

ASK THE RABBI VOLUME III

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

Headed by

Harav Moshe Ehrenreich and **Harav Yosef Carmel**

By

The Eretz Hemdah Students and Faculty



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הוצא לאור בהשתתפות המשרד לשרותי דתות

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

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

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

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

With Torah Blessings,

Rabbi Yosef Carmel

Rabbi Moshe Ehrenreich

Rabbinical Deans of Eretz Hemdah



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THE LAWS OF SHABBAT

1. Running for Pleasure on Shabbat

Question: I am an avid runner. I do not run simply for fitness, but I truly enjoy it. I derive great pleasure from running. Am I permitted to run on Shabbat?

Answer: Strictly speaking, there is no prohibition to run for enjoyment on Shabbat. Only if it is done for fitness is there a formal prohibition. However, the application of when it is appropriate to run is a serious question of the atmosphere of Shabbat. This question breaks up into two parts; public and private.

Shabbat is a day which puts a stress on limiting physical exertion and having it give way to rest and, more importantly, to spiritual elevation. Spending a day, or a good part of it, on serious running is less than optimal. On the other hand, I am not so naive as to believe that anyone who isn't busy running, is busy engaging in Torah study or spiritual introspection all day. So, from this perspective, it is hard to give practical advice without knowing you and the practical alternatives of refraining from serious running.

A similar situation exists on a communal level. For respected members of the community to be seen in full weekday running gear, involved publicly in that which is perceived as a very weekday-like activity, is something that may raise eyebrows. Whether or not they are aware of the great pleasure you personally derive from the activity, the special atmosphere of Shabbat which hopefully exists in your community on at least some level, may be affected. Even if it is affected slightly, this is an issue, especially because public activities may create snowball effects. In this regard, it would be particularly important to confer with a local rabbi to receive his appraisal of the situation.

In my running days, I used to enjoy the mental discipline and willpower it took to keep on going well after part of me wanted to stop. I would like to think that some of that discipline has assisted me in my Torah studies to continue learning even when part of me was interested in stopping or taking a longer break than necessary. While Shabbat is not the time to work on mental discipline, it

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might be particularly appropriate for someone who has experience in that skill to turn his focus to rigorous Torah study even when part of him, and perhaps his friends and family, are pulling him towards other pursuits.

2. Asking a Non-Jew to Do a *Psik-Reisha* on Shabbat

Question: In my apartment building, the front lobby has a light which automatically goes on in the evening hours when a person comes through the entrance, and passes in the range of a sensor. (From my observation it seems impossible to avoid being in this range). There is another source of light present in the lobby which would enable someone to see where they are going even without this light. You had answered in the name of Rav Vosner, that in these circumstances it is preferable (unless it is a *sha'at hadchak*) not to pass through this lobby on Friday night if this light will be activated by going through. One should wait for a non-Jew to go through first. Can one actively request the non-Jewish doorman to walk in front of the light in order to activate it?

Answer: The Rema (253:5) writes that it was the custom for non-Jews to place pots on the cold oven, and then light the fire in order to heat the pots. Even though this is a *psik reisha* and forbidden for a Jew, it is permitted, since it is performed by a non-Jew. Similarly, it is permissible to ask the doorman to enter because *psik reisha* is permitted when asking a non-Jew to do the act.

Sources: *Shulchan Aruch, Orach Chaim* 253:5. Rema and *Mishna Berura* ibid 99, *Sefer Melachim Omnayich* pg.265.

3. Umbrellas on Shabbat

Question: I understand that using an umbrella on Shabbos that was opened prior to Shabbos is prohibited by the *poskim* due to *maaris ayin*. Can a person therefore use a “Shabbos umbrella” on Shabbos that always remains open and never closes to avoid *maaris ayin* issues?

Answer: It has already been accepted by *klal Yisrael* to forbid the opening or carrying of an umbrella on Shabbat (*Noda B’Yehuda, Orach Chaim 30*). The reason is that according to *halacha* it is like building a temporary tent on Shabbat. (According to the Rif this is a Torah based prohibition). Even if the umbrella is opened before Shabbat it is forbidden to carry on Shabbat for two reasons:

A: *Marit ayin* (giving the appearance of a forbidden act).

B: The possibility that it is considered building a temporary structure: Opening the umbrella is not what makes it forbidden, rather, the lifting and placing the umbrella over one’s head. Similarly, the *Shulchan Aruch (Orach Chaim 301:40)* prohibits wearing a hat with a brim wider than a tefach.

It should be mentioned that the *Noda B’Yehuda* hesitates with regards to whether lifting the umbrella above one’s head constitutes constructing a temporary structure.

Your solution does not solve the problem of *marit ayin* and, in addition, because the prohibition of building may apply, one cannot permit the use of umbrellas.

For these reasons, the Rabbis ruled that the use of umbrellas on Shabbat is prohibited even in places where there is a lot of rain, and this custom is widespread. (*Shut Yechaveh Daat 4:43 & Mishpetei Uziel 14*).

Beyond the *halachic* reasons, the fact that the prohibition of umbrellas is so widely and unanimously accepted in the community means that it would be problematic to contradict this custom even if one had *halachic* basis to do so. The statement “don’t change a custom in order not to cause dispute” (*Pesachim 50b*) applies here.

4. *Shehecheyanu* Upon Beginning to Light Shabbat Candles

Question: Does a *kallah* on the first Shabbos following her wedding make "*shehecheyanu*" on the candles on Friday night? (Most *meforshim* seem to say to not make the *beracha*, but there appears to be two conflicting views brought down in the *Taamei HaMinhagim* both in the name of the *Ya'avetz*).

Answer: The *Ya'avetz* writes in his *sefer*¹ that it would seem that a woman should make a "*shehecheyanu*" the first time she performs this *mitzva*. However there is a big debate whether we make a "*shehecheyanu*" on every *mitzva* the first time we do it. There are some who say that she should make a "*shehecheyanu*",² and there are some that dispute this³. The *poskim* of our generation wrote that she should not recite "*shehecheyanu*", and if she wishes to do so, she should eat a new fruit or wear new clothing so that she can recite "*shehecheyanu*" for both together.⁴

¹ *Dinei Erev Shabbos*.

² *Shut Chatam Sofer, Orach Chaim 55*.

³ *Magen Avraham, Orach Chaim 22:1, Biur Halacha* *ibid*.

⁴ *Tzitz Eliezer 13:24, Mishne Halachot 6, Shmirat Shabbat K'hilchata* Vol.2 pg.57, and others.

5. Lactose Pills on Shabbat

Question: In order to properly digest milk, I need to take lactose pills. Would it be permitted to take such pills on Shabbat in light of the *issur refuah*?

Answer: It is permitted to take lactose pills on Shabbat, because the purpose of the medication is preventative and not to cure (*Sefer Refuat Shabbat & Tzitz Eliezer* 11:37).

6. Questions Regarding *Muktzeh*

Question: Is *tiltul min hatzad* (moving *muktzeh* indirectly) allowed for any reason other than the use of the non- *muktzeh* item-i.e. can you use *tiltul min hatzad* to remove unwanted *muktzeh*?

Also, do doors ever become a *bassis* for a *d'var muktzeh*?

Answer: Answer to first question:

Tiltul min hatzad, moving with the help of another object, is permissible for the need of a permissible thing. For example, it is permitted to move bones that are not fitting for food consumption off of one's table, with the help of a knife, if you want the table to clean. But if you do this so that the *muktzeh* object will not be damaged or because you need the *muktzeh* object in a different place, then it is forbidden to move even via *tiltul min hatzad* (*Shulchan Aruch* 311:8).

Answer to second question:

A door can never become a *bassis l'davar hamuktzeh* (a base for a *muktzeh* object), because a door is an important feature of the house that it serves, and thus the *muktzeh* on the door is unimportant relative to the door and becomes *batel*, nullified, to it (See *Mishna B'rurah* 277:7 and *Shmirat Shabbos K'Hilchita* 20:74).

7. Causing *Melacha* to be Performed in a Time Zone Where it is Still Shabbat

Question: Is one permitted to cause a *melacha* to be performed on Shabbat, if he is in a place where it is no longer Shabbat (such as after Shabbat in Israel, causing a *melacha* to take place on Shabbat in America)? If this is prohibited, may one visit websites that are based in America on *Motzei Shabbat* in Israel, or is this considered causing a *melacha* to take place?

Answer: The fact that *melacha* is done on Shabbat in America is not a problem. However, if it causes a Jew to respond or otherwise do *melacha* on Shabbat, then that is a problem (of *lifnei iver*).

8. Communicating with Someone When it is Still Shabbat in His Time Zone

Question: If someone has non-religious relatives in another time-zone, is he allowed to 'talk' with them online when it isn't Shabbat for him but is for them? Is there any difference taking into account that he may be their only religious link/outlet and they may take offense to his reluctance to communicate with them because of 'religious issues'?

Answer: One must not dial or answer a phone call or an internet call when it is Shabbat on the other end of the line. If there is need for one to spiritually educate one's relatives then one must find the time and the methods to do so without transgressing prohibitions such as *lifnei iver* (putting a stumbling block in front of a blind person). For more on this issue see *Shut Minchat Shlomo* (1, *siman* 35), as well as in *Shut BeMareh HaBazak*, vol. 1, answer 37, and in vol. 5, answer 52.

9. Keeping a Website Open on Shabbat and Having a Non-*Shomer Shabbat* Partner

Question:

1. A Jew has a website where people can order products and pay for them using a credit card. Is it permitted to allow this website to operate on Shabbat, or must the “store” be prevented from performing sales on Shabbat?
2. If it is permitted to allow the store to remain open on Shabbat, a further question: the Jew’s partner is not *shomer Shabbat*, and when orders arrive on Shabbat, he may begin to process them on Shabbat. Are you allowed to participate in this partnership with him? Must you make some arrangement to avoid profiting from his business activities performed on Shabbat?

Answer:

1. There are a number of *halachic* problems with leaving an internet site open on Shabbat if Jews are likely to visit the site: the prohibition of placing “a stumbling block before a blind person”, of facilitating someone transgressing the laws of the Torah and of receiving income on Shabbat (which is also relevant to payment from non-Jews). Discussions relating to all the above prohibitions are written in great detail in our book *Shut BeMareh HaBazak* volume 5. Also see *Techumin* 19 p. 349, which discusses a similar issue. Even though there is logic to be stringent and forbid the opening of the site on Shabbat, since it would be difficult and would cause significant financial loss, the site may remain open. If it is possible to buy these products on other internet sites (belonging to non-Jews) there is even more room to be lenient and leave the site open on Shabbat.
2. Regarding partnership with someone who is not *shomer Shabbat*, see *Shut Be'er Moshe* 5:97:22, who writes that one should be stringent. However, it is written in *Shut Melamed L'Hoil, Orach Chaim* (1:34) that one should begin the partnership anew, dividing it up so that the partner who is *shomer Shabbat* will not receive the profits from Shabbat. In turn, he will take the profits of another day of the week.

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There are some who prohibit naming the firm after the one who is *shomer Shabbat* (lest one think he is profiting from the business on Shabbat). However the *Melamed L'Hoil* writes that, if necessary, it is permitted to keep the name of the firm in his name.

All this is in the case of absolute necessity, when one's income is dependent on it. However, if one has a choice, it is preferable not to join a partnership of this kind.

10. Properly Operating a Website on Shabbat

Question: In answer to "when is it Shabbat on the internet?" (Jewish Star, Dec. 1, 2006) Rabbi Carmel states that the owner of a commercial website does not need to close the site on Shabbos as long as he does not make money during that time.

That sounds either like a legal fiction or an oxymoron.

In the final analysis, if business is transacted and profits accrue at some time and place along the worldwide web, what sort of sophisticated bookkeeping would sort out when it is Shabbos at the seller's location and not at the buyer's (if the buyer is even Jewish)? Even with the services of a Shabbos *goy*, wouldn't the site-owner ultimately pocket the profits?

There's something about the original answer that doesn't seem *kosher* and your comments would be appreciated.

Answer: There are a number of problematic points in operating a website on Shabbat. Two of them directly relate to commercial activity:

A. Commercial activity is prohibited on Shabbat due to the verse "nor pursuing thy business, nor speaking thereof" (*Yishaya* 58, 13) from which *Chazal* learn that a person may not look into his assets on Shabbat. This prohibition is not connected to a person's financial gain but rather to the very dealing and participation in something with commercial and financial content.

According to most *poskim*, the owner of a commercial website is not transgressing this prohibition since he is totally passive. However, in order to meet the terms of all of the opinions, it would be proper to ensure that customer's credit cards are not billed until *Motzei Shabbat*, and that this is clearly stated on the webpage. This adaptation is uncomplicated and requires only minor adjustments of the website's program – and the payment can be postponed to a time when it is no longer Shabbat in any part of the world.

B. *Chazal* prohibited the receipt of payment for work done on Shabbat, even for activities that are permitted on Shabbat, and this includes not receiving salary for watching over someone else's belongings on Shabbat. This prohibition applies even if the payment is made on a weekday, due to the fact that the work paid for was done on Shabbat. This prohibition applies also to receiving salary for services provided over the internet.

It is permitted to receive a monthly/annual payment for the right to access the website, due to the fact that Shabbat salary can be absorbed into a larger payment - and in this way there is no prohibition.

However, it is prohibited to receive unique payment for the supply of information, or for watching a movie etc., because this is similar to receiving payment for renting things out on Shabbat. This is also the case regarding a virtual market that receives percentages from every transaction made in it. Receipt of unique payment or percentages will only be permitted if the site is operated in partnership with a non-Jew so that each partner owns it on alternating days. This means that the one-time profits made on Shabbat will be given to the non-Jewish partner, while, in exchange, the Jewish partner will receive the one-time profits made on another day of the week¹. This calculation can also be done automatically, after the necessary adjustments to the program are made. Only in a situation of great distress and serious losses can it be permitted to operate without such a partnership.

To summarize: Credit billings must be done only on *Motzei Shabbat*, and this must be announced on the website. In the case of a website providing a service that can only be paid for on an individual use basis, or a website that collects a percentage from every transaction, the payments must be divided in an alternating day partnership with a non-Jew, and only in a situation of great distress and serious losses can it be permitted to operate without such a partnership.

¹ The non-Jewish partner must be a real partner in the company and not a fictitious partner.

ERETZ HEMDAH INSTITUTE

For in-depth perusal of the sources and *poskim* see our publication *Shut BeMareh HaBazak* Vol. 5, pages 89-100 which deal with this topic.

11. Working as an Airport Security Officer, on Shabbat

Question: I am an El-Al ground security officer somewhere in Europe. I was recently told that we will soon be responsible for the safety of other sister companies which fly on Shabbat. I wanted to ask if my job (protecting Jewish travelers) falls under the same category as other security forces, something that will enable one to work because of *pikuach nefesh* (even if these Jews are *mechallelei Shabbat* themselves). Of course, I will try to minimize any *chilul Shabbat* by not travelling on Shabbat, avoiding non-necessary use of equipment etc.

Another issue that is bothering me is payment that will be added to my account for these Shabbatot that I will be working. Should I request from the company not to pay me at all for my work on Shabbat?

Answer: If the company's *chillul Shabbat* had been contingent upon your actions, and the cessation of your work would have thus prevented this *chillul Shabbat*, clearly it would have been forbidden for you to work as a guard, because you would be directly causing *chillul Shabbat*.

In a situation when *chillul Shabbat* will be committed anyway, and you are required to work as a guard, it is permissible for you to work, because the people you are guarding are desecrating the Shabbat unintentionally, or out of ignorance ("*tinokot sh'nishbu*"). Furthermore, there are children amongst them who are not obligated to keep Shabbat, which means that in any case it is permissible, and even obligatory, to desecrate the Shabbat for the sake of their safety.¹

¹ Rabbi Avraham Sherman (*Techumin* 3, 24-29) quotes Rabbi Elyashiv to the effect that Shabbat must be desecrated in order to secure hikers, because there are children under the age of *bar mitzva* who are not yet considered desecrators of the Shabbat- and this is true without going into the question of the obligation to rescue "*tinokot sh'nishbu*" (Jews who are ignorant of the demands of Judaism), who, most *halachic*

On the other hand, the situation wherein Shabbat is desecrated on a regular basis is definitely unacceptable, and there is reason for a public protest against the phenomenon in its entirety, and against the specific situation, that observant Jews are being required to work on Shabbat, in order to ensure the passengers' security.

As you have mentioned in your question, even when guarding is permissible, one must refrain from *chillul Shabbat* as much as possible. We advise that you clarify in advance, to the best of your ability, which *melachot* will be required of you while guarding on Shabbatot, and check how each and every transgression can be minimized. In this matter see also *Shut BeMareh HaBazak*, pt. 3, 35.

It is permissible to receive a salary for work done on Shabbat if the salary is absorbed, which means that if the payment is given in exchange for work done both on Shabbat and on a weekday, the entire salary is allowed. Therefore, if you are not receiving a special stipend in exchange for work done specifically on Shabbat, or if your shift includes both weekday hours and Shabbat hours (if it begins on Friday for instance) then there is no problem of receiving payment for work done on Shabbat.

If you do receive a special stipend for a shift that begins and ends on Shabbat, it is perhaps possible to compare the case to that of a doctor, who is allowed to receive payment for Shabbat even if the payment is not "absorbed". Conversely, owing to the fact that, ultimately, the entire state of affairs allowing flights to take place

authorities agree, must be rescued. In *Ma'ayan of Tishrei 5745* a clarification was issued in the name of Rabbi Elyashiv- that his words (above) are only applicable if the security guard was forced into a situation where the hikers have already begun their hike and are in danger. But, *lechatchila*, if someone is asked to serve as a security guard on a hike, it is obviously required of him to refuse. Simply put, one must refuse even if he, in his capacity as security guard, will not be actively partaking of *chillul Shabbat*, since his very presence enables the hike to take place and he is considered, at the very least, "an accomplice to transgressors" ("*mesaye'a l'ovrei aveira*"). Obviously, it is also impermissible if the guard is asked to actively desecrate the Shabbat.

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on Shabbat is undesirable, and, being that it is also said of the doctor that "he does not see blessings" from the money he receives (for working on Shabbat- *Har Tzvi*, 1, 204), it would be appropriate if you were to relinquish the extra stipend and give it to *tzedaka*.

12. How to Pay a Babysitter on Shabbat

Question: Is there any way I can have a babysitter help my wife on Shabbat and somehow pay her for her time?

Answer: We are assuming that the babysitter is non-Jewish or, alternatively, that the babysitter is Jewish and will not be asked to do any *melacha* which is forbidden on Shabbat. Although one may not pay for work that is done on Shabbat, one may nevertheless include the payment for Shabbat in the payment for work that is done on a weekday. Thus, if the babysitter does, for example, two hours of work on Shabbat and ten hours of work during the rest of the week, you may pay the babysitter for twelve hours of work without specifying that two hours pay is for the Shabbat work.

13. Pushing a Baby Stroller on Shabbat

Question: Can one push a baby stroller on the grass on Shabbat?

Answer: There is an accepted *halachic* principle in *hilchot Shabbat* which says that: “something done without intention is permitted”¹— meaning, if a person does a certain permitted act which could possibly cause a forbidden act to take place, it is permitted even if one knows that the forbidden consequence could result.

This law applies with one limitation - and that is called *psik reish*, meaning when one is certain that the forbidden consequence will take place. In such a case, the action is prohibited.² In our case, however, there is no certainty that pushing the stroller will uproot the grass, and it is therefore permitted³.

¹ *Shabbat* 95a; *Rambam Shabbat* 1:5; *Shulchan Aruch, Orach Chaim* 312:3.

² *Shabbat* 103 a; *Rambam* *ibid.* 1:6; *Shulchan Aruch, Orach Chaim* 397:4

³ See the *Rambam* *ibid.* which explicitly permits walking on grass on Shabbat, and we can assume that the same ruling also applies to a stroller. See also *Eiruv* 100 b and *Beitza* 23b.

14. Opening a Refrigerator on Shabbat

Question: What is the correct way of using a refrigerator on Shabbat? Can we take something out with the possibility of the motor going on because of the warm air which enters inside the fridge? Can we put something in? Do we have to wait until the motor is on before opening the door?

Answer: Although there are authorities who say that one should only open the refrigerator door when the motor is running, many other authorities permit opening the door even when the motor is not running. The later appears to be the prevalent custom (see *Shemirat Shabbat Kehilachta* 10,12 and footnote 33).

15. The Proper Time to Have the Friday Night Shabbat Meal

Question: Does one have to eat the Shabbat meal right after *tzait hakochavim* or can they wait for a more convenient time?

Answer: Ideally, one should eat immediately after arriving home from shul. (This is because *Kiddush* should be recited as close as possible to the time that Shabbat begins, and the meal has to immediately follow *Kiddush*). However, if you are not hungry, you can rely on the opinion of the *Rishonim* that your obligation to say *Kiddush* is fulfilled with the evening prayer, and you can eat whenever you are hungry. This is only in a situation where others (members of the household or guests) are not disturbed by the delay, and no one is hungry and waiting to eat (see *Shulchan Aruch, Orach Chaim* 271:1 and *Mishna Berura* *ibid.*).

Question 2: When the people you are with do not want to eat at that time, what should you do?

Answer 2: As we have already said, *l'chatchila*, it is better to eat immediately. However, in a case where people are not hungry and the like, it is possible to push off the meal. It would definitely be inappropriate to cause arguments and fighting over the correct time for establishing the meal, and therefore, if the others are not hungry, it is permitted to push off the meal.

16. Alternatives to Wine for *Kiddush* and *Havdala*

Question: If we don't have wine or grape juice for Shabbat, what can we use for *Kiddush* and *Havdala*?

Answer: Generally speaking, there is a disagreement among the *halachic* authorities (*poskim*) regarding the question of whether or not one may make *Kiddush* on something other than wine. There is an opinion that one may make *Kiddush* on the *lechem mishne*, and there is an opinion that one may make *Kiddush* on "*chamar medina*". As to the *halacha*, the *Shulchan Aruch* (*Orach Chaim* 272:9) rules that if one does not have wine, at night he should recite *Kiddush* on the *lechem mishne* (bread) and in the morning on *chamar medina*. The *Havdala* should also be done on *chamar medina* (cit. 296:2).

The meaning of the term "*chamar medina*" is the drink which substitutes wine (In Aramaic = *Chamar*) in that city (=Medina). There is a disagreement among the *poskim* regarding what can be considered such a drink. There are some who say (*Igrot Moshe*, *Orach Chaim* 2:75) that a drink which is offered to guests and they drink it even if they aren't thirsty, is considered *chamar medina*, since it is an important drink. Therefore, coffee and tea can be considered *chamar medina*, when one does not have wine.

17. *Havdala* on milk

Question: If one is unable for reasons of health to drink wine or fruit juice, can one use milk for *Havdala*?

Answer:

1. One should ideally make *Kiddush* or *Havdala* over wine. However, there are those that permitted making *Kiddush* or *Havdala* over any significant beverage. One who is unable to make *Kiddush* or *Havdala* over wine, should make it over any significant beverage.
2. There are those who are lenient and rule that even milk can be used (*Aruch Hashulchan* 272:14, *Tzitz Eliezer* VIII 16), while others are stringent.

The accepted *halacha* is that, in a case where one is unable to make *Kiddush* or *Havdala* over wine, grape juice or natural fruit juice due to health reasons, then one could take on a lenient approach and make *Kiddush* or *Havdala* over coffee, tea etc., and even milk, if necessary.

18. Going through a Hospital's Metal Detector on Shabbat

Question: Recently we went to visit someone sick in Shaare Tzedek Hospital on a Shabbat. We were not allowed to enter the building unless we passed through a metal detector that would ring if we were carrying any metal. Are we permitted to pass through these devices on Shabbat to fulfill the *mitzva* of *bikur cholim*?

Answer: In the present situation it is a great *mitzva* to put a metal detector at the entrance to a public place, such as a hospital, for security reasons.

Therefore, the hospital was right in putting up such a system. Of course, the people who set up the system must make sure that the setting up of the metal detector is in accordance with *halachic* guidance. We are sure that the management of Sha'arei Tzedek hospital made sure of that.

However, the people entering must make sure that their pockets are emptied of anything made of metal, such as keys, etc., so as not to activate the metal detectors unnecessarily. Therefore, you can definitely fulfill the *mitzva* of *bikur cholim* when needed and go through the metal detector (under the stated condition).

19. Opening and Closing Portable Cribs and Strollers on Shabbat

Question: In regards to pac-n-plays, collapsible cribs for babies, are there any *halachic* issues with opening or collapsing them on Shabbos? Is opening and closing a baby carriage the same thing?

Answer: One is permitted to open a baby crib which was folded up, and set the base beneath it, which is intended for the use of the baby mattress. However, this is only permitted on condition that in assembling the crib, there is no requirement for screwing in screws (*Shmirat Shabbat K'hilchata 22:23*).

Similarly, one is permitted to open a baby carriage which was folded up, as well as to open the sunshade which had already been assembled on the baby carriage (*ibid 22:13*). However, one is not permitted to assemble the sunshade on Shabbos.

20. Moving a Chair Wedged in a Front Door on Shabbat

Question: If someone put a chair in a doorway to keep the door open, and the chair is partially in the house/building and partially outdoors (in a place where there is no *eruv*): Does a person coming in/out have to be concerned that the chair might move when he opens the door all the way or that his body might move the chair further into one of the *reshuyos*?

Also, if someone has stairs to his front door and then has a platform by the door, similar to a porch, but that isn't used for anything and does not have a railing, are the platform/steps considered *cho'rei reshus hayochid* (*Mishna Berura* 345:67)?

Also, for one of our doors to the outside we have a step to the door. Is the step considered part of *reshus hayochid* as well?

Answer:

1. The Rambam rules in *Hilchot Shabbat* 12:11 – "One who takes out part of an object from [one of] these two "*reshuyot*" (meaning either "*reshut harabim*" or "*reshut hayachid*"), to the other "*reshut*", he is exempt until he takes out the whole object from one "*reshut*" to the other." "Exempt" means that he does not violate a Torah prohibition, but it is still forbidden rabbinically. From the *Magid Mishne* (ibid.) it may be inferred that Rashi explains that if one takes an object which is half in "*reshut harabim*" and half in "*reshut hayachid*" and put it all in one "*reshut*", that too would be forbidden only Rabbinically. Therefore, it seems that if the chair was placed in the doorway before Shabbat, there is no prohibition at all if it moves, as long as it stays in both "*reshuyot*", meaning, as long as one ensures that it doesn't move at any point all the way into one "*reshut*". In general, it seems that it is better to find a different solution to keeping the door open, since there is a big chance of the chair moving entirely to one of the "*reshuyot*".
2. It is true that regarding a roof of a house, for which there is an opening from the house, the *Shulchan Aruch* in *Orach Chaim* 345:16 and the *Mishna Berura* in note 67 rule that it is like "*cho'rei reshut hayachid*", since the roof is open only to the

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house and the utility of the roof is only through the house. However, the stairs and the platform in front of the house are different, since they are open mainly to a "reshut harabim" or to a "karmelit", and their entire purpose is to serve as a passage from one "reshut" to another. The Rema in *Orach Chaim* 346:3 rules that one is generally forbidden from carrying from a platform before a house into the house, and vice versa, and the same would apply to a step.

21. Participating in a Lottery that is Drawn on Shabbat

Question: Is it permitted to buy a lottery ticket for a non-Jewish lottery, when the numbers are drawn on Shabbos?

Answer: It is permitted. The non-Jew is carrying out a general obligation he accepted upon himself. Even if we consider him to be acting as an agent of those who paid, it is permitted, because the majority of the participants are non-Jewish. Even if you were to win, they are not, to the best of our knowledge, obligated to do any *melacha* on your behalf on Shabbat.

22. Motion Sensors on Shabbat

Question: We have a home alarm system. It works with sensors that go on and off when you pass by. Is it permissible to use the alarm system on Shabbat and *Yom Tov*, as whenever someone passes it, it lights up? If we are in a hotel that these sensors put on the hall lights as we pass and shut them when we move away, may we go through the halls? Similarly, if we are invited to someone's home for Shabbat meals that has these sensors, must we refuse and what if we discover it after we have already arrived?

Answer: An alarm system includes two parts:

1. A volume sensor, which activates the sound system of the alarm.
2. An indication light, which turns on when a person passes by it.

Ideally (*lechatchila*), one should not use the alarm unless he has disconnected the indication light, and the sound system is turned on by the Shabbat clock according to one's needs.

If that cannot be done (*bediavad*) or if one has forgotten to turn off or cover the indication light, one can be lenient. [See *Eretz Hemdah's Responsa BeMareh HaBazak IV*, sec. 40, notes 6-7].

Regarding causing a hall light to turn on by walking past a sensor, one needs to distinguish between two cases:

If the hallway is dark, and therefore one benefits from the light that is turned on, it is forbidden.

If there is enough light, even without the light turning on – in this case the law is not simple [See: *Yalkut Yosef, Hilchot Shabbat IV*, vol. 5, pg. 216, Hebrew, sec. 67], and therefore ideally (*lechatchila*) one should wait until a non-Jew goes by and go after him.

If one is visiting people who have an alarm, ideally he needs to make sure ahead of time that the indication light is turned off [and it is a *mitzva* to inform one's friends of *Hilchot Shabbat*]. However, if one has arrived already and the system was not turned off, after the fact (*bediavad*) one does not need to leave. [See: *Responsa BeMareh HaBazak*, op. cit., note 6. The case you stated is less problematic since one does not get any enjoyment from the fact that the indication light is working].

23. Adjusting a Shabbat Clock (timer) on Shabbat

Question: Can one turn the dial on a shabbos clock on Shabbos, which will result in a light going on (or off) earlier or later than it would have gone on (or off) otherwise (the turning will not turn the light on it will just make it happen sooner)?

Answer:

1. One may cause a delay in the turning on/off by the Shabbat clock, since he is not doing any *melacha*, but rather leaving the existent state as it is. However, one may not cause the turning on/off to occur sooner. (This is the ruling in *Responsa Yabi'a Omer* III 18 and *Shmirat Shabbat K'hilchata* I 13:25 in the name of Rav Shlomo Zalman Auerbach).
2. For the sake of someone who is sick (even if not dangerously ill = “*ein bo sakana*”) or for the sake of a *mitzva*, one may even cause the light to go off earlier (*Shmirat Shabbat K'hilchata* chapter 13 footnote 91, and *Yabi'a Omer* op. cit. according to *Shulchan Aruch Orach Chaim* 334).
However, one may not cause the light to turn on earlier even for the sake of someone sick or for a *mitzva* (*Shmirat Shabbat K'hilchata*, though *Yabi'a Omer* states that for the sake of a *mitzva* it is permitted).
3. Even on Shabbat itself, if the Shabbat clock caused the light to turn off, one may then adjust the timer, so that the light will be turned off earlier, after it is turned on again, since at this moment there isn't light. Furthermore, if the light is now on and it is supposed to turn off (during the Shabbat) and then on again (during the Shabbat), then one may cause the light to turn on earlier the next time it turns on, since at the present moment the light is on (*Shmirat Shabbat K'hilchata* I 13:26).

24. Unplugging a Plata that is Connected to a Shabbat Clock (Timer) That is Set to “Off”

Question: If on Shabbat there is the plata or hot plate (for keeping foods hot on Shabbat) that is plugged into a timer so that it is on only at the times necessary for heating for the main meals, is it possible to unplug the plata from the timer – which is still plugged into the wall outlet but not on – during Shabbat when the timer itself is not on?

Answer: If one wants to prevent the plata from going on, it is better to do it through the Shabbat clock, by moving the pegs or by turning the Shabbat clock to the off mode, all of this in order to prolong the present state, meaning to make sure that a presently cold plata not turn on again, and when it is working to prolong the time that it is on. However, if necessary, one may be lenient and pull out the plug using one's elbows, see: *Shmirat Shabbat K'hilchata* 13:28.

25. Whether Non-Kosher Foods are *Muktzeh* on Shabbat

Question: Regarding the rule that any meat/milk mixture is *muktzeh* on shabbos: if something is not *kosher*, but is not obviously a milk/meat mixture, like non-*kosher* bread or anything not *kosher*, is that still considered a milk/meat mixture and *muktzeh* on shabbos? What if a piece of meat was cooked in a dairy pot, but not cooked with milk, would that also be *muktzeh* on shabbos? What if something pareve was cooked in a pot that previously had been used to cook both meat and milk foods, would that also be considered a milk/meat mixture and thus *muktzeh* on shabbos?

Answer: The author of *Shmirat Shabbat K'hilchata* (20:35) writes that only cow's meat, which was cooked in milk, is *muktzeh*, since it is forbidden to get any enjoyment from it (*issur hana'ah*). However, any other food which is non-*kosher*, but one is allowed to get benefit from (such as giving it to a non-Jew or to an animal), is not *muktzeh*. *Chametz* on *Pesach*, or that which was owned by a Jew on *Pesach* ("*chametz she'avar alav hapessach*"), *orla* (fruit from the first three years of a tree) and *kilayim* from a vineyard (fruit from a forbidden mixture of planting in the vineyard), are *muktzeh*, since they are forbidden to benefit from.

As to the situations you mentioned: meat cooked in a dairy pot- if the pot is clean from remnants of milk and was not used for cooking milk in the previous 24 hours, the food is permitted and is not *muktzeh*. Only the pot needs to be kashered (*hag'alla*). However, in all such incidents, it is best to ask many specific questions as there are many details involved.

26. Chemical Heating on Shabbat

Question: I have a small bag full of liquid (salt called sodium acetate and water). The bag contains a coin too. When the coin is pressed the liquid starts crystallizing. This chemical process heats the bag to 54 deg. C. After an hour, the bag becomes cold again. By boiling the bag it can become liquid again.

My question is if it is permitted to press the coin and cause the bag to become hot on Shabbat.

Answer: One may press on the coin which causes the liquid to become solid, and there is no prohibition of 1) burning (*mav'ir*), 2) cooking (*mevashel*), 3) creating something new (*molid*) or 4) dealing with something new (*nolad*)

1. Burning - The Rambam (*Hilchot Shabbat* 12:1) writes: "one who heats up metal in order to strengthen it in water – this is a "tolada" (a Shabbat prohibition derived from the main prohibitions – "avot", which were learned from what was done in the *Mishkan*) of burning and one is liable". According to this, one might think that in heating the liquid there is a problem of "mav'ir" (burning). However, the *poskim* have written that this applies only when one heats the metal to such a high temperature that it turns red. (*Chelkat Ya'akov, Orach Chaim* 117; *Igrot Moshe, Orach Chaim* IV 74: 29; and *Minchat Shlomo* III 41.) This is not what happens though in the case we are discussing.
2. Cooking – One might think that heating up the liquid should be prohibited because of the prohibited to cook, since one is heating it up to a temperature higher than the allotted "yad soledet bo" (that which a hand cannot touch). However, one may say that as long as the liquid is not fit for eating then one has not met the criteria of cooking. One should also not compare this case to the words of the Rambam who wrote (*Hilchot Shabbat* 9:6): "The rule is that any burning of a hard object in the fire, or hardening a soft object is liable on account of cooking", since one did not use heat in order to harden the solution. Additionally, this heat is not heat of fire.

3. The *Gemara* in *Shabbat* (51b) says: "one may not crush snow or hail on Shabbat so that it turns into water", and Rashi explains: "Since he is creating something new (*molid*) on Shabbat and this is like a *melacha*, as if he himself is creating the water". According to this, here, where one creates the crystals on Shabbat, one might say that this is "*molid*". The *Tzitz Eliezer* writes (VI, 34) that if there was liquid that was frozen on Shabbat, there is no "*molid*" in breaking the ice and returning it to its original state. This is also the *halacha* here, since the liquid turns to solid, and then back to its original liquid state, in a steady manner. In this case, one cannot say that he is creating the solid, and therefore there is no prohibition of "*molid*". We may add, that since the solidification is not a consequence of a direct activity, but rather done indirectly ("*grama*"), one can say that there is no prohibition of creating something new indirectly. This has been written by many *poskim* (as in the above mention *Tzitz Eliezer*) regarding making ice on Shabbat.
4. All we have stated regarding "*molid*", is valid also regarding "*nolad*" (something which one cannot use on Shabbat since it was 'born', i.e. created, on Shabbat), and, in general, this *halacha* is similar to the issue of making ice on Shabbat, for which there are many *poskim* who permit (*Tzitz Eliezer*, op.cit.; *Chelkat Ya'akov*, *Orach Chaim*, 128; etc.).

27. How to Prepare a Crockpot for Use on Shabbat

Question: We prepared and used an electric *chulent* pot on Friday. Someone mentioned to us this past weekend that we need to line the inside of the metal lower section in order to use the pot. They said that the ceramic dish needs to be separated from the coils, and it is therefore necessary to use aluminum foil to create this separation. The electric part of the *chulent* pot is all enclosed and the coils are built in– the ceramic dish sits inside the unit - so do we need another layer of aluminum in order to use it on Shabbat?

Answer: Your question needs to be dealt with on a few levels: *Hatmana* (concealing: wrapping/covering food in order to keep it warm), *Shehiya* (keeping food on the fire from before Shabbat, into Shabbat) and *Chazara* (putting food back on the fire on Shabbat), and we shall elaborate on them one by one.

1. There is a prohibition to conceal food in something which adds heat during Shabbat, even if the "concealing" was done before Shabbat.¹ The reason for the prohibition is explained in the *Gemara* that, if this is allowed, one might come to conceal the food in coals, and when one sees that the food is not warming up enough, he might try to rake the coals and stir up the fire, and thus violate the prohibition to ignite fire.² The *Rishonim* disagree as to whether or not partial "*hatmana*" is also forbidden, meaning that the pot is touching the source of heat but is not covered on all the sides.³ As for the *halacha*, the *Shulchan Aruch* prohibits, and the Rema permits. Therefore, for the *Sefardim* who follow the *Shulchan Aruch*, using a crock pot is a problem of *hatmana*, since the pot is covered from all sides on the bottom, which is the part that touches the source of heat.

¹ Tractate *Shabbat* 43b, 34b; *Shulchan Aruch*, *Orach Chaim*, beginning of sec. 257.

² Tractate *Shabbat* *ibid*.

³ Tractate *Shabbat* 39b – Rosh and Ran there; *Shulchan Aruch*, *Orach Chaim* 253:1 and Rema. Additionally, see *Chazon Ish*, 37:19 who wrote that one should be stringent like the *Shulchan Aruch*.

Soon we shall suggest a few solutions. There are *Sefardim* who are lenient on this issue and they rely on the fact that the pot sticks out of the metal on the top. According to the *Achronim*, the Rema's opinion is unclear⁴ regarding a case where the pot is covered from the sides and only uncovered on the top, and there are those who have ruled leniently.⁵ However, Rav Shlomo Zalman Auerbach ruled stringently.⁶ His reasoning was that this is the normal way for cooking even during the week, and therefore the fact that it is uncovered on the top is irrelevant. He therefore suggested that one separate between the bottom of the inner section and the outer section with a piece of tin. (One can understand from what he writes that tin foil is not enough and is not considered a mark ["*heker*"]). Rav Wosner⁷ wrote that one can use foil in the case of need (and his student writes in his name that one can permit folding aluminum foil a few times).⁸ Also, according to local Rabbis, the common practice in America is to be lenient.

2. The second problem is leaving the food on an "un-covered and un-swept" fire (meaning a source of heat which hasn't been acted upon to lower the level of the heat), which is prohibited concerning every food which has not been cooked at least a third. This is also due to a Rabbinic decree lest one "rake the coals", i.e. raise the level of the fire.⁹ Seemingly, since there is a dial on the crock-pot, which enables increasing and decreasing the heat level, there is a fear that one can come on Shabbat to "rake the coals", meaning, to adjust the level of heat. This problem has a number of solutions:
 - A. Make sure the *chulent* is sufficiently cooked before Shabbat.
 - B. Put aluminum foil between the top part and bottom part of the crock-pot.¹⁰

⁴ *Pri Megadim* 259, *Mishbetzot Zahav* 103.

⁵ *Pri Megadim*, *ibid.*; *Magen Avraham* *ibid.*

⁶ See his letter in the book "*Orchot Shabbat*" I p. 544.

⁷ *Orchot Shabbat* *ibid.*, p. 543.

⁸ *Shabbat Kahalacha*, p. 300.

⁹ *Shulchan Aruch*, *Orach Chaim* 253:1.

¹⁰ *Shabbat Kahalacha*, *ibid.*

- C. Take off the dial or make sure it is stuck in one place. There are those who necessitated both B and C,¹¹ and there are those who wrote that covering the dial is irrelevant.¹²
- D. Put up the food close to Shabbat in such a manner where it is clear that the food won't be ready for Friday night, but will be ready for Shabbat morning without increasing the heat, or by putting one piece like that in the food.¹³
3. The third problem is putting food back onto an "un-covered and un-swept" fire, which is prohibited even if the food is totally cooked, because it looks like cooking.¹⁴ One needs to deal with the question of whether or not the solution of separating the two parts of the crock-pot with a piece of tin or with tin foil is sufficient here, since it might still be considered "*hachzara*" – putting back, because it still looks like cooking.¹⁵ There are those who permitted it if the pot does not sit directly on the bottom, since then the heat isn't as high and it is unlike cooking.¹⁶

Summary: those who use a crock pot have opinions to rely on, as long as one makes sure that the food is cooked at least a third before Shabbat. One should cover or lock the dial, and ideally put aluminum foil between the top and bottom parts of the crock-pot.

¹¹ *Shmirat Shabbat Kehilchata*, chapter. 1.

¹² *Shabbat Kahalacha*, *ibid.*

¹³ *Shulchan Aruch, Orach Chaim* 253:1; Tractate *Shabbat* 18b.

¹⁴ *Shulchan Aruch* there, note 2.

¹⁵ *Ibid.*

¹⁶ *Tur, Orach Chaim*, 253 and *Beit Yosef* and *Bach* there.

28. Status of Microwave Cooking on Shabbat

Question: Is there a difference between cooking with a microwave or cooking with a regular oven, on Shabbat?

Answer: The *Gemara* in tractate *Shabbat* 39a says that cooking with fire is prohibited from the Torah, and so is cooking in something that was heated up by fire ("*toldot ha'esh*"). Cooking with the heat of the sun is permitted, and cooking with something heated up by the sun is prohibited by the Sages. Rashi states that only cooking in the fire and with something heated by the fire is prohibited from the Torah, and not cooking with the sun or something heated by the sun, since that is not a normal way of cooking.

According to Rashi's commentary the *Igrot Moshe* (*Orach Chaim* III 42) writes that even though a microwave is not fire, it can cook just as well. Additionally, it is normal to use the microwave for cooking, therefore it will also be considered as a "*tolada*" (something derived from the classic *melacha*) of cooking in fire and is prohibited from the Torah.

However, many have disagreed with the *Igrot Moshe*, such as Rav Shlomo Zalman Auerbach, who did not accept his understanding. They understood that Rashi's opinion was that anything that is not fire is not prohibited from the Torah, and according to them, (cited in the book "*Yesodai Halacha*" p. 320) the prohibition is only from the Sages. A practical difference between the two opinions is regarding someone who is sick, but not dangerously so (where rabbinic prohibitions are permitted under certain conditions), and whether it would be permitted to cook food for him in the microwave.

29. Using Poultry Shears on Shabbat

Question: Can you use shears that are used to cut chickens, on Shabbos?

Answer: It is permitted. It is no different than using a knife.

30. Removing Bottle Caps on Shabbat

Question: What is the *halacha* of opening bottle caps that must be snapped open, on Shabbat?

Answer: We can rely on many *poskim* who are lenient regarding this, and say that this is allowed, because the cap is only a cover for the bottle, and this is its purpose before the opening as well. Therefore, one is not creating anything new when opening the bottle, and is not in violation of any *melacha*. Among those *poskim* are the former chief rabbis – Rav Ovadia Yosef zt"l, Rav Mordechai Eliyahu zt"l, Rav Aharonson zt"l, Rav Arenberg zt"l, and Rav Yackov Israel Fisher zt"l.

31. Silver Foil/Tin Foil Cut By a Non-Jew on Shabbat

Question: I saw in *sefarim* and rabbis told me, that a roll of silver foil is *mukzah machmas gufo* on Shabbos. If this is true then if you cut pieces of silver foil before Shabbos for a Shabbos *Kiddush*, and a non-Jew nevertheless cuts an additional piece from the roll, which is *adaieta dinafshei*, is that piece that the non-Jew cut *muktzeh*?

Answer: The pieces that you cut before Shabbat are certainly not *mukzeh*. But, due to the roll being *mukzeh machmat gufo*, the pieces that the non-Jew has cut cannot be used, even if you too have cut pieces from the same roll before Shabbat.¹

¹ *Shulchan Aruch, Orach Chaim, siman 310, sif 3.*

32. Cutting Through Letters On Food On Shabbat

Question: May one cut through birthday cake icing that contains letters on Shabbat?

Answer: The Rema (*Orach Chaim* 340:3) writes that “one is forbidden to break a cake that has written on it letter-like forms, even though he intends only to eat, because this is erasing.” The *Dagul Meir’vava* (ad loc.) assumes that, according to the Rema, the same would be true for picture-like forms. The prohibition also applies if small items such as sprinkles or nuts are arranged in a manner which creates such figures (*Shmirat Shabbat K’hilchata* 11:7). (Little puffs of icing are not considered a picture, but carefully made “flowers” may likely be.)

That is the stringent part of the picture (excuse the pun). The *Dagul Meir’vava* asks on the Rema based on the *Gemara* (*Pesachim* 37a) that says that other than potential *chametz* problems, one can eat *s’rikin* on *seder* night. *S’rikin* are *matzot* that are made in the shape of animals (*Magid Mishneh, Chametz U’matza* 5:15) and, therefore should have been forbidden according to the Rema because of erasing.

A distinction which is accepted by most *poskim* (see *Dagul Meir’vava* *ibid.*, *Mishna Berura* 340:15) is between a case where the writing is added to the cake as a separate level of another substance, which is forbidden, to a case where the cake or other food is formed in a manner that words or pictures are discernible. In the latter case, it is not considered writing and is permitted.

