



ניצחון
NITZACHON

Adas Torah Journal of Torah Ideas

Dedicated in memory of
Victoria Ashegian a”h, Tooriya bas Tova

VOLUME 10:2 • SPRING-SUMMER 5783 • LOS ANGELES

Nitzachon

Adas Torah Journal of Torah Ideas
Volume 10:2 SPRING-SUMMER 5783

Adas Torah

9040 West Pico Boulevard
Los Angeles, CA 90035
www.adastorah.org
adastorahla@gmail.com
(310) 228-0963

Rabbi Dovid Revah, *Rav and Mara D'Asra*
Rabbi Yisroel Casen, *Rosh Beis Medrash*
Michael Kleinman, *President*
Yaakov Siegel, *Vice President*

Nitzachon Editorial Team

Michael Kleinman, *General Editor*
Yaakov Siegel, *General Editor*
Yaakov Rich, *General Editor*
Stephen Kirschenbaum, *General Editor*
Rob Shur, *Design and Layout*
www.rbscreative.com

ROSH V'RISHON

RABBI DOVID REVAH: <i>Day One</i>	p. 15
RABBI YISROEL CASEN: <i>Did We Really Just Sell Our Chametz??</i>	p. 21

PESACH

DAVID SCHWARCZ: <i>To Bless or not to Bless, That is the Question: Birkas Kohanim on the Festivals</i>	p. 29
ADIV PACHTER: <i>Insights into the Haggada from the Skverer Rebbe in the Sefer Nesivos Kodesh</i>	p. 37

TISHA B'AV

ADIV PACHTER: <i>Insights into the Bein HaMetzarim Period leading up to Tisha B'Av from Rabbi David Pinto's A'ira Shachar</i>	p. 45
---	-------

LICHAVOD SHABBOS

RABBI EITAN LIPSTEIN: <i>'No Thanks, I Already Heard Kiddush At Shul': How Do I Properly Fulfill Kiddush B'makom Seuda On A Weekly Basis</i>	p. 53
ELI SNYDER: <i>Love and Redemption: Exploring the Themes of Lecha Dodi</i>	p. 65
DANIEL WEISKOPF: <i>My Child, the Shabbos Goy</i>	p. 69
ADIV PACHTER: <i>A Greater Appreciation of Shabbos Kodesh</i>	p. 79
EITAN GELB: <i>Meaningful Zemiros</i>	p. 83
DR. IRA HOFER: <i>Driving on Shabbos for Medical Reasons</i>	p. 87

HALACHA AND MACHSHAVA

RABBI PINCHAS GELB: <i>Prayers Hiding in Plain Sight</i>	p. 95
RABBI EVAN SILVER: <i>Kim Lei B'deraba Minei: A Torah Perspective on Victimhood</i>	p. 107
RABBI YAAKOV SIEGEL: <i>Maris Ayin in Non-Kosher Restaurants</i>	p. 113
JOSHUA GLETTNER: <i>Fascinating Shailos in Lomdus and Halacha</i> <i>The Count, the Maccabees, and the Desecrated Shul</i>	p. 125
<i>All the Fish in the Sea</i>	p. 131
<i>The Pirates Make a Deal</i>	p. 137
MOSHE CARRON: <i>The Halachic Considerations of Giving Gifts to Non-Jews</i>	p. 143

Editors' Preface

We're excited to present to you our 18th volume of *Nitzachon*, representing ten years of our *kehilla's ameilus batorah* and *pilpul chaveirim*. A big part of what makes Adas Torah special is the warmth and beauty of Shabbos at our beloved shul. Whether it is the *chazzanim's* beautiful *niggunim*, the packed *Beis Medrash* on Friday night and Shabbos afternoon, the *Rov's divrei chizuk* and *shiurim*, or the *divrei Torah* we share with our friends over a *l'chaim* at the *kiddush*, *Shabbos Kodesh* at Adas Torah is a big part of our *kehilla's* growth in *ruchniyus*. To build on our *Oneg Shabbos*, we are including a section called "*Lichavod Shabbos*," with *divrei Torah* and *iyunim* related to the *halachos*, *tefilos*, *hashkafos*, and *zemiros* of *Shabbos Kodesh*. We think it's *me'ein olam haba* and *b'ezras Hashem* the learning will enhance Shabbos for all of us.

Michael Kleinman • Yaakov Siegel • Yaakov Rich • Steve Kirschenbaum

**This volume of *Nitzachon* has been dedicated in memory of
Victoria Ashegian a"h, Tooriya bas Tova**

Our esteemed grandmother was a beacon of kindness and tremendous *emuna*. In her entire 92 years I never saw her sad or pessimistic. She was happy and content until the end of her life. She moved to America in 1978 with our late grandfather, David Ashegian. They were both born and raised in Shushan, Iran. Our heritage goes back to thousands of years in Iran, going back to the days of Achashverosh.

My grandmother raised six children. She lived long enough to see her great-grandchildren and great-great-grandchildren. The legacy she left behind was a true testament to her being married at age twelve and staying married and faithful for over sixty-eight years! These records and achievements are hard to reach in this day and age.

Today she has six religious grandchildren who have given birth to twenty-two great-grandchildren plus several other ones who remain traditional Jews. There are also so far twenty-three great-great-grandchildren on the path of Torah.

It is amazing how simple *emuna* and sacrifice comes back many years later to build a huge tree that will give fruits forever.

We cherish her memory and badly miss her chats, wisdom, unconditional love, and positive energy.

Henry & Lisa Manoucheri

In memory of our dear parents
Sydney Kleinman: שמואל בן יצחק ע"ה

On his 27th Yahrzeit, 6 Nissan

Ilse Kleinman: חנה בת באנדאט ע"ה

On her 11th Yahrzeit, 3 Iyar

Effie Gross: אפרים בן אליהו ליב ע"ה

On his 22nd Yahrzeit, 3 Nissan

In memory of our beloved

Dr. Ronald Kleinman: ראובן ליב בן יצחק ע"ה

On his 24th Yahrzeit, 16 Tammuz

Evie Kleinman: חוה בת אברהם ע"ה

On her 8th Yahrzeit, 28 Nissan

Helga Herling: הנדא בת באנדאט ע"ה

On her 1st Yahrzeit, 14 Sivan

May the inspiration from this journal be a
zechus for their *neshamos*.



Lesley and Brian Kleinman

Dedicated in Loving Memory of

Jacob Siegel

יעקב בן צבי הלוי

Rose Siegel

שרה ראסא בת רפאל

Manfred Raphael Lehmann

רב מנשה רפאל בן החבר ר' חיים ופייגא

Sara Anne Lehmann

שרה בת ר' יצחק משולם פייש וחיה חנה איידל

Jamie Lehmann

חיים מנחם בן ר' מנשה רפאל ושרה



Yitzchok and Barbara Lehmann

Siegel and Family

Dedicated in honor of

Moshe Carron

For his continued community participation with an
article in *Nitzachon*.

May you continue to share Torah with others.

May you go from strength to strength with your *Aishet Chayil*,
Hava and the newest addition to the family, Esther Devorah.



Love,

Nehama and Lawrence Samson

Dedicated to the loving memory of

Judy Schwarcz-Kraus

שינדל יהודית בת פריידה

who was an inspiration to her family and her community.



David R. Schwarcz and Family

Rosh V'rishon



Rabbi Dovid Revah
Rabbi Yisroel Casen

Day One

RABBI DOVID REVAH



The *pasuk* in *Parshas Ki Savo* says
היום הזה ה' אלקיך מצוך לעשות את החקים האלה ואת המשפטים (דברים כו:טז)
This day, Hashem commands you to perform the chukim and mishpatim.

Rashi quotes the *Tanchuma*, which asks the obvious question: Moshe was speaking to *Bnei Yisrael* at the end of his life. The *mitzvos* were not given at that time, but rather forty years earlier at Har Sinai. How could Moshe say *hayom hazeh* - **this day** the *mitzvos* were given?

The *Tanchuma* answers

בכל יום יהיו בעיניך חדשים, כאילו בו ביום נצטוית עליהם.
On each day, they should be new in your eyes, as if you were commanded the mitzvos that very day.

This mandate is a central challenge to the life of a Torah Jew. We tend to perform *mitzvos* that occur infrequently with excitement. But many *mitzvos* are mandated weekly or daily; some, like *tefilla* or *brachos*, are required, at least *m'derabbanan*, several times a day. The frequency of these *mitzvos* is meant to enable us to have a constant awareness and connection to Hashem. However, the very frequency sometimes has the opposite effect. We lose the excitement when performing the *mitzva* and it is done only out of habit and by rote. Perhaps many of us remember the first time we wore *tefillin* when becoming *bar mitzva* and the feeling that it evoked. But how long did that last? Do we still remotely feel that way today? The *pasuk* is challenging us – although we have performed the *mitzvos* countless times, we need to make sure that they do not become stale.

An illustration of the challenge of keeping our *shemiras hamitzvos* vibrant can be seen in the difference in the fulfillment of *birkas kohanim* in *chutz la'aretz* and in *Eretz Yisrael*. According to the *gemara*, *birkas kohanim* should be said every day at *shacharis*,

Rabbi Dovid Revah, the *Rav* and *Mara D'asra* of *Adas Torah*,
has led our *Kehilla* since 2005.

and on Shabbos, Yom Tov and Rosh Chodesh again at *musaf*. This is the practice in *Eretz Yisrael*, but in *chutz la'aretz* (at least for Ashkenazim), *birkas kohanim* is only said at *musaf* of Yom Tov. In explaining this *minhag*, the Rama says that during the week people are running to work and may be looking at the clock instead of concentrating on the *bracha*. Even on Shabbos, when there is no work, people lack the tranquility necessary to properly appreciate the *bracha*. Only on Yom Tov, when the feeling of *simcha* permeates the day, are we in the correct frame of mind for the *bracha*. But even then, the *bracha* is only said at *musaf*, when *davening* is almost over and you are about to start a festive meal. Only then is everyone ready to perform the mitzva with the *simcha* that it deserves.

In *chutz la'aretz* we limit the performance of the mitzva to thirteen times a year, instead of more than four hundred times. Because of the relative rarity, this mitzva becomes very memorable. Parents bring their children, and many children have vivid memories of standing under their father's or grandfather's *tallis*. Many women who would not otherwise come to shul try to attend for *birkas kohanim*. We offer special *tefillos* and the *kohanim* sing a poignant tune. The experience in *Eretz Yisrael* is different. For many people, *birkas kohanim* blends into *chazaras hashatz*, and is not performed with the same intensity.

Although ideally we should recite *birkas kohanim* every day,¹ the *minhag* has developed to favor quality over quantity and to only perform it when it will have a stronger impact. It is interesting to speculate what would occur if we applied the same principle to other *mitzvos*. Imagine if we only wore *tallis* and *tefillin* during the *Aseres Yemei Teshuva*.² For a few weeks before, we would have a campaign encouraging everyone to have their *tefillin* checked, whereas now many people have not had their *tefillin* checked since their bar mitzva. There would be *shiurim* to ensure that everyone knows the proper way to wear their *tefillin*, and a stress on having the proper *kavana*. People would commit to refrain from speaking *devarim beteilim* while wearing *tefillin*.

1 The *Beis Yosef* and others strongly criticized this practice. The *Aruch Hashulchan* writes that the Vilna Gaon and Rav Chaim Volozhin wanted to reestablish *birkas kohanim* every day, but ultimately were hesitant to change the *minhag*.

2 Of course, there would need to be a *halachic* justification to allow us to limit the mitzva. For *birkas kohanim* we rely on the opinion that so long as the *kohanim* are not called upon, they are not required to give the blessing. For *tallis* there would be an easy justification because as long as we do not wear a four cornered garment, there is no mitzva of *tzitzis*. *Tefillin* would be more difficult because there may be a mitzva to wear *tefillin* once a day. But the *Biur Halacha* (*Siman 36 s.v. mitzvasan*) cites opinions that the mitzva is to constantly wear *tefillin*, which we do not do anyway.

There is no doubt that the mitzva would have a stronger impact, but it would come at the cost of performing the mitzva daily. We choose to do the mitzva of *tefillin* in the way it was intended, every day, and strive to make it as meaningful as we can.

Why do we single out *birkas kohanim* and limit its performance to when it can be done in the optimal way? Why treat it differently than *tallis*, *tefillin* and *tefilla*,³ which we do every day, choosing quantity over potential quality?

Perhaps the answer lies in a comment of the *Sefas Emes*. In *Parshas Beha'alozecha*, after Moshe was commanded to light the *menora* in the *Bais Hamikdash*, the *pasuk* says “*v'yaas kein Aharon.*”

Rashi quotes the *midrash*, “*l'hagid shvacho shel Aharon shelo shina.*” It is not necessary for the Torah to write that Aharon fulfilled his mitzva, but rather the Torah is teaching us that he did it without deviating.

The *Sefas Emes* asks that just as it is unnecessary to say that Aharon did the mitzva, it's also unnecessary to say that he did not change the mitzva. He answers that we can imagine that the first time Aharon came to light the *menora*, he did it with great excitement. But Aharon lit the *menora* for 39 years, perhaps twice a day.⁴ How did it look the five-hundredth time that he lit it? The five-thousandth time? The *pasuk* is teaching us that Aharon had the same joy and enthusiasm in year thirty-nine as he had in year one. Before Aharon would walk into the *Mishkan* he would think about what he was about to do and how privileged he was to serve Hashem and the significance and meaning of the mitzva. The *midrash* is teaching that there was no difference in intensity in Aharon's performance of the mitzva from the first time on.

With this idea, the *Sefas Emes* explains the *midrash* quoted by Rashi:

למה נסמכה פרשת המנורה לפרשת הנשיאים, לפי שכשראה אהרן חנוכת הנשיאים חלשה אז דעתו שלא היה עמהם בחנוכה, לא הוא ולא שבטו, אמר לו הקב"ה שלך גדולה משלהם שאתה מדליק ומטיב את הנרות.

Why is the parsha of the menora next to the parsha of the nesi'im? Because when Aharon saw the inauguration [offerings] of the nesi'im he became distressed that neither he nor his shevet had participated with them in the inauguration. Hashem told him “your portion is greater than theirs, for you will be lighting and preparing the candles [of the menora].

3 The *gemara* brings many stories of *amoraim* who did not *daven* when they were not able to concentrate properly.

4 The Rambam's opinion is that the *menora* was lit both in the evening and in the morning.

The Ramban questions how lighting the *menora* is a consolation for not participating in the dedication ceremony. The *menora* was one of the daily *mitzvos* in the *Mishkan*, but what does that have to do with the *Chanukas Hamishkan*?

Rav Chaim Vysokier, the *rosh yeshiva* of Bais Hatalmud, visited *Eretz Yisrael* once in his life. Of course, at the first opportunity, he visited the *Kosel*. At the end of his trip, his *talmid* asked him if he would like to visit the *Kosel* once again before his departure, and surprisingly, he said no. He then explained that going to the *Kosel* was a spiritual high point in his life. He wanted to remain with that memory and to carry his deeply felt emotions back home with him, and he was afraid that if he would go again, his second visit would not be the same as the first. The *Chasid Yavetz* (*Avos* 1:4) writes a similar idea. The *pasuk* in *Yechezkel* says that when someone visits the *Beis Hamikdash*, they should exit from a different gate than the one through which they entered. The *Chasid Yavetz* explains that since they already passed the first gate on the way in, they will not have the same awe and appreciation when they see it again on the way out.

Imagine someone living in the *midbar* visiting the *Mishkan*. Of course, he is excited, but he has already been there hundreds of times. Then he sees Aharon. He sees the enthusiasm, love and excitement and suddenly the *Mishkan* becomes something new. *Bekol yom yihiyu b'einecha chadashim*, it is as if it was built today.

This, explains the *Sefas Emes*, is what Hashem told Aharon. “The *nesi'im* dedicated the *Mishkan*, but how long will their dedication last? I want you to dedicate the *Mishkan* as well, but not as a one-time event, but rather every day, for the next thirty-nine years. Your job is to keep the *avoda* vibrant and exciting, both for you and for *Klal Yisrael*. Your lighting the *menora* is not just another *mitzva* but must serve as a *Chanukas Habayis*, as if the *Mishkan* was built today.

Perhaps this is why *birkas kohanim* was chosen to be done only in its ultimate state. Aharon was the role model to show us how to keep *mitzvos* with energy and vitality. Aharon put so much effort to ensure that his *mitzvos* were done fully, actualizing the directive of “as if you were commanded today.” In his merit, we want to ensure that his descendants’ performance emulate his example. There are two *mitzvos* which the *kohanim* perform today - *pidyon haben* and *birkas kohanim*. *Pidyon haben* is always done with excitement. If our *birkas kohanim* would become lackluster if it was done every day, it is worth limiting its performance.⁵

⁵ In addition, the Rambam says that the *bracha* does not come from the *kohanim*, but rather from Hashem. The *Akeidas Yitzchak* explains that the role of the *kohen* in the *bracha* was one of an educator. His job was to make us aware that all *bracha* comes from Hashem. Since he is acting similar to Aharon, as the role model and educator,

The *pasuk* says:

שמרו בני ישראל את השבת לעשות את השבת (שמות לא:טז)
And Bnei Yisrael guarded the Shabbos, to make the Shabbos. (Shemos 31:16)

The *Ohr Hachaim* explains that since Shabbos comes every week, we have to invest effort to make our Shabbos meaningful. This is true of every mitzva. With proper thought and preparation, we can come closer to fulfilling our mandate of “*bekol yom yihiyu b’eineicha chadashim.*”

we keep the performance of the mitzva at Aharon’s high level.

