Living the Halachic Process
Volume V
Volume V

Answer to Queries sent to the

ERETZ HEMDAH INSTITUTE

Headed by
Rabbi Yosef Carmel  Rabbi Moshe Ehrenreich

by
Rabbi Daniel Mann
Living the Halachic Process, Vol. V
Eretz Hemdah Institute

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Printed in Israel
The learning in this book is dedicated

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

Mr. Alfred S. Friedman

who loved Torah, respected its scholars
and was a man of many good deeds and chessed.
In Honor of
Rabbi Daniel Mann

from the families of

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

the

Almosnino, Aljoya

and

Sabetai families, A"H

who perished in the Holocaust.

May their souls be blessed
and counted among the righteous.

Eli and Rebecca Almo
Seattle, Washington
לעיל

הרב משה צבי פולין

נשיא התאחדות הרבנים דאמריקה

רב בקהילות שייאן ווימינג, לואיסを持つ, סיטט לואיס מיזורי, וברוקלין ויורק

מחנך, מרביץ תורה ברבים ומופת כל הליכותיו

מקים משפחתו לתפארת

מעמפרי התנועה של מע榆林 התשובות של ארץ חמדה

מקים על ידי אשכול לכל בתי המשפחה
In Memory of our Beloved Parents

Leonard and Molly Naider
Joseph and Belle Serle

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

Anita and Fred Naider
In tribute to Rav Daniel Mann

and in loving memory of our grandparents

Debby and Max Sachs
Chaim Hirsch and Rachel Leah Mann
Dedicated to the memory of

Leah and Rabbi Jacob Mann
הרב יעקב ולאה מנולא

Quincy, Mass.

Miriam and Abraham Roseman
אברהם אייזיק ומרים רוזמן

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

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

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

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

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

This special style is what has made the Living the Halachic Process series popular, even among Torah teachers, many of whom use these questions and answers as a platform to teach the “Torah of life” in an interesting way. This sanctifies HaShem’s Name, makes the Torah beloved to many, and draws people toward our Father in the Heaven.
We wish Rabbi Daniel Mann and his wife, Natanya, and their dear parents, continued nachat with health, together with all of their descendants. May they have many more years involved in the teaching and spreading of Torah, in a manner that all who see will announce, “Fortunate are those who gave birth to him.” We wish him continued success in finding the “bars” that connect all the details of the Torah into one cohesive structure that serves as a “Mishkan” for the Divine Presence and a focal point of sanctity.

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

With Torah blessings,

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

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

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

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

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

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

To bring the literary quality of this book up to standard, I was privileged to once again receive the editing services of * avi mori* (my father/teacher), Rabbi Dr. Jonah Mann. His great dedication to every phrase and word of the book, with the encouragement and help of *imi morati*, Tirtza Mann, never ceases to inspire me, even during this sixth collaboration. May HaShem grant us many
more years of joint study and projects in good health. Because of
the fast pace of publication (this is the first time volumes have
come out in successive years), we expanded the staff of editors.
We were blessed to be able to recruit two distinguished graduates
turned staff members of Eretz Hemdah – Rabbi Menachem
Jacobowitz and Rabbi Daniel Rosenfeld – to edit parts of the
book. Their contributions in terms of content and writing were
valuable.

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

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

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

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

Rabbi Daniel Mann
Eretz Hemdah Institute
Kislev 5779, November 2018
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Those who are interested in deepening their understanding of the topics or want to use the book as the basis for a class may find great value in the source sheets we have prepared.

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

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**A Chazan Who Has Animosity Toward a Congregant**

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

**A:**

1. **Shulchan Aruch, Orach Chayim, 525:3**

   Mahar”i Kolon wrote that prayer is the community, and it is not proper for a man to be a поручник to bring a sacrifice without his knowledge and will. Therefore, our Rosh HaShana ruled that even if a man can prevent the prayer, if he did not agree with him from the beginning.

2. **Shulchan Aruch, Orach Chayim, 525:9**

   ... Even if a man can prevent it and says: “I do not like this man to be a prayer,” only if he agreed with him from the beginning.

   *Note:* only if he has a good reason for it. If not, he cannot prevent it.

3. **Shiur Avraham, Orach Chayim, 525:1, 2**

   ... Even if a man can prevent it and says: “I do not like this man to be a prayer,” only if he agreed with him from the beginning. The answer: Only if he has a good reason for it. But if not, he does not have a reason to prevent it.

4. **Sho’arat Hamelach, Orach Chayim, 525:4**

   ... Even if a man can prevent it and says: “I do not like this man to be a prayer,” only if he agreed with him from the beginning.

   ... Even if a man can prevent it and says: “I do not like this man to be a prayer,” only if he agreed with him from the beginning. The answer: Only if he has a good reason for it. But if not, he does not have a reason to prevent it.

5. **Sho’arat Hamelach, Orach Chayim, 525:4**

   ... Even if a man can prevent it and says: “I do not like this man to be a prayer,” only if he agreed with him from the beginning. The answer: Only if he has a good reason for it. But if not, he does not have a reason to prevent it.

6. **Sho’arat Hamelach, Orach Chayim, 525:4**

   ... Even if a man can prevent it and says: “I do not like this man to be a prayer,” only if he agreed with him from the beginning. The answer: Only if he has a good reason for it. But if not, he does not have a reason to prevent it.

7. **Sho’arat Hamelach, Orach Chayim, 525:4**

   ... Even if a man can prevent it and says: “I do not like this man to be a prayer,” only if he agreed with him from the beginning. The answer: Only if he has a good reason for it. But if not, he does not have a reason to prevent it.

8. **Sho’arat Hamelach, Orach Chayim, 525:4**

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9. **Sho’arat Hamelach, Orach Chayim, 525:4**

   ... Even if a man can prevent it and says: “I do not like this man to be a prayer,” only if he agreed with him from the beginning. The answer: Only if he has a good reason for it. But if not, he does not have a reason to prevent it.
Section A:

Tefilla (Prayer)
A-1: Shortening *P’sukei D’Zimra* in Order to Catch Up

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

**Answer:** In the *Shulchan Aruch*,
1 Rav Yosef Karo rules, based on *Geonim* and *Rishonim*, that one should shorten *P’sukei D’Zimra* in order to catch up to the *tzibbur*, detailing the order of precedence of what to say. The *Shulchan Aruch* permits skipping all of *P’sukei D’Zimra* if necessary for that purpose,
2 while most Ashkenazi *poskim* require a minimal amount of *P’sukei D’Zimra*.
3 (Some maintain that it is important to finish *Yishtabach* along with the *tzibbur*;
4 but starting *Shemoneh Esrei* together is the main issue.
5) Despite the halachic consensus regarding the propriety of skipping parts of *P’sukei D’Zimra* to catch up, further rabbinical discussion was prompted by a passage in the *Maggid Meisharim*
6 in which Rav Yosef Karo’s *maggid* (angel/teacher) warns him to come to *shul* early because skipping parts of *P’sukei D’Zimra* is like “turning around the pipes.” The *Ba’er Heitev* writes that many pious people therefore do not shorten *P’sukei D’Zimra*, even if they come late.

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2. *The Yalkut Yosef* 52:5 accepts this ruling.
4. See *Avnei Yashfeh, Orach Chayim* I:10.
5. *Mishna Berura* op. cit.
6. Quoted in *Ba’er Heitev* 52:1. This posthumously published work consists of notes that Rav Yosef Karo wrote about secrets and demanding practices he was taught by an angel who frequented him.
LIVING THE HALACHIC PROCESS

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

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

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

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7. Eliya Rabba 52:5.
8. Shut Chacham Tzvi 36.
9. See Mishna Berura op. cit.; Yechaveh Da’at V:5; Halichot Shlomo 8:41 (citing Rav S.Z. Auerbach).
10. 52:1.
12. Ibid.
13. (Butchatch) 52:1.
in order to join the tzibbur’s silent Shemoneh Esrei.  

This question also has an opposite ramification. Should one shorten P’sukei D’Zimra in order to catch up if he will be able only to make it to the beginning of chazarat hashatz and not the tzibbur’s silent Shemoneh Esrei? Each fundamental approach has a strong basis, but we prefer the approach that davening along with chazarat hashatz fulfills a lower level element of tefilla b’tzibbur, and shortening P’sukei D’Zimra is therefore worthwhile if and only if it will enable one to begin the silent Shemoneh Esrei with the tzibbur.  

Starting Shemoneh Esrei significantly later but while the tzibbur is still davening is probably at a level similar to joining at chazarat hashatz. Nevertheless, one should only begin davening Shemoneh Esrei later than the tzibbur if he will finish his Shemoneh Esrei by the time the tzibbur reaches Kedusha.

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

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

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14. See Yabia Omer II, Orach Chayim 7; Living the Halachic Process, vol. IV, A-8. The Pri Megadim, Eshel Avraham 52:1, posits that davening along with chazarat hashatz is of a lower level.
15. Halichot Shlomo op. cit. Mishna Berura op. cit. seems to assume this as well, and this is also implied by the simple reading of several classical sources.
16. Shulchan Aruch, Orach Chayim 109:1; Pri Megadim 109, Eshel Avraham 2; see B’Tzel HaChochma IV:3.
A-2: Skipping to Shemoneh Esrei and Making up What Was Missed

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

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

Let us take a quick look at what can and cannot be skipped in davening. Most of the pre-P’sukei D’Zimra section, including almost all of Birchat HaShachar, can wait to be recited after davening in order to enable one to say Shemoneh Esrei with a minyan. The exceptions are Eloki Neshama and Birkat HaTorah, because under certain circumstances, about which there is not unanimity, their purpose may be fulfilled during davening (through the berachot of Mechayei HaMeitim and Ahava Rabba, respectively), such that they should not be recited afterward. Sephardim follow the opinion that one can indeed skip P’sukei D’Zimra entirely in order to be able to daven Shemoneh Esrei with a minyan. Ashkenazim follow the opinion that one can greatly shorten P’sukei D’Zimra in order to catch up, but he must recite at least its berachot (Baruch She’amor and Yishtabach), along with at least one zimra, before continuing.

1. See response A-1 for more on what to do in such cases.
2. See Rama, Orach Chayim 52:1; Yechaveh Da’at V:5; Ishei Yisrael 5:9.
3. See Mishna Berura 6:12.
5. If one did not make a beracha on netilat yadayim before coming to shul (see Living the Halachic Process, vol. IV, B-10), he must do so before Shemoneh Esrei (Mishna Berura 4:1).
6. Shulchan Aruch, Orach Chayim 52:1; Yechaveh Da’at V:5.
7. Ashrei; see Berachot 4b.
All agree, however, that one may not skip *Kri’at Shema* and its *berachot* in order to join the *tzibbur* for *Shemoneh Esrei*, even if there will be time afterward to recite *Kri’at Shema* before *soph z’man* *Kri’at Shema*. This is because of the great importance of *semichat geula l’tefilla*. *Birchot Kri’at Shema* end with the *beracha* of *Ga’al Yisrael* (i.e., *geula*), and it is important that this *beracha*, being a particularly central praise of HaShem, lead into *Shemoneh Esrei* (the main part of *tefila*). Indeed, this juxtaposition is more important than *davening Shemoneh Esrei* with a minyan. At *Ma’ariv*, at which *semichat geula l’tefilla* is less crucial, one who comes late should begin *Shemoneh Esrei* with the *minyan* and return to *Kri’at Shema* and its *berachot* afterward.

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

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10. See response A-11.
11. “He who liberated Israel.”
13. See *Shabbat* 118b.
15. See *Tur, Orach Chayim* 52.
16. See ibid.
Shemoneh Esrei, one may and should recite the p’sukim that he skipped (as there is no problem of beracha l’vatala). There is a kabbalistically inclined approach that maintains that even reciting the p’sukim is problematic after Shemoneh Esrei. However, the more accepted view is that one does recite the skipped portions later on without any beracha.

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

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

18. See Aruch HaShulchan, Orach Chayim 52:5.
20. See Shulchan Aruch, Orach Chayim 67:1; see aforementioned Shulchan Aruch, Orach Chayim 236:3 regarding Ma’ariv.
A-3: Preference of Davening in a Shul

Question: Is there a preference to daven in a beit knesset 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 probably is a small preference. The gemara¹ states: “A person’s prayer is heard only in a beit knesset, as the verse says: ‘… to hear the praise and the prayer’² – at the place of the praise, there should be the prayer.” Thus, there would seem to be an important reason to daven specifically in a shul. Indeed, the Shulchan Aruch³ writes: “A person should try to daven in a beit knesset with the community.” He continues that there is also a preference to daven in a beit knesset even if one will be davening there alone (although this is the subject of a machloket Rishonim⁴).

The question is whether one’s davening that does not occur in a beit knesset is inferior and to what extent. The Magen Avraham⁵ writes that the reason for the Shulchan Aruch’s recommendation is the idea of b’rov am hadrat melech (roughly, it brings glory to the King when there is a large group). The Pri Megadim⁶ posits that even without the factor of b’rov am, a shul is always preferred. In his view, a shul is not merely a place to find a minyan; the very fact that it is a shul makes it a better choice than a minyan out of a shul. However, not all agree with this view. The Tzelach⁷ 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

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4. See Beit Yosef; Orach Chayim 90.
5. 90:15.
6. Ad loc.
individual, or by **davening** with a **minyan**, even out of a **shul**.

In another Talmudic source about **davening** in a **beit knesset**, the **gemara**\(^8\) says that whoever does not **daven** in a community’s **shul** is called a “bad neighbor” and is doomed to exile. The Chida\(^9\) writes that this warning does not apply if the person **davens** elsewhere with a **minyan**, because the Divine Presence dwells wherever a **minyan** prays. However, he continues, in order to receive its full positive impact, the **davening** must be in a place that is “set for holiness.”

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

While we accept the **preference** of **davening** in a **beit knesset** rather than somewhere else,\(^12\) it is not an absolute requirement. This qualification is important not only to justify one opting not to **daven** in a **shul** due to a significant inconvenience, but also because other choices can have advantages that potentially outweigh those of **davening** in a **shul**. We will give some examples of other criteria for preference, with the caveat that the particulars of a given case can make all the difference as to which choice should prevail:

1) **Davening** in a place where one learns on a regular basis.\(^13\)
2) The speed of the **davening** and/or the congregants’ behavior in a

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10. See Rama, Orach Chayim 153:7.
11. See the complex issue in Shulchan Aruch, Orach Chayim 151:11; Igrot Moshe, Orach Chayim I:45.
12. See Mishna Berura 90:38; Ishei Yisrael 8:2.
particular *beis kneset* affects one’s focus negatively. 14) The *shul* will not have a *minyan.* 15

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

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14. *Mishna Berura* 90:28; *Ishei Yisrael* 8:(27); see *Aruch HaShulchan, Orach Chayim* 90:15.
15. *Mishna Berura* op. cit.
A-4: Making Up a Tefilla with No Net Gain

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

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

However, the matter is more complicated in a situation in which one actually davened Mincha of Rosh Chodesh but forgot Ya’aleh V’Yavo, and the next Ma’ariv is after Rosh Chodesh, which, of course, does not include Ya’aleh V’Yavo. The Tur³ cites a machloket Rishonim whether he should recite a second Shemoneh Esrei at Ma’ariv to make up for the insufficient Mincha. The

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². See *Shulchan Aruch, Orach Chayim* 108:9.
³. *Orach Chayim* 108.
Tur and the Shulchan Aruch⁴ rule that due to the doubt regarding which opinion to follow, one should say the second tefilla with the intention that, if it is not required, it should be considered a tefillat nedava (voluntary prayer).⁵ Accordingly, if one omitted Ya’aleh V’Yavo on Friday afternoon and this question arises at the time of Ma’ariv of Shabbat, one does not recite a double tefilla, because tefillot nedava are not said on Shabbat.⁶

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

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

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

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⁵. See Mishna Berura 108:33.
⁶. Ibid. 36.
⁷. Har Tzvi, Orach Chayim 1:54.
⁸. Ishei Yisrael 39:30. This is also the opinion of Rav Frank op. cit.
⁹. Tefilla K’Hilchata 22:(25).
best avoided.\textsuperscript{10} We believe that it is proper.

Rav Chaim of Brisk is widely cited\textsuperscript{11} as distinguishing between a case of forgetting Ya’aleh V’Yavo and one of forgetting “v’ten tal u’matar.” Ya’aleh V’Yavo is an addition, whereas “v’ten tal u’matar” is part and parcel of the tefilla’s format. Thus, if v’ten tal u’matar is omitted, it is as if that tefilla was not recited at all, and a third tefilla is needed to fix the tefilla that was valid in some ways but was lacking Ya’aleh V’Yavo. The order of omission (i.e., whether he first omitted “v’ten tal u’matar” or first omitted Ya’aleh V’Yavo) should not make a difference; either way, according to Rav Chaim, the tefilla missing “v’ten tal u’matar” was ineffective and cannot validate the Ya’aleh V’Yavo recited in that tefilla.

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

\textsuperscript{10} Piskei Teshuhot 108:12.
\textsuperscript{11} Including in Har Tzvi op. cit.
\textsuperscript{12} See Har Tzvi op. cit.
\textsuperscript{13} See Berachot 29a.
\textsuperscript{14} Including the Har Tzvi op. cit. and Kaf HaChayim, Orach Chayim 117:33 – see Ishei Yisrael 30:(57).
**A-5: Eating Before Davening in Order to Daven with a Minyan**

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

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

The most convincing explanation of the relationship between these two derivations is that the second clarifies the first. In other words, there is no formal prohibition to eat before davening; rather, one should not eat in a manner that reflects haughtiness.\(^4\)

Therefore, one may drink water, which Halacha classifies as the simplest beverage (the most humble, if you will), and one may similarly eat foods for medicinal reasons,\(^5\) even tasty foods that are normally eaten in standard contexts.\(^6\) The Pri Chadash\(^7\) adds that when one needs to eat for medicinal reasons, he may do so before davening even if he can wait until afterward.

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

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1. Berachot 10b.
4. See Beit Yosef, Orach Chayim 89; Mishna Berura 89:22.
5. Shulchan Aruch, Orach Chayim 89:3.
7. Orach Chayim 89:3.
HaKemach\textsuperscript{8} writes that one who is not strong enough to wait to eat until after the minyan should forego the minyan and daven at home prior to eating. Although the omission of this opinion by such important codes as Chayei Adam, Shulchan Aruch HaRav, and Aruch HaShulchan may imply that they do not accept it, several eminent contemporary poskim do accept it.\textsuperscript{9}

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

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

It is recommended for one who must eat before davening to recite at least Kri’at Shema first, preceded by Birkat HaTorah.\textsuperscript{13}

\textsuperscript{8} Cited by the Ba’er Heitev 89:11 and the Bi’ur Halacha to 89:3.
\textsuperscript{9} Including Yalkut Yosef, Orach Chayim 89:38, and Ishei Yisrael 13:27.
\textsuperscript{10} See Yalkut Yosef op. cit.
\textsuperscript{11} See Eretz HaTzvi (Frumer) II:2.
\textsuperscript{12} See also Magen Avraham 90:21.
\textsuperscript{13} See Bi’ur Halacha op. cit., and see details in Ishei Yisrael 13:27.
According to prominent opinions,\textsuperscript{14} if you say a little more of the berachot, you avoid the full problem of involvement in personal affairs before davening. After all, you will have already fulfilled a minimal but basic mitzva of tefilla,\textsuperscript{15} and you will have accepted ol malchut shamayim.\textsuperscript{16}

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

\textsuperscript{14} Rama, Orach Chayim 89:3.
\textsuperscript{15} See Magen Avraham 106:2.
\textsuperscript{16} See Keren L'David (Greenwald), Orach Chayim 21.
A-6: A Chazan Wearing Short Pants

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

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

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

1. Shabbat 10a; Shulchan Aruch, Orach Chayim 91:1-6.
2. Ibid. 5.
3. 91:12.
5. Megilla 24a.
6. Duchenen.
7. Tefilla 8:12.
9. See Yechaveh Da’at IV:8; Yitzchak Yeranen (Barda) I, Orach Chayim 18.
would dress that way before an important person (whom he sees regularly), and in most of our communities, serving as a chazan while wearing short sleeves\(^\text{10}\) is permitted.\(^\text{11}\)

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

What if the community wants to allow chazanim to wear shorts? Rashi\(^\text{13}\) says that the problem of pocheiach (presented explicitly in regard to Birkat Kohanim, but probably also for a chazan) is the matter of k’vod hatzibbur (the honor of the community). One can thus claim that if the community waives any complaints, it is permitted. However, the Tiferet Yisrael\(^\text{14}\) asserts that the limitation is not a matter of showing respect to the community, but of the community as a group showing respect to HaShem. It is important to recognize what public tefilla is. Instead of going about approaching HaShem individually, we join together, and this is expected to have a greater impact.\(^\text{15}\) It is therefore not surprising that the halachot of choosing a representative to lead the “delegation” are quite exacting.\(^\text{16}\) Our choice of a representative should send the appropriate message, and his being dressed in a manner that is at least presentable in the higher echelons of society is an important factor.

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

\(^{10}\) If a person is not wearing any sleeves at all, it is difficult to permit him to serve as chazan.

\(^{11}\) See Ishei Yisrael 14:10 and footnote 27, who unenthusiastically acknowledges leniency when this is standard attire.

\(^{12}\) Yechaveh Da’at op. cit; see Sha’ar Shimon Echad II:26.

\(^{13}\) Megilla 24a.

\(^{14}\) Megilla 4:45.

\(^{15}\) See sources in Ishei Yisrael 12:1.

\(^{16}\) See Shulchan Aruch, Orach Chayim 53.
shortcoming does not send the wrong message. In particular, one might reason that if (almost) the whole group is dressed in shorts (which happens not infrequently in camp or on a trip), then even if society as a whole does not view this as respectfully dressed, the chazan might be allowed to wear shorts, as this is the standard dress for this particular group in this circumstance. Nevertheless, this is not ideal and should be avoided when there are capable candidates to serve as chazan who are wearing long pants.

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

17. See BeMareh HaBazak III:6.
18. The implication of the Shulchan Aruch, Orach Chayim 53:1, is that the laws that pertain to a chazan apply only from Yishtabach, which precedes the Kaddish, the first element of tefilla in which the chazan has a role in leading the congregation. See BeMareh HaBazak op. cit.
A-7: A Minyan Split between Adjacent Rooms

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

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

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

1. 85b.
2. Joining together.
3. 92b-93a.
5. Shut 1:96.
context of a zimun for bentching\(^6\)). The Shulchan Aruch\(^7\) cites the Rashba’s first answer as halacha concerning tziruf for a minyan, while mentioning an opinion that this is valid only on condition that the bima’s partitions do not reach the ceiling. From this ruling, we see that although a bima is obviously under the same roof as the rest of the shul, other reasons are needed to justify the tziruf for a minyan. This source and those cited above are among many that debunk the claim that you heard.

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

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

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8. Another scenario, based on the details of the aforementioned gemara in *Pesachim* op. cit. – in which those standing in the doorway do count – is rarely applicable.
12. The Divine Presence; see *Mishna Berura* 55:60.
13. See ibid. and *Pesachim* 85b. See further opinions in *Piskei Teshuvot* 55:27.
It seems that this logic allows for leniency in the following common scenario. Ten men are davening in the main room, but not all of them have finished Shemoneh Esrei when the chazan is ready to start chazarat hashatz. In a previous response,\textsuperscript{14} we prefer the view that it is necessary for eight people to have finished, not including the chazan, in order to begin chazarat hashatz. Some poskim do not require that many, as the presence of the ten men suffices to bring the Shechina, but others counter that chazarat hashatz requires a minyan that relates to the repetition. In the case of adjacent rooms, we should be able to combine factors. The presence of ten men in the main room brings the Shechina; at that point, we only need ten men who are connected to chazarat hashatz. Since those in the small room can fulfill their obligation via the chazan,\textsuperscript{15} they count toward the quorum needed to start.

\textsuperscript{15} Mishna Berura 55:61.
A-8: Lack of Unity in a “Unified” Minyan

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

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

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

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1. One of the versions of the text of the prayer. The three most common are Ashkenaz, Sephard, and Edot HaMizrach.
2. “HaShem, HaShem, kel rachum v’chanun …”, recited twice daily by Sephardim and those who daven Nusach Sephard. Ashkenazim recite these verses only as part of Selichot, which are said several times throughout the year.
3. Igrot Moshe, Orach Chayim III:89.
4. See BeMareh HaBazak VI:2.
of the members of the minyan. This practice is based on a belief that showing respect toward “minority” groups within a minyan by allowing them to participate according to their customs fosters unity better than insisting on keeping the nusach consistent. The idea is to achieve a “We welcome you to join us as an equal” atmosphere, rather than one of “We force you to conform to us.”

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

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

5. Igrot Moshe op. cit.
7. Orach Chayim 565:5.
8. Shut I:211.
9. Rosh Hashana 17b.
10. Seder Ta’anit.
seeking divine mercy.

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

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

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

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11. See Torah Lishma 96 and Halichot Olam I, Ki Tisa (2), who apply general rules of a minyan to Yud Gimmel Middot.
13. See ibid.
15. Ibid. III:89.
16. Although, as noted, the halachic stakes are not particularly high in this case, so that stringency b’di’eved is probably uncalled for.
However, we will not get into the details because we believe that this is a solution for a savvy individual, not for a tzibbur, and the situation should not get to that point.

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

17. Ta’amei hamikra, the cantillation for Torah reading.
18. See Shulchan Aruch, Orach Chayim 565:5; Yechaveh Da’at 1:47.
**A-9: The Need for a *Mechitza* in the Absence of a *Minyan***

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

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

The *gemara*\(^1\) tells of structural changes made in the *Beit HaMikdash* to deal with the growing recognition of problems of modesty in the context of interaction between the genders. Since structural changes in the *Beit HaMikdash* are prohibited without sufficient justification,\(^2\) Rav Moshe Feinstein\(^3\) and other authorities surmised from this *gemara* that the need for separation between men and women must be a matter of Torah law.

The only context in which there is any halachic unanimity that a physical separation between men and women is necessary is when *davening* takes place in a *shul*. It appears that the requirement does not have to be linked specifically to *davening*, as the *gemara* records that the *Beit HaMikdash* renovators based themselves on a *pasuk* relating to a funeral.\(^4\) However, in practice, there is no history of anything close to universal separation between the genders. Rav Feinstein\(^5\) differentiates between settings that are private (i.e., one can enter by permission only), which do not require separation even when a *minyan* is being held, and between those that are open to the public, which require separation.

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1. *Sukka* 51b.
2. Ibid.
5. *Igrot Moshe, Orach Chayim* V:12.
Since the setting of davening in a shul is the one clear-cut situation in which a mechitza is required, we should investigate which elements are responsible for the requirement. Does all tefilla require a mechitza? Does everything done in shul require it? How do we define a shul?

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

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). After all, they are davening, and the shul has sanctity that elevates tefilla even without a minyan.

What about a place that is designated for tefilla without a

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6. See Shulchan Aruch, Orach Chayim 75, with commentaries.
7. See Igrot Moshe op. cit. Rav Moshe writes, based on the aforementioned distinction, that since a shiva house is open to all who wish to come, there should be a separation between men and women. It is standard in our communities not to require separation, and certainly not a mechitza, in a shiva house, at least when a minyan is not taking place.
8. See ibid.; Ishei Yisrael 9:(72).
minyan? A statement of the gemara\textsuperscript{10} may be instructive in this case. In explaining the various positions on whether a communal beit knesset can be sold to become an individual’s beit knesset, the gemara raises Rabbi Meir’s claim that an individual’s shul does not have kedusha. Rashi\textsuperscript{11} and others explain that this is because devarim sheb’kedusha (i.e., those elements of prayer that require a minyan) are not recited there. On the one hand, this downplays the status of a shul without a minyan, but many posit that even according to Rabbi Meir, such an arrangement has some level of kedusha\textsuperscript{12} and status of a beit knesset. However, we note that many locations that host semi-regular davening without a minyan usually have several other uses, which makes it less like the classic type of shul in which a mechitza is required.

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

\textsuperscript{10} Megilla 27b.  
\textsuperscript{11} Ad loc.  
\textsuperscript{12} Ramban ad loc.
A-10: Delay between Birkat Kohanim and Sim Shalom

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

**Answer:** The gemara¹ indeed states that the kohanim should not turn around until the chazan begins Sim Shalom. Therefore, it seems that you should have waited until he actually started Sim Shalom, as an introductory tune does not have halachic standing. However, the matter deserves a better look.

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

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

While Tosafot⁵ and the Ran⁶ quote Rashi without comment,

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1. Sota 39b.
2. Ad loc.
3. In other versions, this prayer is “Ribon HaOlamin ...” or “Ribbon HaOlam ...”
4. Chochmat Shlomo, Sota 39b.
5. Sota 39a.
6. Megilla 16a in the Rif’s pages.
the Rambam\(^7\) and the *Shulchan Aruch*\(^8\) describe the halacha according to the simple reading of the *gemara* – that the kohanim wait until the chazan starts *Sim Shalom*. There is no indication in their wording or in the sources that the *Beit Yosef* and commentaries cite that they accept the somewhat novel approach of Rashi/Maharshal to the *gemara*.

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

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

There are also strong indications\(^12\) that *Sim Shalom* is the

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9. See *Birchot Horai* 12:(1).
11. Ibid. 6.
12. Based on *Megilla* 18a.
natural continuation of *Birkat Kohanim* and may serve as a confirmation of the blessing.\(^{13}\) This makes it the appropriate time for the *kohanim* to commence the second stage of their blessing by saying “*Ribbono shel olam...*”\(^{14}\) Therefore, it makes sense to argue that the *gemara* means that the *kohanim* should turn around and say “*Ribbono shel olam*” only after *Sim Shalom* has actually begun.

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

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13. See ibid.; see Rav Nota Greenblatt in *Afikei Torah* (5766), p. 131.
15. See *Magen Avraham* 128:28; *Mishna Berura* 128:70.
A-11: Reciting the Three Parshiyot of Shema Before Davening

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

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

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

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

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1. Sections: Shema (Devarim 6:4-9), V’Haya Im Shamo’a (Devarim 11:13-21), and Parashat Tzitzit (Bamidbar 15:37-41).
2. Liberation from Egypt.
3. See Berachot 12b.
4. See Berachot 21a.
5. Berachot 13b.
6. Rashi ad loc.
the beginning of *Shacharit*, we recite the first *pasuk* of *Shema*.\(^7\) The Rama\(^8\) recommends the *minhag* to say, “*Baruch shem k’vod …*” following the *pasuk*, as usual. This indicates our interest that it serve as a fulfillment of *Kri’at Shema*, which is worthwhile since *sof z’man Kri’at Shema* sometimes passes before we reach *Kri’at Shema* in the *davening*.\(^9\) Notably, this arrangement does not cover the requirement to mention *yetziat Mitzrayim*.\(^10\) We must note, however, that this is what is advised in order to deal with the chance that one will miss *sof z’man Kri’at Shema*. When one expects to miss it, he should say all three *parshiyot* of *Shema* before the end-time of *Kri’at Shema* comes.\(^11\)

Interestingly, although there are different sources for reading each of the three *parshiyot*, the Rambam\(^12\) discusses them as one unit, which is compatible with the *mishna*\(^13\) that explains the order of these *parshiyot*. The *Bi’ur Halacha*\(^14\) similarly posits that even if one recites the three *parshiyot* when they are not sandwiched between the *birchot Kri’at Shema*, he should not speak even between the *parshiyot*.

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

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7. Most of our *siddurim* follow the *minhag* to recite the entire first *parsha* at that juncture (see *Magen Avraham* 46:16).
10. The *Shulchan Aruch HaRav*, *Orach Chayim* 46:9, claims that this is not a concern because the Exodus is referred to early on in *P’sukei D’Zimra*.
14. 66:5.
recite the full text of *Kri’at Shema*, which includes a reference to *tefillin*, without having *tefillin* on,\(^{16}\) and this is usually the case for those who recite a last-minute *Kri’at Shema*. If, however, one is unable to both put on *tefillin* and make it to *Kri’at Shema* on time, he can recite *Kri’at Shema* anyway.\(^{17}\) Therefore, if one is able to start *davening* before *sof z’man Kri’at Shema* but will not get to *Kri’at Shema* on time, he should make the effort to at least put on *tefillin* before reciting *Kri’at Shema*.

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

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17. *Mishna Berura* 58:5; see *Yechaveh Da’at* VI:2.
18. See *Shulchan Aruch* and *Rama, Orach Chayim* 46:9; see *B’Tzel HaChochma* I:1.
A-12: The Kaddish after Kri’at HaTorah

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

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

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

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

2. Tehillim 119:164; see Beit Yosef, Orach Chayim 55.
seven *aliyot*. However, that is not the reason for the existence of the *Kaddish*; it is simply the reason that it was placed in between the two. The reason for the *Kaddish* is that it is appropriate at the end of the *laining*. This explains why there is a *Kaddish* after *kri’at haTorah* even on Mondays and Thursdays, when there is no *maftir*.

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

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

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

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4. See *Tosafot*, *Megilla* 23a.
5. Originally, the *ba’al maftir* did not repeat the last few sentences of the *parasha*, but rather read new *p’sukim* and finished the *parasha*, at which point it was appropriate to say *Kaddish* (ibid.).
7. *Pri Megadim* op. cit.
8. *Mishna Berura* op. cit.
A-13: Mistakes in the Reading of the Haftara

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

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

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

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

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1. The one who receives the *aliya* of *maftir*.
2. See *Mishna Berura* 284:1 and *Yechaveh Da’at* V:26, based on *Levush*, *Orach Chayim* 284:1.
3. *Magen Avraham*, introduction to *siman* 284, based on *Gittin* 60a.
4. *Shut Chatam Sofer*, *Orach Chayim* 68.
5. Ibid.
Classical sources seem to indicate that everyone must follow the haftara reader and fulfill the mitzva through him. Based on this assumption, the gemara\(^7\) says that the reading of the haftara should not begin until hagbaha is finished, so that those involved with it will not miss the beginning of the haftara.\(^8\) The Sha’arei Ephrayim\(^9\) writes that everyone should listen to the person reciting the haftara, although he suggests also reading along quietly. He argues that the institution of the haftara, being an obligation of the community that requires a minyan, must be effected by listening to one reader, just like kri’at haTorah. He therefore opposes the minhag that everyone recites the haftara audibly and basically ignores the ba’al maftir.\(^10\) The Chatam Sofer,\(^11\) in contrast, explains that because we do not read from a klaf, individuals cannot be yotzei with the ba’al maftir in any case, and there is therefore no need to try to hear him.

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

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

\(^7\) \textit{Shulchan Aruch HaRav}, Orach Chayim 284:4; Tosefet Shabbat 284:1.
\(^8\) \textit{Sota} 39b; see Rashi ad loc.
\(^9\) See \textit{Beit Yosef}, Orach Chayim 284; Mishna Berura 284:11.
\(^10\) 9:33.
\(^11\) The old minhag is still prevalent among some Chassidim.
\(^12\) Op. cit.
meaning should be corrected, although this is a difficult rule to apply. In some ways, individual mistakes may be more problematic during the Shabbat morning Torah reading. Since it is required to complete the entire chumash text over the course of the year, every pasuk must be read in a valid way. This ostensibly does not apply to the haftarot, as there is no parallel obligation to complete a certain text, and even the choice of the haftara is not always unanimous or critical. On the other hand, a minimum number of p’sukim is mandated for the haftara. If a pasuk is read with a serious mistake, the pasuk will not count, and the minimum number may not be reached. Shuls are often more lenient regarding the haftara than kri’at haTorah, which is understandable given that the former is a later and weaker institution. Nevertheless, sources indicate that serious mistakes compromise the haftara as well.

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

14. See Bi’ur Halacha ad loc.; Igrot Moshe, Orach Chayim IV:23.
15. It is usually twenty-one p’sukim; see Shulchan Aruch, Orach Chayim 284:1.
17. See Mishna Berura 142:7; we have heard reports that this was also Rav Soloveitchik’s opinion.
18. For a variety of reasons, it is difficult to demand as high a standard of adeptness from the reader of the haftara as is expected from the reader of the parasha, especially when the haftara is read from a chumash, in which case many readers feel overly confident.
**A-14: Listening to Laining during Shemoneh Esrei**

**Question:** If a person comes late to davening, should he continue with Shemoneh Esrei during kri’at haTorah, or should he interrupt it to listen? Does it make a difference if sof z’man tefilla’ 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\(^2\) writes that one who is in the midst of Shemoneh Esrei when the tzibbur is up to Kedusha or Kaddish should listen silently to them and thereby fulfill the mitzvot of reciting these passages. This is effective because of the rule of shomei’ah k’oneh (one who listens is considered like one who recites). Tosafot,\(^3\) however, cites some authorities who forbid this, and their argument is based on this very same rule of shomei’ah k’oneh – since one is forbidden to recite other passages during Shemoneh Esrei,\(^4\) it is likewise forbidden to intently listen to them, which is equivalent to reciting. The Shulchan Aruch\(^5\) rules like Rashi, that one may and should listen. Thus, it appears that listening to appropriate things during Shemoneh Esrei is not a fundamental problem and can be helpful. Ostensibly, this should also apply to laining.

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

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1. The deadline for the proper time to recite Shemoneh Esrei of Shacharit.
2. Sukka 38b.
5. Ibid.
during Shemoneh Esrei. Indeed, the Az Nidberu permits listening to kri’at haTorah during Shemoneh Esrei.

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

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

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6. Az Nidberu XIV:29; see Lev Avraham (Weinfeld) I:26
8. See Ran, Megilla 3a in Rif’s pages; Yabia Omer VIII, Orach Chayim 54.
12. II:70.
does not cause difficulties. Pausing to listen to the shorter, less confusing Kedusha and Kaddish is probably easier than pausing for a series of aliyot of laining. Finally, since part of the reason to rule like Rashi regarding Kedusha is minhag, a similar minhag might not exist in the case of laining.

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

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

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14. See Rama, Orach Chayim 38:8.
15. See Tosafot op. cit.; Bi’ur Halacha to Orach Chayim 104:7.
Section B:
Berachot (Blessings)
**B-1: Permissibility of a Personal Beracha**

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

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

The gemara\(^3\) says that one who already fulfilled a beracha requirement and then unnecessarily repeats it violates the prohibition of uttering HaShem’s Name in vain.\(^4\) Tosafot\(^5\) argues that uttering HaShem’s Name in order to praise Him cannot be considered in vain on the level of Torah law; rather, it is a Rabbinic prohibition that “leans” on the pasuk (an asmachta). In contrast, the Rambam\(^6\) seems to hold that making a beracha l’vatala is indeed a Torah prohibition.\(^7\)

All agree that uttering HaShem’s Name without any purpose

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1. Not adding on to the mitzvot.
2. Unwarranted beracha.
5. Rosh Hashana 33a.
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is an *issur aseh*, a violation of a positive *mitzva*. Yet, using HaShem’s Name in the context of praising Him is permitted and indeed positive, possibly even if one uses words that follow a *beracha* formula. In fact, the Rambam writes that if one mistakenly uttered HaShem’s Name, he should immediately turn it into an appropriate praise of HaShem, and the Rambam’s example of such a possible “spontaneous praise” actually puts the word “*baruch*” next to His Name.

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

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

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8. The positive *mitzva* to treat HaShem with fear; see *Temura* 4a.
11. Ibid.
12. See *Rosh*, *Berachot* 3:15.
Eiger\textsuperscript{15} and the Netziv\textsuperscript{16} argue that in the recognized, sensitive context and formulation of a \textit{beracha}, even a \textit{kinuy} or foreign language Name may be forbidden, as we find regarding an oath. The Netziv maintains that the problem is a Rabbinic prohibition of appearing to recite a \textit{beracha l’vatala}. Therefore, the closer the text (and/or the context) is to that of a standard \textit{beracha}, the more likely it is to be forbidden, but praises that do not mimic blessings are acceptable. The \textit{Minchat Shlomo}\textsuperscript{17} explains that although one should not act in a way that challenges the rules that the Rabbis set, those rules were not set to forbid expression of personal thanks to HaShem.

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

\textsuperscript{15} Op. cit.
\textsuperscript{16} \textit{Ha’amek She’ala} 53:2.
\textsuperscript{17} Op. cit.
B-2: The Halachic Status of Gluten-Free Cakes

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

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

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

The Magen Avraham\(^7\) reasons that since the Geonim accept

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1. Every individual should discuss the matter with his doctor.
2. Wheat, barley, spelt, and rye.
5. Approximately 3 fl. oz.
6. See *Mishna Berura* ad loc. 22, 27.
7. 273:11.
even wine as sufficient in this context, any foods made from one of the five grains also suffice, since they are more “meal-like” than wine.\(^8\) This is the source of the common practice of using cake for the post-*Kiddush* “meal.” Along these lines, the *Pri Megadim*\(^9\) permits eating dates for this purpose, based on the *halacha* that if one mistakenly recited *Birkat HaMazon* after eating dates, this *beracha acharona* is valid after the fact, because dates are particularly filling.\(^10\) However, the *Tosefet Shabbat*\(^11\) argues, and most *Acharonim* agree with him, that one should not generally rely on dates as one’s meal after *Kiddush*.\(^12\)

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

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

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8. See *Shulchan Aruch, Orach Chayim* 291:5, regarding the laws of *seuda shlishit*.
11. 273:15.
12. See *Kaf HaChayim, Orach Chayim* 273:42; *Yabia Omer* VII, *Orach Chayim* 35.
14. See *B’Tzel HaChochma* IV:2.
requirements to use two loaves of bread/challa made from halachic grain, to eat a k’zayit, and to recite Birkat HaMazon at the end. It would be regrettable for a gluten-sensitive person to consider himself as incapable of fulfilling the mitzva of seuda, which also might prompt him to not take his Shabbat meal seriously “if it does not count anyway.” It appears proper (although we cannot create an outright obligation) for him to have two nice loaves of bread, made of whatever flour he can use.

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

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

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\(^{15}\) Shulchan Aruch, Orach Chayim 366:8.
\(^{16}\) Mishna Berura ad loc. 47.
**B-3:** Continuing to Eat Based on an Initial *Beracha*

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

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

Rav Pappa presents\(^1\) rules as to which foods need their own *berachot* and at which stages of a meal. The Rashba and others\(^2\) infer from these rules that foods brought to the table during a meal are generally covered by the original *beracha*. The *Beit Yosef*\(^3\) sees this as a source that *berachot*, including those recited outside the framework of a full meal, generally cover even foods that were not present at the time that the *beracha* was recited.

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

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1. *Berachot* 41b.
2. See *Beit Yosef, Orach Chayim* 206.
5. 206:7.
animals were brought before all of the original animals were *shechted* (*S’mak*). Still others rule that it depends if the *shochet* had in mind when reciting the *beracha* to cover animals that were not yet present. The *Shulchan Aruch*\(^7\) adopts the *S’mak*’s distinction, whereas the Rama\(^8\) follows the *Itur*. Presumably, claim the *Taz* and the *Magen Avraham*, the parallel rules should apply to *berachot* on food.

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

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

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

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

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

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

\textsuperscript{13} Mishna Berura 206:21.
\textsuperscript{14} Ibid. 22.
\textsuperscript{15} Ibid.
\textsuperscript{16} Ibid.
\textsuperscript{17} Mishna Berura 179:17; see V’Zot HaBeracha, p. 68.
\textsuperscript{18} For more details, see V’Zot HaBeracha, pp. 65-67; Piskei Teshuvot 206:18.
\textsuperscript{19} Shulchan Aruch, Orach Chayim 177:5.
\textsuperscript{20} Based on Rama, Orach Chayim 211:5; see Mishna Berura ad loc. 32.
\textsuperscript{21} See V’Zot HaBeracha, p. 65.
**B-4: Birkat HaMazon for Those Who Have Left their Place of Eating**

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

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

Beit Shammai\(^2\) rules that if one forgot to bentch at the end of his meal and remembers to do so only when he is already in a different location, he is required to return to bentch in the place where he had eaten. Beit Hillel, on the other hand, maintains that one is permitted to bentch wherever he remembers. If one purposely left his place of eating without bentching, the gemara\(^3\) says that even Beit Hillel agrees that he must return to the location of his meal.

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

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1. Reciting *Birkat HaMazon*.
2. *Berachot* 51b.
3. Ibid. 53b.
and the *Mishna Berura* thus concludes\(^6\) that one should indeed return if it is not difficult to do so.

If one eats even a small amount\(^7\) of bread in his new location, then he need not return to *bentch* in his original place, because the new location becomes his place of eating.\(^8\) Indeed, he **preferably** should *bentch* in the last place he ate.\(^9\)

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

There are other significant questions regarding a person who leaves his place of eating. One such question is what he should do when he wishes to continue eating upon his return. The *Shulchan Aruch*\(^13\) rules that unless one left behind others who continue eating in the original place, there is a break between the returner’s two eating sessions, and he therefore must first *bentch* for the first part and then recite a new *beracha* for the second installment. The Rama\(^14\) disagrees partially. He rules that if the food that one had eaten is of the type that mandates reciting a *beracha acharona before* leaving one’s location, then his meal is considered to continue, and additional *berachot* are not required. It is a matter

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\(^6\) Ibid. 7.
\(^7\) Even less than a *k’zayit*; ibid. 9.
\(^8\) *Shulchan Aruch* op. cit. 2.
\(^9\) Ibid.
\(^10\) *Berachot* 51b.
\(^11\) *Berachot* 53b; *Shulchan Aruch* ibid. 5.
\(^12\) *Mishna Berura* 184:20.
\(^13\) *Orach Chayim* 178: 1, 2.
\(^14\) Ad loc.
of debate as to what exactly is included in this category of food, but all agree that a bread meal certainly is included. Nevertheless, it is improper to leave the place of one’s meal for any extended period without first bentching, unless there is a pressing reason to do so, such as the need to perform a mitzva elsewhere.

