

Living the Halachic Process
Volume VII



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

Volume VII

Answers to Queries sent to the

ERETZ HEMDAH INSTITUTE

Headed by

Rabbi Yosef Carmel

Rabbi Moshe Ehrenreich

by

Rabbi Daniel Mann



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Eretz Hemdah Institute

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In Loving Memory of

Rabbi Emanuel and Pesha Gottlieb ל"ה

our beloved grandparents

Their love for their children,
grandchildren, and great-grandchildren
was paralleled only by their love for
Torah, Learning, and Eretz Yisrael

Shprintzy and Effy

*Dedicated to the loving memory of
and l'iluy nishmat*

Rabbi Dr. Abraham M. Mann

הרב אברהם משה בן הרב יעקב מן ז"ל

Rabbi Dr. Mann was devoted to his beloved family,
his friends, Torah, and *Am Yisrael*.

He dedicated his career to helping people and
institutions whose ideals he believed in fervently. He
was *mekadesh shem shamayim* wherever he went and
was loved by many.

יהי זכרו ברוך

Dedicated to Rav Mann – my teacher and friend

Thanks for being a great teacher of Torah and for all your writings that inspire all of klal Yisroel to lead a life based on Torah and Torah values.

Personally, thanks for being a great friend – someone I can always count on to lend a helping hand and an understanding ear.

May you continue to lead klal yisroel through your teachings and may we continue to always be good friends.

Dedicated to Rav Mann and his Aishes Chayil Natanya, acknowledging their roles as parents to Harav Benzi Mann. To Rav Benzi for all he has done for the chayalim, Am Yisrael and in particular the Kedoshim who have fallen during these difficult days.

Alan Weichselbaum

In Honor of
Rabbi Daniel Mann

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

In Honor of the births of
Naveh Shalom Fine
Lavi Shalom Fine
Maayan Netanel Fine

From the families of
Roger & Rebecca Fine
Milltown, New Jersey

&

Rabbi David and Dr. Julie Fine
Modiin, Israel

Dedicated in memory of

**TOBIAS MOSES
LEVKOVICH**

Devoted and beloved husband,
father, grandfather, son and brother

A man who touched so many
through his warmth, wisdom, and
generosity

In loving memory of our dear parents

Michael and Maidie Fidler

&

Joseph and Rosalind Zatman

מיכאל בן חיים דוד אריה

מייתי בת יעקב הכהן

יוסף בן מנשה

ריזל בת יצחק גרשון

May their memories serve as a blessing
for their families and Klal Yisrael

Jan and Lynn Fidler

מוקדשת תרומה לספר זה
על חגיגת יובל שנים
של חתונת משה ויהודית טוכמן שיחיו.

ברוך שהחיינו וקיימנו והגענו לזמן הזה

Dedicated by Debbie and Danny Weiss
to our parents, inspiring role models for
us and our children

Walter z"l & Gabriela Weiss z"l
and
Gerald z"l & Rosalind Waitman עמו"ש

Foreword

With praise and thanks to HaShem, we are happy to present for the public to read and study the seventh volume of our English responsa, *Living the Halachic Process*. The number seven has tremendous significance in Judaism. The seventh day of the week is holy. Our three major holidays are based on the number seven – Pesach and Sukkot each have seven days, and Shavuot is celebrated after we count seven weeks. The Land of Israel is blessed with seven species of produce. Finally, we have seven patriarchs and matriarchs.

The Maharal of Prague explains that the physical world consists of six directions. The point of holiness that is connected to these physical dimensions is the seventh one. This book searches, in regard to each question, which relate to the “world of activity,” the point of sanctity that gives it true life and makes the Torah an intellectual and spiritual blueprint of life.

Rav Daniel Mann and the Eretz Hemdah Institute both have the privilege to publish the seventh volume of *Living the Halachic Process*, taken from among the responsa of our Ask the Rabbi project. This project gives an important address for individuals throughout the world to receive halachic guidance according to the approach of Eretz Hemdah – “its paths are paths of pleasantness” (*Mishlei* 3:17). Rav Daniel Mann also serves as an *av beit din* (senior Rabbinical judge) in our network of *batei din*, Eretz Hemdah-Gazit, which serves society by solving monetary disputes even in a time of complex, modern financial structures.

In his responses, Rav Mann brings the various sources and possibilities for each question and strives to find the balance between all of the factors that influence the answer. This brings to fruition one of the most important matters in Judaism in general

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and in issuing halachic rulings specifically. This is walking on the “road of the king” or the golden path, as the Rambam refers to it.

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

With Torah blessings,

HaRav Moshe Ehrenreich

HaRav Yosef Carmel

Deans of the Eretz Hemdah Institute



Preface

It is with a sense of great gratitude to HaShem that we present this seventh volume of *Living the Halachic Process* to the public. There should be little surprise in its contents for those who follow our weekly Eretz Hemdah, “Ask the Rabbi” column, which appears in our publication (Hemdat Yamim) and in the venues of several respected partners. The responsa in this volume appeared there during the years 5776-5778 and are, in fact, still available online. We hope that their presentation in an organized book form, and the significant “polishing” in the process, will make them more accessible and appealing to many new and veteran readers.

Like volume VI, the later stages of the preparation of this volume were done in the shadow of great stress, sorrow, struggle, yet also, hopefully for many, belief in HaShem and optimism. Last time, we were in the midst of a pandemic, in which the attacker was a non-feeling entity, invisible to the naked eye. This time, we have been, nationally, defending ourselves from, and trying to eradicate, an enemy who can be seen (although many around the world close their eyes selectively to their aggression), and who has risen up against us with the most evil intentions.

This is not the place, nor am I the person, to engage in strategic or political commentary. Nonetheless, as believing Jews, we know that the path to a better world is not necessarily short or smooth. Like all good Jews, I take this opportunity to pray to HaShem to show us His kindness as soon as possible. May people read these words at times that are calmer than they presently are. May it be easy for us to express our fullest gratitude to Him for extricating us, in the best possible way, from the crisis that started with a day of unfathomable tragedy, and has continued as an extended period of difficult warfare.

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This volume is also being presented at a time of, arguably, unprecedented change and uncertainty in the field of scholarship. Since the time of the printing press, there has been a jump in man's ability to use accumulated wisdom for intellectual progress, including in the area of Torah scholarship. However, the day appears on the horizon wherein the place of the scholar as a pillar of knowledge and wisdom will be challenged by the inanimate creations of mankind. It is natural to wonder with trepidation if a potential future volume of this series will be questioned as to whether it was written by a human or perhaps by an inanimate entity, or whether people will still be interested in the words that a human toiled and perspired over for years, when he could read what a machine put together in a matter of minutes. We put our trust in HaShem's guidance and providence in this matter as well.

It is a privilege to thank those who have helped make this volume possible. I have prepared this sefer not as an individual, but as a member of the staff of Eretz Hemdah. The great majority of the questions presented were sent to Eretz Hemdah for the Institute's ruling. Others were sent to me with the knowledge that I am one of Eretz Hemdah's staff members who draws on its accumulated "Torah reservoirs." As always, this project of Eretz Hemdah was initiated and is 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*. I thank them for their guidance and instruction from my years as a student of Eretz Hemdah to my many years as a staff member of Eretz Hemdah, serving under their tutelage. I have discussed many of the specific questions and answers in this volume with one or both of them, especially when I was unsure whether my thoughts on a given topic captured the approach and spirit of Eretz Hemdah. That being said, I caution that since this book is not written in their native tongue, the deans did not review this work word for

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word. I, therefore, cannot give assurance that everything in this volume represents the Institute's official position.

With a mixture of sadness and gratitude, I note the passing of the torch of the initial stages of editing for the volumes of this series. I have been blessed and privileged to have *avi mori* (my father/teacher), Rabbi Dr. Jonah Mann, serve as the editor for my books. His great dedication to every aspect of the writing, with the encouragement and help of *imi morati*, Tirtza Mann, were a joy and inspiration for me through our many collaborations. This time, after some work on this volume, it was decided that his retirement should extend to the rigors of editing as well as to his previous professorship. *Baruch HaShem*, my parents are still fully capable of enjoying my Torah writings, which, to a very great extent, are the fruits of the education they gave me, both directly and indirectly.

I am very grateful to my dear friend and colleague at Eretz Hemdah, Rabbi Menachem Jacobowitz, for editing the great majority of this volume. His broad and deep scholarship, and his care for precision, leave their mark on the project, both in terms of content and presentation.

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, especially the updating of the index, which appears in this volume, covering all seven volumes. Renana Piness and Tovi Karlinsky did a fine job on the typesetting, the graphic design, and arranging the source sheets, which will soon be available online. We once again thank Riki Freudenstein who, from the beginning, has been proofreading our weekly publication "Hemdat Yamim," from which all the pieces in this book have been taken. The office staff at Eretz Hemdah, led by Yafa Rosenhak, have, as always, been supportive, skilled and helpful. Of note, we thank Rachel

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Harari-Rafal, who has done a great job of getting the questions and answers to and from the queriers and the staff of respondents, respectively, in a timely fashion.

Having been affiliated with Eretz Hemdah for more than three decades, first as a student and since as a staff member who has been privileged to be included in many important projects, I am immensely grateful for being invited to take part in wonderful projects. I express my gratitude and appreciation, both personally, as the recipient of spiritual and material support throughout the years, and on behalf of *Klal Yisrael*, before whom I can testify about the great efforts that Eretz Hemdah has dedicated on their behalf with great love.

In addition to the deans, the board of the institute, headed by Shalom Wasserteil, has enabled Eretz Hemdah to both educate exceptional Torah scholars and provide many services for the benefit of the Jewish community in Israel and throughout the world. We note with sadness the passing of Professor Yisrael Aharoni, the founding chairman of the board and a member of the board from the beginning of Eretz Hemdah until his passing.

In researching and writing the responses in this volume, I have, over the years, used teachers, colleagues, family, friends, and students as unofficial advisory boards and/or sounding boards. They have enhanced my thinking significantly, and I regret that they are too many to mention, but of specific note, in addition to Eretz Hemdah's deans, are Rabbi Ofer Livnat and Rabbi Menachem Jacobowitz, colleagues at Eretz Hemdah. Special thanks to my long-time *rebbe*, Rabbi Mordechai Willig, who once again somehow found the time to review this volume.

I am very indebted to my wife, Natanya, for enabling me to dedicate my time to the study and teaching of Torah and inspiring me by her example of dedication to and enthusiasm for *mitzvot*, especially the teaching of Torah and tireless *chesed*. May we

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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. Now, as much as or more than ever, we need His providence to protect us from dangers from without and within. May we be worthy of His mercy, and may the Torah we learn and teach, and the love of our fellow Jew, which we aim so fervently to increase, provide us with significant merit to continue to spread Torah for many years to come.

“HaShem oz l’amo yiten, HaShem yevarech et amo vashalom.”

Rabbi Daniel Mann

Eretz Hemdah Institute

Elul 5784, September 2024



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Sample Accompanying Source Sheet

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

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

A-1

What One Can Do While Waiting to Take Three Steps Back



I am often unable to take the three steps back immediately at the end of *Shemoneh Esrei* because of a slow *davener* behind me. What may I say or do while in this situation?

<p>4. גמרא, ברכות דף ט עמוד ב דוכי בעי ספרין והו אבא רבי יוחנן בתלמוד הוא אומר: "יהי שפתו תתמיד" (תתלים גא). ולבסוף הוא אומר: "יהו לרצון אמרי פי וגוי" (תתלים ה"ט) - ... רב אשי אמר: "אפילו תימא אבולתי, ומין דקבעה רבנן בתפלה - בתפלה איכתתא דמיא..."</p>	<p>1. שולחן ערוך אורח חיים סי' קכ טע"ד-ה אביר לעבור כנגד המתפללים בתוך די' אמות, והוקא לפניכם אבל בצדדים מותר לעבור ולעמוד. אם השלים תפלתו והיה אדם אחר מתפלל אחריו, אביר לפניהו ג' פסיקות עד שיגמור כי שאריו את תפלתו, שאם יגשה זה הרי הוא עוקר כנגד המתפלל, וצריך לזקק בזה, אפילו אם האחרון התחיל להתפלל אחריו, מאחר שכבר התחיל.</p>
<p>5. שולחן ערוך אורח חיים סי' קכ טע"א אם בא המפסק והעביר קדיש וקדושה בין רוח לרוחו לרצון, אינו פוסק, שיהיה לרצונו מכלל התפלה הוא, אבל בין יהיו לרצונו לשאר התנונים, שפור דמי. הנה ודוק במקום שנתחן לומר יהיו לרצון סוד אחר תפלתו, אבל במקום שנתחן לומר תנונים קודם יהיו לרצון, פוסק גם כן לקיים וקדושה ובקשות, ולא תנונים למפסק ביארו גמרי, קודם יהיו לרצון, לכן מפקחים גם כן לקיים ולקיים תכופין (ה"ק פ"ט רמב"ם שו"ת א"ח סי' ת"א).</p>	<p>משנה ברורה שם סי' טו לפניכם - וצדדים שלפניהם, להגן אבהים במקו' כפניהם דמי, ולהאליהו רבא שרי.</p>
<p>טי"ז שם סי' ק אבל בין יהיו לרצונו גו' - משמע בכל גונו שפור דמי, ואחר כך סיים בדרך שמפסק כמראה של קריאת שמע, וצריך לומר דתחלה מידו כפי שאומר לפרוקים התנונים, על פי און דיום ויהי ליה ברכות מילת, על פי מן פוסקים כפי שיצאת, ובספא דהניל, עשאהו עילוי, ימני, ודמיון קמת ליה ברכות, על פי מן פוסקים דוקא בכברות קריאת שמע.</p> <p>משנה ברורה שם סי' ט ולקיים ולברכי - ועין במסין סי', דחברים שמפסיקין באמצע ברכת קריאת שמע, והוא הדין אבא, ואם כבר סיים הכל אלא שאינו יכול לפסוק מחמת אדם שמפסיק לאחוריו, ומש' לעיל במסין ק"ב, לבויל עלמא יבול למפסיק ולענתו "אמך, ובמאמר מרדכי כתב בשיטות דאפילו "ברוך היא ברוך שמך" מותר או לומר:</p>	<p>2. גמרא, ברכות דף כט ע"ב אביר רבי תנאים אביר רב אבי אביר רבי יהושע בן לוי: "שעור ולא תביר שי ראש חוש מעבדות - תוהו לעבודה, גבר ביהודה - תוהו לעבודה, בישיב שלום - תוהו לעבודה, ואם כיום - תוהו לראש" אביר רב פאא בריה דרב אחא בר אדא: "הא דאמרן בימי, תוהו לראש - לא אמרן אלא ששקב רגליו, אבל לא עקר רגליו - תוהו לעבודה", אביר ליה: "מנא קא' תא" אביר ליה: "מאבא מרי שמעי לי, ואבא מרי מרי", אביר רב נחמן בר יצחק: "הא דאמרן עקר רגליו תוהו לראש" - לא אמרן אלא שאינו רגיל לומר התנונים אחר תפלתו, אבל רגיל לומר התנונים אחר תפלתו - תוהו לעבודה", איבא דאביר, אביר רב נחמן בר יצחק: "הא דאבירן כי לא עקר רגליו תוהו לעבודה" - לא אמרן אלא שרגיל לומר התנונים אחר תפלתו, אבל אם אינו רגיל לומר התנונים אחר תפלתו - תוהו לראש".</p>
	<p>3. שולחן ערוך אורח חיים סימן תכ טע"א ו' ואם לא נזכר עד שהשלים תפלתו, תוהו לראש, ואם היה רגיל לומר התנונים אחר תפלתו ונזכר אחר שהשלים תפלתו קודם שיעקר רגליו, תוהו לירצון".</p> <p>משנה ברורה שם סי' ט קודם שיעקר רגליו - נטא האי לינשא משום דהמחבר מוירי שעדיין לא אמר התנונים, רק בזמן דהניל, מסתא ותחיל לומר גם עתה, אבל אם כבר אמר התנונים וסיים אותם ואין במחשבתו לומר עוד, אפילו עדיין לא עקר רגליו כמי שעקר דמי ותוהו לראש התפלה.</p>





Section A:
Tefilla (Prayer)



A-1: Saying *Shemoneh Esrei* Audibly

Question: I *daven* near someone who says *Shemoneh Esrei* loudly enough that it disturbs my *davening* significantly. Can/should I say anything to him?

Answer: There are two matters to discuss here: whether the *davener* may act in this manner and what you should do about it. While the former question is straightforward, the latter is more difficult.

The *gemara*¹ deduces from the prayer of the biblical Chana² that *tefilla* (referring at least mainly to *Shemoneh Esrei*) should not simply be contemplated in one's mind. Rather, the words should be formed by the movement of the lips. At the same time, the words should be articulated in a manner that is not audible. The *gemara*³ goes so far as to describe one who recites *tefilla* audibly as one who does not believe sufficiently in HaShem, as he implies that He will not hear the prayer otherwise; one who raises his voice in prayer is further described as a false prophet.

The question of whether it is proper for one to pronounce the words of *tefilla* loudly enough to hear them himself is subject to an ongoing *machloket* since Talmudic times.⁴ While kabbalistic sources oppose being able to hear the words at all, standard halachic opinions recommend that one be able to barely hear them himself.⁵

The *gemara*⁶ assumes that the main problem with saying *tefilla* audibly is contextual; specifically, one may do so if it is necessary for his *kavana* (concentration). The *Taz*⁷ posits that this

1. *Berachot* 31a.

2. *Shmuel I* 1:13.

3. *Berachot* 24b.

4. See *Beit Yosef, Orach Chayim* 101.

5. *Shulchan Aruch, Orach Chayim* 101:2.

6. *Berachot* 24b.

7. *Orach Chayim* 101:1.

is justified even to **improve** one's otherwise reasonable *kavana*. (The *Bi'ur Halacha*⁸ objects, out of concern for the kabbalistic opinions that audibility disqualifies the *tefilla*.) However, the *gemara*⁹ states that even one who must recite *tefilla* aloud for the sake of his *kavana* may not do so in a communal setting, because doing so disturbs others. Indeed, common experience indicates that *davening* out loud when others are quiet is disturbing to others. Although we waive the rule that one must pray quietly for the needs of one's personal *kavana*, we do not bend the rule for him if it impacts others negatively.

It is difficult to apply these rules as an exact science. Most people cannot *daven* loudly enough to hear themselves and still be certain that those nearby do not hear him at all. It is also difficult to know when a quiet undertone will be disturbing to others. Although the words themselves may not be audible, a low "hum" might still be annoying. On the other hand, if a neighbor is overly sensitive, then it is arguably his problem; perhaps he should learn to get used to it or find a different place to sit.

These are issues that are difficult to quantify, and their practical application is often the type of thing that distinguishes average people from those with sterling *middot*. In other words, one should optimally make sure that he is not disturbing others. On the other hand, the person being disturbed should optimally try to be understanding and give his fellow *davener* leeway in borderline cases.

I often recall an approach to competing legitimate concerns of different people that I heard from my *rosh yeshiva* decades ago. The Torah instructs that it is forbidden for a lender to harass a borrower who is having difficulty paying back his loan,¹⁰ but a different *pasuk* has sharp words for a borrower who does not pay back.¹¹ Although these principles can sometimes be on a collision

8. To 101:2.

9. Op. cit.

10. *Shemot* 22:24.

11. *Tehillim* 37:21.

course, both are true values. The intention of these *p'sukim* is that the borrower should focus on his obligation to pay and the lender should focus on his patience in getting paid. The problem arises, as can be anticipated by human nature, when the borrower is too fond of the *pasuk* intended for the lender and the lender is too fond of the *pasuk* meant for the borrower.

Even if one may request that the audible *davener* conform to the Halacha, it is not always clear whether and how he should do so. The *Chazon Ish*¹² made famous the opinion that in our days, we do not know how to give rebuke. I would add that our generation is particularly unsuccessful at accepting even minor correction (not that it was ever easy). You therefore must think about (and/or discuss with someone who knows your neighbor better than you do) how he will react, externally and even internally. This may depend to some degree on how he is told. Should the message be conveyed directly or in a carefully worded (anonymous?) letter? You may consider asking the *shul* rabbi to speak to him or perhaps to discuss the *halachot* with the community. What works best in one case may fail miserably in another. Depending on the prospects, it might be better to put up with the situation or to move your seat discreetly rather than to say something.

[This response is addressed to the person who asked and to readers who are similarly bothered by audible daveners. For those who practice (possibly) audible davening, we suggest you discuss the matter with someone you respect and avoid disturbing others and/or having someone complain to you.]

12. *Yoreh Deah* 2:21.

A-2: How Many People Must Begin *Shemoneh Esrei* Together?

Question: I *daven* in a small *minyan* in which some people *daven* more slowly than the *chazan*, and others come late. There are not always nine men who are ready to start *Shemoneh Esrei* with the *chazan*.¹ Should we wait for ten men, including the *chazan*, or are six men enough?

Answer: Beginning *Shemoneh Esrei* with fewer than ten men engaging in that central part of the *tefilla*, even if they are up to other parts of *davening*, is halachically equivalent to having a *minyan* in which there are individuals present who are not *davening* at all.

In certain contexts, if six out of ten men who are present are taking part, that is sufficient to qualify as a *minyan*. Two crucial sources are cited as being lenient in regard to our case, maintaining that six men reciting *Shemoneh Esrei* with another four men present in the room is considered *tefilla b'tzibbur*.²

The Rambam³ writes that although the basic scenario of *tefilla b'tzibbur* is nine men listening to the *chazan*, it is sufficient for six of the participants to have not yet *davened*. We apply here the rule that the majority sets the character of the entire group. Thus, this situation constitutes a *minyan*. Many authorities view this as evidence that the Rambam holds that six men *davening* in the presence of a total of ten is considered *tefilla b'tzibbur*.⁴

The *Magen Avraham*⁵ writes that although *chazarat hashatz* may be recited for even one person who has not yet *davened*,

1. Regarding the number of people required to begin *chazarat hashatz*, see *Living the Halachic Process*, vol. I, A-10.

2. *Davening* with a *minyan*.

3. *Tefilla* 8:4, based on his understanding of *Massechet Sofrim* 10:6.

4. See *Yechaveh Da'at* V:7.

5. 69:4.

chazarat hashatz is preceded by a silent *Shemoneh Esrei* only if six men are presently *davening*. Several *Acharonim*⁶ understand that the silent *Shemoneh Esrei* before *chazarat hashatz* of these six men is justified because their silent *Shemoneh Esrei* is considered *tefilla b'tzibbur*. Again, we ostensibly see that six men are enough in this regard.

The *Chayei Adam*⁷ seems to take an opposing view. He writes that the main element of *tefilla b'tzibbur* is having **ten** men *davening Shemoneh Esrei* together. This is as opposed to the misconception of some that it suffices to have a *minyan* for *Kaddish*, *Kedusha*, and *Barchu*. This view seems to imply that six *daveners* plus four others present is not a fulfillment of *tefilla b'tzibbur*.

Perplexingly, the *Mishna Berura*⁸ cites, basically verbatim and without comment, both the *Magen Avraham* and the *Chayei Adam*. Some authorities⁹ who are lenient in this regard argue that the *Chayei Adam* does not disagree with their understanding of the Rambam and *Magen Avraham*. Rather, the *Chayei Adam* may simply be emphasizing that reciting *Kaddish/Kedusha/Barchu* is not enough; rather, *Shemoneh Esrei* must also be recited with a *minyan*. He did not necessarily mean that it is not considered *tefilla b'tzibbur* when only six out of the ten men present are *davening* together.

The stringent view is perhaps best represented by a compelling (in my humble opinion) set of arguments advanced by Rav Moshe Feinstein.¹⁰ He argues that the idea that six *daveners* can count as a *minyan*, based on the principle of majority, makes sense only when there is a full quorum involved in the matter at hand and the minority is lacking in some regard (e.g., they have

6. Including *Minchat Yitzchak* IX:6, based on *Shulchan Aruch HaRav* 69:5 and *Mishna Berura* 69:8.

7. I:19:1.

8. 69:8 and 90:28, respectively.

9. Including the *Minchat Yitzchak* op. cit.

10. *Igrot Moshe, Orach Chayim* I:28-30.

already fulfilled their obligations). In that case, we say that since the majority of the group is valid, the missing element can be overlooked. However, when six people are *davening Shemoneh Esrei* and four are uninvolved in that element of *tefilla*, there is no *tefilla b'tzibbur*, because there is no group of ten *Shemoneh Esrei* participants. This is worse than the case of participants with a shortcoming. We find a parallel to this in the source of the very concept of following a majority¹¹ – the *halacha* that we follow the majority of jurists in a court.¹² When there are three *dayanim* who rule in the case but disagree regarding the decision, we follow the majority of two who agree with each other. In contrast, when there are only two *dayanim* taking part in the decision to begin with, we cannot follow those same two, even if they agree.¹³

In addition, Rav Moshe reads the primary sources cited by the lenient *poskim* as inconclusive in our regard.¹⁴ The Rambam refers not to the silent *Shemoneh Esrei*, but to *chazarat hashatz*. In *chazarat hashatz*, all ten men are actively involved in the *chazara* by virtue of their listening to the *chazan*; a majority who are obligated is necessary simply to establish the *chazarat hashatz* as one that serves the *tzibbur*. This is not the case with regard to the silent *Shemoneh Esrei*.¹⁵ Although the *Magen Avraham* does mention the silent *Shemoneh Esrei* when he writes that six men suffice, he can be understood as meaning that the six who have not yet *davened* enhance the status of the *chazarat hashatz*. If the upcoming *chazarat hashatz* involves a majority who require it, it is a complete enough *chazarat hashatz* to justify being preceded by a silent *Shemoneh Esrei*, which serves as preparation for *chazarat hashatz* rather than a *tefilla b'tzibbur* in its own right.¹⁶

11. *Teshuvot V'Hanhagot* I:102. The *Chatam Sofer*, *Shut* I:140, makes this point with regard to a similar case.

12. *Chulin* 11a.

13. *Shulchan Aruch*, *Choshen Mishpat* 18:1.

14. *Op. cit.* 28. In a different responsum (*op. cit.* 30), he is more receptive to the simple reading of the Rambam, which is adopted by most *Acharonim*.

15. *Shulchan Aruch*, *Orach Chayim* 124:4, supports this distinction.

16. See *Rosh Hashana* 34b.

Regarding the practical ruling, many important *poskim* are lenient and consider six men *davening* in the presence of another four to constitute *tefilla b'tzibbur*, primarily based on their understanding of the Rambam and *Magen Avraham*. This group of *poskim* includes Rav Ovadia Yosef,¹⁷ the *Minchat Yitzchak*,¹⁸ the *Shevet HaLevi*,¹⁹ Rav Binyamin Zilber,²⁰ and the *B'Tzel HaChochma*.²¹ Several of these also report this to be the common practice.

The stringent camp is also significant, however. In addition to Rav Moshe Feinstein, this group includes the *Halichot Shlomo*,²² *Teshuvot V'Hanagot*,²³ and Rav Yosef Chaim Sonnenfeld.²⁴ Among contemporary *sefarim*, *Ishei Yisrael*²⁵ and *Tefilla K'Hilchata*²⁶ treat this case as one that is subject to *machloket*, with a slight leaning toward stringency.²⁷

The primary disagreement between the two views may be more conceptual (is it halachically considered *tefilla b'tzibbur*?) than practical (may one actually *daven* in this manner?). For example, in spite of being a member of the lenient camp, the *Minchat Yitzchak*²⁸ writes that ten men beginning *Shemoneh Esrei* together is preferable to six *daveners* and four bystanders.²⁹ Conversely, *Igrot Moshe*,³⁰ although a member of the stringent camp, relates to the six plus four setup as a reasonable option

17. *Yechaveh Da'at* V:7.

18. IX:6, 7.

19. XI:20.

20. *Beit Baruch* 19:3.

21. IV:135.

22. *Tefilla* 5:8, in the name of Rav Shlomo Zalman Auerbach.

23. I:102; in that *teshuva*, he cites the Brisker Rav's view as well.

24. *Salmat Chayim, Orach Chayim* 52. It is not clear whether he is resolutely in the stringent camp or if he just prefers stringency.

25. 12:7.

26. 8:71.

27. *P'ninei Halacha, Tefilla: Minyan* 3, surveys the opinions without expressing a preference for either side.

28. IX:7.

29. See also *Salmat Chayim* op. cit.

30. *Orach Chayim* I:30.

in some cases. This is not a contradiction, as *tefilla b'tzibbur* is not an absolute obligation and demands the investment of only moderate efforts.³¹ The *poskim* discuss many questions that relate to the preference of *tefilla b'tzibbur* or other *tefilla*-enhancers and considerations (as we have discussed elsewhere³²).

There are also various permutations to consider, as well as different levels of preference regarding *tefilla b'tzibbur*. Primarily, although it is best to have all members of the *minyan* start *Shemoneh Esrei* at close to exactly the same time, important *poskim*, including Rav Feinstein³³ and *Halichot Shlomo*,³⁴ posit that one who starts later is also fundamentally considered to be fulfilling *tefilla b'tzibbur* if there is still a *minyan* in the midst of *Shemoneh Esrei* when he begins.³⁵ These *poskim* discuss this phenomenon in the context of one who finds it necessary to start late and to join a *minyan* for *Shemoneh Esrei*, not whether fewer than ten men have the right to start before there is a full-strength *minyan*. Nevertheless, the prospect of having a *minyan* participate for most of *Shemoneh Esrei* improves matters in your case, if and when the late-starters will be beginning within a minute or two of the *chazan*-led group.

Indeed, there are different degrees of fulfillment of *tefilla b'tzibbur*. Even *davening* in an empty *shul* has value, as does *davening* at home at the time of the *davening* in *shul*.³⁶ Six plus four may similarly have a status of a significant but incomplete *tzibbur*. *Teshuvot V'Hanhagot*³⁷ calls this situation *tefilla b'tzibbur* (**with** the congregation), unlike ten men *davening* together, which he calls *tefillat hatzibbur* (**of** the congregation). *Igrot Moshe*³⁸

31. See *Shulchan Aruch, Orach Chayim* 90:16.

32. *Living the Halachic Process* vol. III, A-3; *ibid.* A-4; *ibid.* vol VI, A-3.

33. *Igrot Moshe, Orach Chayim* III:4.

34. 8:7.

35. *B'Tzel HaChochma* IV:3 agrees in a case in which the late starters will begin before the *tzibbur* completes the first *beracha*.

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

37. *Op. cit.*

38. *Op. cit.* 29.

says that the very presence of ten men draws the Divine Presence (*Shechina*),³⁹ but only when ten *daven* together are the *tefillot* accepted in the optimal manner,⁴⁰ and the latter is the main goal of having a *minyan*. In short, there is likely to be some value in being stringent on this matter, which would raise the question of the price a group should be willing to pay for it.

Philosophically, approaching prayer united with the community is of utmost importance.⁴¹ While it is difficult to prove that ten men starting *Shemoneh Esrei* together is a condition for unity, the Talmudic sources emphasize maximizing these elements. Therefore, we encourage the following: A *minyan* that has time for a complete tefilla experience (e.g., a yeshiva) should wait **as long as necessary** for ten men to start together. Indeed, waiting may remind individuals to come early enough and/or learn the *halachot* of skipping,⁴² such that it should not continue to be necessary to wait on most days. A *minyan* that must stick to a schedule (e.g., participants must get to work on time) and/or consists of people who are difficult to educate may rely on the lenient opinion, certainly if there will be a time at which enough men will have started before the first ones have finished. (In many cases, however, when some participants start late, questions will arise about when the congregation is ready to begin *chazarat hashatz*.⁴³ It is important that individuals internalize their personal responsibilities not only for a *minyan*'s existence⁴⁴ but also for its proper functioning.)

39. See *Berachot* 6a.

40. See *ibid.* 8a.

41. See *Ein Ayah, Berachot* 1:48, 89.

42. See *Living the Halachic Process*, vol. V, A-2.

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

44. See Rama, *Orach Chayim* 55:22.

A-3: Practicing Saying “V’ten Tal U’Matar”

Question: How many times is one required to repeatedly practice reciting “V’ten tal u’matar” (not in the context of *Shemoneh Esrei*) until, when in doubt, one can assume he did not leave out this winter insertion?¹

Answer: If one is unsure whether he remembered to cease saying “*Mashiv haruach u’morid hageshem*” (=Mashiv) in a *tefilla* during the first 30 days after the first day of Pesach, we assume that he continued to insert what is now an incorrect phrase;² after that point, we assume that he recited the correct version. However, the *Shulchan Aruch*³ accepts the Maharam MiRotenberg’s⁴ idea of reciting the correct version 90 times over a short period, after which one can assume he recited the proper text in his *tefilla*.

The source for the idea that occurrences concentrated in a short period of time are as effective as those that take place over a longer period is the opinion that an ox that goes three times in one day changes its halachic status, just like an ox that gored on three different days.⁵ Thus, 90 recitations of the correct phrase within a short time is equivalent to having said it for 30 days of three *tefillot* a day. Although many question the comparison’s aptness,⁶ the accepted practice is that the Maharam’s idea is sufficiently reliable to remove doubt.⁷ The *Mishna Berura*⁸ similarly writes that reciting “V’ten tal u’matar” (=V’ten) 90 times is effective to

1. In Israel, from 7 Marcheshvan; in the Diaspora, from December 4 or 5.

2. See *Shulchan Aruch, Orach Chayim* 114:8, based on the *Yerushalmi, Ta’anit* 1:1.

3. *Ibid.* 9.

4. See *Tur, Orach Chayim* 114.

5. *Bava Kama* 24a.

6. See *Taz, Orach Chayim* 114:13.

7. See *Bi’ur Halacha* ad loc.

8. 114:40.

remove doubts about having made that change as well.

There are technical questions regarding this system, however. The Rama in the *Darchei Moshe*⁹ points out that 90 times seems to be an imprecise substitute for 30 days, as *Mashiv* is said more than 90 times in 30 days (due to *Musaf*), and *V'ten* (which is not recited on Shabbat) is said fewer than 90 times. He posits that 30 days is simply the average time necessary for one to incorporate something new in his *tefilla* without any doubt, but the important thing is 90 recitations, however long the time between them. (The Rama's opinion in the *Shulchan Aruch* is unclear.¹⁰) The *Chatam Sofer*¹¹ accordingly notes that 30 days often present 101 opportunities for saying *Mashiv*; going over a text 101 times is therefore considered to be the quota for the text to be absorbed.¹² In contrast, the *Gra*¹³ is among the authorities who maintain that it is specifically the passage of 30 days that cements the change, even though there are more than 90 *Mashivs* and fewer *V'tens* during that time.

The accepted opinion is that one who does not do extra repetitions should assume that he said the correct text after a period of 30 days has elapsed. Yet, the practice of those who do “simulated repetitions” is to do 90 recitations, even though this is ostensibly contradictory. The *Mishna Berura*¹⁴ argues that we accept the lenient opinion regarding both major questions because of the concept of *safek berachot l'hakel*. Since we are not sure whether there is a need to make additional *berachot*, in this case by repeating *Shemoneh Esrei* or parts of it out of doubt, we refrain from doing so. (Admittedly, there are cases, such as regarding *Mashiv* slightly before 30 days, in which we could have been more lenient than the standard practice.) Most *poskim*

9. *Orach Chayim* 114:2. The *Darchei Moshe* is the Rama's notes to the *Tur*.

10. See *Orach Chayim* 114:8 and *Mishna Berura* 114:37.

11. *Shut Chatam Sofer*; *Orach Chayim* 20.

12. See *Chagiga* 9b.

13. On the *Shulchan Aruch* op. cit.

14. 114:37.

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assume that one can mix and match, achieving confidence about the transition by an appropriate mixture of days and repetitions (e.g., 10 days and 60 recitations).¹⁵

Some other *poskim* suggest that it is preferable to avoid the 90 simulated recitations system.¹⁶ The logic is that since it is unclear whether it sufficiently removes the doubt that one said the wrong phrase (i.e., it might still be necessary to correct it), it is better to rely on the accepted 30-day guideline.¹⁷ However, this claim is very surprising. First of all, there are also plenty of doubts in the 30-day guideline (e.g., 30 days do not include 90 recitations of *V'ten*; an individual may have missed some *tefillot* in that period or made mistakes in others). More importantly, if the repetition is done with moderate concentration, it certainly helps one significantly in getting into the correct habit, thereby saving many unnecessary *berachot*. It would seem that the approach of avoiding the repetitions system makes sense only for those who rarely make these mistakes anyway.

In summary, doing 90 simulated recitations for *V'ten* and *Mashiv*, which the *Shulchan Aruch/Mishna Berura* and *minhag ha'olam* endorse, is valid and worthwhile (but not obligatory).

15. See *Mishna Berura* 114:42; *Ishei Yisrael* 23:(137).

16. See *Shulchan Aruch HaRav, Orach Chayim* 114:11; *Halichot Shlomo, Tefilla* 8:26.

17. Rav Yaakov Emden (*Sh'eilat Yaavetz*, I:81) notes a technical issue with the repetitions, as he assumes it requires saying HaShem's Name in vain. However, our practice has us start the recitation after the Name.

A-4: An Israeli Serving as *Chazan* Abroad Before December 5

Question: Is it acceptable for an Israeli “*chiyuv*”¹ who is abroad between 7 Marcheshvan and December 5 to serve as *chazan*? If yes, does he say “*V’ten tal umatar*” during his silent *Shemoneh Esrei* and *chazarat hashatz*?

Answer: In Israel, the request for rain in *tefilla* is inserted beginning on 7 Marcheshvan, several weeks before it is inserted outside of Israel, on around December 5.² We have previously discussed the correct course of action for travelers to *chutz la’aretz* during this time of year.³ We will begin with a summary before delving into the issue of serving as *chazan*.

If an Israeli is abroad on 7 Marcheshvan and will be returning home within the year, he should start asking for rain on 7 Marcheshvan. While some authorities instruct that he should make the insertion in its regular place, others maintain that doing so would invalidate the *Shemoneh Esrei*.⁴ Consequently, it is preferable to make the request during the *beracha* of *Shomei’ah Tefilla*. If one traveled abroad only after he had already begun to insert “*V’ten tal umatar*” in Israel, it is clearer that he should continue doing so, and there is therefore more reason to recite it in its regular place.

We might question the permissibility of an Israeli serving as *chazan* in this case on two grounds. One relates to the rule that a person can perform a *mitzva* on another’s behalf only if the *mitzva*

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1. A mourner or someone with a *yahrtzeit*, who has what can be termed an obligation to serve as *chazan*.
 2. *Shulchan Aruch, Orach Chayim* 117:1. The exact date when “*V’ten tal umatar*” begins to be inserted in *chutz la’aretz* depends on the particular year.
 3. See *Living the Halachic Process*, vol. II, A-11.
 4. *Shulchan Aruch, Orach Chayim* 117:3.

applies to him at that time.⁵ (If he is obligated but has already fulfilled the *mitzva*, he remains eligible⁶). The question is thus whether someone who is obligated in one form of *Shemoneh Esrei* can function on behalf of a *tzibbur* that is obligated in a different form (i.e., the forms with and without “*V’ten tal umatar*”).

The matter of an Israeli serving as *chazan* for a *chutz la’arets* community on the second day of *Yom Tov* is a daunting halachic problem⁷ that one might claim presents the same issues that apply in our case. However, stringency requires making several assumptions,⁸ and it is very unlikely that all of them are correct. The great majority of *poskim* maintain that there is no problem in our case,⁹ with the strongest logic being that, unlike the case of *Yom Tov Sheni*, the differences in *Shemoneh Esrei* are not fundamental. Therefore, an Israeli can serve the *tzibbur* according to their needs, which means not saying “*V’ten tal umatar*” in *chazarat hashatz*. (*Yalkut Yosef*¹⁰ instructs that even within *chazarat hashatz*, he should unobtrusively whisper “*V’ten tal umatar*” during *Shomei’ah Tefilla*. However, that is practically and halachically problematic, and it is not the accepted practice.)

Another issue is how the *chazan* deals with his conflicting needs during the silent *Shemoneh Esrei*. On the one hand, he is personally obligated to say a *Shemoneh Esrei* that includes “*V’ten tal umatar*.” On the other hand, *Chazal* instituted the silent *Shemoneh Esrei* for a *chazan* so that he can practice for the *chazarat hashatz* that he is about to recite.¹¹ If our traveler says “*V’ten tal umatar*” in its regular place in his silent *Shemoneh Esrei*, he would be practicing in a way that could potentially ruin his *chazarat hashatz*, which makes his silent *Shemoneh Esrei*

5. See *Yerushalmi, Megilla* 2:3.

6. *Rosh Hashana* 29a.

7. See *BeMareh HaBazak* II:36.

8. See responsum of Rav Ch.P. Scheinberg in *Yom Tov Sheni K’Hilchato*, p. 415-423.

9. See *Minchat Yitzchak* X:9; *Yom Tov Sheni K’Hilchato* 10:6.

10. 5764 ed., *Orach Chayim* 117:16.

11. *Rosh Hashana* 34b.

self-defeating. Nevertheless, the *Birkei Yosef*¹² writes that this is what should be done. He cites as a source the *Taz*'s¹³ idea that a community that needs rain at a time when “*V'ten tal umatar*” is not said can ask for it (in *Shomei'ah Tefilla*) in the silent *Shemoneh Esrei*. This applies to the *chazan* as well, even though *chazarat hashatz* itself cannot be recited that way.

Several *poskim* view this setup as not problematic at all,¹⁴ while others prefer avoiding the situation.¹⁵ This likely depends on whether we consider that practicing was simply the original reason to institute the silent *Shemoneh Esrei* or whether it remains the guide for the *chazan*'s silent *Shemoneh Esrei*. Another application of this dispute is whether a *chazan* uses his own *nusach*¹⁶ for the silent *Shemoneh Esrei* when leading services in a *shul* with a different *nusach*. The *Minchat Yitzchak*¹⁷ claims that the *minhag* is to use one's own *nusach*. His justification is that since the *chazan* reads *chazarat hashatz* from a *siddur*, we are not concerned he will make a mistake. In contrast, *Igrot Moshe*¹⁸ posits that the “practice” *Shemoneh Esrei* should be the same as the *chazarat hashatz* will be – i.e., like that of the *tzibbur*.

One who is a *chiyuv* certainly has the right to serve as *chazan*. In addition to the opinions that there is no problem with being a *chazan* in this situation, many authorities maintain that it is a viable *b'di'eved* situation, and the desire of a *chiyuv* to be *chazan* creates a need that can justify doing that which is only preferable to avoid.

We would add the following as a suggestion (not a requirement). If the *chazan* is accustomed to making private requests in his silent *Shomei'ah Tefilla* and can generally rely on his ability to

12. *Orach Chayim* 117:8.

13. *Orach Chayim* 117:2.

14. See *Ishei Yisrael* 23:39.

15. See *B'Tzel HaChochma* I:62; the *Birkei Yosef* op. cit. also implies this view.

16. Textual version of the *tefilla*, which differs slightly based on a community's country of origin.

17. VI:31.

18. *Orach Chayim* II:29.

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remember to add “*V’ten tal umatar*,” he should recite it there instead of in its regular place. After all, some *poskim* rule that one should recite it at that juncture even when one is not the *chazan*, and he certainly fulfills his obligation if he does so. In addition, since the *chazan* never adds requests in *chazarat hashatz*, his recitation of “*V’ten tal umatar*” in his silent *Shemoneh Esrei* will not cause a mistake during *chazarat hashatz*.

A-5: *Ma'ariv* Around the Time of *Chatzot*

Question: I often work at night. When I have the chance to *daven Ma'ariv* only close to *chatzot* (astronomical midnight¹), dilemmas arise. If I only have time to recite before *chatzot* either *Kri'at Shema* or *Shemoneh Esrei*, but not both, which takes precedence? Is it better for me to *daven* all of *Ma'ariv* before *chatzot* at home or to go to our local “*minyán* factory,” where I will only make it to a *minyán* that misses *chatzot*?

Answer: If one has time to recite only either *Kri'at Shema* or *Shemoneh Esrei* before *chatzot*, *Kri'at Shema* clearly takes precedence. First, we accept the opinion that whereas by Torah law and *b'di'eved*, one may recite *Kri'at Shema* (and its *berachot*²) until the morning, the Rabbis instructed us to do so by *chatzot* so that one not accidentally fail to recite it at all before the night is over.³ In contrast, not all authorities maintain that one must pray *Ma'ariv* by *chatzot*, as we will discuss below. Second, reciting *Kri'at Shema* at night is a *mitzva* from the Torah. *Ma'ariv*, in contrast, is at most a Rabbinic *mitzva*,⁴ and the accepted ruling is that it is an originally optional *tefilla* that became accepted as obligatory.⁵ Third, although there are circumstances in which there is sufficient cause to recite *Shemoneh Esrei* before *Kri'at Shema* and its *berachot*,⁶ one is generally not supposed to switch the normal order.⁷ Therefore, if it is close to *chatzot*, start with *Kri'at Shema* and its *berachot*, even if *Shemoneh Esrei* will then

1. *Chatzot* is also the term for astronomical midday.

2. See *Sha'ar HaTziyun* 235:37.

3. *Berachot* 2a; *Shulchan Aruch, Orach Chayim* 235:3.

4. See Rambam, *Tefilla* 1:1.

5. *Ibid.* 6. See *Sha'ar HaTziyun* 236:4.

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

7. *Ibid.* 2.

be recited after *chatzot*.

(It is not fully clear how much of *Kri'at Shema* and *tefilla*, respectively, must be completed before *chatzot* in order for them to have significant value. If there is not time before *chatzot* for both *Kri'at Shema* and its *berachot*, there is thus a question regarding whether one should first recite *Kri'at Shema* alone or nonetheless start with its *berachot*.⁸)

The more difficult question is the relative importance of *davening Ma'ariv* by *chatzot* vs. that of *davening* with a *minyan*. Either way, one should recite *Kri'at Shema* itself before *chatzot*, even if that means coming late or missing a post-*chatzot minyan*, as the value of *davening* with a *minyan* does not override even Rabbinic obligations.⁹ The question is thus whether one should pray all of *Ma'ariv* by himself before *chatzot* or if he should go to the post-*chatzot minyan* after reciting *Kri'at Shema* and then repeat *Kri'at Shema* within *Ma'ariv*.

Davening with a *minyan* is important in various ways, but it is not crucial for the fulfillment of the basic *mitzva* of *tefilla*.¹⁰ How important, if at all, is *davening Ma'ariv* before *chatzot*? The *mishna*¹¹ states that there is no set time of night for *Ma'ariv*, and the Rambam¹² mentions that it is acceptable to *daven* all night, without distinguishing between before and after *chatzot*.

However, the *Levush*,¹³ a somewhat early source (16th century), can be understood as limiting the *tefilla* of *Ma'ariv* to before *chatzot*. One can recite a *tashlumin* (makeup) prayer for a missed *tefilla* only during the time slot of the next *tefilla*.¹⁴ The *Levush*

8. See *Ishei Yisrael* 18:(16), 13:(9). Further discussion is beyond our present scope.

9. Although there are opinions that it is not required to recite *Kri'at Shema* by *chatzot*, the clear majority of *poskim* follow the view of the Rambam and *Shulchan Aruch* that it is a requirement; see *Bi'ur Halacha* to 235:3.

10. See our discussions in *Living the Halachic Process*, vol. II, A-5, and vol. V, A-5.

11. *Berachot* 26a.

12. Op. cit. 6.

13. *Orach Chayim* 108:3.

14. *Shulchan Aruch*, *Orach Chayim* 108:4.

comments that one who missed *Mincha* can make it up during the time for *Ma'ariv*, but “not the whole night.” The *Malbushei Yom Tov*¹⁵ questions why one cannot make up *Mincha* the whole night, given that the time for *Ma'ariv* itself is the whole night. *Eliya Rabba*¹⁶ offers two suggestions to explain the *Levush*'s view. The first possibility is that the *Levush* intended to exclude the time after *chatzot*, as it makes sense that the time of *Ma'ariv* is linked to that of *Kri'at Shema*, one of its greater components. The *Pri Megadim*¹⁷ prefers the *Eliya Rabba*'s second suggestion – that the *Levush* meant only to exclude making up *Mincha* after *alot hashachar*,¹⁸ even though the night arguably continues beyond that point. The *Mishna Berura*¹⁹ cites both explanations without presenting a clear preference.

The *Tzelach*²⁰ understood from the lack of classical sources about a requirement to *daven Ma'ariv* by *chatzot* that no such limit exists. Unlike *Kri'at Shema*, which is limited to *chatzot*, *tefilla* is modeled after the placing of certain parts of the *korbanot* on the altar, which can be done all night. Furthermore, since *Ma'ariv* is not a full obligation, the Rabbis were less concerned about the prospect of someone forgetting to recite it.

Nevertheless, because there are significant opinions that maintain that one should say *Shemoneh Esrei* by *chatzot*, we find contemporary *poskim* who rule that *Ma'ariv* by *chatzot* takes precedence over *davening* with a *minyan*.²¹ This makes sense, considering the view of *minyan* as a *tefilla*-enhancer rather than an independent obligation. However, not all agree with the perspective that *davening* by *chatzot* takes precedence.²² Since all agree that one may *daven* after *chatzot* at least *b'di'eved*, and the

15. *Orach Chayim* 108:5.

16. 108:4.

17. *Orach Chayim* 108, *Mishbetzot Zahav* 3.

18. Pre-dawn, 72 minutes or more before sunrise.

19. 108:15.

20. *Berachot* 26b.

21. *Ishei Yisrael* 28:15; *Ohr L'Tzion* II:15:9.

22. See *Tefilla K'Hilchata* 3:53.

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question is whether it should be recited *l'chatchila* by *chatzot*, it is logical to let the individual decide which setting is better for his *tefilla*. Consider that these matters are not simply about fulfilling one's obligation, which is accomplished in any case, but about ensuring the best possible *tefilla*. Time plays a role, but so do other things. Realize, for example, that *davening* with a *minyan* and joining with other Jews is impactful in having the *tefilla* accepted.²³

23. See sources in *Living the Halachic Process*, vol. II, A-5.

A-6: Finishing Time for *Mincha*

Question: Is there an absolute requirement to start *Mincha* early enough to finish it before sunset?

Answer: The end of the day is composed of different stages. First there is *sheki'ah*, the end of definite day. This is followed by *bein hashemashot* (lasting between 13.5 and approximately 17 minutes), which is treated as a *safek*¹ with regard to whether it is daytime or nighttime. After *bein hashemashot* comes *tzeit hakochavim*,² which is definite night.

There are two major approaches among the *poskim* as to the definition of what the *gemara* calls *sheki'ah*, which literally means sunset: One approach is that it is what we call astronomical sunset (often called the Gra's opinion),³ the other approach is that *sheki'ah* is at a significantly later point, at which the sun goes well under the horizon, around an hour after sunset (often called Rabbeinu Tam's opinion).⁴ This *machloket* has many direct and indirect halachic implications (including when Shabbat begins and ends), and it impacts on the time for *Mincha* as well, as according to the latter opinion, one may *daven Mincha* for close to an hour after sunset.

There are two opinions in the *mishna*⁵ regarding the end time for *Mincha* – until *plag haMincha*⁶ or until the *erev* (evening). The *Shulchan Aruch*⁷ defines the latter opinion, which most people now regularly follow, as meaning until the *layla*

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1. Halachic doubt.
 2. When three medium-sized stars would be visible (were it not for clouds and light pollution).
 3. *Bi'ur HaGra* to *Orach Chayim* 261:2.
 4. *Shulchan Aruch*, *Orach Chayim* 261:2; see *Mishna Berura* ad loc. 20.
 5. *Berachot* 26a.
 6. One and a quarter “proportional hours” (*sha'ot z'maniyot*) before the end of the day.
 7. *Orach Chayim* 233:1.

(nightfall).⁸ The great majority of us follow the opinion that astronomical sunset is halachic *sheki'ah*, in accordance with the opinion of the Gra. Therefore, the *Mishna Berura*⁹ instructs one to *daven Mincha* before sunset. However, because there are opinions that one may *daven Mincha* after sunset, he writes that in times of great need, there is room for leniency regarding *davening Mincha* after sunset.¹⁰ This is especially true if one is *davening* within the first thirteen and a half minutes after *sheki'ah*, which, according to the main opinion, is still *bein hashemashot*.¹¹

Is it sufficient for one to merely start *Mincha* by the cutoff time, or must he also finish it by then? Most *poskim* posit that as a rule, obligations must be completed by their time limit, and this rule also applies to *Mincha*.¹² Only a minority suggest that beginning on time suffices.¹³ Accordingly, many *poskim* maintain that it is better to finish *Mincha* before sunset without a *minyan* than to finish it after sunset with a *minyan*.¹⁴ One could argue that given the minority opinion of Rabbeinu Tam that *sheki'ah* is much later than sunset, in addition to the minority opinion that it is sufficient to merely start *Mincha* before *sheki'ah*, there is reason for leniency, and one may therefore start before sunset and finish after it.¹⁵ This is not a simple claim for those who do not subscribe at all to Rabbeinu Tam's opinion, however.

Even if the silent *Shemoneh Esrei* is completed before *sheki'ah*, we must still consider the elements of *Mincha* that follow, such as *chazarat hashatz*. Fundamentally, there is little difference

8. The Rama ad loc. writes that this time is *tzeit hakochavim*, but the *Mishna Berura* ad loc. 14 claims that he means the beginning of *bein hashemashot*, which according to the *Shulchan Aruch* and Rama (who accept the view of Rabbeinu Tam) is close to an hour after our sunset.

9. 233:14.

10. Ibid.

11. See also *Shevet HaLevi* IX:48.

12. *Mishna Berura* 233:14; *Ishei Yisrael* 27:6.

13. *Aruch HaShulchan, Orach Chayim* 110:5; see sources in *Ishei Yisrael* 27:(12).

14. *Mishna Berura* op. cit.; *Ishei Yisrael* 27:6.

15. See *Piskei Teshuvot* 233:7.

between the timing of *Shemoneh Esrei* and that of *chazarat hashatz*, which, after all, is supposed to serve as *Shemoneh Esrei* for certain individuals and/or the *tzibbur*. On the other hand, if everyone has already finished his personal *Shemoneh Esrei*, the stakes regarding *chazarat hashatz* can be considered lower. It is therefore not surprising that there is a *machloket* among the *Acharonim*¹⁶ regarding whether it is better to recite a shortened *chazarat hashatz* (often called *Heiche Kedusha*),¹⁷ which is considered less than ideal,¹⁸ or to finish *chazarat hashatz* after *sheki'ah*. In any case, several *poskim* write that if one is present in a *shul* in which *chazarat hashatz* is being recited after *sheki'ah* – and even if it is recited after *tzeit hakochavim* according to one's personal practice – he may answer *amen*.¹⁹

Nefilat apayim (putting our heads down) for *Tachanun* is not performed at night,²⁰ but the *Mishna Berura*²¹ writes that it can be done during *bein hashemashot*. He further notes that one can still say the words of *Tachanun* at night, even though he would not do so with *nefilat apayim*.²² Notably, however, several authorities report a *minhag Yerushalayim* not to recite *Tachanun* at all after *sheki'ah*.²³ Reciting *Kaddish Titkabel* (after *chazarat hashatz*) after *sheki'ah* is not a problem, regardless of whether one finished *chazarat hashatz* before or after *sheki'ah*.²⁴

16. See *Ishei Yisrael* 27:40.

17. See details of how this is done in *Living the Halachic Process*, vol. III, A-2.

18. Rama, *Orach Chayim* 124:2 and *Mishna Berura* ad loc. 6.

19. See Maharam Shick, *Orach Chayim* 91; *Shevet HaLevi* op. cit.; *Tefilla K'Hilchata* 18:33. There are more than one explanation for this ruling, but details are beyond our present scope.

20. *Shulchan Aruch*, *Orach Chayim* 131:3.

21. Ad loc. 17.

22. Ibid. 16.

23. See *Halichot Shlomo*, *Tefilla* 13:4.

24. See *Ishei Yisrael* 27:39.

A-7: *Musaf* or *Hallel* First at Day's End?

Question: I (a woman) did not have a chance to recite *Hallel* or *Musaf* on Rosh Chodesh morning. After *davening Mincha*, I wanted to say them, but I realized that I did not have enough time before sunset to say both. Which one should I have said?

Answer: *Chazal* consider a number of factors in giving one *mitzva* precedence over another, such as *tadir* (the one that is more regular)¹ and *mekudash* (the one that has greater sanctity).² Although these two factors are certainly relevant to our discussion of *Musaf* and *Hallel*,³ they require complex and complicated discussions, which in any event will remain inconclusive. Therefore, our discussion will concentrate on other elements.

There are a few reasons to give preference to *Musaf* over *Hallel* in your case. One is the difference between the levels of importance of *Musaf* and *Hallel* for women. There is a *machloket* regarding whether women are obligated in *Musaf*. The reason many opinions obligate women in general *tefilla*, despite the fact that it is a time-bound *mitzva*, is that it is critical, since it is a request for mercy.⁴ However, since *Musaf* is a special *tefilla* added on holidays in connection to the sacrificial service in the *Beit HaMikdash*, and it is not focused on requesting mercy, the *Tzelach*⁵ posits that women are not obligated in *Musaf*. On the other hand, there are a few reasons to claim that women are obligated in *Musaf*,⁶ with perhaps the strongest one being that we do not easily

1. *Pesachim* 114a.

2. *Zevachim* 90b.

3. See *Igrot Moshe, Orach Chayim* III:70.

4. *Berachot* 20b.

5. *Berachot* 26a.

6. See *Elef HaMagen* 106:4.

distinguish between one *tefilla* and another.⁷ The *Mishna Berura*⁸ cites both opinions without expressing a preference.

In contrast, women are clearly exempt from reciting *Hallel*, since it is a time-bound *mitzva*, and, at least on Rosh Chodesh, there are no special reasons to obligate them.⁹ While some women (perhaps including you) have accepted upon themselves an obligation to recite *Hallel*,¹⁰ one would still give preference to a part of *davening* regarding which there is a possibility that women are actually Rabbinically obligated (*Musaf*). To this we add the fact that reciting *Hallel* on Rosh Chodesh is only a *minhag* even for men.¹¹

Another factor favoring *Musaf* relates to the firmness of the deadline. Your question is based on the assumption that *Musaf* and *Hallel* (and presumably *Mincha*¹²) must be recited before sunset, as they are *mitzvot* of the day,¹³ and this view indeed makes sense for non-Chassidic Ashkenazim.¹⁴ However, there may nevertheless be room to recite *tefillot* of the day later.

Many authorities maintain that *b'di'aved*, *Mincha* may be recited for several minutes after sunset,¹⁵ based on one or more of the following reasons: 1) According to Rabbeinu Tam and others, the day does not end until well after what we call sunset.¹⁶ 2) Even after the end of daytime, it does not immediately become definite night; rather, the period that begins afterwards is *bein hashemashot*, which is treated as a doubt regarding whether it is day or night.¹⁷ 3) If a certain moment during *bein hashemashot* is, in fact, too late for *Mincha*, then it is already time for *Ma'ariv*,

7. See opinions in *Halichot Beitah* 6:(8).

8. 106:4.

9. *Tosafot*, *Sukka* 38a; *Magen Avraham* 422:5.

10. See *Bi'ur Halacha* to 422:2.

11. *Tosafot*, *Berachot* 14a.

12. See response A-6 of this volume.

13. See *Megilla* 20b.

14. See *Igrot Moshe*, *Orach Chayim* I:24; *Yalkut Yosef*, *Orach Chayim* 233:3.

15. See *Ishei Yisrael* 27:6 and *ibid.* (14).

16. See *Beit Yosef*, *Orach Chayim* 261.

17. *Ibid.*

and one can therefore *daven* by making a condition that the *tefilla* should count for whichever of these two *tefillot* is appropriate.¹⁸

Reasons #1 and #2 apply to both *Musaf* and *Hallel*, and there would therefore seem to be some logic in allowing their recital after sunset. However, reason #3 does not apply to either of them, as there is no parallel *mitzva* after nightfall on which to “hang” a condition. Therefore, *davening Musaf* after sunset is problematic, as it includes *berachot* that might be *l’vatala*,¹⁹ a possibility we must take great measures to avoid. In contrast, one can fulfill the recitation of *Hallel* even if one does not say its *berachot*, as Sephardic practice is always on Rosh Chodesh.²⁰ Thus, if you recited *Musaf* before sunset and then directly followed it after sunset with *Hallel* without a *beracha*, you would have a reasonable chance of fulfilling the *mitzva* of *Hallel*, and there would be no possibility of doing something forbidden when reciting it. Although one may not recite *Hallel* freely,²¹ doing so on a one-time basis when it is possibly still the time for it should be acceptable.

For one or both of the above reasons, we would have recommended reciting *Musaf* first, followed by *Hallel* without a *beracha*, if you did not expect to finish by sunset.²²

18. See development of this idea in *Bi’ur Halacha* to 233:1.

19. Useless, and therefore forbidden, *berachot*.

20. *Shulchan Aruch, Orach Chayim* 422:2.

21. *Shabbat* 118b.

22. The majority opinion is that it is necessary to finish a unit by the cutoff point, not just to begin it by then (see opinions in *Ishei Yisrael* 27:(12)). There is some logic to say that *Hallel* is different in this regard, but that topic is beyond our present scope.

A-8: Reciting *Aleinu* Along with the *Tzibbur*

Question: If I am in the midst of *davening* and the *tzibbur* is up to *Aleinu*, should I stop what I am doing and recite it along with them?

Answer: Let us trace the source of what you apparently heard regarding saying *Aleinu* with the *tzibbur* and then try to apply it properly.

The *gemara*¹ notes that the *mishna* instructs one who is impure and may not recite *Kri'at Shema* to “think about” the words when the others are reciting it. The *gemara* states that the reason is “so he should not be idle” at such a time. The *Rosh*² cites the *Behag* as maintaining that, for the same reason, one who had recited *Kri'at Shema* before entering a *shul* in which it is presently being recited should say it again. The *Shulchan Aruch*³ rules this way, explaining that “he should not appear as though he does not want to accept the yoke of the Heavenly Kingdom along with his fellows.”

The *Magen Avraham*⁴ expands this idea significantly: “The same is true of other texts that the *tzibbur* recites, such as *Tehilla L'David* [*Ashrei*]; he reads with them, for this is *derech erez*.”⁵ A number of points are unclear in this statement. What is it about *Ashrei* specifically that classifies it as something that the *tzibbur* says? Was it recited aloud or in unison in the time of the *Magen Avraham*? What other prayers meet this criterion? Regardless, it appears that by “*derech erez*,” the *Magen Avraham* means that it is important to demonstrate agreement with what is being said by

1. *Berachot* 20b.

2. *Berachot* 3:14.

3. *Orach Chayim* 65:2.

4. *Ad loc.* 3.

5. Literally, the way of the land or the appropriate thing to do.

others in *davening*. The *Machatzit HaShekel*,⁶ cited by the *Mishna Berura*⁷ without dissent, says that the same is true of *Aleinu*.

Rav Moshe Feinstein,⁸ without discussing *Aleinu*, gives guidelines for when it is proper to recite parts of *tefilla* along with the *tzibbur*. He notes the obligation to respond to *devarim shebekedusha* (matters that require a *minyan*) that do not have a set amount of mandated recitations per day, such as *Barchu* and *Kedusha*. He further writes that the idea of not appearing as though one disagrees applies only to sections of praise of HaShem, not to sections of supplication.

The *Aruch HaShulchan*⁹ writes that the main *minhag* in his time was not to be careful to recite *Ashrei* or *Aleinu* with the *tzibbur*, but to nevertheless bow with the *tzibbur* at the appropriate point during *Aleinu*. He does mention that some recite all of *Aleinu* (but not *Ashrei*) with the *tzibbur*. While *Ashrei* has a very central place in *davening*¹⁰ and is recited three times a day, the thrice-recited *Aleinu*, reportedly instituted by Yehoshua Bin Nun,¹¹ is very prominent as well, and we also stand during its recitation.¹²

We have seen that the idea that it is important to recite *Aleinu* with the *tzibbur* is: rooted in relatively late sources, not unanimously agreed upon, and described as *derech erez*, rather than an outright obligation. These factors should impact on certain cases. For example, there is a *machloket* regarding whether the practice of reciting the first *pasuk* of *Kri'at Shema* with the *tzibbur* justifies interrupting *P'sukei D'Zimra*¹³ or not.¹⁴ Halachic logic indicates that one should certainly not stop to recite *Aleinu*,

6. Ad loc.

7. 65:9.

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

9. *Orach Chayim* 65:6.

10. See *Berachot* 4b.

11. *Kol Bo* 16.

12. See Rama, *Orach Chayim* 132:2, and *Ba'er Heitev* ad loc. 3; *Ishei Yisrael* 26:(34).

13. Opinions cited by *Mishna Berura* 65:11.

14. *Shulchan Aruch, Orach Chayim* 65:2.

which is a lower-level *tefilla*, during *P'sukei D'Zimra*, but bowing at the time that others do is harmless and worthwhile.¹⁵

In summary, if one is reciting the last parts of *davening*, he should interrupt what he is reciting, preferably at a logical place, to say *Aleinu* with the *tzibbur*. If he has not yet finished *U'Va L'Tzion*, he should repeat *Aleinu* when he gets up to its normal position.¹⁶ If one is *davening* with a *minyan* that says *Aleinu* at a different spot than he is used to, he should say it when the *tzibbur* does.¹⁷ If he is at a point in *davening* at which he may not interrupt, it suffices to bow at the time people get up to the words “*va'anachnu korim.*” According to the view of the *Aruch HaShulchan* cited above, this always suffices and is parallel to bowing when the *chazan* gets up to *Modim* and one is not in a position to recite *Modim D'Rabbanan.*¹⁸

15. *Ishei Yisrael* 26:14.

16. *Tefilla K'Hilchata* 17:16.

17. *Ishei Yisrael* 24:15.

18. *Shulchan Aruch, Orach Chayim* 109:1.

A-9: A Kohen and Others Joining for a *Minyan* “in” a Cemetery

Question: I was in a cemetery with several people (including nine men) at different graves. A *kohen* standing on a path 50 meters away and beyond a 2 foot wall asked that we join with him to make a *minyan* so he could recite *Kaddish* (loudly). Were we right that this constituted *Kaddish* with a *minyan*, considering the distance and the fact that he, as a *kohen*, was forbidden to come to where we were?

Answer: Most of the halachic discussion regarding *tziruf* (joining together as a halachic group) for a *minyan* relates to people in adjoining rooms or courtyards or cases in which some people are inside and some outside. In those situations, the main question is whether they are considered to be in the same domain,¹ although other issues play a role as well.²

In the case of *tziruf* for *zimun* in *Birkat HaMazon*, visual contact between the people connects them, even if they are in different domains.³ A major question is whether visual contact also connects people for the apparently stricter matter of a *minyan* for *tefilla*. The Rashba⁴ was asked why a *chazan* standing on a *bima* that is a halachically separate domain combines with the others. He suggests two **possible** answers that can solve the problem: 1) A *bima* is made to serve as an integral part of the *shul*; 2) If some people in one domain see people in the other one, they all constitute one unit. There is a major *machloket* among *Acharonim* regarding whether we accept this second reasoning

1. See *Shulchan Aruch, Orach Chayim* 55:13, 18.

2. See *ibid.* 14, 15.

3. *Shulchan Aruch, Orach Chayim* 195:1.

4. *Shut HaRashba* 1:96.

and can rely upon visual contact for *tefilla*.⁵ The *Mishna Berura*⁶ cites both opinions and seems to prefer the lenient one, while the *Kaf HaChayim*⁷ accepts the stringent opinion.

What should be the determining factor when all the people are outside? *Mishneh Sachir*⁸ and *Minchat Yitzchak*⁹ maintain that being able to see and hear each other creates *tziruf*. These conditions were fulfilled in your case. However, you may have failed another condition. The *Shulchan Aruch*¹⁰ cites an opinion that a public path that separates parts of the group prevents *tziruf* for *zimun*, even if they see each other and are served by a common waiter.¹¹ The *Taz*¹² writes that even a minor private path prevents *tziruf*.¹³ Other than the insignificantly low wall, you do not describe what was in between your group and the *kohen*. However, it is likely that within 50 meters in a cemetery, there are pathways. The *Mishneh Sachir* and *Minchat Yitzchak* seem to indicate that this precludes *tziruf* with regard to *Kaddish* as well.

There may be logic to suggest that if the cemetery is fenced in, minor internal paths do not separate people. There is also logic to accept lenient opinions in our context. One reason is based on need, as it is emotionally important for people to be able to say *Kaddish* for their loved ones. Moreover, a possibly unauthorized *Kaddish* is not nearly as severe as a possibly unauthorized *beracha* (i.e., *beracha l'vatala*). A *beracha l'vatala* entails saying HaShem's name unnecessarily in the context of the *beracha*, which is either a Torah-level or at least a serious Rabbinic violation.¹⁴ In contrast,

5. See *Sha'arei Teshuva* 55:15.

6. 55:48, 52.

7. *Orach Chayim* 55:70.

8. I:12.

9. II:44.

10. *Orach Chayim* 195:1.

11. *Mishna Berura* 195:8.

12. *Orach Chayim* 195:2.

13. See *Teshuvot V'Hanhagot* I:163 for an extremely strict approach on what is considered a path, but even assuming we reject it, it is unclear what the cut-off point is.

14. See *Tosafot, Rosh Hashana* 33a.

we find *poskim* who hold that one can be lenient in questionable cases of *Kaddish*. (See, for example, Maharshag¹⁵ regarding the leniency to count a child as the tenth person for a *minyan* for *Kaddish*.)

The fact that the *kohen* was forbidden to come to where the majority of you were standing is not an issue. It is true that if three people eat together in a manner that each may not, for halachic reasons, eat from the other's food, there is no *tziruf* for *zimun*.¹⁶ However, we are unaware of a source that a problem exists in your situation. In the context of *zimun*, the problem is that a joint eating is required. In your case, in contrast, the content of the *Kaddish* could unite you; there was simply a question of whether you were close enough to be unified. If you were, there was no halachic need to be closer than that. Furthermore, in the case of *zimun*, it is enough that Reuven can eat from Shimon's food, even if Shimon cannot eat from Reuven's. In your case, you and the others could have gone to where the *kohen* was. In fact, on practical grounds, you probably **should have** done that, so that the *kohen* could have said the *Kaddish* in a more natural way.

15. *Shut HaMaharshag* II:40.

16. *Shulchan Aruch, Orach Chayim* 196:3.

A-10: Waiting Between the *Beracha* and the *Kri'at HaTorah*

Question: In my *shul*, it is often too noisy to start *laining* right after the *beracha* has been recited. How long, if at all, may we delay the beginning of the *aliya*? (I am the rabbi, so I determine *shul* policy in this regard.)

Answer: Many sources equate talking between a *beracha* and the food to which it relates with doing so between a *beracha* and its related *mitzva*. We must therefore investigate a number of distinctions in the laws of *hefsek*¹ that may be relevant here.

1) Speaking is a more problematic break than a silent delay. For example, uttering a single word is considered a *hefsek*, whereas waiting the amount of time it takes to say a single word is not significant on any level.²

2) The most sensitive time for a *hefsek* is between the *beracha* and the start of the matter to which it pertains. For example, if one speaks after a *pasuk* or more of one's *aliya* has been read, he does not have to recite a new *beracha*,³ but if he speaks in between the *beracha* and the beginning of the *laining*, he does have to repeat it.⁴

3) If speaking between the *beracha* and the action serves a positive purpose (e.g., asking for salt for the bread upon which one just recited a *beracha*, before eating any of it), one does not repeat the *beracha*.⁵

Regarding your question about waiting silently before the beginning of the *aliya*, there are two factors arguing for leniency (silence, positive purpose) and one for stringency (before

1. Problematic breaks.

2. *Mishna Berura* 206:12.

3. *Shulchan Aruch, Orach Chayim* 140:2.

4. *Mishna Berura* ad loc. 6.

5. *Shulchan Aruch, Orach Chayim* 167:6.

beginning the *laining*). Let us consider the extent of the leniencies.