Even in the case of a separate layer, there are certain grounds for leniency. The Torah prohibition of erasing only applies when done in order to write something new in the erased area, which does not apply in our case of cutting in order to eat. Additionally, in our case, there is no intention specifically to cut the letters, but rather to cut the cake. In a case that one does something which will clearly cause a violation but without specific intent (known as *p’sik reishei*), some permit the action if the violation is only rabbinic

(*Trumat Hadeshen* 64), as in our case. Even though we are normally strict, the situation could be different in a case where there are additional grounds for leniency. Therefore, we can be lenient if the “erasure” is done by the mouth during eating, not by knife or fork, as this is an unusual form of breaking letters (*Mishna Berura* 340:17). The *Dagul Meir’vava* felt that even cutting with a knife is destructive and unusual erasure and is, thus, permitted without specific intention. Although most *poskim* do not accept his ruling, the great weight that his rulings carry should be reckoned with before one criticizes those who are lenient on the matter.

A couple of practical suggestions for those who will not be lenient: According to most authorities, one can cut in between letters as long as the letters stay intact (see *Shmirat Shabbat K’hilchata* 9:(48)). If one cuts in such a way that there is a reasonable chance that the letters won’t be cut, it is permissible even if they are inadvertently cut. Also, one may slice off the lettering before cutting. The easiest way to do that is to put the design on top of a small piece of parchment paper discreetly stuck to the top of the cake.

33. Follow Up- Cutting Through Letters On Food On Shabbat

Question: A friend of mine recently asked you a question for me on cutting through letters on a birthday cake, and I was very impressed with the answer. Could I perhaps ask you another question on the same topic? Why is there a distinction between letters written on a cake and letters that are part of the cake. I am aware the *Dagul Meir'vava* asks this on the Rema based on the *Gemara* in *Pesachim*, but I still don't understand. If the problem is erasing, letters that are part of the cake are as permanent as letters written on the cake. Letters carved into a stone *matzavah* (grave stone) are meant to last for a very long time. If the distinction is that the cake is being consumed and the letters are part of the cake, it still doesn't change the facts that words are being destroyed.

Answer: You asked regarding the distinction between letters written on a cake by which it is forbidden to erase, whereas if the letters are part of the cake it is permitted to erase.

You are correct that the *Mishna Berura* (340, 15) is stringent regarding erasing writing that is written on top of a cake, but is lenient when the writing is part of the cake itself. He explains that, in such a situation, the letters do not have their own identity, and it is not considered writing at all.

However, this reasoning of the *Mishna Berura* appears to be contradicted by the *Gemara* in *Gittin* (20a) that states that engraving and forging letters is also considered writing. The *Chazon Ish* (*Hilchot Shabbat* 61, 1) also questions the reasoning of the *Mishna Berura*.

The *Menuchat Ahava* (volume 3, 22, footnotes 81, 86) gives another possible explanation. He claims that when the writing is made from the cake itself, it is considered part of the cake and thus when one eats the cake one is to be considered eating and not erasing. This also seems to be the intent of the *Shulchan Shlomo* (*siman* 340 page 308). According to this reasoning it would only be

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permitted to eat the cake, whereas, according to the *Mishna Berura*, it is permitted to cut the cake as well.

34. Proper Times for Shabbat Meals and Placing a Rug Down on Shabbat

Question: Do you have to start the first Shabbos meal and your only *Yom Tov* day meal before *chatzos*? I'm confused because the Rambam says (30:9) a person has to eat 3 meals on Shabbos, one in the morning and one after mincha. The *Magid Mishna* explains that it is a *machlokot Geonim* whether the times are necessary, but the *Mishna Berura* who is clear that you should have *shalish shudis* only after *mincha* says that if you taste something before *mussaf* you can wait until after *chatzos* (to have your morning meal). If you are *makpid* on one, shouldn't you be *makpid* on both, or vice versa?

Also, I read that on shabbos you can't put down an area rug on the floor because that would be *boneh*. Is this true? What size rug would this apply to? Can you move an area rug to a different part of the same room? What if someone is playing with the rug and picks up a part of it, can he then put it back down?

Answer:

1. "A sage's question is half of the answer", and indeed the two opinions you quoted are true. The opinion quoted in the *Magid Mishne*, that a specific meal schedule must necessarily correspond with Shabbos prayers, *Aravit*, *Shacharit* and *Mincha*, is obviously the proper order *lechatchila*, as is hinted at by the *Ridbaz* (*Shut Ridbaz, siman 489*) and the *Kaf Ha'Chaim* (*siman 291, 2*). This is true especially according to the luminaries of *kabbalah*, who claimed that one must be extremely strict on this issue.

The reference to the *Mishna Berura* in the question is taken from *siman 288* that deals with the prohibition against fasting on Shabbat. On this point, the *Mishna Berura* brings the opinion of the *Pri Megadim*, who writes that if one has eaten something before *Mussaf*, one can delay one's Shabbat meal even beyond *chatzot*. However, this is probably not meant to be the usual order, and it appears that it is brought in the context of

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someone, who, by reason of some constraint, was forced to postpone the meal.

For more on this subject see *Yisroel Vihazmanim*, written by Rabbi Yisroel Harpens from New York, Part 1, starting with page 432.

2. Regarding rugs, indeed we have found an English book on *Hilchot Shabbat* that writes that it is forbidden to lay one on the floor. However, according to common sense, this is a huge stringency, and also, the reasoning behind it is extremely puzzling: Someone laying out a rug on Shabbat is not doing so with the intention of making the floor thicker, but rather to make the house look nicer.

We have heard from Rabbi Noivert zt"l, author of *Shemirat Shabbat K'hilchata*, that there is no prohibition against laying a rug on the floor on Shabbat.

35. How to Properly Use a Shabbat Belt

Question: When one wears a Shabbat belt, does this need to be worn like a belt, i.e threaded through the trousers, or can one wear it around ones waist without threading it through?

If one needs to thread it through, does this mean one can't wear a normal belt, since then the function of the Shabbat belt is being done by the normal belt, or can one wear both with neither losing their function as a belt?

Answer: Wearing a Shabbat belt is like wearing any other belt, which is permitted if it is used in a way of dressing. Regarding wearing a belt on top of another belt, the *Shulchan Aruch* and the Rema differ (301, 36); the *Shulchan Aruch* is lenient and the Rema forbids. Hence, *Sefardim*, going like the *Shulchan Aruch*, have no problem with it, while for the *Ashkenazin* it's forbidden. However, if the second belt has a use for the clothing it's allowed. For example, if the first belt holds the trousers and the second is above the coat and holds it closed, it is permitted. Hence, if the regular belt has no use, one has to take it off. if the Shabbat belt is the only belt, even if one doesn't thread it through the trousers, it's allowed, as it is doing the work of a regular belt.

Indeed, if the trousers are tight even without the belt and it has no use, it's forbidden to go even with a regular belt, unless it is considered an ornament, which is a part of the beauty of the clothing. But then it seems that it would be allowed only if one wears it like it's customary to be worn – threaded through the trousers.

36. Pumping Mother's Milk on Shabbat in a Case of Need

Question: I recently had a premature baby. The baby is, thank God, doing well, but will most likely be in the hospital for a few months. He is not yet able to breastfeed, but I pump milk every 3 hours, which he receives every 3 hours through a feeding tube. My question is regarding pumping breast milk on Shabbat. Am I able to use an electric pump on Shabbat or must it be manual? If I can use an electric one, must it be on a timer, or may I leave it on for the whole Shabbat? And what should I do with the milk? I have a lot of milk already stored in the freezer, so if I would save the milk, it would not be used immediately, but will most probably be used within a few months. Also, I have learned that there is a difference between milk produced in the first few weeks that contains more much needed protein than milk produced later on. I understand that some say that I must dispose the milk that was pumped on Shabbat, or nullify it with soap, but this seems like such a waste for me, since I am pumping so much milk and the baby is in intensive care and needs the milk very badly. I would hate to get to a point where I have run out of my stored milk, and he would have to rely on baby formula just because I was not able to use the milk produced on Shabbat. Thank you for your assistance in this matter.

Answer: Mazel tov. May he grow healthy quickly and thereby turn this question into one that no longer is necessary for you practically. If there is even a very small chance that saving the milk will make a difference to the basic health of the baby, then you may pump the milk to save it (see *Shemirat Shabbat K'hilchata* 36:21). We would certainly expect that it could (and *poskim* make that assumption- see *ibid.*). If the electric pump does a better job, and using it does not require making electrical changes (primarily turning things on and off or changing settings), it is permitted. It is then not *muktzeh*, as it has a legitimate Shabbat use.

37. Flushing Ants Down a Drain on Shabbat

Question: I woke up one Shabbat morning to find my kitchen sink and counter teeming with little black ants. It was so bad we could not use the kitchen.

A friend, a very learned person, *talmid chaham*, said: "why don't you just flush them down the drain?"

"But isn't killing insects prohibited?" I protested. He said: "First of all your intention is not to kill them, just to get rid of them, so their death is unintended (*davar she-ein mitkaven*). And if you will protest that their death is inevitable (*pesik resha*), there are many insects who survive water being poured on them. Secondly, even if you kill them, their death is of no benefit to you (*melacha she ein tzoricheh legufah*) and therefore not a violation of Shabbat. Thirdly, even if all of this is forbidden *lechatchilah*, there is a *tzorech mitzva*, namely, avoiding infesting your food with insects which involve 5 prohibitions if you eat them". Is he right?

Answer: You correctly stated that there is a problem to manually flush the ants into the sink. In such a manner, it is certain that a forbidden *melacha* will take place (*pesik reisha*, an action which will result in an unavoidable *melacha*). Although the prohibition is rabbinic (*melacha she'eina tzericha legufa*, an act where one doesn't benefit from the results), it is still a prohibited act. Therefore, it is prohibited to do so, even for merely "getting rid" of the ants.

However, an alternative solution to your problem is to sweep the ants towards the outside of your house, even if one or two ants die in the process. In this sweeping solution, your real intention is not to kill the ants and their death is not certain. This is the classic case of *davar she'eino mitkavein*, an unintentional action.

38. Returning Dental Implants on Shabbat/ Using an Elevator on Shabbat

Question: If a tooth implant of 3 teeth comes out on Shabbos, can you temporarily click it back into place? There isn't any glue/cement so you can't really eat on that part anyway, but it hurts if you don't.

Can one use an ascending Shabbos elevator? I have heard that there is an issue of sensors in new elevators?

Answer: It is permitted to refasten an implanted tooth on Shabbat, but it must be done in a non-permanent fashion without any adhesive but just placing the tooth back in its place. Rav Moshe Feinstein and Rav Eliezer Waldenburg wrote responsa discussing the reattachment of false teeth that fell from their affixed place. Their explanations are also applicable to your question (*Igrot Moshe, Orach Chaim*, volume 2, *siman* 81, *Tzitz Eliezer*, volume 15, *siman* 25; volume 22, *siman* 20). If you wish, we can send you a full answer in Hebrew with sources, so please let us know.

In response to your question regarding the use of elevators on Shabbat: It is preferable to use a Shabbat elevator that was inspected and approved by a rabbinical engineer who has expertise in this area. We recommend the Zomet Institute, zomet@netvision.net.il

At a site which lacks a Shabbat elevator and under pressing circumstances, it is permissible to ascend or descend by elevator with a non-Jew if he enters first and blocks the electro-optic sensor of the elevator door.

We will now further explain the reasoning behind allowing the use of a Shabbat elevator. There are *halachic* authorities who permit using a Shabbat elevator, whether ascending or descending (HaRav Shlomo Zalman Auerbach, as cited in *Shemirat Shabbat K'hilchata*, chapter 23, note 140. Rav Neuwirth, the author of *Shemirat Shabbat K'hilchata*, also writes this in *siman* 49. cf. Rav Auerbach's opinion in *Minchat Shlomo*, 91:10).

There are *halachic* authorities who make a distinction between ascending and descending by elevator. They permit ascending in an elevator because a person's weight does not contribute to the elevator's operation. On the other hand, descending by elevator is a problem since a person's weight affects the elevator's operation. (This is the opinion of Rav Levi Yitzchak Halperin, who heads the Scientific and Technological Institute of Problems in *Halacha*, in his book, *Elevators on Shabbat*. This view is also cited in the book, *Shemirat Shabbat K'hilchata*, *ibid.*) In particular, there is more of a reason to be strict when the elevator contains a heavy load.

There are *halachic* authorities who prohibit using a Shabbat elevator (*Minchat Yitzchak*, volume 3, *siman* 60). In addition to any possible issues of *melacha* involved with using the elevator, the *Minchat Yitzchak* gave an additional reason for prohibiting elevator use because of *ziluta d'Shabbat*, "disrespect" to Shabbat's sanctity.

Practically speaking, one may rely on the lenient view, particularly when ascending by elevator (*Shemirat Shabbat K'hilchata*, *ibid.*, *sif* 49, and the end of note 140; *Shut BeMareh HaBazak*, pp. 34-35), on condition that the Shabbat mode function neutralizes the mechanisms that weigh full and overweight capacity when operating the elevator on Shabbat (*Techumim*, volume 5, entry by Professor Lev, p. 58, entry by Rav Rosen, p. 75; *Talmudic Encyclopedia*, volume 18, electricity supplement, "letter hey", pp. 691-703; *Shut BeMareh HaBazak* volume 2, *responsa* 23).

When the elevator is idle, the electronic circuitry for the doors and safety features, including the photo-electronic cells, must be rendered inoperative (*Techumim*, *ibid.*, *Shemirat Shabbat K'hilchata*, *ibid.*, *sif* 53).

39. Entering a Nursing Home on Shabbat Where One Must Get “Buzzed In”

Question: My relative was recently in a religious nursing home. For security reasons, the front door to the nursing home was always locked. On weekdays, a visitor would ring the bell and the nurse would look at the video camera and buzz in the person. On Shabbos, we would follow the same procedure except that we would knock on the door and then the nurse would buzz us in. Are we allowed to stand in front of a TV camera on Shabbos for our benefit? Are we allowed to knock on the door thereby instructing the non-Jew to press an electronic button?

Answer: You are permitted to knock on the door and stand in front of the camera even though the non-Jew opens the door using an electronic buzzer, because the non-Jew is doing this for his own benefit. He could also come and open the door manually, but it is more comfortable for him to use a buzzer, and that is his decision to make.

40. Using Perfume for Besamim in *Havdala*

Question: If for *Havdala*, there are no spices available, may one make a *bracha* on perfume and/or aftershave lotion, and if yes, what *bracha* should be made?

Answer: Regarding perfume, there is a distinction between perfume that originates from a natural source and perfume that is synthetically-made. For naturally-derived perfumes, it is possible to recite a blessing “*borei minei besamim*” on them, just like all other spices. The *halachic* authorities are divided on whether or not to recite a blessing on synthetically-made perfumes. Some say that one may recite a blessing on them. Still others say that one should not recite a blessing on them since they are considered as a “*rayach she'ein lo ikkar*,” a smell that has no essence.¹ Thus, since “*safek berachot lehakel*” one should not make a *beracha* on such perfumes and not use them for *Havdala*.

¹ The Sefer *VeZot HaBracha*, fifth edition, p. 175 cites the opinions of contemporary *halachic* authorities on the topic. Rav Shlomo Zalman Auerbach, *zt”l*, was unsure in the matter (his opinion is cited in *Shemirath Shabbath K'hilchata*, chapter 61, note 32). It is similarly cited in the name of Rav Moshe Feinstein, *zt”l* (p. 180) that one should not recite a blessing on perfume for *Havdala*. In contrast, other authorities, such as the *Ohr LeTzion* in his responsa (volume 2, chapter 14, *ot* 38) allow one to recite the blessing.

41. Saying *Shir Hamaalot* at a Meal on *Motzei Shabbat*

Question: What is the source for saying *Shir Hamalos* on *motzei shabbos*?

Answer: The *Magen Avraham* (on the *Shulchan Aruch*, *Orach Chaim* 1:3, note 5) cites the *Shlah* (*Shney Luchot Habrit*) that in each meal during the week one needs to say "*al naharot bavel*" and on *Shabbat* one should say "*Shir hama'alot beshuv Hashem et shivat zion*". The *Pri Megadim* (in *Eshel Avraham* par. 5) states that one should recite *Shir Hamaalot* on every day that *Tahanun* isn't said. In the *Mishna Berura* in sec. 297 (of the *Shulchan Aruch*, note 1) he cites the *Pri Megadim* who rules that also one who eats on *Erev Shabbat* after noon should say *Birkat Hamazon* with *Shir Hamalot*.

It is clear, therefore, that *Motzei Shabbat* is the continuation of a day on which one does not say *Tahanun*, and therefore one should recite *Shir Hamalot* with *Birkat Hamazon*. [See also *Sha'arei Torah*, 581:1].

THE LAWS OF *YOM TOV*

42. Guidelines for an Israeli in *Chu"l* for *Yom Tov Shen*

Question: We are 2 Israeli *yeshiva* students who will be traveling to South America for *Sukkot*. We will staying in a Jewish community, and as far as we know, we have to keep *Yom Tov Shen* only in public but not at home. What exactly is considered a "Jewish community" for these purposes? What would the *halacha* be if our hotel is not in a Jewish neighborhood? Can we act normally? In the street, could we take taxis, carry *muktzeh* things, etc.?

Answer: The reason that a person who lives in *Eretz Yisrael* can not do *melacha* in *Chutz La'aretz* on the second day of *Yom Tov* is indeed because *Chazal* were afraid that such activity could cause *machloket* (*Pesachim* 51b). This is not a local *halacha* in regard to *Yom Tov* alone, but a general rule whenever there are clearly different practices among people from different communities (*ibid.*). Therefore, it is understandable that people are under the impression that as long as they "violate" *Yom Tov* privately (*b'tzina*) there is no problem. This is, in fact, the opinion of the *Taz* (*Orach Chaim* 496:2) who bases himself on the *Maharshal* and the logic we mentioned.

However, the overwhelming majority of *Rishonim* and *Acharonim* disagree and forbid *melacha* even in private (*Tosafot*, *Pesachim* 52a; *Magen Avraham*, *ibid.*:4; *Mishna Berura*, *ibid.*:9, to name just a few). It is true that in other areas where there are differences between *minhagim* we allow a person to privately follow his *minhag* against the *minhag* of his surroundings, but *melacha* on *Yom Tov* is more strict for two possible reasons.

1) It is more difficult, as a rule, to do *melacha* without others noticing (*Tosafot*, *ibid.*).

2) The prohibition on work on *Yom Tov Shen* is considered a major enactment, regarding which one has to be particularly strict (*Ba'al Hamaor*, *Pesachim* *ibid.*).

Therefore, we would urge visitors to Jewish communities to follow the majority opinion and not do *melacha* even privately. (Let us point out that we are personally aware of situations where *anei Eretz Yisrael* did *melacha* “privately,” and the matter became known and did cause a fight).

There are a few situations where one can be lenient. One is a situation where even one who sees what his friend is doing cannot tell that it is forbidden even for a local Jew. For example, one can do something which requires an *eiruv tavshilin* without one, because one who sees him doing the work does not see that he doesn't have an *eiruv* (Radvaz, cited by *Mishna Berura* 596:13). Also, if there is an action about which there is a *machloket* whether it is permitted on *Yom Tov*, then even a *ben Eretz Yisrael* who is strict on the matter can do it on the second day of *yom tov*. This shouldn't cause a dispute, since even many locals are lenient. In theory, an example could be smoking (which we think is strictly forbidden on *Yom Tov* and even during the year, but unfortunately, not all agree).

Where does the prohibition of *Yom Tov Sheni* apply? The *Shulchan Aruch* (OC 596:3) says that anywhere which is in the *techum Shabbat* (the confines of the city, where one is permitted to walk on Shabbat) of the community, the laws of *Yom Tov Sheni* apply. While it is difficult to talk about an area of the world which we do not know firsthand, in most cities one can go from place to place within the city and assume that it is within the *techum Shabbat*. If in your case it is not so, how will you get to the *beit k'nesset* on the first day of *YovT om*?

43. Having a Non-Jew Attend a Business Show on One's Behalf on *Yom Tov*

Question: I have a friend who owns a company. He mistakenly committed to a show that he just realized is happening during *Yom Tov*. He has invested non-refundable expenses (close to \$20,000) for that show. Would it be possible to allow non-Jewish employees to attend this show (no transactions will happen there), and under which conditions? Sources are appreciated, thank you.

Answer: In the case under discussion there is no need to sustain heavy losses,¹ and it is permissible for a non-Jew to be present at

¹ There is a prohibition against tending to one's business affairs on Shabbat [even if this does not entail committing any prohibited actions on Shabbat]. This is learned from the verse "from pursuing your business on My holy day" (*Yishaya*, 58, 13), as it is interpreted in the *Gemara Shabbat* (150a) and the *Shulchan Aruch (Orach Chaim 306 & 307)*. Thus, it is also prohibited to tell a non-Jew to commit actions that are relevant to the prohibition of "pursuing thy business" just as it is prohibited to tell him to commit other actions that entail transgressing a prohibition [even if the action only transgresses a *d'rabanan* prohibition- see *Shulchan Aruch Orach Chaim 176 & 307*]

One can find evidence that it is prohibited to tell a non-Jew to commit something that transgresses a "pursuing your business" prohibition, in the words of the *Gemara Shabbat* (150a), where it is written that one is prohibited from hiring laborers on Shabbat (even if they will only be working after Shabbat), due to the "pursuing your business" prohibition; and the *Gemara* adds (*ibid*) that it is even forbidden to tell a non-Jew to hire laborers. Hence, it is proven that it is prohibited to tell a non-Jew to commit an action that entails "pursuing your business".

Thus, regarding the matter at hand- it would also appear that it is forbidden to tell a non-Jew to manage the stand at the fair- for it entails "pursuing your business". However, according to what was mentioned in the question, this would mean a major financial loss, and according to the Rambam, in Chapter 6 of the laws of Shabbat (and he is also quoted by the *Shulchan Aruch (Orach Chaim 307, 5)*), if "one has great need for something" one can be lenient and tell a non-Jew to commit a *derabanan* transgression. Also the *Magen Avraham* (*ibid*) wrote that in this matter a heavy financial loss is considered "great need", and thus in

the stand in the fair also during the festival of *Yom Tov*. You must not ask the non-Jew to do things for you that are prohibited *m'deoraita*. It is permissible, after the fact that he invested in the fair, to ask him to do things that are prohibited *m'derabanan*² It is preferable³ that the non-Jew commit the actions out of his own initiative.

the matter at hand where we are facing a heavy loss it is possible to permit telling a non-Jew. [It is true that the *Eliyahu Raba* (ibid) opines that even when one will be subjected to heavy losses one should still be stringent, but, since we are only discussing a *derabanan* prohibition, it is possible to rely on the *Magen Avraham*].

² According to the letter of the law it is possible to ask the non-Jew to commit actions that are prohibited *m'derabanan*, if they are necessary for managing the stand. It is forbidden, however, to ask him to commit actions that entail transgressing a Torah prohibition.

³ If the non-Jew commits, out of his own initiative, actions that assist him in running the stand, then they are permissible even if he is committing actions that transgress Torah prohibitions (such as turning on a light etc). This is elaborated in the *Taz* at the end of *siman* 276, regarding asking a servant to wash dishes even if she will wish to light a candle so as to help her, since she is lighting it to fulfill her own need (even though the act of washing the dishes is being committed for the sake of a Jew). This is also the ruling of the *Mishna Berura* (ibid, 27).

44. Blowing the *Shofar* on the Left Side of One's Mouth

Question: I am supposed to blow the *shofar* in my shul on *Rosh Hashana*, and while I am able to blow it from the right side of my mouth, I do a much better job and it sounds a lot nicer when I blow from my left side. I know that the *Shulchan Aruch* says that one is supposed to blow from the right. Do we *paskin* this way? Is there anything else in particular that I should know about regarding the blowing of the *shofar*?

Answer: It is customary to blow the *shofar* facing upwards and towards the right. Likewise, the *shofar* should be inserted in the right side of one's mouth (as elucidated in *Shulchan Aruch, Orach Chaim* 585:5, in the *haga'ah*; cf. *Mishna Berura* and *Biur Halacha* for the reason).

The *Shaarei Tzion (sif katan 9)* cites the *Siddur Amudei Shamayim*: "Generally speaking, one does not have to be so scrupulous; rather, in any location that he directs it and he is comfortable with in order to blow according to the way that he learned, is preferable."

Rav David Yosef, in *Sefer Torat HaMoadim (5:13)* writes in a similar vein that, if there is one who knows how to blow the *shofar* towards the right, and if the other one who does not know is more G-d-fearing, it is better to choose the G-d-fearing one. For further laws and customs, please refer to the *Shulchan Aruch* and its commentaries.

If you will do a much better job when blowing from the left side of your mouth, then you are permitted to do so.

45. How to Properly Wash Hands on *Yom Kippur*

Question: On *Yom Kippur*, when washing hands in the morning before *tefilah* (and saying a *bracha*), was I allowed to wash each finger separately, so long as I poured the water in one long pour? It is easier to make sure that the water doesn't splash past the fingers that way. Was I allowed to make a *bracha* on this washing?

Answer: The *Shulchan Aruch* (162:3) rules that one must wash his hands in one go ("*Ein netilah lechatziyin*, washing cannot be performed in half-measures.") However, the *Mishna Berura* (ibid., *sif katan* 30) writes that one does not have to wash his hands in one pouring. Even two pourings that are done one after the other, without an interruption between them, are considered as one pouring.

Therefore, even if you were to put your fingers one-by-one under a continuous flow of water that you pour from a cup, it would certainly be considered as one pouring. You should *lechatchila* be able to recite a blessing on such a washing. Just make sure that your stringency of washing fingers one-by-one won't become a leniency of washing more than necessary on *Yom Kippur*.

46. Using Mouthwash on *Yom Kippur*

Question: Can one use mouthwash on *Yom Kippur*?

Answer: It is forbidden to use mouthwash on *Yom Kippur*. (Rema in *Shulchan Aruch* 613:4 & 567:3). The reason mouthwash is forbidden is because of the concern that it will be swallowed (*Mishna Berura* 613:11).

Question 2: I don't understand. Even if you do swallow the mouthwash, what's the problem, it is not food? In a recent reply you wrote that it was forbidden to use mouthwash on *Yom Kippur* because of the prohibition of drinking. You cited *Orach Chaim* 613:4 and the *Mishna Berura*. But these sources are referring to water or another drink. Mouthwash is not "*rauy le'achila*"?

Answer 2: The prohibition to eat on *Yom Kippur* applies even to things that are not "*rauy le'achila*" (edible) at all. See: *Shulchan Aruch, Orach Chaim*, 612:7. This law is confirmed by what the *Mishna Berura* writes in par. 567:12. Therefore, it is forbidden to wash the mouth on *Yom Kippur* even with something which is not suitable for drinking (*rauy lishti'a*).

47. Using a Pergola for a *Sukkah*

Question: In my yard I have a pergola, which I built with the intention of it being a *sukkah*. The slats on top are spaced (more sun than shade), and what I would like to do is add *sechach* on *Sukkot* to this roof, if necessary. Someone mentioned to me that this may not be a *kosher sukkah* as it stands all year, and the wooden slats are permanent. Could you please tell me if I can use it as a *sukkah*?

Answer: The conditions, which need to be fulfilled in order to allow a *sukkah*, built on the base of a pergola are:

1. If the wooden slats of the pergola are nailed down, one needs to place *kosher sechach* between the slats so that there is more shade than sun and there will be a majority of *kosher sechach* in relation to the slats of the pergola (in order to follow in accordance with the opinions which hold that permanent nailed *sechach* is *pasul*, unfit for *sechach*, from the Torah).
2. One also needs to place *kosher sechach* on the slats, otherwise there are those who say that one may not sleep or eat under them according to the law regarding unfit (*pasul*) *sechach*. If the *kosher sechach* is placed over the *pasul sechach* it is considered as if it is mixed, and the *pasul sechach* becomes insignificant in relationship to the *kosher sechach*.
3. One also needs to place a few branches of *kosher sechach* in the direction perpendicular to the pergola slats (meaning, if the slats are placed parallel to the long side of the *sukkah*, some *kosher sechach* should be placed parallel the width of the *sukkah* and vice versa). This is so there won't be a case of air space going through the entire length or width of the *sukkah*, in which case the Rema ruled that one may not sleep under it.
4. One needs to ensure that the walls of the *sukkah* are built (at least a *tefach* high close to the *sechach* along the whole *sukkah*) before placing the *kosher sechach*, in order not to have the *sechach* before the walls, which would be *halachically* problematic.

As for the *sukkah* standing all year long – the *halacha* has been ruled according to *Beit Hillel* that one does not need to make

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a *sukkah* specifically for the sake of the holiday, but it is enough to make it for shade. Therefore, there is no problem of having an existing *sukkah* all year round. However, it is quoted in the name of the *Talmud Yerushalmi* that one still needs to change or renew something (such as shaking the *sechach* for the sake of the holiday or to add some new *sechach* for the holiday). In your case, where the pergola slats are not the *sechach* itself, but rather *kosher sechach* is added for the *chag*, then certainly there is no problem for the pergola to stand all year long.

48. Washing before Bread in the *Sukkah*

Question: My grandfather used to *netilat yadaim* (washing the hands before bread) in the *sukkah* during the Holiday of *Sukkot*. Where did the *minhag* of washing in the *sukkah* come from. Also, if one is eating in someone else's *sukkah*, should he follow their custom or ask for a basin to wash in the *sukkah*?

Answer: It's written in the *Shulchan Aruch, Orach Chaim* 166 that the hand washing before the meal has to be as close to the eating as possible. This is a *Gemara* rule (*Brachot* 51b). The Rema wrote that the time considered a *hefsek* (interruption) for this matter is the time that it takes to walk 22 *amot*.

The *Achronim* wrote that walking from one house to another or from one room to the next is considered a *hefsek* even if it involves a shorter walk than 22 *amot* (*Mishna Berura* 5, *Kaf HaChaim* 10). For this reason, we try to have the place where one washes be very close to where one will eat, but this is not strictly required according to the letter of the law (*Aruch Hashulchan* there, *sif* 2). *Kaf HaChaim* also wrote that 'a person walking from the place where he washed his hands to the place of the meal doesn't count as a *hefsek*, as it is part of the requirements of the meal' (there 10), and says that it's better if he washes his hands without wiping them dry until he reaches the place of the meal, since, by doing so, the time between the washing and the drying will not count.

It seems that the best way to behave in the *sukkah* is to wash outside but dry one's hands in the *sukkah*, although if your *minhag* is to wash in the *sukkah*, you should carry on with your *minhag*, on condition that you take the water out afterward, as it is not respectful for the *sukkah* to keep it there. At any rate, this *halacha* of washing immediately before the meal is only *lechatchila* (to begin with), but *bediavad* (after the event) it's okay even if it wasn't immediately before (*Mishna Berura* 6).

49. Women making Brachot on the Four Minim (and on Optional Mitzvot in General)

Question: Is a woman obligated to bless the *lulav*? Are there any opinions that say this is proper or improper?

Answer: “Taking the *lulav*” is a time bound positive *mitzva* and therefore women are exempt. However, they may take the *lulav* and have the reward of someone who is fulfilling a *mitzva* without being commanded. The *Rishonim* debate whether a woman should recite a blessing when taking the *lulav*: Rashi (*Sukkah* 42a) and *Haghot Oshri* (ibid.) rule that they should not recite a blessing. The *Smag*, *Agor* (*Beit Yosef* 589) and Rambam (*Hilchot Tzitzit* 3:9 and *Hilchot Sukkah* 6:13) rule accordingly.

There are two reasons for this:

1. It would be an unnecessary (and therefore forbidden) blessing, because, even on a rabbinic level, women are exempt from taking the *lulav*.
2. Because reciting a blessing would make it seem like they were commanded to take the *lulav*, and this would transgress the prohibition of adding to the laws of the Torah. (*Agor* and *Smag* reject this reasoning).

On the other hand, Rabbenu Tam (*Kiddushin* 31a & *Eruvin* 96a) as well as the Ra’avad rule that women may recite the blessing upon taking the *lulav*. They say that just as the commandment itself is permissible but not obligatory, so too is the blessing. They are therefore of the opinion that it is neither an unnecessary blessing nor a transgression of the prohibition of adding commandments to the Torah.

The *Shulchan Aruch* (*Orach Chaim*, 589:6) rules like Rashi and the Rambam, that women should not recite a blessing on time bound positive commandments. This is the custom of *Sephardi* women. The Rema rules that it is the accepted custom for women to recite blessings, however others should not recite them on their behalf. This is the custom of *Ashkenazi* women.

50. Freezing and then Reusing an *Etrog*

Question: I have a question about *Sukkot* - I decided to preserve my (beautiful) *Esrog* in the freezer this year, and last I checked it is still in its original color and form. I'm not sure of the origin of where the *Esrog* came from, however, it was *kosher* and sold to me directly by a vendor in New York State.

Would it be acceptable to "re-use" my *Esrog* next *Sukkot*? My intentions are not to save money.

Answer: The Rema 548:1 ruled that an *Esrog* which has dried up is not *kosher* for use, and that an *Esrog* from the previous year has definitely dried up already, and is therefore not *kosher* for use. There are different opinions as to what the Rema meant. The *Bach*, the *Eliyahu Rabah* and the *Gra* understood the Rema's ruling to mean that, even if the moisture within the *Esrog* were to be examined by means of a thread and needle, it would still be of no value (*Shulchan Aruch* *ibid*), because a year has already elapsed since the last time it was used. However, the *Taz* understood the Rema's ruling to mean that, after a year, examining the *Esrog* would still be of value and obligatory (this explanation is difficult in the words of the Rema).

The *Mishna Berura* (*ibid* 100:4), rules like most of the later commentators and is stringent, but also quotes the *Tamim De'im* (100:8) whose reasoning is like that of the *Taz*, he writes: "However, if one takes care to retain the dampness of the *Esrog*, by keeping it, for example, in moist substances – he would be able to use it for the next *chag*. Our sages did not give a specific time span for the use of the *Esrog*, as it depends on its individual state. The *Mishna Berura* claims that in such a case all would agree, and so ruled the later commentators with regards to freezing the *Esrog* (*Az Nidberu* 13, 38:5; *Be'er Moshe*, *Kuntres Electric* 52). However, Rabbi Moshe Feinstein did not rule likewise, since he was concerned that the *Esrog* would turn moldy inside even though its external appearance is still good, and in such a case the *Shulchan Aruch* ruled (*ibid* 4) "An *Esrog* which is moldy inside but the

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external appearance is good, is *kosher*, and there are those who say it is *pasul*". Rav Moshe is of the opinion that one should be - stringent, and even if this is the only *Esrog* one has, it should taken without a *beracha*.

Therefore, in our opinion, one should take the *Esrog* out from the freezer 8-10 days before the *chag* to see if it will turn moldy on the outside, and if it doesn't, one may use it. However, if one did not check the *Esrog* one may not use it. It appears that the other authorities would also agree with Rav Moshe Feinstein, but only meant that theoretically, if checked, a frozen *Esrog* would be *kosher*.

51. Whether One Should Put a Torah Back Early, so That it Can be Used by a Different *Minyan* on *Simchat Torah*

Question: There is a disagreement in the shul I *daven* at as to the following issue. During *Simchat Torah* we have two *minyans*, a *Hashkama* (early) *minyan* and the main *minyan* (a later one). The early *minyan* had three *Sifrei Torah* and the later *minyan* had a greater amount. Since the early *minyan* finished with *hakafoth* and *aliyot* earlier than the main *minyan*, they gave the main *minyan* two of the *Sifrei Torah* and wanted to keep a *kosher Torah* for the rest of *davening*, putting the Torah back at *Musaf*. The people from upstairs said they wanted the last *kosher Torah* also, to be able to read from it as well. What is your opinion regarding this matter?

Answer: First of all, we would like to say that if your shul has a Rabbi, he should be approached with this question since he is the “*mara d’atra*” the local Rabbinic authority. What will be written here, is not meant to undermine his authority. Our response will have validity only if the Rabbi of the shul agrees to it, or alternately – if there is no Rabbi to the shul.

The *Shulchan Aruch, Orach Chaim* 8:149 writes that the “*tzibur*”, congregation, may not leave the *shul* until they put away the *Sefer Torah* in its place. The source of this *halacha* is in the *Gemara Sotah* 39b, and the reason is that it is a disgrace for the Torah if the congregation walks out, leaving the *Sefer Torah* abandoned.

We did not find such a prohibition in the situation where the people of the congregation stay in place and the *Sefer Torah* is being transferred to the other *minyan*. Furthermore, it is for the honor of the Torah that it be read, especially on *Simchat Torah*, where many unique practices are done for the sake of honoring the Torah. Therefore, there is no problem if the other *minyan* takes the *Sefer Torah*, even if it hasn’t yet been returned to the Ark.

There is a custom to have three people escort the *Sefer Torah* to the new *minyan*.

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In any such case of disagreement, the problem should always be solved peacefully and with the good nature which should always prevail among the members of the community.

52. *Mincha* and *Chanukah* Candle Lighting on *Erev Shabbat*

Question: There is a well known question regarding when the first night of *Chanukah* falls out on Friday as to whether one should light first and then pray *mincha* or vice versa. Assuming that one could not find a *minyan* before lighting and therefore prayed after lighting *Chanukah* candles, is it required to say “*Al Hanissim*” in his *mincha*, being that his candles have already been lit? Or perhaps, since *mincha* is still a *tefila* that belongs to the 24th of Kislev, he should not say it? Are there any sources that discuss this issue?

Answer: In *Shulchan Aruch Orach Chaim, siman 679* of the *Sha'arei Teshuva* (in the name of *Maharash Avraham*) it is written: “One must be careful to *daven mincha* on the eve of *Shabbos Chanukah* and only then light *Chanukah* candles, because *mincha* corresponds with the evening *Tamid* sacrifice and the *Chanukah* candles commemorate the miracle of the Menorah, which is lit only after the evening *Tamid* is sacrificed. For more on this see the *Sha'ar Zion* and the *Mishna Berura*. If one *davens mincha* after lighting *Chanukah* candles one should not say “*Al Hanissim*”, because the addition of “*Al Hanissim*” is an ordinance that is only relevant to the seven days of *Chanukah* (*siman 682*), and *mincha* of *Erev Shabbos* belongs to the 24th of Kislev. This case is similar to that of *Purim De'mukafin* (*Purim* celebrated in cities that were surrounded by a wall since the days of Joshua) that falls on *Shabbos*, in which case the *Megilah* is read early on Friday, and the *Purim seuda* is eaten on Sunday, whereas “*Al Hanissim*” is said only on *Shabbos*. See *siman 688, 6*.

53. Where to Light *Chanukah* Candles if one will be on a Cruise over *Chanukah*, and what to do with Leftover Wax from *Chanukah* Candles

Question:

- a. A family is on a cruise all *Chanukah*, where they can't light *Chanukah* candles- can they make a *shaliach* to light the candles at their home?
- b. Is it obligatory to burn the wax left over from the eighth night?

Answer:

- a. The definition of the *Chanukah* candles is "*ner ish uveito*" (a candle for each man and his house/family). The meaning is that the obligation of lighting the candles is on the home, and on the family living there. However, we have to understand what the definition of the home is.

The *Shulchan Shlomo*, 14, 18, says that the definition of where you live for these purposes is determined anew every day. That is also how he explains the *Pri Chadash* who says that a man who isn't going to be in his house for the whole *Chanukah* lights the candles in the place where he is staying. He explains that this is not only the case when one will be staying in one place for the whole *Chanukah*, but even for a single day as well, and that is the agreement amongst the *poskim*.

Hence, if the whole family lives, sleeps and eats in the boat, their home is the boat and they have to light the candles there. They have no obligation of lighting in their regular home as they aren't living there now.

In that spirit, the *Shut Maharsham*, part 4, 146, wrote that a person traveling in a train all night has to light the candles in the train as this is his home for that night.

Thus, the conclusion is that they have to attempt to light the *Chanukah* candles on the boat, and that they should plead with the management of the boat to allow them to light at least one candle for half an hour each night. They cannot ask someone

else to light in their regular home for them as there is no reason for them to light the candles there, and they aren't doing any *mitzva* that way.

Indeed, if not all of the family is going on the cruise, and some are staying behind, they can light the candles for the rest of the family.

- b. The *Shulchan Aruch Orach Chaim* 677, 4 says: 'what's left from the oil in the eighth day which was needed in order for the candles to be lit (for half an hour), should be made into a bonfire and lit by itself, as it was intended for the *mitzva*'. The *Mishna Berura* says that the leftover oil is forbidden for use because it was intended for this *mitzva*, and shouldn't be kept for the year after, out of fear that one might forget and use it for other purposes.

It seems that the *Shulchan Aruch* says to burn it, as a respectful way to dispose of the object used for a *mitzva*. However, one seemingly does not necessarily need to burn it, but can dispose of it in other, non-disrespectful, ways.

Therefore, seems that the wax left over from the last night may be thrown away and not burnt, on condition that it is not done in a disrespectful way.

54. What to do if One Can't Attend Shul to Hear *Parshat Zachor*

Question: If a man knows in advance that he will not be able to attend *Shul* on Shabbat *Zachor*, is there any way to fulfill the *mitzva min haTorah* of reading *parashat Zachor* with a *minyan* during the week?

Answer:

1. The *mitzva* of the Torah is to remember the story of Amalek by reading it once a year. All agree that one can fulfill this *mitzva* by listening to the story of Amalek during the reading of *Parshat Ki-Tisa*. Some even hold that one can fulfill the *mitzva* by listening to the story of Amalek starting with the words "*Vayavo Amalek*", read on *Purim* itself. In either option, one needs to intend to fulfill the *mitzva*, and one should even ask the *ba'al koreh* (the reader) to intend to make him "*yotze*" (to intend to read in order that the listener fulfill the *mitzva*).
2. All the *poskim* write that this is the solution for whoever cannot hear *Parshat Zachor*, and this is our conclusion too. However, since there is a certain preference for each of the possibilities, it is better to do both.
There is no need to make an additional reading of *Parshat Zachor*.
3. It is proper that on Shabbat *Zachor* one read *Parshat Zachor* even from a regular *Chumash*, as some say that by doing so one fulfills the Rabbinic institution of reading *Parshat Zachor* before *Purim*.

55. The timing of Pesach and the Spring Equinox

Question: I always understood that Pesach should fall out on the first full moon following the spring equinox, March 21st. Since *Pesach* is always in the spring the *chachamim* instituted the additional month *Adar*. As I look at my calendar I see that *Shushan Purim* is the first full moon after the Spring Equinox. Did Hillel the II comment on this phenomenon when he fixed the calendar or is there more that I am missing?

Answer: There is a disagreement among the commentators and the *Midrashim* about whether or not *Nissan* needs to come out on the first month of spring, or whether it just needs to come out during the spring. Those who hold by the first opinion are: Ibn Ezra on "*Hachodesh hazeh lachem*" (*Shmot* 12), and this can be understood from the *Midrash* in *Sechel Tov* on this same verse.

However, the simple understanding is like the second opinion, which says that the main idea is that *Pesach* should come out in the spring and not necessarily in the first month of the season. This is understood from the *Gemara* (*Sanhedrin* 13b), the Rambam (*Hilchot Kiddush HaChodesh* chp. 4) and other *Rishonim*.

Even according to the first opinion, it is understood from the *Gemara* that one may make the year a leap year for other reasons too, such as needing to fix the roads and the bridges and waiting for the sheep to give birth in order to have lambs for the *Korban Pesach*. In any case, there is a rule that "even if you are mistaken, even if you are doing it purposely" (the setting of the calendar by *Beit Din* is effective, *Rosh Hashana* 25a). Therefore, in any case the calendar is still valid, even if it is not ideal. Regarding changing the calendar in present days, according to the Rambam (*Sefer HaMitzvot, Mitzvat Assei* 153) that those who set the calendar and the months are the people of *Eretz Israel*, there is a theoretical option of changing the calendar. However, according to the Ramban (in his *hasagot*), Hillel the II sanctified all of the months and years ahead of time, and therefore, there is no option of changing the calendar until the renewal of official *semicha* (ordination).

56. Using a Hot Water Urn for *Pesach*

Question: I have a Shabbos urn. It has a plastic tap through which the water comes out. I only use it for holding hot water although it may have been cleaned with a vinegar solution for descaling purposes. May it be used for *Pesach*, either with or without *kashering*?

Answer: According to the letter of the law, an urn that did not come into contact with *Chametz* but only with water does not need to be *kashered* for *Pesach*.

However, it has been the custom to clean the urn thoroughly, preferably with scale remover such as vinegar, and to fill the urn with water which is then boiled.

57. Timing of the Fast of *Bechorot* When *Pesach* Begins on Shabbat

Question: A *bechor* (a first born male) asked me the following question at work: Since Passover falls on Saturday this year, the fast for firstborns is on Friday. Is this correct? He has been told that since one can't fast on Shabbat, the fast for this year is actually going to be on Thursday. Is this true? Which one is it, Thursday or Friday?

Answer: There are several opinions among the *halachic* authorities. Most rule that it should be observed on Thursday. The reasoning is as follows: since the Fast of the First Born cannot be observed the day before *Pesach* this year (Saturday), it is advanced; once it is already advanced, rather than advancing it to Friday, it is advanced to Thursday, since it is problematic to choose to fast on Erev Shabbat.

The Fast of the First Born is not a “major” fast day. Accordingly, one is excused from fasting if he is present at a feast for the performance of a *mitzva*, such as a *brit milah* or the completion of a book of the Talmud. Since it is impossible to be certain that there will be a *brit milah* that morning, most congregations arrange for the completion of a book of the Talmud, which is reason for serving food and drink, and one therefore does not need to fast.

58. Guidelines for Selling and Using Food Mixtures and Cosmetics on *Pesach*

Question: Do you have to sell for Passover, health and beauty aids that are used externally? Can they be used on Passover? What if they are inedible? Do mixtures of edible things that contain *chametz* have to be sold even if they are used externally? What about food which are mixtures of *chametz* and non-*chametz*? What percentage has to be sold?

Answer: We shall answer your questions from the simple to the more complicated.

1. Anything which is edible (even if it is not intended to be eaten, but can be eaten, even if with great difficulty) needs to be sold as long as the *chametz* gives taste in the product [1/60 of the mixture]. There is a disagreement among the *poskim* (*halachic* advisers) regarding which mixtures that include *chametz* are forbidden from the Torah and which only from the Sages. There are many people whose custom is not to sell *chametz* which is forbidden from the Torah, but rather burn it, unless there is a great loss (usually household type quantities are not considered “great loss”). Therefore, it is important to figure out which *chametz* is forbidden from the Torah.