Did We Really Just Sell Our Chametz??

RABBI YISROEL CASEN



Milton Cohen takes Pesach seriously. Every year when Pesach approaches, he and his wife Judy turn their house upside down to clear it of any vestiges of *chametz*. They try their best to eat or dispose of everything in their pantry and fridge. Every year Judy gently suggests to Milton that they sell their *chametz* to a non-Jew, and every year Milton retorts that he doesn't believe in *mechiras chametz*. "This selling *chametz* thing is a joke, we all know that. I'm not going to rely on jokes for *chametz* on Pesach," he tells Judy. This conversation ensues annually, and the cleaning continues.

This year is different. The Cohens recently hosted a *sheva brachos* and have been left with a surplus of *chametz* ingredients which Judy is reticent to throw out. She begs Milton to sell the *chametz* this year and he refuses, citing his usual mantra. So, Judy calls the Rabbi and asks him directly if selling *chametz* is actually legitimate.

Is Milton's concern valid? Is there a potential issue with the widespread sale of *chametz* to non-Jews? Is it appropriate to take Milton's approach and abstain from selling one's *chametz*? Although proper avenues of *kinyanim* are utilized to ensure the non-Jew owns the *chametz*, it is understood that the sale is purely a mechanistic process that allows us to keep *chametz* after Pesach. Presumably the non-Jew understands he won't be keeping the food and that his involvement is primarily a courtesy to allow for proper *chametz* disposal during Pesach. Does this knowledge potentially call in to question the validity of the entire transaction?

Shulchan Aruch (445:2) states that one is allowed to gift *chametz* to a non-Jew as a proper way to dispose of it. The *chametz* should be removed from the house and given to the non-Jew, and thus is no longer considered the Jew's property. This individual transaction is truly no different than any other sale of personal property

Rabbi Yisroel Casen is Adas Torah's Rosh Beis Medrash.

and is certainly legitimate. Furthermore, *Shulchan Aruch* (448:3) writes that one can even buy back *chametz* from the non-Jew after Pesach, provided that the *chametz* was properly sold and physically given to the non-Jew prior to the onset of the *chag*.

Today's version of *mechiras chametz* differs somewhat from the above. The Rabbi sells the entire community's *chametz* to the non-Jew, and the *chametz* never leaves the premises of the Jew (the *chametz* is placed in a sealed off room or closet that is sold/rented to the non-Jew, as such it is considered removed from the Jew's domain as per the *Shulchan Aruch's* directive). The non-Jew never physically accesses the food (although he must be provided with the ability to attain access, such as information regarding whereabouts of the key) and it is self-understood from the onset that he will be selling it back after the *chag*. It is most likely that the non-Jew fully understands that the sale isn't intended to be a true and lasting transfer of ownership. He understands that his role is simply to engage in an act that allows the Jews to keep their *chametz* at home over Pesach and use it after the holiday. As such, Milton's concern seems to be well founded, for isn't intent the core of all *kinyanim* (transfer of ownership)? All methods of *kinyan* require intent (*daas*) of the seller and buyer to enact the transaction. If the non-Jew doesn't have intent to actually attain true and lasting ownership, but rather is only acting as an agent to allow for continued use of the *chametz* post-Pesach, how is the *kinyan* valid? Seemingly, the basic tenet of *kinyan*, the *daas* of the buyer, is lacking. As such, the entire transaction is questionable.

The Chassam Sofer (*Teshuvos YD* 310) writes that the non-Jew's lack of *daas* is not an issue. Although he doesn't believe he's actually attaining ownership of the food, this in no way invalidates the sale of the *chametz*. The goal of selling the *chametz* is to remove it from the Jew's domain, and this has been achieved by the Jewish seller who definitely has intent for the sale to be valid. Lack of intent on behalf of the non-Jewish buyer might hinder his acquirement of the food, but this in no way invalidates the Jew's selling of it. As long as the Jew has done an act to rid himself of his *chametz* he has achieved the necessary goal, irrespective of the non-Jew's actual acquirement of it.

However, others find this approach seemingly difficult. The method the Jew is using to strip himself of *chametz* ownership is by selling it to the non-Jew. If the non-Jew's reticence to believe in the validity of the *kinyan* invalidates his participation, then surely there is no *kinyan* here at all, and the Jew still owns his *chametz*!¹

¹ This is certainly a question if the non-Jewish buyer verbalizes his skepticism of the sale. If his doubts remain nonverbalized, does his engaging in the *kinyan* process override his thought process? Generally, when one's

Every *kinyan* is essentially made up of two parts, the *daas*, the intent to buy/sell, and the act of the *kinyan*. The *Rishonim* write that the true crux of *kinyan* is the intent, with the act no more than a method to externalize and concretize the intent. It is thus imperative that the protagonists of every *kinyan* have a clear intent to actualize the ownership transfer they are engaged in. As such, it would seem disastrous if the non-Jew outwardly goes through the motions of *kinyan* but inwardly scoffs at its efficacy. Essentially, this should mean that the brains behind the *kinyan* are not present and the *kinyan* is invalid.

However, Rav Moshe Shternbuch (*Moadim U'zmanim* 277) points out that when a non-Jew engages in *kinyan*, the calculus may well differ from that of a Jew. It is entirely possible that a non-Jew's *kinyan* is created not by the underlying *daas*, but rather by engaging in the act of *kinyan*. The Rivash writes that this is evident from that which a non-Jew may buy and sell items that do not yet exist (*davar shelo ba l'olam*) whereas a Jew may not. For a Jew, the sale of a non-existent item is inherently flawed, as there lacks conclusive *daas*/commitment to the transaction inasmuch as the item doesn't yet exist. For a non-Jew this doesn't matter; seemingly the *daas* of the non-Jewish buyer/seller is not essential.²

If the underlying *daas* is not the crux of the *kinyan* of a non-Jew, but rather his participation in the act of *kinyan* is the crucial piece, we may understand how *mechiras chametz* works. Even though the non-Jew remains skeptical due to the reality of him not physically attaining the *chametz*, if it is made clear to him that he is engaging in a proper act of *kinyan*, his lack of *daas* is inconsequential. Seemingly, if the non-Jew is a willing participant in the act of *kinyan*, even if he feels he is simply providing us a service rather than actually buying anything, the *kinyan* is robust.

actions are at odds with one's thoughts, we rule *devarim sh'beleiv einon devarim*, thoughts of the heart are not of legal importance, and cannot invalidate the legality of the person's actions. *Tosafos* (*Kiddushin* 49b) teaches that while this is generally true, it does not hold true when those thoughts are widespread. When most people think a certain way under particular circumstances, it's no longer *devarim sh'beleiv*, but is rather considered common convention. If most people engaging in what seems to be a farcical *kinyan* believe it to be invalid, then these are not considered thoughts of the heart, but rather thoughts that are out in the open. Thus, these thoughts, albeit non-verbalized, can serve to invalidate the *kinyan*. Since the dubiousness of *mechiras chametz* is a thought presumably shared by many non-Jewish buyers, even if their skepticism is nonverbalized, it can still potentially invalidate the sale.

² This is evidently the way that Yaakov Avinu was able to buy the birthright from Esav. This sale afforded Yaakov the right to a larger inheritance, which did not yet exist since their father was still alive, yet the transaction was valid. Since this event took place prior to *Matan Torah*, both Yaakov and Esav were not considered Jews, but rather *bnei Noach*, and thus seemingly non-Jews can transact items that do not yet exist.

Rabbi Bentzion Sternfeld (1835-1917, author of *Teshuvos Shaarei Tzion* and Rav of Bilsk) was known to caution rabbis against mentioning the *kinyan's* loophole-like nature to the non-Jew at the time of the actual transaction. His concern was that this knowledge would essentially invalidate the sale. Seemingly, he disagreed with the above notion that the non-Jew's skepticism is never an issue. Although he agrees that the transaction is essentially valid, he asserts that it can be nullified if the seller mentions its true purpose at the time of the *kinyan*. He proves this from the *mishna* (*Nedarim* 48a) that teaches if someone vowed not to derive benefit from his friend, and needs food, his friend may not give him food. Even if the friend gifts the food to a third party so that there is no longer a direct transaction between the needy one and his friend from whom he may not benefit, it is still prohibited. The *gemara* clarifies that giving the food to a third party does indeed allow for the needy one to legally attain the food as he no longer receives it from the person he may not benefit from, yet this only works if no verbal stipulation was made. If it was gifted without verbal indication that it was being done to allow the needy one to receive it, that is permissible. However, if verbal indication was given that the sole purpose of gifting to the third party was to allow for the needy one to take it, this would violate the vow and be illegal.

Rambam codifies this in *Hilchos Nedarim* (7:15) and adds that even if the gift to the third party was initially given without qualification, but subsequently the giver clarified his true intentions to help the needy person, he will retroactively invalidate the gift. *Kesef Mishna* posits that this retroactive undoing of the gift will only occur if the giver's statement is made directly after the transaction has occurred. But, if he remains quiet at the time of the transaction and only some time later reveals his true intentions, the validity of the gift is no longer debatable. Based on this *Kesef Mishna*, Rav Sternfeld cautioned rabbis to remain silent at the time of the sale of the *chametz* lest they invalidate the transaction by informing the non-Jewish buyer that the true purpose of the sale is just to allow the *chametz* to be enjoyed after Pesach. (However, some time after the sale's conclusion it would technically be fine for them to have this discussion.)

Rav Shternbuch categorically disagrees with Rav Sternfeld's assertion and maintains that the *chametz* sale cannot be retroactively invalidated, as it is inherently different from the *Kesef Mishna's* case. In that scenario, the giver was gifting food to a third party but was making it clear that his true intent was for the needy person to get the food, and thus it was never truly intended for the third party to keep. As such, he is essentially removing his acquiescence of the third party ever receiving the items.

His true intent is the ultimate gifting to the needy person which is forbidden. This is distinctively different than *mechiras chametz*, which is not a gift but a sale where money changes hands. Since the non-Jew paid for the *chametz*, and is not being refunded in any way, the sale does not become invalidated. A legal transaction has occurred and cannot be rescinded by subsequent conversations. A gift that lacks proper intention may not be considered truly a gift, but a monetary transaction is binding, and thus even if the seller expresses his true motivations, it does nothing to invalidate it.

The above question notwithstanding, it is evident that the actual sale of the *chametz* is perfectly valid even though its entire purpose is to allow for continued ownership of *chametz* post-Pesach. Milton Cohen can rest assured that he is committing no crime in selling his *chametz*. But even if from a legal standpoint there are no red flags, is this the correct approach for a serious Jew to adopt? We generally don't look for shortcuts, and we would like to think that when it comes to *Avodas Hashem* we are willing to go the extra mile. Wouldn't that mean actually ridding our homes of all of the *chametz* and not relying on selling to a non-Jew?

Some *poskim* did indeed recommend not to rely on *mechiras chametz* for actual *chametz* (but rather only for *kitniyos* etc) out of concern for its validity but the Chassam Sofer (OC 113) vehemently disagreed with this approach. He writes that selling *chametz* has been accepted by the Jewish people as a valid method to properly dispose of *chametz* and should not be disparaged in any way. Presumably he did not view it as a shortcut or a lack of commitment to Pesach preparation, but rather a perfectly acceptable avenue to prepare for the *chag*.

Pesach is a labor-intensive holiday, if there are methods that somewhat ease the burden that are sanctioned by the *poskim*, it is perfectly acceptable for us to utilize them.

So, did Milton ultimately sell his *chametz*?

He's still thinking about it...

Pesach



David Schwarcz

Adiv Pachter

To Bless or not to Bless, That is the Question: *Birkas Kohanim* on the Festivals

DAVID SCHWARCZ



*This article is dedicated to and l'ilui nishmas my beloved late sister,
Shaindel Yehudis bas Shmuel Shlomo a"h*

As we approach Pesach, the centrality and meaning of the priestly services in the *Beis Hamikdash* are brought in sharp focus. The prayers are replete with homage to the holiday, daily sacrifices, the Levite musical accompaniment and the *Birkas Kohanim/Nesias Kapayim* (viz. collectively “*Birkas Kohanim*”).

Indeed, Dr. Spock popularized the mysterious *Birkas Kohanim* in several Star Trek episodes.¹ Inquisitive minds often question its origin and why this service has remained a mainstay in our prayers since Biblical times² while other priestly services and commandments are no longer practiced.

This article shall address the *kohen's* qualifications to perform the blessings and the basis for establishing these qualifications. After establishing such qualifications, this article shall explore the reasons why *Birkas Kohanim* continues to be included in our liturgy while other priestly commandments and services have fallen out practice.³

1 Star Trek creator Gene Roddenberry asked Leonard Nimoy to come up with a Vulcan greeting for the sci-fi series when it first aired in the late 1960's. Mr. Spock's iconic gesture is now a bit of pop culture, as familiar to Trekkies as warp drive and photon torpedoes.

2 *Bamidbar* 6:24-26: “May G-d bless you and guard you. May G-d shine His countenance upon you and be gracious to you. May G-d turn His countenance toward you and grant you peace.”

3 This article was inspired by Lakewood Daf, Sruly Bornstein's *Reid Bites* on *Kesubos* 24-25, “Allowing *Kohanim* to *Duchen* Today” and “R' Yosi's Humility”.

David Schwarcz is of Counsel to Beilis & Pols, LLP and a member of Adas Torah.

Background

Since the founding of the *Mishkan* and throughout the time of the establishment and destruction of the two *Batei Mikdash*,⁴ the *kohanim* recited *Birkas Kohanim*. Thereafter, the *Anshei Keneses HaGedola* (vi. Men of the Great Assembly) formulated the *nusach hatefila* for the daily, Shabbos and holiday services to include *Birkas Kohanim*.

It should be noted that in *Eretz Yisrael* the *kohanim* recite *Birkas Kohanim* in the daily morning service, while in the Diaspora *Birkas Kohanim* is only recited on the Festivals and High Holidays. The reason for this discrepancy is that in the Diaspora people are only in a joyful and festive mood on the holidays, and “only one who is glad of heart shall bless.” On other days, by contrast, even on Shabbos, [the *kohanim*] are preoccupied with their livelihood and their loss of working hours, and they are not in a happy state of mind. Indeed, even on Yom Tov the Priestly Blessing is conferred only in the *mussaf* service, when [directly afterwards] they will leave the synagogue and partake of refreshments and rejoice in the celebration of the festival.⁵

In other words, since *Birkas Kohanim* is meant to be conferred in a spirit of joy, and the holidays specifically are a time to rejoice, that is when we recite *Birkas Kohanim*.⁶

The Basis to Include *Nesias Kappayim/Birkas Kohanim* in the Prayer Services

The primary consideration for including *Birkas Kohanim* in the prayer service is found in the *gemara* (*Kesubos* 24b) which provides the backdrop for the prophet Ezra's reinstatement of the priestly services in *Bayis Sheni* (viz. the Second *Beis Hamikdash*). One of Ezra's main accomplishments was the re-establishment of Torah adherence in Israel (*Sukka* 20a), ensuring that its observance would not be lost. He also established the Great Assembly, which was responsible for forming the liturgy of prayer, along with many of the systems of Jewish law that are in place today.

One of the key issues that Ezra confronted was sorting out the exiled *kohanim's* lineage. *Kesubos* 24b provides in pertinent part that:

אמר ליה רב נחמן בר יצחק לרבא: מהו להעלות מנשיאות כפים ליוחסין? אמר ליה:
פלוגתא דרב חסדא ורבי אבינא.

4 From approximately 3338 through 4608, *Birkas Kohanim* was recited except for a period of seventy years of the Babylonian exile.

5 *Shulchan Aruch Harav*, OC 128:57; See there where he explains that, despite the fact that it is a fast day, the priestly blessing is nevertheless also conferred on Yom Kippur since “there is the happiness that results from the forgiveness, pardon and atonement [that are granted], from the holiness [of the day], and from the fact that one honors it by wearing fine clothing.”

6 See OC 128:44, *Mishna Brura* 128:167

Rav Nachman bar Yitzchak said to Rava: What is the halacha with regard to elevating from the lifting of hands to lineage? Rava said to him: There is a dispute between Rav Chisda and Rabbi Avina.

הלכתא מאי? אמר ליה: אנא מתניתא ידענא. דתניא, רבי יוסי אומר: גדולה חזקה. שנאמר: "ומבני הכהנים בני חביה בני הקוץ בני ברזילי אשר לקח מבנות ברזילי הגלעדי אשה ויקרא על שמם. אלה בקשו כתבם המתיחשים ולא נמצאו ויגאלו מן הכהונה. ויאמר התרשתא להם אשר לא יאכלו מקדש הקדשים עד עמוד כהן לאורים ותומים."