The *Beit Yosef*⁶ cites the *Shibolei HaLeket*, who writes, based on his understanding of a *Yerushalmi*, that if one pauses between the *beracha* and its subject (in the case of both food and *mitzvot*) for more than *k'dei dibbur* (1-2 seconds), he must repeat the *beracha*. However, the *Magen Avraham*⁷ disagrees, at least regarding a *b'di'eved* case (i.e., after not repeating the *beracha*). In support of his position, the *Magen Avraham* cites the following discussion in the *Beit Yosef*.⁸ On Rosh Chodesh Tevet that fell on Chanuka and required two *sifrei Torah* for *k'riat haTorah*, the wrong *sefer Torah* was opened first. After the opening *beracha* was made without realizing the error, the Torah had to be rolled to the proper place (from *Naso* to *Pinchas*). Some argued that they should have made another *beracha*, for two reasons: 1) The delay for the rolling was too long. 2) The *beracha* was made with the intention to read what turned out to be the wrong section. The Avudraham rejects reason #1, because a break of silence is not a disqualification, as we see from the fact that we do not cut loaves of bread until after the *beracha* is recited.⁹ The *Beit Yosef* seems to agree with the Avudraham. Thus, we see that a moderate delay is not a problem, unless one took his mind off the fact that he had made the *beracha*.¹⁰

The Rama¹¹ does rule that one should not wait, even in silence, more than *k'dei dibbur* between a *beracha* and the food. However, this is to be avoided only *l'chatchila*. After the fact, the wait does not necessitate repeating the *beracha*.¹²

The Rama¹³ rules that, when possible, one should avoid talking even for a purpose related to the subject of the *beracha*. We see

6. *Orach Chayim* 206.

7. 206:4.

8. *Orach Chayim* 140.

9. *Berachot* 39b.

10. *Mishna Berura* 206:12.

11. *Orach Chayim* 206:3.

12. See *Mishna Berura* 206:12; *Mor Va'aholot*, *Orach Chayim* 1.

13. *Orach Chayim* 167:6.

from the above discussion about opening the *sefer Torah* to the wrong place that at least some of those who consider a significant silent wait to be a *hefsek* even *b'di'aved* hold that this applies even if one is involved in preparing for the *mitzva* (e.g., rolling the *sefer Torah*).¹⁴ It is unclear whether those who accept the *Shibolei HaLeket*'s ruling only *l'chatchila* feel we should avoid a silent break when the silence plays a productive role, such as waiting for quiet before beginning to *lain*.

In summary, it is certainly preferable to wait for quiet **before the berachot are made**, and if there is only a slight disturbance, to read at least one *pasuk* before stopping. If one is going to stop, it is best that it be less than the amount of time it takes to recite the *berachot*,¹⁵ or at least less than the amount of time it takes to read the first three *p'sukim*.¹⁶ However, if the need to wait is acute, even a moderately longer break can be justified.

14. Apparently, this is talking about longer than normal transition time, as regarding *laining* and *shofar*, for example, it is very common to take a few seconds to find the right word or prepare for the actual blowing, respectively.

15. See Ritva, *Megilla* 21b.

16. See *Shut HaBach HaChadashot* 42.

A-11: Dilemmas of a *Chazan* for *Kedusha* on Shabbat

Question: I am a frequent *chazan*. A friend pleasantly presented me with a lengthy list of his objections to the way I (and others) recite *Kedusha* of *Musaf*. One of these objections assumes, as is logical, that the line “*K’vodo malei olam... baruch yomeiru,*” which the *tzibbur* and then the *chazan* recite after “*Kadosh kadosh kadosh,*” is an introduction to the next part of *Kedusha*, “*Baruch k’vod...*”¹ He argued that the *chazan* should not sing *Kadosh* in a way that encourages the *tzibbur* to sing along and thereby repeat that line after they have already introduced the next section by quietly saying “*K’vodo malei olam...*” Rather, the *chazan* should start his tune with *K’vodo*, thereby demonstrating that *Kadosh* and *K’vodo* are separate. He added that it would be even better if the *chazan* would say *Kadosh* quietly. Is my friend right?

Answer: *Kedusha* indeed consists of three (or four²) introductory statements, each of which leads into a *pasuk* (from *Yeshayahu*,³ *Yechezkel*,⁴ and *Tehillim*⁵) used by the angels and by us to sanctify HaShem’s Name. There is a *machloket*, and there are different practices, as to whether only the *chazan* says the introductory passages⁶ or the *tzibbur* does as well.⁷ The *minhag* is for the *tzibbur* to say the longer introductory passages of Shabbat/*Yom Tov*.⁸

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1. Similarly, “*Mimkomo ... pa’amayim b’ahava Shema omrim*” introduces “*Shema Yisrael...*”
 2. *Shema Yisrael*, from the Torah (*Devarim* 6:4), is added at *Musaf*. That does not correspond to that which the angels pronounce.
 3. *Yeshayahu* 6:3.
 4. *Yechezkel* 3:12.
 5. *Tehillim* 146:10.
 6. See *Beit Yosef*, *Orach Chayim* 125.
 7. *Taz*, *Orach Chayim* 125:1.
 8. *Mishna Berura* 125:1.

The *Bi'ur Halacha*⁹ deals with the dilemma of how the *chazan* should recite the *p'sukim* of *Kedusha*. On the one hand, the *chazan* should recite the *p'sukim* out loud, so that those still in the midst of *Shemoneh Esrei* can be *yotzei* with him.¹⁰ However, if he waits for the *tzibbur* to finish reciting the *p'sukim* so that those who are still *davening* can hear him, he is reciting those *p'sukim* of *Kedusha* seemingly without a *minyan*. Some say that the *chazan* can accomplish both by starting each *pasuk* before the *tzibbur* finishes reciting it.¹¹ Others say that the fact that those still reciting *Shemoneh Esrei*¹² or the *tzibbur* as a whole¹³ are listening to him makes him considered as though he is reciting the *p'sukim* with a *minyan*. One could even claim that the *tzibbur*'s present *minhag* to sing along actually creates a *minyan* for the parts they sing together, and although they just finished reciting those same words, one may answer *Kedusha* multiple times.¹⁴

Regarding weekdays, the *chazan*'s ideal practice is clear; he should start as the *tzibbur* is finishing, based on the above. Shabbat *davening*, however, is somewhat more complicated. *Teshuvot V'Hanhagot*¹⁵ argues that since the relatively long introductory passages are not an essential part of *Kedusha*, if the *chazan* waits to start *Kadosh* and *Baruch k'vod* until the *tzibbur* is in the middle of the added next sections, he will no longer be able to connect himself to the *tzibbur*'s recitation of the *p'sukim*. For this reason, *Teshuvot V'Hanhagot* prefers that the *chazan* say *Kadosh* immediately, along with the *tzibbur*, loud enough for those in need to hear him. (Rav Moshe Feinstein,¹⁶ in contrast, writes that the *chazan* should wait until the *tzibbur* finishes, because he assumes that it will be difficult for those still

9. To 125:1.

10. *Shulchan Aruch, Orach Chayim* 104:7.

11. See *Bi'ur Halacha* op. cit.

12. *Ibid.*

13. *Emek Beracha*, cited by *Teshuvot V'Hanhagot* I:111.

14. Rama, *Orach Chayim* 125:2.

15. Op. cit.

16. *Igrot Moshe, Orach Chayim* III:4.

in the middle of *Shemoneh Esrei* to hear the *chazan* over multiple voices. It is possible, however, that he was referring specifically to the case of the weekday *Kedusha*.)

There is another practical possibility with certain advantages: One can start reciting (in the classic *nusach*¹⁷) *Kadosh* soon after the *tzibbur*, and then begin a tune for *K'vodo* in a way that will encourage the *tzibbur* to sing along with him before they recite *K'vodo* themselves the first time. In this fashion, the *chazan* attaches himself to the *minyán*, and the *tzibbur* does not end up repeating anything (certainly not a previous section, which your friend opposes). However, although these may be the best ideas from a purist perspective, our average *shul* is not the place where we would encourage purists to go against standard practice when there are reasonable alternatives that follow common practice.

The *K'tzot HaShulchan*¹⁸ refers to a practice that on Shabbat the *chazan* says *Kadosh* (and *Baruch K'vod*) quietly along with the *tzibbur* and starts aloud only from *K'vodo* (and “*Mimkomo...*”). He surmises that this is based on the assumption that on Shabbat, everyone will have finished *Shemoneh Esrei* by the time of *Kedusha*, and they therefore will not need the *chazan* to be *motzi* them. If indeed no one needs to be *yotzei*, this works well, but this is often not the case in many present-day *shuls*.

There is enough to rely upon to allow the standard *minhag* of the *chazan* saying *Kadosh* after the *tzibbur* recites the next introduction, with or without the *tzibbur* singing along. It is true that from a purist perspective, it does not make sense for the *tzibbur* to sing *Kadosh* after introducing the next piece. However, while one may not speak during *Kedusha*,¹⁹ it is difficult to consider the *tzibbur* repeating *Kadosh* along with the *chazan* a *hefsek*,²⁰ considering that all of *Kedusha* is interrelated. The idea

17. The classic liturgical tunes used for the various *tefillot*, as opposed to tunes adopted primarily from contemporary songs.

18. 83:(22).

19. Rama, *Orach Chayim* 125:2.

20. A problematic interruption. See *Living the Halachic Process*, vol. IV, A-2.

that the tune should not make it seem as though *Kadosh* is part of the same unit as *K'vodo* is appropriate *l'chatchila*. Therefore, there is logic for you, as a talented and learned *chazan*, to start his repertoire of songs from *K'vodo*. (Indeed, there is something nice about “good-old *nusach*” being heard more often than it has recently been common.) However, we would not deem joint singing of *Kadosh* to be illegitimate, nor would we attribute the fact that many people do not understand *Kedusha*'s structure to the singing.

A-12: Saying *Kaddish* when Lacking Full Participation

Question: Can the final *Kaddish D'Rabbanan* at the end of *tefilla* be recited when there is a *minyan* only if one counts people who are no longer involved in *davening* (e.g., they are busy taking off their *tefillin*) and have not recited *Pitum HaKetoret*?¹ Also, is it proper for one who did not participate in the learning session or the section of *tefilla* to which the *Kaddish* relates to recite *Kaddish D'Rabbanan* or *Kaddish Yatom*, respectively, along with others in *shul*?

Answer: A relatively similar case to those you ask about is what is called *poress al Shema*. This refers to a case in which people who do not have a *minyan* for all of *davening* want to join with others, including those who have already finished *davening*, so as to enable the former group to recite *Kaddish* (following and relating to *P'sukei D'Zimra*) and *Barchu*. The *Shulchan Aruch*² rules that although it is best if there are six men present who have yet to take part in these *devarim shebekedusha*,³ *Kaddish* and *Barchu* may be said even for the needs of only one such person. Furthermore, if need be, even someone who already took part in a *minyan* may lead the recitation.⁴

Similarly, the *Taz*⁵ infers from several sources that in order to say *Kaddish*, which relates to a previous text(s) that was recited, it suffices for the *minyan* to be assembled at the time the *Kaddish* is recited, even if the members of the *minyan* were not present for the matters to which the *Kaddish* relates. The *Magen Avraham*, on

1. According to many customs, *Pitum HaKetoret* is recited at the end of *Shacharit* every day.

2. *Orach Chayim* 69:1.

3. Sections of *tefilla* that require a *minyan* in order to recite them.

4. *Ibid.*

5. *Orach Chayim* 55:3.

the other hand, rules regarding the *Kaddish* after learning Torah⁶ and the one after *Ashrei* at *Mincha*,⁷ that the *minyan* must already have been present during the previous recitations to which the *Kaddish* relates. The *Pri Megadim*⁸ posits that in the case of the *Kaddish* following *P'sukei D'Zimra*, the *Magen Avraham* would agree with the *Taz*'s leniency, because *P'sukei D'Zimra/Kaddish* is a requirement. In other words, in cases such as *poress al Shema*, when there is a real obligation for the recitations to be done, the *minyan* enables the recitation of *Kaddish* whenever it becomes possible. In contrast, regarding less critical recitations, including *Ashrei* at *Mincha*, the need for *Kaddish* is created only when a *minyan* is present during the previous recitation.

Some maintain that even in cases in which the *Magen Avraham*'s opinion applies, he only requires the ten to be **present** when the texts that justify the *Kaddish* afterward are recited; he does not require that all ten men actually **participate** in the learning/recitation.⁹ On the other hand, the *Aruch HaShulchan*¹⁰ is fully stringent regarding *Kaddish* after learning, which is optional, requiring that ten people must have learned together.¹¹

The best way to avoid any *machloket* in cases of *Kaddish* after learning is for the learners to include the rest of the quorum in a “*Kaddish-trigger*” statement, such as the famous statement of Rabbi Chananya ben Akashya. This works in a variety of scenarios, because even if the rest of the recitation did not count, the trigger-statement is itself grounds for *Kaddish*. If there are fewer than ten men reciting *Pitum HaKetoret* at the end of *davening*, it is worthwhile for the *chazan* to say, “*Rabbi Elazar....: Talmidei chachamim...*” or the last three *p'sukim* out loud. If this is difficult, one can rely on the majority opinion that we do

6. 69:4.

7. 234:1.

8. *Mishbetzot Zahav* 55:3.

9. *Mishna Berura* 54:9.

10. *Orach Chayim* 55:9.

11. See *Ishei Yisrael* 15:(100).

not require even a majority of the *minyan* to be learning before *Kaddish D'Rabbanan*.¹² Furthermore, the *Aruch HaShulchan* probably agrees that the presence of ten men is enough for *Pitum HaKetoret*, because it is a set part of *tefilla* for those communities who recite it regularly and/or because having at least one *Kaddish D'Rabbanan* at *Shacharit* is important.¹³

Regarding the question of whether someone not involved in the part of *tefilla* to which the *Kaddish* is related may nevertheless recite it, we saw that this is allowed in the case of *poress al Shema*. The *Mishna Berura*¹⁴ assumes that this is also true for *Kaddish* after learning, and there is no reason to assume this would not apply to the *Kaddish* after *Aleinu*, *Shir Shel Yom*, or *Pitum HaKetoret*.¹⁵ However, Rav Moshe Feinstein rules that a non-participant is permitted to recite the *Kaddish* only if the matter to which the *Kaddish* relates is part of the *tefilla* or is part of a learning session of the *tzibbur*, such as *Pitum HaKetoret*. It is not permitted for one who did not take part in a free-standing learning session that just happened to include ten men to recite the *Kaddish* after it.¹⁶ Even in the latter case, however, it is enough to have heard and understood only a small part of the learning, and the passage of *Rabbi Elazar* suffices for this.¹⁷

12. See also *Mishna Berura* 54:9.

13. See *Living the Halachic Process*, vol. I, A-6.

14. *Op. cit.*

15. The *Chelkat Yaakov* (*Orach Chayim* 20) writes that it is always permitted to simply join with others who are saying *Kaddish*, maintaining that this is no worse than answering *amen* to a *beracha* that one knows has just been completed.

16. *Igrot Moshe*, *Yoreh Deah* IV:61.8.

17. *Ibid.*

A-13: Chazan Starting with Chazarat HaShatz

Question: As we were finishing our silent *Shemoneh Esrei*, an *avel* came into *shul* and wanted to take over as *chazan*, without first *davening* his own silent *Shemoneh Esrei*. He *davened* until *Kedusha* and planned to continue silently, but people told him to continue *chazarat hashatz* out loud. What was the proper course of action?

Answer: The idea of a *chazan* starting *chazarat hashatz* without first reciting a silent *Shemoneh Esrei* is discussed in the *Shulchan Aruch*,¹ based on the *Kol Bo*.² In short, it can be done, but it is not ideal. Understanding why it is not ideal will help guide us as to how to proceed in different circumstances.

The *Mishna Berura*³ assumes that when the *Shulchan Aruch* permits the *chazan* to recite *chazarat hashatz* without a previous silent *Shemoneh Esrei*, he refers specifically to a case in which no one else is capable of serving as *chazan*. The *Mishna Berura* does not state why it should not be done otherwise.

The *Kol Bo* identified two issues in this context that we must address:

1) If this *chazan* is reciting *Shemoneh Esrei* for others (the *tzibbur* and/or one who cannot *daven* himself), how does the *chazan* fulfill his own personal obligation? The *Kol Bo* maintains that if the *chazan*'s *tefilla* helps others, it certainly works for himself; he therefore does not need to repeat *Shemoneh Esrei* after his *chazarat hashatz*. Despite this strong logic, the *Mishna Berura* may imply that this is true only after the fact (*b'di'eved*); it is better for the *chazan* to *daven* his own *Shemoneh Esrei* for himself, independent of *chazarat hashatz*.

1. *Orach Chayim* 124:2.

2. 27.

3. 124:4.

2) How can the *tefilla* that is also serving as a personal *Shemoneh Esrei* be recited out loud? Reciting a personal *Shemoneh Esrei* audibly is usually forbidden, because it makes the *davener* appear as though he does not believe that HaShem hears silent prayers.⁴ The *Kol Bo* answers that this is not a problem in this case, because the *chazan* is doing so due to pressing circumstances. However, the *Eliya Rabba*⁵ writes that this issue is enough reason for the *chazan* to avoid using the *chazarat hashatz* as his personal *Shemoneh Esrei* if better alternatives exist.

The *Magen Avraham*⁶ writes that the main problem here is based on the *gemara* in *Rosh Hashana*.⁷ The *gemara* states that the reason to have a silent *Shemoneh Esrei* even though people can fulfill the *mitzva* through *chazarat hashatz* is to give the *chazan* an opportunity to familiarize himself with what he will be reciting. Although this is not crucial for a standard *tefilla*,⁸ it is still a reason to prefer that the *chazan* not skip his silent *Shemoneh Esrei* and simply start with *chazarat hashatz*.

Is switching to the late-coming *chazan* justified because he is an *avel*? We did not find classical sources on this question. Among less-known *Acharonim*, *Birkat HaBayit*⁹ allows this practice within *shloshim* and on a *yahrtzeit*, but not during the rest of the year of *aveilut*. *Ishei Yisrael*¹⁰ writes that any *chiyuv*¹¹ of *aveilut* suffices.

Who should be the one to decide which opinion to follow? According to the *Eliya Rabba*, this is a question that relates to the propriety of the *chazan*'s personal *tefilla* (out loud), and it is

4. See *Berachot* 24b. See also response A-1 in this volume.

5. *Orach Chayim* 124:3.

6. 124:3; see *Machatzit HaShekel* ad loc.

7. 34b.

8. See *Shulchan Aruch*, *Orach Chayim* 100:1.

9. (Einhorn) 42:2.

10. 24:9.

11. Lit., an obligation. This refers to the preference that one who is in the period of mourning should serve as *chazan* and/or recite *Kaddish* in order to bring merit to the deceased.

thus up to him (or his *posek*) to decide. According to the *Magen Avraham*, however, the issue is the *chazarat hashatz*'s quality (without preparation), which is the *minyán*'s call.¹² Certainly, on a matter that is about no more than preference, we would not want the issue to cause discord, which we consistently urge to avoid when possible.

We surmise that your story occurred at *Mincha* (i.e., the *avel* was only a few minutes late), and this is the *Kol Bo*'s context as well. In this case, permitting the late-coming *chazan* to go straight into *Shemoneh Esrei*, preferably after reciting *Ashrei*, is straightforward. Regarding *Shacharit*, which is usually preceded by *P'sukei D'Zimra*, *Birchot Kri'at Shema*, and *Kri'at Shema* itself, if he was able to get up to *Ga'al Yisrael* on time, it is possible to do the same thing as we discussed regarding *Mincha*. Otherwise, there is additional reason to object to his serving as *chazan*, as it is problematic to start *Shemoneh Esrei* without the sections of *tefilla* that lead up to it.¹³

Regarding your question of continuing out loud after *Kedusha*, the sources clearly assume that the *chazan* will be doing so, as he “fills the shoes” of the *chazan* for *chazarat hashatz*. In any case, he has no justification to drag the *minyán* into a less than ideal *chazarat hashatz* (known as *Heiche Kedusha*) or worse.¹⁴ After all, there is not even an obligation to let an *avel* be *chazan*;¹⁵ assigning him *Kaddish* is enough. Therefore, once the *avel* has started *chazarat hashatz*, he definitely should not revert to “silent mode.”

12. See an interesting application in *Igrot Moshe, Orach Chayim* IV:33.

13. See *Bi'ur Halacha to Orach Chayim* 124:2.

14. Analysis is beyond our present scope. See Rama, *Orach Chayim* 124:2, and *Mishna Berura* ad loc. 6.

15. *Mishna Berura* 53:60.

A-14: Calling “Kohanim” to an Under-Age Kohen

Question: In our *minyan*, we sometimes have only one adult *kohen* and his son, who is under bar mitzva, performing *Birkat Kohanim*.¹ In that case, should we call out “Kohanim”?

Answer: The *halacha* upon which your question is based – that we call “Kohanim” before *Birkat Kohanim* only when there are multiple *kohanim* – is derived by the *gemara*² from the words of the *pasuk* in the context of *Birkat Kohanim*: “Say to **them**”³ (plural).⁴ Several *Acharonim* discuss whether this applies even to your case, when there are two *kohanim* but only one of them is a *gadol*.⁵

We must first examine a *katan*’s status with regard to *Birkat Kohanim*. A *mishna*⁶ states that a *katan* does not perform *Birkat Kohanim*, but a *gemara*⁷ implies that a *katan* does perform *Birkat Kohanim* from the time that he knows how to do so. The *Shulchan Aruch*⁸ reconciles the contradiction between these two sources by ruling that a *katan* may perform *Birkat Kohanim* along with *gedolim* in order to receive training.

The *Mabit*,⁹ apparently the first major *posek* to discuss our case, rules that we do not call out “Kohanim” when the only *kohanim* present are one *gadol* along with a *katan*. The *Mabit*

1. *Duchenen*.

2. *Sota* 38a.

3. *Bamidbar* 6:23.

4. See *Living the Halachic Process*, vol. VI, A-13, which discusses the impact of the calling of “Kohanim” on the obligation, and perhaps level, of the performance of the *mitzva*. While this can affect our question as well, further discussion is beyond our present scope.

5. A male after bar mitzva.

6. *Megilla* 24a.

7. *Sukka* 42a.

8. *Orach Chayim* 128:34, based on *Tosafot*, *Megilla* 24a.

9. I:64.

incorporates multiple reasons to arrive at this ruling. One of these reasons is fundamental: The Torah instructs us to prompt the *kohanim* regarding their **obligation** to do *Birkat Kohanim*, and a *katan* is not fundamentally obligated in the *mitzva*. Therefore, the one who calls out “*Kohanim*” relates only to those who are over bar mitzva. In our case, that would mean that the calling out of “*Kohanim*” would be for only one *kohen*, which is inappropriate.¹⁰ Another point the Mabit makes is that it is a disgrace to the *tzibbur* to call out to the *katan* to bless them,¹¹ as doing so reflects a position of dependency.¹² He adds that there is also a problem of *hefsek*¹³ if the *chazan* unnecessarily calls out *Kohanim* in the midst of *chazarat hashatz*.

Several *Acharonim*, including the *Magen Avraham*,¹⁴ accept the Mabit’s position. However, the *Pri Chadash*¹⁵ rules that we should call “*Kohanim*” in this situation; he is not bothered by the Mabit’s concerns. First, he argues that even if calling out “*Kohanim*” is our prompting of the *kohanim* regarding their obligation to do *Birkat Kohanim*, it is appropriate to include a young *kohen* in this prompting, since he is obligated in general to train himself in *mitzvot* in advance of adulthood.¹⁶ The *Pri Chadash* further posits that calling out “*Kohanim*” is not an actual charge to bless, but rather a technical instruction to the *kohanim* to turn around. There

10. A *katan* is obligated Rabbinically in many *mitzvot*. There is an implication in the Mabit that in the case of *Birkat Kohanim*, a *katan* is not obligated even on a Rabbinical level; a *katan* simply sometimes does it as practice. However, one can also read the Mabit as arguing that assuming the practice of calling “*Kohanim*” is a Torah-level law, the people subject to the call would be specifically those for whom there is a Torah-level obligation to do *Birkat Kohanim*.

11. Since calling out “*Kohanim*” would not be done without the young *kohen*, we cannot attribute it as referring specifically to the adult *kohen*.

12. See Rashi, *Megilla* 24a.

13. A problematic break.

14. 128:13.

15. *Orach Chayim* 128:13.

16. It is unclear whether he views the nature of the obligation and/or performance of the *mitzva* differently than the Mabit does or whether the disagreement is over the conditions necessary to call out “*Kohanim*.”

is thus no declaration of dependency entailed, and calling to even a young *kohen* is not a disgrace to the *tzibbur*. Although the *Pri Chadash* does not address the question of *hefsek* explicitly, he apparently reasons that once calling is generally appropriate at this juncture of *chazarat hashatz*, there is no problem of *hefsek*.

The majority of *Acharonim* hold like the Mabit and do not permit calling out “*Kohanim*” in this situation.¹⁷ However, several *Acharonim* raise a very pertinent distinction that relates to the prevalent *minhag* among Ashkenazim in this context. According to Sephardic custom, after concluding the *beracha* of *Modim*, the *chazan* recites only the word “*Kohanim*.” However, the Rama¹⁸ prefers the *minhag* that the *chazan* first says the short prayer of “*Elokeinu ... barchenu baberacha...*,” albeit differently in different scenarios. When there are no *kohanim* present, the entire recitation is said audibly; if there are multiple *kohanim*, the passage is said quietly, except for the word “*Kohanim*,” which is recited audibly; if there is only one *kohen*, the *chazan* recites the entire passage silently.¹⁹ Since the same words are said in any case, calling out “*Kohanim*” cannot cause a problem of *hefsek*. Many *Acharonim*, including the *Pri Megadim*,²⁰ *Mishna Berura*,²¹ and *Kaf HaChayim*,²² maintain that according to this *minhag*, there is no problem calling out “*Kohanim*” for one adult and one minor *kohen*. The question of *hefsek* is even more clearly not an issue according to the prevalent *minhag* in Israel that someone other than the *chazan* calls out “*Kohanim*.” Interestingly, the Mabit himself does not present the matter of *hefsek* as the main problem in this case; apparently, since it is the only issue that can be considered an actual halachic wrongdoing, these *Acharonim* view it as the only claim that must be overcome in order to allow

17. See *Kaf HaChayim*, *Orach Chayim* 128:64; *Yalkut Yosef*, *Orach Chayim* 128:18.

18. *Orach Chayim* 128:10.

19. See *Eliya Rabba* 128:24.

20. *Eshel Avraham* 128:13.

21. 128:38.

22. Op. cit.

calling the *kohanim*. This approach may be encouraged by the fact that according to the *Yerushalmi*,²³ it is always proper to call out “*Kohanim*,” even for only one *kohen*.²⁴

In summary, Sephardim should not call out “*Kohanim*” to one adult and one minor *kohen*.²⁵ Regarding Ashkenazim, if they indeed have the *minhag* to recite “*Elokeinu ...*” or if it is not the *chazan* who calls the *kohanim*, either practice can be justified, and it is difficult to claim a *minhag ha’olam* on a relatively uncommon case.²⁶

23. *Berachot* 5:4.

24. See *Eliya Rabba* op. cit.

25. *Yalkut Yosef, Orach Chayim* 128:9.

26. *VaAni Avarchem* 23:7 suggests that the *minhag* in Israel is not to call out “*Kohanim*” in our case.

A-15: Answering Unsynchronized *Birkat Kohanim*

Question: In my *shul*, one *kohen* regularly finishes each word of *Birkat Kohanim* after the others. When should I answer *amen*?

Answer: The *gemara*¹ states that the congregation should not answer *amen* before the *kohanim* have completed each *beracha*.² Is this *halacha* referring to waiting until all the *kohanim* have completed the *berachot*, or is a majority enough?

To answer this question, we must examine parallel contexts of waiting for a group of people to complete a recitation. The *gemara* cites Rav Chisda as saying that although one who makes the *beracha* over the bread at the start of a meal should not cut the loaf until those present complete answering *amen* to his *beracha*, he need not wait for a minority who unnecessarily stretch out their *amen* recitation.³ Similarly, the *Shulchan Aruch*⁴ rules that during *chazarat hashatz*, the *chazan* does not need to wait for a minority of the *tzibbur* who take an unnecessarily long time to answer *amen* to his *berachot* before moving on to the next one. The *Mishna Berura*⁵ writes that this rule is generally true about a series of *berachot*, except in the case of *berachot* that each member of the group has an obligation to hear. In that case, we need to wait for the last one to finish saying *amen* before going on, so that he will also hear the beginning of the next *beracha*.

Birkat Kohanim is a case in which the *kohanim* must wait for the entire congregation to finish answering *amen*, because everyone present needs to hear the *kohanim*'s full *berachot*.⁶

1. *Sota* 39b.

2. See *Shulchan Aruch, Orach Chayim* 117:13, 18; *Mishna Berura* ad loc. 79.

3. *Berachot* 47a.

4. *Orach Chayim* 124:9.

5. Ad loc. 38.

6. *Shulchan Aruch, Orach Chayim* 128:18; *Magen Avraham* 128:15; see *Sefer Charedim, Aseh* 4:18.

However, in our case, it is a *kohen* who is not finishing with the others, and it does not seem that there is a concern from the *kohen's* perspective if the *tzibbur*, and certainly a segment of the *tzibbur*, did not hear and respond to his entire *beracha*.⁷

Is there a problem from the congregation's perspective if their *amen* was premature with regard to the *beracha* of some of the *kohanim*? To answer this, we need to understand why the congregation must not answer *amen* to *Birkat Kohanim* too early.

The *B'er Sheva*⁸ writes that this is a simple application of a rule regarding all *berachot*. The *gemara*⁹ refers to an improper *amen* called an *amen chatufa*, which some maintain refers to answering before the *beracha* is completed.¹⁰ However, it is difficult to imagine that this problem would apply after most of the *kohanim* have finished the *beracha*, as the *amen* relates to the *beracha* of the majority, who have indeed finished, and it is thus not fundamentally too early.

The *Halachot Ketanot*,¹¹ in the context of *Kaddish*, discusses answering reciters who finish at different times. He writes that if they finish within *toch k'dei dibbur* (approximately 1.5 seconds) of each other, one can choose to answer either after the earlier or the later ones; if they are separated by more than that amount of time, one should answer both separately. The *Birchot Horai*¹² posits that the same is true for an unevenly finished *Birkat Kohanim*. However, he also cites Rav S.Z. Auerbach, without a specific citation or explanation, as instructing to wait until the later person is finished.

Should it make a difference that here there is a clear majority and the individual *kohen* who finishes late is an outlier? We have seen that we follow the majority regarding the end of

7. We do not find, for example, that each *kohen's* voice must be discernable.

8. *Sota* 39b.

9. *Berachot* 47a.

10. See *Shulchan Aruch, Orach Chayim* 124:8.

11. II:48, cited in *Mishna Berura* 55:4.

12. 9:(9).

the response of *amen* in the contexts of *HaMotzi* and *chazarat hashatz*. However, that is apparently because of the assumption that the majority, not the minority, is doing things correctly; if the majority is fast and the minority answers *amen* at a normal pace, one should wait for the minority.¹³ In fact, the main problem with an overly long *amen* is that stretching out that word distorts it.¹⁴ Regarding our case, if the *kohen* who is slower is going at a fine pace and is not distorting *Birkat Kohanim* by being slower, there is reason to presume that it would be better to wait for the last *kohen*.

The *kohanim* should ideally recite *Birkat Kohanim* in unison,¹⁵ although human beings cannot be expected to be exact. Thus, it is not ideal for one *kohen* to stretch out words significantly longer than his friends. The lack of conformity could arguably make the slower *kohen*'s recitation considered inappropriate and therefore make it preferable to follow the majority. However, such a determination, especially with the potential for hard feelings it could cause, cannot be made from a distance. It is also not appropriate for an **individual** congregant to "take a stand" by answering *amen* at a different time than others in a publicly discernable manner. Therefore, we would recommend to let those who are authorized handle matters and follow what others are doing about the timing of answering *amen*. Only if different people are answering *amen* at different times in any event would we recommend that you decide for yourself what to do by applying the nuances presented in our answer to your case.

13. *Bi'ur Halacha* to 124:9.

14. *Tosafot, Berachot* 47a.

15. See *Tosafot, Sota* 39b.

A-16: Stopping the *Kohen* Before the Second *Aliya*

Question: The *gabbai* did not realize that a *levi* was present in *shul*, and he therefore called on the *kohen* to get the second *aliya* in addition to the first one he had just received. As the *kohen* was starting the second *aliya*, the *levi* made his presence known. Was the *levi* supposed to replace the *kohen*?

Answer: The answer is that it depends how far the *kohen* has progressed in the second *aliya*. If he has already started the *beracha*, he continues it, but if he has not yet started it, then we switch to the *levi*. This *halacha* appears in the *Shulchan Aruch*,¹ both regarding your case as well as regarding the parallel case, when it is not realized that a *kohen* is present and a *yisrael* is mistakenly called for the first *aliya*.

The reason we switch the *olim* when we can is that giving a first *aliya* to a non-*kohen*² and giving a second *aliya* to the *kohen* who got the first one (in order to protect the reputation of the *kohen*³) are both exceptional scenarios that are avoided when possible. We will add that replacing the person who is poised to begin does not hurt him in any way. A *yisrael* who is passed up for a *kohen* never had claims to the first *aliya* to begin with; in addition, so as to not insult him, we keep him at the *bima* until we are able to give him the third *aliya*, which is the first one available to a *yisrael*.⁴ In the case of a *kohen* who has already had an *aliya*, he is simply being held back from getting a second one. Giving a *kohen* two *aliyot* is done only when there is no alternative, and the fact that he does not get the second *aliya* he was preparing for cannot be construed as our questioning his status as a *kohen*.

1. *Orach Chayim* 135:6-7.

2. *Ibid.* 4.

3. See *Shulchan Aruch* *ibid.* 8; *Mishna Berura* ad loc. 28.

4. *Shulchan Aruch* *ibid.* 6.

In the case in which the “wrong person” has already started his second *aliya*, the *halacha* is that he completes the *aliya*. We cannot stop him in the middle, because he would then have made a *beracha l’vatala*.⁵ Halachic decision-making often comes down to weighing and choosing between two less than ideal situations. In our case, causing a *beracha l’vatala* is a serious problem, whereas the concern that people will think that a *yisrael* was given the first *aliya* instead of a *kohen* because there is something wrong with the *kohen’s* lineage is not severe. After all, people can understand that the reason the *kohen* was not called was that he was temporarily unavailable or that he was accidentally overlooked.⁶ In such a case, we do not call up a *kohen* afterward for the second *aliya*, because taking that step would make the second *oleh* look like a non-*kohen*, as he would be getting an *aliya* after a *yisrael* already did, which a *kohen* is not supposed to get.⁷

In your case, if the *kohen* was not replaced after starting his second *aliya*, there is actually a bigger “sacrifice” that is being made to avoid the *beracha l’vatala*. Even though the *kohen* did not need to get the exceptional second *aliya*, we still count his second *aliya* toward the number of required *aliyot* and suffice with two people getting *aliyot* instead of the normal minimum of three.

A noteworthy point is the question of what is considered having “started the *aliya*.” The *Shulchan Aruch*⁸ rules that the correct person can replace the one who should not be receiving the *aliya* even after the latter recited *Barchu*. *Barchu* is not considered a “point of no return,” because when one commands the *tzibbur* to bless HaShem (which is *Barchu’s* role), and they do so (by answering “*Baruch HaShem HaMevorach...*”), that has

5. *Beit Yosef, Orach Chayim* 135, in the name of the Avudraham; *Mishna Berura* 135:20.

6. *Mishna Berura* *ibid.*

7. *Ibid.*

8. *Op. cit.* 6.

value independent of the *aliya*.⁹ According to most authorities, the correct person who takes over repeats *Barchu* before his *aliya*.¹⁰ Although some maintain that this is unnecessary,¹¹ it makes sense to follow the majority opinion, because reciting an additional *Barchu* is not a significant problem even if it is essentially unnecessary.¹²

Regarding the opening *beracha* itself, the *Magen Avraham*¹³ rules that until one has said HaShem's Name (the third word), it is permitted and correct to stop the *beracha* in order to transfer the *aliya* to the correct person. Once the *oleh* has said HaShem's Name, however, he must continue the *beracha* and therefore get the entire *aliya*. Although there is generally a remedy to end a *beracha* at that point by turning the *beracha* into the *pasuk* of "*Baruch ata HaShem lamdeini chukecha*,"¹⁴ this remedy is not perfect and is not deemed justified in this case.

There is an opinion that the above is true only when the correct person just entered, whereas if he was there to begin with but was simply not noticed, we would stop the *beracha* after three words and add "*lamdeini chukecha*."¹⁵ However, the consensus of *poskim* is to not make such a distinction.

9. *Mishna Berura* 135:21.

10. *Ibid*.

11. Including the *Aruch HaShulchan, Orach Chayim* 135:15.

12. *Kaf HaChayim, Orach Chayim* 135:39.

13. 135:8.

14. *Tehillim* 119:12.

15. *B'er Moshe* IV:18.



Section B:
Berachot (Blessings)



B-1: Responding to *Devarim Shebekedusha*¹ during One's *Beracha*

Question: What are the *halachot* regarding someone who is in the middle of saying a *beracha* (e.g., *Asher Yatzar*) when she hears *Kaddish* or *Kedusha*? May she answer in the middle of the *beracha*, or should she try to finish the *beracha* quickly enough to answer “*amen yehei shmeih rabba ...*”?

Answer: There are two basic reasons why one should not speak external matters during a *beracha*: the disgrace to the *beracha* as well as the mixing of words, which renders the *beracha* nonsensical.

The central responses of *Kedusha* (“*Kadosh...*”, “*Baruch k’vod...*”²) and *Kaddish* (“*amen yehei shmeih rabba*” and *amen* to “*...da’amiran b’alma*”³) are so important that one must stop and recite them even when he is in the middle of reciting *Kri’at Shema* or its *berachot*.⁴ This is based on the *mishna*’s statement⁵ that one may respond at these times to greetings extended by a distinguished person. Most *Rishonim* posit that responding to these public praises of HaShem is no less appropriate at that time than responding to a human being. If this is true during *Kri’at Shema* and almost any time other than during *Shemoneh Esrei*,⁶ then it is certainly not a disgrace to interrupt *Asher Yatzar* for such responses.

A complication arises, however, because answering can make

1. Holy prayers that require a quorum of ten men in order to be recited.

2. *Mishna Berura* 66:17.

3. *Ibid.*

4. *Shulchan Aruch, Orach Chayim* 66:3.

5. *Berachot* 13a.

6. *Shulchan Aruch, Orach Chayim* 104:7.

the *beracha* one is reciting nonsensical. The *Kesef Mishneh*⁷ writes that one does not answer “*amen yehei shmeih rabba*” during *birchot hanehenin* (on food) and *birchot hamitzva*. However, he does not specify why these *berachot* differ from others.

Some *Acharonim*⁸ posit that the distinction is between the short *berachot* of the *Kesef Mishneh*'s examples and the long *berachot* of *Kri'at Shema*.⁹ Short *berachot* are not more important than long ones, but they are more likely to be ruined by extraneous statements. As the *Ben Ish Chai*¹⁰ comments, a statement of “*Baruch ata ... melech ha'olam kadosh kadosh ...*” makes no sense. In addition, in the case of a short *beracha*, one is not simply interrupting one topic, switching to another, and then returning to the first; he is also detaching the opening of the *beracha* from the statement to which it is supposed to connect. This is particularly problematic, because one has already said HaShem's Name in *beracha* form. It is then forbidden to interrupt the recitation of the *beracha* even for the sake of answering *Kedusha* or *Kaddish*.

While there are no good places to stop in a short *beracha*, in a long *beracha*, there are some better and some worse places to break. The *Mishna Berura*¹¹ discusses the second half of *Baruch She'amar* (from “*Baruch ata...*”), which is a long *beracha* with a short “*beracha ending*” (“*Baruch ata HaShem melech mehulal batishbachot*”). He rules that one may not answer *Kaddish* and *Kedusha* after saying the final “*HaShem*” until he has completed “*batishbachot*.” *Ishei Yisrael*¹² applies this logic to the beginning of long *berachot* in general, forbidding one to answer *devarim shebekedusha* from the beginning of the first “*baruch ata HaShem*” until he has added on to the basic “*template*” a few words that create a coherent idea that gives the *beracha* some

7. *Tefilla* 10:16.

8. Including *Bi'ur Halacha* to 66:3; see also *Chayei Adam* I:5:13.

9. See *Tosafot, Ketubot* 7b.

10. I, *Shemot* 6.

11. 51:2.

12. 19:4.

significance.

Applying these concepts to your example of *Asher Yatzar* (which is a long *beracha*), it seems that after saying “*Baruch ... asher yatzar et ha’adam b’chochma*,” the *beracha* is significant,¹³ and one can then answer *Kaddish* and *Kedusha* until reaching HaShem’s Name at the *beracha*’s end.

We must further consider the case of one who is in the middle of reciting a long *beracha* and has said enough of it such that the opening is significant, and he now wishes to answer *Kaddish* or *Kedusha* in the middle of a phrase. The *Shulchan Aruch*¹⁴ rules that one should stop for *Kaddish* and *Kedusha* even in the middle of a *pasuk* of *Kri’at Shema*. There is a *machloket* regarding whether one may do so only at a logical pausing point in the *pasuk*.¹⁵ Whereas the *Mishna Berura* urges planning in advance to avoid this situation, he does allow stopping anywhere, if necessary, but he writes that after answering, one must return to the beginning of the *pasuk*. Applying this to the case of a long *beracha*, we would conclude that it is similarly proper to be at a good place mid-*beracha* to pause to answer, but if necessary, one can answer in the middle of a long *beracha* and then return to a place that makes the continuation coherent.¹⁶

Finishing the *beracha* quickly before answering is generally preferable. However, that is the case only if your *kavana* will not be significantly diminished as a result.

13. One arguing for stringency might claim the basic idea is complete only at “...*chalulim*,” but it does not seem that we require that level of completion.

14. *Orach Chayim* 66:3.

15. See *Mishna Berura* 66:10.

16. It is not proper to go back to the beginning of the *beracha*, because it is forbidden to repeat the *beracha*’s crucial parts that include HaShem’s Name when not necessary.

B-2: Doubt Whether One Recited *Birkat HaTorah*

Question: I usually recite the morning *berachot*, including *Birkat HaTorah*, on the way to *shul*. This morning, I was mentally preoccupied, and I have reason to suspect that I omitted *Birkat HaTorah*. My doubt arose when I came home, and I therefore asked my wife, who had not yet recited *Birkat HaTorah*, to do so aloud so I could answer *amen*. Can I assume I have fulfilled my obligation one way or another?

Answer: In general, when one has a doubt as to whether or not he is obligated in reciting a *beracha*, the rule is that he should not recite it. However, *Birkat HaTorah* may be different, as the *gemara*¹ cites the *pasuk*, “When I call out HaShem’s Name, give greatness to our God,”² as the source for the obligation. Given the **apparent** Torah-level of *Birkat HaTorah*, most *poskim*³ require reciting *Birkat HaTorah* when there is doubt.⁴ Some prominent opinions⁵ prefer that one not say *Birkat HaTorah* when he suspects he might have already recited it, due to the opinions that *Birkat HaTorah* is a Rabbinic obligation.⁶ However, the accepted opinion is that if there is no other option, one does recite *Birkat HaTorah* in a case of doubt. In such a case, one should suffice with just the second *beracha* (“*asher bachar banu*”).⁷

In your case, however, there is reason to assume that you likely have already fulfilled the *mitzva*. The *gemara*⁸ states that if one realized he did not recite *Birkat HaTorah* and it is now

1. *Berachot* 21a.

2. *Devarim* 32:3.

3. See *Sha'agat Aryeh* 24.

4. See *Mishna Berura* 47:1.

5. *Ibid.*

6. These opinions include the *Birkei Yosef*, *Orach Chayim* 47:8.

7. *Mishna Berura* op. cit.; see *Ishei Yisrael* 6:10.

8. *Berachot* 11b.

after *davening*, he is currently exempt from reciting the *beracha*, because he fulfilled the *mitzva* of *Birkat HaTorah* when he recited *Ahava Rabba* (the *beracha* before *Kri'at Shema*), which expresses our appreciation to HaShem for giving us the gift of Torah study. The *gemara* does not mention a need for special *kavana* in that *beracha* to thereby fulfill *Birkat HaTorah*. Thus, since you had completed *davening*, it would seem that you already fulfilled your obligation.

This is not entirely clear, however, as the *Yerushalmi*⁹ states that *Ahava Rabba* fulfills the obligation only if one learned directly after *Ahava Rabba*. Some maintain that *Kri'at Shema*, which is words of Torah, counts for this, whereas others require that one say words of Torah that are not part of the *davening*, although these can be recited right after *davening*.¹⁰ Unless you learned something not “*davening*-related” before you left *shul*,¹¹ your status would seem to depend on this unresolved *machloket*.¹²

There is likewise uncertainty regarding whether your wife’s *beracha* was helpful. The authorities agree that women are expected to recite *Birkat HaTorah*.¹³ This is surprising considering that women are exempt from Torah study,¹⁴ and Sephardi women do not recite a *beracha* on a *mitzva* in which they are not obligated.¹⁵ The *Beit Yosef*¹⁶ and *Magen Avraham*¹⁷ explain that women must recite *Birkat HaTorah* because they are required to learn how to perform the many *halachot* that apply to them and because there are Torah passages in their *davening*. The Gra¹⁸

9. *Berachot* 1:5.

10. See *Shulchan Aruch, Orach Chayim* 47:7-8, who does not resolve the matter.

11. See *Bi'ur Halacha* ad loc.

12. See *Ishei Yisrael* 6:(33), who posits that other factors make this matter more complex.

13. See *Shulchan Aruch* *ibid.* 14.

14. Rambam, *Talmud Torah* 1:13.

15. *Shulchan Aruch, Orach Chayim* 589:6.

16. *Orach Chayim* 47.

17. 47:14.

18. To *Orach Chayim* 47:14.

posits that women are not obligated in *Birkat HaTorah*, as they lack the ordinary obligation to learn Torah, but they still may and are expected to recite the *beracha* for their voluntary *mitzva* to learn. The *Bi'ur Halacha*¹⁹ notes that one ramification of these disputing explanations is whether women can recite the *beracha* for men and thereby fulfill their obligation. According to the Gra's approach, a woman's voluntary *beracha* cannot count for an obligated man.²⁰ According to the *Beit Yosef/Magen Avraham*, however, women are able to recite the *beracha* on a man's behalf, because women are also obligated in *Birkat HaTorah*. Whether your wife's *beracha* helped you thus depends, once again, on a *machloket*.

Depending on the exact circumstances, there is another strong reason for leniency in your case. Your routine of recitations before arriving at *shul*, which you apparently did perform at least to some extent, includes *Birkat HaTorah*. In the case of someone who is not sure if he said the correct rain-related recitation in *Shemoneh Esrei*, we assume he followed his norm and said what he usually does (which depends on how long he has been reciting the current text).²¹ This leads us to the working assumption that, unless we have strong enough reason to assume otherwise, you did recite *Birkat HaTorah*.

Furthermore, the *Mishna Berura*²² rules that if a person's doubt regarding whether he made a mistake arose only after *davening* is over, as opposed to close to the time of the possible mistake, he can assume he *davened* correctly. You began doubting yourself only after you went home, well after the omission might have taken place. Therefore, you may assume you did things properly (even if not with the usual level of concentration), unless you have a **conviction** to the contrary.

Putting all the indications together, you were not required to

19. To 47:14.

20. See *Rosh Hashana* 29a.

21. *Shulchan Aruch, Orach Chayim* 114:8.

22. Ad loc. 38.

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look for someone else to recite *Birkat HaTorah* on your behalf,
and you certainly should not recite it now yourself.

B-3: *Beracha Acharona* on Fruit of Non-Jews in Israel

Question: If I eat fruit grown in a field in Israel that is owned by a non-Jew, should I conclude the *beracha* of *Al HaEtz* with “*al hapeirot*” (on the fruits) or “*al peiroteha*” (on [the Land’s] fruit)?

Answer: The two versions of the *beracha* of *Al HaEtz* appear in the *gemara*.¹ The *gemara* initially states that in *chutz la’aretz*, one concludes with “*al peiroteha*” (on **its** fruit, i.e., that of *Eretz Yisrael*), whereas in *Eretz Yisrael*, one says “*al hapeirot*” (on **the** fruit – more generic). The *gemara* then argues that it does not make sense that those who do not eat *Eretz Yisrael*’s fruit (i.e., those in *chutz la’aretz*) are the ones who mention the connection of the fruit to the Land (“for the Land and its fruit”). The *gemara* therefore concludes that the opposite conclusion is correct: Specifically in *Eretz Yisrael*, one says *al peiroteha*, as fruit that grew in the Land is worthy of more prominent mention.²

The *Beit Yosef*³ cites a *machloket* between Rabbeinu Yona and the Rashba regarding whether *al hapeirot* or *al peiroteha* should be said on fruit that was grown in Israel but was eaten in *chutz la’aretz*. The Rashba, whose view is accepted by the *Shulchan Aruch*,⁴ infers from the above *gemara* that *al peiroteha* is not recited in *chutz la’aretz* only when one is eating fruit that grew in *chutz la’aretz*; if one eats fruit grown in Israel, one says *al peiroteha* even if he eats them outside of the Land.⁵

1. *Berachot* 44a.

2. See Rabbeinu Yona, *Berachot* 32a of the Rif’s pages.

3. *Orach Chayim* 208. Some understand Rabbeinu Yona differently; see *Eliya Rabba* 208:18.

4. *Orach Chayim* 208:10.

5. There is a minority opinion (*Admat Kodesh* I:3, which is not accepted by the *Mishna Berura* 208:52) that the deciding factor is whether the fruit are obligated in *terumot* and *ma’asrot*. (Fruit grown in *chutz la’aretz* can sometimes be obligated in *terumot* and *ma’asrot*; see *Shulchan Aruch*,

It is indeed a good question whether we view a non-Jew's field in *Eretz Yisrael* as part of the Land in this regard.

There is an important *machloket* regarding whether a non-Jew's acquisition of land in *Eretz Yisrael* uproots the laws that apply specifically to *Eretz Yisrael*.⁶ The halachic conclusion is not fully clear.⁷ There are further *machlokot* regarding different applications, including a critical one between Rav Yosef Karo⁸ and the Mabit⁹ about whether fruit that grows under a non-Jew's ownership during the *Shemitta* year in *Eretz Yisrael* has *Shemitta* status.¹⁰ The opinion of Rav Yosef Karo – that such fruit is not considered *Shemitta* fruit – is the more accepted one.¹¹ One might therefore claim that such fruit does not have *Eretz Yisrael* status regarding our question as well.

However, I have been unable to find any suggestions in classical texts or in rulings of more recent sources indicating a distinction between the fruit of Jewish-owned fields and non-Jewish fields in *Eretz Yisrael* regarding the question of whether to say *al hapeirot* or *al peiroteha*. This implies that one says *al peiroteha* even on fruit grown in non-Jewish fields. Indeed, the common practice seems to be to say *al peiroteha* on such fruit. There are some opinions¹² that *al peiroteha* is not recited on fruit from areas of *Eretz Yisrael* that lost *kedushat ha'aretz* with the Babylonian exile and were not restored to *kedushat ha'aretz* during the period of the Second Temple. However, not all agree,

Yoreh Deah 331:4, 12.) However, the more accepted explanation is that *al peiroteha* is said only for fruit grown in *Eretz Yisrael*.

6. This question is raised most prominently in the context of the *gemara* in *Gittin* 47a.

7. See Rambam, *Terumot* 1:10, and *Kesef Mishneh* ad loc.

8. *Avkat Rochel* 24.

9. *Shut HaMabit* I:11.

10. The main focus of their *machloket* is the question of whether fruit is obligated in *terumot* and *ma'asrot* during *Shemitta* when a Jew obtains the fruit at an early stage (i.e., before *meru'ach*).

11. See *Shabbat HaAretz* (R. Kook), *Mavo* 15.

12. See opinions in *Birkei Yosef*, *Orach Chayim* 208:11, and *Kaf HaChayim*, *Orach Chayim* 208:59.

given that these areas remained part of *Eretz Yisrael* regarding many spiritual matters.¹³ HaShem gave these areas to us, they will return to our full control, and, according to most, we still presently have a *mitzva* to live there.¹⁴ Moreover, our question is about areas that have retained their *kedusha* from the time of the Second Temple; an individual field in one such area was simply bought by a non-Jew. Such land is fully part of *Eretz Yisrael*, even according to those who maintain that it loses some status, and its status is restored as soon as a Jew buys it back.¹⁵

Therefore, even though in cases of doubt it is better to say *al hapeirot*,¹⁶ the common practice to say *al peiroteha* on fruit of *Eretz Yisrael* even from non-Jewish fields is logical and should be followed.

13. See *Shabbat HaAretz* op. cit.

14. See *ibid.*; *Encyclopedia Talmudit, Yeshivat Eretz Yisrael*, notes 28-29.

15. See Rambam op. cit.

16. Mishna Berura 208:54.

B-4: *Al HaMichya* on a Fruit

Question: I ate a fruit that requires the *beracha acharona* of *Al HaEtz* but, due to lack of concentration, I mistakenly recited *Al HaMichya*. Should I have subsequently recited *Al HaEtz*?

Answer: The answer depends on which fruit you ate. Before we explain this answer, we will begin by summarizing the *Levush*'s¹ overview of the various *berachot acharonot* and of what to do if one recited the incorrect one.

Birkat HaMazon is a Torah-level obligation,² prescribed by the Torah for bread, which is both filling and the staple of a classic diet. The Rabbis established a *Birkat HaMazon*-style *beracha* (*Me'ein Shalosh*) for the seven foods for which *Eretz Yisrael* is praised, which are mentioned in the *p'sukim*³ around the *pasuk* about *Birkat HaMazon*. (There are opinions that the *Me'ein Shalosh beracha* is also a Torah-level obligation.⁴) Within the versions of *Me'ein Shalosh*, the highest level (and thus the first mentioned when one makes a *beracha* on multiple *Me'ein Shalosh* foods) is *Al HaMichya*, because it is recited after eating grain-based foods, which are generally more filling than fruits. *Al HaGefen* for wine is next in importance, followed by *Al HaEtz* for grapes, figs, pomegranates, olives, and dates.

The *Levush* maintains that it is obvious that a lower-level *beracha* is insufficient for a food that requires a higher-level one. Additionally, a higher-level *beracha* does not cover foods that call for lesser praise, because an exaggerated *beracha* is not valid. Thus, for example, reciting *Birkat HaMazon* for fruits and vegetables, as if they constituted a meal, is invalid, and *Borei Nefashot* must still be said afterwards.

1. *Orach Chayim* 208:17.

2. See *Devarim* 8:10.

3. *Ibid.* 8.

4. *Tur, Orach Chayim* 209.

Two exceptions to this rule are dates and wine. The *gemara*⁵ states that if one recited *Birkat HaMazon* after eating dates, he has fulfilled his obligation of reciting a *beracha acharona*, because dates are particularly filling. Another *gemara*⁶ states similarly that wine is filling and would have required *Birkat HaMazon* if not for the fact that people rarely make it the basis of a meal. Accordingly, the *Shulchan Aruch*⁷ rules that *Birkat HaMazon* is valid *b'di'aved* for dates and wine. However, all other foods that require *Me'ei Shalosh* are not exempted by a *Birkat HaMazon* that was recited on them outside the framework of a meal with bread.⁸

What if one mistakenly recited *Al HaMichya* instead of *Al HaEtz* (or *Al HaGefen*)? The *Levush*⁹ assumes that regarding dates and wine, if *Birkat HaMazon* is not too much of an exaggeration, then certainly *Al HaMichya* is not either, and one would not have to repeat *Me'ei Shalosh*. However, the *Taz*¹⁰ disagrees. He argues that *Birkat HaMazon* includes the word “zan” (roughly, sustain), which is appropriate for dates and wine, whereas “*michya*” (roughly, food that gives life) refers to a different quality of a food, which does not apply to them. The *Eliya Rabba*¹¹ further raises the possibility that the fact that the *halacha* of fulfilling the *beracha* on dates with the wrong *beracha acharona* was said specifically with regard to *Birkat HaMazon* implies that *Al HaMichya* is invalid even after-the-fact. However, the majority of *Acharonim* assume that if one recited *Al HaMichya* for dates or wine, he does not need to make another *beracha acharona*.¹² Since the general rule is that when in doubt, one does not make a

5. *Berachot* 12a, as understood by *Rishonim*; see *Beit Yosef, Orach Chayim* 208.

6. *Ibid.* 35b.

7. *Orach Chayim* 208:17.

8. *Ibid.*

9. *Op. cit.*

10. *Orach Chayim* 208:16; see *Pri Megadim ad loc.*

11. 208:26, based on *Malbushei Yom Tov* 208:11.

12. See *Minchat Shlomo* I:91; *V'Zot HaBeracha* p. 48.

beracha, this is certainly the proper ruling to adopt here.

The question of *Al HaMichya* sufficing for dates and wine is much more complicated when one ate both grains and dates or wine, and he said *Al HaMichya* without also mentioning the other element. In that case, we may assume that the person, in omitting the other elements, demonstrated that he did not remember the need to have the *beracha* cover them. While there are differing opinions on this matter,¹³ the stronger view in that case is to repeat *Me'ein Shalosh* with just the missing element.¹⁴

The clear consensus is that one does not fulfill his *beracha acharona* obligation on grapes, figs, pomegranates, and olives with *Birkat HaMazon*¹⁵ or *Al HaMichya*.¹⁶ Therefore, one should repeat the *beracha acharona* with the correct text.

13. Including *Kaf HaChayim, Orach Chayim* 208:76; see also *Dirshu Mishna Berura* 208:76.

14. See discussion in *Har Tzvi, Orach Chayim* I:105; *Minchat Shlomo* op. cit.

15. See *Shulchan Aruch, Orach Chayim* 208:17.

16. *Levush* op. cit.

B-5: Joining an Imperfect *Tefillat HaDerech*

Question: When I go on bus tours, the tour guide often has someone recite *Tefillat HaDerech*, to which everyone answers *amen*, before we leave the city limits of Yerushalayim. I thought *Tefillat HaDerech* is supposed to be recited after you have left the city. Should I answer *amen* when the *tefilla* is recited ostensibly at the wrong time? Should I say it myself at the right time? Also, on a one-day trip, if the person who says *Tefillat HaDerech* leaves out the phrase “*v’tachzireinu l’shalom*,” should I repeat the *tefilla* on my own with that phrase?

Answer: The *gemara*¹ asks what the earliest time to recite *Tefillat HaDerech* is, and it answers, “from the time he **seizes** the road.”² The *Magen Avraham*³ explains that this means after the traveler leaves the city and comes to a place that is beyond any string of peripheral houses 70 *amot* from each other.⁴

In contrast, the *Taz*⁵ writes that there is no classical source for waiting until after leaving the city; the *gemara* about “seizing the road” means that one must simply be certain he will be embarking on the journey. In fact, the *Tur* and *Shulchan Aruch*⁶ cite the practice of the Maharam MeRotenburg to connect *Tefillat HaDerech* to *Birchot HaShachar*.⁷ The *Taz* understands that this

1. *Berachot* 30a.

2. There are different versions of this line, and it is difficult to translate this phrase literally.

3. 110:14; see *Machatzit HaShekel* ad loc.

4. Determining which specific roads out of Yerushalayim fulfill this qualification, as well as the discussion of whether the rules for the city limits are the same as for *eiruv techumin*, is beyond our present scope; see *Machatzit HaShekel* *ibid*.

5. Ad loc. 7.

6. *Orach Chayim* 110:6.

7. Since *Tefillat HaDerech* begins as an “open *beracha*” (i.e., without the words “*Baruch ata ...*”), it is preferable to have it follow a previous *beracha*.

is done during the *Shacharit* before the trip, before leaving the city. However, others, including the *Eliya Rabba*,⁸ offer a different understanding of the Maharam, arguing that he connected *Tefillat HaDerech* to *Birchot HaShachar* only when he davened **during** his trip.

The *Shulchan Aruch*⁹ connects *Tefillat HaDerech* to the *beracha* said upon leaving the city one was visiting. The *Pri Megadim*¹⁰ views this as an indication that according to the *Shulchan Aruch*, *Tefillat HaDerech* should be recited right after leaving the city, even before passing the peripheral houses.

The *Mishna Berura*¹¹ prefers the *Magen Avraham*'s approach of waiting until leaving the city, and you are therefore likely correct that people in your tour groups sometimes recite *Tefillat HaDerech* inadvisably early. However, nearly all *Acharonim* agree that one fulfills his obligation *b'di'eved* if he recites the *beracha* at least after preparing to leave.¹² Therefore, the *beracha* is not *l'vatola*, and you may and should answer *amen*.¹³

We will add that it is logical to argue that in our day, *Tefillat HaDerech* should *l'chatchila* be recited earlier than it once was. After all, in the past, the main safety concerns were being attacked by bandits and animals, which were more prevalent outside the city, whereas nowadays, our primary concern is car accidents, which can happen anywhere. On the other hand, it is difficult to change long-established halachic rules based on such a factor.¹⁴

One could argue that it would be best for you to answer *amen* but have in mind not to be *yotzei*, and then to later say *Tefillat HaDerech* yourself at the preferable time. However, besides possibly leading to awkwardness, you might lose out by doing so.

8. 110:14.

9. *Orach Chayim* 230:1.

10. *Orach Chayim, Mishbetzot Zahav* 110:7.

11. 110:29.

12. *Eliya Rabba* op. cit.; *Mishna Berura* op. cit.

13. See *Shulchan Aruch, Orach Chayim* 215:2.

14. See the discussion of an application of the impact of changing times in *Shevet HaLevi* X:21.

One advantage of saying the *beracha* relatively early is that Rashi¹⁵ presents a view that one **must** say *Tefillat HaDerech* within the first *parsa* (approximately 4 km) after leaving the city, and this view is partially accepted by the Rama.¹⁶ Thus, if you do not act quickly and say *Tefillat HaDerech* quite early during the trip, it is possible you will miss the opportunity to recite it according to this opinion. Thus, simply being *yotzei* with everyone else is actually worthwhile.

There is no reason for concern if the person reciting *Tefillat HaDerech* omitted the phrase “*v’tachzireinu l’shalom.*” This phrase (different *siddurim* have variations) is mentioned for **all trips** by some *Rishonim*¹⁷ and is not mentioned at all by others.¹⁸ Although it is indeed quite accepted in contemporary practice to add this phrase specifically if one plans to return home the same day, this distinction first appears only in certain *Acharonim*. Therefore, one need not be concerned that the validity of the *beracha* is affected by omitting it.¹⁹

15. *Berachot* 30a.

16. *Orach Chayim* 110:7.

17. Rosh, *Berachot* 4:18.

18. See *Kaf HaChayim*, *Orach Chayim* 110:13.

19. *Ishei Yisrael* 50:(3).

B-6: A *Beracha* on Building a Rooftop Fence?

Question: The investment team I am part of is renovating a building that we own. This includes making the building's roof usable for tenants. The roof already has a fence (*ma'akeh*), but we have contracted a non-Jewish company to replace the existing fence with a new one. Can I make a *beracha* on the new fence even though non-Jews are installing it? Does one make a *beracha* on a fence that replaces a previous one?

Answer: We will begin with the bottom line: You should **not** make a *beracha*. You have already identified some of the several doubts about the appropriateness of a *beracha* in this case. One does not make a *beracha* unless there is a strong likelihood that it is called for (*safek berachot l'hakel*), and that is not the case here. We will now take a brief look at some of the indications on various doubts.

There is a *machloket Rishonim* regarding whether one ever makes a *beracha* on the *mitzva* of *ma'akeh*. The arguments against making a *beracha* include the following: The *mitzva* is performed to remove danger, rather than as a classic positive *mitzva*; it is *mitzva* that is rooted in natural logic;¹ and there is a concern that the one building the *ma'akeh* will not carry through and actually complete it. Nevertheless, despite the principle of *safek berachot l'hakel*, there is enough of a consensus of *Rishonim* and *Acharonim* to justify reciting a *beracha* on this *mitzva* in general.²

Your case differs, however. First, you indicate that there are other investors. The *mitzva* of *ma'akeh* indeed applies even when the property is co-owned.³ However, not all agree that this is true

1. See *Teshuvot V'Hanhagot* II:725

2. See *Yalkut Yosef, Sova Semachot, Ma'akeh* 22.

3. *Chulin* 136a; *Shulchan Aruch, Choshen Mishpat* 427:3.

when the partners include non-Jews,⁴ and the *Birur Halacha*⁵ claims that this doubt is enough reason to not make a *beracha* in such a case.

Moreover, it appears that before you got involved, there were already people renting apartments in the building. In that case, if there were some Jewish renters, the tenants were obligated in building the *ma'akeh*.⁶ The *Minchat Chinuch*⁷ writes that although renters are obligated, the landlord might also be obligated; however, others say that the Rabbis uprooted the *mitzva* from the landlord and applied it specifically to the renters. According to the latter opinion, although you could argue that the renters are making you an agent for building the *ma'akeh*, it is still not obvious that, if there were a *beracha*, you would be the one to make it.

You further note that non-Jewish workers will be the ones who actually build the new *ma'akeh*. A non-Jew is not able to serve as a halachic agent, certainly with regard to performing *mitzvot* on behalf of a Jew.⁸ Therefore, your non-Jewish workers' actions ostensibly cannot fulfill the *mitzva* on your behalf. It is not that the *ma'akeh* is invalid and must be redone if built by a non-Jew,⁹ as the fact that there is no longer any danger is sufficient. However, a *beracha* – as well as much of the positive *mitzva* opportunity¹⁰ – would seem to be missing.

On the other hand, the *Machaneh Ephrayim*¹¹ writes that if the non-Jew is one's salaried worker, we apply the rule that “the

4. See *Shach*, *Choshen Mishpat* 427:2.

5. (Y.A. Zilber), *Even HaEzer-Choshen Mishpat* p. 249.

6. *Bava Metzia* 101b.

7. #546

8. *Kiddushin* 41b.

9. *Yalkut Yosef* op. cit. (14).

10. There are both positive and negative commandments fulfilled by the erecting of a fence (see *Devarim* 22:8 and *Sefer HaChinuch*, *mitzva* 546-7). The negative aspects are generally fulfilled when the danger no longer exists, irrespective of who changed the situation (see *Minchat Chinuch* #546).

11. *Shluchin* 11.

worker's hand is like the employer's hand."¹² This enables the Jewish homeowner to fulfill his *mitzva* through his non-Jewish employees' actions, making the *beracha* appropriate.

However, many *Acharonim* reject the *Machaneh Ephrayim's* thesis. Their main argument is that the rule that a worker is considered like his employer does not apply to a non-Jew's performance of *mitzvot* on behalf of his Jewish employer. This is the stronger position.¹³ Certainly, there is enough doubt to make a *beracha* uncalled for in such a case.¹⁴ Furthermore, the *Pitchei Teshuva*¹⁵ writes that the *Machaneh Ephrayim's* thesis applies only to salaried workers and not to contractors (which is probably the status of the workers in the situation you are discussing).

The fact that the fence will replace an existing one raises an interesting question. There is discussion regarding whether a person who switches one *mezuzah* scroll for another should make a new *beracha*,¹⁶ and there are similar discussions regarding *tzitzit* and *tefillin*. There are significant similarities between the cases, but also possible distinctions.¹⁷ The matter may also depend on how long the interim period with no functioning *ma'akeh* will be or on whether the roof required a *ma'akeh* before renovations make the roof more accessible.

Given all of these various reasons why a *beracha* may not be needed, you definitely should not make one.

12. *Bava Metzia* 10a.

13. See discussion in *S'dei Chemed*, vol. VI, p. 311.

14. *Yabia Omer* IX, *Choshen Mishpat* 10.

15. *Choshen Mishpat* 427:1.

16. See *Yabia Omer* III, *Yoreh Deah* 17.

17. See *Avnei Shlomo* (Bloch) p. 41.



Section C:

Shabbat



c-1: LED Shoes for Children on Shabbat

Question: On Shabbat, may a child wear shoes that have lights (LED) in the soles that light up when he walks?

Answer: The consensus among the *poskim* is that activating light-emitting diodes (LEDs) on Shabbat is not a Torah-level prohibition, but a Rabbinic-level one.¹ The way LEDs work is that one connects a circuit, and light is thereby emitted (by the transfer of electrons through junctions of semi-conductors). It is not simple to pinpoint what Rabbinic injunction is violated by such action (in cases in which the diodes do not form letters or pictures²). Some maintain that any activity that creates electric circuits is prohibited as *molid* (creating something new),³ even though there is no explicit Talmudic precedent of *molid* of this sort.⁴ Other authorities discuss a prohibition of creating or fixing the electric device.⁵

In the case of a child's shoes, there are various grounds for leniency. One point is that despite the initial excitement of watching himself light up his shoes, a child eventually walks without even thinking about the lights, making this, on a certain level, a *davar she'eino mitkaven* (an unintended violation). Since, regardless of intention, the lights definitely will go on, this is a case of *p'sik reishei*, in which one wishes to perform a permitted act (e.g., walking) but a forbidden result (e.g., activating LEDs on Shabbat) will **definitely** occur. While *p'sik reishei* is

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1. There is no hot filament in a LED diode. Furthermore, one is not connecting wires that are related to building, and one is not creating a new instrument, but rather simply using an existing one.
 2. See discussion in *Orchot Shabbat* 15:(55).
 3. *Beit Yitzchak*, in a note in the index of *Shut Yoreh Deah*, vol. II.
 4. See that objection in *Tzitz Eliezer* I:20:10.
 5. See summary in *Encyclopedia Talmudit*, entry “*chashmal*”; *Minchat Shlomo* I:9.

forbidden,⁶ the *Terumat HaDeshen*⁷ rules that if the violation that will occur without intention is only a Rabbinic one, even a *p'sik reishet* is permitted. Although we accept the opinion of the *Magen Avraham*,⁸ who forbids *p'sik reishet* even if it entails only a Rabbinic prohibition,⁹ the fact that some permit it is still a mitigating factor.¹⁰

Within the realm of *p'sik reishet*, there are possible distinctions. The *Aruch*¹¹ rules that if the person who performs the *p'sik reishet* has no interest in the forbidden result (*d'lo nicha lei*), it is permitted. Although the *Aruch*'s opinion is not generally accepted,¹² there are quite a few opinions that maintain that a *p'sik reishet d'lo nicha lei* on a Rabbinically forbidden result is permitted.¹³ While many are stringent despite the multiple grounds for leniency, in cases in which refraining from the matter at hand causes particular hardship, it is quite accepted to be lenient.¹⁴ Thus, if an adult were to ask about wearing the LED shoes you describe, we would not allow him to do so in the absence of a special need, but this strict ruling would not be a definite one if he did not care at all about the lights.

When we turn to the question of a child wearing such shoes, the situation becomes much more lenient. If the child is a toddler, who is too young for his parents to train in any serious way about observing Shabbat, they are not obligated to distance him from violations of Shabbat. On the other hand, it is prohibited for them to actively facilitate the prohibition for the child by “feeding

6. *Shabbat* 75a.

7. I:64.

8. 314:5.

9. See *Mishna Berura* 314:11.

10. See *Yabia Omer* I, *Orach Chayim* 19.

11. Cited by the *Beit Yosef*, *Orach Chayim* 320.

12. *Shulchan Aruch*, *Orach Chayim* 320:18; see *Mishna Berura* 320:53, who writes that all agree with the *Aruch* that there is no Torah prohibition regarding *p'sik reishet* on *Shabbat*, on which a violation must entail a *melechet machshevet*.

