva, and thus the leining has to be repeated. He seems to understand the requirement as a fully derived requirement from the pasuk. The Yerushalmi (Megilla 4:1) says that it is an element of honor, related to the idea that the Torah must be transmitted with an air of trepidation, not casualness. The Beit Yosef (OC 141) points out that Rashi views the requirement to stand as only l'chatchila, that it is proper to show respect in that way, but in case he does not do so, the reading is still valid. The matter may depend on the situation regarding Megilla reading, as Torah reading is more stringent than it. If the Megilla should l'chatchila be read standing, then Torah, being a step further, is invalid b'di'eved if one did not stand. In any case, the Magen Avraham (141:1) rules that one does, b'di'eved, fulfill the mitzva without standing, as is evident from the fact that we allow a king to read seated. The Mishna Berura (141:1) and most recent poskim take this lenient view.

Despite our relative leniency on the matter of standing, the Shulchan Aruch (OC 141:1, based on a Yerushalmi, *ibid.*) says that, at least l'chatchila, one should stand without leaning on anything. This can be understood in two ways: 1) leaning is not considered standing; 2) since one must show proper regard to the

Torah's transmission, standing that is not fully austere, i.e., leaning, is thereby wrong. The Magen Avraham (ad loc.:2) says that both issues are true, but in different cases. If one stands with a partial lean so that if the object one was leaning on were removed he would fall, this is not halachic standing. If he stands in a manner that he would not fall, this is generally considered standing but it is still not standing in awe. Therefore he reasons that the Mordechai's permission for an obese person to lean (Shulchan Aruch, *ibid.*) applies only to partial leaning, as, when his leaning is understandable, it is not a sign of disregard. However, full leaning simply does not fulfill the requirement to stand. The Shaarei Ephrayim (3:11) says that it is also customary to allow some leaning when looking at the top lines of a long sefer Torah, which are far away from the readers. He reasons that crouching over in order to see well is not disrespectful to the Torah.

In general, the laws governing Torah reading apply both to the ba'al korei and to the oleh (the one who receives the aliya), and this is no exception (see Shulchan Aruch and Rama, *ibid.*; Sha'arei Ephrayim *ibid.*) The Sha'arei Ephrayim (*ibid.*) and Mishna Berura (141:5) say that even the gabbai must stand. (Regarding the congregation, there is a major discussion- see Shulchan Aruch and Rama, OC 146:4).

Like many other halachot in whose regard observance is not 100%, a rabbi should find opportunities to educate his congregants. Regarding partial leaning, which is likely not overly haughty and, according to the majority of opinions, does not affect the congregation's fulfillment of the mitzva, one should point out to the oleh only if he is confident it will be taken in the right away. If many people lean in the more severe way, it would be more worthwhile for one who can educate effectively to point out to the olim in a way that does not embarrass them.

30. Not Reading Along With the Laining

Question: When I get an aliyah, I read along with the laining (Torah reading), as I was taught. Not everyone does this. Is it a problem not to read along?

Answer: Actually, there are opinions that one should not read along. The Zohar (see the Beit Yosef, Orach Chayim 141) says that only one person may read at a time. However, this still does not prevent the oleh (aliyah recipient) from reading along for one or more of the following reasons: 1) The Zohar may have objected only to reading audibly (Beit Yosef ibid.), and the oleh should read so that he cannot even hear himself (Shulchan Aruch, OC 141:2). 2) The Zohar referred to Talmudic times, when the oleh also lained so that there was no need for another to read (Darkei Moshe, Orach Chayim 141). 3) We prefer standard halachic sources, which sanction the oleh to read, to the Zohar (see D'var Hamishpat (Cohen) 1).

Indeed, it is at least proper to read along quietly. The Rosh (Megillah 3:1) says that if the oleh does not, his beracha is l'vatala (meaningless and, thus, forbidden), as it does not make sense that A makes a beracha on a Torah reading that B carries out. (The Talmudic system, whereby the oleh lained himself, is ideal. The Rosh explains that we separate the functions because when we, of necessity, give aliyot to people who do not know how to lain, it could cause embarrassment and/or invalid laining.) The Rosh concludes that a blind person and an am ha'aretz (a Jew who lacks a basic Torah education), who are unable to read from the Torah, may not receive aliyot.

Many Acharonim ask on the Rosh: why, based on the halachic rule of shomei'ah k'oneh (one who listens to a recitation fulfills the related mitzvah as if he had recited it), does the oleh need to read along with the ba'al koreh if he is listening? In fact, the Maharil (Hilchot Kri'at Hatorah) and the Taz (141:3) argue with the Rosh and say that a blind person and an am ha'aretz can get an aliyah even though they cannot read from the Torah. The Taz brings a proof from the Yerushalmi that says that one person can make a beracha on megillah reading which another is reading.

She'eilat Ya'avetz (I, 75) supports the Rosh's approach. He claims that shomei'ah k'oneh, while relating the text to the listener, is insufficient. Since laining must be read from a Torah scroll, the oleh, who is the official reader, must read from the scroll (at least with his eyes). The Biur Halacha (to 141:2) explains that, unlike megillah reading, where every individual must hear the reading, the individual oleh does not make a beracha because he partakes in Torah study (which he did earlier in the morning). Rather, there is a special institution that one who reads from the Torah publicly makes a beracha. Listening to another's reading is not included in the specific element for which the beracha should serve. Other explanations of the Rosh are beyond our present scope.

How do we rule? The Shulchan Aruch (OC 139:3), following the Rosh, says that a blind man should not get an aliyah, since it is forbidden to read the Torah by heart. The Rama counters that nowadays, when the ba'al koreh does the reading on congregation's behalf, it suffices that he reads from the scroll, and a blind man and an am ha'aretz may get an aliyah. Yet, when the Shulchan Aruch states that the oleh must read along, the Rama does not dissent. The Biur Halacha (ibid.) assumes that the Rama, too, prefers the Rosh's ruling but relies upon the Maharil's leniency only in the case of the blind and illiterate, who cannot read along, and would thus suffer the disgrace of never receiving aliyot. Many Sephardic communities follow the Rama (see Kaf Hachayim OC 141:16). Regarding people who can, but do not, read along, it is the rabbi's prerogative and obligation to educate, set down rules, and/or take steps to deal with the possibility that these aliyot do not count, as he sees fit. For you, it is enough to know that you are acting properly and that those who do differently, have the Maharil and Rama's rulings to rely upon, b'dieved.

31. Talking When the Sefer Torah is Opened

Question: I know that one may not talk during kri'at hatorah, neither during the actual leining nor in between aliyot (bein gavra l'gavra = bglg). What I have not found in the Mishna Berura is when this halacha ends. After the seventh aliya? Maftir? Hagba? Haftara? Putting back the sefer Torah?

Answer: We will focus on the limitations on speech only regarding the special factors that relate to kri'at hatorah. Many topics and modes of discussion are forbidden at any time of the tefilla and in fact, in a shul at any time.

The gemara (Sota 39a) says: "Once the sefer Torah is opened, it is forbidden to speak even in matters of halacha." Two sources from the nevi'im are cited: one focuses on being quiet and one mentions the need to listen. Bglg is not explicitly discussed, and according to several authorities (apparently the Rambam, Tefilla 12:9; Bach, Orach Chayim 146, cited by Magen Avraham 146:3 and others; B'er Sheva, Sota ad loc.) it is permitted to talk then. In fact, in regard to another matter of disgrace to the Torah, walking out in the middle, the gemara (Berachot 8a) says that it is permissible to go out bglg. It is Rabbeinu Yona (Berachot 4a of the Rif's pages) who says that once the Torah is opened, it is forbidden to talk until the end, including bglg. The Beit Yosef (OC 146:2) explains that the prohibition must be based on our concern that the person will continue talking after the reading continues.

Poskim discuss how broadly to extend this concern. Most permit learning quietly by oneself bglg, where it may be easier to stop and he at least does not disturb others (see Ateret Paz I,3, EH 13). If there is an organized break, such as when someone says divrei Torah to the whole congregation at that time, the problem likely does not exist (Yecheveh Da'at V, 17). Distinctions are also raised regarding the length of the bglg break (Magen Avraham ibid.: Aruch Hashulchan OC 146:3).

Interestingly, the Shulchan Aruch (OC 146:2), while accepting Rabbeinu Yona's stringency, adopts the Rambam's timeline for the matter. The gemara and Rabbeinu Yona speak about from the time the Torah is opened; the Shulchan Aruch and

Rambam posit that this is only from the time the reading actually begins. (The Ateret Paz tries to explain why it is easier to stop talking before the initial reading than bglg.) One could have explained Rabbeinu Yona's opinion to mean that it is disrespectful to speak during the entire unit of kri'at hatorah, including its breaks, but the Shulchan Aruch explains his ruling on more pragmatic grounds.

This point is important for the following reason. Other than the length of the break for Kaddish (during which one is anyway forbidden to speak) and hagba, there seems to be no difference regarding the chance of continuing talking from the beginning straight through the haftara (the Shulchan Aruch *ibid.*:3 forbids talking during the haftara). On the other hand, regarding the matter of a unit, there is a big difference. The original takana of leining on Shabbat did not include the haftara or maftir. Along with the institution of the haftara, it was instituted that he who gets the aliya to read from the Navi should read also from the Torah, so as not to equate an aliya for reading Navi alone to that of reading the Torah (Megilla 23a). We even separate between the two sections of Torah reading with Kaddish. Therefore, it makes sense that after the seven aliyot, it is no longer considered bglg. In fact, Rabbeinu Yona himself says that the prohibition is in place until he “finishes the parasha,” which implies after the seventh aliya. (We did not find Acharonim who discuss the matter.)

As hinted, there is logic to say that the Shulchan Aruch might argue. However, since he is trying to comply with Rabbeinu Yona, it makes sense to not extend the stringency to the less stringent section of kri'at hatorah. Considering that we did not find someone who forbids the matter (albeit, we did not find one who permitted it either), we do not feel that one can forbid appropriate speaking before the readings of maftir and the haftara.

32. Mistakes in Hashem's Name During Keriat HaTorah

Question: Sometimes I have seen ba'alei k'ri'ah who, when they make a mistake in a pasuk in which Hashem's Name is mentioned, repeat the whole pasuk. Can you tell me whether the practice is necessary and how it is done, as I have noticed a lack of consistency?

Answer: There are mistakes in reading that are serious enough to require repeating words (see Shulchan Aruch, Orach Chayim 142:1 with commentaries). Where the mistake was caught impacts on the extent to which the repetition is problematic. Two major issues have to be considered in this regard. One is that we want to avoid repeating Hashem's Name. If, for example, the Name is found once in a given pasuk it may be a disgrace to the Name to be read twice. Another issue is that we are not supposed to read only a part of a pasuk without sufficient justification (Megilla 22a). The question is when fixing up a pasuk that has been read improperly justifies these two things.

The earliest source we have seen referenced on this topic is the Chayei Adam (written only about 200 years ago). He writes (2:5) that while one may not read only part of a pasuk for no particular reason, even if Hashem's Name is not found within, one may repeat part of a pasuk if he wants to fix a mistake (apparently even when it is not critical) even if it entails repeating a Name. His explanation for this leniency is that it is not viewed as reading part of a pasuk or inappropriately reciting a Name but rather completing a pasuk that had been incomplete because of a mistake. Various poskim have cited the Chayei Adam's ruling as the authoritative opinion on the matter (see Magen Haelef (619:54) and Afarkasta D'anya (II, OC 23)).

Strangely, two respected yet not commonly found sefarim introduce a different ruling based on their understanding of the Chayei Adam. The Chesed La'alafim and Sha'arei Rachamim (cited by the Tzitz Eliezer XII, 40) say that if one wants to return to the beginning of a pasuk in order to repeat Hashem's Name in the

context of a full pasuk, he may do so. The chiddush behind this ruling is that we are not concerned that retroactively we are leaving the part of the pasuk that was read before the mistake was caught as an unfinished pasuk. It is in fact permitted because it is done in order to prevent repeating Hashem's Name improperly, which would occur if one would just repeat a few words including Hashem's Name without restarting the pasuk.

The Tzitz Eliezer (ibid.) convincingly shows that the Chayei Adam should be understood as we originally cited. Thus, it is never necessary to restart a pasuk because of Hashem's Name. The other sources may have understood the Chayei Adam differently because of the minhag to return to the beginning of the pasuk. The Tzitz Eliezer actually concedes that the minhag is not like the Chayei Adam but to restart the pasuk, and he instructs to conform to the minhag. However, he says to first complete the pasuk before returning to the beginning so as not to leave it unnecessarily incomplete. Admittedly completing the pasuk may not have full value if the mistake renders the pasuk invalid. Considering this, we can understand his distinction, that if one has to recite more Names in order to complete the pasuk, he should rather "cut his losses" and revert immediately to the beginning of the pasuk, like the Chesed La'alafim's system.

Since all of the systems one can employ are reasonable, a gabbai can allow the ba'al k'ri'ah to do as he is accustomed and not confuse him. (Banging civilly on the bima or otherwise indicating to the confused congregation that something out of the ordinary will be occurring is often advisable.) Those who correct should also consider whether the correction they are contemplating is worthwhile, especially under the circumstances.

33. Mistakes in the Order of Kaddish and Barchu

Question: On Motzaei Shabbat the chazan mistakenly said Kaddish Titkabel (=KT) and Barchu before V'yehi Noam and Kiddusha D'sidra (V'atah Kadosh). After saying those tefillot, he repeated KT and Barchu. Also, one morning a mourner said Barchu after the Kaddish of the Mizmor of the day instead of after Ein Keilokeinu and then repeated it at its normal place. Were these repetitions warranted?

Answer: The answers are basically evident if one understands the roles of KT and Barchu.

The main reason to recite Barchu again at the end of tefilla is for the sake of latecomers who missed the main one (Rama, Orach Chayim 133:1). For that reason, Nusach Ashkenaz does not repeat Barchu on Monday, Thursday, and Shabbat, due to the assumption that latecomers answered Barchu at the aliyot of Kri'at HaTorah (see Rama *ibid.*). While it is customary in Israel to insert Barchu after Ein Keilokeinu, Barchu meets its purpose earlier or later in tefilla at least b'di'eved, as happens in Kriat HaTorah or in communities which do not recite Ein Keilokeinu daily. This should be so even according to Nusach Sephard/Eidot Hamizrach and in regard to the Motzaei Shabbat mistake, as this is still a Barchu at the end of davening, even if it moved up one Kaddish. (Since Kabbalistic considerations are behind the minhag to repeat Barchu every day (see Kaf Hachayim, OC 133:1) we cannot rule out the possibility that it should be repeated if not said at the exact right place, but we doubt that.)

Different Kaddeishim have different functions. The unique part of the Kaddish Shalem known as KT is the request that Hashem accept our joint prayers favorably. This relates to the joint Shemoneh Esrei, whether the silent one at Maariv or chazarat hashatz at the other tefillot (see Rama, OC 55:3 and Mishna Berura *ad loc.* 22). Therefore, it seems evident that KT is effective b'di'eved any time after Shemoneh Esrei, and there is no need or justification to repeat it.

However, there might be a significant dissenter regarding KT before V'ata Kadosh. Chief Rabbi Y. Yosef writes (Yalkut Yosef 132:8) that if one recited KT before before Ashrei/U'va L'tzion (the morning version of V'ata Kadosh), he should repeat it after U'va L'tzion. This is based on the assumption that Titkabel applies not only to Shemoneh Esrei but also to U'va L'tzion, to the extent that if KT preceded U'va L'tzion, another KT is needed. Indeed we do find Titkabel for a non-Shemoneh Esrei prayer – Selichot. On the other hand, his proof that Uva L'tzion warrants its own KT seems to actually be a disproof, as we will now see. He cites the Eliya Rabba (OC 693:5) who says that at Ma'ariv of Purim, KT is said twice, before Megilla reading to cover Shemoneh Esrei, and after the Megilla for V'ata Kadosh. The problem with this proof is that while the Mishna Berura (693:1) does cite the Eliya Rabba, he also cites the Magen Avraham, who says that Titkabel is said only in the Kaddish that precedes the Megilla, and the minhag of the great majority of communities is like the latter. In other words, we see that KT before V'ata Kadosh/U'va L'tzion suffices.

Perhaps Rav Yosef would agree not to repeat KT when it was done before V'yehi Noam/V'ata Kadosh of Motzaei Shabbat, due to the unique nature of those tefillot. They are recited to push off the end of davening in order to delay the return of souls to gehinom after Shabbat (see Tur, OC 295). The simple implication is that the point of return is after KT ends our tefilla. If so, if one prematurely said KT before those tefillot, there might be no reason to say them. While our intuition suggests that once the tefillot were instituted, they should be said anyway, its recitation is likely not important enough in that case to warrant a repeat of KT for its sake.

We posit then if one mistakenly recited KT on Motzaei Shabbat before the special tefillot, which include sections from Tehillim and elsewhere and requests, they would be followed by Kaddish Yatom. If no one wants to say Kaddish Yatom, the tefilla continues with Aleinu.

34. Tallit and Tefillin During Selichot

Question: I say selichot before my normal Shacharit minyan. Should I put on my tallit and tefillin before Selichot?

Answer: Classically, people did not wear tallit and tefillin during Selichot – for a simple reason. The times for Selichot are after midnight or very early in the morning (see Shulchan Aruch, Orach Chayim 581:1), both times when one cannot put on tefillin. Therefore, wearing tallit and tefillin could not be part and parcel of the halachot of Selichot, even when done after it is light in the morning. It is not proper, then, to miss some of the Selichot while putting them on first.

However, it is a good question whether it is a positive thing to try to have tallit and tefillin on for Selichot when possible. Selichot are a certain type of set of tefillot (see Rosh Hashana 17b), which overlap (especially for those who say Yud Gimmel Middot daily) with elements of our daily tefilla. Is there a connection between tefilla and tallit and tefillin? Let us take one at a time.

Married men wear a tallit at Shacharit. We have discussed in the past (the discussion can be found in *Living the Halachic Process* vol. III, F-7) the reasons to wear a tallit at Shacharit considering that we already are wearing tzitzit and why these reasons are not important enough to have single men do so. One approach is that it is good to make sure we are wearing valid tzitzit (our “tzitzit” garment might be too small), which has special significance at Shacharit when we recite the Torah section on tzitzit (see *Darchei Moshe* 8:3). According to this, Selichot, in which we do not mention tzitzit, is not a time when a tallit is needed. Another possibility is that it is a good thing to cover one’s head with the tallit. According to this, perhaps there is a preference to have a tallit to cover one’s head during Selichot. On the other hand, why should this be more called for at Selichot than at Mincha, where we do not wear a tallit, unless we argue that since one is going to have it on for Shacharit, he might as well put it on prior to Selichot.

The Taz (OC 581:2) discusses the minhag for the chazan for Selichot to wear a tallit and the way to do it without needing a

beracha, which one is not allowed to make at night. Since we recite the Yud Gimmel Middot, there is cause for the chazan to be properly cloaked, especially in light of the gemara (ibid.) that Moshe saw Hashem wrap Himself like a chazan when he taught Moshe how to do the Yud Gimmel Middot. Others discuss whether this is worthwhile, considering kabbalistic reasons not to put on tzitzit at night (see Beit David (Solonica) OC 9). All seem to assume that people other than the chazan do not wear a tallit. One could, on the other hand, argue that it is because of the problems of a tallit at night.

Shacharit is the chosen time for tefillin both because we need to wear them during the day in a state of cleanliness and pure thought and because they are mentioned in Kri'at Shema (see Berachot 14b). There is a connection, but a weak one, to tefilla (see Shulchan Aruch, OC 37:2). While one could say that the connection should apply to Selichot, we again note that it would not appear to be more important than at Mincha (there is an opinion that it is good to don tefillin at Mincha as well – see Be'ur Halacha 37:2, but that is clearly not common practice). Again, it is possible to argue that if we are soon putting on tefillin anyway, we might as well put them on for Selichot (as opposed to making one bring his tefillin with him for Mincha and put them on specially). In summary, we have seen that it is not important to have tallit and tefillin on during Selichot. However, we raised the possibility, without succeeding to confirm or contradict, that there is some value in putting them on before Selichot. Therefore, whatever works practically for a person (including time and concentration considerations) is fine.

35. Bathroom Needs and Davening

Question: What happens if one has an urge to go to the bathroom that arises when he is in the middle of davening (Shemoneh Esrei or other)? If and when should he go to the bathroom? Does he recite Asher Yatzar when he returns? From where does he resume davening?

Answer: These are important questions, as many people do not know what to do or find it hard to follow these halachot, which are a little counterintuitive to some of us.

The gemara (Berachot 23a) takes the matter of preparing the body for a clean and respectable tefilla very seriously. Accordingly, if one davens when he is unable to hold in his need to eliminate (regarding urination the matter is unclear – see Biur Halacha to 92:1) for 72 minutes, his tefilla is considered an abomination, is disqualified, and needs to be repeated (see Rambam, Tefilla 4:10). Even when one can wait 72 minutes, he should properly take care of his needs before davening if he feels any real urge to go to the bathroom even if, as a result, he will be unable to daven along with the congregation (Mishna Berura 92:5).

If one started when it was forbidden and then thinks the matter over again, he must stop right away no matter where he is in the tefilla. However, if he started when he did not need the facilities and then his situation “deteriorated” unusually quickly, the matter depends on where he is in tefilla and the severity of the urge. In Shemoneh Esrei, where it is forbidden to move under all but the most severe circumstances, he must continue until the end and then go to the bathroom even if he will miss Kedusha (Shulchan Aruch, Orach Chayim 92:2 and Mishna Berura 92:8). Only if he reaches the point where restraining himself is considered difficult to the point of being degrading would one be able to leave his place in the midst of Shemoneh Esrei (Rama, Orach Chayim 92:2 and Mishna Berura 92:11). Even in that case, if he is davening publicly and walking out in the middle will be of significant embarrassment, he may decide to continue davening (Mishna Berura, *ibid.*). Regarding Kri’at Shema, he may go to the bathroom if he likes or continue if he likes (Mishna Berura 92:9). However,

since he may not start Shemoneh Esrei in that state, it is best to find one of the relative breaks in Kri'at Shema to go to the bathroom (ibid.). Regarding P'sukei D'zimra, one may go to the bathroom between any of the sections of psalms or before Yishtabach. He should not wait until after Barchu, which begins the next section of tefilla (ibid.).

As long as one stopped properly, he can continue, upon return, to the place in the tefilla that he was up to. Even if he should have stopped earlier, that which he said in any part of tefilla other than Shemoneh Esrei is valid after the fact and therefore he can continue from where he was (ibid.:6). The only issue is that if he spent more time in the bathroom than it takes for him to recite the entire section he is in, he must return to the beginning of the section (Biur Halacha to 92:2). If he started Shemoneh Esrei when he could not have waited 72 minutes, the tefilla was valueless and therefore he must go back to its beginning.

Regarding reciting Asher Yatzar upon exiting the bathroom, the matter depends on the place in tefilla one finds himself. If he was in the middle of P'sukei D'zimra, he would optimally make the beracha at the first break between "paragraphs" of P'sukei D'zimra (see Mishna Berura 51:8; Ishei Yisrael 16:6). If he went to the bathroom during Kriat Shema or its berachot he should wait to recite Asher Yatzar until after Shemoneh Esrei (ibid. 66:23) (assuming he will not have felt a new urge to go to the bathroom by the time he has the chance to recite it). During Shemoneh Esrei certainly one would not be able to recite Asher Yatzar and must wait under all circumstances.

36. Reciting Me'ein Sheva in a Makeshift Shul

Question: I was at a Shabbat bar mitzva at a hotel in Israel. We davened in a makeshift shul (with an aron and Sefer Torah) near the room we ate, which is often used when separate parties are going on. Should we have recited Me'ein Sheva (Magen Avot) at the end of Maariv?

Answer: The phenomenon of Me'ein Sheva (=MS) is interesting. It is like a shortened chazarat hashatz (repetition of Shemoneh Esrei), which is surprising at Ma'ariv, which does not usually have a chazarat hashatz. The gemara (Shabbat 24b) says that we recite it because many shuls were in dangerous places, so the Rabbis wanted to stretch out the davening to give latecomers time to finish before everyone else finished and left.

Because of the unusual nature of the institution of MS, it is not surprising that Rishonim limit it to circumstances that resemble the original situation. The Ra'avya (see Tur, Orach Chayim 268) says that the danger the gemara discussed is no longer prevalent and that although we continue the practice, we only do so with a minyan. The Beit Yosef (ad loc.) and Rivash (40) say that it does not apply to makeshift minyanim, as it is not as likely for people to come from all over to daven and for one to come late. This approach is accepted by the Shulchan Aruch (OC 268:10).

What is considered close enough to a regular shul, which warrants the saying of MS? The Taz (268:8) seems to have a relatively broad definition, as he says that when a group goes to an area and sets aside a place to daven for a few days, they do recite MS. This is more set than the cases of a minyan formed in a home where sheva berachot or a shiva period is held, where the Shulchan Aruch says not to recite it. There is some disagreement as to whether the few days have to be consecutive days or could be on weekends only (see opinions in Minchat Yitzchak X, 21), as is likely the case of the hotel in question. The Eliyahu Rabba (268:19), in bringing this Taz, adds the necessity that a sefer Torah be present (possibly because he did not feel it was likely that they

would go without one), and the Mishna Berura (268:24) also adds this as a requirement. On the other hand, some poskim say that the presence of a sefer Torah suffices without other requirements (see opinions in Yabia Omer II, OC 29). It is also possible that if the area is part of the same complex as the hotel's main shul, it is considered an extension of it and would thus be considered a set beit kneset (see a similar idea in D'var Moshe, cited, Minchat Yitzchak, *ibid.*). On the other hand, there is logic to say as follows. The main distinction should have to do with the nature of the group that assembled more than with the history of the place in which they meet (unless it is a full-fledged shul). In this case, the bar mitzva group is a one-time thing and MS should not be recited.

In the final analysis, your case is one of a safek (doubt) as to which definition to accept. What does one do in such a case? Firstly, some rule (based on kabalistic sources) that once instituted, MS is to be said at any minyan; this appears to be the minhag in Yerushalayim (Rav Pe'alim III, OC 23; Har Tzvi OC I, 152). Secondly, the Magen Avraham (268:14) says that even in a case where the indications are that one should not recite MS, one need not correct those who are doing so. It is possible that even if not required, it may not be a problem for a minyan to recite it anyway, as they are close enough to the institution to make it acceptable. However, the Pri Megadim (MZ 268:8) raises the possibility that those who recite MS out of doubt run the risk of a beracha l'vatala (in vain). Thus, it is safer to rule that one should not have recited MS, but if they did (which I guess most groups do) there was insufficient reason to try to dissuade them.

37. Can a Minyan Function Without 10 Men?

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

Answer: The general concept you refer to exists, but we have to refine some details.