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

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

15. Ibid. 5.
16. Rama ibid.
17. See Kaf HaChayim, Orach Chayim 178:1; Yalkut Yosef, Orach Chayim 178:(1).
20. See the related discussion in the Shulchan Aruch, Orach Chayim 194:2.
**Answer:** Tefillat HaDerech is an obligatory prayer asking for protection from the potential dangers of traveling. Since it was instituted in beracha form, we assume that it follows the standard rules for fulfilling the obligations of berachot and prayers.

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

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

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2. Rosh Hashanah 29a.
3. See Shulchan Aruch, Orach Chayim 215:3, regarding a small child’s beracha.
4. See Rosh Hashana 27b.
is nevertheless certainly better than hearing it via a recording. This is for two reasons: First, the sound heard from a microphone is a direct transformation of the sound waves produced by the ba’al korei. In contrast, the sound produced by a recording is caused simply by someone pressing a button, thereby causing a machine to read a stored coding. Second, when using a microphone, the sound is heard essentially at the same time as the ba’al korei’s reading, unlike the replaying of a recording. Due to these factors, a lenient position regarding fulfilling the mitzva via microphone is somewhat tenable (although most poskim nevertheless still maintain that one cannot do so).⁵

A gemara⁶ indicates that it is not always necessary to actually hear the voice of the person’s recitation, as long as the listener knows what is being said. The gemara discusses a huge synagogue in Alexandria, in which many of the congregants could not hear the sheliach tzibbur; flags were therefore waved to inform those present when to answer amen. Thus, it might seem that one can fulfill his obligation even if he does not hear the actual words being recited. However, Tosafot⁷ limits this precedent to cases in which the participants are not attempting to fulfill any mitzva at the time; the gemara’s discussion relates only to their answering amen. In any event, this source does indicate that at least in regard to answering amen, it is sufficient for one to know what is being recited, even without hearing the actual recitation.⁸

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

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5. See Igrot Moshe, Orach Chayim II:108; Tzitz Eliezer VIII:11; Minchat Shlomo 1:9 in the name of the Chazon Ish. See more on the topic in Living the Halachic Process, vol. IV, B-9.
7. Ad loc. 52b.
The answer is that they arguably can be. First, it is generally assumed that the level of obligation in Tefillat HaDerech is of a lower level than that of set tefillot, thus making leniency in a case of machloket easier. Furthermore, when the beracha is recited on a bus, there are often additional grounds for leniency. Rav Ovadia Yosef assumes that whoever could possibly hear the recitation without the microphone can be yotzei even if in practice he hears the recitation primarily from the microphone. While one can take issue with this assumption, it is a reasonable one from an important posek. Applying this to your case of people on a bus, it is likely that most could hear the words of the Tefillat HaDerech without a microphone; they just might not hear them as well. Even if they could hear only most, but not all, of the words, that would often suffice for Tefillat HaDerech (unlike the case of Megillat Esther, for which one needs to hear (or read) every word).

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

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

10. See BeMareh HaBazak I:26.
11. See more in Living the Halachic Process, vol. III, D-14
**Question:** After I complete major renovations in my home, should I recite *Shehecheyanu*?

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

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

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

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1. *Berachot* 54a.
2. Ibid. 59b-60a.
5. 223:12 with *Sha’ar HaTziyun* ad loc. 14.
6. See *Halichot Shlomo* 23:14, in the name of Rav S.Z. Auerbach, and *V’Zot HaBeracha*, p. 166, in the name of Rav Mordechai Eliyahu.
furniture that often accompanies renovations, which themselves usually warrant a beracha.) The appropriate time for making the beracha on a new or extended house is when the new area is ready to be used, which coincides with the time for attaching a mezuzah.\(^7\)

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

Rav Chayim Palagi\(^14\) and the Kaf HaChayim\(^15\) maintain that one who bought a house on credit does not make a beracha, because of the trouble he may later have paying the cost and the possibility that, as a result, he might be forced to return it to the

8. See sources in Yalkut Yosef, Orach Chayim 223:(2).
10. I, R’ei 5-6.
11. The Ben Ish Chai, ibid. 7, writes that there is no need for one.
12. Yalkut Yosef 223:2 and Birkat HaShem 2:57 do not believe the minhag should uproot the halacha to make the beracha.
13. Ibid.
seller. However, there are strong questions against this opinion. Furthermore, this is likely irrelevant regarding renovations, as even one who takes loans for that purpose rarely is nervous that he might not be able to pay them back, and he certainly need not be concerned that he might have to “return” the renovations.

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

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16. See Birkat HaShem 2:(251).
17. Shulchan Aruch op. cit. 5.
18. See Shulchan Aruch ibid. and Bi’ur Halacha to 223:3.
**B-7: HaMapil for Those Who Take a Long Time to Fall Asleep**

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

**Answer:** Reciting the beracha of HaMapil before going to sleep is mandated by the gemara¹ and codified as halacha.² We say it prior to going to bed, in conjunction with the recitation of Kri’at Shema, which is also an obligation, and together with other p’sukim and texts that relate to our desire for divine protection while sleeping. There are different opinions as to the proper order of the recitation of these different texts, but the prevalent opinion is that one should say Kri’at Shema, then HaMapil, and then the other p’sukim.³ HaMapil’s main content is to thank HaShem for the benefits of sleep and to request a pleasant sleep without fright or improper thoughts.

Let us examine the nature of the problem of speaking between HaMapil and falling asleep, which will help determine whether you made the right choice. The gemara⁴ says that one makes this beracha as he prepares to lie down in bed to sleep. The Rama⁵ writes that one should not eat, drink, or talk between Kri’at Shema and actually sleeping. Most assume that this applies as much, or more so, to interruptions between HaMapil and sleeping.

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

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1. Berachot 60b.
2. Shulchan Aruch, Orach Chayim 239:1.
3. See Mishna Berura 239:2.
5. Orach Chayim 239:1.
falling asleep. However, one cannot repeat HaMapil at will, since it is a beracha.

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

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

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

6. Ibid.
11. To 239:1.
14. Rav Shternbuch himself disagrees with this approach.
We will suggest a similar approach for you. If you have specific reason to believe that you **will be unable** to refrain from speaking before falling asleep, then it may be safer to refrain from making the *beracha* (although the opinion that one’s intention at the time he recites the *beracha* is the critical factor appears to us more correct\(^{15}\)). If you recite *HaMapil* and a long time passes before you fall asleep, it is unclear how great the need has to be in order for you to be allowed to speak or eat.\(^{16}\) We believe that one can be lenient on the matter.\(^{17}\) If you want to avoid entering into the situation of doubt of whether you may eat or talk during this extended period of time, you may wait until you are getting closer to falling asleep before reciting *HaMapil*. If, as a result of waiting, you inadvertently fall asleep before reciting it, you are not to be blamed.

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15. See *Yechaveh Da’at* op. cit.
16. See *Ishei Yisrael* 35:9; *Piskei Teshuvot* 239:3.
17. See *Tzitz Eliezer* VII:27.
**B-8: Time Limit on HaGomel After Birth**

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

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

The Magen Avraham² explains the practice of women not to recite HaGomel as based on the understanding that HaGomel is generally an optional beracha. The Halachot Ketanot³ suggests that according to the opinion that HaGomel cannot be recited without ten men, it makes sense that women would have been excluded from the obligation due to tzniut considerations.⁴ Har Tzvi⁵ suggests an interesting reason for new mothers in particular not to say HaGomel – the text of the beracha states that HaShem does good things “l’chayavim,” for the guilty. Usually, if a person finds himself in a state of danger, he could take this as a sign that he may be deserving of punishment due to some wrongdoing. However, the danger faced by a woman giving birth stems, on the contrary, simply from her participation in the most natural, wonderful mitzva.

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

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¹. Mishna Berura 219:3.
². Introduction to Orach Chayim 219.
³. II:161.
⁴. The Mishna Berura op. cit. cites this issue but recommends that the new mother recite HaGomel in front of a group of ten, most of whom are women.
⁵. Orach Chayim I:113.
For example, there was a minhag⁶ that a man whose wife had recently given birth would get an aliya the first time that the woman returned to shul. The couple would have in mind to thank HaShem when the husband blessed HaShem with “Borchu…,” and she would answer his berachot. Such a practice avoids the recitation of a questionable beracha. Alternatively, a woman could wait for a man who in any event has to say HaGomel and have him recite it for the two of them.⁷

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

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

The source of the three-day period is the opinion cited in the Beit Yosef⁹ that maintains that after three days, it is too late to make the beracha even b’di’eved. Another opinion cited by the Beit Yosef rules that there is a five-day deadline.¹⁰ According to the Shita Mekubetzet and the Ra’ah,¹¹ one may recite Birkat HaGomel even more than a month after the obligation began.

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6. See Torat Chayim, Sanhedrin 94a; Mishna Berura 219:3.
10. The Aruch HaShulchan, Orach Chayim 219:7, cites it as a minority opinion.
11. Berachot 54b.
But even according to this last opinion, it seems logical that there should be some outer limit as to how long one can still recite the beracha.

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

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

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

\textsuperscript{12} Orach Chayim 219:7.
\textsuperscript{13} See Berachot 58b; Bava Metzia 24b; Shut Chatam Sofer, Even HaEzer I:119.
\textsuperscript{14} Mishna Berura 219:2.
\textsuperscript{15} Kaf HaChayim, Orach Chayim 219:7; see Dirshu 219:2.
\textsuperscript{16} See Shulchan Aruch, Orach Chayim 330:4.
also depend on the specific case.\textsuperscript{17} In any event, since the time when a new mother may first recite \textit{HaGomel} is not particularly well defined, it is logical that there should be significant flexibility regarding the maximum time limit as well.

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

\footnote{17. See \textit{Dirshu} op. cit.}
Section C:
Shabbat
**C-1: Flying a Kite on Shabbat**

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

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

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

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

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

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1. *Beitza* 36b.
searching for sources, we found a few short responses with the expected content: Some rabbis forbid flying kites because it is not in the spirit of Shabbat or because of the possibility of violations. Others say that there are no firm grounds to forbid it and that it is therefore permitted.

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

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

In this context, let us deal with two further halachic questions that may arise during kite flying. What should be done if you fly a kite near the boundary of a reshut hayachid³ and the kite goes over the wall, so that it is now over a public domain? As long as the kite continues to fly above 10 tefachim⁴ off the ground, there is no problem because that region over a public domain is a makom p’tur.⁵ It is permitted to move an object from a reshut

². See our “Ask the Rabbi” article in Hemdat Yamim and Torah Tidbits, Bechukotai 5778.
³. A private domain, which is fenced in or is surrounded by an eiruv. It is permitted to carry in a reshut hayachid.
⁴. Approximately one meter (three feet).
⁵. An area that is neither a public nor a private domain, a “halachic vacuum.” See Shulchan Aruch, Orach Chayim 345:12.
hayachid to a makom p’tur⁶ and to move items within the makom p’tur. However, transferring something from a reshut hayachid to a reshut harabim⁷ through a makom p’tur is forbidden,⁸ and this happens if the kite lands outside the eiruv. (A discussion of the topic of items repositioned by means of the wind is beyond our current scope.⁹) Nevertheless, provided that this is not a certain outcome and it is not your intention, you need not be concerned if it happens accidentally, based on the concept of davar she’eino mitkaven.¹⁰ (If it does happen, you should not retrieve the kite.)

The Shulchan Aruch¹¹ writes that one may not play with a ball on Shabbat; since a ball does not have a “real purpose,” it is considered muktzeh. The Rama¹² disagrees. Some Sephardim are stringent on the matter, and some extend the logic to games that have pieces of different sorts.¹³ If one is stringent in those cases, the stringency should also apply to a kite.

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⁶. Ibid. 346:1.
⁷. Public domain.
⁸. Ibid.
⁹. See Yabia Omer IV, Orach Chayim 35.
¹⁰. When one does an action in order to produce permitted result A, but there is a chance that it can also produce forbidden result B, for which he does not intend; see Shabbat 29b.
¹¹. Orach Chayim 308:45.
¹². Ad loc.
¹³. See Yalkut Yosef, Orach Chayim 308,6: 26,27.
Question: The Shemirat Shabbat K’Hilchata writes that in order to return a pot to its heat source on Shabbat, all the food must be fully cooked, even the bones. I cook chulent (stew) on a low flame for hours before Shabbat and leave it on a hot plate for Shabbat. At night, I take it off the hot plate to remove and eat a little, and I then return the rest for the day meal. Although some of the bones are cooked by then, other bones become fully cooked only overnight. Must I stop returning the pot under these conditions?

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

Rav Feinstein³ writes that the requirement that food that one wants to return to a heat source must be fully cooked does not apply to bones, as they are not considered food. He relies both on logic/observation (people do not eat bones) and on halachic sources (bones do not have a halacha of meat with regard to the laws of kashrut⁴). Therefore, making bones soft enough to be theoretically fit for consumption on Shabbat is not considered cooking.

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

1. 1:18.
2. In an exchange of letters that appear in the books of each, as cited below.
3. Igrot Moshe, Orach Chayim IV:76-77.
he says that one must make sure that the bones are fully cooked before doing anything that will hasten the cooking (e.g., returning them to the fire, moving them to a hotter part of a blech, or returning a pot cover that one had removed).

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

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

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

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6. Furthermore, if one were to take Rav Auerbach’s position to its logical conclusion, he would end up with an untenable stringency (which I refuse to share out of concern that someone will adopt it or feel guilty about not doing so).
8. See a citation of several contemporary *poskim* in *Melechet Shabbat* (Leitner), vol. II, pp. 67-76.
determination, especially considering that there is a machloket regarding whether cooking is forbidden after a food has reached the stage of ma'achal ben d'rusai. 9)

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

9. Minimally cooked. See Bi’ur Halacha op. cit.
**C-3: Heating Up Bread on Shabbat**

**Question:** Is it permitted to heat up or defrost *challa* on a hot plate on Shabbat in such a manner that it can or does become crisp¹?

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

Once an item is fully cooked,² it is not possible to violate the Torah prohibition of cooking it on Shabbat.³ However, putting the food on the flame could violate Rabbinic injunctions that were made to prevent transgression, such as out of the concern that one may adjust the heat source. Moreover, although baked goods⁴ are not subject to a prohibition of further baking, the *Yerei’im⁵* maintains that it is prohibited to cook on Shabbat something that was already baked or bake something that was previously cooked.

Based on this, it seems logical to conclude that one may turn bread into toast, as that is simply further baking of the bread. Indeed, important *poskim* maintain this position.⁶ However, there are also important dissenters, for various reasons. The Rambam⁷ writes that turning a soft substance into a hard substance or vice versa is considered “cooking.” The *Sho’eil U’Meishiv⁸* applies this concept even to food that is already edible if one changes its consistency significantly, e.g., making soft bread into toast.

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¹. We are not referring to cases in which the *challa* is reheated at low heat so that it cannot get crisp.

². Cooking is accomplished through the medium of hot liquid; deep frying is in the category of cooking.

³. *Shabbat* 145b.

⁴. Baking is accomplished through the medium of hot air; roasting is like baking (see *Magen Avraham* 318:17).

⁵. 274.

⁶. See *Yechaveh Da’at* III:22; *Shevitat HaShabbat, Mevashel* (92).


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

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

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

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

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9. See \textit{Yechaveh Da’at} op. cit.
11. \textit{Bi’ur Halacha} to 318:4; see \textit{Yechaveh Da’at} op. cit.
12. 6.
14. 318:78.
16. See \textit{Taz, Orach Chayim} 318:6, one of the \textit{Orach LaTzaddik}’s main sources.
who plans to only defrost *challa* does not have to worry that he may forget it on the hot plate until it has turned into toast. Finally, when a whole *challa* becomes crispy on the bottom, the character of the *challa* is not significantly changed, and the reasons to prohibit toast, as cited above, do not apply.

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

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

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Using a Shabbat Clock for an Urn

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

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

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

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2. Most heat sources are equivalent.
5. See *Shulchan Aruch* op. cit.
**Chazara**, returning on Shabbat food that had been removed from the heat, is treated with more stringency. For example, it is forbidden to do *chazara* on an uncovered, adjustable heat source even when raising the temperature is detrimental to the food.\(^6\) Is your case considered *chazara*, given that the heat source starts functioning again through the action of a machine, rather than a person? The answer may depend on the reason for the stringency of *chazara* in comparison to *shehiya*. Rabbeinu Tam maintains that it is due to a heightened concern that one will raise the heat since the food was returned after being off the flame for a while.\(^7\) However, the Ran\(^8\) maintains that the added problem is that returning cooked food to a heat source may be confused with cooking. In your case, Rabbeinu Tam’s reason seems to apply, as you may be inclined to raise the heat of the urn; the Ran’s reason does not apply, since you are doing no action on Shabbat.

Let us examine a discussion about a parallel case. The Rama\(^9\) writes that on a winter Shabbat morning, a non-Jew may put cold cooked food near a fireplace, which a non-Jew is permitted to light for a Jew due to the extreme cold, thereby also heating the food. Why aren’t we concerned that a Jew will stoke the burning coals? The *Pri Megadim*\(^10\) suggests that this ruling must rely on the opinion that reheating liquids is permitted. Consequently, the reheating is not significant enough to forbid due to the concern that one might stoke the coals. The *Chazon Ish*\(^11\) suggests other possible answers. One is that if a food is put in a position with intention to heat it but there is presently no heat, we treat the situation as equivalent to *shehiya*. Since the *Chazon Ish* claims elsewhere\(^12\) that the concern of raising the flame regarding *shehiya* does not apply to fully cooked food, even if it is now cold, this

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6. Ibid. 2.
7. *Sefer HaYashar* 235; see *Tosafot, Shabbat* 38b; *Am Mordechai, Shabbat* 1.
8. *Shabbat* 17b in Rif’s pages.
LIVING THE HALACHIC PROCESS

explains the Rama’s ruling.

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

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

\textsuperscript{13} \textit{Orchot Shabbat} 2:(11).
\textsuperscript{14} See \textit{Am Mordechai, Shabbat}, p. 51.
\textsuperscript{15} 1:40.
\textsuperscript{16} 2:(49).
\textsuperscript{17} \textit{Shabbat} 18b.
\textsuperscript{18} See cases in \textit{Orchot Shabbat} 2:18-19.
\textsuperscript{19} See ibid. 55.
**C-5: Using Salt to Absorb Spilled Wine on Shabbat**

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

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

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

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

1. *Mishna, Shabbat* 142b.
5. See *Kesef Mishneh* ad loc.
The permissibility of removal of dirt from a garment by means of shaking it is also a matter of dispute. The gemara\(^6\) says that if one is particular about the cleanliness of a certain garment, it is forbidden to shake it out on Shabbat. Rashi\(^7\) writes that the gemara is discussing shaking off dirt. Tosafot\(^8\) disagrees and argues that shaking off dirt cannot be considered laundering; rather, the reference is to shaking out water from the garment, which makes it considered part of the laundering process. The Rama\(^9\) states that one should try to follow the strict opinion (Rashi). With this background, let us now consider removing wine by absorbing it with salt.

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

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

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7. Ad loc.
8. Ad loc.
10. See *Mishna Berura* 302:60.
12. Of course, more complete results are reached through agitation/scrubbing.
water on the tablecloth. On the other hand, we have seen that not every action that helps make a fabric cleaner is forbidden.

With a dearth of classical sources on this case or exactly equivalent ones, our halachic intuition is that putting salt on the spill is considered like applying a stain-remover to a fabric and is therefore forbidden. This is in line with Rav Shlomo Zalman Auerbach’s ruling\(^\text{13}\) that it is forbidden to put talcum powder on greasy clothes in order to soak up the fat. We concur with that ruling, and, as our case seems quite similar, we would not permit putting salt on the tablecloth on Shabbat to soak up wine. Rather, we recommend soaking up what one can with a rag or a paper towel on Shabbat and treating the tablecloth with cleaners after Shabbat.

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\(^{13}\) Cited and accepted by *Shemirat Shabbat K’Hilchata* 15:24 and *Orchot Shabbat* 13:20.
Giving an Envelope on Shabbat to Use for Donations

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

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

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

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¹. See *Hemdat Yamim*, Parashat Vayeitzei 5773.
². An object whose main purpose is for a use that is forbidden on Shabbat.
⁴. Preparation for after Shabbat.
⁶. To 279:6.
⁷. 279:13.
⁸. Merely preparing something for a certain halachically significant purpose does not yet invest the object with its expected status.
⁹. *Shabbat* 44b.
The exact formulation of the above rule may be critical in determining the halacha in our case. Once the envelope has the shul’s address printed on it, it is identifiable as being intended to be mailed or delivered (presumably, containing a check or cash). Nevertheless, according to the simple reading of Tosafot (and perhaps the Eliya Rabba), only items that have virtually no chance of being used first for permitted purposes are forbidden before use. According to several contemporary poskim,\(^\text{11}\) however, it seems that an object is forbidden as muktzeh even if there is also a permitted use if it is clear that this is not the main intention. Each of these poskim gives a hammer as an example of being muktzeh even before usage, despite the famous halacha that recognizes and permits using a hammer to open nuts.\(^\text{12}\)

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

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

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

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\(^{11}\) See Shemirat Shabbat K’Hilchata 20:13, Orchot Shabbat 19:30; Tiltulei Shabbat (Bodner), p. 43.

\(^{12}\) See Shulchan Aruch, Orach Chayim 308:3; Shemirat Shabbat K’Hilchata 20:8.

\(^{13}\) See Mishna Berura 323:20.
used to “enforce” payment of the pledge only after Shabbat has concluded, this is permitted in order to not lose the opportunity to ensure that the mitzva of the donation will be fulfilled. For the gabbai to give out envelopes as a hint and reminder to donate is ostensibly not worse than marking the pledge cards.

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

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

14. See Avoda Zara 15b.
Question: I was at a friend’s home on Shabbat, and he brought out a platter of candies, all of the same type. My young daughter grabbed a candy and put it in her mouth. I chided her for her behavior, so she put the licked candy back in the platter. I was very embarrassed and took the candy out from the platter. My friend claimed that, in the process, I had violated the prohibition of *borer* (selecting). Is he correct?

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

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

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

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1. Intermingling of different items.
2. Rama, *Orach Chayim* 319:3; see *Terumat HaDeshen* 57.
3. See *Mishna Berura* 319:15.
4. The *Taz*, *Orach Chayim* 319:2, is a minority stringent opinion on this matter.
applies to them. Accordingly, the Rama\(^5\) rules that it is forbidden to remove spoiled vegetable leaves (pesolet) from among good leaves of the same type. The Magen Avraham\(^6\) identifies several gradations in the matter. If the pesolet is inedible, there can be Torah-level borer when the proper procedure is not followed. If the pesolet is edible but not readily so, it is only Rabbinic-level borer. If the food is totally edible, but some pieces are less desirable than others, there is no borer in selecting among the more and less desired items of the same type.\(^7\)

If the laws of borer indeed apply to your case (i.e., the licked candy was pesolet), you had a problem that needed to be solved, as one may not take out the undesired from the desired\(^8\) – which is what you did. Under what circumstances would the candy have been, or not been, considered pesolet?

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

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

\(^5\) Orach Chayim 319:1.
\(^6\) 319:5; see Machatzit HaShekel 319:3.
\(^7\) See discussion of the status of whole and broken pieces of matza in Shemirat Shabbat K’Hilchata 3:28.
\(^8\) Shulchan Aruch, Orach Chayim 319:4.
\(^9\) See Shemirat Shabbat K’Hilchata 3:23, who permits someone who does not eat onions to remove onions from a salad to give to someone else for the latter’s immediate consumption.
\(^10\) Bi’ur Halacha to 319:10.
may remove a bone from fish if he sucks the bone before throwing it out; it is not required for him to be enthusiastic about sucking fish bones.\(^{11}\) Therefore, you could have taken out the candy and eaten it yourself. Even if you would not have eaten the candy as it was, you could have taken it out, washed it, and then eaten it soon thereafter.

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

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11. Ibid. to 319:4.
13. See *Orchot Shabbat* 3:64.
**Question:** I am a member of YU’s a cappella group, The Maccabeats. We recently made a clip of the zemer Dror Yikra, in which we use Kiddush cups, hands, and a table as a means of creating a beat. While we obviously record during the week, someone suggested that we are encouraging our viewers to do a forbidden action on Shabbat by using an instrument to produce music. Is creating a beat on Shabbat in the way we do forbidden on Shabbat, and are we responsible for a viewer’s possible halachic mistake?

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

There has long been a disparity between these halachic sources and public practice. The gemara\(^3\) says that the reason that rabbis did not protest when people clapped and danced is that it is better that people err unknowingly than knowingly. The Rama,\(^4\) bothered by such practices in his time, comments that the concern of refusal to comply with this halacha still exists. It is also possible that people rely on Tosafot’s opinion\(^5\) that since people do not know how to make musical instruments nowadays, the prohibition no longer applies. Although Tosafot’s thesis is surprising and not widely accepted, the Rama cites it as a second possible explanation for the lenient practice.

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1. Beitza 36b.
2. Eiruvin 104a.
4. Orach Chayim 339:3.
5. Beitza 30a.
How far does the leniency go? The *Mishna Berura* is among those who maintain that the Rama (reluctantly) condones only clapping, thigh-banging, and dancing, but not the use of noise-making and musical instruments. In fact, the Rama elsewhere clarifies his position, writing that one may make a beat with non-instruments, whereas musical instruments may be played only by a non-Jew at a Jew’s behest. (The Rama refers to wedding celebrations, which in the past sometimes continued into Shabbat.)

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

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

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7. *Orach Chayim* 338:2; *Shut HaRama* 125; see *Magen Avraham* 338:5.
10. See *Tosafot*, *Sukka* 50a.
instruments – on the table.\footnote{11}

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

\footnote{11. *B’nei Banim* I:12.}
\footnote{12. The prohibition of placing a spiritual stumbling block before someone (i.e., leading them to do something forbidden).}
C-9: Opening and Closing a Garden Parasol on Shabbat

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

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

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

1. See Shabbat 138a; Sha’ar HaTziyun 315:6.
2. Shulchan Aruch, Orach Chayim 315:2.
3. Ibid. 3.
4. See Shabbat 138a-b.
5. Shulchan Aruch op. cit. 2.
LIVING THE HALACHIC PROCESS

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

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

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

7. Ibid.; Shulchan Aruch op. cit. 5.
8. Orach Chayim 626:3.
10. The Noda B’Yehuda is further concerned because the slope of the umbrella should be considered like additional vertical walls.
12. See Bi’ur Halacha 315:8; Shemirat Shabbat K’Hilchata 24:15; Chazon Ish op. cit.
in several ways. Perhaps most significantly, when the parasol is opened, the fabric extends from a stationary pole, which is not comparable to picking up an umbrella and creating an *ohel* in its present location from scratch.\(^{13}\)

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

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13. See *Chazon Ish* op. cit.
15. See ad loc. (55).
16. If the slope of the parasol is gradual, the *Noda B’Yehuda*’s concern that it is considered to have vertical walls (see n.10 above) would not apply.
C-10: Using a Whipped Cream Dispenser on Shabbat

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

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

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

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

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1. See *Shemirat Shabbat K’Hilchata* 8:1.
2. 11:31.  
canister. Thus, this issue would certainly not be grounds to forbid our case. Recent poskim discuss creating seltzer/soda on Shabbat, in the process of which a somewhat significant change occurs to a liquid by inserting a gas. One of the objections discussed is uvdin d’chol (weekday-like activities, such as producing things). While this principle might or might not apply to the process of inserting a gas canister and preparing the machine to make soda (or a similar device for making whipped cream), it is difficult to apply it to using a ready-to-use canister, which the average user views simply as a dispenser.

The most serious issue is molid, creating a new entity by changing the physical phase of an object. A baraita\(^4\) forbids crushing ice and snow, and Rashi explains that this is like a melacha in that one creates something new (i.e., a liquid from a solid). Some\(^5\) say that it is similarly prohibited to turn a liquid into a solid (e.g., freeze water to make ice cubes).\(^6\)

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

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4. Shabbat 51b.
5. See Doveiv Meisharim I:55.
6. We dealt with this issue in Living the Halachic Process, vol. IV, C-12, and cited strong grounds for leniency.
7. 15:(45).
8. See the distinction in a parallel discussion in Shemirat Shabbat K’Hilchata 10:(14).
While one can make the argument that it is forbidden to spray whipped cream from its canister, common practice is to permit it. On the basis of the above halachic discussion, we do not feel that it is necessary to change that practice. (We have not dealt with the problem of using the cream to write words or make likenesses of specific objects.)


**C-11: Use of Kinetic Watches on Shabbat**

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

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

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

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

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1. *Orach Chayim* 338:3.
5. *Orach Chayim* 55.
sensed until later. In contrast, the *Sha’arei Teshuva*\(^6\) supports the idea that the winding is simply extending the watch’s efficacy, and it is therefore permitted. The *Ktav Sofer* also raises a possible distinction between extending the efficacy of clocks that chime and winding silent clocks and watches, where all that happens is that the gears and handles continue to move longer. In any event, the *minhag* developed to not allow winding a watch to extend the existing operation even if there is no chime, unless there are mitigating or extenuating circumstances.\(^7\)

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

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

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

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6. 338:1*. See also *Da’at Torah* to *Shulchan Aruch*, *Orach Chayim* 338:3, who develops this thesis.
7. See *Mishna Berura* 338:15; *Sha’ar HaTziyun* 338:17; *Shemirat Shabbat K’Hilchata* 28:19-21.
9. See additional explanations, ad loc. (61).
10. See *Peninei Halacha*, *Shabbat* 17.
electricity and will be converted again at some point well in the future into a “harmless” mechanical movement, **without creating new circuits**, is permitted.\(^1\) We assume that it is not included in the prohibitions of electricity, in which new circuits are made and clear, new results take place on Shabbat, a set of circumstances that the halachic world has forbidden since the advent of the use of electricity. (We may reverse our decision if a consensus forms to forbid it.)

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

\(^1\) *Orchot Shabbat* 26:50 reasons that the creation of even this limited electric current is forbidden.
C-12: Non-Jewish Worker Servicing Clients on Shabbat

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

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

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

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¹. C-23.
². *Shulchan Aruch*, Orach Chayim 244:1.
³. Ibid. 252:2.
gains and would like him to do so. It seems that you can conform to this requirement as well in the following manner.

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

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

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

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4. See Living the Halachic Process op. cit.
5. See Mishna Berura 307:15.
in from the work on Shabbat because if one receives payment in one logical **lump sum** for Shabbat and weekday activities, it is not considered forbidden *s’char Shabbat*. In this case, a major part of the money coming to the company is for setting up the business, making the connection between the client and the worker who serviced him, etc., much of which takes place during the week. However, in this system, the company is connected to the work done on Shabbat, which introduces the issue of *marit ayin*. Therefore, it is permitted only if it is not known that it is a Jew’s business or if it is common that one is compensated for such a service with a commission and not as a salaried worker.

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7. See ibid.
8. See distinction in *Igrot Moshe, Orach Chayim* II:64.
9. It looks like one is using his worker to violate Shabbat.
10. See *Mishna Berura* 252:25.
C-13: Placing Delayed Stock Orders from Israel on Friday

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

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

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

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

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\(^1\) *Shulchan Aruch, Orach Chayim* 247:1.
place there on New York’s Shabbat. The question remains, however, whether the important factor is that they do their work for you before Shabbat at their location or that the work they do for you is not done when it is Shabbat at your location.

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

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

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2. Since the writing of this response, the prevalence of “after hours trading” has increased, and it could increase further in the future as well. This section of the response is predicated on there not being a chance of prohibited work being done after market hours.
4. The confines in which one is permitted to walk on Shabbat.
5. To Shabbat ad loc., accepted by the Shulchan Aruch, Orach Chayim 263:17.
6. Agency.
7. See Rashi, Shabbat 153a.
8. Beit Yosef, Orach Chayim 263; Magen Avraham 263:30.
9. Booths that extend the techum Shabbat.
10. Levush, Orach Chayim 263:17; see Shulchan Aruch HaRav, Orach Chayim, Kuntras Acharon 263:8.
11. Taz, Orach Chayim 263:3; Levushei S’rad to Magen Avraham 307:12.
strongest and most accepted one.\textsuperscript{12} Therefore, even if someone would be doing work for you when it is Shabbat for you, since it is not a violation of Shabbat for the one doing it, you may have him carry out the work.

One issue remains. R. Akiva Eiger\textsuperscript{13} maintains that one may not have a transaction on his behalf \textit{take effect} on Shabbat even when the practical dealings are already completed before Shabbat. Therefore, ostensibly, even though nothing is being done wrong on Shabbat, the fact that the transaction may be settled on Shabbat should be a problem. However, R. Akiva Eiger’s theory is so novel that many \textit{poskim} disagree with it, and others limit it to cases similar to the contexts that are the basis of his idea. Thus, his concern need not be applied here.\textsuperscript{14}

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

\textsuperscript{12} See \textit{Mishna Berura} 263:64; \textit{Minchat Shlomo} I:19; \textit{Ta’arich Yisrael} 8.

\textsuperscript{13} \textit{Shut} I:159.

\textsuperscript{14} See discussion in \textit{BeMareh HaBazak} V:37:(21).
**C-14: Relighting Shabbat Candles that Went Out**

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

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

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

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¹. According to the basic *halacha*, without stringency.
². See *Yalkut Yosef*, *Orach Chayim* 263:7, and *Mishna Berura* 263:42.
³. See *Living the Halachic Process*, vol. III, D-12.
⁵. *Badei HaShulchan* 74:14.
including when all planned candles are properly lit.

In fact, there is significant debate⁶ as to whether it is the lighting or the subsequent beracha that ushers in Shabbat. Rav S.Z. Auerbach leans toward the “beracha approach.” The Mishneh Halachot⁷ agrees and therefore permits putting out the match, as opposed to letting it go out by itself, as long as it is done before making the beracha. (The Shemirat Shabbat K’Hilchata⁸ rules that even before the beracha was made, one should let the match go out by itself and should not relight a candle that went out after it had been lit effectively.)

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

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

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⁶. See Shemirat Shabbat K’Hilchata 43:(179).
⁷. VIII:31.
¹⁰. Rama, Orach Chayim 263:10.
¹¹. Shemirat Shabbat K’Hilchata 43:14; see Mishna Berura 263:21.
¹². Shemirat Shabbat K’Hilchata 43:37; see Chovat HaDar, p. 87; Yalkut Yosef op. cit.
If all the candles went out and you did not have any relit, your wife apparently did not fulfill the mitzva. The *Shulchan Aruch HaRav*\(^ {13} \) goes so far as to say that the mitzva is receiving benefit from the light (which you were missing), and the lighting is just a preparatory act. But even if one assumes that the lighting is the mitzva, it still appears that receiving the benefit is a necessary condition for the mitzva’s completion.\(^ {14} \) If none of the solutions were feasible, it is not her fault, and she is credited for at least doing the correct Friday actions (lighting and refraining from desecrating Shabbat). Thus, the “penalty” for one who neglects to light candles – having to add an additional candle for the rest of her life – does not apply.\(^ {15} \) The *Shemirat Shabbat K’Hilchata*\(^ {16} \) is unsure about this when no candles remained lit and the woman did not avail herself of the above solutions. However, if this occurs because she did not know the halacha, we do not believe the penalty applies.

\(^{13} \) Orach Chayim 263, Kuntras Acharon 3.

\(^{14} \) See Shulchan Aruch, Orach Chayim 263:9; Mishna Berura 263:30.

\(^{15} \) See Mishna Berura 263:7.

\(^{16} \) 43:(35).
Who Drinks Kiddush/Havdala Wine and Why?

Question: Why is it that after Kiddush everyone drinks the Kiddush wine and after Havdala only the mavdil\(^1\) does?

Answer: The sources lead us to many ideas, but none that we can prove. The *Shulchan Aruch\(^2\)* deals with ways to fulfill the requirement that a *m’lo lugmav* (enough to fill the cheeks – approximately 2 fl.oz) of the Kiddush wine must be drunk. Some say that one person has to drink the whole amount; others say we can add up the amounts that different people drink. The *Shulchan Aruch* points out that no matter how the requirement is met, it is best for everyone to drink some of the wine. This recommendation\(^3\) that everyone should drink is based on the Rosh,\(^4\) who does not offer a source or an explanation. The Rosh also does not mention if this is a special *mitzva* regarding Kiddush, although that is the context of the gemara upon which he is commenting.

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

The Rambam\(^9\) writes that after drinking a *m’lo lugmav*, one

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1. The one who recites Havdala.
5. See Taz ad loc. 17.
7. The one who recites Kiddush.
8. See *Shulchan Aruch* op. cit. 16.
“gives to all the members of the group to drink.” The *Mirkevet HaMishneh* searches for a Talmudic source for the Rambam (who rarely includes a halacha that lacks one). He points to the *gemara* in *Berachot*, which lists things that one is supposed to do to enhance a kos shel beracha (cup of wine used in a mitzva context). R. Avahu mentions ten things and then adds that some say to “send it to the members of one’s household.” R. Yochanan says that only four of the practices need to be observed. The *Mirekevet HaMishneh* reasons that R. Yochanan argued about the number (four rather than ten) but did not take issue with the importance of “sending” to one’s household. The logic is that drinking the wine bestows importance to the mitzva cup.

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

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

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

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10. Ad loc.
11. 51a.
15. See *Shabbat* 29:24.
16. 74.
17. 296:4.
is not made in the framework of a meal, we want the mavdil to drink at least a revi’it (which is more than m’lo lugmav) so that the requirement for a beracha acharona on the wine will be a certainty. While it is not clear whether there was an early consensus on this matter, our minhag indeed is that not all drink that wine.

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

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

22. Ibid. 174:4.
C-16: How Can We Perform Matters of Minhag Before Kiddush?

Question: The Tur,1 Shulchan Aruch,2 Gra,3 Pri Megadim,4 etc. all mention the need to rush to make Kiddush and eat as soon as Shabbat commences. Yet, I have never seen a household that does not first sing Shalom Aleichem and Eishet Chayil. Making Kiddush is a mitzva (d’oraita5 for those who did not daven Ma’ariv and d’rabbanan6 for those who did), while the singing is merely a nice (recent) minhag. Since when does a minhag take precedence over a mitzva?! Shouldn’t we make Kiddush (and HaMotzi) first?

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

The Tur and Shulchan Aruch indeed write: “When one comes to his house, he should hurry to eat right away.” Although the idea of hurrying does not seem to be found in the gemara or early Rishonim, these are still weighty sources. What is the need for hurrying? The Beit Yosef7 explains that the problem is not the delay per se, and neither is the meal the issue. Rather, since the intent of Kiddush is to sanctify Shabbat as it enters, it should be recited close to the beginning of Shabbat.8 (The Taz9 seems to understand this to also hint that one can make Kiddush even before nightfall.) If this is as pressing as the simple reading would seem to indicate, davening earlier, faster, or at a shul that is closer to one’s home

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1. Orach Chayim 271.
3. Ad loc.
5. Of Torah origin.
6. Of Rabbinic origin.
7. Orach Chayim 271.
8. See Pesachim 106a with Rashi.
would seemingly be as appropriate in this regard as skipping the pre-Kiddush zemirot.

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

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

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

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10. Shulchan Aruch ibid. 8; see Shemirat Shabbat K’Hilchata 47:(31).
11. It may even be possible to fulfill the Torah-level Kiddush by making a beracha on the Shabbat candles or making simple declarations that positively acknowledge Shabbat; see Shemirat Shabbat K’Hilchata 47:(19)
the beginning of *Ma’ariv, Kiddush*, etc.

Indeed, if we were 16th century rabbis, we might have spoken out against these additions based on your arguments. However, we are firm believers in the collective wisdom of the rabbinic and serious laity of *Bnei Yisrael*. As the gemara14 dictates: “Leave Israel alone. If they are not prophets, they are the sons of prophets.” Thus, if (almost) all homes follow this routine, it is a minhag that we have accepted, even if we do not know why it is important. (Understanding is worthwhile, but not necessary before following a good practice.) Making a statement against an accepted practice (including the one in question), whether through an action or through not carefully chosen words, can raise issues of appearing “holier than thou.” This, in turn, sometimes causes machloket, which we are sure is not your intention.

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**C-17: A Melaveh Malka for Women**

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

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

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

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

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2. Resurrection of the dead.
3. See *Beit Yosef*, *Orach Chayim* 300.
4. See *Kaf HaChayim*, *Orach Chayim* 300:2.
5. See ibid. 4.
6. See *Aruch HaShulchan*, *Orach Chayim* 300:3.
7. See *Shulchan Aruch HaRav*, *Orach Chayim* 300:3; *Mishnah Berura* 300:2.
to be careful about.\(^8\) However, the *gemara* implies\(^9\) that the main factor is actually the setting of the table; the food seems to be an afterthought (“even … a *k’zayit*”) or that which makes the table “the stage.” Nevertheless, many people who are *machmir* regarding eating ignore such elements mentioned by *poskim* as a nice tablecloth, place setting, and candles – essentials of *kavod* modeled after Shabbat. On the other hand, some of the reasons given for *melaveh malka* do indeed focus on food, as do the stories the *gemara* tells about the practice of *melaveh malka*.

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

Is there room for leniency not to have a *melaveh malka*? Besides the possibility that it is not halachically required, there is a respected opinion\(^11\) that any eating at *seuda shlishit* that takes place after nightfall (whose exact time is unclear) counts as a *melaveh malka*. The *Tehilla L’Dovid*\(^12\) presents a cogent argument that since we treat that time as Shabbat, *seuda shlishit* cannot count for *melaveh malka*, but this does not delegitimize the lenient opinion.\(^13\) Many *poskim*\(^14\) say that one can fulfill *melaveh malka* without a full meal, even with fruit. This is logical considering the important opinions that maintain that this suffices even for the greater obligation of *seuda shlishit*.\(^15\)

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

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8. See *Maharsha*, *Shabbat* 119b; *Mishna Berura* 300:1.
9. As understood by the *Taz*, *Orach Chayim* 300:1.
11. *Eliya Rabba* 300:1, quoted by many authorities.
12. 300:1.
15. See *Shulchan Aruch*, *Orach Chayim* 291:5.
16. See the discussion in *Pri Megadim*, *Eshel Avraham* 300:1.
assume that women are obligated in such mitzvot when they relate to Shabbat (e.g., Havdala and seuda shlishit\textsuperscript{17}), as all agree regarding Kiddush.\textsuperscript{18} Furthermore, many women will desire their share of the aforementioned spiritual treasures.\textsuperscript{19}

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

\textsuperscript{17} Machatzit HaShekel 300:1, based on Magen Avraham 291:11.
\textsuperscript{18} Berachot 20b.
\textsuperscript{19} See Kaf HaChayim, Orach Chayim 300:2.
\textsuperscript{20} See Shemirat Shabbat K’Hilchata 63:3.
C-18: Reciting R’tzei after Ending Shabbat

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

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

The first rule is actually not unanimously held. The Rosh\(^1\) says that if one starts seuda shlishit before sunset but bentches\(^2\) after the day is over, he does not recite R’tzei. In the opposite situation, if he ate a meal before Shabbat but recited Birkat HaMazon on Shabbat, the Rosh posits that he should recite R’tzei. The Tur\(^3\) writes that according to the Rosh (his father), one who did not bentch for his Purim seuda until nightfall after Purim would not recite Al HaNisim. In other words, the time at which one is ready to make the pronouncement determines whether an addition to Birkat HaMazon is included.

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

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2. Recites Birkat HaMazon.
3. Orach Chayim 695.
include it even when the occasion ostensibly is over.⁴ (An exception to this is Sheva Berachot that finish after the week has been completed, as one cannot make independent berachot after their time period has passed.)⁵

The next rule, that we do not allow tartei d’satrei situations, has far too many applications to address in this context, so we will stick close to our topic. One application concerns a person who started a seudat Purim on Erev Shabbat, continued it on Shabbat, and made Kiddush in the middle. When he eventually recites Birkat HaMazon, there is reason to say both Al HaNisim, due to the food that he ate during the day, and R’tei, due to the food that he ate after Kiddush. The Chayei Adam⁶ maintains that you cannot say both Al HaNisim and R’tei in the same Birker HaMazon when they relate to two different days. Thus, in the Purim case, one should say R’tei, which is more important.