There are a few types of mixtures:

- A. A mixture which includes a “*kizayit*” (size of an olive) which can be eaten (as part of the mixture) within the time of eating half a loaf of bread (“*toch kedai achilat pras*”). The amount of *chametz* according to this criteria is 1/9 of the mixture. *Chametz* in this percentage is forbidden from the Torah according to all of the opinions.
- B. Regarding a mixture which includes somewhere between 1/9 and 1/60 of *chametz*, there is a disagreement whether it is forbidden from the Torah (*mide'oraita*) or from the Sages (*miderabanan*).

In this mixture there are two levels:

- i. The mixture includes the sum of a *kizayit* of *chametz*

ii. The mixture doesn't include the sum of a *kizayit*. For example, if the percentage of chametz is 1/20, but there are only 10 *kizaytim* in the whole mixture.

Thus, it is preferable not to sell any edible mixture of *chametz*, but rather to get rid of it, as long as it is in household quantities.

2. As to cosmetics and health products used externally:

A. When the products are not edible (even) for dogs:

i. For health purposes, all agree that it may be used.

ii. Even cosmetics are permitted for use according to the letter of the law.

B. When the products can be eaten by dogs but not by people:

Most *poskim* rule that external use is allowed. However, one should be stringent if the *chametz* in the cosmetic was originally edible and only became inedible due to the mixture with additional ingredients (such as is the case for some perfumes). If during the production process the *chametz* was never edible, there is no reason to be stringent at all.

59. Whiskey That Wasn't Sold for *Pesach*

Question: A relative of mine passed away recently, and in clearing out the house I found a stack of whiskey which is many years old, clearly was not sold over *Pesach* and is *chometz sheo'var olov ha'Pesach*. Is there any way to *matir* this whiskey?

Answer: We are sorry to hear of your recent loss.

With regard to the whiskey, in normal cases, one would not be allowed to eat or benefit from whiskey which was owned by a Jew on *Pesach* even if that Jew did not observe *Pesach*. However, there are some *poskim* who have allowed it in cases of extreme loss. Their *heter* is based on the following points. Firstly, they say that he does not listen to the Torah, and certainly about *Pesach*. Therefore, the *gezerah* that *Chazal* put on forbidding *chametz* which was owned by them will not deter them in any way. Therefore, they are considered to be excluded from this *gezerah*.¹ A second point² is that the part of the whiskey that is *chametz* is too strong to be drunk in the proper amounts to be “*chayav karet*” since one cannot drink a “*kezayit kedai achilat prass*”; therefore, one is allowed to have benefit from it after *Pesach* if there is a great loss. Below are additional sources.³ Therefore, the more preferable option in a case of very extreme loss is to sell the *chametz* to non-Jews (who won't sell it or give it to Jews). If you want to rely on some of the above *poskim* and drink the whiskey, you may do so.

¹ *Magen Elef, siman 448*.

² *Shulchan Aruch Harav, Orach Chaim siman 442:9* in the note (which allows only *hana'ah*).

³ Additional sources are *Mishna Halachot, chelek 3, siman 549* (where many of the *heterim* are mentioned), *Pitchei Teshuvot, chelek 5, siman 448:9*, *Maadanay Shmuel, siman 112:18*.

60. Burning *Chametz* Found on *Pesach* in a Situation where the *Chametz* was Sold

Question: I was told by an *Av Beit Din* and *Dayan* that nowadays if someone finds *chametz* on *Pesach* he can't necessarily burn it, because, depending on how the *shtar mechira* is worded, this *chametz* is actually not his, but belongs to the non-Jew and so burning the *chametz* is actually stealing from the non-Jew! Rather, one should just put it away with the locked up *chametz* (during *Chol Hamoe'd*). It was interesting to see that you did previously write to burn it, as per the *Shulchan Aruch*, and you didn't discuss the *shtar mechira* issue?

Is this just an "oversight"? Or, was this intentional? If so, what is the reasoning?

Answer: You asked an excellent question. *Mechirat chametz* has enough problems in general. When one is not aware of the *chametz* and does not put it aside with things for sale it is extremely tenuous. If the goy wants to claim his *chametz*, is he to search on his hands and knees for things no one knows about and then do a laboratory test to show that it is *chametz*, and, as a result, he had bought it? Although some *shtarot* include *chametz* wherever it is, we do not think this is sufficient, and therefore the *halacha* of the *Gemara* and *Shulchan Aruch* to burn *chametz* you find still applies. Regarding the fear that you are stealing from the non-Jew, firstly it is only a *safek* that the sale worked and secondly, there is not likely to be *k'peida*. While in general we wouldn't suggest people to be *someich* on the lack of *k'peida*, under the circumstances, we feel this is a better way to go.

People need not be so scared about selling *chametz* they didn't initially find. That's what *bitul* is there for, and *bitul* is, of course, a *takana* of *Chazal*. Even though it doesn't solve *chametz she'avar alav haPesach*, that's fine. If someone didn't bother to think about certain *chametz*, let him do in accordance with the ruling of the *Gemara* and destroy it.

61. Scope of the Principle of "*Achshevai*"

Question: Does "*achshevai*" apply to inedible things that happen to get on ones food, like if lipstick gets on ones sandwich does one have to take it off.

Also, can the principle of "*achshevai*" effect the *kashrut* of a utensil?

Answer: *Achshevei* (giving *halachic* significance to an otherwise inedible item) only applies when the fact that one is eating it shows that he gives it special value, above what other people do. In the cases you mention, if indeed one will eat the questionable non-food, it is only because it is inconvenient to remove it. Therefore, *achshevai* does not apply.

62. How the Sale of *Chametz* Interacts with *Bitul Chametz*

Question: I am somewhat confused with the timing implications of the sale of the *chametz*, and the second *kol chamira* (nullification), especially since we give the rabbi the agency to sell our *chametz*. I have read that the sale - and burning (with nullification to follow) must all be completed by the 5th *zman* (*halachic* hour) of the day. If the rabbi/agent in fact sells the *chametz* before the nullification, it seems that we are only nullifying what may be left, and (if so) that I can understand. I guess that's an argument whether to wait as long as possible to nullify, and to get a "will sell by" time. But what if we inadvertently nullify before the actual sale takes place? Did we negate (nullify) the sale (by losing any transferrable interest)? Or does the later sale completion (still before the 5th hour) somehow void our (earlier) statement of nullification, by showing we still thought we had *chametz* interests to transfer?

Answer: Your question is a wise one and many *Gedolim* have pondered it with difficulty.

The custom accepted throughout the Jewish Diaspora is that rabbinical courts certified to sell the townspeople's *chametz* to non-Jews sell the *chametz* in a manner that the sale does not come into effect until the fifth hour on the fourteenth. This is done for the sake of those who still wish to use *chametz* or to add to the *chametz* being sold. However, at that hour the Jews have already fulfilled the *mitzva* of burning and have already nullified the *chametz* by saying *kol chamira*- and it is hard to understand how one can sell to a non-Jew something that he has already nullified and abandoned, and is no longer his own.

Accordingly, there are those who claim¹ that, *lechatchila*, one should sell his *chametz* prior to the hour of *Bitul Chametz*, and that the *kavanah* (intention) of the nullification should be that any

¹ See Shut Chatam Sofer on Orach Chaim, 62, 113, 114.

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chametz in one's possession that one did not know of at the time of the sale will all be abandoned (*hefker*).

However, the *Shulchan Aruch HaRav* (by the *Baal HaTanya*) writes that, due to the sale, one must emphasize the fact that the *chametz* being sold is not included in the *chametz* being nullified, and that the nullification only applies to *chametz* that he is unaware of and does not intend to sell. Thus the problem is solved, and we will add that the custom of selling the *chametz* to a non-Jew after the burning of the *chametz* is correct, because, according to the Rema (432, 2), one can only burn *chametz* that belongs to oneself; by doing so one is fulfilling the *mitzva* of “*Tashbitu*”, and if one were to sell the *chametz* to a non-Jew before burning it, he would then be burning the non-Jew's *chametz* and not his own.

63. Reasons for the Custom to not Eat *Kitniyot* on *Pesach*

Question: Could you explain the origins of the *kitniyot minhag* (I am *Ashkenazi*), the reasons behind it, and if it is something that I can change? I find it very difficult to shop or go out to eat during *Pesach*, plus, most importantly, I don't go to my sister's for *Seder* (she married a *Sephardi*), because although I know I am allowed to eat with the same utensils, etc. most of the food is cooked with *kitniyot* and I feel bad asking my brother-in-law's family to cook everything special just for me. What can I do? Is this the kind of *minhag* I can change? Also, why doesn't the Rabbinic community change this if it is no longer valid?

Answer: The prohibition to eat *kitniyot* is a custom practiced in *Ashkenazi* communities and in some *Sephardi* communities (such as people originally from Morocco) that is based on a few concerns (see *Shulchan Aruch, Orach Chaim, 453* and *Mishna Berura* there, par. 6 and in the *Bi'ur Halacha* who summarizes the reasons):

1. There is sometimes grain mixed in the *kitniyot* sacks.
2. Flour is produced from the *kitniyot* and there is a chance that if *kitniyot* flour is used, one might come to use real flour as well.
3. The *kitniyot* themselves, at least some of them, look like grain and could be confused with grain.

The *kitniyot* custom was accepted in the *Ashkenazic* communities at the end of the period of the *Rishonim* and should not be discontinued (*Shulchan Aruch, Orach Chaim, 453:1* in the *Rema*). It is forbidden for a person who practices the prohibition on *kitniyot* to put *kitniyot* in food and to be '*mevatel*' (neutralize) them by the fact that the majority of the food is not *kitniyot*. If such a situation occurred or someone whose custom is to allow *kitniyot* cooked such a dish, then the one whose custom is to not eat *kitniyot* is allowed to eat the food, as long as the majority of the dish consists of permissible food, and as long as it is impossible to separate the *kitniyot*. For example, if chicken was cooked or baked with rice – it is permissible to eat the chicken.

Regarding the dishes – it is permissible to eat food that was cooked in *kitniyot* pots, even if they are '*ben-yomo*' (were cooked

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within the preceding 24 hours). Therefore, there is no prohibition on one who does not eat *kitniyot* to eat at someone's house who eats *kitniyot*, and with his dishes. See the Rema above, and the *Mishna Berura* there, and the *Kaf Ha'Chaim* there.

64. Cooking *Kitniyot* in *Pesach* Dishes

Question: In a year when the first day of *Pesach* is on Sunday, or a year when the seventh day of the holiday is on Friday, is it generally permissible for *Ashkenazim* to cook *kitniyot* for, and eat them on, the adjacent Shabbat, using the normal *Pesach* utensils?

Answer: *Kitniyot* are not chometz and may be left in the house on *Pesach* (Rema 453:1). They therefore do not make the utensils in which they were cooked before *Pesach* or during *Pesach* itself forbidden for use, although one should wait 24 hours before using those utensils to prepare food for *Pesach*. One is therefore permitted to eat *kitniyot* in a case of need on Erev *Pesach* which falls on Shabbat, even after the sixth hour from sunrise, and one is permitted to use *Pesach* utensils for this purpose. There is a disagreement among the *halachic* authorities regarding cooking *kitniyot* on the seventh day of *Pesach Yom Tov* which falls on a Friday, because there is a problem in nullifying a food which cannot be eaten by he who nullifies it, as well as other problems in this matter (see responses of *Minchat Yitzchak* 7,53). It is therefore preferable to refrain from cooking *kitniyot* on *Yom Tov*, but where there is a great necessity, one may rely on the more lenient opinion.

65. May an *Ashkenazi* who is Diabetic Eat *Kitniyot* on *Pesach*

Question: What is the *halachic* status of a diabetic in relation to an *Ashkenazi* being able to eat *kitniyot* on *Passover*? Since being diagnosed as a non-insulin diabetic, I had to keep a very strict diet including the avoidance of simple carbohydrates in favor of complex carbs - potatoes for example are not a good source of complex carbs.

Answer: One who is required for health reasons to eat *kitniyot* may do so. Amongst the *kitniyot*, it is preferable to eat those less similar to grain. Those most similar to grain, such as rice, should be the last on the list, however, if necessary, they may be eaten (*Mishna Berura* 553,7).

66. Why *Shir Hashirim* is read on *Pesach*

Question: In what context is the Song of Songs read on Passover, and what is the connection of this book with Passover?

Answer: The tradition of reading the Song of Songs on Passover is at least 1,500 years old and originated in Babylonia, now Iraq. There were differing customs in various communities when it should be read during the festival. Today in all Orthodox congregations it is read on the Sabbath of Passover at the conclusion of the morning service and before the reading from the Torah.

Various reasons have been given for why it is read then.

1. There is a reference to Pharaoh in 1:9.
2. There is a reference to the spring season in 2:11.
3. Allegorically, Song of Songs is interpreted to be the love song between the lover, God, and his beloved maiden, Israel. Passover is the time of the redemption from Egyptian bondage when God forged, as it were, an eternal bond with Israel.
4. On Passover other "songs" are read, for example, the Song after Crossing the Sea (Ex. 15:1-19) on the seventh day of the festival; David's Song (1 Samuel 22:1-51), the *Haftarah* reading for the same day; and the "Egyptian Hallel" (Ps. 136), both at the *Seder* feast and on each festival morning of Passover. Therefore, it is appropriate to read the Song of Songs as well.

67. *Halachot of Yom Haatzmaut and Yom Yerushalayim*

Question: In the *BeMareh HaBazak* Responsa (4) you raised the question regarding shaving and playing music on *Yom Ha'Atzmaut*. I would be thankful if you could summarize all of the details of the laws associated with *Yom HaAtzmaut* and *Yom Yerushalayim* in the following matters:

- A. Holding a marriage.
- B. Saying *Tziduk HaDin*, saying *Hallel* in the house of a mourner, and the laws of mourning during the holiday. Is it appropriate to send a mourner to be *shaliach tzibur* during these days?
- C. On years when the holiday is celebrated early, does the 5th of Iyar (and the 28th of Iyar) have the status of a regular weekday or “*k'zat Chag*” (a little bit of holiday)?

When the celebration is begun during the day must it stop immediately upon *zeit hakoachavim*?

Answer:

- A. It is permissible to hold a *Chupah* and *Kiddushin* on *Yom Yerushalayim*, but on *Yom Haatzmaut* the custom is not to conduct them, but those who are lenient have sources to rely upon.
- B. 1. In regards to saying *Tziduk HaDin*, according to the *Mechaber* (the *Shulchan Aruch*) it should be said, and according to the opinion of the Rema it should not be said.
 - 2. Concerning mourning- we did not find an explicit edict of the Chief Rabbinate, and, therefore, *shiva* mourning is upheld.
 - 3. Regarding *Hallel*, there are those who say that the mourner should move to another room so that the congregation praying in the mourner's home can say *Hallel*, and there are those who say that it must not be read there, and that each congregant should read it when he returns to his own home. *Sephardim* say *Hallel* on *Yom Haatzmaut* in a mourner's home.

4. On *Yom Haatzmaut* and on *Yom Yerushalayim* it is not appropriate to send a mourner to be *shaliach tzibur*, unless he is the regular *shaliach tzibur* during those days, and the congregation wishes to hear him in particular.
- C. 1. The 5th of Iyar remains “*k’zat Chag*” (a little bit of a holiday) in regards to refraining from saying *Tachanun*, “*Tzidkatecha*”, and *Hazkarat Neshamot*, even if *Yom Haatzmaut* was celebrated early.
2. *Yom Yerushalayim* never falls on *Shabbat*, and for many years it was not celebrated early even when it fell on a Friday. In recent years this has changed and it has been decided that it is celebrated early if it falls on a Friday as well as if it falls on a Sunday.
- Regarding a family or public thanksgiving meal in honor of *Yom Haatzmaut* or *Yom Yerushalayim*: on *Yom Haatzmaut* it is permissible to continue the meal at night, without dancing and merriment, and there are those who permit even dancing and merriment, and on *Yom Yerushalayim* it depends upon the customs of *S’firat HaOmer*.

68. Background to *Tikkun Leil Shavuot*

Question: What is the explanation/ history/ *halachot* of the *tikkun* many people say on *Leil Shavuot*? Who compiled it? Why do some people choose to say this as opposed to staying up all night learning? Are there certain sects or the like who choose always one way and not the other, etc.?

Answer: The *Zohar* (*Emor* 108:1) writes that the early *Chassidim* used to stay awake every *Shavuot* night and learn Torah. In *Pirkei D'Rabbi Eliezer* (chapter 41) and in the *Magen Avraham* it is written that we have the custom to stay up all night on *Shavuot* in order to repair the sins of our ancestors who slept on the night that the Torah was given at *Har Sinai*.

Tikkun Leil Shavuot, which is printed in *siddurim* and was composed by the Ari z"l in *Sefer Kriei Moed*, contains verses from the beginning and end of the *Parshiot*, of the *Neviim*, and of *Ketuvim*. The Kabbalists had the custom to read this as a congregation, with groups of ten people or more. According to this opinion, it is preferable to learn this than to learn *Gemara*.

However, someone who is careful to learn all night on *Shavuot* and learns *Gemara* can rely on those *Rabbanim* (*Chok Ya'akov* 504) who explain that the *Tikkun Leil Shavuot* was written primarily for those who are not learned, and not able to learn on their own. According to them, it is preferable to learn *Gemara*.

Those from *Edot HaMizrach* (Eastern *Sefardic* communities) and those who behave according to the ruling of the Chida have the custom to read the *Tikkun Leil Shavuot*, as the Chida writes in his book *Lev Dovid* chapter 31. For other communities, the customs vary in regards to whether or not it is recited, and by whom.

For further information, look in the *Mishna Berura Orach Chaim* 494, and in *Yalkut Yoseph* 5.

69. Is it Permissible to Go to the Gym During the Nine Days?

Question: May I go to the gym during the Nine Days? I am asking because of the music (I go because of health reasons not to enjoy the music).

Answer: One may go to the gym during the Nine Days. One does not need to avoid hearing the music, since one does not listen to the music for the purpose of enjoyment.

**70. Reading *Shir Hashirim* on *Tisha B'Av*
(when one committed to read *Shir Hashirim*
for 40 days)**

Question: I have undertaken to recite *Shir HaShirim* for 40 days. The 40th day happens to fall out on *Tisha B'Av*. Can I recite *Shir HaShirim* on that day even though most Torah study is not allowed on *Tisha B'Av*?

Answer: If there is a necessity to recite it daily, you can be lenient and recite *Shir HaShirim* after *chatzot*, as is the custom in some places to recite *Tehilim*, and as is brought in the *Mishna Berura* in *siman 654 sif katan 7*. You should be careful to read it only, not learn it.

71. The Status of Someone Who Drinks Water with Pills on a Fast Day

Question: On a *Taanit Tzibur*, if one takes necessary pills with the allowable *shiur* of water, may he take an *aliya*, *duchen*, *daven* for the *tzibbur* and say *Anainu*, etc.?

Answer: One who eats less than a *shiur* is still considered to be afflicting oneself. Thus, he may still receive an *aliyah* and recite *Aneinu* in the *Shemoneh Esrei*, etc., just like others who are fasting.¹

¹ The *psak* of Rav Shlomo Zalman Auerbach, *zt"l*, in *Shemirath Shabbath K'hilchata*, chapter 39, note 115.

THE LAWS OF MOURNING

72. The *Mitzva* to Watch over the Deceased before Burial and Seeing the Body Before Burial

Question: I need to check some of the laws concerning mourning, which I am unaware of and which remained unclear to me after looking at the *Kitzur Shulchan Aruch*. I would very much appreciate your help in the following questions:

1. After someone is deceased, is it permitted to leave the body overnight alone in the room where the person passed away?
2. Is it permitted for the *avelim* who have not yet seen the body to come see it if the face is uncovered?

Answer: Regarding the question of keeping watch over the body, it would appear that it is a *mitzva* to watch over the body, and that the *mitzva* has several explanations which imply possible differences in practice. The reason given by the Babylonian Talmud is that, in a place that is not guarded against infestation by mice, the body should be protected from the mice. However, we have found another reason given by the *Yerushalmi*- that the body is guarded out of respect for the deceased, “who should not become like a broken vessel that has been deserted.” And we have found another reason in the *Zohar*- that we watch over the body so that evil spirits will not enter it. According to the last two reasons, the body must be kept watch over also in places where there is no concern for mice- for instance when there is refrigeration.¹ Therefore, the

¹ See in *Igrot Moshe* 10, part. 1, 225, where he writes that in a place where there is no risk of mice, the body still needs watching over, but that it is adequate for the guardian to come and go, even if he is leaving the room for something unimportant, provided that he not divert his attention from the deceased. See also the *Gesher Ha'Chaim*, pt 1, chapter 5,4, who expounds on this point and mentions that it is customary for the guardian to recite *Tehilim*. It is important to add that, in our day, when there is a reasonable risk of malodor, the body must be kept in refrigeration, or at least in a cool place, especially during the summer. For more on this see Responsa *BeMareh Habazak*, pt. 1, 64.

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halacha is that we defer to all three of the reasons and keep watch over the deceased even when the risk of mice, voiced by the *Gemara*, is irrelevant.

Regarding the second question, according to our humble opinion, if the condition of the body is such that the face is not in a state of disfigurement or mutilation then it is permissible to glance very briefly at it- but not to gaze at it for long. However, if the face has been disfigured, out of respect for the deceased it is forbidden to look at it.² It is important to note that in many cases looking into the face of the deceased clouds our pleasant memory of the time when he was alive and full of vivacity.

² For this issue we can send the sources in Hebrew if you wish.

73. Who May Perform a *Tahara*

Question: Is it *halacha* that only an Orthodox person or someone affiliated with an Orthodox shul, school or organization is permitted to perform a *Taharah*?

Answer: Essentially, even non-Jews are allowed to do a *Taharah*. Nevertheless, since the times of the *Rishonim* there has been a preference that only Jews do them. This is a way of respecting the dead. (See *Trumat Hadeshen* 65, *Shut Radbaz* 507).

The *Acharonim* added that, out of respect for the dead, righteous people should perform the *Taharah*. The *Kol Bo Linyanei Aveilut* p. 87 notes that the great Rabbis of the generation were particular to perform *Taharahs* themselves. Therefore Jews who make more of an effort to keep the *mitzvot*, both between man and G-d and between man and man, are given preference when choosing who should perform a *Taharah*.

The local Rabbi is the one who should decide who is appropriate for the job, in accordance with the situation at a given time and a given place.

74. Delaying a Funeral in Order to Enable Relatives to Attend

Question: What is the *halacha* regarding postponement of a funeral for a day so that immediate relatives can attend?

Answer: All the laws of mourning are in order to give respect to the deceased and his family. Therefore, in a case where it is important to the family, or was important to the deceased that a family member be present, the funeral can be delayed until that person arrives, even though ideally one should bury the deceased as soon as possible.

75. When is One Required to Attend a Funeral?

Question: Regarding the *halacha* that all the city's people have to escort the dead – what does this mean? If people are not busy learning or working, do they have to go to every funeral in their city and/or any funeral of someone from their city even if it is taking place in another city? Many people are learned, so how would it apply to a learned person who dies?

Answer: The *Shulchan Aruch, Yoreh Deah* 361 rules that if someone dies in a city, the entire city has to refrain from working, but one who is busy with Torah learning, is not required to stop learning if there are others who can attend to the deceased. However, if there is a committee appointed to take care of the deceased and his burial, the rest of the town is not required to refrain from working, and today, one certainly does not need to because there is the *Chevra Kadisha* that takes care of the burial (see *Gesher Hachaim*, section 1, chapter 14:5).

However, regarding escorting the dead, the *Shulchan Aruch* explains that one should even refrain from learning Torah (except with regards to '*tinokot shel beit raban*' – young Jewish children; although see *Yalkut Yosef* 7:6 that today the custom is that even young children should refrain from Torah learning in order to attend the funeral of a great Torah sage, and see also the *Gesher Chaim*, section 1, chapter 14:14). However, this is only on condition that the deceased doesn't have enough people at his funeral (10 people for a simple person, 600,000 for a *talmid chacham*, and for someone who taught Torah to the masses there is no limit). In any event, the *Shulchan Aruch* writes that one does not need to investigate to find out if there are enough people at the funeral or not. All of this only applies to cases which involve refraining from Torah learning, but in a case of refraining from work, everybody must attend the funeral of even a regular person.

Nowadays, the custom is not to refrain from work in order to attend a funeral. The various explanations for this are as follows:

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1. *Gesher Hachaim*, chapter 14:8, comment 3: If there is a *Chevra Kadisha*, the rest of the town is not obligated to attend the funeral (even though this seems to contrast with the *Shulchan Aruch*- see above).
2. *Minchat Elazar* 1:26: It is almost impossible to attend every funeral, especially in big towns, because of the great expenses, and the abstention from Torah learning involved. (This is not really a *heter*, but rather a sincere attempt to find merit for the people who are lenient).
3. *Ramat Rachel* 50: Since the *Chevra Kadisha* receive their wages from their congregation they are considered *shluchim* (representatives) of the entire congregation.
4. *She'elat David* at the end of *Yoreh Deah* questions the entire ruling of the *Shulchan Aruch* (that one has to refrain from work to attend a funeral), since there is a rule that one is not obligated to expend money for acts of kindness (such as going to a funeral).
5. *Ha'amek She'ela* 14:3: As long as one doesn't see the actual procession, he is not obligated in the *mitzva* of accompanying the deceased.

76. Source for the Expression "*HaMakom Yenachem...*" given to mourners

Question: What is the source for the expression used in a house of mourning: "*HaMakom yenachem etchem...*?"

Answer: There is a similar expression of consolation "He whose presence dwells in this house [referring to the *Beit Hamikdash*], shall comfort you," which appears in the *Mishna Midot* 2:2. The *Perisha* (*Yoreh Deah* 393:3) writes that this appears to be the basis for our commonly used expression.

77. *Aveilut* for an Adopted Parent

Question: I recently attended a funeral where the son of the deceased, who was adopted as a baby, was prevented from performing *kria* because this wasn't his natural parent. Was this correct? Couldn't the son, who was extremely upset and argued vehemently with the officials conducting the funeral, have been allowed to perform *kria* without a *bracha*? And does this son have an obligation to be *shaliach tzibbur* during the year of *avelut*?

Answer: It seems that in the case that you describe, those who prevented the son from performing *kria* were acting according to the opinion of the *Yalkut Yosef* (*Choshen Mishpat*, *siman* 8, 8) who ruled that one must prevent an adopted son from performing *kria*, because it is not an obligation and would constitute "*Bal Tashchit*". However, as it is written in Responsa "*Be'Ohala Shel Torah*" (*siman* 60), the *Yalkut Yosef*'s opinion in this matter is difficult to understand.

In Responsa *BeMareh HaBazak* part 5, answer 91, we wrote that an adopted child should be encouraged to conduct himself according to all of the customs of mourning, including *kria* with a *bracha*. However, these customs are not obligatory, and he is therefore not exempt from *mitzvot* during the period of *aninut* (before burial), nor is he exempt from learning Torah during the *shiva*. Even though he should be *shaliach tzibbur* during the year of mourning, still, he does not take precedence over someone who has an obligation for a biological parent.

78. Aveilut: Showering during Shloshim and Attending a *Kiddush* after Shloshim

Question: Unfortunately my father passed away just over a week ago. I have just got up from sitting *shiva*. I would deeply appreciate if you could please answer the following:

1. Is one permitted to take a hot shower during the *shloshim LeKavod Shabbos*?
2. Is one permitted to attend a regular *Kiddush* and *Shalosh Seudos* held in the *Shul* after *davening* after the *Shloshim*?

Answer: We are saddened to hear of your loss. “*Hamakom y’nachem otcha b’toch aveilei Zion V’yerushalayim.*”

Regarding your questions:

1. Showering with hot water- The Rema (*Yoreh Deah* 381:1) writes that the custom is to forbid it. So too, the *Gesher HaChaim* (22:7) says that this is the ancient custom, and one should not change it. Since the *Shulchan Aruch* did not bring it, *Sefardim* are lenient and allow one to wash the whole body with hot water (*Yabia Omer* IV, YD 34).

Washing with cold water- the *Acharonim* debate the matter and the *Aruch Hashulchan* concludes that one who is lenient has what to rely upon.

A very important distinction is that the above is said in regard to washing with an intention of enjoyment. Washing which is needed to remove sweat or strengthen a weak body is permitted even in hot water (*Gesher HaChaim*, *ibid.*).

2. A mourner for a parent is forbidden in matters of *simcha* for 12 months. To take part in a gathering for a *mitzva* such as a *brit*, a *pidyon haben*, or a *siyum*, without eating, is totally permitted (*Gesher HaChaim* 21:5). Regarding gatherings on Shabbat, one can be lenient to take part in a meal, if it enables him to hear a *drasha* (*ibid.*).

If his absence will be noteworthy, and as such will be attributed to *aveilut*, this would be considered public mourning on

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Shabbat, which is forbidden, and it is thus appropriate to take part.

Some say that if there are only cakes and not bread, this is not considered a meal for which a mourner is forbidden to participate. There is no problem taking part in *Seuda Shlishit* even if it goes on into the night.

79. *Aveilut* and *Birkat Kohanim*

Question: I am a *kohen* and the questions that follow are directly related.

1. Is a *kohen* who is an *aveil* permitted to *duchen* during his *aveilos*?
2. Can he *daven* before the *amud* in this period if he is a *kohen* - presupposing that he cannot *duchen* [it might be that he is the only *kohen* present in the *minyan*]

I seem to have seen somewhere that the initial *brocha* should be given in a state of *simcha* - which of course does not apply in this period of *aveilus*.

3. This is a general *duchening* question: During *duchening* the *kohanim* unwind the *retzuos* of the *tefillin* and wrap it around their palms. Is it necessary to rewind the *retzuos* after the *duchening* into the initial position i.e. a "*shin*" or may the *kohen* continue *davening* with *retzuos* wrapped around his hand?

Answer: The *minhag* in Israel is that a *kohen* does not *duchen* during the week of *shiva*. This is because he is not in a state of *simcha*. This is the case even on Shabbat. After the week of *shiva*, even if he is still in mourning for his mother or father, he *duchens* (*Kaf HaChaim* 260). In Jerusalem there are some that have the *minhag* to *duchen* even during the week of *shiva*. Based on the aforementioned, in Israel there is no problem of a *kohen davening* for the *amud*. The *minhag* outside of Israel is that someone who is mourning does not *duchen*. Since he also does not serve as a *shaliach tzibbur* on *Yom Tov*, there are no problems of his being a *shaliach tzibbur* who is a *mourner* and a *kohen*.

Returning the *retzuot* to the form of a "*shin*" is not an absolute requirement of the *mitzva* of *tefillin*, but it is proper to return them, especially for "*U'va L'Tzion*".

80. Home Repair Renovations During the 12 Months of *Aveilut*

Question: I am in the early part of a year of mourning (the middle of the second month). I am wondering if there is a *halachic* problem with conducting pre-planned renovations on our house. They are not merely home improvements, but rather repair-related improvements.

Answer: May you be comforted among the mourners of Zion and Yerushalayim. The second month of mourning over a deceased parent is part of the 12 month mourning period, which is the more lenient part of the mourning period. Basically, this is an extension of the 30-day mourning period and is meant to show honor for the deceased parent. The restrictions during the 12-month period are:

1. Haircuts.
2. Traveling as part of a large group.
3. Wishes of shalom to the mourner.
4. Purchasing new, colorful clothing.
5. Attending festival gatherings (*smachot*).

These restrictions have many details beyond the scope of this answer and some of these restrictions do not apply to all 12 months. As such, there is nothing to preclude house renovations, especially, implementing repairs,

Sources: *Gesher HaChaim* (Rav Tucachinski) p. 249-250.

81. Being a *Chazan* on Shabbat During the Year of *Aveilut*

Question: I heard that an *avel* cannot *daven* as a *shatz* on Shabbos, but what is the *halacha* in the first year if an *avel* wishes to *daven* on Shabbos before the first *yahrzeit*?

Answer: It is permissible to be *shaliach tzibur* on the *Shabbat* before the *yahrzeit* if the *tzibur* does not object to it (which means – if it does not bother the *tzibur* that the mourner be *chazan*). In the case of a place that does not have the opposite custom, see the *Pnei Baruch* (39, 2), and the *Shut Shevet Ha'Levi*, vol. 3, *Yoreh Deah*, *siman* 165.

82. Having an *Avel* lead the *Tefillah* on Saturday night

Question: Is there a special reason why a mourner should lead the service on Saturday night? To what extent should one be careful about this matter?

Answer: *Kaddish* is recited to serve as a merit for the deceased, even for someone known as a *tzaddik* from his youth and throughout his life, to shield him from the judgment of *Gehinnom*.

According to Rabbi Moshe Isserles, It is customary to lead the service on Saturday night, which is the time when the souls return [after the Sabbath rest] to *Gehinnom*, and when the son leads the service and sanctifies [God's name] publicly, he redeems his father and mother from *Gehinnom*.¹

¹ Rema to *Shulchan Aruch, Orach Chaim*, Section 376, Paragraph 4.

83. Nusach of Kaddish for an Ashkenzai Davening in a Sefardi Shul

Question: When an *avel* who has a *minhag* to daven *Ashkenaz*, is davening in a *Sefard minyan* and is saying *Kadish* - is he required to include the phrase “*veyatzmach purkane v'karev meshich*”? The same question relates to the opposite (*Sefard davening* in an *Ashkenaz minyan* – does he leave out the above phrase)?

Answer: One who recites *Kadish*, at that moment, holds the same status as the *shliach tzibur* (based on the words of the *Chazon Ish*) and therefore should recite it in the *nusach* which the congregation is accustomed to using. Nevertheless, today the accepted custom is that one who prays in the *Ashkenaz nusach*, should wait silently while the phrase “*Veyatzmach purkane v'korev meshiche*” is being recited, and then continue reciting *Kadish* with everyone else.

Clarification Request:

Thanks for your response. In other words – one is not being *poresh min hatzibur* if he is *Askenaz* and does not say “*veyatzmach purkane v'korev meshiche*” when davening in a *Sephard minyan* (not as a *shliach tzibur*)?

Clarification:

You are correct that this is the *minhag* and we don't feel a need to fight the *minhag*. Regarding authoritative sources and *halachic* logic, it makes more sense to say it like the *tzibur*.

84. How long one recites *Kaddish* for a child

Question: How long does one recite *Kaddish* for a child, for 30 days or 11 months? Can you please tell me where this halacha may be found?

Answer: We are sorry to learn of your loss and pray that you and your family will have only joy henceforth. When a parent (or a sibling) recites *Kaddish* for a child (or sibling), it is recited for 11 months. Incidentally, a brother may recite *Kaddish* for an unmarried sister, even if the parents are living, but with the permission of the parents.

This *halacha* is cited in Chaim Binyamin Goldberg's *Mourning in Halachah* on the basis of similar rulings in the *Mateh Efraim* and the *S'de Chemed*.

85. What Day One Finishes Saying *Kaddish*

Question: Does one finish saying *Kaddish* eleven months from the death, or eleven months from the burial?

Answer: Two opinions exist in the classical sources.

If we had to choose one, we would suggest that it is from the day of death. However, the best thing is to ask the local rabbi who is aware of what is done in your community.

86. Length of Recital of *Kaddish* During a Leap Year

Question: Does one recite *Kaddish* for 11 months or until one month before the *yahrtzeit* in a leap year? If the Date of death was in *Tevet* this year. Do we finish *Kaddish* in *Cheshvan* or *Kislev*?

Answer: *Kaddish* is recited for only 11 months even when it includes a leap year. May you be comforted on your loss.

87. Saying *Kaddish* on Behalf of Someone One is Not Related To

Question: I am writing to you to ask if *Kaddish* can be said for an elderly man who was *niftar* recently. He has no observant children who will be saying *Kaddish* for him. I know that the *niftar*, who *davened* and put on *tefillin* would want that *Kaddish* should be conducted in the *frum* way. May a non-relative say *Kaddish* in such a situation?

Answer: Someone who is permitted to say *Kaddish* can do so having in mind that the *Kaddish* should be for the merit of another Jew to whom he is not related. However, the greatest effect of the *Kaddish* is reached when a son says the *Kaddish* himself. This is because the son is whom the deceased left behind in this world, and if that son is sanctifying *Hashem's* name, then it is as if the deceased is sanctifying His name. Other people can also sanctify *Hashem's* name through *Kaddish* while having him in mind, but it's not effective to the same extent.

There is a pretty common practice that a child who cannot or will not say *Kaddish* pays someone to say *Kaddish* in his place. In addition to providing money for someone who can probably use it, this practice also involves the son by his willingness to pay to insure that *Hashem's* name is being sanctified. Thereby we get some of the effect that we discussed above that the son is involved in some way in the *Kaddish*.

88. Yahrzeit Date when the Death Occurred During *Bein Hashemashot*

Question: When should *yahrzeit* be observed when the deceased passed away during *bein Hashemashot*?

Answer: The *halachic* rulers deliberated about when to observe a *yahrtzeit* when a person dies "*bein hashmashot*" – between sunset and the beginning of the *halachic* night (between *shkia* and *tzeit hakochavim*) - see *Pnai Baruch* 39:39.

As for the *halachic* practice, since there is no clear cut *halacha*, one may do as he wishes, and therefore you can fast either on the fourth or on the fifth of *Elul*. The same goes for saying *Kaddish* and for being the *shaliach tzibur* (leading the *davening*). Ideally, one should be *shali'ach tzibur* and say *Kadish* on both days, unless there are other mourners (*Pnai Baruch*, *ibid*).

89. Mourning for a First Spouse while Remarried

Question: A Jewish man lost his wife and re-married.

Two questions:

1. Can/Should he be called up to the Torah on the Shabbat of the *yahrzeit* of his first wife, while his second wife is still married to him?
2. Can/Should he visit the grave of his first wife on the *yahrzeit*, while his second wife is still married to him?

Answer: The Talmud (*Moed Katan* 21b) states: "If one's wife died and he married another woman, one is not allowed to enter his home in order to offer solace to him." Rashi explains that this is in order to spare one's [living] wife from ill feelings. The *poskim* have inferred from this that it is inappropriate for a woman to light a *yahrzeit* candle for her first husband if she remarried. Similarly, a husband who remarries should not light a *yahrzeit* candle for his first wife.

There is a *halachic* debate about what to do regarding reciting *Yizkor* prayers for one who remarries after his/her spouse dies (mentioned in the *Kol Bo*, A1 p. 404 *Aveilut*). Even the authority that permits saying *Yizkor* prayers in such a case only allows the prayers to be recited quietly.

From here, it seems that any semblance of *aveilut* (mourning) for one's first wife is inappropriate to observe publicly if he/she remarries.

However, one must qualify the case, as follows:

1. If the new spouse does not mind, there is no problem to observe mourning customs of the former spouse.
2. If the new marriage is only from a technical *halachic* point-of-view, whereas, practically, the couple does not actually spend their lives together, there is no problem to observe mourning customs for the former spouse.

90. When to Observe *Yahrzeit* for a Non-Jewish Parent

Question: I am a convert to Judaism, but I still would like to honor my mother's memory by observing the *yahrzeit* of her passing. Should I observe the Gregorian calendar date or the Jewish calendar date?

Answer: We were sorry to hear of your mother's passing away. Although a *ger* (convert) is like a newborn baby in many aspects, it is of course appropriate for you to mark the day your mother passed away. We recommend that you commemorate the day of her passing away by the Hebrew date for two reasons:

- A. Because it is you who is doing this, and you are a Jew living by the Jewish calendar.
- B. Because the Jewish calendar is older, more exact and based on objective principles, it is suitable for every person to use it (but we can't ask this from a person living in a place where it is not known).

91. Sources Regarding Fasting on a *Yahrzeit*

Question: Can you please advise the background sources for fasting on a *yahrzeit* of a parent and the prevalent custom nowadays. Also, if one takes it on, is it also a *minhag* that one must do so every year or is it something that one can decide each year?

Answer:

1. It is a *mitzva* to fast on a *yahrzeit* (Rema, *Yoreh Deah* 376:4 & 402:12).
2. If one fasts and does not say “*bli neder*” (with no oath), one needs an annulment of the implied oath if one does not wish to continue fasting on the *yahrzeit* (*Chochmat Adam* 171:11).
3. There are some communities that have the custom of bringing food and drink to *shul* in order that people should make a blessing on them in the memory of the person who has passed away.
4. There are those that do not fast, because people are weaker nowadays than they used to be (*Pnei Baruch* 39:24,34).
5. In practice, few people fast nowadays on the *yarhtzeit*.

92. Attending a *Simcha* on a *Yahrzeit*

Question: Is it proper to attend a *simcha* where there is music and dancing on a *yahrzeit*?

Answer:

- A. On the first *yahrzeit* of one's mother or father, all the customs of mourning still apply (except for on a leap year).¹ For the rest of the years, there is a disagreement whether or not the customs of mourning apply on the *yahrzeit*.²
- B. Even those opinions who are lenient in regards to a *yahrzeit* after the first year are stringent regarding participating in a *se'udat mitzva* (a meal held for the sake of a *mitzva*). The *poskim* (*halachic* rulers) disagree whether the prohibition concerns all *se'udot mitzva* or only weddings, but other *se'udot mitzva*, such as a *siyum masechet*, *bri* or *bar mitzva* would be permitted.³ It seems that one may rely on the lenient opinions.⁴
- C. This all concerns the *yahrzeit* for one's mother and father. However, if one is used to saying *kadish* for other relatives on their *yahrzeit*, there is no prohibition to attend a *se'udat mitzva*.

¹ Rema on *Yoreh Deah* 395:3.

² See *Shach* and *Taz* there.

³ The Rema (op.cit) quotes a custom not to participate in festive meals on the night of the *yahrzeit* for one's parents. The *Pitchei Teshuva* there writes that this only concerns weddings, but not *siyum masechet*, *brit milah* or *bar mitzva*, which one is permitted to attend.

⁴ Since in the laws of mourning the rule is that the law is according to the lenient opinion. The fact that there are songs and music at a meal is not enough of a reason to be stringent, since the prohibition to dance is only due to mourning, and we have already written that on the *yahrzeit* which is not on the first year, there is no mourning.

93. Source for the Expression “May the Neshama have an Aliyah”

Question: I have often heard the phrase, “May your [loved one]’s *neshama* have an *aliyah* in *Gan Eden*”. What is the source of this saying?

Answer: The saying, “May your [loved one]’s *neshama* have an *aliyah* in *Gan Eden*” is based upon a statement in the Rema *to Shulchan Aruch Yoreh Deah*, section 376, paragraph 4, regarding the power of *Kaddish* to raise the soul from *Gehennom* (if, God forbid, the soul was sent there) to *Gan Eden*. It is cited in the name of the Ari by *Elef L’Mateh* in *Mateh Efraim*, Laws of *Kaddish Yatom*, section 4, sub-paragraph 2.

94. Custom of Placing Stones at a Gravesite

Question: Regarding the custom of placing a stone at a gravesite: My understanding is that it is placed there so that people can see that the deceased was visited. My relative (who is not religious and from Iraq) says that their custom is to place the stone when you arrive at the gravesite, but then remove it before you leave. Is this an Iraqi custom? Should the stone remain or be removed?

Answer: The custom of putting a stone or a few weeds at the gravestone is mentioned in the *Ba'er Heitev*, *Orach Chaim*, 224, 8, based on *Drashot Maharash*. He explains that this is done to honor the deceased, to show that you came to his grave. We asked the *Rishon LeZion*, Rav Mordechay Eliyahu zt"l, if there is a custom of putting the stone and then removing it when leaving the grave and he said that there is a reason for putting the stone, but you shouldn't remove it when leaving the site. Rather, a different stone can be removed.

THE LAWS OF *KASHRUT*

95. Using Silverware at a non-*Kosher* Meal

Question: If I am at a non-*kosher* dinner and have been provided with a *kosher* meal, may I use the regular dishes and silverware that the caterer provides since nothing comes into contact with a *k'li rishon*?

Answer: Aside from the problem of *mar'it ayin*, we rule like Maharshal that a hot solid is always considered a *k'li rishon*¹.

¹ *Shach, Yoreh Deah*, section 94, sub-paragraph 30. See also *ibid* section 105, sub-paragraph 8.

96. How to *Kasher* a Non-Kosher oven

Question: I recently moved into a new apartment. The oven which was used for a number of years by the last tenants, who were not religious, was literally covered (inside) with a layer of grease. I scraped out the grease which together was around the size of an orange and sprayed all the area of the interior with a serious oven cleaner. I did the same with the grates. I then had it run on Max for an hour. My concerns are, first of all, we must assume in this case that all of the burned grease was NOT removed because it was hard to reach every area perfectly (although between the spraying and scraping a good job was done). And regarding spraying, perhaps only the top later gets *pagum* but underneath not?

Answer: While we cannot rely on the following reason by itself, in all likelihood the grease was *pagum* before it was sprayed. If it was thick, it is possible that it wasn't penetrated by the spray, which depends on practical factors that we cannot judge from here. *Me'ikar hadin*, it does not make a difference, as an hour on maximum probably burned up whatever was left. [If I were afraid there was serious residue left I would have done it for longer to make sure it all got burnt, especially things in recessed areas, but an hour was probably enough]. The *Pri Megadim* does instruct us to clean out the surface first anyway, *l'chatchila*, but it appears that your efforts to clean fulfill those instructions of *l'chatchila*. Although non-*kosher* food which certainly came in direct contact with the walls should require *libun gamur*, which regular ovens do not get to, the practice in cases like this is to rely on the more lenient positions. At least three grounds for leniency exist:

1. Most of the absorption was done by means of a liquid vapor or gravy spills, for which *hagala*, or in your case *libun kal*, suffices.
2. There are significant opinions that one can employ the logic of *k'bo'lo kach polto*, that if you heat to the maximum temperatures it absorbed at, it will expel the absorbed material at the same heat.
3. If one does not allow major amounts of steam to exist in the oven, it cannot extract absorbed material from the walls into the food.

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Therefore, where it is costly to find a replacement for the oven in question (i.e. a rented apartment), one can rely on the lenient positions, especially since after 24 hours of sitting idly (properly done, after cleaning out the oven) the stakes are much lower.

It is best to find someone by whom you can run the grates through a self-cleaning cycle, so as not to rely on the lenient positions when there is a (usually) simple solution.

97. Oven for Meat and Milk

Question: How long must an oven be cleaned for between meat and dairy or visa versa? Does it make a difference if the oven was only used for a short period of time or was just used to reheat?

Answer: There are so many different practices that exist in regard to using an oven for both milk and meat, and they differ greatly. If you have a local rabbi you really should ask him what he suggests for you. In the meantime we will give you a couple of the basic rules.