Rav Nachman bar Yitzchak asked Rava: What is the halacha? Rava said to him: I know [and base the halachic ruling on] a beraisa, as it is taught in a beraisa that Rabbi Yosei says: Great is the legal authority of presumptive status, as one may rely upon it in determining halachic practice, as it is stated: "And of the children of the priests: The children of Habaiah, the children of Hakkoz, the children of Barzillai, who took a wife of the daughters of Barzillai the Gileadite, and was called after their name. These sought their register of the genealogy, but it was not found; therefore, were they deemed tainted and put from the priesthood. And the Tirshatha said unto them that they should not partake of the most sacred items, until there stood up a priest with Urim VeTummim" (Ezra 2:61–63).

אמר להם: הרי אתם בחזקתכם. במה הייתם אוכלים בגולה — בקדשי הגבול, אף כאן בקדשי הגבול. ואי סלקא דעתך מעלין מנשיאות כפים ליוחסין, הני כיון דפרסי ידיהו — אתי לאסוקינהו!

Rabbi Yosei explains: Nehemia said to the priests whose status was uncertain: You maintain your presumptive status. Of what did you partake in the Babylonian exile? It was the consecrated items eaten in the outlying areas, i.e., teruma. Here too, you may continue to partake of the consecrated items eaten in the outlying areas, but you may not partake of offerings, with regard to which you have no presumptive status of priesthood. And if it enters your mind to say that one elevates from the lifting of hands to lineage, they will come to elevate those priests whose status was uncertain to priestly status in terms of lineage, since they lifted their hands and recited the Priestly Benediction in exile."

Indeed, during Ezra's reestablishment of Bayis Sheni the putative *kohanim* brought with them identification documents evidencing their respective *kohanic*

lineage. Moreover, absent the presentation of verified identification documents those *kohanim* could not maintain their presumptive status of *kohen* to qualify for the *duchaning*.

What is the Status of Today's Kohanim?

One may infer from the foregoing holding in the *gemara* that during Ezra's era the *kohanim* that returned from Babylonia had a presumption (viz. "*chazaka*") supporting their status. Today, some *poskim* allow our *kohanim* to *duchan* based on a *chazaka* that a doubtful-*kohen* would be publicly humiliated to be exposed as a *zar* (non-*kohen*) *duchaning* or would not willfully violate the negative commandment of a *zar* who wrongfully *duchans*.⁷ Thus, today, if a person's father told him that he is a *kohen*, we cannot be certain that the lineage stayed pure over the generations.

Significantly, this *chazaka* is undermined by the fact that today's *kohanim* do not have documentary evidence⁸ supporting their lineage and strictly rely on questionable oral transmission of their lineage based on *mesora*. Moreover, the *Shulchan Aruch* (OC 128:1) cites the *gemara* in *Kesubos* 24b that "a non-*kohen* who ascends to *duchan* and recites the *Birkas Kohanim* violates a biblical commandment of "*Koh Tivorchu*" (*Bamibar* 6:23).

What specific prohibition does a non-*kohen* violate when he performs *Birkas Kohanim*? *Tosafos* in *Shabbos* 118b cites the Ri (Rabbi Yitzchak) who avers that he is not aware of the specific prohibition a non-*kohen* violates when he *duchans* if not for reciting the blessing in vain which is a violation of the biblical commandment of "Thou shall not utter Hashem's name in vain".⁹

The following two questions arise from the foregoing analysis:

- How did Rav Yosi in the *gemara* in *Shabbos* 118b state that "All my days I have never disobeyed the words of my colleagues. For example, I know about myself that I am not a *kohen* but if my colleagues would ask me to "go up to the platform where the *kohanim* recite the Priestly blessings I would go up" if it is biblically or

⁷ See *Kesubos* 24b

⁸ *Kesubos* 24b: the *Kohanim* during *Bayis Sheini* produced their *shtar yuchsin*, lineage document.

⁹ *Shemos* 20:7 cited in *Mishna Berura* 128:4–5 that the Ri (*Tos. Shabbos* 118b) questions what prohibition a non-*Kohen* violates when the Torah prescribes a positive commandment for a *Kohen* to *duchan* and explicitly delineates the prohibition related to a non-*Kohen's* reciting the blessing and *duchaning*. The *Mishna Berura* concludes that the non-*Kohen* violates the prohibition of "*bracha l'vatola*" which according to the Rambam is Biblical commandment derived from "*Lo Tisa*."

at least rabbinically prohibited for a non-*kohen* like Rav Yosi to *duchan*?

- Since the status of our *kohanim* is questionable, should a *kohen* not *duchan* to avoid violating the negative commandment of a *bracha levatala*, a wasted blessing?

Rav Yosi Duchaning

In his *Sefer Hafla'a*, Rabbi Pinchas Horowitz addresses this issue and responds by stating that Rashi (*Kesubos* 24b) and Tosafos (*Shabbos* 118b) have opposing opinions regarding the mitzva of *Birkas Kohanim*. Rashi maintains that the Torah mandates that only a *kohen*, and not a non-*kohen*, perform *Birkas Kohanim*.

Tosafos, on the other hand maintains that there are two components in the fulfillment of the mitzva, to bless and to receive the priestly blessing. More specifically, Rav Horowitz elucidates the concept that when a mitzva requires congregational participation like in our case, then the *kohen* does not fulfill his mitzva to bless until the congregation answers *amen* to the blessing. Accordingly, the Ri questioned whether Rav Yosi, as a non-*kohen*, violated the positive commandment to receive the blessing by improperly assuming the *kohen's* role of *duchaning*. Rav Horowitz reads the term “the prohibition on the non-*kohen* who ascends to *duchan*...” to mean the non-*kohen's* violation of the mitzva “to receive the blessing.”¹⁰ This case is analogous to the case of *yibum*, where the *yavam* has a mitzva to perform the levirate marriage while the *yevama* also has a mitzva to consummate the marriage with the *yavam*. Indeed, the *yavam* cannot fulfill the mitzva of *yibum* without the *yevama*.

As such, the Ri, unlike Rashi, wondered what negative violation a non-*kohen* violates by not answering *amen* to the *kohen's* blessing. Indeed, the *Hafla'a* posits that the prohibition of a non-*kohen* *duchaning* is that he does not receive the priestly blessing.¹¹ Accordingly, if there are no other *kohanim* in the congregation then there would be no issue for a non-*kohen* to *duchan*. As such, the most plausible basis for *Tosafos'* statement that he does not know of any prohibition for a non-*kohen* to recite the priestly blessing other than a “*bracha levatala*, a blessing made in vain.” But if the *kohen* fails to answer *amen* (or more precisely, not receive the priestly blessing) he

¹⁰ The legal distinction is highlighted in a case where the entire congregation is composed of non-*kohanim* and a non-*kohen* *duchans*. According to Rashi the non-*kohen* violates the positive commandment of “*Ko Tivorchu*” and incurs the penalty for uttering a *bracha l'vatala*, whereas according to the *Hafla'a*, the non-*kohen* did not violate the mitzva since the congregation did not actually receive the blessing from a *Kohen*. But still the Ri based on *Kesubos* 24b wondered that a *zar* who *duchans* violates a *mitzvas asei*.

¹¹ See the *Gilyon HaShas* on *Shabbos* 118b where Rav Akiva Eiger references four other cases where *Tosafos* ponders the source for a certain prohibition.

would violate a mitzva of *Birkas Kohanim*.

It should be noted that the *Magen Avraham* (OC 128:1) provides a different resolution to this question. Unlike the case in *Kesubos* where the non-*kohen* acted alone when reciting the blessing and thus the blessing was invalid, here, in *Shabbos* 118b, Rav Yosi just ascended on to the platform for *Nesias Kapayim* but did not recite the blessing. He then proffers a second answer, that wherein the Ri explains the verse in *Bamidbar* 6:23 “Speak to the ‘Bnei’ Yisrael” that even though the mitzva of *Nesias Kapayim* is incumbent on the *kohen*, a woman, just like a non-*kohen*, has permission to *duchan*. Therefore, the Ri in *Shabbos* 118b wonders what prohibition the non-*kohen* violates by *duchaning*. The Ri then questioned the right for a non-*kohen* to *duchan* based on the the holding in *Eruvin* (10) that only *kohanim* may perform the mitzva of *Nesias Kapayim*. The Ri avers according to Rav Yosi that a woman may *duchan* as well as a non-*kohen*. But according to the opinion that women may not *duchan*, a non-*kohen* would also be forbidden to *duchan*.

Rav Baruch Epstein, in his *Torah Temima* (*Parshas Naso*) and *Makor Baruch* (3:27 sub.9) held that the presumption in favor of a *kohen's* status is applied only when such action will not result in a violation of a negative commandment. Here a non-*kohen* who *duchans* publicly violates a negative commandment and thus should not *duchan*. Likewise, the *Shach* in YD 322:4-5 states that in the Diaspora we do not give the *challa* to a *kohen* for, among other reasons, it is difficult to ascertain the *kohen's* lineage.

Accordingly, Rav Epstein concludes that it is very unlikely that Rav Yosi would knowingly *duchan* when such action contravenes a biblical commandment. As such, the passage in *Shabbos* 118b where Rav Yosi exclaims that “I am not a *kohen*” is an editor’s mistake and should read “*eini kedai*, I am not worthy.”

Indeed, the term in *Shabbos* 118b “ascend to *duchan*” can be interpreted to mean to “ascend to the platform” and not “to perform the priestly blessing”. Rav Yerucham in his introduction to his *sefer* interprets the term “I am not worthy” as the *Aruch* says that “I am not worthy to ‘*duchan*’ – to ‘ascend the platform’”. In Rav Yerucham’s introduction to *Shabbos* 118b he references *Megilla* 3b and *Baba Basra* 20a that the term “*duchan*” in Aramaic means “platform”. Rav Yerucham further posits, based on *Yevamos* 47a and *Baba Basra* 145b, that Rav Yosi was a very humble man and that is why the term “*kohen*” was an error and “*kedai*” is more appropriate to describe his humility which served as the basis for the statement that “I not worthy to ascend the platform and confer a blessing on my colleagues”. Moreover, due to Rav Yosi’s humble character the final law usually follows his opinion.

Are Today's Kohanim's Definitive or Doubtful?

Rabbi Tzvi Hirsch Kalischer, a prized student of Rav Akiva Eiger, was one of the founders of the *Chovevei Tzion* movement. In his 1862 book *Derishas Tzion*, he averred that the Jewish settlement in *Eretz Yisrael* could augur the beginning of the redemption. He emphasized that the re-settlement of Israel did not include fighting wars and conquering the land from the gentiles, which would violate the three oaths.¹²

Rav Kalischer, who was a proponent of re-establishing and reinstating the sacrifices and related *avoda* on *Har Habayis*, sent a letter to his Rebbe, Rav Akiva Eiger ("RAE") questioning the basis for permitting *kohanim* to *duchan* today given the fact that after the destruction of *Bayis Sheini*, due to the ensuing persecutions and exiles the *kohanim's* status cannot properly be authenticated.

In response, RAE cited the Rivash's noted opinion that today we do not give the separated portion of the *challa*, a *mitzva d'rabbanon*, to a *kohen* because of their doubtful status. Likewise, here, in the case of *Birkas Kohanim* which may involve a *bracha levatala*, *kohanim* should not *duchan*. Yet, RAE replied that today it is proper for *kohanim* to rely on the *chazaka* of "definitive- *kohanim*" based on their respective ancestry. Just as a non-*kohen* may not give the Priestly Blessing, so too, a *kohen* who fails to bless transgresses a positive commandment. Because of this catch-22 situation, the Sages enacted that *Birkas Kohanim* be done even by "indefinite *kohanim*." Because of this enactment, a blessing (before giving the Priestly Blessing) is permitted.¹³

Rav Kalischer responded and argued that if a *kohen* can perform the *Birkas Kohanim* then according to the *mishna* in *Edios* 8:7¹⁴ which states that Eliyahu will determine the lineage of a putative *kohen* based on *chazaka* and not *nevua*, then by extension the *kohanim* should be permitted to perform other forms of *avoda* like

12 See Kesubos 111a which provides:

הווא מיבעי ליה לכדרבי יוסי ברבי חנינא, דאמר: שלש שבועות הללו למה? אחת שלא יעלו ישראל בחומה, ואחת שהשביע הקדוש ברוך הוא את ישראל שלא ימרדו באומות העולם, ואחת שהשביע הקדוש ברוך הוא את הגוים שלא ישתעבדו בהן בישראל יותר מדאי. *That verse is necessary for that which was taught by Rabbi Yosei, son of Rabbi Chanina, who said: Why are these three oaths (Song of Songs 2:7, 3:5, 8:4) needed? One, so that the Jews should not ascend to Eretz Yisrael as a wall, but little by little. And another one, that the Holy One, Blessed be He, adjured the Jews that they should not rebel against the rule of the nations of the world. And the last one is that the Holy One, Blessed be He, adjured the nations of the world that they should not subjugate the Jews excessively.*

13 See *Noda BiYehuda OC, Mahadura Kamma* §6 who states that the blessing before *Birkas Kohanim* is the basis for the *bracha l'vatala*.

14 *Edios* 8:7: Ben Zakkai, who heard it from his teacher, and his teacher [heard it] from his teacher, as a *halacha* [given] to Moses from Sinai, that Elijah will not come to pronounce unclean or to pronounce clean, to put away or to bring near, but to put away those brought nearby force and to bring near those put away by force.

korbanos. Moreover, Rav Kalischer argued that there is no greater *bitul aseh* than failure to perform the *avoda*.

RAE responded by emphatically stating that the underlying reason that *kohanim* today cannot perform the *avoda* is that the *kehuna* is based on the *chazaka* which is not definitive. As such, since we have a precedent that *kohanim* performed *Birkas Kohanim* continuously from the time of *Bayis Sheini*, then such *chazaka* establishes the basis for the continuation of such *avoda*. On the other hand, presently there is no *chazaka* for separating and giving *challa*, *terumos* and *masseros* to a *kohen*, and as such these services are suspended.

Conclusion

We have seen that the status of today's *kohanim* is a subject of a broad debate among *halachic* authorities. According to some, including Mabit, Maharit, and others, today's *kohanim* have the status of "definite *kohanim*," and must be treated as full-fledged *kohanim* for all intents and purposes. According to others, including the Rivash, *Shach*, Maharshal, *Magen Avraham*, Maharashdam, and others, the assumed *kohanim* of today are only "doubtful *kohanim*."

This dispute gives rise to several *halachic* ramifications:

- Outside the Land of Israel, can *challa* be given to a *kohen* (who is not otherwise *tamei*) to eat?
- Must one be careful to give *kohanim* precedence in all matters of *kedushah*, as prescribed by the *gemara* and *Shulchan Aruch*?
- Can doubt over a *kohen's* lineage be used as a possible source of leniency for marriages that are rabbinically prohibited to the priestly tribe?
- Can one assume that the *kohen* to whom one pays for the *pidyon haben* is a true *kohen*?
- If *kohanim* are "doubtful *kohanim*," how are they permitted to ascend the *duchan* for the Priestly Blessing?

May the *Mikdash* be speedily rebuilt, so that we should once again see *kohanim* at their appointed service.

Insights into the *Haggada* from the Skverer Rebbe in the *Sefer Nesivos Kodesh*

ADIV PACHTER



The Search for *Chametz* in our own *Reshus HaYachid* on the 14th: A Hint to a Real *Dveikus* with Hashem

The Skverer Rebbe quotes the *Sefer Zichron Zos* who quotes the *Mishna* in *Pesachim* that says “*Ohr laarba asar bodkin es hachametz.*” On the 14th of Nissan we check for *chametz*. He notes that the fourteenth specifically is a hint to *dveikus* to Hashem. *Hakadosh Baruch Hu* is called the *Yachid* of the World. And we know that a “*reshus hayachid*” is a private domain which contains an area of at least four by four *tefachim* and is generally surrounded by enclosures at least ten *tefachim* high. This is a hint to us that in order to reach true *dveikus B’Hashem*, we need to check for *chametz* in our own personal *reshus hayachid* on the night of the fourteenth!

Kol Chamira: The Yetzer Hara Hard at Work

The Skverer Rebbe quotes the Imrei Chaim of Vishnitz who frequently quoted the *tzadikim hakadmonim* on the *nusach* of the *kol chamira*. In truth, it is man's duty to always analyze our actions and live a life regularly focused on doing *teshuva* for any misdeeds of ours. However, the *yetzer hara* recognizes our pursuit for character improvement and self reflection and works arduously to prevent us from doing any sort of *teshuva*. The *yetzer hara* successfully tricks us into thinking that we have already fixed our misdeeds and have already done *teshuva*. It is our life mission to combat the *yetzer hara* and realize that we always need to continue to self reflect and do *teshuva*.