The mishna (Megilla 4:3) lists parts of tefilla that require a minyan, including Kaddish/Barchu and chazarat hashatz (repetition of Shemoneh Esrei). The Yerushalmi (ad loc.:4) comments that for each, if a minyan was present at the section's beginning, they can continue with it even after some have left. (It reprimands those who leave in a manner that leaves the rest without a quorum, even though the remaining people may continue). The Rashba (Shut I, 95) extends the matter a step, saying that if a group started chazarat hashatz with a minyan and someone left, they recite even Kedusha (which is in chazarat hashatz), even though they started Kedusha without a minyan. The Terumat Hadeshen (I, 15) goes even further. If a minyan was in the midst of chazarat hashatz when some left, they can even say the full Kaddish that follows U'va L'tziyon without ten. The rationale is that the key addition to that Kaddish ("Titkabel tzlot'hon..."), the request that Hashem accept the completed tefilla of Shemoneh Esrei, demonstrates that all of the tefilla until this point was a continuation of Shemoneh Esrei. The Shulchan Aruch (Orach Chayim 55:2-3) codifies the above concept and the applications mentioned. So indeed that which you remember learning is correct.

There is further leniency than you remember regarding the number of people who can be missing. The Ran (Megilla, ad loc.), reasoning that a significant part of the minyan must remain for the group to continue as if there were still a minyan, sets the minimum at a simple majority of six (including the chazzan). This too is accepted by the Shulchan Aruch (ibid.).

However, this concept has limitations. The group can continue only with sections that are directly connected to the *davar shebekedusha* (section of the tefilla that requires a minyan) that began with a minyan. The Yerushalmi (ibid.) posits that each of the sections mentioned separately in the mishna is a separate section.

Therefore, having a minyan for Kaddish/Barchu does not entitle them to do chazarat hashatz without one. A minyan that disbanded during chazarat hashatz would have to skip over nesi'at kapayim (the kohanim's duchenin, daily in Israel and on holidays abroad). They would not be allowed to do kri'at hatorah (laining) without a minyan even though the Shemoneh Esrei unit continues until after the Torah is normally returned (see above).

There are too many permutations to mention in this forum, but we will mention a few interesting ones. At Ma'ariv, if there was a minyan for the opening Barchu, the group can recite the Kaddish before Shemoneh Esrei because Barchu is the beginning of the berachot of Kri'at Shema, which concludes with Kaddish (Mishna Berura 55:22). However, since the Kaddish at the end of Ma'ariv relates to Shemoneh Esrei, one would need a minyan for Shemoneh Esrei. While it is sufficient to have a minyan for Shemoneh Esrei of Ma'ariv in order to recite Kaddish after it, at Shacharit and Mincha, chazarat hashatz, not Shemoneh Esrei is necessary. This is because that Kaddish was composed primarily for chazarat hashatz, with the exception being at Ma'ariv, where there is no chazarat hashatz, where it relates to the silent Shemoneh Esrei. The Shulchan Aruch (OC 124:4) speaks about the critical need to have nine people listening to all of chazarat hashatz. However, based on the concept at hand, if there are nine listening in the beginning and three stop listening, the chazzan can continue, just that it is as if they physically left without leaving a minyan, which, we mentioned, is criticized (Igrot Moshe, OC IV 19; see Derisha, OC 124:1).

38. Sof Z'man Kri'at Shema

Question: Regarding the machloket between the Magen Avraham (= MA) and the Gra on the times of the day, why are we lenient like the Gra in regard to questions of d'oryata (Torah-level laws) such as sof z'man Kri'at Shema (=szks)?

Answer: Before discussing the machloket between the Gra and the MA, let us see what is agreed upon. Daytime begins at alot hashachar (=alot), over an hour before sunrise (henetz hachama = netz); night and the new halachic day begin at tzeit hakochavim (=tzeit; when the stars come out) (Megilla 20b). In Talmudic times, daytime hours were counted from 1 to 12, as people determined the time by looking at the sun's angle. In the middle of those 12 hours, the sun is directly above head (on the east-west axis) (Pesachim 11b), meaning, there must be astronomical symmetry between the beginning and end points of the count. The gemara (Pesachim 94a) says that there are 4 mil (the time it takes to walk app. 4 kilometers) in between alot and netz and also between shki'at hachama (= shki'a - sunset) and tzeit.

The basic difference between the opinions is as follows. The MA (see 58:1; 233:2) starts and ends all calculation from the halachic bookends of day and night, alot and tzeit, which adds 4 mil on either end of sunrise-sunset. Therefore, szks (= the end of the 3rd hour of the day), is well before the sun is at 45 degrees above the horizon (1/4 of the time the sun is visible). The Gra calculates from sunrise to sunset, and therefore szks is at 45 degrees. It is indeed astronomically logical that people did not count the progress of the sun from or until a time when it was well beneath the horizon.

While each approach has advantages and disadvantages, it cannot be decided in a vacuum because the machloket is linked to an even more important one (see Am Mordechai, Berachot 2). Days (including Shabbat) last until sheki'a, enter a period of halachic doubt known as bein hashemashot, and are followed by definite night at tzeit (Shabbat 34a). We rule that bein hashemashot is 3/4 of a mil (appr. 15 minutes) long (Shulchan Aruch, Orach Chayim 261:2). Since daytime begins 4 mil before netz, there is a

lack of symmetry (of 3 1/4 mil) between the beginning and end of daytime in relation to the appearance and disappearance of the sun. Rabbeinu Tam (Shabbat 35a) explains that “sheki’a” is not what we call sunset but is around an hour later, until which time it is still definitely day. Thus Shabbat does not begin or end until more than an hour after sunset. The Gra (OC 261) posits that sheki’a is the visible sunset and after around a quarter of an hour (in Talmudic latitudes) it is definite night. This machloket is linked to the aforementioned MA (who accepts Rabbeinu Tam) and Gra as follows. According to the MA, sunset, like sunrise, is not a halachic time. According to the Gra, tzeit cannot be a bookend, because it does not mirror alot hashachar and thus we use neitz and sheki’a.

Whose opinion is accepted? The gemara (Shabbat 35a) says that Shabbat is fully over by the time three medium stars are visible (without “light pollution”). Thus, the Gra’s argument that keeping Shabbat at least 72 minutes after sunset is “contradicted by our sight” is powerful. The Gra’s impact (as well as the Rambam and the Ba’al Hatanya) on the greater “Lithuanian” world, the difficulty (including scientific evidence) of Rabbeinu Tam’s approach, and the difficulty of finishing Shabbat so late in northern latitudes probably contributed to the fact that historically most communities accepted the Gra’s basic approach regarding the night. (See a variation in Igrot Moshe, OC I, 24.) This is despite the fact that the Shulchan Aruch (ibid.) and most Rishonim agree with Rabbeinu Tam (see sources in Yabia Omer II, OC 21). Some people have decided to adopt the MA for szks, which is not so difficult; others keep Shabbat until late due to its severity (not all are aware of the linkage). All of these practices are legitimate.

39. Shaving Before Shacharit

Question: I heard a discussion between two learned rabbis on the question of shaving before Shacharit. One took a position along the lines you outlined in the past [Hemdat Yamim, Vayigash 5769] regarding work in general, that it should not be done before Shacharit, with possible exceptions in she'at hadechak (pressing circumstances). The other said that it is not work but resembles getting dressed in the morning. We are talking about clean-shaven people, some of whom go straight to work after davening. What is your opinion?

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

The classical sources on this topic discuss haircutting before davening, which, in many areas of halacha, is equivalent to cutting a beard. Haircutting is a serious issue, especially before Mincha, because one who gets occupied in it may end up not davening (see Shabbat 9b). The Shulchan Aruch (Orach Chayim 89:7) says that there was no formal prohibition on haircutting before Shacharit, because it is an uncommon occurrence. However, the Eliyah Rabba (ad loc.:12) says that the Shulchan Aruch refers to the time before alot hashachar (some 72 minutes before sunrise). After that time, when davening is nominally viable, it is forbidden because all work is improper before davening. Only regarding the added stringency of not starting haircutting a half hour before the time of davening is Shacharit more lenient than Mincha, not regarding the regular regulations of activities before Shacharit. Although the Eliyah Rabba cites the Kolbo as saying that it is not the type of activity that is forbidden work, he and the Mishna Berura (89:36) accept the strict opinion. Thus, the first opinion you cited certainly has validity.

We must consider, though, that the classical sources dealt with a situation where religious Jewish men were, at least predominantly, bearded. For such people, shaving is a periodic activity, which is seen as a matter of choice at any given time. For many clean-shaven people, daily shaving is a matter of simple

hygiene that cannot be pushed off for long. These differences find expression in several areas of halacha, including shaving on Chol Ham'oed, sefira, and the three weeks. Those who are lenient on Chol Hamo'ed, for example, to a great part based on the halachic approach of Rav Soloveitchik and Rav Moshe Feinstein (Igrot Moshe, OC I, 163), reason that shaving before Yom Tov does not suffice for an entire week as it once did. There are even (disputed or contrary) accounts that Rav Feinstein said that not only may the clean-shaven shave on Chol Hamo'ed, but that it is preferable to do so in honor of the holiday.

Some apply the same logic to shaving in the morning. The halachic concept of hikon likrat Elokecha mandates preparing oneself with a clean body and appropriate clothes for davening (see Shulchan Aruch, OC 91-92). One posek who has written that shaving may be a fulfillment of hikon... is Rav Yosef (Yalkut Yosef 89:32), although he brings it as a legitimate but less preferable stance. Many oral accounts and the practice, especially in segments of society where "needing a shave" has a social stigma and is a physical nuisance, make shaving even a preference.

This being said, it is wrong to make a sweeping rule. Those with beards should normally not shave before Shacharit. Those with slow growing or light beards would do better to shave before going to sleep or after davening and if they need to do so in the morning, should do so after saying Shema and some berachot. Those who need a morning shave to make themselves presentable to daven should feel free to do so before davening. However, if they are running late, it's hard to justify missing P'sukei D'zimra for it.

40. Kaddish after a Burial or Siyum

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

Answer: First we need to understand the basic idea of Kaddish. Then we can see where this special Kaddish (sometimes called Kaddish Hagadol) fits into the picture.

To capsulize the idea of Kaddish in a sentence we would say as follows. We pray that Hashem's prominence in the world should increase for our sake and, *ka'v'yachol*, for His. In so doing, we show our connection to Him and our commitment to sanctify His Name. Chazal instituted saying the various *Kaddeishim* primarily in the context of tefilla and the public recitation of *p'sukim*, especially during tefilla (see Mishna Berura 55:2). At the end of some *Kaddeishim*, we insert requests that our prayers will be accepted and that we will be blessed with peace. Kaddish is also appropriate after Torah study (one reading of *Massechet Sofrim* 19:12; see also Sota 49a), at which time we pray for those who teach and study Torah (*Kaddish D'rabbanan*).

Hashem's presence in the world will reach its height at the End of Days when *Mashiach* will help fix the world. The opening words of Kaddish appear in fact to be taken from Yechezkel's (38:23) description of *milchemet Gog U'Magog* (the Apocalypse). Let us translate the beginning of Kaddish Hagadol. "Let Hashem's great Name be exalted and sanctified in the world that He is destined to renew and to give life to the dead and raise them to eternal life, to build the city of *Yerushalayim* and complete its Temple in its midst, and uproot idol worship from the Land, return the service of the Heaven to its place, and the Holy One Blessed Be He shall rule in his majesty and splendor in our lives ..." The themes of the End of Days: resurrection of the dead, the rebuilding of *Yerushalayim* and the *Beit Hamikdash*, and a world that will serve only Hashem are all added to the opening of Kaddish Hagadol.

Where does this text come from, and when should it be said? *Massechet Sofrim* (ibid.) refers to it in discussing the Kaddish said by mourners as people consoled them after davening

on Shabbat. It says not to insert the special opening, which was reserved, according to one version, for after the study of Torah. However, the Shulchan Aruch (Yoreh Deah 376:4) says that we do recite it after a burial, near the grave. This seems to follow the Ramban's (Torat Ha'adam, Hatchalat Aveilut) version of Massechet Sofrim (ibid.) that Kaddish Hagadol is indeed for mourners but ideally only when the deceased had acted in a way that shows that he belongs to those who will take part in the World to Come. Besides the prominence of the Kaddish at the end of the burial, the reference to the resurrection of the dead, which should certainly be on the minds and lips of those at a funeral, is appropriate. Kaddish's place in the context of a funeral is not to express sorrow but to sanctify Hashem's Name even in difficult times, which brings merit to the deceased, and to pray for the grand days of the future.

What does Kaddish Hagadol have to do with a siyum? Fascinatingly, the Rambam (Seder Tefillot Kol Hashanah) uses Kaddish Hagadol's text as the everyday Kaddish D'rabbanan, the Kaddish recited after learning and parts of the tefilla which contain rabbinical exegesis. This was apparently his reading of Massechet Sofrim (ibid.), but it is not our minhag. The gemara (Nidda 73a) says that whoever learns halacha every day will take part in the World to Come. One who makes a siyum shows his accomplishments in this regard. Thus, Kaddish Hagadol's content is appropriate at that time, as the learning will help facilitate his participation in the World to Come.

Irrespective of any homiletic connections between burial and a siyum, the simplest explanation is that both happen to have elements that make the topics of the World to Come, included in Kaddish Hagadol, appropriate. In neither case does it have to do with happiness or sadness.

41. Regarding Kibudim (honors) for Teens in Shul

Question: How should teens be treated regarding different kibudim (honors) in shul? In some shuls, they receive only “less desirable” kibudim like peticha and gelila.

Answer: The mishna (Megilla 24a) lists things that a katan (boy before bar mitzva) can and cannot do. Actually, he can get an aliya (the longstanding minhag does not allow it) but cannot be a chazzan for the core parts of the tefilla. Teens are halachically able to lead any part of the services (assuming, as we almost always do without checking, that he has physical signs of the beginning of maturity). The question is of appropriateness.

The gemara (Chulin 24b) states that only one whose beard has grown in may be chosen as chazzan. Most Rishonim and the Shulchan Aruch (Orach Chayim 53:6) limit this rule to the honor and responsibility of being a set chazzan, due to the congregation’s honor. On an occasional basis though, teens may serve without issue. One occasionally comes across (in life or in the writings of a posek) a local practice not to allow singles or the young to be a chazzan, but this type of approach is not seen as halachic or mainstream policy regarding an occasional chazzan (see Shevet Halevi V, 19).

Regarding aliyot, there are no halachic issues whatsoever about honoring teens. In general, while being a chazzan has strong elements of an honor, aliyot are more a matter of an opportunity to do a mitzva, which applies to all ages (compare Shulchan Aruch, OC 53:16 and Mishna Berura 141:25). It is appropriate and sometimes required to honor “the most deserving” with the earlier aliyot (kohanim and levi’im; on Shabbat, even “regular” aliyot-Shulchan Aruch, OC 136:1). However, there is apparently no point of skipping totally over upstanding but young people. One can prove, albeit from a halacha that is out of practice, the concept that youngsters are also expected to receive “medium-level” kibudim. The mishna (Megilla 24a) states that one who receives the (then) lower-level aliya of maftir is “compensated” by getting to be

chazzan for Musaf. The mishna says that if a katan gets maftir, while he cannot daven Musaf, we give the honor to his father. While the gemara softens the matter a little, the clear assumption is that a katan, let alone a teen, would not be relegated to those “honors” that others did not want. Admittedly, there were and still are places where youngsters are not given aliyot on Shabbat, but this is not seen as healthy under normal circumstances and is certainly not a halacha (see Tzitz Eliezer VII, 1.13).

The matter of policy depends quite a bit on the shul’s circumstances. One reason to prefer adults for kibudim is that, at least regarding davening, they are in theory, and often in practice, more experienced and proficient than adolescents. When this is the case, it is certainly a factor, which is somewhat countered by the value of training the next generation. In some shuls, when there are not always enough kibudim to go around, adults are more likely to expect the more “desired” kibudim and get insulted by a perceived slight. This too is a factor, but should not necessarily exclude, but limit ,youngsters’ participation. In general, making youngsters feel appreciated and respected is subconsciously important regarding their developing attitudes toward shuls and religion in general. Therefore, in all but exceptional communities, we would suggest giving teens a fair share, quantitatively and qualitatively, of the honors and including pre-bar mitzvahs among sections where halacha allows it (peticha, gelila, “An’im Zemiroth,” P’sukei D’zimra, Kabbalat Shabbat). When youngsters are more included officially, there is likely to be a general more welcoming atmosphere toward them in the shul (greetings after davening, etc.), and their behavior is likely to improve somewhat.

42. Permissibility of a Chazan Who Hates One of the Congregants

Question: May one serve as a chazan in shul if he hates one of the congregants for no good reason, especially if the congregant has great difficulty concentrating when he does so? Is it different regarding this person being the ba'al tokeiah (shofar blower) on Rosh Hashana?

Answer: The Beit Yosef (Orach Chayim 53) cites the Maharik that since the prayers correspond to the temidin (daily public sacrifices), which must be brought from community funds, a chazan has to be acceptable to all individuals in the community. In this way, one does not have a shaliach (agent) against his will. Based on this, the Shulchan Aruch (OC 53:19) says that an individual's protest against a potential chazan prior to his appointment is accepted. The Rama (ad loc.) adds that this is talking about a case where the protestor can convince the communal leadership that he has sufficient cause and that, generally, hatred between people qualifies. Thus, your inclination to prevent the person in question has basis.

However, Acharonim distinguish between the aforementioned sources and our most common modern applications. The Magen Avraham (53:20) and Mishna Berura (53:53) say that the Maharik's logic applies when one needs to rely on the chazan to fulfill his prayer obligation, e.g., when people would listen to the chazan's repetition of Shemoneh Esrei instead of reciting their own. However, nowadays the chazan only leads the people and provides cantillation for parts of tefilla, whereas each person fully davens himself. Under such circumstances, we revert to the regular rule that the majority makes appointments to various tasks within the community without giving individuals veto power.

Realize also that many of a chazan's qualifications (see Orach Chayim 53) refer to the position of the shul's permanent chazan. Then the most appropriate person should be chosen, which may exclude one with any serious blemish. The Aruch Hashulchan (OC

53: 19-21) posits that animosity is reason to invalidate only such a chazan, but not one who will be serving only sporadically. As he mentions, we cannot have disqualifications which have the potential of “having no end.”

While not everyone needs to have the special privilege of being the chazan, it is not a simple matter to embarrass and deprive one of the honor of occasionally being the chazan in shul, which almost all who are capable of leading services have. While he may be a flawed individual (which we cannot judge from here), many flawed people lead services. The matter of being unable to concentrate is not a significant factor. For any number of reasons an individual may be bothered by another’s davening, and it is not feasible to have endless possibilities of objection.

Regarding blowing shofar on Rosh Hashana, the matter is less clear. In all elements that our case differs from the classic one, shofar resembles the classic one. The ba’al tokeiah enables others to fulfill their mitzva; not everyone receives the honor of being the ba’al tokeiah; one can also claim that each year is a new appointment (see Haelef Lecha Shlomo, OC 356). Therefore, if there are viable options to replace him with someone who is similarly capable but who gets along with all, it is possible to bring the matter before the local rabbi/leadership (ibid.). However, we cannot stress enough that it is much more appropriate to strive to reduce tension and defuse the issue than to try to remove the person and undoubtedly raise the conflict to new, more regrettable levels.

43. Lack of Unity in a “Unified” Minyan

Question: Occasionally, I join an ad hoc minyan of 10-12 men for weekday Mincha, in which whoever leads chooses the nusach. Several participants start Tachanun even as a Nusach Sephard chazan is leading Viduy and Yud Gimmel Middot (=YGM). Are the following a problem: 1) A noticeable lack of uniformity? 2) The need for a minyan to recite YGM? If there is a problem, does it justify saying something?

Answer: We begin with clarifications. First, the daily recitation of YGM is a post-Talmudic minhag, not found in the Shulchan Aruch. Second, there is zero halachic problem for a Nusach Ashkenaz devotee to recite YGM with a minyan.

Next we deal with the “hybrid minyan” phenomenon. From a purist perspective, chazanim should follow a shul’s established minhag, which is to be established by majority (see Bemareh Habazak VI:2). There is a common minhag, primarily in the Israeli Dati Leumi community (as is Eretz Hemdah’s practice), that the chazan follow his nusach. This is based on a belief that the unity and respect toward “minority” groups within a minyan fosters are important and doable. The idea is to achieve an “I’ll join you; you’ll join me” attitude, not one of “I’ll ignore you; you’ll ignore me.”

Rav Moshe Feinstein says that one who is in a Nusach Sephard shul should say YGM with the tzibbur (Igrot Moshe, OC III:89), citing the rule of avoiding things that can cause machloket. One can argue that a “unity minyan” has no set minhag to uphold and therefore no issue of machloket. However, we submit that snubbing another group (without halachic need – see above) when it is their turn to lead the davening can be insulting. If some participants refrain from saying YGM because they do not know it by heart, cards containing the text should be made available.

Besides possible insult, how does the situation of people not taking part affect matters? There is a machloket whether YGM can be said without a minyan. The Tur cites Rabbi Natan Gaon, whom the Shulchan Aruch (OC 565:5) follows as requiring it. (The Tur argues.) Two reasons are given to require a minyan. The Rashba

(Shut I:211) infers from the gemara (Rosh Hashana 17b) describing the power of reciting YGM that it is like a *davar sheb'kedusha* (a saying that requires a minyan). Rav Amram Gaon (Ta'anit) explains that this “powerful ammunition” is called for only when a *tzibbur* joins together in prayer and righteous behavior.

According to the Rashba's approach, the parameters of the minyan are like that of Kaddish and Kedusha (see Torah Lishma 96; Halichot Olam I, Ki Tisa 1, who apply general minyan rules to YGM). While ten men are needed to usher in the sanctity, six suffice to answer a *davar sheb'kedusha* (see Mishna Berura 55:32; Ishei Yisrael 15:(16)). One can argue that that six suffice for reciting YGM too. However, it is not unanimous that six suffices even for Kaddish/Kedusha, and it is certainly not *l'chatchila* (see *ibid.*). Furthermore, there are strong indications that according to Rav Amram Gaon, the necessary effect that justifies saying YGM requires a minyan reciting it together, as Igrot Moshe (OC IV:34) assumes. Elsewhere (OC III:89), Rav Moshe explains that the practice that people stop learning to join in YGM with a later minyan is to add to the power of that minyan's YGM by increased participation.

Finally, we address the question of what to do. If there are at least six men reciting YGM, they can continue doing so. If they want to be stringent or if there are less than six, most *poskim* would suggest reading the *p'sukim* of YGM with *tropp* (see Shulchan Aruch, OC 565:5; Yechaveh Da'at I:47). Details are beyond our present scope; we believe this is a solution for a savvy individual, not for a *tzibbur*. How does one deal with people who do something that could cause *machloket*? Our approach is that it is very often unwise to try to stop them, as this often brings *machloket* even closer. The halachic stakes here are not high. If sharing our words helps – wonderful. If not, leave things. Only one who knows the personalities and dynamics can decide.

44. Children in Diapers in Shul During Davening

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

Answer: Your question about diapered children in shul during tefilla involves two issues: 1. Preserving the honor of a beit kneset (see Shulchan Aruch, Orach Chayim 151), even not during tefilla time. 2. Davening in the presence of excrement (see the great detail in Orach Chayim 76-87), which applies even outside a shul. (While the main classical sources (see Berachot, 3rd perek) discuss Kri'at Shema, the halachot apply to davening, berachot, and speaking divrei Torah – Mishna Berura 76:2.) We do not believe that the coincidence of the two is more problematic than the elements separately. Realize that if the first issue is a problem, a toddler sibling of a baby having a brit in shul could not attend. The second issue would greatly limit involvement in matters of kedusha in a house with non-toilet-trained children present. (The excrement of newborns for several months is not an issue – Shulchan Aruch, OC 81:1).

Let us dispatch quickly of the matter of the honor of a shul. We found no indication that bringing in a baby in diapers is considered a disgrace to a beit kneset and have no reason to question the clear minhag to allow babies in.

Regarding davening near possible or definite excrement, the first major rule is that the excrement must be covered (Berachot 25b). Thus, at first glance, a diaper should be sufficient. However, there are some complications. First of all, there must not be a smell (whose extent is hard to quantify) that escapes the covering (Shulchan Aruch, OC 76:2; Mishna Berura 76:3). A smell affects people up to four amot from the furthest point it reaches. However, poskim rule that one does not have to constantly check to see if there has been a bowel movement and a spreading smell (Ishei Yisrael 52:18, Ohr L'tzion II:86:14). If one knows that the baby

has eliminated (Ohr L'tzion *ibid.*) and perhaps if enough time has passed to assume a baby has eliminated (Ishei Yisrael *ibid.*), he should check.

According to the concept of *graf shel re'i*, a utensil used for collecting excrement is considered soiled, so that one is not allowed to daven when it is in his view or, if it is behind him or sufficiently to the side, within four amot (Shulchan Aruch, OC 87:1; *ibid.* 79:1). Is a diaper a *graf shel re'i*, given that it is a receptacle of excrement? Rav Moshe Feinstein (see Igrot Moshe OC IV:106) says, regarding cloth diapers, that after being washed, it is not a *graf shel re'i*, implying that while it is soiled it is one. Therefore, there is logic to require that the diaper to be covered (e.g., by the child's clothes) even if it does not smell. On the other hand, modern diapers are made to be thrown out soon after becoming soiled and not reused. Some point out that modern diapers have the advantage of having their own non-absorbent plastic covering (Avnei Yashfeh III:70). Rav S.Z. Auerbach is said to not accept this distinction because the diaper is absorbent and a covering must be something external, not the diaper itself (Halichot Shlomo, Tefilla 20:5). It is not clear what Rav Auerbach's full opinion was on this matter (see Shemirat Shabbat K'hilchata 47:38; Nishmat Avraham, OC 76:(9)). In any case, his stringency is only when the diaper is soiled, not wet.

There is also an opinion that a covering is insufficient to cover excrement at the anus (see Magen Avraham 81:1). However, the great majority of poskim say that the stringency of excrement at the source is only for the soiled individual, not for those davening in his presence (see Ishei Yisrael 52:9).

We conclude that the prevalent practice to allowing matters of holiness to be spoken in the presence of a baby in diapers is very well-grounded. If one who wants to be more machmir, he should consider the "price" and certainly should not impose his view on co-congregants.

45. Realized that Already Davened When in the Middle of Shemoneh Esrei

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

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

The gemara (Berachot 21a) states: “Rav Yehuda said in the name of Shmuel: If one was standing in prayer (in the midst of Shemoneh Esrei) and he remembered that he had already davened, he should stop, even in the middle of a beracha.” Thus, in your case, when you realized that you had already davened, you should have stopped immediately (Shulchan Aruch, Orach Chayim 107:1).

The question is how this ruling is reconciled with the previous segment of the gemara (ibid.). R. Elazar says that one who is not sure if he davened or not, should not daven out of doubt. R. Yochanan argues, saying “if only a person would daven all day long.” Thus, according to R. Yochanan, whose position is accepted as halacha (Shulchan Aruch, ibid.), it is not a problem to daven even if it turns out that he already davened. (If it were a problem, we should say safek berachot l’hakel). A further complication is a subsequent gemara (ibid.) that one who already davened and comes into a shul where people are davening may join them as long as he adds a personal request (during the middle part- Shulchan Aruch, ibid.:2) to Shemoneh Esrei. Why then can’t one who realizes in the middle that he is in that situation, continue by adding something?