13. Including *Yabia Omer* V, *Orach Chayim* 28.

14. *Orhot Shabbat* 30:5.

him by hand” or the like (and putting shoes on him is certainly considered active facilitation).¹⁵ The Rashba and the Ran rule that this prohibition does not apply to “feeding him” Rabbinic prohibitions.¹⁶ Although the *Shulchan Aruch*¹⁷ does not accept their opinion, many are lenient in certain cases of need,¹⁸ at least with regard to small children.¹⁹ In the case of an action that is not even unanimously agreed to be forbidden for an adult, such as walking in these shoes without interest in activating LED lights, it is much easier to be lenient for a child. If the child is old enough to be trained in the *halachot* of Shabbat, it is somewhat more difficult to permit such shoes, but if he wears them of his own volition, there is additional room to argue that one need not stop him.²⁰

We will emphasize, however, that despite all the technical grounds for leniency, it is very much not in the spirit of Shabbat to have a child wear such shoes, and it therefore generally should **not** be done. That being said, if a one-time, unique situation arises in which these are the only shoes a small child is able to wear, and the child does not think about activating the lights, it is possible to combine the different indications for leniency to allow him to wear such shoes (and, if necessary, to even put them on for him).

15. *Shulchan Aruch, Orach Chayim* 343:1; *Mishna Berura* ad loc. 4.

16. See *Beit Yosef, Orach Chayim* 343.

17. *Orach Chayim* 343:1.

18. See *Bi'ur Halacha* to 343:1.

19. *Orchot Shabbat* 24:(32).

20. In most cases, the child will know his parents’ policy on the matter, making it unlikely that it could be considered that he is doing so independent of his parents’ input.

C-2: Garbage Disposal on Shabbat

Question: The garbage collection in my neighborhood takes place on Shabbat. Is moving the garbage can from near the house to the street so that the crew will take it a problem of *amira l'nochri* (asking a non-Jew do *melacha*¹ for me on Shabbat), or is there a basis for leniency?

Answer: First we will investigate your assumption that the sanitation workers perform *melacha* for individual homeowners on Shabbat.

The workers carry the garbage four *amot*² in a public domain and then deposit it into a private domain (the truck), but this constitutes a *melacha* only if there is no *eiruv* in the neighborhood. Regarding the operation of the truck, in many cases, no part of this operation is performed specifically for you or other Jews; the workers would perform the same actions even if none of the Jews in town put out their garbage.³ However, handling the garbage is a (Rabbinic) violation of *muktzeh*. Although it is often permitted to take garbage out of the house on Shabbat, that leniency is based on the need to remove a bad smell,⁴ which, while important inside a house, is rarely a significant need once the garbage is outside.

If we assume that it is forbidden for a Jew himself to throw garbage into the garbage truck on Shabbat, may non-Jewish workers do so for him? A potential factor for leniency is that the Jewish homeowners do not request – and in this case, presumably do not even care – if the sanitation crew comes specifically on Shabbat.⁵ (This might not be true if they have not come for several days, if they never work after sunset or on Sunday, or if

1. Activity that is forbidden on Shabbat.

2. Approximately six feet.

3. There is much more to say on this matter, but it is not likely to affect the answer to this particular question.

4. See *Orchot Shabbat* 19:346.

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

residents would have significant hardship or complaints if they did not come on Saturday. In those cases, it **might** be implicit that the Jewish residents are requesting that they come on Shabbat.⁶)

However, this leniency helps only if the work the crew is doing at that time is halachically considered performed for their sake, not for yours. This condition is most commonly fulfilled when the worker is paid per job (*kablan*), in which case we consider the situation as one in which he is doing the work in order to receive the money to which the results entitle him.⁷ If, however, he is paid by the day or by some other unit of time (*po'el*), he is considered to be paid in order to fulfill the Jew's requests, whether explicit or implicit, which is forbidden.⁸

Categorizing the status of a sanitation crew is not simple. They are presumably paid by the day/month (*po'el*), and not, for example, by the amount of garbage they remove. On the other hand, perhaps we should consider the relationship between the homeowners and the municipality. The homeowners pay (usually through municipal taxes) for a host of services, including garbage disposal, which makes the municipality *kablanim*. The sanitation workers are working directly for the non-Jewish municipality, not for the homeowners, and the workers' pay scheme is therefore irrelevant. In addition, one can possibly consider the sanitation workers *kablanim* on different grounds. The *Shulchan Aruch*⁹ rules that a long-term worker whose responsibility is to perform one specific job is equivalent to a *kablan*. This is the situation in our case, provided the employer does not mind if the worker takes off days here and there as long as the job gets done.

One can argue that it is forbidden for the non-Jew to work for a Jew on the Jew's property due to *marit ayin*,¹⁰ as people will

6. See *Mishna Berura* 307:15, who equates this to telling the non-Jew to work specifically on Shabbat.

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

8. *Mishna Berura* 252:14, based on *Avoda Zara* 21b; see *Tosafot* ad loc.

9. *Orach Chayim* 244:5; see *Mishna Berura* ad loc. 24.

10. *Shulchan Aruch, Orach Chayim* 252:2.

think he is violating Shabbat.¹¹ However, people usually put the garbage cans in the public domain before pickup. One might argue that this is a technicality, as the workers are still clearly doing work for the homeowner. However, since everyone knows that the homeowner has no special arrangement with the crew, and the general setup is permitted, *marit ayin* is not a problem.¹² We are also not supposed to have non-Jews take things on Shabbat from a Jew's house, even when there is no intrinsic violation.¹³ However, this too is due to *marit ayin* issues,¹⁴ which should not apply here.

With regard to the Jew's action of moving the garbage to the curb on Shabbat, there is more to say on this than we can discuss in this context. However, as mentioned, in standard cases, there will be a problem of *muktzeh*. Therefore, we would clearly recommend to simply take the garbage out to the curb before Shabbat.

There are similar analyses of the topic in *Minchat Yitzchak*¹⁵ and *Teshuvot V'Hanhagot*.¹⁶ Note that we have simplified several nuances in these matters. The bottom line is that in standard cases, it is permitted to put out the garbage before Shabbat even when the pickup will be on Shabbat.

11. See *Mishna Berura* 252:17.

12. See *ibid*.

13. See *Shulchan Aruch, Orach Chayim* 252:1.

14. See *Mishna Berura* ad loc. 9.

15. V:105.

16. I:278.

c-3: A Child Riding a Bicycle on Shabbat

Question: May a child ride a bicycle on Shabbat in an area that has an *eiruv*?

Answer: When bicycles first became popular, many *poskim* discussed their use on Shabbat. Almost all forbade it, for one or more of the following reasons: 1) *Uvdin d'chol* – Riding a bicycle is a weekday-like activity, as, among other reasons, it is a mode of transportation that takes people to many places for purposes not appropriate on Shabbat.¹ 2) Bicycles often require repairs that are forbidden to perform on Shabbat, and a rider might mistakenly perform them, forgetting that they are forbidden.² 3) One might possibly ride outside the *techum Shabbat* (boundaries of travel outside the city).³ 4) When riding on soft ground, the bicycle wheels make grooves.⁴

Although Rav Yosef Chayim of Baghdad⁵ dismissed these issues and permitted riding a bicycle on Shabbat, the consensus of both Ashkenazi⁶ and Sephardi *poskim*,⁷ and the general *minhag*, is to forbid it. (Some say that Rav Yosef Chayim himself later changed his mind and prohibited it.) In theory, Rav Ovadia Yosef did not consider any of the halachic issues formidable, but he agreed that it is proper to refrain from riding a bicycle on Shabbat.⁸ The increasing popularity of electric bicycles likely makes riding any type of bicycle even more problematic (although one could

1. See *Tzitz Eliezer* VII:30.

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

3. *Kaf HaChayim*, *Orach Chayim* 404:8; *Tzitz Eliezer* *op. cit.*

4. *Shut Rav Azriel Hildesheimer* I, *Orach Chayim* 49.

5. *Rav Pe'alim* I, *Orach Chayim* 25.

6. See *Shemirat Shabbat K'Hilchata* 16:17.

7. See *Kaf HaChayim*, *Orach Chayim* 404:8.

8. See *Yabia Omer* X, *Orach Chayim* 55.29.

make the opposite claim as well).⁹

Your question regarding children riding bicycles deserves special consideration on a number of grounds. First, most of the reasons to forbid bicycle-riding on Shabbat apply less to a child, especially to a young one. Such a child uses a bicycle as recreation, which is harder to classify as *uvdin d'chol*. In addition, a child is arguably less likely to leave the city on his bicycle or to fix it when it breaks.

Furthermore, when the accepted practice is to follow the stringent opinion regarding a particular practice, but there are strong grounds to claim that the practice is in truth permitted, there is halachic precedent for being lenient regarding children. For example, Rav Ovadia Yosef suggested that children might be allowed to wait less than six hours between meat and milk,¹⁰ and he allowed them to eat cheese produced by a non-Jew without supervision in a case of need.¹¹ Similarly, some authorities permitted feeding children certain foods on Pesach that adults refrain from due only to a stringency on a question of *chametz*.¹² The *Beit Yosef* makes a statement along similar lines.¹³

We have seen that there is at least one important *posek* who permitted bicycle-riding on Shabbat for adults, and others have implied that although the *minhag* is not to ride them, this is probably only a stringency. This makes the question of bicycles for children a good candidate for leniency.

Contemporary *poskim* do take this approach, but only partially. *Shemirat Shabbat K'Hilchata*¹⁴ writes that, except in places where the *minhag* is to be stringent, children may ride tricycles, but not bicycles. He cites two distinctions between the two: 1) Tricycles' wheels do not have an inflatable tube, and one of the reasons to

9. Analysis is beyond our present scope.

10. Ibid. I, *Yoreh Deah* 4.

11. Ibid. V, *Yoreh Deah* 11.

12. *Sdei Chemed*, vol. VIII, p. 238.

13. *Orach Chayim* 269.

14. Op. cit.

forbid bicycles on Shabbat is the propensity of their inflatable tubes to require fixing. 2) A tricycle is clearly a form of recreation, as opposed to being a vehicle of serious transportation.¹⁵ It is likely that the *Shemirat Shabbat K'Hilchata* also factored in the fact that compared to the average bicycle rider, tricycle riders are usually much younger, which, as we noted above, makes leniency more appropriate on multiple grounds.

In summary, conventional Orthodox wisdom has determined that bicycles are forbidden on Shabbat – period. Therefore, we are not open to leniency based on age alone. However, in the separate but related case of tricycles, *poskim* have added up the halachic indications in a manner that permits their use.

Since a large part of the prohibition of bicycles, especially for children, is based on *minhag*, there is no need to oppose a *minhag* of leniency that may exist in certain communities (more likely among Sephardim). Furthermore, in general, even if a child is violating a clear Rabbinic prohibition, one does not have to stop him or even tell his father to do so.¹⁶ It would be legitimate, even for a father, to allow his minor child to ride a bicycle on Shabbat **if** it is in consonance with the local *minhag*.

15. See fn. 50.

16. See *Shulchan Aruch, Orach Chayim* 343:1; *Mishna Berura* 343:3.

C-4: Use of a Fat Separator on Shabbat

Question: Is it permitted to use a fat separator on Shabbat?

Answer: [A fat separator is a regular container, but one which has a spout that comes out from near its bottom. When one pours stock or gravy into the container, forces of nature cause the fat, which is the lighter part of the mixture, to rise to the top. When pouring the stock out from the bottom, the defatted part comes out first; one stops pouring before getting to the fatty layer, which he then discards. Some models have a spout stopper, which traps air so that the gravy, which might still have fat in it, does not enter the spout until it is ready to start pouring out.¹]

*A baraita*² mentions cryptically that selecting (*borer*) one food from other types of food is sometimes forbidden and sometimes permitted on Shabbat. Three distinctions between the permissible and the forbidden acts of *borer* emanate from the *gemara*'s discussion, and the *Shulchan Aruch*³ accepts these distinctions as concurrent conditions in order for the selection to be permitted: 1) The selection must be done by hand, not by a utensil.⁴ 2) The food that one wants to eat is removed from that which he does not want now.⁵ 3) The food that is removed is to be used in the immediate future. Only if all three of these conditions are satisfied is the selecting not a violation of *borer*.

Let us compare the fat separator to more standard acts of

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1. For further explanation, an online demonstration may be helpful.
 2. Cited in *Shabbat* 74a; see *Tosafot* ad loc.
 3. *Orach Chayim* 319:1-2.
 4. If the utensil is made for the purpose of such selection, there is a Torah-level violation; if the utensil is used mainly for other purposes but is now being used for such selection, it is forbidden Rabbinnically. See *gemara* op. cit. and *Orhot Shabbat* 1, p. 157-158.
 5. *Borer* is not limited to foods, but that is the classic case most frequently discussed.

selection. Usually, selection takes place in one stage, either directly – by removing things from the mixture – or indirectly – by putting something into a utensil that separates and removes immediately (e.g., a strainer).⁶ A fat separator, in contrast, employs two separate stages. The separation first takes place during the few minutes after the gravy is poured in; the removal of the defatted part occurs when one decides to pour the gravy out.

The first stage of separation occurs naturally and is not significantly affected by the person's action of pouring the gravy into the separator; the forces of gravity would perform the task in any pot or pan just as well as in the separator. Therefore, this stage cannot be prohibited.

The question is thus if it is permissible to separate the different parts of the gravy during the second stage, by pouring out the defatted part of the gravy and leaving the fat behind. There is enough intermingling between the components of the stock to make this a **question** of *borer*. However, in this case, one takes the desired portion of the gravy from the undesired portion (assuming one is interested in the defatted part, not the fat), fulfilling the second of the three conditions cited above. In order to fulfill the requirement that the separating be done soon before use (the third condition), one should use the fat separator only when he plans to use the gravy shortly after removal.

The remaining question is whether this process is considered to be performed with a utensil for selecting (the first condition). If we evaluate the entire process as one (the stock went into the separator with the fat and the rest of the liquid mixed, and the defatted part came out alone), then the person is indeed using a utensil to separate the components, and this would thus constitute forbidden *borer*. However, as we noted, it is more logical to view this process as composed of two separate, halachically innocuous events: 1) the natural separation; 2) the removal of the wanted

6. Activating the separation/removal by pushing or shaking the material in the utensil (e.g., a sifter) makes no difference as far as the question of Shabbat prohibition.

part through a simple spout, which does no separating.

Aside from intuitive halachic conviction, a factor that indicates that there are two separate stages here is the fact that the second stage, which can happen much later, occurs only if and when one decides to perform it by pouring out the stock carefully, so that the fat does not come along as well. Pouring out only the part you want is no worse than pouring out from a soup pot some desired broth, without pouring out the mixed-in and presently undesired vegetables. This is permitted, at least if one does not use a pot cover or the like to hold back the vegetables.⁷ One may pour from a utensil that which he wants and stop before getting to the unwanted material.⁸

At first glance, a fat separator might appear to be worse, since the pouring is effective only because this special utensil enables it. However, the prohibition of using a utensil for *borer* applies specifically when the utensil is involved in the separation itself, not when it merely allows simple removal of that which was previously separated.

One could argue that the spout stopper (part of the utensil) is involved in the separation, as it keeps fat out of the spout, and using it should therefore be forbidden. However, this claim is incorrect, as the air pressure does not hold back specifically the fat, but rather temporarily prevents the entire mixture of gravy from entering the spout (so that no fat forms on the top of the liquid in the spout and would be the first to be poured from the separator).⁹

7. See *Orchot Shabbat* 3:75.

8. See *Shemirat Shabbat K'Hilchata* 3:47, who permits cases that are apparently even more problematic.

9. Indeed, if one did not use the spout stopper, he would have to be careful not to throw out that first amount of fat by itself, as that would fail the second of the aforementioned conditions.

C-5: Separating *Challa* on Shabbat

Question: My sons were guests of a family in Bnei Brak. The hosts forgot to perform *hafrashat challa*¹ before Shabbat. On Shabbat, the hosts separated some *challa* to be burnt after Shabbat. Was it permissible for my sons to have eaten from the bread?

Answer: It is not clear what you mean by “separated some *challa*,” and the answer to your question depends on this point.

Among the *mishna*’s² long list of Rabbinic prohibitions of Shabbat and *Yom Tov* is taking *terumot* and *ma’asrot*,³ which includes the separation of *challa*.⁴ Therefore, if your sons’ hosts indeed performed *hafrashat challa* on Shabbat, they apparently acted improperly. There is a leniency to take *ma’asrot* in a case in which one does not have alternative food to eat for Shabbat, due to the *mitzva* of eating on Shabbat,⁵ but this is permitted only during *bein hashemashot*.⁶

If the hosts improperly separated *challa* on Shabbat, your sons would still have been permitted to eat the remaining portion of the bread.⁷ This is because if one took *ma’asrot* on Shabbat unintentionally (including out of ignorance of the *halacha*⁸), the food may still be eaten.⁹ (Many discuss the question of why we do not say that the food is *muktzeh* for all of Shabbat, since it was not fit to be eaten when Shabbat began. In any event, it seems that

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1. Taking off a small piece of dough (or bread, if the dough has already been baked). Nowadays, this piece is burned or respectfully discarded, since the main *mitzva*, to give it to a *kohen*, is not currently feasible.
 2. *Beitza* 36b.
 3. Various tithes taken from agricultural produce.
 4. *Mishna Berura* 339:26.
 5. *Shulchan Aruch, Orach Chayim* 261:1; see *Mishna Berura* ad loc. 4.
 6. Twilight, a time when there is a doubt whether it is day or night.
 7. We usually call the bread eaten on Shabbat *challa*. Here, we will call it bread, so as not to confuse it with the piece taken off for the *mitzva* we are discussing.
 8. *Mishna Berura* 339:31.
 9. *Gittin* 54a.

it indeed is not *muktzeh*.¹⁰)

It is possible that the hosts did not intend to actually proclaim, and thereby create, the *challa* on Shabbat, but rather simply left over enough of the bread to take *challa* from it after Shabbat was over. There are circumstances in which this is permitted, but if this is what the hosts did, they misapplied this leniency. Shmuel says: “Regarding the taking of *challa* of *chutz la’aretz*, one may eat now and take off the *challa* later.”¹¹ This is different from the situation regarding *ma’asrot*; until *ma’aser* has been taken, the produce is forbidden to eat (*tevel*). But Shmuel clearly states that this *halacha* is true only regarding *chutz la’aretz*, and, of course, Bnei Brak is in *Eretz Yisrael*.

One might argue that Shmuel’s leniency should apply even in Israel of our time. The *Tur*¹² explains that dough that carries a Rabbinic-level obligation to have *challa* taken from it has several leniencies compared to one that has a Torah-level obligation. One such leniency is that in the case of a Rabbinic-level obligation, the bread that has not had *challa* taken from it does not have the status of forbidden *tevel*. The obligation to separate *challa* outside *Eretz Yisrael* is certainly only Rabbinic.¹³ There is a significant Talmudic *machloket* regarding whether the obligation of *challa* in *Eretz Yisrael* in our times is of a Torah or Rabbinic level.¹⁴ The more accepted opinion is that even in *Eretz Yisrael*, *challa* is a Rabbinic obligation nowadays.¹⁵ Accordingly, it might seem that even in Israel there are grounds to be lenient and allow one to eat the bread from which *challa* was not yet taken, leaving some to

10. See *Tosafot*, *Shabbat* 43a; *Shut R. Akiva Eiger* II:103; *Minchat Shlomo* 62:11.

11. *Beitza* 9a. There is a discussion among the *Rishonim* regarding whether one may eat everything except the part that will become *challa* or whether one must leave over enough to separate *challa* from that piece while leaving some bread that is permitted to eat; see *Tosafot* ad loc.

12. *Yoreh Deah* 323.

13. Rambam, *Bikkurim* 5:8.

14. See *Ketubot* 25a.

15. See *Beit Yosef*, *Yoreh Deah* 322.

use for the *hafrasha* after Shabbat is over, as Shmuel suggests.

In truth, however, this is not the case. The *Beit Yosef*¹⁶ rejects the above reading of the *Tur*, proving that even if *challa* in *chutz la'aretz* at all times and *challa* in *Eretz Yisrael* in our times are both Rabbinic obligations, the status of *challa* in *Eretz Yisrael* in our day is of a higher level, since it is modeled after the Torah law that fundamentally applies in *Eretz Yisrael*. This is in contrast to *challa* in *chutz la'aretz*, which has “no root in Torah law.” Therefore, if in your sons’ case the *challa* was taken only on *Motzaei Shabbat*, the bread that they ate on Shabbat had a Rabbinic status of *tevel*, which is forbidden to eat.

In summary, if the hosts took *challa* on Shabbat itself, they violated Shabbat Rabbinically, but the bread was still permitted to be eaten, provided they did not realize that their action was forbidden. If they left over bread from which to do *hafrashat challa* after Shabbat, it was forbidden Rabbinically to eat the bread before the *hafrasha* actually took place.

16. *Yoreh Deah* 323, and in the *Shulchan Aruch*, *Yoreh Deah* 323:1.

C-6: Sending Packages on Shabbat or Yom Tov

Question: I often send packages with UPS. May I have UPS do a pickup on Shabbat or *Yom Tov*, if all of the arrangements are completed before Shabbat and they take the package without my involvement?

Answer: There are two main issues to deal with here: whether the service providers are considered doing work on your behalf in a forbidden way and whether there is a problem of *marit ayin*.

In this case, UPS is doing *melacha* on your behalf, at least in regard to their driving to the pickup point, and perhaps regarding other matters as well. (The fact that you do not interact with the person who is doing the work, who received his instructions from someone other than you, might provide some grounds for leniency.¹)

It is generally permitted to have a non-Jew do work for you on Shabbat if he is doing it for his own purposes. When a Jew pays the non-Jew to do work that the Jew wants, there is an important distinction that is relevant: If the non-Jew is paid by time, he is considered to be doing work **for the Jew**;² if he is paid per job, he is considered to be working **on his own behalf** (for the pay).³ UPS obviously gets paid for the job, which indicates permissibility. On the other hand, even in such a case, if one instructs the non-Jew, explicitly or implicitly,⁴ to do the work specifically on Shabbat or Yom Tov, it is forbidden.⁵

Therefore, you would have to give UPS a time for pickup that would not necessarily require them to come on Shabbat or

1. See *Mishna Berura* 307:24.

2. *Ibid.* 252:14.

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

4. *Mishna Berura* 252:16.

5. *Shulchan Aruch* op. cit.

Yom Tov (i.e., they would also be able to come before or after). From a look at their website, it seems that one's request can be made for any time of day or night (24/7). However, in response to our written question (although we cannot gauge the expertise of the specific customer service worker), pickups are generally done from 9 AM to 7 PM. Accordingly, during some of the year, if you allow pickup to be any time Saturday, it would not necessarily be on Shabbat, but at other times of the year, the worker would be bound to come on Shabbat. The *halacha* is that it is not enough to provide the worker with a theoretical alternative to working on Shabbat; it must be a practical one.⁶ (If feasible, you could give them a two-day window during which to come.)

An interesting consideration arises regarding two days of *Yom Tov*. Is it permitted to tell them to come, for example, anytime on Monday, including Monday evening, when Monday is the first day of *Yom Tov* and Monday evening starts the second day? It seems that this should be acceptable on any *Yom Tov* other than Rosh Hashana. This is because we treat each day as a mutually exclusive doubt. In other words, although practically we treat each day as *Yom Tov*, fundamentally we consider that only one day is holy; if the first day is holy, the second is not, and if the second day is holy, the first is not.⁷ Therefore, if you give UPS all day and part of the night of Monday to come, they have the opportunity to arrive at a time of fundamental *chol*. Rosh Hashana, in contrast, is treated as two definite days of *Yom Tov*,⁸ and the pickup would therefore have to be possible at some time when it is neither of the two halachic days.

The second problem that must be considered is that it is forbidden to have a non-Jew take an object from a Jew's home on Shabbat.⁹ All authorities explain that this prohibition is related to *marit ayin*, but there is a difference of opinion as to what it is

6. *Mishna Berura* 307:15.

7. *Shulchan Aruch, Orach Chayim* 513:5.

8. *Ibid.*

9. *Shabbat* 18b.

that we are concerned that people might mistakenly think. The *Shulchan Aruch*¹⁰ writes that viewers might think that the Jew told the non-Jew to carry the object for the Jew's benefit outside, into the public domain. If that is the case, then if the non-Jew lives within the same *eiruv* as the Jew's home, there would be no problem; it is possible that the same would be true in at least some cases on *Yom Tov*, even when there is no *eiruv*.¹¹ However, the Rambam¹² maintains that we are concerned that people might think that the Jew improperly sold the object to the non-Jew on Shabbat. In that case, the problem pertains even when there is an *eiruv*.¹³

In your case, it would seem that everyone would agree that there is a problem of *marit ayin*. One who sees a UPS worker taking the package on Shabbat or *Yom Tov* will not realize that you did not tell him to come specifically on the holy day.¹⁴ Therefore, in addition to making sure there is a possibility of *chol* pickup, you should also have the package picked up from a non-Jewish neighbor's home.

10. *Orach Chayim* 246:2.

11. *Taz, Orach Chayim* 246:3.

12. *Shabbat* 6:19.

13. *Magen Avraham* 246:6; see *Sha'ar HaTziyun* 246:7.

14. See *Mishna Berura* 252:17.

c-7: Use of a Salad Slicer on Shabbat

Question: May I use a salad slicer on Shabbat?¹

Answer: The *gemara*² states, according to the explanation of several *Rishonim*, that cutting certain vegetables into small pieces is a Torah-level violation of *tochein* (grinding).

There are several lenient opinions that limit the scope of this prohibition. Some maintain that the prohibition applies only to foods that are not edible whole, such that cutting them into small, edible pieces is a significant change.³ The Rambam⁴ implies that the prohibition applies only when the food is cut up in preparation for its being cooked. These two possibilities, especially when combined, make the prohibition against cutting vegetables comparable to that of grinding grains to be used for baking bread.

A further leniency is cited by many, including the Rama,⁵ based on the Rashba.⁶ The Rashba writes that cutting food soon before its consumption is considered part of the eating process and is not a forbidden *melacha*. This is parallel to the application of this distinction regarding *borer* (selecting).

Thus, if one prepares a standard salad immediately before the Shabbat meal, it would seem that there should be several grounds to permit the matter. Most salad vegetables are edible whole, one is not cutting the vegetables in preparation for cooking them, and the cutting is performed soon before consumption.

Nevertheless, there are a few difficulties in permitting the

1. Different appliances are referred to as “salad slicers,” with the unifying feature being that they are able to cut the vegetables quickly and easily. Regardless of the particular features in the slicer at hand, the application of the principles in this response is likely to be the same or similar.

2. *Shabbat* 74b.

3. See *Tosafot* ad loc.

4. *Shabbat* 21:18.

5. *Orach Chayim* 321:12.

6. *Shut HaRashba* IV:75.

use of a salad slicer on Shabbat. First, the *Shulchan Aruch*⁷ considers cutting any vegetable into **small** pieces, even if not for the purpose of cooking, to be a full-fledged violation of *tochein*. Furthermore, the *Magen Avraham*⁸ and other authorities⁹ do not accept the Rama/Rashba's leniency of cutting soon before eating, at least when the vegetables are cut very small.

In this regard, one using a salad slicer could employ a simple compromise – turning the device only enough for the vegetables to be cut into relatively large pieces. Many *poskim* note that there are no exact dimensions that define what is considered “small,” and the matter is relative to the normal preparation of the salad. Thus, slicing into relatively large pieces is permissible.¹⁰ There is also a *machloket* about a case in which a vegetable is cut thin in one dimension but remains larger in another (such that the pieces still need to be chewed before swallowing). Rav Moshe Feinstein¹¹ is lenient on the matter, while others maintain that cutting vegetables thin in any dimension is problematic.¹²

Even if one does not use the slicer to cut the vegetables too thin, there it is still a problem in that a salad slicer is a utensil that is made for the purpose of usually cutting pieces small enough to be considered *tochein*. The *Bi'ur Halacha*¹³ draws a comparison to *borer* and arrives at a stringency.¹⁴ In order for *borer* to be permitted, it is not enough that the selecting be done for short-term use; it also must not use a utensil, because that makes it more work-like. In parallel, in the case of cutting vegetables, using a regular knife that is used for cutting of all shapes and sizes does not affect the permissibility of the act, because that is the way that permitted cutting is done as well. However, it is forbidden to cut

7. *Orach Chayim* 321:12.

8. 321:15.

9. See *Mishna Berura* 321:45.

10. See *Dirshu Mishna Berura* 321:60.

11. *Igrot Moshe, Orach Chayim* IV:74.3.

12. See *Orchot Shabbat* 5:(12).

13. To 321:12.

14. As the aforementioned Rashba did for leniency.

with a **special** set of blades normally used specifically for cutting small pieces, even if one is careful not to cut the pieces small.¹⁵

This prohibition can apply on two possible grounds. One is that using a special utensil turns the action into one that is more similar to classic *tochein*. The other is that using such a special food-preparation machine is a violation of *uvdin d'chol* (weekday-like activity), and it might therefore be forbidden even when the *melacha* of *tochein* does not apply.¹⁶

There are some types of salad preparation gadgets that always leave the pieces quite large. Cutting with such implements would presumably neither violate any prohibition of *tochein* nor constitute a problematic *uvdin d'chol*.¹⁷ We cannot voice an opinion about a specific appliance without seeing its operation. We can say, however, that it is generally a good idea to either prepare the salad before Shabbat or to use a regular knife.

15. Ibid.

16. *Shulchan Aruch, Orach Chayim* 321:10; see *Mishna Berura* ad loc. 36.

17. See *Shemirat Shabbat K'Hilchata* 6:3; *Orchot Shabbat* 5:(11).

c-8: Using an Hourglass on Shabbat

Question: This past Yom Kippur, I was a few days after birth, and our rabbi told me that I could eat and drink small amounts of food “in intervals.” He lent me an hourglass filled so that it shows the amount of time to wait before the next eating. Is it generally permitted to use an hourglass on Shabbat and *Yom Tov*, or was this a special leniency due to my medical status?

Answer: *Chazal* prohibited measuring on Shabbat. This prohibition is mentioned in the *gemara* in *Massechet Beitza*¹ in the context of using utensils with measuring markings to transfer the exact amount of produce desired from one person to another. It also comes up in *Massechet Shabbat*² in the context of measuring a *mikveh* and other accumulations of water.

There seem to be two approaches to the underlying reason behind the prohibition, and they are likely to be complementary rather than contradictory. The Rambam³ connects the prohibition against measuring to the Rabbinic prohibitions related to commerce, which themselves were enacted lest one come to write.⁴ However, the Rambam⁵ also mentions the prohibition of measuring among actions that are forbidden due to being connected to weekday activities and/or concerns (*uvdin d'chol*). The need for a second element of the prohibition is logical, as many of the applications discussed are completely unrelated to commerce. Likewise, the *Mishna Berura*, in discussing the prohibition of measuring, in one context invokes the reason of commerce,⁶ but in another context views it as *uvdin d'chol*,⁷ and

1. 29a.

2. 157a-b.

3. *Shabbat* 23:13.

4. *Ibid.* 12.

5. *Ibid.* 24:5.

6. 324:4.

7. 306:34.

in yet a third place mentions both reasons for the prohibition.⁸

The *Beit Yosef*⁹ cites the Maharil, who was uncertain whether an hourglass is *muktzeh* because of its use for measuring time. After all, use of an hourglass is not classical measuring, which is when one uses an instrument to measure an object. Here, one uses an instrument to determine the passage of the non-physical entity of time. Whereas the *Shulchan Aruch*¹⁰ leaves the matter as a doubt, the Rama,¹¹ like the Maharil, writes that the *minhag* is to prohibit even moving an hourglass, because its main usage is forbidden on Shabbat. Contemporary *poskim* similarly forbid use of an hourglass.¹² (*Poskim* agree that it is permitted to use a wristwatch.¹³ A watch is better than an hourglass because a watch tells you what time it is at the moment you look at it, whereas an hourglass measures the “distance” in time between point A and point B.)

Thus, the ruling you received was indeed due to your special need, although the required need does not have to be on the same level as that which is required to permit eating on Yom Kippur. The idea that measuring is permitted in certain cases of need is explicit in the *gemara*,¹⁴ which permits measuring a *mikveh* on Shabbat to see if it is still valid, because this measuring is done for the purpose of a *mitzva*. *Rishonim* extend the leniency from *mitzva* use to the needs of a sick person. The *Tur*¹⁵ cites a discussion of an ancient “alternative medicine” procedure for one with a headache, which included measuring a certain distance and then saying an incantation. He cites the Maharam MeiRotenburg as permitting this because healing a sick person

8. 323:3.

9. *Orach Chayim* 308.

10. *Orach Chayim* 308:51.

11. Ad loc.

12. See *Shemirat Shabbat K'Hilchata* 28:30.

13. See *Mishna Berura* 308:168; *Shemirat Shabbat K'Hilchata* 28:20.

14. *Shabbat* 157b.

15. *Orach Chayim* 306.

is a *mitzva*. The *Shulchan Aruch*¹⁶ accepts this opinion. It is clear from the context of the above discussions that the needs of a sick person in this regard include even one who is not dangerously ill.¹⁷ *Tosafot*¹⁸ explains that we are more lenient regarding measuring for a *mitzva* than we are regarding most Rabbinic prohibitions, regarding which a *mitzva* is insufficient to permit the violation,¹⁹ because measuring is forbidden only due to *uvdin d'chol*.

In your case, there are two ways of looking at how using the hourglass is a *mitzva*. One is that the permission you received to eat a fair amount was predicated on your ability to determine that you would not eat too much too quickly. Thus, the measuring in this case allows a weak person to eat to maintain her health. The other way to look at it is that given that you were allowed to eat, the hourglass helped you fulfill the *mitzva* of lessening the necessary violation of eating on Yom Kippur.²⁰ Either way, using the hourglass was permitted for you, even though under ordinary circumstances, it is forbidden to mark the passage of time with an hourglass on Yom Kippur.

16. *Orach Chayim* 306:7.

17. See also *Shemirat Shabbat K'Hilchata* 28:35.

18. *Shabbat* 126b.

19. See *Shulchan Aruch, Orach Chayim* 328:17.

20. See *ibid.* 618:7.

C-9: When and How to Cut the *Challa*

Question: Does one fulfill the requirement of having *lechem mishneh* if the bread is cut or the *matza* is broken prior to the completion of the *beracha*?

Answer: The question of the timing of the cutting of a loaf of bread, roll, etc., is the subject of a *machloket* in the *gemara*¹ with regard to the preference throughout the week of reciting a *beracha* on a whole loaf of bread. According to Rabbi Chiya, *betzi'at hapat* (the breaking of the bread), which should be performed in accordance with a number of *halachot*,² is to be done **as** one is reciting the *beracha*. Rava argues that what is important is that the bread should still be whole at the conclusion of the *beracha*, and one should therefore not cut off a piece until **after** the *beracha* is complete. The *gemara* concludes that we accept Rava's opinion.³

The *gemara*'s discussion, as we noted, is referring to cutting bread on a weekday, when the stakes are low, as there is no **requirement** to use a whole loaf. On Shabbat, when one is required to have *lechem mishneh*,⁴ it is even more important that the *challot* remain intact throughout the *beracha*.

The Rosh⁵ writes that although the separating off of the part of the bread to be eaten is to be done after the *beracha*, one should make a significant but only partial cut of the loaf before the *beracha*. The reason is to minimize the delay between the end of the *beracha* and the eating of the bread.⁶ The Rama⁷ makes a practical distinction based on the heightened level of importance

1. *Berachot* 39a-b.

2. See *Shulchan Aruch, Orach Chayim* 167:1.

3. See also *Shulchan Aruch* *ibid*.

4. *Shulchan Aruch, Orach Chayim* 274:1.

5. *Berachot* 6:19.

6. See *Bach, Orach Chayim* 167, who explains that this is not a halachically forbidden delay, but *l'chatchila* it should be minimized to the extent possible.

7. *Orach Chayim* 167:1.

of wholeness on Shabbat, ruling that partial cutting to expedite matters is justified during the week, when the wholeness of the loaf is only a preference, but on Shabbat, when wholeness is crucial, one should not cut it at all. (If one did cut it, but left it intact enough that if one were to lift the loaf by the smaller part, the weight of the larger part would not cause it to be severed, the loaf is still considered fundamentally whole as far as making a *beracha* is concerned.⁸)

*Poskim*⁹ recommend a compromise for breaking bread on Shabbat that most people follow to at least some degree. One should scratch a line on the *challa* at the place where he plans to cut, thereby saving time when he does later cut the *challa*. Many people do more than scratch the *challa* and actually make a small cut. (This seems to make more practical sense than merely making a scratch, as having to position the knife exactly at the place of the scratch takes more time than to start a new cutting.) On the other hand, we do not make a significant cut, due to the concern the Rama addressed that too large a cut could make the *challa* be considered two *challot* that are only nominally connected, especially if the cut deepens while handling the bread. In any case, any *minhag* along these lines is acceptable.

Due to the above, using *matza* for the second “loaf” of *lechem mishneh* can sometimes cause challenges. (We will just mention in this context the fact that using *matza* is a problem for Sephardim – and thus a problem when one has Sephardi guests – as Sephardic *poskim* do not consider *matza* to be bread, and Sephardim actually recite *Mezonot* on it.)¹⁰ One should hold both loaves during the *beracha*,¹¹ and in the daytime, the loaf that one is cutting should be on the top.¹² It requires some care to hold a nice-sized *challa* on top of a *matza* without breaking the *matza*.

8. See Rosh *ibid.* and *Shulchan Aruch, Orach Chayim* 167:1.

9. *Magen Avraham* 274:1; *Mishna Berura* 274:5.

10. See *Yechaveh Da'at* III:12.

11. *Berachot* 39b; *Shulchan Aruch, Orach Chayim* 274:1.

12. Rama, *Orach Chayim* 274:1.

Preferably, no part of the *lechem mishneh* should break,¹³ although we generally assume that if the piece that broke off is less than 2% of the “loaf,” it is not a problem *b’di’eved*.¹⁴ Regarding a situation in which the *matza* cracks but is not severed, we would again apply the test of connectedness mentioned above.

Despite these challenges, those Ashkenazim who want to use *matza* may do so, but they would be wise to be careful in handling it. Even at *seuda shlishit*, one should be careful to keep the loaves intact until after the *beracha*, as the *poskim* say that one should have *lechem mishneh* for that meal as well.¹⁵ However, there are opinions cited in the *Shulchan Aruch*¹⁶ that bread is not required at all at *seuda shlishit*. Even if bread is required, the Rama¹⁷ rules that it is acceptable, although not preferable, to have only one whole loaf at *seuda shlishit*.

13. *Shemirat Shabbat K’Hilchata* 55:8.

14. See *ibid.* (24).

15. *Shulchan Aruch and Rama, Orach Chayim* 291:4.

16. *Ibid.* 5.

17. *Ibid.* 4.

C-10: Automatic Payment on Shabbat or *Yom Tov*

Question: When I get a credit card bill (in the US), one payment option is for it to be withdrawn from my bank account on the bill's due date. May I allow this to be the default system even though that day will sometimes fall on Saturday or *Yom Tov*?

Answer: Much of this answer is developed at length in a *teshuva* in *BeMareh HaBazak* IX:6.¹ We will add points that apply specifically to your case.

There are two halachic issues to consider: commerce on Shabbat and *amira l'nochri* (requesting a non-Jew to do work on Shabbat).

Commerce: Rashi² gives two possible reasons for the prohibition of commerce on Shabbat. First, conducting commerce violates the *navi's* instructions to refrain from mundane activities; second, it may bring one to write. Simple logic dictates that when the Jew's involvement in the commerce was complete before Shabbat began and matters are finished by a non-Jew or automatically, the prohibition should not apply, since neither of these two reasons are pertinent. However, Rabbi Akiva Eiger³ extends the prohibition of commerce to include cases in which the interaction took place during the week if it was set up to take effect on Shabbat. One can therefore argue that regardless of when you were active in setting up the future payments, it is forbidden to arrange matters so that the payment of your debt (which constitutes commerce⁴) will take place on Shabbat.

1. The discussion there is about a direct-order payment arrangement, which is very similar to the matter of a credit card company taking money from one's bank account.

2. *Beitza* 36b.

3. *Shut Rabbi Akiva Eiger* I:159.

4. Rama, *Orach Chayim* 307:11.

Nevertheless, one need not be concerned by this opinion for a combination of two reasons: 1) It is far from clear that we accept Rabbi Akiva Eiger's opinion (see opinions in our *teshuva* in *BeMareh HaBazak*). After all, even beginning full *melachot* before Shabbat that finish by themselves on Shabbat is permitted. Logically, we would expect that the Rabbinic prohibition on commercial activity on Shabbat would not be more stringent. 2) There are accepted sources⁵ that a Jew may have a non-Jew acquire something on his behalf on Shabbat.

It is possible to argue that Rabbi Akiva Eiger's thesis was that a transaction finished **by a non-Jew** is permitted on Shabbat, while one that is finished **by itself** is forbidden.⁶ There are additional distinctions between this case and that of Rabbi Akiva Eiger as well.⁷ Therefore, it is likely that Rabbi Akiva Eiger would agree that your case, in which a Jew gives over before Shabbat the process to be finished by a non-Jewish financial institution, is permitted.

Amira l'nochri: The main reason to be lenient is technical. Our research indicates that there is no need for human intervention at the time of the transfer of funds.⁸ Since the transfer could be finished before Shabbat, even if the non-Jew chooses to do it on Shabbat, the Jew faces no halachic problem.⁹ If the bank takes a set fee per transfer (*katzatz*), we consider it as though they are acting for their own benefit,¹⁰ and the permissibility is even clearer. Although it is true that even in a situation of *katzatz*, a Jew may not tell a non-Jew to perform the act specifically on Shabbat,

5. Including *Shulchan Aruch, Orach Chayim* 307:4.

6. See sources and discussion in *BeMareh HaBazak* op. cit.

7. These include that Rabbi Akiva Eiger and the sources that seem to support his thesis are discussing acquisitions and not just payments.

8. Regarding Rabbi Akiva Eiger's issue, this point could possibly make matters worse (as per the second reason not to use Rabbi Akiva Eiger's opinion to prohibit this situation), but we do not believe that this is reason enough to forbid the arrangement.

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

10. *Ibid.*

in this case, even if a *melacha* would have been needed at the time of the transfer, it likely could be done after nightfall of *Motza 'ei Shabbat*, or probably even a day later or earlier (with the account charged afterwards).

We could stop here, but we do not want to imply that there are no other potential grounds for leniency. *Amira l'nochri* is among the most complicated areas of the laws of Shabbat, and people should become accustomed to asking halachic questions in this area, as there may be more room for leniency or stringency than one might expect.

We should consider whether the bank is working **for you** when making the transfer. Alternatively, perhaps the transaction between the bank and the credit card company is being done primarily on behalf of the **credit card company**. The credit card company is the one who initiates the payment on a monthly basis, when the time comes, and it receives the money. Perhaps we should therefore view your instructions to the bank as your **acquiescing** in advance to the payment (although if it were not worth your while, you would not do it). Our conclusion might differ from case to similar-sounding case.

It is also possible that giving the order during the week to pay on a day of the month that usually falls on a weekday is not considered *amira l'nochri*, even if, down the line, it happens to fall out occasionally on Shabbat or *Yom Tov*. There are several precedents for the idea that statements that cause a non-Jew to work on Shabbat may still not be considered direct enough to be *amira l'nochri*.¹¹ However, it is very difficult to apply such a concept.¹²

11. E.g., *Mishna Berura* 247:10; *Pri Megadim, Orach Chayim, Mishbetzot Zahav* 307:2.

12. In most cases, there is another reason for leniency: The banker who received your instruction is rarely the one who does the *melacha*; he passes on the job to another non-Jew. While important *poskim* take this leniency (*amira la'amira*) seriously (see *Mishna Berura* 307:24), it is not broadly supported by the *poskim* (see *Orchos Shabbat* 23:73). In any event, in this case we do not need to rely on this leniency to permit the arrangement.

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The bottom line is that you may allow this bank transfer arrangement to continue no matter when the transfers actually fall out.

C-11: A Husband Accepting Shabbat with his Wife

Question: My wife generally lights candles eighteen minutes before sunset, in keeping with our community's practice. I generally cease doing *melacha* then, as do she and our two little children. Sometimes, due to work, I can make it home only close to sunset, not candle-lighting time. May my wife light at the usual time, or should she wait for me? I am afraid that my small children, who are used to my stopping doing *melacha* when my wife lights, will be confused.

Answer: A community's candle-lighting time is not the time that all community members are expected to accept Shabbat. The *Behag*¹ posits that a woman accepts Shabbat with her lighting. This position is generally followed at least by Ashkenazi women,² who, because of this, recite the *beracha* only after completing the lighting.³ (The ruling for Sephardi women is more complicated.⁴)

However, lighting candles does not constitute a home's absolute acceptance of Shabbat. For one thing, the Rama⁵ permits a woman to not accept Shabbat upon lighting, even by simply mentally deciding not to. After all, lighting is innately a preparatory act **before Shabbat**, not an act **of Shabbat**, such as *davening Ma'ariv* or making *Kiddush*. In fact, men do not accept Shabbat when they light candles.⁶

On the other hand, there are several indications that candle lighting is not merely a technical act necessary to enable one to later have a proper Shabbat. Although one of the reasons for

1. Cited in the *Tur* and *Shulchan Aruch, Orach Chayim* 263:10.

2. See Rama ad loc.

3. See *Darchei Moshe, Orach Chayim* 263:2, in the name of the Mahari Weil.

4. See *Yabia Omer* IX, *Orach Chayim* 24.

5. Op. cit.

6. *Mishna Berura* 263:42.

candle lighting is to ensure that there will be enough light in the house on Shabbat, we must light Shabbat candles even if we are happy with the existing light situation. This action is a *mitzva*, as indicated by the fact that it is accompanied by a *beracha* for *mitzvot*. Additionally, not all authorities allow a woman to make a condition to light candles without accepting Shabbat, and the accepted *halacha* is that such a stipulation is acceptable only in the case of significant need.⁷

Regarding your assumption about members of the family who did not light, the Rama states clearly that they do not automatically accept Shabbat with the lighting of another person. Most men have good reason to specifically not want to accept Shabbat with their wife's lighting, because they want to *daven Mincha* in *shul*, which usually is after the time of candle lighting. If they accepted Shabbat prior to that, they could no longer *daven Mincha* that day. (Women should *daven Mincha* before lighting.⁸) Furthermore, men who have accepted Shabbat certainly may not drive to *shul* afterwards. In some households, daughters generally accept Shabbat when their mother lights, and there is a certain appropriateness to that. However, this is not a halachic requirement. Indeed, in many households, there may still be work to do after lighting candles, which the children can do instead of their mother. Therefore, it is not always healthy to expect the entire family to be personally ready to accept Shabbat, or for the mother to feel the pressure that she must be sure that all household tasks are completed before she lights. This is even more true in a place like Yerushalayim, where candle lighting is customarily 40 minutes before sunset.

We advise you not to teach your children that you must cease work after your wife lights candles. Your assumption that a husband's performing work after that point is confusing to the children is based on your assumption that your cessation from

7. *Magen Avraham* 263:20; *Mishna Berura* 263:44; see *Shemirat Shabbat K'Hilchata* 43:24.

8. *Mishna Berura* 263:43.

melacha is necessary. But the truth is that it will likely be more confusing for them if your whole family is very careful to stop doing *melacha* together, while men in neighbors' families drive to *shul* after candle lighting.

Certainly, there are many advantages to a father being home well before Shabbat, but life is not always that obliging. There is a halachic mandate to have *tosefet Shabbat*⁹ by refraining from performing *melacha* a discernable amount of time before sunset.¹⁰ We usually assume a few minutes is enough.¹¹ The closer it is to Shabbat, the more preferable it becomes to stop doing *melacha*. This is not simply a matter of accepting early, but also a concern that one not violate Shabbat itself. First of all, there are different opinions as to how to define halachic sunset; the time the sun disappears from sight is affected by topography and can vary by a few minutes even at one latitude. In addition, there are several practical grounds for being careful to stop performing *melacha* early: One might forget the exact time of sunset, or one might lose track of time if he is not wearing a watch or due to the pressure of last minute delays. Therefore, it is prudent, although halachically not required, to finish all traveling and other *melachot* at least approximately five minutes before sunset.

In short, your wife need not wait for you, and she should not wait more than a few minutes. Her correct time and yours are not linked.

9. Early acceptance of Shabbat.

10. *Shulchan Aruch, Orach Chayim* 261:2; see Rosh, *Berachot* 4:6. For more on how this is done, see *Living the Halachic Process*, vol. III, C-4.

11. See *Orchot Shabbat* 27:(14).

C-12: *Kabbalat Shabbat* of Part of the Community

Question: My community has one *shul* with a small *minyan* for *Kabbalat Shabbat* that accepts Shabbat early in the summer; there is no second *minyan* at night. (The daytime *minyan* is much larger; many *daven* at home on Friday night during the summer.) Must I accept Shabbat at the time the early *minyan* does, which is sometimes difficult for me?

Answer: The *Shulchan Aruch*¹ rules, based on the Mordechai,² that individual members of the community, even those who have not come to *shul*,³ **must** accept Shabbat at whatever time the majority of the community does so.

The acceptance of the community (according to most authorities, at the end of *Lecha Dodi*⁴) does not make it Shabbat for everyone in the fullest sense, but it creates a prohibition to do *melacha*. Those who have not yet accepted Shabbat may still *daven Mincha* during this time (but they may not do so in the same room as where the majority are *davening Ma'ariv*).⁵

There are some exceptions to the rule of communal acceptance, some of which might be relevant to your case. The *Magen Avraham*⁶ writes that in a community with multiple *batei knesset*, the first *shul* to accept Shabbat does not impact on other *shuls*, even if it includes a majority of the town's population. According to many, this applies even to two *minyanim* in the same *shul*.⁷ However, private *minyanim* (i.e., those held in individuals'

1. *Orach Chayim* 263:12.

2. *Shabbat* 297.

3. See *Mishna Berura* 263:51.

4. *Mishna Berura* 261:31.

5. *Shulchan Aruch* *ibid.* 15; see *Bi'ur Halacha* *ad loc.*

6. 263:24.

7. *Shemirat Shabbat K'Hilchata* 46:(43). It may be different when one *shul* is the clear central synagogue; see *Eliya Rabba* 263:26.

homes) are overpowered by a public one that contains a majority of the community.⁸

A member of a *shul* (even one that does not constitute a majority of the broader community) is included in its Shabbat acceptance even if he or she was not present when they accepted Shabbat,⁹ unless he or she decided to go to a different *shul* that week.¹⁰ If most of the community's members are not present,¹¹ however, the *shul(s)* does not draw along the community.¹²

In determining the majority, it makes sense to include specifically Shabbat-observant households, as the members of these households are the ones who have an opinion on when Shabbat observance should begin.¹³ Someone who is careful about Shabbat but might not keep every *halacha* or be a regular *shul*-goer likely counts, except, perhaps, if he is socially divorced from the community of Shabbat observers. It is unclear from your question if those who accept Shabbat early in your community are the majority based on this perspective.¹⁴ It could well be that the early Shabbat *Kabbalat Shabbat minyan* does not usually constitute the majority of your community needed to require the

8. *Mishna Berura* 263:51.

9. *Machatzit HaShekel* 263:24.

10. *Aruch HaShulchan, Orach Chayim* 263:28.

11. Presumably, this refers to representatives of a majority of households. If the great majority of husbands/fathers are attending *shul* but few women and small children do so, it does not make sense to say that the *shul* attendees do not represent a majority. This claim is strong if, as is likely, the father/husband's acceptance of Shabbat through *davening* applies to his household (see *Pri Megadim, Mishbetzot Zahav* 263:1; *Shemirat Shabbat K'Hilchata* 46:(68); we will not delve into the complexity of this issue here).

12. *Mishna Berura* op. cit.

13. See *Shevet HaLevi* IX:56.

14. The case for not having a single *shul* cause a whole area to accept Shabbat early is particularly strong in Israel, where the public announcement of Shabbat times, the end of bus service, etc., follow the regular time.

The boundaries of a community are also not always easily set, especially when closely neighboring towns or neighborhoods have Jewish communities that interact, such that people from one area *daven* in the other. Some examples of such communities include Teaneck/Bergenfield and Rechavia/Sha'arei Chesed.

rest of the community to accept Shabbat then as well.

Additionally, Rav Moshe Feinstein¹⁵ and the *B'er Moshe*¹⁶ present the following novel but logical distinction. The idea of accepting Shabbat early in a way that binds others makes sense when done as part of a communal effort to increase the time of sanctity or to distance people from Shabbat desecration, as a religious enhancement or public stringency. However, in places in which early *minyanim* exist only in the summer, due to the **technical** difficulties that late nightfall creates, early acceptance does not obligate others. This distinction seems to assume that the *halacha* of bringing others along is that the act of **accepting** Shabbat obligates others. Thus, there is room to argue that only a religiously motivated acceptance binds others. If, however, the *halacha* is a matter of avoiding degrading Shabbat when individuals do *melacha* while the majority of the community is already observing Shabbat,¹⁷ it should not make a difference what the motivation for the early acceptance is. *Shemirat Shabbat K'Hilchata*¹⁸ cites this opinion without accepting or rejecting it. It may also be pertinent that the *halacha* of getting pulled into Shabbat by the *tzibbur* is ostensibly only Rabbinic.

In a case of need, it is legitimate to rely on Rav Moshe's leniency, and even more so if it is unclear whether there is a basis for communal acceptance due to other of the aforementioned grounds. However, there are sufficient grounds to claim that it is preferable to try to make it to the *Kabbalat Shabbat minyan* and to accept Shabbat with them.

15. *Igrot Moshe, Orach Chayim* III:38. Rav Feinstein is not certain whether or not one should rely on this idea in practice.

16. II:17. He is more confident about this opinion than Rav Feinstein is.

17. *Shevet HaLevi* IX:56.

18. 46:(42).

C-13: Lighting Candles When One Needs to Leave the House

Question: My husband and I were going away for Shabbat, walking to a different side of the neighborhood to eat with relatives and then sleep in a neighbor's empty house. We left late, so we knew we would not make it in time to light candles at our destination. What should we have done about candle lighting?

Answer: We will begin with a discussion of the possibilities and preferences as to what one should/can do when he does have time to light candles at the place where he will be staying.

In general, the best place for Shabbat candle lighting is where the Shabbat meal will take place.¹ However, if the homeowner is lighting there, there would seem to be little point in adding arguably meaningless lights. The *Shulchan Aruch*² writes that if a guest has no place to light and no one is lighting for him at home, he should become a partner in the homeowners' lighting. This is rarely practiced nowadays, however. In this context, the *Mishna Berura*³ cites a relevant ruling of the *Magen Avraham* in the context of Chanuka lighting. The *Magen Avraham*⁴ states that if a guest relies on the homeowner for his needs (especially those regarding food, which is very common), the guest has no personal obligation to light his own Chanuka candles.

However, even a guest who is exempt from lighting because of someone else's lighting has an obligation to light in a room that is provided specifically for his purposes.⁵ Therefore, you ideally should have lit in the place where you were sleeping, as the entire house was provided for your use. In fact, many *poskim*

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

2. *Orach Chayim* 263:7.

3. 263:33.

4. Opening to *Orach Chayim* 677.

5. *Mishna Berura* 263:30.

always prefer this location over the location of the meal,⁶ and this is the prevalent *minhag* among Sephardim.⁷ Indeed, although the Ashkenazi *minhag* is to light with a *beracha* where one eats, as we noted, it is difficult to justify this *minhag* in a case in which the homeowner has already lit there.⁸

While *poskim* often discuss lighting in one's bedroom, it would appear to be anachronistic to light there. The point of having light in a room on Shabbat is to avoid tripping over things,⁹ which would detract from tranquility in the home. Nowadays, however, few people would ensure their tranquility by having a lit candle in their bedroom. Rather, they would consider an electric nightlight or light from the hall or window to be preferable to a candle. In many ways, electric lights remove the need for Shabbat candles. Nevertheless, we assume that the Rabbinic mandate of kindling a natural flame still adds honor and extra festive light to Shabbat.¹⁰ If one is sleeping in another person's house, lighting a candle in the normal place where that person lights adds honor and can be used upon returning there from the meal. Certainly, when the homeowners have not designated a secure place to light in the bedroom for the guests, one has **no halachic right to assume permission** to light a candle and endanger the house.¹¹ In such cases, one can and should turn on the electric lights,¹² having in mind to use them to thereby fulfill the *mitzva* of lighting candles. It is likely that this counts for the *mitzva*,¹³ in addition to providing the proper light to enjoy Shabbat, as the Rabbis intended.

6. *Shemirat Shabbat K'Hilchata* 45:8; *Chovat HaDar* p. 94.

7. See *Yalkut Yosef, Orach Chayim* 263:19.

8. *Tehilla L'David* 263:7; see *Kavod V'Oneg Shabbat*, p. 11, in the name of Rav M. Feinstein.

9. Mordechai, *Shabbat* 294.

10. See *Shemirat Shabbat K'Hilchata* 43:171, in the name of Rav S.Z. Auerbach; *Yalkut Yosef, Orach Chayim* 263:8.

11. See *Shemirat Shabbat K'Hilchata* 45:3.

12. It is preferable to use an incandescent light, which is more analogous to a flame than the more modern alternatives.

13. See *Shemirat Shabbat K'Hilchata* 43:4; *Yalkut Yosef, Orach Chayim* 263:22.

If one lights before leaving his home or does so in the place he will be sleeping, he must ensure that he will derive benefit from the light on Shabbat itself. The suggested way to enable this is to make sure the candles are long enough that they will last until one returns to them.¹⁴ In your case, however, this was not feasible, as you were not returning at all on Friday night, and you could not make it on time to light at your destination. If it was already beginning to get dark, you might have been able to light before you left and then receive benefit from the candles before leaving, by performing an activity that the candlelight makes more pleasant.¹⁵ Benefitting before leaving would work, however, only if the wife accepted Shabbat at that time (i.e., she did not need to do *melacha* afterward), so that she has “Shabbat benefit” even before nightfall. Sephardi women who do not always accept Shabbat with candle lighting¹⁶ would need to intend to accept Shabbat early under such circumstances.¹⁷

The best thing to do in such a situation is to appoint a *shaliach*¹⁸ to light candles where you will be on Shabbat.¹⁹ If you are an Ashkenazi woman, this would be where you are planning to eat. If you are a Sephardi woman, someone lighting **safely** at the neighbors’ home is best. In any case, it might help and would not hurt if one who is anyway lighting in the place you are eating were to add extra candles on your behalf, without reciting an additional *beracha*.

14. *Mishna Berura* 263:30.

15. *Shemirat Shabbat K’Hilchata* 45:8.

16. See *Yabia Omer* II, *Orach Chayim* 16.

17. See also *Yalkut Yosef* op. cit. 44.

18. Agent.

19. See *Mishna Berura* 263:21. It is questionable whether or not your *shaliach* may make the *beracha* on the lighting when you are not present (see *Dirshu Mishna Berura* 263:30). It is therefore best for the *shaliach* to be a person who is lighting in any case and for him to have in mind that the *beracha* should apply to both lightings. In addition, the *shaliach* should not accept Shabbat until he lights the second set of lights.

C-14: Eating before *Kiddush*

Question: I am a nursing mother, and I sometimes get very hungry or thirsty between when I light Shabbat candles and when my husband comes home from *shul*. When this happens, may I eat or drink?

Answer: We will begin by examining the halachic indications in a situation in which there are no extenuating circumstances, and we will then turn our attention to the best solutions in cases of need.

The *gemara*¹ cites a *machloket* regarding whether one who ate before making *Kiddush* may still recite *Kiddush* afterward. We accept the opinion that he may, but we also accept the *gemara*'s implication that it is forbidden (Rabbinically) to eat even small quantities before *Kiddush*.²

When does this prohibition begin? The *poskim* assume that it is forbidden to eat once it is possibly Shabbat (i.e., from sunset). In addition, it is forbidden to eat even earlier if one has already accepted Shabbat.³ Since (at least Ashkenazi) women accept Shabbat when they light Shabbat candles,⁴ most assume that it is forbidden for a woman to eat or drink between lighting candles and hearing *Kiddush*.⁵

The *Dagul MeiRevava*⁶ writes that whereas *davening Ma'ariv* makes it Shabbat with regard to all Shabbat prohibitions, it is questionable whether other forms⁷ of accepting Shabbat early obligate one to adhere to all Rabbinical laws.⁸

1. *Pesachim* 106b.

2. *Shulchan Aruch, Orach Chayim* 271:7.

3. *Bach, Orach Chayim* 271; *Mishna Berura* 271:11.

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

5. *Shemirat Shabbat K'Hilchata* 43:45.

6. To *Shulchan Aruch, Orach Chayim* 261:4.

7. E.g., by lighting Shabbat candles or by means of an oral declaration.

8. See two opinions in the application discussed in *Shulchan Aruch, Orach Chayim* 393:2.

The *Minchat Yitzchak*⁹ entertains the possibility that it would be permitted to eat after candle lighting before *Ma'ariv*. However, he is unwilling to be lenient in practice in the absence of other reasons for leniency (such as the case he discusses, in which one is drinking water to swallow medicine).

Prohibitions of eating before performing a *mitzva* generally do not apply to drinking water.¹⁰ This is the case, for example, when it comes to the prohibition of eating before *Havdala*.¹¹ In contrast, however, it is forbidden to drink even water before *Kiddush*.¹² The *Rosh*¹³ explains that this is due to the concept that any eating done on Shabbat, including the drinking of water, has special importance. There is a *machloket* regarding whether this concept applies during *bein hashemashot*,¹⁴ and it is thus unclear whether one may drink water during that time period.¹⁵ In the case of a woman who is thirsty to drink water, the *Shemirat Shabbat K'Hilchata*¹⁶ is willing to be lenient only until sunset.

As mentioned, the reason it is forbidden for a woman who lit Shabbat candles to eat is that she accepts Shabbat at that time. There is a general consensus that at least conceptually, a woman can explicitly have in mind not to accept Shabbat with her lighting.¹⁷ In practice, however, *poskim* rely on such a condition only in cases of significant need.¹⁸ Along these lines, *Shemirat Shabbat K'Hilchata*¹⁹ allows a woman who is feeling weak or who is nursing to eat if she feels she needs to, even after candle lighting, if she made a condition not to accept Shabbat with her lighting.

9. VIII:18.

10. See *Shulchan Aruch, Orach Chayim* 89:3.

11. *Ibid.* 299:1. Some follow the *kabbalistic*-based practice not to drink even water before *Havdala*; see *Shemirat Shabbat K'Hilchata* 59:(30).

12. *Shulchan Aruch, Orach Chayim* 271:4.

13. *Shut HaRosh* 25:2.

14. Halachic twilight.

15. *Da'at Torah, Orach Chayim* 271:4.

16. 43:46.

17. *Shulchan Aruch* and Rama, *Orach Chayim* 263:10.

18. *Mishna Berura* ad loc. 44.

19. 43:47.

However, these leniencies of the *Shemirat Shabbat K'Hilchata* apply, as a matter of course, only if the woman finishes eating **before** sunset. What if a woman becomes particularly hungry after that point, as commonly happens when one is nursing? Although there are significant leniencies for nursing mothers to ensure that their milk supply is not affected, waiting an hour is unlikely to affect one's milk supply. It is true that in many cases, a woman who nurses may suffer particular distress if extreme hunger hits her. Nevertheless, it is generally difficult to be lenient, because there is almost always the alternative of the woman reciting *Kiddush* before her husband comes home.²⁰ There is no halachic reason for her not to do so if she is able to arrange for the requisite eating after reciting the *Kiddush*.²¹ Even if it is not accepted in your family for a woman to recite *Kiddush*, a simple discussion with your husband, including the pertinent halachic information, should hopefully convince him that your making *Kiddush* is better than eating or drinking after sunset before *Kiddush*.

On the other hand, every rule has exceptions, and when there is an acute need, one may be lenient after sunset as well, especially in regard to drinking (even large quantities) of water.

20. See *Minchat Yitzchak* op. cit. Whereas men should not recite *Kiddush* too close to nightfall before reciting *Kri'at Shema* and *Ma'ariv* (*Mishna Berura* 271:11), women are not obligated in these *mitzvot*, and this is therefore not an issue for them.

21. See *Shulchan Aruch, Orach Chayim* 273:5; *Living the Halachic Process*, vol. III, C-8.

C-15: To What Does *Havdala* Relate?

Question: This is more of a philosophical than halachic question: Is *Havdala* a *mitzva* of Shabbat or a *mitzva* of *chol*?¹

Answer: The Rambam² appears to have a clear stance on the matter, as he views *Kiddush* and *Havdala* as equivalent “bookends”: “It is a positive *mitzva* from the Torah to sanctify Shabbat with words, as the verse states, ‘Remember the day of Shabbat to sanctify it.’³ In other words, remember it as a remembrance of praise and sanctification. One must remember it as it enters and as it leaves – as it enters, with *Kiddush*, and as it leaves, with *Havdala*.”

There are notable distinctions between *Kiddush* and *Havdala*, however. *Kiddush* is recited **on** Shabbat; *Havdala* is recited **after** Shabbat. *Kiddush* focuses on Shabbat alone; *Havdala* distinguishes **between** Shabbat **and** *chol*. Indeed, one *gemara*⁴ seems to put the focus of *Havdala* on the distinction between Shabbat and *chol*, rather than viewing it simply as an appropriate time to extol Shabbat, citing the *pasuk*, “To distinguish between the sacred and the mundane”⁵ as the source for *Havdala*.

Whether *Havdala* relates more to Shabbat or to *chol* may have practical ramifications when it comes to the question of whether women are obligated in *Havdala*, a point that is disputed by the *Rishonim*.⁶ Women **are** obligated in *Kiddush* of Shabbat. Even though *Kiddush* is a time-based *mitzva*, the positive (“*zachor*”) and negative (“*shamor*”) *mitzvot* of Shabbat are linked in a manner that indicates that all those who are commanded to refrain

1. Weekday.

2. *Shabbat* 29:1; *Sefer HaMitzvot, Aseh* 155.

3. *Shemot* 20:8.

4. *Sh'vuot* 18b.

5. *Vayikra* 10:10.

6. Both opinions are cited in the *Shulchan Aruch/Rama, Orach Chayim* 296:8.

from *melacha*⁷ are obligated in *Kiddush*.⁸ If *Havdala* is part of the obligation of *zachor*, as the Rambam indicates, women may be obligated from the Torah in *Havdala*; even if *Havdala* is of Rabbinic origin, *Chazal* may have modeled it after *Kiddush*.⁹ However, the *Orchot Chayim*¹⁰ maintains that women are exempt from *Havdala*, as it is not linked to the negative *shamor* aspect of Shabbat, and the Rabbis only artificially connected it to the *pasuk* regarding remembering Shabbat. The *Pri Megadim*¹¹ brings corroboration to the *Orchot Chayim*'s thesis that *Havdala* is not linked to the negative *shamor* aspect of Shabbat from the fact that *Havdala* is recited on *chol*, after Shabbat has already ended.

One could claim that the approach of the *Orchot Chayim/Pri Megadim* indicates that *Havdala* is a *mitzva* of *chol*. The *mitzva*'s purpose could be to allow *melacha* on *chol*, as it is prohibited to do any *melacha*¹² before one makes a declaration of *Havdala* (even without wine). However, that conclusion appears to be overstated. The *Orchot Chayim* probably simply means that the notion that women are obligated in *Kiddush* despite the fact that it is time-based does not extend to *Havdala*, because *Havdala* is not as connected to “*zachor-shamor*” in the manner that *Kiddush* is.

In truth, all opinions seem to agree that the main point of *Havdala* is to emphasize, as *chol* begins, how special Shabbat is. Why, then, is *melacha* forbidden before *Havdala*? One possibility is that until one recites *Havdala*, it is still Shabbat for him on some level.¹³ Another possibility is that one is not allowed to go about normal activities before he has fulfilled the *mitzva* of parting from Shabbat.¹⁴

7. Work that is forbidden on Shabbat.

8. *Berachot* 20b.

9. *Maggid Mishneh, Shabbat* 29:1.

10. *Havdala* 18.

11. *Mishbetzot Zahav* 296:7.

12. All or some; see opinions in *Shulchan Aruch, Orach Chayim* 299:10.

13. *Mishna Berura* 299:33.

14. See *Aruch HaShulchan, Orach Chayim* 299:21; *Tzitz Eliezer* XI:34.

Another telling point is that the *gemara*¹⁵ states that *Havdala* can be recited before Shabbat actually ends, starting from *plag hamincha*.¹⁶ (The *Shulchan Aruch* rules this way regarding a case of need,¹⁷ but the *Mishna Berura*¹⁸ urges one not to do this in practice.) Rav Moshe Feinstein¹⁹ explains that this possibility is predicated on (and therefore an apparent proof to) the Rambam's understanding that *Havdala* is a *mitzva* of Shabbat, even if we usually perform it after Shabbat is over. This proof seems refutable, however (in addition to the fact that early *Havdala* is only relevant in unusual circumstances). This is because we find other *mitzvot* that relate specifically to the night that can be performed from *plag hamincha* (at least according to some opinions).²⁰ Therefore, we could view *Havdala* as a declaration of ushering in *chol* and nevertheless recite it from *plag hamincha* (even though *melacha* would certainly be forbidden until nightfall).

Unquestionably, however, the Rambam's approach that *Havdala* is a *mitzva* of Shabbat is the more straightforward and more accepted one.

15. *Berachot* 27b.

16. Approximately an hour and a quarter before sunset.

17. *Orach Chayim* 293:3.

18. 293:9.

19. *Igrot Moshe, Orach Chayim* VI:49.

20. See *Shulchan Aruch, Orach Chayim* 672:1, regarding Chanuka lights; *Bi'ur Halacha* to 489:3 regarding *sefirat ha'omer*.

c-16: Missing the First *Beracha* of *Havdala*

Question: This week, I did not hear the *beracha* of *Borei Pri HaGafen* during *Havdala*. Was I required to hear *Havdala* again?

Answer: Clearly, the most important *beracha* of *Havdala* is the final one, *HaMavdil*, which speaks about contrasts, especially between Shabbat and the rest of the week. The *berachot* on *besamim* and on fire are not crucial obligations,¹ and while they are preferably attached to *Havdala*, they can be said separately as well.² Thus, if one did not hear those *berachot*, this does not affect his having fulfilled his *Havdala* obligation,³ although he should make the *berachot* when he is able to over the course of the night.

In contrast, the cup of wine that one uses for *Havdala* is part and parcel of the *mitzva* on a Rabbinic level. Usually, by the time one recites *Havdala* on a cup of wine, he has already fulfilled the Torah-level *mitzva* of *Havdala* by reciting a form of *Havdala* during *Ma'ariv*.⁴ The reason we recite *Havdala* again is specifically to recite it over a cup of wine. In your case, you heard the *beracha* of *Havdala* recited by someone who made it over a cup of wine, as he was supposed to. On the other hand, you yourself did not hear the *beracha* of *Borei Pri HaGafen* on that wine. Have you therefore not fulfilled the Rabbinic-level *mitzva* of reciting *Havdala* over wine?

The *Magen Avraham*⁵ discusses the case of one who heard a complete *Havdala* but had in mind to include himself only in the *beracha* of *HaMavdil* but not in that of *Borei Pri HaGafen*.

1. *Shulchan Aruch, Orach Chayim* 297:1; *ibid.* 298:1.

2. Rama, *Orach Chayim* 298:1.

3. *Mishna Berura* 298:3.

4. According to most authorities, including the Rambam (*Shabbat* 29:1), *Havdala* is a Torah-level *mitzva*, but using a cup of wine for it is Rabbinic.

5. 296:10.

He rules that such a person did fulfill the *mitzva* of *Havdala*; he simply may not drink the *Havdala* wine without making a new *beracha*. The *Mishna Berura*⁶ explains that *HaMavdil*, recited over wine, is the essential *beracha* of *Havdala*, whereas *Borei Pri HaGafen* is necessary only to enable one to drink the wine.