It is wisest to use an oven primarily and freely for either milk or meat and use it for the other sparingly and with care. In order to get taste into and from the walls of the oven from and back into the food, respectively, significant steam needs to exist. The authorities distinguish between steam which is regarded as *reicha* (smell) and *zeiah* (sweat). Only the latter transfers significant taste from one to the other. Dry foods do not cause such a transfer. Additionally, wetter foods that are reasonably well covered do not allow such steam to transfer taste to and from walls. It is very difficult to quantify the amount of moisture, and it depends not only on the food but also on the size and heat of the oven.

Another thing to be careful about is that the food of the different type should not touch the surfaces of the oven. And unless one can be absolutely sure that there is no edible residue on the surfaces, there should be foil between the baking pans of the second type and the trays or grates of the oven.

If one waits 24 hours between the use of meat and milk and one heats the oven to the maximum for around an hour, then one can use the oven for milk and meat relatively freely according to most authorities.

98. Status of a Dairy Spoon that was Found with the Meat Dishes and then Mixed Again into the Dairy Dishes

Question: The other day we found a milky teaspoon on the meaty drying rack in our kitchen. We have no idea how it got there, but we consider it very unlikely that it was actually used for anything really meaty (it is certainly used regularly for 'real' milky things e.g. eating yogurt, stirring coffee with milk etc.). The chances are that it was put there by a guest, and may have been washed-up in the meat sink. To complicate matters, the particular spoon has since got mixed in with all the other milky teaspoons, and so we have no idea which one it is. Please advise what concerns we should have, and what action we should take, regarding this matter.

Answer: It is permitted to use the teaspoons and there is no need to do *hag'ala* (*Yoreh Deah*, *siman 95 sif 3*; in the *Rema* and the *Taz*).

99. Parve Food that had Been Cooked in Meat Dishes, being Heated Up in Dairy Dishes

Question: Perhaps you might address the following issue. It has always been a source of concern to me when I have purchased “take-out” food from a meat restaurant. I’m vegetarian so my house is dairy. What I buy from establishments is, obviously, vegetarian (e.g. cooked vegetables, soups, salads, etc.). My concern is the re-heating of the items at home. Can parve (or purportedly parve) food that was cooked in meat vessels be re-heated in and/or served on purely parve or dairy containers? What is the status of the containers- and the oven afterward? Is there any difference between cooked items and cold items, such as salads.

Answer: It is essential to point out that the above question raised includes many minute details, of which the *halacha* may vary depending on the reality. That is to say: the management in a meaty kitchen of one hotel cannot be likened to the management in the kitchen of another hotel or kiosk, and one restaurant cannot be likened to the other. We shall therefore provide an answer relating to various situations.

It is important to differentiate between different situations:

Situation 1:

Food which was cooked, baked or fried with meat or with meaty oil (for instance if oil used to fry French fries was previously used to fry *schnitzel*):

The *halacha* pertaining to situation 1:

1. *Halachically*, it is considered a meaty food and therefore cannot be eaten with any dairy foods or in any dairy vessel.
2. One should wait the time period he waits after eating any meaty food.
3. The food cannot be heated in a dairy vessel.

Situation 2:

A non-sharp (not *charif*) food which was cooked, fried, baked or roasted in meaty vessels which were clean of any meaty left-overs. For those of *Sephardi* origin, the food is permitted to be eaten with dairy.

For those of *Ashkenazi* origin:

1. One should refrain from eating the food with dairy, but in a case of necessity, one could be lenient.
2. One may initially heat up the food in a dairy vessel.
3. One may eat any dairy food following it and need not wait. Even if the meaty vessels were not washed well before having prepared the parve food – one still need not wait. One is not required to wait any period of time even if the parve food was sharp.

Situation 3:

Cold non-sharp parve food which was prepared in meaty vessels without being cooked or heated: It is permitted to be eaten with dairy foods

Situation 4:

A parve food containing any sharp food, such as onion or chopped raddish etc. whether cold or cooked: It follows the same *halacha* as situation 1 except that there is no requirement for one to wait between meaty and dairy foods.

100. Non-Jewish Help in regards to *Kashrut* and *Bishul Akum*

Question:

1. My relative has a full-time non-Jewish helper. One week into this new arrangement, we bought a new stove which worked with a pilot light in order to avoid *bishul akim*. What do we do with the dishes that we used until now? Do we need to *kasher* them, or throw them out? (They are made from porcelain and therefore cannot be *kashered*). Also, the family would like to eat in the house from time to time, so a lenient ruling specifically given to an ill person is not enough.
2. Can I rely on the non-Jew keeping *kosher* and separating between meat and dairy?

Answer:

1. In *Shulchan Aruch Yoreh Deah* 113:15, there are two opinions quoted by the *Mechaber* about the question of *kashering* dishes that a non-Jew cooked with; one opinion requires *kashering* and the other does not. The *Mechaber* adds that even those who are strict and require the *kashering* of dishes, with regard to ceramic dishes that cannot normally be *kashered* at all, they may be *kashered* by dipping in boiling water three times (*hag'ala*). Therefore, there is certainly no reason to throw away the dishes. There is an additional reason to be lenient here because the Rema writes, that with regard to cooking for an ill person on Shabbat, it is not considered *bishul akum* (the prohibition of eating food cooked by a non-Jew), and our case seems to be similar because there is no one else available to do this work. Another reason to be lenient is based on the *Shach*, (#20 in explaining the words of the *Torat Chatat*), who says that, if the cooking was done in the home of a Jew, for a Jew, even the food is permissible after the fact (*b'dieved*) and certainly the dishes/pots do not need to be *kashered* in such a situation.
2. If there are people going in and out of the house (or even if there is only the possibility that someone will enter the house),

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the non-Jew is trustworthy (provided of course, that she knows the laws of separating between milk and meat).

101. Cooking *Kosher* and *Non-Kosher* foods in a Toaster Oven at the Same Time

Question: I work in a non-Jewish environment and someone with a cheese and meat sandwich wanted to use the toaster oven at the same time that I was putting my bagel up to toast. The bagel was double wrapped in tin foil. Can I toast my bagel at the same time that the non-*kosher* sandwich is being toasted?

Answer: From your question we understand that you know the toaster oven is not *kosher*, and you acted correctly when you wrapped your bagel in a double layer of aluminum foil. Once you've done that, there is no relevance if there is anything else not *kosher* in the oven at the same time.

102. Using non-*Parve* spoons in a *Parve* food container

Question: If I have a container which is *parve* and I want to use the same container for both meat and dairy - is it permissible to use either a meat or dairy spoon from the same container? For example if I have a container of *parve* mayonnaise, and it comes in contact with a cold, clean meat spoon is it rendered meat, or does it remain *parve*?

Answer: According to the letter of the law, if the spoon is **clean**, without any traces of food on it, then there is no problem with it coming into contact with the mayonnaise. A meat or dairy spoon will not render the mayonnaise meat or dairy.

However, it is better, especially in large kitchens, to keep a special spoon inside the mayonnaise jar to prevent the risk of someone accidentally inserting a **dirty** meat or dairy spoon into the mayonnaise.

103. Buying Sliced Fruit or Fruit Juice without a *Kosher* Supervision

Question: May one buy sliced cantaloupe etc. or fresh fruit juice from a store that doesn't have *kosher* supervision?

Answer: Buying fruit from a non-Jew: as to the *kosher* status of the fruit themselves, there is nothing to worry about (outside of *Eretz Yisrael*). As to fruit juice – one needs to make sure that the non-Jew did not add to the juice anything else that is forbidden to eat. According to the strict letter of the law, there is not a problem to eat cut fruit either.

Details:

A regular utensil that belongs to a non-Jew is suspected of containing a bit of forbidden food, which might have been absorbed in it ("*balu'a*"). However, usually the forbidden food does not pass from the utensil to the food only through contact if they are both cold. The *Shulchan Aruch* (*Yoreh Deah* 96) brings two exceptions to this law: a knife and a food that has a sharp taste. In the *Shulchan Aruch* *ibid.* it was ruled that a sharp food that was cut by a knife, which is not *kosher* becomes forbidden, and if the knife is used to cut food that is not sharp, only the outside layer is forbidden. There are some contemporary *poskim* (*halachic* rulers) who regard contemporary washing as a legitimate way of cleaning a knife in order to cut foods, and one can rely upon them to eat fruit that a non-Jew cuts.

As to fruit juice, it seems there is no problem at all since even if the fruit is squeezed with a knife, this knife is not used for anything else, unless it is used to cut the fruit before the squeezing and then it reverts to the law of cut fruit.

All this is said regarding fruit, which is cut occasionally. However, if it is done commercially or in a large quantity, there is no fear at all, since a special knife is used, and even if it includes forbidden food, that forbidden flavor is wiped off on the first fruits (and those pieces are nullified amongst the many other pieces).

104. Buying Fish at a Fish Store that Does Not Have *Kosher* Supervision, & The Status of Raw Meat that Fell Into Milk

Question:

1. If I buy fish at a regular fish store, I make sure to buy fish that has the skin on it so you can see that it is a *kosher* fish. However if it has been filleted, is that a problem? I know rabbis say that you have to just make sure you wash it when you get home but I thought that since it has already been cut, perhaps the non-*kosher* juice on the cutting knife has seeped into the fish or perhaps the juices from the non-*kosher* fish lying next to it have seeped in (which wouldn't be the case with a whole fish, that can be washed off.) I think this might be parallel to the case of a cooked piece of meat with crevices that falls into milk. Should we be concerned with this and if not, why not?
2. If a raw piece of meat with crevices falls into milk, does the entire meat have to be thrown out?

Answer:

1. In a fish store of a non-Jew, there is a possibility that the knife used is not *kosher*. Since, in the store, there are also non-*kosher* fish cut by the non-Jew we are worried that perhaps the knife used to cut the *kosher* fish contains remnants of fat from the non-*kosher* fish.

Lechatchila, initially, a Jew should not use utensils of a non-Jew without properly *kashering* them. The laws of *kashering* a knife are detailed in *Shulchan Aruch (Yoreh Deah 121:7)*. The ways of *kashering* detailed there are not usually used in a regular fish store.

Someone who wants to make sure that there is no possibility of violating any transgressions should buy a knife and cutting board to cut fish. After *toveling* it according to the *halacha*, bringing it to a *mikvah*, a person should bring the knife and cutting board to the fish store and ask the seller to cut a piece for the buyer using the knife and board that he brought. As long

as the Jew is coming in and out of the store or is able to see the non-Jew, there is no need to worry that perhaps the non-Jew will switch the utensils (*Shulchan Aruch*, Y.D. 118:10). The Jew should be careful not to leave the *kosher* knife by the non-Jew without supervision, and he should bring it with him whenever he wants to buy *kosher* fish.

In neighborhoods that have many Jewish residents, there are non-Jewish fish stores that set aside a fish knife only for *kosher* fish. There are those that want to permit this even without constant supervision over the knife, because the non-Jew will not derive any benefit if he switches this knife for another knife (see *Shulchan Aruch*, Y.D. 118:10). However, this is not a simple thing to permit, because when the store is closed, no one sees the owner and when his non-*kosher* knife breaks, he may use the *kosher* knife to cut the non-*kosher* fish.

Bidieved, ex-post facto, if a non-*osher* knife was already used, since we are dealing with a case where everything is cold, the *Shulchan Aruch* (Y.D. 96:5) rules that in regards to a dry thing that is not *charif* (sharp), it is only required to be rinsed. If it is wet and not *charif* then it needs *g'reidah*, scraping at the place where the knife touched it. In regards to something with a sharp taste like salted fish, one should remove from all cut surfaces, *k'dei netilah*, an amount equal to approximately the thickness of a finger. In regards to salted fish that are bought in packages, there is no need to worry, because the first ones that were cut with a forbidden knife are *batul*, nullified with the other ones (Rema 96:4).

Therefore, *bidieved*, when a person buys fish that was cut with a knife of a non-Jew, since the fish is considered wet *halachicly*, one needs to scrape off the place where the knife touched the fish. This *halacha* comes up a lot in fish stores that cut the bottom of the stomach to remove the innards in order to remove the smell. With these fish, *lechatchila*, one should scrape the place where it was cut. If these fish are salted or sharp flavored fish, then one needs to cut off *k'dei netilah*

2. In the *Gemara* in *Pesachim* (44b) it states that there is a novel concept that is special to *basar b'chalav*, laws dealing with the

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combining of milk and meat. Even if you leave the meat all day immersed in cold milk it is not forbidden (from the Torah) unless they were cooked together. If, however, the meat was left for 24 or more hours in the milk then it is considered as if it was *kavush*, pickled, and it is prohibited just as cooked milk and meat (*Pesachim* 76a).

Therefore to answer the question: If the meat fell into cold milk and stayed there for less than twenty four hours, one should rinse the meat thoroughly and is able to eat it (*Shulchan Aruch* Y.D. 105:1) If the meat stayed there for an entire day or it was cooked with the milk at a temperature of *yad soledet bo*, a degree of heat from which the hand recoils, it depends on the amount of the smaller entity. If the meat was less than one sixtieth of the amount of milk then the meat is forbidden and the milk is permissible (*Shulchan Aruch*, Y.D. 98:1) If there is not 60 times the amount of milk when compared to the amount of meat, then the entire mixture is forbidden.

105. Whether *Chalav Akum* Affects the Dishes it is in:

Question: We are living in a place where it is very difficult to get *chalav yisroel*. We used to go to the farm, watch the milking and spend hours boiling it etc. We simply were delighted when a group of frum Jews started making *chalav yisroel* milk here, because none of us had the time or energy to continue doing what we were doing. However, the group making the milk here do not *kasher* all the equipment (which is also used for pasteurizing non-*chalav yisroel* milk) to the level that many *poskim* hold is necessary, but the fellow in charge told us that it is not a requirement since the milk is for sure cow's milk and there is nothing *treif*, so the *kashering* in this case is not a necessity but just a *chumra*. I just want to know if this is correct. And is the reason for *kashering* only because of *treif* or does one also *kasher* because of the *tumah*?

Answer: *Chalav Akum* is milk that was milked by a non-Jew when a Jew did not observe the milking process.¹ In such a situation, there is a possible suspicion that the non-Jew mixed milk from a non-*kosher* animal (e.g. camel, pig, etc.) with the cow's milk. The main solution to this problem is to have a Jew oversee the milking process and thus, the non-Jew cannot mix in it milk from a non-*kosher* animal.²

In the event that the milk also undergoes a pasteurization process, there is an additional problem - if the non-Jew pasteurized the milk inside a vessel, according to the Rema,³ the vessel is forbidden as with any vessel in which something forbidden by rabbinic law was cooked in it. And therefore, if the same vessel is used to pasteurize *kosher* milk (such as milk supervised by a Jew throughout the milking process), the milk can be forbidden because of the vessel.

¹ *Mishna Avoda Zara* 36b.

² *Ibid* 39b.

³ *Yoreh Deah* 115:1.

If I properly understood the process that the milk, which is milked by the Jews who moved in near you, undergoes, the Jews themselves witness the milking process, but they use water during the pasteurization that is also used to pasteurize the milk milked by non-Jews without supervision by Jews. This water does not directly touch the pipes through which the pasteurized milk passes but it flows through the pipes next to the milk pipes. In such a case, there is no problem with the milk and it is *chalav yisrael lemehadrin*. Even if the vessels which the non-Jews use for pasteurizing the milk are used also by you, and therefore the vessels that you use have “swallowed” (*bli’eah*) *chalav akum*, there are a number of reasons to permit drinking that milk. There are *poskim*⁴ that reason that in our days, milk from non-*kosher* animals is rarely found (especially if that non-Jew does not own any non-*kosher* animals), and there is no need to forbid *chalav akum* in general. The argument is then with the question: When Chazal forbade the drinking of milk out of fear that a non-Jew would mix in non-*kosher* milk, did they only say that one needed to be careful because of this fear or was an independent prohibition created, and even if there is no fear with this specific milk, it is forbidden to drink it, because our sages had additional reasons to forbid the milk (such as preventing contact between Jews and non-Jews).

1. Rav Moshe Feinstein⁵ writes, that in a country that enforces

⁴ Radbaz (Aleph 147), *Tashbetz* (Part 4:32) and the *Pri Chadash* also gave a similar psak (*Yoreh Deah*, 115:6). Nonetheless, in effect the custom is not to rule according to them, as stated by the “Chidah” in the *Birchei Yosef* (*Yoreh Deah* 115:1) but these opinions should be added as an additional reason to be lenient.

⁵ *Igrot Moshe Yoreh Deah* part 1: 47 and on. The *Igrot Moshe* himself writes that one is deemed worthy for being strict in this matter when there is *chalav yisrael* in abundance, but in the situation that you are referring to, there is no other *chalav yisrael* to be found. See the article of Rav Bakshi Doron (*Tehumin* 23, pages 463-464) in which he writes that in Israel the custom is not to rely on the *Igrot Moshe* quoted above, since in Israel, *chalav yisrael* is the norm, and the implication is that where *chalav yisrael* is not the norm, it is possible to rely on the *Igrot Moshe*. Therefore, you also have room for being lenient with regard to the milk of the non-Jew himself, without needing to observe the milking

government supervision over the milk, meaning a country that forbids farmers to sell one type of milk disguised as another type, (for instance, to sell cow's milk as goat's milk or visa versa), it is possible to consider milk from this country as if it was milked under the supervision of a Jew.

2. Even if you encounter milk that is considered *chalav akum*, and it is forbidden to drink it, there are opinions that state that the vessel in which this milk was cooked is not prohibited.⁶

On the basis of these opinions, you can be lenient with regard to drinking milk milked by these Jews, even if it underwent pasteurization in the vessels of a non-Jew. Regarding the concepts of "impurity" and "dullness of the heart": The source for the idea that eating forbidden things causes dullness of the heart comes from a *Gemara* in *Yoma* 39a: The *Beit Midrash* of Rabbi Yishmael taught: A sin causes dullness in the heart of man, as it says (*Vayikra* 11), "neither shall you make yourselves unclean with them, that you should be defiled thereby," do not read "defiled" but "dulled" (a play on words in Hebrew).

The meaning of the words of Rabbi Yishmael is that eating a forbidden food causes "dullness of the heart," but eating something that is not forbidden does not. Therefore, if it is permitted to drink the milk, there is certainly no cause for concern that it will "dull the heart".

Follow-Up Question/Clarification:

Thank you for your answer. It was very informative. However, I would really appreciate clarification on a couple of points, if possible. Concerning the kasherization process of the milk made here, the water that is used to pasteurize or heat the *chalav akum* milk flows through pipes alongside the pipes the milk goes through. I am not sure if those pipes actually touch the other pipes the milk is in, but the water or hot steam does somehow touch the

process. Nonetheless, it is worthy that you use the milk of these Jews that you mention if you can.

⁶ See *Darchei Teshuva*, *Yoreh Deah* 115:18, quoting the *Acharonim*.

milk pipes. So is that still considered okay and *mehadrin*? The water is recycled and used also to heat the *chalav yisroel* milk. Someone told us they have to put bitter chemicals into that water to render it *kosher*, but the company is not willing to do that, as they say it could damage their equipment. However, they do treat the water with some type of chemicals (not bitter) but something that is similar to swimming pool chemicals to keep the water soft and so on. I am also not perfectly clear with the *inyan* of *timtum halev*: you write that since the milk is not forbidden for various reasons you outline, there is no fear of *timtum halev*, but perhaps there is still a trace amount of non *chalav yisroel* milk left?

Follow-Up Answer:

According to the answer that we gave you previously, there are three different kinds of *chalav akum* that need to be addressed.

- A. Milk that was milked by a non-Jew, but the non-Jew does not have in his possession non-*kosher* animals and his milk is under government supervision. This, according to Rav Moshe Feinstein, is permissible milk as we explained in the previous response.
- B. Milk milked by a Jew (or under the supervision of Jew) but afterwards the milk was cooked (for instance during the pasteurization process) in vessels that also contain at different times milk milked by a non-Jew. The permissibility for drinking such milk comes from the fact that *chalav akum* is not definitely milk from a non-*kosher* animal, but rather only a concern that the non-Jew mixed milk from a non-*kosher* animal into the milk of a Jew. According to the Torah, it is permissible to drink such milk because we have no certain information that milk from a non-*kosher* animal was mixed in, but our sages forbade this milk. The opinion of *poskim* that allow such milk as we wrote to you previously, say that when the sages forbade this milk, they forbade the milk only when it “exists”, in other words when it can be seen, but the taste of the milk that is absorbed in the vessels is not prohibited. Therefore, milk of a Jew that was only cooked in a vessel that has the taste of the milk of a non-Jew is permitted, and therefore, there is no reason to worry about the corruption of the heart. And this is the reasoning of

certain groups of *Sephardim*, who prohibit non-Jewish milk, because it is considered by them to be *chalav akum* (and they do not rely on the heter stated in paragraph A), but they do allow milk that was only cooked in a vessel that also contained at some time non-Jewish milk.

- C. From what we understood, the milk in your situation does not actually touch the vessels which held *chalav akum*, but they are only using the same water during the pasteurization process. From what you have said, the water itself does not touch the vessel that held the *chalav akum*, but at the most, the water pipe touched the pipe of that vessel. In this case, there has been no transfer of any hint of milk between the vessels that contain the *chalav akum* and the vessels that contain the milk that you are pasteurizing, and even if the vessel of the non-Jewish milk had absorbed the milk of a pig, your milk would be *kosher lemehadrin*.

In addition, one should mention that, according to the reasoning of Rav Feinstein, one does not need to worry at all about the corruption of the heart since the assumption is that the non-Jew does not mix milk from non-*kosher* animals into his own cows' milk. If this is the case, then this milk is identical with the milk milked by a Jew, and therefore it is impossible to say that this milk corrupts the heart more than any other milk.

106. Is Grape Juice, from Grapes Crushed by Non-Jews *Kosher*?

Question: If a non-Jew crushes grapes and then the grape juice is cooked, is it *kosher*?

Answer: If the grapes were first crushed and then the juice was cooked, then the juice becomes forbidden, and cooking it does not permit it. However, if the grapes were first cooked, and the juice derived was from the cooking of the grapes, the grape juice is permitted. With regards to a company which manufactures grape juice, one could ask them how they make the juice, as long that they are unaware that they are being asked for *halachic* reasons (see *Igrot Moshe, Yoreh Deah 1:7*).

107. Permissibility of Milk Nowadays

Question: Are you allowed to drink milk today?

I recently heard from someone that, since between 15-20% of cows are *treifas*, and milk from a *treifa* is forbidden, it is problematic to drink milk. Even though it used to be that this wasn't a problem, because they milked cows individually, so there was a *bittul barov*, which was okay because we could look at each cow and say *rov* of them are not *treifas*. Now though, nearly everybody milks cows with a machine and all the milk is mixed together immediately and therefore we have to view the *taaroves* as a liquid one which requires *bitul beshishim* not only *rov* and 15-20% is nowhere near *shishim*. So how can we drink milk today? Please explain and if possible some sources as well.

Answer:

1. The question of nullification (*batel b'shishim*) in milk:

Firstly, it should be explained that the question of deciding what constitutes majority is not only a statistical one. We deliberate over each and every animal and infer (*tolim*) that it is part of the majority and therefore *kosher* rather than *treif*. And, even if later on the milk of many individual animals became mixed together, there is no *chashash* because we have already decided that each and every one of the cows is not *treif*. This is reminiscent of a scenario where ten pieces of meat—indeterminate as to whether they are *kosher* or *treif* - are found in the street of a city with eight stores that sell *kosher* meat and two that sell non-*kosher* meat. Will we claim that two of the pieces are forbidden to us due to the fact that, from a statistical point of view, twenty percent of the meat in town is not *kosher*? Clearly we would not. We examine the status of each and every one of the individual pieces, inferring (*tolim*) that it came from a *kosher* store, and all of them are permitted to us, for we have already determined that each individual piece is *kosher*. This is also the case regarding the issue in question. Also the *Minchat*

Asher on *Shemot*, *siman* 44, discusses this question and proposes to be lenient for this very same reason.

2. The problem of surgical procedures performed on cows:

These days it is very common for dairy farm owners to be required to operate upon one of the cows for different reasons. These operations may make the animal *treif*, and one must therefore analyze and examine the different types of procedures and their *halachic* ramifications. Even if it will become apparent that it is either a possibility or a certainty that these procedures will make the animal *treif*, one must deliberate whether milk procured from it is nullified (*batel*) in the remainder of the permitted milk.

The situation in Israel: Rabbi Ze'ev Weitman ("Halichot Sa'de 94, pp. 14-29, and esp. pp. 23-27) reviewed the various types of surgical procedures conducted in Israel and their *halachic* status, and concluded that, in Israel, one must not worry to the point of refraining from drinking milk, even when there is no supervision. Obviously - and this is the situation in Israel today - it is preferable to supervise the surgical procedures. The "Tenuva" corporation supervises procedures conducted in Israel, and thus there is almost no risk of *treif* milk arriving at the dairy.

The situation outside Israel: Outside of Israel the problem is more acute; also because there is no supervision of surgical procedures, and also because there are places where procedures conducted are of the type certain to make the animal *treif*. The question of the type of surgery must be clarified in each and every location.

108. Waiting 6 hours Between Hard Cheese and Meat

Question: Which hard cheeses are we required to wait 6 hours for nowadays?

Answer: According to the strict letter of the law, there is no need to wait six hours after eating the regular hard cheeses nowadays, such as hard (yellow) cheese or salted cheese. This is the common custom and what many of the leading Rabbis rule. We must add that there are some *Ashkenazi* Rabbis who tend to be stringent regarding the hard cheeses of our days.

These are the main sources:

The *Shulchan Aruch* (*Yoreh Deah* 89:2) rules according to the *Gemara* that there is no need to wait, whereas the Rema states that the custom is to be stringent and wait "and it is good". The *Taz* restricts the stringency to specific cases where the cheese has an unusually potent taste. The *Shach* agrees with the Rema, provided that the cheese production took six months. This is relevant nowadays specifically in regards to special hard cheeses made in Holland and France, which go through a procedure, which takes at least half a year. However, as to most common cheeses nowadays, the *halacha* is as we stated above.

109. *Kashrut* of Blood in an Animal before and after *Melicha*

Question: I recently heard and read a few things about the concept of "*dam she'parush m'makom l'makom*". Could you please tell me if it's forbidden (if yes is it *d'rabbanan* or *d'oraisa*) or *muter* during *melichah*? I am especially interested in what the Rema, the *Mechaber*, the Rosh and the Rambam *pasken*.

Answer: According to most of the earlier commentators, the *melicha* procedure makes the meat *kosher* for being eaten cooked. For meat to be eaten in its raw state, no *melicha* is required and this became the accepted *halacha* (67:2, 3). According to the opinion of the Rambam (*ibid*), for meat to be eaten in its raw state, *melicha* is required, and for meat to be eaten cooked, the procedure of *chalita* is also required (this was not ruled as the accepted *halacha*). Regarding blood which was transferred from one part of the meat to the other during the slaughtering (regardless of the *melicha* procedure), the *Gemara* discusses this in further detail in *Masechet Chulin 113a*. For more information, see *Tur Shulchan Aruch 67:3* and the *Rambam 86:9* on the subject of "*ma'achalot asurot*" (forbidden foods).

110. *Kashrut* Certification for Vitamins

Question: My wife and I are healthy people *Baruch Hashem*. Lately, we have been feeling sluggish and tired. A nutritionist told us to take a good-quality multi-vitamin (for example, Centrum) and OMEGA3 tablets every day. Must we only buy vitamin and OMEGA3 tablets with a reliable *kashrut hashgacha*?

Answer: Due to the fact that pills are inedible, and are not chewed but swallowed, the act of swallowing them is not considered eating.¹ Therefore, it would be permissible to swallow a pill even if it is not *kosher*.

However, the permission is usually given to a sick person who is not in a life-threatening condition, but still, there are those who have allowed it in all cases,² because “frailty abounds in our day”.³ Since you are, *B”H*, healthy people – and we wish you a long, happy and healthy life, and since there are many vitamins with a *hechsher* available where you live, it is worthwhile either to buy vitamins with a *hechsher* or to check the ingredients and ensure that none of them contain something which is not *kosher*.

¹ *Minchat Shlomo*, 17.

² *Shut Yabi'a Omer, Yoreh Deah*, pt. 2, answer 12, 10-11.

³ *Shulchan Aruch, Yoreh Deah* 155, 3.

111. *Kashrut* of Glucosamine

Question: I have a question regarding the *kashrut* of a dietary supplement called Glucosamine. It is often used in conjunction with Chondroitin and MSM. It is used specifically to promote healthy joint and cartilage maintenance. From what I have been able to learn it is made from the outer (and porous) shell of certain fish (oysters, I believe) that are not *kosher*. However, it without a doubt offers tremendous relief from joint pain. There is no substitute for Glucosamine. I personally was taking it and no longer had the joint pain in my knees that I was having. I was able to return to intensive exercise activity which I was not able to do without the supplement. After I was told that it was not *kosher* I stopped taking it. About a month later all the symptoms of joint pain returned. I know that the Glucosamine is heavily marketed in Israel under the name "Mega-Gluflex" and many people have found significant improvement in quality of life with this, however, they are unaware that it may not be *kosher*. Please advise whatever information you have about this supplement.

Answer: In principle, one is permitted to use a product containing ingredients of a non-*kosher* animal on the following conditions:

- a) These ingredients form less than 50% of the product.
- b) These ingredients did not originate from the flesh of the animal, but rather from its bones, horns and nails.
- c) The non-*kosher* ingredient is inedible for man, or was inedible at some stage during the manufacturing procedure.
- d) The way in which it is consumed is by means of swallowing and not by means of chewing or sucking.
- e) It is used for medical purposes.

In several instances, it is enough for one to rely on only a few of the above conditions. In Israel, the institute of Science and Technology for *Halachic* issues, headed by Rabbi Yitzchak Halparin, issued a *hechsher* for the medicine, FlaxAnew which is similar to Mega-Gluflex.

We were informed, after contacting the institution, that the above two products are equivalent in terms of their substances and *kosher* status. Similarly, we were given the reasoning for the *psak*

of Rabbi Halparin who explained that the five conditions mentioned exist in the ingredients of these products.

It is for this reason that the above products are permitted for use, and therefore if this product is similar to Mega-Gluflex, then it is permitted as well.

112. Whether a Glass *Challah* Board Requires *Tevillat Keilim*

Question: Does a glass surfaced *challah* board (a plate of glass fixed to a wooden board with screws) require *tevillah*? Is it a *keli seudah*? And if yes, do the screws require *tevillah* as well?

Answer: The glass surface requires *tevillah*. Regarding the screws, we would need to see pictures in order to answer.

113. *Bracha* on *Tevillat Keilim* for Corelle Dishes

Question: Does corelle require *tevilah*? With or without a *bracha*?

Answer: Yes, it requires it with a *bracha*.

THE LAWS OF *TZEDAKA*

114. When a Written or Oral Commitment to Give Tzedaka is Binding

Question: If when assessing my *ma'aser kesafim* I wrote on a piece of scrap paper, “x number of *shekels* to be given to so and so organization,” does that obligate me to give to that specific organization or can I decide to give it elsewhere? I suppose the question is the same if I said I will give x number of *shekels* to so and so, and then I decide I want to give it elsewhere.

Answer:

- A. **Utterance:** When a person says “I will give a certain amount to *tzedaka*”, his utterance is obligating and he may not renege on it. The *Gemara* learns this from the verse “You shall observe and carry out what emerges from your lips, just as you vowed a voluntary gift to *Hashem*, your God, whatever you spoke with your mouth” (*Devarim* 23,24). The *Gemara* explains that this verse also refers to charity. However, the *poskim* disagree as to the case where one says “I will give a certain amount to a certain poor person”, whether or not he may change the purpose of the charity and give it to a different poor person. (See Tractate *Arachin* 6b, the two opinions brought in the *Tosafot*, on the section beginning with the words “*ad shelo bata*”). In the *Shulchan Aruch*, *Yoreh Deah* 258:12, the comments of Rabbi Akiva Eiger bring both opinions and so does the *Gilyon HaMaharsha*. *Ketzot HaChoshen* 212:4 explains that the question is whether the utterance only places an obligation on the person himself, then one can change the recipient of the charity and give it to someone else; or it is considered as if the poor man has acquired the money through this utterance (just like in regards to *Hekdesh*, things dedicated to God, where by through the utterance itself, the money become’s the *Beit Hamikdash*’s property).
- B. **Writing:** Whereas in regards to utterances it is a simple matter that there is an obligation upon the person, since this is a vow, as to writing, the issue is not so simple. Rabbi Akiva Eiger in

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Responsa I 30 deals with this question and does not come to any conclusion. There is a disagreement on this issue between the *Chavot Ya'ir* and the *Shev Ya'akov*.

Summary:

Utterance – By speaking, one is obligated to give the amount he specified. The *Achronim* disagree as to whether or not he is obligated to give it to the specified destination.

Writing – The *Achronim* disagree as to whether or not one obligates himself through writing.

Two notes must be mentioned:

A. If one specified that the destination of the charity be an institution, he does not necessarily become obligated. For example, there is a disagreement regarding someone who specified to give the money to a *talmid chacham* who isn't poor and has enough to live on, whether or not he becomes obligated. This depends on the question of whether or not a verbal commitment is binding only when committing to give to someone who is poor, or to anyone.

There are many institutions nowadays that, even though it is very important to donate to them, it would not be considered as giving to the poor.

B. Even those who say that one can change the destination of the money from one poor person to another, one needs to make sure that he doesn't change the destination from a case where the money would be real charity (for a poor person) to a destination where the money doesn't go to poor people (such as a hospital or *yeshiva*).

115. Delaying the Giving of *Tzedaka*

Question: When is one required to give *tzedaka* right away and when can it wait a day? If someone knocks at your door at night, may you tell him "to please put an envelope in the mailbox or come in the morning" if you are uncomfortable opening the door at night? What if the poor person refuses to leave an envelope or come back the next day? Also, when someone knocks at the door is it as if he is asking everyone who is in the house personally for *tzedaka*?

Answer:

If a poor person "knocks on the door" – one is obligated to give him *tzedaka*, but it is enough to give him "something small" (*Shulchan Aruch, Yoreh Deah* 250:3 and the *Shach* there note 4). The implication is that one should try to give it to him without delay, where possible, and this can also be inferred from *siman* 257:3.

If the asker is starving, we find in *Chazal* (the Sages) specific discussions and emphasis on the importance of giving *tzedaka* immediately. We see this in the story of Nahum Ish Gam-Zu who delayed in giving *tzedaka*, and in the meantime the poor person died (*Bavli Ta'anit* 21a), and this is also what the *Shulchan Aruch* writes in *Yoreh Deah* 247:1: "and one needs to be very careful... lest the poor person die... if he doesn't give right away, as in the story of Nahum Ish Gam-Zu." We also see the importance of giving *tzedaka* immediately in such a situation, from the story about Abba Chilkiya who said that his wife's prayers were accepted before his own, because when she gave *tzedaka* she would give food, and therefore the poor person enjoyed the *tzedaka* immediately, whereas he would give money causing the poor person to need to go and buy his food (*Ta'anit* 23b). [One should note the Rashba's opinion (*Chidushim on Shvu'ot* 25a), that there is no obligation to give money to a poor person if that person does not need the money for the use of that day, and if he needs the money for that same day, obviously one cannot push that person off to the next day.]

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All of the above is a general discussion. As to your specific question: A poor person may not arrive at unacceptable hours or in a place where it is unacceptable for strangers to knock on the door of people who do not know them. Of course, one does not have to endanger himself in order to give *tzedaka*, and this is the case regarding which it says "your life is of higher preference". Therefore, it seems that when a person fears the danger of opening up the door at night to someone he/she does not know, he/she is not obligated to open the door, even if the danger is only a far possibility.

We may add to this, that when the case we are talking about involves someone we don't know, and there is reason to think that he may not really need *tzedaka*, and that he might be a fraud (this is especially apparent in cases where one even fears opening the door for him at night), there is no obligation at all to give him *tzedaka*, without inquiring and finding out the truth, unless the person is requesting food (*Shulchan Aruch, Yoreh Deah 251:10*).

As to the individual obligation of every person in the household to give *Tzedaka* separately - There is no source for such an obligation. The Torah demands that you "do not turn the poor person away shamefully". One person giving the *tzedaka* suffices in circumventing this prohibition. Receiving *tzedaka* from one of the people in the household is not turning him away in shame.

116. How to Calculate Profits for the Purpose of *Maaser*

Question: How should I calculate the *maaser* that I need to take from sales of a book that I edited?

Please note that I had to invest \$5,000 of my own money prior to publishing, and that I get 30% of the net profits from the publisher

Answer: You should deduct all expenses needed to make the profits (theoretically even transportation and child care, especially for young mothers), and then take 10% from the net profits.

117. Using *Maaser* Money to buy *Mishloach Manot*

Question: May one buy *mishloach manot* with *maaser* money?

Answer: In principle, there is a dispute between the *poskim* whether it is permissible to use *maaser* money for *mitzvot* other than *tzedaka* (charity). The opinion of the Rema (*Yoreh Deah* 249a) is that *maaser* money should not be used for purposes other than charity. Yet, the *Shach* writes that *maaser* money may be used also for other *mitzvot*, such as *hachnasat kallah* (marrying off one who does not have enough money), buying *seforim* etc., as long as one does not have the ability to fulfill those *mitzvot* without the *maaser* money.

Even according to the *Shach's* opinion, it seems that the money should not be used for *mitzvot* that one is obligated to do anyway (see *Be'er HaGola* there par. 5, as well as *Tzkaka U'Mishpat*, chapter 6 section b). Therefore, The *Mishna Berura* rules (694:3) that one may not give *matanot la'evyonim* (presents for the poor) on *Purim* from *maaser* money, and such is the *halacha* concerning *mishloach manot*. This is regarding the first *mishloach manot* for which one is obligated to send, but one could use *maaser* money for the second *mishloach manot* and on if one usually uses *maaser* money for *mitzvot* other than *tzedaka*.

118. Receiving Charity from a Non-Jew

Question: Is it permitted for a Jew to ask for and receive charity from Gentiles for a worthy Jewish cause?

Answer: It is permissible to accept *tzedaka* from a non-Jew if one of the following conditions is fulfilled:

1. In private, or in public if one is unable to live on the *tzedaka* given by a Jew.
2. When the non-Jew who is giving is someone who donates to poor people in general, rather than someone who searches specifically for poor Jewish people.
3. When a non-Jew donates to a *shul* it is possible to receive from him, because it is similar to the principle of giving a sacrifice to the *Beit Hamikdash*, which he is permitted to do.

The sources are: *Baba Batra* 8a & *Tosafot. Sanhedrin* 26. *Shulchan Aruch Yoreh Deah* 254, Rema and *Turei Zahav* there.

**THE LAWS OF
MODESTY
& FAMILY LAWS**

119. *Yichud* with Elderly In-Laws

Question: A friend of mine was recently staying in the same town where his in-laws live. His in-laws are elderly. His father in-law is in a nursing home, and his mother in-law lives alone in her home. He had intended to stay the week at his in-law's home, but was told after the first night that he could not stay in the house with his mother in-law alone. His mother in-law had assumed he would stay by her. What is the *halacha* in such a case? Does age and relationship play any role in the laws of *yichud*?

Answer: Regarding sleeping in the same household with one's elderly mother-in-law:

Since the son-in-law's refusal to sleep in his mother-in-law's home would greatly hurt her, and since there exists on his part an act of kindness and showing gratitude, one could permit it under the following two conditions:

1. He should give a key to the house to an additional person and to ask him to periodically visit the household throughout the night on a random basis (*Tzitz Eliezer*, volume 6, *siman* 40, chapter 18).
2. Since they will be sleeping in two separate rooms, and neither needs to use the other room, one of them should lock himself or herself in the room.

For further investigation, see *Igrot Moshe, Even HaEzer*, volume 4, *siman* 64, *ot* 2; *ibid.*, *siman* 65, *ot* 19; and likewise, *Sheilot uTeshuvot BeMareh HaBazak*, volume 6, p. 225.

120. Questions Regarding the Construction of a *Mikvah*

Question: I have a question about the construction of the *mikvahs* in my community.

The *mikvahs* are constructed in such a way that the water is filled up to cover the hole connecting the *bors* and the hole which connects them is plugged up (when the *mikvah* is not in use) with a plastic plug in order to preserve the rainwater as much as possible in the original *bor*. Is this plastic plug not a problem from the point of view of being something that could be *mekabel tumah*? Is this a *chumra*? Is this a *halachic* issue? Is it not an issue at all? The *mikvahs* are built according to *Sephardic* practice, and the majority of the community here are *Sephardim*.

Answer part 1: It is permissible to block the plug hole with a plastic plug. There are two reasons for this:

1. According to most *halachic* authorities (*Igrot Moshe* 4:1:115 and Rav Nechemiah Zalman Goldberg), plastic is not *mekabel tumah*. (Unlike the opinion of the *Minchat Yitzchak* (7:83)).
2. Even if we follow the opinions of those who are stringent regarding plastic, because under the plughole the measurement is large enough for a *mikvah*, it is not considered as if the *mikvah* was created by something that is *mekabel tumah*.

Answer part 2: The following is an answer to your question regarding a plastic plug in the *mikvah*: Plugging the *mikvah* waters with a plug made of plastic¹ is permissible² even when it is

¹ In order to answer this question we need to begin with a short introduction regarding the make up of the materials that we are dealing with, namely, rubber and plastic. Rubber is a well-known material that in the past was made from the resin of trees (this is not the rubber that is mentioned in the *Mishna* and in the Rambam as something that is *m'kabel tumah*, which is referring to a branch or a soft leaf.) In the last few decades the use of synthetic rubber, made from polymers produced from petroleum, has become very widespread. Plastic is a material that

is also produced from polymers derived from petroleum. In the last few years the use of corn as a source for the production of polymers for the making of plastic has become more widespread. It is possible that this (creating plastic via corn) will become more common in the future.

² The Authorities who permit the use of plastic quote a number of proofs:

1. We are taught in the *Mishna Kelim* (10:1) “These are the vessels (whose contents remain pure) when they are sealed (in a tent with a dead body)... vessels made from the earth...” So rules the Rambam (*Kelim* 1:6) “...an earthen vessel is always pure and is not *m'kabel tumah* from any of the *tumot*.” The *Igrot Moshe* concludes (YD 3:53) that nylon (and so is the law in regards to plastic), since it is produced from petroleum which may be regarded as “liquid earth,” has the law of an earthen vessel that is not *m'kabel tumah*. The *Taharat Habayit* (8:11) agrees with this position based on the reason of the *Mishna in Kelim* (17:13) “Anything in the sea is pure.” The *Tiferet Yisrael* explains, “This does not necessarily refer to a sea, rather, this is the law for anything which is grown in a river or stream.” The Rambam rules (*Hilchot Kelim* 1:3) “that vessels made from the bones of an animal in the sea or from its skin are pure. Anything in the sea is pure and cannot be *m'kabel any tumah*.” Since the petroleum is in essence a liquid, its status is akin to something that originates from water that anything that comes out from it is pure (he quotes Rav Elyashiv as agreeing with him).
2. The *Mishna in Kelim* (3:7) states: “An earthenware boiler, *kumkum*, that has a hole that is filled with tar, Rav Yossi says that the *kumkum* is pure because it cannot hold hot water like it can cold water, and so he would say in regards to vessels of tar.” In the *Tiferet Yisrael* *ibid*, it is written that tar is not *m'kabel tumah* at all even though it is created from the resin of trees (and wood is *m'ekabel tumah*), since it is a changed form from its form as part of a tree. There is proof for this from the Rambam, for when he mentions the seven types of vessels that are *m'kabel tumah* (*Hilchot Kelim* 1:3), he does not list tar among them. According to this, the *Chazon Ish* concludes (*Hilchot Mikva'ot*, *likutim*, 7:7) that rubber is not *m'kabel tumah*, since it is different from its original form. And so is the conclusion of the *sefer Taharat Hamayim* (52), in regards to plastic.
3. The *Achronim* disagree (quoted in *Pitchei Teshuva* YD 190:18) in regards to paper whether or not it is *m'kabel tumah*. The crux of their disagreement is whether when a material (for example-cloth)

screwed in.³ There are those that are stringent⁴ if underneath the hole, the amount of water is less than 40 se'ah.⁵ However, in

changes and turns into another material (for example- paper) do we say "*panim chadashot ba'u l'kahn*," "a new face has come here," and the *halachic* relationship to the new material will be independent and not connected to the law regarding the previous material, or not. In this disagreement, the *Chatam Sofer* (6:81) and the *Sidrei Tahara* (ibid 19) are of the opinion that we say that "*panim chadashot bau l'kahn*." However, the *Noda B'Yehuda* disagrees and holds that we do not say "*panim chadashot bau l'kahn*."

It appears that this disagreement applies to plastic and rubber as well. According to the *Chatam Sofer* and the *Sidrei Tahara* who say that *panim chadashot* applies; even if plastic is produced from something that is *m'kabel tumah*, it itself is not *m'kabel tumah*. The *sefer Taharat Mayim* follows this vein in 52:53 and allows the use of rubber and plastic even if they are produced from trees which are *m'kabel tumah*. However, the *Igrot Moshe* (YD 3:53) disagrees and believes that, if we assume that the source of nylon (and this is the law also for other materials of the same type) is from materials that are *m'kabel tumah*, we do not say "*panim chadashot bau l'kahn*," since he agrees with the *Noda B'Yehuda* in the disagreement mentioned.

In Conclusion: As long as the rubber is produced from petroleum, all of the *heterim* mentioned are relevant to it and it is not *m'kabel tumah*. In a checkup we did with the National center for *Taharat Hamishpacha*, family purity, in Israel we found out that in all of the *mikvahs* in Israel they use a rubber stopper to close the watering hole. It is also permissible to use plastic but a plastic stopper is usually not used because it does not seal well enough. However, if the production of plastic from things that grow from the ground will become more widespread, then it will be in a *machloket Achronim* if we say "*panim chadashot bau l'kahn*" and there will be room to be more stringent, depending on the guidelines which will be explained in the continuation of the answer.

³ Because a material that is not *m'kabel tumah*, even if it is made into a vessel, is still not *m'kabel tumah* (Rambam ibid. and so ruled the *Chazon Ish* ibid. and the *Badei Hashulchan* 190, 108).