The Rosh (Berachot 3:15) reconciles matters as follows. R. Yochanan did not mean that one can literally daven all day long without any further conditions. Rather, he may daven an additional time only if he adds something new to the Shemoneh Esrei. The rationale is that one can daven a second time but only as an optional tefilla (nedava), which he undertakes in order to add something that he neglected to include in the first one. If it is just a repeat, it is deemed to be a second, mandatory Shemoneh Esrei. Since tefilla corresponds to the korban tamid which could be

brought only once during a given time period, he cannot repeat. Only if he does it in a way that shows that it is a nedava, by adding something, is it permissible, as an individual can offer a korban olah in a manner similar to the korban tamid. The congregation may not repeat Shemoneh Esrei beyond the standard obligation because, in the Beit Hamikdash, a communal olah was not permitted. Similarly, one cannot daven an extra Musaf, as an individual could not bring such a parallel korban in the Beit Hamikdash.

When one is unsure whether he already davened, he need not add anything to the tefilla because the prospect that he may need this tefilla is equivalent to adding something new (*ibid.*). However, one should make the possibly superfluous Shemoneh Esrei conditional in the following manner. “If I did not daven, this should be an obligatory tefilla. If I already davened, it should be deemed optional” (Mishna Berura 107:2, based on Chidushei HaRashba, Berachot 21a).

If one starts out Shemoneh Esrei thinking it is a normal, obligatory tefilla and realizes in the middle that he already davened, he is stuck. It cannot be turned in the middle into a nedava and, therefore, there is no framework with which to continue even if he wants to add something (Rosh, *ibid.*). Only if he began with a doubt and a condition that envisioned nedava from the outset can he continue even after realizing that he had already davened, as a nedava (see Mishna Berura 107:7).

Regarding one who remembered in the middle of Shemoneh Esrei of Maariv, there are poskim (especially Sepahrdic- see Kaf Hachayim 107:12 and Yalkut Yosef, Tefilla 68) who say that he can continue in the framework of nedava, as Maariv always has an element of being optional. However, the Mishna Berura (Biur Halacha to 107:1) says that now that Maariv is treated as an obligatory tefilla, it is no different than other tefillot.

46. Waking Up on a Plane to Daven

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

Answer: You raise a fascinating question: do obligations in mitzvot apply to a person while he is sleeping? This issue is at the heart of questions of what others should do when observing a sleeping person in a halachically problematic situation. However, that point is not necessary to answer your practical question.

While certain sources indicate that when a person is sleeping, the laws of the Torah fundamentally do not apply to him, there are several and stronger sources that prove that mitzvot do apply at least on some level. If rain forces one to sleep inside his house on Sukkot and the rain stops during the night, he does not have to go then to the sukka (Sukka 29a). The Beit Yosef (Orach Chayim 639; see also Mishna Berura 639:43) says that a major part of this discussion is about the people of the household not being required to wake the sleeping person. The simple implication of the sources (compare Shulchan Aruch, OC 639:6 and 7) is that this is a specific exemption from sukka for someone who will be unusually bothered to be in the sukka under those circumstances. The classical commentaries do not speak of a sweeping rule that mitzvot do not apply to those sleeping, implying that there is no such rule. On the other hand, Rav S.Z. Auerbach said that one is not obligated in sukka when he is sleeping and therefore it is (theoretically) permitted to remove a sleeping person from the sukka (see Halichot Shlomo, Tefilla, pp.335-337). Another important source involves someone who died in the room where a kohen is sleeping. The Rama (Yoreh Deah 372:1) says that people should wake the kohen so he can leave the premises.

Playing out the different approaches to a case of one who sees his friend sleeping as the end time for reciting Kri'at Shema approaches, Rav Auerbach's camp would not require waking him, while others would (see Halichot Shlomo *ibid.*). There is logic to distinguish between mitzvot and aveirot in two directions. In some

ways, being physically involved in a situation of aveira while sleeping may be more problematic than simply not doing a mitzva at that point (ibid.; see also Shut R. Akiva Eiger I:8). In the opposite direction, even if one is exempt from a mitzva when sleeping, if he does not perform it, he will not be credited for what he did not do; therefore, there is certainly what to gain by waking him. In short, there is room for other distinctions: whether a Torah-level mitzva, e.g., Kri'at Shema, or a Rabbinic one, e.g., Shacharit, is at stake (see Keren L'Dovid, OC 18; Shach, YD 372:3); whether the specific person would want to be woken (see Keren L'Dovid ibid.; Halichot Shlomo ibid.); whether the person went to sleep with a realization that the problem would arise while he would be sleeping (ibid.).

This last distinction brings us to the crucial practical point regarding your question. It is forbidden for one to go to sleep in a manner that will likely bring him to miss a mitzva. In several cases, there are Rabbinical prohibitions about eating or sleeping before doing a mitzva even when his plan is to perform the mitzva within its proper time (see Shulchan Aruch, OC 692:4 and Mishna Berura 692:15). This prohibition sometimes begins even before the mitzva applies (see Shulchan Aruch, OC 235:2 and Mishna Berura ad loc. 17). While Chazal obviously do not forbid going to sleep at night out of fear one will wake up too late for Kri'at Shema and Shacharit, they had harsh things to say about those who are not careful to wake up in time (see Avot D'Rabbi Natan 21; Pirkei Avot 3:10 with Bartenura). Therefore, whatever one's fundamental approach to obligations while one sleeps, before going to sleep, one must have a good plan to ensure he will perform the mitzva when it becomes incumbent (see Halichot Shlomo ibid.).

47. Women Hearing Parashat Zachor

Question: It is not always easy for me (a woman) to make it to shul to hear Parashat Zachor. How much of an effort must I make?

Answer: There is a mitzva from the Torah to remember the actions of Amalek. It is related scripturally and, as simple logic dictates, innately, to the mitzva to fight them (see Devarim 25:17-19). According to some Rishonim, it is included in the latter mitzva – see Mikraei Kodesh, Purim 5.) The question of how and when the Torah prescribes the mitzva can influence whether a woman has an obligation. The basic mitzva of remembering can ostensibly be done at any time, which seems to preclude an exemption for women on grounds of being a time-based mitzvot. That which we do it on a specific Shabbat is Rabbinic. Yet, for a long time, the minhag was that women did not come to shul like men to hear Parashat Zachor, which prodded poskim to look for a reason why.

The connection to the mitzva to fight could be significant in this regard. One claim is that battle is usually carried out in the day, making it time-based. One of several questions on this idea is that one can remember the need anytime and act when it is practical. The Chinuch (#603) says that since women as a group are not obligated to wage battle, they are not included in the mitzva to remember either. The Minchat Chinuch (ad loc.) argues with the Chinuch by poignantly pointing out that women can and often should take part in other war-related efforts (see Sota 44b). Others argue that mitzvot are not dependent on whether the mitzva's assumed logic applies to an individual. On the other hand, the Chinuch's logic is reminiscent of the halacha that Moavite women are not included in the prohibition on marrying into our community because they do not usually bring provisions to nations passing through. Due to the Chinuch's stature and the old minhag, it is hard to discard the opinions that women are exempt.

It is also possible that women, while obligated, fulfill the mitzva in other ways. The gemara (Megilla 18a) derives that the remembering of the story of Amalek should be done through a recitation from a sefer. The Terumat Hadeshen (I:108) posits that reading Zachor from a sefer Torah with a minyan is required from

the Torah. Regarding men, we accept this opinion, thus making us expect men to go to significant lengths to have a minyan for Shabbat Zachor (Shulchan Aruch, Orach Chayim 685:7). However, not all agree that Torah law requires a minyan and perhaps not even a kosher sefer Torah. If so, the Rabbinically prescribed way men fulfill the Torah law (Shabbat Zachor), which is time-based, may not be binding for women (see Torat Chesed, cited in Yechaveh Daat I:84; Mikraei Kodesh, *ibid.*). If women have an obligation for some type of remembrance but not necessarily like men, it is not surprising that some (including Teshuvot V'hanhagot II:344) say that they should take the opportunity of Shabbat Zachor to read those p'sukim from a Chumash.

There is another possible way for women to fulfill the mitzva, which, if correct, does not require an extra action. Some Rishonim say that it is possible to fulfill the mitzva of Zachor by listening to Megillat Esther, which women anyway must do and usually even have a minyan (see Teshuvot V'hanhagot *ibid.*). It might just be necessary to have in mind for Zachor during that time (*ibid.*).

In general, over the last few hundred years, the minhag has developed for women to try to make it to shul for the reading of Parashat Zachor (see Binyan Tzion (Chadashot 8) in the name of Rav Natan Adler). When this is doable, it is a good thing. However, if one has difficulty doing this, she should not feel undue pressure, and can rely on the several opinions and the old minhag that she does not have to fulfill the mitzva the way men do (Yechaveh Da'at, *ibid.*). (Some communities have a second reading. There are different ways of doing this, which raise certain halachic questions (see Minchat Yitzchak IX:68). However, whatever system a community uses should be fine for the individual who wants to hear.)

48. The Need for a Mechitza Without a Minyan

Question: Is there a need for a mechitza between men and women when there is no minyan?

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

The gemara (Sukka 51b) tells of structural changes made in the Beit Hamikdash to deal with the growing realization of problems of modesty between the genders. Rav Moshe Feinstein (Igrot Moshe, Orach Chayim I:39) is prominent among those who learned from the fact that such changes in the Beit Hamikdash are generally prohibited that the need for separation must be a matter of Torah law.

The only context in which there is any Orthodox unanimity that a physical separation is necessary is when davening in shul. It appears that the concept need not be linked specifically to davening, as the gemara says that Beit Hamikdash renovators based themselves on a pasuk relating to a funeral (Zecharia I:28:12). On the other hand, in practice there is not a history of anything close to universal separation between the genders. Rav Moshe (ibid., OC V:12) makes a distinction between settings that are private (i.e., by permission only), which do not require separation, and those that are open to the public, which require.

Since the setting of davening in shul is unique in its unanimity and its level of definitiveness, it is worthwhile to investigate the halacha's scope by broadening your question. Does all tefilla require a mechitza? Does everything in shul? How do we define a shul? A man is not allowed to daven, learn aloud, or even make berachot when exposed to a lack of modesty (see Shulchan Aruch, OC 75 with commentaries). However, it is agreed that regarding davening in a place that is not set for tefilla, the formal requirement of mechitza per se does not exist. This is more obvious in a public place, like a plane. The need for a mechitza is more of an

obligation to put one in the proper place than a prohibition to daven without it. Therefore, since there is no way to expect an airline servicing Jews and non-Jews to put up a mechitza, there is no problem. Even in places like sheva berachot and a shiva house, there is not a formal need for a mechitza (see Igrot Moshe ibid.).

If men are davening in a shul at a time when there is no minyan, it would seem that a mechitza is needed if women are present (one or two women are likely not a problem (see ibid.; Ishei Yisrael 9:28)). After all, they are davening and the shul has sanctity that elevates tefilla even without a minyan (see Shulchan Aruch, OC 90:9).

What about a place that is set for tefilla without a minyan? The gemara in Megilla 27b can be instructive. In explaining the various positions on whether a communal beit kneset can be sold to become a beit kneset of an individual, the gemara raises the claim for R. Meir that an individual's shul does not have kedusha. Rashi (ad loc.) and others explain that this is because matters of kedusha (i.e., elements of prayer that require a minyan) are not recited there. On one hand, this downplays the status of a shul without a minyan, but many posit that even according to R. Meir it has some kedusha (Ramban, ad loc.) and at least the status of a beit kneset. We note that many places that have semi-regular davening but without a minyan usually have several other uses, which also makes it less like a classic shul, in which we know a mechitza is required.

Tying things together, we suggest the following approximate guidelines (there are many slightly varying cases). In a room that is treated like a shul, just that it belongs to such a small community that there is not usually a minyan, there should be a mechitza. In a multi-use room that has semi-regular davening but without a minyan, davening should be done with a separation between men and women, but a mechitza per se is not necessary (assuming it is done in a way that there are no modesty in dress problems).

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BEIT KNESSET SYNAGOGUE

49. Preference of Davening in a Shul

Question: Is there a preference of davening in a beit kneset as opposed to a house-minyan? Does it matter if the place is not an actual shul but consistently hosts a minyan?

Answer: The short answer is that there is probably a small preference.

The gemara (Berachot 6a) says: “A person’s prayer is heard only in a beit kneset, as it says: ‘... to hear the praise and the prayer’ (Melachim I, 8:28) – at the place of the praise, there should be the prayer.” The Rambam (Tefilla 8:1) cites this idea with the addition that the prayers will not be “heard at all times” outside of a beit kneset. This would seem to be an important reason to daven specifically in a shul, and indeed the Shulchan Aruch (Orach Chayim 90:9) writes: “A person should try to daven in a beit kneset with the community.” He continues that there is also a preference to daven in a beit kneset even if he will be davening there alone (this is the subject of a machloket Rishonim - see Beit Yosef, OC 90).

The question is whether all davening out of a beit kneset is inferior and to what extent. The Magen Avraham (90:15) cites, as the reason for the Shulchan Aruch’s recommendation, the idea of b’rov am hadrat melech (roughly, it is honorable to the King when there is a large group). The Pri Megadim (ad loc.) posits that even without the factor of b’rov am, a shul is always a preference, as he assumes that the preferences of a minyan and a shul are both called for. This is not a clear conclusion. The Tzelach (Berachot 6a) says that the important thing is having one’s tefilla heard and that this can be accomplished either by davening in a shul, even as an individual, or by davening with a minyan, even out of shul.

There is another Talmudic source about davening in a beit kneset. The gemara (Berachot 8a) says that whoever does not daven in a community’s shul is called a bad neighbor and is slated for exile. The Chida (Machazik Beracha 90:4) says that this does not apply if the person davens elsewhere with a minyan because the Divine Presence dwells wherever a minyan is praying. However, he continues to say that in order to receive the full

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positive impact, it must be in a place that is “set for holiness.” The definition of “set for holiness” is not always clear. Public vs. private ownership is not the issue (see Rama 153:7). Whether steps were taken to allow occasional use of the place for meals, especially when limited to mitzva-related eating (see more on this complex issue in Shulchan Aruch, OC 151:11; Igrot Moshe OC I:45) is also probably not critical. However, using one’s living room for a minyan after a regular shiur or a daily Mincha minyan in a business’s board room does not turn these places into batei knesset.

While we accepted the preference of davening in a beit knesset (see Mishna Berura 90:38; Ishei Yisrael 8:2), this is not an absolute requirement. This qualification is important, not only to justify one opting out due to a significant inconvenience, but also because other preferences can potentially outweigh that of davening in shul. We will mention some such possible cases, while warning that the particulars of a given case can make all the difference. 1. Davening in a place where one learns on a regular basis (Shulchan Aruch, OC 90:18). 2. The speed of the davening and/or congregants’ behavior make one’s davening noticeably “better” out of the beit knesset (Ishei Yisrael 8:10; see Mishna Berura 90:28; Aruch Hashulchan, OC 90:15). 3. One will have to daven in the shul without a minyan, but can make one elsewhere (Mishna Berura *ibid.*).

We are generally strong believers in the importance of community on various grounds. We note that Rav Kook, commenting on Berachot 6a, says that it is important to show that one connects his prayer to the matter of publicizing Hashem’s greatness and that this is done most profoundly in the communal setting (Ein Ayah, Berachot 1: 48,49). That being said, sometimes even the most communally oriented people have recourse to davening outside a shul.

50. Stopping to Rent Out to a Shul

Question: I own a property that I have been renting out to a shul for years, but now I want to sell it. The members of the shul say I have no right to do it because my sale will effectively close down the shul, which is forbidden, so I must continue the rental. Are they correct?

Answer: We cannot get into “Choshen Mishpat” questions of when a landlord can remove a tenant from rental property (see Shulchan Aruch, CM 312). Rather, we will deal with the “Orach Chayim” questions of closing down a shul, assuming that you otherwise would be permitted to end the rental.

First of all, under certain circumstances and conditions, one may sell a shul (see Shulchan Aruch, Orach Chayim 153:6-7). One basic condition is that the decision is made in a serious manner by community leaders that the step is in the community’s best interest. In this case, the community wants to keep the shul, so we must see whether the fact that it is rented rather than owned makes a difference.

The gemara (Megilla 26a) cites the Rabbanan’s ruling that the part of town where prayers are held on public fast days lacks sanctity because praying is done there on an ad hoc basis. The Beit Yosef (OC 154) cites Mahari Ibn Chaviv as saying that the batei kneset of his time/place lacked kedusha because they are expected to be used for a limited time, secretly, until removed by the authorities. Some (including Shut Chatam Sofer, Yoreh Deah 225, Michtam L’David OC 5) say that the critical factor in his case is the lack of even short-term security. However, the Shulchan Aruch (OC 154:2) implies that regarding any rental, where the congregation’s ongoing use of the premises depends on the landlord’s agreement, there is no kedusha (see Mishna Berura 154:4). Distinctions are made, including the duration of the rental (Mishbetzot Zahav 154:1) and whether the rental is for a set time or open-ended (see opinion cited by Piskei Teshuvot 154:2). However, all seem to agree (see Chatam Sofer, *ibid.*) that when the rental period is over, the status of beit kneset ceases. Poskim assume that no status of beit kneset can prevent a landlord from

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legally discontinuing the rental. (Admittedly, some of the sources relate to non-Jewish landlords, but some discuss Jews (including Divrei Yatziv, OC 78), and the basic sources do not distinguish.)

In certain cases, another factor arguably plays a role. The gemara (Bava Batra 26b) says that a community may not take down a shul before they secure its replacement. This is beyond the matter of kedusha, as it applies even if they are just renovating the shul for future improved use (see Mishna Berura 152:2). Rather, it is a matter of concern that the community, for a short or possibly a long time (see gemara) will be without a proper beit kneset. One might have argued that this concern should prevent a landlord from closing a shul, if there is no proper alternative.

The Mishna Berura (152:3) cites the opinion of several Acharonim that a community that rents a beit kneset may not leave the rental before securing a replacement location. They speak of the permissibility of the community's steps, not the landlord's. One cannot infer that there is no prohibition on the landlord because the context of this halacha's primary source (the Eliya Rabba 152:1 in the name of the Nachalat Shiva) is of a non-Jewish landlord, who obviously has no obligation to be concerned about batei kneset. Nevertheless, since the community is obligated to search for alternatives to rental shuls, the concern need not fall on the landlord. Understand that landlords cannot evict a tenant without giving sufficient opportunity to find an alternative (Shulchan Aruch, CM 312:5). Once the community is forewarned, they are obligated to find an alternative, such as building their own shul (may be preferable) or finding another rental location.

That being said, there may be circumstances where at least the spirit of the law would require giving a community an especially long warning period to ensure their ability to find an alternative beit kneset.

51. Lighting a Ner Tamid Candle When the Electricity is Out?

Question: One day there was a power outage in our area while I was in my Beit Midrash. Emergency lights were on, but the ner tamid (eternal flame) was off. Were we required to go get a candle to serve as a ner tamid, or could we wait until the lights would come back on?

Answer: The idea of a ner tamid is both an ancient practice, first alluded to in Shemot 27:20), and a more recent one, as we will see. In the Beit Hamikdash, the "western lamp" of the menorah was supposed to always be lit. Now that there is no Beit Hamikdash and our shuls have assumed some of its place in our lives (Megilla 29a), some say that the ner tamid is among the specific mikdash-like features that have been adopted (see Binyan Tziyon 12; Terumat Hagoren I:37).

I have been unable to find a reference to a "ner tamid" in a shul before the Terumat Hadeshen (15th century Germany). On the other hand, lights in shuls are discussed well before that, and they are an important part of a shul to which some specific halachot pertain. For example, they cannot have any connection to idol worship or worshippers (Shulchan Aruch, Orach Chayim 154:11). This, though, refers to lights in general, and not necessarily to a ner tamid.

Some sources refer to the practical need of being able to see and read, especially at night. Others, including the Rambam (Tefilla 11:5) and the Rosh (Shut 5:8), refer to good lighting as one of the ways to show honor (kavod) to the shul. The concept we know of ner tamid is that even shuls that have extensive lighting and expensive chandeliers, additionally have a specific ner tamid, usually in the front of the shul, which stays on even when other lights are off.

Is it required for there to be a light in shul at all times? The Shulchan Aruch (Orach Chayim 514:5) says that it is permissible on Yom Tov to light candles in shul, as the mitzva purpose justifies doing melacha. The Rosh (ibid.) says that it is permitted even to light these candles in the afternoon and have them last into the next

day (e.g., Shabbat, second day of Yom Tov) because the kavod it brings immediately suffices. While the Rashba (III:277) was not convinced that this type of benefit justifies melacha on Yom Tov, he agrees that generally it is proper to have light for the kavod of the shul, apparently beyond that which is technically necessary. The Magen Avraham (ad loc. 14) says that it is even permitted to light candles at the time that people are not in shul, as the honor still applies.

Indeed, it is usually assumed that light is worthwhile even when people are not there, but that still does not mean that there is a literal concept of tamid (constant). The Rav Pealim (II, OC 43) discusses a shul that was afraid, for safety reasons, to leave candles lit all night in shul and wanted a non-Jew to blow them out and relight them the next morning (Shabbat). He mentions that even when blowing out all the lights, they must certainly keep at least one candle lit in a safe place because it is not kavod for there to be pitch dark in the shul. He seems to assume that when there is daylight, one candle does not make a difference and is not needed (the Magen Avraham, *ibid.*, is likely talking about several candles, which are noticeable even during the day).

Putting things together, nowadays there is a minhag to have a specific ner tamid in shul at all times. Since it is so easy to just leave it on always, it is unclear whether it is important that it remain on during the day as well. However, the minhag does not appear to be strongly modeled on the Beit Hamikdash. One of several signs that it is intended for a more practical than ritual kavod is the fact that we use electricity rather than olive oil (see Maharam Shick, Yoreh Deah 83), unlike the more mikdash-related Chanuka lights. There are few if any sources that indicate there is a problem if a relatively short period goes by without a specific, set ner tamid. Therefore, it does not seem that it was necessary to get candles, especially during the daytime and certainly when emergency lights were on.

HOLY ARTICLES

52. Passing Over Tefillin to Put on the Shel Yad First

Question: Is it true that if one picks up his tefillin shel rosh before his shel yad that he should put the shel rosh on first? How does this affect the order of berachot?

Answer: What you apparently heard is not correct according to the consensus of opinions. Let us examine the issues and see where the concept you have heard of does apply.

The gemara (Yoma 33a) explains some of the order of service in the Beit Hamikdash based on a rule called *ein ma'avirin al hamitzvot* (we do not pass over mitzvot). In other words, if one plans to do two mitzvot and one presents itself to him before the other, he should do the immediate mitzva before the other one. Rashi (ad loc.) says that this is derived from the pasuk that one should guard the matzot from waiting around and becoming chametz, which can also be read as teaching that no mitzva should be passed over and thus “put on hold.” There is a dispute whether this concept is from the Torah or is rabbinic, but either way, it plays a role in various cases.

Regarding tefillin, the gemara (ibid. 33b) says approximately as follows: because of *ein ma'avirin*, “passing over the tefillin shel yad for the tefillin shel rosh is forbidden.” Rashi explains that since one comes to his arm before his head, he should lay the shel yad first. Based on this, one might suggest that if one has already picked up the tefillin shel rosh first, he should put it on before the shel yad. However, several Rishonim posit that the gemara cannot be understood in this manner for the following reason.

The gemara (Menachot 36a) says that the tefillin shel yad should be put on before the shel rosh because the Torah mentions the two tefillin in that order. The shel rosh should even be taken off first so that it not remain on the body alone. Tosafot (ad loc.) is bothered by the above gemara (Yoma 33a). Why does it need the rule of *ein ma'avirin* to explain why the shel yad should not be passed over if it is anyway supposed to be put on first? The first answer is that the gemara is instructing not to put the shel yad

deeper into the tefillin bag than the shel rosh. This is because it would force him to pass over the shel rosh to put on the shel yad, which compromises the issue of passing over mitzvot. Tosafot's premise, which is accepted as halacha (Shulchan Aruch, Orach Chayim 25:6), is that ein ma'avirin does not justify putting the shel rosh on before the shel yad (against what you heard). The question about berachot should thus not arise in this context. If an Ashkenazi mistakenly puts on the shel rosh (presumably with the beracha of "al mitzvat tefillin,") he would make the beracha of l'hani'ach tefillin when putting on the shel yad.

A similar application, where ein ma'avirin does apply, is in regard to the order of tallit and tefillin. Our practice is to put on a tallit/tzitzit before putting on tefillin (see Beit Yosef, OC 25 who cites reasons for this, including, that tzitzit, which is worn everyday, is more common (tadir) and therefore comes first). However, if when one reached into his tallit/tefillin bag he grasped the tefillin, he would have to put the tefillin on first because of ein ma'avirin. (The level of contact with the tefillin that gives it precedence over the tallit is a matter of some dispute- see Magen Avraham 25:1; Mishna Berura 25:3). Why is it that ein ma'avirin takes preference in regard to tallit and tefillin and not regarding tefillin shel yad and shel rosh? Tallit and tefillin is an example of two totally independent mitzvot (even though they often overlap), in which case ein ma'avirin is unimpeded from setting precedence. However, regarding tefillin, where the Torah instructs the way the two are to be performed in tandem, the matter of a general element of precedence, such as ein ma'avirin does not alter the proper performance.

Other applications of ein ma'avirin and its interaction with other matters of precedence are beyond our present scope.

53. Tefillin for Immobilized Arm

Question: I, a right-handed person, will undergo surgery on my left shoulder, which will require my left arm to be immobilized in a sling for a few weeks. What should I do about putting on tefillin? Should I put it on my left arm (preferably, on top of my shirt) although I will be unable to wrap the retzuot (straps) on my lower arm because of the sling? Is my right arm a possibility under the circumstances (with someone else tying)? If neither is viable, do I put the shel rosh on alone and, if so, with which beracha?

Answer: There is an opinion that when the left arm is unavailable, one puts the tefillin on the right arm without a beracha (see Magen Avraham 27:3 and Pri Megadim, EA 27:11). However, the consensus is that the right arm is not an option for a right-handed person (see Mishna Berura 27:6; Halachos of Tefillin (Eider) pg. 85). The question is: to what extent is putting the tefillin and/or the retzuot directly on the skin crucial.

The mishna (Megilla 24b) condemns those who put tefillin shel yad on their sleeve. They think that since the Torah calls them an *ot* (sign), it should be visible to outsiders. However, we learn the pasuk that “it is an *ot* for you - and not for others” (Menachot 37b). The simplest understanding of Rashi (Megilla 24b) is that the whole problem is that it should not be done primarily toward others. The Rosh (Tefillin 18) understands that, given that the tefillin shel yad do not require being exposed, they must be directly on the skin, thus precluding a *chatzitza* (separation).

How broadly does the matter of *chatzitza* extend to tefillin? The Rashba (to Megilla 24b) raises the real possibility that it does not apply to the shel rosh or even to the shel yad’s retzuot (Shut I, 827). However, he concludes (*ibid.*) that the practice is to be careful on the shel rosh, the shel yad, and the retzuot. The Rama (Orach Chayim 27:4) says that *chatzitza* is not a problem for the retzuot but many of the commentaries take issue on this claim, at least in regard to the part of the retzuot that are needed to tie the tefillin down (Taz, Magen Avraham, and Mishna Berura, *ad loc.*).