This is how he explains the *kol chamira*. We say *kol chamira u’chamia d’ika*

Adiv Pachter is a real estate professional in Los Angeles, CA.
He has been a member of Adas Torah since 2010.

b'reshusi. This is a reference to all of the improper things that we find within ourselves once we take the time to analyze our actions. Comes along the *yetzer hara* and says *D'Chamitey*; meaning; Do not worry! You already saw those misdeeds, you already addressed them; even though deep down the real truth of the matter is that we have not seen them and we are only first detecting these flaws now. The *yetzer hara* continues and says: *d'biartey*; don't worry, you already did *teshuva* on these misdeeds, you already eradicated all of your flaws. However, when we dig deep within ourselves, we know that we did not yet go through the process of *teshuva*; *d'lo biartey!*

If we lose focus, we can easily be fooled into thinking that we have nothing to work on and that we have no work to do in the character development arena. But, on Erev Pesach, we daven to Hashem that we have the strength to be *mevatel* the *yetzer hara* and make it *hefker k'afra d'aara*, so that we can focus on our *Avodas Hashem* and return to our Father in Heaven!

Kol Hamarbe L'saper, Harey Ze Meshubach: The Causal Relationship between Sippur Yetzias Mitzrayim and Current Day Miracles

The Skverer Rebbe quotes the *Kisvei Arizal* who comments on the *nusach* in the *Haggada* of "*kol hamarbe l'saper b'Yetzias Mitzrayim harey ze meshubach.*" The *Arizal* expounds on this and says that it means "*meshubach b'chasadim.*" The *sefarim* explain that through our delving into and telling over all of the miracles that we were *zoche* to, we cause that very same *shefa* of miracles to reoccur today. This is why the *Baal Haggada* says that in every generation we are required to view it as though we, ourselves are leaving *Mitzrayim*. Because in truth, through our *sippur Yetzias Mitzrayim*, we are *zoche* to new miracles today.

This is how he explains the *pshat* in the *pasuk* in *Tehillim* 111:4. Dovid HaMelech says "*Zecher asa niflaosav.*" With the explanation above, we can appreciate what this *pasuk* means. "*Zecher*" – when we remember the miracles that Hashem performed for us; "*asa niflaosav*" – our act of *zecher* causes a new revival of the *nissim* and *niflaos* that were done for our forefathers in *Mitzrayim*.

Further on this theme, he explains the *pasuk* in *Shemos* 10:2: "*Lemaan tisaper b'oznei bincha... vidatem ki Ani Hashem...*" Grammatically speaking, the *pasuk* should have concluded with "*v'yeidu ki Ani Hashem.*" The beginning of the *pasuk* focuses on our telling over the story of *Yetzias Mitzrayim* to our children so that they would know that Hashem is in control. If so, why then would the *pasuk* say that as a result of our telling the story over to our children, we will know that Hashem is in control? According to this *mehalach*, it makes perfect sense! Our telling over of *Yetzias*

Mitzrayim causes us, the ones who tell it over, to have a greater awareness of Hashem and His greatness through the newfound *hisorerus*, *nissim* and *niflaos* that we will experience as a result of telling over all of the miracles that Hashem had performed for our forefathers.

***Ha Lachma Anya*: Do we say it in Aramaic to Confuse the *Malachim* or to Show the Greatness of the Night?**

There are several reasons given as to why we say the paragraph of *Ha lachma anya* in Aramaic. One of the explanations is because we know that angels do not understand Aramaic and we do not want the angels hearing us praising Hashem for taking us out of *Mitzrayim* lest they make a case to Hashem that we were not worthy to be freed from *Mitzrayim*.

The Skverer Rebbe notes a fascinating twist on the topic from the Belzer Rebbe. Generally, we know that we are not supposed to daven in Aramaic because the angels would not be able to bring our *tefilos* to Hashem. However, for a sick person, we are indeed allowed to because the *Shechina* is right besides the sick person and when there is *hashraas haShechina*, there is no need for any ministering angels to receive the *tefilos* to bring to Hashem. Hashem Himself hears and receives those *tefilos*.

Saying this paragraph in Aramaic is a hint to the auspicious time where there is a revelation of the *Shechina* itself at our seder. This is also hinted to when we say “*U’vmora gadol, zo gilui Shechina.*”

Another Reason as to why we say *Ha Lachma Anya* in Aramaic: Averting a Potential *Kitrug* from the *Malachim*

The Skverer Rebbe quotes the *sefer She’eris L’Pinchas* who points out that generally when a person wants to come close to Hashem, he first needs to start with his own *hisorerus d’letata*. Man has to first put forth his own efforts to show Hashem that he is trying on his own to overcome his *yetzer hara* to do bad and rather channel his energy to come close to Him. Once Hashem sees this, He will lend His Hand and provide man with a boost from Above, which is called *hisorerus d’leayla*.

However, Pesach night is different and is an exception to the general rule noted above. On this night, Hashem sends down a burst of light from *Shamayim*, and even those who have not even made any attempt of their own to combat the *yetzer hara* are uplifted through the unique and special light that comes down on this night. By *Yetzias Mitzrayim*, Hashem took *Bnei Yisrael* out of *Mitzrayim* from the lowest levels, even though they had no *hisorerus* of their own.

We see that this concept is hinted to by the *Baal Haggada* when he says *v’yifsach*,

which connotes a *dilug*, skipping. As explained, generally the sequence of events is that in order to merit *hisorerus d'leayla* we first need to exhibit our own *hisorerus d'letata*. However, on the night of Pesach we skip this normal sequence and we jump right into the sea of light of Hashem, without any internal work of our own.

The Skverer Rebbe notes that angels are called *omdim* because they have no ability to grow and change their *madreiga*. This is in contrast to Man who are called *mehalchim* because we have the constant ability to move from *madreiga* to *madreiga* through our efforts. And the angels can not be *mekatreg* against man for having the ability to grow in spirituality while they cannot because man has a *yetzer hara* which angels aren't challenged with. Man has to persevere and fight the *yetzer hara* daily; it comes with the territory of being a *mehalech* with the potential to grow. But angels do not have this fight, so they are *omdim* without the potential to move at all.

But this whole dynamic only applies during the regular year. But on the night of Pesach, when anyone and everyone from *Bnei Yisrael* is *zoche* to the *Ohr Hashem* and the special gift of *hisorerus d'leayla*, regardless of their level and regardless of the efforts that they have put in to develop their own *hisorerus d'letata*, there is an opening for the angels to make a *kitrug* and complain against man. After all, on this night why should man have the benefit of this special *hisorerus* when they didn't do anything to deserve it. It is for this reason that we say *Ha lachma anya* in Aramaic, so as to prevent the angels from understanding what is transpiring and therefore to prevent this potential *kitrug* against *Klal Yisrael*.

The 50th Gate and the Ultimate Geula; The Importance of Giving Tzedaka Anonomously

The *pasuk* in *Shemos* 13:18 says: "*V'chamushim alu Bnei Yisrael m'Eretz Mitzrayim.*" The *Nesivos Kodesh* quotes the *Zohar HaKadosh* who points out that the word *chamushim* is written *chaser* (not in its full form) without the *vav*. The *Maase Rokeach* explains that *Bnei Yisrael* weren't *zoche* to *geula nitzchis* which is hinted to in the fact that the word *chamushim* is not written in its full form. The Skverer Rebbe quotes a *gemara* in *Rosh Hashana* 21b which says that the world was created with fifty gates of *bina* and all fifty gates were given to Moshe Rabbeinu with the exception of one. Since not all the gates were given to him, *Bnei Yisrael* did not merit for an eternal *geula*. However, *l'asid lavo*, when the 50th gate will be revealed, then we will be *zoche* to the final, eternal *geula shleima*.

The Skverer Rebbe proceeds to ask: How could it be that *l'asid lavo* we will merit the ultimate *geula* through the 50th gate, when even Moshe Rabbeinu wasn't *zoche*

to that 50th gate?! Who from our generation will be greater than Moshe Rabbeinu?!

In order to explain, he quotes the *gemara* in *Bava Basra* 9b which says: Someone who gives *tzedaka b'seser*, anonymously and quietly, is on a higher level than Moshe Rabbeinu! With this *gemara* in mind, we can now understand who can merit more than Moshe Rabbeinu; the one who gives charity secretly.

Now we can appreciate the words of “*Kol dichfin yeisey v'yeychol*” with a greater understanding. Generally, the way of a poor person is to stand outside and stretch his hand inwards in order to receive *tzedaka*. But if we give *tzedaka* to the poor person while he is outside, it makes our giving of *tzedaka* public! So, on Pesach night, we invite all poor people in need to come inside; we invite them to come sit down with us, inside our house! In this way, we will fulfill the mitzva of *tzedaka b'seser*, which is a much higher level and which will enable us to merit the ultimate *geula*. And this is why we end by saying that next year, we will be *bnei chorin*, we will merit the final *geula*!

Kol Dichfin: Are We Making False Promises?

We proclaim *kol dichfin*; all poor people: Please come to our house! But, are we really able to practically and logistically host all people that may hear this invitation? So, in making this invitation, it seems like we may be making an invitation that we could not realistically make good on. One of the explanations given in response to this question is that our rabbis have instituted the mitzva of *kimcha d'Pischa* before the *chag* of Pesach; we are encouraged to give charity to go towards funding the needs of poor Jews around the world. So, if we fulfill that mitzva properly, by the time *leil ha'seder* comes around, the amount of poor people still in need should be minimal. And it is those few poor people straggling behind that we want to be sure to invite to our houses for the Seder.

The Skverer Rebbe points out that this proclamation is actually us praising *Bnei Yisrael*. We are so confident that we as Jews must have fulfilled the mitzva of *kimcha d'Pischa* leading up to Pesach, that when it comes to *leil Haseder*, we confidently make the invitation to all poor people knowing that there will most likely not be many poor people unaccounted for.

Tisha B'av



Adiv Pachter

Insights into the *Bein HaMetzarim* Period leading up to Tisha B'Av from Rabbi David Pinto's *A'ira Shachar*

ADIV PACHTER



Rebbe David Pinto writes about the period leading up to Tisha B'Av in *A'ira Shachar*. The following is a *likut* of some of his teachings. He says that during the *Bein Hametzarim* it is incumbent upon all of us to do a *cheshbon hanefesh* and to be *mesaken* any bad *middos* that we may find within our personalities. He notes that there is a special *siyata d'shmaya* for anyone who strives to improve their *middos* during this time period.

A Lack of An Aliya in Torah & Ruchnius is Our Personal Churban

מִיִּהְיֶה חָכֵם וַיִּבֶן אֶת־זֵאת וְאֵשֶׁר דִּבֶּר פִּי־ה' אֵלָיו וַיִּגְדֶּה עַל־מָה אֲבָדָה הָאָרֶץ נִצְתָה כַּמְדָּבָה.

Who is the wise man who will understand this? Who is he to whom the mouth of Hashem speaks, that he may explain this? For what reason did the land perish and become parched like the desert..." (Yirmiyahu 9:11)

In the following *pasuk*, Hashem gives the answer to this question;

וַיֹּאמֶר ה' עַל־עֲזֹבם אֶת־תּוֹרָתִי אֲשֶׁר נָתַתִּי לִפְנֵיהֶם...

Hashem has said: Because of their forsaking of My Torah that I gave to them... (Yirmiyahu 9:12)

The time leading up to Tisha B'Av, the *Bein Hametzarim*, is a time for reflection; we all need to do a *cheshbon hanefesh*. It is clear that since the *Beis Hamikdash* has not been rebuilt, there are things that we are doing in our generation that are preventing

Adiv Pachter is a real estate professional in Los Angeles, CA.

He has been a member of Adas Torah since 2010.

the rebuilding.

Rav Pinto points out the choice of *lashon* that the *navi* uses. Why does the *pasuk* say *al ma* when it could have said *madua* or *me'eize tam*? "*Al ma*" means for what reason. So, what is the use of *al ma* coming to teach us? He explains that *al* is from the *lashon* of *aliya* and *ma* (45) is the same *gematria* as *adam* (45). The *pasuk* is coming to teach us that when we, *adam* (mankind) strive to grow spiritually and have an *aliya* in *ruchnius* through Torah learning and *yiras shamayim*, then there will not be an *avdon laaretz* or a *churban*. However, if we don't look for opportunities to grow spiritually and if we don't have an *aliya*, then by definition, we are falling and this is the ultimate *churban*, *rachmana litzlan*.

Rav Pinto quotes the *gemara* in *Berachos* that if a person encounters *yesurim*, he should look into his deeds. And if he looked into his deeds and finds that everything is in order, he should attribute the onset of *yesurim* to his *bitul Torah*. He explains that if someone is experiencing a "personal *churban*" with troubles befalling him, the first thing to do is to examine his deeds. And if he finds a spiritual lacking and downfall, then he can attribute the *yesurim* to that. However, if he finds his deeds to be in order and everything is fine from a spiritual perspective, then he should realize that even though he performs *mitzvos*, it does not mean that his Torah learning is not flawed. If he has *yesurim*, it is very possible that the root cause of his hardship is due to the fact that he does not have an *aliya* in his Torah learning and that in itself is a *churban*.

Our Limud HaTorah Has to be Enjoyable

Rav Pinto elaborates on what an *aliya* in Torah learning means. When the *pasuk* says that we abandoned Hashem's Torah, it does not necessarily mean that they did not learn Torah. Rather, it is very possible that they were learning, but if you learn without a *simchas halimud*, then that type of Torah is not what is desired. If you learn without happiness, then it is tantamount to forsaking Hashem's Torah. Because when joy is not flowing from your learning, then you are liable to distance yourself from Hashem and ultimately leave Him.

True Limud HaTorah is Predicated on Good Middos & The Root Cause of Sinas Chinam Is Bad Middos

Rav Pinto points out that, *Baruch Hashem*, today there is a great proliferation of Torah across the world. If so, he asks, why has *Mashiach* not yet arrived? He explains that it is not just Torah that Hashem wants. The *ikar tikun* that He craves is good *middos* and an overarching *yashrus* in our way of life.

We know that the first *Beis Hamikdash* was destroyed as a result of the three big

sins of *avodah zara*, *gilui arayos* and *shefichus damim*. However, after seventy years the *Beis Hamikdash* was rebuilt. The second *Beis Hamikdash* was destroyed because of *sinas chinam* and still has not yet been rebuilt. Rav Pinto raises the famous question: It seems puzzling that we were forgiven for the sins that caused the destruction of the first *Beis Hamikdash* but have not yet been forgiven for the sin of *sinas chinam* which seems far less grave a sin than the three cardinal sins!

Furthermore, he notes that it is peculiar that Avraham was insistent that Eliezer not to take a wife for Yitzchak from *Bnos Canaan*. Why were *Bnos Charan* more preferable than *Bnos Canaan* to Avraham? Charan also had *avoda zara* and there are even opinions that Lavan was Bilaam *HaRasha*. If so, why would Avraham want a girl from Charan over a girl from Canaan?

To answer these questions, Rav Pinto quotes the *mishna* in *Peah* that says “*V’Talmud Torah keneged kulam*.” Talmud Torah is the most important mitzva. However, if someone learns all of the Torah in the world but has bad *middos*, then their Torah is worthless.

The *mishna* in *Avos* (6:6) says that there are forty eight ways to acquire Torah. Rav Pinto points out that if you look at these forty eight ways, many of them relate to *bein adam l’chaveiro* and having good *middos*. This is to teach us that one may be very learned in Torah *yedios* and be a supposed *gaon* in Torah learning but still not have truly acquired the Torah, because in order to truly acquire and be one with the Torah, you need to have good *middos*, to be humble and to have an *ayin tova*, a good eye. Otherwise, there is no value to your Torah. This is why *Chazal* teach us that *derech erez kadma l’Torah*.

The Search for a Wife for Yitzchak: The Difference between Canaan & Charan

When Avraham Avinu sent Eliezer to look for a wife for his son Yitzchak, his main concern was finding a woman that was a *baalas midos tovos*; a woman with stellar *middos*. Therefore, he specifically sent Eliezer to Charan. The people of Canaan were people with bad *middos*, and as such, Avraham Avinu wanted to steer clear from Canaan. Granted, Lavan was a *rasha* but a redeeming quality was that the people of Charan at least had good *middos*. The Torah tells us that Lavan said the following to Eliezer: Come... why should you stand outside when I have cleared the house and place for the camels. And Rashi explains that Lavan cleared the house of *avoda zara* out of respect for Eliezer. This was a sign of *middos tovos* which is what Avraham Avinu was searching for.

The Redeeming Quality of Izevel: Her Hands and Feet were Spared from the Dogs

Rav Pinto shows the extent to which the *Hakadosh Baruch Hu* values *middos tovos*. He quotes the demise of Izevel, the wife of Achav. She was steeped in the *avoda zara* of Baal and was the source of much evil. And as such it was decreed that the dogs would eat and devour her flesh. However, Rav Pinto points out the fascinating *pesukim* in Melachim II; 9:35 that describe how when they went to bury her, they did not find anything left of her except the skull, the feet and the palms of her hands. He explains that *Chazal* teach us that the dogs did not touch Izevel's hands or feet because she engaged in *mitzvot bein adam l'chaveiro* with her hands and feet, and as such, the dogs did not devour her hands or feet!