Another case of tartei d’satrei regarding R’tzei arises when one starts eating on Shabbat and continues eating bread after nightfall and Rosh Chodesh begins. There are grounds to say both R’tzei and Ya’aleh V’Yavo in this case, but again, they belong to two different days. The Magen Avraham⁷ asserts that one cannot say both, and since it is clear that there is more of an obligation of Ya’aleh V’Yavo, which applies at that moment, than there is an obligation of R’tzei, one says only Ya’aleh V’Yavo. On the other hand, the Taz⁸ is of the opinion that one may say both despite the apparent contradiction, whereas the Mishna Berura does not come to a clear conclusion.

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

⁴. Shulchan Aruch, Orach Chayim 188:10.
⁵. See Sha’arei Teshuva 188:7, based on the Ginat Veradim.
⁶. II:155:32.
⁷. 188:18.
the consensus of poskim is that davening Ma’ariv is such a strong indication of ending Shabbat that it is not possible to say R’zei in bentching afterward.\textsuperscript{9} Some major poskim\textsuperscript{10} express uncertainty regarding whether reciting HaMavdil\textsuperscript{11} without davening Ma’ariv precludes saying R’zei.

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

\begin{itemize}
\item \textsuperscript{9} See implication of Beit Yosef, Orach Chayim 188, Magen Avraham 188:17; Mishna Berura 188:32; Aruch HaShulchan, Orach Chayim 188:27.
\item \textsuperscript{10} Magen Avraham 263:33; Rabbi Akiva Eiger to Magen Avraham 188:17.
\item \textsuperscript{11} A declaration of Havdala that permits work after Shabbat has finished.
\item \textsuperscript{12} Shulchan Aruch, Orach Chayim 188:8.
\end{itemize}
C-19: Methods of Receiving Pay for Work on Shabbat

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

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

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

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

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1. Nedarim 37a-b; Shulchan Aruch, Orach Chayim 306:4.
2. Mishna Berura ad loc.
3. Nedarim op. cit.; Shulchan Aruch op. cit.
without the ability to back out under normal circumstances. This has ramifications both for leniency and for stringency, depending on the particular situation. If the employee is owed for work on Shabbat and the employer is not obligated to continue the employment during a period that includes weekdays, the work on Shabbat is viewed independently and the worker is forbidden to receive the pay. One common example is a babysitter, who usually gets hired for each job individually. Therefore, getting paid at one time for separate babysitting jobs, one during Shabbat and other(s) during the week, is forbidden. Your situation, in contrast, is in all likelihood an example of the lenient ramification. A shul usually hires youth workers for “a year” (often Sept.-June), which is the relevant time unit even if the payments are made in monthly installments. If that is the case, then since the year includes work on Tu B’Shvat and Purim, the pay is permitted, as your friends surmised.

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

6. Including Aruch HaShulchan, Orach Chayim 306:12. The Orchat Shabbat 22:(149) doubts that chazanim are considered to receive any pay for their preparations.
weekday components of their jobs by requiring the leaders to come to a training session or a meeting or to call the children and/or parents with whom they will be working. One such significant responsibility during the employment period suffices.

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

\(^8\) Orach Chayim 306:5.
\(^9\) 306:24.
Section D:

Mo'adim (Festivals)
D-1: Blowing Shofar After Shul

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

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

It is Rabbinically prohibited to blow shofar on Shabbat,\(^1\) and this prohibition presumably applies to Yom Tov as well. Thus, if not for the mitzva of blowing shofar, we would not be allowed to do so at all on Rosh Hashana. The Rama\(^2\) therefore rules that an adult is not allowed to blow shofar “for no reason” on Rosh Hashana. What does “no reason” include? The Tur\(^3\) cites an opinion that goes as far as to say that one may not blow a shofar only on behalf of a woman on Rosh Hashana, because she is not obligated in the mitzva. (The Tur himself argues with this view because it is still an optional mitzva for her to hear the shofar blasts.) Another discussion\(^4\) raises the possibility that if, out of incorrect stringency, one makes the tokeiah repeat a blast when Halacha does not require it, he violates this Rabbinical prohibition. Thus, it appears that extra blowing “just to be on the safe side” could be a negative thing. (The Taz\(^5\) does say that the prohibition against unnecessary shofar blowing on Rosh Hashana only applies when it falls out on Shabbat, due to the Rabbis’ concern that shofar blowing could lead to carrying outside without an eiruv. However, his opinion is not widely accepted.)

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

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1. Tosafot, Rosh Hashana 30a.
2. Orach Chayim 596:1.
3. Orach Chayim 589.
5. Orach Chayim 596:2.
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adding on to the mitzvot of the Torah. Indeed, Tosafot wonders why the accepted practice of blowing during the amida (or chazarat hashatz) does not violate bal tosif. Tosafot answers that performing a mitzva an additional time beyond what the Torah requires on the day when the mitzva is to be performed is not a violation of bal tosif. We could apply that answer to our case as well. However, we should note that although Tosafot’s rule is quite accepted, the Rashba disagrees and maintains that bal tosif is violated through repetition of a mitzva’s performance unless there is a Rabbinic institution to add on to the mitzva. Therefore, according to the Rashba, in our case there would have to be some type of Rabbinic mandate in order to justify blowing more than necessary.

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

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7. Rosh Hashana 16b.
8. There are different minhagim as to when this set of shofar blasts is carried out.
9. Rosh Hashana 16b.
10. Rosh Hashana 34a.
11. The Shulchan Aruch and Rama, Orach Chayim 590:4, argue regarding “one or two breaths” (see n. 12); another question is how long the shevarim should be (see Shulchan Aruch op. cit. 3).
Another reason that some wish to blow after shul is that the tokeiah does not always do a good job of blowing accurately, and the rabbi is sometimes lenient about making him repeat blasts. Some people therefore wish to hear extra blasts just in case the ones during davening were not sufficient. Thus, it is difficult to make a generalization as to whether extra blowing is prudent or close to frivolous.

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

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

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12. This refers to the dispute regarding whether the blower should or should not break long enough to take a breath in between the shevarim and the teru’ah of the “teki’ah-shevarim-teru’ah-teki’ah” blows; see Shulchan Aruch, Orach Chayim 590:4.
14. See discussion in Mishneh Halachot VIII:206; he himself advises against an exaggerated amount of blowing.
15. See the standards recorded in the Shulchan Aruch, Orach Chayim 34:3, regarding those for whom it is appropriate to don a second pair of (Rabbeinu Tam) tefillin.
**D-2: The Timing of Shehecheyanu on New Clothes on the Second Night of Rosh Hashana**

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

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

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

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

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1. See Rama, Orach Chayim 600:2.
3. Shulchan Aruch, Orach Chayim 600:2; see Beit Yosef ad loc.
This goal is fully attained even if the beracha should have ideally been recited earlier, as long as it is still definitely appropriate at the time of Kiddush. Indeed, the halacha is that if one did not recite Shehecheyanu on an article of clothing as soon as he put it on, he can still recite it until he takes it off, at least if he still feels happiness from its being new. One who was happy to put on a new suit before Ma’ariv still feels good when he thinks about it at Kiddush of the first meal at which he wears it. Thus, the effectiveness of the Shehecheyanu is not an issue (not to mention that the need for the new clothes is itself only a chumra, as many authorities maintain that the Shehecheyanu may be recited simply because of Yom Tov).

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

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

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4. In vain.
7. Magen Avraham 225:6; see also Yechaveh Da’at III:15.
8. Shulchan Aruch, Orach Chayim 8:10.
this question, but according to most of them, the situation of having the beracha relate to the fruit/clothing is not optimal, but only acceptable – considering the gain. Essentially, a halachic compromise is called for due to necessity in any case, and waiting with Shehecheyanu is not a bigger compromise than the matter of possible hefsek. We do the best we can.

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

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10. See, for example, Minchat Shlomo I:20.
11. See response G-1.
**D-3: Washing One’s Face on Yom Kippur**

**Question:** I have great difficulty being alert if I do not wash my face in the morning. May I do so on Yom Kippur, considering that I am not doing so for enjoyment, but rather to allow me to function properly?

**Answer:** It is true that only washing “for enjoyment” is forbidden on Yom Kippur.\(^1\) Therefore, one may use water to wash off dirt\(^2\) or to carry out a required washing before *davening*,\(^3\) and one also may get wet if he needs to pass through a body of water for an important purpose.\(^4\)

Why the prohibition is so limited is a good question. After all, it clearly is not permitted to violate other *aveirot* simply because one does so for reasons other than enjoyment; one may not eat or drink on Yom Kippur for similar reasons, short of *pikuach nefesh*.\(^5\) The simplest explanation is that the *innuyim*\(^6\) of Yom Kippur, other than the prohibitions against eating and drinking (the two labeled as the major *innuyim*), are only Rabbinically mandated, and it is not uncommon for logical leniencies to be built into Rabbinical prohibitions. Indeed, several *Rishonim*, including Rabbeinu Tam,\(^7\) cite such leniencies as proof that the minor *innuyim* are Rabbinic. The Rambam,\(^8\) however, is among those who maintain that all the *innuyim* are of Torah origin. The Ran’ explains that according to this view, we have here an example of Torah laws whose

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2. Ibid.
3. Ibid. 2.
4. Ibid. 5.
5. Danger to human life.
7. See *Tosafot*, *Yoma* 77a.
9. *Yoma* 1a of the Rif’s pages.
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parameters were given over to the Rabbis to establish.

With that background, we will address your specific question. The Rosh\(^\text{10}\) cites the following ruling of a Gaon: “If someone wants to wipe his face on Yom Kippur, if he is an istanis\(^\text{11}\) and his mind is not at rest throughout the year until he wipes with water … he may wipe; but for others, it is forbidden.” In addition to apparently distinguishing between applying water for pleasure and fulfilling a specific need, this opinion considers the subjective frame of mind of the individual. The Shulchan Aruch\(^\text{12}\) accepts this leniency. However, some Rishonim and Acharonim argue that there are problems with the application of the Gaon’s statement. The Maharil\(^\text{13}\) cites but rejects the ruling, without mentioning why he does so. As often happens, the Rama\(^\text{14}\) and Ashkenazi communities follow the Maharil. The Bach\(^\text{15}\) posits that the Gaon and the Rosh (as well as the Tur) permitted wiping with water only in a case in which there is actual dirt on one’s face. (The Shulchan Aruch, however, apparently reasons that if the Gaon’s ruling referred to a case of actual dirt, there would be nothing noteworthy in his ruling. He must therefore mean that an istanis with a clean face is equivalent to a normal person with a dirty face.\(^\text{16}\))

The Aruch HaShulchan\(^\text{17}\) argues that the Rosh must be understood in context, which greatly lessens the leniency’s scope. The gemara\(^\text{18}\) speaks about one who would dip a towel in water before Yom Kippur and then run that towel over his face on Yom Kippur, when it was less wet. (The Rama rejects using this system in our times out of concern that one might squeeze out water from

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11. A person who is particularly sensitive to certain physical situations.
14. See Rama, Orach Chayim op. cit.
15. Orach Chayim 613.
16. See Beit Yosef, Orach Chayim 613.
the towel on Yom Kippur.\textsuperscript{19} The \textit{Aruch HaShulchan} understood that the \textit{Gaon} limited the \textit{gemara’s} leniency, such that a regular person could use this system only to run the towel over his \textit{eyes}, a most sensitive area that needs cleaning; only an \textit{istanis} may use that system for the entire face. According to this view, the \textit{Gaon} is not conveying a leniency, but actually somewhat of a stringency.

In any case, while Sephardim may be lenient as you suggested, Ashkenazim should not.\textsuperscript{20} The practical logic for Ashkenazim seems to be that the refreshing feeling that wakes one up is considered washing of pleasure, even if the long-term interest of that pleasure is to help one concentrate on his \textit{davening}. After all, being hungry is also often not conducive to \textit{kavana} for \textit{davening}, and a physically subdued feeling is not a contradiction to the Yom Kippur spirit. Only removal of negative extraneous materials from the body and incidental contact with water are included in the leniency of lack of enjoyment.

For you, we suggest considering putting your face next to an open freezer or placing something cold but dry on your face.\textsuperscript{21} This may help.

\textsuperscript{19} \textit{Orach Chayim} 613:9.
\textsuperscript{20} See \textit{Mikraei Kodesh} (Harari), \textit{Yom Kippur} 7:11.
\textsuperscript{21} See \textit{Shulchan Aruch, Orach Chayim} 613:9.
**D-4: Disqualification of an *Etrog* Based on Color**

**Question:** When does discoloration of an *etrog* render it not kosher?

**Answer:** The *mishna*\(^1\) discusses an *etrog* upon which a *chazazit* (a blister-type formation, which is uncommon in our times) appears. The *mishna* states that a *chazazit* disqualifies the *etrog* only if it covers the majority of the *etrog*. However, the *gemara*\(^2\) says that a *chazazit* can disqualify an *etrog* even if it is only on a minority of the skin when: 1) the blemishes are in a few places, making the *etrog* look spotted; or 2) the blemish (of any size) is on the *chotem* (literally, the nose; see below).

When a blemish has a serious visual impact, the *etrog* is not considered *hadar*\(^3\) (pleasing to the eye), which is the word the Torah\(^4\) uses to describe an *etrog*. If the blemish is located on the top part of the *etrog* or if it is spread out like a leopard’s spots, the *etrog* fails the “*hadar* test.” A major question is whether blemishes (or other cases of lack of *hadar*) disqualify the *etrog* only on the first day of Sukkot, when the *mitzva* is of Torah origin,\(^5\) or even throughout the seven days of Sukkot.\(^6\)

The *Rishonim* extended the laws that we find regarding *chazazit* to other changes of color and visible form, such as when part of the *etrog* is black or white\(^7\) or very dry (according to most opinions).\(^8\) Black spots can come from different sources, but one

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1. Sukka 34b.
2. Ibid. 35b.
3. See Beit Yosef, Orach Chayim 648.
5. Rambam, Lulav 8:9; Shulchan Aruch, Orach Chayim 649:5.
6. Rosh, Sukka 3:4; Rama, Orach Chayim 649:5; see Mishna Berura 649:35-36.
7. Shulchan Aruch, Orach Chayim 648:16; see Mishna Berura 648:45.
8. See Shulchan Aruch op. cit. 12 and Mishna Berura op. cit. 47.
should assume that any black spot that does not come off with rubbing is problematic.\(^9\) (If one tries to remove such a spot, one should be careful not to rub off some of the skin of the *etrog* itself in the process.) However, spots that are too small to be noticed through looking casually do not count.\(^{10}\)

Another common situation is *bletlach* (scab-like formations, which occur at spots of the *etrog* that a leaf was touching while the *etrog* was growing). There is no consensus among poskim regarding whether *bletlach* are considered blemishes if they protrude from the *etrog’s* surrounding skin.\(^{11}\) It is possible that since *bletlach* are common parts of the normal growth of an *etrog*, they are not considered blemishes, but rather part of the normal appearance of an *etrog*.\(^{12}\) Similarly, the normal appearance of an *etrog* is yellow. However, although a dark green color disqualifies an *etrog*,\(^{13}\) there may be green spots in sensitive areas if they have started to turn yellowish, and this is acceptable.\(^{14}\)

Where is the *chotem*, in which small blemishes are a special problem? There are four opinions among the *Rishonim*,\(^{15}\) three of which are identified in the sketch below. Some say that it is the area above the *etrog’s* widest spot. The accepted opinion is that it is where the *etrog* starts angling toward its point at the *pitum* (\(^{#1}\)).\(^{16}\) The *Bi‘ur Halacha*\(^{17}\) writes that all agree that the *chotem* can begin only in the top half of the *etrog*.

Most authorities maintain that the disqualification based on multiple blemishes applies only if the total area in which the blemishes appear (measured by encircling them) covers the majority of the *etrog*. According to most authorities,\(^{18}\) this

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\(^9\). *Kashrut Arba’at HaMinim*, p. 21.
\(^{10}\). Ibid. p. 199; see *Shut HaRadbaz* IV:111.
\(^{11}\). Rama, *Orach Chayim* 648:13; *Mishna Berura* 648:50.
\(^{12}\). Rama ibid.
\(^{13}\). *Shulchan Aruch* ibid. 21.
\(^{14}\). See *Mishna Berura* ibid. 65.
\(^{15}\). See *Beit Yosef*, *Orach Chayim* 648; *Kashrut Arba’at HaMinim*, p. 79-80.
\(^{16}\). *Shulchan Aruch* ibid. 12.
\(^{17}\). To 648:9.
\(^{18}\). See *Magen Avraham* 648:12; see *Machatzit HaShekel* ad loc.
disqualification applies even if these blemishes cover a majority of only the **width** of the *etrog* and do not cover a majority of the entire surface area.\(^\text{19}\)

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\(^{19}\) The *Chazon Ish, Orach Chayim* 147:5, disagrees.
**Question:** At “side minyanim” for laining on Simchat Torah (in an Ashkenazi shul), should hagbaha be done when each group finishes its reading, before the sefer Torah is returned to the main shul?

**Answer:** Our impression is that there is not a clear minhag regarding this question. Nevertheless, tracing the minhagim of hagbaha should provide some insight, although complete clarity may be elusive.

The *gemara*\(^1\) discusses the laws and importance of gelilla, but it is actually more like what we call hagbaha. Massechet Sofrim\(^2\) describes gelilla as the opportunity before reading from the sefer Torah for everyone to see the sefer Torah’s writing, bow, and say several p’sukim in recognition of the Torah’s veracity and importance. The practice seems to have been first recorded in connection to Ezra’s moving public reading of the Torah.\(^3\) There too, the lifting of the Torah to show it to the people was apparently done before the reading. Many Sephardim point the yad at the place in the sefer Torah from which the reading will begin, further stressing the element of introducing the ensuing reading.

Why do Ashkenazim do hagbaha at the end of the laining,\(^4\) and what impact does this have on the way we view the process? The change took place by the end of the period of the Rishonim, as the Maharik\(^5\) takes for granted that hagbaha is done after laining. The most authoritative source justifying the change is actually

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1. Megilla 32a.
2. Chapter 14. There are different versions of the text, but this is the way most sources, including *Darchei Moshe, Orach Chayim* 147:4, understand it.
3. Nechemia 8:5.
5. Shut 54.
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Sephardic. The *Sheyarei Knesset HaGedola*\(^6\) praises the change, saying that is worthwhile because people get more excited about *hagbaha* than about *kri’at haTorah*, so that putting *hagbaha* at the end of the *laining* makes it more likely that people will remain in *shul* until then.

The *Sheyarei Knesset HaGedola*’s explanation provides a technical reason to do *hagbaha* after *laining*, but even if this was the original motivation, it still seems that the nature of *hagbaha* has developed away from being a preparation for the reading. For Ashkenazim, *hagbaha* has become the major focus of the *gelilla* process.\(^7\) As we complete the Torah reading, we honor it by enabling the congregation to properly “take leave” of the *sefer Torah*, along with readying it for proper storage. The Rashba\(^8\) already was cognizant of the fact that *minhagim* were going in the direction of showing more *kavod* to the Torah during *hagbaha* than is normally halachically necessary.\(^9\)

Let us return to your question of whether it is necessary or preferred to do *hagbaha* after even a semi-formal Torah reading or whether *hagbaha* is to be performed only in the classical forums of public Torah reading. Ashkenazim take for granted that on days when multiple *sifrei Torah* are read, *hagbaha* is done to each *sefer Torah*, but this is actually the subject of varied *minhagim* among Sephardim. Furthermore, at least some Sephardim who do *hagbaha* for each *sefer Torah* lift them all before reading from even the first one. We can learn from the existence of these diverse *minhagim* that the basic idea is that the people should experience *hagbaha* in honor of the *sifrei Torah*, which is more important than there being a set procedure of lifting a *sefer Torah* before reading. If we are correct that for Ashkenazim *hagbaha* has become the honorable way to conclude using the *sefer Torah*

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9. The Rashba’s context is standing when the *sefer Torah* is being held in a separate domain (the *bima*) from where the people are.
and prepare it to be put away, then it should be done any time the tzibbur has finished reading from a given sefer, no matter how many sefarim are used.

It is difficult to prove whether or not there must be hagbaha at the end of laining at side-minyanim on Simchat Torah. We would recommend that in the case of a sefer that will be used shortly as one of the three sefarim in the main minyan, we can view its temporary closing as a pause, such that the later hagbaha will suffice. However, it appears appropriate that if the use of a sefer Torah is finished, this should be accompanied by hagbaha. On a day in which we dance with and around the sefarim, it does not make sense to be stingy regarding a classic way to show our reverence for them. However, it is difficult to call this an absolute requirement. Thus, for example, if there is no one left at the minyan who is strong enough to lift the sefer Torah reliably, hagbaha may be skipped.
**D-6: A Ben Chutz La’Aretz¹ Flying Out of Israel on Yom Tov Sheini**

**Question:** May an American visiting Israel who keeps only one day of Yom Tov fly on the day after Pesach in Israel (Yom Tov Sheini abroad) if he will land at his destination after Yom Tov Sheini is over there?

**Answer:** Before addressing your question itself, we will touch on the question of whether a ben chutz la’aretz should observe one or two days of Yom Tov in Israel. There is a difference of opinion on this issue. We believe that both opinions (and their offshoots) are defensible and legitimate, and we are glad that the machloket has not become divisive. Having a basic understanding of the issues involved in that question is critical before we deal with your question.

Bnei chutz la’aretz keep two days of Yom Tov outside Eretz Yisrael because of the binding minhag – even after the calendar was set – to treat the day following Yom Tov as if it might be the actual day of Yom Tov.² Those bnei chutz la’aretz who keep two days even in Israel reason that this minhag applies even when they are in Israel,³ since the minhagim and accepted stringencies of a person’s community are binding upon him even while he is visiting elsewhere.⁴ The Chacham Tzvi⁵ differs, arguing that the rule of observing the practices of one’s community does not apply to matters that are dependent on the place in which one finds himself. If the person’s community were to move to Israel, they would not need or even be allowed to keep an extra day of Yom Tov; thus, the individual in that situation should also not keep

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¹ A Jew who lives in the Diaspora.
² Beitza 4b.
³ Mishna Berura 496:13. See survey of opinions in favor of this approach in Yom Tov Sheni K’Hilchato 2:(3)-(4).
⁴ See Pesachim 50a.
⁵ Shut Chacham Tzvi 167.
Let us analyze the unique situation of the flight to which you refer. Israeli travelers do not have a problem flying on the day after *Yom Tov*, because they are not obligated to keep a second day of *Yom Tov* unless they move permanently to the Diaspora. Although there is a prohibition for Israelis to perform *melacha* in *chutz la’aretz* on the second day of *Yom Tov*, this prohibition applies only when they are within the limits of a Diaspora Jewish community (and the plane does not qualify as such).\(^6\) In contrast, an American traveler is himself a *ben chutz la’aretz*, and he is therefore fundamentally obligated to keep a second day. The *Chacham Tzvi*’s logic to exempt him in Israel no longer applies while he is in the air, as a plane flying over *chutz la’aretz* is not in Israel even if it took off from there. The visitor would therefore enter into his natural obligation of *Yom Tov Sheini* on the plane.

One might argue that one’s *Yom Tov* status cannot change in the middle of the *Yom Tov* day. However, there is ample precedent that one’s status can indeed change. The accepted opinion is that one who makes *aliya* (e.g., by boat) on *Yom Tov Sheini* or makes the decision, in the midst of *Yom Tov Sheini*, to remain permanently in Israel does change his status in the middle of the day.\(^7\) (The logic of the minority who disagree seems to apply only to removing a positive status of *Yom Tov* that was already accepted, not to preventing from starting *Yom Tov* in the middle of the day.\(^8\)) We similarly find the idea of halachically changing one’s calendrical day in the middle of a day in the context of the laws of *sefirat ha’omer* and other *halachot* for those who cross the International Date Line.\(^9\)

Is it permitted to put oneself in a situation in which he will experience *Yom Tov* on a plane for several hours? The *Shulchan*

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8. See *B’Tzel HaChochma* I:53.
Aruch rules that it is permitted for one to board a ship even though he will be on it on Shabbat if the trip is needed for mitzva purposes, but we cannot provide a blanket ruling as to how to categorize the needs of those who feel they must leave Israel right after Yom Tov. In some ways, the situation on a plane is even better than that on a ship, but in other ways it is worse. However, in any case, there are so many difficulties with this arrangement (purely halachic problems as well as technical ones that are created by the halacha) that we strongly discourage taking such a flight except in case of extreme necessity. Among many examples of difficulties are: One may not lock the door to the bathroom, as doing so causes the light to go on. One also may not look at the television screen. Muktzeh prohibitions are relevant to such items as passports, boarding passes, and customs declarations. It is likely that such a person would even be obligated to recite the Yom Tov davening and the full Kiddush, and he would be required to have lechem mishneh. On the eighth day of Pesach, he would be prohibited to eat chametz.

In summation, even those bnei chutz la’aretz who keep only one day of Yom Tov in Israel should not take off from Israel while it is still Yom Tov Sheini. If they do, they should treat that time on the plane as Yom Tov. We would be happy to give more detailed advice to one who finds himself in a situation in which he has little choice but to fly then.

11. The details are beyond our scope. See aforementioned article by Rav Ryzman in depth.
**D-7: Hachnasat Sefer Torah** on Chol HaMo’ed

**Question:** I have strong reasons to hold a hachnasat sefer Torah on Chol HaMo’ed. Is it permitted to do so?

**Answer:** The main issue at hand, relevant specifically to a hachnasat sefer Torah for a new sefer Torah, is the permissibility of writing the sefer Torah’s final letters, as the minhag is to do so on the day of the ceremony.

The mishna states that it is forbidden to write even a small part of a book, including holy scrolls, on Chol HaMo’ed. The Rama cites two opinions as to whether this is permitted if the masses need the book after the chag, and he concludes that it is permitted if one uses simple, “non-artisan” writing. In other words, according to the lenient opinion, the mishna refers specifically to cases in which there is no acute need to write on Chol HaMo’ed itself. These halachot follow the rule that simple work (ma’aseh hedyot) is permitted on Chol HaMo’ed for festival needs or for communal needs that are sufficiently significant, even if they are only for after the chag.

Since writing a sefer Torah certainly requires an expert acting carefully (ma’aseh uman), it should be forbidden on Chol HaMo’ed. The Shulchan Aruch does rule that if there is no other sefer Torah for the community’s Torah reading, a sefer Torah may be finished on Chol HaMo’ed for that purpose. However, it does not sound like that is your predicament.

Despite the above, there has long been a phenomenon of

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1. A party upon the completion of the writing of a sefer Torah and/or its being brought to the place it will be held.
2. As opposed to one simply purchased or whose venue is being changed.
5. Shulchan Aruch, Orach Chayim 544:1.
hachnasot sefer Torah held on Chol HaMo’ed. Some poskim⁷ criticize the practice. However, several poskim justify the practice when it is performed in a particular – and anyway common – fashion, as we will now discuss.

Usually, the main writing of the sefer Torah is completed days before the event, except for the last letters, which are written at the hachnasat sefer Torah itself by the sefer’s owner and his honorees. To facilitate this, the sofer uses one of two systems: 1) He writes the letters in very light ink, so that the donor/honorees write on top to darken them. 2) He writes “hollow letters” and has the donor/honorees fill them in. Some poskim suggest that in these cases, the halachic writing already exists, in which case the writing that is left for the end does not constitute a melacha.⁸ Moreover, even if this is a full melacha of writing, it is an example of ma’aseh hedyot, as even a non-expert can follow the tracing or fill in the hollow letters, and in such a case, writing is permitted even for a simple mitzva of an individual or for an enhancement of the chag.

What mitzva or enhancement of the chag applies here? Some say” it is the mitzva of having a sefer Torah. Although some of the leniencies of Chol HaMo’ed apply only if one had to do the work at that time (a condition that might not apply in your case), festival and mitzva needs can be done even if they could have been done at other times. Some question ¹⁰ whether the writing of the sefer Torah is considered a mitzva in our days, but the argument that it is not a mitzva seems weak. In any case, since the whole celebration is such a joyous and chag-appropriate activity, all of its standard elements, which customarily include writing the last letters, are festival needs. (The poskim are not concerned with the possibility that the celebration might impinge on the proper focus on the chag, which is the reason that weddings are forbidden on

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⁷ Including Aruch HaShulchan, Orach Chayim 545:5.
⁸ See discussion in B’Tzel HaChochma IV:50.
¹⁰ See Minchat Elazar III:2.
Chol HaMo’ed.\textsuperscript{11} A Torah celebration of this type is within the appropriate focus.) If the sefer Torah will be read from during the chag, including Simchat Torah, that should also be considered a mitzva purpose.

Thus, under the above conditions, a hachnasat sefer Torah is permitted according to most poskim, including the Beit Yitzchak,\textsuperscript{12} Kaf HaChayim,\textsuperscript{13} and the contemporary Chol HaMo’ed K’Hilchato.\textsuperscript{14} As mentioned, there is also some history of leniency. Some poskim\textsuperscript{15} are willing to be lenient only in the case of real need, which you indicate you have.

In summary, if it will be most appropriate for the celebration to take place on Chol HaMo’ed, feel free to do it then. Make sure the sofer completes his part before Yom Tov and leaves any expert brush-up work for after the chag. Mazal tov!

\textsuperscript{11} Chagiga 8b.
\textsuperscript{12} Yoreh Deah II, addendum 20.
\textsuperscript{13} Orach Chayim 545:6, based on the S’dei Chemed op. cit.
\textsuperscript{14} 6:24.
\textsuperscript{15} Shevet HaLevi III:96; B’Tzel HaChochma op. cit.
**Question:** Is one supposed to celebrate Chanuka with festive eating? How and why is it different from Purim?

**Answer:** There is no set obligation to have a meal in honor of Chanuka,\(^1\) as there is on Purim.\(^2\) Let us begin by discussing why there is such a difference.

The broadly accepted general distinction between the two holidays in this regard is based on the difference between the types of danger that were involved. In the Purim story, there was danger of physical annihilation. In contrast, in the Chanuka story, the Jews’ ability to keep the Torah was attacked, but had they agreed to forsake the Torah, there would not have been a physical danger. According to the Taz’s\(^3\) understanding of the Levush,\(^4\) the Chanuka salvation was therefore less important and thus did not warrant as much festivity. The Taz, however, disagrees based on the idea that one who causes someone else to sin is worse than one who kills him.\(^5\)

The Taz himself argues that physical salvation, which relates to “this world,” is most appropriately celebrated with physical celebration, whereas spiritual salvation is to be celebrated in a spiritual manner (i.e., the Chanuka lights). However, this idea seems inconsistent with other sources. For example, a festive meal is required on Shavuot because it is the day on which the Torah was given.\(^6\) Furthermore, the Rama\(^7\) writes that there should be some festivity on Chanuka and gives as the reason that it was the time of the dedication of the *mizbe’ach* (altar), which was

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2. Ibid. 695:1.
3. *Orach Chayim* 670:3.
a spiritual event, and the Taz himself seems to agree. Perhaps the Taz meant that the preservation of life deserves physical celebration; regarding spiritual matters, one celebrates physically only if there is something new, as occurred on Shavuot and in the dedication of the mizbe’ach.

Mishnat Ya’avetz adds halachic reasoning to explain why there actually could be a preference not to have a full obligation of a festive meal on Chanuka. He points out that a full obligation could have caused a problem of bal tosif (the prohibition of adding on to the mitzvot of the Torah) for creating a day significantly akin to Yom Tov.

Nevertheless, there are sources that seem to indicate that there is a mitzva of having festive eating on Chanuka. The Rambam refers to the days of Chanuka as “days of simcha (joy) and hallel (songs of praise),” and the former term usually relates to festive eating. At the very least, this includes a prohibition of fasting during Chanuka. The Shulchan Aruch, who rules that there is no obligation to have festive meals, implies that there does indeed exist a practice to have them, but that they are reshut (voluntary). The Rama, as mentioned, cites an opinion that there is a slight mitzva to have special meals for Chanuka, with the reason relating, as above, to the dedication of the mizbe’ach.

The Rama adds that the practice is to sing and praise HaShem at special meals made in honor of Chanuka, and if one indeed does so, then the meal is a seudat mitzva. The status of seudat mitzva can mean one of two things: One is that there is a mitzva to have the meal; the other is that the meal has religious significance.

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8. Ad loc. 4.
10. See ibid. regarding how Mordechai and Esther dealt with this issue regarding Purim.
12. Yam Shel Shlomo, Bava Kama 7:37.
13. Shabbat 21b
when one has it, even if it is not required. For example, on Yom Tov\textsuperscript{16} or after a brit mila,\textsuperscript{17} one is required to have a festive meal. In contrast, if one completes a unit of learning that warrants a siyum, he is not obligated to make a celebration, but if he does celebrate, the celebration has a special status – which, for example, allows one to eat meat during the Nine Days.\textsuperscript{18} On Chanuka, there is no requirement to have a seuda; there is simply an obligation not to fast. However, if one does have a special seuda, it is quite clear that he has fulfilled a mitzva by so doing.\textsuperscript{19}

This makes sense particularly when there is some sort of praising of HaShem at the seuda. After all, if one does not praise HaShem, then what makes it a Chanuka party? Since, as the Rambam writes, these are days of simcha and hallel, a simcha that is not accompanied by some sort of hallel lacks significance. It is possible that mentioning or having in mind that one is eating a little more or nicer food in honor of Chanuka suffices, but going beyond this is at least appropriate.

\textsuperscript{16} Shulchan Aruch, Orach Chayim 529:1.
\textsuperscript{17} See Shulchan Aruch, Yoreh Deah 265:12.
\textsuperscript{18} Rama, Orach Chayim 551:10.
\textsuperscript{19} See Torat HaMo’adim (Rav David Yosef), Chanuka 9:(10).
D-9: Repeating Questionable Words in *Parashat Zachor* and *Megillat Esther*

**Question:** In *Parashat Zachor* and *Megillat Esther*, there are words with variant readings, and most *shuls* read them twice. In doing so, should one repeat the word, the phrase it is in, or the whole *pasuk*?

**Answer:** First, it is not clear that it is necessary to repeat any of the above. The repetition of *zeicher/zecher* (for the Ashkenazim who distinguish between the vowels *tzeirei* and *segol*) in *Parashat Zachor*\(^1\) is based on the concern that this variance might change the meaning of the *pasuk*, which is the determinant factor of when a mistake must be corrected.\(^2\) The word for “memory” is apparently “*zeicher.*”\(^3\) The question is whether the word is changed to *zecher* when it means “memory of.” The more accepted position (found in most *Chumashim* and the one employed in reading the same *pasuk* during *Parashat HaShavua*) is “*zeicher,*” but the Radak\(^5\) and the Gra\(^6\) maintain that “*zecher*” is correct. The *Mishna Berura*\(^7\) recommends the *minhag* to read both words, which seems to have emerged based on the *Chatam Sofer*’s\(^8\) practice.

However, it is not clear that reading the “wrong choice” out of the two possibilities actually changes the meaning. Consider the great similarity between the words, the fact that the Radak agrees that in other places in *Tanach* “*zeicher*” is used to mean “memory

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4. Admittedly, *Igrot Moshe, Orach Chayim* V:20.32, writes that it should be read both ways then as well.
5. *Sefer HaShorashim*, “*zachor.*”
6. Cited in multiple sources, although some have different accounts.
7. 685:18.
8. Died 1839.
of,” and the fact that the context of the pasuk makes the correct meaning clear.\(^9\) The two traditional changes in Megillat Esther also do not seem to change the meaning.\(^10\) In any case, probably due to our great regard for Parashat Zachor and Megillat Esther, the idea of repeating is now a strong minhag, which is effectively untouchable in most communities.\(^11\)

The matter of how many words to repeat enjoys much less consensus. To start with, there are three different accounts of what the Chatam Sofer repeated regarding zeicher/zecher: only the word, the full phrase from “timcheh,” or the whole pasuk. The minhag decades ago was to repeat the phrase, which is what Rav Moshe Feinstein\(^12\) and apparently Rav Yosef D. Soloveitchik recommended.\(^13\)

Some raise issues with the practice of repeating just the phrase. When we lain a word wrong, we fix just the word. If the mistake was adding a word, we reread the phrase in which the word had been inserted without the extraneous word. The simplest explanation of how this works is that by repeating the phrase correctly, one “erases” that which was said before and starts the phrase again. In that vein, the Shulchan Aruch\(^14\) rules that if one accidentally recited “borei pri hagafen” on beer and then immediately added “shehakol …,” the correction works to replace the mistaken part of the beracha (at least enough to not have to repeat the beracha). Thus, saying “zecher” (the second reading) may erase “zeicher,” and that is not our intention given that we do not believe that “zeicher” is actually wrong; we are simply acting with extra stringency to be sure. (There is some

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\(^9\) Context is apparently a factor in determining what needs to be corrected.
\(^10\) See Mishna Berura 142:4. Grammatical and halachic arguments are beyond our scope.
\(^11\) Whether or not it should be that way is a good question, but we will not address it further. See article by Rav Menachem Breuer in Megadim X, pp. 97-112.
\(^12\) Igrot Moshe op. cit.
\(^13\) See P’ninei HaRav, p. 148; I have heard differing accounts.
\(^14\) Orach Chayim 209:2, based on some Rishonim to Berachot 12a.
logic to saying “zeicher” second, but that is not the minhag.) It therefore makes sense to finish the pasuk before repeating. Once the pasuk is finished, it is like “money in the bank” that cannot be ruined by an altered recitation.

However, those who suffice with repeating the phrase can defend themselves and “counterattack.” The defense is that erasure may happen only if one intends to replace that which was wrong, but not if one only wants to add an alternative reading just in case the first reading was wrong. The counterattack is that the Ramban\(^1\) understands the gemara\(^2\) as being unsure about the halacha in the case of one who said a beracha correctly and immediately after finishing it added the wrong ending. Is he credited for the beracha, or was it “erased”? Thus, we see that even finishing the pasuk might be problematic. This argument actually strengthens the approach of those who choose what they believe is the correct reading and do not repeat anything (as shuls did for centuries). There are halachic arguments to support either side (which we leave out for brevity’s sake), but no conclusive proof. We will not share an idea to solve the problem according to all opinions (as we do not want to introduce more chumrot than, for better and/or for worse, already exist).

In conclusion, we believe that those following any of the many minhagim fulfill their mitzva of zechirat Amalek\(^3\) and recommend that each shul should keep to its own minhag.

\(^1\) Milchamot HaShem, Berachot 6b in the Rif’s pages.
\(^2\) Berachot 12a.
\(^3\) Remembering what Amalek did (and what should be done in response).
D-10: Purim in Transit

Question: I plan to fly from New York during the night of Purim (after Megilla reading) and arrive in Jerusalem in the afternoon.1 Would I have to hear Megillat Esther in Jerusalem before the end of the 14\textsuperscript{th} of Adar, or is it enough that I will hear it there on the 15\textsuperscript{th}?

Answer: If, at daybreak of the 14\textsuperscript{th} of Adar, one will be in a place that celebrates Purim on that day, he is obligated both to hear the Megilla reading the previous night, as well as to hear it again on the 14\textsuperscript{th} during the day.2 This is true even for a resident of Jerusalem. (Intention to travel elsewhere on Purim itself sometimes makes a difference, but not in this case.) This is deduced from a pasuk\textsuperscript{3} that states that people who “are sitting in an un-walled city,” in addition to residents of such cities, observe Purim on the 14\textsuperscript{th}. One who is located in an uninhabited area (including a plane over the ocean) at daybreak of the 14\textsuperscript{th} also reads the Megilla on the 14\textsuperscript{th}, as this is Purim for anywhere that did not have a wall at the time of Yehoshua.\textsuperscript{4} If such a person is subsequently in Jerusalem at daybreak of the 15\textsuperscript{th}, the Talmud Yerushalmi\textsuperscript{5} apparently rules that he is obligated to hear the Megilla on the 15\textsuperscript{th} (night and day) as well.

Not all agree with this ruling that one can be obligated to hear the Megilla on both days. According to the way that the Korban Netanel understands the Rosh,\textsuperscript{6} the Bavli argues with the Yerushalmi and maintains that the place where one is at daybreak of the 14\textsuperscript{th} sets his status and determines on which single day

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1. In most of the world, Megillat Esther is read on the 14\textsuperscript{th} of Adar. Jerusalem is one of the only places in which it is read on the 15\textsuperscript{th} of Adar instead.
4. Rama, Orach Chayim 688:5.
5. Megilla 2:3.
he will be obligated to read or hear the *Megilla*. Accordingly, Rav Ovadia Yosef says that one who is outside Jerusalem at the beginning of the 14\(^{th}\) and returns to Jerusalem by daybreak of the 15\(^{th}\) reads the *Megilla* with a *beracha* on the 14\(^{th}\) but without a *beracha* on the 15\(^{th}\).\(^7\) Rav Frank\(^8\) goes further, saying that even the aforementioned *Yerushalmi* required hearing the *Megilla* on the 15\(^{th}\) after hearing it on the 14\(^{th}\) only in the case of one who is a resident of Jerusalem or who moved there permanently in between the respective reading times, not for one who merely visited Jerusalem. In any event, we do not know of any opinion that exempts one who is outside Jerusalem on the morning of the 14\(^{th}\) from hearing the *Megilla* on that day due to plans to hear the reading in Jerusalem on the 15\(^{th}\).

The plan to arrange to hear the *Megilla* when you get to Jerusalem toward the end of the 14\(^{th}\) raises a few halachic complications. One is that only someone who himself is obligated in reading on the 14\(^{th}\) can read for you on that day. This is based on the idea that someone who is not obligated in a certain *mitzva* cannot facilitate the fulfillment of that *mitzva* for one who is obligated.\(^9\) Thus, reasons the *Yerushalmi*,\(^10\) since a Jerusalemite has no obligation to read the *Megilla* on the 14\(^{th}\), he cannot read for someone who does have an obligation on that day. Rav Frank\(^11\) cites a minority opinion that the *Bavli* disagrees with this *Yerushalmi*, with the logic that the general obligation to read the *Megilla* along with the concept of responsibility for a fellow Jew’s religious obligations suffice for all Jews to be considered obligated. Although there is some additional basis to claim that all are considered obligated regarding the 14\(^{th}\),\(^12\) the consensus is that the *ba’al korei* for the 14\(^{th}\) should be someone who is obligated.

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7. See Yalkut Yosef, Mo’adim, pp. 305-6.
12. See Yerushalmi op. cit.; Yabia Omer I, Orach Chayim 43.17.
that day.\textsuperscript{13} (If the reader is from the correct place, the fact that he has already fulfilled the \textit{mitzva} earlier is not a problem.\textsuperscript{14})

Needing to hear the \textit{Megilla} reading in the afternoon of the 14\textsuperscript{th} will also raise an issue regarding eating, as it is forbidden to eat a meal before fulfilling the obligation to hear the \textit{Megilla},\textsuperscript{15} both at night and during the day.\textsuperscript{16} Although one is allowed to snack before the reading, some say this is permitted only in a case of significant need.\textsuperscript{17} Moreover, while a “snack” sometimes means anything less than a \textit{k’beitza} of bread,\textsuperscript{18} some maintain that one should not eat more than a \textit{k’beitza} of anything.\textsuperscript{19} Certainly you would not be allowed to have the Purim \textit{seuda}, in which you will be obligated, until after \textit{Megilla} reading. (For \textit{mishlo’ach manot} and \textit{matanot la’evyonim}, appointing an agent in advance is likely a wise step.\textsuperscript{20})

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

\textsuperscript{13} See \textit{Yalkut Yosef} op. cit.
\textsuperscript{14} \textit{Shulchan Aruch, Orach Chayim} 692:3.
\textsuperscript{15} Ibid. 4.
\textsuperscript{16} \textit{Mishna Berura} 692:15.
\textsuperscript{17} Ibid. 14.
\textsuperscript{18} Ibid.
\textsuperscript{19} \textit{Mikraei Kodesh} (Harari), \textit{Purim} 4:6, in the name of Rav Mordechai Eliyahu.
\textsuperscript{20} See \textit{Living the Halachic Process}, vol. I, D-13, regarding some timing issues.
D-11: Ranking Mishlo’ach Manot Stringencies

**Question:** I have heard many opinions about mishlo’ach manot requirements (enough for a meal, different berachot, cooked food, etc.). Which of these so-called requirements are actually necessary?

**Answer:** We will refer to the practices you mention and a few others (although this list is not exhaustive), categorizing them according to our appraisal of the chumrot (stringency). The most basic unanimous requirement (i.e., not a chumra) is that mishlo’ach manot must include two food portions, as indicated by the plural manot.¹

**Proper to Be Careful** (strong opinions require them)

**Respectable quality/quantity** – The gemara² tells of two Amora’im, one who sent simple foods and another who sent sharp spices, and of a colleague who implied that this was inappropriate. Many explain that mishlo’ach manot are supposed to foster warm relations and/or that they are for seudat Purim use.³ Therefore, it is not surprising that poskim maintain that the manot should have some importance⁴ and perhaps that the affluence of the giver and/or of the recipient affects what is considered sufficient.⁵ However, the opinions⁶ that one person’s mishlo’ach manot should suffice for some level of an entire independent meal (as opposed to simply being a nice enhancement to a meal) are fewer and weaker.