Several *Acharonim*⁷ demonstrate the extent of this distinction's cogency by citing a *halacha* with regard to the parallel *mitzva* of *Kiddush*, which is also a declaration about Shabbat's special status and which is similarly recited over a cup of wine. The *Shulchan Aruch*⁸ posits that if one was in the midst of a meal in which he had already made a *beracha* on wine when Shabbat began, he should make *Kiddush* without reciting *Borei Pri HaGafen*. We see from this *halacha* that reciting the blessing of *Borei Pri HaGafen* is not an integral part of the *Kiddush*. Similarly, if one recites *Havdala* during *seuda shlishit* when one had already made a *beracha* on wine during the meal, there are two opinions in the *Shulchan Aruch*⁹ regarding whether he should recite *Borei Pri HaGafen* in *Havdala*, and the accepted opinion is that he does not need to.¹⁰ Furthermore, the reason for another *Borei Pri HaGafen* during *Havdala*, according to the opinion that requires it, is that *Havdala* cannot be considered part of the meal, and the *beracha* made during the meal is therefore no longer effective at that point.¹¹ There is no concern raised that one may possibly not fulfill the obligation of *Havdala* made over wine if he fails to recite the *beracha* of *Borei Pri HaGafen* during *Havdala*. Your case, in which *Borei Pri HaGafen* was recited but you did not hear it, is no worse.

There is even a question regarding whether reciting *Borei Pri HaGafen* is crucial for the one who makes *Havdala* when not in

6. 296:33.

7. Including *Shulchan Aruch HaRav*, *Orach Chayim* 272:(2); *Igrot Moshe*, *Orach Chayim* III:45; *Chelkat Yaakov* I:91.

8. *Orach Chayim* 271:4.

9. *Orach Chayim* 299:3.

10. See *Mishna Berura* ad loc. 10.

11. *Ibid.*

the midst of the meal, who clearly should be saying it. Based on the rule mentioned above that the *beracha* is important only to allow one to drink the wine, Rav Moshe Feinstein posits¹² that if one mistakenly recited *Shehakol* on *Havdala* wine, he fulfills the obligation of *Havdala*, as he is permitted to drink the wine based on the *beracha* of *Shehakol*. He further proposes that even if one forgot to make any *beracha* at all on the *Havdala* wine and he has already drunk it,¹³ he has fulfilled the *mitzva* of *Havdala*. Certainly, then, if the person who needed the *beracha* for his own drinking did indeed recite it, the fact that one of the listeners missed it is not a problem

*Shemirat Shabbat K'Hilchata*¹⁴ cites Rav S.Z Auerbach as ruling that since someone must drink the wine and he needs the *beracha* of *Borei Pri HaGafen* to be able to do so, the *beracha* is indeed a part of *Havdala* that listeners must take seriously. However, if one missed hearing that *beracha*, *Shemirat Shabbat K'Hilchata*¹⁵ rules that *b'di'eved*, there is no need to hear *Havdala* again, and he cites several *poskim* who agree with this ruling. This applies both to one who came in after *Borei Pri HaGafen* was said, as well as to one who did not hear it or concentrate on it. In your case, while you would have needed a *beracha* before drinking the wine,¹⁶ there was, of course, no need for you to drink.

12. *Igrot Moshe* op. cit.

13. If one did not drink the proper amount of wine, there is uncertainty as to whether he has fulfilled his *Havdala* obligation; see *Shulchan Aruch HaRav, Orach Chayim* 190:4; *Shemirat Shabbat K'Hilchata* 60:36.

14. Vol. III, notes to 60:(91).

15. 60:30.

16. *Ibid.*



Section D:
Mo'adim (Festivals)



D-1: *Simanim* on Rosh Hashana

Question: Are the *simanim*¹ eaten on both nights of Rosh Hashana? Should they be eaten before or after the *challa*, and how does when we eat them impact on the *berachot* made on them?

Answer: There are various credible *minhagim* regarding these matters, and it is not our place to imply that one should abandon his *minhag* in favor of a different one. We will simply explain the issues at hand, although we will show mild preferences for certain practices for the benefit of those who lack a clear *minhag*.

The *gemara*² states that since symbolism has significance, one should “be in the practice” of eating³ certain foods – dates and four vegetable *simanim* – in the “beginning of the year.” Some maintain that the “beginning of the year” refers to all Rosh Hashana meals, whereas others hold that it refers only to the first meal. The more accepted practice is to eat the *simanim* at both night meals.⁴

The more prevalent *minhag* (as well as the one preferred by *poskim*) is to eat the *simanim* foods after *HaMotzi*.⁵ In addition to the natural logic of eating the foods during the meal, some *poskim* claim that doing so solves a halachic problem.⁶ If one were to eat the *simanim* before the bread, he would put himself into a situation in which it is questionable whether the *simanim* foods require their own *beracha acharona*. This is similar to the question that arises regarding eating *karpas* before *matza* during

1. Symbolic foods.

2. *Kritot* 6a.

3. Some texts have it as “seeing” rather than “eating.”

4. See discussion of various possibilities and opinions in *Mishneh Halachot* XIII:80; *Torat HaMoadim, Yamim Noraim* 4:1.

5. See *Tur, Orach Chayim* 583; *Taz, Orach Chayim* 583:2.

6. See *Torat HaMo'adim* op. cit. 2.

the Pesach *seder*.⁷ We solve that problem by eating less than a *k'zayit* of *karpas*,⁸ but many people want to eat more than a *k'zayit* (combined) of the *simanim*.

On the other hand, eating the *simanim* after bread raises other *berachot* questions. The *poskim* assume that one makes a *beracha rishona* on the fruit *simanim* even though they are eaten during the meal. However, this is not self-evident.⁹ Although fruit eaten as desert requires a *beracha rishona*, no *beracha* is recited on fruit served as an “appetizer.”¹⁰ One would think that since the *simanim* are served in the beginning of the meal, they should be considered an appetizer. Perhaps the fact that the *simanim* are eaten for ritual and not culinary reasons is a contributing factor to justify a *beracha* requirement.¹¹

A related question is whether to recite *Borei Pri HaAdama* on a vegetable *siman*. As a rule, we do not make a *beracha* on vegetables during a meal, as they “accompany the main meal.”¹² In our case, however, there are varied opinions. The more common practice is to make the *beracha*, perhaps because the vegetables are eaten as *simanim*, but some posit that their status as *simanim* makes no difference.¹³ Some compromise and maintain that one recites the *beracha* on the vegetable least normally eaten as part of the meal, which some assume is *kara* (of the gourd family).¹⁴ (*Piskei Teshuvot*¹⁵ cites Rav Devlitzki as suggesting a safe, although unnatural, idea – making the *beracha* on a *Borei Pri HaAdama* fruit, such as a watermelon or banana, which certainly is not eaten as part of the main meal, making recitation of the *beracha* more clearly required.)

7. See *Living the Halachic Process*, vol. V, D-14.

8. See *Shulchan Aruch, Orach Chayim* 473:6.

9. See *Darchei Moshe, Orach Chayim* 583:3; *Mishna Berura* 583:3.

10. See *Mishna Berura* 174:39; *V'Zot HaBeracha*, p. 76.

11. See *Divrei Yatziv, Orach Chayim* 252.

12. *Shulchan Aruch, Orach Chayim* 177:1.

13. *Teshuvot V'Hanhagot* II:269; *Torat HaMo'adim* op. cit.

14. See *Halichot Shlomo, Mo'adim* II:1:18.

15. 583:(13).

Another question of *minhag* vs. regular rules of *berachot* relates to the order of the *simanim*. When one plans to eat multiple fruit and at least one of them is of “the seven species,” which includes both dates and pomegranates, he should recite *Borei Pri HaEtz* on that fruit.¹⁶ (If he is eating more than one fruit of the seven species, the question of on which to make the *beracha* is determined based on the order in which the seven species appear in the *pasuk*.¹⁷) Nevertheless, the common *minhag* among Ashkenazim is to first eat the apple dipped in honey, with a *beracha* and with a *Yehi Ratzon*.¹⁸ Some take the purist approach, reciting *Borei Pri HaEtz* on the date and having the apple only later.¹⁹ One way to preserve the order of the *Yehi Ratzon* prayers and still follow the regular rules of *berachot* is to be careful to keep the dates and pomegranates off the table when making the *beracha* on the apple, while having in mind to eat them afterwards.²⁰ Another option is to make the *beracha* on the date, eat a small amount without reciting the *Yehi Ratzon*, and then eat the apple, pomegranate, and more date, etc., following the order that fits the standard practice.

Although it is contrary to common practice, *poskim* recommend that when eating a food on which a *beracha* is recited, one should take a small bite of the food right after the *beracha* and recite the *Yehi Ratzon* only afterwards, before further eating.²¹

16. *Shulchan Aruch, Orach Chayim* 211:1.

17. *Ibid.* 4.

18. It is unclear how the apple was awarded this precedence, despite the fact that it is a post-Talmudic *siman*. Perhaps the reason is that the prayer for a “*shana tova u’metuka*” is seen as a more central theme on Rosh Hashana.

19. *Halichot Shlomo* op. cit. (26).

20. *Ibid.*

21. *Mishna Berura* 583:4.

D-2: *Shehecheyanu* on *Shofar* on the Second Day of Rosh Hashana

Question: Why is it that at *Kiddush* on the second night of Rosh Hashana, we require the presence of a new fruit in order to recite *Shehecheyanu*, but we say *Shehecheyanu* before *shofar*-blowing of the second day without any such “help”?

Answer: *Shehecheyanu* is recited at *Kiddush* on the second day of *Yom Tov* in *chutz la'aretz*, even though it was already recited the day before, because we view the second day as observed due to doubt. In other words, based on Rabbinic design, we treat the second day as if it might be the correct day, in which case the first day would not have been *Yom Tov* and the *Shehecheyanu* of the first night would have been of no value. Therefore, the *beracha* must be said again on the second night. Rosh Hashana, however, is somewhat different, as the second day was not instituted out of doubt; the two days of *Yom Tov* are observed out of certainty (a concept often called *yoma arichta*¹ = a long [single] day).²

The Rabbinic-level certainty that defines the observance of a second day of Rosh Hashana affects a number of halachic issues, as we cannot employ leniencies that stem from viewing the second day of *Yom Tov* as based only on doubt regarding the correct day.³ (For example, if an egg was laid on the first day of *Yom Tov*, it is permitted on the second day of *Yom Tov*, because one of those days is not really *Yom Tov*. This leniency does not apply on Rosh Hashana.⁴) Some *Rishonim* suggest that due to the concept of *yoma arichta*, *Shehecheyanu* should not be repeated on the second day of Rosh Hashana, since it was already properly

1. See *Beit Yosef, Orach Chayim* 515.

2. See *Beitza* 4a.

3. See *Shulchan Aruch, Orach Chayim* 600:1; *ibid.* 527:22.

4. *Beitza* *op. cit.*

recited on the first day.⁵ However, the more accepted opinion is that the second day was instituted with all elements of the first day; while *yoma arichta* strengthens some of the day's practices, it does not remove matters such as *Shehecheyanu*.⁶

The Rosh⁷ recommends having a new fruit on hand for *Kiddush* of the second day of Rosh Hashana, so that even according to the opinion that *Shehecheyanu* is not called for due to the nature of Rosh Hashana, it will not be a *beracha l'vatala*, due to the presence of the fruit. However, this is not an absolute requirement, as both Ashkenazi and Sephardi *poskim* rule that if one does not have a new fruit, he recites *Shehecheyanu* anyway.⁸

Ashkenazim and Sephardim both posit that *Shehecheyanu* is different with regard to *shofar*, but they go in opposite directions. Ashkenazim follow the Rama,⁹ who rules that *Shehecheyanu* is recited on *shofar* without the need to resort to a new fruit.¹⁰ *Rishonim* indicate that it is easier to justify the recitation of the *beracha* on the second day before blowing *shofar* than while reciting *Kiddush*,¹¹ although the *Mishna Berura* does not understand why.¹² The *Minchat Shlomo*¹³ suggests that it is because in the case of the *mitzva* of *shofar*, there is a break in the *yoma arichta*, as the *mitzva* does not apply at night. Nevertheless, the *Magen Avraham*¹⁴ and other important *poskim* **recommend** (as opposed to **requiring when possible**, as for *Kiddush*) that the *ba'al tokeiah* wear a new article of clothing requiring *Shehecheyanu* and have this new article as his secondary intention while reciting *Shehecheyanu* on the *shofar*. Thus, it is not unanimous that there

5. See *Tur; Orach Chayim* 600.

6. See *ibid*.

7. *Rosh Hashana* 4:14.

8. *Shulchan Aruch, Orach Chayim* 600:2.

9. *Orach Chayim* 600:3.

10. See *Darchei Moshe, Orach Chayim* 600:1.

11. See *Hagahot Maimoniot, Shofar* 3:7.

12. See *Sha'ar HaTziyun* 600:5.

13. I:20.

14. 600:3.

is a big difference between *Kiddush* and *shofar* in this regard for Ashkenazim. However, it is true that the more prevalent *minhag* is that the *ba'al tokei'ah* does not bother to wear new clothing for the second-day *shofar*-blowing.

Sephardim follow the ruling of the *Shulchan Aruch*,¹⁵ who posits that one does not recite *Shehecheyanu* on *shofar* on the second day, although in the *Beit Yosef* he cites no reason other than *minhag* for the second-day *shofar*-blowing being less deserving of *Shehecheyanu* than *Kiddush*.¹⁶ Interestingly, the main Sephardi *poskim* do not suggest bringing new clothes or fruit to enable the *beracha* (perhaps because it is less practical than at *Kiddush*). Although *Teshuvot V'Hanhagot*¹⁷ rules that a Sephardi *ba'al tokeiah* should recite *Shehecheyanu* if blowing in an Ashkenazi *shul*, we would expect such a *ba'al tokeiah* to follow Rav Ovadia Yosef's ruling that he should not.¹⁸ (An Ashkenazi in the crowd can do so in his stead.)

Interestingly, on the second day of *Yom Tov* of Sukkot in *chutz la'aretz*, we do not recite *Shehecheyanu* before taking the *lulav*.¹⁹ The distinction likely has to do either with the possibility that the *Shehecheyanu* of the second night's *Kiddush* covers it²⁰ or that *Shehecheyanu* can be said on the *lulav* even **before** Sukkot,²¹ such that the first day's recitation suffices even if we treat it as a doubt that the first day was really Sukkot.

15. *Orach Chayim* 600:3.

16. See *Aruch HaShulchan, Orach Chayim* 600:4.

17. I:347.

18. *Yabia Omer* I, *Orach Chayim* 29.

19. *Shulchan Aruch, Orach Chayim* 662:2.

20. *Pri Megadim, Eshel Avraham* 662:1.

21. *Mishna Berura* 662:2.

D-3: Non-Leather Footwear on Yom Kippur

Question: Is it permitted and proper to wear comfortable non-leather footwear on Yom Kippur?

Answer: The Torah commands us to afflict ourselves (“*v’initem*”) on Yom Kippur, and *Chazal* derived from *p’sukim* which forbidden activities this affliction entails. In one such derivation, the *gemara*¹ cites *p’sukim* describing people in states of mourning who went “*yachef*,” and the *gemara* determines that this means they were shoeless.

The *gemara*² asks whether one may wear shoes made of *sha’am* (a type of plant) on Yom Kippur, and it answers by citing stories of *Amoraim* who wore such shoes. On the other hand, Rava implies that it is forbidden to wear wooden shoes on Yom Kippur. The *Beit Yosef*³ summarizes the opinions of several *Rishonim*: The Rif rules that only leather (or leather-lined) shoes are forbidden. According to the *Ba’al HaMaor*, the *gemara*’s conclusion is that whatever functions as a shoe is forbidden, regardless of the material from which it is made. Rashi maintains that only leather and wooden shoes (which are strong and protective) are forbidden.

The *Beit Yosef/Shulchan Aruch*⁴ accepts the Rif’s lenient opinion that only leather shoes are forbidden. The *Magen Avraham*⁵ reports that the *minhag* is in accordance with this ruling of the *Shulchan Aruch*, and the *Taz*⁶ criticizes anyone who forbids non-leather shoes, considering that *Amoraim* were personally lenient.

1. *Yoma* 77a.

2. *Ibid.* 78b.

3. *Orach Chayim* 614.

4. *Shulchan Aruch, Orach Chayim* 614:2.

5. 614:2.

6. 614:1.

The *Mishna Berura*⁷ confirms that the primary ruling permits all non-leather shoes. However, he encourages those who want to be stringent to not wear wooden shoes (especially while indoors) or even any shoe that protects the foot well and prevents the wearer from feeling the ground – unless necessary, such as when one must walk outside.⁸

Unquestionably, the present-day, widely accepted practice among observant communities is to **allow any shoe that does not contain leather**. Admittedly, it is difficult to discuss a *minhag* regarding the now uncommon wooden shoe; however, there are many available synthetic shoes, and most observant Jews do wear such shoes on Yom Kippur. Before we analyze this practice any further, we will preface our discussion by declaring as clearly as possible: We reject any suggestion to change this standard ruling for our communities.

On the other hand, if there is any day on which **personal** stringencies should not be criticized as an expression of a “holier than thou” approach, Yom Kippur is that day. Therefore, for the benefit of one who has such an inclination or conviction, we will discuss the relative logic of stringency regarding different footwear.

Comfortability of footwear is not an issue, as the *gemara*⁹ states explicitly. Thus, even if someone loves wearing fabric/thin-rubber-sole slippers or flip-flops, there is no reason to avoid them on Yom Kippur. (After all, although many people would take off their shoes in *shul* every Shabbat if protocol allowed it, comfortable (non-leather) socks are permitted according to all opinions.¹⁰)

Crocs are slightly more like shoes, and there was an uproar when Rav Elyashiv was quoted as saying that it is worthwhile to

7. 614:5.

8. The Rambam (*Shevitat Asor* 3:7) mentions feeling the ground as a factor in determining which shoes are forbidden.

9. *Yoma* 78b.

10. See *Yevamot* 102b.

not wear them on Yom Kippur. (He apparently did not say they were actually forbidden.) In truth, Crocs are good at preventing wearers from feeling the ground. However, in addition to the fact that they are not made of leather, they do not give the type of support and protection that normal shoes do, and these are qualities crucial for the prohibition of wearing them according to the main stringent opinions.

Sneakers are much more shoe-like than the above examples, which makes sneakers candidates for stringency according to the minority of classic *poskim* who hold that leather is not the only factor. Even so, sneakers are often thinner and flimsier than regular shoes, which make sneakers less shoe-like.

Chumra is most logical regarding shoes that look and function like standard leather shoes, but which for some reason (including production price) are made of a substitute material. It is **possible** (although not necessarily correct) that even the majority opinions who forbade only leather shoes would be stringent in this case. First, some argue that there is a problem of *marit ayin*.¹¹ Second, if *Chazal* singled out leather shoes because their characteristics made them their time's normal shoes, it is possible that standard-looking/feeling shoes according to the norms of one's time and place would be similarly forbidden.¹² Therefore, for those inclined to stringency, refraining from wearing normal shoes that happen to be synthetic is the most logical of the stringencies on this matter.¹³

11. *Minchat Shlomo* II:53. Rav Elyashiv, as cited by *Dirshu Mishna Berura* 614:8, is lenient on this point, because people are used to similar-looking shoes made of different materials.

12. Analysis of this point is fascinating but beyond our present scope.

13. See *Dirshu Mishna Berura* 614:9.

D-4: Washing Hands with Soap on Yom Kippur

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

Answer: We will discuss specifically the Yom Kippur elements of the question; we will not touch upon the question of possible Shabbat violations regarding the use of soap (which is relevant particularly when one wishes to use hard, and perhaps also thick liquid, soap).

It is a matter of debate whether the “afflictions” (i.e., refraining from physical pleasures on Yom Kippur) other than eating and drinking, such as *rechitza*¹ and *sicha*,² are of Torah origin or are Rabbinic.³ Either way, built into the prohibition of *rechitza* is permission to wash when one does so not for enjoyment but to remove dirt.⁴ We can safely posit that the hygienic need to wash hands after use of the toilet is no less significant than the need to remove dirt.

Nevertheless, your question is a good one, because if washing hands with soap is considered *sicha*, it might be prohibited even when simple washing is permitted. This is because we are more stringent regarding *sicha* than we are regarding washing with water. Indeed, the *Yerushalmi*⁵ teaches that *sicha* is forbidden even when it is not done for pleasure. On the other hand, the *gemara*⁶ does permit putting oil on *chatatim* (a type of skin disorder) or for the needs of the sick.

Thus, we must ask: 1) Is using soap classified as *sicha*? 2) If

1. Washing the body with water.

2. Classically, smearing the skin with oil.

3. See *Beit Yosef, Orach Chayim* 611.

4. *Shulchan Aruch, Orach Chayim* 513:1.

5. *Yoma* 8:1.

6. *Yoma* 77b.

so, does the need for soap justify its use?

When the *gemara*⁷ discusses *sicha*, it does so in reference to using oil. *Tosafot*⁸ assumes that the prohibition on Yom Kippur similarly applies to smearing animal fats on one's skin. The two main ingredients in solid soap are vegetable **oils** and/or animal **fat** (although liquid soaps, which we use because of possible Shabbat violations, have more diverse ingredient options). Nevertheless, soaps seem to be fundamentally different from the oils and fats discussed in the classical sources. The objective of *sicha* is usually to have the skin absorb the substance. Indeed, this is evident from the *gemara*'s⁹ portrayal of *sicha* as being like drinking. In contrast, soap is intended to be applied and then removed soon thereafter, with only a tiny amount being absorbed by the skin. Thus, one could argue that using soap is not classified as *sicha*.

However, we find very influential *Acharonim* – including the *Mishna Berura*¹⁰ and the *Aruch HaShulchan*¹¹ – who assume that using soap is indeed considered *sicha*. The context of the *Aruch HaShulchan*'s comment is a discussion of whether it is permitted to use **non-kosher** soap, which, he writes, depends on how far we take the equation between *sicha* and drinking. On that topic, Rav Ovadia Yosef¹² notes, in addition to other reasons for leniency, the idea that using soap is “less than regular *sicha*, as it is immediately washed away with water.” It is unclear whether he intended that such logic alone could make using soap permitted on Yom Kippur, but the statement does corroborate the salience of our distinction and contributes at least slightly to the grounds for leniency.

Why do we treat *sicha* more stringently than washing, in that the former is forbidden even when there is no intention for

7. *Yoma* 76b.

8. *Ibid.* 77a.

9. *Yoma* 76b.

10. 554:28.

11. *Yoreh Deah* 117:29.

12. *Yechaveh Da'at* IV:43.

enjoyment? A number of explanations are offered. The *Magen Avraham*¹³ writes that it is because *sicha* generally provides greater enjoyment than washing. Rabbeinu Mano'ach¹⁴ writes that since most people wash off dirt with water, using oil looks like it is being done for enjoyment. Similarly, *Tosafot Yom HaKippurim*¹⁵ writes that since one could have used water by itself, if he chooses to also use unnecessary oil, it is considered *sicha* done for pleasure.

Let us now analyze whether these explanations as to why *sicha* is treated more stringently apply to use of soap in a normal hygienic context. Soap is rarely used for enjoyment. In addition, people are unlikely to be confused about the intentions of one who washes his hands with soap. Finally, soap serves a hygienic function that water does not. Therefore, logic would seem to allow its use for hygiene, just as water is permitted for that purpose. Nevertheless, it is quite possible that anything that falls under the category of *sicha* is forbidden even if it does not share the classic reasons for stringency. The *Mishna Berura*¹⁶ might imply this, as does the common ruling/practice forbidding roll-on deodorant on Yom Kippur.

Still, the above argument makes it easier to permit the use of soap based on need. The *Shulchan Aruch*¹⁷ rules that it is permitted to do *sicha* for a sick person. Logically, it should be similarly permitted to do so to prevent disease, which health experts assert soap does. However, halachic precedent is potentially influential, and whereas the needs of one who is already sick are well-established in Halacha, the hygienic needs of a healthy person are not.

It is further clear that circumstances impact the degree of the need to use soap, as not all hygienic needs are of the same level. It would also seem to be proper to be consistent on the matter. It

13. 614:1.

14. *Shvitat Assor* 3:9.

15. *Yoma* 77b.

16. 554:28.

17. *Orach Chayim* 614:1.

does not appear appropriate for one who is not regularly careful about using soap when leaving the bathroom to take advantage of the possibility for leniency specifically on Yom Kippur.

In summary, we believe that Halacha generally permits use of soap on Yom Kippur in cases in which a basic level of hygiene calls for it. However, one should use simple, not luxurious, soap, and it is even better to dilute it to the point that it has a water-like consistency.¹⁸

18. The *Ohr L'Tzion* IV:12:5 permits using diluted soap on Yom Kippur for washing.

D-5: Moving Fallen Decorations on Sukkot

Question: I know that the *halacha* is that *sukka* decorations are *muktzeh* throughout Sukkot because they are set aside for a *mitzva*. Does this mean that if they fall down, I must leave them where they fell? If so, do the *halachot* apply to both Shabbat/*Yom Tov* and *Chol HaMo'ed*?

Answer: This type of *muktzeh*, called *muktzeh l'mitzvato*,¹ has different levels. The *gemara*² derives from shared terminology used regarding both a *sukka* and the *korban chagiga*³ that just as the latter may not be used for personal benefit due to its holy status, the “wood of a *sukka*” similarly becomes forbidden. This is a Torah-level law.⁴ There is a *machloket* regarding whether this law applies only to the *s'chach*⁵ or even to the walls.⁶ There is also discussion whether this level of *muktzeh* applies only to the minimum size of the *sukka* and whether it applies after the *sukka* has fallen down.⁷

There are also Rabbinic applications of the prohibition to use *mitzva*-related objects. The *gemara*⁸ discusses the Rabbinic prohibition of *muktzeh* with regard to leftover oil from Chanuka candles and with regard to *sukka* decorations (*noyei sukka*) that have already been used, understanding that the prohibition is generated by the fact that these objects are designated and set

1. *Muktzeh* on account of the object being set aside for the performance of a *mitzva*.

2. *Sukka* 9a.

3. One of the sacrifices offered in the *Beit HaMikdash* on holidays.

4. *Tosafot*, *Beitza* 30b.

5. *Rosh*, *Sukka* 1:13.

6. *Rambam*, *Sukka* 6:15.

7. See *Tosafot* op. cit.; *Beit Yosef*, *Orach Chayim* 638.

8. *Shabbat* 45a.

aside for *mitzva* use. However, elsewhere, the *gemara*⁹ implies that it is forbidden to use *noyei sukka* for purposes other than the *mitzva* for which they were designated because such use constitutes *bizuy mitzva*.¹⁰ *Tosafot*¹¹ explains that both reasons are needed, as *muktzeh*-designation does not apply on *Chol HaMo'ed*, and *bizuy mitzva* does not apply after the decorations have fallen down. The Ran¹² distinguishes between the categories as follows: Using the wood of the *sukka* is forbidden based on Torah law; use of the decorations during the *chag* is forbidden because of *bizuy mitzva*; the prohibition continues throughout the eighth day due to the regular rules of *muktzeh*.

In addition to the prohibition to **use** the objects, the Rama¹³ points out that on Shabbat and *Yom Tov*, the decorations' *muktzeh* status also forbids **moving** them, as in other types of *muktzeh*. The Gra¹⁴ explains that anything from which one may not derive personal benefit is *muktzeh* with regard to moving it. Paradoxically, even though the status of *muktzeh* is rooted in one's interest in continuing the object's *mitzva* use, if decorations fell, one should not move them on Shabbat/*Yom Tov* even to enable them to again serve as *noyei sukka*. Similarly, one may not move them to protect them from the rain, even if this is necessary to enable them to be used as *noyei sukka* in the future.¹⁵

On days other than Shabbat and *Yom Tov*, the Torah-level or Rabbinic-level prohibitions of using objects connected to *mitzvot* do not extend to moving the object. Thus, one may move *sukka* decorations on *Chol HaMo'ed* or leftover Chanuka oil on a day other than Shabbat. There is a *machloket* among contemporary

9. *Shabbat* 22a.

10. Degrading a *mitzva*.

11. Ad loc.

12. *Beitza* 17a in the Rif's pages, citing the Ramban.

13. *Orach Chayim* 638:2.

14. Ad loc.

15. The *Bi'ur Halacha* ad loc. discusses whether and how decorations that fall on the table and disrupt the *Yom Tov* meal may be moved to facilitate the continuation of the meal.

Acharonim regarding whether it is prohibited to remove *sukka* decorations from the *sukka* on *Chol HaMo'ed* if one is not planning to use them for another purpose.¹⁶ Presumably, it is acceptable to remove them in order to protect them, so as to later return them to the *sukka*.¹⁷

There is a way to prevent *noyei sukka* (not the *sukka* itself¹⁸) from becoming *muktzeh*. The *gemara*¹⁹ states that one can make an oral condition to “not separate himself from use of the objects when the days of Sukkot begin.” When one does so, the decorations never develop the exclusive connection to the *mitzva* of *sukka*, and it is therefore permitted to remove them from the *sukka* or to use them for other purposes, even if they did not first fall.²⁰ Consequently, they are not *muktzeh* on Shabbat/*Yom Tov* either.²¹ However, there are complex requirements as to how to make such a condition, and because of this, the Rama²² prefers that people not rely upon it.

16. See *Dirshu Mishna Berura* 638:19.

17. See *ibid.* and *Piskei Teshuvot* 638:7.

18. *Shulchan Aruch, Orach Chayim* 638:1.

19. *Beitza* 30b.

20. *Shulchan Aruch*, *op. cit.* 2; *Mishna Berura* ad loc. 19.

21. That being said, many decorations are attached to the *sukka* in a way that makes it forbidden to take them down due to *melacha* considerations (see *Mishna Berura* 638:24). This applies on Shabbat and *Yom Tov* and, in some cases, even on *Chol HaMo'ed*.

22. *Orach Chayim* 638:2; see dissenting view in *Mishna Berura* 638:23.

D-6: *Nichum Aveilim* on *Yom Tov* and *Chol HaMo'ed*

Question: May *nichum aveilim* be done on *Yom Tov* and *Chol HaMo'ed*?

Answer: As is common in the realm of the laws of *aveilut*, there is a gulf between the *gemara's* principles and the current practice. We will attempt to make some peace between them.

It is clear from *gemarot* that one may do *nichum aveilim* on a holiday. A *baraita*¹ describes a person going from place to place holding a *lulav* and *etrog* (clearly referring either to *Chol HaMo'ed* or *Yom Tov*), and it mentions *nichum aveilim* as one of the person's destinations. Another *gemara*² even arrives at a halachic consequence of the practice of performing *nichum aveilim* during a *chag*: Since people do *nichum aveilim* during a *chag*, even though *shiva* does not begin until after the *chag*,³ the number of days of *chag* after the burial are subtracted from the number of days of *nichum aveilim* required after the *chag*. For example, if there were three days of *chag* (including the last *Yom Tov*) before *shiva* began, only on the first four days of *shiva* are people expected to be *menachem*.⁴ Finally, the *gemara*⁵ states that Beit Shammai and Beit Hillel disagree regarding if it is permitted to do *nichum aveilim* on Shabbat, and the *halacha* follows Beit Hillel, who permit it.⁶ The same is presumably true of *Yom Tov*.

Relatively recent *Acharonim* point out that the *minhag* in our times is not to do *nichum aveilim* on Shabbat and/or *chag*. The *Aruch HaShulchan*⁷ writes this with regard to Shabbat. Rav

1. *Sukka* 41b.

2. *Mo'ed Katan* 20a.

3. See *Shulchan Aruch, Yoreh Deah* 399:2.

4. *Ibid.*

5. *Shabbat* 12a.

6. *Shulchan Aruch, Orach Chayim* 287:1.

7. *Orach Chayim* 287:3.

Moshe Feinstein⁸ reports that the same is true regarding *Yom Tov* and *Chol HaMo'ed*, and he suggests that this is the reason that we now assume that *nichum aveilim* is done during the entire period of *shiva* after the *chag*, even if the burial was during *Chol HaMo'ed*.

How did this change in practice come about? The following *gemara*⁹ may be most instructive: “**Reluctantly**, they permitted to console mourners and visit the sick on Shabbat.” Rashi¹⁰ explains that the problem with *nichum aveilim* is that it can be upsetting to those who do it, and the Rif¹¹ writes that the visitor might inappropriately cry out. These sources help explain the *Shulchan Aruch*'s ruling¹² that we use a different formula for *nichum aveilim* on Shabbat than during the week, as we want to keep the atmosphere different from the regular norm of a mourner's house. (The *Mishna Berura*¹³ does cite an opinion that one may use the regular formula.)

The *Magen Avraham*¹⁴ expresses displeasure with those who improperly take advantage of “free time” specifically on Shabbat to perform such *mitzvot*, which are preferably done during the week. The *Nimukei Orach Chayim*¹⁵ notes that the situation has in fact improved in this matter since the *gemara*'s time, as people now are careful to be *menachem avel* specifically during the week. He further points out that *nichum aveilim* should ordinarily be done with the *aveilim* sitting on the ground or a low chair when addressed by the visitors,¹⁶ and such a position, as well as the formal words of consolation, are not appropriate for Shabbat, when public mourning is forbidden. This is one more

8. *Igrot Moshe, Yoreh Deah* II:172.

9. *Shabbat* 12b.

10. Ad loc.

11. *Shabbat* 5b of the Rif's pages.

12. *Orach Chayim* 287:1.

13. 287:3.

14. 287, introduction to *siman*.

15. 287:1.

16. *Shach, Yoreh Deah* 387:1.

reason why it was appropriate that *nichum aveilim* on Shabbat was discontinued. While the *Nimukei Orach Chayim* does not discuss *chagim*, much of the same logic presumably applies to them as well.

Notably, the *Shevet HaLevi*¹⁷ points out that the factors that the *Nimukei Orach Chayim* raises existed in the *gemara*'s time, and yet the *gemara* states, albeit reluctantly, that *nichum* can be done. The *B'Tzel HaChochma*¹⁸ cites many *Rishonim* who describe *nichum aveilim* on Shabbat as a normal thing to do, and therefore writes that we should not reject it, especially if people are careful to keep the mood calm.

The *Gesher HaChayim*¹⁹ writes that the Ashkenazi *minhag* is to not do *nichum aveilim* on Shabbat or *Yom Tov*, whereas it is done on *Chol HaMo'ed*. As mentioned above, more recent *poskim*²⁰ seem to acknowledge that it is not commonly practiced even on *Chol HaMo'ed*. Sephardi *minhag*²¹ is to sanction *nichum aveilim* in the mourner's house even on Shabbat, with more of a focus on words of encouragement than discussing the loss, if this is the only time the consoler can come. Ashkenazim do no more than mention one's regrets and discuss feelings informally with the *avel* in *shul*. It seems that the Ashkenazic approach is that coming to an *avel*'s home is done only when he is accepting visitors as part of *shiva* (at the hours he set). At other times, only people who are very close would venture in.

17. IV:53.

18. II:44.

19. Vol. I, 20:5:2.

20. See *Igrot Moshe* op. cit.; Rav Auerbach, cited in *Shemirat Shabbat K'Hilchata* 65:(181).

21. See *Yalkut Yosef, Sova Semachot I, Aveilut* 26:2.

D-7: Chanuka Lighting on *Motzaei Shabbat* by Hosts or at Home?

Question: My family and I will be at my parents' house for Shabbat Chanuka, and we will be leaving there for our own home (an hour-long trip) relatively soon after Shabbat. Where should I light Chanuka candles?

Answer: An *achsenai* (guest) is obligated to light where he is, unless his family lights on his behalf at home.¹ Although the *achsenai* can fulfill his obligation by paying the host for a part in his oil/candles,² the *achsenai* usually lights his own candles where he is staying.³ This is what we assume you will do on *erev Shabbat*.

On *Motzaei Shabbat*, there is a two-fold question: Does your *achsenai* status, which connected you to the house you are visiting with regard to the lighting on Friday afternoon, continue as you are about to leave? If it does (or can), is it preferable to light earlier in your temporary home or later in your real home?

Most *poskim*⁴ rule that it is generally better, if possible, to light in one's own home, even though it will be quite a bit after nightfall by the time he can do so. However, Rav S.Z. Auerbach⁵ is cited as preferring lighting in the host's home in your case. The logic is that when the obligation initially takes effect upon the conclusion of *Shabbat*, the host's house is the guest's "home" with regard to Chanuka lighting, and the guest should therefore fulfill the *mitzva* then and there. This follows if one posits (in contrast to the opinion of Rav Ovadia Yosef⁶) that when one is a guest in

1. *Shabbat* 23a.

2. *Shulchan Aruch, Orach Chayim* 677:1.

3. *Mishna Berura* ad loc. 3.

4. Including *Chazon Ovadia* (Yosef), Chanuka, p. 155; *Chovat HaDar*, Chanuka 1:(65); *Teshuvot V'Hanhagot* 1:391.

5. Cited in *Halichot Shlomo, Mo'adim* II, 14:19.

6. *Chazon Ovadia* op. cit.

someone's home for an entire day, the host's house is considered the visitor's effective home until he leaves. Much may depend on one's reading of the *Bi'ur Halacha*.⁷ He writes that one who eats only a single meal at a local friend's home should not light there, but if he stays at his parents' home for all of Chanuka, he lights there even if he sometimes eats at home during those days. The above *Acharonim* differ regarding cases that are somewhere between these two extremes – e.g., when one is in someone else's house for a day and more but not for all of Chanuka.

Rav Auerbach argues that one may light at his parents' home only if he remains a half hour after lighting before leaving there for his own home.⁸ That is because the lighting must be viable for a half hour. Thus, for example, if one lights with less than a half hour of oil, the lighting is invalid,⁹ and if one lights with the intention to extinguish the candles within a half hour, he does not fulfill the *mitzva*.¹⁰ Rav Auerbach reasons that once the person leaves his host's home, it is no longer considered his own home and the lights are therefore no longer connected to him; leaving within a half hour is thus equivalent to extinguishing the candles.

A major factor in this case is the question of how important it is to light as soon as possible after nightfall. In fact, we find correlations among some of the *Acharonim* on these matters. Rav Auerbach generally places great importance on lighting promptly (within 30 minutes of the earliest time). One situation in which this arises is the normal timing of lighting on *Motzaei Shabbat*. Although Rav Auerbach was ordinarily stringent to follow Rabbeinu Tam's opinion that one should refrain from *melacha* until approximately 72 minutes after sunset on *Motzaei Shabbat*, he nevertheless was very careful to light on *Motzaei Shabbat* of Chanuka between 35 and 50 minutes after sunset.¹¹ *Teshuvot*

7. To 677:1.

8. See *Minchat Shlomo* II, 58.2.

9. *Shulchan Aruch, Orach Chayim* 675:2.

10. *Minchat Shlomo* op. cit.

11. *Halichot Shlomo, Mo'adim* II, 16:15.

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V'Hanhagot, as a contrasting example, viewed lighting until 7:30 PM¹² as satisfactory. He therefore recommended that a Shabbat guest who could make it to his own home by then light at home.

Most people are not very careful (if there is a conflicting need) to light within a half hour of the starting time for lighting. If you are not particularly careful to always light close to the recommended time, we advise you to try to make it home relatively promptly after Shabbat (without being inappropriately hasty) and to then light at home. Otherwise, light at your parents' home and stay at least a half hour after the lighting.

12. Sunset in Jerusalem on Chanuka is before 5:00 PM.

D-8: Lighting Chanuka Candles at a Party

Question: It is popular to light Chanuka candles in public gatherings. My extended family (about 40 people) will be getting together on a night of Chanuka in a small hall. Should/may we light with a *beracha*? (We expect that all participants will already have lit at home.)

Answer: Chanuka candle lighting is connected to specific lighting places, primarily to houses in which the people lighting live.¹ There is precedent, however, for public fulfillment of the *mitzva* with a *beracha* – namely, the post-Talmudic *minhag* to light in a *beit kneset*.² We can gain insight regarding your question from a two-part discussion of this practice: Why was it started? And what is the justification for making a *beracha* in this context?

The *Beit Yosef*³ cites a few reasons for the *minhag*: 1) The lighting is for the benefit of guests who lack a home in which to light, similar to the practice of reciting *Kiddush* in *shul*. 2) This public setting is appropriate for *pirsumei nisa* (publicizing the miracle). 3) Lighting in the *beit kneset* compensates for the fact that we no longer light outdoors (i.e., publicly), as was originally instituted.⁴ The *Shulchan Aruch*⁵ cites only the reason of *pirsumei nisa*, without further explanation. 4) Others explain that a *beit kneset*, as a “mini-*mikdash*,” has special significance for commemorating a *Beit HaMikdash* miracle.⁶

Reasons #1 and #4 are linked specifically to a *beit kneset*, whereas #2 (which the *Shulchan Aruch* seems to accept) and #3,

1. *Shulchan Aruch, Orach Chayim* 671:5-8.

2. *Ibid.* 7.

3. *Orach Chayim* 671.

4. See *Shut HaRivash* 111.

5. *Op. cit.*

6. See *Kol Bo* 44.

could arguably be applied to any large gathering, with a group containing a *minyan* of people being a likely minimum.⁷ We have never heard of a **requirement** to light out of the house, nor of serious objections to lighting outside the house without a *beracha*. Therefore, the question boils down to whether the case for lighting in a public place is strong enough and/or similar enough to the *minhag* of lighting in a *shul* to justify a *beracha*.

The question of how one can make a *beracha* in *shul* without a Talmudic source is acute for the *Shulchan Aruch*, as he does not permit *berachot* for post-Talmudic *minhagim* (e.g., *Hallel* on Rosh Chodesh).⁸ Rav Ovadia Yosef⁹ suggests several possible explanations: 1) A *minhag* that extends an existing *mitzva* receives a *beracha* (e.g., *Hallel* on *sefer* night). 2) An important *minhag* justifies a *beracha*. 3) A *minhag* that was instituted by rabbis to strengthen observance receives a *beracha*, whereas a grass-roots *minhag* does not.

Most contemporary *poskim* oppose making a *beracha* on Chanuka lighting in public places that are not *shuls*.¹⁰ Yet, some important *poskim* either encourage it or at least support the growing practice's validity post facto. Rav Ovadia Yosef writes that those who do recite a *beracha* have sources on which to rely.¹¹ *Az Nidberu*¹² also maintains that reciting a *beracha* is appropriate, at least when the lighting is in an outdoor, very public location and includes youth who will not light elsewhere. *Davening Mincha/Maa'riv* there strengthens the case.¹³

Our analysis leads to the following compromise. One of the

7. See *BeMareh HaBazak* IV:64 regarding lighting in a *shul* without a *minyan*; see also *Nefesh HaRav*, pp. 222-224.

8. *Orach Chayim* 422:2.

9. *Yabia Omer* VII, *Orach Chayim* 57.

10. See several such sources quoted in *Yabia Omer* *ibid*.

11. Among the sources he quotes in this light is the *Mishnat Yaakov, Zemanim* vol. II, p. 260, about settings in which there is better *pirsumei nisa* than in *shuls*.

12. V:37.

13. See *Yalkut Yosef* (5748 edition), *Mo'adim*, p. 204.

Kol Bo's¹⁴ reasons for the practice of lighting in *shul* is that it helps those who do not know or do not care enough about the *mitzva* to do it properly. This is very relevant for a large part of the Jewish community today, both in Israel and abroad. Not only is there the general importance of involving them in an authentic lighting (i.e., *berachot* sung traditionally, albeit not at one's home), but it is also in line with the *pirsumei nisa* that is so prominently part of this *mitzva*. Therefore, **broad public** lightings are important with a *beracha*. There are both technical halachic¹⁵ and educational preferences to having one who does not usually perform *mitzvot*, but respects them, do the lighting (although sometimes having an inspiring rabbi light is a better idea).

In your case, however, there is little need to light. All of the participants will have lit at home, and it is a private gathering in a private place (even if you do not fit into a house). Thus, even if a *minyan* will be present, we do not believe a *beracha* is justified.

14. Op. cit.

15. Rav Eliezer Melamed, *Zemanim* 12:15 makes one such claim; see also there, footnote 18.

D-9: Where to Light Chanuka Candles at a Guesthouse

Question: My extended family will be at a guesthouse for the Shabbat of Chanuka, sleeping in separate rooms and eating together in a separate dining room. The guesthouse staff has told us that we may not light Chanuka candles in the individual rooms or in our personal family dining room, but only in the main lobby with the rest of the guests. Can we fulfill the *mitzva* in the lobby, or must we find an alternative?

Answer: While one usually lights Chanuka candles in his own home, the *gemara*¹ does discuss a guest (*achsenai*) lighting at a guesthouse. A traveler takes part in the lighting there, at least by contributing toward the oil, unless his wife lights on his behalf at their home. The *Shulchan Aruch*² writes, however, that if the guest has his own place to sleep, he should light there, so that it does not appear that the occupant of those quarters does not light Chanuka lights. The Rama³ writes that since nowadays people light inside, and people from the outside will therefore not be suspicious when they see no Chanuka candles outside, one should light in the place where he eats. A precedent for preferring the place of eating is the *halacha* that regarding matters of *eiruv*, a person's main place of inhabitation is where he eats, not where he sleeps.⁴

Contemporary *poskim* have discussed various cases in which it is less clear that the place of eating is the best place to light. The situation of yeshiva students living in dormitories is perhaps the case most discussed. The *Chazon Ish* is cited⁵ as being among those who maintain that the yeshiva dining room is the best place

1. *Shabbat* 23a.

2. *Orach Chayim* 677:1.

3. Ad loc.

4. See *Taz* ad loc. 2.

5. See *Dirshu Mishna Berura* 677:15; *Chut Shani, Chanuka* p. 309.

to light if the students eat all of their meals there. However, many point out drawbacks of this location. First, the dining room, being used by all students, lacks the personal connection to specific individuals that exists in homes or in dormitory rooms.⁶ In addition, students are usually allowed in the dining room only for short periods of time during the day.⁷ In contrast, one's dormitory room is available for use all the time (even if a healthy, motivated *talmid* is in the *beit midrash* almost all day).

Your scenario might provide a test-case between the reasons. Over Shabbat, your small dining room is set aside for your family, which could make it the ideal lighting location according to most *poskim*. There is a possible drawback if, as is likely, it will not be open to you the whole day. Still, even if it is not always available, the reason for this is probably to a great extent to keep the room in good order for your next meal. Additionally, on Friday night, it will certainly be available to you throughout the first hours of night, which is the crucial time during which the Chanuka candles should be lit. While one might claim that the rooms you sleep in are as good, or even better, places to light, the hotel will undoubtedly not allow having candles burning in unattended rooms (for excellent reasons).⁸ In short, if you can make a safe arrangement and get permission to light in your dining room, that is excellent.

At first glance, the lobby seems to be a problematic place to light, as it is neither the place of sleeping nor the place of eating. However, prominent *poskim*⁹ make the following cogent point. The discussions regarding the place of sleeping vs. the place of eating refer to choosing between different places in different buildings (e.g., married children eating in their parents' homes

6. See *Igrot Moshe, Yoreh Deah* III:14.

7. See *Piskei Teshuvot* 677:6.

8. They might allow one to light in the room if he commits to remain there for half an hour and then extinguish the candles (which would be helpful during the weekdays, but not, of course, on Shabbat).

9. Including Rav S.Z. Auerbach (see *Halichot Shlomo, Moadim* II, 14:8) and *Shevet HaLevi* III:83.

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but sleeping in their own homes). In contrast, when all major home activities occur in one premises, even if it is a large one like that of a yeshiva, any location on those premises that those who are lighting frequent is acceptable. After all, it is accepted and acceptable to light in the living room of one's home, for example, even if no one eats or sleeps in that room. We would say that the greater the extent to which the lobby is open to and used by the guests, the stronger the logic of being able to light there. This is true all the more so if the lobby is adjoining the dining room, as it might then be viewed as an extension of it. If you visit the candles during the meal, that further improves the situation.

If you do not get permission to light in the private dining room, in most cases, we would suggest lighting with a *beracha* in the lobby. (If a traveler wants to be *machmir*, he can appoint an agent to light at a safe and appropriate place in the traveler's own home.¹⁰ However, even if he does so, it is still worthwhile to light in the lobby, at least without a *beracha*.¹¹)

10. See *Minchat Shlomo* II:58; *Living the Halachic Process*, vol. VI, D-8.

11. As mentioned, different factors affect how likely it is to be able to fulfill the *mitzva* in the lobby, and therefore whether it is advisable to make a *beracha* on the lighting there, and there is greater reason to avoid making a *beracha* if one has already fulfilled the *mitzva* through his family at home.

D-10: Dividing *Megillat Esther* Among Readers

Question: Is it proper to divide the reading of *Megillat Esther* among multiple *ba'alei kri'ah*?

Answer: The answer depends on what you mean by “proper,” as we will explain.

The *gemara*¹ does discuss having more than one *ba'al korei* for the reading of *Megillat Esther*, but this refers to their reading the same *p'sukim* out loud at the same time. Such a reading is valid,² although rarely done. The *Magen Avraham*³ is the first major *posek* to discuss dividing the *Megilla* by sections, in a case of a *ba'al korei* who loses his voice in the middle of the reading.

Since the question is not discussed in the *gemara* or *Rishonim*, early *Acharonim* looked to parallel areas of Halacha to resolve the question. The *Magen Avraham* compares this situation to one in which the person reading the *haftara* had to stop in the middle of the reading, in which case the replacement must return to the beginning of the *haftara*⁴ and repeat the *beracha*.⁵ The *Magen Avraham* writes that in the case of *Megillat Esther* as well, the second *ba'al korei* should return to the beginning of the *Megilla*, but he does not recite any *beracha* again, because the first *ba'al korei*'s *berachot* were said on behalf of everyone. We find a similar ruling regarding a switch in the *shofar* blower; one who takes over as the second blower does not repeat a *beracha*.⁶ Indeed, the Rama⁷ rules that one is allowed, even *l'chatchila*, to make the *beracha* on the *Megilla* reading for the reading of another person.

1. *Megilla* 21a-b.

2. *Shulchan Aruch, Orach Chayim* 690:2.

3. 692:2.

4. *Shulchan Aruch, Orach Chayim* 284:5.

5. *Magen Avraham* 284:4.

6. *Shulchan Aruch, Orach Chayim* 585:3.

7. *Orach Chayim* 692:1.

The great majority of *Acharonim* disagree with the *Magen Avraham* and posit that the second reader does not need to return to the beginning of the *Megilla*.⁸ The *Eliya Rabba*⁹ and *Shvut Yaakov*¹⁰ agree with the comparison to *shofar* blowing, but apply it more completely. Thus, they maintain that just as regarding *shofar*, the first blower's blasts need not be repeated,¹¹ the subsequent *ba'al korei* for *Megillat Esther* similarly does not need to repeat the *p'sukim* of the *Megilla* that were already read. This differs from a situation in which a second *ba'al korei* takes over in the middle of a regular Torah reading, in which case the reading must be repeated from the beginning.¹² That is because the entire reading must be linked to the opening and ending *berachot* of the *oleh*; it is therefore problematic when the first *oleh* recited only the opening *beracha* and the second recited only the concluding *beracha*.¹³ The *Eliya Rabba*¹⁴ says that *Megillat Esther* is different in that the concluding *beracha* is not strictly related to the reading. Furthermore, while the *beracha* for Torah reading is made by the *oleh* for himself, the *beracha* for *Megillat Esther* is made on behalf of everyone. Therefore, anyone may continue reading *Megillat Esther* where the first reader left off, based on his *beracha*. The *Shvut Yaakov* writes that the first reason of the *Eliya Rabba* is not universally accepted, but he agrees fully with the second one.

It would seem that according to the *Magen Avraham*, breaking up the *Megilla* among different *ba'alei kri'ah* is quite problematic, since the later *ba'alei kri'ah* do not go back to the beginning of the *Megilla*.¹⁵ According to the authorities who rule that the second

8. See *Mishna Berura* 692:2.

9. 692:3.

10. I:42.

11. *Shulchan Aruch, Orach Chayim* 583:40.

12. *Yerushalmi, Berachot* 5:3.

13. See *Tur, Orach Chayim* 140.

14. *Op. cit.*

15. Note, however, that the *Mikraei Kodesh* (Harari) (Purim 7:(91) in third edition) cites Rav Mordechai Eliyahu as understanding the *Magen Avraham*

ba'al korei does not need to repeat the reading from the beginning of the *Megilla*, is it proper to divide the reading *l'chatchila*? The cases that the *poskim* discuss are situations of a *ba'al korei* losing his voice; this might indicate that we would not otherwise allow the division. Alternatively, one might argue that it was simply not common practice to divide the reading, and no *halacha* precludes the division even *l'chatchila*. The *Shvut Yaakov* writes that the reason we do not return to the beginning of the *Megilla*, at least as a stringency, is due to *tircha d'tzibbura*;¹⁶ this **might** imply that were it not for *tircha d'tzibbura*, stringency would be appropriate. Furthermore, some *poskim* who cite and accept the *Shvut Yaakov*'s opinion¹⁷ recommend that if the community does not care about the extra time or if only a few *p'sukim* were already read, the *ba'al korei* should return to the beginning. This indicates that many *poskim* do not view the set-up we are discussing as *l'chatchila*.¹⁸

Thus, a “purist” *minyán* should not agree to divide the *Megilla* reading. First, it makes sense to defer to the opinions of the *Magen Avraham* (who apparently **requires** going back to the beginning of the *Megilla*) and of others (who maintain that one should **preferably** go back). Second, it is probably also more respectful of the *mitzva* to have one person read the whole *Megilla*, as we do in the case of many other *mitzvot*. In addition, due to the prominence of the *mitzva* of reading *Megillat Esther*, it makes sense to have the best available *ba'al korei* read everything.

differently. Rav Eliyahu is cited as claiming that the *Magen Avraham* was talking only about a case in which the second *ba'al korei* was not listening to the beginning of the reading with the clear intention to fulfill the *mitzva* of the reading and its *berachot* along with the first *ba'al korei*. This is a logical halachic thesis, but it is somewhat difficult to read the *Magen Avraham* as discussing a limited case, and the *Acharonim* who argued with him did not read his comments that way.

16. Not wasting the time of the community.

17. Including *Sha'arei Teshuva* 692:2 and *Kaf HaChayim, Orach Chayim* 692:11.

18. *Mikraei Kodesh, Purim*, addendum 15 to the third edition, brings a letter of Rav Chaim Kanievsky, who permitted dividing the reading if there is a need.

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However, not all situations lend themselves to purist approaches. There are many places where it is difficult for anyone to learn the entire *Megilla* well, and there are many communities in which the importance of involving as many people as possible (especially the community's youth) is part of the *shul's* or the educational institution's very mission.¹⁹ This is a local rabbi's call. (Note that given that the well-known division into ten chapters is non-Jewish in origin, it is somewhat distasteful to break up the reading exactly in that way.)

19. Rav Mordechai Willig agreed with this practical distinction.

D-11: Early Reading of *Megillat Esther*

Question: I am the rabbi of a small *shul* with a strong *kiruv* element. I am working on a *Megilla* reading program for Purim evening, to attract non *shul*-going families with children who attend public school to join us in *shul*. This year, *tzeit hakochavim*¹ of Purim will be around 8 PM, a time late enough that it would discourage families from coming. May we read the *Megilla* for everyone after *plag hamincha*²?

Answer: The *gemara*³ states that one may follow the opinion that allows *davening Ma'ariv* from *plag hamincha* onward. Rabbeinu Tam⁴ maintains that one may likewise recite the evening *Kri'at Shema* from *plag hamincha*. Based on these opinions, the *Terumat HaDeshen*⁵ rules that in a situation of even modest need, one may read *Megillat Esther* from *plag hamincha*. This view is accepted by the *Shulchan Aruch*.⁶ Since you describe a case of significant need, this seemingly gives you permission to set the reading for any time after *plag hamincha*.

However, not all authorities accept the view of the *Terumat HaDeshen/Shulchan Aruch*. The *Pri Chadash*⁷ strongly disagrees. He argues that we do not accept Rabbeinu Tam's opinion regarding reading *Kri'at Shema* from *plag hamincha*.⁸ Furthermore, the *gemara*⁹ derives the night *Megilla* reading from a *pasuk*¹⁰ that

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1. The emergence of stars, which is the halachic beginning of the night.
 2. 1^{1/4} hours before sunset.
 3. *Berachot* 27a.
 4. Cited in *Tosafot, Berachot* 2a.
 5. I:109.
 6. *Orach Chayim* 692:4.
 7. Ad loc.
 8. See *Shulchan Aruch, Orach Chayim* 235:1.
 9. *Megilla* 4a.
 10. *Tehillim* 22:3.

refers to *layla* (night). The *Pri Chadash* argues that since the *Megilla* must be read at “night,” *plag hamincha*, which is only **close** to night, is not late enough; rather, the earliest time one may read is *tzeit hakochavim*. The Gra¹¹ cites the *Pri Chadash*, and the *Chayei Adam*¹² and the *Aruch HaShulchan*¹³ explicitly rule in accordance with his view.

The *Mishna Berura*¹⁴ does not decide clearly between the opinions, but he writes that in a case of great need (not the modest need the *Shulchan Aruch* refers to), one may read before nightfall. Rav Ovadia Yosef¹⁵ ruled that one may rely on the lenient opinion under fascinating circumstances: On Purim of 1947, the British placed a strict dusk-to-dawn curfew in Yerushalayim, making reading *Megilla* from *plag hamincha* the most feasible option. One of the factors Rav Yosef considered is that according to prominent (although far from unanimous) opinions,¹⁶ the main reading is in the daytime, as mandated by the *Megilla* itself, whereas the night reading is only Rabbinic, thus allowing for more leniency at night.

It is quite clear that if by reading the *Megilla* early, one will include people who might otherwise not hear the *Megilla* reading at all, the situation is considered one of a critical need that justifies leniency. This is because of the possibility that they will fulfill the *mitzva* at that time, as well participate in the celebration of the holy and its inspiring story. However, it is difficult to quantify what number of extra people coming for early *Megilla* reading would be required to justify not holding the reading at the normal, proper time. Arguably the most critical factor is your community’s strong *kiruv* element, such that getting people to come might open up many future avenues toward connection to the community’s activities. This could well be an overriding consideration even for

11. To *Shulchan Aruch* op. cit.

12. II:155:5.

13. *Orach Chayim* 692:8.

14. 692:14 and *Bi’ur Halacha* ad loc.

15. *Yabia Omer* I, *Orach Chayim* 43.

16. Including the *Noda B’Yehuda* I, *Orach Chayim* 41.

a small extra group of new attendees.

Note that the lenient position you want to rely upon is accepted by no less than the *Shulchan Aruch*. Nevertheless, you should consider such factors as the extent to which, if at all, this leniency might affect the community in other ways. For example, will it dampen the resolve to continue fulfilling *mitzvot* carefully if you introduce more lenient ways of fulfilling a *mitzva* than was previously practiced?

Is reading after sunset (a little after 7:30) preferable to doing so after *plag hamincha*? The *Pri Chadash*'s approach requires *tzeit hakochavim*; perhaps if one reads the *Megilla* before that time, it does not make a difference by how long.¹⁷ However, to a certain extent, Halacha treats *bein hashemashot*, starting with sunset, as a *safek* of night,¹⁸ which would seem to be preferable to a time period that is definitely not night.¹⁹ There may also be significant communal/educational advantages to limiting the change, such that it is as least noticeable as possible. Therefore, you should consider whether beginning the *Megilla* reading at sunset would be early enough for the needs of the families you are trying to attract.

When one must read the *Megilla* before *tzeit hakochavim*, there is ample halachic logic to suggest that one do so without *berachot*, as the fulfillment of the *mitzva* at that time is uncertain. However, we do not find the lenient opinions suggesting this compromise of reading without reciting the *berachot*.²⁰ Additionally, reciting the *berachot* in the normal ceremonious manner would likely add to the reading's spirit and impact.²¹

If you do read the *Megilla* early, it would be appropriate for you to reread it at the normal time, after *tzeit hakochavim*, without

17. See *Mishna Berura* 692:14.

18. See *Shabbat* 34b.

19. See *Mishna Berura* op. cit.

20. See language of *Pri Chadash* op. cit.

21. See Rav Ovadia's formulation op. cit. We should note that in his scenario, the early "night" reading in Yerushalayim would actually take place during the afternoon of the 14th of Adar, the regular Purim of most of the world.

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berachot.²² Subjective communal/educational factors, of which you are undoubtedly more aware than we are, should determine whether and which others you should invite to join you for the second reading.

May you continue to bring “*ora v’simcha v’sason viykar*” to your community.

22. See *Mishna Berura* op. cit.

D-12: Joining a Friday Shushan Purim¹ *Seuda*

Question: I live in Yerushalayim, and Shushan Purim is on Friday this year. For the Purim *seuda*, I will be hosting my children, who live outside the city. Are there any limitations on their participation considering that it is *Erev Shabbat*?

Answer: While the primary *halacha* of refraining from eating a substantial amount before a holy day relates to the day before Pesach,² it is proper to refrain from even a moderate meal during the last quarter of the day on Friday.³ In general, it is prohibited to partake in an especially big meal anytime on Friday day, but there is an exception for *seudot mitzva*⁴ that fall specifically on this day,⁵ and the Purim *seuda* is one such *seudat mitzva*.⁶

At first glance, since the Purim *seuda* does not apply halachically to your visiting family, whose Purim was the day before,⁷ they do not have an excuse to eat at a time it is normally forbidden to do so. However, we can argue cogently to the contrary. One who makes a *brit* or *pidyon haben* on Friday makes an accompanying *seuda*,⁸ and we do not find limitations on whom he may invite,⁹ even though there are only a few principals of the

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1. The celebration of Purim the day after most of the world. This date is celebrated primarily in Jerusalem, which was a walled city for thousands of years, similar to the Persian capital of Shushan, where the Purim story was based.
 2. *Shulchan Aruch, Orach Chayim* 471:1.
 3. *Ibid.* 249:2.
 4. Meals in which it is a *mitzva* to take part.
 5. Rama ad loc.
 6. Rama, *Orach Chayim* 695:1.
 7. *Shulchan Aruch, Orach Chayim* 688:1-3.
 8. Rama, *Orach Chayim* 249:2.
 9. This is in contrast to the case of those eating meat at someone else's *siyum* during the Nine Days, on which some authorities do place limitations; see Rama, *Orach Chayim* 551:10, and *Mishna Berura* ad loc. 76.

simcha who are obligated in the *seudat mitzva*. It follows that the non-principals are permitted to join because these people contribute to the occasion's festiveness, and they therefore enjoy the leniency of eating a *seudat mitzva* on *Erev Shabbat*. This would seem to apply as well to non-Jerusalemites participating in Shushan Purim and enhancing it, as important sources¹⁰ write that Purim is properly celebrated in the context of a broad gathering of family and friends.

We would not say, however, that this is proof that your out-of-town guests have no more restrictions than you have. Consider that the nature of a *seudat brit* is such that in order to achieve even the basic festive setting (which traditionally includes at least a *minyan* of participants¹¹), the *ba'alei simcha* by necessity rely on guests who are not themselves the *ba'alei simcha*. In contrast, in your case, it is plausible that since one's entire community is celebrating Shushan Purim, participation is a *mitzva* only for those who are obligated in Shushan Purim and not for members of communities who celebrate at a different time. On the other hand, some festivity is appropriate for all Jews on both Adar 14 and Adar 15,¹² so that logically the guests are not really out of place.

It is even likely that the "prohibition" against eating a big meal in the morning is not a problem at all for your guests. The source to refrain from such a meal is a *gemara*¹³ that relates how a family that set a meal on "*Erev Shabbat*" was punished. Although Rashi¹⁴ explains that their main Shabbat meal was on Friday night, most interpret the *gemara* as referring to a *seuda* on Friday day. However, some maintain that such behavior is problematic only for those who practice it on a regular basis.¹⁵ Some¹⁶ explain

10. Including *Eliya Rabba* 695:4; *Aruch HaShulchan, Orach Chayim* 696:3.

11. Rama, *Yoreh Deah* 265:12.

12. Rama, *Orach Chayim* 695:2.

13. *Gittin* 38b.

14. Ad loc.

15. *Chiddushei HaRamban, Gittin* 38b.

16. *Chiddushei HaRashba* in the name of Rabbeinu Chananel; *Pri Megadim, Eshel Avraham* 249:4.

that the concern is that a meal on Friday will detract from Shabbat preparations, in which case the problem is for the organizers, not for the guests. In your case, the organizers of the *seuda* and Shabbat meals are Shushan Purim celebrants, who must have the festive Purim meal that day. Only according to one interpretation of the *gemara* (albeit the one accepted by the *Shulchan Aruch*¹⁷) – that any occurrence of a big meal, even in the morning, can ruin one’s appetite for Shabbat food – should it be a real issue for guests and require a special *mitzva*-related exception.

In the final analysis, based on multiple possible grounds for leniency, we posit that it is appropriate to include your children in the *seuda*. The question remains whether any special limitations or recommendations are appropriate for this scenario.

Most years, we prefer to hold the Purim *seuda* in the afternoon,¹⁸ but on Friday, it is preferable to start it in the morning¹⁹ so that one will have enough time to recover his appetite by Shabbat.²⁰ (There is a serious albeit minority approach that maintains that one should hold the *seuda* at the end of the day and have it turn into a Shabbat meal.²¹) The involvement of out-of-town guests is an added reason to prefer an earlier meal, as for them, serious eating close to Shabbat is clearly problematic, and the advantages of enhancement of Purim by eating later do not apply directly to them. Therefore, starting the meal in the morning²² is significantly preferable for the guests.

If the guests want to be stringent, there is logic for them to eat less than they otherwise might have if it were not Friday. In addition, it is not justified for them to get drunk or even drink a

17. *Shulchan Aruch, Orach Chayim* 249:2.

18. Rama, *Orach Chayim* 695:2.

19. *Ibid.*

20. There is an opinion that it is sufficient to begin before the last quarter of the day; see *Shut Maharil* 56, cited as a secondary source in *Mishna Berura* 695:10.

21. Details are beyond our present scope.

22. The starting point is generally the determining factor; see *Shemirat Shabbat K’Hilchata* 42:(96).

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lot of wine, which would likely detract from a proper start to their Shabbat. (Even when Purim does not fall on Friday, it is difficult to justify one getting drunk when it is not Purim for him, in addition to the fact that we never favor drunkenness on Purim.²³)

23. That discussion is beyond our present scope.

D-13: Language in Which to Recite the *Haggada*

Question: At our *Seder*, the participants will have a wide range of Hebrew proficiency and understanding of the *Haggada*'s texts. What language should we use to read the *Haggada*?

Answer: The *mishna*¹ lists texts that may be recited in any language, including *Kri'at Shema*, *tefilla*, and *Birkat HaMazon*, while others may only be recited in *Lashon HaKodesh* (i.e., the original language of the sacred texts). The *Haggada* is not mentioned at all. If there were required Torah texts at the *Seder*, we would compare them to the list of Torah texts that the Rabbis derived must be recited in *Lashon HaKodesh*.² However, there are no specifically required Torah texts, and it is therefore obviously permitted to recite the texts in any language. In fact, most of the *Haggada* text is not even formally Rabbinically-instituted.³ The *Maggid* and *Nirtza* sections are a post-Talmudic compilation of passages from different periods that were bound together. The Rama⁴ confirms that one may, and indeed sometimes should, fulfill the *mitzva* of telling about the Exodus in a language other than Hebrew that the participants understand.

Acharonim who argue vehemently against *tefilla* in another language (despite the aforementioned *mishna*) raise no reservation regarding the *Haggada*. What is the difference? The *Mishna Berura*⁵ presents the following objections to *tefilla* in other languages: 1) It is possible that *tefilla* in other languages is

1. *Sota* 32a.

2. See *Sota* 33a.

3. The formal texts of the *Seder* are *Kiddush*, the *berachot*, and *Hallel*. Although *Birkat HaMazon* is a Torah requirement, it is not mandated specifically because of the *Seder*; rather, it is recited anytime one eats a full meal that includes bread (or *matza*).

4. *Orach Chayim* 473:6.

5. In *Mishna Berura* 101:13 and *Bi'ur Halacha* to 101:4.

permitted only on an occasional basis. 2) It is difficult to translate the *tefillot* precisely and in a manner that captures the many secrets included in the holy words. 3) Praying in the vernacular is a capitulation to the dangerous changes the Reform Movement attempted to insert into Jewish life.

Reviewing each issue, we can conjecture about the lack of objection to the practice of reciting the *Haggada* in translation: 1) Permitted only occasionally: The *Seder* is held only once a year, and the group dynamics in this regard may change from year to year. 2) Difficult to translate secrets: The texts of the *Haggada*, which were composed/compiled centuries after the standard *tefilla*, likely contain fewer secrets. 3) Capitulation to Reform: *Sedarim*, which are usually carried out in families' private homes, were never a flashpoint in the struggle with the Reform Movement.

There is a further reason to view translating the *Haggada* favorably, which explains why the Rama⁶ sometimes **requires** translation (whereas earlier sources concerning *tefilla* merely **permit** it⁷). One can fulfill the *mitzva* of *tefilla* recited in Hebrew even if one does not understand the words,⁸ whereas the Rama indicates that participants in the *Seder* are required to understand the *Haggada* in order to fulfill the *mitzva* of retelling the story of *yeti* 'at *Mitzrayim*.

For how much of the *Haggada* is comprehension crucial? Generally, all of it should be recited and understood;⁹ it is, after all, a basic Jewish text, even if written later than most. However, the base obligation is the three statements of Rabban Gamliel about the significance of the *Korban Pesach*, *matza*, and *maror*.¹⁰ Other pieces of prominent importance include "*Avadim Hayinu*,"¹¹

6. Op. cit.

7. See *Shulchan Aruch, Orach Chayim* 101:4.

8. See *Orach Chayim* 101:1.

9. *Shulchan Aruch, Orach Chayim* 473:7.

10. See *Mishna Berura* 473:64.

11. *Pesachim* 116a.

Ma Nishtana,¹² and the ten plagues.¹³ These passages should be translated or explained for those who do not understand the language in which it is recited. If this is done, it is halachically valid to read all of the *Haggada* in Hebrew.

Let us now discuss basic best strategies. (There are too many permutations of factors to cover all of them in this forum.) The Rama cites a *Rishon* who would read the whole *Haggada* in the local language, and this is a fully legitimate option when called for. However, we have a luxury that *Rishon* presumably lacked – to provide everyone at the *Seder* with a *Haggada* that has a clear translation. Thus, the majority of the *Haggada* text can be read in the original, and those who cannot read or understand the Hebrew can read along in the translation. We recommend frequent stops to discuss the past or upcoming texts. Reading along only with one’s eyes is insufficient for the critical sections,¹⁴ so participants who are reading the translation should either read with their lips or hear that which someone else is reading aloud in a language they understand.¹⁵

Personally, I, like many Jews, have been attached to and love the original *Haggada* text from a young age, and I believe that it is a central part of a Jew’s heritage. Growing up as a *frum* American Jewish kid, key *Haggada* passages and phrases, specifically in Hebrew, were as familiar to me as “the land of the free and the home of the brave.” In order for this desired impact on our children to continue in future generations, a typical observant home, even one that opens its doors to Jews of different levels of Jewish knowledge, should find a healthy **balance** between a classical Hebrew *Seder* and using vernacular to meet the needs of those who require or benefit from it. (Unique situations deserve unique consideration.)

12. See Rambam, *Chametz U'Matza* 7:3.

13. *Mishna Berura* op. cit.

14. See *Chazon Ovadia*, Pesach II, p. 48.

15. See *ibid.* p. 52.

D-14: Keeping Foods Cooked in Chametzdik Pots

Question: I have some food that does not contain **any** *chametz* ingredients, but I cooked it in a *chametzdik* pot. If I fail to finish consuming the food before Pesach, may I keep it in the corner of the freezer and mark it as *chametzdik*? (I try to not sell cooked *chametz*.¹)

Answer: We will first deal with the question of whether it is really forbidden to eat such food on Pesach.