The Mistake & Consequences resulting from Flattering King Agrippas: Duplicity and Bad Middos

Another example of the severity and far reaching consequences of bad *middos* that Rav Pinto brings is the *gemara* in *Sota* 41. The *mishna* in *Sota* discusses the mitzva of *hakhel*. The Torah was read by the king in public in the Temple at end of every seven years in front of the entire nation. When King Agrippas reached the *pasuk* in *Devarim* 17:5 that teaches that "you may not place over you as a king a foreigner who is not your brother," his eyes started to flow with tears as this *pasuk* disqualified him from being the king; Agrippas was a descendant of Herod. In seeing him cry the people tried to console him and said "Do not fear Agrippas, You are our brother, you are our brother." The *gemara* on this *mishna* says that when the people said this to Agrippas they became liable to destruction because they flattered Agrippas. The *Yerushalmi* notes many deaths occurred on that day as a result of the people flattering Agrippas. Many commentators discuss the reasoning behind the seemingly harsh and severe punishment doled out as a result of the people saying what they said to Agrippas. Rav Pinto also wonders why they were punished, as after all wasn't Agrippas a good king? He explains that in reality, the people did not feel that Agrippas was their brother. But externally they made it seem that they had brotherly feelings towards him. And this is a despicable *midda* which Hashem has no tolerance for. Hashem desired that they truly internalized the brotherly love for Agrippas and not have it remain something solely on the tip of their tongues while they festered ill feelings internally.

On a similar note, Rav Pinto quotes the fact that Yosef's brothers saw that their father loved Yosef most and so they hated him. The *pasuk* says that as such the brothers were not able to speak to him peacefully. Interestingly, Rashi points out that this was actually a praise of the brothers; although it was disgraceful that they hated Yosef, at least they were not "*echad b'peh v'echad b'lev*;" it is praiseworthy that they did not pretend to love him when they in fact hated him inside. From this, we see the importance of being straightforward and honest even if your emotions are not ideal.

Rav Pinto explains that the root cause of *sinas chinam* is bad *middos*. What transpired at the *seuda* of Kamtza and Bar Kamtza and the fact that none of the *Chachamim* that were at the *seuda* protested the bad *middos* of the host of the meal is the prototypical display of *sinas chinam*.

The Strong Connection between Eretz Yisrael and Toras Yisrael

Rav Pinto explains that *Eretz Yisrael* was given on condition that we keep the *mitzvos* of Hashem and go in His *derech*. He quotes the *pasuk* at the end of *Acharei Mos* that warns us not to become contaminated because “the Land became contaminated... and the Land disgorged its inhabitants.” He quotes the *Toras Kohanim* which compares it to the son of a king who happens to eat something that does not sit well with his stomach, which he proceeds to spit out. So too, *Eretz Yisrael* does not tolerate those who sin.

On Tisha B’Av we all sit on the floor and cry about the destruction of the *Beis Hamikdash* and *Yerushalayim* and about the bitter exile that we find ourselves in. On this day, we have to recognize and internalize the fact that the root cause of our *galus* from our Holy Land is directly correlated to our leaving *Toras Hashem* and leaving the *derech* of Hashem’s *mitzvos*. Hashem Himself says: *Al ma avda haeret? Al azvam es Torasi.*” Why did we lose *Eretz Yisrael*? Because we left the Torah. As we saw from the *pasuk* in *Vayikra*; the Land does not tolerate sinners.

With this in mind, Rav Pinto goes on to explain the *pasuk* in *Tehillim* 137:5: “*Im eshkachech Yerushalayim tishcach yemini.*” If we forget *Yerushalayim*, we should forget our right hand. He explains that *yemini* is a reference to Torah, because the Torah is referred to as the Right Hand of *Hakadosh Baruch Hu* as it says in *Tehillim* 118; “*Yemin Hashem romeyma.*” Dovid HaMelech is coming to teach us that *Yerushalayim* was forgotten and was lost only as a direct result of us forgetting our *yemini*; because we forgot the Torah!

Moshe Rabeinu begged Hashem to enter *Eretz Yisrael* and we know that he davened 515 times. The *Baal Haturim* points out that the word *Va’eschanan* is the *gematria* of 515, which is also the same *gematria* as the word *shira*. Rav Pinto explains that the Torah is called a *shira* as it says in *Devarim* 31:19: “*Ve’ata kisvu lachem es hashira hazos...*” Moshe Rabeinu pleaded with Hashem to be able to enter into the Land of Israel so that he could fulfill the *shira*, which is a reference to Torah.

May we internalize all of these lessons and strengthen ourselves to give the Torah the proper importance that it so deserves and with that may we merit the building of the *Beis Hamikdash* and to enter into the Holy Land to usher in *Mashiach* speedily in our days!

Lichavod Shabbos



Rabbi Eitan Lipstein

Eli Snyder

Daniel Weiskopf

Adiv Pachter

Eitan Gelb

Dr. Ira Hofer

‘No Thanks, I Already Heard *Kiddush* At Shul’: How Do I Properly Fulfill *Kiddush B’makom Seuda* On A Weekly Basis

RABBI EITAN LIPSTEIN



The word *kiddush* evokes a variety of emotions and correlations for many different people. Oftentimes, people are mainly enamored with what food coincides with the *kiddush* being made, perhaps neglecting the *ikar* of *kiddush* and the *berachos* themselves. Yet, perhaps the focus on food as opposed to the *kiddush* has some credence, as *kiddush* is a dual-faceted mitzva, requiring both wine and *seuda*. How we define the necessity to perform *kiddush b’makom seuda* will lend clarity to the myriad scenarios that occur in one’s home and at Shul, and the guidelines for ensuring that we fulfill our *kiddush* obligation according to *Halacha*.

The Source for *Kiddush B’makom Seuda*

In order to understand this discussion, we must first identify the source of the stipulation to perform the mitzva of *kiddush* in a place of *seuda*. The *gemara* in *Pesachim* (100b) presents a *machlokes* with regard to those individuals who make *kiddush* in Shul on Friday night.

אותם בני אדם שקידשו בבית הכנסת אמר רב די יין לא יצאו ידי קידוש יצאו
ושמואל אמר אף ידי קידוש לא יצאו.

With regard to those people who recited kiddush in shul, Rav said: They have not fulfilled their obligation to say a bracha over wine. [That is, the bracha over the wine in the synagogue does not enable them to drink wine

Rabbi Eitan Lipstein is the *Limudei Kodesh* Principal at Yeshivat Yavneh.
He has been a member of Adas Torah since 2021.

at home without an additional bracha.] However, they have fulfilled their obligation of kiddush. And Shmuel said: Even the obligation of kiddush they have not fulfilled [and they must recite kiddush again at home].

Rav states that those who make *kiddush* in shul on Friday night fulfill their requirement of making *kiddush*, while Shmuel states that they have not. Shmuel's rationale is given shortly thereafter as "*ein kiddush ela b'makom seuda*," - we only fulfill the mitzva of *kiddush* in the place where we have a meal. The Rashbam there (*d.h. af*) explains that this *halacha* is derived from the *pasuk* in *Yeshaya* (58:13), "*v'karasa l'Shabbos oneg*, and you will proclaim *Shabbos* a delight for you,' meaning in the same place where you proclaim *Shabbos* (make *kiddush*), there must also be a delight (*seuda*). The other possibility given by the *Rashbam* is not from a *pasuk* but rather from a *svara*. He explains that since the best way to perform *kiddush* is on wine, and on *Shabbos* we make wine a main part of our meal (*kovea seuda*), that means that wine and *seuda* are now a package deal of sorts, linked together for *mitzvas kiddush*.

Does Kiddush Need Seuda, or Does Seuda Need Kiddush?

Rav Moshe Feinstein (*Igros Moshe, OC, 4:63, Anaf 7 & 8*) writes that the two reasons cited by the *Rashbam* present two possible approaches to the requirement of *kiddush b'makom seuda*. Rav Moshe boils down the question to the following: does the *kiddush* need a meal to accompany it, or does the meal require that *kiddush* be made before it? A central question that comes out of this discrepancy is in a case where one makes *kiddush* in shul and then eats a little bit afterwards. In this common scenario in our communities, is the individual obligated to make *kiddush* again when he returns home for his *Shabbos seuda*, or has he already fulfilled his obligation via eating at shul? According to Rav Moshe, *v'karasa l'Shabbos oneg* points to the main aspect of *kiddush b'makom seuda* to be the *seuda*. The vital facet of the mitzva is that the *kiddush* must be made in the place where the *seuda* is taking place. Yet, according to the *svara* that *Rashbam* concludes with, the *kiddush* is the main component. Based on said logic, wine is the main component of the *seuda*, and as such the *seuda* must take place wherever the *kiddush* is made.

These differing interpretations lead to important practical differences and *nafka minos*. First, we need to establish what kind of meal is required to fulfill *kiddush b'makom seuda*. According to the approach that a meal is merely required to accompany *kiddush*, and *kiddush* is the focal point of the two, one does not need a true meal to fulfill this requirement. Even eating *mezonos*, or drinking an additional

revi'is of wine, would be sufficient to act as the accompanying meal following the recital of *kiddush*. Since the goal of the meal is to ensure that *kiddush* does not stand alone, and that it be recited where the meal is taking place to enhance the mitzva, it is sufficient if even a basic, non-bread, meal accompanies it. This interpretation would follow the *psak* of *Shulchan Aruch*, who quotes the *Geonim* to further solidify this stance.

כתבו הגאונים הא דאין קידוש אלא במקום סעודה אפילו אכל דבר מועט או שתה כוס של יין שחייב עליו ברכה יצא ידי קידוש במקום סעודה וגומר סעודתו במקום אחר ודוקא אכל לחם או שתה יין אבל אכל פירות לא: הגה ולפי זה היה מותר למוהל ולסנדק לשתות מכוס של מילה בשבת בשחרית אם שותין כשיעור [ב"י] אבל נהגו ליתן לתינוק. (שלחן ערוך או"ח רעג:ה)

The Geonim wrote that kiddush may be recited only in the place of one's meal, but even one who ate something small or drank a cup of wine that required a blessing over it has fulfilled his obligation regarding kiddush at the place of the meal, and finishes one's meal in another place; and specifically if one ate bread or drank wine. But if one ate fruits, no (he does not fulfill his obligation). Rama: Because of this, it was permissible for a mohel and a sandak to drink from the cup of the bris on Shabbos in the morning if they drank a shiur [Beis Yosef]. But it is the custom to give it to the baby [Hagahos Maimoni Chapter 29]

Yet, according to the second interpretation of Rav Moshe, that *kiddush* and wine establish the meal as *seudas Shabbos*, then a meal consisting of bread is necessary, as without it, the *seuda* is not considered a Shabbos meal. Based on the second approach of Rav Moshe, the meal is the focal point, as opposed to the *kiddush*. As such, *mezonos* or wine cannot truly establish *seuda*, which means that the *kiddush* made prior to eating at Shul does not successfully establish any type of meal.

A second practical difference between these two approaches may be whether one fulfills *kiddush* without eating or drinking anything afterwards. According to the *Geonim*, and the opinion of *Shulchan Aruch*, *kiddush* cannot stand alone without any food afterwards. One clearly does not fulfill *mitzvas kiddush* in this manner. Furthermore, it would be *assur* to drink the *kiddush* wine when not eating afterwards, as failing to eat afterwards would classify drinking the *kiddush* wine as a violation of the *issur* to drink before making *kiddush*.

How Do We Define *Oneg*?

If one were to rely on the first reason of the *Rashbam*, and follow the *psak* of the *Geonim*, as cited in *Shulchan Aruch*, that would mean that eating *oneg* (delight) after *kiddush* would be a sufficient way of fulfilling *kiddush b'makom seuda*. The question then becomes, how do we define *oneg*? *Beis Yosef* (OC 273:5 s.v. *kasvu Hagaonim*), explains that a small amount of bread would suffice, as would drinking a cup of wine. The *Magen Avraham* famously goes a step further (*Orach Chaim* 273: 11):

פירות לא. בש"ג כתב דאף בפירות דיו דכל סעודת שבת נחשבת קבע ע"ש ודעת הטור והש"ע
 עיקר מ"מ נ"ל דבאוכל מיני תרגימ' מה' מינים יצא דהא עכ"פ חשיבי טפי לסעודת שבת מיין.
*The Shiltei Giborim writes that even fruits suffice; that all seudas Shabbos
 is considered permanent. And according to the Tur and Shulchan Aruch, the
 primary (way to fulfill) is nevertheless mentioned earlier concerning one who eats
 minei targima from the five species (of grain), as it is even more significant for
 seudas Shabbos than drinking wine.*

The *Magen Avraham* explains that if a *seuda* for *Kiddush* purposes includes wine, then certainly it would include '*minei targima*', types of cakes and cookies. This *chiddush* of the *Magen Avraham* is considered '*Minhag Yisrael*', as by almost any *kiddush* in any *shul* in the world, it is commonplace to have *kiddush* with *mezonos* as the *seuda*.

Many *poskim* agree with the *psak* of the *Magen Avraham*. While a large faction of them feel that it is ideal that *seuda* consist of bread, nevertheless if one does not eat bread, *chamaishes minei dagan* would suffice (which would presumably require one to eat a *kezayis* in 3-4 minutes, or the amount of time considered *k'dei achilas pras*) given that the *bracha* of *mezonos* is recited, as noted by Rav Shlomo Zalman Auerbach in *Shmiras Shabbos K'hilchasa* (54:22).¹ Rav Shlomo Zalman also *paskens* that, *b'sha'as hadechak*, if one is ill and cannot eat grain products for *kiddush b'makom seuda*, one can drink a *revi'is* of wine or grape juice in order to be *yotzei* (*Shmiras Shabbos K'hilchasa*, 54:23)

Although there are some *poskim* who maintain that one may fulfill the *seuda* obligation by eating fruit or *shehakol* items after *kiddush*, especially if they are cooked (*Kitzur Shulchan Aruch*, 77:16), this *halacha* is reserved for an unideal scenario, such as a *choleh* who is weak and needs to eat and has no baked/cooked *mezonos* items available. As such, one who relies

1 Rav Shlomo Zalman also encouraged people to say the *bracha* of *mezonos* on two pieces of cake, rather than one. Since the cake takes the place of the *challah*, the two pieces of cake represent the two *challos*. Additionally, if the *shul kiddush* counts as a meal, then one's subsequent lunch is the third meal. According to Rav Shlomo Zalman, if one forgets *retzei* at lunch after eating at a *kiddush* with the intent that it count as a meal, he would not repeat *birkas hamazon*, as repetition only occurs during the first two Shabbos *seudos*.

on this *kula* must repeat *kiddush* at home before the meal. While there is no *chiyuv* to repeat *kiddush* at home if *mezonos* items were eaten after *kiddush*, it is best to do so, especially for one who made *kiddush* on less than a *revi'is* of whiskey or the like.

Yet, it is not enough to simply make a bracha on *mezonos* after hearing *kiddush* (in a scenario where one does not drink a *revi'is* of wine); rather, one must eat enough *mezonos* for it to be considered *seuda*. How much must one consume to meet the requirements of *seuda*? According to the *Mishna Brura* (273:25), the *mekadesh* and those who hear this *kiddush* must eat a *kezayis* of bread or a *kezayis* of *mezonos*, or an additional *revi'is* of wine or grape juice, but he would not be *yotzei* with *chamar medina*.

או שתה יין: וכ"ש אם אכל מיני תרגימא מה' מינים דיצא דהם חשיבי טפי לסעודה שבת מיין אבל שכר ושאר משקין אפילו אם היו חמר מדינה אין יוצא בם במקום סעודה דלא סעיד הלב כמו יין. ועיין בחדושי הגרע"א ובתו"ש שהוכיחו דלכמה ראשונים אינו יוצא ידי קידוש במקום סעודה ע"י כוס יין וע"כ נראה שאין להקל בזה אלא במקום הדחק.

And all the more so if one ate minei targima from the five species of grain, which one is yotzei through, since they are more significant in regards to seudas Shabbos than wine. However, beer and other drinks, even if they are classified as chamar medina, are not able to be used in order to fulfill kiddush bemakom seuda, as they do not satisfy the heart in the way that wine does.

Pushback of the Vilna Gaon

While it has become widely accepted as *Minhag Yisrael*, not everyone agrees with *Magen Avraham's* opinion. Many are reliant on wine or *mezonos* fulfilling one's *chiyuv*; however, even among those who *pasken* so, there those who are careful to have a *seuda* of bread anyhow. Rabbi Akiva Eiger (*Orach Chaim* 273, 7 & 9) takes issue with the leniency of the *Magen Avraham* and argues that neither wine nor *mezonos* should fit in the *seuda* category.

The Vilna Gaon famously pushed back on this leniency as well, and insisted that his *kiddush* be made exclusively in conjunction with a Shabbos *seuda* with bread. Although the Vilna Gaon's opinion is considered a minority, there are bevy of *poskim* who hold that it is preferable to be careful to fulfill *mitzvas kiddush* with a full *seuda*.²

² *Shemiras Shabbos K'hilchasa* (vol. 2, Ch. 54: 22) writes that it is *l'chatchila* to be *machmir* on making *kiddush* with actual bread as the *seuda*. Additionally, it is said that the Chazon Ish was *machmir* for the Vilna Gaon's *shita* for himself, but not for others (*Orchos Rabbeinu* vol. 1, pg. 125).