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¹. Shulchan Aruch, Orach Chayim 695:4.
². Megilla 7b.
³. See Shut Chatam Sofer, Orach Chayim 196.
⁴. Aruch HaShulchan, Orach Chayim 695:15.
⁵. Ritva, Megilla 7a; Chayei Adam II, 155:31; Bi’ur Halacha to 695:4.
⁶. See citations in Yalkut Yosef, Mo’adim, p. 329; Mikraei Kodesh (Harari), Purim 12:4.
Ready to be eaten – The Magen Avraham\(^7\) requires that if one gives meat as *mishlo'ach manot*, it must be given already cooked. The logic behind this is that raw food misses the mark, as the recipient cannot enjoy it without effort. The Mishna Berura\(^8\) cites this as the primary ruling, while noting that there are also distinguished lenient opinions. (Some mistakenly understand that one must always give cooked food, but in truth, this is an issue only for food that is inedible raw.) While important *poskim* are lenient,\(^9\) this is an easily-followed and logical stringency that most people should adopt.

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

Drinks do not count – Some claim\(^10\) that *manot* refer to solid food, not drinks. This is based on a minority text of a Talmudic story about a complaint of insufficient *manot*, which identifies the problem as a drink having been given instead of a second food item. However, an explicit *gemara*\(^11\) tells of a rabbi who sent a nice portion of meat and a barrel of wine, indicating that drinks are fine.\(^12\) The Magen Avraham\(^13\) and Mishna Berura\(^14\) rule that drinks do count.

Kedushat shvi’it – It is forbidden to pay debts by giving fruit that has *kedushat shvi’it*.\(^15\)\(^16\) Some say that fulfilling one’s religious obligation to give *mishlo’ach manot* is like paying a debt, and it is therefore prohibited to fulfill the *mitzva* by using *shvi’it* fruit.

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7. 695:11.
8. 695:20.
10. See Afarkasat D’Ania I:25.
11. Megilla 7a-7b.
12. See Terumat HaDeshen I:111.
15. Fruit that grew in *Eretz Yisrael* during the *Shemitta* year in a manner that gives the fruit special sanctity.
(This applies only to the first valid *mishlo’ach manot* that one gives that year, through which he fulfills his obligation). Others say that using *shvi’it* fruit is prohibited specifically when one gives *mishlo’ach manot* as reciprocation for having received something from someone, as the need to reciprocate is like a debt. However, many are lenient, including, apparently, our mentor, Rav Shaul Yisraeli.

**Separate utensils** – The *Ben Ish Chai* says that whatever is in one utensil counts as only one portion. This opinion is difficult to maintain concerning foods that are by their nature unrelated (as opposed to foods such as assorted candies in a container). However, probably partially in deference to the *Ben Ish Chai*’s stature, several Sephardic poskim endorse this stringency *l’chatchila*.

**Unwarranted Stringency**

**Foods of different berachot** – The two *manot* must indeed be unique units. Many poskim say not to suffice with one food that is merely separated into two portions (even if each is large). However, the idea that foods’ *berachot* are an indicator of being separate is contradicted by many prominent sources and is, in fact, illogical; note that meat and juice share a *beracha*, whereas different types of potato chips may not.

These stringencies are meant to ensure that one fulfills the formal *mitzva*; they are not always indicative of the *mitzva*’s goals. Therefore, as long as you give “halachically *mehudar*”

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20. See *Mikraei Kodesh* op. cit. (31).
22. See related application in *Hitorerut Teshuva* I:126.
mishlo’ach manot to one person, the idea of giving to many people\textsuperscript{25} to cultivate friendships and make people happy on Purim can be done in any way that enhances the Purim spirit. Do not let chumrot stifle your energy or creativity!

\textsuperscript{25} Shulchan Aruch, Orach Chayim 695:4.
Question: Should one follow the minhag to put out ten pieces of bread before bedikat chametz? I have heard people question the minhag’s logic.

Answer: This minhag is an old one. It was mentioned (and rejected) by the Ra’avad over 800 years ago as a safeguard that the beracha on bedikat chametz should not turn out to be l’vatala if no chametz is found. This concern seems to assume that the beracha is recited over the finding of chametz.

Note that the beracha’s text is “al bi’ur chametz” (usually translated as “on the destruction of chametz”). This is a surprising phrase to use considering that the beracha is made before the bedika, rather than immediately prior to the burning, which is done only the following day.

There are at least four explanations as to the purpose of the beracha: 1) It refers primarily to the next day’s bi’ur but is recited before this important preparation for it. 2) The beracha is primarily on the mitzva (perhaps Rabbinic) to search for chametz. 3) The beracha includes the bitul chametz performed after the bedika. 4) The beracha is primarily on the removal of the chametz from one’s mind, which one does before the bedika commences. The possibility of a problem of beracha l’vatala if no chametz is

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1. Checking/searching for chametz.
2. Temim De’im 29, cited by Chok Yaakov 432:14 and others.
3. In vain.
5. See Rosh, Pesachim 1:10.
7. See ibid.
found (but known chametz will be disposed of tomorrow) arises only according to the second approach, and only if one further assumes that the search must turn up some chametz. Nonetheless, it is reasonable for a minhag to deal with a possible problem even if the concern is based only on a minority opinion, and this is the simple reading of the Rama,\(^9\) who records the practice to put out bread before the bedika.

Some Acharonim reject the rationale and the practice of this minhag. The Taz\(^10\) says that not only is it unnecessary to put out pieces of bread, but it is even detrimental, because one might not find everything that was put out. This concern is mitigated by the usual care exercised by whoever puts the pieces out to know the number (traditionally, ten) and location of the pieces. And after all, even irrespective of this minhag, it is always possible that chametz will be missed, and after doing a responsible bedika and bitul, one is not culpable for chametz that inadvertently remains.\(^11\)

Some suggest that one should put out pieces of specifically less than a k’zayit, so that if he misses one, it will not be large enough to cause him to violate the prohibition of possessing chametz.\(^12\)

Incidentally, there is an interesting machloket regarding whether people will take bedikat chametz more or less seriously due to the presence of the ten pieces; this may depend on where the pieces are placed.\(^13\)

Other reasons are given for putting out the pieces of bread. The Mahari Weil\(^14\) cites the gemara’s\(^15\) insistence that bitul be performed at the time of bedika because we are concerned that one might otherwise forget to do the bitul. The Mahari Weil then argues that this association works well only if one actually finds some chametz; when he puts away the chametz that he found

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15. Pesachim 6b.
during bedikat chametz, he will remember to do bitul at that point. There are also Kabbalistic reasons, attributed to the Arizal, for the minhag.  

Another factor makes the minhag particularly appropriate in our times. In years past, people had much smaller houses and less property, and bedikat chametz was the main Pesach cleaning. Nowadays, in contrast, people spend weeks cleaning seriously in a manner that makes the bedika (almost) a formality, in which they do not actually look for real chametz. Without the pieces of bread, then, the bedika is not a fully obligatory search, and the beracha is more problematic.

Although there have been, over the centuries, poskim who thought that this minhag is superfluous or detrimental, one should practice it unless he has specific reason not to. An ancient minhag that is still in practice by the overwhelming majority of religious Jews deserves the appellation “the minhag of Israel is Torah,” all the more so when the logic behind it is readily understandable, even if debatable.

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16. See Ba’er Heitev, Orach Chayim 432:8.
17. See Living the Halachic Process, vol. III, D-15, for a discussion of whether this is justified.
18. Emek Halacha 128, cited by Kaf HaChayim, Orach Chayim 432:31. The Emek Halacha explains that even though the person who put out the pieces knows where they are, the one who is searching is the relevant person in this regard, and he does not know. The Tzitz Eliezer (IX:17:9) brings an interesting proof that looking for something that one knows is there would still be considered bedika in our context.
19. See a short survey in Yechaveh Da’at op. cit.
20. The Minchat Yitzhak VIII:35 writes that the minhag does not apply to one who is doing bedikat chametz before the night of the 14th of Nisan.
The Focus of Discussions at the Seder

**Question:** In many homes, the Seder conversation is based on children telling linguistic *pilpulim*\(^1\) and adults arguing about Halacha. Yet, the Torah’s intention seems to be that we focus on extolling HaShem for His greatness and kindness. Where should the emphasis be placed?

**Answer:** We must distinguish between the basics of the Seder and additional enhancements. Your idea of extolling HaShem captures the Torah’s basic *mitzva* to tell about *yetzi’at Mitzrayim*\(^2\) on Seder night, as formulated by the Rambam\(^3\) and indeed expressed explicitly by *p’sukim* throughout the Torah. Let us add other central points.

The account of *yetzi’at Mitzrayim* is not only an example of Divine kindness; its associated miracles serve as a linchpin of our belief system,\(^4\) similar to *matan Torah.*\(^5\) Regarding both of these great historical events, the Torah stresses the importance of the inter-generational chain of tradition and belief, including parents and grandparents, which confirms our deep belief.\(^6\) I have made a point at the Seder to have my children’s great-grandmother recall a Seder with her grandparents. I had her recall that she was certain that her grandparents truly believed what had been told to them through an unbroken chain of testimony. I urged my children to tell this to their great-grandchildren. Such a link in the generational chain of tradition can easily extend over 200 years! Whether or not a family does this so methodically, this phenomenon adds a profound element to the Seder experience.

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1. Intricate detail-based analysis.
2. The Exodus.
5. The giving of the Torah at Sinai.
Chazal found it important to connect the remembrance of yetzi’at Mitzrayim to both p’sukim in Tanach and the mitzvot of the day. The core of the Maggid section of the Seder consists of the Rabbinic elucidation of a four-pasuk summary of Jewish history related to yetzi’at Mitzrayim. Rabban Gamliel says that in order to fulfill one’s obligation, one must mention pesach, matza, and maror, the objects behind the major physical mitzvot of the day, and explain their connection to the story of yetzi’at Mitzrayim. All of these basic goals can be accomplished by joint reading of the Haggada with basic comprehension.

However, the Rabbis tell us that whoever increases the scope of talking about yetzi’at Mitzrayim is praiseworthy. How is this done best? The simplest way is to continue speaking about the miracles and events. Yet, this is not easy to do. There are rarely detailed family traditions (as there certainly were in the first generations) of what our ancestors experienced, other than the accounts of the Torah and Chazal. And there is no consensus of what texts one should use to provide additional stories of miracles.

Let us examine some of the popular alternatives. You referred to analyzing the text of the Haggada. The model for doing so is in fact the Haggada itself, which quotes classical texts (i.e., p’sukim) and analyzes them, not just to introduce new stories of events that occurred but also to connect concepts to the texts. In Talmudic study, Amora’im analyzed statements of the Tanna’im, who themselves analyzed p’sukim, and we analyze all the above. It likewise makes sense to analyze the Haggada, which is for us the classical source on the topic. Consider that thousands of talmidei chachamim have written commentaries focusing on various types of analysis of the Haggada text. Obviously, they expected and hoped that these ideas would be shared at the Seder.

Our children are supposed to be the focus of the Seder, and we should strongly consider their needs and interests. You refer

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7. “Arami oved avi ...” (Devarim 26:5-8).
8. Text of the Haggada.
9. Rambam op. cit.
to children who are excited to share *pilpulim*. If this is the case, then this is positive. Generally, the abilities and religious needs of the speaker\(^{10}\) and the audience play a major role in determining what is most worthwhile.\(^{11}\) Some people internalize the message of Pesach best through theatrics, song, emotional expression, or art, and these can all be employed as appropriate.

The Rambam does not mention halachic discussion in this context, but the Rosh\(^{12}\) and *Shulchan Aruch*\(^{13}\) do, as the answer to the Wise Son implies. Considering the aforementioned idea of connecting the story to the performance of the *mitzvot*, it makes sense that the details of the *mitzva* have not only practical but also conceptual value. Therefore, halachic discussion of Pesach is in the spirit of the evening, as long it does not qualitatively detract from sufficient focus on relating the story deeply.\(^{14}\)

As *Hallel* and the custom to read *Shir HaShirim* after the *Seder* indicate, focusing on our relationship with HaShem is also in the spirit of the night.

In summary, there are many facets and possibilities to choose from in one’s focus at the *Seder*. After doing a proper job of understanding what Chazal have set out for us, there is room for doing that which speaks to the participants – with balance, as usual, being a good tool for the wise.

\(^{10}\) Rambam, *Sefer HaMitzvot*, Aseh 157.
\(^{11}\) As we see in the *Haggada* narrative of the “Four Sons.”
\(^{12}\) *Pesachim* 10:33.
\(^{13}\) *Orach Chayim* 481:2.
\(^{14}\) See *B’Tzel HaChochma* VI:47.
D-14: The Significance of the Amount of Karpas Eaten

**Question:** I know that we are supposed to eat less than a k’zayit of karpas at the Seder, but I am not sure why. What happens if someone does eat a k’zayit?

**Answer:** To answer this question, we will need to touch on a few different areas of Halacha.

The first question we will address is: Why is it sufficient to eat less than a k’zayit of karpas, considering that in general, such an amount is not considered halachic “eating”?

2. Chametz U’Matza 8:2.
4. See Beit Yosef, Orach Chayim 473.
exempt the person from a *beracha* on a food he will eat during the meal that normally receives a *beracha rishona* during a meal. The *beracha* linkage of these foods eaten before and during the meal connects the pre-meal food to the meal, which thereby allows *Birkat HaMazon* to relate to it and exempt it from a *beracha acharona*.\(^7\)

To apply this rule to our case, we must discuss the *machloket* about the reason for the consensus that we do not recite a *beracha* of *Borei Pri HaAdama* before eating *maror*, which is eaten after the *matza* – i.e., during the meal. The Rashbam\(^8\) says that it is because the *beracha* made on the *karpas* covers the *maror*.\(^9\) Accordingly, the *karpas* is connected to the meal, making a *beracha acharona* on it unnecessary even if one ate a *k’zayit* of it. Indeed, the *Shulchan Aruch*,\(^10\) while suggesting to eat less than a *k’zayit* of *karpas*, says that no *beracha acharona* is made even if one did eat a *k’zayit*.\(^11\)

However, not all agree with the Rashbam. The Gra\(^12\) claims that the Rama does not accept that there is a *beracha* connection between *karpas* and *maror*, because the delay during the *Maggid* section of the *Seder* is considered a halachic break. Evidence for this understanding is the Rama’s ruling that a new *beracha* of *Borei Pri HaGefen* is required before the second cup of wine.\(^13\) According to this approach, the reason that the Rama does not require a *Borei Pri HaAdama* on *maror* is Tosafot’s\(^14\) opinion that the *maror* is subsumed under the meal since it is eaten after *HaMotzi*. Thus, there is no connection between the *berachot* on *karpas* and on *maror*, and if one were to eat a *k’zayit* of *karpas*,

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7. Ibid.
9. The Rashbam assumes that the *maror* is not eaten as a normal part of the meal and therefore is not naturally exempted with the *beracha* on the *matza*.
11. See *Mishna Berura* 473:56.
he would need to recite a beracha acharona on it.

Another reason to require a beracha acharona on the karpas if one were to eat a k'zayit is that the break between eating the karpas and the meal is too long for the Birkat HaMazon to relate back to it.\(^{15}\) Even after a full meal, one should normally bentch within 72 minutes of the end of the eating, and certainly one should do so if he ate only a little bit of a vegetable.\(^ {16}\) Since we are not sure whether Birkat HaMazon will be able to count as a beracha acharona on the karpas, we prefer eating an amount sufficiently small such that a beracha acharona is certainly not needed.\(^ {17}\)

Based on what we have seen, there is an additional benefit of not eating a k'zayit of karpas. If we were convinced that a beracha acharona were required for the karpas, then according to most poskim,\(^ {18}\) making this beracha acharona would end the efficacy of the beracha rishona, and the Borei Pri HaAdama on karpas would accordingly not cover the maror. We would then be in doubt as to whether to recite Borei Pri HaAdama on the maror. If the aforementioned Tosafot is correct, a new Borei Pri HaAdama is unnecessary because the maror is subsumed under the meal. However, if the halacha is that it is not subsumed and we would normally rely on the beracha of the karpas to cover it, then if one were to make a beracha acharona on the karpas, a new beracha for the maror would be necessary. Thus, by eating too little for a beracha acharona on the karpas, we increase the chance that the beracha rishona on maror will be taken care of by the beracha recited on the karpas.\(^ {19}\)

\(^{15}\) Ohr Zarua, cited in Shut Chazon Ovadia 18.

\(^{16}\) Shulchan Aruch, Orach Chayim 184:5; Mishna Berura ad loc. 20.

\(^{17}\) Mishna Berura 473:53.

\(^{18}\) The Magen Avraham 190:3 is a notable exception; see Living the Halachic Process, vol. II, B-4.

\(^{19}\) See Shut Chazon Ovadia op. cit.
D-15: Chametz of an Intermarried Couple after Pesach

Question: I am a yeshiva student who will be home after Pesach. My father is not Jewish, and my mother does not keep kosher for Pesach. Do I have to be concerned regarding eating packaged chametz that I find around the house? May I ascribe the ownership of the chametz to my non-Jewish father and say that it is not a problem, or should I assume that my mother owns (some of) the chametz, which makes it a problem?

Answer: As you note, chametz that was owned by a Jew over Pesach is forbidden for him or any other Jew to eat or benefit from, but not chametz that was owned by a non-Jew.¹

According to classic halacha, in a Jewish marriage, the husband receives his wife’s salaries, owns the “family property,” and controls the property his wife brought into the marriage while they remain married. However, this is not an intrinsic law, but rather an arrangement that the Rabbis instituted, assuming the wife agrees, in return for the husband’s obligation to his wife of full support and other obligations.² Your parents are not halachically married. Furthermore, the Rabbis did not get involved in the financial arrangements of non-Jewish marriages. Thus, ownership of property of a non-Jewish or intermarried couple depends on individual agreement, societal norms, and/or secular law. It is safe to assume that when a 21st century, Western-society spouse buys crackers in the supermarket from joint finances, the crackers are to be legally considered as jointly owned.

Therefore, at first glance, your mother has a share in the chametz, and this share will thus be forbidden to you, while your father’s share will be permitted to you. How is one to know whose share he is eating from? According to the relevant

¹. Shulchan Aruch, Orach Chayim 448:3.  
². Ketubot 47b.
application of the principle of bereira (where it applies), when joint owners of property divide it amongst themselves, we say that the part that each person received was his all along. We apply bereira regarding matters of Rabbinic, not Torah, law. Although chametz is a Torah law, the prohibition of eating chametz after Pesach is a Rabbinically instituted k’nas (penalty) against those who were lax regarding the prohibition of possessing chametz on Pesach. Therefore, whatever turns out to be your father’s part of the household chametz is permitted.

Accordingly, if a system could be arranged such that your father would take chametz articles for himself and then give them to you, the problem would be solved. However, the guidelines of activating bereira are difficult to explain, and we do not recommend this approach in practice.

If your parents are willing to cooperate with your halachic lifestyle, it makes more sense for your mother to appoint you as her agent to sell her (part in the) chametz before Pesach and to ask her to avoid buying on Pesach at least chametz that will last until after Pesach. As far as the possibility of a mistake in determining which food items were sold and which were not, one can be quite lenient – at least in situations of need – regarding assumptions of which food was obtained when.

There are lenient opinions regarding chametz possessed by a totally irreligious Jew. The Taz and Mishna Berura say that if a Jew sold chametz to a non-religious Jew, the latter can sell it after Pesach to a non-Jew and give the money to the Jew instead of having him incur a great loss. However, they do not allow a

4. See Pesachim 30a.
5. See Mishna Berura 448:2.
6. The Sha’agat Aryeh (90) argues that even the Jew’s part should be permitted because he may have gotten the non-Jew’s part, and we are lenient regarding doubts of this nature. However, both this position and its application are difficult to rely upon; see Mekor Chaim 448:1.
7. See Chulin 4b.
9. 448:11.
Jew to eat the actual *chametz* that the irreligious Jew possessed over Pesach. There is a fringe opinion that the injunction to discourage people from possessing *chametz* does not apply to those who disregard their halachic responsibilities as Jews.\(^\text{10}\) In your case, there is one further point for leniency [which would not be appropriate to discuss publicly].

We imagine that in order to eat in your parents’ house, you anyway must have different utensils and food. If so, buying packaged *chametz* after Pesach from appropriate sources would seem not to change things so much. However, if there is a strong need for leniency, please contact us again so that we can discuss your specific needs and options.

\(^{10}\) See *She’eilat David* (Karlin), *Orach Chayim* 5.
D-16: Shehecheyanu, New Clothes, and Renovations During Sefirat HaOmer

Question: May one buy and wear new clothes, do work on his house, and recite Shehecheyanu during the sefirat ha’omer period?

Answer: The gemara¹ discusses the halachot of aveilut (mourning) for a deceased relative and for the national mourning over the destruction of the Beit HaMikdash during the period before Tisha B’Av. However, the minhagim of national mourning during sefira over the death of Rabbi Akiva’s students are not found in the gemara. There are both overlap and differences between the rules for these different periods of mourning.

Regarding the aveilut of the sefira period, the Shulchan Aruch² mentions prohibitions on marriages and hair cutting (as well as on work after sunset, but this is not widely accepted). The Mishna Berura³ further mentions the minhag of not dancing, which many have extended to include refraining from all forms of instrumental music.⁴ These standard sources make no mention, in the context of sefira, of the practices about which you inquire.

Let us look briefly at minhagim regarding Shehecheyanu, new clothes, and work on the house as they appear in the context of the period before Tisha B’Av. One should curtail certain activities before Tisha B’av, including building projects,⁵ but according to the Shulchan Aruch,⁶ this applies only during the Nine Days and not throughout the entire Three Weeks.⁷ There

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1. See Ta’anit 29b.
2. Orach Chayim 493.
3. 493:3.
4. See Igrot Moshe, Orach Chayim 1:166.
5. Yevamot 43a.
7. See response D-18.
is also a recommendation, which not all accept, not to recite Shehecheyanu during the Three Weeks. The logic is that the beracha of Shehecheyanu expresses our gratefulness for having made it to “this time,” which may not be appropriate at such a particularly sad time of the year.

While the standard sources do not mention these issues during the sefira period, there are some sources that do, especially in regard to reciting Shehecheyanu. There is basis to extend these prohibitions to the sefirat ha’omer period on two grounds. First, there is logic in doing so, as this is a nationwide sad period (as opposed to aveilut over a relative, the sad nature of which is only personal). Second, it is relatively easier to transfer minhagim when there is a model for such halachot, by doing, so to speak, a “copy and paste” from one time period to another (i.e., from the Three Weeks to sefira).

However, paradoxically, the logic and the model are also reasons to ignore the minority strict opinions and the practice of some to refrain from some or all of the matters you mentioned. The reason is that people may have gotten confused as to which practices apply when. They remembered that there is a concept of not saying Shehecheyanu and not doing renovations during national mourning periods, and they may have heard of someone knowledgeable who says to act this way during sefira. They then may have started adopting the practice, but not based on a decision with knowledge of the sources and a desire to accept the stringency. Rather, they thought these are the standard minhagim. This is called a minhag ta’ut. In such a case, even one who has already followed the stringent practice may suspend it without hatarat nedarim.

Rav Ovadia Yosef has an interesting approach to these

8. See opinions in Mishna Berura 551:98.
10. See several opinions cited in Bein Pesach L’Shavuot 16:(2).
11. See Mishna Berura 551:98.
questions. First, he explains that one cannot call *sefira*, which is actually the bridge between the joyous holidays of Pesach and Shavuot, a tragic period of time, as we term the period leading up to Tisha B’Av. Therefore, he is against refraining from recitation of *Shehecheyanu* on fruit at that time. He is not, however, against the stringency to avoid wearing new clothing that warrants *Shehecheyanu*, out of extra mourning. Regarding moving into a new home or doing work on an existing one, he unequivocally permits the matter. The *Tzitz Eliezer* is perhaps more resolute in rejecting stringency in these matters.

Thus, one need not be stringent with regard to the practices you mention. If one has acted stringently in the past, he may continue if he likes, but he should consider whether his (family’s) practice is more based on confusion than on a conscious decision to accept minority stringencies.

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15. XVIII:41.
D-17: Is Acknowledgment of Lag BaOmer Considered Counting?

Question: If one mentions, before intentionally counting the omer, that “Tonight is Lag BaOmer,” can he subsequently count with a beracha?

Answer: As you assume, if one makes a declaration that nominally fulfills the mitzva of sefirat ha’omer – even without making a beracha and without the intention to thereby serve HaShem – he subsequently may not recite sefirat ha’omer with a beracha.\(^1\) This is one of the cases in which we prefer to not have fulfilled a mitzva, so that we can still perform it properly by reciting a beracha.

However, although the statement, “Tonight is Lag BaOmer” (henceforth, “the statement”) does include basic elements ordinarily needed to fulfill the mitzva of sefirat ha’omer, it is possible that in this case one has not fulfilled the mitzva for a number of reasons.

First, there is an unresolved machloket regarding whether counting sefirat ha’omer by stating the day’s numerical gematria (lag = lamed gimel = 33),\(^2\) which is a secondary but accepted way of expressing numbers, is valid for sefirat ha’omer.\(^3\) It is therefore questionable whether the statement fulfills the mitzva.

Second, the statement does not include mention of the weeks of sefira. The Acharonim debate whether one who has mentioned only the days and not the weeks has fulfilled his mitzva (starting with day seven). The matter relates to Ameimar’s opinion\(^4\) that there is no need to count weeks at a time that there is no Beit

\(^1\) Shulchan Aruch, Orach Chayim 489:4.
\(^2\) Use of the letters of the Hebrew alphabet as representations of numbers.
\(^3\) See Sha’arei Teshuva 489:6; see applications in Living the Halachic Process, vol. I, D-19.
\(^4\) Menachot 66a.
HaMikdash in which to offer the korban ha’omer.\(^5\) The Mishna Berura\(^6\) concludes that one who mentions only the days should count again properly, but this case lacks the level of certainty to justify a new beracha.\(^7\) (According to the Eliya Rabba,\(^8\) the problem of leaving out weeks, which requires one to count again, applies only on days when the number of weeks changes – e.g., 28, 35).

The strongest reason to discount the statement as a possible fulfillment of the mitzva is that when one says it, he almost certainly does so without having in mind to fulfill the mitzva of sefirat ha’omer. The Shulchan Aruch\(^9\) rules that one does not fulfill a mitzva in the absence of intent to do so, and the statement therefore should not prevent one from counting afterwards with a beracha. However, another halacha in the Shulchan Aruch\(^10\) seems to contradict this: If one is asked before counting what day of the omer it is, he should answer what day yesterday was, because stating the current day compromises his ability to count later with a beracha. The Taz\(^11\) says that the Shulchan Aruch must mean that avoiding saying the day’s count is just a stringency; if one were to say the current day, due to the lack of intention, he would b’di’eved count with a beracha later. However, many point out that the Taz’s claim does not fit the Shulchan Aruch’s language. The Magen Avraham\(^12\) says that one should not make a beracha if he mentions the day’s count without intention to fulfill the mitzva, due to the opinion that intention is not critical for mitzva performance and the view that sefirat ha’omer is fulfilled without intention because it is only a Rabbinic obligation.\(^13\)

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5. The sacrifice brought on the second day of Pesach as the first sacrifice from the year’s new grain.
7. See Sha’ar HaTziyun 489:9.
8. 489:14.
12. 489:8.
13. See Yecheveh Da’at VI:29.
While each individual reason to allow counting with a beracha after the statement is debatable, the combination of these reasons makes that prospect convincing in two possible ways. First, in other contexts, poskim\textsuperscript{14} maintain that when there are specific indications that one intends to not fulfill a mitzva, he indeed does not fulfill it. In the standard case, when “Lag BaOmer” is used as the name of a semi-holiday, as opposed to as the gematria of the count, the statement would be precluded from fulfillment of the mitzva and a beracha could be made later.\textsuperscript{15} The Mishna Berura\textsuperscript{16} says that we would accept the aforementioned logic of the Taz in cases in which the week should have been mentioned and was not. Second, the coinciding of factors may create enough doubts against the chance that the mitzva was fulfilled to justify a beracha. Indeed, according to many opinions, we find cases in which we make a beracha on sefirat ha’omer when s’feik s’feika\textsuperscript{17} indicates its appropriateness.\textsuperscript{18} (However, that halachic phenomenon likely does not apply to every set of doubts.\textsuperscript{19})

In short, it is unlikely that one has fulfilled sefirat ha’omer by noting that the day is Lag BaOmer. Therefore, one who has done so may still subsequently count with a beracha. However, it is worthwhile to avoid such a statement before counting and, when easily feasible, to rely on someone else’s beracha if he did.

\textsuperscript{14} Including Bi’ur Halacha to 489:4; Eliya Rabba op. cit.
\textsuperscript{15} Kaf HaChayim, Orach Chayim 489:30.
\textsuperscript{16} 489:22.
\textsuperscript{17} A double doubt, i.e., a certain halachic ruling is correct unless two doubts are both resolved in a manner that indicates otherwise.
\textsuperscript{18} Shulchan Aruch, Orach Chayim 489:8; Mishna Berura 489:38.
\textsuperscript{19} See discussion in Yabia Omer IV, Orach Chayim 43.
Question: May I make a chanukat habayit celebration in Israel during the Three Weeks, before Rosh Chodesh Av and the beginning of the Nine Days?

Answer: Of the different periods of national mourning leading up to Tisha B’Av, the one with the lowest level of intensity is the first part of Bein HaMetzarim (the Three Weeks), from the 17th of Tammuz until Rosh Chodesh Av. No restrictions are mentioned in the gemara regarding this period. Even the well-known restriction of marriage during the Three Weeks is post-Talmudic before Rosh Chodesh, and Sephardim do not even subscribe to this restriction.

Questions regarding customs of this period of national mourning are difficult to analyze halachically. On the one hand, the more religiously significant a particular event is, the more we would like it to take place in the nicest way possible. It is for this reason that it is acceptable and even preferable to eat meat at a siyum, even during the Nine Days when Ashkenazim usually do not eat meat. On the other hand, the stronger an event’s joyous character, the more likely it is that the celebration itself is significant enough to be forbidden during this period, even if it is a mitzva and even if it is celebrated without extra flourishes. Therefore, it is forbidden to get married even without a celebratory meal.

A chanukat habayit is an expression of joy and gratitude over moving into a home that is new for its inhabitants. There are restrictions regarding joyful practices involving the home.

1. Lit., the inauguration of a home; the celebration of moving into a new home.
2. Rama, Orach Chayim 551:2.
3. Shulchan Aruch ad loc.
4. Rama op. cit. 10.
5. Mishna Berura 551:15.
During the Nine Days (and perhaps during the Three Weeks) it is forbidden to perform non-essential beautification work on a home. Along the same lines, we avoid entering a new home during this time unless this is necessary so as to avoid a significant loss. Since one may enter a new home before the Nine Days, the problem presented by a chanukat habayit is only from the perspective of the added activities of the celebration.

The nature of the celebration is relevant here. Many Sephardim have the minhag to perform a ceremony, with specific Torah texts recited, on the day that they enter the house; some will not even sleep in the house before doing so. Here, the words of Torah are the main component of the ceremony, whereas the accompanying festivities are only ancillary; such an event is certainly permitted.

A further reason for leniency is the fact that many consider a chanukat habayit in Israel to be a celebration of the fulfillment of the mitzva of yishuv Eretz Yisrael, which then allows for the leniencies connected to a seudat mitzva. Indeed, the Torah views inaugurating a home as significant enough to allow someone to leave the battlefront, but only in Eretz Yisrael. While one can distinguish between actually living in the house in Eretz Yisrael and the celebration over the building of a home there, the B’er Sheva says that even the celebration over the building of a home is a seudat mitzva in Eretz Yisrael (but not abroad). While it is not simple to allow this celebration during the Nine Days, the chanukat habayit per se is permitted before Rosh Chodesh.

If the celebration is not on the actual day that one enters the home, there are two reasons to be more stringent. One is that the

7. Shulchan Aruch, Orach Chayim 551:2.
8. See BeMareh HaBazak III:60.
9. Ibid.
10. See Yalkut Yosef, Sova Semachot I, pp. 283, 290.
11. Devarim 20:5.
13. 70.
level of the *mitzva* to perform such a celebration may be lower when it is not on the same day. The other is that if one is already delaying the celebration, it makes more sense to delay further until after Tisha B’Av. That being said, since there is no classical source to forbid a *chanukat habayit* before the Nine Days, if one has good reasons to do it specifically at that time, we would not forbid it. (We would urge one in this situation to remember to put a stress on *divrei Torah* and thanks to HaShem.)

Keep in mind that certain possible parts of the celebration may pose a problem. Some people ordinarily make *Shehecheyanu* as they enter their new home, which is problematic during the Three Weeks; we do not say “*Shehecheyanu … laz’man hazeh*” during the Three Weeks because “this time” is a sad one. However, we anyway maintain that this is not the correct beracha to make for an Ashkenazi family moving in to a new home. (*Yalkut Yosef,* based on the *Shulchan Aruch,* writes that *Shehecheyanu* is the correct beracha. He is therefore opposed to having a full-scope *chanukat habayit* during this time, as *Shehecheyanu* would be included. On the other hand, he allows a meal with ten people reciting the appropriate passages according to one’s *minhag*.)

In addition, it is accepted not to play music or dance during the Three Weeks. Therefore, it is proper to forgo music or dancing at the celebration at a *chanukat habayit* at this time, since those are not an integral part of such an event.

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16. See *BeMareh HaBazak* op. cit.
18. *Orach Chayim* 223:3.
20. Certainly live music, which is more problematic than recorded music.
21. See *Yalkut Yosef* op. cit.; *Shemen Afarsimon, siman* 10.
Section E: Kashrut
E-1: Buying Food without a Hechsher for a Friend

**Question:** A friend asked me to buy for her a food product that does not have a hechsher. May I do so?

**Answer:** In order to properly answer this question, we need more information about both your friend and the food.

If your friend keeps kosher, try to determine whether she is making a mistake (and tell her nicely if she is) or whether there are some legitimate grounds to believe that the food does not need a hechsher.

If she is a Jew who does not keep kosher, the situation presents an issue of the Torah prohibition of lifnei iver [lo titen michshol] – i.e., one may not provide someone with the opportunity to sin. Buying someone non-kosher food would be an example of a violation of this rule. If the other person could do the forbidden act himself or ask another person (non-Jewish, according to some⁵) to do so, most authorities agree that the one assisting does not violate lifnei iver.⁵ Nevertheless, several poskim⁴ maintain that there is a Rabbinic prohibition to aid a Jew in performing a forbidden act even if he can do so without the assistance.

This issue may be overcome through combinations of mitigating factors, but we will focus on one in particular. The gemara teaches that if it is unclear whether the recipient will use the object improperly, one may give it to him based on the optimistic possibility.⁵ There is disagreement regarding whether this is true when he certainly will do something that might be

1. Kashrut certification.
2. See Mishneh LaMelech, Malveh V’Loveh 4:2.
3. See Rama, Yoreh Deah 151:1, with commentaries.
4. See Shach ad loc., based on Tosafot, Shabbat 3a, and other Rishonim.
5. Avoda Zara 15b.
forbidden. This appears to be the situation in your case; while we know that your friend will be eating the food, we do not know with certainty that the food is not kosher. Even if this special leniency of lifhei iver does not apply, it is reasonable to be lenient because of the possibility that no Torah-level prohibition is entailed (because she could attain the food without your help). If the food is clearly forbidden, however, you should, under normal circumstances, refuse to buy it.

In the event that the friend is not Jewish but the food is forbidden by Torah law, the question becomes whether the prohibition of commerce in such items applies. There is significant discussion regarding the reason for this prohibition. Is commerce with non-kosher food prohibited as a limited issur hana'ah or is it in order to prevent a situation in which one may eat the food that he is dealing with? Most of the discussion relates to cases in which it is a Jew’s business (such that he benefits) but the food is handled only by non-Jews (such that the Jew is unlikely to eat it). Most poskim are stringent regarding such cases in the absence of other grounds for leniency, but this does not describe your case.

The Pitchei Teshuva does write that the concern that one may eat the food suffices to forbid one from being employed to work with a non-Jew’s “treif” food. Following this line of reasoning, we might argue that it is forbidden for you to handle the food you are buying on behalf of a non-Jew. However, this is incorrect. First and foremost, it is commerce that is forbidden, not contact, and commerce must include elements of financial benefit. Although some forbid buying non-kosher food that will be given as a present to a non-Jew, that ruling is based on the assumption that it is being done because of a financial interest.

In contrast, in a situation like yours, in which you are but a simple

6. See Shut P'nei Yehoshua, Yoreh Deah 3, and Beit Shmuel 5:18, who disagree.
8. Prohibition to benefit.
11. See Shach, Yoreh Deah 117:3.
agent, handling without intention to gain is permitted.\textsuperscript{12}

Another support for leniency in your case is based on the halacha that one is permitted to sell non-kosher food normally if he did not obtain it on purpose. (The classic example is of a fisherman of kosher fish into whose net some non-kosher fish entered.\textsuperscript{13}) We can put you in the same category since your friend’s request placed you in a one-time situation in which the natural response is to obtain and transfer the food. This can be considered “chancing upon” the food.

Because of complicated issues of agency on behalf of a non-Jew and the impact of ownership on this question, it is proper for one to have in mind not to take ownership or responsibility for the non-kosher food that he buys for a non-Jew.

Regarding the problem of marit ayin\textsuperscript{14} presented by buying non-kosher food, your situation would not face an across-the-board prohibition. However, in all of the possible circumstances outlined above, you should avoid a situation in which your purchase will be noticeable and suspicious to fellow Jews. (The details are difficult to delineate in this forum.)

\textsuperscript{12} See Taz, Yoreh Deah 117:2.
\textsuperscript{13} Shvi’it 7:4.
\textsuperscript{14} Appearing as though one is transgressing a violation.
E-2: Does a Cutting Board Used for Onions Take on the Status of the Knife?

Question: I cut an onion with a fleishig knife on a pareve plastic cutting board. I know that the knife makes the onion fleishig, but does the knife make the cutting board fleishig as well?

Answer: Had you cut most foods with a fleishig knife, they would not have become fleishig for up to three reasons: 1) Transfer of taste from a utensil to a food requires heat. ¹ 2) The taste expelled into a pareve food from a utensil that absorbed that taste from a kosher fleishig food (nat bar nat²) is too far removed, and thus too weak, to be a building block of basar b’chalav³ status. ⁴ 3) If the most recent absorption of taste had remained in the walls of the knife for 24 hours, it would be assumed to give a negative taste (notein ta’am lifgam) to the food that it subsequently enters, and it therefore would not change the food’s halachic status.⁵

Poskim derive from two gemarot that these leniencies do not apply to a davar charif (a sharp food) – including onions, according to most opinions. The gemara in Avoda Zara⁶ says that one may not eat chiltit (a very sharp food) bought from non-Jews because they cut it with non-kosher knives. The gemara posits that there is a transfer of taste from a non-kosher knife to this davar charif even in the absence of heat and that it is prohibited even if the knife had not been used in the past 24 hours. The

¹. Shulchan Aruch, Yoreh Deah 105:1.
². Twice-removed taste.
³. A prohibited combination of milk and meat.
⁴. Shulchan Aruch, Yoreh Deah 95:2. According to the Rama ad loc., there are certain elements of fleishig status that would be imparted to the food unless other mitigating factors are present.
⁵. Shulchan Aruch, Yoreh Deah 103:1.
⁶. 39a.
gemara in *Chulin* states that a radish cut with a *fleishig* knife may not be eaten with *milchig* food. In addition to the fact that taste transfer without heat is a factor, we learn from this source that it is forbidden to eat a *pareve davar charif* food that has a *nat bar nat fleishig* taste together with a *milchig* food.

It is possible that the rules in these *gemarot* are somewhat limited. Some *poskim* maintain that only the ultra-sharp *chiltit* overrides the leniency of *notein ta’am lifgam*, such that it absorbs taste from a knife and that taste is deemed positive even though the knife has not been used in 24 hours. Furthermore, some say that the problem with a radish cut with a *fleishig* knife is based on the assumption that the blades of most knives have caked-on fat, and it is likely that we keep knives cleaner in our day. Nevertheless, the *Shulchan Aruch* and *Rama* are stringent on all the points. Therefore, you are correct that the onion is *fleishig* in the case that you describe.

However, your question regarding the cutting board entails two additional points of possible leniency. First, the *gemarot* discuss a *food* that is a *davar charif* absorbing the taste in question; the sharpness likely heightens the taste’s absorption and/or how people sense it. In your case, the question is not simply about the onion becoming *fleishig*, but rather whether it is unusually capable of making other things (e.g., the cutting board) *fleishig*. The *Magen Avraham* does write that if ginger was cut with a *fleishig* knife and was subsequently ground, the mortar, as well as spices that are later ground in it, becomes *fleishig*. In contrast, the *Even HaOzer* argues that *fleishig* taste that leaves a *davar charif* loses its special qualities, and the mortar therefore remains

7. 111b.
8. See *Beit Yosef*, *Yoreh Deah* 96.
10. See *Badei HaShulchan* 96:10.
12. See Rashi op. cit.
pareve. Another factor is the gemara’s statement that transfer of taste without heat occurs only due to the combination of “the knife’s pressure” and the davar charif. Is a cutting board subject to this special pressure that the gemara discusses? The cutting board does not seem to be affected by the friction of cutting, as the blade goes on top of, not into, the board. On the other hand, there is downward pressure on the board, and there are differing opinions regarding whether this is equivalent to the friction of cutting.\footnote{See Badei HaShulchan 96:7. The Shulchan Aruch, Yoreh Deah 96:3, assumes that crushing with a mortar and pestle also creates a transfer of taste, but in that case the pressure seems to be much stronger than when one simply cuts on top of a cutting board.}

Considering the reasons for leniency, it is difficult to argue that hard, smooth surfaces like glass or glazed material would become fleishig due to the cutting that occurs on top of them. On the other hand, in the case of a plastic cutting board that is rough and has multiple deep serrations from repeated use, taste from the onion can accumulate and be difficult to remove. In that case, there is also a certain amount of friction during cutting. Therefore, one should at least scrub the surface of the plastic cutting board before non-fleishig use, and, while we do not require it, kashering it would be an understandable stringency.
E-3: Using a Water Urn for *Milchig* and *Fleishig*

**Question:** I read somewhere that a hot water kettle is considered either *milchig* or *fleishig*. In other words, once one pours from it into a *milchig* *kli* (utensil), it may no longer be used to pour into a *fleishig* *kli*. Can you remind me of this halacha’s source?

**Answer:** We can provide you with a source for what you heard, but we also must tell you that we do not agree with its application in the case that you describe.

The Rama\(^1\) writes: “It is prohibited to pour from a *kli* that contains kosher fats into a lit candle cup that contains forbidden fat.” His source is a statement of the Mordechai\(^2\) based on a *mishna* in *Machshirin*,\(^3\) which states that when one pours a cold pure liquid into a hot impure liquid, the liquids are connected in the process, such that the contents of the pouring *kli* become impure. It is possible that a contemporary *kashrut* guide that you saw inferred from this ruling that one may not use an urn for both *milchig* and *fleishig* *keilim*. However, we will present you with the consensus of the *poskim* to the contrary and the logic behind that view.

The strongest argument against the Mordechai’s thesis is that one cannot compare the laws of transfer of impurity, which revolve around contact, to the laws of *kashrut*, which depend on imparting taste.\(^4\) Indeed, given the fact that several *Rishonim* disagree with the Mordechai, we can understand why the Rama in the quote above concludes, “and if was already done, one need not be concerned.” The question in the *poskim* is thus whether one should **avoid pouring**, not what happens to the *kli* if one already

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1. *Yoreh Deah* 105:3.
2. *Chulin* 715
3. 5:10.
4. *Terumat HaDeshen* II:103.
Furthermore, your case is more lenient than that of the Rama in several ways. One is that the mishna says (according to the accepted opinion) that the stringency applies only when pouring from cold to hot, because the hot liquid on the bottom emits steam. In contrast, in your case, one is pouring from hot into either hot or cold, and this situation is probably more lenient.

There are further points of leniency as well. Rav S.Z. Auerbach is quoted as saying that the Rama was speaking only about when forbidden foods are in one of the utensils, not about milk or meat. There are several leniencies with regard to taste from milk or meat food entering a pareve food and/or utensil. Even if we were to rule that when hot water is poured from an urn onto milk, all the water becomes milchig, new water subsequently heated in that urn would be only b’chezkat chalavi (“milchig-leaning”). Regarding such water, there is a machloket between Ashkenazim (stringent) and Sephardim as to what extent and under what circumstances it can be consumed together with meat. Therefore, it is logical to argue that the stringency of transfer through pouring into non-kosher need not be applied to more lenient areas. In our opinion, extending the stringency of not pouring from kosher to non-kosher to not pouring from a pareve utensil into actual milk or meat is reasonable but unnecessary.

In any event, it is certainly permitted to pour from a pareve urn into a milchig cup when the cup does not presently contain milk. After all, even Ashkenazim – who do not eat pareve food that was cooked in a fleishig or milchig utensil with food of the other type – agree that pareve food cooked with milchig or fleishig can be put while still hot into a kli of the other type.