Since there is no way of determining how much *chametz* residue emerged from the pot's walls, we are required to assume that the entire volume of the walls was full of *chametz* and that it all came out during the cooking.² Since the volume of a pot's walls (including its bottom) is always more than a sixtieth of the food it holds, we cannot assume that when the food was cooked in it, there was *bitul*³ before Pesach based on volume. However, when food is cooked in a pot and one does not remember when the pot was last used, Halacha allows one to assume that the pot was *eino ben yomo* (had not been used for 24 hours) from its most recent use.⁴ In that case, what comes out of the walls of the pot gives off a negative taste (*noten ta'am lifgam*). Therefore, even if the pot was not kosher, kosher food that was **accidentally**

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1. Many people/families have the *minhag* to perform a *mechirat chametz* but do not rely upon it to the full degree possible. There are a variety of sub-*minhagim* about what to sell and what not to sell, and the querier identifies one element that he is careful about – cooked food. Apparently, the logic of the distinction is that it is not common for one to buy food that an individual has already cooked at home for personal consumption. It is out of the scope of this response to comment on the strength of this or other versions of the *mechirat chametz minhag*.
 2. *Shulchan Aruch, Yoreh Deah* 98:4.
 3. Nullification by means of being “overwhelmed” by the presence of permitted food.
 4. See *Shulchan Aruch, Yoreh Deah* 122:7.

cooked in it remains permitted.⁵ If one prepared *pareve* food in an *eino ben yomo fleishig* pot without intention to eat it with *milchig* food, he may afterwards eat the *pareve* food together with *milchig* food.⁶ Cooking food in a *chametzdik* pot without intention to eat it on Pesach is a roughly equivalent case, and food cooked in an *eino ben yomo chametzdik* pot would thus seem to be a candidate for *bitul*. However, there is a *machloket* regarding whether it is permitted to eat *noten ta'am lifgam* of *chametz* on Pesach,⁷ and the Rama⁸ is *machmir*.

The Rama's stringency regarding negative taste in a mixture relates only to eating the food on Pesach itself. On the afternoon of *Erev Pesach*, despite the Torah-level prohibition against eating *chametz* at that time,⁹ the regular rules of *kashrut* apply, and the *chametz* from the pot you describe is *batel*.¹⁰ However, since your question applies to all of Pesach, we must deal with the question of whether the change of *bitul* rules during Pesach itself transforms a mixture whose *chametz* was *batel* before Pesach, based on the more lenient pre-Pesach rules, into a forbidden *chametz* mixture when Pesach and its stricter standards begin (*chozer v'nei'or*).

The *Shulchan Aruch*¹¹ prefers the lenient opinion, that those foods whose *chametz* elements were already *batel* before Pesach remain *batel* on Pesach. The Rama¹² rules that it depends on the type of *bitul* that is involved. If there is no effective intermingling, and the *bitul* before Pesach was based only on lack of recognition (i.e., the *chametz* element is intact, we just do not know where it is), the food becomes forbidden when Pesach starts. However, if there is a physical mixture (i.e., the foods are mixed in such a way that the *chametz* does not give taste to the mixture), the

5. Ibid. 103:5.

6. Ibid. 95:2.

7. *Shulchan Aruch, Orach Chayim* 447:10.

8. Ad loc.

9. *Pesachim* 5a.

10. Rama op. cit. 2.

11. Op. cit. 4.

12. Ad loc.

mixture remains permitted even on Pesach, despite the fact that if the mixture occurred on Pesach itself, even trace quantities of *chametz* would make it forbidden.¹³

The most straightforward case of a physical mixture that avoids being forbidden due to the principle of *chozer v'nei'or* is *bitul* based on volume (when there is 60 times more non-*chametz* food than *chametz*). The form of *bitul* in an *eino ben yomo chametzdik* pot, which gives negative taste, is also one of a physical mixture, and its *bitul* status before Pesach is therefore similarly retained throughout Pesach itself.¹⁴

We need to use the idea of *bitul* based on volume to be lenient in your case for an additional reason. It is highly likely that small amounts of actual *chametz* got into the food, whether in the ingredients or from the pot's surface, the work area, or storage containers. We can assume that these will be trace quantities of *chametz*, which were *batel* before Pesach based on a volume of 60 times more non-*chametz* in the food. As above, *chozer v'nei'or* will not apply to forbid the food in question.¹⁵ Thus, food prepared normally and cooked before Pesach in a standard pot could actually be permitted to eat on Pesach. Nevertheless, our *minhag* is generally not to rely on these halachic leniencies, but rather to buy or prepare food that was in a *chametz*-free environment.

If one will not eat the food in question, may he at least keep it around? There is no violation of *bal yeira'eh* (possession of *chametz*) when there is only taste of *chametz* without any discernable piece of *chametz* that is not *batel* by 60.¹⁶ While according to some authorities,¹⁷ it is permitted to leave in one's possession any food that is permitted to eat on the level of Torah

13. *Shulchan Aruch, Orach Chayim* 447:1.

14. *Mishna Berura* 452:1.

15. For this reason, many make an effort to purchase as many products (e.g., milk) and cook as much food as possible before Pesach, so that trace quantities of *chametz* would be *batel* before Pesach and remain kosher for Pesach.

16. *Mishna Berura* 442:1.

17. Including the *Tur, Orach Chayim* 442.

law, the more accepted approach is to not leave most foods¹⁸ that are forbidden to be eaten, even if the prohibition is only Rabbinic.¹⁹ This does not apply, however, to a food one does not eat only due to a *chumra*. Even so, it is proper to remove such foods from the places where kosher-for-Pesach foods are kept (such as the same freezer), lest one mistakenly eat the wrong foods.²⁰

If you put such food in a different place (e.g., a different freezer or a section of the freezer that is taped off), you are not required to sell it, but you do not lose anything by including it in your sale. Although you report that you do not sell certain types of *chametz*, stringencies regarding sale of *chametz* apply to cases in which you must rely on the sale, not when you choose to sell in order to facilitate a stringency.

18. Exceptions to this rule are beyond our present scope.

19. See *Mishna Berura* op. cit.

20. Ibid.

D-15: Working in a Bakery on *Chol HaMo'ed Pesach*

Question: I am the only religious Jewish worker in a bakery that is owned by non-Jews and which has a *hashgacha* during the year but not for Pesach (as they sell *chametz* on Pesach). I believe that if I take off on *Chol HaMo'ed*, they will fire me. May I work then?

Answer: Concerning work on *Chol HaMo'ed* (e.g., *Chol HaMo'ed Sukkot*), one of the broad bases for leniency to allow performing *melacha* is *davar ha'aveid* (significant loss).¹ Therefore, you may go to work on *Chol HaMo'ed* even if you will have to perform *melacha*, if the alternative is losing your job.²

Working with *chametz* on Pesach, however, raises serious problems. In one of our responses,³ we discussed parameters for working with non-kosher food in various capacities. We dealt with various opinions on a few issues: the possibility the worker will eat the non-kosher food and commerce in non-kosher food, as well as the possibility of violating *lifnei iver* (facilitating an *aveira*). According to our analysis, we would rarely condone holding a job such as being a waiter in a non-kosher restaurant, for a combination of reasons.

Working directly with *chametz* on Pesach entails additional obstacles that are even more difficult to overcome than working as a waiter in a non-kosher restaurant. First, the level of concern about eating something prohibited is more severe regarding *chametz* than it is regarding other forbidden foods. The Rama⁴ forbids buying *chametz* on behalf of a non-Jew on Pesach, whereas we do not find a parallel prohibition regarding most

1. *Shulchan Aruch, Orach Chayim* 537:1.

2. *Shemirat Shabbat K'Hilchata* 67:11.

3. *Living the Halachic Process*, vol. VI, E-6.

4. *Orach Chayim* 450:6, based on *Shut HaRivash* 401.

non-kosher foods. One of the reasons for being strict regarding buying *chametz* is the concern that the Jewish buyer might come to eat it.⁵ This is in line with the *halacha* that one who is watching a non-Jew's *chametz* in his house (without accepting monetary responsibility) must construct a partition in front of it. In this context as well, we do not find any parallel requirement regarding other forbidden foods.⁶ It is thus certainly forbidden to work in a manner in which there is ongoing, direct physical contact with *chametz* on Pesach.⁷

There is another reason to forbid work dealing with *chametz*. It is forbidden on Pesach not only to eat *chametz* but also to benefit from it.⁸ The most direct applications of this prohibition are direct physical benefit from *chametz* and selling *chametz*. However, there are also broader types of benefit known as *rotzeh b'kiyumo* (one wants the forbidden object to exist). The main Talmudic sources⁹ on this type of *rotzeh b'kiyumo* appear in the context of *yayin nesech* (strictly forbidden wine), and almost all *Rishonim* and *poskim* maintain that it also applies to *chametz*. This prohibition includes situations in which the Jew has only indirect and minor interest in the *chametz*.¹⁰ For example, the *Magen Avraham*¹¹ explains that the reason the Rama forbids buying *chametz* for a non-Jew is also because of *rotzeh b'kiyumo*. Since you will be paid for your work with *chametz*, this restriction would seem to apply to you.

Is it considered *rotzeh b'kiyumo* if you forgo pay for your work on Pesach, and thus ostensibly do not benefit from the *chametz*? In the case of *yayin nesech*, this does not help, as one may not watch *yayin nesech* even for free and without responsibility to pay for loss, because a watchman feels bad if he does not do

5. *Shut HaRivash* op. cit.; *Mishna Berura* 450:21.

6. *Pesachim* 6a; *Mishna Berura* 440:13.

7. See also *Yabia Omer* IV, *Yoreh Deah* 6.

8. *Pesachim* 21a.

9. See *Avoda Zara* 63b.

10. See many examples in *Orach Chayim* 450.

11. 450:10.

his job well and is thus interested in the continued existence of the wine.¹² *Acharonim* disagree as to the permissibility of a scenario in which one suffers when *chametz* is lost but does not gain positively from its presence. Some forbid such a situation only with regard to *yayin nesech*, assuming that we treat it more stringently than *chametz* in this context.¹³ Various distinctions are suggested in order to reconcile apparent contradictions in this matter. According to one particularly pertinent distinction, a person may not perform an action that involves interaction with *chametz* on Pesach.¹⁴ In your case, almost all opinions would consider your work forbidden due to *rotzeh b'kiyumo*, as you would be actively working with *chametz* and would be benefitting from that work. Even if you relinquish the pay you are due, your right to continued employment, and future pay as a result, is a benefit of your agreement to work with the *chametz*.

Therefore, we believe you are forbidden to work with the non-Jews' *chametz* on Pesach, both because of the possibility you might eat it and because of the semi-direct benefit from it.

12. *Shulchan Aruch, Yoreh Deah* 133:6.

13. See *Mekor Chayim* 450:7.

14. *Shut Maharam Shick, Orach Chayim* 225.

D-16: The Effect of the Wrong *Bitul Chametz*

Question: What are the consequences if, after *bedikat chametz* at night, one recited the daytime *bitul chametz*¹?

Answer: We will begin by examining the purposes and mechanisms of the different *bituls*.

The Torah forbids possession of *chametz* on Pesach² and mandates its removal before Pesach.³ To facilitate this, we search for *chametz* the night before Pesach⁴ and physically “destroy” the leftovers (*bi’ur chametz*) the next day. The *gemara*⁵ states that the Rabbis instituted that one perform *bitul chametz* after he has done *bedikat chametz*. The *gemara* explains that this *bitul* is required out of concern that one might find some tasty *chametz* on Pesach, which would be problematic if one had not done *bitul*.⁶ This is the *bitul chametz* recited after *bedikat chametz* at night.⁷

The *gemara* does not mention the *bitul*’s text, and slightly varied versions exist.⁸ The consensus, however, is that the *bitul* applies to *chametz* that is **unknown** to the declarer at the time of the *bitul*. One reason to exclude known *chametz* from the *bitul* is that some of one’s *chametz* is slated to be eaten during the next half day; a statement that this *chametz* is worthless and ownerless is therefore disingenuous.⁹ In addition, the complete fulfillment

1. The nullification of one’s *chametz*.

2. *Shemot* 13:7.

3. *Shemot* 12:15.

4. *Pesachim* 2a.

5. *Ibid.* 6b.

6. There are different explanations of the nature of this problem. See *Tosafot* and Maharam Chalava ad loc.; see also Rashi ad loc.

7. See Rashi ad loc.

8. See Rambam, *Chametz U’Matza*, for one text. We assume that most people will use the text in the standard *Haggada*.

9. *Mishna Berura* 434:7.

of *bi'ur chametz* is accomplished with one's own *chametz*, and one therefore wants the *chametz* he is to burn the next day to remain in his ownership.¹⁰

Daytime *bitul* is a post-Talmudic *minhag*¹¹ designed to deal with the possibility that some of the *chametz* that was purposely left over was neither eaten nor destroyed.¹² According to most *poskim*, this *bitul* is done after the *bi'ur chametz*. It therefore uses inclusive terminology;¹³ one is *mevatel* all known *chametz* in addition to unknown *chametz*. This can even include *chametz* that was thrown into the fire but was insufficiently destroyed.¹⁴

If one uses the daytime text at night, nullifying even known *chametz*, it will ostensibly impact even that *chametz* that he plans to eat or burn the next day. Is this problematic?

First, we should consider whether this *bitul* takes effect at all, considering that it is done in a mistaken fashion. If one reads the words of *bitul* without understanding what the *bitul* is supposed to accomplish, the *bitul* is ineffective.¹⁵ However, one does not need to understand every word; a reasonable level of understanding of the overall content of what his words are accomplishing is sufficient.¹⁶ Arguably, one who read the morning version instead of the night version might not have understood what he was saying. Regarding the extra words of inclusiveness that exist in the daytime *bitul*, he may have intended for the more limited nullification and not for the words that included known *chametz*, in which case it did not take effect on that which he did not mean to say. If he understood and meant what he read but did not remember the relevant *halachot*, we can consider the concept that declaration of *hefker* (declaring an object ownerless) based on

10. Rama, *Orach Chayim* 434:2. Development of the question as to the importance of that ownership is beyond our present scope.

11. See Rosh, *Pesachim* 1:9.

12. See *ibid.* and *Mishna Berura* 434:11.

13. *Shulchan Aruch*, *Orach Chayim* 434:3.

14. *Da'at Torah* 434:3.

15. *Mishna Berura* 434:9.

16. *Ibid.*

false assumptions is ineffective,¹⁷ and the same might also be true regarding *bitul chametz*.¹⁸ It is a good question whether including extra *chametz* that one ordinarily nullifies only the next morning rises to the level of mistake that disqualifies the declaration in their regard. In any case, the mistake regarding the additional *chametz* should not disqualify the *bitul* regarding the *chametz* for which it is normally intended.

Now we will analyze the consequences of the possibility that the *bitul* did, in fact, take effect on all of the *chametz*. First, we must examine what the *bitul chametz* accomplishes. According to *Tosafot*,¹⁹ *bitul* makes *chametz* ownerless (*hefker*). According to this view, assuming that no one hears the owner's mistaken declaration and takes the still-desired *chametz*, the owner can eat all of the nullified *chametz* either as is or by first reacquiring it. (If it is in his house, no action is necessary to reacquire it.²⁰) Regarding wanting the *chametz* to be his so that he will be burning his own *chametz*, one can likewise easily reacquire it. Reacquiring it might be more critical in order to facilitate *mechirat chametz* (which rabbis perform the next morning), as one can sell only that which he owns.

According to Rashi,²¹ *bitul* is not based on *hefker*, but is instead a special “mental destruction” of *chametz*, which the Torah indicated as significant with regard to one's *chametz*. This does not affect one's ability to eat the *chametz* he desires before the time of *bi'ur chametz*. Moreover, it probably also does not impact on one's ability to sell the *chametz* to a non-Jew. In fact, it is likely that the act of sale of food that one put aside in a special place for that purpose might undo the *bitul* of that *chametz*, as one demonstrates that his *chametz* is at that time still of at least theoretical value for him (as the non-Jew is nominally

17. *Tosafot, Pesachim* 57a.

18. See discussion below and *Chashukei Chemed, Pesachim* 4b.

19. *Pesachim* 4b.

20. *Bava Metzia* 11a.

21. *Pesachim* 4b.

willing to pay for it). Undoing the *bitul* is not a problem, as he will presumably perform another *bitul* the next morning anyway, and that later *bitul* will work in the same manner as it does in regular situations. It is possible that the *bi'ur chametz* for *chametz* set aside after such a *bitul* would be considered *bi'ur* of *chametz* that is not one's own, and the mistaken declaration could thus **in theory** be negatively impactful.²² However, as noted above, *bitul* without intent, and probably even by mistake, is fundamentally not valid.²³

While most likely unnecessary and not clearly effective, it would be a good idea²⁴ for a person in this situation to declare that he reverses his declaration regarding the *chametz* he is aware of.

22. The relevant analysis is well beyond our present scope.

23. See Ran, *Pesachim* 1a in the Rif's pages

24. Development of this point is beyond our present scope.

D-17: “Ba’omer” or “La’omer”?

Question: Which is the correct version of counting the *omer* – “... *yamim la’omer*” or “... *yamim ba’omer*”? Is there a content difference between the two options or only a difference of grammatical nuances?

Answer: We will begin with some simple background. *Omer* is the measurement of barley brought as a *korban* on the second day of Pesach, and it is accepted Rabbinic parlance to refer to that *korban* as the *Korban HaOmer*. The *mitzva* is to count for 49 days, starting on the day on which the *Korban HaOmer* is offered.¹ There is a *machloket* regarding whether, in our times, when there is no *Korban HaOmer*, this *mitzva* of *sefirat ha’omer* is Torah law or is Rabbinic.²

Regarding your question: *Ba’omer* almost certainly means “within the period of the *omer*.” *La’omer* might be a different expression of the same idea, but it could also mean “from the time of the offering of the *Korban HaOmer*.” The *Taz*³ assumes that the latter explanation of *la’omer* is correct. He therefore argues that saying *la’omer* on the first night does not make sense; the word refers to the count from the bringing of the *Korban HaOmer*, but on the first night, the count precedes the next day’s *omer* offering. Accordingly, the *Taz* maintains that on the first night, one should say *ba’omer*, and it follows logically that the text throughout the counting should be *ba’omer*, as the Rama rules.⁴

However, unlike the *Taz*’s understanding, there is strong reason to suggest that when we use the word *omer*, we are referring to a time period and not to the actual bringing of the *omer*. The *beracha*’s text is “on the counting of the *omer*.” This makes sense

1. *Vayikra* 23:15.

2. See *Beit Yosef, Orach Chayim* 489.

3. *Orach Chayim* 489:3.

4. *Orach Chayim* 489:1.

if the *omer* is a period of time that we count. However, if the word refers to the *korban* or to the day on which the *korban* is offered, we are not counting the *omer* itself, but are rather counting **from** it. (To deflect this proof, one would have to argue that the usage of this word in the *beracha* is a slight misnomer.)

The *Chok Yaakov*⁵ demonstrates that the most prevalent text in the time of the *Rishonim* was apparently *la'omer*. He supports use of *la'omer*, explaining that it means from the day of the offering of the *omer*. He argues that *ba'omer* does not work well, because it implies that one is counting on one of the days on which the *omer* is brought, whereas this is appropriate only on the first day.

However, as mentioned above, proponents of *ba'omer* understand its meaning differently. The *Beit Yaakov*⁶ understands both *la'omer* and *ba'omer* as referring to the day within a time period; the question is merely which is the more appropriate prepositional prefix.

Regarding a *get* and a *ketuba*, we find that the letter *lamed* is used for the day number within the month, whereas *bet* is used for the day number within the week. The *Bach*⁷ presumes that the standard way of counting is to use a *lamed*, and he suggests a technical reason why the *bet* is needed regarding the week – so as to avoid confusion. On the other hand, we use phrases such as Tisha **B**'Av and Tu **B**'Shevat for days within months, even when there is no concern of confusion.

In practice, perhaps because the Arizal and the *Shelah* join most *Rishonim* in promoting *la'omer*, Sephardim and *Nusach Sephard* (Chassidic *minhag*) use *la'omer*. Perhaps because the Gra joins the Rama to promote *ba'omer*, many followers of *Nusach Ashkenaz* use *ba'omer*. However, the *Mishna Berura*⁸ claims that most *poskim* choose *la'omer*, and the *Aruch HaShulchan*,⁹

5. 489:9.

6. *Shut Beit Yaakov* 23.

7. *Even HaEzer* 126.

8. 489:8.

9. *Orach Chayim* 489:9.

while citing both texts, prefers *la'omer*. In practice as well, many people and *shuls* who otherwise use *Nusach Ashkenaz* say *la'omer*. (Interestingly, it seems standard for people to call the most famous day of the *omer* period Lag **Ba**Omer.) Everyone can and preferably should follow their family *minhag*.

Realize that the stakes here are very low. Even if one leaves out the word entirely, the counting is valid,¹⁰ and it seems that even if the word would have been needed, both versions are similar enough to be valid.

One's personal preference is certainly not an excuse to recite out loud a different version than the one accepted in the specific *shul* in which one is counting (if there is such an accepted practice).¹¹ All the more so, the *chazan* or others who recite it for the rest of the community must conform to the community's *minhag*.

There are reports of *talmidei chachamim* who repeat(ed) the count to cover both versions. This is certainly not necessary and probably not preferable (as it is not found in classical *poskim*). If one is regularly in the practice of covering all halachic bases and wants to do so here as well, we would suggest he do so only unnoticeably.

10. *Mishna Berura* op. cit.

11. See *Igrot Moshe, Orach Chayim* II:23.

D-18: Davening Early on Shavuot Night

Question: In a *shul* with many elderly members who have trouble staying up late, may we have a *minyan* for *Ma'ariv* of Shavuot before *tzeit hakochavim*¹?

Answer: The idea of waiting until *tzeit hakochavim* to start Shavuot is not found in *Chazal*; it arises first in the works of early *Acharonim*, beginning with the *Masat Binyamin*.² The matter is based on the idea that since Shavuot follows a 49-day period, it should not begin before that time period has finished. The problem could be that it is not yet time for Shavuot; alternatively, although one may start Shavuot early *per se*, in so doing one is improperly “shortchanging” the *omer* period.

Early sources³ focus on the *pasuk*, “They shall be seven **complete** (*temimot*) weeks,”⁴ positing that beginning Shavuot early impinges on the completeness of the *omer* period, since one is ending the period before it is fully complete. (This is likely related to the idea that one should count promptly on the first night of the *omer* due to the need for *temimot*, i.e., so as to begin the seven-week period of counting close to the weeks’ actual beginning.⁵) The Netziv,⁶ however, sees in the *pasuk* regarding Shavuot, “You shall call, **in the midst of this day**, a holy convocation,”⁷ an indication that it is specifically that Shavuot should not start before nightfall. *L’Horot Natan*⁸ prefers the earlier sources, which relate the matter to the impact on *sefirat ha’aomer* rather than to

1. The emergence of stars, the halachic beginning of the night.

2. *Chiddushei Dinim, Orach Chayim* 4.

3. *Masat Binyamin* op. cit.; *Shelah*, beginning of *Massechet Sh’vuot*.

4. *Vayikra* 23:15.

5. See *Mishna Berura* 489:2.

6. *Meishiv Davar* I:18.

7. *Vayikra* 23:21.

8. VII:31.

when Shavuot begins. He claims that as a result, one who made *Kiddush* early fulfilled his *mitzva* of Shavuot, just as he would at that time of day for Shabbat and other *yamim tovim*, and he need not repeat *Kiddush*.

Regarding which Shavuot element(s) should one wait? The *Masat Binyamin*,⁹ *Shelah*,¹⁰ and *Magen Avraham*¹¹ refer only to *Kiddush*, and the *Shelah* writes explicitly that *Ma'ariv* (and *Kiddush* in *shul*) may be recited earlier. The *Taz*¹² maintains that one should wait for *Ma'ariv* as well. The *Pri Megadim*¹³ supports the *Taz* by pointing out that in the context of several *halachot*, *Ma'ariv* ushers in a new day. The *Mishna Berura*¹⁴ posits that one should indeed wait until *tzeit hakochavim* to *daven Ma'ariv*, and this is the widespread *minhag*. (*Hitorerut Teshuva*¹⁵ supports the delay of *Ma'ariv* for an additional reason: On Shavuot, many people remain awake all night and do not recite *Kri'at Shema Al HaMita*, and it is therefore important for the *Ma'ariv Kri'at Shema* to be recited after *tzeit hakochavim*.¹⁶)

What about candle lighting? It is permitted to light candles on *Yom Tov* itself (with certain conditions that do not exist at a pre-Shabbat lighting), and lighting before *sheki'a* usually ushers in the holy day in whose honor the candles are lit.¹⁷ For these reasons, it would seem logical to compare candle lighting to *Kiddush* and *Ma'ariv* and to therefore require waiting to light until *tzeit hakochavim*. However, while there is indeed an opinion that one should wait until *tzeit hakochavim* to light the candles, the *minhag* is to light them at the regular Shabbat/*Yom Tov* time.¹⁸

9. Op. cit.

10. Op. cit.

11. Intro. to *Orach Chayim* 494.

12. Intro. to *Orach Chayim* 494.

13. Ad loc.

14. 494:1.

15. II:56.

16. See Rashi, *Berachot* 2a.

17. See *Shulchan Aruch and Rama*, *Orach Chayim* 263:10.

18. See *Halichot Shlomo*, *Mo'adim* I:12:2.

One explanation for the common practice is that lighting candles does not constitute an absolute acceptance of Shabbat or, in this case, of Shavuot. One could also claim that it is permitted for women, who are the ones who accept Shabbat with lighting,¹⁹ to “ruin *temimot*” of *sefirat haomer*, because they are exempt from counting the *omer* in the first place. However, *L’Horot Natan*²⁰ argues powerfully that this application of *temimot* is not a function of the *mitzva* to count, but of respecting the time-period’s integrity, and that principle applies to women as well.

The main reason not to preclude lighting candles for Shavuot before *tzeit hakochavim* is that there probably is no intrinsic problem at all. One violates no *mitzva* by performing an act of Shavuot early, and the *omer* period is one of seven complete weeks irrespective of any Shavuot actions we might take. *Chazal*, who are our source of formal *limudim*, are, in fact, silent on the matter. Rather, the matter of waiting, which we do not find regarding Shabbat or other *yamim tovim*, is a *minhag* instituted because it **looks like** (language of the *Shelah*) we are shortchanging the *omer* period. Thus, there is no innate need to separate between the period of the *omer* and Shavuot, but only an expectation that we should act according to the extent of care the *minhag* prescribes. There is a consensus regarding *Kiddush* to wait for *tzeit hakochavim*, and the practice has extended for most to *Ma’ariv*; however, no more than a few apply it to candle lighting.

Because many classical *poskim* allow early *Ma’ariv* on Shavuot, it is legitimate for a *shul/minyan* with a special need to do so, despite the prevalent *minhag*. If feasible, it should be emphasized that only those with a real need attend such a *minyan*. (It is unclear if accommodating children’s sleep patterns qualifies as such a need.) It is proper to communicate that all who can should not make *Kiddush* until (the earliest opinion of) *tzeit hakochavim*. Even if the rabbi feels that some people are reciting

19. See Rama op. cit.

20. Op. cit.

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Kiddush before *tzeit hakochavim*, the congregation may continue *davening Ma'ariv* somewhat early, unless it is known that there is widespread “abuse.”



Section E:
Kashrut



E-1: *Timtum HaLev*

Question: Is there *timtum halev*¹ when one ingests non-kosher food in a halachically valid manner (e.g., based on *bitul*²)?

Answer: We will divide our view and analysis of the sources regarding this excellent question into three parts: 1) What causes *timtum halev*? 2) How severe is exposure to it? 3) Practical recommendations.

What causes *timtum halev*? The *gemara* teaches that “sin causes *timtum halev*.”³ The idea derives from the spelling of the phrase “*v’nitmeitem bam*” (you will become defiled by them) in the context of eating *sheratzim* (crawling creatures),⁴ indicating that eating such creatures causes not only *tumah* (impurity) but also *timtum* (pollution) of the heart.

There are at least three ways to understand this *gemara*. These approaches are not mutually exclusive, and may be complementary: A) Acts of sin cause *timtum halev* irrespective of exposure to a problematic object. This is the simple reading of the *gemara*⁵ and the understanding of the *Maharal*⁶ and Rav Kook.⁷ B) The reason that certain foods are forbidden by the Torah is that they impact negatively on the spirit. While this negative effect may be strongest regarding certain specific forbidden foods (e.g., *sheratzim*), it is true to some degree of forbidden foods in general.⁸ C) Forbidden foods were not originally **naturally** damaging to the spirit, but after the Torah forbade them, they became so.

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1. Approximately, spiritual pollution of the heart.
 2. Nullification by means of mixture that includes a sufficient quantity of permitted food.
 3. Yoma 39a. Rashi ad loc. explains: “It seals off and blocks out all wisdom.”
 4. *Vayikra* 11:43.
 5. See *Beit HaLevi*, *Bereishit* 6:5.
 6. *Tiferet Yisrael* 8.
 7. *Mussar Avicha* 1:4.
 8. Ramban, *Shemot* 22:30.

There are practical differences between these approaches. Importantly, some prohibitions seem to lack a naturally damaging element: 1) Performing forbidden actions in which one does not ingest a food; 2) Eating foods that are forbidden based solely on Rabbinic law. HaShem apparently did not create these foods as ones that cause *timtum* (for if He had, they would have been forbidden on a Torah level⁹), but the Rabbis nonetheless forbade them due to various halachic concerns, especially due to the possibility of their being confused with innately forbidden foods; 3) Eating foods that are forbidden (at least to specific people) because of the foods' special holiness (e.g., *teruma*, certain *korbanot*); 4. Eating foods that are forbidden only at certain times (e.g., food on Yom Kippur, *chametz* on Pesach); 5. Eating foods that are forbidden for a circumstantial moral reason (e.g., a mother animal and her child that were slaughtered on the same day; *eiver min hachai*¹⁰). According to approach A, *timtum halev* would be expected in these cases, whereas according to approach B it apparently would not be. (Following approach C, the question of *timtum* could be debated in several of these cases.)

Conversely, there are some cases in which prohibited foods enter a person's body without moral culpability, such that approach A would not apply whereas approaches B and C would: 1) The person eating followed halachic rules, which resulted in his ingesting the forbidden food (e.g., an animal had blemishes that make it a *treifa*, but we are not required to check for that blemish; it was permitted due to *bitul*); 2) The eater is not forbidden to eat the food (he is a non-Jew, a small child, or severely mentally disabled); 3) The person was compelled to eat the normally prohibited food to save his life; 4) The substance entered the body in a way other than eating.

9. It is possible to claim that certain Rabbinically prohibited foods create some amount of *timtum*, but the Torah nevertheless did not want to forbid them, whereas the Rabbis accepted for us a higher level of concern even for small amounts of *timtum*; see Netziv, *Devarim* 6:10 in *Harchev Davar*.

10. See *Moreh HaNevuchim* III:48.

We will begin with a small sampling of the many sources that present different views on some of these matters.

*Chashukei Chemed*¹¹ cites a *machloket* regarding whether eating forbidden food due to an unavoidable mistake creates negative spiritual effects (*Rav Pe'alim* says no; Rama MiPanu says yes¹²). One explanation for the opinion that there is no *timtum halev* in this case is approach A, which maintains that the source of the *timtum* is the sin involved. However, one could also suggest that HaShem would intervene to rectify the spirit of an individual who followed Halacha properly.¹³

The Netziv¹⁴ writes that the reason it is better to *shecht* an animal on Shabbat for a dangerously sick person than to have him eat non-kosher meat, even though the former action is apparently a more severe prohibition, is that the latter option causes *timtum*. This assumes that *timtum* exists even in the absence of wrongdoing. However, we do not find *Rishonim* giving this explanation,¹⁵ which would seem to demonstrate the opposite.

How severe is exposure to *timtum halev*? Many *halachot* assume that even if *timtum halev* is caused without wrongdoing, it is not a serious normative factor. One is not required to stop a child from eating non-kosher food,¹⁶ even though we would certainly stop him if we were to see him ingesting poison. (It is difficult to claim that the lack of a requirement to stop the child from eating non-kosher food is “only” on a halachic level, whereas one must still save the child due to *timtum*.¹⁷)

11. *Megilla* 13a.

12. See *Pitchei Teshuva*, *Yoreh Deah* 29:1.

13. See *Derashot HaRan* 11, who writes similarly regarding a case in which the Sanhedrin mistakenly permitted something that they should have forbidden.

14. *Op. cit.*

15. See *Beit Yosef*, *Orach Chayim* 328.

16. *Shulchan Aruch*, *Orach Chayim* 343:1.

17. See *Pri Chadash*, *Yoreh Deah* 81:26.

If 49 pieces of *treif* meat were to become mixed in with 50 pieces of kosher meat, *bitul* (sometimes) enables the eating of all the pieces.¹⁸ (Some have the stringency of first removing some meat to avoid the **appearance** of impropriety.¹⁹) Similarly, if *treif* gravy falls into a larger amount of kosher food and thereby lowers the kosher food's quality of taste, it is permitted to eat the combination.²⁰ In neither case do *poskim* raise the issue of *timtum halev*. In fact, there is a *machloket* if it is **permissible to refuse** to eat food that is permitted based on *bitul*.²¹ If Reuven sold non-kosher food to Shimon, who then ate it, Shimon is entitled to a full refund if the food was forbidden from the Torah, but no refund if it was only Rabbinically forbidden.²² The main reasons given for this *halacha*²³ do not raise *timtum halev* as a factor in either case. Thus, it seems clear that on a normative level, when the eater lacks guilt, there is no *timtum halev*, or at least the *timtum* is halachically insignificant.

Nevertheless, there are normative halachic sources that warn about *timtum halev*. The Rama²⁴ writes that one who has a choice in the matter should not have a baby nurse from a non-Jewish or not *kashrut*-observant wet nurse. This is based on the Rashba,²⁵ who holds that a non-Jewish woman's milk is kosher, but it is pious to avoid giving it to a baby due to concern for the baby's future spiritual health. Along the same lines, the *Chatam Sofer*,²⁶ after halachically justifying sending a *shoteh* child to a non-

18. *Shulchan Aruch, Yoreh Deah* 109:1.

19. Rama ad loc.

20. Ibid. 103:2.

21. See *Pitchei Teshuva, Yoreh Deah* 116:10, and a distinction in *Mishneh Halachot* VII:104. *Bnei Yisachar* (II, *Ma'amarei Chodesh Adar*, 2:7) views the circumstances of halachic *bitul* as a means of divine intervention to enable us to use the positive spiritual element of a specific forbidden piece of food.

22. *Shulchan Aruch, Choshen Mishpat* 234:2-3.

23. See *S'ma* ad loc. 4; *Netivot HaMishpat* ad loc. 2-3.

24. *Yoreh Deah* 81:7.

25. See *Darchei Moshe, Yoreh Deah* 81:9; *Torat Chatat* 65:11.

26. *Shut Chatam Sofer, Orach Chayim* 83.

Jewish center at which he had the best chance at improved mental health, nevertheless advised not to send him there in practice, due to *timtum halev*. (Many argue with the *Chatam Sofer's* advice or limit its scope.) Even if these are “extra-halachic” pieces of advice, why do they come up when they do?

One cannot always reconcile exceptional rulings with the rules. However, these cases, especially that of the Rama, have unique factors. A baby's basic sustenance on an ongoing basis is from nursing, during a crucial point of development in which he lacks performance of *mitzvot* and has few other things to counteract *timtum halev*.²⁷ (*Yabia Omer*²⁸ does not accept this distinction, as he views the Rama's ruling as reason to prefer, if possible, accepting a blood transfusion from a kosher-eating Jew.)

Practical Recommendations: While some compare eating non-kosher food to poison,²⁹ one dose of such food apparently does not “kill” one's spiritual soul. Rather, the more one is exposed, the worse it is for the person. Several components cause *timtum halev* and other similar concepts (e.g., *ruach ra'ah* in food touched before *netilat yadayim*³⁰), and many things rectify problems of the spirit. The average person should trust Halacha to factor in this element in a balanced manner, and he need not personally factor *timtum halev* into his halachic decisions; concern for possible sin is serious enough. One who strives for spiritual near-perfection might need to factor in even the finest points, but this response is not geared for such unique people.

27. The Netziv (op. cit.) and *Torat HaYoledet* (42:2) raise the distinction between one-time and ongoing exposure to substances that contain particles of prohibited food.

28. VIII, *Choshen Mishpat* 11.

29. See *Mesillat Yesharim* 11, who addresses a case in which there was some concern due to halachic grounds.

30. See *Shulchan Aruch, Orach Chayim* 4:2.

E-2: Reliability Regarding *Kashrut*

Question: Does the rule that “one witness is believed in matters of *issurin* (that which is religiously forbidden/permitted, including, *kashrut*)” apply even if the witness has a personal interest in the matter, such as if he owns a store or restaurant? Does the rule apply to a woman? Must the person be a *yarei shamayim*¹? How is a *mashgiach* better than the owner, if the business pays the *mashgiach* for his work?

Answer: We will answer your question generally, not in detail.

In cases in which full testimony is required – i.e., for monetary matters, punishments of *beit din*, or matters of “family status” – two witnesses are required,² and they must not have a direct interest in the matter.³ However, formal testimony is not necessary for matters of *issurin*,⁴ which is the reason why one witness suffices in such areas.⁵

When one witness is enough, a *nogei’ah b’eidut* (one who is impacted by the “testimony”) is also valid. One example of this rule is that a butcher is believed to say that the steps needed to make meat kosher were taken.⁶ We do not suspect him of lying to make money by selling non-kosher food to kosher consumers. The certifier does, however, need to be under the presumption of reliability on religious matters. This requires that he be, first and foremost, personally observant.⁷ As a rule, one who eats only kosher will not feed non-kosher food to others. Although some mainly religious people have serious flaws in their observance of certain areas of Halacha, there is a concept that we may sometimes

1. A God-fearing person.

2. See *Gittin* 2b.

3. Rambam, *Eidut* 9:1.

4. Distinctions in this matter are beyond our present scope; see *Yevamot* 88a.

5. *Chulin* 10b; see Rashi ad loc.

6. See Rambam, *Ma’achalot Assurot* 8:7.

7. Ibid.

believe such people regarding certain areas of *issurin* about which they are careful, while not believing them about others. One who violates “light” *aveirot* does not automatically lose credibility regarding “severe” ones. Sometimes, we also distinguish between whether the person stands to benefit from his testified assertion or not. (Many of the complicated details of this matter are found in *Shulchan Aruch, Yoreh Deah siman 119*.)

Fundamentally, there is no distinction between the reliability of men and the reliability of women regarding *issurin*.⁸ In fact, one of the sources from which we derive that people can rely on others regarding *issurin* is the Torah’s description of a woman’s counting the days to end her *nidda* status, regarding which her husband is to trust her.⁹ Rashi¹⁰ writes that the source for a witness’s reliability in the area of *issurin* is the correct assumption that one may trust the kosher status of food prepared by others, and this applies to testimony of both men and women.

Given the fact that we do not require formal testimony or witnesses without interests in these cases, where did the idea of requiring *hashgachot* come from? The Rosh¹¹ writes that in his time, the broad *minhag* was not to trust butchers for all of the checking necessary, but to appoint experts to ensure proper standards were being maintained. Mahari HaLevi¹² posits that this was not out of fear of purposeful deceit, but rather because some elements of *kashrut* may be too complicated for certain butchers, who might not admit or realize their limitations.

In some communities, a proprietor who is known to be trustworthy is not required to obtain a formal *hashgacha*. However, most communities today require some level of rabbinic supervision. Having a *mashgiach* is “healthy” for the following reasons: 1) The supervision is often looser when one simply relies

8. See certain practical distinctions in Rama, *Yoreh Deah 127:3*.

9. *Tosafot, Gittin 2b*.

10. *Yevamot 88a*.

11. *Chulin 1:24*.

12. *Shut Mahari HaLevi 17*.

on the (known-to-be-trustworthy) proprietor, but since, as noted above, even honest people make mistakes, it is worthwhile for someone with appropriate training to supervise. He should be able to be diligent in catching mistakes and also know how to deal with them when they occur. In general, a *mashgiach* also has easier access to *kashrut* experts when needed. 2) One who is visiting or new in a town and does not know who is and who is not trustworthy can be guided by the certification of known rabbis or organizations, as opposed to surmising the proprietor's reliability. 3) Every once in a while, someone who was assumed to be trustworthy turns out to not be. While Halacha does not demand us to suspect this, extra prudence on matters affecting the public can be worthwhile.

Regarding *mashgichim* being paid by the people whom they are supervising, there is no problem as far as the first two reasons we have mentioned are concerned. As for the third reason, however, the guarantee that there will be no corruption is indeed weaker if the proprietor can pressure the *mashgiach* financially to be less than sufficiently vigilant. Nevertheless, halachically, the *hashgacha* is still valid, because as we have seen, we do not expect trustworthy people to lie about *kashrut* even if they have a financial interest in doing so. Nonetheless, in order to reduce the chance of abuse of the system, many organized *kashrut* organizations are careful that they be the ones to pay the *mashgiach*.

E-3: Double Wrapping Food in a *Treif* Oven

Question: I heard that when warming kosher food in a non-kosher oven, or a *milchig* food in a *fleishig* oven, we are supposed to double wrap the food. When is this necessary and why?

Answer: A proper job of double wrapping solves virtually any problematic issue that arises from heating food up in an oven. Sometimes, less wrapping is completely sufficient, and we double wrap only as a stringency. We will summarize the issue, but we will not be able to cover every circumstance in this context.

The clearest way in which a non-kosher food transfers *ta'am*,¹ and thereby makes a kosher food forbidden, is when the foods are in direct contact with each other while they are hot. Two additional ways are discussed in the sources (among yet others): 1) The foods are heated up in close proximity, such that *reicha* (vapor) from one is liable to reach the other. When the vapor is strong/wet enough, it is called *zeiah*, and the chance of significant transfer is enhanced. The issue of which factors must be present for this to prohibit the food, *l'chatchila* or *b'di'eved*, is detailed, complicated, and includes *machlokot*; it is beyond the scope of this piece.² Below we will relate specifically to scenarios in which the potential for problematic transfer is certainly significant. 2) Heat and/or other factors cause particles to transfer from food into utensils, and those utensils can then “contaminate” other foods that touch them.³

Let us consider various situations. If one heats kosher and non-kosher food at the same time in one oven, the vapor may transfer *ta'am* from the *treif* food to the kosher food. In such a

1. Sufficient quantity and quality of particles to give taste to the absorbing object.

2. See *Shulchan Aruch, Yoreh Deah* 108:1.

3. *Ibid.* 92:5-8.

situation, there is a clear requirement to double wrap one of the foods. If one were to merely single wrap, the vapor of the *treif* food could make the wrapping *treif*. The hot kosher food on the inside of the single wrapping would then extract the *ta'am* from the wrapping, and the kosher food would become forbidden. Double wrapping helps because when there is no medium of a food or liquid between two utensils, *ta'am* is not transferred from one to the other.⁴

If a *treif* oven had only an empty kosher utensil in it, then neither edible non-kosher residue on the walls of the oven nor non-kosher *ta'am* within the walls would produce enough vapor to cause a problem. However, if the utensil is full of kosher food, the vapor of the kosher food might provide the medium to transfer the *treif* particles in the oven into the kosher food. To prevent this, it suffices to use a single cover over the utensil. This keeps (enough of) the vapor inside the utensil, and thus the non-kosher particles remain where they are.⁵

Another problem can occur if the kosher utensil is placed directly on non-kosher residue. In such a case, the non-kosher *ta'am* can go straight into the utensil and from there into the kosher food. To prevent this, a full wrapping is not required; rather, a simple sheet of some non-food article suffices to separate between the utensil and the possible residue.

If *milchig* and *fleishig* foods are being cooked or heated at the same time in a kosher oven, wrapping only one of them with a single wrapping is not enough. The vapors of each food can reach the wrapping,⁶ thus making the wrapping at that moment both a *milchig* and a *fleishig* utensil, which is a halachically complex situation.⁷ In the case of a *milchig* food in an otherwise empty *fleishig* oven, the situation is similar to that of a kosher food in

4. Rama, *Yoreh Deah* 92:8.

5. See Rama, *Yoreh Deah* 108:1.

6. It does not help that they came from different sides.

7. See *Shulchan Aruch* and Rama, *Yoreh Deah* 95:3.

an empty *treif* oven (and may be a bit more lenient⁸), and one effective covering suffices.

In the case of baking *pareve* food in an oven that is simultaneously baking *fleishig* food,⁹ it is questionable whether covering one of them is enough to keep the food *pareve*, as vapors of the *fleishig ta'am* can enter the covering and from there enter the *pareve* food. That food would then be no better than that which people call “*bechezkat besari*”¹⁰ or “meat equipment,” which has certain *halachot* of *pareve* and certain *halachot* of *fleishig*. Some maintain that this situation is actually worse, because the *fleishig* and *pareve* tastes interact within the “utensil” that separates them at the same time that they are connected to the original food.¹¹

If a *fleishig* oven has no meat food in it but only *pareve* food, then a sufficiently effective single wrapping would certainly succeed in preventing the oven’s meat element from affecting the *pareve* food, as we saw above. Again, one must ensure that no meat residue comes in direct contact with the utensil/wrapping.

8. Discussion of this distinction is beyond our present scope.

9. The same rules apply to *milchig* food.

10. Literally, having the assumption of being *fleishig*.

11. *Chavat Da'at* 95:1.

E-4: *Kashrut* of a Tea Bag Holder

Question: I have a porcelain tea bag holder (a small saucer on which one puts a tea bag after removing it from the tea). May I use it for tea bags used in *pareve* tea served alternately in both *milchig* cups (e.g., used for coffee with milk) and *fleishig* cups (e.g., used for chicken soup)?

Answer: Let us analyze what the possible concern is in the case you ask about.

If a tea bag becomes *fleishig* through use in a *fleishig* cup, perhaps it then infuses meat *ta'am*¹ into the tea bag holder and makes the holder *fleishig*. Another tea bag could similarly become *milchig* through use in a *milchig* cup and then infuse milk *ta'am* into the holder, making it now both *milchig* and *fleishig*, which is at least effectively not kosher. If one were to then use the holder again, it could theoretically make a third tea bag not kosher, as well as the tea and teacup that the tea bag was returned to. (We will not discuss the question of whether the mixing of the tastes of milk and meat in the tea bag holder is a problem of cooking *basar b'chalav*, which is forbidden even if one does not reuse the tea bag.²)

We will begin by analyzing the status of hot *pareve* tea that is put into a *fleishig* (or *milchig*) teacup. In general, such tea can pick up *fleishig* taste only on the level of *nat bar nat* (twice removed taste – e.g., first from the chicken soup into the cup, and later from the cup into the tea). The *gemara*³ cites a *machloket* regarding whether hot fish that was placed on a *fleishig* plate may be eaten with *milchig* sauce. While many believe that the halachic ruling in this situation is a *machloket* between Ashkenazim (stringent)

1. Sufficient quantity and quality of particles to give taste to the absorbing object.

2. See *Pri Megadim, Siftey Da'at* 87:19.

3. *Chulin* 111b.

and Sephardim (lenient), this is inaccurate. In truth, all *poskim* agree that in the *gemara*'s case, the fish may be eaten with *milchig* food.⁴ (We will discuss below to what extent it is proper to set up this situation in the first place.) The Rama⁵/Ashkenazim are stringent specifically when a *pareve* food was **cooked or roasted** in a *fleishig* pot, as opposed to when one merely placed a hot food on a utensil. In the case of cooking, such a taste is possibly more powerful than the *nat bar nat* that is transferred when hot fish is simply placed on a *fleishig* utensil without the presence of an additional heat source.

Our case is equivalent to that of the *gemara*, as putting hot water into a *fleishig* cup will extract no more than *nat bar nat* taste, and all would agree that the water remains *pareve*.

However, the matter is not simple. Many maintain that even according to the *Shulchan Aruch*, who rules that *pareve* food with *nat bar nat fleishig* taste may be eaten together with milk, this leniency applies only when the *pareve* food has already absorbed the *nat bar nat* taste. One should not, however, purposely put hot *pareve* food into a *fleishig* utensil,⁶ thereby having it absorb *nat bar nat* taste, if he plans to later eat the food with milk.⁷ We do not allow one to *l'chatchila* (purposely) set up a situation in which he must rely on the *pareve* status of food that has absorbed *nat bar nat* meat or milk taste in order to have it “mingle” with the opposite category of food. In your case, you are asking whether you may *l'chatchila* use the holder in such a way that the foods will remain kosher only because *nat bar nat* is not deemed halachic taste, and as of yet, we have not yet seen grounds to permit that.

One could claim that this depends on a *machloket* among the *Acharonim*. One is permitted to put *pareve* food that was **cooked** in a *fleishig* pot, and which therefore may not be eaten with milk

4. *Shulchan Aruch, Yoreh Deah* 95:1.

5. *Yoreh Deah* 95:2.

6. Or purposefully cook it, even according to the *Shulchan Aruch*.

7. See *Pri Chadash* 95:1; *Kaf HaChayim, Yoreh Deah* 95:1; *Yalkut Yosef* is lenient.

according to Ashkenazi practice, into a *milchig* utensil.⁸ However, this leniency might be permissible only after the fact (*b'di'eved*). If one already has such meat-leaning food, then one may put it into a *milchig* utensil, but may one decide in advance to cook the *pareve* food in a *fleishig* pot if he plans to later put it into an empty *milchig* utensil? Is that situation similar to the aforementioned case of setting up a *nat bar nat* situation *l'chatchila*? The *Pri Megadim*⁹ rules stringently on this matter, whereas the *Bach*¹⁰ and *Igrot Moshe*¹¹ are lenient. Your case sounds the same. You want to *l'chatchila* use *nat bar nat* to allow a hot food to be exposed both to *fleishig* and *milchig* utensils, and the permissibility of doing so would seem to depend on this *machloket*.

Nevertheless, the bottom line is that **there is no problem** in your case of the tea bag holder, for the following reason. The *poskim* who ruled stringently discussed cases in which the utensils on the two sides of the story (i.e., where the food came from and where it is being placed) are both truly *milchig* and *fleishig*, respectively. In contrast, in your case, although the tea bag came from a *milchig* or *fleishig* cup, it is being put on a holder that remained *pareve* throughout. It is stretching the stringency too far to prohibit putting essentially *pareve* tea bags on the holder at different times, simply because of the “leanings” of the tea bags. Therefore, all should agree that one may even set up this situation *l'chatchila* by using the same holder.

There are further possible grounds for leniency, especially the fact that the heat sources that might transfer taste from cups to the tea bags and from the tea bags to the holder are removed from a primary heat source at least once. Hot water poured into the teacup has the status of *iruy mikli rishon*,¹² and the tea bag

8. Rama, *Yoreh Deah* 95:2.

9. *Mishbetzot Zahav* 95:4; see *Badei HaShulchan* 95:30, who agrees with the stringent ruling.

10. *Yoreh Deah* 95

11. *Yoreh Deah* III:10.

12. Hot liquid right after it has been poured out of a utensil in which it had been cooked or heated up.

often enters the cup only afterward, when the water is less hot and has the status of a *kli sheni*.¹³ The hot tea bag is then removed from the *kli sheni* and only afterward put on the holder. With such lower levels of heat, transfer of *ta'am* is less likely.¹⁴

There is much more to discuss on the topic of levels of heat, but we will pass on that opportunity in this context, as we have already concluded that it is permitted to use the tea bag holder even without this additional mitigating factor.¹⁵

13. A utensil into which hot food is transferred from a different utensil in which it had been heated.

14. See *Shulchan Aruch, Yoreh Deah* 105:2.

15. If the holder were to lose its *pareve* status through direct contact with hot *milchig* or *fleishig* food, the mitigating factor of levels of heat might be significant.

E-5: How Many Eggs Should be Boiled Together?

Question: When preparing hardboiled eggs, may one cook one or two eggs by themselves, or must there be at least three? Also, does it make a difference if there is an even or odd number of eggs?

Answer: There are sources for and traditions about being careful to boil at least three eggs together. While at first glance this practice seems to fly in the face of halachic logic, the laws of blood spots in eggs are unique, as we will see.

A blood spot in an egg can be the beginning of an embryo, in which case the **egg** is forbidden. There is a *machloket* regarding whether this is based on Torah law or Rabbinic law.¹ If the blood comes from a hen without any embryo, the **blood** itself is forbidden (Rabbinically), but the rest of the egg is permitted and may be eaten after the blood is removed.² *Poskim* provide physical signs of when it is more likely that the blood either is or is not the beginning of an embryo, but after the egg has been handled, it can be difficult to recognize these signs. Since we cannot crack open an egg to check it before boiling it, perhaps we should attempt to ensure that any possible blood is nullified in the process of cooking.

We can assume that in a case in which only the blood is forbidden, the contents of the pot will have a 60:1 ratio of permitted to forbidden material to nullify (*bitul*) the blood. However, if the whole egg is forbidden, *bitul* requires 60 times more permitted material in the pot than the volume of the egg. Having three eggs in the pot instead of one will not help much toward reaching that target. (The water in the pot does not help toward guaranteeing

1. See *Tosafot, Chulin 64b; Beit Yosef, Yoreh Deah 66*.

2. *Shulchan Aruch, Yoreh Deah 66:2-3*.

a majority of permitted material, because it is of a different food type.)

There are times that *bitul* takes place by means of a simple majority. When a minority forbidden food and a majority permitted food are of the same type (*min b'mino*) and they are “combined” *yavesh b'yavesh* (i.e., they are separate solid items that are intermingled only in that the identity of the forbidden food is not known), all the pieces are permitted.³ However, this would not apply in the case of two kosher and one non-kosher eggs being boiled together, because boiling causes their tastes to mix, making a ratio of 60:1 necessary for *bitul*.⁴

Rather, the logic of having three eggs is based on a ruling of the Rama.⁵ The *Shulchan Aruch*⁶ discusses cases of blood found in a mixture of raw eggs, and he rules regarding what must be discarded, depending on various permutations. The Rama adds that the *Shulchan Aruch*'s discussion applies only when there is an indication that the entire egg is forbidden. However, if there is a doubt whether the whole egg is forbidden, we “permit the mixture, since in any case, one [forbidden egg] is *batel* in two [permitted eggs].” The *Taz*⁷ explains that even though a 60:1 ratio is needed for *bitul* in *lach b'lach* mixtures (physical mixtures, such as the contents of eggs mixed together), the Rama is more lenient in the case of an egg with a blood spot. This is due to two mitigating principles: 1) According to some authorities, even a forbidden blood spot prohibits the egg only Rabbinically. 2) The requirement of 60:1 for *lach b'lach* of *min b'mino* is itself only a Rabbinic law; a majority suffices according to Torah-level law when the taste of the forbidden food is not recognizable in the mixture. Therefore, when it is questionable whether a particular blood spot is of a type that makes the egg forbidden, we do not

3. *Shulchan Aruch, Yoreh Deah* 109:1.

4. *Ibid.* 2.

5. *Yoreh Deah* 66:4.

6. *Ad loc.*

7. *Ad loc.* 5.

forbid the mixture when a majority of the eggs are permitted.

Following this logic, the *Yad Yehuda*⁸ explains the practice of cooking three hardboiled eggs together. If there are two eggs boiling, there is not a permitted majority for *bitul* if one of them contains a blood spot, and the taste coming from the forbidden egg would thus render the other egg not kosher. In contrast, if there are three eggs, if one of the eggs turns out to have a blood spot and two do not, the kosher eggs and the pot remain kosher.⁹ The more eggs the better the chance of a majority, and odd numbers help slightly statistically. The number of eggs is thus not required, but rather suggested.

Almost all contemporary egg producers are careful to separate roosters from hens. Thus, the chances that a blood spot came from an embryo and thereby forbids the entire egg are very small. *Igrot Moshe*¹⁰ writes that since eggs are not expensive, we should, as a stringency, discard any egg that has a blood spot. However, he writes that nowadays we do not need to throw out eggs cooked with such an egg, and it is not necessary to perform *hagala* on the pot in which a blood-spotted egg was boiled. According to this, there is no longer a reason to cook three eggs together. Although some continue the old practice of using three eggs,¹¹ this is not necessary on a strictly halachic basis.

8. 66:7.

9. The question of whether or not it would be necessary to *kasher* the pot under such conditions is beyond our present scope.

10. *Yoreh Deah* I:36.

11. See *Teshuvot V'Hanhagot* II:384.

E-6: Kashering Frozen Liver

Question: If a piece of not-*kashered* liver was frozen for a few weeks, may it now be cooked and roasted?

Answer: Your question touches on several halachic issues, which we will mention only in passing as necessary background for the answer to your question.

As is well known, it is necessary to remove the blood from meat before one may eat it. In truth, however, not all blood is the same; the main halachic issue relates to blood that moved from its initial position.¹ Salting, following the regular procedure, which includes rinsing the meat, is usually sufficient to remove the blood.² However, due to the high concentration of blood in the liver, salting is insufficient to remove the blood from the liver meat, and the more powerful process of broiling is required, after slitting the meat to allow its blood to flow out more easily.³ (There are important *halachot* regarding this process that we assume you either know or will learn before carrying it out.)

One of the situations in which it is more difficult to remove blood from any meat is when the meat remained unsalted for 72 hours after *shechita*.⁴ In such a situation, it is possible to halachically remove the blood only through broiling the meat,⁵ but the classical *poskim* differ significantly as to the extent to which broiling is fully effective in that case. The *Shulchan Aruch*⁶ takes a middle approach. On the one hand, he is concerned that broiling after a 72-hour delay might not remove all the blood, such that if one cooks (or fries or sautés) the meat afterward, some blood might still come out and render the meat not kosher.

1. See *Tur* and *Beit Yosef*, *Yoreh Deah* 67.

2. *Shulchan Aruch*, *Yoreh Deah* 69.

3. *Ibid.* 73:1.

4. *Ibid.* 69:12.

5. *Ibid.*

6. *Ibid.*

Therefore, *l'chatchila*, one should not cook such meat even after broiling it. On the other hand, the *Shulchan Aruch* rules that since it is not certain that further blood will be displaced in the process, *b'di'eved*, if one did cook such meat after broiling, it may be eaten afterwards.

Many decades ago, a major halachic dispute emerged regarding the *halacha* when meat is left unsalted for 72 hours in a frozen state. (Nowadays, the salting process is almost always performed at the slaughtering facility soon after the *shechita*, before the meat is frozen.) Some significant *poskim*⁷ reason that if one freezes the meat solid (*basar kafu*), so that chemical processes are suspended, the “72-hour clock” stops. Others, however, argue that freezing cannot change the *halacha*. If one adopts the lenient approach in this dispute, broiling should suffice in a parallel case regarding liver as well, assuming it was frozen well within 72 hours. Your question arises only if one follows the stringent opinion regarding salting frozen meat.

Based on the above, we can understand the following ruling of the *Pitchei Teshuva*.⁸ He cites the *Chamudei Daniel* as maintaining that although one should not let meat sit for 72 hours without *kashering* it, because he might come to improperly rely on salting instead of broiling,⁹ one may let liver sit that long, because in any event one must always broil liver to *kasher* it. He notes that broiling the liver is not a full solution for liver that sat 72 hours (which is no better than meat that went unattended for such a period), since one is not allowed to cook it after broiling. However, since we rule that if one did cook liver after a delayed broiling, it may still be eaten after the fact, the issue is clearly not such a serious one. We may therefore allow liver to sit 72 hours before being *kashered*.

The same approach of relative leniency regarding liver that is

7. Including *Aruch HaShulchan*, *Yoreh Deah* 69:79; *Yabia Omer* II, *Yoreh Deah* 4.

8. *Yoreh Deah* 69:26.

9. Rama, *Yoreh Deah* 69:12.

to be broiled, as compared to meat that is to be salted, will help answer your question as well. It is a significant stringency to keep the 72-hour clock ticking when meat is frozen. Therefore, it is certainly halachically acceptable to use liver freely after broiling it, even if it had first been frozen for 72 hours.¹⁰ As Rav Ovadia Yosef¹¹ explains cogently, it is also permitted *l'chatchila* to set up such a situation by freezing the liver for an extended period of time and then broiling it.

There is a difference of opinion among *poskim* regarding whether one must wait for the liver to thaw before broiling it (so that the beginning of the process will not be considered cooking the liver in liquid as it thaws) or whether broiling is effective in any case.¹²

10. See *HaKashrut* (Fuchs) 9:(263).

11. *Yechaveh Da'at* VI:46.

12. See *HaKashrut* 9:87.

E-7: Products Containing Minute Quantities of Non-Kosher Food

Question: I want to use a homeopathic allergy medicine that contains some *apis mellifica*, which is trace quantities of crushed honeybee. Is this permitted?

Answer: There are different views about the efficacy of alternative medicine in general. Given that extreme opinions are rarely correct, we assume that some treatments under the umbrella of alternative medicine are helpful, whereas some others are quackery and serve as a placebo at best. Presumably, there is also a significant group of medicines and treatments (both homeopathic and conventional) whose efficacy is unclear or varies from person to person. We are not in the position to take a stand on which treatments fall into which category.

This general disclaimer has added significance in the case of ingesting something non-kosher as a medication. There is significant room for leniency regarding ingesting non-kosher items in the not classic manner of eating for medicinal needs.¹ However, the Rama² requires that a medicine must be proven effective for this leniency to apply, and this is rarely if ever true of homeopathy. Furthermore, in many cases of allergies, the sufferer is not considered halachically sick regarding such leniencies. We will therefore consider the *kashrut* of the ingredient in question.

Bees are *sheratzim*³ and are thus not kosher. Their honey, however, is kosher.⁴ It is permitted to eat their honey even if it has absorbed taste from parts of bees, because this non-kosher taste is assumed to be negative.⁵ One could argue that this is true only

1. *Pesachim* 25b; *Shulchan Aruch* and Rama, *Yoreh Deah* 155:3.

2. *Ibid.*

3. Insects.

4. Rambam, *Ma'achalot Assurot* 3:3.

5. *Shulchan Aruch*, *Yoreh Deah* 81:8.

when bee parts fell in accidentally, whereas if one purposely put them into the honey, he thereby gave them importance (*achshevei*) and thus prevented *bitul* (nullification).⁶ However, many *poskim*⁷ rule that if the purpose of including the non-kosher food is not related to its food qualities but only to medicinal ones, *achshevei* does not apply.

In this case, we ostensibly have a simpler reason for permissibility. Homeopathic solutions use trace quantities of the active ingredient, in which case there will be sixty times more kosher than non-kosher parts, which is grounds for *bitul*.⁸ On the other hand, *bitul* is supposed to come about by accident; if one purposely combines kosher and non-kosher foods in a manner in which the criteria for *bitul* are ostensibly met, it is forbidden to eat the mixture.⁹ When the non-kosher food is inserted intentionally, the *bitul* is disqualified, and the food remains forbidden both for the person who did the *bitul* as well as for those for whom he did it.¹⁰ Ostensibly, this is the case when the producers purposely put small amounts of *apis mellifica* into the solution.

However, a mixture in which someone purposely nullified a food is prohibited as a penalty for the sin of nullifying the forbidden food in the first place. If the prohibited food was put into the mixture by a non-Jew, who is obviously not prohibited to place substances that are not kosher for Jews together with kosher food, there is no reason to penalize the non-Jew. As a result, it is permitted, according to most opinions, for a Jew to buy the product from a non-Jew.¹¹

If the company is owned by Jews but the act of nullification was done by non-Jews, the matter is not simple. On the one hand, the *Beit Yosef*¹² writes that if a Jew asked a non-Jew to do *bitul*,

6. *Chulin* 120a.

7. Including *Igrot Moshe, Orach Chayim* II:92; *Minchat Shlomo* II:65.

8. See *Shulchan Aruch, Yoreh Deah* 98:1.

9. *Shulchan Aruch, Yoreh Deah* 99:5.

10. *Ibid.*

11. See *Badei HaShulchan* 99:38.

12. *Yoreh Deah* 99.

the Jew may not eat the resultant mixture (or, apparently, sell it in order to profit from the *bitul*¹³). On the other hand, even if a Jew himself purposely did the *bitul*, the *Taz*¹⁴ rules that if he did not realize it was forbidden for him to do so, the mixture is permitted.

This leads us to an interesting question: Would it be permitted to give a *hashgacha* to this product? The *Badei HaShulchan*¹⁵ maintains that it would be forbidden, because the rabbi would thereby become a partner in the nullification process through his instructions. However, this is logical only in a case in which the rabbi instructs the producers to perform the process according to his instructions. If the regular process renders the mixture kosher via *bitul*, formal Halacha should allow the rabbi to simply inform the public of this fact.¹⁶ In practice, formal *hechsherim* are not generally given in such cases.¹⁷

The entire above discussion will be moot if the product in question has, as we have reason to suspect, an edible base (including alcohol), whose *kashrut* we cannot confirm. The edible base is too large to be nullified. In such a case, ingesting the solution **may be forbidden due to the inactive ingredient.**

13. See Rama, *Yoreh Deah* ibid.

14. *Yoreh Deah* 99:9.

15. *Bi'urim* to 99:5.

16. See *Igrot Moshe*, *Yoreh Deah* II:41.

17. See ibid.

E-8: *Tevillat Keilim*¹ Before Giving a Present

Question: I often give glass salad bowls as presents. Is there any problem with doing *tevillat keilim* on them before giving them, to save the recipients' time or out of concern that the recipients might not do *tevilla* themselves?

Answer: On a certain level, the goal of *tevillat keilim* is to purify utensils that we obtain from a non-Jew. However, this is not classical purification from *tumah*. Rather, immersing the utensil in a *mikveh* it is an act of a *mitzva* that simply models such purification.² This representation of the halachic mechanism of *tevillat keilim* helps explain some lenient *halachot*, such as the *halacha* that food placed, or even prepared, in a non-*toveled* utensil is unaffected by the contact.³ However, with regard to your question, *poskim* seem to use this understanding of *tevillat keilim* to posit a stringency, which we will present after considering additional background.

If one buys a knife to use for cutting parchment, rather than for food preparation, the knife does not require *tevilla*.⁴ The *Beit Yosef*⁵ cites a *halacha* from the *Hagahot Ashri* that one who borrows such a knife from its owner does not have to do *tevilla*, even if the borrower uses it for food. This is because a borrower is obligated in *tevilla* only if the owner has an existing obligation. The *Beit Yosef* extends this logic to one who borrows a food-related utensil from a person who bought it only in order to sell it rather than to use it himself. Since the owner is not obligated to do *tevilla* before selling the object, neither is the one who borrows

1. Immersion of certain newly acquired utensils in a *mikveh*.

2. See Rambam, *Ma'achalot Assurot* 17:5.

3. Rama, *Yoreh Deah* 120:16, based on *Avoda Zara* 75b.

4. *Avoda Zara* op. cit.

5. *Yoreh Deah* 120.

it from him. Thus, it is permitted to use the “not-purified” utensil for food if the grounds for an obligation of *tevilla* did not yet materialize.

The *Taz*⁶ is not certain that the *Hagahot Ashri* and/or the *Beit Yosef* are correct. He therefore rules that one who borrows a utensil from a merchant to use for food should perform *tevilla* before using it, but he should do so without a *beracha*, since it is not certain that the *tevilla* is necessary. The *Taz* warns that due to the doubt regarding whether or not the *tevilla* was called for, the eventual buyer should be informed to not make a *beracha* when he performs *tevilla* after buying it. One can ask why the next owner has to do any *tevilla* at all, considering that the utensil already went through the “purification” process. We see from the *Taz* that even though a vessel was previously *toveled* before being sold to a consumer, the eventual buyer cannot rely on that *tevilla*.⁷ This is because, according to the opinions that at that time there was no obligation to do *tevilla*, the *tevilla* was not effective.⁸

This must be based on the idea with which we began: *Tevillat keilim* is not a matter of removing impurity, which should work even if not performed in the context of fulfilling an obligation, but rather simply an act of doing a *mitzva*, which is effective only when done when it is in force. If and when there was no obligation of *tevilla*, the *Taz* and later *Acharonim* assume that not only did the borrower doing the *tevilla* not fulfill the *mitzva*, but no “purity” was achieved. Therefore, when someone later buys the item and wants to use it with food, he must perform a new *tevilla*.

The same applies in your case. Although you did not buy the utensils with the intention of selling them, you also did not buy them for yourself to use them for food. Therefore, according to the *Beit Yosef*, you do not have an obligation to *tovel* them before

6. *Yoreh Deah* 120:10.

7. See comments by Rav S.Z. Auerbach, cited in *Tevillat Keilim* (Cohen), p. 241.

8. *Chelkat Binyamin* 120:66; *Tevillat Keilim* 8:(7).

giving them as a present.⁹ Therefore, the simple answer to your question is that your *tevilla* prior to giving the present likely does not spare or save the recipient.

Rav Tzvi Cohen¹⁰ suggests having a third party acquire the item from you on behalf of the recipient, so that the utensil will then become obligated in *tevilla* (as the recipient will presumably use it for food). Then, your performing *tevilla* on his behalf will be effective.¹¹ Rav S.Z. Auerbach¹² counters that if it is not clear that the recipient will actually use it himself (e.g., he might already own such a vessel, or he might not keep it because he wishes to acquire a different kind), it is not yet defined as a utensil that is obligated in *tevilla*, and the *tevilla* would therefore not be effective. This does not mean that there is no point in doing the *tevilla* to help in all the cases in which the recipient clearly will use it. However, this concern may be sufficient reason for you not to recite a *beracha*.¹³

A similar but different solution is possible as well. You can plan to use the utensil, at least briefly, after the *tevilla* but before you give it to the recipient. The *tevilla* will thus be needed **for you**, and it will certainly be valid.¹⁴

In summary, there are various issues entailed in *toveling* utensils that you will give away as presents.¹⁵ If the recipient is someone who might *tovel* the utensil himself, you would have to discuss the matter with him in any case, so that, assuming your

9. *Tevillat Keilim* 8:6.

10. *Ibid.* (9).

11. He posits that once the utensil requires *tevilla*, the *tevilla* is valid even if it is not done by the owner or his *shaliach* (halachically recognized agent); see *ibid.* 8:1.

12. See *Tevillat Keilim*, p. 241.

13. Generally, we would say that if the recipient will be happy that you are doing the *tevilla* for him, it is even possible for you to recite a *beracha* on it (*ibid.* 4; see *Mikraei Kodesh*, Chanuka 22-23).

14. We will note that the idea of opening the package, removing any problematic labels, and immersing the utensils in a *mikveh* before giving them as a gift is not exactly standard etiquette.

15. There are social issues as well; see previous note.

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tevilla works, he will not do *tevilla* again with a *beracha*, which would turn out to be a *beracha l'vatala*. Once doing so, you can also ask him if it would be helpful for him if you were to acquire it on his behalf and do the *tevilla* for him. In the average case, this would be a more recommended approach than those previously mentioned.

E-9: Maintaining a Possibly Grafted Tree

Question: I bought property that has a nectarine tree on it, and I do not know if it was grafted. What do I do with it?

Answer: The main prohibition regarding tree grafting is the actual **act** of grafting – i.e., inserting the branch (scion) of one tree into the wood (rootstock) of another tree. This prohibition is not explicit in the Torah; the *gemara*¹ derives it from the textual proximity of the prohibition of crossbreeding animals and that of crossbreeding in the field (*kilayim*).² This derivation is presumed to be of a Torah-level.³ Because it is derived from the prohibition of crossbreeding animals, which is not a land-based prohibition, it applies even outside of *Eretz Yisrael*.⁴

It is forbidden not only to plant *kilayim*, but even to allow it to remain in one's field.⁵ This extends to grafting trees as well.⁶ However, although one may not leave such grafted trees intact, one may eat or benefit from the fruit that have already grown there.⁷ An exception to this rule is when vineyards (grapes) are involved. In addition, the offspring of crossbred animals are invalid to be brought as *korbanot*.⁸

It is unclear whether leaving the grafted tree intact is a Torah-level prohibition or a Rabbinic one.⁹ This question might depend on whether one is passive or active in the matter of preserving or

1. *Kiddushin* 39a.

2. A mixture of species, most classically accomplished by planting the seeds of different species in close proximity.

3. Rosh, *Kilayim* 3.

4. *Kiddushin* 39a.

5. Rambam, *Kilayim* 1:3.

6. *Shulchan Aruch*, *Yoreh Deah* 295:7.

7. Rambam, *Kilayim* 1:7; *Yerushalmi*, *Kilayim* 1:4.

8. *Chulin* 115a.

9. See *Tosafot*, *Bava Kama* 81a.

improving the tree.¹⁰ In any case, it appears that the opinion that this is only a Rabbinic prohibition is the stronger one.¹¹

The *Chatam Sofer*¹² was bothered by the practice in his time (outside Israel) of observant Jews buying orchards containing grafted trees. In justification of the practice, he suggested that since the source for the prohibition and its extension to *chutz la'aretz* is the prohibition of crossbreeding animals, the prohibition in *chutz la'aretz* applies only when one is **active** in preserving the grafted species. Thus, claims the *Chatam Sofer*, the practice he witnessed, although not ideal, can be justified, especially in a case in which a non-Jew has a financial stake in the orchard, by means of which he can prevent the Jewish partner from uprooting the grafted trees. The *Chazon Ish*¹³ rejects the *Chatam Sofer's* nuanced leniency. Thus, at first glance, it is quite problematic to keep and cultivate a grafted fruit tree, even though its fruit are permitted.