If the main problem regarding the tefillin on top of something else is its being an *ot* to others rather than to oneself,

then there are some points of leniency and distinctions to make. First, when there is a need to have something cover the skin, it is necessary and perhaps sufficient to cover the tefillin with another layer (Mishna Berura 27:18). There is also room to distinguish between a bandage or a cast, which are in the realm of chatzitza, and a sleeve, which makes the tefillin considered on the outside rather than on the arm. The Chayei Adam (14:14), cited by the Mishna Berura (ibid.) and Rav Eider (pg. 84) say that the tefillin cannot be on top of a sleeve even if there is another covering above the tefillin and even if the sleeve is medically called for. While it is possible to argue on this logic, it is hard to make a beracha on the tefillin shel yad in such a case (see Minchat Yitzchak II, 46). If one can put just the bayit of the tefillin on the skin, the retzuot being on the sleeve is less of a problem. Also, if one could only get the tefillin directly on the upper part of the bicep, one can rely on the Gra that that is also a valid place for tefillin shel yad (see Mishna Berura 27:4). The ability to get seven wrappings on the forearm is not a major issue and certainly does not preclude a beracha (see Shulchan Aruch, OC 27:8).

In your case, it seems that the forearm can be exposed. If you can get the sleeve off without hurting yourself, then that is the best thing. However, don't hurt yourself trying to be a hero. If one is unable to put on the shel yad, he should put on the shel rosh. An Ashkenazi makes both berachot on the shel rosh; a Sephardi makes only "al mitzvot tefillin" (Shulchan Aruch and Rama, OC 26:2).

54. Tefillin Shel Yad Slipping

Question: Sometimes my tefillin shel yad slips out of place and needs refastening. Should I take off my shel rosh and put the two on in the right order?

Answer: You assume correctly that the order of putting on the shel yad before the shel rosh is fundamental. The gemara (Menachot 36a) derives this from the order of the p'sukim, which all mention tying the tefillin to the arm before having tefillin on the head. In fact, despite the concept that one should not “pass over” one mitzva to get to another, if one first picked up a shel rosh, he should put it down in favor of the shel yad (Shulchan Aruch, Orach Chayim 25:6). The gemara derives further that we take off the shel rosh first from, “v'hayu l'totafot bein einecha” (they shall be tefillin shel rosh between your eyes). The plural language indicates that when the tefillin are on your head, you should have two tefillin on.

Is it actually some sort of transgression to have the shel rosh on without the shel yad, or are the aforementioned just instructions of the optimal order. There certainly cannot be an absolute transgression because the mishna (ibid. 38a) says that the absence of one of the tefillin does not preclude putting on the other. If, as it sounds, the proper fulfillment of the mitzva is when the shel yad is put on before the shel rosh but either one still has value, one can understand the Taz's (OC 684:4) following claim. There is a preference to put on the shel yad first and the mitzva's full fulfillment comes only when both tefillin are on. If one puts on the shel rosh first it has value, but one should get to the state of having both on at the first opportunity. One accomplishes this, not by removing the shel rosh, which delays matters, but by putting on the shel yad immediately. The Taz's opinion is accepted as halacha (Pri Megadim, EA 25:7; R. Akiva Eiger to 25:6; Mishna Berura 25:22).

Not all agree. The Avudraham (cited by the Taz, ibid.) compares the case of one who puts the shel rosh on before the shel yad to a community that reads the Chanuka Torah reading before that of Rosh Chodesh when the two overlap. He cites a source that

regarding the tefillin one does not fulfill the mitzva because of the mistaken order and posits that the same is true for the Torah reading. Regarding Chanuka, the Rama (684:3) accepts the Avudraham's opinion. The Taz takes issue with the Avudraham, firstly because the apparently Talmudic source he cites is not found in our texts. It is possible also to accept the Avudraham/ Rama's opinion regarding Chanuka based on local considerations and not regarding tefillin (see the Biur Halacha to 25:6 in the Gra's name).

Only the Malbim (Artzot Hachayim 25:43) accepts the Avudraham regarding tefillin. He cites statements of Chazal that indicate that putting on the shel rosh first is a sin, and thus if one put on the shel rosh first, that should be disregarded. It appears (and the Avudraham likely agrees) that if one put on the tefillin in the right order and the shel yad later slipped that all would agree that one returns the shel yad to its proper position without removing the shel rosh.

It is noteworthy that many Acharonim do not follow the Shulchan Aruch's (OC 25:12) ruling to make a beracha when returning tefillin that slipped out of place. The Shelah explains that, when making the original beracha, one's intention is to have it extend until the end of tefilla regardless of such breaks. Although there is not unanimity on the matter, that seems to be the more accepted practice (Mishna Berura 25:42; Kaf Hachayim 25:77). Therefore, it is not necessary to determine if the tefillin slipped so much to break the fulfillment of the mitzva. This along with the answer to your question allows one to rectify the situation and continue tefilla without fanfare, which is generally best.

55. Loose Knots on Tzitzit

Question: I have a new talit katan (tzitzit), and the knots keep loosening up. Does this make them temporarily pasul? If I discover on Shabbat that this has happened, what should I do?

Answer: Let us begin with a brief overview of the basic idea (without the hidden messages) of the series of knots and spirals to help understand the answer to your question.

The Torah's most famous description of tzitzit refers to the string appendages to the corners of our garments as tzitzit (Bamidbar 15:38). This word, which can also refer to the hanging strands of human hair (Yechezkel 8:3), implies that there are hanging strings. The Torah elsewhere (Devarim 22:12) refers to gedilim, which implies that there is a string that is wrapped around other strings (see Mishna Berura 11:66). There is also a need for at least one knot per tzitzit. This can be derived from the latter source, which mentions tzitzit in direct proximity to shaatnez (a garment of wool and linen). This teaches us that, under the right circumstances, the mitzva of tzitzit allows one to wear a garment with woolen tzitzit on a linen garment, whereby the positive mitzva of tzitzit overrides the negative commandment against shaatnez (see Yevamot 4a). This implies that the strings must be tied on to the garment, for if they were hanging loose, there would be no issue of shaatnez (Menachot 39a).

We know that the practice is to have five double-knots with four wrappings in between them and that the gedilim include different numbers of revolutions. However, these numbers do not represent Torah law. Regarding the knot, the gemara (ibid.) says that one set of knots is from the Torah. In order for the knot to be permanent enough to count halachically, a simple single knot is not sufficiently durable. There are two versions in the gemara (ibid. 38b) regarding whether it is necessary to have knots around each gedil and different opinions among the Rishonim as to what the proper conclusion of the discussion is. The Rashba, responding to a question whether having more than the standard amount of knots violates bal tosif (adding on to the Torah), says that other than the mitzva from the Torah to have one set of knots, the rest is not

critical. Likewise, the Mishna Berura (11:65) concludes as halacha that neither the number of gedilim nor the number of sets of knots are critical.

In fact the Beit Yosef (Orach Chayim 11, accepted by the Magen Avraham 11:19) says that when one does not have enough time to tie all the knots as prescribed, one can suffice with one section of wrappings and one set of knots. His example of a pressured time is erev Shabbat, in which case one enters Shabbat with non-standard tzitzit. This is important for a couple of reasons. When one has a four-cornered garment and has some tzitzit on them that are not attached in a manner that fulfills a mitzva, wearing halachically useless strings that add nothing to the garment is “carrying” if there is no eiruv (Shulchan Aruch, Orach Chayim 13:1). Thus, we see from the Beit Yosef that even if each corner has only one proper knot, it is not a problem of tzitzit or a problem of Shabbat.

Usually what happens when a double knot opens up is that the distance between the two parts slowly increases. At some point, they are not considered a knot, neither regarding the laws of tzitzit nor regarding the laws of making or undoing knots on Shabbat. It is hard to delineated or illustrate when exactly that becomes the case. Therefore, one should be careful not to tighten the double knots on Shabbat in such a way that he might be turning a non-knot into a knot. As mentioned, he can rely on the other knots that undoubtedly still exist on each corner of the garment. The problem of knots that fall apart occurs most frequently when the tzitzit strings are quite thick.

56. When Can The Beracha on a Tallit Count for Tzitzit

Question: I am a single kohen living in Israel. I, therefore, wear my tallit only for nesi'at kapayim (duchening). When I put on my tzitzit in the morning, should I make a beracha, or should the beracha on the tallit cover the tzitzit?

Answer: First we must understand the halacha that you correctly assume that one who puts on a tallit does not make a beracha when putting on his tzitzit in the morning.

The Shulchan Aruch (Orach Chayim 8:10) says that one who puts on his tzitzit when his hands are still dirty from the night should put them on without a beracha, which he will recite later. He suggests doing so 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 that he wears for Shacharit, which also covers the smaller pair of tzitzit.

The Mishna Berura (8:24) provides different reasons for the practice to make the beracha only on the tallit and use it to cover the already worn tzitzit. He mentions the Chayei Adam's (12:4) issue not to make two interchangeable berachot in close proximity. Since one beracha can accommodate multiple tzitzit, an unnecessary second beracha would be a beracha she'eina tzricha (unneeded and thus improper). (The Chayei Adam actually prefers making the beracha on the tzitzit to cover the tallit.) The Darchei Moshe (ibid.) was bothered by the possibility that the mitzva of tzitzit will not be complete (and thereby not warrant a beracha) because often the tzitzit's garment is too small. Others point out other things that could make a beracha on the tzitzit unnecessary (e.g., the garment's shape, having had the tzitzit on all night.).

This practice does raise problems. Berachot generally should precede the mitzva's fulfillment; here the beracha comes after the mitzva of tzitzit. Rabbeinu Yonah (cited by the Beit Yosef, OC 8) says that it is sufficient that the beracha precedes part of the performance of the mitzva, in this case, the continuation of their being worn. The Taz (8:9) says that since one cannot put on the

tzitzit right away, considering that the hands were dirtied during the night, it is fine to delay the beracha.

The question is whether this system is best even if one will not put on his tallit until a significant time later, i.e., during chazarat hashatz, prior to duchening. Not only is the concern with two berachot in succession being unnecessary reduced, but the problem of waiting a long time without a beracha being made on the tzitzit also increases. Several poskim therefore say that when a long time is expected between the two, one makes a beracha first on the tzitzit and later on the tallit (see Be'er Moshe VI, 4; Tzitzit 8:(52)). Some still prefer one beracha, on the tallit, because of the lingering concern that the tzitzit do not warrant a beracha (Minchat Shlomo II, 4.1.3). This is far from clear; recall that when there is no tallit, we take our chances and make a beracha on the tzitzit. It should also depend on if the garment clearly requires tzitzit or not. On the other hand, it is hard to alter minhagim.

It is also not clear what constitutes a long break. There appear to be different opinions ranging from around an hour to two or three hours (see Minchat Shlomo, *ibid.*; Piskei Teshuvot 8:16). Therefore, when one waits between tzitzit and tallit from the time he dresses until chazarat hashatz, there is ample justification to prefer either approach on whether to make a beracha on each or make the beracha only on the tallit (if it is his own tallit or he acquires it temporarily before putting it on). One can continue as he was taught or how he has practiced until now. Either way, it is correct to have the proper intention: taking the first approach, intend not to cover the tallit with the beracha on the tzitzit; taking the second approach, have in mind with the beracha on the tallit to cover the tzitzit.

57. Tzitzit Tied By the Wearer When He Was Still a Minor

Question: When I was a katan (under bar mitzva) I made tzitzit for myself. Someone told me that they are no longer valid, now that I am fully obligated in mitzvot. Is that so? If it is, may I untie one knot and upon retying it as a gadol (above bar mitzva), fix them, or must I do something else?

Answer: The gemara (Menachot 42a) cites Rav's statement that a non-Jew may not make tzitzit for a Jew, based on the pasuk regarding tzitzit that addresses "the Sons of Israel," which excludes non-Jews. Tosafot (ad loc.) comments that this implies that women would be able to make kosher tzitzit, as only non-Jews are excluded, and this is how the Shulchan Aruch (Orach Chayim 14:1) rules. On the other hand, the gemara (Gittin 45b) learns from the p'sukim "You shall fasten ... You shall write ..." (Devarim 11:18, 20) that only those who are involved in putting on tefillin can write tefillin, mezuzot and sifrei Torah, not non-Jews, women, and children. Tosafot (ad loc.) cites Rabbeinu Tam as saying that this is part of a general rule that only those who are obligated in a mitzva can create the halachic object needed for the mitzva. Therefore, he says, tzitzit tied on to a garment by a woman, are not valid. Tosafot dispute this based on the aforementioned gemara and the one that validates a sukkah made by a non-Jew. The Rama (OC 14:1) mentions the strict opinion and recommends being careful in the first place not to have a woman make tzitzit. He says that if it was done, then b'dieved they are valid.

The Magen Avraham (14:2) suggests another reason why women should not make tzitzit: the words "the Sons of Israel" often exclude not only non-Jews but also the "daughters of Israel." The Pri Megadim (ad loc.:3) says that while, according to Rabbeinu Tam, the issue of not being obligated in the mitzva excludes minor males as well, the limitation on the daughters of Israel does not apply to minors, to whom the mitzva of tzitzit applies even if presently they are too young to be fully responsible for any mitzvot. In any case, the Magen Avraham equates between

women and children in this matter, making your tzitzit of a questionable status. The Mishna Berura says that it is proper to avoid a katan making tzitzit for a gadol (apparently only for Ashkenazim). However, he also says (Biur Halacha, ad loc.) that once the tzitzit were made when one was a katan, when he must decide if he can, as a gadol, use them, it is a question of b'dieved and he can use them as is.

In at least one way, a katan lacks what a woman possesses: the ability and reliability to do things in a kosher way. Regarding the physical element, one can check to see if it was done properly. However, what about the required kavana (intention) to act to create valid tzitzit? The gemara (Sukka 9a) says the threads of the tzitzit must be spun lishma (on behalf of the mitzva). The Rambam (Tzitzit 1:12) says that this is not a requirement for the attaching to the garment, but the Rosh says attaching must also be done lishma, and we try to follow the latter position (Shulchan Aruch, OC 14:2). Therefore, even regarding b'dieved, only if an adult was standing with the katan and training him to have in mind lishma would the tzitzit be valid (see Mishna Berura 14:4 and Biur Halacha, ad loc; see Gittin 23a). In your case, the situation is significantly better. You don't have to convince someone else that you had proper intention. Rather, if you are confident that you had in mind that the tying was being done for the mitzva of tzitzit (which is highly likely), you can continue to use them (Biur Halacha ibid.; Tzitzit (Cohen) 14:8). If you are not confident that you had the right intention or if you want to follow the opinions that are stricter than what we presented, you should undo the tzitzit fully so that the whole tzitzit will be formed properly.

58. Making a Shabbat Tallit Into a Weekday One

Question: After replacing the tallit I have used for Shabbat, may I use the old one for during the week?

Answer: We find in several contexts a concept of *ma'alnin bakodesh v'ein moridin* (=ein moridin) – one may only raise the status of a sacred object (or person) but not diminish it. The question is whether this case falls into that halacha.

The Beit Yosef (Yoreh Deah 259) cites the Mordechai who says that an object that was used in a mitzva role, e.g., a candelabrum in shul, can be switched to another mitzva use, even if the latter is of a lower level. He explains that *ein moridin* applies to *tashmishei kedusha* (objects that “serve holiness,” especially sacred scrolls), but not to *tashmishei mitzva* (objects used for mitzvot that do not include such articles). Some Acharonim (including Maharsham II:39 and Yabia Omer II, Orach Chayim 1) posit that since *tzitzit* is a classic *tashmish mitzva* (Megilla 26b), *ein moridin* does not apply to it; one just must avoid disgracing it (Shulchan Aruch, OC 21). They are aware that important sources refer to *ein moridin* regarding *tzitzit*. This is either because they represent opinions that argue with the Mordechai (see Darchei Moshe YD 259:3; the Shach YD 259:11 supports the Mordechai), because *tzitzit* is more *kadosh* than a shul’s candelabrum, or the opinions represent acts of stringency (Maharsham *ibid.*).

The Shulchan Aruch (OC 15:1) rules that one may take kosher *tzitzit* off one garment as long as he will put it on another one. Most Acharonim (including Beit Yehuda (Assad) YD 29, Mishna Berura 15:1) permit moving the *tzitzit* from a tallit gadol (what we call a tallit) to a tallit katan (what we call *tzitzit*). Those who forbid it invoke the concept of *ein moridin*, saying that based on halachic or Kabbalistic factors, a tallit is of a higher level than *tzitzit* (see discussion in Yabia Omer *ibid.*; *Tzitzit*, p. 286). The majority opinion does not dismiss the relevance of *ein moridin* but denies there is a fundamental difference between the mitzva for the two garments. On the other hand, the Magen Avraham (8:6) and the

Mishna Berura (8:9) explain the minhag of having an atara on the tallit as aiding one to keep the two front tzitzit in their more prominent position. While they cite the Ari's practice to not be careful to maintain the positions, the stringent opinion is quite accepted. Since we see that it is not always obvious to determine when a change is a prohibited diminishment, it is worthwhile to seek additional grounds for leniency.

The Taz (OC 154:7) suggests that if one has decided to stop using a holy object for its designated purpose, making it a candidate for geniza, it is better to "lower" its usage than to totally take it out of use. Thus, since it is appropriate to periodically upgrade a Shabbat tallit, it would be better to use it at least during the week. However, the Taz is not widely accepted (see Sha'ar Hatziyun 154:23). Another possible strategy is to initially stipulate the intention to eventually transfer it to weekday use. However, this idea is apparently contradicted by the fact that the gemara (Yoma 12b) does not raise it in regard to the need to retire rather than "lower" a temporary kohen gadol (see S'dei Chemed vol. V, p. 109).

Despite scant authoritative discussion of the topic, we would confidently permit one to transfer a tallit from Shabbat use to weekday use for the following reasons. It is unclear that a Shabbat tallit has more mitzva importance than a weekday one; consider that the frequency of use is halachically prominent. More fundamentally, even if a Shabbat tallit is more prominent, it is not in regard to the mitzva of tzitzit but because wearing nicer garments is a means of honoring Shabbat (Rambam 30:3). Therefore, buying a new tallit and using the old for weekdays is like buying a new suit for Shabbat and using the old one for weekdays - a practice we have never heard questioned due to ein moridin.

Thus, based on several reasons, one should have no compunction about using a former Shabbat tallit for weekdays.

59. Shul Selling a Sefer Torah

Question: May a shul sell sifrei Torah that are too heavy for an aging membership?

Answer: Generally, it is permitted to sell a holy object and use the proceeds to buy something of higher kedusha but not to buy something of lesser kedusha (Megilla 26a). The gemara (ibid. 27a) asks whether one may sell a sefer Torah in order to buy another one. (Note that a sefer Torah is the highest level of kedusha.) The gemara does not come to a conclusion, and most Rishonim assume that one should not l'chatchila make the sale if there is a choice (see Beit Yosef, Orach Chayim 153). Although the Shulchan Aruch in one place (OC 153:4) is inconclusive, in another (Yoreh Deah 270:1) it appears unequivocal: "One may not sell [a sefer Torah] even if he has many sifrei Torah (Rama- even if has barely enough to eat) and it is forbidden even to sell an old one in order to buy a new one" (see Shach, ad loc.).

However, there are likely solutions in cases where one has a sefer Torah that is not being put to good use. According to the first opinion in the Shulchan Aruch (OC 153:10) an individual may sell his sefer Torah. This is because if one owns personally (as opposed to communal ownership) a holy article, he, from the outset, reserves the right to transfer ownership elsewhere and use the proceeds as he sees fit. The source for this proposition is from the power of the zayin tovei ha'ir b'ma'amad anshei ha'ir (the public leadership with the knowledge of the public) to sell such items and use their proceeds for anything (Megilla 26b; see Nimukei Yosef, ad loc.). According to the lenient position, when the gemara said one may not sell a sefer Torah, it was referring to a case where the individual gave it over for public use, in which case he loses sole authority to sell it.

On the other hand, the Shulchan Aruch similarly cites an opinion that a private owner may not sell a sefer Torah. The pertinent question in your case is whether the strict opinion at least allows the public leadership to sell a communal sefer Torah (Eliyahu Rabba 153:22) or whether it forbids this too (Magen Avraham 153:23). The primary sources (especially, the Rivash

285, based on the Rambam, Sefer Torah 10:2) indicate that those who do not allow an individual to sell do not allow the leadership either. The source discussing leadership's power in this regard is in reference to a shul. In comparison, a sefer Torah has an advantage and a disadvantage. On the one hand, the sefer's buyer will almost inevitably be using it for the purpose of Torah (why else would one invest in a Torah scroll). A shul, on the other hand, is a building that might be used for mundane purposes. On the other hand, it is possible that since the Torah's kedusha is intrinsic and of the highest degree, it is always disrespectful to use it to procure funds (Aruch Hashulchan, OC 153:8).

There are various opinions among more recent poskim as to whether one can allow the sale of a private sefer Torah and, similarly, a public one by the leadership. Many refer to a minhag to be lenient on the matter (see Magen Avraham 153:22, Achiezer III, 79), which may be attributable to people's intention when they acquire the sefer Torah in the first place. When the Torah has mistakes in it, there is more room for leniency (Ba'er Heitev 153:19).

Under certain circumstances, there is broad agreement that one may sell. One is when there is an acute need for funds to enable one to learn Torah or to marry (Megilla 27a). Also, if one does not sell the sefer Torah but lends it to another shul, it is permitted (Rama, OC 153:11). Thus, while one should not fake lending it and get money for it (Rivash, *ibid.*) the shul in question can lend the bigger sifrei Torah to shuls with younger membership in exchange for loaned smaller sifrei Torah. If such an arrangement is unfeasible, a sale would be a possibility but one which might not be viewed favorably (see Mishna Berura 153:60).

60. Disposing of Old Netilat Yadayim Cups

Question: I have plastic cups that we had used for netilat yadayim and negel vaser but no longer need. Should I put them in geniza, just keep them, or dispose of them, and how?

Answer: The gemara (Megilla 26b) says that tashmishei mitzva (articles used to facilitate a mitzva) may be thrown away, as opposed to tashmishei kedusha (related to holy texts), which require geniza). The examples given for tashmishei mitzva are: sukka, lulav, shofar, and tzitzit.

The Tur (Orach Chayim 21) cites the Sh'iltot, that as long as tzitzit are still on the garment, they must be treated with respect and may not be used for non-mitzva purposes. Although they lack intrinsic sanctity, using them for other things while they are still slated for a mitzva is a bizuy (disgrace to the) mitzva.

Is there bizuy mitzva after one has finished using them? The Shulchan Aruch (OC 21:1) rules that tzitzit may be discarded in the garbage (although they may not be used for something disgraceful - see Mishna Berura 21:13). On the other hand, the Darchei Moshe (the Rama on the Tur) cites the Kolbo, who says that the gemara only means to exempt them from geniza, but one may not disgrace them, and the Rama (OC 21:1) says that throwing them out in a disgraceful place is included. He also cites the Maharil's more stringent practice to do geniza as a preferable but not binding practice.

The arguably different levels of tashmishei mitzva, depending primarily on the level of connection to the mitzva, apparently adds complexity. For example, the Shulchan Aruch (21:2) says that although one may not disgrace a tallit, it (the garment part) does not require geniza but may be thrown into the garbage. Unlike regarding tzitzit, the Rama agrees regarding a tallit (understanding of the Mishna Berura 21:13; see practical complexity in Living the Halachic Process, II-G-5). This is because although tzitzit are meaningless without the garment, the tzitzit are the main part of the mitzva.

A similar distinction exists regarding a sukka. The Mishna Berura (21:6; 638:24) forbids throwing s'chach into a garbage

dump or even a place where many are likely to trample them. Regarding the walls of the sukka, he cites the Pri Megadim as saying not to use them directly for something disgraceful (actually, in Mishbetzot Zahav 21:2 he is uncertain), but brings no limitations on throwing them out. Again, while walls are needed for a sukka and are set aside for its exclusive use during the chag (Shulchan Aruch, OC 638:1), the s'chach has a higher mitzva status, which may increase the care needed after the mitzva is over.

What is a netilat yadayim cup's status in this regard? Our halachic intuition is that it is similar to a tallit and the walls of a sukka rather than to tzitzit and s'chach. After all, while a utensil (or a body of water) is required for netilat yadayim before a meal, the specific qualifications are very broad and general, and one does not need a special netilat yadayim cup (see Orach Chayim 159). While the mitzva of netilat yadayim always remains, when one comes to retire a cup, it apparently can be disposed of like sukka walls.

We will now relate to different situations. Simple netilat yadayim cups that are often used for other kitchen purposes besides netilat yadayim do not assume any halachic status. It is laudable to avoid putting special cups used exclusively for the mitzva, directly in a garbage, especially with identifying elements that link it to the mitzva (see this distinction in Ginzei Hakodesh 20:(9) in the name of Rav Chaim Kaniefsky). Putting it in an opaque bag first sufficiently removes bizuy. Placing it in a recycling bin (if feasible) is a cleaner and more dignified solution (see Shevet Hakehati IV:OC 10). Geniza is certainly not required, and keeping them “around,” without disgraceful use, is fine. Cups that are used primarily for negel vaser (upon awaking), after the bathroom, or before davening should be even more lenient, as there is not a real halachic requirement to use a cup for these (see Shulchan Aruch, OC 4:7).

61. Should a Piece of the Cover of a Siddur be Put in the Geniza?

Question: When pieces of the cover or binding fall off an old siddur or sefer, can it be left on the floor or thrown away?

Answer: The baraita (quoted by the gemara, Shabbat 61b) says that if one has a Name of Hashem on the handle of a utensil, he cuts that section off the utensil and puts it in geniza (disposing of it in an honorable manner, usually through burial). This ruling, accepted by the Shulchan Aruch (Yoreh Deah 276:13), assumes that only the part that has Hashem's Name requires geniza and cannot be used, as is explicitly stated in Arachin 6a. If so, one would think that certainly the blank parts of papers that have only prayers and p'sukim without the Names written out should not require geniza.

However, there is another concept that seems to imply otherwise. The gemara (Megilla 26b) says that tashmishei kedusha (things that serve holy items, most specifically sacred texts) require geniza when one finishes using them. Even the cover of a sacred text fits this bill (see *Living the Halachic Process*, vol. II, G-6 for some parameters). Therefore, it would seem simple that the page that the words are written on should be no less than that. It is true that the Masat Binyamin (100) says the margins of books do not have kedusha and he allows printers to cut off and use extra paper from the sides of the pages. He gives several explanations: the most extreme explanation assumes that only the minimum necessary margins needed for halachic articles such as a sefer Torah and tefillin have sanctity. The Mishna Berura (334:50) accepts the premise that printers can use the parts of the pages they cut off in the process. However his justification is for cases where the seforim have not yet been used and based on the assumption that the sanctification process does not apply to the parts that are made to be cut off.

How then are we to understand the aforementioned baraita, which states that only the part of the utensil that has Hashem's Names written on it is subject to geniza? The gemara in Arachin (6a) cites the baraita in question in the context of a case in which a

non-Jew donates an object for the Beit Hamikdash with a Name of Hashem written on it. The gemara says that one can remove the Name and use the object for another purpose if the donor left its use up to the Jews who receive it. The gemara, in explaining why the rest can be used, says: “a Name, not in its place, is not holy.” Rashi has two ways of reading this gemara: 1) when the sanctity is due to a Name, the section away from the Name is not holy; 2) when a Name is put in an inappropriate place, there is no sanctity. In any case, poskim (see Shvut Yaakov I,81; Piskei Uziel 26) learn from here, among other places, that the Name of Hashem itself must be treated respectfully and not destroyed even if it were written by a non-Jew or written not for the purpose of ritual sanctity. That is a special law regarding the Names. However, in regard to the normal rules of sanctity of texts and items, there is no kedusha. That, then, is why the rest of the utensil may be used (Aruch Hashulchan, YD 276:26; Chavot Yair 16).