⁴ The Maharsham writes (1:2) that rubber is *m'kabel tumah*, and the fact that it is not spun does not prevent it from being *m'kabel tumah* since shoes are made from it, and its stature is like any garment that is *m'kabel tumah* (this claim is accepted by the *Igrot Moshe* mentioned earlier but he permits the use of a rubber stopper because of the reasons mentioned previously). Apparently, the Maharsham stated so regarding rubber made from the resin of trees. The reasoning to classify it as *m'kabel tumah* (this is not explicit in the Maharsham but is necessary to understand his opinion) is that from the *Mishna* it appears that tar is *m'kabel tumah*. And although the *Tiferet Yisrael* (quoted above) rejected this proof, it is possible that the Maharsham disagrees with the *Tiferet Yisrael*. Thus, rubber, which like tar is also made from resin of trees, is also *m'kabel tumah*. The fifth Lubavitcher Rebbe, the Rashab, agreed with the Maharsham and ruled (quoted in *Taharat Mayim* 52) that one should not plug the *mikvah* with a rubber stopper. The *Minchat Yitzchak* (4:36) expands the ruling of the Maharsham regarding rubber to plastic as well. However, according to what was mentioned previously, there is a distinction between natural rubber which is made from something which grows from the ground and plastic which is made from petroleum, and thus even those who are stringent regarding natural rubber might permit plastic and synthetic rubber.

⁵ The *Mishna* in *Mikva'oth* (5:5) states that if one wants to turn flowing water into a *mikvah*, one may not use something that is *m'kabel tumah*. The *Rishonim* disagree as to what exactly this means. According to the Rash, even if you are using the object that is *m'kabel tumah* to prevent the flow of water it is prohibited. The Rosh, however, makes a distinction between using the object that is *m'kabel tumah* to bring the water into the pool and using it to prevent the water from exiting the pool. If one is merely using the object that it is *m'kabel tumah* to prevent the water from exiting, it is permitted.

The *Shulchan Aruch* (YD 201:50) quotes the Rash as the main opinion and quotes the opinion of the Rosh as a “*yesh mi she'omer*,” “there is someone who says.” Thus it appears that he rules according to the stricter opinion that one should not even seal the exit of the water from the *mikvah* with something that is *m'kabel tumah*. However, the *Shulchan Aruch* is stringent only when underneath the hole there is not 40 *se'ah*; however, if underneath the opening there is 40 *se'ah* then it is permissible to seal it with something that is *m'kabel tumah*, and so rules Rav Zalman Nechemia Goldberg.

reality, this is not so common since in most *mikvahs*⁶ the hole is high enough⁷ that it contains below it the necessary measurement of a *mikvah*.⁸

Question 2: You sent me a while ago a detailed explanation about plastic plugs for *mikvahs*. It was very helpful and informative. However, I do have another question concerning the *mikvah*: One of the main *mikvahs* here in our city has a kind of electric closure system which is used to empty the water from the *mikvah* when they change the water. Some of the *mikvahs* use a pump system to pump the water out, but this particular one has this electric closure system on the bottom of the *mikvah* and they open it to drain the water and then close it again to refill the pool. Is that a problem? Someone told me a *mikvah* must be leak proof and this type of system on the bottom of the *mikvah* could be a problem and therefore such a *mikvah* is best not to be used. However, I want to know the exact *halachot* concerning this matter. This is an electric system, so hopefully it is more leakproof than a simple plug in a hole. But at the same time, one can never be sure that there is not a drop of water leaking, even a minute amount and so is it really better not to use that *mikvah*?

However, the Rash himself prohibited even in a case where underneath the hole there are 40 *se'ah* and apparently so rules the Rema (ibid.). However, the Rema is not explicit regarding this. Furthermore, in our case even if we remove the plug the water will not turn into flowing water and thus even the Rash might permit.

⁶ However, in *mikvahs* built according to the opinion of *Lubavitch chassidim*, the water storehouse is built underneath the dipping pool, and the plug in the opening between the two bodies of water holds the water that is in the dipping pool in place and apparently its law is like that of an opening which is lower than 40 *se'ah* and one should not seal it with something that is *m'kabel tumah*.

⁷ The accepted standard of height for the opening built in *mikvahs* is about 1.2 meters (*Mivneh Mikvaot V'hechsheiram*, Rav D. Mintzburg). At this height there should be 40 *se'ah* underneath the opening.

⁸ It is possible to attain rubber stoppers via special ordering. If this interests you, please contact us and we will send you the address.

Answer 2: The best way to empty the *mikvah* is by using a vacuum pump and this is what is customarily used in Israel. When the emptying of the *mikvah* is done through an opening in the floor of the *mikvah* that is only opened in order to empty the water as you indicated in your question, there is no difference between an opening that is opened manually and one that is opened electronically and one needs to examine each sealing device and the degree to which it actually seals. The way to test how leakproof a *mikva* is would be to measure the degree of the decrease in the water level in the *mikvah*. A slow leak from the *mikva* is defined as a very slow progression that is not recognizable and the *Shulchan Aruch* ruled (*Yoreh Deah* 201: 51) that it does not disqualify a *mikvah*. With regard to the *shiur* of a very slow progression that is not recognizable, there are different opinions in the *Achronim* (*Taharat Mayim* pages 34-35), and it is proper to be stringent like the Maharsham that if the water level decreases up to about half an inch (1.27 centimeters) over the period of 24 hours, it is considered a very slow progression that is not recognizable and is *kosher*.

In conclusion, one needs to check the decrease of the water level in the *mikva* over the course of 24 hours, and if it is less than half an inch, the *mikvah* is *kosher*.

121. Is a Cast a *Chatzitza* for the *Mikvah*?

Question: My wife has her arm in a cast and will be casted for several months. Is a cast considered a *chatzitza* for the *mikvah*?

Answer: In a situation such as this, that her cast will be on her arm for a number of months:

1. If the cast will not become ruined, and it is medically permitted to get it wet, then she should clean the arm well and then she can immerse in the *mikvah* with the cast on.
2. If this is impossible, she should replace her cast with one that is possible to immerse in the *mikvah* (such as one made from polymers) from a medical point of view without becoming ruined.
3. If this is also impossible, please contact us again via e-mail.
4. In a few months, when the time for immersion in the *mikvah* is close to the time of the removing of the cast (within a few days), it would then be preferable to wait and not immerse in the *mikvah* until the cast is removed.

122. Hair Covering for Married Women

Question: In today's society, in which non-Jewish women rarely cover their hair, are there contemporary *poskim* who hold that *frum* Jewish women need not cover their hair? While the *Aruch Hashulchan's heter* is clearly a *limud zechut*, a *teshuva* of the *Seridei Aish* would seem to permit uncovered hair *lechatchila*.

Answer: *Aruch Hashulchan (Orach Chaim 75:7)* does not permit the hair of a married woman to be exposed. Rather, he writes protesting the fact that married women did not cover their hair. He writes only that, because they were accustomed to not cover their hair, one can recite *Shema* in front of a woman whose head is not covered, because it does not cause a distraction.

The *Seridei Aish (1:78)* writes an essay in which he begins by noting that he will not discuss the rulings of *halacha* or the *poskim*. In his article he clarifies the Torah source for the obligation of covering one's hair and brings up a new idea without a source. It states that there were two types of head coverings. One was Torah based and applied to all women: single and married. The second was of Rabbinic origin and applied only to married women. This was written as theoretical conjecture and was not intended to be used as a source for practical *halacha*.

For the practical *halacha*, one should rule according to the *Igrot Moshe, Even Haezer 1:58*. He states that one should cover one's entire head, apart from up to a square handbreadth, which one is permitted to reveal.

123. Must a Woman Cover All of Her Arm Above the Elbow?

Question: What is the basis for the practice that some religious women have to expose some of the arm above the elbow, as long as the exposed area is less than a *tefach*?

Answer: The *Shulchan Aruch* in *siman 75:1* writes that a man is forbidden to recite the *Shema* in front of a *tefach* of a woman's body, in a place which is usually kept covered, even if the woman is his wife. The Rema there explains that, regarding less than a *tefach*, one is only permitted to say *Shema* in front of one's wife and not another woman, because even less than a *tefach* of a woman other than one's wife is still considered an *erva*.

However, the *Aruch Hashulchan* and the *Chayei Adam* argue with the Rema and write that one is allowed to say the *Shema* while facing another woman who has less than a *tefach* exposed (as long as he doesn't intentionally gaze at it). We see therefore that the *machloket* between the Rema and the *Aruch Hashulchan* and *Chayei Adam* is whether an area which is exposed less than a *tefach* is considered *erva*. (This however doesn't apply to less than a *tefach* above the knee, as everyone agrees that it is *erva*, because this place is more conducive to lead to immoral thoughts).

The *Igrot Moshe* (*Evan Haezer 1:58*) writes that a woman doesn't have to cover all of her hair, but can leave less than a *tefach* exposed, because it is not considered an *erva*. Although a man is forbidden to intentionally gaze at it, a woman need not be concerned about that, just as she is not expected to cover her face and hands out of concern that a man gaze at them. Although Rav Moshe's words were said regarding hair, still perhaps one can deduce the principle that what is not an *erva*, because it is less than a *tefach*, may be exposed. In the book "*Hatznea Lechet*", the author tries to find a heter based on the *Igrot Moshe*, for also exposing less than a *tefach* of one's knee. However, this is difficult regarding less than a *tefach* above the knee, which as we mentioned earlier is treated more stringently.

Therefore, if we follow the *Aruch Hashulchan* and the *Chayei Adam* against the Rema, and apply Rav Moshe's principle, it is possible to find a *heter* for exposing less than a *tefach* above the elbow.

Follow-Up Question:

Can you explain how the *Aruch Hashulchan/Chayei Adam* understand the *Gemara* in *Brachot* which concludes that *tefach* only applies to *ishto v'krias shma*?

Follow-Up Answer:

The *Gemara* in *Brachot* 24 brings: "Rabbi Yitzchak says: a *tefach* in a woman is *erva*". The *Gemara* explains that Rabbi Yitzchak's words were referring to a man's wife at the time of *Kriat Shema*. According to the simple explanation, the *Gemara's* innovation is that, even regarding one's wife, an exposed *tefach* in the parts one usually covers is an *erva*, and it is needless to say that such is the case for any other woman. It is indeed specified in the *Gemara* that less than a *tefach* is not *erva*. The Rema (following the *Hagahot Maimuniot*) learns from this that the specified leniency is specifically for one's wife, but for any other woman, even less than a *tefach* is *erva*.

However, *Aruch Hashulchan* understands the Rambam's opinion as saying that even regarding other women, less than a *tefach* is not *erva*, and the fact that the *Gemara* specified one's wife was to accentuate the fact that even regarding one's wife a *tefach* is *erva*, but for both wife and other women, less than a *tefach* is not *erva*.

124. Full Length Swimsuits and Mixed Swimming

Question: I recently purchased a new design in swimsuits for religious women. This is designed out of swimwear material but is a full length skirt and full top with long sleeves. When wearing this, am I allowed into the water when there are men in the water, or is the prohibition of mixed swimming a separate issue to that of *tzniut*?

Answer: A pool, which has mixed swimming, is not the recommended place for religious women even if their swimsuits are modest. Since today there are many places that have separate swimming hours one should go only there. Therefore, even without getting into the question of whether or not this swimsuit fulfills the *halachic* requirements, we could not recommend using it in a place where there is mixed swimming.

125. Whether Marrying is Obligatory

Question: Shalom, I have a question about marriage. I am a Jew, and in Judaism it was always seen as a sin when a person chooses to not marry. Can you give an illustration about this topic. Are there some prophets who did not marry? What about the *Nazirim*?

Answer: It is a basic tenet that every Jewish man is obligated to marry a woman upon maturity. However, the *halachic* authorities debate whether this is an independent *mitzva* or if this is merely a preparatory *mitzva* for *peru urevu*, the commandment to procreate, for which marriage is a prerequisite. All, nevertheless, agree that marriage is obligatory (see *Sefer HaChinuch, Mitzva 1*; Rambam, *Mishna Torah*, list of *mitzvot* at the beginning of *Hilchot Ishut*).

Our Sages taught (*Bereshit Raba 17:2*): "Rebbi Yaakov taught, 'Whoever does not have a wife is not in a good situation. He is without help, without happiness, without blessing, without atonement, without goodness....'" Furthermore, our Sages (*Avot 5:21*) suggest the optimum age to get married: "When one reaches eighteen years, he should get married." Our Sages also stated, (*Tractate Kiddushin 29b*): "Up to age twenty, *HaKadosh Baruch Hu* sits, waiting for a person to get married. Once a person reaches twenty and is not married, He Says, 'May his bones burst.'" (Nevertheless, the ideal age can change with the changing reality and local custom.)

However, we have seen that *HaKadosh Baruch Hu* Allowed Moshe *Rabeinu* to separate from his wife, Tzipora. Since *HaKadosh Baruch Hu* could speak to Moshe at any moment, it was important that Moshe would always remain in a state of spiritual purity. It is important to put into perspective that even Moshe's separation from Tzipora was only after he was married with two children. Aside from Moshe *Rabeinu*, you will not find a single prophet who remained unmarried for reasons of *nezirut* or asceticism. In Judaism, the *Nazir* is also commanded to marry a woman. The *Nazir* is only forbidden to cut his hair, to drink wine (and grape products), and to become defiled from the dead.

ASK THE RABBI III

Ben Azai was one of the *Tannaim* who remained a bachelor (however, one of the opinions is that he married and subsequently divorced, see Tractate *Sotah* 4b). He, himself, acknowledged criticism that he received from his colleagues (*Yevamot* 63b). Ben Azai told them, "What could I do? My soul desires the Torah. It is possible for the world to be sustained by others." The Ritvah wrote there that there is nobody in our generations that is permitted to conduct himself like Ben Azai regarding remaining single.

126. Halachic View on a Double Ring Wedding Ceremony and Equality

Question: Why can't women exchange rings with their husbands and say something under the *chupah*? Surely in these days of equality, the marriage ceremony should be updated to reflect contemporary reality.

Answer: There are many *mitzvot* in the Torah which we do not understand at all. There are other *mitzvot* of the Torah which we basically understand, but do not understand every detail which is derived from the Torah. In any case, even if we were to be convinced that we know why the Torah said that the man is the active “player” in the wedding and divorce proceedings, we could not change it. As one rabbi put it to me; “The same God who decreed that even in the days of equality women would give birth and men would not, said that men would give the ring and women would not.” We don’t need to understand everything God decrees. But just as we can’t change physical differences between man and woman, we dare not change God’s instructions of how they should interact. God did not say women can’t work out of the house nor did he say that men can’t cook or change diapers. Changes of custom of these types are the prerogative of the couple. However, religious laws are not to be tampered with. This does not mean that certain practices which were customary but not binding cannot be updated. However, the officiating rabbi should be consulted in regard to what may or may not be changed.

127. Fasting on One's Wedding Day and If It Falls on *Rosh Chodesh*

Question: What is the source for fasting on your wedding day? Does one have to fast if the wedding day is on *Rosh Chodesh*?

Answer: The source for the fast on the wedding day is in the words of the Rema on the *Shulchan Aruch, Even HaEzer* 61:1 and in *Orach Chaim* 573:1. Different reasons have been given for this custom, and the most famous is that on this day the bride and groom's sins are atoned, like on *Yom Kippur*.

As for fasting on *Rosh Chodesh* – in *Orach Chaim* 573 (ibid.) it is clear that one does not fast if the wedding is on *Rosh Chodesh*. For further information on issues concerning the wedding, see the book "*HaNissu'in KaHalacha*" I, pp. 194-204 (Hebrew).

128. How to Properly Write the *Tannaim* and *Ketuba* for a *Chatan* Whose Father is Not Alive

Question:

1. If the *chatan's* father died and the mother remarried who should represent the *chatan* for *tenaim* – the mother or the stepfather?
2. When writing the *chatan's* name in the *ketuvah* do you write *z"l* after the deceased father's name?

Answer:

1. It is customary to write in the *Shtar Tenaim* (marriage agreement document) that the agreement is made between the *chatan's* father, who represents his son and the father of the bride who represents his daughter (see *Nachalat Shivah*, chapter 8). With regards to the question which you raised, there is no problem in writing that the mother's spouse represents the *chatan* even though he is not really his father.
2. There are several customs regarding this issue. In the book, *Mishpat Haktubah* (approved by Rabbi Menashe Klein), it is quoted in the name of the *Admor of Kloyzenberg* that one should not write *z"l* in a *ketubah*. However in the book, *Nitey Gavriel* (page 78), it is mentioned that the *Chidah* himself wrote *z"l* after his father's name. In any case, if one does write *z"l*, one should be particular in adding *Nero Yair* (term used for those alive, which means – his light shall shine) after the *chatan's* name, so as not to cause any misunderstanding.

129. Writing the Name of a *Chatan* Who Converted in a *Ketuba*

Question: How should one write the name in a *ketuba* of a *chatan* whose father is Jewish, but whose mother converted only after he was born (and therefore the *chatan* himself also converted)?

Answer: Regarding the *ketuba*:

- A. It is obligatory in a *ketuba* to note that the *chatan* is a convert, since it makes a difference in the case that he could in the future marry a convert, in which case his daughter would be forbidden to a *kohen*.
- B. In order not to embarrass him you can tell the one reading the *ketuba* to leave out these words. This is what we wrote in *BeMareh HaBazak* Vol. V, *teshuva* 116, and Vol.III *teshuva* 84.
- C. You may mention his family name from the time he was a non-Jew (see *BeMareh HaBazak* III, *teshuva* 83).
- D. In a case where there is a possibility of the *chatan* being *porek ol* if his father's name is not mentioned, we suggest that the *ketuba* read: "*ploni ben Avraham Avinu, d'mitkare*" "*ploni ben almoni*" (his biological father). The one reading the *ketuba* can then read only the words "*ploni ben almoni*" skipping "*ploni ben Avraham Avinu d'mitkare.*" This is on condition that the biological father raised him as a Jew, as then he is no worse than an adoptive father.

This solution is suggested by the *Minchat Yitzchak* V,44 and VI, 151 based on the *Teshuvot Emek Sheala*, EH 98. In vol VI he wrote the solution only in the case of danger. The *teshuvot* deal with mentioning the adoptive father's name. However, in our case, if the father raised him as a Jew, he is no different than another adoptive father as the *Minchat Yitzchak* himself wrote in I, 136.

130. Reciting *Sheva Brachot* at a Meal That Begins Seven Days after the Wedding and Continues Into the Eighth. Drinking the Wine at a *Sheva Brachot Seudah* during *Seuda Shlishit*.

Question: How does one deal with the drinking of the wine at a *seuda shlishit/ sheva brachot* for a *chatan* and *kallah* who got married the previous Sunday? (In other words, on *Motzei Shabbat*, no more *sheva brachot*.) Who drinks? When? When do you say *Havdala*? Can one drink the wine before *Havdala*?

Answer: At a *seuda* that starts within the seven days of *sheva brachot* but finishes on the eighth day, you should recite the *sheva brachot* before the eighth day begins. Ideally, it is correct to recite *birkat hamazon* before nightfall. However, there are some that say that it is possible to recite the *sheva brachot* in the middle of the meal, without *birkat hamazon*. If one did this, then when reciting *birkat hamazon* after nightfall, one should do so without the *sheva brachot*. Nevertheless, it is appropriate to opt for the first opinion.

For *seuda shlishit* during the week of *sheva brachot* there are different customs. There are those who have the custom of saying *birkat hamazon* and saying only six of the *sheva brachot*. Then, the wine that was used for *birkat hamazon* is later used for *Havdala*. However, the accepted custom is to say all the *sheva brachot* together as normal. The *chatan* and *kallah* then drink from the wine of *sheva brachot* and *birkat hamazon*. After *Maariv*, *Havdala* is made as normal.

**THE LAWS OF
CHILDBIRTH,
CHILDREN &
CHINUCH**

131. Looking at One's Wife During Childbirth

Question: My question is regarding childbirth. I am aware of the prohibition on a husband seeing his wife from the lower end during childbirth (and otherwise) for reasons of *tznius*. I also know that there is a prohibition on seeing the moment of birth itself. Is this for the same reason? Or is there a *halachic* or kabbalistic reason why a husband should not see the birth itself? Does it in any way relate to the *kedusha* present at that time?

Answer: The matter seems clear in the *poskim* (see *Iggrot Moshe, Yoreh Deah 2, siman 75; Taharat HaBayit, siman 12, s'if 28; and Mishmeret Hatahara* (ad. loc.) among others) that the prohibition to look at the parts of one's wife's body that are usually covered (*m'komot ham'chusim*) during childbirth is based on the fact that at this time she is certainly a *niddah* (*vadai niddah*) and it is forbidden to look at *m'komot ham'chusim* of a *niddah* as stated in *Shulchan Aruch, Yoreh Deah, siman 195, s'if 7*. In truth the basic prohibition involves looking for the purpose of receiving pleasure. On the other hand, there are other reasons why it's preferable for the husband not to look at *m'komot ham'chusim* during childbirth. Therefore, it's advisable for a husband, when he and his wife desire for him to be present in the delivery room, to stand by his wife's head – a place where he can be present for the birth, but at the same time not involve himself with *halachic* issues that arise by looking at the birth itself.

132. Naming a Child “Yaakov *ben* Yisroel”

Question: Is there any problem with a man named Yisroel naming his son Yaakov, so that the son's name would be Yaakov *ben* Yisroel? The problem would be that Yaakov and Yisroel in the Bible are the same person. Note, we are *Ashkenazim*.

Answer: *Sefer Chasidim* (sec. 460) states that Jews make sure not to call their sons by their names. In the book *Otzar HaBrit* it is written that the reason for this is so the brother of the son will be able to call his name without saying his father's name. According to this there is no problem for a man called Yisroel to name his son Ya'akov. We are not aware of any other problem with someone named Yisroel calling his son Yaakov.

133. Naming a Baby Before the *Brit*

Question: B"H, my wife is pregnant with triplets, and we know that two are male. Unfortunately, they are expected to be "premature" (and will be in the NICU for, *I"H*, only a short time). Unfortunately, I will not be able to add them to my company's medical insurance policy without names/social security numbers. As the *milah* will be postponed until they gain adequate size, which may take upwards of a month, is there a *halachically* acceptable method of naming them prior to the *milah* (maybe not publicizing, for example)?

Answer: First of all we would like to wish you that with the help of *Hashem* the birth be on time and in the best and easiest way. As to the question itself: The custom in the Jewish communities is to name a male child only at the time of the *bris*. A few reasons have been given for this, among them the reason that the name should be given in holiness, at the time of a *mitzva*.

However, there were those whose practice was to give the name even before the *bris*, and in the Responsa *Bnai Zion* (sec. 11) the author writes that both customs are possible, since the *Shulchan Aruch* and Rema did not state an opinion on the subject. In any case, it seems that there is no prohibition in this matter, only a matter of custom. Therefore, it seems that if there is a reason to give the name before the *bris* one may do so (this is what we have heard in the name of the *Rishon LeZion*, Rav Mordechai Eliyahu *zt"l*, and not as is written in the book *Zecher LeDavid*, that it is permitted to give the baby's name in writing only if the government demands it). This is especially true in the case where the *bris* does not take place on time, since in this case there are those who ideally give the name before the *bris* (and there are those whose custom it is to name the child a month after the birth anyway, even if there hasn't been a *bris* yet). In the *sefer Az Nidberu* III sec. 73, the author states that regarding premature babies who are placed in incubators there is another reason for giving the name before the *bris*, according to one of the reasons

given in *the sefer Chesed LeAvraham*, namely, so that there will be a name to use for *tefillot*.

In a situation where the parents wish to give the baby a secular name in addition to his Jewish name, it seems that this is the name that should be used before the *bris*; this is what can be understood from Rav Moshe Feinstein's *teshuva* (*Igrot Moshe, Even HaEzer* III, 35).

In any case, even if one gives the child his full name before the *bris*, at the *bris* itself, one should not omit the declaration: "And his name in Israel will be" (*VeYikare Shmo BeYisra'el*), etc. – this is quoted in the name of Rav Shlomo Zalman Auerbach in the book *Otzar HaBrit*, and brought also by the Responsa *Az Nidberu* (op. cit.).

Follow-Up Clarification:

Thank you for the reply. As with our previous two children, the babies will be given only Hebrew names. From the reply, I gather that, if they are in the incubator, their names may be spoken aloud for a "*Mi Sheberach*", but that their names should ideally only be written (as would be the case for placing them on my insurance policy). Is this how I should be reading the reply?

Answer: We would like to clarify our answer. Since the whole issue is of custom and there are different customs, in your case one may name the babies and call them by their names and there is no difference between writing their names or saying them. What was mentioned about writing was according to the stringent opinion that one should only name the babies if the government requires it and even then only in writing. However, we quoted Rav Mordechai Eliyahu as disagreeing on both points and that in any case of need (as in your case) one may name them and one may call them by their names and write their names as well.

The *Az Nidberu* spoke about a case that one needed to name the baby in order to pray for him. But, he too did not then limit calling the baby by his name. Conclusion: You may name the babies, and you are not limited in using their names in any fashion. Again, we wish the babies and mother well and that the birth will be on time and in the easiest and healthiest way!

134. *Pidyon Haben* at Night

Question: My son was born during the day of December 5, and requires a *pidyon haben*. I understand that the 31st day for the purposes of the *pidyon haben* would be the night of January 3/the day of January 4.

I would very much like to have the *pidyon haben* on the night of January 3, which is a Bank Holiday, when we can have a proper *seudah*. The alternatives would be the following morning (a working day) before work, which would have to be a quick affair with fewer people, or during the day when most people, including family who would like to come, will not be able to attend because of work. Can we have the *pidyon haben* on the evening of January 3?

Answer: *Mazal Tov*. The *minhag* among *Ashkenazi* Jews is to do the *pidyon haben* during the day, at least if it is being done on the normal day. There is an additional matter (although it is possible that factor #2 is responsible for #1) that some feel that the baby must be a lunar month old, which is just over 29 ½ days.

Despite your understandable concerns, it would be *halachically* better if you had a smaller crowd/faster *pidyon* and did it during the day. However, it is not illegitimate at night, especially if you do it 29 days, 12 hours and 45 minutes after birth, and if you feel the *pidyon* will be more public and festive.

135. Teaching *Berachot* and Torah to Children Who May be Soiled

Question: I work in a Jewish special Ed. program. My question is about saying *brachos* or other tefilos or teaching *parsha*, with a child who is known to me to not clean himself properly after the bathroom and has many small accidents that we don't notice right away. Also, is it permissible to make *brachos*/teach *parsha* to 3 or 4 year olds that are still in diapers?

Answer: One may say issues of Torah and blessings in a place where there is covered excrement (*Shulchan Aruch, Orach Chaim* 76:1), and therefore one may teach children Torah even when one of them is not clean, as long as there is no smell.

One may teach small children the *berachot* (and even more so *Modeh Ani*, etc.) even when his body is not clean, as long as there is no smell (Responsa *Yabi'ah Omer, Orach Chaim* I-IV, 13). This applies only to children who are not commanded specifically by the *mitzva* "*Vehaya machanecha kadosh*" (your camp shall be sacred). However, one who is over thirteen years old who is commanded in this *mitzva* of "*vehaya machanecha kadosh*" should not be taught Torah and *berachot* if his body is not clean. According to this, it seems that one may teach a child who still wears diapers, as long as there is no smell. We would like to send you a warm Yasher Koach for the blessed work you are engaged in!

**THE LAWS OF THE
LAND OF ISRAEL &
AGRICULTURAL LAWS**

136. Spiritual Significance of the State of Israel

Question: Is the State of Israel the fulfillment of the Messianic promise?

Answer: The Prayer for the Welfare of the State of Israel includes the phrase, *Reishit Tzemichat Geulateinu* (the beginning of the flowering of the redemption). Whether or not that constitutes the fulfillment of the Messianic promise is, of course, open to question. Let us begin to analyze what the Messianic Era was supposed to be.

Shmuel, a Babylonian Amora of the first generation, said: “There is no difference between this world and the Messianic Era except for [Israel] being subjugated to the nations.” According to this opinion, the State of Israel might qualify as the fulfillment of the Messianic promise.

However, the question of whether Jews have a right to proclaim an independent state of their own or must wait until the coming of the Messiah, requires a more detailed answer.

According to Talmudic tradition (Talmud *Ketubot* 111a), when the Jews went into exile, God made Israel swear that (1) they would not retake the land of Israel by force, (2) that they would not rebel against the nations of the world, and (3) that the nations of the world would not overly oppress the Jews. Religious anti-Zionists, such as Satmar *Hasidim*, base their objection to the State of Israel on this passage. Religious Zionists note that the State of Israel was established by the United Nations; hence, the second oath is no longer valid. Moreover, the Holocaust violated the third oath taken by the nations of the world; hence Jews were free to establish their own state.

The earliest Religious Zionists of the nineteenth century urged resettling the land of Israel, namely, what was then called “practical” Zionism. “Political” Zionism came into being with Herzl and the Zionist movement. The break within the ranks of religious Jewry, Mizrahi vs Agudah, was over Zionist control of

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education, not resettling the land of Israel. None of the above contradicts in any way the belief in the coming of the Messiah at such time as God chooses.

137. The *Mitzva* to Live in *Eretz Yisrael*

Question: I am very drawn to the teachings of Rav A.Y. Kook and lately I have been reading the book *Torat Eretz Yisrael* by Rav David Samson. I live in a generally Religious-Zionist community in America. And in none of these *shuls* does the Rav emphasize the obligation of each Jew to strive to make *Aliyah*. Rav Samson says in his book that there is a *chiyuv* on each Jew to try to make *Aliyah*. Is Rav Samson's opinion that this *mitzva* is a *chiyuv* a minority opinion? I am interested in hearing your opinion.

Answer: The question is, on the one hand, not only a good one, but a fundamental one. On the other hand, from a practical perspective, it should be almost moot. How can this be, you ask. Even those who say it is an obligation do not require one to leave on the first plane. They also agree that, for certain people in certain situations (which may be common), the obligation may be able to be put on hold indefinitely. On the other side of the coin, even those who rule that the *halachic* nature of the *mitzva* is “optional” need not minimize its crucial nature in the religious life of a Jew. The *mitzva* of learning Torah, after some learning in the morning and night, may also be an optional *mitzva* from one perspective. But one who doesn't have a good reason not to partake in such a basic foundation of our religion will be questioned by *Hashem* as to why. The same is probably true about living in *Eretz Yisrael* even for many who categorize it as optional. Please accept the following from our files.

In addition to what is listed below, you can access additional articles under the *Moreshet Shaul* section of *Hemdat Yamim* online at <http://www.erezhemdah.org/hemdatyamim/archive.htm> listed under 5762, *parshiot Korach*, *Chukat-Balak*, and *Pinchas*.

Financial Sacrifice to Live in *Eretz Yisrael* – Part I (based on *Eretz Hemdah* I, I, 7)

The first question we should deal with is whether one should subject himself and/or his family to poverty and dependency on

tzedakah in order to live in *Eretz Yisrael*. The Maharit II, 28 rules that one who will be unable to support his wife and children if he moves to *Eretz Yisrael* should not go there. This is based on a *Gemara* (*Gittin* 6b) which criticizes those who went to *Eretz Yisrael* to learn, and as a result, exposed their children to difficult conditions in order to survive. One can deflect this proof based on another position of the Maharit himself, namely, that only one who goes to *Eretz Yisrael* in order to live there permanently fulfills the *mitzva* of *yishuv Eretz Yisrael*. Thus, the Torah students who left their families behind and planned to return were not even fulfilling the *mitzva*, in which case they had insufficient justification to compromise their families' welfare. Perhaps, if they would have fulfilled the *mitzva*, it would have been proper.

There are additional sources which indicate that one shouldn't go to *Eretz Yisrael* if it will cause him to be dependent on charity. The *M'eel Tzedakah* says that it is against the Rabbinic dictum that one who supports himself "from the toil of his hands" is to be lauded and that one should not spend too much money on enhancing Shabbat if it will cause him to be dependent on others. The Rashbash also says that one is not required to move to *Eretz Yisrael* if he doesn't have an expected source of income there.

The *Avnei Nezer* (454) questions whether it is clear that fear of poverty exempts one from the great *mitzva* to live in *Eretz Yisrael* which, *Chazal* tell us, is equivalent to all the *mitzvot* of the Torah combined. There does, though, appear to be a clear proof to the position of the *M'eel Tzedakah* and Rashbash from the *Gemara*, codified in the Rambam (*Melachim* 5:9). The *Gemara* states that when the economic situation reaches a point where money is scarce, and a person does not have the ability to earn a living, he may move to wherever he can find a living.

However, if we understand the Rashbash properly, we can accept the *Avnei Nezer's* contention that one needs to make greater financial sacrifices for living in *Eretz Yisrael* than for other *mitzvot*. The Rashbash posits that when one is not able to live in *Eretz Yisrael* normally, which includes having a place to live and the ability to earn money for basic needs, he does not fulfill the *mitzva* of living there. We can argue that if one will be able to

survive reasonably in *Eretz Yisrael* but will have to make a more significant financial sacrifice than is required by other *mitzvot*, he is required to do so.

Financial Sacrifice to Live in *Eretz Yisrael*- Part II (based on *Eretz Hemdah* I,I,7)

We saw last time that according to significant sources, one need not subjugate himself or his family to poverty in order to live in *Eretz Yisrael*. We raised the possibility that as long as one can make a reasonable living, there may be an obligation to live in *Eretz Yisrael*, even if it requires outlays of money greater than required for other *mitzvot*, because of the centrality of the *mitzva*. However, it is possible that financial sacrifice for this positive *mitzva* should be the same as for other *mitzvot*, and so, we should determine the extent of one's obligation to spend money on positive *mitzvot*, in general.

The Rema, in discussing the maximum amount of money one needs to spend on an *etrog*, says the following. "One who does not have an *etrog* or other object for a *mitzva* whose time passes does not need to spend a great sum of money (הון רב), as the Rabbi's said, 'He who spends, should not spend more than a fifth [of his net worth]'" (*Orach Chaim* 656:1). The Rosh (*Bava Kamma* 1:7), who is the Rema's source, bases himself on three *gemarot* which can be instructive for our study. The *Gemara* in *Bava Kamma* 9b tries to figure out a cryptic statement that one pays a third for *mitzvot*. The *Gemara* claims that it cannot be referring to spending a third of one's wealth for a given *mitzva*, because then a person would use up all his money with three *mitzvot*. The *Gemara* in *Sukkah* 41b tells of Rabban Gamliel's great love of *mitzvot* which caused him to spend 1,000 *zuz* for an *etrog*. The *Gemara* implies that he went beyond his obligation by paying such a sum. A third *Gemara* (*Ketuvot* 50a) brings a rabbinical injunction that people giving *tzedakah* in a generous manner should not exceed one fifth of their wealth.

If one re-examines the Rema's statement, he will notice that only the maximum sum to spend is mentioned, not a required or suggested amount. Rabbeinu Yerucham, a *talmid* of the Rosh,

continues the comparison to *tzedakah* and says that one is expected to spend a tenth of his wealth for a *mitzva* (quoted by *Beit Yosef* OC 656). The *Biur Halacha* (on *siman* 656) assumes that the obligation by *mitzvot* whose time passes and are personal obligations is greater than by *tzedakah*. He says, therefore, that it is possible that the tenth Rabbeinu Yerucham refers to is an absolute least, and it is possible that the maximum of a fifth of wealth is also the expected amount. The *Biur Halacha* wonders why the *Gemara* (*Bava Kamma*, *ibid.*) doesn't prove that one doesn't spend a third on a *mitzva* from the limit of a fifth on *tzedakah*.

The truth is that the *Gemara* cannot use the limit on *tzedakah* as a limit for other *mitzvot*, because they are very different. By *tzedakah*, every *p'ruta* is a *mitzva*, and *Chazal* instruct us regarding what the normal range is for giving the *tzedakah*. In contrast, regarding *mitzvot*, we are discussing a situation where one will not be able to fulfill the *mitzva* at all if he does not spend a large sum of money. Therefore, the *Gemara* proves not to spend a third of one's wealth from independent logic. The question is where the boundary of this logic is. Since, in the context of *mitzvot*, no measure is given, the *Rosh* assumes that we can apply the precedent that giving a fifth (for *tzedakah*) could cause poverty and is forbidden. But since a fifth is only a maximum amount and is not required by *tzedakah*, it is not logical that it is required by *mitzvot* without giving a person the ability to monitor the situation. Therefore the *Rosh* introduces the limit of *הון רב*.

Financial Sacrifice to Live in Eretz Yisrael- Part III (based on Eretz Hemdah I, I, 7)

We saw last time that the Gemara felt that it is not logical that the Torah would require one to spend a third of his money for a mitzva. The Rosh continued this reasoning, saying that one shouldn't spend more than a fifth and need not put out הון רב (a great sum of money) on a mitzva and that Rabbeinu Yerucham said that one should be prepared to spend a tenth, as by tzedakah.

The *Beit Yosef* (*Orach Chaim* 656) questions the source of Rabbeinu Yerucham's tenth, and the *Biur Halacha* (*ibid.*) understood that it should be more (up to a fifth). However, it

seems that the tenth we find by *tzedakah* may be too stringent for other *mitzvot* for the following reasons: 1) The nature of the obligation of *tzedakah* is that there is a minimum outlay to fulfill the *mitzva* properly, whereas other *mitzvot* do not necessarily require any expense. 2) The Divine promise to compensate for *tzedakah* outlays does not seem to exist by other *mitzvot*. Therefore, it should not be simply assumed that one is obligated to give a tenth for *mitzvot*. Indeed, the *Gemara*, cited by the Rosh (*Bava Kamma* 1:7), says that the 1,000 *zuz* which Rabban Gamliel spent to get an *etrog* was more than *halachically* required. As Rabban Gamliel was a *nasi* and a wealthy man, that sum was probably not a fifth or even a tenth of his net worth. Rather, if a certain sum of money is objectively considered *הון רב* for a given *mitzva*, then even a wealthy man is not obligated to pay it. The monetary value of *הון רב* does depend on societal considerations to set it. Additionally, a poor person is not required to exceed a tenth of his resources for a *mitzva*, even if it is an objectively reasonable sum, unless the monetary amount is part of the obligation (i.e. *the 5 shekalim of pidyon haben*).

[As we mentioned in part I] it is possible that the great *mitzva* of inhabiting *Eretz Yisrael*, which is equivalent to the entirety of the *mitzvot*, requires one to spend all his money, if he will be able to support himself (which is a requirement to fulfill the *mitzva*). [Ed. Note – perhaps we can suggest a further reason to expect a larger than usual expenditure for inhabiting *Eretz Yisrael*. Besides the value of the *mitzva*, one would not pay more for an *etrog* than for a lemon. Therefore, to pay an unusually large and oppressive amount of money may be unnecessary. In contrast, it is common for people looking for a place to live to spend exorbitant amounts of money because of location (for accessibility, view, good neighbors, etc.). Why then shouldn't the *mitzva* value of living in *Eretz Yisrael* be considered the most important factor in choosing a location, causing the estimation of *הון רב* in this realm to jump?].

Summary: If by making *aliyah*, one will need to be impoverished until he needs handouts to survive, he is not obligated to do so and it is forbidden. However, if the situation is not that dire, it is

not altogether clear how much he must spend. He must certainly pay up to a tenth and may spend up to a fifth, as we find by other *mitzvot*.

138. The *Mitzva* to Conquer and Settle Israel Nowadays

Question: I was looking at the OU's web page about the *Ichud HaRabbanim*: Under Principles it says: "It is a Torah commandment for all generations to conquer the Land of Israel, to settle it and to preserve it."

1. From where do we learn this *mitzva*?
2. Is this *mitzva* in effect even before *Moshiach* arrives i.e. during *galut*?
3. Do all or most of our *Gedolim*, *Chareidi* and Religious Zionist, agree that "It is a Torah commandment for all generations to conquer the Land of Israel, to settle it and to preserve it."?

Answer:

1. The Ramban in the omissions of *Sefer HaMitzvot* of the Rambam, positive commandment 4, writes the following:
 "We were commanded to inherit the land that the exalted Almighty gave to our forefathers, to Avraham, to Yitzchak, and to Yaakov and it should not be left in the hands of other nations or (left) to desolation and He said to them "*v'horashtem et ha'aretz v'yishavtem bah ki lachem natati et ha'aretz l'reshet otah v'hitnachaltem et ha'aretz asher nishbati l'avoteichem,*"
 "and you should inherit the land and you should dwell in it, because I gave the land to you to inherit it, and you should settle the land that I promised your forefathers", and this is what our sages refer to as a *milchemet mitzva*, a war which is a *mitzva*."
 The source for this *mitzva* is therefore from the *pasuk* "*v'horashtem et ha'aretz v'yishavtem bah...*" and so is the opinion of the Ramban.
2. The Ramban elucidates that this *mitzva* applies in all generations: "... but the land, do not abandon it in their hands or in the hands of others from foreign nations, in any of the generations. ...behold we are commanded in the conquering (of the land) in all generations." And the Ramban concludes: "If so it is a *mitzvat aseh*, positive commandment, for generations;

every one of us is obligated in it, even in a time of exile as is known from the Talmud and other numerous places.” From the Ramban it is clear that this is a *mitzva* for all generations even before the coming of the *Mashiach*.

3. In regards to your question whether all of the *Gedolei Yisroel* agree to this: See *Pitchei Teshuva* to *Shulchan Aruch* 75 who concludes that most *poskim*, *Rishonim*, and *Achronim* agree with the words of the Ramban. Those that challenged this conclusion used two *Rishonim* in their rebuttal:

The *Tosfot* in *Ketubot* 110b wrote that in our days the ruling of the *Mishna* that one may force his spouse to move to *Eretz Yisroel*, *hakol ma'alim l'Eretz Yisroel*, does not apply because of *sakanat drachim*, danger on the roads. It is clear that this is not applicable in our times when there is no danger in traveling. Furthermore, the *Tosfot* adds in the name of Rav Chaim Kohen, that now there is no *mitzva* to live in *Eretz Yisroel* since there are some *mitzvot* and punishments that are dependent on the Land, and we are not able to be careful with them and uphold them.

On these words there is much commentary; today, after the work of Rav Kook, the *Chazon Ish*, and Rav Tzvi Pesach Frank, *zecher tzadikim l'bracha* and other *Achronim*, who worked on these *mitzvot* that are dependent on the land of Israel and restored the Torah to its place, we are able to be careful with these *mitzvot*. In addition, doubt has been expressed regarding the authenticity of the words of Rav Chaim. The Maharit writes that these words are not the words of Rav Chaim; rather, a mistaken student wrote them. The *Chatam Sofer* maintained (this opinion) in his responsa; these opinions are brought down in the *Pitchei Teshuva* mentioned previously.

The Rambam does not mention this *mitzva* (therefore the Ramban adds it in the “omissions” (as mentioned previously). The *Megillat Esther*, therefore, wanted to explain that according to the Rambam this *mitzva* is only applicable during the time of the *Beit HaMikdash*. However, many *Acharonim* reject this opinion. Rather, they claim that this *mitzva* is a general *mitzva* that impacts many other *mitzvot*, and therefore the Rambam

ASK THE RABBI III

does not list it (as is explained in his principles, that he will not list general *mitzvot*). However, as mentioned, the clear consensus of the *poskim* is that the *mitzva* is applicable today. Additional sources for this are *Mitzvat Yishuv Eretz Yisrael* by Rav Yona Dov Blumberg, *Otzar Haposkim- 75-* on the *mitzva* of *Yishuv Eretz Yisrael*.

139. Living in Yericho Nowadays

Question: Is one still allowed to live in Jericho after Joshua's curse?

Answer: As we know, Joshua put a ban on rebuilding Jericho after he had destroyed it.¹ *Chazal* also added that one is forbidden to build another city and call it by the name Jericho, or rebuild Jericho and call it by a different name.² Early commentators explain that this ban applies to all generations, even those who were not born yet at the time.³

However, once the city is rebuilt, it is permissible to *settle* in it.⁴ The later commentators differ in interpreting this statement. Some explain that this only refers to a city which carries the name Jericho (in a different location to that of Jericho), but one can never settle in the original city,⁵ and there are others who have permitted settling even in the city itself.⁶

With regards to *rebuilding* the city, there are those who explain that, since the decree was transgressed and Jericho has already been rebuilt, the prohibition no longer applies, and now it is permissible to rebuild it.⁷ However, some disagree with this claim.⁸ There are also those who say that even in this situation the original city is still nevertheless prohibited to rebuild but another city by the same name is permitted.⁹

¹ *Joshua* 6:26.

² *Sanhedrin* 113:71. See *Yerushalmi, Sandhedrin* 10:8 that seems to argue.

³ Responses 5,4 of the *Rosh*.

⁴ *Yerushalmi* *ibid*.

⁵ *Yafeh Mareh, Yerushalmi* *ibid* and other later commentators.

⁶ *Korban Ha'eda* *ibid*.

⁷ *Meshech Chochma* in weekly portion of *Re'ah*.

⁸ Response of *Mahari Ben Lev* 1:38.

⁹ The book *Shaarei Torah* (written by Rabbi Shai Faigenbaum) 1:6. You can also find a lot of this discussion in the *Encyclopedia Talmudit* on the subject of Jericho.

140. *Halachic* status of Gaza

Question: What is the *halachic* status of the Gaza area, specifically with regard to *Shmita* and Biblical borders?

Answer: The area of Gaza is included in the borders of Israel in *Parshat Masei*. The borders reach the river of Egypt that according to one opinion (Rashi) leads to the Nile, and according to another opinion (Rasag) is the Wadi Al Aresh. In *Yehoshua* 13, Gaza is mentioned as a city that Yehoshua did not capture. Later though, in *Shoftim* 1:18, it appears that the sons of Yehuda captured it. It is also said of Shlomo HaMelech that he ruled Gaza (*Melachim* I 5:4). According to Rabbeinu Tam (*Tosafot* in *Gittin* 2:1), Gaza is included in the land conquered by those who came up from Egypt, but is not included in the borders of those who came up from Babylon. According to the Ri (*ibid.*), it is also included in the borders of those who came up from Babylon.

According to the Rambam (*Hilchot Trumot* 1:7), south of Ashkelon is also not included in the borders of those who came up from Egypt, even though they are definitely included in the borders of *Parshat Masei* (*Eretz Hemdah* of Rav Shaul Israeli I 4:7).