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5. See Shach, Yoreh Deah 105:11; Taz, Yoreh Deah 105:6; Pri Megadim ad loc.
7. See VaYizra Yitzchak, Basar B’Chalav, Birur Halacha 5.
8. See Yoreh Deah 95.
9. See Shulchan Aruch and Rama, Yoreh Deah 95:2, with commentaries.
10. Ibid.
Based on the above analysis, we feel that it is perfectly acceptable to have one hot water kettle to be used with both milk and meat. One should keep in mind, however, that when a significant amount of hot steam reaches a kli from a food, it can change the kli’s status,\(^{11}\) such that if an urn gets close enough to relatively thick steam of milk or meat, the type of issues we are discussing may exist.\(^{12}\) Thus, in addition to making sure that the urn is not soiled by milchig and fleishig substances, it is proper to avoid putting foods that contain actual meat or milk too close to it, because of the steam that may arise from them.\(^{13}\) However, one does not have to assume that the steam problem will certainly arise simply because he uses one urn with both types of utensils. Unless one makes a mistake, the kli will remain pareve. Further precautions beyond what we have mentioned are, in our opinion, unwarranted. However, you can check with your own rav to clarify his stance.

\[^{11}\) Rama, Yoreh Deah 108:1.  
\(^{12}\) Darchei Teshuva 105:101.  
\(^{13}\) See HaKashrut (Fuchs) 1:69.  

E-4: Discarding Separated Challa

**Question:** What is the preferred manner of disposing of the piece of *challa* that one takes from dough – burning it or wrapping it up and throwing it in the garbage? If one burns it, where should this be done?

**Answer:** In principle, the portion of dough designated as *challa* is supposed to be given to a *kohen* to eat. This is one of many ways that the laws of *challa* are related to the laws of *teruma*. If *teruma* becomes *tamei* (impure), it may not be eaten, and the *gemara* reasons that just as there is a *mitzva* to burn *kodashim* (sacrifices) that are *tamei*, *teruma* that is *tamei* is burned, and this is true of *tamei challa* as well. All *challa* is *tamei* in our days because we all are *tamei*; although food does not become *tamei* before it is touched by one of seven liquids, including water, *challa*, which is taken from dough, is by definition always touched by water. Accordingly, the Rama gives standard instructions to remove a *k'zayit* for *challa* and burn it.

Where should one burn the *challa*? It is forbidden for a non-*kohen* to eat *challa*, and one might therefore logically conclude that it should not be burned in one’s regular oven, which obviously needs to remain kosher. The Rama does say that one should make a separate fire to burn the *challa*, but for an unexpected reason – namely, that a non-*kohen* must not get any benefit from the heat that the burning *challa* produces. The Rama continues that the *minhag* is to burn the *challa* in the oven before baking the bread. It is important to note that in the Rama’s time, ovens had a separate chamber with fuel and fire, and one could throw the *challa* in with the fuel. Nowadays, in contrast, gas or electric ovens have

3. See *mishna*, *Challa* 4:8.
4. *Yoreh Deah* 322:5.
5. Ibid.
one chamber in which items bake and do not usually burn (unless one sets the temperature very high and/or leaves the oven on for a long time). Nevertheless, most poskim seem to prefer burning the challa in the oven to simply discarding it. Why doesn’t baking this forbidden-to-eat food create a kashrut problem?

Indeed, whatever surface touches the hot but not yet burnt challa will need to be kasheréd, and one should therefore have a separate “treif” tray to put it on. But why don’t the challa vapors pose a problem? While the Shulchan Aruch and Rama⁶ rule that reicha (odor) from non-kosher meat does not forbid kosher meat that was roasted in the same large oven, this applies only b’di’ved.

There are two situations in which the issue of reicha is mitigated – when the foods are not fatty and when the two foods are not in the oven at the same time, which is what should be done in the case of burning challa. May we set up this situation in the first place? The Shach⁷ maintains that it is permitted to bake Rabbinically forbidden, non-fatty food together with kosher food. (Challa is a Rabbinic law outside of the Land of Israel; in our times, it is Rabbinic even in Israel because a majority of Jews do not live in it.⁸) However, in light of the fact that not all agree with the Shach’s premise, many suggest wrapping the challa in foil. Keep in mind that it takes longer for the challa to burn that way and that the dough expands when heated, so that it may burst through its wrapping before it burns. Many are concerned that the chance of a mishap when burning the challa in the oven is great, as well as inconvenient. (Burning on the stovetop has some advantages, but the smell of burnt bread and the remote possibility of a fire are issues.)

Given these concerns, some say that one may dispose of tamei challa by discarding it in the garbage, after wrapping it to avoid disgracing it. (Some require a double wrap, which seems to be a

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7. Ad loc. 1, citing the Issur V’Heter.
chumra.) The major justification for this approach is based on an explanation in Rashi\textsuperscript{9} that there is no obligation to burn the \textit{challa} per se; there is simply a need to preclude the possibility that someone will eat it. Accordingly, throwing it out could actually be preferable to waiting for a chance to burn it. Additionally, there are certain circumstances under which it is forbidden to burn \textit{teruma/challa}, and it is possible to confuse the situations.\textsuperscript{10} In this forum, we cannot do justice to the halachic analysis of this view. However, we will say that despite the fact that Rashi’s opinion is the minority and is difficult, use of this option has become increasingly common (including in kosher bakeries) and is accepted by many \textit{rabbanim} (some of whom suggest other mitigating factors as well). Thus, in the event that one finds it problematic to settle upon a feasible and safe way (both physically and \textit{kashrut}-wise) of burning the \textit{challa}, she should not feel guilty if she simply wraps up the \textit{challa} and discards it in the garbage.

\textsuperscript{9} Shabbat 25a; see \textit{Tosafot} ad loc.
\textsuperscript{10} \textit{Minchat Yitzchak} IV:13, based on the \textit{Chazon Ish}, \textit{Ma’asrot} 7:13.
Question: Is it permitted to buy futures contracts of hogs? When you do so, you are not buying pigs; rather, you receive a “paper” by means of which, if you hold on until a certain date, you will receive the hogs. I will certainly sell the rights before that date.

Answer: In the course of discussing the prohibition of commerce in non-kosher food in Living the Halachic Process, vol. I, we touched on the topic of “ownership on paper” through the stock market. Futures trading has elements of both stringency and leniency in comparison to standard stock transactions. We will begin with some basic background.

The gemara\(^2\) derives from the pasuk, “v’sheketz yiheyu lachem”\(^3\) that one may sell non-kosher animals that come into his possession, but one may not make efforts to acquire and then sell them.\(^4\) This law also applies to some other foods forbidden by Torah law.\(^5\)

According to most Rishonim, the prohibition of trading in forbidden foods is on a Torah level.\(^6\) The Rashba\(^7\) maintains that the reason for the prohibition is to minimize the possibility of eating forbidden foods; others say that it is a gezeirat hakatuv (Heavenly decree without a known reason).\(^8\) In any case, the prohibition is associated with eating, as it applies only to items that are usually owned for eating purposes.\(^9\)

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1. E-6.
4. See response E-1 in this volume.
7. Shut III:223.
8. See Chatam Sofer op. cit.
The consensus of poskim is that this prohibition applies as long as a Jew owns the food, even if he is not expected to have direct contact with it.\(^\text{10}\) It is debatable, however, whether it is prohibited for one to hold a small amount of stocks of a company – in other words, whether we should treat him like a partial owner – especially when the business is not built specifically on forbidden foods.\(^\text{11}\)

Let us analyze how futures contracts differ from stocks. A futures hogs contract acquires for its buyer the (usually theoretical) right to obtain that commodity at a future date. Should this come to fruition, he will become the outright owner and controller of the pigs, which is certainly forbidden by Halacha. From this perspective, futures are worse than stocks. When in possession of the latter, one only has financial rights – but not control – over the company’s individual assets; a stockholder of McDonalds cannot demand 1,000 hamburgers for his part in the business. On the flip side, in the commodities futures markets, the average trader has no interest in obtaining the commodity, but rather plans to sell it to another buyer (hopefully at a profit) while it is still “on paper.”

Based on standard halachic rules, a futures transaction is often a *davar shelo ba la’olam* (something that is not presently fit to be transferred from the seller to the buyer). The pigs that an eventual buyer will get on the delivery date have not yet been born at the time of most of the transactions. Thus, although the sale takes effect based on *situmta* (societal consensus),\(^\text{12}\) the contract is not viewed legally as the sale of pigs, but rather as a commitment to provide the pigs at the specified time of delivery.

Ostensibly, this resembles the *Terumat HaDeshen’s*\(^\text{13}\) case of a Jew who wanted to lend money to a non-Jew, with pigs being used as collateral for the loan. The *Terumat HaDeshen* suggests

\(^{10}\) Chatam Sofer op. cit. 108.


\(^{12}\) See Bava Metzia 74a.

\(^{13}\) I:200.
that this might be permitted because a Jew does not acquire immediate ownership of the collateral that he receives from the non-Jew. Similarly, in our case, a process through which one can receive pigs has commenced, but it is not clear that this will happen.

The Rama\textsuperscript{14} rules that, in general, one may not lend with forbidden food used as collateral, which might imply that our futures sales are prohibited. However, in the situation described by the Rama, the lender takes the collateral under his control and also foresees a situation in which he will take ownership of the collateral.\textsuperscript{15} The logic of those who permit taking the non-kosher collateral is that the lender does so in order to protect himself from a loss.\textsuperscript{16} In our case, in contrast, an average trader foresees no scenario in which he will ever become the owner of the pigs or have any physical contact with them. This case is not similar to the one that the Torah forbade – owning and/or controlling non-kosher food sources with commercial intent.

It is true that in some of the similar cases in which poskim were lenient, it was only reluctantly, when there was great financial need.\textsuperscript{17} However, in our case, in which one is involved in a form of speculative trade on paper of mainly theoretical rights to future commodities, it is proper to permit the transactions without hesitation.\textsuperscript{18}

\begin{itemize}
  \item \textsuperscript{14} Yoreh Deah 117:1.
  \item \textsuperscript{15} See Chatam Sofer op. cit.
  \item \textsuperscript{16} See Rama op. cit.
  \item \textsuperscript{17} See, for example, Chatam Sofer op cit.
  \item \textsuperscript{18} See Pitchei Teshuva, Yoreh Deah 117:6.
\end{itemize}
**E-6: An Oven Used for Chillul Shabbat**

**Question:** I want to use a kosher oven that was previously used for cooking food in a manner of intentional chillul Shabbat. Has the oven become “treif”?

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

The answer seems dependent on whether ma’aseh Shabbat regarding food is simply a prohibition against benefiting from it (in the case of food, usually by eating) or whether the food is considered ma’achalot assurot (what we call non-kosher food). If the former is true, there is no need for concern about the oven, as any residue in the oven will not bring you real benefit. If the latter reasoning is true, however, the food is like any other forbidden food that “treifs up” an oven. (In this context, we will not discuss how an oven becomes treif, how it affects foods that are cooked in it, or how it is kashered.)

Logically, one reason that we should not consider food that is cooked on Shabbat to be ma’achalot assurot is that it is prohibited for an external reason – due to its connection to an improper situation – and not because of an intrinsic problem with the food. The Ktav Sofer compares ma’aseh Shabbat food to bishul akum, another case of food that is not intrinsically problematic but is “artificially tainted” by an unwanted situation. There is a machloket Rishonim regarding whether bishul akum causes the utensils that were used to become not kosher. The Shulchan

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1. Ketubot 34a.
2. Orach Chayim 50.
3. Food that was cooked by a non-Jew.
4. See Tur, Yoreh Deah 113; the Rashba is strict, while the Rosh is lenient.
Aruch\(^5\) cites both positions, but prefers the stringent one (although he is slightly lenient regarding how to kosher such utensils).

Indeed, the Magen Avraham\(^6\) cites the Rashba as saying that ma’aseh Shabbat food treifs up the utensil in which it was cooked, and he and the Mishna Berura\(^7\) accept this position. Rav S.Z. Auerbach\(^8\) considers the Magen Avraham’s ruling to be proof that ma’aseh Shabbat food is indeed viewed as ma’achalot assurot, which treifs up utensils.

Many authorities disagree, however. Aside from significant opinions that are lenient regarding a pot used for bishul akum, ma’aseh Shabbat has additional reasons for leniency. The Mateh Yehuda\(^9\) says that the Rashba implies that a utensil would become treif due to ma’aseh Shabbat only according to the opinion of R. Yochanan HaSandler, who views ma’aseh Shabbat as an intrinsic Torah law.\(^{10}\) According to the opinion of R. Yehuda, which the Shulchan Aruch\(^11\) accepts, the food is forbidden forever only for the person who was mechallel Shabbat by cooking. It is difficult to make such a distinction if ma’aseh Shabbat food is actually ma’achalot assurot, which are generally objective prohibitions that apply equally to all Jews.\(^{12}\) Finally, some authorities\(^13\) note that the Gra\(^14\) rules like R. Meir, who is even more lenient than R. Yehuda and maintains that the food becomes permitted after Shabbat even for the one who violated Shabbat. According to that opinion, there is certainly no problem in your case.

We would add that since ma’aseh Shabbat applies to many non-food-related melachot, in which case the category of ma’achalot assurot does not apply, the concept of ma’aseh Shabbat is better

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5. Yoreh Deah 113:16.
6. 318:1.
8. Minchat Shlomo I:5.
9. Cited in Livyat Chen 42.
understood if all the items share the categorization of prohibitions of benefit.

Nevertheless, it is difficult for an Ashkenazi posek to argue with the opinions of the Magen Avraham and the Mishna Berura, at least without other grounds for leniency.\(^\text{15}\) Rav Ovadia Yosef,\(^\text{16}\) on the other hand, concludes that the basic halacha is to be lenient regarding utensils used for ma’aseh Shabbat, although he views those who do kasher such utensils as acting laudably.

Despite these considerations, in your case there is little room for concern. We forbid ma’aseh Shabbat after Shabbat only when the chillul Shabbat was intentional, and even then only for the one who was mechallel Shabbat. According to most poskim, the ma’aseh Shabbat is not even forbidden for a person for whose benefit the Shabbat desecrator did the work,\(^\text{17}\) and it is certainly permitted for others.\(^\text{18}\) Therefore, since you had nothing to do with the chillul Shabbat, the food and certainly its residue in the oven are permitted for you. (You did not ask, and we will therefore not discuss, the topic of trusting the kashrut standards of one who does not observe Shabbat.)

\(^{15}\) See Orchot Shabbat 25:53.
\(^{16}\) Livyat Chen 42.
\(^{17}\) Mishna Berura 318:5; see Magen Avraham 318:2.
\(^{18}\) Shulchan Aruch op. cit.; see Livyat Chen ad loc.
Section F:
Holy Articles
F-1: Protecting Sefarim but Aiding Terrorists

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

Answer: As a practical question, this hinges on many issues that are beyond our strategic-political expertise. Although one’s initial response might be that one obviously may not do anything that would help murderers such as ISIS, that may be simplistic. Consider that one who follows this approach to its logical conclusion would have to get rid of his car because ISIS is financed significantly by oil sales and usage affects the market. Since we have no idea to what extent ISIS sales of Jewish artifacts are an issue, this response is a theoretical analysis – not in any way practical guidance for any individual or group.

First we must consider whether there is a mitzva to save these artifacts. There are two possible mitzva reasons to “redeem” them. One is to save holy articles from being disgraced. Another is to save Torah information for the Jewish people. People are often motivated to buy such items because of their desire to possess coveted Judaica, but it is difficult to consider a personal reason like that a mitzva.

Saving holy scrolls from being disgraced is recognized as a value for which it is worthwhile to pay a halachically significant price. Accordingly, it is permitted to violate certain Rabbinic laws of Shabbat in order to save from a fire holy writings that have sufficient sanctity to require geniza, whether they are halachic.

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1. The placement of holy articles in a safe, dignified place until they are eventually buried.
sifrei Torah, remainders thereof, or even other Torah writings. On the other hand, we do not find sweeping leniencies or an obligation to seek out such items to save. It therefore does not seem that this factor can overcome such an obvious wrongdoing as helping a terrorist organization.

The second consideration, the matter of saving vital information, comes up in the discussion of pidyon shvuyim. The mishna says that despite the great mitzva of redeeming captives, the Rabbis prohibited paying more than the captive’s “market value.” The apparently accepted explanation is that paying excessively encourages the taking of more captives. Accordingly, Tosafot asks how it was permitted for R. Yehoshua ben Chananya to pay an exorbitant price to free a certain youngster to whom he took a particular liking. One of Tosafot’s answers, which the Shulchan Aruch accepts, is that it is permitted to pay a high price for someone with the potential to make great Torah contributions. The same logic should apply to redeeming a valuable Torah work.

However, “redeeming” Torah works is apparently not included in formal pidyon shvuyim, the goal of which is to alleviate human suffering. In some ways, this may lessen the mitzva to redeem them. On the other hand, if sefarim do not fall within the formal realm of pidyon shvuyim, they also are not within the formal Rabbinic prohibition of overpaying. Thus, if one wanted to extend the prohibition involving ransom to any especially dangerous “seizer of Torah scrolls,” we would say that neither the mitzva to pay something nor the prohibition to pay too much applies formally. The absence of a formal prohibition, however, does not imply that one should not use moral common sense.

2. Shulchan Aruch, Orach Chayim 334:12; Mishna Berura 334:39; Rama, Orach Chayim 334:17.
3. Paying ransom to free captives.
5. Ad loc.
8. See Bava Batra 8b.
The price that people are willing to pay for valuable Judaica often has little to do with its practical importance for Torah information, but rather relates to its historical, sentimental, or even artistic value. In the case of a terrorist organization, it seems inexcusable to pay even the “going rate” for such an artifact if it means helping an “organization” like ISIS, which perpetrates atrocities.

Let us put things in perspective. The Rabbis sometimes forbade commerce that might be used to further sinful activity. On the other hand, the Rabbis were careful not to forbid more than society is able to handle; there is a limit to how many things we can boycott (remember our example above about cars). Yet, in a case as stark as the one you raised, the spirit of the law suffices to preclude buying even important holy objects when there is a rational concern that people could be put in mortal danger as a result. Only in exceptional cases might one contemplate that the cost-benefit consideration makes redemption morally feasible.

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9. See Avoda Zara 2a.
F-2: Tallit and Tefillin during Selichot

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

Answer: Traditionally, people did not wear tallit and tefillin during Selichot, for the simple reason that the appropriate times for Selichot are after midnight or very early in the morning, at both of which one is not supposed to put on his tallit and tefillin. Therefore, wearing tallit and tefillin could not be an integral part of the institution of Selichot. This logically remains the case even when Selichot are recited when there is enough daylight to put them on. It is therefore not proper to miss some of the Selichot because one is putting tallit and tefillin on before starting Selichot.

However, it is a good question whether there is a positive effect for one to wear tallit and tefillin for Selichot when possible. Selichot are a special type of tefilla that overlaps with elements of our daily tefilla (especially for those who say Yud Gimmel Middot daily). Thus, our question essentially depends on whether tallit are tefillin enhance tefilla in general. Let us consider tallit and tefillin individually.

We have discussed elsewhere the reasons that married men wear a tallit at Shacharit even when they are already wearing tzitzit (as well as why these reasons may not be sufficiently important to compel single men to do so). One approach we cited is that it is sensible to make sure that one is wearing valid tzitzit (our “tzitzit” garment might be too small), which has special

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2. See Mishna Berura 581:6; wearing a tallit at night puts one in a situation in which it is unclear if a beracha is called for.
4. See below regarding the chazan for Selichot.
5. See Rosh Hashana 17b.
7. This, of course, depends on one’s minhag.
significance at *Shacharit*, when we recite the Torah section on *tzitzit*. According to this reasoning, *Selichot*, in which we do not mention *tzitzit*, is not a time when a *tallit* is called for. Another possibility is that a *tallit* enables one to cover his head, which helps improve his concentration. Consequently, perhaps one could argue that there is a preference for one to cover his head with a *tallit* during *Selichot*. On the other hand, why is this more important at *Selichot* than at *Mincha*, at which we do not wear a *tallit*? A possible rejoinder is that since one is going to wear the *tallit* for the subsequent *Shacharit*, he might as well put it on prior to *Selichot*.

The *Taz* discusses the *minhag* that the *chazan* for *Selichot* wears a *tallit*, noting the proper way for him to do so without needing the corresponding *beracha*, which one is not allowed to say at night. The *Taz* argues that since we recite the *Yud Gimmel Middot* at *Selichot*, there is cause for the *chazan* to be properly cloaked, especially in light of the *gemara* that states that Moshe saw HaShem “wrapped up like a *chazan*” when He taught Moshe how to recite the *Yud Gimmel Middot*. Other authorities discuss whether this *minhag* is advisable, considering the kabbalistic reasons not to put on *tzitzit* at night. All the discussants seem to assume that only the *chazan* wears a *tallit* for *Selichot*. One could argue, however, that the reason that these classical *poskim* assumed that most people were not wearing a *tallit* is because in their time, *Selichot* were recited at night, when wearing a *tallit* poses a problem. If so, in the case of contemporary *morning Selichot*, all participants might be encouraged to wear one.

*Shacharit* is the chosen time for *tefillin* because we need to wear them during the day, in a state of cleanliness and pure

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8. See *Darchei Moshe*, *Orach Chayim* 8:3.
9. Likely, primarily during the sections of *Yud Gimmel Middot* (see *Rosh Hashana* 17b).
11. Ibid.
thought, and because they are mentioned in *Kri’at Shema*.\textsuperscript{13} There is a connection, although a weak one, between *tefillin* and *tefilla*.\textsuperscript{14} While one might presume that the connection should apply to *Selichot* as well, we again note that the connection to *Selichot* does not appear to be more important than the connection to *Mincha*. (There is an opinion that it is proper to don *tefillin* at *Mincha* as well,\textsuperscript{15} but that is clearly not a common practice). Again, it is possible to make a case that if one is putting *tefillin* on soon anyway, he might as well put them on for *Selichot* (as opposed to *Mincha*, when one would have to bring his *tefillin* specifically for the prayers).

In summary, we have seen that it is not important to wear *tallit* and *tefillin* during *Selichot*. However, we raised the possibility, without successfully confirming or contradicting it, that there is some value in putting them on before *Selichot*. Therefore, no matter how it works out practically for you (including time and concentration considerations), putting on the *tallit* and *tefillin* either before or after *Selichot* is fine.

\textsuperscript{13} See *Berachot* 14b.
\textsuperscript{14} See *Shulchan Aruch, Orach Chayim* 37:2; see also *Living the Halachic Process*, vol. IV, A-3.
\textsuperscript{15} See *Bi’ur Halacha* 37:2.
F-3: The Timing for the Beracha on Tzitzit after Being Up All Night

Question: After learning all night on Shavuot, most people do not make a separate beracha on tzitzit, but rather rely on the beracha on the tallit recited when they start davening to “cover” the tzitzit. Since I do not wear a tallit, should I make a beracha on my tzitzit as soon as it becomes halachically possible?

Answer: We will first discuss the practice of many men to always use the beracha on the tallit to cover the tzitzit that they put on earlier.¹

The Shulchan Aruch² writes that one who puts on tzitzit when his hands are dirty from the night should wait to recite the beracha, which should then be recited after purposely handling the tzitzit or when he puts on another pair of tzitzit. The Darchei Moshe³ refers to the minhag to make a beracha only on the tallit that one wears at Shacharit, which also covers the tzitzit he had put on earlier. The Mishna Berura⁴ cites various reasons for this practice. One is that it is wrong to make two interchangeable berachot in close proximity to each other, as one suffices (beracha she’eina tzricha). The Darchei Moshe⁵ himself is bothered by the possibility that the tzitzit garment may be too small to be actually obligated in tzitzit, such that one would not fulfill the mitzva and the beracha would be l’vatala.⁶

This practice does raise problems, however. Berachot are supposed to precede a mitzva’s fulfillment; waiting to make the beracha on the tzitzit until one puts on his tallit afterward thus

¹. See further in Living the Halachic Process, vol. IV, F-1.
². Orach Chayim 8:10.
³. Orach Chayim 8:3.
⁴. Ad loc. 24.
⁵. Ibid.
⁶. Of no value and therefore forbidden.
raises questions. Rabbeinu Yonah\(^7\) says that it is sufficient that the beracha precedes part of the performance of the mitzva – the continuation of wearing them. The Taz\(^8\) adds that when one cannot make the beracha right away because his hands were dirtied during the night, the delay is justified.

In the case that you raise, you have a different reason not to make a beracha when the time to put on tzitzit comes (50-60 minutes before sunrise\(^9\)). The Shulchan Aruch and the Rama\(^10\) rule that one who wore tzitzit all night should make a new beracha on them in the morning (without having to remove them first). This is rooted in the assumption that the night is not a time when the mitzva of tzitzit applies and therefore constitutes a break in the fulfillment of the mitzva. However, many poskim\(^11\) argue with this ruling based on Rishonim\(^12\) who posit that the mitzva continues at night, and there is therefore no need or justification for a new beracha. Due to the doubt, the accepted practice is to not make a separate beracha on tzitzit if one wore them all night.\(^13\)

While there are other possible ways to deal with this doubt, the Mishna Berura recommends the system of using the beracha on the tallit to cover the tzitzit as well.\(^14\) As you mentioned, you do not have a tallit on which to make that beracha. However, when the learning on Shavuot night concludes, many people are readying to daven together, and the common practice is that certain berachot are said by one on behalf of others.\(^15\) It therefore should not be difficult to find someone to recite the beracha on his tallit while having your tzitzit in mind as well. In fact, usually

\(^7\) See Beit Yosef, Orach Chayim 8.
\(^8\) Orach Chayim 8:9.
\(^9\) See additional opinions in Dirshu 18:12.
\(^10\) Orach Chayim 8:16.
\(^11\) Including the Eliya Rabba 8:18.
\(^12\) Including the Tur, Orach Chayim 8.
\(^13\) Mishna Berura 8:42; Tzitzit-Halacha P'suka, 8:91; Yalkut Yosef, Orach Chayim 8:6.
\(^14\) This is in fact one of the cases that the aforementioned Mishna Berura cites in which there is a preference that one make the beracha on the tallit.
someone does so out loud in any case.

From one perspective, there is actually an advantage to being yotzei with another person’s beracha on his tallit over the daily practice of many men to have their own beracha on the tallit cover the tzitzit. When one recites the beracha on the tallit, it is proper to have the intention that it include the tzitzit as well, but this is easily overlooked or forgotten.\textsuperscript{16} Although some recommend solving this problem by mentioning the tzitzit\textsuperscript{17} or handling them at that time,\textsuperscript{18} few men actually do so. (There are strong grounds to contend that \textit{b’di’eved}, the intention to include the tzitzit does not have to be cognitive when it is one’s standard practice.\textsuperscript{19}) In contrast, the matter of intention is rarely a problem on Shavuot morning, given the ceremonious manner in which the berachot are recited by one man for others. People are generally reminded that the beracha recited on one person’s tallit is intended for the tzitzit of all who need it.

Regarding timing, while one could argue that the beracha should be made as soon as possible,\textsuperscript{20} it is easy to justify waiting the relatively short time until davening begins. If the daily practice of putting on tzitzit well before the beracha is acceptable, then one who simply keeps them on certainly has less of a problem waiting for the beracha.\textsuperscript{21}

\textsuperscript{16} See discussion in \textit{Tzitzit-Halacha P’suka} 8:52.
\textsuperscript{17} \textit{Ben Ish Chai} I, Bereishit 2.
\textsuperscript{18} See opinion in \textit{Tzitzit-Halacha P’suka}, p. 42.
\textsuperscript{19} Ibid. 8:52
\textsuperscript{20} \textit{Minchat Shlomo} II:4:1.
\textsuperscript{21} See \textit{Ta’amei HaMinhagim}, p. 8.
**F-4: Status of Tzitzit When the Garment Rips and Is Repaired**

**Question:** My tallit katan sometimes rips a little around the neck area and I don’t know if it is still kosher. If I sew it back up, do I have to undo and retie the tzitzit?

**Answer:** The first question, which we will only touch upon, is whether wide shoulder pieces are necessary to connect the two sides (front and back) of the tzitzit. The earliest stringent source on the matter is the Maharil, quoted by the Magen Avraham. The simple reading of this source indicates that if the neck hole is bigger than either one of the shoulder pieces, the tallit katan is considered two separate small garments with two sets of tzitzit each, and it is therefore invalid. The Chazon Ish understands the Maharil this way and suggests that one should try to follow his opinion. The Machatzit HaShekel argues that it suffices that the shoulder pieces be wide enough to be deemed real parts of the garment and not just thin connectors; they do not have to be wider than the hole.

There are also questions of what counts toward the minimum size of a garment. Do the front and back parts combine, or must each one separately be the minimum size? What impact does the hole for the head have? The Mishna Berura posits that the hole for the head does not count, and he seems to assume that the requisite size is necessary in both the front and back. If the hole is relatively small in comparison to the shoulder pieces, it is easier to contemplate counting that section or at least combining the front and the back sections. In any event, we will assume the

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1. The four-cornered garment that we usually call tzitzit.
2. Introduction to siman 16.
4. On the Magen Avraham op. cit.
5. 16:4.
worst case scenario – that the remaining width of the shoulder piece that is not ripped would not be enough to have a kosher tallit katan garment.

The question that arises when repairing a tallit katan is whether the principle of ta’aseh v’lo min he’asuy applies. This rule means that something that the Torah says to make, such as tzitzit, must be turned into a halachic entity by a direct action; it cannot come about indirectly through a situation that emerged incidentally. A classic application is when one attaches three tzitzit fringes to a three-cornered garment (which is not required to have tzitzit) and only afterward forms a fourth corner. In that case, we disqualify the three existing tzitzit fringes because they were not made into halachic tzitzit, but rather became significant indirectly when the part of the garment to which they were attached later required tzitzit.6

Let us consider a tallit that was severed into two, with each side retaining two tzitzit fringes and with each side including enough fabric to be considered a valid tallit that requires tzitzit. The Shulchan Aruch7 writes that ta’aseh v’lo min he’asuy is not a problem here. The logic is that all the tzitzit were made properly, as they were required at the time they were tied. The Taz8 says that if one reattaches the garment, the tzitzit of only one side are considered valid, whereas the part that is considered reattached needs to have its tzitzit removed and redone. According to the Magen Avraham,9 however, nothing has to be redone when the garment is reconnected, as the situation is just a return to the garment as it used to be with properly attached tzitzit. The Acharonim infer that if, when severed in two, a tallit katan turned into two pieces in a manner that neither constituted a halachic tallit katan garment (which is usually the case according to some

7. Orach Chayim 15:3.
8. Orach Chayim 15:3.
opinions), all the tzitzit must be redone.\textsuperscript{10}

Our case is more lenient. First, only one side is affected, and there is a machloket among Acharonim when a tallit katan is not severed into two separate garments but instead remains connected on one of the two sides.\textsuperscript{11} Furthermore, there is a machloket regarding whether to view a garment that is ripped a majority of the way but is still somewhat connected as being severed or not. The Lechem Mishneh and Mishneh LaMelech write that even a small amount of connection is sufficient, whereas the Artzot HaChayim,\textsuperscript{12} who cites them, says a majority connection is required. In your case, the rip is not significant and is unlikely to be a majority of the fabric. On the other hand, when one adds the rip to the significant opening for the head, it may not leave enough connection.

Nevertheless, there is a widely accepted leniency that applies regarding this point.\textsuperscript{13} The Chazon Ish\textsuperscript{14} says that if the shoulder pieces of a tallit katan are clearly intact but are somewhat ripped, the ripped part counts toward the amount of garment needed to connect the sides, despite the hole for the head. Thus, the tallit katan can halachically be used as is. Consequently, sewing it (which is a good idea if for no other reason than to prevent further ripping) introduces no problem of ta`aseh v’lo min he’asuy.

\textsuperscript{10} See Mishna Berura 15:17.
\textsuperscript{11} See opinions in Tzitzit-Halacha P’suka 15:31.
\textsuperscript{12} 15, Eretz Yehuda 3.
\textsuperscript{13} See Tzitzit-Halacha P’suka 15:32.
\textsuperscript{14} Orach Chayim 3:19.
The Permissibility of Selling Inherited Tefillin

Question: I inherited a pair of tefillin from my grandfather, but I already have a pair of tefillin that I view as more mehudar. May I sell the tefillin? (As a kollel student, I could use the money.)

Answer: There are strict halachot about what can be done with the money earned from the sale of a holy article. The mishna says that when one sells an article of kedusha, he must use the proceeds to buy something of higher kedusha. However, the gemara says that if the city’s leadership sells the item in the presence of the populace, thereby obtaining maximum authority, the money can be used freely. The Tur maintains that since every individual controls his own property, he can similarly sell it and use the money freely.

On the other hand, the gemara asserts that one may sell a sefer Torah only to enable him to learn Torah or to get married. The Beit Yosef infers from the fact that the gemara’s source and other sources are written in the singular that this directive is referring to a privately owned sefer Torah; nevertheless, it is permitted to sell it only under very specific circumstances. The Shulchan Aruch cites two opinions regarding whether, under normal circumstances, it is permitted to sell a privately owned sefer Torah. (If a privately owned sefer was dedicated to community use, the matter is more severe). While there is no consensus in deciding between the opinions, many have been lenient.

The question of selling privately owned tefillin is significantly

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1. Megilla 25b.
2. Ibid. 26a.
3. Orach Chayim 153.
5. Yoreh Deah 270.
simpler. Besides the fact that the sanctity of a *sefer Torah* is greater than that of all other religious articles, there is a special *mitzva* to write/possess one. Thus, if one sells his only *sefer Torah*, he may be uprooting the fulfillment of that *mitzva*, and it is usually forbidden to do so. However, if the *sefer Torah* was acquired in a manner in which one did not fulfill the *mitzva*, it is more likely to be permitted to sell it.⁸ Likewise, if one has another *sefer Torah* and thus will continue to fulfill the *mitzva* even after the sale, there are greater grounds for selling it.⁹ In any case, the *Magen Avraham*¹⁰ says that the prohibition for an individual to sell does not apply to holy articles other than a *sefer Torah*, such as *tefillin*. While not everyone agrees,¹¹ the consensus seems to be on the lenient side.¹²

In your case, there are further reasons for leniency. Obviously, it cannot always be forbidden to sell *tefillin* for normal profit. If it were, what would a producer or merchant of religious articles do? The *Beit Yosef*¹³ writes that they are permitted to sell because those holy articles were always slated for sale and not for their own personal use. The *Kaf HaChayim*¹⁴ applies this logic to other cases, such as one who receives a *sefer Torah* as payment of a debt or as an inheritance. He reasons that the permissibility to sell depends on the owner’s intent when the article entered his possession. In the case of inheritance, we consider the inheritor’s intent upon receiving the *sefer Torah*. If he planned to use it, then the aforementioned questions arise about switching its designation and selling it. If when he received it he had in mind to sell it, he would not be changing its designation, and selling would therefore be permitted. Since you fit into the latter category, leniency is indicated again, and even more so since we are referring to *tefillin*

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⁸ See *Pitchei Teshuva*, *Yoreh Deah* 282:16.
⁹ See *Igrot Moshe*, *Yoreh Deah* 163.
¹⁰ 153:23.
¹¹ See *Bi‘ur Halacha* to 153:10.
¹² See *Shevet HaLevi* I:41.
¹³ *Yoreh Deah* 270.
¹⁴ *Orach Chayim* 153:90.
rather than a sefer Torah.

Your financial situation can also be a significant factor. If your financial situation is very difficult, it is possible that you need the money so that you can continue learning Torah with the regularity that you desire, and the gemara states that this is justification for selling even a sefer Torah. If your situation is less dire and you have the merit of giving significant tzedaka, you may prefer not to sell your grandfather’s tefillin and instead donate them to someone in need. The money you save the recipient can be credited as tzedaka, thereby lowering your out-of-pocket tzedaka expenses.
Section G: Miscellaneous
G-1: What Can Be Learned from the Silence of the Poskim

**Question:** In one of your articles, about whether a guest has to make an act of acquisition for the matza at the seder (you said he does not), you used the concept of setimat haposkim (the silence of halachic authorities) as a proof for your argument. Can you explain how this is a convincing argument and when it can be applied?

**Answer:** Setimat haposkim is a post-Talmudic tool for helping decide halacha. A search of the Bar Ilan Responsa Project turns up several hundred occurrences of the phrase, especially among Acharonim.

The thesis of setimat haposkim is that if a certain common halachic issue or a distinction within a halachic subject is not raised, or if it is raised in only a handful of sources, one can assume that the consensus of poskim opposes it. The logic is that if the halachic argument had been accepted to a reasonable degree, it would have found its way into additional rabbinic sources.

How do we know, then, what the halacha is when there are no sources at all on a specific case, neither in one direction nor in another direction? In the absence of halachic discussion, one should assume that the simple or straightforward understanding or practice is correct. If there is an accepted halacha in case X but there is logic, without sources, to limit the halacha to X.1 and X.2, to the exclusion of X.3 and X.4, setimat haposkim likely indicates that there is no halachic distinction. If the halacha is a certain way in X in general, then it is presumably the halacha in all standard subcases of X.

Regarding a matter such as ownership of matza, where the question is whether a special act is required (i.e., an act of

1. Published in *Living the Halachic Process*, vol. IV, D-13.
acquisition of the matza), setimat haposkim is a reason to not require an act that is not mentioned by poskim. If an act were truly necessary, it should be mentioned, whereas there is little reason to mention not requiring an act. Setimat haposkim is often used to reject a new stringency, as it would have been irresponsible for a large number of poskim to have omitted a warning on the matter if it were indeed called for. It can also be used, to a lesser extent, to reject a novel leniency that people would not have known about without being told.

Scholars in many areas of research can and often do use this type of tool. For example, if a researcher studying the history of a particular neurological disorder made an extensive study of medical records of a certain era and found no evidence of relevant symptoms, he might safely conclude that this disorder did not exist then or that it was extremely rare.

There are certain conditions that must be met in order to employ setimat haposkim. First, one must have searched through a sufficient number of sources. Sample size is always important, especially when drawing conclusions from what is not written. The volume necessary for drawing a conclusion depends on a few factors. If the situation at hand is common, relatively fewer sources are needed. Regarding responsa literature, common issues would be expected to come up more often than rare cases, again making the volume of literature to be surveyed dependent on the case. Regarding codes, since the codifiers choose what to discuss, as least to a certain extent, we would expect them to put extra focus on more common cases, thus making silence on such cases more telling.

Another factor is the similarity of the issue to topics in halachic literature. If there are detailed sources about cases similar to the issue at hand, the absence of discussion is more significant. Returning to our example, a medical textbook that surveys 150 medical conditions can be “forgiven” for not mentioning a given

2. The basis of the discussion of most codes stems from Talmudic discussion.
neurological disorder, but a detailed textbook on neurological conditions would not have omitted it if it were prevalent.

One must be experienced and careful in using *setimat haposkim* and must know how to analyze the background. It is possible that the topic is not discussed for some other reason. In our medical example, perhaps in the studied era the disorder was viewed as a psychological disorder, not a neurological one, thus explaining its absence in the neurological contexts. In the context of Halacha, perhaps the issue is common nowadays but was not common in the past. For example, one should not dismiss the validity of pre-nuptial agreements due to a lack of source material on their past use since there were, in the past, fewer recalcitrant husbands and there was consequently less of a need for such agreements. Sometimes an issue is barely discussed because its existence and parameters were taken for granted. For example, the laws of a *mechitza* in *shul* became a relevant topic only when some people tried to do away with them and, even then, only in certain communities. Previously, the *mechitza’s* existence and requirements were a given that did not raise halachic questions. Using grape juice for the Pesach *seder* was not discussed in previous generations because grape juice was not available in the spring before the days of vacuum packaging and refrigeration.

In our day and age, *setimat haposkim* is a more compelling tool than ever. We have access to far more *sefarim* than our predecessors did because of greater access to larger libraries. In particular, new electronic “libraries” enable access from anywhere in the world. There are works on virtually all major halachic topics that survey centuries of halachic discussion with extensive footnoting and indexing. With the powerful computer search engines that now exist, an experienced researcher can be more confident in coming to conclusions based on what he does not find.
There is a phenomenon in which a certain opinion or practice was conspicuously absent until the ruling of a lone respected halachic authority popularized it. The resulting conflict between the setimat haposkim of one era and the accepted approach of another era requires a separate discussion.

In summary, the experienced, responsible student of Halacha can learn much not only from what is written, but also from what is not written.
**G-2: Disclosing Problems about Another Person’s Apartment**

**Question:** I am renting an apartment whose owners are trying to sell it. Potential buyers come to see the house. Should/may we inform the potential buyers of the mold problems that exist?

**Requested Follow-up Information:** The problems are within the norm, and the owners did not take steps to hide them.

**Answer:** It is difficult to say that it is categorically forbidden by the laws of *lashon hara* to inform the buyers of the problem. The *Chafetz Chayim*\(^1\) writes that one should tell his counterpart who is about to enter a business relationship that doing so will likely cause him to incur a loss, if the following conditions are met: The one informing considered the resulting damage carefully; he does not exaggerate the problem’s extent; his intentions are noble and not out of dislike for the subject of his criticism; there is no other way to achieve the same result; the subject of his criticism will not be unduly harmed.\(^2\) The *Chafetz Chayim* proves that one is in fact obligated to inform the person who stands to lose due to his lack of information, because of the *mitzva* to not stand idly by when someone is in danger. This *mitzva* applies not only to danger to life, but also to potential monetary loss.\(^3\)

However, based on your description, it seems that you should not tell the potential buyer about the mold. First, buying an apartment with a normal amount of mold does not constitute a financial loss, as many people would buy such an apartment in any case. Although it is true that such a condition might justify a reduction in price, considering that the price for a particular house is not exact, it is not very likely that such a problem would make

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1. II:9:1.
2. Ibid. 2.
3. *B’er Mayim Chayim* ad loc. 1.
the price clearly inappropriate. In general, a person who does not perform a thorough check of the apartment should assume it is not perfect, and that seems to be the extent of the problem – imperfection, not a bad apartment.

Second, you also are not required to take steps to save someone from damage when he himself does not bother to take such steps to easily protect his interests. The Chafetz Chayim⁴ writes that one who did not bother to have a potential son-in-law tested for Torah proficiency, even when that is important to him, “caused the loss to himself,” and someone who was not asked should not offer a negative report on his own.

One who is asked by both sides to give an appraisal should do so honestly.⁵ Therefore, the buyer can ask permission of the seller to ask you about the apartment. In that case, giving the impression that it is better than it is would be a violation of lifnei iver (giving someone bad advice).

If a potential buyer asks someone about an apartment without the owner’s permission, the person asked may tell the truth in a case in which his answer will affect the object’s price. This is clear from Talmudic precedents. For example, if someone overpaid for an object, he can take action only within the amount of time it takes to go to an appraiser to check its true worth.⁶ We do not consider the possibility that the appraiser will refuse to tell the buyer the truth due to concern about lashon hara. In a parallel vein, another source discusses a case of neighbors with inside information. If a woman with physical blemishes gets married and her husband wants to void the marriage due to misrepresentation of her physical characteristics, such a claim is not accepted if they live in a place with public bathhouses. This is because we assume that the husband checked out her physical condition by asking

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4. Ad loc., section of examples, par. 6.
5. Ibid.
female relatives. The Rambam\textsuperscript{8} cites two opinions regarding whether we expect the groom to ask friends to ask their wives if he has no relatives in town. Apparently, Halacha does not require people to hold back such information.

As stated above, however, you do not need to do the work for the buyer unless you think that the buyer cannot find out for himself. We have seen that if there is an extreme problem that one would not know to ask about, an individual who possesses this information should step forward and provide it. Even so, the act of tattle-telling is so frowned upon that it should be avoided when there are alternatives. For example, when Yehoshua asked HaShem who was responsible for \textit{Bnei Yisrael’s} defeat at the city of Ay, HaShem told Yehoshua that He is not a tattle-tale, and Yehoshua should cast lots to determine who it was.\textsuperscript{9} Therefore, when there is no great need to save someone from a deep, dark secret (as explained above), it is improper to volunteer information that paints one’s counterpart or his merchandise in a negative light.

\begin{footnotes}
\item[7] \textit{Ketubot} 75b.
\item[8] \textit{Ishut} 25:3.
\item[9] \textit{Sanhedrin} 11a.
\end{footnotes}
Question: What is the biblical source for the mitzva to learn Torah? Why does HaShem want me to study laws regarding damages, for instance, which do not seem related to spirituality? Studying just because HaShem commanded it, without understanding the reason, has never made me particularly attached to Him or inclined to continue learning!

Answer: There are several biblical verses that refer to the obligation to study Torah. The Rambam cites “You shall teach them thoroughly to your children” as the source for teaching Torah to students (non-biological children) and “you shall learn [the statutes] and guard them to fulfill them” as the source of the mitzva to study it oneself. He counts these two elements (learning and teaching) as one mitzva. This seems to indicate that the mitzva is not just to treat Torah as something that one must know in order to apply it to his own life. Rather, it is imperative that as many members of our nation as possible master and pass along Torah knowledge and values so that the Torah will eternally remain the guiding force of our nation’s life.