In contrast, regarding a properly prepared sefer, the entire sefer would receive sanctity and the margins and cover (see Birkei Yosef, Orach Chayim 154, Shiyurei Beracha 1) would be at least tashmishei kedusha. The Kevod Hasefarim (9:2) cites the same ruling from Rav Chaim Kaniefsky. (The latter is famous for giving one word answers, so we would not know if his reasoning is similar). According to some of the explanations of the lenient, aforementioned Masat Binyamin, the margins would not be sanctified, and this would presumably apply to the binding as well. It is unclear whether he would say they could be disgraced, and, if not, what should be done to prevent that. (See Living the Halachic Process vol. II, G-8) regarding religious articles that do not have sanctity but should be shown respect anyway.)

62. Displaying the Mezuzah Scroll While Unfolded

Question: In some modern, decorative, clear mezuzah cases, the klaf (parchment) is unfolded so that it can be read while attached. Is this kosher and is only a lack of hidur (best way to fulfill a mitzva), or must the klaf be rolled?

Answer: The very long-standing practice has been to roll the mezuzah klaf and put it into some sort of canister. The rolling is documented already by the gemara's (Menachot 31b) statement that the mezuzah should be rolled from the left side of the parchment to the right so that its beginning (in right-to-left Hebrew) is opened up first. These instructions are brought as halacha by the Rambam (Mezuzah 5:6) and the Shulchan Aruch (Yoreh Deah 288:14).

However, your assumption that the rolled form is at least preferred need not be evident from the classical sources. Perhaps the rolled-up version is assumed only due to such technical reasons as that it takes up less space and is better protected. Perhaps being able to read it is an advantage (see language of Rambam, Mezuzah 6:13). The venerable posek, Rav Ovadya Yosef (Yechave Da'at VIII, Yoreh Deah 30), raises this as a real possibility. Of course, it is hard for many of us (including this respondent) to diverge from tradition and ignore possible mystical implications about which we know little (perhaps including the Name of Hashem on the back of the klaf, which turns out being facing out). Remember also that despite the theoretical advantages of being able to read content of tefillin (which are closely related to mezuzot), they are certainly rolled up and hidden away.

Let us return to your question: could an unrolled mezuzah be halachically prohibited? The gemara (Menachot 34a) asks why we do not take the pasuk literally and write a mezuzah's content directly on the doorposts. If this were done, there would not be anything to roll up, which seems to prove that there is no intrinsic need to roll. However, we must consider the gemara's conclusion, which provides a source for writing on a klaf, and see whether it

impacts our question. The gemara says that we learn from another appearance in the Torah of the word writing, which is done on a normal writing surface, that the same is done for a mezuzah. The Rishonim on the page bring three possible identifications of the other writing: a get, the scroll of a sota, and a sefer Torah.

There is a very strict, lone opinion (see Noam, vol. X) that, assuming the gemara compares mezuzah to a sefer Torah, since a sefer Torah must be rolled, we learn that if a mezuzah is not rolled, one does not fulfill the Torah law of affixing it. This opinion is convincingly disposed of by Rav Yosef and others (see also Chovat Hadar (9:(9)) and Pitchei She'arim 288:94).

The major question is whether the change from tradition is in and of itself problematic. See again Rav Yosef's responsum, where he cites an opinion that this is grounds to remove such a display and re-affix the mezuzah normally (without a beracha). His own approach is that while he does not recommend it, one could allow such a display to remain. The question of changes in tradition is a major topic that cannot be properly treated in a sentence or two. However, we should note a pertinent factor. Affixing a mezuzah in this manner does not seem to be based on subversive intentions but is intended to glorify the mitzva, make it more significant to some, and/or at worst to be unique. Therefore, although we would not push the practice, we would not reject it either.

We also refer to a responsum from our book, *Living the Halachic Process* (G-2), where we pointed out that if the scroll was not yet used as a halachic mezuzah, it could be displayed in a non-halachic setting in a room where it will not be disgraced. Therefore, one has the option to use the see-through case in his living room and put a standard mezuzah case on his doorpost.

63. Protecting Sefarim but Aiding Terrorists

Question: I read a news report that ISIS has looted rare Jewish artifacts, such as old scrolls of various sefarim, to help finance their operations. Is appropriate to save the sefarim, or is it forbidden to support ISIS?

Answer: As a practical question, this hinges on many issues that are beyond our strategic-political expertise. Although one's first response is that one obviously may not do anything that would help murderers such as ISIS, that may be simplistic. Consider that one who follows that approach to its end would have to get rid of his car because ISIS is financed significantly by oil sales, and usage affects the market. Since we have no idea to what extent such ISIS Jewish artifact sales are an issue, this response is a theoretical analysis.

First we ask: is there a mitzva to save these artifacts? There are two possible mitzva reasons to "redeem" them. One is to save holy articles from disgrace. Another is to save Torah information for the Jewish people. Often, people buy such things for a personal reason – the desire to own coveted Judaica – it is hard to consider that a mitzva.

Saving holy scrolls from disgrace is recognized as something for which it is worthwhile to pay a halachic price. It is permitted to violate certain Rabbinic laws of Shabbat in order to save holy writings with enough sanctity to require geniza, whether halachic sifrei Torah, remainders thereof, or even any Torah writings (Shulchan Aruch, Orach Chayim 334:12, Mishna Berura 334:39 and Rama, OC 334:17). On the other hand, we do not find sweeping leniencies or an obligation to seek out such items to save.

The element of saving vital information comes up in the following context. The mishna (Gittin 45a) says that despite the great mitzva of pidyon shvuyim (paying ransom to free captives), the Rabbis prohibited paying more than the captive's "market value." The apparently accepted explanation is that it encourages the taking of captives. Tosafot (ad loc.) asks how it was permitted for R. Yehoshua ben Chananya to pay an exorbitant price to free a youngster who showed great Torah promise (Gittiin 58a). One of

Tosafot's answers, which the Shulchan Aruch (Yoreh Deah 252:4) accepts, is that it is permitted to pay a high price for someone with the potential to make great Torah contributions. The same logic should also apply to redeeming a valuable Torah work.

Yet, "redeeming" Torah works is apparently not included in formal pidyon shvuyim, which applies to alleviating human suffering (see Bava Batra 8b). In fact, one may sell a sefer Torah to afford pidyon shvuyim (Tosafot, ad loc.). In some ways, this may lessen the mitzva to redeem them. On the other hand, if sefarim are not within formal pidyon shvuyim, they are not within the formal Rabbinic prohibition of overpaying. Thus, if one wanted to extend the prohibition to paying any especially dangerous "seizer of Torah scrolls," we would say it formally does not apply either. The lack of a formal prohibition, though, does not mean that one should not use common moral sense.

Often, the price people are willing to pay for valuable Judaica has little to do with its practical importance for Torah information, but due to its historical, sentimental, or even artistic value. In the case of a terrorist organization, it seems inexcusable to pay even the "going rate" for them if it means helping an "organization" like ISIS, which perpetrates atrocities.

Let us put things in perspective. Sometimes the Rabbis forbade commerce which may be used to further sinful activity (see Avoda Zara 2a). On the other hand, the Rabbis were careful not to forbid more than society is able to handle, and there is a limit to how many things we can boycott (remember the comment about cars). In a case as stark as the one you raised, the spirit of the law suffices to preclude buying even important holy objects in a manner where there is a rational fear that it would put people in mortal danger. Only in exceptional cases might one contemplate that the cost-benefit comparison makes redemption moral.

KIBBUD AV V'EIM HONORING PARENTS

64. Listening to Parents Regarding Choosing a Spouse

Question: Must a Child Obey if Parents Disapprove of His Choice of a Spouse?

Answer: The basic answer to the question is that he or she need not obey, as the Rama (Yoreh Deah 240:25) rules, based on the Maharik (166), and later poskim accept apparently unanimously. We will see the Maharik's reasons and briefly consider if there are exceptions to the rule. If an actual case tragically arises, one should ask according to all the particulars.

The Maharik has three main reasons: 1) If a child does not have to give up his money for kibud av va'em (honoring his parents), he certainly does not have to accept the mental anguish pain of parting from the woman he wants to marry. 2) A parent may not tell his child to violate even a rabbinic prohibition. Since one may not marry a woman we have reason to fear he will not love (Kiddushin 41a), they cannot make him give up the woman he loves and possibly marry one he will resent. 3) The sacrifices one must make for his parents relate to things to benefit his parents, not things his parents want him to do for his welfare. The Aruch Hashulchan (YD 240:45) says that there is a general matter that a parent cannot force a child to perform a mitzva other than the way he sees fit. Most poskim seem to think that all of the reasons are valid individually, although it is difficult to determine that conclusively. This is an important point because in some cases, some reasons apply but not all of them. We do find different opinions in some of those cases.

A minority opinion holds that a daughter has to obey her parents' refusal of her choice of a husband, based on the (questionable) assumption that she does not have a mitzva to get married. However, the great majority of poskim reject this opinion (see Noda B'Yehuda II, EH 46; Yabia Omer VIII, YD 22). A more serious issue is when the parents not only disagree with the choice, but it will cause them disgrace. The Netziv (Meishiv Davar II, 50) says that this does impact them directly and that the disgrace

overshadows the other considerations. The Tzitz Eliezer (XV, 34) asks from the fact that the Maharik discussed a woman about whom there were serious, publicly known questions of morality. He says that the Netziv's distinction applies only in the case where the disgrace is recognized by Chazal or classical sources. Otherwise, the parents should try to make their viewpoint conform to their child's choice, not vice versa. For example, parents' bigotry toward a certain type of fine Jew should not be rewarded by being considered an objective disgrace.

The Divrei Yatziv (EH 3) cites the Netivot Lashevet who says that if the choice of spouse will curtail the child's ability to perform kibud av va'em (e.g., he will have to move away), then it affects the parents, and they can object. The former disagrees because the Maharik's other reasons still apply. It seems, though, that those reasons apply only when a decision to marry has been or is almost made. However, if one is considering a "shidduch" idea (before there is an emotional connection) which will negatively impact his or her parents, their feelings or interests should be considered. This is not an absolute rule, as one should consider the child's range of dating partners, age and dating history, and whether this is an unusually promising idea.

We would also urge a child, who hopefully values his relationship with his parents, to not only be right but be smart and look at the "fifth Shulchan Aruch," the ability to apply halacha wisely. Parents are very often right and when they try to protect their child from a horrible mistake, the child should not only consider their motive but also the possibility that parents have picked up on what he overlooked due to the excitement of the relationship. He or she would do well to discuss the matter with a wise advisor. That being said, the same reservations apply to the parents, who may make the moral or tactical mistake of their lives by getting improperly involved.

65. Standing for Parents in Our Times

Question: Most people do not stand up when their parents enter the room. Is this due to the opinion that it is enough to stand for them once in the morning and at night?

Answer: We believe in the great significance of upstanding Jews' common practices and in looking for halachic justification for them. However, there has to be a good fit between sources/logic and the practices.

The gemara (Kiddushin 31b) gives examples of kibbud (honoring) for parents and of mora (awe). While standing is not on either list, it is evident from gemarot that it is expected (see Beit Yosef, Yoreh Deah 240). This is logical considering the mitzva from the Torah (Yayikra 19:32) to stand before old people and scholars (Kiddushin 32b).

R. Yannai (ibid. 33b) says that a talmid chacham is not permitted to stand for his rebbe more than once in the morning and in the evening to avoid giving to him more honor than to Hashem. The Rif does not cite this ruling, and the Rosh (Kiddushin 1:56) explains (and agrees) that the gemara's subsequent discussion indicates that his idea is rejected. The Rambam (Talmud Torah 6:8) does accept R. Yannai. The Shulchan Aruch (and, therefore, Sephardim- see Yalkut Yosef, Kibbud Av 4:8) rules like the Rif/Rosh.

The Rama (YD 242:16) accepts R. Yannai, but not according to its simple reading; one is not obligated more than twice a day, but he may do more (see Darchei Moshe YD 242:11; Semag, Aseh 13). Most Acharonim (see Chayei Adam 67:7; Shevet Halevi II:111; Yalkut Yosef ibid.) assume that the exemption applies to parents also. The Aruch Hashulchan (YD 240:24) suggests that the obligation to stand for one's parent may exceed that toward his rebbe. (I believe, but cannot develop here, that according to the Rambam's presentation of the case in which it is not permitted to stand more than twice a day, it does not apply to parents. Also note that the Rama rules that when one is among people who did not see him stand previously, he must stand again.)

ASK THE RABBI I

It is difficult to demonstrate how the Rama's opinion would justify the common practice of laxity about standing up for parents. After all, do people think about whether they already stood for their parent that day? The Rama can still help, depending on the following chakira about his opinion. Must one stand at the first opportunity of the day, after which there is an exemption, or should there just be a mode of behavior in which he is expected to stand roughly once in the morning and once at night? This might depend on if standing is part of the positive kibbud, making the exact timing less crucial, or the more negative mora, in which case without an exemption, remaining seated is an aveira (Yalkut Yosef ibid. is unsure to which category it applies). This, of course, helps only if the child stands with some regularity, which is not always be the case.

Another minimizing opinion found in the Aruch Hashulchan (ibid.) is that standing only applies when a parent comes in from outside the house, not when he moves from place to place in the home.

The most plausible explanation for the practice of laxity is the idea that a parent can be mochel (waive rights to) kibbud (Kiddushin 32a). (Regarding being mochel on requirements of mora, see Living the Halachic Process III, G-4.) In our times, parents do not usually expect their children to stand up in their honor and often do not find it to even be positive. If that is the case in a specific household, then the child is indeed not required to stand.

Let us clarify a few things. Even after their mechila, it is a mitzva to stand for parents (Pitchei Teshuva, YD 240:16). Some say that one has to make some gesture of respectful acknowledgement (see Kiddushin 32b). If the reason parents are mochel starts from the children (i.e., the parents are so used to their not standing that they no longer demand or expect), this is not a good thing. Therefore, it is, in most cases, better for children (of all ages) who try to do things properly to stand for their parents more than is presently common.

DEATH AND MOURNING

66. Performing an Autopsy

Question: Please give me Talmudic and halachic sources on autopsy along with your opinion.

Answer: There is more literature on the topic and more variations of cases than we can deal with in this forum. For further source material and background, see Encyclopedia Hilchatit Refu'it (Steinberg) on Nituach Hamet.

A few Talmudic sources indicate that it is generally forbidden to perform autopsies yet may leave the door open for some forms of investigating the deceased's body in certain cases. The gemara (Bava Batra 154a-b) discusses an adolescent who sold inherited property and died, and a dispute arose as to whether he had the physical signs of maturity necessary to make the sale binding. The gemara says that the body check is nivul (degrading) and his relatives were forbidden to carry it out, but it might be justified for the buyers, whose purchase was challenged, to have it done. The gemara (Chulin 11b) in discussing whether we can rely on probabilities, discusses the fact that we kill a murderer even though it is conceivable that the victim previously was a treifa (had a mortal physical flaw). The gemara suggests that we would be able to check the corpse to save the murderer despite the nivul involved. A final source is a gemara in Arachin (7a) that when a woman dies in advanced labor, a post-mortem cesarean may be done to extract the baby.

Besides the problem of nivul, there are also Torah-level issues of pushing off burial or not burying (parts of) the body, but we leave those issues to other forums. (See Rav Yisraeli's thoughts in Amud Hay'mini, siman 34).

Almost all agree that an autopsy may be performed if needed for pikuach nefesh (to save a life). However, it is questionable what constitutes pikuach nefesh, something that both poskim and the general medical ethics community have debated. The first responsum on the topic, the Noda B'Yehuda (II, Yoreh Deah 210), deals with doing an autopsy to learn from possible mistakes made during an operation to prevent their repeat in the future. He says that this is permitted if there is a sick person before us who can

benefit from the information. A general hope that the information might someday be useful is insufficient. The Chazon Ish (Yoreh Deah 208:7) stresses the element of the chances the information will save lives in the short-term, as if one considers any theoretical future need as pikuach nefesh, countless perceived needs would regularly push off Shabbat.

Other justifications of autopsies are controversial from a fundamental perspective. The aforementioned gemara in Bava Batra implies that one can cause some level of nivul in order to safeguard the monetary rights of non-relatives of the deceased. The Tzitz Eliezer (XIV, 83) uses this idea to allow a hospital that lent a costly pacemaker to a patient to posthumously cut his skin and remove it. However, this would be possible only because the deceased may have had an unfulfilled obligation (Binyan Tziyon 170). It may also be crucial if the deceased agreed in his lifetime to allow himself to be disgraced after death for a certain reason (ibid.). Consequently some rule that if the deceased acquired life insurance that will be paid only if an autopsy is performed, this can be done (see discussion in Encyclopedia Hilchatit Refu'it (Hebrew) vol. V, p. 623). Finding information for criminal investigations is another issue which is not clear-cut and depends on the case's particulars (see ibid. p. 629)

We have not discussed all the issues or given clear practical guidelines. The general rule is that religious Jews do not allow autopsies and when a specific issue arises, "rabbis with broad shoulders" should be consulted. We do not want this abbreviated survey to change that reality.

67. A Mourner Davening at a Regular Minyan in the Same Building

Question: If one is sitting shiva in his apartment and there is a minyan in the building's miklat (bomb shelter), is it acceptable for the avel (mourner) to go down to the minyan if it is not easy to gather a minyan in his apartment?

Answer: Two issues come into play in this case: the positive element of a minyan taking place in the shiva house, and the problem of an avel leaving his house. We will deal with one at a time.

The Rama (Yoreh Deah 384:3) says that the deceased has nachat ruach (a spiritual good feeling) when people daven in the place he died. Therefore, if the shiva house is where the deceased died, significant efforts should certainly be made to hold a minyan there. There is a difference of opinion whether davening in a shiva house in his honor causes nachat ruach when he did not die there (see Divrei Sofrim 384:25). This element would not seem to exist if the minyan was held in a different area of the building. The Har Hacarmel (Yoreh Deah 20) gives two other reasons why it is good to daven in a shiva house. 1) Often an avel says Kaddish for the deceased (i.e. for a parent), and so it is better that he has a place to do so without conflicting with other mourners. He says that the minhag was accepted across the board, even when the avel does not say Kaddish. 2) It is forbidden for the avel to leave the house and, therefore, the minyan enables him to not miss his mitzvot. Let us, then, see if this problem of leaving the house applies within the same building.

The Shulchan Aruch (YD 393:2, based on Mo'ed Katan 23b) rules that an avel should not leave his house during shiva. The Terumat Hadeshen (I, 290) explains that this is to keep his mind on mourning, which is compromised when one leaves and interacts with others. The Terumat Hadeshen, based on this reasoning, allows one who has a need to do so, to go from the shiva house to a nearby house at night, when there is little activity on the streets.

Poskim considered the relative gain and loss of allowing an avel who does not have a minyan in the shiva house to go to shul. The Magen Avraham (694:8) implies that if it is just to take part in a minyan, the mourner should stay at home. One should note that the Terumat Hadeshen assumed that davening in shul is worse than walking home at night because in shul there is likely to be interaction with others. This is different from people gathering in the shiva house, where the focus is on the shiva. The Eliyah Rabba (132:4), though, says that if the mourner is a son who wants to say Kaddish for the deceased, he should go to shul; many accept this opinion (see P'nei Baruch 21:(16)). The Chochmat Adam (Matzevet Moshe 8) went further, saying that it is logical that any avel who would be missing the davening with a minyan may go. Although he seemed reluctant to rule against the Magen Avraham, he said that if the shul is in the same courtyard, so that he does not have to pass through the public domain, all agree he should go. A minyan in the avel's building's miklat is no worse than that permitted scenario. This opinion seems to be accepted by later poskim (see Pitchei Teshuva 393:2; Divrei Sofrim 393:42).

However, the permission to go to the nearby minyan does not justify not making an effort to have a minyan in the shiva apartment, as those who are lenient discuss cases where the minyan not being held is a fact. Therefore, even without going outside or meeting anyone on the street, the proper thing is that the mourner takes part in a minyan that is special for the shiva for his deceased. Since different levels of difficulty and other factors impact on a possible case in a manner that we cannot anticipate, it is hard for us to give an absolute ruling. However, either for the positive reasons of nachat ruach or negative reasons of leaving the house, a minyan in the shiva house should be strongly pursued over having him participate in the miklat minyan.

CHARITY

68. Ma'aser From Net Gains

Question: If one buys a home for \$100,000 and sells it 25 years later for \$250,000, should he pay ma'aser kesafim on the net gain of \$150,000 or can he subtract from the net gain for inflation, mortgage payments, improvements, or other matters?

Answer: Few classical sources discuss this common matter these days. This can be explained by changes in economics. Our point of departure is that the sale of a home obligates one in ma'aser on the net gain, as Igrot Moshe, Yoreh Deah II, 114 assumes. However, some of the technicalities in arriving at the real net gain make it almost impossible to arrive at an exact figure.

Rav M. Feinstein (ibid.) deals with halacha's outlook on inflation's erosion of a currency's value. There are complicated reasons that despite inflation, one who borrows \$1,000 returns \$1,000, and if he gives more, he violates the prohibition of ribbit. Regarding ma'aser kesafim, though, he said to adjust the price for inflation to determine the real gain. However, he felt that the government's publicized Consumer Price Index (or madad) is not correct for our context; rather, we should consider only basic, not luxury items. In practice, the CPI may still be the most realistic tool people have access to.

Regarding a mortgage, it does indeed raise the expense of buying the home. However, a major component of that cost is due to the inflation component of the mortgage. Thus, if one took off for 25 years of inflation, he cannot also take off the full added payments of the mortgage. Presenting a mathematical system to deal with this is not practical in this forum.

Certain taxes, home improvements and upkeep that are needed to maintain or raise the house's resale value may also be deducted. However, much work done in a home over 25 years is more related to quality of life during those years than to the home's resale and may not be deducted.

One could claim that the practice of ma'aser is not geared for the purchase and eventual sale of residential real estate, assuming the funds used to buy it were "after ma'aser." When Chazal extended (by their understanding of p'sukim or rabbinic

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decree or advice) the concept of ma'aser from agricultural produce to include other earnings, they addressed primarily business dealings (see Tosafot, Ta'anit 9a). When one buys \$1,000 of merchandise to sell it shortly for \$1,500 that is commercial activity to create earnings and is obligated in ma'aser. When one uses earnings from which ma'aser was taken to buy a home to live in that is a matter of consumption not commerce, and he need not give further ma'aser if its price goes up. The question is whether selling it creates a new obligation. One could distinguish between one who bought real estate in order to sell at a profit and one who sells because he needs to change his home for some reason. The case to exempt is strongest when one needs all the proceeds to buy a new home. If two people swap homes, intuition dictates that neither would have to pay for the previous appreciation. It is not clear that is different from a case when one receives money but does so to enable him to pay for a new home.

The prevalent position (see, for example, She'eilat Ya'avetz I, 6) is that calculating ma'aser kesafim is only a proper minhag, not an outright obligation. This justifies being lenient regarding calculations and machlokot, especially if that was one's stated intention when starting the practice. However, ma'aser kesafim is not a simple custom. Rather, it is the recommended, average level of fulfilling the mitzva of tzedakah (see Shulchan Aruch, YD 249:1). One should always want to give tzedakah generously. Cash flow issues often make it difficult, and the sale of a home may give one the opportunity to do so. It may also be a time that one realizes that his home purchase decades before was Divinely blessed and a good time to give significant contributions to those in need. Thus, the question of whether there is a formal obligation of ma'aser, which is anyway hard to calculate, is almost moot.

69. Paying a Poor Person's Guaranteed Loan from Ma'aser Money

Question: My shul has a gemach, which gives loans only with an arev (guarantor). One borrower (Reuven) came into serious financial and medical problems some time after the loan. Realizing that he was not going to be able to pay, some friends decided to pay the loan for him, and they want to use for this purpose their ma'aser kesafim money (a personal tzedaka fund, consisting of a tenth of one's income). The question arose: since the arev (Shimon) will have to pay, given that the borrower cannot, and the arev is not poor, the donors are actually not sparing the poor but the "rich," and therefore can ma'aser money be used?

Answer: This is a case where halachic intuition screams from the outset that it must be permitted to use ma'aser money, as the money is being given with the intention to help Reuven. We now aim to provide specific reasons why the intuition is indeed correct.

We begin with a simple halacha. After a guarantor has, based on the agreed terms, paid the loan back instead of the borrower, the borrower is required to reimburse him (Shulchan Aruch, Choshen Mishpat 130:1). This halacha impacts on our question in two ways. First, on the practical level, the donors are extricating Reuven from debt, whether you view it as the present debt to the gemach, or the future one to the arev.

Perhaps more significantly, the above and other halachot are instructive in understanding the nature of the mutual obligations when a borrower is unable to pay and an arev is called on to do so. It is not that the arev turns into the borrower, as the borrower remains obligated. Therefore, if the donors pay, they will be paying and relieving Reuven's debt. The fact that practically this will benefit Shimon greatly does not cancel the tzedaka toward Reuven.

Under certain circumstances, there are additional reasons. Let's assume Shimon took the responsibility as a chesed (not for some personal gain) and planned that if Reuven would be unable to pay, he would count his payment of the loan as tzedaka/ma'aser, as he may (see Tzedaka U'mishpat 5:(50)). If so, if the new donors

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relieve Shimon of paying, they are saving money for Shimon's ma'aser fund, which is in effect a donation to it. While we usually thinking of giving our ma'aser kesafim to poor individuals or official NPOs, one can give (or, as in the case, give, in effect) his ma'aser money to someone else's ma'aser fund. Thus, even if one views it (incorrectly, in our opinion, as above) as giving money on behalf of Shimon, it could still be considered giving it to his ma'aser fund.

Another way of looking at the donation as a valid use of ma'aser is to simply look at the donors' actions as replacing the existing guarantor. While one could claim that this was an unnecessary gesture, as Shimon does not need to be replaced, in the final analysis, the donors are paying for Reuven, as Shimon had been prepared to do. So if, as we posited, Shimon could consider his payment as a legitimate tzedaka outlay (even though he originally hoped not to), certainly the new donors, who are acting in at least as altruistic a manner as Shimon, can consider it as such.

Finally, it may be possible to give the money as a donation to the shul's gemach, as they are actually giving it, just doing so on condition that the gemach will let their friend "off the hook." This is not far-fetched. After all, the gemach is not interested, despite the requirement of an arev, in forcing payment from one with extreme difficulty paying. Rather, they are concerned that if they let people off too lightly, they will lose the ability to continue lending to others in the future. The new donors are assuring the gemach that they can forgive Reuven because the donors are replenishing their resources commensurately.

Thus, we have been able to find five constructs to support the intuitive conviction that the donors' philanthropy should be considered a proper use of tzedaka funds. However, we would point out that the first two constructs are the most straightforward truths.

KASHRUT

70. Kashrut of an Animal Fed Meat and Milk

Question: I have heard that veal comes from calves that are fed a mixture of milk and meat. Shouldn't that make it forbidden, as an animal whose sustenance comes from non-kosher food (see Rama, Yoreh Deah 60:1)? This case is particularly severe, because the feed is assur b'hana'ah (forbidden in benefit)!