Rav Shaul Israeli was doubtful whether the conquering of the Israeli army gave holiness to the places within the borders mentioned in *Parshat Masei* but outside the borders of those who came up from Babylon. He said that the issue was subject to debate between the Radbaz and the *Kesef Mishna*. He was also doubtful due to the fact that the State of Israel did not enforce its laws on the conquered areas. The *Tzitz Eliezer* 10:10:1 states that a conquered area within the biblical borders of Israel becomes holy only if the intention is to settle there (10:10:3). It seems that Jewish settlement is the depending factor upon which the issue of *Shmita* is determined.

It is forbidden to work the land within the borders of those who came up from Egypt and from Babylon on the *Shmita* year (*Mishna Shvi'it* 6:41, Rambam *Hilchot Shmita* and *Yovel* 4:26).

It is forbidden to eat “*sefichin*” (vegetables that grow on their own) which come from products of the land within the borders of those came up from Babylon. The products from within the borders of those who came up from Egypt though are not forbidden (*Mishna & Rambam ibid.*)

141. Guidelines for *Orlah*

Question: It is forbidden to eat the fruit of a tree in its first three years. My cherry tree has excellent roots that are fifteen years old. In the event that part of the tree is torn down by wind, and those roots send up suckers that bear fruit in one year, is that forbidden? What about if the entire tree is torn down?

My peach tree has grown too vigorously for its location and I am thinking of moving it. It is now five years old. If it bears fruit the year after it is moved, is that fruit forbidden?

A Jew is forbidden from grafting trees, but is not forbidden from owning them. In the case of a grafted tree, is the age calculated from the age of the graft, the age of the rootstock, the age of the scion (that which grafted onto the roots), or the time of the transplant?

Answer:

1. With regards to the question you raised about your cherry tree:
In a case where a tree which passed the years of *orlah* and a branch that was torn off from it was replanted in the ground, one is required to recount the years of *orlah* for the tree (*Yoreh Deah* 294:16). Regarding the tree itself, if a small trace of it has been left standing on the ground, it is exempt from the prohibition of *orlah*.
(ibid 18 – the *Shach* requires that the tree should remain at least the measurement of a *tefach* above the ground).
2. With regards to the peach tree: If it was removed from its original location without a chunk of earth removed along with it one is required to recount the years of *orlah* for that tree. However, if it was uprooted with a chunk of earth along with it, meaning to say that if there was a portion of earth from which the tree could survive without having to add any extra amount of earth, one could count the years of *orlah* from the time the tree was originally planted, and if the amount of earth taken along was not sufficient for its survival, one must recount the years of *orlah* when planting the tree again (*Yoreh Deah* 294:19). With regards to the period of time required for the tree

to survive with the chunk of earth, the Rashba writes that he is unsure whether a period of 3 years, or just a few days is necessary for its survival. The *Pitchei Teshuva* claims that the tree needs to be able to survive three years with the chunk of earth. The *Shivat Tziyon* explains that only if the tree is planted in Israel, does it need to survive 3 years with the chunk of earth, but oversees, only a few days is required. Practically, the Chief Rabbinate of Israel ruled, that even in the land of Israel, if there is a chunk of earth which is sufficient to ensure the survival of the tree for 14 days, it would not be considered like planting the tree anew, and therefore counting *orlah* would not be required (see *Chazon Ish, Orlah* 200:11 who rules that 14 days is sufficient). The *Mishpat Kohen* 8:3 held a more stringent opinion but wrote that one should not oppose those who follow the opinion of 14 days required for the tree's survival with the chunk of earth.

3. In grafting the deciding factor is the age of the rootstock, and therefore if one grafted a young scion in an old rootstock it is exempt from *orlah*. However, an old scion in a young rootstock requires waiting *orlah*, except for outside of Israel where it too is exempt.

142. *Orlah* for Passion Fruit

Question: Does the *issur* of *orlah* apply to the fruit of the passiflora “passion fruit” vine?

Answer: In the book “*Mitzvot Ha’aretz K’hilchatan*”, it is written that the passiflora “passion fruit” is a fruit tree and the prohibition of *orlah* applies to it. However, since it is considered a creeper (a plant which grows and extends upon the walls surrounding it), the prohibition of *orlah* does not apply to it in a case where it was planted for its beauty and not for its fruit (this can be determined by the way in which it is grown).

See “*Mitzvot Ha’aretz K’hilchatan*” written by Rabbi Goldberg (the rabbi of K’far Pines), pages 97,103, as well as in the *Mishna Orlah* 1:1.

143. Fourth Year Trees Outside of Israel

Question: I live outside of Israel and have a raspberry bush for which I am not eating the fruit for the first three years, can I eat the fruit in the fourth year?

Answer: There are those who hold that the laws of *Neta Revai* apply outside of Israel. Therefore one needs to redeem his fruit by transferring the *kedusha* to a coin (Rabeinu Yonah, *Gemara Berachot* 35a), and so rules the *Shulchan Aruch* in *Yoreh Deah* 94:7. There are those who hold that *Neta Revai* does not apply (Rambam, *Hilchot Ma'achalot Assurot* 10:16), and there are those who hold that this law applies only to grapes (*Tur, Yoreh Deah* 297 in the name of the *Geonim* and the Rema there, and this is the conclusion of the *Biur HaGra* there). As for the practical *halacha*, one should redeem without a *beracha*, and then he/she can eat the fruit (*Shach* on *Yoreh Deah* *ibid.*, note 17).

The method of redemption: any amount of fruit can be redeemed on the worth of a "*pruta*" (small amount of money) from a larger coin. When the coin is finished, after several redemptions of fruit, that coin can be redeemed by transferring its *kedusha* to the worth of a *pruta* in another coin, and so forth. At the time of "*bi'ur ma'asrot*" (finishing off all *ma'aser* one has in his home, on *Erev Pesach* of the fourth and seventh year of the *shmita* cycle) one needs to destroy the coin which has the *kedusha* of *Neta Revai*. There are those who say one can redeem the coin by transferring its *kedusha* to sugar and then to dissolve it.

144. The Scope of *Kilayim*

Question: Does the issue of *kilayim* apply to the sowing of grapes and other fruit together, or to the sowing of any fruit together? (I think nectarines are a combination of a tangerine and a peach, although I don't know if they are cross bred genetically or if the seeds of the 2 fruits are sown in the same field.) If fruits are cross bred genetically to make a new seed, as opposed to sowing the old existing seeds together in a field (including grapes), is this a problem?

Answer: The prohibition of *kilayim* is divided into 3 parts:

- A. *Kilei Ilan* (tree *kilayim*) – there is no prohibition in trees unless one puts one tree on the other and hence creates a new breed. Even then it's not forbidden unless they are two different types, but if one puts together two species of the same type (family), like orange and tangerine – it's not forbidden (*Shulchan Aruch, Yoreh Deah, 295, 6*, and see *Shut Mishpetei Uziel* part 1, *Yoreh Deah 24*).
- B. *Kilei HaKerem* (vineyard *kilayim*) – a prohibition to sow any kind of seed (grain or vegetable, except trees which is allowed), in a vineyard or near a grapevine. Also a prohibition of leaving that kind of mixture in one's property. The details can be found in *Shulchan Aruch, Yoreh Deah, 296*.
- C. *Kilei Zraim* (seed *kilayim*) – a prohibition to sow two kinds of seeds in proximity, see *Shulchan Aruch, Yoreah Deah, 297*.

As for genetic engineering in *kilei ilan*, the *Shut Minchat Shlomo* (part 2, 2-3, chapter 100, the part starting with "*Beinyan sheelato*"), says that even though the putting together of the trees is done by genetic engineering, if there is a joining of two different species it is forbidden because of *kilayim*.

However, we should mention that even though *kilei ilan* are forbidden, their fruits are allowed after the fact, even to the person doing the prohibition (*Shulchan Aruch, Yoreh Deah 295, 7*), and it goes without saying that they are allowed to the general public.

As opposed to this, if there was a transgression with *kilei hakerem*, the fruit is forbidden for eating and for general use.

145. Flower Seeds and *Kilayim*

Question: Recently we were asked to donate to some *Amuta* here in Israel and received from them a small paper with several seeds in it, with instructions that we should put it in a vase and put water in it. There are at least 4 different types of flowers in there. Am I transgressing *kilayim*?

Answer: No, you are not transgressing. *Kilayim* does not apply to flowers, as they do not produce a fruit or vegetable.

**THE LAWS OF
*LASHON HARA***

146. Guidelines on the laws of *Lashon Hara*

Question: I am trying to learn *hilchos loshan harah*, but sometimes I don't understand how to use what I learn in practice. I read that you are supposed to stop a person if you think he's going to tell you *lashon hara*; but a lot of time I'm pretty sure it will be *lashon hara*, but let say it wasn't, then it would not be nice to assume it was. Is that really the *halacha*? Also, let's say two people know someone has a bad temper, is it *lashon hara* to hear someone give an example of his bad temper?

What does it mean that you can't believe *lashon hara*? Is it okay just to think that it might not be true?

Answer: As is well-known, the main extensive work on the topic of *lashon hara* is *Sefer Chafetz Chaim* by Rav Yisrael Meir Kagen. Our answer is derived from his writings.

You asked for advice about what to do if someone is about to tell you *lashon hara*. You must separate the prohibition of listening to *lashon hara* from the obligation to admonish a fellow Jew. Fulfilling the *mitzva* of admonishment is dependent on many conditions, the main one being that the person that you wish to reproach will accept your admonishment, which requires great insight. However, you correctly stated that since you, yourself, are prohibited from listening to *lashon hara*, if the only alternative is to stop the transgressor, you should do so in a gentle way. If you could avoid the situation through other means, it is preferable, which are indeed the recommendations of the Chafetz Chaim in *klal 6, halacha 6*.

Regarding your query about the case of someone having a bad temper, we wish to preface our remarks with two statements:

1. There is also a prohibition to relate that a particular person has an angry personality, as mentioned in *klal 4, halacha 9*.
2. Under certain circumstances it is permissible to relate *lashon hara* when the listener already knows of it, as explained in *klal 2*.

In your case, the fact that someone is known to have an angry personality does not permit you to relate the information for two reasons:

1. Relating an anecdote about the angry person is bound to magnify the portrayal of the person's temper in the eyes of those who hear about it.
2. It seems that in addition to the prohibition of speaking about the trait of a person's temper, it is prohibited to relate each incident in and of itself, since it itself is something negative.

The prohibition to believe *lashon hara* is found in *klal 6 halacha 1*. From the explanation there it appears that, since the main purpose of the prohibition of *lashon hara* is to prevent the creation of a negative portrayal of the person being spoken about, one who believes *lashon hara* is active in achieving that which the Torah wanted to prevent. On the other hand, the Torah doesn't demand one to bury his head in the sand either. Since the Torah states that only two witnesses are to be believed, this is not considered burying one's head in the sand and therefore one should not believe *lashon hara*. If one could explain the actions of the person in a better way (*limud zechut*) this is even better. May you continue to be strong in the fulfillment of this important *mitzva*!

Clarification: Thanks so much for answer that was very helpful and even more thanks for the *bracha* at the end. But what I didn't get is what to do when you aren't sure the person will say *lashon hara*, but you have a feeling that she/he will.

Follow-Up Answer: Even if you are unsure if the other person intends to say *lashon hara*, you should change the topic of your conversation or gently tell the other party to stop speaking.

147. Scope of *Lashon hara* (When It Is Already Written in the Press etc.)

Question: Lately I've been trying to stop speaking so much *Lashon hara*. I was wondering if the prohibition of *lashon hara* applies to famous people whose behaviors can be read about in the newspaper or politicians who you might wish to discuss to be able to make an educated decision when voting? Additionally, does this apply to dead people or a group of people such as a race or nationality. Does it apply to a dead nation?

Answer: The prohibition to speak *lashon hara* is one of the most severe prohibitions, on the one hand, and the most transgressed on the other. Therefore, it is very good you are asking about this subject, as it is important to encourage people to learn about this topic.

The prohibition of *lashon hara* includes seventeen *mitzvot lo ta'asei* (prohibitions) and fourteen *mitzvot aseï* (positive commandments) and three curses. [Of course, one does not transgress all categories at once].

In the introduction to the book *Chafetz Chaim*, the author elaborates on how big the sin of speaking *lashon hara* is, and how unfortunately people are so accustomed to transgressing it. Praised be the person who takes into his attention to realize the severity of this sin, and chooses his words carefully, so as not to transgress this prohibition, or worse than that, be counted in a group of people who consistently speak *lashon hara*. Praised be he and his lot.

Specific answers:

- A. Something, which has been said before three people has become known, because of the assumption that "each person has a friend who has a friend..." (meaning, once three people know, it's already considered public knowledge, as the original people will presumably speak about it with others). Furthermore, information which is publicized to all, such as newspaper articles and ads put up in the street, are also public knowledge. Therefore, repeating such knowledge before others does not come under the prohibition of speaking *lashon hara*, according to the Rambam, since he is not revealing any new knowledge,

seeing as all is already known. Therefore, one may repeat the news. However, this is only permitted when the telling of the news is done coincidentally and not with purpose of advertising and spreading the story further (*Chafetz Chaim*, Laws of *lashon hara*, section 2, *halacha* 3). [The author of *Zera' HaChaim* writes that things which are public knowledge, and not just 'said before three people', such as newspaper articles, are not prohibited even when one wants to spread the news, since the person telling is not causing any damage, seeing as the story is already well known]. The matter of whether or not the person being talked about is famous are not, is irrelevant, and even in such an instance it is proper to avoid (*ibid. halacha* 10).

- B. As to speaking *lashon hara* about politicians, since there is a need to know details about them, such as their actions, thoughts, reliability, etc., in order to know whether or not to trust them as representatives of their voters, It seems that this is similar to a case where one wants to enter a partnership with one's friend or to go out with him/her, where in such an instance one is permitted to inquire about one's friend, as long as he informs the person he is asking why he is inquiring about this friend (since he wants to enter a partnership, or to know whether or not to vote for him etc.). In this way he won't be "putting a stumbling block" of *lashon hara* before the person being asked. Furthermore, one must be careful not to believe the other's answers as definite truth, but only to consider them as possibly true in order to take proper precautions. Furthermore, the person who is asked questions about another person, even for a good purpose, must only say the truth as he knows it, and should be careful not to exaggerate, and should not say anything he doesn't know as true and which is only rumors. And, of course, one should not say anything which is not relevant to the purpose of the inquiry, and in our case, which is irrelevant to whether or not to vote for that certain politician (*ibid. section* 4, *halacha* 11).
- C. One may not say *lashon hara* on dead people either, and this is included in an early Sages' decree and oath of exclusion (*cherem*) (*ibid section* 8, *halacha* 9).
- D. In regards to the prohibition to speak *lashon hara* about non-Jewish nations, a few details need to be clarified:

- A. The prohibition of telling *lashon hara* is not only when talking about individuals, but also when talking about groups of peoples, and even nations (ibid. section 10, *halacha* 12).
- B. We find in *Midrash Rabah* on *Parshat Ki Tetze*, par. 9: "this is the meaning of the verse: 'You sit and speak against your brother; you slander your own mother's son' – Rabbi Yochanan said: if you are used to speaking about your brother who is not from your nation, you will end up slandering one of your own nation". In the *Tanchuma* on *Parshat Pekudai*, we read: "Rabbi Yehoshua Ben Levi said: David said if you speak ill of Esav who is your brother you will end up speaking ill of one of your own nation, and who is this one? Moshe, who is the head of all the prophets, and he was spoken ill of, as it says: 'And the people spoke against G-d, and against Moses'".

We see from here that the *Midrash* says one should not speak *lashon hara*, even about a non-Jew, seeing as this will lead one to eventually speak *lashon hara* about a Jew. The Radal, in his commentary on the *Midrash*, writes that we learn from here that it is prohibited to say *lashon hara* about non-Jews. Even if we say that this isn't an explicit prohibition, and certainly not the same prohibition as speaking about a Jew, we learn that it is not right to speak *lashon hara*, even about a non-Jew, either because it's not moral, or because it gets one accustomed to speaking slander, and he might come to speak about a Jew. [See *Zera HaChaim* op. cit. and Responsa *BeMareh HaBazak* IV answer 74]. Of course, there is no prohibition on speaking ill of evil non-Jews who resist Israel and their Creator. In their case, it is important to remind people of their sins and to humiliate them.

Saying *lashon hara* to a non-Jew about a Jew is forbidden, like any other *lashon hara* about a Jew, but is even worse, since it also causes a desecration of the G-d's holy name, and the one telling it is due to receive great punishment.

148. *Lashon hara* in Digital Archives

Question: With regard to digital archives maintained by schools, museums, libraries, corporations, and governments, is the archivist under an obligation to ensure that there is no harmful speech accessible through the archives, through expungement software for example, or may an archivist rely on “*api t’lata*” (*lashon hara* that was spoken about in front of at least three people)?

Is the maintenance of a digital archive or physical archive, where harmful speech is accessible a violation of *Hilchos Shmiras Halashon*?

Answer:

A. Because the purpose of establishing public archives is to serve the public and enable research, it is possible to publish documents in an archive even if they include things that have *lashon hara* and *rechilus*, (is damaging the people to whom¹ it

¹ The prohibition of *lashon hara* also applies to things in writing (*Chafetz Chaim, Hilchos Lashon Hara* 1:8, as indicated from the *Gemara in Sanhedrin* 30a.) Even if the archivist did not write the document, it is clear that there is also a prohibition to publish a written document, because it is considered to be spreading *lashon hara*. This matter is similar to an editor of a newspaper who decides what to publish in his newspaper; he violates the prohibition of *lashon hara* if he decides to include words of *lashon hara* in the paper. (See the *Zera Chaim* a booklet published at the end of the *Sefer Chafetz Chaim* with the commentary of the *Netivot Chaim* in the essay “*Lashon Hara* in the Newspaper” 3:2, there he qualifies his statement and says that when the editor does not pay attention to the *lashon hara* there is no prohibition. However, there he is speaking about a newspaper that is not interested in repeating *lashon hara*, but it happens that occasionally there are forbidden things written. In regards to someone in charge of archives, who is supposed to determine which documents will be published, this leniency is not applicable, since there one should establish a rule to not include documents that contain *lashon hara*.) The *Mishne Halachot* (9:353) states that publication of something in writing is more severe

then saying it orally, because his sin is immortalized and remains forever.

However, there is room to be lenient from the fact that documents found in an archive generally include things that have already been published in one form or another, for the public. The Rambam in *Hilchot Deot* (7:5) writes: “If these words (of *lashon hara*) are said in front of three people, this matter is already heard and known, and if one of the three people tells it another time, it does not constitute *lashon hara*, provided he does not intend to spread the information and reveal it further.” The source for his words are found in the *Gemara* in *Erchin* (17a): “anything that is said in front of three people is not a violation of *lashon hara* because a friend has a friend.” The Rambam explains this *Gemara*, that when something is said in front of three people, it is obvious that it will eventually become publicized, and there is no prohibition of *lashon hara* in this, because in any event everyone will know of it. The *Chofetz Chaim* cites the opinion of the Rambam (*klal 2, seif 3*) as a “*yesh omrim*,” (there are those who say), but we cannot rely on this leniency for three reasons: The first is that many *Rishonim* argue against the Rambam in regards to this leniency and explain the *Gemara* in *Erchin* in a different way, (see *Chofetz Chaim* *ibid.* in the *Be'er Mayim Chaim* 2-4). The second reason is that the *Chofetz Chaim* himself, in the continuation of *klal 2*, lists many qualifications in regards to this leniency, for example, that it is permissible to be said only in that city (in which it was originally said), (*ibid, seif 6*), or not to tell it to people that will certainly believe what was said and will violate the prohibition of accepting *lashon hara* (*ibid, seif 10*), and furthermore, some of the qualifications are difficult and sometimes impossible to apply properly when being published openly in a public archive. However, the main reason why not to rely on this leniency are the words of the Rambam himself who requires that the person does not intend to repeat the information and reveal it further, rather he tells it over by chance. This is the opposite of what happens in archives, which are intentional publications, based on the premise that anyone who wants to see them can come and look at them.

This leniency, of when *lashon hara* is said in front of three people, is that the allowance of the story to continue further through the person who heard it, is based on the fact that the matter will be publicized in the future. But this is itself controversial and subject to qualifications (as mentioned previously). In regard to something that is already widely

publicized, perhaps everyone would concede to the Rambam that there is no prohibition of *lashon hara*, since, in any event, the matter is known (see *Zera Chaim* p. 313, which has a number of proofs from the *Chofetz Chaim: klal 4* in the *Be'er Mayim Chaim* par. 7 and 41; *klal 8* in the *Be'er Mayim Chaim* in the note, that in something which is well known, general rule of *lashon hara* does not apply.) Likewise, even though the intention is to reveal the information, it appears that the prohibition is not applicable, since in any event the matter is already revealed and known. (And so can it be derived from the words of Rav Shlomo Aviner in his publication *Iturei Kohanim* #82, p. 16. There he brings further sources to permit it.) However, if one intends it, *lignai*, to disgrace someone, then the prohibition is applicable from the aspect of the speech itself. (See the, responsa, of Rav Aviner *ibid* that quotes the *Sha'arei Teshuva 216*, that in addition to the pain and damage that he causes to his friend with the *lashon hara*, there is also a prohibition due to the fact that he wants to harm his friend and is happy to gloat. Therefore, even if there is no prohibition in regards to damage caused, for example, with something public that would otherwise cause damage, when one has also intent *lignai* then it is prohibited from the point of view of his desire and his happiness to gloat.) However, the publication of archives is not intended to disgrace the people that appear there.

It would seem, based on the above, that it is possible to permit, in an archive, the publication of things that were previously publicized. However, it seems that it is forbidden, because the items that are published in an archive remain public for many years, and if so, even after these public things are forgotten, it is possible to see them in an archive, and so they become known anew and it would then seem that every leniency regarding something that is public no longer would apply. So it is brought in the *Tzohar* publication 5:42 in the name of the former chief Rabbi of Israel, Rabbi Avraham Shapira. Rav Dov Lior adds to this that something is considered to be known publicly only up to one year after it is publicized. Even though their explanation seemingly is only coming to reject applying, to a situation of an archive, the leniency of republishing something that was already widely publicized, something that everyone would permit as was cited previously; the *heter of api t'lata* will still be applicable, even after the matter is forgotten, since there are certainly those that remember it and if so it has the potential to be publicized. As was already mentioned

previously though, using the *heter of api t'lata* with archives is not a simple matter even according to those opinions that permit it generally. We must also deal with archives in which the information is closed to the public, and only after some decades they open it to the public (such as military archives etc.), where many of the people about whom it is speaking are no longer living. And if so, there is no damage in publicizing the matter. However, the *Chofetz Chaim* already wrote in *klal 8, seif 9* that it is forbidden to disgrace and demean the dead, and there is a *cherem*, a ban, from earlier generations not to disgrace the dead. The *Netiv Chaim* nevertheless writes that clearly this is not a direct Torah prohibition as no damages are caused. On the other hand, it is much more severe since there is a *cherem* from earlier generations. In the publication of *Zera Chaim* (*ibid.* on p. 400) he concludes that to speak bad about the dead for no reason is very serious. However, *lashon hara* for a useful purpose (which will be spoken about later), is permissible. Under specific conditions- there are more leniencies in regards to a dead person. However, certainly when there is no need, this also is prohibited.

It seems that the publication of documents in an archive would be allowed for the reason that the purpose of preserving the material in an archive is not to disgrace and degrade, rather its purpose is to be a benefit for the future. For example: Preserving court rulings is very important for lawyers and judges, in order that they should know how similar instances were ruled in the past and they will be able to better represent their client and rule according to the past occurrences. So too, preserving historical documents can bring much benefit to researchers in future generations, who try to understand the conditions that prevailed in a specific time period etc. Their research is also useful to influence current decision making through learning from the past. The *Chofetz Chaim* in *Hilchot Lashon Hara klal 10 seif 1*, writes that there is an allowance to speak *lashon hara* for a beneficial purpose (similar to the laws of *Rechilus klal 9 seif 1* and other places), but that in *seif 2* he gives seven conditions, and only when all of them are present, is the allowance relevant. The seven conditions are: 1. It should be clear to him that the report is true (either through seeing it himself or through clarification.) 2. One checks that in truth the thing he is speaking about is bad and one needs to be prevented from being harmed by it. 3. One should first rebuke the person, perhaps it will help. 4. One should not exaggerate his words. 5. The intention should be for a good purpose and

refers.) It appears that it is possible to publicize things in archives even when they contain *lashon hara*, since the publication is for a useful purpose and there is no other means to produce this benefit. This is assuming that what is being published is truthful. (It is important to note that if there is a doubt about the credibility of the information, there is no reason to publicize it. What is learned from there will not be correct and the prohibition will be doubled; because of its lack of usefulness and from its lack of truth.)

- B. When it is clear that there is no good purpose in the publication of a document or that its trustworthiness is questionable – one should not publicize it, or one should remove its negative content.²

not for ulterior motives. 6. If it is possible to bring about the purpose without *lashon hara*, it is forbidden to tell it. 7. Not to cause through *lashon hara* more damage towards this person than he would have been judicially obligated.

Briefly the main principles are: 1.the principle of authenticity; 2.the principle of good intent; 3.the principle of concern for ramifications. [See about this also the article of Rav Azriel Ariel on *Lashon Hara* in a public, democratic system in *Tzohar* p.42-56.]

If we would relate all this in regards to archives it appears that in general these conditions are met. 1. The public information in archives is exact information (this answers the main point about credibility of official documents, etc.) However, if they also publicize paragraphs from newspapers one needs extra care and additional checking for reliability, since, generally, the level of exactness of publications in mass media is not especially high. 2. The intention of the publication is for the benefit of the public as was already explained. There is no intention to disgrace or to cause damage. 3. The benefit derived from archives cannot be derived without them, and generally damage is not caused to the persons therein (and also if at times it is likely that damage will be caused, the benefits outweigh such damage.)

² See footnote 1 at the end in regard to the principle of benefit and the principle of credibility.

- C. Whenever it is possible, one should omit names of people, unless this will negate the usefulness of the information that is published.³
- D. This leniency applies only to statements that constitute *lashon hara*. Other forbidden publications, such as pornography etc., cannot be publicized under any circumstances.⁴
- E. There is no difference, in these matters, between digital archiving and regular archiving.⁵

³ There is no prohibition of *lashon hara* in regards to a derogatory story from which it cannot be deciphered who is the person about which the story is spoken (see *Chofetz Chaim, Hilchot Lashon Hara, klal 3, seif 4* and *Hilchot Rechilut klal 1, seif 9*: There it implies that it is forbidden to speak *lashon hara* without mentioning a name, if from the story it will become clear who the person is or afterwards it will be revealed, but when it will not be revealed, it is permitted; this is obvious, because the entire prohibition of *lashon hara* is because it is likely that damage or pain will be caused to the person that is spoken about.) Therefore, if it is possible to remove names, it is an obligation to do so, because there is a possibility for the archive to be beneficial even without the *lashon hara* (see further guidelines in footnote 1). This is the practice with publicizing rulings in Rabbinical courts in Israel (that come out in volumes entitled “*Piskei Din Rabbanim*”), that publicize all of the rulings, including descriptions of circumstances that contain bad information about people, and in place of mentioning the names of the people, they mention only the first letter of the names of the people in judgment and of their lawyers.

⁴ Only *lashon hara* for a beneficial purpose was allowed, but we do not find that other forbidden things were allowed because they were useful, except for circumstances of *pikuach nefesh*, where someone’s life is in danger.

⁵ As was already mentioned in the beginning of footnote 1, the prohibition of *lashon hara* is not dependent on the manner in which the action comes about. Speaking, writing or publishing written material can all potentially violate the prohibition of *lashon hara*. And therefore, despite the fact that digital writing is not identical to regular writing (this is not the proper place to get into the question of whether or not digital writing is considered writing in regard to the

prohibitions of Shabbos or of writing on *Chol HaMoed* etc.), in regards to *lashon hara*, there is no difference.

149. Is Praising Someone in Public Considered *Lashon Hara*?

Question: When the *Chafetz Chaim* says that you can't even say something positive about someone, because it might lead to *lashon hara*, what does he mean? I have heard great scholars praise people publicly as has everyone else. Is it that we don't hold like the Chafetz Chaim?

Answer: It is permitted in one of two ways:

1. What the *Chofetz Chaim* wrote in *Hilchot Lashon Hara*, *klal 9, sif 2*, that if someone praises someone in public it is forbidden under any circumstance even if he is not among those that hate him, and even if he does not excessively tell of his praise, is referring to a group of people talking, and therefore there is a fear that maybe there will be someone in the group who after hearing the praise will speak negatively. However, during a speech or a lecture when only the *Rav* is speaking, there is no fear that during the lecture when he praises someone, that someone else will then disgrace that man, since the congregation is quiet and will not stumble in this area.
2. If one praises someone who is known to be good and righteous and has no guilt and no bad can be said about him, then one may praise him even in front of those that hate him because there is no way that they can disgrace him, and even if someone would disgrace him, everyone would know that his words are not true (*ibid.*). In regards to a person like this, the idea that praise will lead to disgrace is not applicable. The source for this ruling is in *Megillah 25b*, "one who has a good name is permissible to praise."

INTERPERSONAL AND BUSINESS LAWS

150. Trespassing in *Halacha*

Question: What does the Torah teach regarding walking in an area like an apartment complex where there is a sign that says “entrance for residents only.”

Is it theft? Nothing is being stolen or damaged and who exactly is one possibly stealing from?

Answer: Included in the rights of ownership that belong to a person regarding his property, is the right to prevent people from the possibility of using the property. This right exists also with regard to jointly owned property, and, in that case, such property should not be used without the permission of all of the co-owners (*Shulchan Aruch Choshen Mishpat* 162).

However, if the prevalent custom for the public is to pass through a backyard, the owners of the yard cannot prevent this kind of usage because this is considered a “*meizar*” (a border property separating between public and private property) that has been co-opted by the public and an individual cannot stop this type of usage (see *Shulchan Aruch Choshen Mishpat* 377:1). It is unclear what the formal prohibition is with regard to one who enters the property of people against their will, but certainly it goes against the principle of “love thy neighbor like thyself,” and people who own that property are entitled to prevent you from passing through there. Therefore, it is not appropriate to do this, and one should be just as careful with these laws as with the laws of *kashrut*.

151. Tipping and *Lo Tichaneim*

Question: In a place where tipping is not customary, such as here in Israel, and the person providing the service (i.e. taxi-driver, waiter, delivery boy) is not Jewish, is it permissible to give a tip anyway, or does that fall under the prohibition of giving unwarranted gifts to non-Jews? What about the case when I will never see the person again, and receive no future benefit from him (such as a taxi-driver)? What about the fact that I dress like a religious Jew? Maybe a *Kiddush Hashem* is involved.

Answer: There is reason to permit giving a tip to a non-Jew on several accounts:

1. The Rashba in a responsum (part I, par. 8) and the *Bach* (*Choshen Mishpat* 249) write that the prohibition applies only to idol worshipers.
2. Even according to the *Shach* (*Yoreh Deah*, 151:18) and the *Bait Yosef* (*Choshen Mishpat* 249) who hold that the prohibition applies also to Arabs, all agree that the prohibition does not apply to a *ger toshav* (a non-Jewish resident fulfilling the seven mitzvot of *Bnai No'ach*). See the article “*Lo Techonem U'Mashma'uto BeYamainu*”, in *Techumin* 2, footnote 91, where it's written that Arabs aren't considered *ger toshav*. However, Rav Kook in his *Igrot* I 89 pg 99 (Hebrew) rules according to the *Me'iri* (*Bava Kama* 38b) that the nations who have laws concerning the ethical relationships between fellow men are considered *gerim toshavim*.
3. The *Gemara* in *Gittin* 61a says that the poor gentiles are given charity for the sake of peace, and the *Tosfot* (par. beginning with the words: “Rabbi Yehuda” in the tractate *Avoda Zara* 20a) explained that there is no problem in giving presents, since it is done for the sake of peace. According to this, in our case, if there is a consideration of the sake of peace, one may be lenient.

152. Using Information Gained During a Previous Job for a New One

Question: I have just left my job at one Jewish organization where I acted as administrator and fund collector. I am subsequently being employed by another Jewish organization with basically the same functions. The previous organization I worked for feel it is unfair for me to use the names I used for their organization to collect funds for another organization.

It should be made clear at the outset that 95% of the names were obtained by myself through months of painstaking work. What are my obligations?

Answer: Although you obtained the names with much hard work, pain and effort, you are still not permitted to give these names over, because you do not possess them.

You have already received a salary for your hard work, which means that the outcome of all this hard work belongs to your previous employer. We wish you much success with your new job and to the new organization which you are working for.

153. When to Report a Co-Worker Who is Suspected of Stealing

Question: I live and work in Israel. I have a very strong belief (approximately 90% certain) that a co-worker is and has for some time been stealing both from our employer and from customers. I don't know how to proceed *halachically*. Do I go to the employer? I would be extremely grateful for your guidance in this critical matter. The situation has gotten really bad.

Answer: Dealing with this matter requires extra-careful caution. You should approach your employer with discretion, inform him of your suspicion, emphasize that it is only a suspicion (even if it seems likely), present to him any proof and evidence that you have, and allow him to take care of the matter, because it is his responsibility.

154. Returning *Gezel Hager* Nowadays

Question: The *Gemara* in *Bava Kamma* 111b mentions that a *gazlan* returns the *gezel* of a deceased, heirless *ger* to the *kohanim* of the current *mishmar* on duty. Nowadays, what should the *gazlan* do if he finds himself in possession of a *gezel* from a deceased, heirless *ger*?

Answer: The *Sma* in *Choshen Mishpat* 367:17 writes that, in such a case, the money should be given to *tzedaka*.

155. Transferring Copyrighted Material to DVD

Question: With the rapidly changing technology, no doubt the following scenario is becoming most common. An individual who owns a copyrighted videotape will wish to transfer the contents of the video to the DVD format. What are the *halachic* ramifications of such an action? May one do so without compensating anyone? And what is one then permitted to do with the old videotape (i.e. may he or she give it to someone else, continue to use it as well as the DVD, etc.)?

Answer: According to a few of the *poskim*, the prohibition against the infringement of copyrights is a financial one, according to which one must not cause financial loss to the owner of the copyright. Therefore, if no financial loss will be sustained by the owner, then there is no prohibition against copying the material. Hence, if someone knows that he would not buy another copy, it is permissible for him to create a backup for himself, and even to create one from a copy owned by someone else, again- only if he is sure that he would not be willing to pay for such a copy (Rabbi Naftali Bar-Ilan, *Techumin* 7 pp. 360-367).

According to what is probably the majority view amongst the *poskim*, the owner of the copyright can maintain financial rights on the cassette itself and ban copying of any sort- even for the purpose of creating a backup. In such a case, to go against the owner's wishes constitutes a transgression of *gezel* (theft). Therefore, every such case must be dealt with in its own right- one must check if the owner of the content prohibited copying, or if he permitted copying for specific purposes (Rabbi Goldberg, *Techumin* 6 pp. 185-207).

In cases where the owner of the content did not specify when and how it is permissible to create another copy, and only a copyright symbol (©) appears on the content, one must follow the law of his country of residence (in keeping with the

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principle that “the law of the kingdom is the law”)-even according to the first opinion.

156. Returning a Lost Item to a Non-Jew

Question: If, when I buy something from a company owned by non-Jews, they mistakenly send me two items, is it required of me to return one of the items? Also, if they forget to bill me, am I required to mention their mistake to them? And a third question: If I see that a non-Jew has forgotten some object, am I required to return it to him?

Answer: It would be proper to return the extra item or the lost item or correct the mistake in the bill in order to sanctify the name of Heaven,¹ and it is clear that, in instances where *Chillul Ha'Shem* might be the consequence of failing to return an object, it is a *mitzva* to return it.²

¹ The *Be'er Ha'Gola* writes (*Shulchan Aruch, Choshen Mishpat, siman 348, 5*): “And so is the law regarding correcting a mistake which the non-Jew himself has made. And I write this for posterity for I have seen many people grow wealthy off mistakes made by non-Jews, and these people were not ultimately successful; they lost all of their assets and did not leave a blessing in their wake. And many who sanctified the name of heaven by reversing mistakes made by non-Jews in substantial matters grew wealthy and succeeded and bequeathed the remainder of their wealth to their offspring.”

² *Ibid, Shulchan Aruch.*

157. Buying an Item with the Intention of Returning It

Question: At Costco, the return policy is that you can return anything you want whenever you want as long as you have the receipt. It doesn't matter if you bought it 2 years beforehand, as long as you have the receipt. Is it allowed to buy something with the intention to return it?

Answer: If a person initially buys a product with the intention to use and to return there is an element of *gneivat da'at* (deceiving someone) involved, and one is forbidden to do so without explicit permission from an authoritative person working in the store. If there is a possibility that the consumer will keep the product even if he eventually decides to return it, then there is no problem.

158. *Dina Dimalchuta* regarding Taxes and Illegal Workers

Question:

1. Does *dina d'malchuta dina* apply only in monetary matters or does it apply to other areas as well?
2. Are non-Jews obligated to follow the law of the land in the same manner that Jews are required to follow it?
3. Is it permissible for me to buy at a store when the storeowner does not pay VAT? Do such people have a *halachic* source to rely on?
4. Is it permissible to hire a worker whom I suspect is an illegal immigrant, due to a *dina d'malchuta dina* problem?
5. Is it permissible for me to hire a worker whom I suspect does not have all of the required work documents?

Answer:

1. *Dina d'malchuta* deals only with monetary matters.¹ In the state of Israel other laws also have validity stemming from *mishpat*

¹ The two main reasons given for *dina d'malchuta dina* are: (A) The Rashbam (*Bava Batra* 54b, beginning with the words “*V’ha’amar Shmuel*”) explains that since all of the citizens of the state accepted upon themselves the laws of the king, “therefore this law is absolute”. (B) The Ran writes in *Nedarim* (28a, beginning with the words “*B’moches ha’omed me’elav*”) “because the country is his, and he can say to them that if they do not follow his decrees he will expel them from the country”.

On a simple level, the Rashbam’s intention is that the mutual agreement of all of the citizens is in fact a type of stipulation that they have all agreed upon, and that this stipulation applies in monetary matters. From here we can infer that in matters that are not financial this stipulation is of no use.

The Rambam also appears to agree with the Rashbam’s opinion, since the Rambam explains (in *Gzela V’Aveida* 5, 18): “What case are we speaking of – in the case of a king whose coins are circulated in all of those countries **for all the citizens of that country have agreed upon it** and have let it be known that he is their master and that they are slaves to him”. According to the Rambam, it is clear that *dina d'malchuta* is inapplicable to things that are not monetary, for he writes

ha'melech, because, when there is no king, the king's governmental authority remits to the people,² and hence to the *Knesset*, as well as due to the power of *takanot ha'kahal* (public enactments),³ see further in the note.⁴ But *dina d'malchuta* is associated only with monetary matters.

(in *Zechia U'Matana* 1, 15) that "One must judge according to all of the laws of the king **in monetary matters.**" However, according to the Ran's reasoning, one can say that the rule is also useful in things that are not connected to money. The *Shulchan Aruch* does not accept the Ran's opinion, since the *Shulchan Aruch* (*Choshen Mishpat* 369, 2) transcribed the Rambam's opinion.

Yet, it is true that if a king sets down a law and links the abidance of it to a financial fine - for instance, if someone drives through a red light he is fined 1000 *shekels* - then this fine's validity is drawn from *dina d'malchuta*. Hence, some of the laws have this status, not because it is forbidden to break the law, but because the lawbreaker is liable to get fined. It seems that a lawbreaker is not required to pay this fine unless the state has enforced it in practice, but if it did not enforce it because the lawbreaker was not caught, then he is not required to pay of his own volition. An in depth discussion of this topic is beyond the scope of this work.

² See the responsum of Rav Kook (*Mishpat Kohen*, paragraph 144) who writes that in places that do not have a king, the laws of the nation belong to the entire nation. This is also what Rav Herzog writes (*T'chuka L'Yisrael Al Pi Ha'Torah* vol. 1, p. 129), as well as Rav Shaul Yisraeli in *Amud Ha'Yemini* (Paragraphs 7 and 9).

The king's law (*mishpat ha'melech*) does not only specifically pertain to monetary matters, rather the king has the authority to set all different rules in society, as well as the right to declare war etc.

³ See *Choshen Mishpat siman* 331, *seifim* 27-28, *ibid siman* 2 and more. Public enactments (*takanot ha'kahal*) are usually made in financial issues, but the *kahal* can also compel the community to do things or to refrain from doing things and to enforce their resolutions with excommunication or similar steps that are not necessarily financial.

⁴ Besides what is written above, in many areas pertaining to society, society has the power to make its own principles. In this context, it is worthwhile to mention the words of the *Chatam Sofer* (*Shut Choshen Mishpat*, 79). The *Chatam Sofer* discusses the question of the validity of the law stating that it is impermissible for someone to work (under certain conditions) when in so doing he is taking somebody else's customers, and writes that "and to my humble opinion this is included in

2. Non-Jews are obligated to keep all of the laws that the government sets and that Jews are required to keep.⁵
3. In places where it is clear that the salesperson does not pay VAT, one should refrain from making a purchase for two reasons:
 - A. Because of the prohibition against assisting transgressors.⁶

what is written ‘*u’bein achiv u’bein gero*’ and the *Sifri* interprets the word *ger* as coming from the root of living and residing (*gar v’dar*) with him... and this is also the Ramban’s interpretation regarding ‘*sham sam lo chok u’mishpat*’ and that this is the interpretation of ‘*va’yasem lo chok u’mishpat*’ in *Shchem* regarding Yehoshua **that it is the customs of settling of society that the Torah gave authority to the sages of Israel to elucidate...**”

For further elucidation in the matter of the status of the laws of Israel, see the excellent article dealing with this subject in “*Keter – Mechkarim B’Kalkala U’Mishpat Al Derech Ha’Halacha*, vol. 1, pp 339-385, and in the notes.

⁵ As we have written above, the reason for upholding the custom of *dina d’malchuta dina* is that it is agreed upon by the citizens of the state. Clearly, this consent also binds the non-Jews, as it does us. It is clear as well that non-Jews must define their own laws and live according to them, and this is one of the seven Noachide *mitzvot* – lawmaking.

⁶ By law, the requirement to pay VAT is the responsibility of the service provider/salesperson. Therefore, when the buyer makes a purchase he is not himself stealing from the state, rather, he is, at worst, causing the salesperson to err. Regarding the question of whether or not it is permissible to cause the salesperson to err, in accordance with the prohibition against “*lifnei iver*” (putting a stumbling block in front of a blind person) or against assisting a transgressor, it seems that one must compare this case to what the Rema writes (*Orach Chaim siman 163 se’if 2*) – that it is forbidden to give food to someone who has not washed due to the prohibition of “*lifnei iver*”.

Although many of the *poskim* have permitted in the above situation, most of their reasonings do not pertain to our case under discussion. The main reasoning that is applicable to our case is that there is no prohibition against assisting a transgressor who is willingly transgressing (*b’mesid*) - as the *Shach* wrote (*Yoreh Deah, siman 151 se’if 106*, and see also *Igrot Moshe Yoreh Deah* part. 1, *siman 72*) – or because there is no prohibition against assisting a transgressor *b’chad avra d’nehara*, when he can attain the same result on his own (see the Rema, *Yoreh Deah siman 151, se’if 1*, and in the book *Lifnei Iver*, from

- B. Because the corruption which is caused by this phenomenon (tax evasion)⁷ is a threat to our society.⁸
4. According to what we have found out, a foreign worker who is working in the country without a permit is also required to pay income tax if his income exceeds minimum wage. Therefore, in hiring such a worker, the employer is an accessory to tax evasion, and, hence, what we wrote in paragraph 3 applies also to him. Also regarding the matter of foreign workers – it is clear

p. 122). Furthermore, due to the fact that the transgressor is not transgressing a *kum v'aseh* (an active violation), but rather a *shev v'al ta'ase* (a passive violation), there is a basis to claim that he is not considered a blind person for the purpose of the prohibition. And see also Rav Yitzchak Eliyahu Ha'Kohen Adler's book *Lifnei I'ver*, in *siman 8* of the rules of *lifnei i'ver*, where he discusses this question and ends with a statement that this topic requires further consideration.

Therefore we have written that *l'chatchila* it is impermissible to do so, but, in a case where he cannot make the purchase in a different way, there may be grounds for being lenient and relying on this opening.

⁷ It is perfectly clear that, when people become accustomed to evading the law when it is convenient, they turn it into a habit – even when it is harmful to others.

⁸ The Ran that we have mentioned above in footnote 1 writes that *dina d'malchuta* does not apply in *Eretz Yisrael*, since every Jew has the right to live there and the king cannot expel him. The Rashba writes in a similar vein. The more lenient sources probably rely on them in ruling that there is no requirement to pay taxes in Israel due to *dina d'malchuta dina*.

Indeed, their reasoning is questionable, since the *Talmud* in *Bava Batra* (113b) writes that it is permissible to pass over bridges that the king has built due to *dina d'malchuta dina*, for the wood that was used to build it was taken from the citizens, and, if there is no *dina d'malchuta dina*, then the king is a thief and it is impermissible to benefit from something that was stolen.

Accordingly, those who reason that there is no *dina d'malchuta dina* in *Eretz Yisrael* should also argue that all of the money that the state uses for the sake of paving roads etc is all stolen, and that it is forbidden to use these roads. Therefore, according to their reasoning, it is forbidden to drive on the roads, and it is forbidden to use public buildings etc.

In addition, besides *dina d'malchuta dina*, the *Knesset's* power also stems from public enactments (*takanot ha'kahal*), as we have written above in note 3.

that an overabundance of foreign workers is harmful to our country, and therefore, one must not employ them without a permit.

5. Regarding a worker who does not have all of the required work documents – if he is an illegal worker, then, as we have written above, one must not employ him. If the intention is to employ him without paying taxes, then there is an additional reason to forbid employing him.

159. Travelling in a Taxi “Off the Meter”

Question: When taking a cab in Jerusalem, is it permissible according to the *halachah* to fix in advance the cost of the trip? From what I understand, some cabbies might seek to do so because it will leave no record of any receipt of money (i.e. tax fraud). Would this amount to putting a 'stumbling block before the blind?' As I encounter this dilemma frequently, I'd greatly appreciate some expert help ASAP!