Based on this, as well as the opinions of many *Rishonim*, there are those who are *makpid* not to make *kiddush* unless attached to a full bread-based *seuda*.

The Gra's reasoning is centered on the perspective of *kiddush*, particularly in its relation to *seudas* Shabbos. It is logical to interpret the role of *kiddush* at the Shabbos meal as organic. According to this approach, *Chazal* specifically enacted the mitzva of *kiddush al ha'kos* in the context of a true meal consisting of bread. Meaning to say, one would only fulfill *kiddush* if followed by a meal of bread. This is the position of the Vilna Gaon (*Maaseh Rav* 122) as understood by the *Biur Halacha* (273:5):

כתבו הגאונים וכו' - ובספר מעשה רב כתב שהגר"א אף בקידוש היום לא היה מקדש אלא במקום סעודה גמורה ולא מיני תרגימא או יין
And in the Sefer Maaseh Rav, it is written that the Gra, even for kiddush during the day, would only make kiddush in a makom of seuda gemura (bread-based), and not when centered around minei targima or wine.

What is the justification for following the *Magen Avraham* instead of the Vilna Gaon?

As noted earlier, the *shita* of *Magen Avraham* is widely accepted amongst most shuls. Yet, the logic of and cache of the Gra is air tight. As such, one must ask: why do we not follow the opinion of the Vilna Gaon? In his *sefer Eretz Ha'tzvi* (pg. 47), Rav Hershel Schachter *shlit"a* quotes his rebbe, Rav Yosef Dov HaLevi Soloveitchik *zt"l*, who provides a novel approach and insight as to why we tend to shy away from following the Gra in this *machlokes*.

ומנהג העולם שביום השבת בבקר אומרים קידוש, וטועמים מיני תרגימא בכדי לצאת י"ח קידוש במקום סעודה, ביאור בזה רבנו שנראה שיסודו בצירוף השיטות, וכעין ספק ספקא, שמא הלכה כדעת הגאונים הנ"ל, ושמא הלכה כהראב"ד (פכ"ט משבת ה"י) דמותר לאכול קודם קידוש היום. אבל בליל שבת, לא נהגו להקל כדעת הגאונים, ולהחשיבו כקידוש במקום סעודה ע"י יין או מזונות. [ומג"א ס' רע"ד סק"ב לא כ"כ, אלא מי שאינו רוצה לאכול סעודת הלילה יאכל ג' הסעודות ביום, ויקדש בלילה וישתה עוד רביעית כדי שיהי' נחשב הקידוש במקום סעודה. הרי דס"ל דאף בלילה אפשר לסמוך אדעת הגאונים שהביא המחבר, אף דליכא ס"ס וצירוף שיטת הראב"ד הנ"ל. ולפי דעת רבנו, שיחי', שמנהג העולם מיוסד אצירוף השיטות, מן הנכון לקדש עוה"פ על היין בתחילת הסעודה של פת שיאכלו בבית, בכדי לקבוע אותה לשם סעודת שבת, דשמא אין ההלכה כהגאונים אלא כהגר"א, וכאן אין עוד שיטה לצרף, כי הראב"ד ג"כ מסכים דבעינן קידוש במקום סעודה אף ביום, אלא שהקיל, שהוא סובר שאין איסור לאכול קודם קידוש ביום.

And the custom of the world is that on Shabbos day, in the morning, we recite kiddush and we taste minei targima (cakes, cookies etc.) in order to be yotzei our obligation of kiddush b'makom seuda. Rabbeinu (Rav Soloveitchik zt"l) explained that the root of this practice is a combination of opinions, and a type of sfek sfeika. Perhaps the halacha follows the Geonim (mezonos following kiddush would sufficiently fulfill the obligation), and perhaps the halacha follows the Ra'avad, that a person is allowed to eat prior to the daytime kiddush. But on Shabbos night, we are not of the custom to follow the leniency of the Geonim, and consider fulfilling kiddush b'makom seuda through wine or mezonos. Yet the Magen Avraham does not write this way, rather anyone who does not want to eat seuda at night is in fact permitted to eat three seudos during the day and instead make kiddush at night and drink an added revi'is (of wine) to consider the kiddush as one that was done b'makom seuda. The reasoning for this being that even at night one can rely on the opinion of the Geonim that the Mechaber brings, even without the sfek sfeika and combining this opinion with that of the Ra'avad. And according to Rabbeinu (Rav Soloveitchik zt"l), the minhag of the world is rooted in combining these opinions, and that it is proper to make kiddush once more, on wine, at the start of the bread-based seuda that one eats at home, in order to establish the eating as a proper seuda, because perhaps the halacha does not follow the opinion of the Geonim, and instead follows the opinion of the Gra. And here, there is no other opinion to combine, because the Ra'avad also agrees that we need kiddush b'makom seuda during the day as well, rather he is lenient, since he holds that there is no issur to eat prior to daytime kiddush.

Rav Schachter writes that the Rav zt"l was of the opinion that the *minhag* of following *kiddush* with *mezonos* on Shabbos morning stems from a *sfek sfeika*, a double doubt (where we tend to be lenient). Rav Soloveitchik explains that, on the one hand, it is possible that the *halacha* follows the *Geonim* who permit *kiddush* being followed by a *seuda* of *mezonos* (the first *safeik*/doubt). Yet, on the other hand, even if *kiddush* must be followed by a true meal, against the opinion of the *Geonim*, perhaps the *halacha* follows the *Ra'avad* (*Hilchos Shabbos* 29:10) who allows one to eat prior

to *kiddush* on Shabbos day³ (albeit a *safeik*/doubt, nonetheless).

Therefore, Rav Soloveitchik explained that there is a clear discrepancy between *kiddush* made at night, versus the *kiddush* made by day: The *minhag* on Friday night, where this *sfeik sfeika* does not exist, is to follow *kiddush* with a full meal of bread. There is no *sfeik sfeika* Friday night because even the *Ra'avad* forbids eating prior to Friday night *kiddush*.

While it is true that on Shabbos day many people do not repeat *kiddush* at home after *kiddush* in shul, Rav Soloveitchik *zt"l* felt that the correct *minhag* would be to say *kiddush* again at home before one's *seuda*. While eating *mezonos* after *kiddush* may be a reliable practice due to the *sfeik sfeika*, there is no *sfeik sfeika* to justify ingesting *kiddush* prior to *seudas* Shabbos. As such, the *minhag* has generally been to say *kiddush* again prior to the *seuda* of Shabbos day as well.

Is there a difference between Shabbos Night and Shabbos Day? Can I rely on Mezonos on Friday Night to fulfill Kiddush B'makom Seuda?

Although the *Magen Avraham* did not distinguish between the Friday night and Shabbos day *kiddush*, and held that his *psak* should apply equally,⁴ Rav Yitzchak Elchanan Spektor, differentiates between the two. He writes that on Shabbos day, when *kiddush* is only mandated on a *d'rabbanan*⁵ level, one may certainly rely on *mezonos* as a *seuda*. Yet, on Friday night, when *kiddush* is an actual *chiyuv d'oraysa*, he maintains that one should not rely on mere *mezonos*, but should ensure that *kiddush* is recited along with a full bread *seuda* (*Shu"t Ein Yitzchok* OC 12:11). This is also why Friday night *Kiddush* is seldom performed with *mezonos* instead of *hamotzi*,⁶ which is far more prevalent on Shabbos day.

While *kiddush* on Shabbos day is given the moniker of "*Kiddusha Rabba*", the

3 On Friday night, one may not eat or drink before *kiddush*, unlike on *Shabbos* morning where one may drink water, tea or coffee before *Shacharis* (after *brachos*) according to most.

4 Interestingly, the *Magen Avraham* (OC 274:2) doubles down to a certain extent and *paskens* that if a person decides to not eat a meal on Friday night, he/she may eat three meals on Shabbos day instead. In this case, he holds that one should recite *kiddush* Friday night and rely on the *Geonim* that it is sufficient for *kiddush* to be followed by merely *mezonos* or an additional *revi'is* of wine.

5 If one does not have (or is unable to drink) wine or grape juice on Shabbos day, one may recite *kiddush* on a *revi'is* of *chamar medina*, ideally an alcoholic beverage including schnapps or beer. (When reciting *kiddush* on schnapps, one should use a cup that holds a *revi'is* and drink a *m'lo lugmav*.)

6 Many *yeshivos* following the *Chazon Ish* will make *kiddush* on Simchas Torah night on *mezonos*, as the *kiddush* on *Yom Tov*, even at night, is also *d'rabbanan*. (The *Chazon Ish's* ruling for making *kiddush* on *mezonos* as the *seuda* on Simchas Torah night is cited in *Piskei Teshuvos* 273, at the end of footnote 68).

Great *Kiddush*, it is somewhat ironic, as it is merely a way of giving *kavod Shabbos*. Rashbam (*Pesachim*, 106a, *amar*) explains the reason why we make *kiddush* on Shabbos day is *l'chalek bein midas Shabbos l'middas chol*, to showcase the difference between *chol* and Shabbos. Although there are other rationales to explain why we call the seemingly less weighty *kiddush* with a title of such gravitas, the accepted reason is that it is simply '*lashon sagi nahar*', a euphemism. *Shabbos* day *kiddush* is called 'Great' because it actually is less important as the Friday night *kiddush*. The only necessary facet of Shabbos day *kiddush* is the *bracha* of '*Borei Pri HaGafen*'.⁷

However, the Brisker Rav, Rav Yitzchak Zev Soloveitchik, is bothered by the *halachic* fallout of *kiddush* made during the day (*Likutei HaGriz* Volume II, Page 16). He explains that if Shabbos day *kiddush* is just a *bracha* of '*Borei Pri HaGafen*' on the wine as a vehicle of *kavod Shabbos*, then isn't it a '*Birkas HaNehenin*', and not a '*birkas mitzva*'? If it is in fact a '*birkas hanehenin*', then *halachically* one must partake of the item that the *bracha* was recited on! As such, the Brisker Rav felt that one must at least taste the *kiddush*; otherwise, how does he fulfill his obligation? While this seems to be a strong *chumra*, and is not accepted by many (*Shemiras Shabbos Kehilchasa*, 50:18), it is one that the Brisker Rav did follow.

What is the definition of *Makom*? How do I know if I am in my *Kiddush*

Location?

The final questions to unpack relate to our understanding of *makom*: How far may one stray from the location in which he made *kiddush* in order to eat his meal? Must a person eat in the exact spot where he made *kiddush*? Can he move to a different room? Can he move to a different house?

The *gemara* (*Pesachim*, 101a) quotes Rav Anan bar Tachlifa as saying that he saw Shmuel make *kiddush* on the top floor of his house, and then descend to the bottom floor to eat his meal.

אמר להו רב ענן בר תחליפא זימנין סגיאיין הוה קאימנא קמיה דשמואל ונחית
מאיגרא לארעא והדר מקדש.

Rav Anan bar Tahalifa said to them: Many times I stood before Shmuel, and he descended from the roof to the ground and recited kiddush again.

⁷ Rav Sternbuch (*Shu"t Teshuvos V'Hanagos* vol. 1, 164 s.v. *v'taam*) explains that Chazal wanted people to realize that Shabbos day *kiddush* is simply the *bracha* of '*Borei Pri HaGafen*', and one can fulfill *kiddush* by merely saying this *bracha*. Therefore, they called it 'the Great *Kiddush*' so that everyone should realize the *bracha's* importance in fulfilling their *chiyuv*.

The *Mishna Brura* (OC 273:8) writes that such a situation does not require *kiddush* to be repeated, since he is under one roof. The *Tur* (OC 273:1) cites Rav Sar Shalom Gaon who held that one may move to a different room to eat his meal, provided that he can see the second room while he is making *kiddush*. The *Tur* himself states that a person may move around within his house, but may not eat in a different house other than the one in which he made *kiddush*.

The *Yerushalmi* in *Sukka* (*Perek 4, halakha 5, 17b*) discusses a situation that falls in between the scenarios laid out by the *Mishna Brura* and *Tur*:

רבי יעקב בר אחא בשם שמואל. קידש בבית זה ונמלך לוכל בבית אחר מקדש. רבי אחא רבי חנינא בשם רב (הושעיה). מי שסוכתו עריבה עליו מקדש בלילי יום טוב האחרון בתוך ביתו ועולה ואוכל בתוך סוכתו. אמר רבי אבון. ולא פליגין. מה דאמר רב. בשלא היה בדעתו לוכל בבית אחר. מה דאמר שמואל. בשהיה בדעתו לוכל בבית אחר.

Rabbi Yaakov bar Acha in the name of Shmuel: If one made Kiddush in one house and changed his mind to eat in another house, he must make Kiddush. Rabbi Acha, Rebbi Chinena in the name of Rav (Hoshaiah): One who loves his sukkah makes Kiddush of the last yom tov in his house and eats in his sukkah. Rabbi Abun said, they do not disagree. What Rav said was, if he did not have the intention to eat in another house. But what Shmuel said was if he had the intention to eat in another house.

The *gemara* teaches that a person whose *sukka* is pleasing to him may make *kiddush* in his house on the night of *Shemini Atzeres* and then go eat in the *sukkah*.⁸ However, what is the *halachic* status of the *sukka*? Is it considered to be a separate room or a separate house? How do we *paskin* on a practical level?

The *Aruch HaShulchan* (OC 273:2) offers two possible *svaros*.

והוא הדין מבית לסוכה, כשחדר אחר אינו מפסיק - חשיב כמפינה לפינה, כיון דהיא דירת עראי - בטילה להבית, וחשיב כמפינה לפינה. והמחיצה שבין הבית להסוכה - לא חשיבא מחיצה להפסיק, כיון דאינה אלא משום מצות סוכה.

And this is the law from the house to the sukkah, when another room is not being mafsik (impeding/interrupting). In such a scenario, it is considered like going from corner to corner, as since the sukkah is a temporary dwelling, it's batel (nullified) to the house, and considered like going from one corner

⁸ Making *kiddush* in the *sukka* would create the problem that it would appear that the person was adding on an eighth day to the mitzva of *sukka*, a violation of “*bal tosfif*” (adding on to commandments/*mitzvos*).

(of the house) to another corner. And the barrier that's between the house and the *sukka*, is not considered a barrier that interrupts or impedes, since it is only there due to *mitzvas sukka*.

The *Aruch HaShulchan* writes that the fact that a *sukka* is a temporary structure, it is considered like another room of the house, lacking any real importance of its own. His second *svara* (via citing the opinion of the *Rama*) is that since the walls of the *sukka* are made only for the purpose of the *mitzva*, and not to be used, they do not form a real barrier/*mechitza*, and the *sukka* and the house can be considered as one.

The *Biur Halacha* (273:1) writes that if one hears *kiddush* in one room, and intends (has *da'as*) to eat in a different room in the same building, he may eat in the other room. This is considered *l'chatchila* if he can see the other room while saying *kiddush*. If he cannot see the other room, he may be only *yotzai b'dieved*.

It would appear that it is simplest, and most preferable, to recite *kiddush* in the place where one is eating. At a typical bread-based *seuda*, this tends to be the arrangement and circumstance. Yet, when *mezonos* is acting as the *seuda*, it can sometimes be murkier. If someone were to make *kiddush* in his home and utilize *mezonos*, should he fail to have *mezonos* available in the room where *kiddush* is being made, there would clearly be what to rely on in order to fulfill his obligation. Certainly if he could see into the room where the *mezonos* is available, he would fulfill his obligation.

Moreover, based on the opinion of the *Biur Halacha*, he may have room to be *yotzei* his *chiyuv* by having in mind that he'll be eating his *seuda/mezonos* in another room. This scenario is commonplace in any shul, as oftentimes the Rav or *mekadesh* will recite *kiddush* in the shul, before migrating to the social hall or *kiddush* room. In such a scenario, all of those being *yotzei* are aware of where *kiddush* is taking place, thereby having *da'as* that they will be eating *seuda/mezonos* in a different room. Yet, some are *makpid* that the *mekadesh* drink a *revi'is* of wine or grape juice in the shul itself, or even ingest a *kezayis* of *mezonos* there as well, to account for the various opinions cited above.

In the same vein of being *yotzei* through the *mekadesh*, must one be careful to not be *mafsik* between hearing *kiddush* and ingesting the *mezonos* that is acting as *seuda*? After all, in a scenario where the *kehilla* is required to walk into another room once *kiddush* is complete in the shul itself, it can be increasingly difficult not to speak to another or wish someone a 'Good Shabbos'! The *Rama* writes (*OC* 273:3) that one is required to eat in the place he heard *kiddush* immediately or right away

(*l'alter*).⁹ The *Mishna Brura* takes this very literally and clarifies that *l'alter* means that one should not interrupt (be *mafsik* between *kiddush* and eating *mezonos*) even a short amount of time. This would seem to require zero talking or communication amongst any of the shul goers, prior to ingesting *mezonos* or *seuda*.¹⁰

However, we tend to rely on *Aruch HaShulchan* (OC 273:4) who writes:

ויראה לי דלאלתר אין הכוונה תיכף ממש בלי הפסק רגע, אלא כלומר שלא ימשוך
זמן רב.