Answer: We will start with your assumption that the feed is fully forbidden as basar b'chalav, the combination of milk and meat. The halachic ramifications are very complicated, and we will but summarize them.

Generally, when a forbidden food undergoes a major change so that it reappears in a totally different form, the new food is permitted. Thus, for one of many examples, a bird born from the egg of a treifa bird is permitted (Temura 31a). Nevertheless, we must contend with the following source. The mishna brings an opinion that if a kosher animal drank the non-kosher animal's milk, it should not be used for a korban. The gemara (ibid.) says that it refers to a case where it drank milk in a manner that would sustain it all day. Tosafot surmises that similarly if an animal was sustained consistently on grains of avoda zara, it would be forbidden, apparently even for regular eating (not only as a korban).

Despite an apparent abundance of sources permitting such a case (see Pri Chadash, Yoreh Deah 60:5; Igrot Moshe, YD I, 147), the Rama (YD 60:1) rules like Tosafot's stringency regarding animals that have consistently been fed non-kosher feed. The Shach (ad loc.:5) and others argue on two major grounds. First, Tosafot was explaining an opinion that is not even accepted as halacha. Secondly, Tosafot's suggestion is regarding feed of avoda zara, which is assur b'hana'ah (forbidden in benefit), whereas the Rama forbade it even when it consumed foods that are forbidden to be eaten but permitted to be benefitted from.

The second point suggests a distinction whereby more opinions can accept the stringency regarding issurei hana'ah. This raised a lot of discussion regarding milk on Pesach from animals that were fed chametz on Pesach. We can address this matter only

superficially in this forum. A major principle indicating leniency is the acceptance of the opinion (Avoda Zara 49a) that *zeh v'zeh goreim, mutar* (=zvzgm), In other words, when something is the product of two or more physical factors, some of which are permitted and some forbidden, the resulting object is permitted. Here, the milk is a result of the chametz but also other feed and/or the animal's body, and thus it should be permitted. One question, though, is whether the major dependency on chametz, especially over time, makes the animal and its milk some type of continuation of the chametz (along the lines of the Rama). There is also an issue regarding chametz, where the rules of bitul (nullification) do not apply, so zvzgm might not either (see Magen Avraham 445:5). Oversimplifying the matter, the Mishna Berura (448:33) is equivocal and Rav Moshe Feinstein ruled leniently (Igrot Moshe, *ibid.*).

Important to us in Rav Feinstein's thesis is that he rejects not only the Rama but also the Shach's distinction. He says that the use of a by-product of an *issur hana'ah* that is now gone (i.e., the animal feed) is far too indirect to be considered benefiting from the original item. The prohibition could only be based on seeing the milk as an extension of the original object, which is a fringe opinion that we do not accept.

Instead of citing all the various opinions and applying them to the similar but slightly more lenient case of *basar b'chalav*, we will obviate the issue by sharing our assumption, corroborated by an OU webpage. Even regarding the calf feed that is a mixture of milk and meat (not all are), the milk and meat are not cooked together. That feed thus is forbidden only rabbinically and it is permitted to be benefited from (Shulchan Aruch, YD 87:1). It is hard to imagine that even according to the Rama, a rabbinic prohibition (whose nature is procedural to require a person to refrain from eating, rather than saying the object is intrinsically forbidden- see Chelkat Yoav II, 20) would extend on to a transformed by-product.

71. Switching Status of Corelle Dishes

Question: I have a full set of Corelle dishes that I used to use for dairy, but I haven't used them at all in 10 years. May I use them for meat now?

Answer: We can confidently permit you to convert the dishes from dairy use to meat use because of a combination of factors. It is worthwhile to be exposed to the factors because they arise in other situations, many of which are less clear-cut. We caution that each of the factors is the subject of differing positions among poskim and different practices in different communities. One should ask his local rabbi as questions arise. He can best inquire, consider various halachic factors and the level of need, and apply the local customs.

There are two issues to deal with. The first is whether Corelle dishes require hechsher (kashering, the halachically mandated purging of taste, absorbed in a utensil's walls) and, if so, whether hechsher works. Most materials that absorbed problematic taste can have it removed by hagala, which is immersing them in boiling hot water for a few seconds. However, this system does not work for earthenware utensils (Pesachim 30b). The Rishonim dispute the status of glass. On one hand, it is made out of sand, which is a type of earth. On the other hand, it is hard and smooth, which some feel indicates that is less porous than other materials. The Shulchan Aruch (Orach Chayim 451:26) says that glass does not require hechsher, and this is the practice of Sephardim. However, Ashkenazim follow the Rama (ad loc.), who takes the opposite extreme, ruling that hechsher does not work for it.

However, many poskim limit the Rama's stringency regarding glass to Pesach, whose laws are particularly stringent, whereas in regard to treif and dairy and meat one may be lenient (see Tevillat Keilim (Cohen) 13:(38)). Although some allow switching glass dishes from dairy to meat or vice versa without hechsher, we suggest doing hagala when possible. (Corelle will not shatter in the hot water.) Again, different rabbis and communities have different policies on this matter.

Assuming hechsher is needed, there is usually another problem. The Magen Avraham (509:11) reports a minhag not to allow kashering utensils between dairy and meat use. The rationale is that if we allow one to kasher freely, he may decide to have only one set of utensils that he uses for both. Chazal opposed this situation, as we see from the gemara (Chulin 8b) that states that one should have three different knives to use for different functions. This minhag is widely accepted and considered binding in Ashkenazic communities.

We understandably find many instances in which poskim claimed that one need not extend the custom of not switching utensils from milk to meat to more cases than necessary. One of the suggestions is particularly pertinent here. After sitting unused for 12 months, the taste absorbed in a utensil's walls is expected to dissipate or even disappear (see Noda B'Yehuda II, YD 51). Therefore, we find in certain circumstances and according to certain opinions, leniency regarding such cases. It is possible that after twelve months without use, one can kasher and switch milk utensils to meat use (see Igrot Moshe, Yoreh Deah I, 43). Even if one does not want to accept this leniency, in a case of Corelle dishes, which may not have absorbed in the first place, the grounds to allow the switch are extremely strong. A further point of leniency is that plates, upon which hot food is placed only after it has been removed from the heat source, has less chance of absorbing (see Igrot Moshe, YD II, 46).

Therefore, under the circumstances you describe, you should feel free to switch the use of the Corelle dishes from milk to meat, preferably after performing hagala. We encourage you to seek the advice of a local rabbi if similar circumstances arise so that he can properly apply the principles we just touched upon to the specifics of those cases.

72. Length of Time for Hagala

Question: I have seen books that describe the process of hagala (putting a treif utensil into boiling water to remove the absorbed material) but have not seen a discussion as to how long one has to leave the utensil in. This seems strange especially in regard to treif material that was absorbed over a long period of time.

Answer: The poskim do not give an exact amount of time for hagala; it seems to be a matter of several seconds (see Mishna Berura 452:4). Actually, the Shulchan Aruch (Orach Chayim 452:1) even alludes to the opinion that one should preferably not leave the utensil in for too long (to avoid the situation where the expelled particles return to the utensil). It is hard to argue with the scientific intuition behind your assumption that the more something absorbs, the longer it takes to remove everything that is inside. The Taz (OC 251:23) seems to agree with this idea.

The explanation of the halachic phenomenon appears to be along the following lines, which we will be able to develop only slightly in this forum. Some of the laws of the Torah are purely ritual in nature, and we should not expect them to be based on scientific distinctions or depend too much on specific circumstances. For example, even if there is a correlation between a species of birds being predators and their being not kosher, we would not say that a violent chicken would be treif or a kind vulture would be kosher (Chulin 59a). However, regarding something like kashering a utensil to remove the absorbed tarfut, we might expect that we should be interested in whether we are confident that we were able to remove the requisite amount of absorption.

It can be demonstrated that when the Torah gives instructions as to how to perform kashering (Bamidbar 31:23), its intention was that if the rules are followed, one does not have to be concerned with the possibility that not everything was removed. Halacha says one may assume it, and that suffices. This is the flip-side of a stringent non-scientific assumption regarding absorption. When a utensil was exposed to a food that fit into a category of heat where there is liable to be absorption, we halachically treat the utensil as

if it became totally saturated with the substance that it touched. This stringent assumption applies even if the contact was for but a matter of a few seconds. (There is a machloket whether there is some minimum time beneath which there is not absorption- see Pitchei Teshuva, Yoreh Deah 105:8).

It is true that there are sub-rules that are specific to the circumstances. For example, if something absorbed while on the fire, it must be removed while on the fire. If it absorbed with a lesser type of heat, the requirements of kashering are easier. However, the requirement for boiling water does not mean one has to reach the same level of heat as he had during absorption (i.e., even though boiling points vary according to altitudes and depend on what type of liquid is involved, kashering does not differ as a result.)

When we do make distinctions, it is often based on categories of distinctions that the Torah alludes to. For example, we distinguish between the absorption and the ability to kasher utensils made of different materials. Metals are assumed to absorb and release particles normally. On the other hand, pottery is assumed to absorb a lot in a manner that normal hagala will not remove all that it needs to (see Pesachim 30b). The commentaries find the source for the distinction in the Torah itself (see Rashi, ad loc.). Subsequently, authorities discussed other materials such as glass to see which category to attribute it to according to various characteristics (see Shulchan Aruch and Rama, OC 451:26).

Regarding the matter of time, once the requisite conditions for hagala are reached, it does not matter how many times or for how long tarfut or chametz was previously used or for how long we performed hagala regardless of scientific indications.

73. Cooking Parve Food in Fleishig Crock Pot

Question: I like to cook foods inside cooking bags in my fleishig crock pot. May I cook pareve food in water in the crock pot or perhaps even when fleishig food is cooking in the crock pot and still consider the food pareve?

Answer: The answer assumes that the cooking bag is reliable enough to prevent noticeable seepage of liquid into the bag (see Shulchan Aruch, Yoreh Deah 95:2, regarding an egg shell, which is too porous to be considered a separation). If one cannot ensure this situation, the discussion below is academic. We thus will treat the bag as a pot within a pot.

Let us start with the case where you simultaneously cook fleishig and pareve together, separated by the “walls” of the cooking bag. In this case, the bag turns into a fleishig utensil. (Had the bag contained milchig food, then first level taste of milchig and fleishig would have joined together in the walls of the pot to become the forbidden substance of basar b’chalav [see Shulchan Aruch, YD 92:5].) There is a most far-reaching machloket between Ashkenazi and Sephardi p’sak regarding pareve food cooked in a fleishig pot. The Shulchan Aruch (YD 95:2, accepted as usual by Sephardim) says that the pareve food remains pareve because the fleishig taste is twice removed from its source (nat bar nat), once by entering the pot and again when leaving it to enter the pareve food. However, there is a significant machloket among Acharonim if that leniency applies if the fleishig source is still entering the pot from the outside at the time the pareve food is cooking inside. Some consider it that taste enters the other food directly (see opinions in Pitchei Teshuva 95:1; Yad Yehuda 95:1; Badei Hashulchan 95:7).

For Ashkenazim, the matter is quite straightforward. Even pareve food that has absorbed only nat bar nat taste may not be eaten together with milchig food (Rama, YD 95:3). Certainly then, one cannot eat the formally pareve food cooking on the other side of the bag with milchig, as it must be assumed to have absorbed fleishig taste from the food cooking in the crock pot. See below regarding other halachot for nat bar nat food.

A more pertinent question is if only water or pareve food was cooking at the time in the crock pot. Here, even the food in the crock pot is only nat bar nat of fleishig. Even though Ashkenazim are stringent regarding nat bar nat, there is reason to believe that they would not go as far as to forbid the food on the inside of the bag. After all, the Rama (YD 95:2) says that not only may one eat nat bar nat fleishig food that was already mixed into milk but one may put nat bar nat food into the opposite type utensil. (See commentaries regarding the problem of pouring hot food directly from a fleishig to a milchig utensil.) On the other hand, several Acharonim say that one should not set up a nat bar nat situation on purpose. For example, according to one opinion, one may not cook in a fleishig pot food that he is planning to serve on a milchig utensil (Pri Megadim, MZ 95:5; see Badei Hashulchan 95:30; Rav M. Feinstein (Igrot Moshe, III, 10) says one may be lenient for even a small need). That being said, if the crock pot was not used in 24 hours for fleishig food, there is further reason to be lenient. Compared to the Pri Megadim's case, our's has an element of additional leniency but also of further stringency. On the one hand, he is not putting the nat bar nat in a milchig utensil but in a pareve one. On the other hand, he is cooking the nat bar nat food at the same time with the pareve, which we saw may be more stringent. Let us summarize by saying that one should not certainly not cook pareve food in a cooking bag along with fleishig food in the same crock pot, at the very least for Ashkenazim. Regarding cooking the pareve along with a pareve base in a fleishig pot, it is hard to forbid the practice, but one who wants to be careful might try to avoid doing so when possible if he plans to eat the pareve with milchig.

74. Making Food in Fleishig Pot to Transfer into Other Utensils

Question: Sometimes I want to make a big pareve vegetable soup in a meat pot (my largest) and later put some of it in milchig or pareve pots or bowls. Is this permissible?

Answer: Questions of nat bar nat (twice removed taste, i.e., food into pot and then pot into food) are often complex due to the multiple permutations of l’chatchila (proper action) and b’dieved (after the fact). Let us proceed from rules to details.

Amoraim dispute whether pareve food that was placed while hot on a fleishig utensil can be eaten with milk, and we rule leniently (Chulin 111a). Therefore, the Shulchan Aruch (Yoreh Deah 95:1) rules that one may mix pareve food cooked in a fleishig pot (nat bar nat of fleishig) into milchig food. However, the Rama (whom Ashkenazim follow) rules that cooking food in a fleishig pot is more severe than simply placing hot food in a utensil. He says that in the former case, the originally pareve food may not be mixed in with milchig food (ad loc. 2).

However, the Rama incorporates a few leniencies. If the food cooked in the fleishig pot was subsequently mixed into milchig food, it may be eaten, b’dieved. Also, the pareve food may l’chatchila be placed hot into a milchig utensil without affecting the status of the pot or the food (ibid.). Thus, the soup you describe may be placed in a milchig pot or bowl.

However, there is a complicating factor – a further level of l’chatchila. The Beit Yosef cites several Rishonim who say that one may not set up l’chatchila a situation of nat bar nat. While his final opinion is unclear, most prominent Sephardi poskim (see Kaf Hachayaim, YD 95:1) say that one should not put hot pareve food in a fleishig pot if he intends to subsequently mix it in with milchig. The question is whether there are other cases where a food would be treated as pareve, b’dieved, but should not be “created” in that way.

One case in point is when a fleishig pot has not been used for fleishig within the 24 hours before the pareve use. The Rama says

that in such a case, the resulting food is pareve enough to mix in with milchig. The Gra (95:10) says that in such a case it is even permitted to l'chatchila cook the pareve in that fleishig pot with intention to mix it in with milchig. However, the Chochmat Adam (48:2) says that one should not cook it in the fleishig pot with that intention, and this is the more accepted position.

Regarding your first specific question, making the soup in a fleishig pot with intention to put it into a milchig pot, there is a machloket among the Acharonim. Among the earlier authorities, the Bach allows it, and the Pri Megadim (Mishbetzot Zahav 95:4) forbids it. Amongst contemporary authorities, Rav Moshe Feinstein (Igrot Moshe, YD III:10) leans toward leniency, whereas several less prominent authorities lean toward stringency (see differences of degree in Badei Hashulchan 95:30, Ma'adanei Hashulchan (95:23), and Laws of Kashrus (Artscroll), p. 242). (Realize that there are serious opinions that even b'dieved, it should not be put into a milchig pot (see discussion in Darchei Teshuva 95:23).) It seems to be better policy to have a large pareve pot for big soups to avoid this issue. However, in cases where this is not readily feasible, leniency is legitimate.

In cases where there is an additional reason for leniency, one can be lenient freely. One is the second case you ask about – where the second utensil is itself pareve, not milchig. Since nothing can go wrong to the food in this utensil, and it is just a question of making the utensil fleishig, we do not have to go so far in our concern. It also makes sense that if the fleishig pot has not been used in 24 hours, it is permissible to cook in it with the intention of putting the food in a milchig pot.

It is important to realize in questions such as these that “all bets are off” if one is dealing with onions or other sharp vegetables that were sautéed in the fleishig pot or cut with a fleishig knife (Rama, ibid.). The details are beyond our present scope.

75. Permissibility of a Jew Owning a Grocery that Sells Non-Kosher Items

Question: I would greatly appreciate if the Rabbi can kindly clarify the following halachic question; is it permissible for a Jew to own a local convenience/mini grocery store that also stock's/sell's some non-Kosher products?

Answer: The Mishna (Sheviit 7:3) states that it is forbidden to do business with items that are forbidden to eat. The Mishna is codified in the Shulchan Aruch Yoreh Deah 117:1. There is a dispute between the Rishonim and Achronim regarding if this prohibition is from the Torah or rabbinic.

The Gemara Yerushalmi (Bava Kama 7:7) states that this prohibition applies only to foods that would themselves be prohibited from the Torah to be eaten, but it is permitted to do business with foods that are only rabbinically forbidden to be eaten. This Halacha is codified by the Rambam (Maachalot Asurot 8:18) and Shulchan Aruch (Yoreh Deah 117:1). Furthermore, several authorities (see, for example, Minchat Shlomo 2:65:2) write that if there is an opinion that the food is permitted to be eaten, even if one does not accept that opinion to permit eating the food, nevertheless, it is permitted to do business with such a food.

Therefore, since many products sold in a convenience store, even if they don't bear a kosher symbol, would either be only rabbinically forbidden or would be considered kosher according to some opinions, they could therefore be sold. Non-kosher meat and non-kosher fish (e.g. shellfish) products should not be sold. There are probably some other products that would be prohibited to be eaten from the Torah, but we aren't able to give a comprehensive list of every potential item, so if you have more questions relating to specific products please feel free to ask.

Finally, it is important to note, that there probably will be Jewish consumers who will unwittingly purchase foods from the store, which have questionable kashrut issues or which are rabbinically forbidden. Therefore, if you could try to offer kosher products where possible (meaning, when the price difference between a

kosher and non-kosher item is negligible), then that would be meritorious.

76. Eating at Someone's House Who Has a Business That Stays Open on Shabbat

Question: May I eat on Shabbat in the house of someone whose business (in Europe) stays open on Shabbat?

Answer: If the owner works in the store on Shabbat, one has to assume that he has the status of a mechallel Shabbat b'farhesia (one who desecrates Shabbat publicly), who loses all halachic ne'emanut (credibility) (Shulchan Aruch, Yoreh Deah 119:6; see Shut Chatam Sofer, Choshen Mishpat 175 regarding operating a store on Shabbat). If, though, a wife who does not violate prohibitions vouches for all the food's purchase and preparation it would be permitted to eat there. Your question implies that the owner only keeps the store open, and, let's assume, with non-Jews selling and working. You also imply that the person seems to generally follow the laws of the Torah.

Since you give no details, we cannot say whether your acquaintance's store is allowed to be open on Shabbat with non-Jews working in it. Some relevant factors include whether there is a non-Jewish partner and the nature of the partnership; whether it is known publicly that it is a Jewish-owned business; how the workers are paid and whether they are required to open on Shabbat. We will work with your apparent assumption that the owner violates a rabbinic prohibition by keeping it open. There is considerable debate, without a clear consensus, regarding whether the sweeping disqualification for chillul Shabbat b'farhesia applies to the violation of rabbinic prohibitions of Shabbat (see Baer Heitev, Yoreh Deah 2:15; Pitchei Teshuva, YD 2:8; Rabbi Akiva Eiger, ad loc.; Aruch Hashulchan, YD 2:16).

Besides the special disqualification of a mechallel Shabbat, there is the general matter that one who does not follow a halacha loses credibility. The gemara (Bechorot 30a) cites a machloket Tannaim whether one who is not trustworthy in one area of halacha is not trusted for anything or whether he is trusted in areas that are more severe and thus it is less likely that he would violate them. We accept the opinion that one is still believed regarding matters

that are more severe (Shulchan Aruch, *ibid.*:5). On the one hand, one who violated rabbinic prohibitions should not be suspected to violate ones of Torah origin (Bechorot 30a). On the other hand, when one eats by someone, he has to be sure that not only are there are not Torah violations but that there are also not rabbinic violations. Regarding questions of general kashrut, this should not be a problem because the transfer of distrust from a severe violation to a lighter one applies only when the violations are of the same general type (i.e., from forbidden food to forbidden food) and would not apply from Shabbat to kashrut (see Shach 119:12). Yet, if one wants to eat in this person's house on Shabbat, don't we have to be concerned that he will violate a rabbinic prohibition of Shabbat as he did regarding the store?

The solution to these problems is found in the Rama (YD 119:7). One does not lose his reliability if he violated a prohibition that people don't think is a real prohibition. Since there are cases where one can have his store operated on Shabbat and since, for a long time in many places, there has been an atmosphere where many believed that doing so in general is not forbidden, the storeowner is not categorized as a mechallel Shabbat nor is he considered one who is suspect of sinning. Of course, it may be questionable if someone of this level knows enough to keep a sufficiently kosher home, but the matter of the store per se should not make it forbidden to eat in his house even on Shabbat.

77. Status of Food in an Untovelled Utensil

Question: I will be traveling to a place with no mikveh for tevilat keilim (immersion of utensils) for the utensils I will need to buy. If I do not do tevilat keilim, does the food become non-kosher?

Answer: The Torah speaks at once about the often overlapping laws of hechsher keilim (ridding utensils of non-kosher residue) of used utensils and tevilat keilim of even new utensils obtained from non-Jews (Bamidbar 31:23). A major difference is that the former is needed to solve technical kashrut problems, whereas the latter is a mitzva of purification. One of the ramifications of this difference is that even if one failed to perform tevilat keilim, the food that came in contact with the utensils remains kosher (Tosafot, Avoda Zara 75b). The continued use of the utensil before tevila is the problem (see Rambam, Ma'achalot Assurot 17:3).

Rav Shlomo Zalman Auerbach (cited in Tevilat Keilim (Cohen) 4:(2)) points out that there must be a full-fledged violation of the law of tevilat keilim if one uses a utensil before tevila. After all, since one does not have to do tevila unless and until he uses the utensil, if one were allowed to use it before tevila, when would he be required to immerse it? However, if the reason to disallow usage is not a classic prohibition but a failure to perform the positive mitzva to do the tevila, then if one is incapable of doing the tevila (e.g., there is no mikveh) the fundamental violation would not exist. Nevertheless, in that case, there is likely a rabbinic prohibition to use the utensil prior to the tevila (compare *ibid.* with *ibid.* 3:(24)).

However, there is an idea that you can implement in a variety of ways which will enable you to use the keilim without tevila. The halacha is that one must do tevila on utensils that are acquired from a non-Jew. However, if they remain the non-Jew's property and one only borrows them or even rents them, he does not need tevila (Shulchan Aruch, Yoreh Deah 120:8). Although you are not likely to find a non-Jew who is willing to lend or even rent you new utensils at a modest price, you can spend the same money as he is willing to sell them for and have in mind not to acquire them but to only rent them. The problem you will have in this scenario is that if

the utensils remain his, you should have to return it to the store at some point. Here is at least one way to deal with that problem. Arrange with the storeowner (who may think you are strange, but that's not the end of the world), that you are renting the utensils for part of the price, but you will give him the full price for the possibility that he does not want to accept back used utensils and/or you do not take the opportunity to return them.

Another technical idea is that you can find another non-Jew (perhaps a hotel worker or a neighbor) and say as follows: "I am not going to need these utensils after I leave so I want to give them to you as a present as of now. Since I am nice enough to give you them as a present, I ask that you agree to let me use them and that you be responsible to retrieve them when I leave."

In theory, one could always use this type of ha'arama (shrewd halachic ploy) to get out of doing tevilat keilim. However, we are not supposed to be interested in getting out of mitzvot. However, in a case like yours, where you would be happy to do the mitzva if you could, but you cannot, this type of system is very appropriate. (Note that many bodies of natural water are kosher as mikva'ot, and one may be available in the area you are visiting. However, since it is hard to know when this is the case, you do not need to try to do such a tevila that you will not even know if it was valid. Also, realize that neither disposable utensils nor utensils made out of substances other than metal and glass require tevila.).

78. Which Utensils that Have Been Obtained From a Non-Jew Require Tovelling.

Question: I believe that it is a p'sik reishei (an unintentional but certain result) that a can opener will touch the food while opening the can. Therefore, it would seem to be required to tovel (immerse) the opener before use when it has been obtained from a non-Jew. Yet, I have not heard of people doing this. What is the correct practice?

Answer: Rav Sheshet (in Avoda Zara 75b) seems to have posited that the idea of tovelling utensils (keilim) has to do with the fact that they were used and may contain traces of forbidden foods. However, the gemara concludes that even new keilim must be tovelled. In response to the question, then, why shearing scissors do not require tevilla, the gemara explains that only klei seuda (utensils of meals) require tevilla.

The question is: what is special about such keilim? You seem to understand that the issue is that such keilim come in contact with food. Rashi, however, says that the way we can tell the Torah is describing klei seuda is that it talks, in the interconnected topic of kashering keilim, about utensils that come in contact with fire, which, he says, is common specifically for food preparation (or serving) keilim. The Pri Chadash (Yoreh Deah 120:1) questions the veracity of the claim, as he says that there are plenty of utensils that have nothing to do with food and are used with fire. He therefore, prefers the Rashba's (Torat Habayit 4:4) explanation that since the same section discusses kashering utensils for kashrut reasons, it refers to keilim with which the possibility of transfer of taste between food and keilim makes a halachic difference. This logical approach encourages the suggestion that you make: that the contact with the food, which could potentially have caused kashrut problems (even though in a specific case everything is cold and there will be no transfer), is what obligates one in tevilla.

If we were to look at the matter on that semi-pragmatic level, then one could talk along the lines that you used. If there will definitely be contact between the kli and the food, then we should

say that tevilla is required. However, the poskim take a different approach. Whatever the exact reason for understanding from the p'sukim that we are discussing klei seuda, the issue is what is considered in that category. It is true that it has to be a utensil that is used directly in relation to the food. Thus, a tripod (or its modern-day equivalent) that only holds up the pot that contains the food does not require tevilla (Shulchan Aruch, YD 120:4). A pot cover is considered a kli seuda because the steam that emanates and continues to interact with the food touches the cover (Rama, ad loc.:5). However it is not the touching itself that is the issue, but whether the kli is considered to be used directly in relation to the food.

One of the cases that illustrates this distinction is your question. A can opener is not intended to interact with food but with cans, albeit usually ones that hold food (similar to the tripod above). The fact that there is incidental contact between the can opener and the food while opening is not significant enough to help define the can opener as a kli whose job is to come in contact with food. Therefore, a can opener does not require tevilla even if there is a p'sik reishei (Hilchot Tevilla (Cohen) 11:171).

Another case in point, this one going in the direction of stringency, is that of a tray upon which one always places aluminum foil or cookie sheets before putting on the food. In this case, one would view it as the tray is being used to hold the food as it is being baked, just as we would view it if there were not a lining separating between the two of them (ibid. 1:4, based on Rav S.Z. Auerbach). Only if the separation would be significant enough to be considered a separate entity, as opposed to a lining, would we say that the tray is not made for holding the food and would it be exempt from tevilla (ibid.). While this explanation is not unanimously held, we believe it to be correct.