Answer: Since there is a very logical possibility that the cabby's purpose in deciding in advance on the cost of the trip is for tax fraud, and all the more so if the passenger gets benefit from this decision – one may not agree to it and should request putting the trip on the meter or deciding upon the sum in advance while requesting a receipt (usually the passenger will lose in such a case), as required by the law. If you read Hebrew and would like to learn more on the subject, please let us know and we will send you extensive sources.

THE LAWS OF
KOHANIM

160. Whether a Kohen Must be Concerned with a Rumor That a Certain Area Has Graves

Question: I wanted to ask one of the rabbis if there was a problem for *kohanim* to live in the area on the bottom of *Har Hazazim* in Abu Dis? People are saying that it may be an old cemetery that was paved over – Please let me know what you feel the status is.

Answer: As long as the issue is a baseless rumor ("people are saying that..." as written in your question), there is no prohibition for *kohanim* to be there. Something which is known to be permitted (i.e. has a *chazaka*, in this case – known to be pure) does not stop and become prohibited out of a doubt (a *safek*, a doubt, in this case the possibility of being impure), unless it is done by a specific testimony, which is considered acceptable according to the *halacha* by the standards of testimony concerning prohibitions, or evidence. (A doubt concerning the prohibition may arise, in this case, for example, if there is a specific testimony concerning a certain area that has/had a grave and the witness does not remember the exact place.) See, for example, Responsa *Minchat Yitzchak* VIII, 124, regarding a place which was written about in a book, using the expressions "I heard" and "people say" that there are graves there, that these sayings are insignificant and *kohanim* may stay there.

Of course, if you know about a specific place regarding which there is a clear testimony or evidence that there are/were graves there, the *halacha* might change, and in this case you need to verify the information you have and rule accordingly.

161. A *Kohen* Attending a Funeral for a Relative

Question: Are there any exceptions so that a *kohen* can go into a cemetery? Say for example, if a parent or another close family member is being buried?

Answer: A *kohen* is commanded to become *tamei* for seven relatives (father, mother, brother, sister, wife, son and daughter), until after they are buried. He's forbidden to become *tamei* for other deceased, even though he is already *tamei* because of his relatives (and if this is sorely needed and there is no other solution – he should ask a *talmid chacham*). The prohibition of becoming *tamei* from the deceased only applies to male *kohanim* and not females. Also, it is allowed to stand near the grave if there is a partition between himself and the grave, or if it is 4 *amot* (approx. 2 meters) away. See further in *Yoreh Deah* 371.

162. How Much Wine Disqualifies a *Kohen* from doing *Birkat Kohanim*

Question: Hello, I recently learned that a number of things make the *kohen* ineligible to give the priestly blessing. For example, impaired speech, too young, and also intoxication. *Sefer Hamitzvot* says that to be intoxicated the *kohen* must have drunk more than one half of a *log* of wine. What is the quantity of a *log*? Can the *kohen* drink any amount of wine and still bless the people?

Answer: If a *kohen* drank one quarter of a *log* of wine, he may not give the priestly blessing (*Orach Chaim* 128:38). This measurement (i.e. $\frac{1}{4}$ log) is between 86.4 and 149.3 cc.

163. *Birkat Kohanim* at *Mincha Gedola*

Question: Do *kohanim* *duchan* at *Mincha Gedola* (of a fast day)?

Answer: The custom in *Eretz Yisrael* is that the *kohanim* only perform *Birkat Kohanim* (*duchan*) during *Mincha Ketana* -this has been the ruling of many *Acharonim*- *Luach Eretz Yisrael – Tzom Gedalya*; *Ze Ha'Shulchan*, pt. 2, paragraph 129; *Shut Ginat Veradim*, *Kelal* 1, *siman* 34; *Shut Rav Pe'alim*, pt. 4, *siman* 5, and that during *Mincha Gedola* only “*Elokeinu V'Elokei Avoteinu*” is said (ibid *Luach Eretz Yisrael*).

On the other hand, the *Chazon Ish* prescribed that in his *Beit Midrash* the *kohanim* perform *Birkat Kohanim* also during *Mincha Gedola* (See *Ishei Yisrael*, chapter 27, note 115).

THE LAWS OF ANIMALS

164. Guidelines regarding *Tzar Baalei Chaim* - Cruelty to Animals

Question:

1. Is cruelty to animals against Jewish law when an animal is killed?
2. Are the reasons for the requirement of *shechita*, i.e. the knife should have no nicks, one cannot apply pressure, the action should be continuous etc., so as to make it as humane as possible?
3. Is your answer the opinion of most commentators?

Answer:

1. Firstly, it is important to keep in mind the fact that there are *many halachot* which, from a moral point of view, define the minimum and not the maximum law required (surely, it is important to differentiate between them, since there are those deeds which are permitted to be done, but are not morally praise-worthy). For example, eating meat is obviously permitted, but after looking into the Torah, we see that eating meat was only permitted after the flood, but before that, man's diet consisted of vegetation. However, one should not always be stringent beyond the basic *halacha*, since being stringent on moral issues more than the *halacha* requires can lead to exaggerated morality where, in one area, one acts very morally, and in another area, one is not moral enough, or where one is not on the level to act in a stringent manner.
The Ri Migash states that killing animals is included in the prohibition of *tzar ba'alei chayim* (cruelty to animals). The *Noda BeYehoda* disagrees, however he nevertheless states that it is cruel behavior. So too he prohibits hunting. The reasons for this prohibition are that, firstly, it is regarded as cruelty, and it is noteworthy that in the Torah not one man apart from Nimrod and Esav, occupied himself with hunting. Secondly, it is not in accordance with the ways of the offspring of Avraham and Yitzchak to involve himself in this occupation (It's worth looking into *BeMareh Habazak* 2:29, pg. 82).

ASK THE RABBI III

2. The laws of *shechita* are those which were given at Sinai, and the actual commandment is a decree arising from the verse: "And you shall slaughter from your cattle and sheep as I commanded of you." However, the *Sefer Hachinuch* claims that one of the reasons for this *mitzva* is *tzar ba'alei chayim* (*Chinuch, mitzva 451*), and so too does Harav Uziel write in *Responses of Mishptei Uziel*, part 1, *Yoreh Deah 1*.
3. Please let us know if you would like to receive additional detailed sources in Hebrew.

165. Background and Guidelines Regarding the Prohibition of *Tzar Baalei Chaim*

Question: Would it be wrong, from a *halachic* perspective, for an advertising company to agree to advertise hunting trips?

Answer: One needs to make a distinction between hunting where the purpose is the use of the hunted animal and hunting which is just for sport and fun. Additionally, one needs to make a distinction between hunting where the animal hunted is killed, and hunting in which the animal is caught and kept alive.

Hunting for the sake of using the hunted animals is permitted, for example for the sake of slaughtering the animal in order to eat the flesh (in *kosher* animals) or for the sake of using the leather, etc. This is allowed also when the hunting is done for the sake of selling to industries or anyone interested.¹ Even though when catching animals alive there is an element of hurting animals, there is no prohibition when this is done for the sake of man.² Yet, the “sport” of hunting, which turns the hunting into the goal, is an improper thing which leads to cruelty, seeing as this was the way of Nimrod and Esav. One should not take part in such a thing, since it includes the prohibition of *bal tashchit* (to not be wasteful),³ and sometimes even *tzar baalei chaim* (i.e. the hurting

¹ These are the conclusions of the *Noda B'Yehuda* (*Mahadura Tinyana, Yoreh De'ah* 10).

² Rema, *Shulchan Aruch, Even Ha'Ezer* (end of par. 10). Even though he wrote that the custom in the world is not to pluck geese feathers due to cruelty, it is permitted, however, if the necessity is real.

³ *Gemara* Tractate *Hulin* (7b) in the case of Rebbi and Rabbi Pinhas ben Ya'ir, where the killing of mules was considered *bal tashchit*

of animals),⁴ besides including putting oneself into a dangerous situation without a good reason.⁵ Therefore, one should not participate in an advertising campaign which encourages the “sport” of hunting.

⁴ This applies when the hunting of the animals does not kill them immediately. This is understood from the *Gemara* mentioned above, which states that only when removing the hooves there is the problem of hurting the animals. See also Responsa *Noda B'Yehuda (Mahadura Tinyana, Yoreh Deah 63)*.

⁵ Responsa *Noda B'Yehuda (Mahadura Tinyana, op. cit.)*; See also *Techumin* (1, pg. 336 – Hebrew).

166. Fishing with a Hook

Question: Tell me please, can a Jew fish with a hook? Thank you.

Answer: Fishing with a hook:

If the fishing is done for the benefit of man, for example: if one wants to eat the fish he catches, or to feed them to his animals, or for any other purpose that is for his benefit – one may fish with a hook, even if this causes pain to the fish.

However, if the fishing is done only for the sake of the sport, it is prohibited, both by *the halacha of tzar baalei chaim* (not to cause pain to animals), and by the *halacha of bal tashchit* (not to cause damage and waste). Furthermore, this includes indecent behavior and cruelty. Even if one kills the fish without causing it pain, if one does not intend to eat it, he is transgressing the prohibition of *bal tashchit*, since it is not done for a purpose.

Sources:

- A. The permission in case of a benefit: *Trumat Hadeshen, psakim 105* and *Noda B'Yehuda Tinyana, Yoreh Deah 10*.
- B. The lack of *tzar baalei chaim* when killing them: *Noda B'Yehuda Tinyana Yoreh Deah 10*.
- C. The prohibition when it is not needed: *Psakim of Tosfot, Tractate Avoda Zara chp. 1:11; Trumat Hadeshen, psakim 105; Sefer HaChinuch, mitzva 186; Rambam, Hilchot Melachim 6:8.10; Noda B'Yehuda Tinyana, Yoreh Deah 10*.
- D. Indecent behavior and cruelty: See Rema on *Shulchan Aruch, Even HaEzer 5*.

167. Which Animals *Shiluach Haken* Applies to

Question: Zoologists, biologists, veterinarians, wildlife and environmental officials etc. may find themselves in the position of having to collect nestlings or eggs. Does the commandment of sending away the mother bird apply to other species besides birds, such as alligators? Does this commandment apply only when the female guards the eggs? What about the Emperor Penguin male who guards the eggs?

Answer: The commandment to send away the mother bird before taking the nestlings or the eggs applies only to *kosher* species of wild birds, i.e., not fowl such as chickens, and where the mother bird, to the exclusion of the male, is sitting on the nestlings or the eggs.¹

¹ *Shulchan Aruch, Yoreh Deah*, Section 292 based upon the *Mishna* and *Gemara* in *Hulin* 138b. See also the commentaries to *Deut.* 22:6-7; Maimonides, *Sefer Hamitzvot*, Pos. Com. 148 and Neg. Com. 301; Maimonides, *Mishneh Torah, Hilchot Shechitah*, Chapter 13; *Sefer Hachinuch*, Commandments 537 and 566.

168. Caring for Animals on Shabbat

Question: Hello, can you please give me some guidelines on handling and caring for animals on Shabbat.

Answer:

Care of Animals on Shabbat:

A. Walking one's pet on Shabbat

It is permissible to walk one's animal on Shabbat, whether in an area that has an *eruv* or an area that does not have an *eruv*. In a place without an *eruv*, one must be careful to observe the following guidelines:

1. It is forbidden for the animal to bear a load on its body.¹
2. It is permitted to dress the animal in clothing in order to protect it from the elements, such as cold, etc.²
3. It is permitted to walk an animal with a leash that is attached to it for its protection.³ However, one must ensure that the end of the leash should not protrude a *tefach* or more past the hand of the one who is holding it. Similarly, one must ensure that the leash does not sag within a *tefach* of the

¹ Some animals wear an identification tag on their neck for various purposes:

- A. To prevent the animal from being killed, as an animal with a neck collar or ID tag is assumed to not be abandoned.
- B. To show government officials that permit fees have been paid.
- C. In case the animal gets lost, the finder will be able to contact the owner. It is forbidden for the animal to wear a tag whose [sole purpose] is to assist the owners (2,3).

There is a *halachic* debate whether it is permitted to place a tag for the intention of guarding the animal (a): *Aruch HaShulchan, Orach Chaim* (305:5) forbids, while Rav Shlomo Zalman Auerbach, *zt"l* permits (see *Shemirat Shabbat K'hilchata*, chapter 27, *sif* 9, and the footnotes, especially note 33).

² *Shulchan Aruch, Orach Chaim* 305:7,8; *Shemirat Shabbat K'hilchata*, chapter 27, *sif* 7.

³ *Shulchan Aruch, Orach Chaim* 305, *Mishna Berura, sif katan* 11.

ground.⁴ Both of these problems can be solved by using a retractable leash; none of the leash will extend past the walkers hand and the leash will remain taut and not approach the ground.

B. Feeding an animal on Shabbat:

It is permissible to feed an animal on Shabbat on condition that the animal depends on its owner for sustenance; however, it is forbidden to feed an animal that does not depend on its owner for sustenance.⁵

C. Touching an Animal on Shabbat:

There is a distinction between touching an animal on Shabbat and carrying an animal on Shabbat. Animals are *muktzeh*⁶ and are therefore forbidden to be lifted or handled on Shabbat. However, it is permissible to touch an animal on Shabbat.⁷

⁴ *Shulchan Aruch, Orach Chaim* 305:16, *Mishna Berura, sif katan* 51; *Shemirat Shabbat K'hilchata*, chapter 27, *sif* 8.

⁵ *Shulchan Aruch, Orach Chaim* 324:11. If the animals can find food in another place, and they are accustomed to scavenge and to search for their sustenance, even if they are owned by him, they would not be considered animals that are dependent upon the owner for sustenance. cf. *Shemirat Shabbat K'hilchata* chapter 27, *sif* 21-23, and the notes.

⁶ *Ibid.* 305:39, *Mishna Berura sif katan* 146; *Shemirat Shabbat K'hilchata*, chapter 20, *sif* 40; *Responsa Yabia' Omer*, volume 5, *Orach Chaim siman* 26 (Rav Ovadia Yosef *zt"l* deals with the question of whether it is permissible to handle pets, which he forbids).

⁷ *Shulchan Aruch, ibid.*, 308:42: "Something that is *muktzeh* is permissible to touch, as long as one does not shake it, even a small amount." And similarly cf. *ibid.*, 324:10, *Mishna Berura, sif katan* 28.

JEWISH THOUGHT & ETHICS

169. Sources on Balancing *Bitachon* and *Hishtadlut*

Question: There is a lot of talk within my community about whether one should take "precautionary steps to protect oneself" or "have *bitachon* in *Hashem* and do nothing". May I request *halachic*/Torah proofs for either position.

Answer: In *Mesillat Yesharim* chapter 9 it says "in a place where damage is likely and is known, one should guard oneself. However, in a place where damage is not known about, there is no need to fear..." As long as the effort we make is based on logic and intelligence, it is desirable. However, if it comes from hysteria and confusion, it has no place.

Regarding the essence of the debate between *hishtadlut* – taking precautions/making an effort and *bitachon* – faith in G-d, there is a major debate whether *hishtadlut* contradicts *bitachon*. According to Rav Dessler (*Michtav M'Elياهو* 1:187) the greater the *bitachon* of a person, the less *hishtadlut* they are required to do. (The Ramban in *Bereshit* 12:10 and 14:20, as well as the son of the Rambam in his book *Maspik L'Ovdei Hashem* support this view).

The Maharal however, (see *Gur Aryeh* in *Shemot* 12:22 where he debates this view) sees *hishtadlut* as something which complements *bitachon*. Someone who trusts in G-d acts in the same way as someone else would, and makes the most of his natural inborn talents, and is aware that the source is Divine. Rav Kook writes similarly regarding this issue in *Ein Ayah, Brachot* 1:143). This opinion is supported by the Ramban in *Bereshit* 6:19 & *Bamidbar* 13:2. See further in the Rambam's commentary to the *Mishna, Pesachim* 4:9. This is a proper way to act.

170. *Halachic* Attitude Towards Cloning and Stem Cell Research

Question: What is Judaism's position on human cloning and stem cell research?

Answer: Below please find attached an extract from our publication *BeMareh HaBazak* Vol.4, Question #127, on this topic:

Question: I am the chairman of the Committee of Ethics in a hospital in New York. We are debating the issues of genetic cloning and I am sure that *halacha* has a great deal to say with regards to this complicated issue.

There are two methods of genetic cloning. The first is to take a D.N.A. sample from an adult man and insert it into fertilized ova, so that the child will develop as an identical twin of the adult man. This is like two identical twin brothers who are born several years apart.

The second method is to take an eight cell embryo and to form from it two four cell embryo. Each embryo will develop individually, and the result will be identical twins. This process occurs naturally in the case of identical twins.

Cloning can help childless women. Until today, in order to undergo the process of test tube fertilization, women took medication which was designed to create many ova, so that one of them should be successfully fertilized in a test tube. This process is known as I.V.F. (In Vitro Fertilization). This is a dangerous process and could, in extreme examples, cause ovarian cancer.

Every technique that will prevent the need for creating multiple ova is a positive advance from a medical point of view.

This is an example of a positive result of the cloning process. *halachic* guidance would be of great assistance with regard to this problem.

Answer: According to our outlook, the development of scientific knowledge is something that should be encouraged. It is not only that each technical breakthrough should not be regarded as a challenge to our belief system, rather, it should be seen as an actualization of one of man's purposes in this world – "to work and to guard it".¹

From the phrase "and you shall surely heal" the Rabbis learn² that doctors have permission to heal. It is possible that we can also learn from here that every action whose purpose is to heal is permitted according to the Torah. Reproduction is included in the category of healing, and thus we should relate to the issue of genetic cloning positively, just as we regard healing as such. However, when the purpose of cloning is not for medical purposes, one should refrain from any activity within this field. In the case where there is no clear safeguard to ensure that the purpose falls within the category of "to work and to guard it", there is great potential for destruction. This phenomenon turned out to be true concerning other inventions and developments in science. Therefore we should relate to the issue in the following manner:

A. In principle there is no formal transgression of *halacha* involved in either of the two methods of genetic cloning you mentioned in your question. It seems that this issue is less problematic than fertility treatment which requires frequent

¹ There are those who in fact regard human activity of this kind as an unwanted imposition on creation and a disturbance of the natural balance of the world. This is in line with *Sefer HaChinuch* (62,240,244,348,351), in his explanation of the prohibitions of witchcraft, *shaatnez* and crossbreeding. On the other hand though; a) one generally does not invent new prohibitions, b) the issue under discussion does not involve the creation of a new species, c) when this is done for the purpose of fertility, it can be regarded as a medical act, d) there are stories in the *Gemara* and the literature of the *Amoraim* and *Rishonim* which tell of the creation of animals and men through the *Sefer HaYetzirah*. We have not found essential opposition to these creations.

² *Gemara Baba Kama* 141a.

- sperm tests, and is definitely less problematic than sperm donors (other than from the husband) or surrogate motherhood.³
- B. Non-supervised genetic cloning could lead to serious moral and social problems:
1. The disregard for the importance of the family unit, and the encouragement of single parent families and single sex couples who wish to bear children.
 2. The danger that wealthy megalomaniacs will hire women and use them as incubators to create offspring identical to them.
 3. The fear that people will create doubles of themselves, or their children, to be used as "storage" for limbs and organs.
 4. The danger of mass duplication of people of identical characteristics that will be used for the needs of dictatorships etc.
 5. The establishment of a chromosome bank from which women will be able to choose their children according to the current fashion, without knowing or registering the identity of the donor.
- C. It still remains to be discussed how to determine the parenthood of the clone from a *halachic* point of view. According to most *poskim* today, regardless of any egg or chromosome donation, the woman who bears the child is considered the mother.⁴ Regarding the identity of the father, if the first method has been used (division of the fertilized ovum into two), it seems that the father is the one who donated the sperm which fertilized the ovum.⁵ Regarding the second method however, (cloning by

³ Of course, the prohibition of witchcraft is not relevant to actions whose methods and purposes are evident. See Rambam, *Hilchot Avoda Zara* 1:16, *Moreh Nevuchim* 3:37 and *Sefer HaChinuch* 62.

⁴ Encyclopedia *Hilchatit Refuit* of Prof. Steinberg summarises the different opinions relating to this issue. (vol. 2 130-135). See also Rav Goldberg's essay in *Techumin* 5, 248-259, 268-374) and Rav Shaul Yisraeli's essay in *Chavat Binyamin* 68:418 – 419.

⁵ However, see Encyclopedia *Hilchatit Refuit* (vol. 1, p156) that one who is born as a result of unnatural fertilization it is considered as if he has no father. See Rav Yisraeli's article in *Torah Shebal Peh* 33:41-46.

taking chromosomes from an adult man), if the donor is a man, it is debatable whether to regard the donor as a father or brother of the clone. Perhaps this fetus does not have a father.⁶ If the donor is a woman, it is debatable whether the father of the donor is the father of the newborn, or whether he has no father at all.⁷

Each of the above possibilities should be ruled upon stringently until *halachic* decisions have been made.

- D. As a result of the above problems, one should act with much hesitation in the application of this technique on mankind. One should approve of the implementation of the technique only if the process will be supervised according to the law, and in accordance with the following conditions:
1. The process will be made available only to childless couples, and only in the case where the husband is completely infertile.
 2. The cloning should be limited to one child only.
 3. The chromosomes should be taken only from the mother or father, and the chromosome donors should be registered.

And finally, one should oppose the idea of a chromosome bank. As is likely to aggravate the above problems.

⁶ When genetic material from a regular cell is donated, as opposed to a sex cell (sperm), it is possible to regard the donor as the father. This is because his connection is stronger than in the case of a sperm donor, when the donor gives only half of the chromosomes to the fetus. One could also regard the donor as the brother of the newborn, because this action is similar to the natural process of fertilization of identical twins. It could be that the baby born of this process, which is in no way natural, has no *halachic* father.

⁷ It is difficult to define the female chromosome donor as the father.

171. Nature of the *Halachic* rule that “its ways are ways of pleasantness”

Question: How do I reconcile the statement that the ways of Torah are pleasant (*derocheha darchei noam*) with certain *halachot* that I learned; 1) a man may force his wife to divorce (according to Torah law) but not vice versa, and 2) the Talmud in *Kesubos* 40b states that a father may marry off his young daughter to a, in the Talmud’s words, “*menuval*” (not nice looking person) and a “*mukah schin*” etc?

Answer: It is true that the principle of “*derocheha darchei noam*” is a very important Torah principle that has many *halachic* ramifications. For example, in tractate *Sukkah* 32a, in the context of describing types of *lulavs* it explains that a *kophra* is certainly not what the Torah refers to as *kapot temarim* (*lulavs*), because they produce thorns; since “*derocheha darchei noam*,” it must be that the Torah would not command us to use a *kophra*.

However, when we contemplate the 613 *mitzvot*, it becomes clear that there are other important maxims that show us how to relate to *mitzvot* and our service of G-d on a general level.

In the *Mishna* at the end of *Masechet Makkot* it says “*Hashem* wants to give Israel merit, therefore, He gave them much Torah and *mitzvot*, as it says, “*Hashem* in His righteousness desires to make Torah grow and be mighty.” Here we learn that the abundance of *mitzvot* is for the merit of *Bnei Yisroel*.

The Rambam in *Moreh Nevuchim* (Vol. 3, Chpt. 27) explains that the general purpose of Torah is twofold: perfection of the soul and perfection of the body. He proves that every *mitzva* has an aim of bringing us to a proper *hashkafa*, life perspective, or creating within us good quality traits which improve relationships between people, or remove injustice.

One can also reason that together with the pleasantness of Torah and *mitzvot*, they also serve an educational purpose of elevating the individual and society, and therefore the pleasantness cannot always be felt in each and every detail of a *mitzva*.

And now to directly answer your question regarding the one-sidedness of *halachic* marriages - Regarding the personal relationship of a man and woman there is not an absolute equality, because the Jewish home could not function as such. In a Jewish home, the man and woman are partners and each one has rights and obligations that they were commanded based on their unique nature. A husband has many obligations towards his wife, both financial and personal, and from this partnership he also has rights. The woman also has her rights and obligations, and it does not make sense to compare one to the other.

The Divine Torah gives the husband the possibility of divorcing his wife (in specific circumstances - *Mishna* at the end of *Gittin*) in order to prevent difficult situations that might arise if this right would not be granted. In truth, for a woman, there is no parallel opportunity; this possibly stems from her different nature, a nature in which every action is done wholeheartedly, and therefore a woman is not allowed to marry two men. In addition, a woman who sees that she cannot remain married, does have the ability to file specific complaints that will lead the *beit din*, judicial authority, to actively separate the marriage partners. [*Shulchan Aruch, Even HaEzer* 77 and 154].

In regards to a father who marries off his daughter - *this halacha* is found in *Mishna Ketubot* 46b where it says that a father has the power to marry off his daughter to another man, when his daughter is less than 12 ½ years old. This *halacha* is of great value when it comes to guarding small girls, so they will not be single and be taken advantage of by men who are not fit. The *halacha* quoted in the question is certainly not something that is advisable, rather it is a legal formulation to allow a father the ability to marry off his daughter. To fact that he has the legal ability to even give her over to a *menuval*; certainly does not come to advise the father to do so.

172. Judaism and the Zodiac

Question: Were the signs of the zodiac (astrology) once a part of Judaism? I came across this in the book *Job* 38:31-32 - "Can you bind the cluster of the Pleiades, or loose the belt of Orion? Can you bring out Mazzaroth in its season, or can you guide the Great Bear with its cubs?"

Answer: The twelve signs of the Zodiac are twelve groups of stars which, according to the way we see it on earth, are organized in a sort of circle in the sky through which the sun and the rest of the planets pass through on their yearly movement. These groups remind us (through some kind of association) of a lamb, ox, twins etc.

In a few sources in *Chazal* (the Sages), we find references to the astrological theory of the signs of the zodiac (see *Bavli Rosh Hashana* 10b, *Brachot* 59a. There the *Gemara* relates to the groups of stars called *Kimah*, which we call the Felids).

The verses you cited in your question relate to groups of stars, i.e. signs of the Zodiac called *Kimah*, *Ksil*, etc.

The book *Pirkei DeRabbi Eliezer* (a non-Mishnaic Tanaitic source attributed to Rabbi Eliezer HaGadol, but was completed only in a later period, since it includes sayings of the *Amoraim*) deals at length with the signs of the Zodiac (chapters 6-8). In chapter 6 it compares the twelve signs of the Zodiac with the twelve months of the solar year, and states that in each such month all of the signs are dominant (meaning that the movement of the planets is through each group of stars), each for two and a half days. On the last ten and a half hours of the month, the sign, which was dominant at the beginning of the month, is dominant again, and this is the sign of the month.

In chapter 7 there, he divides the signs according to the lunar months, and says that in each lunar month all of the signs are dominant by turn, where each sign is dominant for two days and two thirds, and the rest is by the sign which is dominant at the beginning of the month (see there for the exact math).

Additionally, he divides the signs into four groups of three, where each group is on a different side of the world, and they are dominant during the night, together with the moon.

We see from this book that there are two "functions" for the signs – being dominant during the day, and being dominant at night. During the day they are at the sun's service, and at night at the moon's service, and in each, the division of the signs is different.

Another important source on this topic is *Braita De'mazalot DeShmuel* – which is attributed to the *Amora* Shmuel or the *Tana* Shmuel HaKatan. This *Braita* (non-Mishnaic Tanaitic source) divides the signs of the Zodiac into six pairs (according to the times of years which correlate). Afterwards, the *Braita* describes the exact rise and fall of each of the signs. There too, the division is into six groups, though different.

After that, the *Braita* divides the different planets into "houses" which are the signs, and divides the signs themselves into male and female. This presentation includes an astrological concept, which attributes characteristics and forces to the different signs and stars.

In the *Midrash Tanchuma* at the beginning of *Parshat Ha'azinu*, there is a description of life of man divided according to the twelve signs of the Zodiac. In *Midrash Tadshe* there is a comparison between the vessel Shlomo HaMelech made in the *Mikdash*, which stood on twelve oxen, and the twelve signs of the Zodiac (three from each direction). In *Sefer Yetzira* there is a comparison between the months and the signs of the Zodiac and the month is attributed characteristics accordingly.

For further information you can see the article written by Rav Shai Valter, *The Astrology in the Talmudic and Post-Talmudic Literature (Hebrew)*, *Kovetz Yad Yitzchak*, S. Valner ed., *Yeshivat Kerem BeYavne* Pub. 2003. We used this article too, and we are thankful to him for that.

173. The *Halachic* status of Energy Healing

Question: What does Judaism say about Energy Healing? Are there any problems due to its connection to Eastern wisdom?

Answer: As long as there is no active connection with *Avodah Zara* (idolatry) there should be no problem. If you read Hebrew we would be happy to send you a more detailed answer from our book *Shut BeMareh HaBazak*.

174. Custom of Wearing a Red String Given Out at the *Kotel*

Question: Dear Rabbi, What *bracha* does one need to make on a red string that one obtains at the *Kotel* in Jerusalem?

Why must one only wear the string on his left wrist? Is it possible for men to wear the string, as well?

Thanking you in advance

Answer: Wearing a red string from the Western Wall is a custom without a reliable source. Therefore, one certainly does not make any type of blessing on it.

Furthermore, the tying of a red string is mentioned in the *Tosefta* (*Shabbat* ch.7) as a practice of gentiles which is forbidden. Therefore, it would be preferable that both men and women completely refrain from wearing the string. Since the custom does not have a known source or reason, the custom is considered a *minhag shtut*, a custom of a dubious nature that should be abolished. It is even possible that there is a prohibition to wear a red string.

175. Pictures of the Sun, Moon, and Stars

Question: Dear Rabbi, Is it permitted to keep pictures of the sun, moon or stars in one's home? Please would you kindly also tell me the source and the logic.

Answer:

1. The Torah prohibits drawing or making shapes of the sun, the moon and the stars. This we learn from the verse: "You shall not make unto you a graven image, nor any manner of likeness, of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth" (*Shemot* 20:3) – Included in this prohibition is the prohibition against making an image of the sun, moon or stars.
Additionally, one may not keep in his possession such an image (a photograph is just like a drawing).
2. In any case, one should not get into arguments over this issue, since those who are lenient have *halachic* opinions to rely on.
3. The prohibition only applies to a full shape. However, if the drawing is partial, for example – a setting sun or covered with clouds, it is permitted. There are those who are stringent even in such a situation.
4. For educational purposes, one may make even a full image.
5. Small children should also be taught to draw only in a permitted fashion (such as drawing the sun in the corner of the paper).

If you are interested in the footnotes and sources of the above answer, let us know and we'll be happy to send you them in Hebrew.

176. The Ice Age

Question: I was recently having a discussion with someone. He asked me why the Torah does not mention the Ice Age. When did it occur according to the Torah? I was unable to find any references to it. Could you please include your references with your response. Thank you

Answer: There are two answers to your question:

- A. The Sages say in the *Midrash in Bereshit Rabba* (3:7 and 9:2): "Rabbi Abahu said: from here we learn that *Hashem* creates worlds and destroys them, creates worlds and destroys them, until He created these". The source for this opinion is the verse in *Kohelet* 3: "everything He did nice in its time", meaning that *Hashem* created everything in our world when the right time arose (implying that there was a time prior to our time). Another source for this opinion is in the verse "and there was evening". On the first day it doesn't say "there shall be an evening", meaning that the evening didn't need to be created during the creation of the world, but it existed even before the world was created. Even according to the simple reading of the verses, before the creation there wasn't nothing, since it says: "Now the earth was unformed and void, and darkness was upon the face of the deep; and the spirit of G-d hovered over the face of the waters", meaning that there was already water and the face of the deep before creation.
- According to this, presumably the Ice Age could have been before the creation of the world that is described in *Bereshit* 1, and it was one of the worlds *Hashem* created and destroyed. This is logical since the creation of man was 5765 years ago and the ice age was about 10,000 years ago.
- B. Rashi on the words "*Bereshit bara*" says, according to *Chazal* (the Sages): "The Torah did not come to tell us the order of the creation and to state what happened before what". The meaning of this sentence is that one should not learn from the stories of the Torah about the order of the creation, since the Torah is not

a history book, and it chooses to tell us only of the occurrences which one can learn from (ideas, values or laws). The rule "*ein mukdam u'me'uchar ba'Torah*" (the stories in the Torah are not necessarily brought according to the chronological order), is related, since it means that the arrangement of the stories in the Torah is not chronological, but rather guided by the best way to express ideas of value and ethics.

What is most important regarding this subject is that the real question is not when the world was created, but rather whether or not it was created and by whom, and the answer is that it was created by *Hashem*. The specific physical and biological procedure is not so important in terms of faith.

177. *Chazal* and Science

Question: *Masechet Berachot, daf 60* (loosely paraphrased) says "There are 2 kidneys, the Right has a *Yetzer Tov*, the Left one a *Yetzer Ra*...The Lungs take in fluids. Anger makes the liver swell, the gallbladder squeezes a drop of bile, then the liver calms down... the stomach sleeps, the nose awakens". Are we to understand this as metaphors, or as the misinformed understanding of physiology at the time of the *Gemara*?

Answer: Regarding contradictions between known science and *divrei Chazal*, there are two main approaches:

1. Rambam (see *Moreh Nevuchim*, 3, 14), R. Avraham ben HaRambam (see his essay about *drashot Chazal* at the beginning of *Ein Yaakov*):

There are cases where *Chazal* were discussing things as they knew it in their time, and when we find out that that knowledge is not considered true anymore – we have to reject their saying.

2. Maharal (*Be'er HaGola*, the sixth *Be'er*), Ramchal (*Adir BaMarom*), *Siftei Chaim Emuna U'Bechira* part 2:

Chazal, in their *drashot* didn't mean to discuss the natural sciences, this is a thing best left for the doctors and the scientists and not for Torah scholars. *Chachamim* were discussing the spiritual roots of the things, the essence of reality, so when they talk about the sun, the stars, the heart, lungs and kidneys they are referring to those things' inner meaning and not the actual objects.

178. Questions Regarding Judaism and Art

Question: I have a few questions about religion and art:

1. Is there any such thing as idolatry today, and if so, how, if at all, does that overlap with art?
2. Is there a value to Jewish art beyond its practical utility as beautifying commandments?
3. What are the restrictions, if any, on viewing art from a Jewish perspective, vis. nudity, idolatry, other religious works, works depicting sins, etc.?

Answer:

1. Regarding the question whether or not there is *avoda zara*, nowadays, and the implications this question has on the *halacha's* attitude towards art:
Avoda zara in its *halachic* definition exists also nowadays, since:
 - A. At least part of the sects in Christianity are considered *avoda zara*, and therefore Christian art can be considered real *avoda zara* (for example statues and pictures of the crucified or his mother which are placed in the church and are the center of the prayer and religious ceremonies) or as 'vessels' of *avoda zara* (*meshamshey avoda zara*) [pictures carried during religious parades or ceremonies] or as 'decorations' of *avoda zara* (*noyey avoda zara*) [pictures which are used to decorate churches, etc.].
 - B. Also blatant idolatry still exists in the world – in the Far East, in primitive African tribes, etc. Art of these religions can also be considered idolatry, vessels of idolatry or idolatrous decorations.
 - C. At least part of the *halachot* of *avoda zara*, which refer to art objects are relevant in any case, even if in the modern world there was no *avoda zara* at all. Indeed, there are *halachot*, which stem from *chashad* ('suspicion', meaning that one may not possess a picture or statue which is used for idol worship, since someone who might see this object in his

possession, might suspect that the person worships the object). Regarding these *halachot*, there might be a possibility to discuss their relevance in a situation where there is no longer idolatry in the world. Yet, other *halachot* – the prohibition to create certain shapes, and the prohibition to enjoy objects which are vessels, or were once vessels, for *avoda zara* are not dependant on the existence of idolatry in the world.

2. As to Judaism's attitude towards art:

We shall begin with quotations from *Proverbs* (3:6): "In all your ways acknowledge Him", and from the *Mishna* in *Masechet Avot* (2:12): "And all your deeds should be for the sake of Heaven".

From here we learn that all of one's ways and deeds can be considered part of the worship of *Hashem* and can be done for the sake of Heaven. Our basic relationship with this world and all it contains is a positive one, and our job, while dealing with everything in the world is to justify and to realize this relationship.

As for art itself, it is appropriate to bring the words of Rav Avraham Yizchak HaCohen Kook (*Igrot Re'aya* I, letter 158): "For all of the wonder of the artistic beauty, which is realized in actual creations, made by man, our nation regards with a pleasant and good attitude" – this is the general approach.

However, in order to justify this approach one must remember, as Rav Kook continues and reminds: "but it is limited. We are careful of intoxication and exaggeration even from the things which are exalted and supreme." Later on he explains also the *halachic* limitations and says: "The Jewish People has raised its hand... to save the grace of beauty... lest it be trampled... by the vulgar hands of idolatry... with the right hand pushing away, and the left hand bringing close: 'you shall not make with me silver gods...' on the one hand, and: 'behold I have called the name of Bezalel Ben Uri... to create with the gold and the silver... in all manner of skillful workmanship' on the other hand". As long as the *halachic* boundaries are kept, he writes:

"all of the vast options of the adornment and the ornamentation, the beauty and the creation, are permitted for Israel."

We shall additionally note Judaism's attitude towards beauty and aesthetics, even though they are not identical to the concepts of art, but without a doubt there is a great connection between them. The verses in *Bereshit*, describing the planting of the trees in the Garden of Eden (*Bereshit* 2:9) explain: "And out of the ground made the Lord God to grow every tree that is pleasant to the sight, and good for food". We see from here that the Torah regards the beauty of the tree as important, and even mentions it before mentioning the functional purpose of the tree – food.

We shall add another story about Rav Kook, who, while visiting in London, went to the National Gallery and saw pictures by the famous Dutch artist Rembrandt. When leaving the exhibition he said to those near him that he now merited understanding a bit of the meaning of the light of the first day of the creation.

Rav Shimshon Raphael Hirsch commented on this point, in his commentary on Genesis, and he writes: "the scripture puts the 'pleasant to the sight' before the 'good for food'... the fulfillment of the sense of beauty before the fulfillment of the sense of taste and the desire to eat. Here the sense of beauty received its justification and sanctification..."

As an addition to these ideas of Rav Kook and Rav Hirsch, we shall note the continuation of Rav Hirsch's words (there), where he explains that as far as we know, only man – of all creation – enjoys beauty (and this nature of man was, of course, intentionally created by God), and this proves the "importance of the sense of beauty to the moral designation of man... the enjoyment in the beauty of nature... will bring (man) to enjoy the moral beauty... man's happiness in the aesthetic harmony is close to his happiness in the moral harmony..."

Rav Hirsch expresses similar ideas also in his commentary to the verse: "God give beauty to Yefet and he shall dwell in the tents of Shem" (*Bereshit* 9:27), see there.

We shall bring another remark of Rav Kook (*Olat Re'aya* II, on *Shir HaShirim, Likutim*, p. 3) – "as long as there is one sketch

hidden in the depth of the soul which is missing and was not realized, there is still an obligation on the workmanship of art to express it," this is under the limitation that "only those treasures, which when opened perfume the air of reality, are good to be opened..."

3. Regarding enjoying looking at works of art and its *halachic* limitations:

A. Looking at works of art connected to idolatry:

i. Enjoying idolatry:

Idolatry, meaning the objects themselves that were worshiped, and things made for idol worship or to decorate them (which is considered in the *halacha* as *tikrovet* – offerings of *avoda zara*, *meshamshei* – tools used in the service, *noyei* – decorations) are forbidden for enjoyment.

Even though there are other things that are forbidden for enjoyment regarding which looking is not considered forbidden enjoyment, the laws of idolatry are different, since the Torah was very stringent regarding it and warned: "Let nothing that has been doomed stick to your hand" and "Do not turn to the idols", and one may not look at idolatry (including all of the above) and enjoy it.

However, regarding a picture or a photograph which depicts idolatry, which was not done for sacramental purposes, but only for artistic purposes, there is no prohibition to look at it in terms of enjoying idolatry.

ii. Looking at works of art which include a prohibition connected to idolatry:

Even though there are certain shapes which one is forbidden to create (sculpting the shape of a person or the four animals of the divine *chariot* – *merkava*, and sculpting and drawing the sun and the moon and the stars), and also to keep in one's house such shapes, there is no prohibition to look at such shapes if they were not done for purposes of idolatry, and there are those who permit keeping such works in public areas.

B. Looking at works which depict nudity:

- i. A man may not look at an undressed woman, and this refers also to a partially dressed woman, as long as parts of her body, which according to the *halacha* need to be covered, are exposed.

Furthermore, even regarding the parts of a body, which a woman is not obligated to cover – a man may not look at for the sake of enjoyment (except for his wife). The Sages were very stringent regarding these prohibitions.

The reason for these prohibitions is since these things cause thoughts of sins, and these are forbidden in and of themselves, and can also lead to sin.

This reason exists also in looking at works of art which depict exposed women, and therefore they are also forbidden to look at.

- ii. Regarding a woman looking at an exposed man – there is a disagreement among the rulers whether the prohibitions for men to look at women have parallel prohibitions for women to look at men (though, it may be noted that even those who permitted women to look at men for the sake of enjoyment did not speak specifically of looking at undressed men).

In practice, one cannot force a woman to go according to the stringent opinions and forbid her to look at a work of art depicting a man, even if he is not dressed, yet as is understood from the sources, including within the writings of the lenient rulers, there is no doubt that this looking – at an undressed man or looking for physical enjoyment – is indecent, even if it isn't forbidden.

- iii. The looking of a man at a work which depicts a man or of a woman at a work which depicts a woman:

In general the *halacha* is that Jews are not suspected of homosexuality, therefore there is no suspicion that such looking will cause sinning or thoughts of sinning.

C. Works which depict sins:

Regarding works which describe sins, not from the fields of idolatry or sexuality, there is no *halachic* source which forbids looking at such works. The attitude is decided

according to the purpose of looking and the estimated result of doing so – a work which describes a sin might encourage similar acts or at least legitimize them, and on the contrary, it might express revulsion or the danger in such an act. (The collection of works might also create a certain effect – for example a work which depicts a sin and next to it is placed a work which hints to its result – for example: Dante's Inferno).

D. A general note regarding looking at works of a non- Jewish artist:

A positive attitude is permitted when one tells of the non-Jew's praise, if he means by this to praise and thank God who created a man with such talent so people can enjoy it, or to praise Jews or Jewish values (whether by means of comparison or concerning a work which deals with Jews or Jewish concepts), and one may assume that the same applies regarding using the work for demonstrating and amplifying the impression of a Jewish ethical or educational moral (for example, using certain Biblical drawings).

179. The Torah's Perspective on Slavery in Contemporary Society

Question: I recently participated in a learning program where we looked at the Curse of Canaan, and how there is a link from some of the *Midrashim* to slavery (in particular African/Negro slaves). However, the curriculum did not include a reference or link to any *teshuvot* that I'm sure have been written that clearly forbid slavery in our times. Where might I find such formal *teshuvot*?

Answer: The negative attitude towards slavery exists in the Torah and other sources for two reasons: firstly, because of the typically vicious treatment against slaves; secondly, because the only enslavement that is permissible is man's being subjugated to his Creator, which in reality transforms Man into a freed individual. You could find out more about this topic by reading the *Igrot HaR'iyah* by HaRav Avraham Kook, *zt"l*, (volume 1, letter 89).

The correct approach to your question is that there is no place for slavery in our time when the morality of humans has elevated and has negated this phenomenon.

For further information, we recommend reading *BeDarkah Shel Torah (Perek "Tafkidan shel Mitzvot"*, from p. 11) by Rabbi Dr. Nachum Eliezer Rabinowitz, *Rosh Yeshiva* of Yeshivat Maaleh Adumim.

180. Contemporary Significance of Remembering Amalek

Question: I was thinking about what actually is the point of *Parashat Zachor*? We are all careful to hear the *maftir* but what relevance is it today? That today's enemies are amalek?

Could Rashi be telling us that these *psukim* follow the weights and measures so that if we adhere to truthful values and practices in our interaction with each other than we will be better equipped to face our enemies today? That seems very relevant today, especially as people are so disenchanted with the leadership which managed the war in Lebanon last summer.

What does it mean to remember with our mouth (simply reading the passage) and our heart?

It seems worthwhile to examine a *mitzva* which seems so obvious, but if we look at more closely, maybe the deeper meanings are more relevant. Am I on to something? If so, may I ask what sources I should consult?

Answer: At the outset it should be noted that the search for the meaning of blotting out Amalek, and its relevance in each and every generation, is both real and important. Furthermore, it seems that this is an essential part of the *mitzva*, as is evident from the Ramban's commentary on the Torah (*Devarim*- Deuteronomy 25, 17): "I have already mentioned the *Midrash* made in the *Sifri*: 'Might it be in your heart (the *mitzva* to "Remember what Amalek did to thee")? (No) The forgetfulness of the heart is already implied when the Torah says: 'Thou shalt not forget'. Then how does one fulfill the *mitzva* of *Zachor* (remembrance)? -through oral retelling...' And in my eyes the true explanation is that you should not forget what Amalek did to you, until his name is blotted out from under the heaven, and we will tell this to our sons and future generations". Hence, the Ramban learned that the meaning of "remembrance", beyond the remembrance of the heart, is oral- the obligation to tell the story to future generations. And it is obvious

that part of telling the story to each and every generation lays is understanding the relevance of the *mitzva* to each generation.

Regarding the question of whether our current day enemies are Amalek it is recommended to peruse the words of Rabbi Soloveichik (in *Perakim Be'Machshevet Ha'Rav* p. 136) who claims that every nation that inscribed upon its banner the motto "that the name of Yisrael may be no more in remembrance" is the ideological successor of Amalek.

The idea you raised regarding the meaning of the *Midrash*; tying sins having to do with weights and measures to the Amalek war, and that its broader meaning is that any indecency between people causes a downfall in battle- seems right and true. Nevertheless, we find it appropriate in this context to note another meaning that the verses teach us on the matter, for it is written: "and smote the hindmost of you" (*Va'Yezanev* etc.), and Rashi explains that these were people who were "powerless due to their sins, and the cloud would cast them out". Here too it seems that the entire community was incriminated by the sins of the few, which teaches us that mutual camaraderie imposes a public responsibility to care even for those who have sunk to the level where, *chas ve'chalila*, the cloud casts him out due to his sin.

We should, of course, add the *Chassidic* approach (See R. Zadok's *Resisei Layla*, p. 270 as well as the *Kedushat Levi* on *Purim*, in the paragraph beginning with *Zachor*), which also sees in the obligation to blot out Amalek a personal duty of each and every one of us to blot out the spiritual Amalek residing within.