And it appears to me, that the intention of 'immediately' (l'alter) is not to eat literally right away, without interrupting even for one moment. Rather, what it means to say, is that one should not wait a long time (or stretch out the interruption longer than necessary).

According to *Aruch HaShulchan*, the instruction of Rama to eat immediately is not a literal one. Rather, a person should look to do so as soon as possible and not elongate the time in between *kiddush* and the *bracha* of *mezonos* longer than necessary. However, should it take him time to arrive at the room that houses the food, he would be permitted to speak in his efforts to consume *mezonos/seuda*.

⁹ The language of *l'alter* is also used by *Shulchan Aruch HaRav* (OC 273:5)

¹⁰ *Shemiras Shabbos Kehilchasa* (vol. 2, Ch. 54:46-47) discusses varying opinions about how much a person must be alacritous in fulfilling the suggestion of the Rama to eat *l'alter*, immediately. Amongst these opinions, he quotes the *Siddur Ya'avetz* of Rav Yaakov Emden who is rather *machmir* and says that a person should not interrupt longer than 22 *ama*, which is roughly equivalent to 12-16 seconds or so.

Love and Redemption: Exploring the Themes of *Lecha Dodi*

ELI SNYDER



Written by Rav Shlomo Alkabetz in Tzfat during the time of the Arizal, *Lecha Dodi* is arguably the centerpiece of the inspiring *Kabbalos Shabbos* liturgy. Interesting to note is that despite its centrality to the Shabbos *davening*, the majority of the stanzas in *Lecha Dodi* are instead focused on the desolation of Jerusalem in exile and a call to arise and rebuild the Holy City and the joy that the Redemption will bring. The other pervasive theme in the prayer is the focus on the *Shabbos Kalla*, the bride, and the joy of that union when she arrives. What emerges from *Lecha Dodi* are three elements: Shabbos, *Geula* and marriage, and understanding how these ideas intertwine can provide a much deeper appreciation for the prayer and the overall *Kabbalos Shabbos* experience.

In the 1st chapter of his *sefer Yichud HaShabbos*, Rav Avraham Tzvi Kluger, a Breslov luminary, draws the parallel between *Kabbalos Shabbos* and the *Kabbalos Kalla* at a Jewish wedding. There is a tremendous *simcha* when the *choson* greets his bride at the *badekin*, and the spreading of her veil over her head is according to some authorities the initiation of the *nisuin* process, a miniature *chuppa*. So too, we sing to our *dodi*, beloved, to join us in greeting the *Shabbos Kalla*, in a parallel matrimonial ceremony. The language of *dodi* alludes to the male quality of the Divine presence, as a homiletical reading of *Shir HaShirim* clearly illustrates;¹ the quality of having a *hashpa'a*, a giving, spiritual outflow from Hashem. The Shabbos bride represents the *Shechina*, the female quality, that of receiving and cultivating the spiritual energy. In *Lecha Dodi*, we are just beginning Shabbos and are celebrating the union of the male and female dimensions. The first stanza of the prayer states:

1 e.g. “Kol Dodi Dofeik,” “Ani L’Dodi V’Dodi Li,” etc.

Eli Snyder works as an engineer in pharmaceutical manufacturing.
He has been a member of Adas Torah since 2010.

...שמור וזכור בדיבור אחד.

'Observe' and 'Remember' in one act of speech.

“Zachor” is again the male energy, sharing its root with “zachar” the word for man, and “Shamor” is the female.² We know that all the *mitzvos* of Shabbos are taught in these two words; “Zachor” refers to the positive commandments, and “Shamor” the negative. Following this theme, women are obligated in all negative commandments but, with exceptions, not time-bound positive *mitzvos*. So on Shabbos, these two words are unified, *b'dibbur echad*. The ties between marriage and Shabbos begin to emerge.

Lecha Dodi also draws a parallel between Shabbos and the *Geula*, the ultimate redemption and rebuilding of the *Beis Hamikdash*. The prayer is not unique in its eschatological references. In fact many *zemiros* make mention of a longing for *Moshiach*. The end of *Menucha V'simcha* states:

יזכו לרב טוב המתענגים בה, בביאת גואל לחיי העולם הבא.

Those who delight in [Shabbos] will merit a great reward, the coming of the Redeemer and life in the World to Come.”

In *Kol MiKadesh Shvi'i*, we sing:

אוהבי ד' המחכים בבנין אריאל, ביום השבת שישו ושמחו כמקבלי מתן נחליאל.

Lovers of Hashem, who await the building of the Temple, be joyful and happy on Shabbos as if receiving Hashem's inheritance.

Most explicitly in *Ma Yedidus* it states in the final stanza:

מעין עולם הבא, יום שבת מנוחה.

A glimpse of the World to Come is the day of Shabbos rest.

There is the element that those keeping Shabbos will merit to see the *Moshiach*, but even deeper, the experience of Shabbos is a taste of the ultimate Redemption. Stated inversely in the *Mishna Tamid* 7:4, when the *Leviim* would sing their Psalm for Shabbos they were in essence singing:

מזמור שיר לעתיד לבא ליום שכולו שבת מנוחה לחיי העולמים.

² Rav Moshe Weinberger notes an interesting discrepancy between the *Talmud Bavli* and *Talmud Yerushalmi* regarding the well known *aggadata* that if all of *Bnei Yisrael* kept Shabbos, it would bring the *Moshiach*. The *Bavli* says it must be two *Shabbosos* and the *Yerushalmi* says it can be one. He explains that only in *Yerushalayim* can we achieve the contrasting Shabbos elements “Zachor” and “Shamor” simultaneously since that is the place of true *Yichud Hashem*.

A psalm a song for the time to come, for a day that will be entirely Shabbos and rest for everlasting life.

The experience of Shabbos and *Olam Haba* are deeply intertwined.

Before exploring the thematic connection between marriage and Shabbos and also *Moshiach* and Shabbos, to complete the triangle it is worth seeing the link between marriage and *Moshiach*. In *Megillas Eicha*, the prophet Yirmiyahu describes the desolation of Jerusalem after the destruction of the Temple and the very first verse laments:

איכה ישבה בדד העיר רבתי עם היתה כאלמנה.

Oh how she sits alone. A city once teeming with people sits like a widow.
(Eicha 1:1)

Without the *Beis Hamikdash* and Hashem's presence within, Jerusalem is like a wife that lost her husband. When the *Mishkan/Beis Hamikdash* were standing, the *keruvim*, sitting on the *Aron Kodesh*, in the deepest, most private chamber, represented the relationship between Hashem and *Klal Yisrael*. When our relationship was positive, they faced each other, like a husband and wife in loving embrace, and they faced away from each other when, *chas v'shalom*, *Klal Yisrael* were not acting properly. In *Lecha Dodi* itself we sing that when Hashem rids us of our enemies,

ישיש עליך אלקיך כמושׁוֹשׁ חתן על כלה.

Hashem will rejoice over you like a groom rejoices over his bride.

At a Jewish wedding itself, to temper the *simcha* experienced through this profound act of bonding, the *choson* must break a glass to remind us that until the *Beis Hamikdash* is rebuilt, even this joy is incomplete. Again we see an inextricable link.

Having established that the three main themes of *Lecha Dodi*, Shabbos, marriage and *Moshiach*, are deeply intertwined, it is necessary to understand what binds them. Going back to the first Shabbos of Creation, we know it was not just a day of rest from the six days of universe building but the entire justification and totality of Creation. As *Lecha Dodi* states about Shabbos:

סוף מעשה במחשבה תחילה.

Last in deed, first in thought.

The creative work is only justified by the end goal, for humanity to delight in the Godly Presence. In the *Ein Ayah* on the *gemara* in *Shabbos* 10b (Piece 15), Rav Kook delves into the concept of working towards Shabbos.

הרי הטורח ועמל המלאכה היא שלימות לו. אמנם לא לזה נוצר, כי עוד יבא על גמר תעודתו שלא יהי צריך לעזר ההטרדה החומרית בעמל המלאכות הרבות, שצרכי החיים בצירוף קלקולי הטבע הזקיקוהו להן, אז יהי לו העונג האמיתי, המנוחה, למען יתענג על ד' ועל טובו. *Indeed he was not created for work because ultimately he should be able to reach a point where he does not need the help of physical exertion and toiling in various tasks. There is a necessity in life to collaborate with the harsh forces of nature to which he is beholden, in order to reach the true oneg, that of menucha, in order to delight in Hashem and His Goodness.*

The work is necessary to appreciate the accomplishment and the arrival at the goal. While Shabbos is functioning on the weekly scale, it is truly a microcosm of what is taking place on the cosmic scale.³ The entire process of the world in its current state is for humanity to work towards reaching the ultimate redemption. So too, that is the *simcha* of a marriage. The husband and wife until that point have each needed to live a lonely life of personal growth and searching until they found each other and were able to join as one. The ideal state is not of solitude, it is of union, both between man and wife and between *Klal Yisrael* and Hashem.

In each of the three *Lecha Dodi* themes, there is a pattern of seven. In the deeper sources, the number seven represents completion, totality. The week is composed of seven days, and the kabbalist teachers explain that the first six millennia of existence are building towards the seventh when *Moshiach* will be fully established. Within a wedding, the *kalla* walks around the *choson* seven times, there are seven *brachos* under the *chuppa*, and the celebration continues for seven days. The pattern of seven indeed appears all over Jewish life and thought, e.g. *Shavuot*, *Shemitta/Yovel*, and the lower *Sefiros*. The author of *Lecha Dodi* drew many of these parallel concepts into this inspirational prayer to highlight the profound depth and joy of Shabbos and so when we turn around to greet the *Shabbos Kallah*, we can appreciate the gravity and elation of that moment.

³ See *Nitzachon* 4:2, "Fire and Wine: The Continuing Story of Nadav and Avihu" for further explanation into the creative work required to create the world and creative work to build the *Mishkan*.

My Child, the *Shabbos Goy*

DANIEL WEISKOPF



As observant Jews, we've all had a situation where we've found ourselves in a pinch on Shabbos. The lights are on in the bedroom or the lights are off in the dining room. The refrigerator light is on or an alarm clock is blaring. It could feel like our whole *menuchas Shabbos* hangs in the balance. Unfortunately, in these situations our choices are usually limited. We could try to find a non-Jew and go through the uncomfortable dance of asking them for help without actually asking for help, while trying to navigate the very delicate *halachos* of *amira l'akum*. But maybe there's another choice, one that for centuries has been a constant discussion amongst the *poskim*. What if we could ask a small child, under the age of adulthood, to help us in our time of need? After all, they are not obligated in *mitzvos* until they reach the age of twelve or thirteen. As we will see in this article, it is not as simple as we might hope. There are numerous complications involved with asking a child to violate Shabbos.

Although it is generally prohibited to tell minors to do *melacha* on Shabbos, there are certain circumstances in which we can rely on *heterim*. The application of these *heterim* are dependent on a set of criterion, such as the age of the child, the relationship to the child, and for whom the *melacha* is being performed. However, before we can discuss when it is permitted to have a child commit a *melacha* on Shabbos, let's first explore the reasons to prohibit adults from allowing or enabling children to violate halacha.

The Mitzva of *Chinuch*

Although children below the age of adulthood (13 for boys, 12 for girls) are not biblically required to uphold the commandments of the Torah, there is a rabbinical commandment that is imposed upon the parents to instruct their children how to follow in the correct path. The main purpose of this rabbinical commandment is to accustom children to the lifestyle of being *ovdei Hashem* so that they will hopefully

Daniel Weiskopf is a DevOps Engineer working at nClouds.
He has been a member of Adas Torah since 2021.

have an easier time taking on the responsibility of keeping *mitzvos* once they formally reach adulthood. Therefore, we can reason that this commandment would apply to any mitzva the child will ultimately have to follow once they become an adult, whether it is biblical or rabbinical, and whether it is a positive commandment or a prohibition. (It is customary to educate young girls in commandments that they are not biblically required to uphold in adulthood, such as positive commandments that are dependent on a time period, i.e. *sukka* or *krias shema*.) Additionally, it's important to remember that we must be careful to show our children the proper way to perform the mitzva, and not take shortcuts when showing them the particulars of a mitzva. If they are truly going to learn from our example, we must ensure our example is the most accurate portrayal we could possibly provide. Children are astute and not as easily fooled as we think.

The Age of *Chinuch*

Although the requirement to be *mechanech* children applies to all *mitzvos* equally, the age of *chinuch* depends on the individual child and the mitzva in question. For positive commandments that involve performing an action, such as shaking a *lulav* or lighting candles, the age of *chinuch* is whenever the child is old enough to properly perform the action with all its requirements and can understand that the action is for the sake of a mitzva. This will depend on the child and their intelligence, but is often assumed to be somewhere around when the child turns five or six years old. This is often referred to as the age of *chinuch*.

For positive commandments that are not dependent on an action, but rather a deeper understanding of a prayer that is recited, such as *kiddush* or *havdala*, the *Mishna Brura* (343:3) writes that the age of *chinuch* would be when the child is old enough to comprehend the essence of the mitzva, such as the sanctity of Shabbos. This would also depend on the child, but is often assumed to be somewhere around when the child turns six or seven years old.

The other type of mitzva that has an obligation of *chinuch*, and the one we will be discussing for the entirety of this article, is a prohibitive commandment, such as not eating non-kosher food or refraining from doing *melacha* on Shabbos. If one sees a child transgressing an *aveira*, the laws of *chinuch* would require them to stop the child from committing the transgression. This type of *chinuch* begins earlier than that of positive *mitzvos*. While the *chinuch* for positive *mitzvos* only applies once the child is old enough to understand the nature of *mitzvos* and that they are commandments from Hashem, the *chinuch* for prohibitions applies whenever the child is old enough

to understand that a particular action is forbidden. They don't need to understand why it is forbidden, only that it is something they must not do. It's important to note that this does not mean when a child is old enough to be told to stop doing an action when told by their parent, but rather when they are old enough to comprehend that the action itself is prohibited even when not told so. Therefore, they must be old enough to understand that some foods are different from other foods and that Shabbos is different from other days. A child that reaches this stage of maturity is often referred to as a *bar havana*. The age at which this comprehension is acquired is usually assumed to be somewhere around the age of three or four, but again would depend on the intelligence and maturity of the individual child.

Who is Commanded in *Chinuch*

It is a discussion whether the commandment of *chinuch* is only imposed on the father or on the mother as well. Although there are *poskim* that hold that mothers are not obligated in *chinuch*, the generally practiced custom is that mothers are also included in the commandment.

When it comes to people other than the parents, the *gemara* discusses whether a *beis din* (which basically means anyone other than the parents) who sees a child committing a prohibition is obligated to stop the child. The *Shulchan Aruch* (343:1) rules that others are not obligated to restrain the child from committing the prohibition. The Rema, however, brings down the opinion that this ruling only applies to children below the age of *chinuch*. But for a child that is above the age of *chinuch* (approximately five or six years old), others should, in fact, stop the child from committing the prohibition. The *Mishna Brura* writes that for biblical *mitzvos*, one should be stringent like this opinion.

Therefore, while a father or mother is obligated in the mitzva of *chinuch* for positive commandments from the age of *chinuch* and prohibitions from the age of *havana* for both biblical and rabbinical *mitzvos*, non-parents are only obligated in *chinuch* for a child above the age of *chinuch* for biblical prohibitions.

The Prohibition of *Lo Lisfu B'Yadayim*

Until now we have been discussing the laws of *chinuch* that apply when a child is performing a transgression on their own accord. There is an additional prohibition in the Torah to actively cause a child to perform a transgression. The source of this prohibition is a *gemara* in *Yevamos* that brings three separate instances in the Torah that discuss a warning for causing others to do an *aveira*. One is from the *parsha* of eating creeping animals that uses a *lashon* of “*lo tochlum*,” which is interpreted to

mean, “don’t feed to others.” The second is from the *parsha* of eating blood where the *pasuk* says “*kol nefesh michem lo tochlu dam*,” “every soul within your midst must not eat blood.” Again the *gemara* infers from the *lashon* of “*kol nefesh*” that we are commanded to not feed others blood as well. The final *parsha* is in regards to the prohibition of a *kohen* becoming *tamei*, where the *pasuk* says, “*emor v’amarta*,” a *lashon* of instructing others. From these three sources, the *gemara* establishes a general rule that an adult is prohibited from directly instructing a minor to perform a prohibition. This is often referred to as the commandment of “*lo lisfu*,” which is literally translated to mean, “do not feed”, but would apply to any prohibition a minor might commit. This *halacha* covers the direct instruction or direct enablement of a child to perform an *aveira*.

In contrast to the laws of *chinuch*, this prohibition applies equally to the parents of the child as well as any other adult. Additionally, because it is not tied to the *chinuch* of the child, but rather a prohibition on the adult, the age of the child is not a factor and would apply to a child of any age, even an infant that has no understanding at all.