79. Baking Chicken and Fish at the Same Time in an Oven

Question: May I bake together uncovered chicken and fish (not for a milk meal) in an oven?

Answer: The gemara (Pesachim 76b) says that one should not eat fish that was roasted together with meat because of the danger of leprosy. The Shulchan Aruch (Yoreh Deah 116:2) codifies this in regard to eating meat and fish together. The Rama adds not to roast meat along with fish because of reicha (the aroma) but says that if this was already done, the food is not forbidden.

Your case seems to be like the Rama's. The idea behind his compromise is as follows. In the context of roasting kosher and non-kosher foods together (Yoreh Deah 108:1) and baking bread near meat with the intention of eating the bread with milk (ibid. 97:3) we say that roasting things near each other facilitates only minor taste transfer (reicha) between the foods. While these situations are to be avoided, food does not become forbidden without more direct contact, including by cooking in the same pot, when the process produces zeiah (significant water vapor) in the oven, or when the foods touch. While one should avoid even roasting meat and fish together in an oven, it is fine if one of them is covered reasonably well (Shulchan Aruch, YD 108:1).

Even in your case, there is room for leniency as we will explain. The Maharshal (Chulin 7:15) allows one to roast meat and fish together in one oven, at least in a relatively large oven (like most of ours). He claims, based on the Rambam (Maachalot Assurot 9:23) that the prohibition referred to cooking the two together in one pot, whereas in one oven there is no danger. The Taz (116:2-3) cites the Maharshal but relies on his leniency only in regard to bread baked in the same oven with meat to be eaten with fish (not fish and meat together). The Shach (YD 116:1) cites the Maharshal's leniency regarding our case as well, apparently even in a small oven. On the other hand, he also cites an opinion that it is forbidden even b'dieved (after the fact) without clearly favoring one opinion. There is an agreed upon issue regarding meat and fish

that is more lenient than regarding matters of standard “religious” prohibitions: one can use the same utensils for meat and fish (Taz 116:2). In other words, not in all cases of transference is there deemed to be danger. On the other hand, there are opinions that we are stricter for meat and fish than we are regarding standard prohibitions, based on the rule that “danger is more severe than prohibitions.” See the Pitchei Teshuva (YD 116:3) who cites various opinions as to whether to apply the rule of nullification by 60 in this context.

As far as the propriety of following the lenient opinion, it seems that we have to decide how severely the concern of danger should be viewed. For one, is there an issue of a Torah law? Rav Kook (Da’at Cohen 55) writes that the prohibition to inflict on oneself a non-life-threatening danger is only rabbinic. Rav Ovadia Yosef (Yabia Omer I, YD 8) says that while it is forbidden from the Torah to damage oneself, it is only rabbinically forbidden to eat meat and fish, as it only creates the possibility of mishap. Both see the rabbinic status as reason to rule leniently (each in their own context). Furthermore, many notice that the Rambam (the famous rabbi/physician) apparently ignored this halacha. The Magen Avraham (173:1) sees this as support for his suggestion that the danger is not prevalent in our times and places. The Chatam Sofer (II, 101) raises an additional possibility that it applies only to a specific species of fish. (There is a rejected opinion that it does not apply to fowl- see Pitchei Teshuva, YD 116:2). While few go as far as ignoring the idea of not mixing meat and fish, many poskim factor these opinions in when looking for leniency in gray areas. Therefore, while it is halachically safer to not roast meat and fish uncovered in the same oven, it seems reasonable to do so in a regular, large oven when there is a need.

80. Working in a Non-Kosher Establishment

Question: Is it permitted for a religious Jew to work (e.g., as a waiter) in a non-kosher restaurant or café where most of the food is not kosher?

Answer: The question is general(/theoretical?), so we will not ask clarifying questions. The issue of providing non-kosher food for Jewish customers is beyond our scope.

Most non-kosher foods are permitted in benefit. Some notable exceptions are chametz, wine with a concern of use for idolatry, and beef and milk that were cooked together. In such cases, one may not earn money from dealing with them, even if he does not own the food or get direct physical benefit from it (see Taz, Orach Chayim 150:6). However, it is not common for these foods to be forbidden in benefit according to all opinions. Regarding wine, many are lenient about benefit in times (like ours) where libations for idolatry are rare) (see Shulchan Aruch, Yoreh Deah 124:6; Rama, YD 123:1). Regarding meat and milk, many combinations are permitted in benefit (e.g., poultry, meat from a non-kosher animal, combined without cooking – see Yoreh Deah 87). It is thus possible that one could work in a non-Jewish restaurant without violating a prohibition of benefiting from forbidden foods (see more in Tzitz Eliezer XVII:33).

Another issue is working professionally with food that is forbidden to eat. The gemara (Pesachim 23a) derives that even concerning forbidden foods from which one may benefit, one may not seek to obtain them for commercial purposes (sechora), just that he can sell that which came his way. According to most Rishonim (see Shut Chatam Sofer, YD 104-106, 108), this is a Torah-level law, although significant opinions among Rishonim and Acharonim say it is Rabbinic (see Noda B'Yehuda II, YD 62).

The Rashba (Shut III, 223) says that the prohibition's rationale is that one who does commerce with food might eat it. Indeed, the prohibition applies only to things that are slated for eating (e.g., animals such as pigs, not horses). However, most (see Chatam Sofer *ibid.*) posit that the prohibition applies even if an owner is not in a position to eat the food.

Your question is the opposite case – someone who does not own the food but is in a situation where he is liable to eat it. The Pitchei Teshuva (YD 117:6) assumes that if the prohibition of sechora is to distance one from eating the food, we should follow that logic for stringency and not allow one to work with non-kosher food even without owning it. On the other hand, many poskim (including Sho'el U'meishiv I,III:122; Igrot Moshe, YD I:51) do not extend the prohibition to such a worker.

There are often additional grounds for leniency. Sechora is forbidden only regarding food forbidden by Torah law (Shulchan Aruch, YD 117:1). In many dairy eateries, the food is primarily forbidden Rabbinically, at least according to many opinions (again, beyond our scope). When the commerce is mainly not in the context of the prohibition of sechora, even if some is problematic, it is likely not forbidden (see Shut Chatam Sofer, YD 108). The classic example is one who raises animals for kosher meat and sells the forbidden parts of the animal to non-Jews.

Even when the prohibition of sechora does not apply, it might still be halachically required to refrain from situations where one could easily come to eat non-kosher food (see a variety of opinions in Yabia Omer IV: YD 6). One interesting source is the Maharsha on Rashi, Chulin 106a, who discusses one who, after separating the non-kosher parts of an animal, would cook them before selling them to non-Jews. The issue of the practical concern of eating may be influenced greatly by the type of contact with the food and the extent to which one has permission to eat freely from the food with which he is working (see Yabia Omer *ibid.*).

Some poskim were reluctantly lenient in cases of great need to allow people to work in non-kosher settings. However, the severity of the issues and the level of need vary greatly from case to case, and each case requires its own evaluation.

MISCELLANEOUS

81. Changing Minhagim upon Divorce

Question: I am a woman of Sephardi descent who married an Ashkenazi man, and I have since been divorced. Should I revert back to my Sephardic customs and rulings?

Answer: We must start by seeing why a wife takes on her husband's customs and rulings.

The oldest direct source we know regarding a wife conforming to her husband's traditions is the Tashbetz (III, 179). He says that it is inconceivable that a husband and wife would live together governed by different practices. There are varied explanations of this concept. Rav Moshe Feinstein (Igrot Moshe OC I, 159) compares the husband's home to a community and says that when his wife joins his household, she takes on "the place's practices" just like a new permanent resident of a community (Shulchan Aruch, OC 468:4). Others (Admat Kodesh II, OC 2; see Igrot Moshe, *ibid.*) claim that a woman was not fully connected to her father's traditions, as the expectation always had been that she would leave to join her husband's family and accept his minhagim.

What happens when a couple gets divorced (or widowed)? If the matter is that they cannot have different minhagim under one roof, then when they no longer live under one roof, the woman would revert to her former minhagim. In fact, the Tashbetz says this but with a major proviso. If the woman becomes widowed and her husband leaves her with children she would maintain her husband's family's minhagim. One of the precedents he brings is from a halacha from the Torah in regard to the eating of terumah. The daughter of a kohen eats terumah because of her father, until she marries. If she marries a non-kohen she no longer eats terumah, but if he dies or divorces her she goes back to her father's house, and his terumah. However, if she has children from the non-kohen husband, she does not return to eat terumah (see Vayikra 22:13). Thus, we see, says the Tashbetz, that a widowed woman with children retains the family status of her marriage.

Rav Yosef Engel (Gilyonei Hashas, Yevamot 86a) takes this comparison very formally and also understands it to work by linking her to her ex-husband. It sounds from the Tashbetz that her

relationship with the children prevents her from reverting back naturally to her father's household and way of life. It is also likely that this concept is based not on a halachic derivation but on a sociological situation that the Torah recognized. Namely, the mother of children who have their father's halachic status is expected to continue to act in a way that is consistent with their upbringing. This then would apply even if she was divorced, as the Tashbetz himself states. Even when they are grown up, although she no longer has to raise them, halacha recognizes the likelihood that she will be very connected to them and may spend much time with them (see Ketubot 54a; Even Ha'ezer). Therefore it makes sense that she should not be more connected to her father than to them and it is not necessarily appropriate to change back to her childhood minhagim.

Igrot Moshe does not rule on what happens in the case that a wife is widowed or divorced. However, his logic seems to imply that if practically she went back to interacting with her former community she could and maybe should go back to their minhagim. He does raise the possibility (within his explanation of the Rambam's minority approach) that a woman waits until she marries to accept her lifetime minhag and that she should keep it thereafter (at least until she remarries).

In the final analysis it seems that a divorcee without children should revert to her old minhagim and that children, who play a pivotal role in the divorcee's lifestyle, should prompt her to retain their joint minhagim. In general, though, if she has chosen either her old or her adopted community as her religious/cultural center, she can follow its minhagim.

82. Guidelines on When the Mitzva of Tochacha Applies

Question: Please give some guidelines on when the mitzva of tochacha (giving rebuke) applies? If one is not sure if the recipient will respond positively or negatively, should he say something?

Answer: The first guideline is that when one is sinning unknowingly but will sin knowingly if he is told, he should not be informed (mutav sheyihyu shog'gin v'al yihyu m'zidin- see Beitza 30a). This however, applies only when one is sure that the party will not change his ways (Tosafot, Shabbat 55a; Mishna Berura 608:3). It does not appear that one needs 100% surety, and it is very difficult to apply this distinction. One of the cases where pointing out a mistake is less likely to be successful is when many people act improperly in a certain matter (see Beitza 30a; the Rama (Orach Chayim 608:2) makes this distinction in our general context.)

The possibility of a negative backlash is also a factor. In a landmark teshuva (Minchat Shlomo 35), Rav S.Z. Auerbach argues that one may even create a situation whereby his counterpart will sin (ostensibly violating lifnei iver, placing a spiritual stumbling block), if failure to do so would cause that person to deteriorate further, such as in hatred of Torah and its adherents. Certainly then, one can refrain from butting in when information is likely to cause significantly negative results in addition to probably not helping. We use some variation of this concept often in our interactions with the non-observant and those with inconsistent observance. Honestly, it is not always clear when our silence is due to prudence and when we tend to avoid uncomfortable conversations.

It is important to consider that it is not always a choice of whether someone's mistake should be corrected but when, how, and by whom it should be done. Consider the following application (found in Rashi to Devarim 1:3). Yaakov, Moshe, Yehoshua, and Shmuel all waited until close to their deaths to strongly rebuke their constituencies out of fear that earlier rebuke might have caused the recipients to change their allegiances in favor of a path

ASK THE RABBI I

of evil. Similarly, a new rabbi may see many things that he knows his community needs to change. Instead of raising all issues at once and failing, he waits for a (hopefully) opportune time to deal with each (or some) of them.

An interesting question is whether one should say something when he sees an unaware person doing something that is forbidden according to a consensus of opinions, but where there is not unanimity. Again, we will borrow a concept from Rav Auerbach's approach to *lifnei iver*. Most poskim posit that one who is stringent on a certain question may enable one who is legitimately lenient on the matter to partake in the practice (see *Ktav Sofer*, YD 77). The giver does not have to apply his own standards regarding a possible violation performed by someone else. Rav Auerbach (*Minchat Shlomo* 44) goes further, saying that even if Reuven, who is doing the questionable thing, is unaware of the majority who forbid the matter and the legitimate minority, Shimon may enable Reuven to act so if he knows that if Reuven were aware of the opinions, he would act leniently.

83. A Fence on the Roof of an Organization's Building

Question: We are building a new building for a Jewish organization. The question has arisen whether we require a fence for the roof (ma'akeh) and, if so, what are its requirements?

Answer: In general, one who builds a home is required to build a sturdy fence that is ten tefachim (approximately two and a half feet) high for its roof (Shulchan Aruch, Choshen Mishpat 427:5). However, there are several cases where there are exemptions.

The gemara (Chulin 136a) says that while the word “gagecha” (your [singular] roof) (Devarim 22:8) does not exclude the mitzva of ma'akeh in the case of a home owned by partners, it does exclude a shul or a beit midrash (study hall) from requiring a fence. Rashi (ad loc.) provides two reasons for this exemption: 1) No one has ownership of these places, as people from around the world have rights to them. 2) These places are not used to live in (beit dira). The Rambam (Rotzchim 11:2) and Shulchan Aruch (ibid.:3) state the second reason. This is along the line of their rulings that storage houses and other such places that are not lived in are exempt, an opinion that is not universally accepted (see S'ma ad loc.:2, 5). One other reason is provided to exempt a shul, namely, that it has sanctity that precludes this type of obligation. However, that position is difficult to support (see Binyan Tzvi II, 17).

We must thus compare your case to that of a shul and beit midrash. We do not know and even you may have difficulty determining whether your organization is more similar in structure and purpose to a partnership or to a shul that serves an undefined broad public body (see Minchat Yitzchak V, 122). This may anyway not be the main point, as the more accepted distinction of a shul is that it is not a beit dira. However, here we also have trouble comparing cases. If one has a building that is inhabited during much of the day but it is not a home that is classically lived in, does it require a ma'akeh? In many ways, the requirements of a building regarding ma'akeh and regarding mezuzah are compared (Kesef Mishneh, Rotzeiach 11:1). There is much discussion about

whether office buildings require mezuzas. The most accepted opinion is to affix a mezuzah without a beracha, and one might expect that likewise an organizational building, even if no one sleeps there, would be the same. However, the S'ma (427:2) points out that, regarding certain types of storage rooms, the Shulchan Aruch is stringent regarding mezuzah (Yoreh Deah 286:1) and lenient regarding ma'akeh (Choshen Mishpat 427:1).

In general one should understand the following. In cases where people rarely use the roof, certainly when access requires a ladder or a key and only workmen go to fix things, there are ample halachic opinions that do not require a ma'akeh even for a standard house (see *Minchat Yitzchak* V, 122; *Yeshuat Moshe* II, 79). This is the reason that poskim point out that in the classic, slanted roof-top, the minhag is not to build a fence (Aruch Hashulchan, Choshen Mishpat 227:5). When people use the roof regularly and without some type of fence there is a fear of real danger, halacha requires one to take necessary steps to remove the danger, even if the formal mitzva of ma'akeh does not apply. This is because beyond the specific mitzva of ma'akeh, there is a general prohibition against being responsible for dangerous situations (*ibid.*). Certainly then, in this case, where the formal obligation is likely not to apply, if you take the normal steps that any construction company takes to avoid danger (and possible law suits if tragedy occurs, Heaven forbid), you probably have fulfilled your obligation. It would then just be worthwhile, if the planned use of the roof warrants some precautions, that the fence you erect will be just over two and a half feet high.

84. Thanking Hashem After a Medical “False Alarm”

Question: If one has indications that he has a life-threatening illness but subsequently it is determined that, *baruch Hashem*, it was a “false alarm,” should he recite Hagomel and make a *seudat hoda’ah* (meal of thanksgiving)?

Answer: The *gemara* (Berachot 54b, based on Tehillim 107) lists one who recuperates from illness as one of four types of people who must thank Hashem. The manner in which he does this is by reciting Birkat Hagomel before ten people.

Regarding the illness’ extent, the *Shulchan Aruch* (Orach Chayim 219:8) says that it applies to any reasonable illness, whereas the *Rama* (ad loc.) says it is only for illnesses where there appears to be real danger (parallel to the parameters for violating Shabbat to treat). Some Ashkenazi *poskim* accept the former approach, at least when the illness confines one to bed for three days (see *Mishna Berura* 219:28).

One might suggest that your question depends on these two opinions. Do you need a true life-threatening situation or only one which warrants thanking Hashem when He brings a recovery? However, the sources indicate that even the expansive opinion requires some threat to life, just that it reasons that any significant illness could become life-threatening. If it becomes evident that there was nothing remotely dangerous, no one would require Hagomel. (If one was confined to bed for three days, *Sephardim* would require a *beracha*, presumably even if doctors say there was no danger at all- see *Yalkut Yosef*, OC 219: 22, 27).

This being said, there is great logic to distinguish between the formal *beracha* of Hagomel, which must meet certain parameters, and the more general *inyan* (positive element) of making a *seudat hoda’ah*. The *Shulchan Aruch* does not mention anywhere a requirement to make such a *seuda*. Yet, we know that such a practice exists, although apparently on a voluntary basis (as opposed to Hagomel). Some cite the following *gemara* (Berachot 46a) as evidence. Rav Avahu, upon visiting Rav Zeira when he

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was sick, stated that if the latter would recover, he would make a feast for the rabbis. Some cite this source as not only a worthwhile thing to do afterward but as a *segula* (a spiritual facilitator) to help bring about the recovery (see Imrei Shamai, p. 85 in the name of the Ba'al Shem Tov's disciples). If one, under these circumstances, felt the need to promise such a party, it does not seem right to claim afterward that the self-obligation was not binding because it was based on misinformation.

Even if one did not accept such an obligation prior to recovery, a *seudat hoda'ah* would still seem appropriate. Even if it turns out that there was no serious illness from which recovery was necessary, there still was good news that a perceived problem disappeared. We shall illustrate with Talmudic precedent. The *gemara* (Bava Kama 87a) tells of Rav Yosef (who was blind) who said that he would make a feast for the rabbis if he found out that the opinion that a blind man is exempt from *mitzvot* is incorrect, because one who is obligated in *mitzvot* receives more reward. Here, nothing changed but a happy realization, and yet a celebration was appropriate. Another such source is the historical background behind an early-winter pagan holiday. The *gemara* (Avoda Zara 8a) says that one was instituted properly by Adam who feared that daylight was disappearing due to his sin until the solstice passed and he saw that the days were naturally getting longer. Despite Adam's mistake, the celebration was appropriate (until it turned pagan).

The logic behind such thanks appears to be as follows. We are always in danger (see text of Asher Yatzar), just that it is natural not to feel it. However, when we understandably come face to face with the prospect of our mortality, it is a good time to thank Hashem for our continued existence. So, if one wants to make a *seudat hoda'ah* upon receiving, for example, a negative biopsy result on a suspected malignant growth, he should be encouraged.

85. Hosting a Difficult Guest

Question: We have a friend who, when visiting from America, stops by for meals often when she is in our area. For the first time, last night, she slept over. It was, shall we say, a nightmare! She received several phone calls in the middle of the night, which woke us, and also, despite being warned, tripped the alarm. She now seems to want to stay for another night and perhaps return in the future. Are we permitted to refuse her request?

Answer: This is a very hard question to answer, not just because it is hard to predict the likely potential scenarios, but because there is a conflict between values, as we will explain.

Hachnasat orchim (welcoming guests) is a rabbinically mandated application of the Torah command to love one's counterpart (Rambam, Avel 14:1). It applies both to poor and rich guests and, in theory, can be accomplished even when taking money for expenses (food, telephone calls, etc.) by providing a warm, welcoming place to be (Ahavat Chesed 3:1). Thus, even if someone can afford to stay in a hotel, (and, maybe, from her perspective, should do that) if she asks to stay at one's house or the situation is such that such an invitation is the normal nice thing to offer, the mitzva is normally a responsibility.

There is a general question about the obligation to fulfill a mitzva that has a large physical or emotional price, and this comes up in different contexts. In *Living the Halachic Process* (vol. II, D-15) we dealt with someone who can expect to have a moderate allergic reaction to eating matza on Pesach. The basic assumption is that one does not have to make himself sick in order to fulfill a mitzva, and while it is hard to do, one has to try to figure out what is a normal "price" one has to pay to fulfill a mitzva. In this case, when it is a matter of your needs against another person's needs and feelings, the matter is certainly not easy to determine, but one should try to consider this in an idealistic but realistic manner. The availability of alternative arrangements is a factor in this context (see Ahavat Chesed 3:2)

There is another element to the complex nature of this question. Just as a host is urged and, to a great extent, commanded

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to extend himself to make the guest happy and welcome (ibid. 1) so is the guest required to not take advantage or overdo her welcome (Halichot Bein Adam Lachveiro 8:28). If she is outright damaging to her hosts, they are not required to keep her (ibid. 6, in the name of Sefer Chasidim). We would certainly say that if she were stealing from her host, presumably even if the host is willing to spend similar amounts of money to feed her), she can be asked to leave. You could make the claim that *gezel sheina* (deprivation of sleep) would be equivalent. On the other hand, it is hard to know where to draw the line on such a matter (otherwise, we would all be thieves at one time or another).

A final, related issue is that if your guest continues to grossly abuse her rights, she is seriously sinning. By letting her continue to do so, in some ways you are wrongly facilitating her sins. The Rambam (Sefer Hamitzvot, Aseh 205) says that rebuke, in addition to correcting “religious” sins and those affecting third persons, is intended for people who are being abused (as opposed to harboring resentment – see Vayikra 19:17). While we are cautious about the use of rebuke, having your guest continue to upset you is unlikely to be in her best interest.

All this being said, we think you should consider seriously the likelihood that your guest was not aware of how her behavior disturbed you. She is less likely to trip the alarm again, and you can probably unplug the phone or mention calmly how its ringing disturbs you greatly. Hopefully, your friend is a nice person who will be a much improved guest in the future. So, if you can put up with her for another night and see how it goes, you would probably be doing a big mitzva, even if you arguably can get out of it.

86. Using Expressions From the Writings of Another Religion

Question: I was approached by a friend who was surprised to see your column using an expression that comes straight out of another religion's writings. Is that permitted?

Answer: We will omit the specific expression, as we will explain later. In truth, I was unaware of the expression's source. While I have had a lot of exposure to American culture, I am quite ignorant regarding other prevalent religions and do not plan to study them to avoid any such problem. Yet, the question remains: May one knowingly use terms from their texts or lore in a context that is not religious in context?

The Torah forbids us to copy *chukot hagoyim* (gentile practices) (Shulchan Aruch, YD 178:1). It is hard to delineate the extent of this halacha, but let us mention some guidelines. One should not perform a strange or problematic gentile practice, which would indicate that he is doing so to copy them or makes it apparent that the practice is related to the service of their religion (Rama, *ad loc.*). Logical practices of society are permitted, even if they originate from non-Jewish elements, especially if they are not geared specifically toward the non-Jews (see Igrot Moshe YD I, 81).

The use of idioms and phrases is a logical practice. However, perhaps the origin in the context of a different religion, not general society, is a problem. A parallel case that is discussed by poskim is using a secular date that is associated with a central event of a different religion. Most poskim permit using these dates, which even appear sporadically in rabbinic literature without incident. The issue was raised prominently by Hungarian poskim at the height of the struggle against the Reform movement. The Maharam Shick (Shut, YD 171) strongly opposed the innovation of writing the gentile date on a tombstone. He considered it a violation of the prohibition to cause others to utter the name of gods of others by extending it to people thinking about other religions' beliefs, as he felt the date would do.

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Tzitz Eliezer (VIII, 8) argues that using a date of gentile origin per se is not a problem, even according to the Maharam Shick. Rather the initials that follow, which indicate its religious context, are the issue. The same date in a “pareve” context is not a problem. After all, the Maharam Shick identifies the problem as what one is led to think about, not the practice itself, as it is regarding regular chukot hagoyim. Thus, context is crucial. Admittedly, the Tzitz Eliezer (and Yabia Omer III, YD 9 who takes a different approach) while permitting use of the secular date, stresses to do so only when there is a specific need.

One should realize that even if a phrase’s source is the sacred books of a certain religion, if its use as a phrase or idiom freely crosses religious lines, it does not represent that religion. One can prove this from our own religious texts, *l’havdil elef havdalot*. One should not write three words from the Torah without underlining the scroll. Yet, the Shulchan Aruch (Yoreh Deah 284:2) allows doing so if the words are used as an idiom, not as a reference to the ideas as found in the Torah. Also, one can recite phrases from the Torah in a non-Torah context before reciting *birkat hatorah* (Mishna Berura 47:4). Similarly, phrases that emanate from other religions should be able to be removed from their context and status.

Let us summarize. One can be respected for avoiding non-Jewish cultural associations in strict adherence to the spirit of the laws of chukot hagoyim. Yet, many of us legitimately value the advantages of integration, to the extent permitted by halacha, in the general society of our origin, which has strong roots in other religions. At least, if using society’s standard phrases does not conjure up thoughts of the tenets and texts of other religions, it is permitted. We purposely left out examples. Why should we cause the power of suggestion to make people self-conscious about common phrases that good Jews use without giving a second thought to their origin?

87. Trumot and Ma'asrot on Spices and Leaves

Question: Does one have to take off terumot and ma'asrot (tithes – hereafter, teruma) on mint leaves or other spices that grow in Israel?

Answer: The Torah, in describing the laws of teruma, refers only to grains, wine, and olive oil (Devarim 18:4). The Rambam (Terumot 2:1) says that these are only examples of vegetation that are eaten by people, but all edible species of vegetation which a field's owner will protect require teruma to be taken. Rashi (Berachot 36a) and the Ra'avad (Ma'aser 1:8) say that other than the aforementioned foods, teruma on other fruits and vegetables is only rabbinic. In any case, fruits and vegetables that grow in the Jewish-owned ground of Eretz Yisrael require teruma on some level.

The question then is whether spices are food in this regard. The gemara (Pesachim 44a), in distinguishing between different levels of teruma obligation, says that teruma on tavlin (spices) is rabbinic. Thus, it appears that it is not from the Torah but does have a practical requirement nonetheless. Indeed, there are many classical sources that indicate this. The mishna and gemara (Nidda 50a) equate between something being considered a food in regard to being susceptible to tumah (ritual impurity) and requiring teruma.

The gemara (Yoma 81b) says that one who chews the type of pepper that is used as a spice (pilpeli) on Yom Kippur does not fully violate the prohibition to eat. The gemara asks from sources that indicate that the prohibition of orlah applies to pilpeli and distinguishes between different types of pilpeli. The laws of orlah are ostensibly parallel in these regards to the laws of teruma, as each depends on the categorization of being fit for human consumption to be considered a food. In order to reconcile the various different sources together, Tosafot makes the following distinction. There are two types of spices. There are some, like onions, that, while they can be used as a spice, are also eaten as a food (or the main element of a food – see Nidda 51b), while other spices are only used to add flavor.