In practice, however, you probably have no problem. Grafting trees is forbidden only when the scion is of a different species than the rootstock.¹⁴ It is completely permissible to graft a nectarine branch onto another nectarine tree. In addition, nectarines are simply a variety of peaches; thus, it is also permitted to graft a nectarine branch onto a peach tree or vice versa.¹⁵ Unlike what many think, nectarine branches are not (or at least not usually) grafted onto plum trees. Thus, even if your tree was grafted, it was probably grafted in a permissible manner.

Since we do not want “to go out on a limb” botanically, let us work with your assumption that it is possible that your tree

10. See *Shut Chatam Sofer* II:288.

11. *Derech Emuna, Kilayim* 1:41.

12. Op. cit., cited by the *Pitchei Teshuva, Yoreh Deah* 295:4.

13. *Kilayim* 2:11.

14. *Shulchan Aruch, Yoreh Deah* 295:6.

15. Why would one graft if he does not want to mix together two species? Apparently, the main idea is almost like cloning. When trees are grown from seeds, fruit will only grow if there is cross-pollination from another tree, and one cannot know their exact genetic makeup. When grafting, the scion will effectively turn from a simple branch into the beginning of a new tree with the old tree's properties.

was grafted in a forbidden manner. (In most cases, someone with horticultural experience can tell you if it was grafted at all.) The *Chazon Ish*¹⁶ writes that if one is unsure whether a grafted scion and the rootstock are (considered) of the same species, it is permitted to keep the tree and cultivate it. This conclusion is based on a halachic type of “divide and conquer.” On the level of Torah law, there is a *s’feik s’feika* (double doubt): Perhaps there is never a Torah prohibition to maintain an already grafted tree, and even if there is, perhaps the case before us is not one of forbidden grafting. Therefore, regarding Torah law, we permit keeping the tree based on the double doubt. On the level of Rabbinic law, although the Rabbis forbade maintaining an improperly grafted tree, one may be lenient regarding the single doubt of whether they are different species. If this is true, when one knows that the tree was grafted and the question is only whether the scion is considered the same species as the tree, one certainly may be lenient when it is not clear whether any grafting even took place to begin with. In addition, in *chutz la’aretz*, there is slightly more room for leniency.¹⁷

16. *Kilayim* 2:9.

17. See *Chatam Sofer* op. cit.



Section F:
Holy Articles



F-1: Color of the Inside of the *Retzuot*

Question: Until recently, I had only seen *tefillin retzuot* (straps) blackened on one side, but when I went to buy *tefillin* for my son, the *sofer* suggested *retzuot* that are black on both sides. He says these are now common and preferable, and the price difference is modest. Which type is better to buy?

Answer: The *gemara*¹ states that there is a *halacha l'Moshe miSinai*² that *retzuot* must be black. It then cites a source stating that if the *batim*³ are not black, the *retzuot* should be the same color, which contradicts the first statement's implication that the *retzuot* are always black. The *gemara* explains that the outside of the *retzuot* must always be black; the other possible color is on the *retzuot*'s underside.

The Rambam⁴ rules that the underside of the *retzuot* may be any color (other than red, which would be degrading to the *tefillin* if the *retzuot* turn over). He further writes that the underside of the *retzuot* should be the same color as the *batim*, and it is nicest if the *batim* and both sides of the *retzuot* are black. There is a *machloket*⁵ regarding whether according to the Rambam, the *retzuot*'s underside must also be black when the *batim* are black, or if in that situation, it is merely preferable for them to be black. It is clear, however, that the Rambam certainly at least prefers, given that our *batim* are always black, that the *retzuot* be black even on the underside. Nevertheless, the *Shulchan Aruch*,⁶ Rama,⁷ and *Mishna Berura*⁸ have no qualms with the widespread

1. *Menachot* 35a.

2. A tradition originating from an oral communication from HaShem to Moshe.

3. The boxes of the *tefillin*.

4. *Tefillin* 3:14.

5. See Rabbeinu Manoach ad loc.; *Shut Radbaz* 1026.

6. *Orach Chayim* 33:4.

7. *Darchei Moshe*, *Orach Chayim* 33:2.

8. 33:21.

minhag that the underside of the *retzuot* is not black.

Some *Acharonim* cite the Arizal as positing that there are important kabbalistic grounds for the *retzuot* to be black on both sides.⁹ Since we do not deal with kabbalistic issues that have not been integrated into common practice, we have nothing to add in this regard.

There is lack of clarity regarding two other possible advantages to the *retzuot* being black on both sides. First, it is considered very negative for the parts of the *retzuot* that fasten down the *tefillin* to turn over, and it is preferable that no part of the *retzuot* do so.¹⁰ It is possible that the problem would be solved or at least minimized if the bottom side were also black, such that even if it were to accidentally face up, it is at least black. However, it is unclear if and to what extent this would solve the problem.¹¹ Second, some note that the way *retzuot* are blackened on both sides is by soaking them in dye through and through. This might be advantageous in that even if the outer layer of black paint peels or cracks in a way that could ordinarily affect the *retzuot*'s color and therefore their validity, the general blackness under that outer layer might save the situation. On the other hand, it is difficult to guarantee that the leather under the crack will be sufficiently black halachically, and relying on the assumption that it will be could be a mistake.

Weighing the above, there seems to be more advantage in the new practice of blackening both sides than disadvantage.¹² Despite this, my *retzuot* are undyed on the bottom, and I and many others, including prominent rabbis,¹³ have no plans to replace them anytime soon. This approach of retaining our arguably less-desirable *retzuot* rather than switching to presumably preferable

9. See opinions in *Piskei Teshuvot* 33:5.

10. *Shulchan Aruch, Orach Chayim* 27:11, and *Mishna Berura* 27:38. There is also a difference in that the side that is supposed to be up is the smoother side of the leather; see *Mishna Berura* 33:20.

11. See *Bi'ur Halacha* 33:3; *Kaf HaChayim, Orach Chayim* 27:51.

12. See *Shevet HaLevi* IX:16.

13. We will not attempt to provide lists of rabbis who practice this or that way; in any event, the matter can change over time.

ones that are now available is based on the power of *minhag*.

Let us examine what the reliance on *minhag* means in this context. On one level, if there is a longstanding prevalent practice, especially one that is supported as perfectly fine in the most accepted sources, many will view this as an omen from Above that we need not try to improve on it.¹⁴ In addition, there are several related issues that can make the change problematic, specifically because it is a change made with the claim or hope of improvement. One such issue is that of *yohara* (holier-than-thou haughtiness), another is that of casting aspersions on others in the past or present, and yet another is causing *machloket*. These general issues have many classical sources to which we cannot presently do justice, but they certainly are accepted as significant in certain contexts in the *Shulchan Aruch*.¹⁵ Therefore, we discourage people from trendsetting in this matter, especially because the advantages we have mentioned are merely preferences and are not halachically compelling.¹⁶

Veteran *sofrei stam* can attest to a mushrooming of *hiddurim/chumrot* for standard upper-echelon *tefillin* over the last 50 years.¹⁷ Many youngsters have more *mehudar tefillin* than their fathers and rabbis, and none of the mentioned problematic issues have resulted. However, most of these new *hiddurim/chumrot* are not readily apparent to others. Your question relates to the coloring of the *retzuot*, which is noticeable, and that noticeability of the stringency/*hiddur* could potentially create a real problem.¹⁸

Our recommendation is that you buy for your son that which is normal for his peer group. Do not be one who spreads a new practice, due to the above reservations. On the other hand, to the extent that the practice has already spread in your surroundings,

14. See *ibid*.

15. *Orach Chayim* 34:3 and 468:4.

16. See *Mishna Berura* 468:23.

17. Analyzing the sociological background behind the change would be interesting, but it is not within our scope or expertise.

18. See *Shulchan Aruch, Orach Chayim* 468:4.

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it is not your doing, and there is little reason to be concerned that your son joining the trend will be a significant contributing factor in any negative element. Every generation brings changes, and, in retrospect, many of them are fine. Your young son need not be a *minhag*-preservation purist and should not feel that his *tefillin* are sub-standard among his peers.

F-2: *Tefillin* in Pre-Dawn Hours

Question: I work at a hospital, and depending on my shift, I am sometimes unable to wear *tefillin* during the day. May I put on *tefillin* before its regular time if I will not be able to do so later?

Answer: There are varied opinions among the *Tannaim* regarding if the *mitzva* of *tefillin* fundamentally exists at night.¹ According to most *Rishonim*,² the *mitzva* of *tefillin* does apply at night on a Biblical level. Nevertheless, one is Rabbinically forbidden to put *tefillin* on at night, because of the concern that he may fall asleep and then pass gas while wearing the *tefillin*, which would be degrading to them.³ (In certain circumstances, such as if the *tefillin* are still on from daytime⁴ or if one needs to wear the *tefillin* so as to protect them,⁵ the matter is somewhat complicated.) Although the halachic day starts at *alot hashachar*, approximately 72-90 minutes before sunrise, *tefillin* should not be put on until “*misheyakir*” (when it is light enough to recognize an acquaintance at the distance of four *amot*),⁶ approximately 50 minutes before sunrise.

A *baraita*⁷ teaches that if one will be on the road from before the time of *tefillin*, and he is concerned that if he does not wear them before he begins his travel, they are more likely to get lost, he may don them early, but he should delay the *beracha(ot)*⁸ until

1. *Menachot* 36b.

2. See *Beit Yosef*, *Orach Chayim* 30; the Rambam, *Tefillin* 4:10, is a notable exception.

3. Rashi, *Menachot* 36b; see *Mishna Berura* 30:3.

4. *Shulchan Aruch*, *Orach Chayim* 30:3.

5. *Ibid.* 2, 4.

6. *Ibid.* 1.

7. *Menachot* 36a.

8. *Ashkenazim* generally recite two *berachot* on *tefillin*, whereas *Sephardim* recite only one *beracha*.

the proper time arrives.⁹ The *Shulchan Aruch*¹⁰ *paskens* according to this *baraita* and explains that the ordinary concern of falling asleep at night does not apply in this case, because this person has already gotten up for the day. The *Mishna Berura*¹¹ assumes that this traveler may put on *tefillin* even before *alot hashachar*.

One crucial question relates to the nature of this special permission to put on *tefillin* early. Is it an indication that one is, under special circumstances, able to fulfill the *mitzva* before its normal time (which is your desire)? Or does it simply reflect that one is allowed to wear *tefillin* in order to protect them, without fulfilling the *mitzva* at that time?

The fact that one should not recite the *beracha* until later could be an indication that he does not yet fulfill a *mitzva*. In fact, Rabbeinu Peretz¹² maintains that the *baraita* is in accordance with the view that the *mitzva* of *tefillin* does not apply at night; according to our ruling that it does, the traveler should make the *beracha* right away. According to Rabbeinu Peretz, this individual is clearly performing a *mitzva*. However, the *Shulchan Aruch*¹³ rules that one should not recite the *beracha* then, despite the fact that he maintains that the Torah-level *mitzva* applies at night. The *Sha'agat Aryeh*¹⁴ posits that although one fulfills the Torah-level *mitzva* of *tefillin* at that time, since the Rabbis generally required waiting until *misheyakir*, the *berachot* were not instituted for unusual circumstances when it is permitted to don them earlier. Along similar lines, the *Eliya Rabba*¹⁵ writes that if one mistakenly makes the *beracha* before daytime, he should not repeat it at the right time, because the *beracha* was valid due to the Torah-level

9. The Rambam does not cite this *baraita*, likely because he reasoned it followed the opinion that the *mitzva* of *tefillin* fundamentally applies at night, a view he did not accept; see *Beit Yosef* op. cit.

10. *Orach Chayim* 30:3.

11. 30:11.

12. Cited by the *Tur*; *Orach Chayim* 30.

13. Following the Rosh (*Tefillin* 16) and others.

14. 45.

15. 30:3.

fulfillment. Rabbi Akiva Eiger¹⁶ agrees that one should not repeat the *beracha* in that case, but his rationale is different. Since it is possible that Rabbeinu Peretz is correct and the *beracha* was appropriate *l'chatchila*, one should not make a new *beracha*, as making a new *beracha* would require confidence that the first *beracha* was invalid.¹⁷

In the final analysis, while some disagree,¹⁸ we assume there is benefit to putting the *tefillin* on before *alot hashachar* if the alternative is not putting them on at all. This is the recommendation of both Rav Moshe Feinstein¹⁹ and Rav Moshe Sternbuch,²⁰ each of whom adds his own practical perspective on the matter. Rav Feinstein writes that if the person will not take the opportunity of putting on *tefillin* seriously if he is not instructed to make a *beracha*, we can rely on Rabbeinu Peretz's view and have him make the *beracha* even before the proper time. Rav Sternbuch comments that he believes it is rare for a person to have **no** opportunity to put on *tefillin* for a few seconds during the day; he suspects that the issue is more often embarrassment to put them on at the workplace, which he does not consider justified in our times.

As we have seen, permission for the early-waking traveler to put on *tefillin* before dawn is predicated on the assumption that he will not fall asleep under those circumstances. Therefore, if one is not walking or riding but is being drawn in a vehicle, he may not wear *tefillin* before dawn.²¹ Similarly, and relevant to your question, if a doctor is in the midst of a long shift in which he is able/expected to catch power naps, the leniency does not apply, as we must be concerned that he might fall asleep while wearing the *tefillin*.

16. To *Orach Chayim* 30:3.

17. As we have seen, if the *beracha* is invalid, this might indicate that there is no *mitzva* at that time, but that is not necessarily the case.

18. See *Divrei Mordechai* (Friedberg) 4.

19. *Igrot Moshe, Orach Chayim* I:10.

20. *Teshuvot V'Hanhagot* I:49.

21. See *Magen Avraham* 30:5; Taz, *Orach Chayim* 30:5.

F-3: *Tefillin* on a Semi-Permanent Toupee

Question: I am balding at a young age, and this is having a major effect both on my dating and on my self-image. I am considering getting a toupee that is glued down to the scalp, which lasts for three to six months. Would this pose a problem of *chatzitza* (separation from the body) regarding my *tefillin*?

Answer: The Rashba¹ posits that the laws of *chatzitza* do not apply to the *tefillin shel rosh*. However, the accepted opinion is that a *chatzitza* is problematic even for the *shel rosh*, although possibly only regarding the *bayit* but not the *retzuot* (straps).²

Many *poskim*³ posit that a removable toupee is a *chatzitza*. However, Rav Moshe Feinstein⁴ maintains that transplanted hair is not a *chatzitza*, since it becomes a permanent, desired part of one's body. Furthermore, he writes that this is also true regarding a permanently glued-on toupee.

We must still ask whether a toupee that is glued down for only a matter of months is considered a temporary or a permanent appendage to the body. The status of appendages that remain for an extended period is discussed prominently regarding items such as removable stitches and temporary fillings for women immersing in the *mikveh*. In that context, many *poskim*⁵ are lenient and permit *tevilla*. One of the lenient factors⁶ is that the ostensible *chatzitza* is something that is specifically needed for medical

1. *Shut HaRashba* III:282.

2. See *Shulchan Aruch* and Rama, *Orach Chayim* 27:4, and *Mishna Berura* 27:16.

3. Including *Igrot Moshe*, *Orach Chayim* IV:40.18; *Aseh Lecha Rav* III:3; *Yalkut Yosef*, *Orach Chayim* 27:14.

4. *Igrot Moshe* op. cit.

5. See opinions in *Badei HaShulchan* 198:179 and *The Laws of Niddah* (Forst), vol. II, pp. 313-314.

6. See *Igrot Moshe*, *Yoreh Deah* I:97.

reasons for a significant amount of time. This factor is absent in your case. However, several *poskim* are also lenient in a case of aesthetic need, e.g., to enable a married woman to have braces on her teeth,⁷ and such a need is parallel to your case. Your case is actually better than that of braces, since people want to remove the braces as soon as possible, whereas you would presumably want to keep the toupee on as long as you can.

There are various opinions regarding how long the item must remain on the body in order for it to be considered permanent enough that it is not considered a *chatzitza*: six months, one month, or a week.⁸ If, for example, the halachically required time for permanence is a month, then according to some opinions, the appendage becomes a *chatzitza* a month before it will be removed; others say that once it is on for a month, it does not constitute a *chatzitza* as long as it is there.⁹ Your situation is easier to permit if the toupee will be removed in order to be re-glued rather than to be replaced, as it will essentially continue to stay on your head after what one can argue is an insignificant pause.¹⁰ Moreover, a woman who wants to follow the stringent opinion can synchronize going to the *mikveh* and removing the appendage; in contrast, a man who has to put on *tefillin* every day cannot.

Let us halachically contrast *tevilla* and *tefillin*. On the one hand, *tevilla* is necessary in the context of a more stringent halachic matter than *tefillin*. Furthermore, as noted above, there is an opinion that *chatzitza* is not a problem for the *tefillin shel rosh* at all. In other respects, however, your case is more severe than most questions regarding *tevilla*. For one, a *chatzitza* on a **minority** of the body during *tevilla* (as in the cases above) is no worse than a Rabbinic disqualification.¹¹ In contrast, in your case, the entire area of the *tefillin shel rosh* is covered by a toupee, and

7. See *The Laws of Niddah* op. cit.

8. See *ibid.*

9. See *ibid.*

10. See *Badei HaShulchan* op. cit.

11. *Nidda* 67b.

there is thus the potential for a Torah-level disqualification. Some authorities argue that the parameters of *chatzitza* for *tefillin* are stricter than those for *tevilla*,¹² and some actually claim that even one's own hair that is under the *tefillin* in an unnatural way is a *chatzitza*.¹³ A toupee should be no better than such hair.

In summary, it is likely that a toupee that is glued down in a semi-permanent manner would not constitute a *chatzitza* as long as it is still considered desirable. This would allow one to put on the *tefillin* with a *beracha*. However, it is clear that according to significant opinions, the *mitzva* of *tefillin* could be compromised. A removable toupee, while more clearly a *chatzitza*, has a major advantage in that a solution is possible. Several *poskim* suggest that one who is embarrassed to remove the toupee publicly put on *tefillin* at home without the toupee, recite the *beracha* and say *Kri'at Shema* there, and then *daven* in *shul* with *tefillin* on the toupee, without reciting a *beracha* a second time.¹⁴

12. See *Riv'ot Ephrayim* III:38; the matter cannot be fully explained in this forum.

13. *Machatzit HaShekel* 27:4; see *Living the Halachic Process*, vol. III, F-8.

14. *Igrot Moshe, Orach Chayim* IV:40.18; *Aseh Lecha Rav* op. cit.

F-4: Mezuzot on Both Doorposts?

Question: I am unsure to which doorpost to affix a *mezuzah*. May I affix one on both sides, or is that prohibited as *bal tosif* (adding on to a *mitzva*)?

Answer: We will start with some of the basic rules/opinions regarding *bal tosif*. *Tosafot*¹ asks how we can blow *shofar* both before and during *Musaf* on Rosh Hashana without violating *bal tosif* and answers that simply repeating a *mitzva* more times than necessary does not constitute *bal tosif*. The Rashba² writes that one does not violate *bal tosif* if the additional activity is mandated by *Chazal*.³

Many *Acharonim* compare the act of affixing two *mezuzot* due to a doubt to that of wearing two sets of *tefillin* due to a doubt. The latter practice is the subject of much discussion regarding *bal tosif*.

The *Shulchan Aruch*⁴ rules that one who wants to don the “*tefillin* of Rabbeinu Tam” in addition to “the *tefillin* of Rashi”⁵ should, if possible, don both pairs at the same time. To avoid *bal tosif*, the *Shulchan Aruch* requires that one have in mind that whichever set is really the correct *tefillin* should be for the *mitzva* and that the one that is in truth not the proper *tefillin* is “no more than straps.” *Tosafot Yeshanim*⁶ maintains that adding to a *mitzva* merely for the purpose of eliminating doubt is not subject to *bal tosif* at all, but many authorities disagree with this claim.⁷

1. *Rosh Hashana* 16b.

2. *Rosh Hashana* 16a.

3. The Rambam (*Mamrim* 2:9) writes that if the Rabbis formulate a Rabbinic *mitzva* as if it is a Torah obligation, they thereby violate *bal tosif*.

4. *Orach Chayim* 34:2.

5. These two *Rishonim* disagreed as to the relative positions of the various scrolls inside the *tefillin*.

6. *Yoma* 57a.

7. *Shut Maharam Shick*, *Yoreh Deah* 287; see *Yabia Omer* VI, *Orach Chayim* 2, who brings opinions on both sides.

The *Tur*⁸ rejects the relevance of *bal tosif* more fundamentally, arguing that it applies specifically when one adds on to the basic description and character of the *mitzva* – for example, when one has five compartments in the *tefillin* – but it does not apply when one simply wears two separate pairs of normal *tefillin*. Many take issue with the *Tur* based on a *gemara*⁹ that states that one who finds *tefillin* on Shabbat outside an *eiruv* and wants to wear them so that he can bring them to safety may not wear two pairs at a time, because of *bal tosif* (among other reasons).

While we cannot summarize all the discussion on the matter, we will mention that the *Magen Avraham*¹⁰ writes that one may don two pairs of *tefillin* only if one of them is not kosher. The *Mishna Berura*¹¹ explains that the *Shulchan Aruch*'s case of donning the “*tefillin* of Rabbeinu Tam” in addition to “the *tefillin* of Rashi” is permitted only because it has two factors that minimize *bal tosif*: 1) The extra element (the incorrect *tefillin*) is separate from the required element (the correct *tefillin*);¹² 2) One of the entities (the pairs of *tefillin*) is unfit for the *mitzva*. Even in this case, one should intend that only one of the sets of *tefillin* (whichever is actually the correct one) is for the *mitzva*.

The *Pitchei Teshuva*¹³ posits that one who places two *mezuzot* **on the same doorpost** violates *bal tosif*. Why would one do such a thing? *Poskim* discuss, for example, the case of one who rents an apartment from a Jew who is lax about *mitzvot* and who has put up a tiny *mezuzah* case covered by paint, which the renter does not have permission to remove. In this case, the question is whether the renter may affix another one.

Regarding your question of putting *mezuzot* on two different doorposts, where only one doorpost can be obligated in a *mezuzah*,

8. *Orach Chayim* 34.

9. *Eiruvin* 96a.

10. 34:3.

11. 34:8.

12. See *Sanhedrin* 88b.

13. *Yoreh Deah* 291:2.

there is a disagreement among the *Acharonim*. The *Binyan Tzion*¹⁴ maintains that the *mezuzah* that is on the wrong doorpost has no more halachic significance than the wrong pairs of *tefillin* discussed above. The *Shulchan Aruch*'s idea of donning two pairs of *tefillin* simultaneously can therefore be applied to putting *mezuzot* on the two questionable posts. The Maharam Shick,¹⁵ however, argues that a kosher *mezuzah* affixed to a doorpost – even if it is the doorpost that in truth does not need the *mezuzah* – falls within the realm of the *mitzva*, making it subject to *bal tosif* when it is opposite a *mezuzah* in the right place.

While there is no clear consensus among contemporary *poskim*,¹⁶ the stronger opinion is to not sanction *mezuzot* on opposite doorposts, whether as a clear ruling¹⁷ or as a practical preference.¹⁸ In addition to formalistic *bal tosif* issues, it is problematic to create an odd-looking new phenomenon of two *mezuzot*, even if it is out of a desire for stringency/covering all bases (which itself is very often a two-edged sword).

14. *Shut Binyan Tzion* 99.

15. *Shut Maharam Shick* op. cit.

16. See *Yabia Omer* VI, *Orach Chayim* 2.

17. *Minchat Yitzchak* I:9.

18. *Shevet HaLevi* III:150; *BeMareh HaBazak* IX:35.



Section G:
Miscellaneous



G-1: Respect for the Elderly

Question: Is one required to show special respect to an individual between 60 and 70 years old? I remember learning that one should stand up for those over 70.

Answer: While one should be respectful of people in general, and certainly of older people, the *mitzva* regarding older people pertains specifically to standing for them. The Torah commands: “Stand up before *seiva*, and honor the presence of a *zaken*.”¹ The *gemara*² cites different opinions as to what is referred to by the term “*seiva*.” The first opinion is that it refers to a Torah scholar. Another opinion is that of Isi ben Yehuda, who maintains that *seiva* refers to an elderly person, even if he is devoid of other special qualities. The *gemara*³ concludes that we accept Isi ben Yehuda’s opinion, and the *Shulchan Aruch* rules accordingly, noting that we stand to honor Torah scholars as well.⁴

Who is considered old enough to deserve the expression of respect of others rising in his or her presence? The Rambam⁵ writes that one stands for a person who is “extreme in oldness,” without giving a specific age. The Rosh⁶ writes that one stands for a 70-year-old. Many point out that the Rosh’s ruling is in line with the *mishna* in *Avot*⁷ that lists characteristics of different ages and states that 70 is the age of *seiva* – the word the Torah uses for one for whom we should stand. The *Shulchan Aruch*⁸ likewise rules that one should stand for people over the age of 70.

However, there are also sources that refer to the age of 60.

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1. *Vayikra* 19:32.
 2. *Kiddushin* 32b.
 3. *Ibid.* 33a.
 4. *Yoreh Deah* 244:1.
 5. *Talmud Torah* 6:9.
 6. *Kiddushin* 1:53.
 7. 5:21.
 8. *Op. cit.*

The *Birkei Yosef*⁹ cites the Arizal as saying that one should stand for people over 60; the *Birkei Yosef* writes that this is based on Kabbalistic secrets. Others provide “revealed”¹⁰ sources for the significance of 60. Onkelos¹¹ translates the above *pasuk* such that “*seiva*” refers to a Torah scholar and “*zaken*” refers to an older person. The Rashbetz¹² explains that according to Onkelos, who maintains that “*zaken*” refers to the elderly, the age is 60, as the *mishna* states that 60 is the age of *zikna*.

As we have seen, the *Shulchan Aruch* accepts the age of 70. This makes sense, because we prefer the *gemara* to Onkelos as a source of practical Halacha and because it is possible that even Onkelos agrees that the word for an older person is indeed “*seiva*,” which the *mishna* tells us is at least 70.¹³

Despite the preponderance of standard halachic sources maintaining that the age to be stood up for is 70, there are a few reasons that it might be worthwhile to do so from 60. There are early sources, such as *Tikkunei HaZohar*,¹⁴ that maintain that *seiva* begins at age 60, and the Gra¹⁵ writes that those sources argue with the *mishna* in *Avot*. In any case, it may be laudable to follow the Arizal, whatever his reason is,¹⁶ or to simply be more generous in showing respect than is required. There is also an interesting compromise that includes **some** 60-year-olds. Some *Acharonim* understood the classical sources as teaching that in order to deserve honor based on age alone, one must be 70, and to deserve it based on scholarship alone, one must be a notable *talmid chacham*, but if one is a minor *talmid chacham* and is also 60, he too deserves honor.¹⁷

9. *Yoreh Deah* 244:4.

10. I.e., non-Kabbalistic.

11. To *Vayikra* 19:32.

12. *Magen Avot on Avot* op. cit.

13. See Ramban, *Vayikra* 19:32.

14. As cited by *Yabia Omer* III, *Yoreh Deah* 13

15. Cited *ibid*.

16. See *ibid.*; *Divrei Shalom*, *Yoreh Deah* 93.

17. See *Tzemach Yehuda* IV:35.

These *halachot* are difficult to implement in a society in which it is not standard, even for observant Jews, to stand up to honor older people. Indeed, *poskim* have bemoaned this for centuries.¹⁸ One justification is that elderly people are permitted to waive their honor, and perhaps we can assume that many of them do so, as waiving the honor may be a prudent practice so as to save the many good people who do not stand from abrogating their *mitzva*. (We can consider also that many of those who are presently elderly did not stand regularly for older individuals when they were younger.) It is also difficult to know in which situation it is desirable to stand. After all, it is not always clear if someone is 70¹⁹ or even 60. Many 70-year-olds these days are in excellent physical shape and resent being treated as old. One could even claim that 70 years old no longer meets the Rambam's description of extreme age, but I did not find this thesis among the *poskim*. Certainly, we do not want to insult someone whom we are trying to honor by making him feel older than he wants to feel.

If one really wants to do this *mitzva* well, we suggest developing a style of standing up **and approaching** older people (or, for that matter, anyone) to greet them. If this is practiced in a natural manner, the action will not scream, "I am rising in your honor, because you are elderly, and it is a *mitzva*," but simply express, "I value you and am happy to be in your presence."

18. See *Shut HaRadbaz* VIII:167.

19. See *Yabia Omer* op. cit., who writes that in a case of *safek* regarding this Torah law, when there is a possibility that the individual is over 70, one should be stringent.

G-2: Delayed *Chanukat HaBayit*

Question: We moved into a new house four months ago. Are we still obligated to make a *chanukat habayit*, or have we missed the opportunity? Also, what does the obligation of making a *chanukat habayit* generally entail?

Answer: Besides making sure to fulfill house-related *mitzvot* such as *mezuza* and *ma'akeh* (installing a fence for one's roof), there are two celebratory practices that apply to moving in to a new house.

The *mishna*¹ states that one who builds a new house or buys new clothes should recite the *beracha* of *Shehecheyanu*.² The same is true for purchasing an existing house.³ (There is a *machloket* as to whether *Shehecheyanu* or the parallel *beracha* of *HaTov V'Hameitiv*, recited when there are multiple beneficiaries, is the proper one to recite.⁴ However, when in doubt between the two, *Shehecheyanu* is the safer *beracha*.⁵)

Yet, as has been reported for centuries, many observant people do not recite *Shehecheyanu* on a new house.⁶ It is difficult to know to which halachic factor(s) to attribute this phenomenon (assuming it is not simply due to lack of awareness), but we will suggest a few possibilities.

*Tosafot*⁷ cites (and is among many who argue against) the opinion of Rav Sherira Gaon, who says that we do not follow the *mishna* regarding the rules of *Shehecheyanu*; rather, the *beracha* is limited to cyclical events. Others suggest that worries about

1. *Berachot* 54a.

2. See also *Shulchan Aruch, Orach Chayim* 223:3.

3. *Ibid.*

4. See *Bi'ur Halacha* to 223:3.

5. See *ibid.* to 223:5.

6. See opinions and discussion in *Yalkut Yosef, Sova Semachot I, Chanukat HaBayit* (2).

7. *Sukka* 46a; see also *Beit Yosef, Orach Chayim* 223.

financing one's new home detract from the *simcha* necessary for reciting the *beracha*.⁸ In addition, timing could be an issue, as the *mishna* discusses reciting *Shehecheyanu* at the time of purchase, whereas the house might at that point be unfit for inhabitation, either for pragmatic reasons or if it is missing *mezuzot*.⁹ Nevertheless, one should still be able to recite *Shehecheyanu* at the time he enters the house to live in it.

There are significant opinions that *Shehecheyanu* for happy occurrences is a desirable, but not an obligatory, *beracha*.¹⁰ Therefore, one should not feel he is sinning if he follows the practice of many who do not recite *Shehecheyanu* over their new home. When several months have passed since moving in, it might indeed be too late for *Shehecheyanu*, a *beracha* that should be made before the excitement wears off (although it is not certain that it is too long past).¹¹ If you would still like to make the *beracha*, you can “cover your bases” by reciting *Shehecheyanu* on a qualifying new garment with intention to thank HaShem for the house as well.¹²

When you ask about a “*chanukat habayit*,” you are apparently referring to the *seudat hodaya*¹³ held to express your thanks to HaShem, who enabled you to move into your new home. This is clearly a *minhag* rather than a halachic obligation, and it does not have explicit classical halachic sources. However, many important sources provide the rational and essential basis for this positive practice. Some note that the Torah¹⁴ instructs us to send home from battle one who built a house and did not “inaugurate it.” We see from this that beginning to live in a new house is a very significant event, and many *poskim* therefore consider it

8. See opinions in *Yalkut Yosef* op. cit.

9. See R. Akiva Eiger on *Shulchan Aruch* op. cit.

10. See *Magen Avraham* 225:6.

11. See *Halichot Shlomo* I:23:13; see also *Living the Halachic Process*, vol. V, B-8.

12. See *Bi'ur Halacha* to 22:1.

13. Thanksgiving meal.

14. *Devarim* 20:5.

a fitting time for celebration and thanksgiving.¹⁵ However, there are strong sources indicating that both the wartime *halacha*¹⁶ as well as the celebration's status as a *seudat mitzva*¹⁷ apply only for homes in Israel. After all, it should be our fervent hope and prayer that our homes outside *Eretz Yisrael*, which are an unfortunate necessity, will be ours only very temporarily, as a result of the speedy coming of *Mashiach*.¹⁸ Indeed, among Ashkenazim, such *seudot* are far more prevalent in Israel than outside it.

The more focus one puts on Torah and thanks to HaShem, the more meaningful the *seuda* is,¹⁹ but there is no specific necessary structure. If the main goal of the *seuda* is to thank HaShem and no special *berachot* are made at that time, there is no firm statute of limitations on the celebration. Although we are generally encouraged to perform positive acts as soon as possible, it is natural to wait for things to settle down and perhaps wait for key people to be around, and a four-month waiting period is not unusual.

There is a more Kabbalistically-oriented approach, more prevalent among Sephardim, to make the *seuda* on the very day one moves into the house. While also contributing an element of thanksgiving, this practice is more focused on creating the correct spiritual start to enhance the family's success in the house. Some great rabbis, such as the Chida, composed set orders of actions to do and texts to learn and recite on such occasions.²⁰

15. See *Shut B'er Sheva* 70; *Torah Lishma* 484.

16. See *Yerushalmi, Sota* 8:4.

17. See *Magen Avraham* 568:5.

18. See *Shut Chatam Sofer, Yoreh Deah* 138.

19. See *Yam Shel Shlomo, Bava Kama* 7:37.

20. See *Chanukat HaBayit* (Mark), pp. 39-41.

G-3: Tricking a Cheater

Question: If someone asks me for an answer during a test, may I tell him the wrong answer? (I prefer not to refuse others' requests. I do not want to suffer socially, and I am happy for the cheater to get what he deserves.)

Answer: Cheating on a test is an example of *geneivat da'at* (deception),¹ which is forbidden whether one fools a Jew or a non-Jew.² Some consider *geneivat da'at* to be a Torah prohibition, under the rubric of stealing.³ It is highly destructive to one's moral character⁴ and distances him from the path of the One whose "seal is truth."⁵ Indeed, the amount of cheating that occurs in far too many of our schools is tragic, and it is sometimes committed even by people who are generally morally/religiously "quality students." Your frustration is thus justified, but your suggestion is flawed on several important grounds. We will divide our discussion based on the motivations you have mentioned, starting with the simpler one.

Geneivat da'at applies to such seemingly innocuous situations as making someone think you did him a bigger favor than you actually did.⁶ Rashi⁷ explains that it is prohibited because one makes the recipient unnecessarily grateful. This leads to an important question: Is the deceptive act intrinsically forbidden, or is the prohibition dependent on the chance that the deceiver will receive "in return" from the recipient something the recipient would not otherwise have given him? While substantiating the following claim is beyond our present scope, it seems clear

1. *Igrot Moshe, Choshen Mishpat* II:30.

2. *Chulin* 94a.

3. Ritva ad loc.

4. *Sha'arei Teshuva* 3:184.

5. *Shabbat* 55a.

6. *Chulin* 94a.

7. Ad loc.

that such deception is a violation as long as one intends it to be impactful, even if the impact never comes to fruition.⁸ Thus, for example, every test answer taken from an illicit source is forbidden, even if the examinee's final grade (including F) was not improved by the cheating.

Based on the above, the cheater violates *geneivat da'at* even if you give him the wrong answer. Consequently, you will violate *lifnei iver*⁹ (the prohibition on facilitating another person's prohibited action)¹⁰ by providing him with an answer other than his own that he will present to the teacher in a forbidden manner. "Giving him what he deserves" does not justify your violation of *lifnei iver* for aiding him in his *aveira*, even if it were "morally justified." In fact, giving him the impression that you are helping him is in and of itself *geneivat da'at*.

If feasible, you should rebuke the perpetrator, acting not only out of love of the *mitzvot*, but also out of love of the unfortunate sinner, who needs guidance.¹¹ Even if this is not feasible,¹² you should not give the impression of agreeing with his cheating, which may be a form of *lifnei iver*¹³ and a *chillul Hashem*. Additionally, while there are cases in which it is justified to act deceitfully with the deceitful,¹⁴ there is no compelling reason to think that this is one of those cases.

The question of whether or not your concern for your social standing justifies making the cheater believe you are going along with his request is a good one, since such situations can sometimes create serious problems. The *gemara*¹⁵ allows

8. See *Igrot Moshe* op. cit.

9. *Vayikra* 19:14; see *Avoda Zara* 6b.

10. See *ibid.* and *Shach, Yoreh Deah* 151:6, regarding when the facilitator violates a Torah prohibition and when he violates only a Rabbinic prohibition.

11. See Rambam, *De'ot* 6:7.

12. See *Yevamot* 65b.

13. See *Shach* op. cit.

14. See *Tehillim* 18:27 and the Yaakov-Lavan story in *Sefer Bereishit*.

15. *Berachot* 19b; see also Rambam, *Kilayim* 10:29.

significant halachic leniency to avoid embarrassment. In a past response, we suggested that one might not be required to try to get fare-beaters to pay, including by informing the bus driver, due to concern about potential unpleasant reaction.¹⁶ Similarly, your fear might suffice to allow you to not rebuke the fellow student or tell the proctor about the cheating. However, **taking part** in the cheating (even with the wrong answer, as discussed above) is more difficult to justify.

One might claim that if the cheater could cheat from someone else, you would only be violating a Rabbinic version of *lifnei iver*,¹⁷ and there are times that one may violate Rabbinic prohibitions in order to avoid serious embarrassment.¹⁸ However, such leniencies apply when there is a conflict between one's dignity and a Rabbinic prohibition. Here, in contrast, the embarrassment is that you will be scorned for your halachically-mandated morality, and one is not supposed to shy away from such conviction simply because others scorn it. Therefore, even if many peers tragically rationalize or otherwise fail to observe this *halacha*, you must stand your ground and refuse to take part in it. This situation is comparable to one whose friends invite him to eat (even Rabbinically) non-kosher food and will ridicule him if he refuses. We expect such a person to stick to his principles, as obligated.

We wish you *hatzlacha* in protecting yourself from the moral corrosiveness of cheating and from the barbs of those who cheat – but in the appropriate way.

16. *Living the Halachic Process*, vol. III, I-8.

17. See *Shach* op. cit.

18. *Berachot* op. cit.

G-4: Paying Earlier than the Payment Plan Prescribed

Question: My company pays suppliers (including Jewish ones, to whom the laws of *ribbit*¹ apply²) with payment plans that we establish with each supplier in advance. Occasionally, after the transaction is complete, a supplier makes a request that we pay earlier than already agreed in exchange for a cash-purchase discount we work out. (“Cash” in this context does not mean it is paid with physical currency as opposed to checks, credit cards, etc. The point is that the payment is immediate. By credit, we likewise do not mean using a credit card, but rather arranging a delay in payment and/or with installments). Is this like a regular cash discount, which is permitted, or is this discount for earlier-than-agreed payment a case of *ribbit*?

Answer: Actually, the case you are asking about is easier to permit than the one that you assume is permitted. Let us develop the topic from the beginning.

Paying for something not at its “natural” time raises questions of *ribbit*. The normal time to pay for a purchase is at the time the buyer receives the merchandise. Therefore, it is forbidden for a seller to allow a buyer to pay on credit if he clearly charges him more for that privilege.³ It is viewed as if the seller is lending money to the buyer during the credit period and receiving extra money for doing so.

There are nevertheless permitted ways of buying on credit; we will note a number. If, during the presentation and discussion before the sale, only the sales price for credit payment was given as an option, it is permitted to agree on the credit payment,⁴ even

1. Usury.

2. See response G-6 of this volume.

3. *Bava Metzia* 65a.

4. *Ibid.*; *Shulchan Aruch, Yoreh Deah* 173:1.

if it would have in fact been cheaper had the purchaser bought with cash. This system has a couple of conditions, based on the need to ensure that it is not clear that the seller is charging extra for waiting for payment. One is that there must not be a set price for the item that was exceeded with the credit agreement.⁵ Another is that the increase in price for credit is not steep enough to be clearly related to the credit.⁶ If one negotiates his own prices with suppliers, he can agree on a payment scheme **before** agreeing on a price and then negotiate one price accordingly. This is not a problem even if other customers are able to choose between different rates for cash and for credit.

Another possibility is to use a *heter iska*⁷ for the transaction, which is particularly effective when the item is to be used for business, rather than for personal consumption.⁸ A *heter iska* causes the late payment, which is considered like the seller's loan to the buyer, to be viewed as the seller's investment of the sales money in the buyer's hands, with assumed joint profits.⁹ (It is preferable but not absolutely required for the *heter iska* to be a written document.¹⁰)

There is a distinguished but minority opinion¹¹ that if the accepted market price is the one the seller gave for credit and this seller gives a particularly cheap price for cash, it is permitted to buy on credit even when the two prices were presented together. The *Pitchei Teshuva*,¹² however, does not accept this leniency.

5. *Shulchan Aruch* *ibid.*

6. *Ibid.*

7. A halachic device that turns an ostensible loan, for which interest is forbidden, into an investment of sorts, in which the additional money returned is to be viewed as a return on a successful investment.

8. *Brit Yehuda* 40:21.

9. One who regularly sells on credit would be wise to put up a clearly visible sign stating that all the transactions on credit are "according to the *heter iska* found in ..."

10. *Brit Yehuda* 40:9; *Torat Ribbit* 16:2.

11. *Chochmat Adam* 139:5.

12. *Yoreh Deah* 173:5.

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There is a more accepted opinion¹³ that applies in many business settings. If the industry standard is to pay only by credit, that becomes the normal payment time. Then, even if there is a known cheaper price for cash, paying on credit is normal and does not create a problem of *ribbit*.

Regarding your question, we might have thought that we should view the receiving of the money early as, in essence, a “loan” from the time the money is received until the time the payment was due. If so, the incentive for early payment could have been forbidden as interest on that “loan.” Nevertheless, the *halacha* is that it is permitted to pay early after a proper sale on credit in order to receive a discount.¹⁴ The Rama¹⁵ cautions that the offer of a discount should be presented only after a *kinyan* has made the sale final. Otherwise, it would be forbidden for the sides to stand by the credit deal, although it would be permitted for them to use the arrangement of a discount for immediate payment. While it is not always clear when it is that the *kinyan* takes place, if you have already received the merchandise, you can safely assume that the *kinyan* has already been completed. In any case, the answer to your question is that such a scenario is permitted.

13. Cited in *Imrei Yosher* I:150; see *Torat Ribbit* 8:15, *Brit Yehuda* 22:8.

14. *Shulchan Aruch*, *Yoreh Deah* 173:3. *Rishonim* (see *Tur* and *Beit Yosef*, *Yoreh Deah* 173) compare this to someone who sells a debt someone owes him for future payment to a third party for immediate cash, but at a lower face value than what the borrower owed him.

15. *Yoreh Deah* 173:3.

G-5: Returning a Loan Affected by Currency Fluctuation

Question: Two years ago, Reuven, an American, sent \$4,500 to Shimon, who lives in Israel, to convert the money into shekels (15,400 NIS¹ at that time) and then to lend it to Levi, a needy Israeli. Levi returned a quarter of the shekel sum every six months and believes he has finished repayment. Shimon now wants to return the money to Reuven, but the amount he has received is now worth only \$3,990 (as the value of the dollar in comparison to the shekel has gone up in the interim). Should Shimon give Reuven \$4,500 or the present-day dollar equivalent of the 15,400 NIS that Levi received?

Answer: We cannot respond to the question's "*Choshen Mishpat*" elements (i.e., the various monetary claims of the sides) without hearing both sides. We will focus only on the "*Yoreh Deah*" (i.e., ritual, religious *halachot*) issue of *ribbit*² on the loan, which depends on the possibilities of what the exact financial arrangements and legal constructs between the parties were. We will relate to the major possibilities.

It sounds like Levi accepted the responsibility to repay a 15,400 NIS loan. If Shimon was simply an agent following instructions, he has no more obligation than that of a simple conduit; apparently, he merely accepted upon himself to take care of the currency transfers. Therefore, he returns to Reuven only the amount of dollars he can get from the shekel sum Levi paid him.

If Shimon in fact accepted responsibility for payment, there were either two separate loans (one loan from Reuven to Shimon, which then enabled a second loan from Shimon to Levi) or Shimon was an *arev* (guarantor). We will now analyze each possibility.

1. New Israeli Shekel.

2. Usury, the forbidden payment of interest on a loan.

If there were two loans, Shimon would ostensibly need to return the \$4,500 loan he received from Reuven. Is it permitted for an Israeli to return the same number of dollars as he received if the value of those dollars has gone up, or is that a problem of *ribbit*? The rule is that it is Rabbinically forbidden to lend a specific amount of objects that, at the completion of the loan period, are to be replaced and given to the lender in the same amount of the same type of object. This is because this commitment might require the borrower to return more value than he received, if the object went up in value over the course of the loan.³ However, that is true of commodities, whereas currency is viewed halachically as a constant (even if its true value, as compared to commodities and other currencies, changes). Accordingly, one might conclude that a dollar loan is permitted, and Shimon would therefore be obligated to return the same \$4,500 he received, even if the sum's shekel equivalent increased over the time.⁴ On the other hand, outside the country where a currency is the legal tender, it is considered a commodity. Although relatively recent *poskim* have ruled that dollars have a special status in Israel, because of their centrality in many aspects of day-to-day finance,⁵ the situation of centrality that this ruling was based on no longer exists; dollars are not sufficiently used in today's Israel to be considered a currency here. Nonetheless, when an American transfers dollars from America and wants that same amount of dollars returned to him, dollars are considered the relevant currency, and there is no problem of *ribbit* for their return.⁶ Thus, if these were indeed the circumstances, Shimon may and should return \$4,500 to Reuven.

If there was only one loan (from Reuven to Levi) and Shimon is merely an *arev*, we must analyze which of the three types of *arev* he was: 1) A simple *arev* – one who pays only if the borrower

3. *Shulchan Aruch, Yoreh Deah* 162:1.

4. *Ibid.*

5. See *Igrot Moshe, Yoreh Deah* III:37.

6. See *ibid.*

defaults;⁷ 2) An *arev kablán* – in which case the lender may choose to take payment either from the borrower or the *arev*;⁸ 3) An *arev sh'lof dotz* – in which case the lender receives payment specifically from the *arev*.⁹

The *gemara*¹⁰ states that if a non-Jew lends to a Jew a loan with interest, and the lender takes payment with interest from the loan's Jewish *arev*, the borrower may not reimburse the *arev* for the interest. The *gemara* explains that since the non-Jewish practice is to go directly to the *arev*, it is considered as if the Jewish *arev* borrowed from the non-Jew and then lent the principal to the Jewish borrower. Therefore, the *arev* must not take back more money from the borrower than he gave him. There is a *machloket* among *Rishonim*, and there are two opinions in the *Shulchan Aruch*,¹¹ regarding if this prohibition is true only for an *arev shlof dotz* or even for an *arev kablán*.¹²

While that case is different from ours, the analysis of how to view the financial relationships between the three parties in a loan with various types of guarantors should be the same. If Shimon is a simple *arev* or, according to some, even if he is an *arev kablán*, the loan is treated as one between Reuven and Levi. Thus, if Levi may simply pay the same amount of NIS that he received, Shimon is governed by the same rules. If so, neither Levi nor Shimon may give \$4,500, unless one of the leniencies of this Rabbinic form of *ribbit* applies.¹³

If Reuven indicated that he was giving a dollar loan, he deserves to receive \$4,500, and Levi is obligated to pay however much NIS is necessary for that to happen. Shimon is allowed to

7. *Shulchan Aruch, Choshen Mishpat* 129:8.

8. *Ibid.* 15.

9. *Shulchan Aruch, Yoreh Deah* 170:1.

10. *Bava Metzia* 71b.

11. *Yoreh Deah* 170:1.

12. Regarding the question of which is the more accepted opinion, see *Divrei Sofrim, Yoreh Deah* 170:9, and *The Laws of Ribbis* (Reisman), p. 286.

13. See *Shulchan Aruch, Yoreh Deah* 162:2-3, regarding the most basic leniencies.

add from his own pocket to the money Levi gave him so as to return the full dollar amount to Reuven. This could occur if, for example, he wishes to help Levi and/or if he blames himself for having failed to relay to Levi that Reuven had indicated that the loan was to be repaid in dollars. It is certainly not a violation of *ribbit* if Shimon does not demand the difference from Levi.

If Shimon is an *arev shlof dotz*, it is likely that the loan was in dollars. In that case, Shimon may and should pay \$4,500.¹⁴ Whether and under what circumstances he would be permitted to ask for compensation from Levi for the added shekels needed to pay that amount of dollars is too complicated to discuss in this forum.

Fine nuances can affect the way to view these matters. It is laudable (not required) for Reuven to waive the possible right to full payment, whether he does so to avoid the possibility of a violation of *ribbit* or, especially, if he does so in order to strive for higher moral ground. (His dollar loss can count as *tzedaka* if the person who ultimately benefits from not being charged the difference, whether it be Shimon or Levi, is poor.¹⁵)

14. See *Netivot Shalom*, p. 349.

15. See *Tzedaka U'Mishpat* 1:(78).

G-6: Taking *Ribbit* from a Non-Jew in Israel

Question: I understand that the reason it is permitted to take *ribbit*¹ from a non-Jew is that we live among non-Jews and cannot avoid conducting business with them. May one who lives in Israel rely on such logic, which seemingly does not apply there?

Answer: The *mishna*² states that it is permitted to lend money to a non-Jew with interest. However, the *gemara* cites a source indicating that it is Rabbinically forbidden to do so. The *gemara*³ suggests two distinctions to reconcile these sources: 1) It is permitted to lend to a non-Jew with interest only to ensure a basic livelihood (*k'dei chayav*); 2) The reason for the prohibition is to discourage business relationships that could cause a Jew to learn from his counterpart's ways, and it is therefore permitted for a *talmid chacham*, who is not liable to be significantly affected by such a relationship, to receive *ribbit* from a non-Jew. According to another version in the *gemara*, there is no prohibition for anyone to lend to a non-Jew.

*Tosafot*⁴ was troubled by the fact that the practice of the time was to allow usury on loans of Jews to non-Jews, in contradiction to the simple reading of the *gemara*. *Tosafot* presents three possible explanations: 1) On this matter, which is no more than Rabbinic, we accept the lenient version of the *gemara* that there is no prohibition altogether. 2) Due to the great difficulty in making a living, we generally consider accepting usury as *k'dei chayav*. 3) Since we anyway have to do business with non-Jews, permissibility to take interest does not significantly increase interactions.

1. Interest.

2. *Bava Metzia* 70b.

3. *Ibid.* 70b-71a.

4. *Ad loc.*

You based your question regarding whether it should be forbidden to lend with interest in Israel on the assumption that *Tosafot's* third explanation is correct. This is a reasonable assumption, considering that the *Tur*⁵ adopts it. However, although *Netivot Shalom*⁶ cites *Klala D'Ribbita*, who suggests that it could be forbidden to lend to a non-Jew in a case that does not include the *gemara's* lenient elements, standard practice is nevertheless certainly to be lenient,⁷ and we feel it is important to justify standard practice when possible. (We have no problem with the *Chochmat Adam's*⁸ praise of those who adopt the stringent approach. However, enforcing such a ruling on others is a very different story.)

First, we must note that this prohibition is highly unusual, in that the *gemara* states that it does not apply to all people (i.e., a *talmid chacham*) and that it is waived in the face of significant financial need. One could possibly argue that this is a sign of focus on practical considerations, which would strengthen your question. However, it is more likely a sign of great leniency (as is the Rambam's⁹ position that it was instituted only with regard to Torah-level *ribbit*), which perhaps indicates that we are not dealing with a full-fledged prohibition. It is therefore not difficult to rely on the opinions that there is no prohibition or that we would apply the leniency of *k'dei chayav*.¹⁰

Even working within the approach that the basis of the permissibility is that we do not have to be concerned that taking *ribbit* will increase our learning from the ways of non-Jews, we should view this point in the context of how practical Halacha works. Once *Chazal*, or often even post-Talmudic *minhag*, have forbidden something, we rarely say that the prohibition no longer

5. *Yoreh Deah* 159.

6. 159:16.

7. See also *Torat Ribbit* 1:35.

8. 130:6.

9. *Malveh* 5:2.

10. *Shulchan Aruch* and Rama, *Yoreh Deah* 159:1.

applies simply because things have changed, even if it seems that they really have changed. A less common but still important phenomenon is that when the rabbis of a period decide to be lenient regarding a certain (usually Rabbinic) prohibition, we do not easily reinstate the prohibition even when the strength of the leniency's reasons has diminished. It seems that in the face of "halachic inertia," we require clear indications of strong reason to change the practical *halacha*, even from leniency to stringency. Even in the times of the *Rishonim*, it seems that this prohibition was broadly ignored, and that seems to include even cases in which the reasons for leniency were not particularly strong.

In fact, in contemporary Israel, there are still practical reasons to apply *Tosafot's* leniency, based on the contention that we are in contact with non-Jews anyway. First, in a global market, it is difficult to avoid financial interactions with non-Jews in many fields, and many Israelis have customer bases and engage in business cooperation with non-Jews. There is also practical logic to be less concerned about usury's impact on interactions, based on one understanding of the reason *Chazal* forbade specifically taking *ribbit* from non-Jews and did not forbid conducting other business interactions with them. Regarding other business transactions, there is little reason not to deal with Jews at least as much as with non-Jews. However, in the case of loans, since the Torah permitted taking interest specifically from non-Jews, *Chazal* were concerned that one would loan only to non-Jews and be unwilling to do so to Jews.¹¹ Nowadays, however, consider that the contemporary broad reliance on *heter iska*¹² all but eliminates the obstacle of *issur ribbit* in the business world. Therefore, there is less incentive to lend specifically to non-Jews, and as a result, the logic of the prohibition is weaker than in Talmudic times.

11. Maharam Shiff on Rashi, *Bava Metzia* 70b.

12. A halachic device that turns an ostensible loan, for which interest is forbidden, into an investment of sorts, in which the additional money returned (the "interest") is to be viewed merely as a return on a successful investment.

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Another reason that the prohibition might not be as compelling nowadays is that business is often conducted these days with little to no personal interaction between the sides. Although we would not dismiss a Rabbinic prohibition because of such changes, they may allow us to continue the centuries-old lenient application of this *halacha* even if the reason for being lenient has become weaker.

Based on any combination of the above, it is justified to assume that the widespread practice of lending interest to non-Jews remains intact even in contemporary Israel.

G-7: Receiving Credit Card Benefits on a Purchase for Someone Else

Question: Reuven paid for Shimon's plane ticket by using Reuven's credit card; the arrangement was that Shimon would later reimburse him. Reuven received benefit from the payment in the form of credit card points that he earned from the transaction. Is this situation considered as if Reuven lent money to Shimon, such that Reuven's benefit is considered *ribbit*¹? Also, who deserves to get the value of the points? Should Reuven somehow share with Shimon some of the benefit from his credit card gain?

Answer: When Reuven gave money to the airline via his credit card based on Shimon's request, it is indeed considered as though he lent money to Shimon. This is based on a broad concept known as *arvut* (guarantorship). By means of *arvut*, the one who becomes obligated to pay Reuven is not the one who received the money from him (i.e., the airline company), but rather the one who requested of Reuven to do what he did with the money (i.e., Shimon). This concept can be used in creating loan obligations,² *kiddushin*,³ and transactions.⁴ Thus, if Shimon were to refuse to pay Reuven back because Reuven did not give him anything, we would say: "When you asked Reuven to pay the airline, you said (or implied in a manner that obligates you) that you would reimburse him, and that is binding." Accordingly, from the time that Reuven paid, Shimon became obligated to pay him back.⁵

Now that we have determined that, effectively and halachically, Reuven is considered to have lent money to Shimon, the question remains whether Reuven may not only get his principal back

1. Forbidden usury.

2. *Bava Batra* 174b.

3. *Kiddushin* 7a.

4. *Ibid.*

5. See *Shulchan Aruch* and Rama, *Choshen Mishpat* 129:2.

but also receive additional benefit as a result of the transaction.⁶ The answer seems to be that this is permitted, because there can be a problem of *ribbit* on Reuven's loan to Shimon only if the benefit that Reuven receives comes in some way from Shimon, his "borrower."⁷

Importantly, your second question regarding who deserves the benefit is relevant not only in itself, but can also impact on the question about the *ribbit*. If Reuven is required to share the benefit with Shimon, then if Shimon waived his rights to this benefit, most likely because Reuven advanced money on his behalf, this ostensibly could be considered *ribbit*.

The *gemara*⁸ asks about a case in which someone serves as an agent to buy a certain amount of a commodity for a buyer at a certain price, and the seller decides to give more commodity than was requested. The *gemara* states that if the object does not have a set price, it was the buyer's money that ended up bringing **him** more than expected.

The *gemara* further states that if there is a set price, we view the extra as a present. Who deserves this present? The *gemara* accepts the opinion that it is to be divided equally between the buyer and the agent. Rashi⁹ explains that this is because there is a doubt regarding for whom the present was intended. Based on this, the Rama¹⁰ writes that if the seller specified that he added the extra for the agent, the agent keeps the entire surplus. The Rif,¹¹ however, rules that even if the agent was the intended recipient, the buyer deserves a share, because the benefit came through

6. Although in some ways, we view Reuven as an agent for Shimon, and although the obligation of Shimon to Reuven is based on the institution of *arvut*, nevertheless, the respective leniencies regarding *ribbit* in these contexts (Rama, *Yoreh Deah* 160:16, and *Taz*, *Yoreh Deah* 170:3) do not apply here. Analysis to support this contention is beyond our scope.

7. *Bava Metzia* 69b.

8. *Ketubot* 98b.

9. *Ad loc.*

10. *Choshen Mishpat* 183:6.

11. *Ketubot* 57b in his pages.

him; it was only due to his purchase that the agent was able to receive the bonus from the seller. The *Beit Yosef*¹² prefers the Rif's opinion, and the *Shach*¹³ wonders why the Rama presented the *halacha* according to Rashi in a manner that implies that all agree with his position.

At first glance, it seems that our case depends on the *machloket* between the Rif, Rashi, et al., as Reuven received the benefit because of Shimon's purchase. However, in your case, Shimon is less directly involved with the source of the extra benefit – the credit card company – than the *gemara*'s seller is with the buyer. There is no real financial relationship, not even through an agent, between Shimon and the credit card company. Furthermore, the credit card company awards points because they want to incentivize their customers' decision to pay specifically by means of their credit card, which increases their profits. The company does not care about the background of their customer's decision to spend the money. It is therefore more difficult to relate the present to Shimon, even according to the Rif. The Rashba¹⁴ maintains that when the present is given because of the agent's relationship with the seller, the agent receives the entire benefit, and that certainly applies here. Additionally, the "present" of points is one part of an ongoing arrangement between company and client (Reuven). The points from this payment fit in with the rest of Reuven's points, in which Shimon has no part.

In summary, based on your description, Reuven need not credit Shimon for the points benefit, and there is no problem of *ribbit*.

12. *Choshen Mishpat* 183.

13. 183:12.

14. *Shut Meyuchas LaRamban* 60; see *K'tzot HaChoshen* 283:7.

G-8: Inheritance Without *Ma'aser Kesafim*

Question: My parents are planning their will and want to divide their estate evenly between my brother and me. They believe I give *ma'aser kesafim* too broadly, and when I told them that I indeed think that it should be taken from an inheritance as well, they objected and insisted it is enough that they will leave some money to charity. They told me that if I cannot figure out a way to avoid giving *ma'aser* from their estate, they will give the entire estate to my brother. Is there a permitted way for me to obviate the obligation of *ma'aser*, or should I stand on principle in the face of losing a lot of money?

Answer: We praise not only your willingness to forgo inheritance if halachically required, but also that you are not trying to trick your parents in this regard.

There are times when parents' gifts are exempt from *ma'aser*. Rav Moshe Feinstein¹ rules that when parents promise money to their son for his basic needs, the parents have the right to have their son not give *ma'aser* from their gift, as giving it would in effect compel the parents to give the son more to cover his own needs. *Teshuvot V'Hanhagoth*² writes that if that son gives *ma'aser* against his parents' conditions, it is considered stealing.

However, this argument does not apply in your case. Your parents are not giving you money for a specific purpose that will not be met if you give *ma'aser*. Rather, the inheritance will be yours to do as you like, and what you do with it will not impact your parents; they object only on a "matter of principle." If indeed you are obligated to give *ma'aser* on the inheritance, their expression during their lifetime of their strong sentiment against

1. *Igrot Moshe, Yoreh Deah* II:112.

2. III:282.

ma'aser is akin to a parent who commands his child to not fulfill a *mitzva*, which is an illegitimate request.³

If your parents are serious about withholding all your inheritance over this matter and this inheritance is a large amount of money, you can be exempted from *ma'aser* based on the Rama's ruling⁴ that one does not have to spend an exorbitant amount of money on a *mitzva*. In addition to other *mitzvot*, this exemption applies to *tzedaka*, which actually has an upper limit for how much one may give.⁵ Of course, *tzedaka* (*ma'aser kesafim* falls under its rubric⁶) involves financial loss by its very definition, but here we are talking about a large loss **beyond** natural *tzedaka* costs.

In general, there are three opinions regarding the practice of *ma'aser kesafim*. Some maintain that it is a *mitzva* from the Torah,⁷ some hold it to be a Rabbinic obligation,⁸ and yet others maintain that it is simply a proper practice to accept upon oneself.⁹

We believe that the third opinion is the strongest. According to that opinion, one could perform *hatarat nedarim* on his practice of *ma'aser kesafim*. We suggest that even if you rely on the above exemption based on the Rama's ruling that one does not have to spend an exorbitant amount of money on a *mitzva*, it is good to also do *hatarat nedarim* in regard to this inheritance.

However, it is better (for your sake and probably also for that of your parents) to obviate the *mitzva* to begin with, rather than to simply fail to perform it due to substantial loss. Therefore, we would recommend asking your parents to leave you the inheritance in a way through which you are anyway exempt from *ma'aser*. According to most opinions, one who receives objects or property is not required to give *ma'aser* based on the objects'

3. *Bava Metzia* 32a.

4. *Orach Chayim* 656:1.

5. *Ketubot* 50a.

6. See Rambam, *Matnot Aniyim* 7:5.

7. See *Tosafot*, *Ta'anit* 9a; *Tzedaka U'Mishpat* 5:2.

8. *Shut Maharil* 54.

9. *Shut Chatam Sofer*, *Yoreh Deah* 231.

value, unless and until he sells them.¹⁰ According to many opinions, money received that is bindingly earmarked for specific needs is also exempt from *ma'aser kesafim*.¹¹ Your part in your parents' estate can be made to fit into one of these situations. For example, they can create a trust fund for certain purposes (e.g., children's weddings, education), or you could receive real estate, as opposed to cash. In the case of real estate, if and when you sell the property after quite a while, you will give *ma'aser* at that point. This would hopefully not contradict your parents' explicit directives.

There are strong indications that *ma'aser kesafim* is not an independent *mitzva*, but is rather a set of rules within *tzedaka*. Your parents are presumably not against your giving *tzedaka*, but only annoyed by the level and the automatic nature of giving *ma'aser*. However you resolve the issue with your parents, you do not need to be a less generous person in the long term. If inheritance, and hopefully other sources and merits, enhance your ability to give *tzedaka*, at some later point, you might end up giving a similar amount of *tzedaka* as if you followed the rules of *ma'aser kesafim* formalistically on the inheritance. (One may give more than 10% when he wants or not rely on leniencies that one used to rely on.) We do not condone actually calculating the amount you are withholding from *ma'aser* and adding it on later to make up for following your parents' condition, as this would be dishonest to them. However, it would be acceptable to purposely give more *tzedaka* in other settings, such that what you give naturally over time will offset what you do not give upon your parents' passing.

10. See *Tzedaka U'Mishpat* 5:(25); *Hilchot Ma'aser Kesafim* (Bronstein) 3:6.

11. *Hilchot Ma'aser Kesafim* ibid. 11.

G-9: *Ma'aser Kesafim* from Proceeds of a Damage Suit Settlement

Question: I was injured in a car accident a few years ago. The accident has brought on, and will continue to bring on, high medical expenses. I just received a large damages payment. Should I give *ma'aser kesafim* from it?

Answer: *Refuah shleima!* It is important to realize the nature of the practice of *ma'aser kesafim*. *Tzedaka* is a *mitzva* from the Torah, but its practical parameters are difficult to define and quantify. The concept of *maa'ser kesafim* provides a *tzedaka* formula that is moderately ambitious (depending on a person's circumstances).¹ In general, there are three opinions regarding the origin/level of obligation of the *ma'aser kesafim* practice: Some maintain that it is a *mitzva* from the Torah,² others consider it a Rabbinic obligation,³ and yet others understand it to be simply a proper practice for one to accept.⁴ The last is the strongest possibility.

Most *poskim*⁵ rule that if one receives money as a gift and has the freedom to use it as he likes, he should give *ma'aser kesafim* from what he receives. If the monetary gift he received is earmarked for a certain purpose (e.g., buying a house), however, it can be viewed as though he received that matter as a present, and according to many, he is exempt from *ma'aser kesafim* on both the money and that which was bought with it. This ruling is especially compelling if giving *ma'aser kesafim* on the funds will effectively preclude one from obtaining that for which the

1. Compare Rambam, *Matnot Aniyim* 7:1 and 5.

2. *Tosafot*, *Ta'anit* 9a.

3. *Shut Maharil* 54; *Taz*, *Yoreh Deah* 331:32.

4. *Bach*, cited by *Taz* op. cit.; *Shut Chatam Sofer*, *Yoreh Deah* 231.

5. Including *Chikrei Lev*, *Yoreh Deah* III:102.

money was earmarked.⁶ In your case, you **may** use the money for whatever you wish. However, medical expenses are primarily necessities that one cannot reasonably ignore.⁷

We can suggest the following proof that *ma'aser kesafim* does not apply to damage payments that relate to medical expenses (*ripuy*). *Ripuy* is intended and calculated with the goal that medical expenses should not harm the victim's financial situation. It is conceptually optimal for the damager to directly finance medical services for the victim as they are needed, rather than to give an estimated lump sum of money for anticipated past and future expenses.⁸ Lump sum payments, when decided upon, are arranged simply as a matter of practicality and convenience. Consider the financial circumstances of a victim who is being compensated for his medical expenses. If the victim had to give *ma'aser* on those payments, he would sustain a net 10% loss, as 10% of what he needed to pay for medical expenses will go to *tzedaka*. It does not make sense that Halacha would want this, and we do not find any suggestion of the step of adding 10% to the base *ripuy* payment to cover the giving of *ma'aser*.⁹

On the other hand, in many systems of law, a large damages award is almost always intended to accomplish more than simply pay medical expenses. The money is intended to cover short-term and long-term loss of earning capabilities, and even compensate for mental anguish and loss of enjoyment. Sometimes, courts also include punitive charges. In most cases, it is possible to at least approximate the breakup of the elements of large lump sum

6. See *Tzedaka U'Mishpat* 5:(26).

7. While one can often opt for cheaper medical products and services, one of the purposes of a significant settlement is to enable the possibility of paying for relatively high quality medical care.

8. *Bava Kama* 85a.

9. One can deflect this proof on technical grounds, arguing that the obligation to pay damages is a Torah law, which does not take the victim's worthy *tzedaka* practices into account, especially assuming they are Rabbinically-mandated or less. We would counter that the practice of *ma'aser kesafim/tzedaka* does consider the fact that *ripuy* is not general profit but rather necessarily earmarked payment, which it would be wrong to "tax."

payments, based on an itemized insurance claim or a court or arbitrator's ruling. Regarding many of these elements, *ma'aser* is indeed appropriate. For example, regarding payment for loss of income, which should (halachically and legally) be compensated for,¹⁰ logic dictates that *ma'aser kesafim* is called for. Since such payments are in place of previously potential earnings that are presumed to be lost, this element should be treated as income, which, of course, is subject to *ma'aser kesafim*.

We have explained in the past¹¹ that people who cannot afford to give significant amounts of *tzedaka* should not do so, as their obligations to their families come first.¹² While some injury victims have no financial worries, many in such a situation need to consider their present and future financial outlook. Since we do not know your situation, we will share with you what we would suggest to the average person who receives large lump-sum damage payments.

Since the payments are planned for long-term use, many would opt to set up a fund to be invested, with a certain amount being freed periodically for use. (We emphasize that we are not giving financial advice.) If you decide to take that approach, it is fine to give any appropriate *ma'aser* only from the periodic drawing of funds, minus the portion that relates to medical or other injury-related expenses during that period. Do not give *ma'aser kesafim* from the lump sum in the beginning. By following this suggestion, you are likely, as time goes by, to develop a good understanding as to whether or not you will be able to give full *ma'aser kesafim*, or to at least determine the extent to what you deem yourself able to fulfill the wonderful *mitzva* of *tzedaka*.

10. *Shulchan Aruch, Choshen Mishpat* 1:2.

11. *Living the Halachic Process*, vol. I, F-5.

12. Rama, *Yoreh Deah* 251:3.

G-10: Approach to Kidney Donation

Question: Is it a requirement, an appropriate practice, or an improperly exaggerated act of *chesed* to donate a kidney to someone with whom the only connection is that you both are Jews?

Answer: [Let me begin with a little background on the question and answer. After deciding that I wanted to donate a kidney, I asked my *posek* the above question. His conviction was that while one is not required to donate, it is a very big *mitzva* to exceed one's *chesed* obligation and to do so. He also ruled that if I donate, **I am obligated to share this fact with as many people as possible**, so as to encourage others (in my opinion, specifically very healthy middle-aged men and women) to consider it. I have decided that after a very brief discussion of the halachic issues, I will share a unique Torah-based approach (not ruling) that convinced me (intellectually) to go through with the donation.]¹

The Radbaz² was asked whether one who can save a Jew's life by agreeing to sacrifice a limb should do so. He responded that one is not required to make such a life-altering sacrifice but that doing so would be an "act of *chasidut* (piety)." He continues that if giving the limb endangers one's own life (as he assumes it would), only a "*chasid shoteh* (misguided pious person)" would agree. In fact, there may be differing opinions among *Chazal* about the appropriateness of endangering oneself to save someone else who is in great danger.³

1. In another departure from standard protocol in these books, I dedicate this response *l'iluy nishmat* Rabbi Yeshayahu Heber *zt"l*, founder of Matnat Chayim, who helped lead me through the process of kidney donation and served as an inspiration and a true friend to me and hundreds of other kidney donors and recipients.

2. *Shut HaRadbaz* III:627.

3. See *S'ma* 426:2; *Pitchei Teshuva*, *Choshen Mishpat* 426:2.

There are decades-old *teshuvot*⁴ that discourage kidney donation due to perceived dangers. However, the present consensus of major *rabbanim* encourages it, as Rav Yisraeli did decades ago.⁵ All surgery entails some danger, but nowadays, the immediate danger to a kidney donor from surgery is negligible. There are slight disadvantages to having only one kidney, the most important being that it can lead to life-threatening situations, but this is quite uncommon for those who pass the rigorous pre-donation testing. Based on medical developments and what we have learned over the last few decades, it is unclear (and hopefully unlikely) whether the Radbaz would consider a donor a *chasid shoteh*. In fact, *poskim*,⁶ and the Radbaz himself elsewhere,⁷ urge people not to exaggerate self-concern when others who are in danger can be saved.

Consider that when there is a communal danger from attackers, Jews are expected to come with weapons, even on Shabbat, to defend their counterparts.⁸ Given that this must pose some danger to the defenders, doesn't this contradict the Radbaz?