Many statements of Chazal laud, in the highest possible terms, one who studies Torah lishmah (for its sake) – in other words, for the right reasons. Yet, different classical sources put the stress on different elements of Torah study. While acknowledging the beauty of studying in order to teach, the mishna in Avot seems to indicate that study in order to fulfill the mitzvot is of an even

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4. Rambam, Talmud Torah 1:3.
5. Sefer HaMitzvot, Aseh 11.
7. 4:5.
higher level. This is not referring to merely reading the Torah as an instruction manual before performing a mitzva. Rather, one should fill himself with a broad level of knowledge so that he knows how to deal appropriately with whatever situation might come up in the future. The Bach is one of the supporters of the minority view that the best intention one can have while studying Torah is to study it in order to cling to HaShem. Rav Chayim of Volozhin popularized the widely accepted approach that Torah lishmah is that which is learned for the sake of the Torah knowledge itself, after understanding the religious – not merely intellectual – value of that knowledge.

This does not necessarily mean that knowledge of Torah is more important than closeness to HaShem. Closeness to HaShem is emphasized in other mitzvot, such as the mitzva to love HaShem, fear Him, cling to Him, etc., and the performance of many mitzvot fosters these feelings. But Torah study has multi-faceted value. Knowledge of HaShem’s word connects one to Him and can and should ennable one’s behavior. It also enables one to fulfill the mitzvot properly. Furthermore, it insures the continuity of our religious community.

HaShem wants “us” to study all of the Torah, including the laws of damages. That being said, since only a handful of people are able to master the entire gamut of Torah, a person has to choose the style and subject matter that will bring him the greatest gain. Certain basic texts (including the Chumash) are a must for anyone who takes his Judaism seriously. There is also a basic (not small) amount of practical Halacha that is required so that one does not constantly make mistakes. However, beyond that, one should experiment and get advice in finding the subject matters that are practically usable for him and/or inspire him. Some are enthralled by the intellectual rigor of the intricacies of Talmudic/halachic matters (including the laws of damages), while others

8. Orach Chayim 47.
9. See Nefesh HaChayim 4: 2, 3,18.
10. See Yoma 86a.
are inspired by the more philosophical ideas. Trying to “force-feed” large amounts of study of areas that are not appealing to the learner is doomed to failure. As Chazal teach, “A person learns only from a place that his heart desires.”

Our suggestion to you is to find the subjects, teachers, books, etc. that further your own personal spiritual quest, while keeping your mind open to all genuine words of Torah. At the same time, realize that the very subjects that do not seem to produce the results you desire or need most at this point may do wonders for someone else or may even satisfy you yourself in the future.

**G-4: Different Types of Minhag and their Levels of Flexibility**

**Question:** It is said that minhag turns into halacha and that halacha cannot be changed. Yet, I find that there is a lack of consistency. The Bais Yaakov movement changed the minhag of girls’ education. Some minhagim replace or greatly alter minhag/halacha, such as rewording agreements to allow receiving pay for work done on Shabbat. Why, then, can’t we create new minhagim to obviate the minhagim that make agunot “chained” to their marriages?

**Answer:** You lumped together different types of minhagim that have very different characteristics. We will not deal in depth with the specific issues themselves, but we will touch on the issue of which types of practice have more flexibility than others and why.

First we must consider the source and authority of different types of Jewish religious laws and practices. We encourage you to read our Introduction to the History and Process of Halacha in Living the Halachic Process, vol. I.¹ Some halachot are from the Torah and cannot be changed. There may sometimes be changes in the implementation of certain Torah laws, but this is a rarity, and this can occur only when there are very specific reasons and parameters that allow for change. One example: The Torah forbids cross-dressing, but exactly which types of clothing are considered the dress of the opposite gender changes with time and place.² Although the practical question of what can be worn changes, the Torah principle behind the issue does not change one iota.

Rabbinic laws (up to the completion of the Talmud) are binding and do not change much. Some of these Rabbinic laws were not accepted broadly enough by the Jewish People and were thus discontinued (e.g., the prohibition on consuming oil

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¹ It is also available on Eretz Hemdah’s website.
² Devarim 22:5.
produced by non-Jews). Sometimes the Rabbis provided a device to obviate a previously accepted Rabbinic prohibition in certain cases (e.g., a pruzbol document to allow collection of debts after a Rabbinic-level Shemitta year).

Minhagim are more flexible than Torah or Rabbinic halachot for several reasons. One such reason is that they are often not formally instituted, making them more closely linked to circumstances, which change. Also, what some call a minhag may just be a standard practice that never had halachic standing. (No, bagels and lox are not actually required at a brit mila!) There is another type of minhag to consider. This is something that was not instituted as a new minhag, but rather relates to how to act in the face of different opinions about a full Torah law or Rabbinic law. Sometimes a minhag develops as to which of the opinions should be accepted and followed.

Let us now look at your examples. Women are required to learn Torah, although the nature of their obligation is different from that of a man. Curriculum, venue, and style of study have changed dramatically due to changing situations, but the same is true of men’s Torah education (although in different ways). This is an example of a change in practice as to how to best perform a Torah law. When the matter has great religious significance, the guidance of great rabbinic leaders is crucial to ensure that the changes are implemented by the right people, at the right time, in the right way, and for the right reasons. The Bais Yaakov movement’s founders sought out the approval of the highly revered Chofetz Chayim. The introduction of Talmudic study for women was encouraged and initially mentored by the great Rav Soloveitchik.

Regarding agunot, we must clarify what seems to be a misconception on your part. The questions of agunot are almost

3. See Avoda Zara 35b-36a.
5. See Beit Yosef, Orach Chayim 47.
6. First and foremost, Sarah Schenirer.
always questions of Torah law and occasionally Rabbinic law – not *minhag*. Due to increased need, steps to reduce the scope of the problem have become more prevalent; when they appropriately use *existing halachic principles*, we strongly support the steps and the trend to look for additional effective and responsible methods. But we certainly cannot “wave the wand” of *minhag* to make the issues of *agunot* disappear.
G-5: The Best Way to Spend Money on Israel

Question: I have enough money to buy an apartment in Israel, but I do not plan to live there in the near future. I could also use the money to help support people or programs in Israel. Which is the preferred way to fulfill yishuv Eretz Yisrael?

Answer: According to almost all opinions, there is a mitzva in our times to live in Israel (yeshivat Eretz Yisrael), although there is significant discussion as to whether the mitzva is from the Torah or is Rabbinic. In all likelihood, one fulfills this mitzva only by being a permanent resident of Israel, but not by being merely a tourist or even a landowner who visits often. Some even say that the living must be a normal, healthy inhabitation. In any case, none of the options you mentioned would constitute a fulfillment of a full-fledged mitzva of yeshivat Eretz Yisrael.

There is a second part of the mitzva, which the Ramban calls kibush (conquest) – to bring Eretz Yisrael under Jewish control. While doing so by military conquest in our times was at one point hotly debated due to the concept of the “Three Oaths,” it is all but unanimous that there is a mitzva to obtain control by buying land. This is the basis for the famous leniency, for the goal of

1. The mitzva to live in and strengthen the Jewish community of Israel.
2. When referring to yeshivat Eretz Yisrael, we put the stress on the individual living there. Kibush Eretz Yisrael refers to taking control over the Land. Yishuv Eretz Yisrael is a general term that can refer to either or both elements.
3. Ramban, Additions to Sefer HaMitzvot, Aseh 4.
4. See discussion in Rav Yisraeli’s Eretz Hemdah I, 1:4, about the opinion of the Rambam, who does not mention yishuv Eretz Yisrael in his list of mitzvot.
5. Shut HaMaharat II, Yoreh Deah 28.
6. See different applications in Shut HaRashbash 2; Amud HaYemini 22.
8. See Ketubot 111a and many contemporary sources.
yishuv Eretz Yisrael, of having a non-Jew draw up on Shabbat a contract for purchasing land in Eretz Yisrael. However, this applies specifically when a Jew buys land in Eretz Yisrael from a non-Jew. Similar logic may apply to buying land or building a home in areas where Jewish settlement is not a given. Buying a home in Ramat Gan is unlikely to contain that element of the mitzva. Nevertheless, acquiring a home from a Jew in order to enable aliya is a hechsher mitzva of yeshivat Eretz Yisrael, as are steps to strengthen the ability to remain in the Land.

The matter of supporting the poor in Israel is not brought in the poskim in reference to the mitzva of yishuv Eretz Yisrael. Rather, the Sifrei derives from the pasuk dealing with the tzedaka priorities (e.g., relatives, neighbors, before others) that the poor in Eretz Yisrael have precedence over the poor elsewhere. The Shulchan Aruch records this precedence as the halacha, while the Rambam, for some reason, does not mention it. We would view giving money to the poor of Israel as a proper fulfillment of tzedaka, for which one may certainly use ma’aser kesafim money. Indeed, one could not use such funds for supporting the poor of Israel if we viewed it only as a means to formally achieve one’s own fulfillment of yishuv Eretz Yisrael. After all, that is a personal mitzva, like buying an etrog or, for that matter, buying his own home in Israel. Helping others buy homes in Israel so that they can afford to make aliya is helping them with their mitzva and, according to the accepted opinions, it is a legitimate use of ma’aser money.

9. Gittin 8b.
11. Facilitation of a mitzva.
12. Shut HaRashbash 1.
15. The money set aside for the recommended practice of giving one tenth of his income to charity.
Just because something is not a full-fledged mitzva does not mean that it does not have significant value. It is certainly laudable to want to connect oneself to Eretz Yisrael by owning a home here. It is something one does for his Jewish soul and from his own funds. Supporting different projects in Israel may be at least a partial fulfillment of taking part in the national mitzva of yishuv Eretz Yisrael, and one may use tzedaka funds for this purpose.

Practically, concerning your dilemma, it makes a lot of sense to combine the elements as follows. One can buy a home and hope to some day move into it oneself or have his children do so (which would make future aliya/yeshivat Eretz Yisrael more likely). It is best if one can rent it out in the meantime; rental subsidies for the needy are a wonderful form of tzedaka. In this way, not only will Israeli society gain from the infusion of funds, but you will avoid the problematic phenomenon of absentee homeowners (especially prevalent in Jerusalem). When fine Jews leave empty apartments during the majority of the year, they unwittingly raise housing costs and drive Jews out of town, thereby hurting the day-to-day economy, exacerbating the national housing shortage, and harming demographics. These factors do not make it wrong to buy in such a manner, but they take away from the positive effect the buyer was hoping to create.
Question: Around the time of Rosh Hashana, I will not be in the proximity of people who can do hatarat nedarim for me. Can I do it via Skype?

Answer: While performance of a general hatarat nedarim within days of Rosh Hashana is just a minhag, it is good that you are looking for an opportunity to do it.

There is a machloket Rishonim regarding whether hatarat nedarim requires the physical presence of the noder (oath taker) himself. The gemara asks whether a husband can be an agent to request his wife’s hatarat nedarim and concludes that he can. Some (including R. Shimshon) posit that even other people can act as agents to annul an oath, even when they are less impacted than a husband by the oath that they are trying to cancel, based on the general rule that agents can carry out halachic processes. However, the Rambam is among those who require the noder’s actual presence, and this ruling is accepted by the Shulchan Aruch.

How absolute is this ruling? The Keren Ora and the Kiryat Melech Rav suggest that the inadmissibility of an agent for hatarat nedarim is a Rabbinic law; the latter explains that the objective is to make the noder self-conscious so as to discourage him from making this a common practice. Rav S.Z. Auerbach

1. Nullification of oaths, which can be done by need, but is also done standardly before Rosh Hashana.
3. See Beit Yosef, Yoreh Deah 228, and Ran, Nedarim 8b.
5. See Beit Yosef, Yoreh Deah 228.
7. Yoreh Deah 228:16.
8. Nedarim 8b.
10. Minchat Shlomo, Nedarim 8b.
suggests that the point is to enable effective discussion of the grounds for the *hatarat nedarim*.

Classical *poskim* suggest some exceptions. The Rama\(^{11}\) says that *hatarat nedarim* can be done through an interpreter, but the *Shach*\(^{12}\) and *Taz*\(^{13}\) say that this is true only when the *noder* is present. More significantly, the *Taz*\(^{14}\) cites the Rashba’s ruling that even those who disqualify an agent for *hatarat nedarim* allow the *noder* to submit his request to *beit din* in writing. The idea is that the request must be transmitted without using intermediaries, but it works even without formalistic interaction between the *noder* himself and the *beit din*. The *Taz* also cites the Rivash,\(^{15}\) who does not allow writing. (The Rivash’s proof is from the *midrash* about Yiftach’s haughty refusal to go to Pinchas to undo his oath,\(^{16}\) which seems to indicate that a letter would not have sufficed.) The *Taz* himself does not take a clear stand on *hatarat nedarim* through correspondence, and the *Pitchei Teshuva*\(^{17}\) allows it in a case of significant need.

*Poskim* have discussed the use of telephones with regard to several halachic matters. One such matter is the crucial issue of appointing the facilitators of a *get*. This is a more difficult matter than ours because of the need to ascertain identity and the likely requirement of a high level of connection between the husband and the *get*’s facilitators.\(^{18}\) Another area of interest is *berachot* heard via telephone. One cannot fulfill *mitzvot* through such a *beracha*, but leading *poskim* have debated whether one can\(^{19}\) or

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11. *Yoreh Deah* 228:16, based on the *Yerushalmi*.
15. Shut HaRivash 370.
16. See *Bereishit Rabba* 60:3.
17. *Yoreh Deah* 228: 9; see also *Kol Nidrei* 19:3.
18. See discussion in *Tzitz Eliezer* X:47 and an article by Rabbi H. Jachter in *Techumin* XIV.
19. *Yechaveh Da’at* II:68.
cannot\(^{20}\) answer *amen*.\(^{21}\) *Hatarat nedarim* by phone could possibly follow the same logic, or it might be more lenient (if a practical rather than formal connection between the two parties is enough) or more strict than other applications (if presence is a Torah requirement).

A Skype discussion is no worse than a written request for *hatarat nedarim*. After all, one’s written word does not have any special status in this context; what is necessary is simply to convey the requester’s message effectively without another person’s intervention.\(^{22}\) In some ways, Skype is preferable to a written letter. It allows for give and take between the parties and creates a personal connection that could provide an increased ability to properly discuss the matter, as well as a measure of self-consciousness. In the latter regard, it might even be a slight improvement over use of a telephone. Audio/video’s greater advantage is apparent in cases in which authentication is crucial (arguably including *gittin*), as it is easier to impersonate a voice than a voice and an appearance simultaneously.

In conclusion, when necessary, one may rely on *hatarat nedarim* via Skype and even by phone.\(^{23}\) We note briefly that *hatarat nedarim* before Rosh Hashana may require less halachic precision than *hatarat nedarim* for a specific oath that one wants to absolve,\(^{24}\) and leniency is therefore fully acceptable when necessary.

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22. Proof of this claim is beyond our present scope.
23. See *Shevet HaKehati* IV:239.
24. Development of this argument is beyond our present scope
G-7: Lighting a Candle When the Ner Tamid Is Out

**Question:** There was recently a power outage in our area while I was in my beit knesset. Emergency lights went on, but the ner tamid (eternal flame) was off. Were we required to go get a candle to serve as a ner tamid, or could we have waited until the lights came back on?

**Answer:** The idea of having a ner tamid is both an ancient practice, first mandated in the Torah for the Mishkan/Beit HaMikdash, and a more recent practice, as we will see. In the Beit HaMikdash, the “western lamp” of the menora was supposed to always be lit. Now that there is no Beit HaMikdash and our shuls have assumed some of its place in our lives, some say that the ner tamid is among the specific Mikdash-like features that have been adopted.

I have been unable to find a reference to a special “ner tamid” in a shul before the Terumat HaDeshen (15th century Germany). On the other hand, lights in shuls are discussed well before that, and they are an important part of a shul, to which some specific halachot pertain. For example, they cannot have any connection to idol worship or worshippers. This, however, refers to lights in general, and not specifically to a ner tamid.

Some sources refer to the practical need of being able to see and read in the shul, especially at night. Others, including the Rambam7 and the Rosh, refer to good lighting as one of the

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2. The temporary sanctuary first erected in the desert and brought into Eretz Yisrael.
5. See Binyan Tziyon, II:12; Terumat HaGoren 1:37.
7. Tefilla 11:5.
8. Shut HaRosh 5:8.
ways to show honor (kavod) to the shul. But the contemporary ner tamid is found even in shuls that have extensive lighting and expensive chandeliers; it is usually in the front of the shul, and it stays on even when other lights are off.

Is it indeed required for there to be a light in shul at all times? The Shulchan Aruch\(^9\) rules that it is permissible on Yom Tov to light candles in shul, as the mitzva purpose justifies doing melacha.\(^10\) The Rosh\(^11\) says that it is permitted even to light these candles in the afternoon, so as to have them last into the next day (e.g., into Shabbat or the second day of Yom Tov), because the immediate kavod that the candles bring suffices. Although the Rashba\(^12\) is not convinced that this type of benefit justifies performance of melacha on Yom Tov, he agrees that it is generally proper to have light to enhance the kavod of the shul, apparently beyond that which is practically necessary for reading and the like. The Magen Avraham\(^13\) writes that it is even permitted to light candles on Yom Tov when people are not in shul, as the honor to the shul still applies.

Indeed, it is usually assumed that it is worthwhile to have light in a beit knesset even when it is empty, but that does not necessarily mean that there is an obligation or even a purpose for it to be literally tamid (constantly). The Rav Pe’alim\(^14\) discusses the case of a shul whose members were afraid, for safety reasons, to leave candles lit all night in shul and wanted a non-Jew to extinguish them and relight them the next morning (Shabbat). He states that even when they put out all the lights, they must certainly keep at least one candle lit in a safe place because it is not kavod for the shul for it to be pitch dark. He seems to assume that during the day, when it will anyway not be totally dark, a single candle does

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10. Actions that are fundamental prohibitions on Shabbat and Yom Tov.
14. II, Orach Chayim 43.
not make a difference and is in fact not needed.\footnote{15}{The Magen Avraham, op. cit, is likely talking about several candles, which are noticeable and thus add honor 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, due to electricity, to just leave it on always, it is unclear whether the minhag mandates that it remain on during the day as well or just that no one bothers to shut it. However, the minhag does not appear to be strongly modeled after the Beit HaMikdash. One of several signs that it is intended for a more practical rather than ritual kavod is the fact that we use electricity rather than olive oil.\footnote{16}{See Maharam Shick, Orach Chayim 83.}

There are few if any sources that indicate that there is a problem if a relatively short period goes by without a specific ner tamid. Therefore, in your case it does not seem that it was necessary to get candles, especially during the daytime and certainly when emergency lights went on.
G-8: A Fence for the Roof of an Apartment Building

**Question:** I reside in a building with over 200 housing units. The vast majority of the residents are not Jewish. The building is owned by a condominium association comprised of the building’s apartment owners, and over half of the building’s apartments belong to a Jewish-owned real estate company. Are we obligated, as residents or owners, to build a *ma’akeh* (fence) for the roof (it is flat)? It is likely that a decision to build one would cause animosity among the non-Jewish owners, as the fence will be expensive for such a large roof.

**Answer:** There are a few cases in which roofs are not required to have a *ma’akeh* around them. Regarding some, the ruling is unanimous; regarding others, there are different opinions.

The *gemara*\(^1\) says that although the word “gagecha”\(^2\) seems to imply that a jointly owned roof does not require a *ma’akeh*, the continuation of the *pasuk*, “lest the faller fall,” indicates that partners indeed are obligated, since someone could fall from a jointly owned roof as well. It is less clear whether this applies even when there are non-Jewish partners, who are not personally obligated in the *mitzva*. The *Shach*\(^3\) writes that although the Maharshal obligates a Jew who has a partnership in a house with a non-Jew to build a *ma’akeh*, the Rama,\(^4\) who rules that such a house is exempt from a *mezuza*, might exempt him from a *ma’akeh* as well. The *Shach* hints that the comparison between *mezuza* and *ma’akeh* is not self-evident. We note that one of the reasons given for the *mezuza* exemption is the non-Jew’s possible reaction to what he might consider a strange ritual;\(^5\) this does not

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5. See *Shach*, *Yoreh Deah* 286:6.
apply to a *ma’akeh*.

Although the more accepted opinion is to obligate a Jewish homeowner with a non-Jewish partner to construct a *ma’akeh*, the matter remains somewhat unclear. The *poskim* do not distinguish between cases in which the Jewish-owned portion or the non-Jewish portion is the majority, making moot one part of your excellent question – whether the determinant of the majority follows ownership or residency.

This question actually could be different if it were asked not by a resident like you, but by the Jewish-owned real estate company. The *gemara* says that the renter who is obligated to erect a *ma’akeh*. Most assume that his obligation is Rabbinic. The *Minchat Chinuch* raises the question of whether the renter’s obligation is exclusive or whether the owner of the house is also obligated, and possibly even more obligated.

You did not state whether the roof is used at least semi-regularly or if it is basically accessed only for the purpose of repairs. Presumably, if the roof were used extensively, everyone would understand the safety benefits of some sort of barrier. (Also, note that a *ma’akeh* only needs to be 10 tefachim tall. Most *poskim* rule that a roof that is not frequented does not require a *ma’akeh*. It is possible that even the stringent opinion on this matter would not apply his stringency to a renter or to a case in which there is a partnership in the house. Since the obligation for those who are classical owners of the house is likely based on the practical consideration of danger, it *might* not apply when the roof is rarely used.

What should you one do if your case is such that you are obligated in a *ma’akeh* but you cannot get others to agree unless you

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7. *Bava Metzia* 101b.
9. #546.
10. Approximately three feet. See *Shulchan Aruch*, *Choshen Mishpat* 427:5.
11. *Bi’ur Halacha* to *Orach Chayim* 540:1; Chazon Ish op. cit. 1.
and/or a small group agree to pay for it (which would presumably be prohibitively expensive)? The rule is that one does not have to pay an exorbitant amount of money to fulfill a *mitzvat aseh*, but one does have to spend all of his money to avoid the violation of a *mitzvat lo ta’aseh*. The *mitzva* of *ma’akeh* includes both types of *mitzva*, but it is primarily a *mitzvat aseh*, and there may be times that the *aseh* applies while the *lo ta’aseh* does not.

On the other hand, the existence of a *lo ta’aseh* would seem to strengthen the *aseh*. In the final analysis, however, according to many *poskim*, the amount that one must pay depends not on how the *mitzva* is formulated, but on whether it is violated by action or inaction. In this case, since the violation is done by **not building** the fence, a handful of people would not be expected to pay an exorbitant price to build the *ma’akeh* to prevent the passive lack of fulfillment of the *mitzva*.

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12. Positive *mitzva*.
13. Negative *mitzva*.
15. See *Chiddushei HaRamban, Kiddushin* 34a.
16. See *Tosafot, Kiddushin* 34a.
17. See *Pri Megadim, Eshel Avraham, Orach Chayim* 656:8; *Pitchei Teshuva, Yoreh Deah* 157:4.
G-9: A Loan/Investment that Requires a *Heter Iska*\(^1\) after its Inception

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

**Answer:** If there was a valid *heter iska*, it is not a problem to be unable to find it. That is because a *heter iska* sets the nature of the transaction as having an element of investment (subject to profit or loss, at least theoretically) from the outset, such that there is no problematic loan to begin with.

Let us briefly explain the reason that a *heter iska* can be used to allow payment at a fixed rate of interest/theoretical profit, irrespective of actual profits. When a *heter iska* is in place, the loan is halachically viewed as an investment that does not provide a guaranteed return on the money advanced. The reason that it *resembles* a fixed-rate loan is the provision in the *heter iska* that the investor can demand verification (witnesses to say there was loss or an oath that there was less gain than expected) if and when the investment recipient claims that he does not have to pay as much as expected. Therefore, the fixed rate of “assumed profit” (known as *d’mei hitpashrut*) in lieu of verification of a different amount of payment is a legitimate part of a *heter iska*. We do not view it as assured interest, even though it is almost always the amount that is paid irrespective of actual profits.

According to most *poskim*, an oral *heter iska* agreement

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1. An agreement that turns what would have been a situation of *ribbit* (forbidden usury) into a joint investment between the two parties.
is essentially valid. Why, then, do we bother with a written agreement? The most cogent reason has to do with the weakness of the heter iska in general. While we certainly do not intend to cast aspersions on a halachic system that the rabbinic community has accepted broadly, most admit that it borders on halachic fiction. In all honesty, the parties basically agree to a loan that is to be returned with interest (i.e., ribbit) even if the borrower did not profit. In order to redefine the transaction to conform to halachic requirements, it makes sense to be assisted by the written word to bring the provision to a proper minimum level of seriousness. Indeed, there is halachic precedent that written agreements are taken more seriously than oral ones.

Additionally, many people do not understand the conditions of the iska. Most poskim do not require a high-level understanding of the mechanism, but it is unclear what the minimum level is. When agreements are in writing, there is more chance that the sides will understand the conditions. Furthermore, there is a broad rule that when an agreement is in writing, we do not enable a party to claim that he did not understand it; he has to realize that he is accountable for whatever is written. This element is missing when the “agreement” is oral. There are also different types of heter iska that can be used, and not everyone knows how to specify which version he is agreeing to. Thus, it is important to have a written heter iska, and you should prepare one now. However, if there was an oral agreement to follow the conditions of a classic heter iska, then if the business transaction was already performed, you may assume the agreement had the proper halachic effect.

What if there was no agreement? Interest that was already paid would be in violation of a Torah prohibition, and in such a situation the creditor is required to return the interest to the borrower. However, the borrower is allowed to waive the right

2. See Brit Yehuda 40:9; Torat Ribbit 16:2.
3. See Ketubot 56a; Shut Tzemach Tzedek (Lubavitch), Yoreh Deah 88.
4. See Brit Yehuda 35:4 and ad loc. n. 13; Shut Tzemach Tzedek op. cit.
5. See Netivot Shalom (Gelber), pp. 725-726.
to have the money returned,\(^7\) as you are apparently interested in doing.\(^8\) Regarding the future, it is possible to create an *iska* at this point. This can be accomplished by transferring to you potentially profit-producing assets by means of a *kinyan sudar*,\(^9\)\(^10\) or through a written *heter iska* (although it would be preferable to slightly modify parts of its language). This new *iska* arrangement cannot change the nature of the loan retroactively, and it would therefore be forbidden to make new interest payments that correspond to the time that has already passed.\(^11\) Some allow compensating for the lost profit to the lender by making the *d’mei hitpashrut* higher than what was originally planned.\(^12\) However, others counter logically that it is clear that the added payment is *ribbit* for the past and not incidental. The matter may depend on the willingness of the one who gave the money to waive compensation for the missed *d’mei hitpashrut* of the past.\(^13\) The less exact and less clear the compensation is, the more reasonable leniency is on this point.

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

\(^7\) Ibid. 160:5.
\(^8\) There is more to be said on this matter, but it is beyond our present scope.
\(^9\) A symbolic act of finalization involving the giving of a utensil from one side to the other.
\(^10\) *Dagul Merevava* to *Shach*, *Yoreh Deah* 177:41.
\(^11\) *Torat Ribbit* 16:28-29.
\(^12\) Ibid.; *Netivot Shalom*, p. 721.
\(^13\) Ibid.
G-10: Solving a Netilat Yadayim Problem on a Plane

**Question:** Airline kosher food packages often contain “Mezonot rolls,” and I used to, conveniently, not do netilat yadayim on the plane. Nowadays, many rabbis have come out against this concept, and the rolls are often labeled as “HaMotzi.” Considering that during mealtime on an airplane, it is not feasible to wash, what should I do?

**Answer:** We will start with a brief view of the contemporary machloket regarding “Mezonot rolls,” about which so much has been said and written.

The *gemara*\(^1\) discusses *pat haba’ah b’kisnin*, a baked grain-based food that shares some qualities with bread but in some ways is different from normal bread. The *gemara* says that whether one recites HaMotzi or Mezonot on such a food depends on whether one is *kovei’a seuda* (sets a meal) on it. The *Shulchan Aruch* writes that when one is *kovei’a seuda* on *pat haba’ah b’kisnin*, the other halachot of bread also apply to it – namely, one has to do netilat yadayim before eating it\(^2\) and recite Birkat HaMazon after eating it.\(^3\)

What are the characteristics that make a baked product of flour from the five main grains *pat haba’ah b’kisnin* instead of bread? The *Shulchan Aruch*\(^4\) cites three opinions: 1) It has a pocket of sweet filling. 2) Its dough contains significant amounts of ingredients such as sugar and oil (in addition to flour and often water). 3) It is thin and crispy. It is not altogether clear whether we treat a food that has some but not all of these characteristics as definite *pat haba’ah b’kisnin* or as possible bread, and the

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1. Berachot 42a.
2. Orach Chayim 158:1.
4. Ibid. 7.
practical ruling may depend on the specific halachic ramification that is being considered.\(^5\)

The idea of “Mezonot rolls” is to make it *pat haba’ah b’kisnin* by kneading the flour with juices and with little or no water. But does this succeed in creating the desired halachic status? There are three main claims against this application, although each one is debatable.

One claim is that these rolls are usually served on the airplane in a manner such that they constitute the main part of the meal; i.e., one is *kovei’a seuda* on the roll. We have written elsewhere\(^6\) our belief that pizza should be treated as bread no matter how much of it one eats because it is normally eaten as the main part of the meal. Similarly, one can argue that airline rolls should be viewed as bread. On the other hand, the prevalent *minhag* is to treat only a large amount of pizza as bread, and one is not served that much of the *Mezonot* rolls on the plane. Furthermore, the rolls are less central to meals than a slice or two of pizza is.

Another claim is that nowadays, when people normally eat only a little bread at a meal, even a relatively small amount of *pat haba’ah b’kisnin* should be treated as bread when it is eaten as part of a full meal.\(^7\) However, according to that logic, one should make *HaMotzi*, wash, and *bentch* even for borekas and some kugels during a meal, and that certainly is not the accepted *minhag*.

A third claim is that this roll greatly resembles a regular roll, and we are more interested in the way the food looks and tastes than in its actual ingredients. However, one can deflect this claim as well. One can easily tell that a *Mezonot* roll is not a regular roll, and the airline food chefs and the travelers are willing to use it as a roll mainly to save them from the problem of *netilat yadayim* on a plane.

Our opinion, based on the combination of the above factors, is that one should wash, recite *HaMotzi*, and *bentch* on most

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\(^5\) See *Bi’ur Halacha* to 168:8.

\(^6\) *Living the Halachic Process*, vol. IV, B-3.

\(^7\) Based on *Igrot Moshe*, *Orach Chayim* III:32.
Mezonot rolls, although we do not discount the ruling that treats them like pat haba’ah b’kisnin.

If you bring real bread with you on the plane, you will be able to solve the netilat yadayim issue and also obviate any doubt as to which berachot to make on these questionable rolls. Before the stewardesses start giving out the food (special orders, including kosher, are usually served first), go to do netilat yadayim and make HaMotzi on the bread. (It is best to use a permanent cup. Also, if you wash in the sink of the little kitchenette, you will be able to recite the beracha right away. If necessary, you can wash in the bathroom, but dry your hands and make the beracha outside of it.) Then continue the meal with what they bring you later, with or without the Mezonot roll. If you do not have a chance to wash when the aisles are clear, you can first eat the meal without the bread and roll and make the appropriate berachot acharonot. Some time later (right away would raise problems of unnecessary berachot), when the aisle traffic eases, wash and have the bread and/or roll.

It is important to emphasize that while we do not want to compromise halachic requirements while on a plane, we also do not want to make a chillul Hashem or unfairly inconvenience others (i.e., by going into aisles that are full with food carts). It is legitimate to be lenient, and it is praiseworthy to inconvenience ourselves but eat in the most halachically sound manner, when one is under less than ideal conditions.

8. Another practical note: It is a good idea to bring bread with you for the situations in which there is a problem with your kosher food order.
9. If you save some spread from the meal, the bread and roll will likely be more appealing.
**G-11: Burying Wisdom Teeth**

**Question:** I am having wisdom teeth removed. Do I need to bury them?

**Answer:** There are a few reasons to bury parts of the human body, and we will have to examine each one to see whether it applies to the tooth of a live person.

There is a major question regarding whether the obligatory mitzva of kevura (burial) applies even to an individual limb of a deceased person.¹ (If the majority of the corpse is present, all agree that the mitzva applies to every part of it.) Some maintain that while there is a mitzva of burial for an individual part of the body, this applies only to a dead person. Since all parts of his body should be buried, it is a disgrace for part of his body to go unburied. In contrast, when a person continues living without a part of his body, burial might not be necessary for that part.² The Igrot Moshe³ attempts to prove that there is an obligation of burial even for an individual limb or a sizable amount of flesh of a live person, based on the fact that the gemara⁴ needs a pasuk to deduce that a kohen may not make himself tamei in order to bury a limb of his live father. However, it appears that the majority opinion is that there is no obligation of kevura for a live person’s limb.⁵

Even if the mitzva of burial does not apply, there are additional issues that may put limitations on what to do with a part of a body. A dismembered limb of even a live person is tamei (ritually impure).⁶ As such, it is not proper to allow such a limb to be left out in the open, where a kohen might come in contact with it. Another issue that could create requirements for proper disposal

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1. See Mishna LaMelech, Avel 14:21.
5. See Ateret Paz III, Choshen Mishpat 7.
6. Rambam, Tumat Meit 2:3.
of the body part is the prohibition to receive benefit from it.\textsuperscript{7}

Let us now look into the matter of a tooth. The \textit{gemara}\textsuperscript{8} relates that R. Yochanan would walk around and show people a bone from his tenth son to have died. (\textit{Tosafot}\textsuperscript{9} explains that he did so to console others who were distraught over tragedy.) Commentators are troubled how R. Yochanan could have acted in this way, as he ostensibly should have buried the bone. Rashi\textsuperscript{10} posits that it was a tiny bone, smaller than the size of a grain of barley, whose \textit{halachot} are different than those for a larger bone. The Rashbam\textsuperscript{11} says that the “bone” was actually a tooth, which is not \textit{tamei}. Indeed, a \textit{mishna}\textsuperscript{12} states that neither hair, nor nails, nor teeth that are separated from the human body are \textit{tamei}. Although not everyone explains that it was a tooth that R. Yochanan kept, we do not have an indication that there is any fundamental \textit{machloket} on a tooth’s status regarding burial. It is not clear whether it is permitted to benefit from a tooth from a deceased person,\textsuperscript{13} but one certainly may benefit from the tooth of a live person. Therefore, we are not aware of any halachic source or strong reason to place restrictions on what may be done with an extracted tooth.

There is a venerable source that does discuss what one should do with extracted or fallen teeth, but it is apparently not following halachic lines. The Chida\textsuperscript{14} wrote to someone who was upset that his tooth, which he had been saving to have buried with him, was lost. The Chida told him that although the custom of saving a tooth for eventual burial is mentioned in \textit{Ma’avar Yabok}, it is not clear that the author agreed with that practice, and it appears to contradict the story of R. Yochanan cited above. The \textit{Tzitz Eliezer}\textsuperscript{15}
seems to dismiss the practice. It is also interesting that even this uncommon minhag does not require one to bury the tooth right away, as many require for limbs, but rather to specifically wait until the burial of the person himself. This actually seems to discount the potential halachic stringencies, as we posited above. Therefore, we see no reason to take any special measures in regard to a tooth that is removed or falls from a live person.\textsuperscript{16}

\textsuperscript{16} The matter of disposing of cut nails is an entirely technical matter (i.e., it could cause damage) that does not apply here; see Mo’ed Katan 18a.
**G-12: Eating Contests**

**Question:** I am interested in your opinion regarding whether eating contests violate any prohibitions, such as *bal tashchit* (lit., not destroying). (I am a reporter writing an article.) Is there a difference between contests of volume (e.g., eating dozens of hot dogs in ten minutes) and of speed (e.g., eating three hot dogs the fastest)?

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

We will begin with the issue that you raised – *bal tashchit*. Beyond the context of destroying trees, in which this prohibition appears in the Torah,\(^1\) it is difficult to delineate the violation. The Rambam\(^2\) describes it as applying not to wasting, as many assume, but to destroying things, including “*me’abed ma’achalot derech hashchata*” (causing the loss of food in a destructive manner). The emphasis on the destructive manner opens the door to permitting arguably wasteful usage of objects of value for such purposes as recreation.\(^3\) In the question at hand, we are discussing eating, and it is harder to claim that the ingestion of the food is destructive even if it is done in a less than dignified manner.

Some claim that Rashi would consider stuffing oneself as *bal tashchit*. In discussing the case of one who is bloated and yet continues to eat, the *gemara*\(^4\) describes such action as considered not “eating,” but “damaging,” and Rashi\(^5\) says that such a person damages both the food and himself. If eating in this manner is considered damaging the food, it is likely *bal tashchit*. However,

\(^1\). *Devarim* 20:19.
\(^2\). *Melachim* 6:10.
\(^3\). See *Etz HaSadeh* (Shtesman) 11:2.
\(^4\). *Yoma* 80b.
\(^5\). Ad loc.
since the context there is the parameters of prohibited eating (e.g., Yom Kippur, forbidden food) and not bal tashchit, it is difficult to be sure what Rashi would say in our context.

Another related issue is bizuy ochlin (disgrace of food). Since the context there is the parameters of prohibited eating (e.g., Yom Kippur, forbidden food) and not bal tashchit, it is difficult to be sure what Rashi would say in our context.

Regarding this issue, Halacha distinguishes between foods. Most foods are considered “disgraced” only when they are soiled and made unappetizing prior to eating. It is difficult to apply that to eating itself, even if it is done in an unnatural way. Bread, however, may not be handled disrespectfully (e.g., by throwing it), even when it is unaffected by such handling. Thus, while it is difficult to consider overeating an objective bizuy ochlin for most foods, it is reasonable to forbid stuffing bread (including hot dog rolls) down one’s throat in the context of extreme overeating, as situational bizuy.

Safety concerns are also relevant. A small number of people have died (mainly from choking) at eating contests, and eating in such a fashion is not wonderful for one’s digestive system. We find in Chazal particular concern to avoid eating in a dangerous or even unhealthy manner, e.g., speaking while eating; eating while standing. On the other hand, in addition to our reluctance to taking stands on medical matters, we do not want to be hypocritical by forbidding eating contests on health grounds when so many people eat very unhealthily on a regular basis without significant rabbinic comment.

There are a few semi-halachic, semi-philosophical areas about which people can argue whether they apply. Here we simply mention one issue that we believe eating contests – at least those of volume – clearly violate: bal teshaktzu. A secondary application of the pasuk is that one should not put his body in a situation in which he feels disgusted. Classic examples include

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6. See Rashi, Ta’anit 20b.
7. See Shulchan Aruch, Orach Chayim 171:1.
8. Ta’anit 5b.
9. Gittin 70a.
holding in a strong need to eliminate and eating in a manner that disgusts the eater.\textsuperscript{11} It is true that poskim permit such situations for certain needs (e.g., for one who is in public without access to a bathroom;\textsuperscript{12} for a sick person who needs to ingest a medicine that disgusts him\textsuperscript{13}). However, the anyway dubious practice of an eating contest is not adequate justification to allow for such violations.

Regarding an eating “sprint” of three hot dogs, we lack the expertise to determine whether contestants necessarily disgust themselves or whether fast swallowing is simply a technical skill of swallowing a normal amount of food unusually fast. The food, assuming it will eventually get digested, can be used by the body like other hot dogs. Therefore, objections to such a contest might be based more on philosophical/ethical grounds than on halachic ones.

\textsuperscript{11} Makkot 16b.
\textsuperscript{12} Mishna Berura 3:17.
\textsuperscript{13} See Pri Megadim, Siftei Da’at 81:3.
Section H: Family Law
H-1: Standing for Parents in our Times

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

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

The gemara\textsuperscript{1} gives examples of kibud (honoring) and of mora (awe) for parents. While standing is not on either list, it is evident from gemarot that it is expected.\textsuperscript{2} This is logical considering the mitzva from the Torah\textsuperscript{3} to stand before the elderly and scholars.\textsuperscript{4}

Now let us take a look at the idea of standing once during the day and once at night, which you mention. The gemara\textsuperscript{5} cites R. Yannai as saying that a talmid chacham is not permitted to stand up for his rebbe more than once in the morning and once in the evening to avoid giving more honor to him than to HaShem. The Rif does not cite this ruling, and the Rosh\textsuperscript{6} explains (and agrees) that the gemara’s subsequent discussion indicates that this idea is rejected. The Rambam,\textsuperscript{7} on the other hand, does accept R. Yannai’s opinion not to stand for one’s rebbe more than twice daily.

The Shulchan Aruch does not cite R. Yannai’s halacha, thereby demonstrating that he rules like the Rif/Rosh, and this

\textsuperscript{1} Kiddushin 31b.  
\textsuperscript{2} See Beit Yosef, Yoreh Deah 240.  
\textsuperscript{3} Vayikra 19:32.  
\textsuperscript{4} Kiddushin 32b.  
\textsuperscript{5} Ibid. 33b.  
\textsuperscript{6} Kiddushin 1:56.  
\textsuperscript{7} Talmud Torah 6:8.
is the ruling accepted by Sephardim. The Rama, in contrast, accepts R. Yannai’s view, but not according to its simple reading; rather, one is not obligated to stand for his rebbe more than twice a day, but he may stand more often. (The Rama also rules that when one is among people who did not see him stand previously, he must stand again.)

Most Acharonim assume that the exemption of standing only twice daily applies to parents as well, although the Aruch HaShulchan suggests that the obligation to stand for one’s parent may exceed the obligation toward his rebbe. (According to the Rambam’s presentation of the halacha – that it is not permitted to stand for one’s rebbe more than twice a day – it is plausible that it is still permitted to stand for one’s parents more than twice, but we cannot develop this discussion in the current forum.)

It is difficult to argue that the Rama’s opinion would justify the common practice of laxity about standing for parents. After all, do people really consider whether they already stood for their parent that day before deciding to remain seated? Nevertheless, the Rama’s view may still help us understand the common practice. Consider the following chakira regarding the Rama’s ruling, which we will examine through a practical question. According to the Rama, must one stand at the first opportunity of the day, after which there is an exemption, or is it enough that there is a mode of behavior in which one stands roughly once in the morning and once at night? This might depend on if standing is part of the mitzva of mora, which incorporates the acts that must be avoided in order to demonstrate proper awe, or the mitzva of kibud, which refers to positive acts performed to demonstrate honor. If we stand for parents due to the negative element of

8. See Yalkut Yosef, Kibud Av 4:8.
10. See Darchei Moshe, Yoreh Deah 242:11; Semag, Aseh 13.
13. Analytical dilemma.
14. Yalkut Yosef op. cit., in a footnote, is unsure to which category it applies.
mora, remaining seated would be forbidden unless one stood already; if it stems from the positive element of kibud, the exact timing of the performance would be less crucial. According to the latter approach, we could justify a certain amount of laxity if the child stands not infrequently, but that is not always the case.

Another factor that minimizes our apparent lacking is the opinion recorded in the Aruch HaShulchan\(^\)\(^{15}\) that one must stand only when a parent comes in from outside the house, not when he moves from place to place in the home.

The most plausible explanation for the common laxity in this regard is the idea that a parent can be mochel (waive rights to) kibud.\(^{16}\) In our times, parents do not usually expect their children to stand up in their honor, and they often do not even find it to be positive. If that is the case in a specific household, then the child is indeed not required to stand.

Let us clarify a few things. Even after a parent’s mechila, it is still a mitzva for a child to stand for his parents, just not an obligatory one.\(^{17}\) Also, some say that one must make some gesture of respectful acknowledgement.\(^{18}\) Finally, if the reason that parents are mochel starts from the children (i.e., parents are so used to their not standing that they no longer demand or expect it), this is not a good thing. Therefore, in most cases, it is better for children (of all ages) who try to do things properly to stand for their parents more often than is presently common.

\(^{15}\) Op. cit.

\(^{16}\) Kiddushin 32a. Regarding being mochel requirements of mora, especially in a case that can be considered a disgrace, see Living the Halachic Process III, G-4.

\(^{17}\) Pitchei Teshuva, Yoreh Deah 240:16.

\(^{18}\) See Kiddushin 32b.
**H-2: Staging a Fake *Pidyon HaBen***

**Question:** I often serve as the kohen for a *pidyon haben*. A friend told me that he was a kohen at a fake *pidyon haben*. The mother had previously miscarried and they were embarrassed to tell people, so they faked the *pidyon*. If such a situation arises, what should I do?

**Answer:** Poskim¹ discuss the case of a woman who had been pregnant from another relationship before her marriage. Her husband did not know this and assumed that their firstborn son required a *pidyon haben*. Could the woman allow her husband to do a *pidyon haben* for their son, including making two berachot l’vatala, to avoid embarrassment and possible repercussions to their marriage? The consensus is that considerations of *k’vod haberiyot* (preserving human dignity)² allow her to not reveal the truth.

One factor in the leniency is that most Rishonim maintain that a standard beracha l’vatala is only a Rabbinic violation,³ and *k’vod haberiyot* overrides Rabbinic laws.⁴ (After all, the content of the beracha, which says that HaShem commanded us [plural] in the mitzva of *pidyon haben*, is always a true and positive statement.) Furthermore, the wife was passive in this case; she did not stop her husband from making a mistake. The Rosh⁵ says that under such circumstances, *k’vod haberiyot* supersedes even a Torah law.