181. Orthodoxy and the Modern World

Question: Where do Orthodox Jews believe Jews should live in the 21st Century? How did the modern world affect Orthodox Jews? How did modern technology and development influence Orthodox Jews?

Answer: You have asked some very serious questions, and each one could require an entire book to answer. We shall, however, attempt to give you a concise answer, but not in the order in which you asked the questions.

The modern world affected Jewry more profoundly than, say, the destruction of the Second Temple. Although the Temple was the central institution of Jewish life, the synagogue and school that existed in every community had more influence on the daily lives of Jews. Hence, although the Temple was destroyed, Jewish life continued essentially as it had until that tragic event. Not so with the arrival of the Jews in the modern world. The French Revolution and the spread of its ideals by Napoleon throughout Europe brought the ghetto walls tumbling down. Jews, in Europe at least, had no preparation for their new situation. The results were on several levels: (1) Some Jews abandoned Judaism entirely or "modified" it to make it more "acceptable" to the modern world. [e.g.: Jews who converted to Christianity, Secularism, Reform, Conservative]

(2) Others insisted upon maintaining Jewish life as it had been in the ghettos even without the ghetto walls. [e.g.: so called "Ultra-Orthodox"] (3) A small but influential number, primarily under the leadership of Rabbi Samson Raphael Hirsch (Germany, 1808-1888), insisted that the laws of the Torah applied in every society, and it was the duty of Jews to live by the Torah while shedding the externals of the ghetto. [e.g.: "modern" or "centrist" Orthodox]

In many ways, technology has made it easier for Orthodox Jews to live in the modern world. The Sabbath laws, for example, require Jewish men, women and children to refrain from *melacha*, those activities that "show man's mastery over the world by the

constructive exercise of his intelligence and skill,¹ i.e., technology. However, if that technology is set in advance of the Sabbath, it may continue to operate automatically. Thus, for example, timers may be used to turn on lights, etc. There are other provisions in traditional Jewish law that allow indirect actions involving the use of technology.

Finally, where a Jew ought to live, whether in the 21st Century or at any other times, is a matter of discussion in Jewish law. Maimonides (Spain, N. Africa, Egypt, 1135-1205), for example, does not include living in the Land of Israel as one of the 613 commandments. Nachmanides (Spain, Israel, 1194-1270), disagreed. While many commandments can only be observed in Israel and therefore many Jews desire to live there for religious and/or political reasons, the controversy between Maimonides and Nachmanides still reverberates in Jewish law.

¹ I. Grunfeld, *The Sabbath*, London: The Sabbath League of Great Britain, 1954, P. 19.

182. Contemporary Relevance of a Groom's Exemption from the Army

Question: When reading *Ki Tetzei* I came across Deuteronomy, 24:5... about a year's military exemption after a wedding.

From reading lots of stories over the last few weeks with the Lebanon excursion, and speaking with Israelis... this appears to be something the IDF doesn't honor and the *Rabbanut* doesn't insist on.

Is my information about Israeli practice wrong? Or, if not, why is this commandment from G-d not honored in Israel?

Answer: The details of *the halacha* you are talking about are in Tractate *Sotah* 8:4: "And those who do not go out to fight: a man who has built a house and moved into it, a person who planted a vineyard and started eating its fruits, a man who has married the one he was engaged to, one who marries his *yevama* (wife of a brother who has died without children), as it is said: "he shall be in his house for one year".

However, in *Mishna 7* it says that this law applies only in a *milchemet reshut* – an optional war, and not in a *milchemet mitzva* – an obligatory war, in which case a bridegroom goes out from his room and the bride from her *chuppah*.

Of course the last war in Lebanon is considered a *milchemet mitzva*, which is defined as "helping Israel against their foes who come upon them", and therefore even bridegrooms are obligated to participate. Those who merit participating in a *milchemet mitzva* (obligatory war), will hopefully not only receive grace from *Hashem* and return peacefully, but also will merit the blessing of Avigail to David: "for *Hashem* will certainly make my Lord a sure house, because my Lord fights the battles of *Hashem*."

For further reference, see in the book *Hatzava Kahalacha* ("The Army According to the *Halacha*") written by Rav Itzhak Kofman, pp. 15-17, 21-17 (Hebrew).

183. The Relationship between the Authority of the *Tanach* and the Talmud

Question: What has more authority – Talmud or *Tanach*?

Answer: Your question in general is: as it is known that there is a Written Torah and an Oral Torah, is there a division of authority between them, and does the Oral Torah have more authority than the Written one?

Indeed there is a Written Torah and an Oral one, and we know that both of these "Torahs" were given to Moshe at Mt. Sinai as the *Gemara* (Tractate *Brachot* 5a) states: "Rabbi Levi b. Hamma said in the name of Rabbi Shimon b. Lakish why does it say: 'And I gave you the stone tablets, the Torah and the *mitzva* which I have written to teach'? Tablets – these are the Ten Commandments, Torah – this is the Written Torah, the *Mitzva* – this is the *Mishna*, to teach – this is the Talmud, to teach us that all of these were given to Moshe on Mt. Sinai."

The Rambam writes in his introduction to *Mishneh Torah*: "All of the commandments given to Moshe on Sinai were given with their explanations as is written: 'and I gave you the stone tablets, the Torah and the *mitzva*', "Torah" is the Written Torah and "*mitzvah*" is its explanation, and he commanded us to keep the Torah according to the *mitzva*, and this '*mitzva*' is called the Oral Torah."

The Rambam hints to this in his Thirteen Principles of Faith (end of his introduction to Perek Chelek) in the Eighth Principle concerning the Torah from heaven: "... and also its explanation was given from *Hashem*, etc."

We see from here that they have joint authority. However, we see differences between *mitzvot* created by the sages and ones that are derived from the Written or Oral Torah. The rule is that if there is a doubt concerning a *mitzva* – if it is from the Torah one needs to be stringent, and if it is from the Sages one is lenient. Supposedly, one could learn from this that the words of the Torah are more severe than those of the Sages, however there is a disagreement

among the *Rishonim* concerning this. The Rambam and the Ramban disagree concerning the prohibition of "*lo tasur*" (do not stray from the rule of the judges). The Rambam writes in *Sefer Hamitzvot*, root A:

"Everything the Sages commanded us to do and warned us not to do has already been commanded by Moshe Rabbainu at Sinai to do as we are told, and this is what is said in the Torah: 'According to the Torah that they teach you you should do', etc., and *Hashem* commanded us not to transgress anything they decree and said 'do not stray'."

The Ramban argues with him (ibid. note 4): "If every prohibition from the Sages is included in the prohibition of "*lo tasur*" from the Torah, how can one be lenient in prohibitions from the Sages, if it is then considered a prohibition from the Torah stemming from "*lo tasur*"?"

Note the *Drashot HaRan* in the seventh *Drush*, who wrote that the Sages themselves allowed one to be lenient when a doubt arises in order to differentiate those *mitzvot* from the ones written in the Torah. One can understand the Ran's words in two ways:

1. We know that every *halachic* obligation or prohibition will never apply without the right conditions, which necessitate it. For example: the condition for the obligation of putting on *tefilin* is a thirteen-year-old male, etc. The soil of *Eretz Israel* is the condition for keeping the land-bound *mitzvot*, such as *trumot* and *ma'asrot*. One could say that the Sages decreed their commandments only when the conditions are certain, yet if there is a doubt concerning a commandment from the Sages, we'll say that the conditions for the commandment are not fulfilled. For example – if a person is in doubt whether or not he lit *Chanukah* candles, we will say that he does not now have the proper conditions for the obligation of lighting candles since he is in doubt.
2. A different way to understand the Ran is that, indeed there is a doubt whether or not the person fulfilled the *mitzva*, but the Sages had the option of being lenient in order to differentiate between *mitzvot* from the Sages and those from the Written

Torah. Since this is part of the authority of setting decrees, they set the decree and they exempted people in the case of doubt.

The difference between these two understandings is whether or not one *should* be stringent. According to the first opinion, there is no need to light the *Chanukah* candles again, since one is not obligated at all, just like one lighting the *Chanukah* candles at the wrong time. However, according to the second understanding there certainly is a good reason to tell a person to light the candles again since we're not certain he fulfilled the *mitzva*. Even though the Sages exempted him, the conditions for lighting still exist and one should light again.

We can say that, according to the first understanding, one can answer the Ramban's question towards the Rambam by saying that, since the sages never obligated the *mitzva* in the case of doubt, therefore there is no prohibition of "*lo tasur*" in such a case. This does not hold according to the second understanding, as the question is still valid. Since the conditions for the obligation are withstanding then one would be under the prohibition of "*lo tasur*", and then how could the Sages be lenient if this is a matter of a Torah prohibition. It therefore seems that the two understandings correlate with the disagreement of the Rambam and Ramban. According to the Rambam there is no obligation at all, and according to the Ramban the obligation exists, but the sages were lenient in the case of doubt.

See further in the Ramban where he asks another question regarding another *halachic* rule; in a disagreement concerning a Torah Law one rules according to the stringent opinion and concerning a law from the Sages one rules according to the lenient opinion. Here the Ramban questions the Rambam's opinion: if the Rambam thinks that every prohibition from the sages is also a prohibition from the Torah, then one always needs to follow the stringent opinion, since this concerns the prohibition of "*lo tasur*". One cannot answer utilizing the Ran's explanation, since this is not a case of doubt, and according to the stringent opinion this is a prohibition from the Torah and one needs to be stringent. The *Shev Shma'atata* explains the Rambam's opinion that, since the Rambam holds that this rule, that in the case of disagreement one rules

stringently if it concerns a prohibition from the Torah, is itself a rule set by the Sages, so once there is a disagreement among the scholars, this becomes a doubt in *the halacha* as to which opinion we should follow, and then we rule leniently, as we explained above that one rules leniently in a case of doubt regarding a law from the sages. According to this, being stringent isn't part of the requirements of the prohibition of "*lo tasur*".

The *Kovetz Shiurim (Kuntres Divrei Sofrim 14)* asks on the Ramban – if he asks all of these questions on the Rambam, how does he himself understand the essence of a law from the Sages? One seemingly must say that there is some source from the Torah for the Sages authority to establish decrees, and even if it is just common sense, that is also from the Torah, and logic dictates that there must be some kind of authority to be able to set these decrees. If so, what differentiates it from the Torah authority? Therefore, one must explain that the Torah indeed gave the Sages the authority to prohibit things from the commandment of "*lo tasur*", yet this commandment applies generally and not concerning each and every *mitzva* separately. Each *mitzva* was set by the Sages separately according to their opinion, and since the details aren't from the Torah, but rather from the Sages, then when there is a disagreement between scholars you may follow the more lenient one, since you are not obligated to follow the Sage's stringent opinion. Even though concerning a Torah prohibition one must go according to the stringent opinion, following the Ramban's opinion that following the stringent opinion is from the Torah, in any case one can follow the lenient opinion concerning a commandment from the sages since the Sages were lenient concerning their commandments in order to differentiate them from Torah commandments. Nevertheless, one may decide to be stringent, since it may be that the stringent way is what the Sages wanted, yet they permitted to be lenient. Of course, also according to the Ramban, if a person disagrees with the Sages or decides not to follow them, he is transgressing a Torah prohibition.

It seems that, according to the Rambam, one can explain why the Sages can cancel a Torah *mitzva* using the rule of "*shev v'al ta'asse*", meaning canceling a Torah *Mitzva* by not doing anything

(see: Yevamot 90 and Gittin 36). The answer is that the Torah itself gave them the authority to do so. This also explains the *Gemara* in Shabbat 4a where the *Gemara* asks if it is permitted for a person to transgress a prohibition from the Sages in order to save someone from a Torah prohibition (such as allowing a person to take the bread out of the oven on Shabbat before it is baked – a prohibition from the Sages – in order to save someone from baking on Shabbat – a prohibition from the Torah). If there was a clear hierarchy between the Torah prohibitions and the Sages' prohibition such a question wouldn't be understood. However, according to the Rambam, that the authority is the same, the question is easily understood. See Tosfot there who write that if one refrains from taking out the bread due to a prohibition from the sages he won't be liable from the Torah concerning the baking since he is forced by a prohibition from the Sages ("*anus*"). They understood that the prohibition from the Sages isn't as severe as a prohibition from the Torah, and therefore there is no question that there is a hierarchy of Torah level and rabbinic prohibitions, but the question of the *Gemara* is only whether or not the Sages wanted to prohibit a person from doing so even though they knew it would cause that person to transgress a Torah prohibition.

Yet, from the *Gemara* in *Berachot* it appears that even the Rambam admits that there is a hierarchy between Torah level and rabbinic prohibitions. The *Gemara* (20a) states that the honor of people is so great that it overrules a transgression from the Torah, and the Rishonim explain that this transgression is "*lo tasur*", and that is the only transgression permitted for the honor of people (*kvod habriyot*), and thus ruled the Rambam. It therefore seems that even the Rambam would agree that there is a difference between a prohibition from the Torah and a prohibition from the Sages.

As for the nature of the differences between a prohibition from the Torah and those from the sages see: *Sha'arei Yosher* of R. Shimon Shkop, Sha'ar 1 chapter 7 and the beginning of *Be'er HaGola* of the Maharal, the first Be'er.

As to the fondness towards the prohibitions of the sages, see *Yerushalmi Pe'ah* Chapter 2, *halacha* 4, where it asks the question

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of what is liked better the words of the Torah or those of the sages, and the sages there disagree, see there.

Concerning the relationship between the Written and Oral Torah, we won't elaborate but we'll just note that Rav Kook in *Orot HaTorah* (par. 1) says that it is like the relationship between the body and the soul, where the Written Torah is the soul and the Oral Torah is the body, more connected to the physical world.

184. Who is Authorized to be a *Posek* (*Halachic* decisor)?

Question: Who is authorised *lifsok halacha*?

Answer: The Rambam writes: "...the begginers, who didn't study enough Torah, and want to be admired by the people and their townspeople and jump and sit at the head to teach and rule, they are those who increase disagreement and destroy the world and extinguish the light of Torah and sabotage the vineyard of G-d" (*Hilchot Talmud Torah*, 5,4).

The definition of a *talmid chacham* qualified to rule, if the person asking is willing to accept his ruling, is "*Shegamir*". Rashi explains that such a person "heard from *chachamim* and from *dayanim* their ruling" (*Sanhedrin* 3a). Meaning, heard and studied from them, thoroughly, the area in which he wants to rule. The *poskim* differ whether knowing the *halachic* books is enough, or maybe one can't rule until studying the question starting with the *Gemara* onward (see *Pitchei Teshuva, Yoreh Deah*, 242, 8).

Today the custom is to award *semicha* of various kinds, whose purpose is: "so everyone will know he is qualified to teach" (*Yoreh Deah*, *ibid*, 13 in the Remah).

Indeed the *Psikah* (deciding on *halachic* issues) should be divided into 3 kinds:

1. The simple teaching of *halacha* which is written in the books explicitly. This is allowed to anyone reaching teaching level in that area.
2. Teaching which isn't written explicitly, but is based on comparison of the known rules. This is called: "*Dimuy milta lemilta*" (comparing one situation to another one). This is not allowed for a student where his Rabbi is present, unless he has explicit permission (see *Yoreh Deah* 142). Similarly, in the place of *gadol hador*, one requires explicit permission from him, and the same goes for where there is a *mara deatra* (rabbi of the place) (see *Shut Beit Shearim, Yoreh Deah*, 86). The Rema thinks that in ruling in *issur* and *heter* (such as *kashrut*),

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if there is someone greater than him in the city, he shouldn't rule unless he has reached the age of 40 (ibid, 31). The *Pri Megadim* (*Hanhagot HaShoel VeHanishal, Orach Chaim 3*) wrote that the *halacha* books are now our Rabbis and anyone ruling without looking in them is like a student ruling in front of his Rabbi without permission.

3. A decision in an area where the *poskim* differ is only allowed if he is a great *talmid hacham* and can decide the matter. (*Haghahot HaRema, Choshen Mishpat, 25, 2*).

185. *Halachic* Perspective on Honoring a Living Will

Question: How do you define "quality of life?"

(Relating to honoring a "living will" as dictated in a person's expressed wishes vis-a-vis applying extreme measures during the course of a fatal illness).

Answer: The Torah regards life itself as an important value. However, there is also a value to the quality of life. Even in cases when we can avoid medical treatment due to suffering, it is not because the value of life is less than it used to be, but because we acknowledge another value, which is avoiding suffering, as we'll explain.

The question about a dying person's medical care can be divided into 3 categories:

1. Causing the death directly: Even when a dying person asks to be killed – we don't listen, and if someone causes his death he is considered by *halacha* a murderer (see *Shut Tzitz Eliezer* 18, 48, 2).
2. Avoiding medical care: Where the treatment is already in progress, the *poskim* differ as to whether it's allowed to be stopped, and there is also a difference between different kinds of treatment. Feeding through the mouth and automatic respiration cannot be stopped. The *poskim* differ about feeding through the veins. Most of the *poskim* think that if the patient is on a respiration machine, he cannot be disconnected.

There are those who think we can be lenient, (and even some who think it's a *mitzva* to listen to the patient), and not restart the machine after it's operation was interrupted for another reason, because it is not something we are actively doing. The same question exists about stopping the giving of medication. In any case we have to check if the treatment can save life or only lengthen it, and the situation of the patient (see *Igrot Moshe Choshen Mishpat* part 2, 74,3 and *Minchat Shlomo* 91, 24. also, the *Igrot Moshe Choshen Mishpat*, part 2, 74, 1).

3. Avoiding medical treatment – when the treatment has not yet commenced, we can be more lenient and not start the treatment at all, and there are those who think that we aren't allowed to start it at all. Some distinguish between basic treatment like feeding and antibiotics and between special treatment, not given to a regular person, like chemotherapy, radiation, resuscitation and resuscitation. Even here there are those who think we should do anything to prolong life (and see in the aforementioned sources, and also *Igrot Moshe Yoreh Deah* part 2, 174).

We would like to add that we learn in various places that there is an important value in a person continuing to live even though he is suffering, and this is of benefit to the person himself (and see the *Gemara Sotah*, 20a).

Of course, all of the above is theoretical. If we are discussing an actual case you should talk to a Rabbi who knows the specifics of the case and the sick person.

We pray that you should know no sorrow and disease.

186. Donating a Kidney

Question: I am interested in becoming a kidney donor. What *halachic* considerations do I need to be concerned with? This would go to a Jewish person that I do not know.

Answer: Although there is no *halachic* obligation to donate a kidney in order to save another person, whoever does so deserves every compliment and is considered a hero.

This is only in a case where the doctors determined that he can live without the kidney without any risk to himself.

See *Shut Radbaz* part 3, 627 and *Shut Yechave Daat* 3, 84.

MISCELLANEOUS LAWS

187. Details Regarding the *Mitzva* to Stand for a *Talmid Chacham* or the Elderly

Question: Is there a *halacha* that if a *talmid chacham* is giving a speech, that a person attending the *shiur* should not leave before the *Rav* does?

If so, would this apply to a person attending a class given by an elderly person?

Also, can a person be *mochel* something they don't know they are entitled to?

Would you have to stand up for an elderly person whose personality shows that if she knew she was entitled for you to stand up for her, she would be *mochel* it?

Would the same apply to be *mocheling* someone for something he did against you without knowing what exactly had been done?

Answer: A person is obligated to honor and fear his *Rav* even more than his father (*Yoreh Deah* 242, 1). Therefore, one should avoid leaving in the middle of a *talmid chacham's* *shiur* because of the obligation to respect a *talmid chacham* (*Chayei Moshe, Yoreh Deah* page 171 in the name of *Shiyurei Knesset Hagedola*), although clearly the matter depends on the exact situation, the reason for the early exit, and the degree to which the *talmid chacham* will be insulted. For example, it is certainly insulting for a person to leave a *shiur* because it does not interest him, but if he has to leave because he has a plane to catch or an important meeting or to care for a sick child, then that would seemingly be considered justified.

It is a *mitzva* for a person to stand up for an elderly person, meaning for someone who is over 70 and it is a *mitzva* to stand even if the elderly person is an ignoramous and irreligious, as long as he is not a wicked person (*Shulchan Aruch Yoreh Deah* 242, 1). The honor shown to an elderly person does not only have to do with standing up for him, but also in other matters, similar to the respect shown to a *talmid chacham* (*ibid*, 18), and therefore, it

seems that just as you need to prevent yourself from leaving in the middle of a *talmid chacham's shiur*, the same applies to an elderly person's. So too, out of respect for all people, one should avoid leaving any *shiur* that a person gives unless there are extenuating circumstances.

An elderly person who has *mocheled* his honor, his honor is *mocheled*. In addition, this applies to a *talmid chacham* as well, but one must make sure that he gives this *mechila* actively. However, if a person is publicly known as one who *mochels* his honor with regard to respect due to the elderly, this is considered *mechila*, and there is no need in this case to ask for actual *mechila*. If there is merely an understanding that this *talmid chacham* or elderly person is an extremely modest person who would presumably *mochel* his honor, this is not considered *mechila* at all. Thus, if a person does not know that there is a *mitzva* to honor him, this is also not *mechila*.

Similar to what was mentioned above, a person who did a bad deed to his friend needs to be forgiven actively. He cannot rely on the knowledge that he will be forgiven in the course of time, but rather, he needs active *mechila*. In a situation where the friend does not know of the wicked deed that you did, and if you tell him it will injure or embarrass him, then you need to ask *mechila* without specifying the act (*Orach Chaim* 606, in the *Mishna Berura* 3).

188. Owning Angel Figurines or Pictures of Angels

Question: Is it permissible to buy an angel figurine or a mug with a picture of an angel and the inscription, “There are angels watching over you,” for a Jewish person?

Answer: A Jewish person is not permitted to own a statue or figurine that shows a human face in relief; that is considered an idol. This would also apply to an “angel.” Even according to the most stringent opinions, however, if one of the facial features, such as the nose, is broken off, it then becomes permissible. Other authorities are more lenient where there is clearly no issue of idol worship, as, for example, in the case of a child’s doll.

A picture of an angel - and certainly the inscription, “There are angels watching over you” - is permitted.

We might add that Jewish tradition does not accept the idea that an angel is a human figure with wings. The Hebrew word *malach*, which is used for “angel”, actually means “messenger.” God chooses the messenger that is most appropriate to the mission, whether human or ethereal, and the messenger takes on whatever appearance is best suited for the mission.

189. *Shaatnez* in a couch

Question: Must one be concerned that there could be *shaatnez* in a couch or sofa?

Answer: There is a Rabbinic prohibition to sit on a couch or pillows that contain *shaatnez*. The reasoning is that there is a concern that a string will fold up on the person sitting and thus he would be violating the prohibition of *shaatnez*. As most couches do not contain *shaatnez*, one may rely upon that and not be concerned with the possibility of *shaatnez*. However, if there is special reason for concern, a sample of the fabric should be sent to a *shaatnez* laboratory for examination.

190. Text of the *Hadran* One Recites Upon the Completion of the *Mishna*

Question: Which *hadran* should be recited for the completion of the entire Six *sedarim* of *Mishna*, including those tractates for which there is no *Gemara*? What about the *kaddish* following?

Answer: There is a *hadran* for the entire six *sedarim* of *Mishna*, which you will find at the end of *Massechet Uktzin* in a traditional printed edition of the *Mishnayot*, e.g. *Yachin u'Boaz*. Please note the text carefully to make certain that it is for all of the *Mishnayot* and not just for a single *Seder*.

The *kaddish* following the *hadran* is the same as for other situations of making a *siyum*.

191. Why a Jew May not Participate in a Non-Jewish Funeral

Question: Why would a Jew be forbidden to attend a religious funeral of a non-Jew? If you are an observant Jew in particular I presume that the rituals of another “faith” would simply be nonsensical, and there would be no danger of a sudden conversion.

Answer:

1. There is a prohibition to attend or to watch a religious ceremony, which involves any element of idol worship,^{1 2} including marching behind a “cross”³ or praying to Jesus or to his icon.
2. Similarly, it is forbidden to enter a church, as it is defined as a place of idol worship.⁴

¹ These type of questions were discussed several times in the past in the *Shut BeMareh Habazak*. For more details, see part 1, response 59-60; part 3, response 112, 114; and part 5, response 75

² *Mishna Avoda Zara*, pg 11b; *Shulchan Aruch, Yoreh Deah* 149:1. It is all the more so in our situation.

³ See footnote 4 regarding the definition of Christianity as being idol-worship. See also the response of *Trumat Hadeshen* 196; *Rema, Yoreh Deah* 141:1; and *Yechaveh Daat*, part 3, chapter 65 on the categorization of a cross as an object of idol-worship, and the difference between a big cross, which is considered an object of idol-worship for all purposes, and a small cross worn as a necklace. We were informed from oral sources that in a Catholic funeral, all those present march behind a big cross which the priest carries. In the book, *Tzeida Ladrech*, Pg. 192 (8,1), it is written that it is forbidden to take part in a Catholic funeral, because an idol-worship ritual is included in it. The author also gives a good suggestion for evading such a ritual: to apologize and to explain that it is improper to take part in a religious ceremony when one does not identify emotionally with the religion, and that doing so can even be considered an insult to the deceased.

⁴ *Igrot Moshe (Yoreh Deah III, 129:6); Tzitz Eliezer XIV, ch. 91; Yabia Omer* (II, *Yoreh Deah* ch. 11, and VII *Yoreh Deah* ch. 12); and *Yechaveh Daat* (VIII, ch.45).

3. These things are prohibited not only for fear of being drawn to their religion, but in order to not show respect towards the idol-worship. It is forbidden even for the sake of maintaining peace.⁵
4. One should make every effort to partake in the sorrow of the mourners and to express it from a personal perspective, whether it be before the ceremony or after the ceremony in the forum of consoling the mourner.⁶
5. Marching behind the coffin when there is no element of idol-worship present is permitted for reasons of maintaining peace.

⁵ *Yabia Omer* and *Yechave Daat* *ibid.*

⁶ The Talmud in *Gittin* 61a writes that we bury poor gentiles as we bury poor Jews, in order to maintain peace. The *Shulchan Aruch* (*Yoreh Deah* 151:12) also writes that we can also eulogize them and console their mourners. See *Beit Yosef* (*Yoreh Deah* 367), who says that one can attend their funeral (where no idol worship is involved), and so too writes the *Tzeida Laderech* p192 (8,2), that it is permitted to take part in a Protestant funeral, which does not include idol worship. It is also apparent from the *Shulchan Aruch* in 152:1, where the *Shach* and the *Taz* argue about whether we could allow one to eat at a wedding of a gentile (which is forbidden under normal circumstances) out of concern that not doing so might lead them to hate us. The *Taz* ruled that it is forbidden, but only because of the eating involved, which is prohibited under the category of things that could lead to intermarriage. We can imply from there that when this is not an issue (such as being at a wedding without eating there, or at a funeral when there is no idol worship) it should be permitted in order not to cause hate, according to all opinions.

192. What to do if One's Parents' Hebrew Names are Unknown

Question: What does one do when his or her parents were never given Hebrew names? There are no documents (e.g. *ketuba*, *get*, etc.) to provide the answers. How does one identify himself?

Answer: A person's name is his name even if it is not a Hebrew one. (Yiddish names which abound in many circles are not really Hebrew ones, yet many fine people have them). When a Hebrew name does not exist or is forgotten, we use the "non-Jewish" name which he has.

193. Proper *Teshuva* for getting a tattoo

Question: Does *teshuva* for having voluntarily gotten a tattoo require removal of the tattoo?

Answer: The accepted *halacha* is that one is not obligated to remove a tattoo, since the prohibition is in the actual imprinting of the tattoo (in agreeing to having it imprinted on one's body), but not in the tattoo remaining on the body,¹ regardless of whether the tattoo was done in a permitted or in a prohibited way. However, if the tattoo is in a form of any idol worship, one ought to cover it when entering a synagogue or while praying.² Therefore it is recommended to remove such a tattoo if possible (not according to the letter of the law). If one wishes to remove the tattoo because he is ashamed of exposing it after having repented, and wishes to become part of the Jewish society which observes the Torah and its commandments, he could have it removed by means of a laser treatment.³ In spite of the prohibition of bruising oneself, removing

¹ The *Shulchan Aruch* (*Yoreh Deah* 180:2) says that a person who got a tattoo in a passive way (i.e. he did not even move his body in a way that would make it easier for the "tattooer" to put the tattoo on him) is not considered to have transgressed. The *Shach* there says that one is guilty, however, of having agreed that the tattoo be done to him.

² It's like having an idol in the Holy Temple. If the tattoo is on the place where one puts *tefillin*, one should cover it in a way that does not form a barrier between the skin and the *tefillin*.

³ Medical background: The external part of man's skin is comprised of three layers. When the tattoo is imprinted on the body, the color penetrates into the second layer of skin. Today in the state of Israel, there are two techniques which are common for removing a tattoo:

- A. Laser treatment— where the two layers of skin are scorched and the coloring of the tattoo is removed without causing harm to the lower layer of skin or blood-vessels, and therefore, in this case, no skin transplant is required. This type of surgery is performed in stages and is usually more expensive than plastic surgery. In this treatment, the body does not undergo any physical bruises, and this type of treatment is therefore unquestionably permitted.
- B. Plastic surgery – where the three layers of skin, as well as the layer of flesh under the coloring of the tattoo is peeled off. Skin from

it via plastic surgery could be permitted⁴ as a second preference⁵, because of the principle that human dignity overrides a rabbinic prohibition⁶.

another part of the patient's body is transplanted into the operated area. In this type of surgery, the body undergoes a physical bruise and therefore it is questionable whether this falls under the prohibition of bruising one's body.

⁴ The Rambam (ibid) writes that "one is not permitted to bruise himself or another... and also one who hits someone in a quarrel. This does not only refer to one who bruises himself or another, but also one who smites his friend while quarreling, transgresses the Torah commandment: "One should not continue smiting him." We understand from this that the type of bruise which is forbidden to cause is that which results from a quarrel, meaning something the victim did not want. If the bruise did not result from a quarrel, but rather was done for the benefit of an individual – it is permitted. We can prove the Rambam's method of interpretation from different sources (see *Igrot Moshe, Chosen Mishpat* 2:66): A) Rabbi Chisda who used to walk among thorns, would roll up his garments, and he was not concerned that he was bruising himself (*Bava Kama* 91b). B) Throughout the entire *Shas*, we find that taking medication and drawing out blood are permitted, even though this may at times involve some injury. According to the Rambam's ruling mentioned above, later commentators – *Igrot Moshe* (ibid), *Yabia Omer*: 8, *Chosen Mishpat*: 12, and *Minchat Yitzchak* (105:2), ruled that one is permitted to undergo plastic surgery for aesthetic reasons.

Some of the later commentators - *Tzitz Eliezer* (11:41), and *Shevet Halevi* (chapter 198) opposed this ruling that permitted cosmetic surgery. Their reasoning is as follows:

- A. A physician is forbidden to cure a defect which was caused by the hand of G-d;
- B. We do not have the right to change the order and laws of creation
(The two reasons mentioned above are irrelevant in our case because we are referring to a defect caused by man)
- C. It is an unnecessary risk
(This reasoning is also not so strong in our case, because it is only done with a local anesthetic. Moreover, since an individual is ashamed of his tattoo, he is considered a sick man whose condition is not life threatening, and is allowed to take a risk in order to cure himself (*Minchat Yitzchak* mentioned above). It is worth mentioning that one should assure that this surgery is only performed by one proficient in performing this type of surgery).

⁵ The *Tosfot* (*Bava Kama* 91b “*ela hai tana*”) says that one is forbidden to bruise himself even for a good purpose, and we can derive from this that bruising oneself or another is forbidden even if it did not result from a quarrel. This is different from the Rambam’s ruling (see *Igrot Moshe* *ibid* who tries to resolve the difference of opinion). However, also according to the Rambam, the matter is not so clear, and the above evidence can seemingly be rejected:

- A. Rabbi Chisda did not fear bruising himself when he rolled up his garments while walking among the thorns, because his intention was not to bruise himself, and there is no need here to say that it was inevitable that he be bruised.
- B. An injury caused for medical purposes is permitted, because it is not really considered an injury. The purpose of medication is to cure the human body, while any injury to the human body is harmful, even if it was not caused as “a form of quarrel”. We therefore cannot compare this injury to the one caused for a medical purpose and say that it is permitted. Based on this, we can understand why the *Mishna* in *Bechorot* (45a) permits a *kohen* to remove a blemish by means of articulation, since this is a bruise which cures a defect in the body (and not because it did not result from a quarrel). More so, we could question the above understanding of the Rambam (footnote 4 mentioned above) with regards to *the halacha* of a man who smites his father, and he (the Rambam) prohibited a son to remove a thorn from his father’s body, lest he causes him to bruise more than that which is necessary (*Sanhedrin* 84:2). Even though, there is apparently no quarrel involved here (Rabbi Yosef Dov Soloveitchik in the book *Hamesorah* left it as an unresolved question). We can nevertheless explain that the additional bruise would be caused by a lack of regard for the father. Such disregard could be considered a “form of quarreling,” and therefore such a wound would be forbidden even according to the Rambam (*Igrot Moshe* *ibid*). However, there are two difficult issues regarding this explanation:
 - i. The simple reading of the *Gemara* is that the additional and unnecessary bruise is a problem in itself, and not the psychological background behind it.
 - ii. It is difficult to consider a lack of regard as a form of quarrel (The printer wanted in fact to change the word “quarrel” in the Rambam to “contempt”, making the application more acceptable, but this change does not actually appear in the writings of the Rambam).

We can explain that the Rambam differentiates between two actions resulting from the prohibition of attacking someone: 1. Bruising –

causing harm to the human body. This action is also forbidden even if it was not performed as a “form of a quarrel”. 2. Hitting - This action does not cause significant damage to the human body, and we can say that the damage caused is more on an emotional level. Therefore, we should differentiate between a hit which is given as a joke or for educational purposes – which is permitted, and a hit which is given as a “form of quarrel,” which is then prohibited. According to this understanding of the Rambam, he himself would admit that any form of bruising is forbidden (except for a bruise done for medical purposes, which is not considered to be a bruise at all). More so, it is likely that the Rambam would agree with the *Tosfot* who explains that bruising is forbidden even in a case of necessity. In this case, plastic surgery, which causes a bruise in the body would be forbidden and only laser treatment would be permitted since it does not cause any bruise. However, there is room to permit here, since the patient gives the surgeon permission to bruise him, and in this case, there is no prohibition of bruising according to some of the later commentators. See the *Minchat Chinuch* (*Mitzva* 48), *Turei Zahav* (*Megilla* 27:1), and similarly the Gaon, Rabbi Shaul Israeli (*Hatorah Vehamedina* 5-6). Still yet, see the words of Rabbi S.Y. Zevin (*Leo'r Hahalach, Mishpat Shylock*) who went into great lengths to prove that even where permission is granted, the prohibition of causing any bruise still applies. See the comments in the article of Rabbi Israeli who rejects the proofs which Rabbi Zevin brings.

⁶ *Berachot* 19b and more.

194. Choosing between Attending a *Brit* or a *Bar Mitzva*

Question: If on the same weekend you're invited to a *bris* and to a *bar mitzva*, and they are located so geographically apart that attending both is impossible, which takes precedence?

Answer: The *seuda* of the *brit* is more important than the *seuda* of the *Bar Mitzva*. The source of the *seuda* of the *brit* is very ancient, from the time of the *Mishna* Sages. In *Pirkey De'Rabbi Eliezer* it says (chpt. 29): "The Sages said: one needs to make a festive meal on the day he has the honor of circumcising his son just like Avraham Avinu, as is says: 'and Avraham made a great banquet on the day Yitzchak was weaned' " (other sources are brought in the book *Otzar HaBrit* – Weissberg, Sec. II, pg. 310). The *seuda* of the *Bar Mitzva*, however, is a custom. The Maharshal, in his book *Yam Shel Shlomo* (sec. 37) explains that the *seuda* is a *seudat mitzva*, since it is done on the occasion of the *Bar Mitzva* boy becoming obligated to perform the *mitzvot*.

Since the requirement for the *seuda* of a *brit* is more established, the *seuda* of the *brit* has precedence.

195. Authors of *Tehillim*

Question: Please send me information about which Psalms were written by which authors? Which Psalm was authored by King David? Which by King Solomon? Which by others?

Answer: The Talmud discusses the authorship of the Psalms: Who wrote the Scriptures? ... David wrote the Book of Psalms, including in it the work of the elders, namely, Adam, Malchizedek, Abraham, Moses, Heiman, Yedutun, Asaph, and the three sons of Korah.¹

Similar statements are found in various *midrashim*, but there are variant texts of this passage, and it is beyond the scope of this answer to discuss them. There is, however, a passage in the *Yalkut* that names Adam, Abraham, Moses, David and Solomon, about whom there is no question. The other five are Asaph, Heman, Yedutun, and the three sons of Korah (who are counted as one), and Ezra.

As for specific authors of specific Psalms, 100 of the 150 Psalms are attributed to individuals. 73 are attributed to David; 12 to Asaph; 11 to the Sons of Korah; 2 to Solomon; and one each to Moses and Eitan HaEzrahi. Other individuals are mentioned either in the body of specific Psalms or at their end.

A quick survey of the opening verses throughout the Book of Psalms will give you the name of each individual who is associated with each of the Psalms.

¹ Baba Batra 14b-15a.

196. When One is Allowed to Say Only Parts of *Pesukim*

Question: When do we apply the *halacha* of not saying a *pasuk* Moshe Rebbenu didn't say? What is the basis of saying half a *pasuk* when the Torah is raised "*al pi Hashem b'yad Moshe*" and starting *Kiddush* with "*vayihi erev vayihi boker*"?

Can one sing songs that have fragments of *pesukim* in them?

Answer: As you mentioned, reciting parts of verses is prohibited (see *Megillah* 22a). However, as to the question you asked, the *poskim* write different reasons for being lenient and reciting parts of verses.

These are the main reasons:

1. Verses that are in the *Ketuvim* (*Mishlei*, Psalms, the *Megillot*, *Ezra* and *Nechemia*, *Daniel*, *Divrei Hayamim*) - one may recite parts of them.
2. When the verses are said in a liturgical manner (*davening*, etc.) – one may say half a verse.
3. When there is a *ta'am mafsik* – a stopping note with the *ta'amim* (*trop*), which help read the verses – one may recite that section.

If you are interested in more information, and you read Hebrew, let us know and we'll send you a detailed summary.

197. Permissibility of Lift and Cut Shavers

Question: What is the current consensus among the *poskim* regarding removing the lifts of Norelco/Phillips lift and cut shavers in order to permit their use? Additionally, is using the trimmer in the backs any less problematic?

Answer: The *Gemara (Makkot, 21a)* says that shaving with scissors is allowed. The method of action of the shaving machines is similar to that of scissors, with one exception, which is that the lift and cut machine pulls the hair from the skin, in order to allow for cutting closer to the hair root. Since the shaver is still fundamentally using a method similar to scissors, it is permitted according to the majority of *poskim*.

Therefore, you don't have to remove that part of the machine.

198. Disposing of *Challah* from *Hafrashat Challah*

Question: Can I throw, in the garbage, the dough that I took off when making *challah* for Shabbos, as opposed to burning it?

Answer: It is a *mitzva* from the Torah to set aside part of the loaf and give it to the *kohen*, as it is written: “You shall offer up a cake of the first of your dough for a gift” (*Bamidbar*, 15, 20). The *Shulchan Aruch* (in *Yoreh Deah* 322) writes that “In our time, since the dough is impure due to ritual impurity (*tum'at meit*)... it is burned, for it is impure.” However, the *Rishonim* disagree about whether the *mitzva* requires that it be burned, or if it is sufficient to dispose of it in another way, (see Responsa *Minchat Yitzchak* 4, 13).

Therefore, *lechatchila*, it is certainly better to burn it. Practically speaking, due to the risk of part of the *challah* being absorbed by the oven, one must first wrap it in tin foil and then set it in the oven (obviously not alongside other baked goods), which must be set to a high heat until the *challah* burns. Another option is to scorch the *challah* on the stovetop. The fork that is used to hold the *challah* must afterwards be *kashered* (*libun kal*), and it possible to assign a special fork for this purpose.

If it is impossible to burn the *challah*, then one may rely on the opinion that the act of burning is not an inherent part of the *mitzva*, but rather it is enough to dispose of the *challah* in a manner that rules out the risk of someone eating from it by mistake. Therefore, it is possible to wrap the *challah* in two wrappers –in order to give it proper respect- and then throw it in the garbage, especially in our day and age, when the garbage is usually incinerated- which fulfills the *mitzva* of burning.

199. *Halachic* Status of the “Bodies” Exhibit

Question: In New York, for the past several months there has been a very popular exhibition called "Bodies." In the exhibit, there are actual preserved bodies of people (all from China and most probably not Jewish) - which are injected with latex to preserve them. Also, there is a room with preserved fetuses. Philosophical issues aside, would it be problematic for a non-*kohen* to visit the exhibit? Assuming a medical student could learn enough anatomy by studying the exhibit, would it be preferable for the student to attend such an exhibit or work closely with the latex preserved bodies, instead of using the "fresh ones" typically available in gross anatomy labs?

Answer:

- A. *Halachic* authorities differed in their opinions as to whether it is required to bury a non-Jewish dead body, but their differing opinions only apply with regards to dead bodies in the land of Israel. However, according to all opinions, there is no requirement of burying a non-Jewish body remaining abroad. In either case, one should conceal the body in a different manner.
- B. *Halachic* authorities held different opinions as to whether one could derive benefit from a non-Jewish dead body.
- C. Even according to those who believe that there is a prohibition of deriving benefit from a non-Jewish dead body, looking at the body is not included in this prohibition.
- D. The Medieval Sages differed in their opinions as to whether there is a prohibition of leaving a dead body overnight with regards to non-Jews.
According to Rashi, no prohibition exists and according to the Ramban, there is a prohibition.
- E. A medical student is permitted to dissect non-Jewish bodies for the study of his profession, as is the accepted practice among all nations. He should nevertheless make sure not to disgrace the body, unless for the purpose of his studies.
- F. Seeing that there are those who prohibit disgracing of a non-Jewish body, making an exhibit of non-Jewish bodies is also

prohibited. One should therefore refrain from attending such exhibits out of mere curiosity or for leisure.

- G. According to the accepted *halacha*, it is permissible to attend the exhibit for the purpose of medical study, especially if a special study tour would be organized for these medical students.

In general, each individual Jew should try to avoid such despicable situations and anything of the like.

If you wish to receive the sources for the answer (in Hebrew), we can send them to you.

200. Whether Practicing Vegetarianism Constitutes a *Neder*

Question: A year ago I decided to stop eating meat. Would my decision qualify as a *neder*? If in the more or less close future I would want to change my mind, would I have to go through a *hatarat nedarim* procedure? What exactly would I have to do? I would like to study the sources that would answer my question - could you indicate these to me?

Answer: If your motivation for deciding to refrain from eating meat was the formation of a virtuous practice of safeguarding and abstinence, or if you decided to keep *kashrut* more strictly, then your practice constitutes a *neder*. If, however, other motivations have caused your practice, then it does not comprise a *neder*. In order to avoid the need for *hatarat nedarim*, whenever one accepts a virtuous practice upon oneself, one must say “*bli neder*.” See *Shulchan Aruch, Yoreh Deah*, 214, 1.

201. Whether One Should Wash Hands After Giving Blood

Question: I try to give blood as often as possible (every 3 months or so). I would like to know if one is required to wash one's hand afterwards, in the same way that one is required to wash one's hands after getting a hair cut or trimming one's nails.

Answer:

- A. In *Shulchan Aruch Orach Chaim* 4, 18 in the list of those who are required to wash their hands, one whose blood was let is not mentioned. In paragraph 19 it is written that one whose blood was let, and did not wash his hands should be in fear for seven days (based on the *Gemara* in *Pesachim* 112a). This does not clarify whether there is a requirement to wash hands after blood is let or not. The opinion that one need not wash hands after bloodletting may be substantiated by the fact that the *Shulchan Aruch* lists one who trims his nails in both paragraph 18 and paragraph 19; and, since he did not do the same with one whose blood was let, it can seemingly be concluded that there is no requirement to wash hands after bloodletting. However, in the *Kitzur Shulchan Aruch*, Rav Shlomo Ganzfried included one whose blood was let in the list of those who are required to wash their hands.
- B. Even if one believes that there is a requirement to wash hands after bloodletting, we must also discuss the question of whether or not there is a difference between giving blood and bloodletting. See the Encyclopedia *Hilchatit Refuit* which cites HaGaon Rav Shlomo Zalman Auerbach as a source for leniency on the matter (due to the fact that smaller amounts are given). The *Nishmat Avraham* quotes Rav Auerbach to the effect that “it is possible that one who does not do it to remedy himself, but rather in order to remedy others, (which is a *mitzva*), will know no evil.” Rav Elyashiv’s opinion is that one must be stringent.

ASK THE RABBI III

According to the letter of the law (see the *Mishna Berura Orach Chaim 4, sif katan 39*), there is no need to wash 3 times for nail trimming and haircuts, and it would seem, therefore, that neither would there be a need to do so for bloodletting, and certainly not with giving blood, but rather, one time (on each hand) would be sufficient. However, anyone who washes his hands three times will be blessed (*Ben Ish Chai*), and there are additional *poskim* who wrote that there are those whose custom it is to wash their hands three times after these activities.

202. When One is Required to Pick Up Food from the Ground

Question: When is one required to pick up a piece of bread from the floor? Is it only when one is in reachable distance from the bread? Can someone avoid the situation by not walking next to the bread? Let's say the person is embarrassed, because other people see him doing this, or is afraid the bread is full of germs, or doesn't want to handle bread that is dirty, is one still required to pick it up?

Answer: There are two *Gemarot* that seemingly discuss the requirement to pick up food from the ground: one is in *Bava Metzia* 23a (where the *Gemara* quotes the issue as a *machloket*) and the other in *Eruvin* 64b. However, the *Meiri* explains that the *Gemarot* are merely saying that one should not step on food, and not that one is required to pick it up (Rashi and *Tosafot* disagree). Furthermore, although the *Mishna Berura* (171:11) believes that there is such a requirement, the *Shulchan Aruch* and Rema do not quote it (and it's possible that they either accept the *Meiri*, or that they *pasken* like the lenient opinion in *Bava Metzia*). Therefore, although it is certainly meritorious to pick food up from the floor in general, if it is too difficult or uncomfortable, there is no absolute requirement.