The following approach to answer the question and to deal with the idea of self-sacrifice within our society is based on the way I was taught at Eretz Hemdah, and by Rav Yisraeli, to view communal needs, especially in the State of Israel.

Members of Israeli society face many dangers – hostile countries, criminals, national disasters, etc. Many people (soldiers, police officers, firefighters, etc.) often risk their lives to protect society. Nationally, we are far better off having an apparatus of protection than we would be were we to leave everyone to fend for himself. But who should risk their lives to save others in these various ways? We draft, appeal to, and/or provide incentives for people to take these various positions. I believe that no responsible

4. *Minchat Yitzchak* VI:103; *Tzitz Eliezer* IX:45.

5. *Chavot Binyamin* 109.

6. See *Pitchei Teshuva*, *Choshen Mishpat* 426:2; *Mishna Berura* 329:19.

7. See *Shut HaRadbaz* V:218.

8. *Eruvin* 45a; *Shulchan Aruch*, *Orach Chayim* 329:6-7.

posek would forbid serving as an Israeli soldier or police officer based on the Radbaz's thesis, in line with the above sources about protecting Jews under attack.

Similarly, if society, as guided by doctors, lawmakers, and *poskim*, has to decide whether to encourage healthy people to accept difficulties and minor risks in order to save recipients from extended dialysis and/or death, the logical answer is that they should. It is simply a matter of finding the right profiles and number of donors. The government provides incentives (including modest "financial gratitude"), the most important one being that the donors' families go to the top of the list of future recipients if needed. The government also conducts careful pre-donor screening. When organizations (e.g., Matnat Chaim, and Renewal, in the US), rabbis, and others succeed in presenting the matter to the public eye (I am hereby trying), our philanthropically-minded nation will respond appropriately.

We are getting closer to providing the desired number of donors, but more work is needed. We are proud that (at the time this volume is being prepared for print), Israel is the per-capita world leader in altruistic kidney donation!

G-11: Reflecting on a Socio-Religious Trend

Question: I ask **myself:** What religious trends have I been noticing, both through questions received and by personal observation, and what should our reaction be toward them?

Answer: There are a number of crucial halachic and/or social issues in the forefront of rabbinic and community discussion. While I make no attempt to identify the most impactful ones, I thought it would be interesting to examine some changes in socio-religious behaviors and religious practices that are signs of trends that share common roots. Identifying those roots and considering a basic strategy toward them can help the community and the individual react thoughtfully to practices that have arisen and will arise in the future. We will focus here on the types of practices that have become more common among people who strive for healthy (not extreme) religious excellence.

One trend is the use and pursuit of *segulot*. For example, over the last decades, the *chatan*, *kalla*, and *sandek* have become among those before whom one is expected to line up to receive *berachot*, as is done for great *tzaddikim*.¹ (Previously, participants at a wedding would bless the *chatan* and *kalla*, not primarily vice versa.) *Tzedaka* organizations encourage donations by promising that THE right holy people will *daven* for us THE best *tefilla* at THE best time and place. (One would have expected greater emphasis on the important aspects as the *mitzva* itself, the importance of the cause, the steps an organization hopefully takes to minimize wasted overhead, etc., with little focus on *segula* promises.)

Another trend – which is not new, but which has in some ways

1. It used to be that Chassidic rebbes were known as the ones to approach for personal *berachot*, but this phenomenon has been significantly broadened to include others as well.

intensified recently – is many people’s focus on their individual religious practice. I am not discussing selfish people or those who are disconnected from the community. Indeed, many of the people to whom I refer are true *ba’alei chesed* and people who work on community projects; they simply strive to do the “best thing.” Here are a few examples of such practices that are new, picking up steam, or expanding to new communities: Breaking up a *minyan* so that two *aveilim* can be *chazan* simultaneously;² a *chazan* using his own *nusach* in a *shul* in spite of its having a set and different *nusach*; asking for *maftir* semi-regularly during the year of *aveilut*; *davening* at one’s own speed without skipping when coming late, and thereby causing there to be only a questionable quorum for *Shemoneh Esrei* and *chazarat hashatz*.

Without going into the details of such specific issues, I see overlap between the trends. “I believe my *nusach* is better (for me), so the *tzibbur* should accommodate me.” “I need to provide my parent with the most effective *illuy neshama*,³ so the *shul* should sacrifice to accommodate *aveilim* in ways not traditionally prescribed.” “The *Beit Yosef*’s angel said that skipping is detrimental, so we no longer follow the *Shulchan Aruch*’s rules meant to enable a *minyan* to be a cohesive communal *davening*.”⁴

Our approach is that while proper balance is always important, the general rule is that the needs and preferences of the *tzibbur* come before those of the individual.⁵ In matters where diverging from community norms can cause discord, even when that outcome is not obvious, the *sugyot* of the fourth *perek* of *Pesachim*⁶ are strictly against an individual’s divergence.⁷ This is often even at the cost of religious preferences for the individual.⁸ Furthermore, we believe that the individual’s *avodat HaShem*

2. See *Living the Halachic Process*, vol. III, A-4.

3. See *Birkei Yosef, Orach Chayim* 284:1.

4. See *Mishna Berura* 52:1.

5. *Living the Halachic Process*, vol. I, H-3.

6. Which deals with the impact of local *minhag* on religious observance.

7. See, for example, *Shulchan Aruch, Orach Chayim* 468:4.

8. See *Mishna Berura* 468:23.

should be focused on improving the **community's** spiritual state.⁹

It is true that the ultimate level of community is that of *Klal Yisrael* as a whole. However, in one's personal life, his local community represents his *klal*. While a community should be concerned about the feeling of fulfillment of individuals, it is more fundamental that the individual not put the main focus on the fine points of his personal quest, even for something as impactful as the apparent spiritual advantage of his departed parents,¹⁰ if that compromises what is healthiest for the community. Similarly, some *segulot* are positive, but the emphasis on them seems to reflect a tendency on the part of individuals to focus on serving their own needs, rather than fulfilling *ratzon HaShem*.

Pursuing real Torah values, as set out by Halacha, should define our practices. The community should remember, of course, that every issue that arises should be handled in a manner that seeks to avoid *machloket*. However, according to Halacha, the obligation to avoid *machloket* makes greater demands on the individual than on the community at large.

9. This is often expressed beautifully by Rav Kook, including in *Ein Ayah, Berachot* 1:89.

10. See *Shulchan Aruch, Orach Chayim* 53:20.

G-12: Unintentional and Innocuous Deceit

Question: I ordered something and had it delivered to my in-laws' house. I forgot to mention it to them, so when it arrived, they assumed it was a gift for them, and they thanked me for it. Is it permissible for me to “play along” and pretend it was intended for them from the beginning?

Answer: There are different sorts of cases that are included in the broad prohibition of *geneivat da'at* (deceiving someone). One case is when one sells a defective item without the buyer knowing about the defect.¹ Such a sale is forbidden even when the buyer pays a price that is reasonable given the object's actual value.

The same *gemara* includes several cases in which the deceived party loses nothing on any level, but the deception is nevertheless forbidden. In one such case, Reuven makes Shimon think that Reuven **intends to give** him something, when in fact Reuven does not have that intention. Another case is when Reuven urges Shimon to eat with him when he knows Shimon will not take him up on the offer. Yet another is when one brings to his friend a utensil in a way that looks like its content is of significant value, when in truth it is not.

Furthermore, the *gemara* forbids even cases in which one is indeed giving something of significant value, if the recipient will view the act as more generous than it actually is. Thus, one may not open a closed barrel of wine before a guest if most of it is earmarked for imminent sale. (Since wine of newly opened barrels tastes better than that of barrels that have been open for a while, opening a new barrel for the guest appears to be a special gesture to him.) Rather, says the *gemara*, one must inform the guest that he would have had to open the barrel soon anyway.

1. *Chulin* 94a.

Based on the broad possibilities for a prohibition of making others more grateful to you than they should be, it would appear, **at first glance**, that it is halachically problematic to lead your in-laws to believe you bought them a present when you actually bought it for yourself. Nonetheless, it seems that for one or more of the following reasons, you are not required to inform them of their mistake.

First, we must examine the reasoning behind the prohibition of this type of *geneivat da'at*. Rashi² explains that the giver causes the recipient to feel that he owes the giver more reciprocity than he actually does. If the recipient of the favor/gesture were to realize the true situation, he would be less likely to invest in generosity in return. Thus, if there is no reason to expect any change in reciprocity due to the process of giving, it is likely permitted to present a more positive picture than exists. In your case, we would consider that parents (in-law) usually give their children gifts in a manner that is unrelated to relatively small gifts that their children give them. (Although we do not ordinarily make such distinctions based on the spirit of a law regarding prohibitions, a prohibition like this one is totally situational by its very nature, thus making it likely that this distinction will indeed affect the *halacha*.)

The following story recounted in that *gemara*³ is also instructive. Two rabbis were traveling when they chanced upon a third rabbi. When they met, the third rabbi expressed his appreciation that they had come to greet him. One of the first two politely corrected the third rabbi's mistake to avoid deceiving him. The second rabbi told the first one that he was mistaken in disappointing the third rabbi, claiming that there was no problem of *geneivat da'at* because the third rabbi had "deceived himself." The *Shulchan Aruch*⁴ rules like the second rabbi; if the "recipient" should have realized that he actually did not receive a favor, the "giver" does not have to correct him. We can derive a leniency and perhaps also

2. Ad loc.

3. Ibid. 94b.

4. *Choshen Mishpat* 228:6.

a stringency from this ruling. The stringency is that a giver might need to correct a misimpression, even if he did not act purposely to create the perception, if it turns out that he had unwittingly created the misperception. The leniency is that if the unintended recipient should not have jumped to the erroneous conclusion, the “giver” does not have to correct it. You would know best whether this idea applies to your case – that is, whether your in-laws should have assumed that you bought it for yourself rather than for them.

Another leniency is that it is permitted to give the wrong impression if the motivation of the “deception” is not to win favor but for the honor of the recipient – for example, if as a result, other people will think that the recipient is a person who is deserving of significant honor.⁵ If we apply the concept of honor here, it makes sense to be concerned that it **might** be embarrassing to your in-laws for them to be told that they made a mistake in assuming it was a present for them, and it seems that you would be justified in going along with that assumption. On the other hand, it is possible that they would not be embarrassed, as it was your mistake in not telling them that the item was coming for you.

Another reason there may not be a problem of *geneivat da'at* here is that by letting them keep the item, you actually **are** giving them a present now. Thus, it turns out that they really do have reason to be grateful for your generosity and your care about their happiness. This is the case even if the background of what was nice on your part is different from the way they perceived it. When one gives an actual present whose level of generosity is equivalent to what the recipient understood (as opposed to the case of opening the barrel of wine), we do not find an obligation to divulge all the circumstances under which it was given. For example, if you gave a nice present thanks to your sister-in-law's suggestion, you are not required to say that the idea came from her. Similarly, in your case, you do not have to mention that the idea for the present came from your in-laws' mistake.

5. *Chulin* 94a and *Shulchan Aruch* op. cit.

G-13: Improper “Table” Manners?

Question: I was at the home of very fine friends, who have a few-week-old baby. Soon before the meal, they put a changing pad down on the dining room table and changed the baby’s dirty diaper. I did not say anything, but I found it surprising and distasteful. (I imagine that most people would.) Is it also halachically forbidden, and should I say something about it so that they not continue doing this?

Answer: We will first take a look at the “halachic” element and then, perhaps more importantly, try to put things into perspective.

The *gemara*¹ derives from a *pasuk*² that mentions both the *mizbe’ach* (altar) and the *shulchan* (table) the idea: “At the time of the *Beit HaMikdash*, a person would bring a sacrifice and be atoned, but now one’s table brings him atonement.” The primary explanation of this statement is that the atonement power of one’s table stems from the *mitzva* of feeding guests³ – a practical, not mystical, concept. Nevertheless, there are several (semi-)accepted *halachot* that are derived from the spiritual concept that “a table is like an altar,” which may reflect another level of the *gemara*’s teaching with regard to tables upon which people eat.

Several *Rishonim*⁴ learn from this concept that one should cover metal knives that are on the table at the time of *Birkat HaMazon* during the week, just as metal is kept away from the *mizbe’ach*; the altar lengthens life, whereas metal (i.e., weapons) shortens it. The *Shulchan Aruch*⁵ cites this practice as the accepted *minhag*. In a similar vein, the Rama⁶ recommends placing salt on the table, just as salt was put on the *korbanot* brought on

1. *Chagiga* 27a.

2. *Yechezkel* 41:22.

3. See *Rashi, Tosafot* ad loc.

4. See *Beit Yosef, Orach Chayim* 180.

5. *Orach Chayim* 180:5.

6. *Orach Chayim* 167:5.

the *mizbe'ach*. The *Magen Avraham*⁷ cites the *Sefer Chasidim*,⁸ who writes that one must not kill insects on a table upon which people eat, just as one would not do so on the *mizbe'ach* – again because of the comparison between the two. As usual, when the *Magen Avraham* states an opinion, most *Acharonim* follow suit.⁹ The *Aruch HaShulchan*¹⁰ extends this protection of the sanctity of the table to refraining from any action that is unseemly. Other *Acharonim* mention some specific examples, such as not allowing children to walk on top of the table.¹¹ All indications are that this matter of respect for the table applies at all times, not only during a meal.

It seems apparent that changing a diaper is included in what the *Aruch HaShulchan* calls unseemly actions that should not be done on a table used for eating,¹² and he would thus forbid it. Actually, most people would refrain from doing so on health and aesthetic grounds, certainly in the presence of guests and soon before a meal.

Nevertheless, I would not suggest saying anything to the new parents, unless you feel that due to your relationship and/or their personalities, they would take your comments in a positive spirit without embarrassment or resentment. While those who cite this *halacha* use the word *assur*, it is difficult to view this post-Talmudic “prohibition” as a classical Rabbinic prohibition of the type from which we should try to protect our friends. (It is also unclear if all authorities accept the *Aruch HaShulchan*'s extension to all unseemly actions, especially those that are natural

7. 167:13.

8. 102.

9. See *Sha'ar HaTziyun* 167:26; *Kaf HaChayim, Orach Chayim* 167:41.

10. *Orach Chayim* 167:12.

11. See *Piskei Teshuvot* 167:6.

12. Changing a diaper is obviously not the type of action one needs to be embarrassed about in the slightest, but that does not prevent it from being “objectively” unseemly, making the timing and place of doing it something that should be handled appropriately.

and unavoidable, like changing diapers.¹³)

It is healthy to be *melamed z'chut*¹⁴ and see a little logic and even some beauty in the couple's behavior. First, the *halachot* relating to excrement do not apply, for the most part, to such young babies.¹⁵ Indeed, the smell is also less oppressive (for most) and **apparently** somewhat less unhygienic. What is more interesting, though, is the attitude of these parents, who, I would guess, are first-time parents. Their days (and some sleep-deprived nights) revolve around that little bundle of joy, and he or she lovingly occupies their thoughts and actions. With such a frame of mind, they probably view taking care of the baby's needs as being most natural and beautiful, and it has not even dawned on them that others might be taken aback. I would also predict that in a few weeks, they will "land" a little bit and stop this practice, not necessarily due to halachic realization, but due to a return to normalcy, through which they will "know better." In the meantime, I would excuse their lack of tact and try to focus on the endearing element of this practice.

13. Even though one could avoid doing it in that place.

14. Judge someone favorably.

15. See *Shulchan Aruch, Orach Chayim* 81:1, and *Mishna Berura* ad loc. 2.

G-14: Animal Experimentation

Question: I am working for a medical researcher, and a lot of our work includes experimentation on rodents, whose lives are not always pleasant during our experimentation. Is such work permitted, or is it prohibited due to *tza'ar ba'alei chayim* (causing pain to animals)? How should I feel about my involvement in this research?

Answer: There is a *machloket* in the *gemara*¹ and among the *poskim* regarding whether the obligation to avoid *tza'ar ba'alei chayim* is a Torah law or a Rabbinic one; it is also possible that it is a quasi-Torah law.² Many *mitzvot* in the Torah (at least according to some commentators), as well as many Rabbinic laws, are based on concern for animals and are intended to avoid cruelty to them.³ When and why can this concern be waived for human purposes?

The simple reading of *Tosafot*⁴ is that *tza'ar ba'alei chayim* can be waived only in order to facilitate an important *mitzva*. However, the halachic consensus is along the lines of the Rama's ruling:⁵ "Anything that is needed for medicine or for other things does not have a prohibition of *tza'ar ba'alei chayim*. Therefore, it is permitted to pluck feathers from live geese, but people are careful about that because of cruelty."

There are at least two approaches as to why the prohibition is overpowered in situations of human need. One approach is that the prohibition relates only to being **needlessly** insensitive. Regarding a parallel prohibition, causing damage (*bal tashchit*), we find that destroying something for a positive reason is permitted, because it is, in context, not destructive. Indeed, *tza'ar ba'alei chayim* and

1. *Bava Metzia* 32b.

2. See opinions in *Encyclopedia Hilchatit Refuit*, VI, p. 525.

3. See *Devarim* 22:4, 6; *Berachot* 40a.

4. *Avoda Zara* 11a.

5. *Even HaEzer* 5:14, based on the *Issur V'Heter* and *Terumat HaDeshen*.

bal tashchit may be connected, as the *gemara*⁶ teaches that killing an animal for no good reason is *ba'al tashchit*, whereas keeping it alive but in pain is *tza'ar ba'alei chayim*. Thus, if causing pain is done for a good reason, it can be permitted because it is not considered cruel.

A second, complementary approach is that the Torah teaches us, explicitly and implicitly, that animal rights do not compare to human needs. The Torah instructs, “Have dominion over the fish ... birds ...”⁷ Furthermore, we are permitted to take an animal’s life simply because we desire to eat meat. We may enslave animals to do hard labor, albeit with some restrictions. (It may not be done on Shabbat, and the animals may not be muzzled.)

There are a few important possible distinctions. Permissibility may depend on the level of pain to which the animal is subjected. Normal agricultural work is not torturous and is permitted. However, the Rama cited above calls plucking feathers from a live bird cruelty and writes that we do not do such things.⁸ The level of need is also a variable. Some rule that the prospect of earning extra money is not a sufficient justification.⁹ While most authorities maintain that this is sufficient, it may depend on how painful it will be for the animal.¹⁰

Rav Yaakov Emden suggests that *tza'ar ba'alei chayim* might apply only to animals with which man works (e.g., cattle, horses, donkeys), and perhaps to relatively highly cognitive animals (dogs, cats), but not to “lower creatures” with which man does not “interact.”¹¹ According to these opinions, the prohibition does not apply to insects, and likely not to rodents.

In any case, searching for cures and treatments for human illnesses is certainly a very valid reason to allow animal

6. *Chulin* 7b.

7. *Bereishit* 1:28.

8. See *Shvut Yaakov* III:71.

9. See opinions cited in *Minchat Yitzchak* VI:145.

10. See *ibid.*

11. *Sh'eilat Ya'avetz* I:110; see also *Teshuvot V'Hanhagot* II:726;

experimentation. As several *poskim* point out, real efforts should be made to ensure the importance of the experimentation, to limit the number of animals used, and to minimize pain. Suffering animals should be euthanized as promptly as possible. Thankfully, many countries have rules that monitor such experimentation, although unfortunately, probably only a few do a good enough job.

If you are involved in the experimentation for only a short time, it is appropriate for you to feel somewhat uncomfortable, even if the practice is halachically and morally correct.¹² A professional researcher cannot be expected to constantly live with guilt, but even for him, it is appropriate to seek ways to heighten sensitivity and to thereby emulate HaShem, whose mercy is on all of His creations.¹³

12. See a scary story about Rabbi Yehuda HaNasi recounted in *Bava Metzia* 85a.

13. See *Tehillim* 145:9.

G-15: *Netilat Yadayim* from a Chipped Cup

Question: I have a cup for *netilat yadayim* that has a few small chips on its top. Is it still kosher for that purpose?

Answer: The *gemara*¹ presents some of the rules for the *kli*² used for *netilat yadayim*, including that it must be able to hold a *revi'it*³ of water. Potentially pertinent to your question, the *gemara* states that a utensil is unfit for this use if it has a hole the size of *kone's mashkeh* – i.e., big enough not only for water to seep out through it, but even for water to seep **into** the cup through it.

There is a *machloket Rishonim* as to the reason for the disqualification of a *kli* with a hole.⁴ According to the *Semag*,⁵ a cup with a sufficiently large hole is not considered a *kli* (utensil) with regard to various halachic matters, including *netilat yadayim*. According to the Rosh,⁶ however, such a cup is generally considered a *kli*, but the area **above** the hole is considered to be beyond the *kli*-like area, as the cup does not reliably hold water above that point. The problem, according to the Rosh, is that the water for *netilat yadayim* must be poured onto the hands directly from the walls of the *kli*.

One practical difference between these opinions is whether one may use such a cup if he pours the water onto his hands from the hole itself, rather than from the top of the cup (assuming that the cup can hold a *revi'it* up to the height of the hole). According to the Rosh, this is acceptable, because one is pouring from the top of the *kli*-part of the cup. According to the *Semag*, however,

1. *Chulin* 107a.

2. Utensil.

3. Between 3 and 5 ounces.

4. See *Beit Yosef, Orach Chayim* 159.

5. *Asin* 27.

6. *Chulin* 8:15.

the cup is totally lacking in *kli*-status due to the hole, and it does not matter how high the hole is or from where the water is being poured. The *Shulchan Aruch*⁷ rules leniently like the Rosh that one may perform *netila* through the hole. However, many *Acharonim* are *machmir* if the cup is made from pottery/ceramics, in which case it is not considered a *kli* if it has a hole.⁸ (We assume your cup is ceramic, as metal and plastic cups rarely “chip.”)

If your cup has only small chips on its rim, it is hard to believe that this would disqualify the cup from being considered a *kli*, as such chips do not, in any serious way, impede the use of the cup to hold liquids. On the other hand, as opposed to the case of a hole in the middle of a cup, in which one can pour in such a way that the water will pour out through the hole alone, from where should you pour the water using your chipped cup? If you pour it randomly, or if you pour it purposely from the area that is not chipped, then you are pouring from a place that extends beyond the height of the complete circumference of the cup. According to the Rosh’s view, this is problematic. The *Mishna Berura*⁹ rules that while it is not ideal to use a cup with a piece missing on top, if that is the only available cup, one should pour out from the chipped part, which is now lower than the rest of the top. Practically speaking, however, unless the chip is broad or deep, it will be difficult to pour only or even mainly through the crack.

The following idea may help. The *Eshel Avraham*¹⁰ writes that if the height of the cup is not uniform, but that fact is not clearly recognizable to the eye, one may pour from the higher side. His primary logic is that “the Torah was not given to angels,” who can be exact, but rather to imprecise humans. He also points out that in any event the surfaces upon which a cup normally sits are not exactly straight, making the top regularly on an angle, such that a

7. *Orach Chayim* 159:2.

8. *Mishna Berura* 159:10.

9. 159:12.

10. (Butchatch) to *Magen Avraham* 159:4.

slight difference in height is meaningless. *Piskei Teshuvot*¹¹ writes that the same is true for slight height differences due to chips. However, it is difficult to present a clear rule as to how far one may take this comparison. If there is only a slight dent in a plastic or metal cup, it is indeed difficult to tell the height difference. Regarding ceramics, however, it is much more common for even small chips to make the area of the chip noticeably lower than the area right around it.

Therefore, in general, the best thing to do with a chipped ceramic *netilat yadayim* cup is to insert filler material to more or less remove the defect and the height change caused by the chip. Although some sources are quite particular about the material used as filler,¹² the practical ruling is that anything that works securely is fine.¹³ Until this is done, there is room for leniency if the “hole” that is produced is barely noticeable.

11. 159:10.

12. See *Taz, Orach Chayim* 159:1.

13. *Shut Beit Ephrayim, Yoreh Deah* 53; see *Bi'ur Halacha* to 159:2; *Chazon Ish, Orach Chayim* 21:5.

G-16: Halachic Consequences of Use of Medical Marijuana

Question: After years of unsuccessful “conventional” treatment for debilitating pain, the medical marijuana my doctor has prescribed for me has proven more effective and has fewer side effects than anything else. My license is only for “leaves,” not pills or oil. Obviously, I cannot smoke on Shabbat, so I bake a batch of “cannabis brownies” to eat, which take effect about 90 minutes after ingestion. May I eat one of these brownies before *shul*? If so, should I make *Kiddush* first? Also, as a *kohen*, may I do *Birkat Kohanim* while using medical marijuana? Although it affects my coordination slightly and I have a slightly strange feeling in my brain, it does not make me “drunk,” nor does it significantly impair my cognitive ability?

Answer: [*We trust that our readership is aware of the significant distinction between drug abuse and the responsible use of medical marijuana for those in great need, as prescribed by a doctor in a place where medical marijuana is legal.*]

It is generally forbidden to eat or drink anything before *davening*¹ except for water and, according to some, tea and coffee.² However, it is permissible to eat food for a health need, even when one is not fully sick.³ Anyone who has a prescription for medical marijuana is presumably in enough pain to justify ingesting his treatment as needed.⁴

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1. We are not dealing here with those who have the practice of eating cake before *davening* on Shabbat morning.
 2. There are various opinions regarding if one may drink the coffee and tea with sugar; see *Shulchan Aruch, Orach Chayim* 89:3, and *Mishna Berura* ad loc. 22.
 3. *Mishna Berura* 89:24.
 4. This was true at the time when this response was written. It is possible that as time goes on and marijuana is legalized in more and more places, prescriptions will be given even for trivial conditions.

Regarding *Kiddush*, we are faced with a quandary. Assuming the brownies have a decent taste, they require a *beracha*, even though their main purpose is medicinal.⁵ Since they are treated like a food, the *halacha* is that one should generally not eat them before *Kiddush*.⁶ On the other hand, making *Kiddush* requires drinking wine or the equivalent. Is drinking the wine, which itself is not needed for medical purposes, halachically justified before *davening*?

The *Bi'ur Halacha*⁷ writes that one indeed should make *Kiddush* before pre-*davening* eating for health purposes. The *Igrot Moshe*⁸ disagrees in a case in which not all halachic opinions agree that the food is sufficiently “meal-like” such that *Kiddush* is effective.⁹ This raises the possibility that when eating the brownies, the wine is not justified. However, assuming that the brownies are real, flour-based cookies and that you are eating a *k'zayit* of them, it is safe to say the *Kiddush* is called for, even before *davening*.¹⁰

Is there some (not required) preference to ingest the active ingredient (in this case, the leaves) as a non-food, to avoid the undesirable situation of eating and making *Kiddush* before *davening*? The truth is that this “improvement” actually makes the halachic situation worse in a different way. This is because in situations in which it is forbidden to ingest actual medicines on Shabbat,¹¹ it is permitted to eat them if they have been mixed into a food,¹² such that they are not recognizable as medicinal.¹³ While the need in our case likely justifies taking even actual medicine,¹⁴

5. *Mishna Berura* 204:42.

6. *Shulchan Aruch, Orach Chayim* 289:1.

7. To 289:1.

8. *Orach Chayim* II:26.

9. *Kiddush* is effective only if it is followed by a “meal” (*Shulchan Aruch, Orach Chayim* 273:1).

10. See *Mishna Berura* 273:25.

11. See *Shulchan Aruch, Orach Chayim* 328.

12. It may be necessary to mix it in before Shabbat.

13. See *Orchos Shabbat* 20:132.

14. See *Shulchan Aruch, Orach Chayim* 328:17.

the halachic issue of eating before *davening* is easier to waive than that of taking medicine on Shabbat. In the absence of a net gain by eating the marijuana as leaves, the medicated brownies are a fine choice.

Now we will turn our attention to *Birkat Kohanim*. The *gemara*¹⁵ derives from a connection between *Birkat Kohanim* and both the laws of *nazir* and of service in the *Beit HaMikdash* that it is forbidden to *duchen*¹⁶ when drunk. The *gemara* indicates that this is only a Rabbinic derivation/*halacha*. A *nazir* is forbidden to consume only grape products, and service in the *Beit HaMikdash* is fully forbidden only after drinking wine.¹⁷ Therefore, some maintain that there are no restrictions on *Birkat Kohanim* after one consumes anything intoxicating other than wine, unless he is as drunk as the biblical Lot was.¹⁸ The *Taz*¹⁹ disagrees and disqualifies one who has drunk anything that makes him unfit to “speak before a king,” and we follow this stringent opinion.²⁰

The halachic cut-off point for wine (a *revi'it*²¹) does not apply to other drinks. Although the *Taz* holds that one should therefore not drink any amount of any intoxicating beverage before *Birkat Kohanim*, this is reasonable for those who are drinking recreationally, not for one whose use of something “intoxicating” is medically necessary and whose behavior and cognitive abilities are not significantly impaired.²²

Presumably, you will make *Kiddush* on grape juice, so as not to ingest another intoxicating substance. There is a *machloket* regarding whether grape juice, which is forbidden for a *nazir*,

15. *Ta'anit* 26b-27a.

16. Recite *Birkat Kohanim*.

17. See *Kritot* 13b.

18. *Magen Avraham* 128:55.

19. *Orach Chayim* 128:35.

20. *Mishna Berura* 128:141.

21. *Shulchan Aruch, Orach Chayim* 128:38. A *revi'it* is 3-5 oz., most likely a little more than 3 oz. (86 cc.).

22. See *Chayei Adam* I:32:7 regarding *Kiddush* on a small amount of whiskey before *Birkat Kohanim*.

invalidates one for *Birkat Kohanim*.²³ Although there is ample room for leniency on this point,²⁴ it is proper to be stringent and drink a little less than a *revi'it*.²⁵ Therefore, assuming you will be up to acting in a fully presentable manner during *Birkat Kohanim*, you should perform the important *mitzva* of *Birkat Kohanim* even after having eaten your cannabis brownies.

23. See *Mishna Berura* op. cit.

24. See *ibid.* and *Dirshu Mishna Berura* ad loc. 146.

25. To fulfill *Kiddush*, it is sufficient to drink a majority of a *revi'it* (*Shulchan Aruch, Orach Chayim* 271:13).

G-17: *Hatarat Nedarim* for a Pledge that Affects Others

Question: If someone committed himself to a certain amount of Torah study in order to win a special *aliya*, may he do *hatarat nedarim*¹ on his commitment if he now finds it unreasonable to accomplish that which he pledged?

Answer: First, we urge the *beit kneset* to consider stipulating that these commitments will not have the status of a *neder*, as we are generally supposed to avoid making *nedarim*.² Although we do make an exception regarding a *neder* involving Torah-learning goals, as well as those involving other *mitzvot*,³ this is only when there is no particular concern that the one making the *neder* might not abide by it.⁴ Although it can sometimes be a complicated matter to determine whether a specific commitment is classified as a *neder*, we will work with the assumption that the pledge being discussed is considered a *neder*.

It is problematic to do *hatarat nedarim* on a *neder* to fulfill a *mitzva* in which one is anyway obligated, such as accepting to learn a specific amount of Torah.⁵ However, *hatarat nedarim* can be done even in such a situation when there is enough need for it.⁶

Is there an added problem if the *neder* was made as a means of receiving gain from one's counterpart (in this case, the other members of the congregation)? The *gemara*⁷ cites stories from *Tanach* that are relevant to our discussion: HaShem told Moshe that he required permission from Yitro to return to Egypt because

1. The undoing of an oath.

2. *Shulchan Aruch, Yoreh Deah* 203:1-5.

3. *Ibid.* 6.

4. See *Kol Nidrei* 3:2.

5. *Aruch HaShulchan, Yoreh Deah* 228:128-133. Admittedly, while one is obligated in Torah study, the exact amount is not set.

6. *Ibid.*

7. *Nedarim* 65a.

of Moshe's oath to stay with him, even though *hatarat nedarim* would have had obvious justification (i.e., to help orchestrate *yeti'at Mitzrayim*). Also, King Tzidkiyahu was punished for not keeping his oath to Nevuchadnetzar to keep an embarrassing secret quiet, even though he too had a good reason for the *hatarat nedarim* that he did. According to the understanding of many *Rishonim*,⁸ the *gemara* teaches that such a *neder* can only be undone in the presence of, and with the agreement of, the affected counterpart.⁹

Rishonim deal with many related questions, including whether *hatarat nedarim* works *b'di'eved* if done when it should not have been done. On the one hand, Tzidkiyahu was a righteous king, so he ostensibly would not have relied on an invalid *hatarat nedarim*. On the other hand, perhaps the fact that he was punished is a sign that his *hatarat nedarim* did not work.¹⁰

In our case, it would seem clear that the one who made the *neder* needs permission to undo his oath, as he gained something (an honor) as a result of his learning pledge. There is an opinion that if there is a *mitzva* need for the *hatarat nedarim*, it is permitted without obtaining permission from those from whom he gained as a result of the *neder*.¹¹ One example of a *mitzva* need is when the load of learning the person has accepted is taking away from his more important/appropriate service of HaShem. Although it is far from clear that this leniency is accepted,¹² the *Noda B'Yehuda*¹³ maintains that when there is a *mitzva* purpose to undoing the *neder* and no one loses out by the person not keeping the *neder*, all permit *hatarat nedarim*.

To analyze our case, it is possible, but far from simple, to determine that it is a *mitzva* need to release the person from his

8. See *Beit Yosef, Yoreh Deah* 228.

9. Rama, *Yoreh Deah* 228:20.

10. See Ran, *Nedarim* 65a, and two opinions in the *Shulchan Aruch, Yoreh Deah* 228:20.

11. *Tosafot, Nedarim* *ibid.*, cited by the Rama, *Yoreh Deah* 228:20.

12. See *Taz, Yoreh Deah* 228:33, who denies the Rama meant to rely on it.

13. II, *Orach Chayim* 117, cited by *Pitchei Teshuva, Yoreh Deah* 228:13.

learning obligation. In terms of whether this should be considered a situation involving loss to others, the matter is tricky. On the one hand, if people can receive *kibbudim*¹⁴ by making pledges they will not keep, the system of making pledges will not work. Additionally, the one who would otherwise have received the honor might be considered to be losing out retroactively. On the other hand, if the pledge was sincere and realistic at the time, but the circumstances changed, does anyone gain by holding the person to his pledge?

In practice, our standard halachic advice would be that if there is a serious need, the pledger should ask permission from an appropriate representative of the congregation (preferably the rabbi) to do *hatarat nedarim*. It also makes sense for him to change the pledge for which he won the *kibbud* to another appropriate task of parallel seriousness that he can handle. However, the specifics of each case need to be considered.

We conclude by again urging congregations to consider explicitly making such bidding *bli neder*.

14. The honor of being personally involved in parts of the public services, such as *aliyot*.

G-18: Altering an Oath Made at a Time of Need

Question: Your article about *hatarat nedarim*¹ reminded me about a related question involving an incident that happened to me. My family and I were recently in a dangerous situation involving an Arab mob. At the time, I decided that if we would make it through safely, I would stop taking part in situation *X*.² *Baruch HaShem*, no one sustained worse than a minor injury, and I am happy to show my thanks to HaShem. However, *X* contains three elements: Elements *A* and *B* are harmless, positive, and important to me. It is *C* about which I have had a guilty feeling for some time. Had I had more time to think clearly, I would have committed to refraining just from *C*, but under pressure, *X* in general came to mind. I am willing to live up to any obligation I am bound to, but may I do *hatarat nedarim* or otherwise switch the *neder* to something more appropriate, e.g., just refraining from *C*?

Answer: We are glad you are well, with HaShem's mercy. We praise your spiritual instincts under pressure and your attitude now, which are signs of a God-fearing woman. Although we generally frown upon making *nedarim*,³ an *eit tzara* (time of acute need) is likely different.⁴

The Rama⁵ rules that one may not do *hatarat nedarim* on an oath taken with the hope of extricating himself from an *eit tzara*.⁶ He accepts⁷ the explanation found in *Shut Binyamin Ze'ev*⁸ that

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1. The undoing of an oath. The article referred to is found in this volume, response G-17.
 2. We decided not to share the specific matter with the public.
 3. See response G-17.
 4. See *Tosafot, Chulin* 2b.
 5. *Yoreh Deah* 228:45.
 6. Not all agree; see *Shut Maharam Mintz* 79.
 7. See *Shut HaRama* 103.
 8. 266.

this is based on the rule that one must not do *hatarat nedarim* on a *neder* he made so as to receive a favor from another person.⁹ In other words, one cannot ask someone for a favor with a promise to “pay” by means of a *neder* commitment and then back out after getting what he wants. The same applies if the One with whom he “made the deal” is HaShem. One could argue that, as opposed to one’s friend, HaShem can always take back what He gave if He so desires, such that undoing the *neder* commitment is not being “unfair to Him.” On the other hand, some argue that irrespective of whether it is permitted or forbidden, it is **dangerous** to “play games” with HaShem by undoing such oaths.¹⁰

The Rama¹¹ and others do permit *hatarat nedarim* on *nidrei eit tzara* when necessary to facilitate a *mitzva* or when there is great need. However, for most people, *X* does not qualify as either a *mitzva* or as a great need.

The major factor for leniency is that you apparently did not verbalize the *neder*, but rather simply thought about it. In most cases, *nedarim* are effective only when they are verbalized, with *tzedaka* being an exception according to many authorities.¹² A strong majority of *poskim* maintain that thoughts do not create a *neder* obligation for other *mitzvot*, at least not in a fully binding manner.¹³ Anyway, in your case, refraining from *A* and *B* is not a *mitzva*.

There is an opinion¹⁴ that a “*neder*,” even if accepted by thought alone, takes effect during an *eit tzara*, based on a *pasuk*¹⁵ that states that HaShem already responds to a plea when it is in one’s heart. However, the opinion¹⁶ that it is not halachically binding until verbalization is more convincing. Even according

9. Rama op. cit. 20, which is the main issue in our previous response op. cit.

10. Rav Yehuda HaChasid, quoted by *Yam Shel Shlomo*, *Gittin* 4:40, and others.

11. Op. cit.

12. Rama, *Yoreh Deah* 258:13.

13. See *Aruch HaShulchan*, *Yoreh Deah* 258:39; *Kol Nidrei* 59:1.

14. *Nishal David*, *Yoreh Deah* 17.

15. *Daniel* 10:12.

16. *Yehuda Ya'aleh* I:333, also based on *p'sukim*.

to the stringent opinion, the thought must be clear and final.¹⁷ The following practical distinction is therefore important. Most discussions of *eit tzara* refer to drawn out situations, such as illness. In contrast, you, while faced by a dangerous mob, thought fleetingly about refraining from *X*, but given a moment to gather your thoughts, you would have specified *C*. It is therefore unlikely that this would be considered a complete decision. Considering the factors we have seen, it is safe to conclude that your thought alone would not have been binding regarding *X*.

Although there is room to be lenient fully, it seems the proper thing to do for someone of your standards is to keep what you really intended – that is, to eliminate *C*, which you believed was the right and appropriate thing to accept when asking mercy from HaShem. If *A* and *B* are positive parts of your life, keep them. Doing *hatarat nedarim* on them is worthwhile to be on the safe side.¹⁸ Adding tangible thanks to HaShem, such as accepting (preferably, *bli neder*) a different, practical righteous practice or giving extra *tzedaka*,¹⁹ is also positive and appropriate for the salvation you experienced.

17. *Aruch HaShulchan* op. cit.

18. The Rama, *Yoreh Deah* 228:45, rules that *hatarat nedarim* works *b'di'eved* even in cases of *eit tzara* in which it should not be done; the *Shach* ad loc. 108 argues.

19. See *Kol Nidrei* 7:12.

G-19: Whose Responsibility is it to Install a Proper Fence?

Question: The house we are renting has a somewhat elevated (up to a meter in some places) *mirpeset*,¹ with a fence (*ma'akeh*) around it that is only 50 cm² high. Is raising the *ma'akeh*'s height our obligation, or is it the obligation of the landlord? (We do not want to invest money in a house that we do not own.) If it is his obligation, may we use the *mirpeset* before the *ma'akeh* is heightened, or are we forbidden to do so until then? If it is our obligation, may we simply decide not to use the balcony, or would we be obligated to block it off?

Answer: In the context of the *mitzva* of *ma'akeh*, the Torah refers explicitly to a roof³ and requires a fence of 10 *tefachim* (approximately 80 cm.).⁴ However, any other dangerous area similarly requires a fence or covering, as appropriate.⁵ Thus, the balcony in question would seem to require a proper *ma'akeh*.

Who is obligated to erect the *ma'akeh*, the landlord or the renter (you)? Regarding the question of who is responsible for seeing to a variety of needs of the house, the *gemara*⁶ establishes a rule that a job that requires expert work is the landlord's obligation, whereas simple work is the obligation of the renter. *Ma'akeh* is given as an example of the renter's responsibility. Although the *Pitchei Teshuva*⁷ cites two opinions on the matter, a renter's obligation is apparently of Rabbinic origin, as according to Torah law, only the homeowner is obligated. Some explain that the reason the Rabbis transferred the Torah's obligation of the

1. Balcony.

2. 20 inches.

3. *Devarim* 22:8.

4. *Shulchan Aruch, Choshen Mishpat* 427:5.

5. *Ibid.* 7.

6. *Bava Metzia* 101b.

7. *Choshen Mishpat* 427:2.

landlord to the renter is the fact that the renter is more likely to fulfill his obligation promptly.⁸

Are there grounds to extricate you from the obligation? The *Pe'at HaShulchan*⁹ makes a novel claim – that the landlord actually remains obligated to build the *ma'akeh* to begin with, and the *gemara* only means that if damage occurs to the fence, it is the renter who must take care of fixing it. However, this opinion is not accepted by most *poskim*.¹⁰ The Rama¹¹ can be read as saying that local *minhag* determines who is obligated in *ma'akeh*, and we believe the *minhag* is that a landlord is expected to provide a safe dwelling, which would include a balcony from which there is no concern that someone might fall. However, this *minhag* might not apply when the balcony would generally be considered safe and is merely missing the halachic qualifications. In any case, if the landlord refuses to erect a halachically valid *ma'akeh*, you are likely obligated to do so.

Will setting up a situation in which you will rarely use the balcony help? The Rambam¹² rules that a *ma'akeh* is required only for a house that is lived in somewhat normally. Some infer from this that if one goes to his roof only infrequently, a *ma'akeh* is unnecessary. However, that approach is correctly rejected.¹³ Only when the roof is not fit for use (e.g., it is steeply slanted) do we say that it is excluded from the obligation, but not when it is fit but just rarely used.¹⁴ Only if one knows that he will not go to the roof at all, or if he makes it physically inaccessible, would the situation create an exemption. Otherwise, the occasional circumstances in which he will want/need to use the roof are enough to make the *ma'akeh* required. Note, however, that even if one is obligated to build a viable fence, it is not forbidden in the

8. See *Yereim* 234.

9. 2:(27).

10. See *V'Nishmartem M'od L'Nafshoteichem*, p. 86.

11. *Choshen Mishpat* 314:2.

12. *Rotzeiach* 11:1.

13. See *Pe'at HaShulchan* op. cit.

14. See *Aruch HaShulchan, Choshen Mishpat* 427:5.

meantime to go carefully to the unsecured place.¹⁵

An important distinction between a *ma'akeh* for a roof and one for other places may be highly significant for you.¹⁶ Whereas a roof bears an obligation for a formal *ma'akeh* (even if one could effectively minimize the danger in another way), what is necessary for other types of places is simply to practically remove the danger.¹⁷ Thus, it is possible that a decision to rarely use the *mirpeset*, along with other factors, could create a situation in which there is no real danger, and you might then be exempt from constructing a *ma'akeh*. Of course, if the *mirpeset* is not safe, Halacha and common sense both dictate that one cannot leave the situation as is.

Therefore, it seems legitimate to be lenient and simply require that the *mirpeset* be safe, even if the official fence height is missing. You might anyway be able to raise the height to halachic levels in a way that is not very expensive, as a fence only needs to be strong enough to support the weight of a person leaning on it.¹⁸

15. *B'tzel HaChochma* IV:118.

16. See *Living the Halachic Process*, vol. I, H:8.

17. *Ibid.*

18. *Shulchan Aruch, Choshen Mishpat* 427:5.

Section H:
Family Law



H-1: Is Raising Children a *Mitzva*?

Question: Is it a *mitzva* to care for one's own children: feeding, changing diapers, teaching manners, etc.? If so, what is the source? Does it apply equally to men and women? If it is not a *mitzva*, wouldn't any *mitzva* take precedence over such activities?

Answer: Presumably, your question is about how to explain the fact that we spend time raising children that we could instead be devoting to various *mitzvot*. The fact that all normal Jewish (and non-Jewish) families will continue toiling for their children is a given; you are simply asking how and if this practice is justified. Your question presents a wonderful opportunity to briefly discuss some basic principles of *avodat Hashem*,¹ before presenting sources and analysis in an attempt to solve the moral mystery you have identified.

HaShem gave us *mitzvot*, which are the highlights of our life, but our life situations also require that we learn how to incorporate undeniable realities, both mundane and profound, in our existence. HaShem made the world in such a way that we must eat, sleep, go to the bathroom, bathe, etc. These are not *mitzvot* in the classic sense, but HaShem clearly wants us to partake in these regular, time-consuming routines. These activities are so obviously a part of our lives that they **do not need** to be commanded in order for us to know that we should partake in them.

Let us illustrate with a famous *pasuk*, the source of the *mitzva* to recite *Birkat HaMazon*: “You shall **eat** and you shall **be satiated**, and you shall **bless** HaShem, your G-d, for the good Land He gave you.”² The *pasuk* contains three verbs that are presented in the same manner of “you shall.” “You shall bless HaShem” is the Biblical source for the *mitzva* of reciting *Birkat HaMazon*. Why did *Chazal* not similarly derive a *mitzva* to eat and another

1. Service of HaShem.

2. *Devarim* 8:10.

mitzva to be satiated? The answer is that it is understood that we generally eat food until satiation, because that is normal and necessary for human beings, which HaShem created us to be. If we need confirmation that HaShem wants us to eat normally and not be ascetics who barely eat food, note the *p'sukim* in the second section of *Kri'at Shema*,³ where we are told that when we keep the *mitzvot* of the Torah, HaShem will bring rain and our crops will grow and be harvested. This section, describing the ideal situation,⁴ ends with “you shall eat and be satiated.” Thus, the standard ideal includes ample eating, not abstaining from eating out of asceticism. Accordingly, if one has to choose between eating a full meal or doing a *mitzva*, he is not normally expected to forgo the meal.⁵ Similarly, when one is busy with work, another proper non-*mitzva* activity, he is generally exempt from involving himself during that time with *mitzvot*, whether they be learning Torah, visiting the sick, writing a *sefer Torah*, etc.⁶

We can draw further insight from the Torah perspective on supporting children. A father (not mother) is required Rabbinically – not by Torah law – to support his children when they are young.⁷ Before the Rabbis instituted this obligation on the father, did the average father not support his family?! Consider the Torah-derived law⁸ that an *eved ivri*'s⁹ master must support his servant's wife and children. The rationale behind this law clearly seems to be that the father/family breadwinner is at work all day for the master and can no longer support his family. But why should the master be required by **Torah law** to support them in lieu of the father, when the father himself is only **Rabbinically** obligated? The answer is that the Torah left it to fathers to support their families because they are normal human fathers, and the Torah trusted that as a rule,

3. Ibid. 11:13-15.

4. Or at least close to ideal situation; see *Berachot* 35b.

5. Of course, a special *mitzva* or one that is very pressing could be an exception.

6. See *Shulchan Aruch, Orach Chayim* 156.

7. See *Ketubot* 65b; Rambam, *Ishut* 12:14.

8. See Rashi, *Shemot* 21:3.

9. A Jewish servant of another Jew (see *Shemot* 21:2-6.)

they would do so without a specific Torah mandate. Similarly, the Torah expects a mother, who is technically not obligated to support her children, to provide food for them if they do not have a father doing so. In the animal kingdom, parents do this based on instinct; among humans, this instinct is augmented by basic G-d-given morality. The Torah, for reasons I cannot identify with precision but with which my intuition identifies, preferred not to formally legislate such positive behavior.

The Torah expects parents to be busy with their children's various needs, which are harder to delay than most of one's personal needs. Attending to these needs can take precedence over, and may be performed before, even *mitzvot* that must be done before one may eat or go to work, such as morning *tefilla*.¹⁰ In fact, it is likely that the need to take care of children is at the very least partially behind the broad exemption of women from time-dependent *mitzvot*.¹¹ Taking care of the needs of one's family justifies not pursuing *mitzvot* when the *mitzva* opportunity is one that is not clearly incumbent upon him (e.g., helping out someone in need when others have a closer connection or can do so more easily). We hopefully learn how to find the proper balance between family needs and *mitzva* opportunities from the example of our own parents.

Only if one has **earned** a deep relationship with his children can he expect success in inculcating them with a love of and a dedication to a Torah lifestyle. This approach to preparing the next generation has been the Jewish ideal since Avraham Avinu.¹² How the responsibilities of providing all of a child's material, educational, and emotional needs are divided between two parents, sometimes with help from their families and the community, depends on the time, place, and the individuals' circumstances.

We have demonstrated why taking care of one's children, even

10. See *Shulchan Aruch, Orach Chayim* 89:3; we do not find such limitations regarding caring for children.

11. See *Igrot Moshe, Orach Chayim* IV:49.

12. See *Bereishit* 18:19.

if it were not a *mitzva* per se, would be a proper, central reality of life and should be done even when it limits or delays one's ability to perform certain *mitzvot*. Now we will provide sources that indicate that taking care of one's children is, in fact, a *mitzva* in its own right.

The *gemara* analyzes a *pasuk*¹³ as follows: “‘Praiseworthy is one who guards justice, who does *tzedaka* every moment.’ Is it possible to do *tzedaka* every moment? Our rabbis in Yavneh said that it refers to one who supports his sons and daughters when they are young.”¹⁴ Consider two difficulties in this *gemara*: 1) Why is supporting one's **own children** considered *tzedaka*? (The *gemara*'s next opinion indeed interprets the *pasuk* as referring to raising orphans, which is easier to understand.) 2) How is supporting one's children something that one can do at “every moment”? Rashi¹⁵ answers both questions: 1) The *gemara* is talking about children who have reached an age at which there is no longer a full obligation to support them. The support of close family members takes *tzedaka* precedence over support of others, unless there is a halachic obligation to provide the support (e.g., a husband towards his wife), in which case it is not considered *tzedaka*.¹⁶ 2) “Always, day and night, they are his responsibility.” I understand “day and night” as indicating that the responsibility in question is not only giving money, which one can do in a moment, but includes also the state of mind and reality that whatever and whenever needs arise, a mother or father will take care of them.

Elsewhere, the *gemara*¹⁷ states that a father is exempt from the consequences of injuring his son while disciplining him, because such disciplining is a *mitzva*. It does not seem sensible that discipline is a *mitzva* whereas positive elements of child-rearing are not. This is thus another indication of a *mitzva* to raise

13. *Tehillim* 106:3.

14. *Ketubot* 50a.

15. Ad loc.

16. *Shulchan Aruch, Yoreh Deah* 251:3.

17. *Makkot* 8a.

children, this time from a more educational perspective.

Despite these sources about a *mitzva* to perform a variety of functions in child-rearing, one will not find this *mitzva* in any of the technical “lists of *mitzvot*,” as taking care of one’s children is not an independent *mitzva*. The Rambam¹⁸ lists several acts of kindness as Rabbinic positive *mitzvot*, such as visiting the sick, comforting mourners, involvement in a funeral, and escorting a guest, among other acts. He concludes: “Although all of these *mitzvot* are of Rabbinic origin, they are included in ‘*v’ahavta l’reiacha kamocha*’ (You shall love your friend like yourself).”¹⁹ This formulation is paradoxical. If a *mitzva* is of Rabbinic origin, it follows that it is not from the Torah. But if that is the case, then how can it be included in a *mitzva* of the Torah?! The Rambam apparently means the following. The Torah requires one to do his fair share of acts of kindness. However, an individual could fill his whole kindness quota by, say, visiting the sick, never taking part in funerals or bringing guests into his home. Therefore, the Rabbis instituted an independent **obligation** in each of the matters listed, in addition to the fact that they are already included in the general Torah *mitzva* of being kind and helpful to our counterparts.

Why are actions entailed in raising children not included in the above list of formal Rabbinic obligations?²⁰ It is possible that the list is not exhaustive. It is also possible that not only the Torah, but even the Rabbis in principle left these matters for a parent to do voluntarily (see above), even though practically, from a human perspective, they are activities that are incumbent upon the parent. Indeed, if one is unable (for various reasons) to do a lot of the caring for his children, he/she can arrange for others (e.g., pre-school, day care) to take a major part in providing the child’s physical, educational, and emotional needs. However, when a mother or father acts normally in raising his children, which

18. *Eivel* 14:1.

19. *Vayikra* 19:18.

20. Admittedly, the Rambam does mention some applications elsewhere in his work; see *Matnot Ani'im* 10:16 for one.

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includes a tremendous amount of work, this too is a fulfillment of “*v’ahavta l’reiacha kamocho.*”

Fundamentally, the above discussion applies equally to men and women. In practice, reason and practicality should guide a family on how to share and assign these responsibilities. It is uncommon, for example, for a father to have to miss putting on *tefillin* one day because he is too busy tending to his children. However, he might legitimately put them on later and miss *minyan* because a child is sick. A mother is more likely to spend a larger part of her day with her children, especially young ones, than a father does. Her crucial actions of child-rearing include both use of tremendous wisdom and sensitivity, on the one hand, as well as such mundane activities as cooking and changing diapers, on the other. But all contributions toward the child’s welfare, by both parents, are part of the general *mitzva* and a necessity we have tried to put in context.

H-2: *Nichum Aveilim*¹ by Phone and by Email

Question: If it is difficult for me to do *nichum aveilim* in person, may I do it by phone or by email? If so, is one of these methods better than the other?

Answer: *Nichum aveilim* is on the Rambam's² list of Rabbinic obligations that are fulfillments of the Torah commandment of "v'ahavta l'reiacha kamocho,"³ to do for one's friend as one would for himself. The Rambam⁴ posits that *nichum aveilim* takes precedence over another *mitzva* on that list, visiting the sick, because *nichum aveilim* is an act of kindness both to the living (the mourners) and to the deceased. Although it seems surprising that consoling the mourners would constitute a kindness to the deceased, some⁵ provide a source for this concept from the *halacha* that if one dies without relatives to sit *shiva*, ten people "sit in the place of the deceased" and are visited by others.⁶

Rav Moshe Feinstein⁷ is among the consensus of opinions that *nichum aveilim* by phone does not impact on the deceased and thus cannot be as good as coming in person. Therefore, one should be *menachem avel* in person, if feasible.⁸

In addition, even with regard to the *chesed* for the mourner, coming in person is generally preferable. The *Perisha*,⁹ in justifying the practice of those who say little or nothing beyond

1. Consoling mourners.

2. *Eivel* 14:1.

3. *Vayikra* 19:18.

4. Op. cit.

5. See *Kiryat Melech* to Rambam op. cit.; *Igrot Moshe, Orach Chayim* IV:40.

6. *Shabbat* 152a; *Shulchan Aruch, Yoreh Deah* 376:3.

7. *Igrot Moshe* op. cit.

8. The parameters of who is obligated are beyond our present scope. See also *P'nei Baruch* 11:12; *Yalkut Yosef, Kitzur Yoreh Deah, Aveilut* 26:9.

9. *Yoreh Deah* 393:3.

the “*nichum* formula” when visiting, posits that even “coming in and sitting down to honor [the mourners] is considered *nichum aveilim*.” While picking up the phone is worth something, it is not as demonstrative an act of honor and empathy as coming in person (just as speaking by phone to a *chatan/kalla* is not like actually being at the wedding).

Before examining if there is a preference between phone and email, let us analyze a *halacha* of *shiva* house protocol. Consolers may not speak until the mourner “opens,” as we find was the careful practice of Iyov’s friends.¹⁰ What is the logic of this *halacha*, which apparently has not been observed uniformly for quite some time? The *Levush*¹¹ explains that the *menachem* should wait to see if the mourner is in distress; only if so is the *menachem* to comfort the mourner to relieve that distress. However, practical experience makes it difficult to imagine requiring the *menachem* to wait for such an indication. The *Divrei Sofrim*¹² suggests that the assumption that nearly all mourners are in distress can explain why many do not wait. The *Aruch HaShulchan*¹³ explains that *nichum aveilim* has to do with *tzidduk hadin* (accepting divine judgment), and the mourner should be the one to start this process, as Iyov did. Some point out that we usually do wait for the *avel* to say at least something to someone; it is possible that this may suffice, and it is possibly enough for the mourner to have done so only once, in order to enable all *menachemim* to speak throughout the entire *shiva*.¹⁴

Technically, this *halacha* is presumably not an issue if one calls or emails. An *avel* would generally be the one to speak into the phone first, so as to acknowledge that he is on the line. His choosing to receive an email is in some ways like inviting

10. *Moed Katan* 28b.

11. *Yoreh Deah* 376:1.

12. *Yoreh Deah* 376:2.

13. *Yoreh Deah* 376:1.

14. See *Divrei Sofrim* op. cit. and a letter from the *Tzitz Eliezer* in *P'nei Baruch*, p. 472.

the *menachem* to “speak.” However, extending the *Levush’s* approach, one would want to know not only that he **should speak** to the mourner, but also how to do so best. The Chafetz Chaim¹⁵ writes that while one nominally fulfills *nichum aveilim* by saying “*HaMakom yenachem ...*,” *nichum aveilim* is intended to touch the heart and lessen pain. Sizing up the mourner’s mood by observing and listening enables the *menachem* to calibrate his own speech.¹⁶

Nichum via phone has both greater potential and greater risk than *nichum* via email. The positive potential is due to the interaction of conversation, which allows one to have a better guess of what to say. The negative potential involves the difficulty to speak impactfully without seeing the body language of the mourner, which might have led to a change in approach. The *menachem* also does not know what is going on at the *shiva* house; his call may have interrupted a good dynamic among other *menachemim* present. It also can take away from the opportunity of a different *menachem*, who is more equipped to console effectively but cannot stay much longer.¹⁷ In contrast, email is usually shallower (barring a masterpiece of a note or letter). However, it has the huge advantage that it allows one to “drop the message off” after choosing the words carefully and allows the *avel* to choose when to read it (after *shiva* is also fine).

We propose with conviction that people who are close to an *avel* but cannot make a personal visit should call by phone, because the potential of a phone call from such individuals is worth the disruption. People who are not close to the *aveilim* should use email instead (unless they know that there are only few *menachemim* present or that they can keep their calls very

15. *Ahavat Chesed* III:5.

16. See also *Minchat Yitzchak* II:84, in the parallel context of “visiting” the sick by phone.

17. This phenomenon can happen when one is *menachem* in person as well, but one is more likely to recognize and avoid such a situation when he is there in person.

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short). If one decides to call and is not given access to the *avel* with whom he wanted to speak, the *menachem* should not be insulted, as it is the prerogative of the people at the *shiva* house to gauge their situation as best as they can, based on emotional and technical considerations.

H-3: Whose *Minhag* About Being *Chazan* Should an *Avel* Follow?

Question: I was in an (Ashkenazi) *shul* on Rosh Chodesh when a visitor who is an *avel* asked if he could serve as *chazan* for *Shacharit* or whether there were other *aveilim*. The *gabbai* said that there were no other *aveilim* but that *aveilim* do not usually serve as *chazanim* on Rosh Chodesh. The *avel* said that he received a *p'sak* that he may serve as *chazan* on Rosh Chodesh, which he proceeded to do, up to but not including *Hallel*. Was that the right course of action?

Answer: Our response must consider not only the question of whether an *avel* should be *chazan* on Rosh Chodesh, but also the issue of whose call it is – the *shul*'s or the *avel*'s.

The Maharil¹ is the primary source for limiting which days an *avel* may serve as *chazan*. He holds that an *avel* should not be *chazan* for the *tefillot* of Shabbat and *Yom Tov* or for *Hallel*, because of the *simcha* associated with those *tefillot*. The Rama² cites this idea only concerning Shabbat and *Yom Tov*, writing that the practice is for *aveilim* to refrain from being *chazanim* on those days, although it is not actually forbidden. Ashkenazi *Acharonim* accept this limitation regarding *Hallel* as well.³ There are a wide range of opinions and practices regarding the rest of *Shacharit* other than *Hallel*, as well as regarding *Mincha* and *Maariv* on days other than *Yom Tov* on which *Hallel* is recited in *Shacharit* (Rosh Chodesh, Chanuka) and on Purim.⁴ Therefore, both practices you refer to are legitimate; deciding between them is not our present focus.

The *minhag* to prevent an *avel* from serving as *chazan* on a

1. *Shut Maharil* 22.

2. *Yoreh Deah* 376:4.

3. *Eliya Rabba* 582:22; *Mishna Berura* 683:1.

4. See a survey in *Divrei Sofrim*, *Yoreh Deah* 376:94

happy day is related to the incongruity between the festivity of the day, which pervades its *tefilla* (or *tefillot*), and the *avel*'s sadness (or an aura of strict judgment⁵). What is not clear is whose interests we are "protecting" when we prevent the *avel* from being *chazan*, and this question impacts on the question of who gets to make the decision. If we are protecting the congregation from a *chazan* who is incapable of sufficiently elevating the congregation to the proper festive mood, then the proper practice is clearly the *shul*'s call, and ostensibly the *avel* in your case (unintentionally) acted improperly by pushing himself onto a congregation that did not want him. If, however, the issue is that it is wrong **for the *avel*** to involve himself in the joyousness by leading a happy *tefilla*, because that is incongruous with his *aveilut*, then the matter logically depends on his rabbi's ruling.

Sources that connect the matter to the suitability of the *avel* to act as a *shaliach* (agent) of the *tzibbur* on a joyous day include the *Taz*⁶ and the *Zera Emet*.⁷ My reading of the Maharil⁸ and the Maharam Shick⁹ indicates that they reason that the issue is one of inappropriateness for the *avel* vis-à-vis his mourning obligations. It is possible to distinguish between different days or between parts of *tefilla*. Perhaps on Shabbat, *Yom Tov*, and during the leading of *Hallel* itself, the community requires festiveness that the *avel* is assumed to be unable to provide. On the other hand, *Mincha*, *Maariv*, and the rest of *Shacharit* other than the joyous *Hallel* on days of less overarching joyousness have no special requirements for the *chazan*, but such prominent involvement in the *tefillot* of a happy day is improper **for him**. In any case, we leave the fundamental question of whose issue is it without any clear conclusion.

5. See *Taz, Orach Chayim* 660:2.

6. *Ibid.*

7. III:164.

8. I am not convinced my reading is correct; it is not feasible to share analysis of the textual nuances in this forum.

9. *Shut Maharam Shick, Orach Chayim* 183.

Some of the authorities opposed to an *avel* serving as *chazan* for any part of *Shacharit*, including the Gra¹⁰ and the *Chatam Sofer*,¹¹ were reportedly in the practice of not allowing an *avel* who wanted to be *chazan* to do so. Why would we stop someone who wants to be *chazan* if the source for this is post-Talmudic and respected opinions permit it? One explanation is that the Gra and the *Chatam Sofer* indeed held that the *avel*'s status affected the community, whom these distinguished rabbis represented, regardless of what the *avel* or his rabbi might have held. Another possibility is that even regarding matters that affect the individual, it is generally improper to contradict a local *minhag*.¹² This point is especially poignant regarding someone as visible as the *chazan*.¹³ A third possibility, albeit one that I find difficult, is that these *poskim* were so convinced that the other practice was wrong that they felt a need to save the *avel* from compromising his *aveilut* responsibility.

Our practical advice is as follows. An *avel* who received a ruling that he may serve as *chazan* on Rosh Chodesh should ask the rabbi or *gabbai* in the *shul* in which he finds himself if he agrees with this ruling. If he does not, he should ask whether the community minds if he is *chazan* anyway. If they do not mind, it should be fine for the *avel* to lead the part of *davening* of Rosh Chodesh that he wants to. However, if the *shul*'s *minhag* of not having the *avel* lead that *tefilla* is one that they regularly adhere to, the *avel* should not serve as *chazan* even if no one actually tries to stop him. This can either be because it is the community's prerogative to decide or due to the idea of publicly conforming to local *minhag*.

10. As reported by the *Chayei Adam* II:138:4.

11. See *Shut Maharam Shick* op. cit.

12. See *Shulchan Aruch, Orach Chayim* 468:4.

13. See Rama, *Orach Chayim* 53:22.

H-4: *Daf Yomi*¹ During Shabbat of *Shiva*

Question: I understand that an *avel* may be involved in standard learning, such as *shnayim mikra v'echad targum*,² on the Shabbat of *shiva*. Is learning *daf yomi* also permitted?

Answer: The *gemara*³ states that it is forbidden for a mourner during *shiva* to study Torah, because Torah study brings true happiness.⁴ On Shabbat, only some elements of *aveilut* pertain; specifically, *devarim sheb'tzina* (practices of mourning that are not noticeable to others) apply.⁵ *Rishonim* posit that Torah study is a *davar sheb'tzina* and is thus forbidden even on Shabbat.⁶

The Rosh and *Shulchan Aruch*⁷ do indeed maintain that it is permitted for an *avel* on Shabbat to review the *parasha*, i.e., *shnayim mikra v'echad targum*. You suggest that this is because any **set, regular** learning is permitted on Shabbat; if only somewhat unique study is forbidden, perhaps *daf yomi* is permitted. However, the Rosh and the *Shulchan Aruch* explain their rationale differently, noting that since *shnayim mikra v'echad targum* is obligatory,⁸ it is permitted for an *avel* to do it, just as an *avel* may and should recite *Kri'at Shema* daily even though it is a form of Torah study.⁹ In other words, *shnayim mikra v'echad targum* is not viewed as an ordinary experience of learning Torah,

1. *Daf yomi* is a 100-year-old project in which Jews throughout the world learn the same page of Talmud each day according to a seven-plus year schedule to finish the entire Babylonian Talmud.

2. Reading the *parasha*'s text twice, as well as either the Aramaic translation of Onkelos or Rashi's commentary once.

3. *Mo'ed Katan* 21a.

4. See *Beit Yosef, Yoreh Deah* 384.

5. *Mo'ed Katan* 24a.

6. Rosh, *Mo'ed Katan* 3:28; *Shulchan Aruch, Yoreh Deah* 400:1.

7. *Ibid.*

8. *Shulchan Aruch, Orach Chayim* 285:1.

9. See *Nedarim* 8a.

which is improper for an *avel*, but rather is viewed as simply reciting things one normally recites in the course of the day.¹⁰

Some *poskim*, including the *Korban Netanel*,¹¹ do emphasize the matter of regularity regarding Torah study and extend the leniency to any standard, daily learning, even when it is done as actual learning per se rather than as a required recitation. Thus, he rules that those with the practice of reviewing eighteen *perakim* of *mishnayot* daily may do so on the Shabbat of *aveilut*. The *Aruch HaShulchan*¹² writes that based on this line of reasoning, those with a set quota of daily learning, including of *gemara*, may partake in it on the Shabbat of *shiva*. This should certainly include learning *daf yomi*.

However, this approach is not the mainstream one. For example, the *Pitchei Teshuva*¹³ rules that those with the *minhag* to learn *Massechet Shabbat* every Shabbat should not do so during *aveilut*. The difference between that learning and the recitation of *shnayim mikra v'echad targum* is that there is no general expectation to take part in that specific Torah learning on Shabbat, whereas *shnayim mikra v'echad targum* is ideally supposed to be completed by Shabbat. (There is a parallel discussion regarding whether an *avel* should recite *Bameh Madlikin* on Shabbat.¹⁴ On the one hand, it is a standard part of the *siddur*, but on the other hand, it is Torah that is recited not due to an actual obligation, but rather due to a weaker *minhag*.)

There may sometimes be other grounds to allow taking part in *daf yomi* on this Shabbat. There is precedent to allow certain types of learning because failure to participate in the learning would constitute conspicuous *aveilut*. The *Shulchan Aruch*¹⁵ implies that while an *avel* should listen to the Torah reading, he

10. *Aruch HaShulchan*, *Yoreh Deah* 400:6.

11. On the Rosh op. cit.

12. Op. cit.

13. *Yoreh Deah* 400:3.

14. *Beit Yosef*, *Yoreh Deah* 393, in the name of the *Kol Bo*; *Badei HaShulchan*, *Yoreh Deah* 400, pp. 401-403.

15. *Yoreh Deah* 400:1.

should not receive an *aliya* even on Shabbat.¹⁶ However, if he was called to the Torah, he must accept the *aliya*, because failure to do so on this Shabbat would be considered improper public *aveilut*. The *Shulchan Aruch* continues with the story of Rabbeinu Tam, who ruled that since he received *shlishi* every Shabbat, he should also get it during *aveilut* for this reason. Similarly, it is possible to argue that if one regularly takes part in a public *shiur* in *daf yomi*, or, for that matter, on any topic, he should not refrain from attending on the Shabbat of *aveilut*, as this can effectively constitute public *aveilut*.

However, it is difficult to consider refraining from participating in a regular *shiur* as public *aveilut*. The *Taz*¹⁷ writes that although standard practice is to give an *aliya* to a father who is making a *brit* on Shabbat, nevertheless, on the Shabbat of the father's *shiva*, he should not get one. It is rare that someone's attendance at a *shiur* is more regular than is a father's receiving an *aliya* before his son's *brit*. If one always gave the *shiur*, his absence might be more conspicuous. Even then, however, one can argue that considering that the *avel's* ability to prepare was curtailed during the week, his absence would not have to be interpreted as *aveilut*, but rather as a well-needed vacation, while allowing for his week-long stand-in to continue teaching. (*Badei HaShulchan*¹⁸ suggests, in the context of whether or not to give the *avel* an *aliya*, that one should appraise each specific occurrence on its own.) In short, it is almost always improper to learn *daf yomi* on the Shabbat of *shiva*.¹⁹

16. See *Taz* ad loc. 1.

17. *Ibid.*

18. 400:(75).

19. The fear of having trouble catching up with the pace of *daf yomi* is not irrelevant, but it does not justify such a leniency in the obligations of *aveilut*.

H-5: Serving as *Chazan* on the Shabbat Before a *Yahrtzeit*

Question: How important is it for someone to serve as *chazan* on the Shabbat before a *yahrtzeit*? Is the practice only for the *yahrtzeit* of a parent, or is it also for grandparents/in-laws? Some people in my *shul* feel that people use it as an excuse to “grab the *amud*.” I am asking as the *shul*’s *gabbai*; we have no rabbi.

Answer: Although many *shuls* face this issue, the best solution in each particular case depends on the available alternatives, the personalities involved, and the character and needs of the *shul*. While we will provide sources and generic advice, local wisdom and sensitivity are crucial.

Reciting *Kaddish* and serving as *chazan* are merits for the deceased, who can no longer create new merits on his own, but who can still get them through his descendants.¹ During the first year after death, the deceased’s soul needs the most help. The *yahrtzeit* is both a time of potential improvement of the deceased’s status² as well as a potentially difficult day for surviving children.³ Due to the first point, the logic of *davening* on the *yahrtzeit* is the same as that of during *aveilut* – i.e., to help the deceased’s soul’s status – and one with a *yahrtzeit* for a parent is a relatively high-level *chiyuv*.⁴

The sources regarding the deceased’s son’s *chiyuvim* on the Shabbat before a *yahrtzeit* are more recent. Regarding getting an *aliya*, it appears hundreds of years ago, but only as a quasi-*chiyuv*⁵ and with a preference that the son receives the *aliya* of

1. See *Divrei Sofrim, Aveilut*, vol. I, pp. 324-326.

2. Arizal, cited in *Gesher HaChayim* I, p. 341.

3. *Levush, Yoreh Deah* 402:12.

4. Rama, *Yoreh Deah* 376:5.

5. See *Sha’arei Ephrayim* 2:7.

maftir.⁶ It is primarily Sephardim who have the *minhag* that the son recites the *Kaddeishim* on this Shabbat.⁷ The *minhag* to have the son serve as *chazan* on that Shabbat is found in the twentieth century *Gesher HaChayim*.⁸ One reason that this Shabbat has special observances even when it is not the *yahrtzeit* itself is that the *neshama* is elevated every Shabbat, and the merit of *mitzvot* on behalf of that *neshama* may keep it in that elevated state until the upcoming *yahrtzeit*.⁹ However, the *Gesher HaChayim*¹⁰ writes that despite the *minhag* that it is appropriate for a son with an upcoming *yahrtzeit* to be allowed to perform these observances, the rights of other *chiyuvim* supersede his.