The case you present, in contrast, is worse in several ways. First, the father knowingly is making a non-mandated beracha. It is true that he can technically get around that problem by making the Shehecheyanu over new clothing and by mumbling

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¹. See *Yabia Omer*, VIII, Yoreh Deah 32; *B’er Moshe* VIII:237.
². See *Berachot* 19b.
³. See *Tosafot*, Rosh Hashana 33a; *Mishna Berura* 215:20.
⁴. *Berachot* 19b.
the beginning of the main beracha on the pidyon haben, while not uttering HaShem’s Names. However, there is another issue: Those assembled will answer amen to a beracha that is invalid, which is forbidden.⁶ This ostensibly violates the Torah-level prohibition of lifnei iver lo titen michshol (facilitating a person’s act of sin), certainly when one consciously causes others to do so unwittingly.⁷ One cannot invoke the ruling of the aforementioned Rosh in this case because the father is actively presenting, rather than passively not stopping, a “beracha” to which it is forbidden to respond.

Nevertheless, it should still be permitted. Consider the following. It is forbidden to daven when one has to use the facilities, and if the need is acute, his tefillot and berachot are invalid.⁸ Still, the Bi’ur Halacha⁹ states that a chazan in that condition, who will be very embarrassed to walk out in the middle, may continue leading the tefilla. In that case, the chazan knowingly improperly makes berachot to which people will answer amen, and yet it is permitted due to k’vod haberiyot. This seems to be a pertinent precedent for our case. The explanation apparently is that just as the chazan is allowed to violate a Rabbinic law for the sake of k’vod haberiyot, he is allowed to make others violate the Rabbinic law for that purpose. Since it is permitted under the circumstances, lifnei iver does not pertain. Similarly, in our case, if in the face of a severe concern for k’vod haberiyot, it would be permitted for the father to actually make a beracha l’vatala, it would likewise be permitted to cause people to answer an improper amen in unintentional violation of a Rabbinic prohibition.

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6. See Shulchan Aruch, Orach Chayim 215:4. One might argue that it is worse to answer amen to an improperly made beracha than to answer amen to what he thinks is a beracha and really is not, as when the father mumbles something instead of HaShem’s Name. However, see Minchat Shlomo I:9 regarding a case that is parallel to the latter, which he says is forbidden.
7. See Dagul Merevava to Shach, Yoreh Deah 151:6.
9. Ad loc.
In spite of the above, it is worthwhile to encourage people not to make a fake *pidyon haben* when not extenuatingly necessary. The fact that a few close friends and relatives find out about a miscarriage is not always as embarrassing as it seems to some or at first. It is also possible for a couple in this situation to say that the birth was a caesarean delivery, which exempts from a *pidyon haben*,\(^\text{10}\) or that the delivery was with forceps, which calls for a *pidyon* without *berachot*.\(^\text{11}\) However, every case is unique, as is every person, and you should therefore look into and ask for halachic advice regarding each case if and when it arises.

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\(^{10}\) *Yoreh Deah* 305:24.

\(^{11}\) *Otzar Pidyon HaBen* 1:13.
H-3: Standing for a Chatan and a Kalla

Question: Is there a reason to stand for a chatan¹ and a kalla² as they walk toward the chupa³?

Answer: The practice of standing as the chatan and kalla walk past those who are seated is a relatively new phenomenon. The traditional approach to new practices in a religious setting is to be wary of them, for several reasons. One reason is that some new practices are against the spirit or even the letter of Halacha or Jewish thought. Another is that new practices create confusion, as it is difficult to distinguish between important minhagim, which one should (preferably) keep and from which one can learn and gain, and spiritually meaningless practices. A third dimension is a feeling many have that if the practice in question is a proper one, generations before us would have initiated it. A related idea is that initiating a new minhag gives the impression of arrogance and dismissal, as if to say: “We know better than our predecessors.”

Let us analyze the practice of standing for the chatan and kalla in light of the above. It is difficult to find anything significantly objectionable about standing for a chatan/kalla. Although some people may be irked by the tendency toward attributing special powers to the chatan and kalla,⁴ there are a staggering number of sources that indicate that the idea of standing is generally appropriate. After all, we are commanded to stand for various people whom we are required to honor,⁵ and we find numerous sources about giving great regard to the chatan/kalla. These include such halachot as halting Torah study to escort the kalla.

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1. Groom.
2. Bride.
3. Wedding canopy.
4. See the scant sources regarding their power of prayer in Nitei Gavriel 9:15, indicating that it is not a mainstream approach.
5. See Kiddushin 32-33.
and giving precedence to a wedding procession over a funeral procession. One could argue that these reflect a mitzva to make them happy rather than to honor them per se. However, numerous sources refer to kavod (honor) for them and compare it to the kavod due to others.

There are different ways of showing kavod to different people. For example, a husband and wife should honor each other greatly, yet we do not find a halacha that they should stand for each other. The main honor for a chatan and kalla is acting in a manner that expresses interest in and excitement about their marriage and future home. Certainly, it is more appropriate to sit in rapt attention than to rise while continuing to talk to a friend. However, standing would also seem to be a reasonable expression of honor.

Some people quote the concept of chatan domeh l’melech (a groom resembles a king) as grounds for standing. This phrase is found in the Pirkei D’Rabbi Eliezer, along with examples of similarities between a chatan and a melech: They both are praised for seven days; they wear nice clothing; they are involved in partying (regarding a chatan, for seven days, and some understand this to mean that he may not go to work); they do not go in the street alone. The latter two points are brought as halacha in the Rama. The gemara makes another interesting comparison: A chatan is like a kohen, and he therefore sits at the helm. However, we did not find a classical source requiring standing before a chatan.

There are semi-classical sources that speak about standing for the chatan as he goes to get an aliya during the week before and

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7. Including Tosafot ad loc. and the Beit Yosef, Yoreh Deah 360.
9. 16.
10. Even HaEzer 64:1.
11. Moed Katan 28b.
after the wedding. The lack of similar sources about standing specifically on the way to the chupa should not be surprising, as for hundreds of years, weddings were held outside and indications (including in old paintings) are that seating was not the norm.

In summation, we find nothing compelling to require standing for the chatan/kalla, but we agree that it has some logic and is not intrinsically objectionable. Out of respect for our predecessors who did not do so, we would not have initiated the practice, but out of respect for present-day peers who do it (and perhaps chatanim/kallot who already expect it), we encourage joining along.

12. See Nitei Gavriel 2:7 and Chashukei Chemed, Gittin 62a, who are not overly impressed by the case for standing in that context.
**H-4: Wedding Spending**

**Question:** What is the maximum that one should spend on a wedding?

**Answer:** We have to seek a balanced approach when providing general guidelines for the tricky matter of wedding spending. (Of course, every family has leeway to determine how it wants to proceed.) We will start with reasons to spend **significantly** and then temper that with counter considerations.

The major expenses that Chazal foresaw as a couple prepares for marriage are intended to enable the establishment of a viable home (i.e., the dowry). The bride’s father was expected to set aside one tenth of his net worth for this purpose.\(^1\) When parents are unable to properly equip their children, it is a great *mitzva* to help the parents and/or the young couple directly to reach a reasonable level of financial preparedness for marriage.\(^2\)

Chazal attributed great importance to the wedding celebration, including giving it preference over some other significant values. The term *hachnasat kalla* classically refers primarily to the procession of the bride from her father’s home to the home where the couple would live. In one such context, the *gemara*\(^3\) says that Torah study is suspended for people (in addition to friends or family) to join the procession and that if the procession meets up with a funeral procession, the wedding party takes precedence.

The meal that follows the *chupa* is a *seudat mitzva*, and one is even allowed to plan its technical details on Shabbat.\(^4\) Therefore, one can apply the directive that it is praiseworthy to plan the meal generously.\(^5\) There are strong indications that the outlay of energy and expenses is presumed to be substantial. Indeed, one of the

\(^1\) See *Ketubot* 68-69.
\(^2\) See *Sukka* 49b; *Shulchan Aruch, Yoreh Deah* 249:15.
\(^3\) *Ketubot* 17a.
\(^4\) *Ketubot* 5a.
\(^5\) See *Bava Kama* 9b.
explanations for the ancient, Rabbinically-instituted custom that weddings take place on Wednesday is to make sure there are three days available (uninterrupted by Shabbat) to prepare the meal.6

There is a remarkable *halacha* that shows how challenging having a materially appropriate wedding could be and how important it is to protect that goal. If the father of the groom or the mother of the bride dies right before the wedding, the burial is delayed until after the wedding ceremony and meal. Then the burial takes place, followed by a week of *Sheva Berachot* and finally a week of *shiva*.7 Rashi8 explains that the groom’s father and the bride’s mother are primarily responsible for the wedding’s material arrangements and that if the wedding were to be delayed after the preparations had already been made, we are concerned that the postponed wedding would not be up to par. This *halacha* is in significant contrast with Chazal’s view of burial expenses. Rabban Gamliel felt that too much was being spent on funerals, and he therefore ordered his family to bury him in cheap shrouds. This became the standard for shrouds, a rule that all are supposed to abide by regardless of financial ability, in order to ease the financial strain on families.9

The *Shulchan Aruch*10 writes that if the groom is not interested in having a proper meal but the bride’s family is, the latter can force him to make a feast “according to his and her honor.” This ruling hints at one reason we cannot make an exact calculation of appropriate expenses: The matter depends on the subjective standards of both families. Someone who has fancy cars and a fancy house should make a relatively fancy wedding. Those who are more modest in their means and spending can honor the event accordingly.

8. Ad loc. 3b.
9. See *Ketubot* 8b.
Despite this conclusion, it is only one side of the coin. The other side is that a wedding should not be a reason for ruining a family’s financial situation or harming the couple’s prospect of beginning their joint lives in tranquility and with reasonable provisions. Children should also not impose expenses upon parents that are beyond their responsibility, interest, and capability. On a communal level, there have been numerous examples of takanot (enforced guidelines) with rabbinic blessing and/or initiative to curb spending even when the families are willing and happy to pay for a lavish wedding. This can be especially important during hard financial times. But it also applies during times of prosperity if spending starts to get out of hand in a way that affects some individuals adversely or if weddings become so gaudy that they exceed Jewish good taste.

How an individual or a community is to know where to draw the line is, as they say, “the $64,000 question” (and we pray that weddings remain well below that price tag).

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11. See sources in HaNisu’im K’Hilchatam 13:56.
**H-5: A Mistake in a Ketuba**

**Question:** A recently married friend of mine noticed that one of the times the kalla’s name is mentioned in the ketuba, it is written as “Sarah ben Avraham,” instead of “bat Avraham.” Is the ketuba kosher, which, I understand, determines whether the couple may live together?

**Answer:** There are two elements to a ketuba. One is that it is a binding monetary document that obligates the husband or his inheritors monetarily to the wife. Additionally, there is a religious requirement for the woman to possess a valid ketuba; without it, the couple is forbidden to live together.\(^3\) The reason for the latter rule is that a woman must have at least a minimum feeling of security that her husband cannot divorce her without a reasonable monetary consequence.\(^4\) Thus, it is critical for her to be confident that she has a valid ketuba. (There is a basis to say that if the wife believes that the ketuba is valid, even when it has a mistake that invalidates it, they are permitted to live together if she is unaware of the mistake.\(^5\) There are other elements of leniency to consider to allow their living together without a valid ketuba document,\(^6\) but these have problems and are beyond our present scope.)

The two elements of the ketuba are connected. If it can be used as a valid legal document, it also serves the religious function. Although we try to make the ketuba as complete as possible, and some invoke some of the stringencies of a get document, the basic requirement is that the ketuba can stand up to a review in beit din.

Does the mistake that you raise invalidate a ketuba, or some other document for that matter? There is a rule regarding

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1. Son of.
2. Daughter of.
3. *Shulchan Aruch, Even HaEzer* 66:1; see there the *machloket* with the Rama regarding what living together includes.
5. See *Minchat Yitzchak* IX:139.
documents that distinguishes between different types of mistakes. A \textit{ta’ut d’muchach} (when it is clear from the context what was intended to have been written, despite the mistake) does not invalidate a document.\textsuperscript{7} The writing of “son of” instead of “daughter of” in the place of the \textit{ketuba} that relates to the bride is possibly one of the clearest examples of a \textit{ta’ut d’muchach}. In addition, since the name of the bride, including her father’s name, appears correctly elsewhere in the \textit{ketuba}, there is even more reason to ignore the mistake, as this shows clearly that the mistake is a \textit{ta’ut d’muchach} and how the name should have been written.\textsuperscript{8}

The \textit{Itur}\textsuperscript{9} does maintain that a minor mistake in the names in a document should be corrected. However, it appears that the motivation for this is that a name could be anything and it is hard to know what was intended. However, although the word “\textit{ben}” or “\textit{bat}” could be confused in a regular document because of the possibility of a unisex name, this does not apply to a \textit{ketuba}, where there is a distinct place for the name of the groom and for the bride, respectively. Furthermore, the Rosh\textsuperscript{10} confirms the validity of the document in a case of a clear mistake regarding names. Therefore, the \textit{ketuba} is valid, and the couple can continue to live together with the \textit{ketuba} as is.

Usually, there are ways of fixing mistakes (this is too detailed to discuss here), but they become more complicated the later in the process they are discovered. The \textit{mesader kiddushin}, who apparently made the mistake (as he is human), can be contacted regarding the proper steps to take. There is a possibility of replacing the \textit{ketuba} with a new one. However, in general, replacement \textit{ketubot} have altered texts, at least when signed on a later date than the first one.\textsuperscript{11} These changes make things more complicated and, in addition, will look strange to those who read the new \textit{ketuba}’s

\textsuperscript{7} See Rama, \textit{Choshen Mishpat} 49:2.
\textsuperscript{8} See \textit{Nitei Gavriel}, \textit{Nisu’in} I:29:4.
\textsuperscript{9} Cited in the \textit{Beit Yosef}, \textit{Even HaEzer} 126.
\textsuperscript{10} \textit{Shut HaRosh} 68:32.
\textsuperscript{11} See \textit{Shulchan Aruch}, \textit{Choshen Mishpat} 41:1, and \textit{Shach} ad loc.:4.
content. Your friends and the mesader kiddushin can discuss what to choose from among the different options. However, the couple has the halachic right to decide to leave things as they are.
H-6: A Fading *Ketuba*

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

**Answer:** It is forbidden for a couple to live together without the husband’s basic *ketuba* obligation to the wife. This includes a valid *ketuba*, which includes a lien on his property, so that the wife can feel a certain level of security. While ideas have been raised to minimize the need for a *ketuba* document in our days, in practice, we require that a valid *ketuba* exist.

The *Rabbanut*’s practice to hold a copy of the *ketuba* makes one’s “home *ketuba*” much less critical, but it was not intended to be relied upon by itself *l’chatchila*. In fact, the existence of two documents for one obligation is problematic, as it could enable one to collect double. While some authorities thus oppose making “copy” documents, others permit doing so if proper precautions are taken, as Rav Zalman Nechemia Goldberg rules. A copy document probably only prevents a full denial of the obligation; without the original document, the debtor could still claim he already paid, thus precluding the concern that the woman will collect double. Likewise, one could not extract payment via the lien using the copy.

If so, does the *Rabbanut ketuba* give the woman the level of protection that permits the couple to live together if the main copy is lost? Some indeed maintain that if the main *ketuba* is lost, the

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1. See *Ketubot* 39b, and ibid. 56b.
2. See Rama, *Even HaEzer* 66:3; *Shulchan Aruch*, *Even HaEzer* 66:1.
5. *Techumin* XXVI.
one at the Rabbanut is insufficient. However, the Nitei Gavriel argues cogently that since it is rare in our days (certainly in Israel) for the wife to be paid her ketuba without beit din’s involvement, the husband cannot make the claim that he already paid, and the Rabbanut ketuba is therefore effective. Accordingly, he rules that one may rely on the existence of the Rabbanut copy until the couple has an opportunity to remedy the situation, and we concur.

If a ketuba is lost, there is a special document called a shtar ketuba d’irchasa that a couple can ask a rabbi to produce. It tells the story of the past obligation and the loss of the ketuba, and the new document replaces the lost one from the time of its issuance. The document is composed with the husband’s involvement. The gemara and the Shulchan Aruch discuss the creation of a replacement document by beit din for one who possesses a document that has become (or is becoming) illegible. The witnesses of the original document may not reissue an identical copy of the old one, because their authorization to produce a document ceased when they signed the first one. Even with the borrower’s (or, in this case, the husband’s) reauthorization, the lien stemming from a new document would be valid only from the time of the reissuance.

Your idea of resigning the document (which is parallel to rewriting other parts of the ketuba that faded) is interesting. However, since it is not raised in all the discussions of the parallel cases, it is apparently not feasible, for the following reason. If the rewriting replaces something that is illegible, it is like writing

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7. See Teshuvot V’Hanhagot 1:760; Ketuba K’Hilchata 2:15, in the name of Rav Elyashiv.
9. This is also the conclusion of HaNisu’im K’Hilchatam 11:225. In fact, he does not even write that they are required to write a new ketuba, although it is likely that this is his intent.
12. Ibid.
13. See S’ma ad loc. 5.
14. Shach, Choshen Mishpat 41:3.
a new document, which cannot be done with the old date (as a predated document is invalid). Even if the original writing is legible, it is still apparently a problem to write over it because people will be reading the new writing that covers the original.

We suggest that you ask a rabbi with experience with such documents to prepare an appropriate special new ketuba. In the meantime, you can rely on the Rabbanut ketuba. (If your wife is troubled by the situation, you should act immediately.) If you want to fix the old ketuba for sentimental purposes, you can make any changes you like after you mark it clearly (if discreetly) as not for payment.

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15. Shvi’it 10:5.
H-7: How to Name the Child of a Gentile Father

**Question:** As a *mohel*, I sometimes perform a *brit* for a baby whose mother is Jewish but whose father is not Jewish. When giving the baby’s name, which usually includes “…ben (son of) …,” what should be said?

**Answer:** In the case of intermarriage, not only does the mother determine the child’s religion, but the child is considered related only to her, not to his or her father.\(^1\) The question of how to refer to someone whose biological father cannot be used for Jewish identification arises in several cases and contexts, from which we can extrapolate.

Regarding the writing of names in a *get* for a convert (who loses his halachic relationship to his parents\(^2\)) and for one whose father’s identity is unknown (a *shtuki*), the *Shulchan Aruch*\(^3\) says to write just the person’s given name, without mentioning a parent. Elsewhere, the *Shulchan Aruch*\(^4\) writes to refer to a convert in a *get* as “… the son of Avraham Avinu,” the forefather who is a catch-all father for people of any lineage who embrace HaShem in a Jewish manner. The *Levush*\(^5\) says that we can also mention Avraham Avinu in the case of a *shtuki*. However, the *Get Pashut*\(^6\) writes that this should not be done, as it gives the false impression that the *shtuki* is a convert (and such an inaccuracy can invalidate a *get*).

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1. *Kiddushin* 68b.
2. See *Yevamot* 62a.
4. Ibid. 20.
Regarding calling up for *aliyot*, the Rama⁷ says that we should refer to a *shtuki* as the son of his maternal grandfather. The Taz⁸ objects because it is inaccurate and is liable to cause a future problem. If the *shtuki* becomes accustomed to this form of self-identification and someday gives a *get* in which he is so described, the *get* would be invalid. The Taz therefore suggests calling him “the son of Avraham.” (It is not clear whether he means to say “Avraham Avinu” or just “Avraham.”)

The *gemara* raises another possibility in the course of a narrative. Rachel, the daughter of the Amora Shmuel, was captured by non-Jews and was raped by one of them. She had a son, Mari, from that incident, and he became a *talmid chacham*.⁹ The *gemara* consistently calls him Mari bar Rachel, identifying him as the son of his mother. The *Dagul MeRevava*¹⁰ initially suggests doing the same for a *shtuki*, but he concludes that the case of a *shtuki*, who has an unknown halachic father, is not comparable to the case of Mari bar Rachel. He argues that when there is a halachic father (who is simply unknown), one cannot use the mother’s name in a halachic context (certainly regarding a *get*), whereas when one has no halachic father at all (as the father is not Jewish), it is appropriate to identify him by means of his mother.

The *Get Pashut*¹¹ and *Chatam Sofer*¹² take as a given that one should use the mother’s name when she is Jewish and the father is not, and they claim that using the mother’s name is even appropriate for a *shtuki*. However, the *Igrot Moshe*,¹³ in the context of a *ketuba*, says not to write the mother’s name for a *shtuki*, because that is the system to use when the mother is Jewish and the father is not. He maintains that it is important not to confuse

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7. Orach Chayim 139:3.
9. See Bava Batra 149a and Rashbam ad loc.
11. 129:51.
13. Yoreh Deah III:106.3.
between the two because they have different halachic statuses.\textsuperscript{14}

To summarize, the most accurate way to identify a child of a Jewish mother and non-Jewish biological father is as the mother’s child. In regard to being called for \textit{aliyot}, which is not very formal or halachic, the factor of embarrassment plays a major role.\textsuperscript{15} However, at a \textit{brit}, not only is the matter more formal, but whoever is present is usually aware of the child’s lineage. Therefore, there need not be problematic sensitivities of acknowledging that his Jewish identity is only through his mother. (Obviously, the union itself is highly problematic). Therefore, using the mother’s name is the correct approach. (You can inquire again regarding exceptional cases, e.g., if the father converted after conception, \textit{brit} for an adult, etc.)

\textsuperscript{14} See \textit{Kiddushin} 69a.
\textsuperscript{15} See Rama, \textit{Orach Chayim} 139:3.
Section I: Monetary Law
I-1: Payment for Uncompleted Work

Question: I hired a contractor to build a stairway in a deserted building belonging to the State of Israel. I told him that I do not have a permit and that there might be disturbances by the neighborhood Arabs (par for my foundation’s course). We agreed on a price for the job, not by time (expected to be a day). In the midst of the work, the police surprisingly arrived and took us all for questioning until night. Although we were not charged with a crime, we were ordered to stop building. The contractor now wants to be paid for the whole job minus his savings in material that was not used, since he did nothing wrong and he was “occupied” for a whole day, as was expected. I countered that he did only about half the job, and he knew there was a chance of disturbances, even though we did not consider that the police would stop us. How much should I pay?

Answer: We cannot tell you anything definitive after hearing from only one side. However, we will advise you how to proceed under the circumstances and why. In addition, since we do not know more details or have authority to deal with such questions, we will address only the considerations between you and your worker, not the legal issues between you and various authorities.

The *gemara*¹ tells of one who hired a worker to irrigate a field using a local river but the river dried up in the middle of the work. The *gemara* says that if the worker is from the town, he is paid only for what he did and not what he was hired to do but was prevented from doing. Since the worker should have known as well as the owner about the state of the local river, he should have anticipated the problem; he cannot shift the blame on the owner, and he therefore does not deserve to be paid for what he did not do. The worker is also not entitled to receive pay in a case in which neither he nor the owner should have known of the situation that

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¹. *Bava Metzia* 77a.
made the work undoable.\(^2\) If, however, the worker did not know of the potential problem but the owner did, the worker is entitled to be reimbursed.

Let us analyze your case. Although you informed the contractor that there might be problems, you did not warn him about the police; if you were surprised, he certainly was. If the oness (extenuating circumstance) that actually occurred was unknown to the worker, it does not make a difference that other dangers were known. It does not make sense to argue that the police are just another example of a disturbance, which the contractor was aware could occur, because (regardless of one’s political views) this “disturbance” is different with regard to its origin and its implications (i.e., it can prevent further work, as opposed to merely delaying or complicating).

The main remaining question seems to be about your ability to have been aware of the threat of police involvement. You indicated that you were surprised that the police intervened. However, since your background information indicates that you do this type of work often, and we know nothing about the contractor, you have to ask yourself the following question: Did you have more reason to be aware of the possibility of the police stopping the work than the contractor did? If so, based on the aforementioned rules, you should have to pay.

Assuming there are grounds for payment, there are a couple of factors to be considered. First, the contractor is correct in deducting the savings of material. Second, there is a machloket regarding the reason for payment in the case of aborted work. Is payment rendered because the owner is considered to have damaged the worker in the form of the lost wages, or must the owner pay because once a worker begins the job, the owner is obligated based on the agreement to pay for the job that was agreed to?\(^3\) There should be a practical difference between these opinions in a case in which the worker would not have had a

\(^2\) Ibid.; see Shulchan Aruch and Rama, Choshen Mishpat 334:1.

\(^3\) See Machaneh Ephrayim, Sechirut Po’alim 4.
different job to do anyway. According to the former opinion, since there was no loss incurred due to the aborted work, there is no payment. According to the latter view, a deal is a deal, and the worker must be paid regardless of whether he would have had other work if not for this job.

As there are a few elements of the question that are not clear to us and are probably not conclusive, we recommend that you offer a real compromise. In the context of a compromise, the following question is very pertinent. How did the price you agreed upon compare to that for the same job in a less “challenging” work setting? If it is similar, then if you do not pay a very significant portion of the fee, it turns out that you gave him a bad deal, which is improper.\(^4\) If you offered him a high price, however, that could indicate that you were both aware of the risks involved with the job. Under certain circumstances, the price agreed upon can even be an indication of what we can assume the tacit understanding was for conditions that were not explicitly discussed.\(^5\)

Finally, we urge you to set clear guidelines with future workers, especially in similarly complex jobs, to cover a wide variety of possible surprises.

\(^4\) Shulchan Aruch, Choshen Mishpat 227:36.  
\(^5\) See K’tzot HaChoshen 331:1.
I-2: Going to a Civil Court Where There Is No Beit Din

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

**Answer:** Although we respect and value local governmental courts, Jews are required to seek adjudication specifically in a beit din. There are two main rationales for this halacha: 1) When the judgment is rendered by a non-Jewish court, it is possible that the incorrect litigant, from the perspective of Torah law, will win the case. 2) Seeking a different system of justice is a severe affront to the Torah, as doing so questions the Torah’s pertinence in the critical realm of justice.

Factor #1 does not apply if the two sides agree to go before the non-Jewish court, as they are entitled to mutually decide on forms of dispute resolution other than a ruling of beit din (e.g., mediation, flipping a coin, etc.). However, factor #2 is still a problem. If adjudicating in a beit din is unfeasible, then factor #2 should not be a concern; in that case, one is not rejecting Torah justice, but is rather dealing with a situation in which it is not an option. Indeed, the gemara discusses adjudication before unknowledgeable Jews when no local Jews are capable of functioning as a proper beit din. The implication, however, is that an unqualified court of Jews is preferable to going to the local

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1. See *Avot* 3:2.
3. See *Beit Yosef*, *Choshen Mishpat* 26; *S’mi* 26:4.
non-Jewish court. Nevertheless, it is possible to argue that the
*gemara*’s conclusion was based on the assumption, which is not
as prevalent in our days as in the past, that the non-Jewish courts
were corrupt and were dangerous places for Jews and the Jewish
community.\(^5\)

What should one do if a city has no Jewish tribunal at all? The Rama\(^6\) says that this is grounds for going to a different
city from the one in which the case would otherwise have been
heard. However, an out-of-town alternative may sometimes be
practically unfeasible, as it appears to be in your case.

Most *poskim* posit that when there is no *beit din* that can
adjudicate, it is permissible to go before a non-Jewish court,\(^7\)
as the Rivash\(^8\) implies. The *Shulchan Aruch*\(^9\) rules that although
even a contractual stipulation does not allow a lender to take
payment from a borrower’s property without involving *beit din*,
the lender may do so if he cannot find a *beit din* to adjudicate. The
Maharikash\(^10\) broadens this concept to allow a Jew to sue in non-
Jewish court when a local *beit din* is unwilling to hear the case.
There is discussion among the *poskim* about the conditions under
which such action is justified\(^11\) and regarding whether a *beit din*
must at least grant permission. However, in cases in which there
is no alternative, it is permitted to go to non-Jewish courts.

Spending more money on transportation than the claim
warrants is one case in which it is considered that there is no
alternative to using the local option.\(^12\) On the other hand, there
are often reasonable alternatives to litigation in court. Mediation
and non-judicial arbitration are often good ideas in any case.
Nowadays, there are recognized *batei din* that will adjudicate

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5. See *Shut HaRashba* II:290.
8. *Shut HaRivash* 216.
10. *Erech Lechem* ad loc.
11. See *Chukot HaChayim* op. cit.
12. See *Sanhedrin* 31b.
via video-conferencing, as our beit din has done successfully. While a standard hearing is more effective, there are precedents for compromising effectiveness in a case of need. For example, when one side wants to go to an expert regional beit din and the other prefers a local, lower-level one, they adjudicate locally, and the beit din sends questions to experts if and as needed.13

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

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I-3: Buying With Intention to Return

Question: I liked a dress that I saw in a store, but it was too expensive. I am an amateur seamstress, so I am considering buying it, learning its cut, and then returning it, which Israeli law permits within 48 hours of the purchase. May I buy the dress with the intention to return it? (I certainly would not buy it to keep.)

Answer: In the absence of special governmental provisions, the *halacha* is that after making a *kinyan* on a sales item, a buyer cannot back out of the deal unless either: 1) The object was seriously blemished; 2) It was very overpriced; 3) A condition was made to allow it. However, we will work under the assumption (whose guidelines are beyond our present scope) that the ordinance that allows no-fault return is indeed binding. That ordinance was certainly not instituted to help people who are acting with intentions such as yours. Furthermore, even assuming that the law would apply to this case, you seem laudably aware that this does not mean that you are morally and halachically permitted to buy the dress with the intention to gain from it and then return it.

While we are not experts on this ordinance, our research indicates that it includes relevant limitations. For one, the consumer can return the item only if he has not used it. It is a good question whether handling a dress minimally in order to determine its cut is considered using it. We would assume that a use is a use, even if it is not a standard one and it does not wear out the dress. Thus, if you hide your “use” of the dress, this would

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1. The provision in question is not a law of the Knesset, but rather a ministerial *takana* (ordinance) – *Takanot Haganat HaTzorchan*, 2010.
2. Act of acquisition.
3. See *Bava Metzia* 30a, which says that one may not display, for the purpose of beautifying his home, a fabric that one has found and that he must return. However, some factors apply in that case that do not apply in the present one.
be misapplying the law. Another provision of the law is that the seller can demand, as a charge for returning, either 5% of the sales price or 100 shekels, whichever is lower. We will see that this provision may actually help you from a moral standpoint, but first we will look at the halachot of ona’at devarim (non-physical abuse), which are relevant to your question.

It is forbidden for one to ask a merchant the price of a sales item if he has no intention of buying it. While some describe the classical problematic case as one in which the supposed buyer intends to upset the seller; others refer to the psychological damage caused to the seller through the disappointment of losing a sale, irrespective of the buyer’s intentions. The Meiri notes the possibility that the discussion of price may take away from others’ interest to buy the item at that price, and he writes that even if no one else is present, the discussion still causes the seller pain and toil. Although any negotiations with a proprietor can lead to disappointment, this is justified in a normal process of commerce (i.e., there is some chance he will buy). (Indeed, one who is overly sensitive should not be a storeowner.) However, when the proprietor has nothing to gain, it is forbidden, according to the second approach, to engage him for no reason.

It is not clear to what extent a salesperson who is an employee would be overly put out by the effort exerted to make the sale and/or be upset by its return, although we cannot rule that out. In any case, there are a few potential scenarios of loss for the owner when you buy the dress without intention to keep it. By occupying the salesperson, you may discourage others from buying or prevent her from doing something else of value; while the dress is out of the store, it cannot be sold; and handling the dress may take away from its freshness, etc. While such concerns are not very strong, they may be enough to qualify as a violation of the halacha not to feign interest in buying.

4. Bava Metzia 58b.
5. See Mayim Chayim II:83.
On the other hand, if indeed you will have to pay, albeit modestly, for returning the dress (or if you will volunteer to do so), it stands to reason that this compensates for the small concerns and logically overcomes the problem of *ona’at devarim*. However, this does not solve the problem that the ordinance does not allow return after “usage.” In any case, we would urge you, if it seems possible (depending on the owner or worker’s personality), to be open and honest on the matter – request permission to do what you want for a modest, agreed-upon price.
I-4: Immoral Commercial Practices?

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

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

1) The *gemara*¹ states that a salesman should not have a profit margin of more than one sixth above the price at which he acquired the product.² This is surprising considering that the prohibition of *ona’ah* (mispricing) focuses on straying significantly (a sixth) from the market price; profit margin does not arise in that context. Since market price usually includes a healthy profit margin, how can a profit margin of a sixth be a problem if it the price is certainly less than a sixth above the market price?

Indeed, several classical halachic statements limit the scope of the restriction on profit margin. The *gemara* itself stipulates that the limited profit margin is applied only after one factors in his expenses and the intensity and value of the salesman’s labor. The Rambam³ limits the restriction to staple foods, as opposed to luxuries.⁴ Significantly, he writes that it is the obligation of *beit*  

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1. *Bava Batra* 90a; *Bava Metzia* 40b.
2. We will not discuss how to calculate that percentage in this forum. Regardless, it appears that you are exceeding any manner of calculation; see *Pitchei Choshen, Ona’ah* 14:(28).
4. An attempt to itemize is beyond our scope.
din to enforce proper pricing policy. The Ramah, following those lines, says that if beit din is unable to enforce their goal price, then an individual proprietor is not restricted to a price level that his competitors are not following. On the other hand, the Aruch HaShulchan writes that if beit din feels that if some merchants conform, others will be forced to follow suit, the beit din should demand compliance from those who will listen.

2) There is a parallel to high-pressure sales tactics that is discussed in classical Jewish sources – pressuring the owner of an object to sell when he does not want to do so. This practice is forbidden by the last of the Ten Commandments, lo tachmod (do not covet). The full violation of this prohibition occurs when the desire to have someone’s object culminates in pressuring him to sell it, even at a fair price to which he agrees. Some claim that the prohibition applies in the opposite direction as well; one may not strongly pressure someone to buy something that he does not want to buy. It is somewhat difficult to accept that we can make an exact comparison between the cases without classical sources, especially considering that the prohibition begins with the desire for his counterpart’s specific possession (e.g., his wife), which ostensibly does not apply to wanting money from anyone who is willing to buy what one is selling, which is quite innocuous. However, it does seem logical that, on some level, there is an overlap in the impropriety.

There are classical sources that forbid practices that have a strong similarity to high-pressure sales techniques. It is forbidden to trick someone into buying something that he otherwise would not want by making it look better than it really is, apparently

5. Cited by the Tur, Choshen Mishpat 231.
8. Sefer HaChinuch #38.
9. Pitchei Choshen, Geneiva 1:(26); Case Studies in Jewish Business Ethics (Levine), pp. 96-98.
10. See examples in Bava Metzia 60a-b; Shulchan Aruch, Choshen Mishpat 228:9.
even when the product is not overpriced.\textsuperscript{11} Thus, psychological techniques that cause one to buy something that he would refuse to buy if left to his own better judgment should be forbidden. The same basic idea applies to high pressure as well,\textsuperscript{12} especially if a certain percentage of the people really do not want the item.

The combination of the two factors about which you ask is particularly troubling. Why don’t the forces of supply and demand lower the profit margin? One possible answer is that the prevalence of manipulation artificially raises the price. In many cases, this is forbidden,\textsuperscript{13} and it should bother someone of your moral sensitivity. However, if you can sell the items at the standard, albeit high, price \textbf{without pressure}, it is permitted. If you sell at a moderately lower price, you likely will be able to sell enough to make a healthy living without moral/halachic problems.

\textsuperscript{11} See \textit{Pitchei Choshen, Ona`ah} 15:16.
\textsuperscript{12} While one could theoretically distinguish between misrepresenting an item, which leads to a lack of knowledge of the facts, and creating an environment in which, due to the high pressure, there is difficulty in making a decision based on one’s best interests, in our opinion, there is little difference practically and morally.
\textsuperscript{13} See \textit{Shulchan Aruch, Choshen Mishpat} 231:21.
1-5: Stealing by Accident?

**Question:** If one accidentally took and used a friend’s similar coat, is he considered a *ganav* (thief)? Is he obligated to pay *kefel* (double)? Must he pay the owner if something happens to the coat in a manner that is beyond his control (*ones*)? [The questioner then presented sources that he found about *geneiva b’shogegeg* (unintentional theft).] How can there possibly be *geneiva b’shogegeg* considering that one needs intention to acquire something?

**Answer:** We will only scratch the surface of the scholarship on whether one is obligated for *geneiva b’shogegeg*, and we will relate to some of the issues that you raise.

The *K’zot HaChoshen* is among those who posit that a *ganav b’shogegeg* is exempt from responsibility to pay if something happens to the object. He infers this from *Rishonim*, but his main rationale is based on an inference from a *pasuk*. He explains that the concept of culpability for accidental financial harm to one’s friend is limited to a *mazik*, one who physically damages another’s property, because that culpability is derived from a *pasuk* specifically regarding a *mazik*; the liability is not extended to other causes of obligation. Thus, if one accidentally takes another’s object without damaging it and then something happens to it through *ones*, he is not responsible to pay for it. Of course, he has to return the object when he finds out the truth, but if it was lost, damaged, or passed on to someone else in the interim, the accidental thief is not held responsible.

The *Machaneh Ephrayim* presents various opinions among the *Rishonim*, but he agrees with those who obligate a *ganav b’shogegeg*. One of the strong indications that he relies upon to decide that *geneiva b’shogegeg* is obligated to pay is a *gemara*.

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1. See *Shemot* 22:3.
2. 25:1.
concerning payment made by one who **accidentally** ate *teruma*. The *gemara* says that if the food’s price went down after he ate it, he nevertheless pays the higher price of the time that he ate it, because “it is no less than **one who steals.**”

Let us now discuss your question about the need for intention. The *gemara* indeed speaks of a *kinyan* (an act of acquisition) as a necessary step in defining a *ganav* and his subsequent obligations, and *kinyanim* require a certain level of intent. However, the intent needed for a *kinyan* regarding *geneiva* is not identical with the intent needed to acquire in general. For example, if one lifted up an object that was in his way with the intention to relocate it nearby, he would clearly neither acquire it nor be considered to be stealing it. But if he wanted to use the object without ever returning it, this would be considered intention for theft even if he tried to be clever by having in mind to “not acquire it.” Furthermore, even one who intended to briefly borrow something without permission is considered a *ganav.*

The *Machaneh Ephrayim* makes a relevant fundamental distinction. One may be culpable for *geneiva b’shogeg* when he intended to bring the object from another’s “possession” into his own. Such cases would include unknowingly buying a stolen object or even borrowing an object from someone who is not its owner. However, if one thought that the object that he was taking was his own, such that he did not intend to make any change, this would not be considered an act of stealing. According to this, the accidental coat-switcher is not even a *ganav b’shogeg* and does not have, as of the time that he took the object, the accompanying responsibilities for its welfare.

The *Marcheshet* posits that a *ganav b’shogeg* has the basic

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5. See *Bava Kama* 79a.
7. There is an interesting halachic parallel. When one performs an act of acquisition on something that he can acquire, but he did the act while thinking that the object was already his, there is no legal acquisition (see *Yevamot* 52b).
8. II:32.
obligations of a ganav. In fact, he views the very source cited by the K’zot HaChoshen to exempt a ganav b’shogeg – the obligation of an unintentional mazik – to obligate him as a ganav. Whereas the K’zot interpreted the pasuk’s specific reference to a mazik as implying an exclusion of other forms of unintentional causes, the Marcheshet views the mazik as a prototype to actually obligate a ganav b’shogeg. If mazik is the model, then just as a mazik is exempt b’ oness (under extenuating circumstances), a ganav b’ oness is also exempt. In our case, taking another’s coat is usually shogeg rather than oness. Thus, according to this approach, it could be considered geneiva. Regarding intention, the coat-switcher does intend to use something that turned out to actually belong to someone else.

All agree that the disqualifications of a ganav (e.g., from suitability to testify) do not apply to an individual who accidentally took someone else’s object. Kefel is never levied in our days, and it is thus not discussed much by poskim. However, logic and implicit statements indicate that this k’nas (penalty) of the Torah, which applies in a limited manner (e.g., to only certain types of theft and only when one is exposed by witnesses) is predicated on full culpability and does not apply b’shogeg.
I-6: Returning a Lost Item that the Owner Knows About

Question: Neighbors on an upper floor have several young children who regularly throw toys and even heavy objects into our ground floor garden. For years we have picked up and returned the items and dealt with a mess, as they have refused to install screens to prevent the throwing, and they do not come promptly to retrieve the items. We believe that if we leave the toys at our house, they will change their behavior. Is that permitted?

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

Let us assume that your neighbors are improperly taking advantage of you. Does that justify your stopping to return their toys in order to get them to change their behavior? At first glance, this seems like nekama (revenge), refusing to do a favor that you would ordinarily do for your counterpart because of grievances against him. On the other hand, several sources indicate that nekama applies only when one is punishing another for past behavior, whereas it is permitted to take unpleasant steps to try to dissuade someone from continuing his improper behavior or for another positive, not spiteful, reason. Precedents for this rule include the permissibility of telling lashon hara to protect one’s legitimate rights and steps that David HaMelech took against those who tried to harm him.

Thus, since you have a need to stop your neighbors from abusing your goodwill and detracting from your tranquil use of your property, you could claim that you are allowed to take the

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1. See Rambam, De’ot 7:7.
2. See Rama, Choshen Mishpat 388:7; Mitzvot HaLevavot p. 32; Torat HaAdam LeAdam (Tzfat, 5759), pp. 177-185.
3. See Chafetz Chaim, Lashon Hara 10, where he also discusses the conditions.
4. See Torat HaAdam LeAdam op. cit.
measured but unusual (for you) step of not promptly returning the things thrown into your garden. However, in this realm, there is likely a distinction depending on the level of need and the nature of the steps contemplated. There is also a difference between refusing to do a favor and acting in a way that would usually violate a Torah law, e.g., refusing to do hashavat aveida. Therefore, it is important to determine if the mitzva of hashavat aveida is obligatory in this case.

There is a question as to what hashavat aveida requires of the finder. Is he obligated to return the object to the owner, or must he simply enable the owner to retrieve it? The stronger position, in our view – which is reportedly endorsed by Rav Moshe Feinstein and the Chazon Ish – is that the finder does not have to deliver the object. You imply that letting your neighbors know that they have to come pick up the toys would suffice as impetus for them to change their ways, and there appears to be a halachic basis to allow you to take that step.

Even if one wants to be stringent on the above issues, we should consider whether your neighbors’ pattern of behavior falls under the category of aveida mida’at (“intentional loss”). There are different levels of aveida mida’at. One is when the owner of an object demonstrates, by allowing it to be in a precarious situation, that he does not care if the object gets lost. In that case, there is even an opinion that one is allowed to take the object for himself. Your case does not fall into this category, as your neighbors want the toys back; they are not overly concerned about the fact that the toys are being thrown from their home because they rely on you. However, the Shulchan Aruch writes that although we assume

5. Ibid.
6. See discussion in Mishpat HaAveida, p. 21.
7. See Torat HaAveida 5:1.
8. Pitchei Choshen, Aveida 7:(2).
9. Presumably, based on experience they should know that this needs to be done periodically.
10. Rama, Choshen Mishpat 261:1; the Shulchan Aruch ad loc. disagrees.
11. Ibid.
that an owner is generally not mafkir\textsuperscript{12} his object, if he does not take precautions to protect it from disappearance, he loses his right to require the finder to bother to return it. This seems to apply in your case. Your neighbors could argue that they try to limit the children’s throwing of toys, that you cannot blame them for lack of success, and that you are therefore required to help your counterpart, as hashavat aveida requires (even a hundred times\textsuperscript{13}). Even so, it appears that in this case, there is no aveida at all because your neighbors always know where to find their objects, and they therefore have the responsibility to come get them. Thus, there is another reason to exempt you from doing more than returning the toys when they come for them.

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

\textsuperscript{12} Relinquish ownership rights.
\textsuperscript{13} Bava Metzia 31a.
I-7: Taking Bottles from Recycling Receptacles

**Question:** I am a preschool teacher, and I would like to do a project with my students using a few dozen large empty soda bottles. May I take bottles from the recycling receptacles we have in Jerusalem and “recycle them” in that way?

**Answer:** It is good that you are sensitive to both the ecological elements of recycling and the halachic propriety of what you take from where. This question requires research in two areas: monetary Halacha and the attitudes of the people in charge of the recycling effort.

We will start with Halacha. When the bottles are placed in the receptacles, does the recycling company or authority acquire them immediately, which would make it necessary to receive the explicit or implicit permission of the owner? Or is it possible for you to take the bottles before any employee acquires them on behalf of the authority?

A *kinyan* via *chatzer*, i.e., when an object is on the property of the acquirer, has a rare quality – it can work without the involvement, presence, or knowledge of the acquiring party.\(^1\) A variation of *kinyan chatzer* is a *kinyan* through a *kli* (utensil): if an object is placed in someone’s utensil, he acquires that object.\(^2\) While this does not usually work if the *kli* is in the public domain, that is because people do not have the right to leave their personal utensils in the public domain to use as they like. However, when they have permission to keep their *kli* in a given area, the *kinyan* works even in the public domain.\(^3\) Recycling receptacles are certainly put out with permission and thus fall into this category.