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This approach seems to work well within the Rambam as well. On the one hand, he does not mention as a rule that there is teruma for tavlin. On the other hand, he mentions it in the context of a few spices, including onions (see Tzafnat Pa'aneach, Terumot 2:2). In the laws of Ma'aser Sheni (7:9), he says that those things that are grown only for their color, their smell, or their taste cannot be bought with the money of ma'aser sheni, which have to be things that “are the food of humans” (ibid. 7:3 - the same requirement as for teruma.) The list of those non-foods includes the pilpeli we have mentioned before.

Several acharonim mention and seem to accept Tosafot's distinction, including the Chatam Sofer (Chulin 6a), the Chazon Ish (Ma'asrot 1:21), Igrot Moshe (IV, 74.18), and Shevet Halevi (II, 196). Therefore, it appears that spices that are used only to give a taste and not to be eaten as a food do not require teruma. (Rav M. Eliyahu holds that if the spices are grown purposely to be used they require teruma in any case.) Specifically regarding mint, since it has begun to be used as a food, such as in a salad, it appears that they do require teruma. (This response does not go into such factors as to whether the vegetation grows directly in the ground or in a pot and whether it is grown indoors or outdoors, which are beyond our present scope.)

88. Joining Pieces of Dough for Obligation of Hafrashat Challa

Question: If I make cookies and cupcakes one evening, do the different pieces of dough combine to form an amount that obligates hafrashas challa (the removal of a piece to, in theory, be given to a kohen)?

Answer: First we should point out that you appear to be aware of that which not all know – cookies and cake may need hafrashat challa. Even though the Torah refers basically to bread, cookies and cake made from the classic types of grain (especially, wheat) are closely enough related to the bread family to be obligated in hafrashat challa if either the dough is thick or the batter is baked rather than cooked (Shulchan Aruch, Yoreh Deah 329:1).

The Torah describes the giving of challa as something which is taken from dough (arisoteichem – Bamidbar 15:21). Classically, the requisite amount of dough (over 2lbs./ 1 kilo of flour – we will not get into all the opinions of the exact amount needed for hafrasha with and without a beracha) is present at the time there is one dough. One big dough can indeed be made into many cookies or loafs of bread afterward without affecting the obligation. However, we will briefly see that a big piece of dough does not always require hafrashat challa, and many smaller pieces of dough are not always exempt. A lot has to do with the plans one has for what to do with the dough in the baking process. For example, if the big piece of dough was made with the intention to be given out to different people before being baked, each one of which was to be less than the requisite amount for challa, hafrasha is not required (Shulchan Aruch, Yoreh Deah 326:2). On the other hand, if one makes smaller amounts of dough at different times and then brings them together at a later time, then under certain circumstances the existence of an obligation of hafrashat challa is determined by the combined amount (ibid. 325:1). What the physical situation needs to be in order for the smaller pieces of dough to be joined is slightly involved (see ibid.). As we will see, that point is not necessary to answer your question, which we will now address.

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The mishna (Challa 4:1) says that if two women make loaves of dough of the same type (i.e., from the same grain) and each one is not big enough to require challa taken, then even if the loaves touch each other, they do not combine to create an obligation of *hafrashat challa*. If one woman owned the two loaves, then they do combine to obligate her to give challa. The Yerushalmi (ad loc.) explains that it is not the ownership per se that is the issue, but the feasibility of the two pieces of dough being combined without anyone's objection. One woman would usually have no issues about mixing between the two pieces of dough, whereas regarding two people, the assumption is that each one will want to keep that which is their own. The Yerushalmi goes on to give examples of when we can expect that even one owner would not want to mix the pieces of dough, e.g., if one piece is from "clean flour" and the other from unprocessed flour.

Indeed, when the Shulchan Aruch (Yoreh Deah 326:1) codifies these concepts, he says that if an individual does not want the two pieces of dough to be mixed one with the other, then they do not combine to be obligated in challa. Regarding cookies and cupcakes, it seems self-evident that one would not want to mix the two, as they are quite different one from the other. In fact, it is not really feasible to do so as the former is dough and the latter is batter. Therefore, it is clear that if neither the cookie dough nor the cupcake batter has a sufficient amount of volume to be obligated in challa, then even if you want to connect them in a manner that would work for two similar loafs of dough, in this case there would not be an obligation of *hafrashat challa*.

89. Promoting Vegetarianism and Veganism

Question: The attached literature explains why we feel Jewish leaders, including rabbis, should take a leading role in promoting vegetarianism and veganism (not using animal products, including milk and eggs). We await your comments and feedback, as the rabbinic community is relatively silent on the matter.

The billions of farmed animals produce more greenhouse gases than human transportation, contributing to the looming world ecological disaster, including flooding, heat waves, and droughts in places such as Israel. These animals require enormous amounts of water and animal feed, much of which could feed starving people. Wasting resources in this way violates bal tashchit (the prohibition to waste). Jews are not filling their leadership role of tikkun olam (improving the world). Also, most farming of animals is done in a cruel manner (tza'ar ba'alei chayim).

Answer: The scientific consensus seems to agree with your basic premises. However, we lack the expertise to confirm or reject the definitive picture you paint of the danger's extent and the most effective ways to act. For this reason, many rabbis are uncomfortable speaking out. Because we agree that waiting until all the facts are crystal clear may doom us, we are responding to you in an abridged and theoretical manner to do our part to advance dialogue within the Jewish community.

Few, if any, of us can make a significant impact on world ecology. Thus, when each of us decides about diet, the matter can be equated to the following situation. A person has a serious medical condition. He can decrease the chances of tragedy by a tiny amount if he undergoes a difficult treatment. While it might be wise for him to take the steps, he is not halachically required to do so. Otherwise, anyone with a serious illness would have to spend all of his money to hire the biggest (most expensive) expert in the field to heal him (as our mentor, Rav Zalman Nechemia Goldberg, has argued is not so). On the Jewish, national level, if the world would follow our lead, we might have a national obligation to make a significant difference, but we do not think that this is presently the case. However, we still feel it is noble to try to

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advance ecological concerns along the lines of the Rabbis' words, "It is not for you to finish the job, but neither are you free to be idle from it."

There are various steps we can take to improve the situation, of which vegetarianism/ veganism is but one. These include: supporting (when it does not conflict with bigger concerns) "green-minded" candidates for office; spending money on fuel efficiency (efficient cars, home insulation, etc.); investing in companies that research and develop environmentally friendly technology; reducing consumption of animal products and fuels (adjust thermostat, walk and take public transportation more); speak to friends and/or write about such steps.

We reject the claim that raising livestock is bal tachshit. Bal tachshit refers to acts that are directly destructive, such as ripping and chopping down without positive gain (see Rambam, Melachim 6:10). Allocating resources for a desired result in a less than ideal manner or where there are side effects does not violate the prohibition.

Regarding cruelty to animals, although it is unclear what the exact parameters of proper conditions are, it is clear that there are many instances of abuse. We encourage efforts to "clean up the industry." While veganism is a noble means to limit abuses, by causing there to be fewer animals born to suffer, it does not eradicate the problem and is not required. We support boycotting companies who are known to cause definite tza'ar ba'alei chayim. In summary, we encourage people to take steps to reduce dependence on animal farming and improving world ecology. However, this does not mean one needs to be a vegan or a vegetarian.

90. Shaving Hair Very Short

Question: It is now common for religious teenage boys to shave their heads with a shaver, leaving a shadow of hair 2-3 millimeters long. Does this violate *lo takifu* (removing peyot)?

Answer: The similar prohibitions, not to “round off” the sides of one’s head (i.e., not to remove peyot) and not to “destroy” the sides of one’s beard (i.e., not shaving a beard with a razor) are found in the same pasuk (Vayikra 19:27). The two are halachically comparable, at least in regard to the fact that the prohibitions do not apply to women (Kiddushin 35b).

The mishna (Makkot 20a), after mentioning both prohibitions, cites a machloket whether the prohibition(s) exists only with a razor or even when removing the hair with other instruments. The Rambam (Avoda Zara 12:6) says that one may cut off peyot with scissors, which is apparently based on the mishna’s lenient opinion. In contrast, the Rosh (Makkot 3: 2, 3) says that only in regard to the beard may it make a difference how the hair is removed. Regarding peyot, if one gets similar results with scissors as one gets with a razor, he still violates the prohibition. The Shulchan Aruch (Yoreh Deah 181:3) brings both opinions and encourages following the stringent opinion.

One can explain the machloket between the Rambam and Rosh by saying that the Rambam cares about the action the Torah calls destroying, whereas the Rosh says that hair removal is a problem. Regarding a likely test case, removing peyot with a chemical, there is a machloket between the Beit Hillel and the Noda B’Yehuda (see Kol Mevaser I, 19). We must point out that even the Rambam says that the results play a role regarding peyot (as opposed to the beard). He (ibid.) says that one needs to leave forty (according to one version, four) hairs on the peyot. Regarding the beard, it is irrelevant how many hairs remain, as any removal via a razor is a violation. The Shulchan Aruch (ibid.:9) says that one should avoid cutting [too close] anything in the area of the peyot. However, the Chatam Sofer demonstrates that one cannot hold two stringencies, and thus it is permitted to remove only some hair if this is done in a not razor-like manner.

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You, though, refer to a case where all of the hair of the peyot is removed and therefore the question is as follows: is the shaver (assuming it works based on a mechanism analogous to scissors) cut close enough to the results of a razor to be problematic according to the Shulchan Aruch? The Kol Mevasser (ibid.) identifies three opinions among the Rishonim as to how long hair has to be to not be considered razor-like. (Clearly, scissors cannot make the surface perfectly clean, so that one cannot say that even the slightest recognition of hair roots suffices.) The Rambam (albeit in the context of a nazir) says that if the hair is long enough to take the top and loop it over to the bottom it is not razor-like. Gilyon Tosafot says the cut-off point is whether one can grab the hair with tweezers. Rashi says it depends whether it is close to the skin.

We have not found measurements for the opinions we have mentioned nor is there a consensus as to which opinion to accept (certainly the most stringent opinion is not met in the case you raise). The reason there is relatively little discussion of this matter is probably that religious Jews have not shaved their heads in the manner now popular among some of our youth. (Chasidim who shave their head, of course leave prominent peyot). While we would be hard-pressed to prove that this “new for religious Jews style” is definitely forbidden, it is hard to halachically approve of it. Parents and teachers of teenagers who will listen would do well to encourage them to find other ways to differ from what was once considered a normal haircut.

91. Grounds for Cutting Down a Fruit Tree

Question: May one cut down a fruit tree in order to make room for improvements to their back yard for recreational purposes such as to put in a pool or a basketball court?

Answer: The Torah forbids cutting down fruit trees (Devarim 20:19), which is the strictest application of the concept not to be destructive (see Rambam, Melachim 6:8). It is thus not surprising that the gemara and poskim identify “non-destructive” cases where it is permitted to cut down fruit trees.

The gemara grants permission in the following cases: 1. The tree no longer produces a kav (a relatively small amount) of fruit (Bava Kama 91b-92a). 2. It is worth more for wood than for fruit (see Rashi, ad loc.). 3. It is significantly damaging a more valuable tree (see Tosafot). 4. It is damaging someone else’s property (Bava Batra 26a).

The Rosh (Bava Kama 8:15) learns from the above that one may cut down a tree if needed to use its location, which the Taz (Yoreh Deah 116:6) applies to building a home. Most poskim say this includes expanding a home, at least when the addition is objectively more valuable than the tree (see Chayim Sha’al I:22; Yabia Omer V:12). On the other hand, the gemara tells of an Amora’s son who died because he cut down a fruit tree prematurely, and R. Yehuda Hachasid also warned about it. Therefore, even when it is apparently permitted, some prefer that the work be done by a non-Jew (ibid.) and/or that the tree be transplanted (Chatam Sofer, YD 102).

To what extent can we rely on the Rosh’s thesis that making room for something else is an excuse for cutting down a fruit tree? The Beit Yaakov (140) claims that Tosafot and others disagree with the Rosh. The Meishiv Davar (II:56) adds that it is hard to be certain that after cutting down the tree, the building project will actualize. However, many Acharonim (see Chayim Sha’al I:22; Yabia Omer V, Yoreh Deah 12) strongly reject the Beit Yaakov and adopt the Rosh/Taz leniency.

How important must the need for the spot be? Although the gemara’s cases (e.g., wood worth more, affecting another tree) are

not huge benefits, they relate to situations where the tree's existence is more directly wasteful. In contrast, in the Rosh's (and your) case, the tree is fully viable, just that it precludes another future use. It is therefore not surprising that some who accept the Rosh say that the need must be substantial. The *She'eilat Yaavetz* (I:176) relates to a case where a shul is too small and needs to be extended to an area occupied by fruit trees. The *Chavot Yair* (195), while allowing cutting down a tree that darkens one's house, forbids doing so to allow for a place for walking around or increasing space and light. Several Acharonim, including important poskim such as the *Aruch Hashulchan* (YD 116:13) and *Yabia Omer* (ibid.) adopt this middle-of-the-road approach.

Appraising the cases you raised is tricky. On one hand, building a swimming pool or a basketball court is expensive, so that one erects one only if it is important to him (see *Minchat Asher*, *Devarim* 33), in which case the tree should not prevent it. On the other hand, some poskim (see *Yabia Omer* ibid.) indicate that the value of the change should be an objective one that applies to the average person. Swimming pools and basketball courts are not likely to qualify in that regard (even if we focus on the positive and permitted uses of those facilities). It is hard to ignore the possibility that one who uses honest but faulty judgment could be punished with death (aforementioned gemara; see also *Chatam Sofer* YD 102; *She'eilat Yaavetz* ibid. is more extreme). Another factor is that it might be possible, even if less convenient, to build what is desired without cutting down a fruit tree.

Therefore, we suggest the following. If you are willing to professionally, preferably by a non-Jew, transplant the tree, you may do so. Otherwise, we would have difficulty permitting cutting the tree.

92. Eating Contests

Question: Please state your opinion on whether eating contests violate any prohibitions such as bal tashchit? (I am a reporter writing an article.) Is there a difference between contests of volume (e.g., tens of hot dogs in ten minutes) and of speed (e.g., eating three hot dogs fastest)?

Answer: Presumably, one with a Torah-based mindset will react negatively to such contests (with good reason). However, we do not believe in using words like “forbidden” without honestly weighing halachic issues.

We start with the issue you raised – bal tashchit (not destroying). This prohibition, beyond the Torah context of destroying trees, is hard to pin down. The Rambam (Melachim 6:10) describes it as applying not to wasting but to destroying things, including “me’abed ma’achalot derech hashchata” (destroying food in a destructive way). The stress of a destructive manner opens the door for allowing arguably wasteful usage of objects of value for such purposes as recreation (see Etz Hasadeh (Shtesman) 11:2). The fact that, after all, we are discussing eating makes it harder to claim the ingestion of the food is destructive. Rav Zilberstein (in Tzohar, 5758) claims that Rashi would consider stuffing oneself bal tashchit. In discussing one who is bloated eating more, the gemara (Yoma 80b) describes the action as “not eating” but “damaging,” and Rashi (ad loc.) says he damages the food and himself. If it is called damaging the food, it is likely bal tashchit. However, it would seem that since the context there is the parameters of forbidden eating (e.g., Yom Kippur, non-kosher food) and not bal tashchit, it is hard to know what Rashi would say in our context.

Another, related (see Rashi, Ta’anit 20b) issue is bizuy ochlin (disgrace of food). Halacha distinguishes between foods (see Shulchan Aruch, Orach Chayim 171:1). Most foods are disgraced only when they are soiled and made unappetizing prior to eating. It is hard to apply that to eating, even if in a not natural way. Bread, though, may not be handled disrespectfully (e.g., throwing it) even when it is unaffected. Thus, while it is hard to consider over-eating

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an objective bizuy ochlin for most foods, it is reasonable to consider stuffing bread (including hot dog buns) down one's throat in the context of extreme over-eating forbidden situational bizuy.

Safety concerns are also questionable. A small number of people have died (mainly from choking) at eating contests, and it is not wonderful for one's digestive system. We find in Chazal particular concern for not eating in a dangerous or even not healthy manner (speaking while eating – Ta'anit 5b; eating standing – Gittin 70a). On the other hand, in addition to our reluctance to taking stands on medical matters, we do not want to be hypocritical by outright forbidding eating contests on health grounds when so many people eat very unhealthily.

There are a few semi-halachic, semi-philosophical areas about which people can argue, but we will skip to an issue that we believe at least eating contests of volume clearly violate – bal teshaktzu. A secondary application of Vayikra 11:43 is that one should not put his body in a situation in which he feels disgusted. Classic examples include holding in a strong need to eliminate and eating in a manner that disgusts him (Makkot 16b). It is true that poskim allow such situations for certain needs (e.g., one is in public without access to a bathroom – Mishna Berura 3:17; a sick person who needs to ingest a medicine that disgusts him – see Pri Megadim, Sifte Da'at 81:3). However, the anyway dubious practice of an eating contest is not adequate justification.

Regarding an eating “sprint” of three hot dogs, we lack the expertise to determine whether contestants necessarily disgust themselves or whether fast swallowing is just a technical skill of swallowing a normal amount of food unusually fast. The food can certainly be used by the body in a normal manner. Therefore, objections to such a contest would be based more on philosophical/ethical grounds than halachic ones.

93. Cosmetic Surgery

Question: What does halacha have to say about cosmetic surgery?

Answer: We will survey halachic elements of the topic that relate to cases where it is readily understandable why a serious observant Jew would feel a need or a strong desire to have surgery. Needless surgery or, in the other direction, cases of gross malformations are, respectively, very different matters from a halachic and a philosophical perspective.

The fundamental issue that the poskim discuss is that of damaging oneself. The gemara (Bava Kama 91b) refers to a machloket among Tannaim whether one is allowed to damage himself, and the Rambam (Chovel U'mazik 5:1) and Shulchan Aruch (Choshen Mishpat 420:1) rule it is forbidden. The question is whether totally elective surgery done for an understandable reason is included in the prohibition. On the one hand, in the immediate stage, surgery includes cutting the body, and Tosafot (Bava Kama 91b) says that one may not damage himself even for gain. On the other hand, Chazal allowed cutting the skin for certain purposes, including bloodletting and removing splinters (Yevamot 72a; Sanhedrin 84b). Some say that a procedure done to correct a blemish, even if it is just a significant aesthetic one and not a classic medical problem, is considered healing and included in the doctor's mandate to heal (Mishneh Halachot IV:266, based on Ketubot 74b). Others infer from the Rambam's language that only violent damage to the body is forbidden, not constructive cutting done to improve it (Igrot Moshe, Choshen Mishpat 5:66; see Minchat Shlomo II:82 and Minchat Yitzchak VI:105). There is a difference between the two approaches to leniency in a case where the initial situation is not one of a blemish, while the surgery can still provide substantial and not frivolous improvement. Yabia Omer (VIII, CM 12) reasons that one should distinguish between different levels of gain.

Another issue is the potential danger to life from surgery, specifically one that requires general anesthetic. Objectively, in our times, the chance of death from simple surgery is tiny (assuming a responsible choice of medical practitioners). While we do not

generally take stands on medical questions, one could say that the danger is roughly equivalent to that of driving a few hundred miles. While there have been poskim, at least decades ago (Minchat Yitzchak *ibid*, Aseh Lecha Rav IV:65), who have forbidden cosmetic surgery that requires anesthetic on those grounds, this is a difficult position to take (see Yabia Omer *ibid*.).

Some poskim suggest an interesting distinction between the genders. Cases in which men act with concern about their own appearance to a degree that is not normal for men raise questions of a prohibition of *lo yilbash*. While this literally refers to cross-dressing, Chazal apply it to several activities that are normal specifically for the opposite gender. One gemara (Shabbat 50b) says that it is permitted for a man to remove certain scabs from his face due to pain, but it is forbidden for beautification. Rashi (*ad loc*.) explains that the problem is *lo yilbash*. Tosafot (*ad loc*.) says that pain does not have to be physical but that if a man is embarrassed to be among people in that state, “there is no greater pain than that.” Therefore, while there is likely to be a difference between genders regarding the extent of blemish that justifies intervention, surgery can be permitted for a man whose aesthetic problems would be disturbing for the average man (Mishneh Halachot IV:267; Minchat Shlomo *ibid*.).

The Tzitz Eliezer (XI:41) claims that performing surgery to change one’s G-d-given appearance (excluding the results of illness or injury) is improper intervention in the way Hashem created the world. Most of his contemporaries reject or ignore this position regarding cases where patient’s feelings are understandable. However, it is worthwhile to add this philosophical point to the above halachic ones regarding cases where there is absolutely nothing wrong with a person’s appearance.

94. Conflict Between “Salvation Day” and Yahrzeit

Question: For many years, I have been celebrating a day on which I had a significant salvation. It now turns out it that it is my father’s yahrzeit. Can the two commemorations go hand-in-hand? If not, which has precedence? Follow-up Question: What have you been doing until now, and what has changed? Clarification: Since my father died seven years ago, I have been lighting a candle, learning mishnayot, and saying Kaddish, along with thinking about him a lot, on the yahrzeit. Recently I realized that I miscalculated the Jewish date of the salvation; the true date falls on the yahrzeit.

Answer: On the yahrzeit that completes the twelve months of aveilut for a parent, the full laws of the year’s aveilut apply (Rama, Yoreh Deah 395:3). In subsequent years, the laws of aveilut do not apply.

There is an old, recommended but not binding minhag to fast on the day portion of a parent’s yahrzeit (Shulchan Aruch, Orach Chayim 568:7, Rama, YD 376:4). The Rama (YD 391:3) says that that one should not take part in festive meals from the night that begins the Jewish day. The Levush (YD 402:12) argues based on how he views the fast’s logic. The yahrzeit is a day of bad omens for the offspring, and the teshuva that accompanies the fast helps protect him. The Levush says that since it has nothing to do with aveilut, there are no restrictions on attending festivities the night before. The Shach (391:8) and others say that the minhag is like the Rama. These days, it is very common to not fast on a yahrzeit. However, there is a stronger minhag to avoid or at least lessen one’s participation in weddings. The Taz (YD 395:3) posits that aveilut- type behavior is indeed part of the yahrzeit experience.

There are several grounds for leniency, besides the aforementioned Levush. Many (including Chochmat Adam 171:11) quote the Magen Avraham as saying that the aforementioned restrictions apply only on a yahrzeit that ends the twelve months of aveilut. Additionally, the Pitchei Teshuva (YD 391:8) says that participation is forbidden only in a wedding,

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where the intensity of simcha activity exceeds that of other celebrations. Several poskim say that an avel is permitted to take part in a seudat mitzva such as a siyum (see Shach, YD 246:27). While the Shach (ibid.) cites the Maharil as not allowing a person, who has the minhag to fast, to eat at a siyum on the yartzeit, the Maharam Shick (YD 369), however, rules that one who accepted the practice to fast can still eat at his own siyum.

What is the status of your self-created salvation holiday? The Chayei Adam (125:41), who instituted one when his family survived a fire, says that it is a mitzva to keep such a day. While the Pri Chadash (496:14) says that the ability to institute semi-holidays ended with the retraction of megillat ta'anit, a clear majority of poskim disagree (see presentation in Yabia Omer X, OC 53). Therefore, all of the aforementioned reasons for leniency exist in your case, and it is fully reasonable to celebrate your salvation on the yahrtzeit.

However, it is apparent from your question [only partially presented here], that you are uncomfortable with the combination, as is very understandable. Therefore, we do not recommend that you move your celebratory day to the yahrtzeit. While the meal you have on this day is likely a seudat mitzva, one is not obligated to institute it. Admittedly, once instituted, it is not a simple matter to undo it (beyond our present scope), but this is not a problem for you. Perhaps min hashamayim, the day you have been celebrating does not cause you a conflict. There are no set rules as to when and how to do such a celebration. Even Purim, after which the concept is modeled, is not held on the day of salvation. Some known "family Purims" consisted of a fast day on the day of salvation and a feast on a different day. Thus, you can continue on the day you instituted it (or a different one), so that the celebration and the yahrtzeit do not cast a shadow on each other.

95. A Lawyer's Obligation to Get Involved in "Sticky" Cases

Question: I am a lawyer. A potential client asked me to help sue someone who is known to be part of the underworld. Should I agree based on the commandment of lo taguru ("Do not be afraid of a man" - Devarim 1:17), or is it okay for me to pass?

Answer: The formal prohibition of lo taguru does not apply here for a few reasons. First, it only applies to dayanim, as is evident not only from the context of the pasuk but also the context in which it comes up in classical sources (the Sefer Hachinuch #415 is explicit on this point; see Minchat Chinuch, ad loc.). There are some sources that extend lo taguru somewhat further (Sanhedrin 6b regarding assistants to dayanim; inference of the Meiri, Sanhedrin 89b regarding one who withholds prophecy out of fear). However, applying it to require a lawyer, who does not have a halachically formal part in the judicial process, is too much of a stretch. Secondly, even for a dayan, the prohibition applies only if he has heard the case to the extent that he has a feeling regarding what the ruling should be (Sanhedrin 6b).

In general, it is problematic to take sides in adjudication (Avot 1:8). While there is an opinion that this warning is only to a dayan (Shiltei Giborim, cited by Shach, CM 66:82), most poskim posit that no one should take sides without a reason (see Sha'ar Mishpat 17:5). What are grounds for taking sides? The gemara (Ketubot 86a) says that it is proper to advise a litigant if he is a relative, invoking a pasuk (Yeshaya 58:7), as long as the advisor is not an important person. The Maharshal (Shut 24) applies this approach to helping a widow who is a litigant. Logic dictates that this permission applies to fighting hardened criminals (see Yeshaya ibid:6), a task that a simple individual cannot handle alone.

In cases where giving advice is appropriate, is there an obligation or mitzva to help out as a lawyer? When the lawyer is (honestly) convinced that his client is correct, there should be a mitzva of hashavat aveida to help him win his case (see part of the breadth of the mitzva in Bava Kama 81b) and thus in the cases it is

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permitted to get involved, it should likewise be included in that mitzva.

However, the mitzva of hashavat aveida does not require one to put himself in a position of loss or hardship to save money for another (Bava Metzia 30a). This is all the more clear if there are any number of other people who can do the job, making the individual lawyer less specifically obligated than one who found a lost item (see one of many applications of this distinction in Bemareh Habazak I:32).

Returning to the case of the fearful dayan, the Shulchan Aruch (CM 12:1) rules that a dayan who has a set public role is required to hear the case when others would not. While the Radbaz (Sanhedrin 22:1) and Bach (CM 12) explain that it is because the public will help him, the Beit Yosef (ad loc.) seems to understand that one with responsibility cannot shirk it even in the face of reasonable concern. That logic would seem to apply to a lawyer with a role of district attorney, for example. We also find, in a parallel case, that the Tzitz Eliezer (IX:17) allows and encourages a doctor to expose himself to patients with infectious diseases as part of his job. That being said, the job description of an average lawyer does not necessarily include angering dangerous criminals, in which case he should not have to feel obligated to do so. When he decides he wants to, there is generally permission for someone to put himself into at least moderate danger as part of his pursuit of livelihood (Bava Metzia 112a).

In summary, a lawyer need not feel an obligation to take on a case in which he will have to go against a dangerous opposing litigant. He may choose to do so, preferably after discussing the matter with his family. This is a noble step if he has a unique opportunity to help someone who needs and deserves it.