There are different opinions regarding whether the *minhag* to have the son serve as *chazan* applies only to *Musaf* and to *Maariv* of *Motza'ei Shabbat* or to all of the Shabbat *tefillot*.¹¹ There is value for a grandson or a son-in-law to stand in to help the soul of the deceased if no son is doing so, but the level of their "*chiyuv*" is lower.¹² Thus, the *chazanut* "rights" on the Shabbat before the *yahrtzeit* vary, depending on the case, from moderately low to very low.

Even regarding full *chiyuvim*, a community has the right to decide that concern for the quality of *tefillot* warrants having non-mourners serve as *chazanim*, even during the week, when the *tefillot* do not require much cantorial skill.¹³ However, such a decision should be made for the right reasons, with a fair and clear process, and it is in fact not standard practice to disallow mourners or those observing *yahrtzeit* to serve as *chazan* during the week.¹⁴

6. Ibid. 42.

7. *Kaf HaChayim, Orach Chayim* 55:23. Regarding Ashkenazim, see *Nitei Gavriel* 69:3; *Pnei Baruch* 39:2. In practice, people should follow their family and/or community *minhag*.

8. I:32:2; see also *Kol Bo Al Aveilut*, p. 401.

9. See *Kaf HaChayim* op. cit.

10. Op. cit.

11. See *P'nei Baruch* op. cit.

12. *Pitchei Teshuva, Yoreh Deah* 376:7.

13. *Mishna Berura* 53:60.

14. See *ibid*.

An ideal community, with perfectly understanding people, would time an “approved *chazan*’s” opportunities to serve as *chazan* to occur at least on the *Shabbatot* before an upcoming *yahrtzeit*. It might also be appropriate to allow borderline *chazan* candidates one or two Shabbat *tefillot* annually. On the other hand, serving as *chazan* should not be something one can automatically demand. While mild pressuring for the opportunity to serve as *chazan* is not as severe as one who “takes the *amud* by force,”¹⁵ it is still frowned upon even if done with reasonable intentions.¹⁶ An upcoming *yahrtzeit* does not at all justify pressuring a *gabbai*.

Nevertheless, there are important concessions on halachic priorities that are practiced to accommodate the feelings of one who wants to honor/aid a relative’s *neshama*.¹⁷ The issue at hand can also be such an example. While the congregation’s desire for a better *chazan* is legitimate and **sometimes** important, such preferences are not **usually** critical in nature and do not supersede the importance of another’s feelings. How might it feel to not only be regularly passed over when a *chazan* is chosen (people often consider themselves better *chazanim* than others do), but to get the message that “You are not even good enough to be *chazan* before a *yahrtzeit*”? The *rabbi/gabbai*’s job is to strike the best possible balance regarding the needs of all.

We suggest a few generic pointers: 1) Consistent rules (e.g., a maximum of one *tefilla* per Shabbat) make matters easier. 2) **Absolute** consistency might be counterproductive. We suggest the following system:¹⁸ Every member of the congregation should submit a list of *kibbudim* requests for the year, rated by priority for him. The *gabbai* should try to come the closest possible to accommodating all, given the various relevant factors.

15. See Rama, *Orach Chayim* 53:22.

16. *Mishna Berura* 53:65.

17. The classic one is to allow more than one person to recite a *Kaddish* so that every *avel* will get to recite *Kaddish* at every *tefilla*.

18. This proposal is certainly not an ideal one for every community/situation, and it is not meant to preclude other reasonable proposals.

H-6: Should a *Chatan Daven* in *Shul*?

Question: I have heard that a *chatan* during his *Sheva Berachot* week does not need to *daven* with a *minyan*. Is this true, and what would the reason be?

Answer: There is something to what you have heard, but it has more to do with reasons not to go to *shul* than with the *chatan* not needing a *minyan*. Let us discuss the issues and put things in perspective.

The *Shulchan Aruch*¹ rules that *Tachanun* is not recited in a *chatan*'s house, because of the incongruity of the *simcha* of the *chatan* and the heart-wrenching supplication of *Tachanun*.² The *Shulchan Aruch* and Rama³ write that we refrain from *Tachanun* not only in the *chatan*'s house, but even when the *chatan* comes to *shul*, but only on the wedding day itself.⁴ The *Taz*⁵ extends this *halacha* to include not only the wedding, but the six days that follow as well, and he comments that as a result, a *chatan* should not come to *shul* during this time, so as not to deprive others of *Tachanun*. The *Mishna Berura*⁶ cites both of the *Taz*'s ideas without citing dissent.

Contemporary *poskim* point out that some disagree with the recommendation for the *chatan* to avoid coming to *shul*.⁷ While the *tzibbur* rarely minds missing *Tachanun*,⁸ it is a powerful prayer,

1. *Orach Chayim* 131:4.

2. There are different explanations of the exact nature of the incongruity; see *Taz ad loc.* 10 and *Aruch HaShulchan ad loc.* 15.

3. *Ad loc.*

4. *Ibid.*; see also *Beit Yosef, Orach Chayim* 131.

5. *Ad loc.* 10.

6. 131:26.

7. See *Nitei Gavriel, Nisuin* 63:4; *Dirshu Mishna Berura* 131:41.

8. It is possible that there is never a full obligation to recite it; see *Beit Yosef op. cit.*

especially when coupled with *nefilat apayim*.⁹ On the other hand, is it right to exclude such an honored person as a *chatan*, at such a joyous and critical time in his life, from joining a *minyan*? Rav S.Z. Auerbach¹⁰ posits that according to the Rama, who maintains that the *Tachanun* exclusion is only on the wedding day, people are appropriately happy to share the *chatan*'s *simcha* at the price of *Tachanun*. In contrast, according to the *Taz* and our *minhag* that the exemption is for an entire week, it is more objectionable to be deprived of *Tachanun* so often (as we hope for many weddings during the year).

Why is a *chatan* different from a *mohel*, who is not told to avoid *shul*, even though *Tachanun* is similarly not recited in the presence of a *mohel* performing a *mila* that day? Rav Auerbach explains that due to the halachic status of a *chatan* and his preoccupation with his new wife and status, the importance of his *tefilla b'tzibbur* is diminished. This explains why we may prefer him to not come to *shul*. We might put it this way: Consistently *davening* in *shul* helps the individual and *Klal Yisrael*. However, a *chatan* personally has a halachically recognized contrary indication. Considering that the *chatan* maximizing his time at home with his newlywed wife is important enough during this week to make it forbidden for him to work,¹¹ and considering that this period includes exemptions from certain *mitzvot* at certain times,¹² there is a practical silver lining to his not having to go *shul*. The fact that his presence deprives the community of *Tachanun* is enough to tip the scale in favor of his *davening* at home in the proximity of his *kalla*.

Another reason for the *chatan* not to go to *shul* is the concept that a *chatan* (and *kalla*) should not go on the streets by himself

9. See *Shulchan Aruch* op. cit. 1 and *Mishna Berura* ad loc. 1; see also our *Ask the Rabbi* column, *Vayakhel Pekudei* 5783.

10. Part of whose letter on the matter is recorded in *Tefilla K'Hilchata* 15:(41).

11. *Shulchan Aruch, Even HaEzer* 64:1.

12. *Berachot* 16a.

(or herself).¹³ Some connect this rule to the *chatan*'s stature, in that he resembles a king, who does not go out unaccompanied.¹⁴ Others¹⁵ explain the practice based on concern for his physical and/or spiritual welfare.¹⁶ There are discussions as to whether this applies in safe places/times (daytime). In any case, an escort of one, including the new spouse, suffices,¹⁷ so this impediment is solvable.

We now turn to practical guidelines and perspectives. If there is a *minyán* at a *sheva berachot*, the *chatan* should take part, and this should also hopefully make the *kalla* happy. Going to *shul* can depend on the circumstances. If the couple is careful about not going out alone (which Ashkenazim, especially those with Chassidish leanings, are more likely to be), then the *chatan* should consider the feasibility of the alternatives. Does he have someone to escort him both ways, without unreasonable inconvenience for the escort or disappointment to the *kalla*? Is it feasible for the *kalla* to come to *shul* herself, and is she interested in doing so? How important is it to the *chatan* to not miss *minyán*, even during such a week? How important is it for the *kalla* that her *chatan* does not miss *minyán* "because of her" and that he/they thank HaShem for their marriage and add requests for their future success at an optimal setting (*shul*)?

It is not always simple for a *chatan* to raise these questions and get honest answers from his *kalla* about what she really feels. Therefore, some rabbis might wisely say that the default position is that the *chatan* should not expect to go to *shul*. However, if based on personalities and circumstances the couple deems it desirable, there is insufficient reason to preclude the *chatan* from going to *shul*.

13. Rama, *Even HaEzer* op. cit.

14. *Pirkei D'Rabbi Eliezer* 16.

15. *Perisha*, *Even HaEzer* 64:1*.

16. Based on *Berachot* 54b.

17. See *Nitei Gavriel*, *Nisuim* 56:(10).

Section I:
Monetary Law



I-1: Answering Monetary Questions Outside of *Beit Din*

Question: We present here a discussion that emerges from occasional questions/complaints we have received. People often ask us questions about financial disputes they are involved in. We respond that our policy is that we do not get involved in practical monetary situations that affect another side whose view we have not yet heard. Most questioners take this response in stride. Some, however, take offense. One disgruntled querier pointed out that our website includes practical monetary questions that we indeed have answered. Therefore, I decided to discuss our approach to the matter in detail.

Answer: Our policy is based on the Rama. The *Shulchan Aruch*¹ presents the basic rule of jurisprudence that one may not listen to the claims of one litigant while the other side is not present. The Rama² posits that this refers to one who is or will be a *dayan* in the dispute. However, he adds that a *talmid chacham* should never express even a tentative opinion (“if indeed ... then ...”), even regarding a case over which he is not presiding, without hearing both sides.

The first reason the Rama gives for this ruling is that the *talmid chacham*'s response might teach the litigant which claims to make, including false ones. While the sources speak of falsehood, the concern is not limited to outright, premeditated lying, but includes describing the nuances of a gray situation in a slanted manner. Our contemporary experience demonstrates that even honest people are liable to do this under the pressure of litigation, when significant money and stature are on the line.

The Rama's second stated reason is that due to claims that will

1. *Choshen Mishpat* 17:5

2. Ad loc.

surface in the trial, the eventual ruling might appear to contradict the *talmid chacham*'s previously stated opinion, which could discredit him. We note that such concern need not be limited to the non-*dayan*'s credibility. Our *beit din*'s administration has received post-ruling complaints along the following lines: "I asked my rabbi about the case, and he said the *beit din*'s decision was wrong, so the *dayanim* are either incompetent or biased." Of course, two rabbis can have different views without either person being incompetent or biased, which is the reason three *dayanim* serve on a *beit din* and not just one. Furthermore, the *dayanim* generally have more experience in adjudication than rabbis who are not *dayanim*. They also have the advantage of having heard and interrogated both sides and often spending dozens of hours researching, analyzing, and debating each other. Nevertheless, a dissatisfied litigant may not care about this and might instead prefer an outside rabbi's initial reaction to the litigant's presentation of the matter, often presented in a setting that does not allow for careful consideration.³ This negative phenomenon can occur as a result of even a provisional opinion made prior to adjudication. The dynamics of dispute are such that otherwise respectable and respectful people are liable to decide that they are right and that there is something wrong with anyone (litigant, *dayan*, or other) who disagrees with what they **understood** that a rabbi said in their favor.

Our experience makes us concerned about another issue that the Rama does not discuss. (It is likely that he was not addressing such a case.⁴) There are times that the sides prefer to avoid the trouble of litigation, which we applaud on fundamental and practical grounds. A well-intentioned party to a still non-litigated disagreement may ask us or another *rav* about the scenario, presenting it as he honestly but subjectively sees it, with the

3. Since our *beit din* offers an option of appeal, we do not object to a litigant showing our written reasoned decision to a *talmid chacham* for his advice on whether it is worthwhile to appeal.

4. See the distinctions between cases below.

intention of getting an answer to share with the other side in lieu of litigation. He may be honest enough that he is willing to inform the other side if the rabbi said that he himself was wrong. However, if we answer, “Based on your description, you are right,” he is likely to say more resolutely than we did, “I asked a *dayan*, and he said I am right.” If this happens, then the other side will be at a disadvantage. Should he question the *dayan*, or should he call his neighbor, friend, or business partner a liar? Many people do not realize that they have a right to respond: “If the *dayan*/rabbi did not hear me describe the case in **my own words**, he should/could not have said, ‘You are right.’” In such cases, we will request from the one who asks us informally to have the other side present his case in a parallel manner, or at least have the other side inform us very clearly that he does not want to continue the argument and wants us to answer his counterpart based on the latter’s presentation of the facts.

We will now summarize the first part of our treatment of the subject from our specific perspective at Eretz Hemdah. We wear two relevant “hats” that impact on our answering monetary questions: 1) We have an “Ask the Rabbi” service, through which we try to be responsive to all. 2) We have a *beit din*, where we make very strong efforts to be ethical, impartial, and cautious regarding monetary matters.⁵ The policy we believe as best to reconcile these competing responsibilities is to almost always refuse to answer questions of one side that have a hint of being related to an actual monetary dispute. We regret that some people are resentful of this policy; that is part of the price of being principled and cautious.

Now we will attempt to deal with complaints of inconsistency regarding answering practical monetary questions. The decision not to honor such requests is not due to a sweeping formal Torah prohibition, but rather is based on proper ethical norms. Rabbis

5. One of our concerns is that our present anonymous querier may become our future litigant.

throughout the centuries, including those who themselves have authored rulings against answering questions about conflicts without hearing both sides, have found themselves weighing conflicting considerations and struggling with apparent inconsistency; some of them discuss these struggles in their responsa.

We should point out that it is standard, recommended practice for *dayanim* who are unsure of the proper ruling to send the case's details elsewhere so as to obtain a greater authority's opinion.⁶ The *dayanim* are responsible for presenting the claims of both sides accurately, and they are the ones who will end up making the formal decision. The authority to whom they turn is allowed to rely on the *dayanim* to faithfully and accurately present the situation to him and to implement his recommendations.

Regarding requests of guidance made by or on behalf of a party to a dispute, the *Pitchei Teshuva*⁷ provides perhaps the most important compilation of distinctions to reconcile apparent contradictions. We will now present several distinctions and some opinions about them.

The *Me'il Tzedaka*⁸ cites sources and a broad common practice that permit a *talmid chacham* to answer a question when he knows the querier and is confident that the querier wants to know the truth and will not formulate false claims. (The *Me'il Tzedaka* questions the validity of this leniency, except in cases in which the respondent believes that the case does not actually apply to the querier.)

Other sources for leniency refer to various cases with great need to get involved, such as: 1) The information is needed to save people from sin.⁹ (There are many *teshuvot* about *poskim* who got involved when there were suspicions about a *shochet*.) 2) The complaint being addressed is of someone attacking the

6. *Shulchan Aruch, Choshen Mishpat* 14:1.

7. *Choshen Mishpat* 17:11. The next six cited responsa are all referenced there.

8. 53.

9. *Shut Maharashdam, Yoreh Deah* 153.

integrity of a *talmid chacham*.¹⁰ 3) The opinion is needed for the *mitzva* of helping a widow.¹¹

Another type of case in which some permit discussion with one side is when the *talmid chacham* focuses specifically on the general halachic questions that will determine the correct ruling, whereas the factual claims of the case are agreed on by all.¹² In a related justification, *poskim* will often also say that they are not suggesting a ruling for the case, but are simply explaining *gemarot* or general halachic issues to interested parties. The logic is that the *talmid chacham* is not responsible for the conclusions that those who now understand the halachic topic will draw regarding their case.

Another exception is when the question is about which *beit din* has jurisdiction.¹³ The logic is that since the arguing sides cannot agree on the same *beit din*, the alternative of addressing the matter formally before *beit din* does not exist. There is therefore no practical choice but to accede to the request to provide a correct solution in order to get the sides past the deadlock.

While some of the cases in which we at Eretz Hemdah are lenient are based on one of the above distinctions, our most common justification to express **tentative opinions** is in cases in which there are no actual litigants. (Generally, the sources that discuss our issue refer to cases of talking with one side when there are already litigants, or at least those planning to be litigants.) We are often approached by a non-litigant who wants to know about his rights and obligations. For example, a person does not want to go to *beit din*, but he wants to do the right thing; he will willingly pay, without being sued, or not make a demand, even out of *beit din*, if we tell him that this is what is appropriate for him to do. We often respond: “We cannot tell you that you are right (because maybe if we heard the other side’s version of what

10. *Shvut Yaakov* III:99.

11. *Shut Maharshal* 24.

12. *Shut HaRama* 112.

13. *Avodat HaGershuni* 47.

happened, we would agree with him), but we can tell you if you are wrong even according to your version of the story.”¹⁴ Even then, we try to ascertain to the extent possible that the person who has approached us is sincere on this point. This is easier when we know the person, although there could be other indications.¹⁵ When it appears that someone wants to adjudicate, and we feel that he will create enemies and bring on head/heart aches with only a small chance of winning, we will often advise him, without going into too much detail, that he would be wise to drop the matter.

The above are **some** of our guidelines, and gray areas abound. We request of those who turn to us with these types of questions: Realize that our rule is not to answer. If you believe you belong to the exception rather than to the rule, but we are not convinced of that, please respect our right to be more careful on the matter than you were expecting, are used to, or agree with. Believe us that our practice is based on our understanding of what is proper, and not due to malice, apathy, or laziness, Heaven forbid. We think it is proper for an organization serving mainly anonymous people, about whose circumstances we know little, to be *machmir* on such matters, even when our answer might be important for the advice-seeker. This is especially so because we run a *beit din* that pursues ethical excellence, including not helping one side at the possible expense of another.

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

15. There is a possibility that the querier wants to ascertain his prospects in *beit din* so that he can go to secular court if he believes his prospects are better there. As we discussed in *Living the Halachic Process*, vol. V, I-2, going to secular court without valid justification is forbidden (see *Shulchan Aruch, Choshen Mishpat* 26). It is also possible, although we doubt it is common, that he is tricking us and telling the story with the sides switched.

I-2: A Rabbi's Approach to Monetary Problem Solving

Question: [*We present here a summary of our conversation with a new community rabbi who sought our help in handling a monetary dispute between two congregants. We will not focus on the specific dispute and solution, which he shared with us.*]

The scope of a particular dispute, between people who need to interact with each other regularly, is a few thousand shekels. I was reluctant to accept responsibility for the matter, because I do not want to create resentment between congregants, as well as because I do not “specialize” in monetary Halacha. However, they want me, specifically, to handle it, and a rabbinical mentor told me I have no choice. So far, each side has told me his side separately; I have not met with them together. I think each one of the parties is trying to be honest, but each views the situation differently, both on factual and on legal grounds. How should I handle the situation?

Answer: We urge you to clarify with your congregants that they accept the following rules of engagement, which are important for both halachic and practical reasons.

In such a dispute – which is of only moderate financial scope, but which can evoke significant personal feelings – the sides should assure you that they will not allow the dispute to develop an adversarial bent. Your impression is that (most of) each side's claims have logic. The two sides should realize that this is not a dispute between right and wrong or good and bad, and they must not be overly embarrassed, upset, or even surprised if they are not as vindicated as they expect. It is not shameful to be somewhat off on matters of fine legal distinctions or careful analysis of what transpired, and it is meritorious to accept a decision arrived at sincerely and to do the proper thing vis-a-vis one's neighbor. Money lost in such a situation due to payment to one's counterpart

or receiving less than expected is no more of a loss than the higher cost of kosher food or needing to pay tuition at one's children's schools of choice.

Hammering home these ideas is important for at least two reasons: 1) These points are true and educational, and this is the right time/setting, as their rabbi, for you to teach or remind them the proper mindset regarding conflict resolution. 2) If they have an adversarial approach, you are likely to incur resentment from either or both sides for not living up to their expectations.¹ Since you will need to interact with them communally and personally, you do not want to harm relationships. Therefore, if they do not have the proper attitude, we recommend referring them to a different framework.² Working it out themselves is best, but if they are not able to accept the peace-loving approach to settling the dispute, it is unlikely they will be able to work it out themselves. Mediation³ or a formal *beit din* are often good options.

Next, let us examine your role. Due to a few points, we suggest that you not view or present yourself as an ad-hoc *dayan*, bound to a *Choshen Mishpat*⁴ ruling. First, as you yourself point out, you have not had sufficient training and practice to rule proficiently. Furthermore, arriving at the correct ruling may be very time-consuming. Seeking assistance from *dayanim*⁵ minimizes these problems, but it is not an ideal situation.

In addition, under ordinary circumstances, monetary decisions are rendered by a *beit din* of three *dayanim*, not by a lone *dayan*.⁶ Even a special expert, who is entitled to serve alone,

1. As *dayanim*, we are accustomed to our efforts being resented by litigants, and it is part of our sacred duty to put up with such unpleasantness.

2. In the "*shtetl*," the rabbi/*dayan* often had no choice but to adjudicate between members of his community, but our dynamic society offers many alternative options.

3. See footnote 13.

4. The section of the *Shulchan Aruch* dedicated to the *halachot* of monetary issues.

5. See Rama, *Choshen Mishpat* 3:1.

6. *Shulchan Aruch* ad loc.

should generally try to avoid adjudicating by himself.⁷ While it may be permitted for one to do so when the litigants specifically ask him to, it is still not ideal.⁸ The best solution is to say that they should accept in advance a ruling based on your reasoning, which might be according to Halacha but which also might possibly be a halachic mistake.⁹

Another issue is that you have already met with each side separately. Such meetings can be helpful when dealing informally with disputes, but it is forbidden for *dayanim*, both according to Halacha¹⁰ and according to arbitration law, to hold such meetings. It is permitted, however, to adjudicate even in such a situation, if the sides agree to it.¹¹

All of these factors push toward the preference of giving up on the *dayanut* route in favor of less formal dispute resolution, which the *gemara*¹² refers to as the approach of Aharon (as opposed to that of Moshe). If you can serve as a mediator rather than as an arbitrator,¹³ that is ideal. If they need you to make the decision, then to the extent that Halacha guides you as to what is fair and logical, that is great. However, the sides should expect a ruling based on *p'shara*,¹⁴ and not necessarily one that is based on formal legal/halachic grounds.

7. Ibid. 3, based on *Avot* 4:8.

8. See *Shach*, *Choshen Mishpat* 3:10.

9. See *ibid.*; Rama, *Choshen Mishpat* 25:3.

10. Shulchan Aruch, *Choshen Mishpat* 17:5.

11. Rama *ad loc.*

12. See *Sanhedrin* 6b.

13. A mediator works with the sides to arrive at a solution that is worthwhile for both of them to accept as a compromise. An arbitrator is given authority to impose a solution on the sides.

14. Compromise.

I-3: Supermarket Manners or *Halacha*?

Question: I was in a supermarket and saw a person (woman #1) take the last packages of a certain item, put them in her shopping cart, and walk off to other shelves. Another person (woman #2) saw the empty shelf and the items in the cart, and she took some of them from the cart and put them in hers. Was that just bad manners, or was it actually stealing (i.e., had woman #1 already acquired them)?

Answer: Anything we say here is general information and does not relate in any reliable way to the specific case, whose exact details we do not know. Since the case is not *halacha l'ma'aseh* (we obviously do not expect woman #1 to sue woman #2), we are free to conduct here a general discussion.¹

We start with the halachic issue you raise. Many people think that one acquires items in a store by paying for them. However, the *halacha* is that money is not a valid *kinyan* for movable objects.² Rather, one must perform a physical *kinyan* on the item, which for items easily picked up is usually *hagbaha* (lifting the objects). Nevertheless, although woman #1 did physically perform an act of *kinyan* when she took the items off the shelf, that does not mean that she necessarily acquired the items at that time.

Classical *poskim* discuss at exactly what point we assume that one who performed such an action intended to acquire the item.³ However, in the contemporary context you describe, the *kinyan* is clearly not effective until the buyer lifts the item **after paying** for it, and certainly not before or when the buyer puts it in the shopping cart. We can be confident about this conjecture because

1. See response I-1 of this volume.

2. *Bava Metzia* 44a.

3. See *Shulchan Aruch, Choshen Mishpat* 200:8,11.

it is very common for someone to put an item in the cart, only to change his mind later and return it to the shelf. If he would have acquired it, he would need the store's permission to return it. Since buyers do not do this, it is a sign that taking an item off the shelf to put in the cart is simply the first step toward the likely, **future** purchase of the object. Thus, woman #2 was not stealing from woman #1, as the latter did not yet own the items.

There is a relevant, interesting concept in the *gemara*⁴ called *ani hamehapech b'charara* that likely applies to this situation. The classic case is when Reuven is in the midst of efforts to acquire something, and Shimon, who enters the scene later, beats Reuven to the acquisition.⁵ In such a case, Shimon is called a *rasha*.⁶ (There is a *machloket* regarding whether there is any binding or practical consequence of that status.⁷)

There is a *machloket Rishonim*⁸ if this affront applies only to one who buys and/or rents an item instead of the one who had started the process (Rosh), or even to one who tries to acquire something from *hefker* (Rashi).⁹ The *Shulchan Aruch*¹⁰ cites both of these opinions. The distinction between buying something and receiving it for free is that receiving for free is generally a unique opportunity, unlike purchases. This distinction could pull us in either direction, depending on whether we focus on the person who tries first to acquire the object or on the one who actually takes it first. If we focus on the former, we can say that in the case of a purchase, the first person does not lose much by not being able to buy at this time, as he can buy later or elsewhere. In contrast, acquiring from *hefker* is a fleeting opportunity, which he will lose forever, thus making protection of the former's rights at least as appropriate. The logic of the opinion that *ani hamehapech*

4. *Kiddushin* 59a.

5. See *Shulchan Aruch, Choshen Mishpat* 237:1.

6. An evil person.

7. See *Pitchei Choshen, Geneiva* 9:(29).

8. See Rashi, *Kiddushin* 59a; Rosh, *Kiddushin* 3:2.

9. A state of being ownerless.

10. Op. cit.

b'charara does not apply to taking from *hefker* is that in that case, the second person's actions are understandable because of the rare opportunity that arose for him. This is unlike one who seizes a sale instead of his counterpart who is in the midst of the process. Such a person is acting in a needlessly petty manner, since he should have taken the time to go elsewhere to buy, and this is why *ani hamehapech b'charara* applies to sales.¹¹

The Rama¹² writes that according to the opinion that *ani hamehapech b'charara* does not apply to *hefker*, it also does not apply to an item with a unique sales price. The logic here is the same as above: It is not petty for the one who comes second to try to beat the one who came first if the one who came second has no equivalent alternative opportunity to acquire the item. If the event you saw involved such a special sale, then according to this opinion, these special circumstances could arguably save woman #2 from the negative status of *ani hamehapech b'charara*. On the other hand, the *Shach*¹³ argues and maintains that *ani hamehapech b'charara* applies to sales even if the price is a uniquely good one.¹⁴

In truth, we can suggest that what woman #2 did actually did constitute theft, but for a different reason than what you suggested. If woman #1 did not acquire the items, then the store still owned them. It is **possible** that the store strongly objects to one shopper taking a product from the cart of another, as such actions might cause very unpleasant shopping experiences and could in some cases even lead to shouting matches inside the store. If this is the case, woman #2 can arguably be considered stealing **from the store**, which does not permit one person to take items from someone else's cart. However, we would imagine that such an

11. See *S'ma* 237:2.

12. *Choshen Mishpat* 237:1.

13. Ad loc. 3.

14. Even though you mentioned that woman #1 took the last of these items in this store, such items are presumably for sale in other stores, so that the logic of *ani hamehapech b'charara* still applies.

occurrence is uncommon, and it is therefore difficult to determine in advance whether a given store's objections are strong enough to counteract the general assumption that anyone who brings items to the cashier has a right to buy them.

I-4: To Whom Should One Sell His Apartment?

Question: I want to sell my apartment, and both the apartment's present renter as well as my nephew are interested in buying it. Do laws of precedence apply here? If so, does it make a difference if one of them offers to pay more than the other is willing to?

Answer: Our response cannot cover all elements of your case or give you a conclusive ruling, without the affected sides having the opportunity to advance possible claims. Our response is intended simply to inform you of your moral **responsibilities** and/or preferences, based on your presentation.

There are various levels of precedence regarding selling land. A relative who wants to buy a seller's land has precedence over those with no connection to the seller or the land, although a *talmid chacham* and a neighbor have greater precedence than a relative.¹ In any case, such precedences are not legally binding.²

A *bar metzra* (also called a *matzran*) – someone who lives on the boundary of the property, and possibly also someone who has a special interest in buying the field in question – has a higher level of precedence than the people mentioned above. If Reuven sold property to Shimon and thereby ignored Levi's *matzran* rights, Levi can pay the sale price to Shimon and take the land from him.³ This is a *takana*⁴ based on the concept that one is supposed to do the "straight and good"⁵ – to give the opportunity to buy a specific property to the one who can benefit from it more than others. In the classic case of *bar metzra*, what the neighbor

1. *Shulchan Aruch, Choshen Mishpat* 175:50.

2. *Ibid.*

3. *Shulchan Aruch* *ibid.* 6.

4. A practice of Rabbinic origin intended to improve a certain element of life in the Jewish community.

5. See *Devarim* 6:18.

stands to gain is that if he acquires the property that is adjacent to his own, he will be able to connect the two properties and/or make working the fields more efficient.

However, a *matzran*'s rights do not preclude the seller from selling to someone else for a higher price or under better conditions than the price or conditions that the *matzran* is willing to give. Similarly, the seller may sell to someone else if selling to the *matzran* will cause some other loss to the seller.⁶ Therefore, you have the right to sell to whoever agrees to the highest final price or to the best conditions for you.

As we have seen, relatives have a preference regarding buying property. However, they do not have actual *bar metzra* rights. Does a renter have these rights? Regarding a renter who wants to continue renting a property, as opposed to bringing in a new renter, the *Taz*⁷ writes that the renter has the right to remain in the property, but the *Pitchei Teshuva*⁸ notes cases in which this might not be true. There are no specific *gemarot* regarding a renter of the property who wants to buy it, but the *gemara* does discuss⁹ the case of *mashkanta* – when one has a lien on the property in question stemming from the owner's debt to him. *Rishonim* and *Acharonim* view *mashkanta* and a renter as similar cases (in that both have a significant but temporary and non-ownership connection to the land), to the extent that they might possibly be halachically equivalent or close to it.¹⁰ These sources debate regarding several permutations of cases that pit renters and *mashkanta* versus *matzranim* or people with no connection to the property.

The *Shulchan Aruch*¹¹ writes that a renter's connection does not make him a *matzran* with regard to taking the land from the buyer of property adjacent to his rental. What about the sale of the

6. *Shulchan Aruch* and Rama op. cit. 23.

7. To *Shulchan Aruch* op. cit. 59.

8. *Choshen Mishpat* 175:27.

9. *Bava Metzia* 108b.

10. See *Beit Yosef*, *Choshen Mishpat* 175; *S'ma* 175:116.

11. Op. cit. 60.

rental property itself to someone other than the renter? On the one hand, the classic gain of combining properties does not apply in such a case. On the other hand, being able to acquire property to which one has become accustomed may count as maximization of benefit. The *Shulchan Aruch*¹² rules that the renter does not have *matzran* rights, even if the buyer had no connection to the property.

However, matters are not so simple. Regarding *mashkanta*, the Rama¹³ argues with the *Shulchan Aruch* and rules that the lender who holds the lien of the property can claim the purchase rights. The *S'ma*¹⁴ claims that the Rama likewise argues with the *Shulchan Aruch* and awards *bar metzra* rights to a renter on rental property as well. However, the *Pitchei Teshuva*¹⁵ cites several opinions that assume that the Rama does not argue regarding rental. On the other hand, the author of the *Shulchan Aruch*¹⁶ does not totally reject the idea of *matzran* rights of a renter, but rather emphasizes that it is not strong enough to **extract** property if someone else has **already** bought the land. Since you are asking about the proper actions **before** selling, there is reason to give the renter preference.¹⁷

To summarize, you have a choice between a weak halachic preference for a relative and a *machloket* about a renter's possible full *bar metzra* rights along with the likelihood of some level of precedence. While neither side has binding rights, each has some moral rights, and it is not fully clear who has more. Practically, therefore, you have the right to act in whatever manner you decide. However, this seems to be a case in which discussion might be helpful. The parties should know that while you care about the interests of each, neither seems to have a **clear** halachic advantage over the other. We hope you will be able to resolve things and come to a decision without any hurt feelings.

12. Ibid. 63.

13. Ibid. 57.

14. 175:116, cited by *Netivot HaMishpat (chidushim)* 175:67.

15. *Choshen Mishpat* 175:28.

16. See *Beit Yosef, Choshen Mishpat* 175.

17. See *Pitchei Teshuva* op. cit.

I-5: Paying for Another Person's Theft

Question: I was at a coffee shop, and an ostensibly religious Jew (Reuven) left intentionally without paying for what he had ordered. I heard the angry reaction of the proprietor (Shimon) and decided to pay in Reuven's stead, hoping to reduce the *chillul Hashem*. Did my payment exempt Reuven from needing to pay? Was there a need to pay *kefel* (double payment for covert theft)? Were the *berachot* that Reuven made on the food *l'vatata*, when it turns out retroactively that he had effectively stolen it? Also, how did my actions affect the *teshuva* process that Reuven will hopefully undertake?

Answer: Your actions and questions demonstrate noble concern for both your fellow man and the honor of HaShem, and it is a pleasure to analyze, on a basic level, the halachic elements you raise. This scenario, as you present it, raises troubling educational and societal issues, but we will suffice here by discussing the actual questions you have asked.

The *gemara*¹ states that one who pays his friend's debt without being instructed to do so is not considered as having given his friend positive benefit; rather, he has merely removed an obstacle, i.e., the friend's need to pay. (These legal categories are different regarding the laws of *nedarim*² and regarding whether the one who paid can demand compensation from the debtor.³) However, it is a given that in such a situation, the debt is considered paid, thus precluding any further demands on the debtor by the creditor. How payment by a person other than the debtor or his agent works is an important question. One

1. *Nedarim* 33a.

2. Oaths; see an application, *ibid*.

3. See *Ketubot* 107b; *Shulchan Aruch, Even HaEzer* 70:8.

possibility is a concept known as *eved k'na'ani*⁴ – when Levi gives something to Yehuda on behalf of Naftali, it is considered as if Naftali gave it to Yehuda.⁵ Another possibility is that at the time of payment, there is an implied stipulation between the payer and the creditor that the creditor receives the money on condition that he waives the debtor's debt.⁶

Your question about *kefel*, which is a penalty limited to certain specific cases and does not apply broadly to all monetary affronts, assumes that in your scenario there was an actual halachic theft. However, this is apparently not the case. The coffee shop willingly gave Reuven the food, and Reuven therefore did not steal it. Rather, upon receiving the food, Reuven became obligated to pay for it, an obligation that he did not fulfill. While it is an *aveira* not to pay a debt,⁷ such an infraction does not incur a *kefel* obligation.

One could argue that Reuven's actions were considered theft because had Shimon known Reuven's plan to "eat and run" (assuming that this was planned in advance), Shimon would not have given Reuven the food in the first place, such that Reuven receiving the food under false pretenses was effectively stealing. That is a fascinating perspective that has several related applications,⁸ but we cannot do justice to this point in this forum. In any event, even if we were to accept this argument, there would still be no *kefel* obligation in our case. On at least technical grounds, had Shimon read Reuven's mind **at the moment** Reuven would potentially have been stealing, i.e., when he received/ate the food which was already prepared for him, Shimon likely would have tried to force Reuven to take the food

4. *Kiddushin* 7a.

5. *Chazon Ish, Even HaEzer* 136, comments on *Nedarim* 33a.

6. *Mishneh LaMelech, Malveh VeLoveh* 5:14.

7. See *Bava Kama* 86a and the analysis of *Pitchei Choshen, Halva'ah* 2:(1).

8. See *Pitchei Choshen* *ibid.* (26) for one application. We find that there can be some level of theft even when one party gives something to his counterpart of his own volition but under unfair circumstances, such as in the context of gambling; see *Shulchan Aruch, Choshen Mishpat* 370:2 and *S'ma* ad loc. 3.

and pay for it, rather than take the food back.⁹ Thus, at that point, his deception was not responsible for his getting the food, but rather for not paying.

In any case, one is required to pay *kefel* only if a special *beit din* makes a ruling on the matter based on two witnesses. Even if Shimon would think to go through that formal process, since we have lost the uninterrupted chain of *semicha* from Moshe Rabbeinu,¹⁰ we now lack the authority to obligate penalty payments such as *kefel*.¹¹

If we were to view the food as actually stolen, then indeed any *berachot* that Reuven made on it would themselves constitute *aveirot*.¹² However, if we are correct that the sin was not in eating the food but rather only in failing to pay for it, the food itself was permitted for Reuven to eat, and the fact that the situation was likely to lead to a future *aveira* (not paying) did not preclude recitation of a *beracha*.¹³ Certainly, the food cannot become stolen **retroactively**, if and when Reuven ends up not paying.¹⁴

Whatever the *aveira* violated, Reuven certainly requires *teshuva*. There are several elements to *teshuva*. Reuven's need to confess sin, have remorse, and change his future behavior¹⁵ are obviously not accomplished by your noble actions. However, there is also a matter of practically rectifying one's actions vis-à-vis the person whom one wronged. The Rambam¹⁶ refers to making sure to pay any money due and also appeasing the victim for the accompanying affront. Your payment removed Reuven's ongoing requirement to pay his debt, which helps Reuven if he

9. In such an establishment, it is technically unfeasible to take back food that was already served.

10. See *Tosafot, Gittin* 88b.

11. *Bava Kama* 84b.

12. *Bava Kama* 94a.

13. Compare to *poskim* on *Shulchan Aruch, Orach Chayim* 196:1, including *Dirshu Mishna Berura* 196:2.

14. Even if he had decided definitively not to pay and it was clear that he would succeed in getting away with it.

15. See Rambam, *Teshuva* 2:2.

16. *Ibid.* 2:9.

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would otherwise ignore his duty to pay Shimon. However, he must still appease Shimon for the upset he caused him. Perhaps you removed some of the sting from Shimon, which probably helps Reuven.

Finally, we note that we hope that your noble act did indeed succeed in lessening the *chillul Hashem* by showing how a religious Jew should and can ideally act.

I-6: How Soon Must a Guarantor Pay?

Question: Must an *arev kablan* (a strong form of loan guarantor) pay immediately upon being asked to? If not, how much time does he have?

Answer: Let us first clarify the relevant terminology. There are different types of *arevim*, with the two main ones being a regular *arev* and an *arev kablan* (literally, a receiving *arev*). An *arev kablan* – who attains that status by means of explicit agreement or sometimes even through more subtle language and/or circumstances – is treated like a direct recipient of the loan, even though the practical beneficiary is someone else. This type of guarantor has a heightened level of obligation. While a lender can demand payment from a regular *arev* only if the borrower does not have enough money or assets from which to pay back the owed money,¹ a lender can demand payment from an *arev kablan* even if the borrower is capable of paying.²

The Rambam³ writes that an *arev* is not required to pay until 30 days have passed from the time he became obligated, just as a borrower is afforded 30 days. The Bach⁴ understands this to mean that the *arev* is treated exactly like the borrower for whom he is covering. Therefore, just as the borrower's 30-day grace period after the time he is obligated to pay applies only if he does not have liquid assets to pay immediately,⁵ the *arev* is granted 30 days only under parallel circumstances. The Shach,⁶ however, argues cogently that it is evident from the Rambam that the *arev* has an

1. *Shulchan Aruch, Choshen Mishpat* 129:8.

2. *Ibid.* 15.

3. *Malveh V'Loveh* 26:2.

4. *Choshen Mishpat* 129.

5. *Shulchan Aruch, Choshen Mishpat* 100:1.

6. *Choshen Mishpat* 129:23.

advantage over the borrower. Even if the borrower's time to pay has already passed, the *arev's* 30-day clock starts ticking only at the point the payment of the debt becomes his responsibility. Just as a borrower generally has use of the loan money for 30 days until the obligation to pay kicks in, an *arev* has 30 days to get around to paying, even if the borrower's obligation has already started and the *arev* is already now capable of paying.

However, it would seem that the *Shach's* ruling should apply specifically to a regular *arev*; it does not seem relevant to an *arev kablán*. Since the *arev kablán* accepts the responsibilities of the borrower, he does not deserve extra time beyond that which the borrower is granted. In the practical realm, since the lender can extract payment from the *arev kablán* without first trying to do so from the borrower, the *arev kablán* should not be surprised when the payment falls on him, and he should have planned his payment as the loan was becoming due.

However, we must still ask: Even if an *arev kablán* is like a borrower, is a borrower himself in fact supposed to pay as soon as his loan is due? The *gemara*⁷ states that "the time of *beit din* is 30 days." This means that from the time that *beit din* rules that an award should be paid, the standard time for carrying out the court's ruling is 30 days. Thus, if one admits to *beit din* that he owes money but requests time to raise the amount, *beit din* gives him 30 days to raise it.⁸ The Rama⁹ writes that this is only a default period of time. If the *beit din* understands that the litigant needs either more or less time, they should adjust the 30-day length accordingly, including by requiring immediate payment for those with the wherewithal.

The same is true of your case of *arev kablán*. In theory, he should pay right away; in practice, however, his request to push off the payment for 30 days (or a different time period, as per the Rama above) will be accepted when based on legitimate need.

7. *Bava Metzia* 118a.

8. *Shulchan Aruch, Choshen Mishpat* 100:1.

9. *Ad loc.*

The *Shulchan Aruch*¹⁰ cites two opinions regarding whether a borrower can request a 30-day grace period for payment when the target date of payment was set in advance. The rationale of the stricter opinion is that the borrower had preparation time for the payment, and he should have completed the preparation by the stated time.¹¹ There is strong logic to argue that in the case of an *arev kablan*, all would agree to give him the 30 days upon a reasonable request, even if the loan had a clear payment date. This is because even though the lender may come to the *arev* before the borrower, it is by no means clear that he will do so. Thus, the *arev kablan* can legitimately argue that he needs the normal amount of time to prepare payment, even according to the stricter opinion.

In summary, an *arev kablan* should pay the debt as soon after the lender's request as he reasonably can, which may often be immediately. If there are difficulties, the standard grace period is 30 days from the time he is asked to pay, just as it is for a borrower. It is possible that our assumptions about the reasonable expected speed of the payment may be slightly different for an *arev kablan* than for a borrower.

10. Op. cit. 2.

11. *S'ma* ad loc. 4.

I-7: Taking Unwanted Things against the Owner's Will

Question: During my service in the IDF, I witness many things being discarded, whether food or other items that people no longer have use for. My understanding is that the army does not allow people to take leftover food, due to concern that someone might get sick from it and sue the army as a result. Regarding non-food objects, I understand that if people get used to taking things that are about to be discarded, some will take things that the army still needs. If I am fully confident that something will be thrown out without being used again, but it has not yet actually been discarded, may I take the item for myself, in a manner that is technically against the rules?

Answer: First, let us be clear that this response is a general analysis and cannot by itself resolve your quandary. This is because many of the relevant elements can vary from one case to another similar case and because the setting of the army can make the situation unique. The army has the right to make rules of discipline that they (justifiably) expect soldiers to obey, even if the only reason for these rules is to maintain an atmosphere of discipline. The only way to be able to be sure that taking such an object is not problematic in a given case is by inquiring with the proper authority in that setting.¹

We also emphasize that our response is a theoretical analysis based on the assumptions you provide in your question. It should not be taken as correct concerning cases in which it is not possible to determine the veracity of such assumptions.

We are working with the assumption that the objects in question were, at some point, fully owned by the army and slated for worthwhile purposes. We are also assuming that at the time

1. Not always is the identity of that person clear.

of the dilemma, these objects were expected to eventually end up in the garbage, at which point they would be *hefker* (ownerless). There are two possible justifications for using such objects before they are disposed of:

1. **The owners give permission:** It is a good question whether permission has to be explicit or can even be assumed.² Presumably, if an owner refuses to give permission, the one whose request was rejected has little he can do about it, even if he believes the owner will not be adversely affected by his taking it.³ Granted, there is a concept of *kofin al midat S'dom*, that we may force a person to allow someone else to technically infringe on his ownership rights when failure to allow it is immoral.⁴ According to many, in a case in which we may force an owner to agree, one who wants to use the object may take it on his own accord.⁵ However, when there is any semi-plausible reason that the owner might lose out by his object being taken, it is forbidden to take it against the owner's will, even if his objection is due only to concern about what **might possibly** happen and even if the potential damage is not a direct, standard type of damage.⁶ The reasons you cited for the army not agreeing to take the items suffice such that one may not take such items against the army's will.

It is plausible, as you suggest, that the reason an entity such as the army does not give permission to others to take their food is not because they really do not want it taken, but only that they wish to protect the army from being sued if someone gets sick. If this is indeed the case, that would change the picture. However, we cannot more than conjecture whether or not that is the case here.

2. **The object has already become *hefker* (ownerless):** In general, an owner needs to make an actual declaration in front of

2. See *Machaneh Ephrayim*, *Gezeila* 2; *Shach*, *Choshen Mishpat* 358:1.

3. Rama, *Choshen Mishpat* 363:6.

4. *Bava Batra* 12b.

5. See Rosh, *Bava Kama* 10:16.

6. See *K'tzot HaChoshen* 154:1.

others in order for his property to become *hefker*.⁷ However, in a situation in which it is clear to the reasonable observer that the owner has no interest in keeping the object or trying to prevent someone else from obtaining it, no actual *hefker* procedure is necessary.⁸ In such a case, a person who would like to take the object need not be concerned that perhaps this owner is different from the norm.⁹ It is possible that even if the owner, for some strange reason, does not want others to take the object (yet), his highly unusual outlook is not halachically significant, and one may therefore treat the object as already *hefker*.¹⁰ However, if in the case you are presenting, there are rational reasons for the army to not want others to take the objects, the objects are not *hefker* before some actual process of *hefker* has occurred.

7. *Shulchan Aruch, Choshen Mishpat* 273:3,7.

8. See *Pesachim* 6b; see Rashi ad loc.

9. *S'fat Emet* ad loc.

10. *Ibid.*

I-8: Paying for Work One Refused to Pay for

Question: My child's friend (under bar mitzva) has joined my son in helping me with various chores and projects around the house. He has asked many times if I will pay him, and I always say, "No." I have never asked him to help, although I do appreciate it. Now he has come to me with the claim that I owe him money for all he has done. Might he have a halachic right to be paid, or may I just brush it off?

Answer: In our eyes, the most important issue here is the personal, educational one. I would not be happy if my child was – as this child apparently is – obsessed with getting paid in situations in which children in his situation usually do what he does without pay, and beyond that, argues about it with his friend's parent. If the child's parents are involved healthily in his character development and interact reasonably with you, it is worthwhile to discuss the matter with them for the child's welfare. It would be best if you and they together develop a practical plan to deal with the matter.

It might be best to pay the child something, so that he does not feel that adults take advantage of him. On the other hand, he might be well-served by being put in his place. We are not child psychologists, nor do we know the child in question, and we therefore cannot give clear recommendations about what is best for the child in this situation. We trust you to handle this important matter wisely and sensitively – again, preferably in conjunction with his parents.

Regarding the halachic element of the question, we cannot tell you anything that you could cite as a ruling, as we have not heard both sides. However, since we do not suspect that you are going to a *din Torah* or to a court case with this child, we will discuss the matter with you, emphasizing that this should be taken

only as a point of reference for you.¹

There are two elements that can require one to pay for work done on his behalf: one's agreement (explicit or implicit) and being a *neheneh* (gaining benefit from the work).² In this case, the would-be employer (you) did not agree (and even refused) to pay, thus precluding payment based on agreement. On the other hand, the would-be worker (the child) did not waive any pay due him (and even demanded it). Therefore, if it is objectively due to him as a result of *neheneh*, he should deserve pay.

The Rama³ discusses the case of one who was in jail along with a friend and used his resources to secure the release of both of them. The Rama writes that if he needed to add resources to include his friend in the release or if he used his resources with the release of both of them in mind, his friend must pay him. The Rama then presents a general rule: "In the case of anyone who does an action or a favor for his friend, [the friend] cannot say: 'You did it for free, because I did not tell you to do it,' but rather he must pay his wages." Therefore, to the extent that you benefitted from the child's work, you ostensibly would be obligated to pay.

One could argue that the Rama's ruling is not applicable to your case, because he refers to a case in which the recipient of the favor said nothing in advance regarding payment, whereas you said explicitly that you were unwilling to pay. The *Pri Tevu'ah*⁴ mentions that possibility, but he rules that if the worker intended to get paid and there was a situation of *neheneh*, the recipient still ordinarily has to pay. On the other hand, *Shut Mahari'a HaLevi*⁵ says that it does not make sense that one must pay after he explicitly told his counterpart in advance that he refuses to do so.

Given the fact that there are differing halachic opinions, it would be difficult in such a case for the worker to extract money

1. See response I-1 in this volume.

2. See *Living the Halachic Process* vol. IV, I-10.

3. *Choshen Mishpat* 264:4.

4. *Shut Pri Tevu'ah* I:58, cited by the *Pitchei Teshuva*, *Choshen Mishpat* 264:3.

5. II:151.

in *beit din*, but that does not necessarily give one of whom the money is being claimed a moral “clean bill of health.” The *Pitchei Choshen*⁶ claims that the *Pri Tevu’ah* was discussing a case in which the recipient of another’s work expressed only **dissatisfaction** at the idea of paying and also wanted the work done. In contrast, if he conclusively **refused** to pay, all would exempt him. This distinction **might** be further reason to exempt you in your case.

There might be another reason to exempt you. Considering that the work was being done by you and your children, as opposed to hired help, it seems likely that it would have been done anyway without your spending any money. Thus, from a practical perspective, there is little⁷ or no halachically relevant benefit for which to claim.⁸ Therefore, any payment would be minimal.

Another complicating factor of the child’s claim is that **if** anyone has a halachic right to receive payment, it is likely the child’s father.⁹ Thus, if the child’s father does not want you to pay, you certainly would not need to.

We will conclude by emphasizing that independent of the actual halachic question, what is most proper to do in this case is what will ultimately most benefit the welfare and development of your son’s friend.

6. *Sechirut* 8:(64).

7. For saving some time and energy for you and your son.

8. See *Shach, Choshen Mishpat* 246:11.

9. Rama, *Choshen Mishpat* 270:2.



Glossary

A

Acharonim – the Talmudic and halachic scholars who lived from the 16th century until our days.

achsenai – guest.

achshevei – the idea that when one purposely puts a small amount of prohibited food in a mixture, this gives it special importance that impedes its nullification.

Al HaEtz – the blessing recited after eating grapes, figs, pomegranates, olives, or dates.

Al HaGefen – the blessing recited after drinking wine.

Al HaMichya – the blessing recited after eating grains not prepared as bread.

aliya (pl. – **aliyot**) – when a man is called up to the Torah to bless before and after a section of its public reading.

alot hashachar – the halachic beginning of the morning, somewhat more than an hour before sunrise.

amen – the response to a blessing, expressing agreement with its content.

amen chatufa – a response of amen done in an improper, hasty manner.

amira l'nochri – a Jew telling a non-Jew to do something that is forbidden for the Jew to do. This is often Rabbinically forbidden.

Amora (pl. – **Amora'im**) – a rabbinic scholar of the Amoraic period, from approximately 200 – 500 CE.

amot – cubits; a measurement with applications in several halachic contexts. The standard opinion is that each one is approximately a foot and a half (45 centimeters).

amud – the podium in the front of the synagogue from which the cantor leads the services.

ani hamehapech b'charara – lit., a poor man handling a biscuit; the situation where one is toiling to acquire an object, so that it is wrong for someone to take the opportunity from him.

arev – a guarantor (to a debt).

arev kablán – a guarantor who accepts a specially high level of obligation to pay.

arev sh'lof dotz – a guarantor who obligates himself to pay another's loan exclusively, as if he were the borrower.

arvut – the mutual obligation that one has for others, including in the context of fulfillment of religious obligations.

Asher Yatzar – the blessing recited after using the bathroom.

Ashkenazi (pl. – **Ashkenazim**) – a Jew of Central or Eastern European origin.

Ashrei – an important prayer, recited three times a day.

aveilut – the atmosphere and/or laws of a period of mourning.

aveira (pl. – **aveirot**) – sin.

avel (pl. – **aveilim**) – a mourner.

avodat HaShem – service of God.

B

ba'alei chesed – people who excel in performing acts of kindness.

ba'al simcha – a celebrant.

ba'al tokeiah – one who blows the *shofar*.

bal tosif – the prohibition on making additions to the performance of a *mitzva*.

bal tashchit – the prohibition against destroying objects.

bal yeira'eh – the prohibition to possess *chametz* in one's domain on Passover.

bar metzra – someone who lives next to an available property, who deserves the first chance to acquire it when it is for sale.

baraita – a Talmudic text from the time of the Tanna'im that was not incorporated in the *Mishna* or the *Tosefta*.

Barchu – a responsive declaration of praise to HaShem.

baruch HaShem – thank God.

Baruch She'amar – the blessing that precedes *P'sukei D'Zimra* (in the morning prayers).

basar b'chalav – meat mixed with milk, a forbidden mixture.

basar kafu – meat that was frozen before *kashering*.

batel – something halachically indistinguishable from its surroundings in a manner that it loses its halachic status.

bayit (pl. – **batim**) – the compartments of *tefillin* that contain the scrolls.

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.

bechezkat besari – a basically *pareve* food that had a low level of exposure to meat.

bedikat chametz – the *mitzva* to check one's house for chametz before the Pesach holiday.

bein hashemashot – twilight; the time that is halachically considered neither definite daytime nor definite nighttime.

beit din (pl. – **batei din**) – rabbinical court.

Beit HaMikdash – the Holy Temple in Jerusalem. The first was destroyed c. 2,600 years ago; the second was destroyed c. 2,000 years ago. We pray for the building of the third and final one.

beit kneset (pl. – **batei kneset**) – Hebrew for the Yiddish, *shul* – a synagogue, where Jews assemble to pray.

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**) – a blessing recited after one eats.
- beracha l'vatala** – a blessing recited in a manner in which it has no value, which is forbidden.
- besamim** – fragrant herbs or branches. One smells them after Shabbat to “revive” the soul after Shabbat departs.
- betziat hapat** – the breaking of bread, in the beginning of a meal.
- bima** – the platform and/or table in the middle of the synagogue.
- birchot hanehenin** – the blessings before eating foods.
- Birchot HaShachar** – the series of blessings recited before morning prayers, thanking God for providing the basic necessities of life.
- Birchot Kri'at Shema** – the blessings recited before and after Kri'at Shema.
- birchot hamitzva** – blessings recited before performing a *mitzva*.
- 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 new day or 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*).
- bitul** – the concept of something being *batel* (see entry).
- bitul chametz** – the declaration that one does not want to have rights over chametz in his possession.
- bi'ur chametz** – the physical destruction of chametz.
- bizuy (mitzva)** – a disgrace done to a *mitzva* or an object connected to it.
- bli neder** – a statement that conveys the idea that some good action or oral commitment should not be construed as a binding vow.

- Borei Nefashot** – a blessing recited after eating certain foods.
- Borei Pri HaAdama** – the blessing recited before eating foods that grow from the ground, like vegetables.
- Borei Pri HaEtz** – the blessing recited before eating a fruit that grows on a tree.
- Borei Pri HaGafen** – the blessing recited before drinking wine or grape juice.
- borer** – selecting, one of the 39 forms of forbidden work on Shabbat.
- brit (mila)** – the *mitzva* and celebration of the circumcision of a Jewish male.

C

- chag** – festival; see also *Yom Tov*.
- challa** – a loaf of bread that is the basis of the Shabbat/*Yom Tov* meals; the piece of dough removed during *hafrashat challa*.
- chametz** – leavened bread or other grain-based food, which it 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* burned for eight days.
- chanukat habayit** – the celebration of moving into a new home.
- chasidut** – piety.
- chatan** – a groom.
- chatzitza** – a problematic obstruction between two objects that are supposed to come in contact with one another.
- chatzot** – the astronomical middle of either the day or night. This time has halachic significance in a number of contexts.
- Chazal** – a generic term for the Jewish scholars at the time of the Talmud (approximately 1-500 CE).
- chazan** – a cantor or prayer leader.

chazanut – related to being cantor or prayer leader.
chazarat hashatz – the repetition of *Shemoneh Esrei* by the cantor.
chesed – an act of kindness.
chillul Hashem – the desecration of HaShem’s name, including when a person who is viewed as (particularly) religious acts improperly.
chiyuv – lit., obligation; a mourner or someone who has a *yahrtzeit*, which gives him priority regarding leading services.
chol – mundane; a day that is not Shabbat or *Yom Tov*.
Chol HaMo’ed – lit., the mundane of the festival; the intermediate days of the holidays of Pesach (Passover) and Sukkot (Tabernacles). These days includes some, but not all, of the halachic elements of the main days of the festival (*Yom Tov*).
chozer v’ne’ior – the change of status (toward stringency) of a mixture of kosher and non-kosher based on the beginning of a period of stricter halachic rules.
chumra (pl. – **chumrot**) – stringency.
chutz la’aretz – the Diaspora (lands outside of the Land of Israel).

D

davar she’eino mitkavein – a case in which one performs an action that is permitted on Shabbat that may, as an unintended consequence, cause a prohibited result as well.
daven/ing (see table of contents for section A on *tefilla*) – Yiddish for pray/ing. The term “*davening*” can also refer to a prayer service as a whole.
dayan (pl. – **dayanim**) – a rabbinical judge.
devarim shebekedusha – those particularly holy prayers that require a quorum of ten men in order to be recited.

E

eino ben yomo – a utensil that has not been used in the past 24 hours.

eiruv – one of a series of Rabbinic mechanisms that make it permissible to do what would otherwise be Rabbinically prohibited; often refers to an *eiruv chatzeirot* specifically, which allows one to carry in an enclosed public area on Shabbat.

eit tzara – a time of distress and/or strong need.

Eretz Yisrael – the Land of Israel. This can refer to the 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 – eve of...

etrog – a specific citrus fruit (citron), one of the four species used on the holiday of Sukkot.

eved ivri – a Jewish servant, under a master's control.

eved k'na'ani – a halachic construct that allows one to receive financial credit for the payment another made on his behalf.

F

fleishig – Yiddish for a food that comes from or has absorbed taste from meat. It is forbidden to eat such a food together with milk products. This term is also often used to describe utensils used for meat and the state of one who has eaten meat and therefore may not eat dairy for the time being.

frum – Yiddish for religious.

G

gabbai – a person in charge of something (e.g. synagogue services, charitable funds).

gadol – an adult male (i.e., after bar mitzva).

gemara – the section of the Babylonian Talmud that contains the discussion of the Amora'im.

geneivat da'at – deceit.

get – a religious bill of divorce.

H

hafrashat challa – the removal of a piece from dough, which, were it not for problems of ritual impurity, would have to be given to a *kohen*.

haftara – the reading of a section from the Prophets after the Torah reading.

Haggada – the text recited at the Passover *Seder* and the book that contains it.

halacha (pl. – **halachot**) – the field of Jewish law; an operative Jewish law; the halachic opinion that is accepted as practically binding in the case of a rabbinic dispute.

halacha l'ma'aseh – the halacha as expected to be practiced, as opposed to a theoretical halacha that is unlikely to be implemented.

Hallel – several psalms that are recited joyously on festivals.

HaMavdil – the main blessing of *Havdala* ending Shabbat or festival.

HaMotzi – the blessing recited before eating bread.

HaShem – lit., “The Name.” Common practice is to use this word to refer to God in order to avoid using His Name in inappropriate settings.

hashgacha – rabbinic supervision, usually to ensure the kashrut of food.

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 – a blessing said for a significant benefit

received by multiple people.

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.

hechsher (pl. – **hechsherim**) – rabbinical certification.

hefker – ownerless.

hefsek – a problematic interruption, often in the performance of a *mitzva*, recitation of a prayer or blessing, or between a blessing and that which it refers to.

hiddurim – performance of a *mitzva* in a particularly preferred way.

I

illuy neshama – the “elevation” of the soul of a deceased person.

issur (pl. – **issurin**) – a prohibition.

K

Kabbalat Shabbat – the acceptance of Shabbat upon oneself; the prayer recited on Friday evening to welcome in Shabbat.

kabbala/kabbalistic – esoteric mystical Jewish teaching and literature related to them.

Kaddish – a prayer (in which we sanctify God’s Name) that is recited by a member or members of the congregation, often by mourners.

Kaddish Titkabel – a form of *Kaddish* said at the completion of a prayer service.

Kaddish Yatom – the *Kaddish* traditionally recited by mourners.

Kaddish D’Rabbanan – the *Kaddish* recited after public Torah study.

kalla – a bride.

karpas – a vegetable eaten during the Passover *Seder*.

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.

katan – lit., small; a minor (i.e., before bar mitzva).

katzatz – setting a price for the work a non-Jew does.

kavana – intent.

k'dei chayav – income needed for a basic living.

Kedusha – a prayer recited during the repetition of *Shemoneh Esrei*.

kedushat ha'aretz – the special sanctity of the Land of Israel.

ketuba – a formal marriage contract that, among other things, ensures a Jewish wife financial support during and after her marriage.

kibbud (pl. – **kibbudim**) – the honor of being asked to perform one of the religious functions in synagogue.

Kiddush – the blessing through which we sanctify Shabbat. It is recited over wine before the Shabbat meal both at night and in the day.

kiddushin – the first part of the marriage process.

kilayim – the prohibited mixing of species.

kinyan – an act of finalization of a transaction.

kiruv – religious outreach.

klal – community.

Klal Yisrael – the Jewish People.

kli – utensil.

kohen (pl. – **kohanim**) – a member of the priestly tribe (who descend from Aaron). Members of this tribe have special religious obligations, roles, and privileges.

korban (pl. – **korbanot**) – sacrifice (in the Holy Temple, may it be rebuilt soon).

Korban HaOmer – the sacrifice brought from barley on the second day of Passover.

kosher – suitable, especially for eating.

Kri'at Shema – three sections of the Torah containing basic elements of our faith. The Torah commanded us to recite these sections every morning and evening.

k'zayit – the size of an olive. This measurement has many halachic ramifications.

L

lain/ing – Yiddish for reading the Torah (*kri'at haTorah*).

lashon hakodesh – lit., the holy tongue; the original Hebrew, in which the sacred texts were given.

l'chatchila – lit., in the first place; the ideal way of acting.

Lecha Dodi – the poem recited when welcoming in Shabbat.

lechem mishneh – the two loaves of bread eaten at the meals of Shabbat and festivals.

levi – a descendant of the tribe of *Levi*. Members of this tribe have certain roles and privileges.

lulav – a palm branch, one of the four species used on the holiday of Sukkot.

l'vatata – see beracha l'vatata.

M

Ma'ariv – the evening prayer.

ma'aser (pl. – **ma'asrot**) – one of a number of tithes in which one gives a tenth.

ma'aser kesafim – the recommended practice of giving one tenth of one's earnings to charity.

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.

Marcheshvan – a Jewish month in early autumn.

marit ayin – giving an impression that one is doing something forbidden.

mashgiach– *kashrut* supervisor.

Mashiach – the Messiah.

Mashiv haruach u'morid hageshem – the passage in prayer, praising God for bringing rain.

Me'ein Shalosh – condensed form of *Birkat HaMazon* recited after eating foods made from one of the seven species for which *Eretz Yisrael* is praised (wheat, barley, grapes, figs, pomegranates, olives, dates).

Megillat Esther – The Book of *Esther*, read on Purim, which is written on a Torah-like scroll.

melacha (pl. – **melachot**) – an activity that the Torah prohibits on Shabbat.

menachem (pl. – **menachemim**) (**avel**) – one who offers consolation to a mourner.

mevatel – doing *bitul* (see entry).

mezuzah (pl. – **mezuzot**) – a scroll containing certain fundamental Torah passages. There is a *mitzva* to attach *mezuzot* to the doorposts of one's house.

middot – personal attributes.

Mikdash – sanctuary; see *Beit HaMikdash*.

mikveh – a specially constructed pool for the ritual immersion of people and utensils.

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 and the state of one who has eaten milk products.

min b'mino – when two foods of the same type are mixed together.

Mincha – the afternoon prayer.

minhag (pl. – **minhagim**) – a custom or general practice.

minhag ha'olam – a widely accepted practice.

minhag Yerushalayim – custom of the people of Jerusalem.

minyan (pl. – **minyanim**) – a quorum of ten men who pray together. A minyan is required in order to recite certain prayers.

mishna (pl. – **mishnayot**) – the most authoritative teachings of the *Tanna'im* (c. 1-200 CE).

mitzva (pl. – **mitzvot**) – a commandment; a good deed.

Modim – one of the blessings in *Shemoneh Esrei*.

Modim D'Rabbanan – the paragraph recited by the congregation when the *chazan* reaches the blessing of *Modim* in *chazarat hashatz*.

mohel – one who performs a circumcision.

Motzaei Shabbat – Saturday night, after the conclusion of Shabbat.

muktzeh – something that does not have the type of function or status on Shabbat that allows it to be moved.

muktzeh l'mitzvato – something which is not to be used because it is set aside for the fulfillment of a *mitzva*.

Musaf – the additional prayer on special days.

N

navi – prophet.

nazirc – nazirite; one who accepts certain extra restrictions, including not to consume grape products.

neder – an oath.

nefilat apayim – putting one’s head down during the *Tachanun* prayer.

neshama – a soul.

netila – short for *netilat yadayim*.

netilat yadayim – the procedure of washing one’s hands in a certain way in certain circumstances, such as before eating bread.

nichum aveilim – the consoling of mourners.

Nirtza – the final section of the Passover *Seder*.

nusach – specific texts and tunes used in the synagogue services, which may differ from community to community; classic tune for liturgy.

O

oleh (pl. – **olim**) – one who is called up for an aliya to the Torah.

omer – the seven-week period between Pesach and Shavuot, during which it is a *mitzva* to count the days.

P

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 on a male child who is the firstborn of his mother and is not a *kohen* or *levi*.

pirsumei nisa – the publicizing of a miracle.

Pitum HaKetoret – one of the concluding sections of morning

prayers, which describes the bringing of incense in the *Beit HaMikdash*.

plag hamincha – a time slightly more than an hour before sunset.

po'el – a worker paid on the basis of time.

posek (pl. – **poskim**) – scholar who regularly renders halachic rulings.

p'sak – a halachic ruling.

p'shara – compromise.

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.

Purim – the holiday celebrating the salvation of the Jews of the Persian Empire from a cruel oppressor.

R

rav (pl. – **rabbanim**) – rabbi.

refuah shleima – a full recovery; a standard blessing for recovery.

revi'it – a measure of liquid of approximately 3-4 ounces.

ribbit – forbidden interest payment on a loan or other monetary obligation.

Rishon (pl. – **Rishonim**) – A Talmudic or halachic scholar who lived between 1000-1500 CE.

Rosh Chodesh – the beginning of a Jewish month (lunar).

Rosh Hashana – the holiday that is both the Jewish New Year and the Day of Judgment.

rosh yeshiva – head of rabbinical institute.

S

safek – a situation of doubt.

safek berachot l'hakel – the principle that in situations of doubt, we refrain from reciting possibly unnecessary blessings.

sandek – the one who holds the baby during a *brit*.

s'chach – the special roof placed on top of the *sukka* for the festival of Sukkot.

Seder – the “order” of religious observances and the feast on the first night(s) of Passover.

Sephardi (pl. – **Sephardim**) – Jews from the communities of North Africa, the Middle East and the Near East.

sefer Torah – Torah scroll.

sefirat ha'omer – the daily counting of forty-nine days from the second day of Pesach until Shavuot.

segula (pl. **segulot**) – a spiritual/mystical positive practice.

semicha – rabbinic ordination.

seuda – a meal.

seuda shlishit – the third Shabbat meal.

seudat brit – the meal celebrating a *brit mila* (circumcision).

seudat hodaya – meal of thanksgiving.

seudat mitzva – a meal in honor of something that the Torah deems worthy of celebration.

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.

Shavout – 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 that do not have a more specific text.

Shehecheyanu – the blessing recited upon experiencing certain new and significant or cyclical events.

sheki'ah – sunset.

- 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.
- shir shel yom** – the daily psalm for each day of the week.
- shiva** – the seven-day period of mourning after the death of a close relative.
- shloshim** – the thirty-day period after the death of a relative, which has special rules of mourning.
- shochet** – a ritual slaughterer.
- shofar** – the ritual “musical instrument” made of a ram’s horn that is used to blow certain types of blasts on Rosh Hashana.
- Shomei’ah Tefilla** – blessing in *Shemoneh Esrei* in which we address God as the “One Who hears prayer.” Personal requests are often inserted in this blessing.
- shoteh** – a lunatic.
- shul** – Yiddish for synagogue.
- Shushan Purim** – the 15th of Adar, the day on which Purim is celebrated in Jerusalem and a few other ancient cities.
- siddur** – prayer book.
- simcha** – happiness.
- sofer** (pl. – **sofrei stam**) – a scribe who writes (or one who sells) Torah scrolls, *tefillin* and *mezuzot*.
- sukka** – the booth one sits in on Sukkot (Tabernacles).
- Sukkot** – Tabernacles, the holiday during which we celebrate the Divine protection of the Jewish people during their sojourns in the wilderness, as well as the yearly harvest.

T

Tachanun – a prayer recited after *Shemoneh Esrei* during which people “fall on their face,” due to its particularly plaintive nature.

talmid chacham – literally, a student of the wise; a Torah scholar.

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).

techum Shabbat – the confines of a city, where one is permitted to walk on Shabbat.

tefachim – plural of a measure used in halachic matters, approximately three inches (eight centimeters).

tefilla – prayer.

tefilla b'tzibbur – a prayer service that is held in a communal setting, with a quorum of ten adult males.

Tefillat HaDerech – prayer requesting divine protection while traveling.

tefillin – phylacteries, specially made boxes containing hand written scrolls upon which four sections of the Torah are written. Jewish men wear them during weekday morning prayers.

tefillin shel rosh – the phylacteries placed on the head.

Tehilla L'David – the central psalm of *P'sukei D'Zimra*.

terumot – tithes given to a *kohen*.

teshuvot – responsa.

tevel – produce that requires tithing, which is forbidden until that is done.

tevillat keilim – immersion of certain newly acquired utensils in a *mikveh*.

tochein – grinding; one of the forbidden actions on Shabbat.

Torah – teachings of Jewish law, Bible, and ethics; the Five Books of Moses.

treif – colloquial term for something that it is not kosher.

treifa – meat that is forbidden because the animal was severely damaged.

tumah – impurity.

tzaddik (pl. – **tzadikim**) – a righteous person.

tzedaka – charity.

tzibbur – a community.

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.

U

U’Va L’Tzion – a prayer recited in *Shacharit* on weekdays and at *Mincha* on Shabbat.

uvdin d’chol – activities on Shabbat or a festival that are characteristic of weekday activity and therefore problematic.

V

v’ten tal u’matar – the request (within *Shemoneh Esrei*) for rain.

Y

yahrtzeit – Yiddish for the anniversary of the death, often in the context of observances by a close relative.

yayin nesech – wine used in idol worship.

yehi ratzon – a type of prayer beginning with the words “May it be Your will.”

yeshiva – academy of Jewish study.

yetziat Mitzrayim – the exodus from Egypt.

yisrael – a Jewish male who is not a *kohen* or *levi*.

Yom Kippur – the Day of Atonement, the fast day that is the holiest day of the year.

Yom Tov (pl. – **Yamim Tovim**) – the main day(s) of Jewish festivals, during which it is forbidden to engage in most of the actions that are forbidden on Shabbat.

yotzei – fulfilled an obligation.

Z

zimun – the responsively recited introduction to *Birkat HaMazon*, recited when three men eat together.

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