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1. Act of acquisition.  
4. See ibid.
Another requirement for kinyan chatzer is that if the acquirer is not present, the kli must be located in a place that is guarded on behalf of the acquirer. While there are various explanations for this halacha, the basic idea is that in the acquirer’s absence, the chatzer has to serve as a shaliach (agent) of sorts, and to fit the role, it must be a reliable guarantor that the object will not be taken by any passerby. On the other hand, many authorities maintain that if someone is giving the object to the acquirer (as opposed to a case in which a lost or un-owned article finds its way into the chatzer), it is sufficient that the giver is watching it at the time that he puts it in the utensil. Furthermore, the Netivot HaMishpat says that if the kinyan is done in a utensil with walls, there is no further need for it to be guarded.

Based on what we have learned, the recycling authorities acquire the bottles that are put in the receptacles. Therefore, we need to determine whether the people in charge of the recycling efforts allow you to take the bottles. (In truth, even if there was a halachic deficiency in the recycling authority’s kinyan, it would be best not to take the bottles against their will, but it is worthwhile to know the halacha for cases regarding which you are not confident about what they would say.)

The most important research conducted on many “halachic” questions is determining the simple facts. I contacted the recycling authority, and I was told that at present (I cannot tell you about the past or the future), the Jerusalem municipality operates the collection efforts and owns the recycling receptacles. The municipality workers in charge of the collection told me that the Jerusalem municipality is not bothered at all if people take bottles and reuse them. In general, my research indicates, recycling is not particularly financially rewarding these days; it is done primarily to alleviate the need for landfills or pollution through incineration.

5. Bava Metzia 11a.
8. 200:3.
Thus, when someone takes the “usable garbage” home, it does not at all harm the national recycling efforts. One of the officials thought that it would be educational to have the children bring bottles themselves, but we leave that to your educational and logistical wisdom.

We do have a slight concern that, in certain settings, some people might view you as “raiding” the recycling bin, and thus there could be a chillul Hashem entailed. However, in most cases, that is not necessarily true. We cannot give an absolute assurance that in other municipalities or in other times the situation will be the same, but in Jerusalem of the foreseeable future, you may take the bottles without fear of stealing.
I-8: Receiving Permission to Sublet

Question: I work on a campus in Israel, in a project funded by an outside foundation. As part of my employment agreement with the foundation, they rent an apartment on the campus on my behalf throughout the period of my employment, including vacations. I did not sign the contract, and I am not involved in payment. I will be abroad during vacation and would like to make a little money by subletting the apartment to a nice family. Do I need permission, and who should get the money?

Answer: Based on your description, the halachic/legal status appears to be that the foundation rents the apartment from the campus and rents it out (with the campus’ permission) to you in the form of part of your compensation package.

The first question we must discuss is whether one who rents is allowed to sublet. One who rents a movable object is not allowed to give it to someone else without permission from the owner. However, when it comes to real estate, the renter is generally permitted to sublet. The Rambam explains that since the renter has full rights to use a rented item in any non-damaging way that he wants during the time of the rental, there has to be a good reason to disallow him to rent it out to someone else. Regarding movable objects, such a reason exists; there is a concern that something will happen to the object, and the owner has the right to not trust the second person’s honesty about telling what transpired. This is less of a concern regarding real estate. The Rambam makes a practical, common-sense distinction – one may not sublet to a family that is larger than the renter’s family. The Rama adds that one may sublet only to an upstanding person.

2. Shulchan Aruch, Choshen Mishpat 316:1, based on Rambam, Sechirut 5:5.
3. See S’ma 316:1. Further distinctions are needed to deal with an apparent contradiction within the Rambam on this topic.
In matters of this type, the local *minhag* supersedes classical Halacha. Unless there are strong indications otherwise, we assume that a local (in this case, Israeli) law sets the standard. Clause 22 of the Law of Renting and Borrowing states that one must ask permission from the owner before subletting, but if the owner objects on unreasonable grounds, his objections may be ignored.

You should not sublet the apartment without discussing the matter with at least one of the parties. Both the law/minhag and probably Halacha mandate that you give the owners (the campus) the opportunity to express any objections, which might include matters you did not consider. Furthermore, the foundation cannot give you more rights than they have themselves, and since it is common for a rental contract to disallow subletting without permission, you need to ascertain what the foundation’s agreement with the campus was.

Assuming that you receive permission from the campus, the more difficult question is whether you have to receive permission from the foundation. The foundation cannot, unless previously stipulated, force you to let them rent out the apartment during your vacation and keep the money themselves, as it was put at your disposal for the entire period of your stay. However, what if they say, “If you want to sublet, we want (some of) the money”? Since the potential problem of subletting is a matter that affects mainly the owner (his property could get damaged), if the campus does not have concerns, the foundation can probably not raise issues, unless they are renting it long-term and will want it in good condition for the use of a different worker after you.

The question relates more to your compensation package. The foundation might be able to claim that the apartment rental was included in your salary only as necessary for you to have a place on campus in which to live and out of which to work. They may not have meant to include it as an additional money-maker for

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you. We cannot tell for sure who would be right if such a claim were made without hearing both sides’ claims. We also do not know if there could be any sensitivities regarding the relationship between the campus and the foundation. Therefore, even if for no other reasons than *menschlichkeit* and to maintain good favor in your employer’s eyes, we feel that you should inform both the campus and the foundation of your intention to sublet and ask if it is acceptable to them.⁶ (You do not have to suggest sharing the proceeds.) If there is an objection, hopefully you can work it out, or you can ask the question again based on the new situation.

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⁶ If someone particularly trustworthy at the foundation tells you that their agreement with the campus authorizes them to give such permission, you may trust him.
I-9: Dealing with Fallout from a Dishonest Middleman

Question: For the last few winters, neighbors and I have been ordering heating oil through Shimon, who used to live in the community. We would pay Shimon, and he would send a supplier – whom I had never seen – to deliver the oil to our tanks. This year, I did not succeed in contacting Shimon, so I looked for a supplier myself and came upon Levi. Levi told me that he had been our supplier through Shimon, and he said that before delivering the oil this year, he wants payment for last year, as Shimon had told him that I did not pay (a lie). I tracked down Shimon, who said that he stopped handling the oil two years ago (another lie). I trust Levi’s honesty. If I (or Levi) cannot recover the money from Shimon, do I have to pay Levi for using his oil last year? [The querier gave additional details, but there were several questions about the arrangement that he could not answer.]

Answer: We will divide this question into the following different possible models of business interaction and analyze each one according to its halachic logic and sources: 1) Shimon acted as a shaliach (an agent) on your behalf, for free or, more likely, for some form of profit; 2) Shimon acted as Levi’s shaliach to make agreements with customers and collect and deliver the money; 3) Shimon acted as a business, which paid Levi for oil and its delivery to destinations of his choice and received money from consumers for assuring the same.

If Shimon was your shaliach, you have a natural obligation toward Levi due to the fact that he gave you his oil at your request (through your agent, Shimon). The question is whether anything exempts you from having to pay Levi under the current circumstances. The mishna’1 says that if Gad asks Asher to send him an object that he wants to borrow by means of Yissachar,

1. Bava Metzia 98b.
once the object enters Yissachar’s hands, Gad assumes full responsibility for it. If Gad did not instruct Asher how to send the object, Gad is not responsible for it until it enters his possession. The lesson from the mishna, which can be applied to various scenarios, is that the party represented by the middleman who transfers the object is responsible for it while it is “in transition.” The poskim apply this idea to sending payment for a loan through a courier. Similarly, in the case at hand, if Shimon served as your agent to bring your money to Levi and instruct him to deliver oil to you, then if Shimon stole the money, he stole it from you; there is thus nothing to exempt you from owing Levi. However, if Shimon served as Levi’s agent to arrange for his sales and collect his charges, then once Shimon received the money, it is as if you had paid Levi; the fact that Levi’s representative pocketed money due to Levi is Levi’s problem.

Let us consider the possibility that Shimon is a separate business entity, serving as a middleman. In that case, he would have two business relationships: between you and him and between Levi and him. If so, he got what he wanted from you (the money) and provided you with the service you deserved (a delivery of oil). Shimon’s wrongdoing was in his relationship with Levi. He received what he requested from Levi (oil for his customer), but did not keep his part of the deal with Levi (paying him). It follows, then, that Shimon stole from Levi, not from you, and Levi has to deal with the consequences.

But don’t you owe Levi directly in any case because you benefitted from his oil? Consider the following case discussed in the gemara. Dan told Naftali to work in Zevulun’s field, and it was Dan, not Zevulun, who took responsibility regarding Naftali’s pay. Dan has to pay Naftali at the rate they discussed, and Zevulun has to pay Dan for the benefit Dan brought him (which might be a different amount than what Dan promised Naftali). Zevulun does not have a direct obligation to pay Naftali, even though Naftali

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2. See Beit Yosef, Choshen Mishpat 121.
did the work in his field. It is true that if Dan runs away without paying Naftali, Zevulun will have to pay Naftali for the benefit he received, but that is because there is no reason for Zevulun to benefit without paying while Naftali remains uncompensated. In contrast, in your case – while there are some similarities between you and Zevulun (as you received the oil) – you already paid for the benefit you received. Therefore, Levi would have to go after Shimon, who promised him payment.

We cannot give a ruling without hearing both sides, but we will make a suggestion. Only according to possibility #1 would you be halachically obligated to pay Levi. Because you might not be able to determine which of the models applies to your case, and because it seems like the proper thing to do, we recommend that you offer Levi that if the money is not recovered, you will pay him a sizable minority of the money he has lost. If the two of you do not agree to an amount, you will have to go to a suitable form of dispute resolution.
I-10: Keeping Benefits from a Communal Purchase

Question: I was asked to buy an air conditioning system (for several thousand shekels) for my beit knesset. I received money to put in my account, and I made the purchase with my credit card. A few weeks later, I received, as a result of that sale, a 500 shekel gift certificate (in my name) for purchases at a certain outlet. Must I pass on the benefit to the beit knesset?

Answer: The gemara discusses the question of who gains when a shaliach (agent) receives a special deal as a result of buying something for his meshaleiach (the one on whose behalf the agent acts).\(^1\) The basic rule is that when the commodity does not have a set price, we treat the low price or extra quantity received as part of the purchase, which goes to the meshaleiach. If there is a set price and the purchase ended up being out of the norm, the extra is split between the shaliach and the meshaleiach.

Before categorizing your case in this regard, we must discuss the logic behind the gemara’s ruling. Rashi\(^2\) explains that while we view the special rate as a present, we do not know who the intended recipient is, and we therefore split it between the two parties out of doubt. The Rif\(^3\) maintains that we objectively view the benefit as being joint between the two people responsible for the profitable transaction. The shaliach is the one who was given the “present”; on the other hand, the meshaleiach’s money and request to buy were the trigger for the “present.” The Hagahot Oshri\(^4\) explains that the good fortune that brought about this profit is naturally attributable to the shaliach and the meshaleiach, and

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1. Ketubot 98b.
2. Ad loc.
3. Ketubot 57b in the Rif’s pages; see Ran ad loc. and Beit Yosef, Choshen Mishpat 183.
4. To Rosh, Ketubot 11:15.
Poskim discuss variations of the case that depend upon the rationale behind the rule. The Ran\(^5\) writes that if the seller said explicitly that the special rate was due to the shaliach, then Rashi would award the gain entirely to the shaliach, as he is clearly the intended recipient of the “present.” The Rif, in contrast, would say the meshaleiach still gets half for his critical role in the whole process. Rashi’s logic would also not apply to a case in which the extra resulted from the seller’s mistake (of the type that does not require return of the money paid in error); in such a case, he would award the “present” to the meshaleiach. It would be less clear who would deserve the extra according to the Rif’s approach, but the Hagahot Oshri’s argument of good fortune certainly still applies; in his view, the extra would be split.\(^6\) The Shulchan Aruch\(^7\) seems to hold like the Rif, and that view is also the preference of the Shach,\(^8\) whereas the Rama\(^9\) accepts Rashi’s view. The major poskim do not follow the Hagahot Oshri.

The application of these rules to your case depends on certain factors that you did not mention. If the company clearly advertises the gift certificate along with the sale of this item or large purchases in general, then it would seem that you do not deserve any part of it. In that case, the gift certificate is not a special present, but rather part and parcel of the transaction. Just as if there were a 20% sale on a certain day, you would not claim the reduction for yourself, the same is true for another set benefit that the seller provides. If, however, the bonus was a discretionary decision of the store with no known reason, it would be similar to the present, which is subject to the 50-50 split. If you were entered into a lottery of buyers and your name was selected, then according to Rashi, you should pass on the profit; there was no

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5. On the Rif op. cit.
6. See K’itzot HaChoshen 183:8.
8. Ad loc. 12.
9. Choshen Mishpat 183:6
intention to give it to you, and profits from the sale naturally go to the buyer. According to the *Hagahot Oshri*, you are part of the good fortune and should receive some of it; the Rif’s approach in this case would be open to debate.

Since it is important to act in a manner beyond reproach and suspicion in dealings with community needs,\(^\text{10}\) we suggest discussing the matter with the powers that be in the *beit kneset*. Even though the strict law is similar to that regarding standard monetary rights, you must make sure there will be no conflict. You can share the pertinent elements of our presentation to help you come to an agreement with them.

\(^{10}\) See *Tzedaka U’Mishpat* 7:7.
I-11: Claiming Damages from an Employee

**Question:** I hired a teenager to do deliveries with my van. He backed into a tree and moderately damaged my car. I do not want to report the collision to insurance, because it will raise my insurance rates. May I demand that the driver pay for the damage?

**Answer:** We cannot rule what the driver must do without hearing his side of the story. We can give you tentative guidelines about what we think you should do, although we are limited by partial information, including regarding the specific laws and practices of your locale.

People often decide not to inform their insurance company regarding minor damages; we leave that decision to you. While someone who causes you damage cannot force you to receive money from insurance and exempt him,¹ it is nevertheless sometimes the right thing to do.

A paid worker is a *shomer sachar* (a paid watchman) over the employer’s property that he is working with,² which means that he is obligated to pay even when damage is only marginally his fault. The *gemara* explains that the worker is considered a paid watchman because he benefits from the object being under his guard, as it enables him to earn his wages. Therefore, even if the accident was not an outright act of negligence, the driver should ostensibly be responsible in your case.

However, other sources present an additional perspective. Until now we have discussed the *halacha*, but there is also the spirit of the *halacha*. The *mishna*³ and *gemara* discuss the case of one who was hired to transport a barrel and broke it along the way. R. Eliezer says that the porter must swear that he was not negligent,

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¹. See *Ohr Sameiach*, Sechirut 7:1.
². *Bava Metzia* 80b.
³. *Bava Metzia* 82b.
and he is then exempt. R. Yochanan⁴ explains that according to the strict law, the porter should have been obligated to pay, as a shomer sachar is exempt only from oness (circumstances beyond his control), which is not usually the case when breaking a barrel. However, the Rabbis instituted a possibility for the porter to be able to exempt himself by means of an oath, because otherwise people would not agree to transport barrels. In parallel, there is a discussion among poskim regarding a household worker who damages an object in the house during her activities.⁵ The Aruch HaShulchan⁶ writes that according to strict din,⁷ the worker would be obligated to pay, but “the minhag of upstanding homeowners” is to not make a claim unless the negligence approached the level of purposeful damage. The extent to which one can apply these rulings to your case is up for debate, and a dayan would have to sort through all the details and indications if asked to rule based on strict din.

However, there is yet another element of the case to consider. We understand that the standard ruling in the United States (although there are likely differences between states) is that one who borrows a car with permission and then causes damages is exempt from damage payment, and the liability falls on the insurance company. This is relevant because Halacha is more likely to apply the law of the land in monetary disputes between individual Jews in cases in which the two entered in an agreement in such a manner that they implicitly accepted the local standards, which are based on local law.

Without hearing the claims of the two sides, we cannot make a determination on the matter here. However, we will say the following in a general manner.

Let us assume that you paid the youngster as you would an experienced driver who you could trust with your valuable car

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⁴ Ibid. 83a.
⁵ See Pitchei Choshen, Pikadon 1:(17).
⁶ Choshen Mishpat 331:7.
⁷ Law.
and that you paid him enough that it would be worth his while to take the job even considering the possibility of having to pay car damages (without your insurance kicking in). If that is the case, it is fair to demand payment for his apparent negligence. However, if you paid minimum wage (or perhaps less), having in mind that it was still worth a youngster’s time to get paid for a little menial work, it is evident that he would not have taken the job if he knew that his hard work could be wiped out by a simple mistake. If that is the case, we feel it is not menschlach to make a claim against him for the damage, and this is even clearer if you could charge your insurance if you so desired. If the negligence was of a reckless nature, of course, the story would be different.

There is an additional pertinent question in the gemara’s case – whether the porter who broke the barrel is paid for the job that he ended up not doing successfully.\(^8\) However, in your case, the job for which the young man was hired (the deliveries) was completed, and he therefore clearly deserves his pay.

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\(^8\) See *Bava Metzia* 83a; *S’ma* 304:1; *Taz* to *Choshen Mishpat* 304:1.
I-12: A Lawyer’s Obligation to Take a Dangerous Case

**Question:** I am a lawyer. A potential client asked me to help sue someone who is known to be part of the underworld. Should I agree based on the commandment of *lo taguru* (“Do not be afraid of a man”), or is it okay for me to turn down the request?

**Answer:** The formal prohibition of *lo taguru* does not apply in your case for a few reasons. First, it refers to *dayanim*, as is evident not only from the context of the *pasuk*, but also from the context in which it is cited in classical sources. Although some sources extend *lo taguru* somewhat further, it is too far of a stretch to apply it to require a lawyer to take a case, as a lawyer does not have a halachically formal part in the judicial process. Moreover, even in the case of a *dayan*, the prohibition applies only if he has heard the case to the extent that he has an idea regarding what the ruling should be.

In general, it is problematic to assist a particular side in adjudication. While there is an opinion that this warning is only to a *dayan*, most *poskim* posit that no one should take sides without a valid reason. What are grounds for taking sides? The *gemara* says that it is proper to advise a litigant if he is a relative, invoking a *pasuk* stressing the importance of helping relatives,

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2. The *Sefer HaChinuch* #415 is explicit on this point; see *Minchat Chinuch* ad loc.
3. *Sanhedrin* 6b, regarding assistants to *dayanim*; inference of the *Meiri*, *Sanhedrin* 89b, regarding one who withholds prophecy out of fear.
7. See *Sha’ar Mishpat* 17:5; *Pitchei Teshuva*, *Choshen Mishpat* 17:15.
as long as the advisor is not a prominent person. The Maharshal\textsuperscript{10} applies this approach to helping a widow who is a litigant. Logic dictates that permission could also be given to help a litigant fight hardened criminals in court,\textsuperscript{11} a task that the average individual cannot handle alone.

In cases in which giving advice is appropriate, is there an obligation or \textit{mitzva} to help out as a lawyer? When the lawyer is (honestly) convinced that his client is correct, there should be a \textit{mitzva} of \textit{hashavat aveida} to help him win his case.\textsuperscript{12} Thus, in the cases in which it is permitted to get involved, doing so should be included in that \textit{mitzva}. However, the \textit{mitzva} of \textit{hashavat aveida} does not require one to put himself in a position of loss or hardship to save money for another.\textsuperscript{13} This is all the more clear if there are any number of other people who can do the job, which makes the individual lawyer less specifically obligated than a person who spots a lost item.\textsuperscript{14}

Returning to the case of the fearful \textit{dayan}, the \textit{Shulchan Aruch}\textsuperscript{15} rules that a \textit{dayan} who has a set public role is required to hear the case even when others would be able to refuse to hear the case out of fear. While the Radbaz\textsuperscript{16} explains that this is because the public will help the \textit{dayan} in such a case, the \textit{Beit Yosef}\textsuperscript{17} seems to understand that it is because someone who has responsibility cannot shirk it even in the face of reasonable concern. That logic would seem to apply to a lawyer with a role of district attorney, for example.\textsuperscript{18} In a parallel case, the \textit{Tzitz Eliezer}\textsuperscript{19} allows and encourages a doctor to expose himself to patients

\textsuperscript{10} \textit{Shut HaMaharshul} 24.
\textsuperscript{11} See \textit{Yeshaya} op. cit. 6.
\textsuperscript{12} See part of the breadth of the \textit{mitzva} in \textit{Bava Kama} 81b.
\textsuperscript{13} \textit{Bava Metzia} 30a.
\textsuperscript{14} See one of many applications of this distinction in \textit{BeMareh HaBazak} 1:32.
\textsuperscript{15} \textit{Choshen Mishpat} 12:1.
\textsuperscript{16} \textit{Sanhedrin} 22:1.
\textsuperscript{17} \textit{Choshen Mishpat} 12.
\textsuperscript{18} As we have said above, the formal prohibition to act based on fear in such matters may be limited to \textit{dayanim}.
\textsuperscript{19} IX:17.5.
with infectious diseases as part of his job. That being said, the job description of an average lawyer does not necessarily include angering dangerous criminals, and he therefore should not have to feel obligated to do so. If a lawyer wants to accept such a case anyway, there is generally permission for someone to put himself in at least moderate danger as part of his pursuit of livelihood.\textsuperscript{20}

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

\textsuperscript{20} Bava Metzia 112a.
Glossary

A

Acharonim – the Talmudic and halachic scholars from the 16th century until our days.

agunot – women who are in a non-functional marriage and are unable to get remarried.

Ahava Rabba – the second blessing before Kri’at Shema in the morning prayers.

Al HaNisim – an additional section of praise in Shemoneh Esrei and in Birkat HaMazon on Chanuka and Purim.

aliya (to Israel) – moving to live in Israel.

aliya (pl. – alyot) – when a man is called up to the Torah to recite the blessings before and after a section of its public reading.

Amalek – the arch-enemies of the Jewish People.

amen – the response to a blessing, expressing agreement with its content.

amida – see Shemoneh Esrei.

Amora (pl. Amora’im) – a rabbinic scholar of the Amoraic period (approximately 200-500 CE).

Ashkenazi (pl. – Ashkenazim) – a Jew of Central or Eastern European origin.

Ashrei – an important prayer, recited three times a day.

asmachta – a law of Rabbinic origin to which a verse from the Torah is attributed as a source of sorts.

Av – month in the Jewish calendar, in which we commemorate the destruction of the Holy Temples.

aveirot – sins.
ba’al korei – one who publicly reads the Torah for the congregation.
ba’al maftir – one who receives the aliya of maftir.
bal teshaktzu – a prohibition on a person eating certain foods or doing things that are disgusting to him.
bal tosif – the prohibition on making additions to the performance of a mitzva.
baraita – a Talmudic text from the time of the Tanna’im that was not incorporated in the Mishna or the Tosefta.
Barchu – a declaration of praise that calls for a response.
Baruch – blessed.
Baruch She’amar – the blessing that precedes P’sukei D’Zimra (in the morning prayers).
Baruch shem k’vod – a statement recited in praise of God after mentioning His Name.
b’di’eved – after the fact; a situation that one is supposed to avoid but, after the situation has already occurred, may be halachically acceptable under the circumstances.
beit din (pl. – batei din) – rabbinical court.
Beit HaMikdash – the Holy Temple in Jerusalem. The first was destroyed c. 2,600 years ago; the second was destroyed c. 2,000 years ago. We pray for the building of the third and final one.
beit knesset – synagogue.
bentch/ing – Yiddish for reciting Birkat HaMazon. The term “bentching” often refers to Birkat HaMazon itself.
beracha (pl. – berachot) – blessing. There are a number of categories of berachot, and they may be recited periodically or under certain circumstances.
beracha acharona (pl. – berachot acharonot) – blessing recited
after one eats.

**beracha l’vatala** – blessing recited in a manner that has no value, which is forbidden.

**beracha rishona** – a blessing recited before one eats.

**bima** – the platform and/or table in the middle of the synagogue upon which the Torah is read.

**Birkat HaGomel** – the blessing recited publicly after emerging safely from a potentially dangerous situation.

**Birkat HaMazon** – the series of blessings recited after eating a meal that includes bread.

**Birkat HaTorah** – the blessing recited before the study of Torah each day and before and after the formal public reading of the Torah.

**Birkat Kohanim** – the priestly blessing recited during the repetition of *Shemoneh Esrei* (also known as *nesi’at kapayim* or *duchenen*).

**Birchot HaShachar** – the series of blessings recited before morning prayers, thanking God for providing the basic necessities of life.

**Birchot Ki’at Shema** – the blessings recited before and after *Ki’at Shema*.

**blech** – a sheet of metal used to cover a flame on Shabbat in order to solve certain halachic problems.

**Bnei Yisrael** – lit., the Sons of Israel, often translated as Israelites; a common reference to the Jewish People.

**Borei Pri HaAdama** – the blessing recited before eating foods that grow from the ground, like vegetables.

**Borei Pri HaGefen** – the blessing recited before drinking wine or grape juice.

**brit mila** – the *mitzva* and celebration of the circumcision of a Jewish male.
chag – festival; see also Yom Tov.
challa – the piece of dough removed, that ideally should have been given to a kohen; a type of bread, primarily eaten on Shabbat and festivals.
chametz – leavened bread or other grain-based food, which one is forbidden to eat or own on Passover.
Chanuka – the eight-day holiday in the early winter that commemorates the Hasmoneans’ triumph over the Greeks over 2,000 years ago and the subsequent miracle that a small amount of oil burned in the Temple menora for eight days.
chanukat habayit – the celebration of moving into a new home.
Chassidim – a subgroup of observant Jews with certain distinct characteristics and customs.
chatzer – lit., courtyard; property.
Chazal – a generic term for the Jewish scholars at the time of the Talmud (approximately 1-500 CE).
chazan (pl. – chazanim) – cantor or prayer leader.
chazara – returning foods to a heat source on Shabbat, which is Rabbinically prohibited under certain circumstances even for cooked foods.
chazarat hashatz – the repetition of Shemoneh Esrei by the cantor.
chillul Hashem – the desecration of HaShem’s name, including when a person who is viewed as (particularly) religious acts improperly.
chillul Shabbat – the desecration of the sanctity of Shabbat by violating its negative commandments. This is one of the most serious violations of Halacha.
Chol HaMo’ed – lit., the mundane of the festival; the intermediate days of Pesach (Passover) and Sukkot (Tabernacles). These
days include some, but not all, of the halachic elements of the main days of the festival (Yom Tov).

**chulent** – a traditional Jewish food, especially for the Shabbat day meal.

**chumash** (pl. – chumashim) – the Pentateuch; a printed edition of one or more of the five books of the Torah, often with the accompanying readings from the Prophets and **megillot**.

**chumra** (pl. – **chumrot**) – stringency.

**chutz la’aretz** – the Diaspora (places outside of the Land of Israel).

**D**

**Dati Leumi** – National Religious, a subgroup of Orthodox Jews, essentially parallel to what American Jews call “Modern Orthodox.”

**daven/ing** – Yiddish for pray/ing. The term “**davening**” can also refer to a prayer service as a whole.

**dayan** (pl. – **dayanim**) – rabbinical judge.

**din** – strict judgment or law (as opposed to compromise).

**din Torah** – a court case adjudicated by a rabbinical court.

**divrei Torah** – Torah ideas that are discussed or studied.

**duchenen** – Yiddish reference to the priestly blessing (**Birkat Kohanim**, **nesi’at kapayim**).

**E**

**eiruv** – one of a series of Rabbinic mechanisms that make it permissible to do what otherwise would be Rabbinically prohibited; used colloquially to refer to an **eiruv chatzeirot**.

**eiruv chatzeirot** – a series of walls, poles, and strings, as well as an amount of food set aside, that makes it possible to carry in the enclosed area on Shabbat.

**Eishet Chayil** – **Mishlei** (Proverbs) 31.
LIVING THE HALACHIC PROCESS

Elokai Neshama – one of the first blessings recited in the morning.
Eretz Yisrael – the Land of Israel. This can refer to its boundaries at various times in Jewish history, from biblical times until today. It is noteworthy that the current boundaries of the State of Israel are similar to the boundaries described in the Bible.
Erev Shabbat – Friday, before the beginning of Shabbat.
etrog – a specific citrus fruit (citron), which one is obligated to hold in his hands on the holiday of Sukkot.

F
fleishig – Yiddish for a food that comes from or has absorbed taste from meat (including fowl). It is forbidden to eat such a food together with milk products. This term is also often used to describe utensils used for meat and the state of one who has eaten meat and therefore may not eat dairy for the time being.

G
gabbai – a person in charge of something (e.g., synagogue services, charitable funds).
gelila – the rolling up of the Torah scroll after the Torah reading has been completed.
gemara – the section of the Babylonian Talmud that contains the discussion of the Amora’im.
gematria – the numerical value of Hebrew letters and words. These values are used as hints of various concepts.
Geonim – the Talmudic and halachic scholars who lived during the period from approximately 500-1000 CE.
get (pl. gittin) – a religious bill of divorce.

H
haftara (pl. – haftarot) – a section from the Prophets that is read after the Torah reading.
hagbaha – the lifting of the Torah scroll after the Torah reading has been completed for the congregation to see.

Haggada – the text recited at the Passover Seder.

HaGomel see Birkat HaGomel.

HaKadosh Baruch Ho – God (lit., the Holy One, Blessed be He)

halacha (pl. – halachot) – the field of Jewish law; an operative Jewish law; the halachic opinion that is accepted as practically binding in the case of a rabbinic dispute.

Hallel – the series of psalms recited joyously on festivals; praise.

HaMapil – the blessing recited before one goes to sleep.

HaMotzi – the blessing recited before eating bread.

hashavat aveida – returning a lost object.

HaShem – lit., “The Name.” Common practice is to use this term to refer to God in order to avoid using His Name in inappropriate settings.

hatarat nedarim – the process of annulling oaths, also used by those who want to stop adhering to a commendable religious practice that they accepted explicitly or implicitly.

HaTov V’Hameitiv – the blessing recited when certain things that are beneficial to a group of people occur.

Havdala – the blessing recited over wine at the end of Shabbat and Yom Tov, which acknowledges God’s part in the transition from these days to regular weekdays.

heter iska – an agreement between two parties that turns what would have been a situation of ribbit (forbidden usury) into a joint investment. This usually brings about the same financial outcome through a very different, permitted mechanism.

K

Kabbalat Shabbat – the psalms and songs recited to usher in Shabbat.

Kaddish – a prayer (in which we sanctify God’s Name) that is
recited by a member or members of the congregation, often by mourners.

**karpas** – the vegetable eaten near the beginning of the Passover seder as a historical remembrance.

**kasher/ing** – the process by which halachically significant taste absorbed in a utensil is removed and/or neutralized, thereby allowing the utensil to be used without halachic concern.

**Kashrut** – the field dealing with keeping kosher; also used to refer to the acceptability of ritual objects.

**kavana** – intent and concentration.

**k’beitza** – the size of an egg.

**Kedusha** – a prayer recited during the repetition of *Shemoneh Esrei*.

**kedusha** – sanctity.

**ketuba** – a formal marriage contract that, among other things, ensures a Jewish wife financial support during and after her marriage.

**Kiddush** – the blessing through which we sanctify Shabbat, recited over wine before the Shabbat meal both at night and during the day.

**kohen** (pl. – **kohanim**) – a member of the priestly tribe (who descends from Aaron). Members of this tribe have special religious obligations, roles, and privileges.

**kollel** – a rabbinical seminary for married men.

**korbanot** – sacrifices.

**korban ha’omer** – the sacrifice brought from barley on the second day of Passover.

**Korban Pesach** – the Paschal Lamb. The sacrifice that, in Temple times, was offered on the afternoon before Passover and was eaten as a central part of the *Seder* on the first night of Passover.

**kosher** – fit, especially for eating.
kri’at haTorah – the reading of the Torah during prayer services.
Kri’at Shema – three sections of the Torah containing basic elements of our faith. The Torah commands us to recite these sections every morning and evening.
k’zayit – the size of an olive. This measurement has many halachic ramifications.

L

Lag BaOmer – the thirty-third day of the period of sefirat ha’omer.
lain/ing – Yiddish for reading the Torah (kri’at haTorah).
lashon hara – improper speech that causes damage to others, especially by tarnishing their reputations.
l’chatchila – lit., in the first place; the ideal way of acting.
Lecha Dodi – a song recited as part of Kabbalat Shabbat.
lechem mishneh – the two loaves of bread eaten at the meals of Shabbat and festivals.
lifnei iver [lo titen michshol] – lit., do not put a stumbling block before the blind, the prohibition of facilitating another’s sin.

M

Ma’ariv – the evening prayer.
machloket – disagreement, in our context, concerning matters of scholarship.
machmir – follow the stringent opinion; see also chumra.
maftir – the last portion of the public Torah reading on Shabbat and festivals.
Maggid – the section of the Passover Seder in which the story of the Exodus is related.
marit ayin – one giving an impression that he is doing something forbidden.
maror – bitter herbs eaten at the Passover Seder.
matanot la’evyonim – the mitzva on Purim of giving a donation to the poor.
matza – unleavened bread. We are commanded to eat matza on Passover.
mazal tov – a blessing that means “have good fortune.”
Mechayei HaMeiteim – the second blessing of Shemoneh Esrei.
mechitza – a separation between the men’s and women’s sections in a synagogue.
Megillat Esther – The Book of Esther, read on Purim, which is written on a Torah-like scroll.
mehudar – of a high quality, often in a halachic sense.
melacha (pl. – melachot) – an activity that the Torah prohibits on Shabbat.
melaveh malka – meal eaten after the end of Shabbat.
menschlach/menschlichkeit – common courtesy.
mesader kiddushin – the rabbi responsible for arranging the halachic requirements of a Jewish wedding.
Mezonot – the blessing recited before eating a non-bread food made of one of the five major grain species.
midrash – Rabbinic works that analyze verses from Tanach and discuss moral and philosophical ideas.
mezuzot – a scroll containing certain fundamental Torah passages. There is a mitzva to attach mezuzot to the doorposts of one’s house.
Milchig – Yiddish for a food that comes from or has absorbed taste from milk products. It is forbidden to eat such a food together with meat products. This term is also often used to describe utensils used for milk products and the state of one who has eaten milk products.
Mincha – the afternoon prayer.
minhag (pl. – minhagim) – a custom or general practice.
minhag ta’ut – a practice one adopted based on misinformation.
minyan (pl. – minyanim) – a quorum of ten men who pray together. A minyan is required in order to recite certain prayers.
mishloach manot – the mitzva to send food goods to a friend on Purim.
mishna – the most authoritative teachings of the Tanna’im (c. 1-200 CE).
mitzva (pl. – mitzvot) – a commandment; a good deed.
m’lo lugmav – roughly, a cheek full that looks like two cheeks full, or approximately 2 fl. oz.
mohel – one who performs a circumcision.
Motzaei Shabbat – Saturday night, after the conclusion of Shabbat.
motzi – perform a mitzva in a manner that enables another person to fulfill the mitzva.
muktzeh – something that does not have the type of function or status on Shabbat that allows it to be moved.

N
Navi – the Prophets (a section of the Holy Scriptures).
netilat yadayim – the procedure of washing one’s hands in a certain way in various circumstances, such as before eating bread.
Nine Days – the period of national mourning leading up to and including Tisha B’Av.
nusach – specific texts and tunes used in the synagogue services, which may differ from community to community.

O
omer – the seven-week period between Pesach and Shavuot, during which it is a mitzva to count the days.
parasha (pl. – parshiyot) – a section of Torah text; the weekly Torah portion read on Shabbat.
Parashat Tzitzit – the third section of Kri’at Shema.
Parashat Zachor – the special Torah portion (Devarim 25: 17-19) read on the Shabbat before Purim.
pareve – Yiddish for a food that is neither a milk product nor a meat product and thus may be eaten with either. This term is also often used to describe utensils used for such foods.
pasuk (pl. – p’sukim) – a Biblical verse.
Pesach – Passover, the festival that celebrates the liberation of the young Jewish Nation from slavery in Egypt.
pidyon haben – redemption of the firstborn, a ritual performed for a male child who is the firstborn of his mother.
posek (pl. – poskim) – scholar who regularly renders halachic rulings.
p’zik reishei – an action that will necessarily, although unintentionally, cause a forbidden result.
P’sukei D’Zimra – lit., The Verses of Song; a major part of the Shacharit prayer service, composed of selections from Psalms and other biblical passages.
p’sukim see pasuk.
Purim – the holiday celebrating the salvation of the Jews of the Persian Empire from a cruel oppressor.

Rabbanut – the rabbinical officials of the Israeli government.
rav (pl. – rabbanim) – rabbi.
rebbe – Torah teacher.
revi’it – a measure of liquid of approximately 3-4 ounces.
Ribono shel Olam – God; lit., Master of the Universe.
Rishonim – Talmudic or halachic scholars who lived between 1000-1500 CE.

Rosh Chodesh – the beginning of a Jewish month (lunar).

Rosh Hashanah – the holiday that is both the Jewish New Year and the Day of Judgment.

R’tzei – a prayer recited as part of Birkat HaMazon on Shabbat.

s’char Shabbat – earnings from Shabbat.

Seder – the “order” of religious observances and the feast on the first night(s) of Passover.

sefarim (sing. – sefer) – books (that deal with Torah topics).

sefer Torah (pl. – sifrei Torah) – Torah scroll.

sefira/sefirat ha’omer – the daily counting of forty-nine days from the second day of Pesach until Shavuot; the time period between those two holidays, during which practices of national mourning are observed.

segula – a spiritual/mystical positive device.

Selichot – special prayers of supplication recited at appropriate times during the year, most notably before the High Holy Days (Rosh Hashana and Yom Kippur).

Sephardim – Jews from the communities of North Africa, the Middle East, and the Near East.

seuda – a meal.

seuda shlishit – the third Shabbat meal.

seudat mitzva – a meal that is connected to a noteworthy religious event.

seudat Purim – the festive meal eaten on Purim.

Shabbat – the Sabbath; the time from sundown Friday until Saturday night. This day is marked by its special observances, prayers, and many restrictions on different types of work.

Shacharit – the morning prayer.
shaliach – an agent whose actions are halachically considered as if they were done by the person who appointed him.

Shalom Aleichem – a song recited before Kiddush and the meal on the evening of Shabbat.

Shavuot – Pentecost, the holiday during which we celebrate the giving of the Torah on Mount Sinai.

shechita – ritual slaughter.

shecht – ritually slaughter.

Shehakol – the most general blessing, recited before eating foods which do not have a more specific text.

Shehecheyanu – the blessing recited upon experiencing certain new and significant or cyclical events.

shehiya – leaving food on the fire on Shabbat.

sheliach tzibbbur – cantor.

Shemitta – the Sabbatical year, during which there are special agricultural restrictions.

Shemoneh Esrei – the main section of the daily prayers, during which one “stands directly before God” to praise Him and make important requests.

sheva berachot – the days (usually seven) of celebration after a wedding; the individual festive meals during this period; the seven blessings that are recited after those meals and at a wedding.

shevarim – the triple blast that is part of the shofar blowing on Rosh Hashana.

Shir HaShirim – *Song of Songs* (one of the books of the Holy Scriptures).

shiva – the seven-day period of mourning after the death of a close relative.

shochet – one who performs ritual slaughter.

shofar – the ritual “musical instrument” made of a ram’s horn that is used to blow certain types of blasts on Rosh Hashana.
Shomeii’ah Tefilla – blessing in the Shemoneh Esrei in which we address God as the “One Who hears prayer.” Personal requests are often inserted in this blessing.

shul – Yiddish for synagogue.
siddurim – prayer books.

Sim Shalom – the final blessing of Shemoneh Esrei at Shacharit.

Simchat Torah – the holiday at the end of Sukkot, in which we celebrate the completion of the Torah reading cycle.

siyum – the completion of a large section of Torah study and the related celebration.

semichat geula l’tefilla – the juxtaposition of the last blessing of Kri’at Shema and the beginning of Shemoneh Esrei.

sof z’man Kri’at Shema – the latest time one can recite Kri’at Shema at its proper time.

sof z’man tefilla – the latest time one can recite Shemoneh Esrei at its proper time.

sofer – scribe who writes Torah scrolls, tefillin and mezuzot.

sukka – the booth one sits in on Sukkot (Tabernacles).

T

Tachanun – a prayer of supplication recited after Shemoneh Esrei.

tallit – a four-cornered garment worn during prayers. As required by the Torah, it has special fringes.

talmid chacham (pl. – talmidei chachamim) – Torah scholar.

tamei – halachically impure.

Tammuz – a summer month, in which there is a fast day and the beginning of a period of national mourning.

Tanach – an acronym for the three sections of the Holy Scriptures, Torah (The Five Books of Moses), Nevi’im (The Prophets), and Ketuvim (The Writings).

Tanna’im – rabbinic scholars of the Tannaic period (approximately
1-200 CE).

tefilla (pl. – tefillot) – prayer.

tefilla b’tzibbur – a prayer service that is held in a communal setting, with a quorum of ten adult males.

Tefillat HaDerech – prayer requesting divine protection while traveling.

tefillin – phylacteries, specially made boxes containing handwritten scrolls upon which four sections of the Torah are written. Jewish men wear them during weekday morning prayers.

teruma – tithes given to a kohen.

Three Weeks – the period of time between Shiva Asar B’Tammuz and Tisha B’Av, during which the fall of Jerusalem and the destruction of the Holy Temple are mourned.

Tisha B’Av – the fast day that marks the destruction of the first and second Holy Temples in Jerusalem.

tokeiah – the one who blows the shofar on Rosh Hashana.

treif – colloquial term for something that is not kosher.

tzedaka – charity.

tzeit hakochavim – lit., the emergence of stars; the halachic beginning of the night, which ushers in a new Jewish calendar day.

tzibbur – a community (of different sizes, depending on context).

tzitzit – the special fringes that are attached to the corners of four-cornered garments. Colloquially, this also refers to the garments to which the fringes are attached.

tzniut – modesty (either with regard to dress or personality).

V

Viduy – the recitation of admission of sins.

v’ten tal u’matar – the request (within Shemoneh Esrei) for rain.
Ya’aleh V’Yavo – an addition to Shemoneh Esrei and Birkat HaMazon on special days of the Jewish calendar.
yad – a pointer used in Torah reading.
yeshiva – academy of Jewish study.
Yishtabach – the blessing after the completion of P’sukei D’Zimra.
yishuv Eretz Yisrael – settling in and/or developing the Land of Israel.
Yom Kippur – the Day of Atonement, the fast day that is the holiest day of the year.
Yom Tov – the main day(s) of Jewish festivals, during which it is forbidden to engage in most of the activities that are forbidden on Shabbat.
Yom Tov Sheini – the second day of Yom Tov, primarily observed outside of Israel.
Yud Gimmel Middot – the thirteen divine attributes (taken from Shemot 34:6-7), recited in Selichot and throughout the services on Yom Kippur.

zechut – merit.
zemer/zimra – a (religious) song.
zimun – the responsively recited introduction to Birkat HaMazon, performed when at least three men eat together.
Index to *Living the Halachic Process* – Vol. I-V

**Format** – The entries (which appear in the left-hand column) include topics that are covered in the books’ responses and words that appear in them. When an entry is at the heart of response(s), each response’s title either follows the entry or appears indented in the line(s) beneath it. When an entry arises less prominently, no title is written, and only the location(s) in the volumes in which it appears is listed. The location(s) are always in the right-hand column. Some entries have both types of occurrences, so that the first line contains the entry and the minor occurrences and the following lines contain the focused occurrences. (Responses in which an entry appears in passing are omitted from the index.)

The locations in the books are presented using Roman numerals for volume number followed by the response notation (section, number within section – as it appears in each book). For example, IV, G-7 means the fourth volume, section G, response 7).

Some of the entries stand independently. Others are parts of a section of index topics, of which there are two types. Minor topics fit in within the alphabetical flow of the index. Major topics are separated by empty lines from the alphabetical flow of the index, and contain alphabetically ordered subtopics. When we instruct to see elsewhere, we refer to major topic and subtopic, separated by a backslash (e.g., see Pesach/Bedikat Chametz means to look under letter P for Pesach, within which to look for the subsection for bedikat chametz).

At the end of the index, we present a unique **thematic index**, which highlights responses that have a special characteristic to them, whether in terms of halachic, moral, or societal interest.

**Search strategies:**
1. For the most part, halachic topics are presented according to the Hebrew term used in the books.
2. When a halachic matter that you are seeking is a subset of
a broad topic, look in the broad topic before looking for the specific matter within the alphabetical flow. For example, look for Shemoneh Esrei, under Tefilla/Shemoneh Esrei. Some topics do not fit obviously under a broader topic or belong to more than one; these usually do not appear as subsets of broad topics. Some minor occurrences were also removed from the topics in order to make the topics more easily traversed. For example, pesolet is found under “P” and not in its natural place (Shabbat/Melachot/Borer).

Below find a list of topics (of at least five lines) in the index. (The major topics are bolded):

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Chinuch
Fast Days
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Holy Articles
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Kibbud Av Va’em
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Monetary Law
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