The Additional Stringency of Shabbos

The *halachos* of Shabbos have an added level of strictness. The *pasuk* says, “Do not do any work; not you, your son, your daughter, your slave, your maid, your animal, and the foreigner in your gates.” Because any adult children would already be included in their own commandment to not perform any work on Shabbos, the *Mechilta* learns that the *pasuk* here is coming to warn parents from using even minor children for any work on Shabbos. While some authorities learn this *pasuk* as just another instance of the prohibition of *lo lisfu*, Rabbi Chaim Ozer Grodzinski uses this *pasuk* to learn that Shabbos has an extra level of stringency, that not only is it *asur* to directly instruct a minor to violate Shabbos, but even when the child is violating Shabbos through his own accord, if the actions of the child are for the benefit of their parent, the parent would have a *chiyuv* to stop the child from committing the violation. And if he fails to do so, it would be as if he committed the violation himself.

The source for this opinion comes from a *gemara* in *Shabbos* that relates a situation where a house is on fire and a non-Jew and a child are coming to put it out. The *gemara* states that the non-Jew does not need to be prevented from putting out the fire because he is acting on his own accord, but the child must be stopped because the child is working as an agent of his father. Even though the father never instructed the child to put out the fire, because we can assume the child knows that his father wants the fire to be put out, we consider him to be working on behalf of his father.

One difference between this added stringency in regards to Shabbos and the *isur* of *lo lisfu* is that *lo lisfu* applies to all adults with any minors, but the *isur* of Shabbos is specifically tied to the father or mother of the child. This would mean that only a parent has a biblical

obligation to stop the minor from putting out the flames. The *Shaar Hatzion* (334:54) however, writes that there would be a rabbinical obligation for others to stop the child from doing a *melacha* on their behalf.

While the mitzva of *chinuch* would already obligate a father to stop his child from doing any *melacha* on Shabbos, the laws of *chinuch* would only apply to children that have reached the stage of *havana*. This added stringency, however, would apply to a child of any age. Additionally, while *chinuch* is only a rabbinical mitzva that would incur a *lav* to transgress, a father that allows his child to perform *melacha* on Shabbos on his behalf would incur the same penalty as if he himself was *mechalel* Shabbos. Rabbi Chaim Ozer Grodzinski writes that a father that uses their child for *melacha* on Shabbos is considered a *mumar* (heretic) and would have the same status as one that transgresses Shabbos on his own.

The Concept of *Asi L'misrach*

The *gemara* in *Shabbos* (139a) relates a story that Rav Mesharshya would give money to a gentile child to sow hops in his vineyard, a mixture the *gemara* rules would be *kilayim* by rabbinical law. The *gemara* asks why he didn't use a Jewish child, considering a child would also not be obligated in *kilayim*. The *gemara* responds by introducing a new concept called *asi l'misrach*. The basis of this concept is that the child might become confused, thinking that a particular prohibited action is permitted, and might come to perform this same action after reaching adulthood.

The *poskim* use this as a source to learn that we must be careful that children do not engage in habitual transgressions so as to not develop improper interpretations of *halacha* or misunderstandings in what is permissible. We will see later in this article that the *poskim* (Rashba, *Yevamos* 114b) learn that this concept only applies when a child is committing the transgression on behalf of an adult, but not if they are doing it for themselves. The reasoning is that when an adult is involved, the child might confuse their silence with approval and will think that the action is completely permissible. But if the child is only acting for themselves, they will not come to think that what they are doing is permitted in *halacha*.

A Quick Review

Before we discuss the possible *heterim* for having a minor do *melacha* for us on Shabbos, it would be worthwhile to review and take stock of all the reasons why it should be *asur*.

- The mitzva of *chinuch* applies when a child is doing a transgression on their own, and would most certainly also forbid causing the child to transgress directly.

A father would be obligated in this commandment from the age of *havana* for biblical and rabbinical *mitzvos* and other adults would be obligated on a child from the age of *chinuch* regarding biblical *mitzvos*.

- The *isur* of *lo lisfu* applies to causing a child to commit a transgression. This would apply to a parent and other adults equally and for a child of any age.
- The *isur* of *melacha* on Shabbos creates an added stringency on the father to prevent his child from doing any *melacha* on Shabbos for his sake, regardless of the age of the child.
- The concept of *asi l'misrach* that we must not promote the habitual transgression of *mitzvos* for children. This concern is only when the child is acting on behalf of the adult and not if the child is acting for his own benefit.

The Rashba's *Heter*

Now that we've covered all the reasons why it is prohibited to ask a child to do a *melacha* for us on Shabbos, we can discuss a possible *heter* and the caveats that apply. The Rashba in *Yevamos* (114a) makes the following logical reasoning. If the *halacha* is that *beis din* is not biblically required to step in to stop a child from committing a biblical transgression when the child is acting on their own accord, by a rabbinical transgression we can take an extra step of leniency and allow *beis din* to actively tell a child to commit the transgression. What we can conclude from this Rashba is that he holds the *halacha* of *lo lisfu* is only relevant to biblical prohibitions, but would not apply to rabbinical prohibitions.

The Rashba continues and adds one caveat to the above leniency, that this would only apply if the child is doing the transgression for his own benefit and not for the benefit of the adult. The Rashba explains that when the act is done for the benefit of the child alone, there is no problem of *asi l'misrach*. The Rashba sources this opinion from the story of Rabbi Mesharshya in *Shabbos* (139a) that the *gemara* only mentioned the problem of *asi l'misrach* in a situation where the sowing was done for the benefit of Rabbi Mesharshya and not the child.

The *Shulchan Aruch* does not quote this *heter* of the Rashba and seemingly does not hold of his leniency. The Ran in *Yevamos* (114a) quotes the Rashba and writes that while the Rashba held this to be *halachically* correct, he did not act this way in practice. This is most likely why the *Shulchan Aruch* does not mention this *heter*.

The *Shulchan Aruch Harav*, however, does quote this *heter*, as well as the caveat that the action must be done for the benefit of the child and not the adult. He then adds a second caveat, that this can only be done in a time of need and not on a regular

basis. It would appear that the *Shulchan Aruch Harav* held similarly to the Rashba (according to the Ran) that this leniency, while being *halachically* sound, is not something that should be relied on. This is most likely because of the inherent danger of causing a child to become accustomed to committing transgressions. Therefore, he only permitted this leniency in a time of need, so it would not become a habitual occurrence.

We've discussed why there is no problem of *lo lisfu* by a rabbinical prohibition and why there is no concern of *asi l'misrach* when it is done for the benefit of the child, but we must still discuss the mitzva of *chinuch* and the added stringency of children doing *melacha* on Shabbos.

While it is a contention among the later *achronim*, the *Shulchan Aruch Harav* and Rabbi Akiva Eiger both hold that this *heter* would apply even when the child has reached the age of *chinuch*. Although the *poskim* do not make the distinction, it can be inferred from *halacha* that the Rashba was only referring to other adults asking children that are not their own to commit the transgression. As discussed earlier, there is no obligation of *chinuch* on strangers for rabbinical *mitzvos*. As for a parent, even though they would not have an issue of *lo lisfu* or *asi l'misrach* by a rabbinical transgression for the child's own benefit, there would still be the issue of *chinuch* that prohibits the father or mother from asking their child to commit a transgression. Therefore, for a parent, the *heter* of the Rashba would only be applicable when the child is below the age of *havana* and there is no obligation of *chinuch*.

Additionally, besides for the obligation of *chinuch*, there is an added stringency with regards to Shabbos that a child, regardless of age, cannot perform *melacha* for the parent. Therefore, when discussing the issue of *chillul Shabbos*, a father could not ask a child to perform any *melacha*, regardless of the age of the child and if the *melacha* is biblical or rabbinical. And even if the father does not ask the child explicitly, but the child knows that the father would be pleased with the result of the *melacha*, the father would have an obligation to stop the child. Therefore, a parent can only let their child do the *melacha* if the child is doing it unprovoked by the parents and are not aware that their parents would be pleased by their action.

Practical Takeaway

As we begin to discuss the practical application of this *heter*, it must be stressed that these leniencies are in no way intended to be used as *halachic* loopholes for performing *melacha* on Shabbos. Rather these *heterim* are created as lifelines in a time of need and not to be used on a regular basis.

If the *melacha* in question is only rabbinic (most situations that involve electricity are rabbinical unless it includes a fire), an adult may directly ask someone else's child to perform the *melacha* even if the child is over the age of *chinuch*.

A parent, however, is never allowed to directly ask a child to commit a *melacha* on Shabbos, for that would automatically be considered as if the child is an agent of the parent. The practical use of this *heter* for a parent is that a parent may allow their own child that is below the age of *havana* to perform a rabbinical *melacha* for their own benefit. Additionally, the child must be unaware that his actions benefit his parents.

When the *Isur of Lo Lisfu* Doesn't Apply

When discussing the *isur of lo lisfu*, it's important to make the distinction between actively causing the child to transgress and passively putting the child in a situation where they might come to transgress. The *isur of lo lisfu* only applies to the former when we either tell the child outright to transgress or put them in a situation where the transgression will be inevitable. The *gemara* in *Shabbos* (90b) relates a case where someone gives a grasshopper to a child to play with on Shabbos. The *Shulchan Aruch Harav* (343:9) rules that this would be a situation of *lo lisfu* because it is expected that through playing with the grasshopper, it will most likely die and children are prone to eating dead bugs. Therefore, the act of putting the grasshopper in the hands of the child would be considered a transgression of *lo lisfu*. Putting the child down in front of a forbidden food or a *muktza* item on Shabbos, however, would not be an issue of *lo lisfu* because if the child decides to eat the food or play with the item, that would be their own choice and not considered that the adult caused the child to transgress.

A practical case where this is relevant is when a light is left on or off on Shabbos and we would like to use a child to switch the light. Putting the child's hand on the light switch would be considered an act of causing the child to do the *melacha* and would be forbidden on the grounds of *lo lisfu*. Placing the child down in front of the light switch, however, would not be considered a transgression of *lo lisfu* because if the child chooses to switch the light on or off, that would be their own decision. Therefore, because no issue of *lo lisfu* exists in this case, it would even be permitted in a case of a biblical prohibition. (It's important to note that when discussing a biblical prohibition, even strangers have an obligation of *chinuch* if the child is above the age of *chinuch*).

We must still remember that even though this would not pose an issue of *lo lisfu*, the obligation of *chinuch* would still apply on the parents to stop the child from turning on or off the light and therefore would not allow the parent to put the child

in front of the light switch. The only time this would be permitted for a parent is if the child is below the age of *havana* and the child does not know that his action is benefitting his parents.

A Situation of a *P'sik Reisha*

Rav Chaim Pinchas Scheinberg writes that in a situation of a *p'sik reisha*, a case where the act itself is not a *melacha*, but will ultimately lead to a *melacha* being accomplished (i.e. a refrigerator light that turns on when you open the door), a child may be used to perform the act as long as the child does not know that his actions will lead to a *melacha*. Additionally, the child must be acting for his own benefit and not for the benefit of the adult.

Therefore, in a situation where someone forgot to turn off the light inside a refrigerator, because the act of opening the door is only a *p'sik reisha*, one may tell a child to retrieve food for themselves from inside the refrigerator. And then once the door is already open, one may remove any other food items that are inside.

Again, a parent would not be absolved of the obligation of *chinuch* and would only be allowed to partake in this *heter* if the child is below the age of *havana*. Because the child is unaware that he is even committing a *melacha*, we can assume the child is not acting as an agent of his parents.

Asking a Child to Transgress a *Chumra*

Rav Ovadia Yosef writes a leniency that in a situation where something is not prohibited by *halacha*, but rather one is stringent by his own choice, i.e. an *eruv* in a town that is not used by everyone, one may ask a child to carry even though he himself would be stringent. This would mean that there is no issue of *lo lisfu* or even of *chinuch* in such a situation.

Having a Child to Tell Another Child to do a *Melacha*

Rav Simcha Bunim Cohen writes in his book, *Children in Halacha*, that a possible workaround to having a child do *melacha* on Shabbos would be to tell one child to tell another child to perform the *melacha*. This would bypass the issue of *lo lisfu* because the adult is not instructing the second child to perform the *melacha*. And assuming the second child does not know that the adult originally requested for this *melacha* to be done, there would not be an issue of a child performing the *melacha* as an agent of the parent. This would, of course, only be applicable if the second child is below the age of *havana*, otherwise there would be an issue of *chinuch* for a parent to stop the child.

Conclusion

As you can see, children doing *melacha* on Shabbos is not a simple or trivial matter. If one is not careful, having a child perform a *melacha* could lead to a full blown *isur* of *chillul Shabbos*. The use of these *heterim* are intended as a last resort in a time of dire need. The title of this article might compare a child to a Shabbos *goy*, but that is merely tongue-in-cheek. Our children possess special *neshamos* that we must very carefully safeguard. Young minds and hearts are sponges that absorb from the environment they are in, and exposing them to *chillul Shabbos* should not be something we do without careful thought and consideration. That being said, later *poskim* such as Rav Akiva Eiger have written *teshuvos* about how we can use children in dire circumstances in a *halachically* valid manner to save ourselves from *chillul Shabbos*. May we be *zocheh* to never have a need to put our children in these situations, but hopefully this article will help us understand the complicated terrain we traverse when our backs are against the wall.

A Greater Appreciation of *Shabbos* *Kodesh*

ADIV PACHTER



The Kamarna starts off his *sefer Shabbat Shalom U'Mevorach* with the following teaching from the Noam Megadim about Shabbos. The *pasuk* says “*Zachor es Yom HaShabbos lekadesh.*” He asks, is Shabbos not already intrinsically holy? What business do we have trying to add holiness to the day of Shabbos that is already holy?! He answers that in truth the intent and focus was directed at us; when we remember Shabbos and the intrinsic holiness that Shabbos already has, it will remind us to sanctify ourselves before Shabbos.

In the *sefer Noam HaChassidus*, a *likut* of *divrei Torah* from the *talmidim* of the Baal Shem Tov, the following is quoted:

- *Avodas Yissachar*: Every day of the week, he would *daven* that the upcoming Shabbos would be pure, clear and holy. And every week of the month, he would *daven* that the upcoming Rosh Chodesh would be pure, clear and holy.
- *Igros Mekor Baruch*: He heard in the name of the Belzer Rebbe who said in the name of his father that anyone who learns Torah and *chassidus* on *Leil Shabbos* will be able to “taste the taste” of Shabbos.
- *Tiferes HaYehudi*: On *Erev Shabbos* in *Kabalas Shabbos*, every person should pour out their heart in *tefila* to *Hashem Yisbarach* as a son would cry out to his father after being reunited after having not seen him for a long period of time.
- *Shem Mishmuel*: The *Beis Hamikdash* was destroyed on *Motzei Shabbos* (*Taanis* 29). This is to teach that Shabbos was not “*nifgam*” with the *Churban Habayis*.
- *Maor Einayim*: On Shabbos, each person is filled with a burst of *kedusha*, each one according to his level.
- *Divrei Shmuel*: When a person falls to a deep pit and needs to be rescued, a rope is thrown down so that he can be pulled up. All he has to do is muster up the

Adiv Pachter is a real estate professional in Los Angeles, CA.

He has been a member of Adas Torah since 2010.

strength to simply hold on to the rope and the people above ground will pull him up to safety. So too, there are people who fell to the depths during the days of the week, but when Shabbos comes, the *Shechina* connects with them and pulls them out of their darkness. All the person has to do is to do is awaken his heart and hold on to the rope of Shabbos so that Hashem can save him.

In the *sefer Ahavas Shalom*, Rav Menachem Mendel of Kosov, has the following teaching about Shabbos:

During the week our *avodas Hashem* is through *yirah*. However, on Shabbos our *avodas Hashem* is through *ahava*. And on the note of *ahavas Hashem* he brings the following *mashal*: When there is love between two people but there is no *hischadshus*, then the existing love becomes dry and old; the relationship becomes one of *hergel*/routine. But when there is an element of *chiddush* introduced into the relationship, then the existing love becomes stronger and stronger. Therefore, we always need to seek out and look to incorporate new elements of *chiddush* into the relationship which will strengthen the love that exists. The same exists with our relationship with Hashem. We need to always look to introduce new elements into our relationship to foster the love that we have with Hashem. True *ahava* brings us closer to Hashem, which is why the *gematria* of *ahava* (13) is equal to *echad* (13), which is One, Hashem. This is also why *kamocho* equals 86 which is the same *gematria* as *Elokim* (86) which represents *din*. This is to teach us that when we have true *ahava* amongst ourselves and Hashem, that serves to combat the element of *kamocho* which represents *din*. (*Parshas Kedoshim*)

The Kamarna quotes the *gemara* in Shabbos 118 where Rebbi Akiva said that it is preferable to make our Shabbos into a weekday instead of being beholden to others. “*Aseh Shabbasecha chol, v'al titztarech labriyos.*” The simple meaning of this *gemara* is that we should only eat two meals on Shabbos, as we do during the week, if by doing so, we can avoid taking *tzedaka*. He points out the noteworthy choice of words of the *gemara* of *Shabbasecha*. He explains that we should not make Shabbos about our own physical, mundane needs and wants. Rather, we should focus on having lofty *kavanos l'shem Shamayim* and *l'kavod Shabbos*.

Rav Pinchas Friedman in the *Shevilei Pinchas* discusses various aspects of Shabbos. The Torah tells us that Yaakov sent angels to Eisav. Rav Friedman quotes the Imrei Noam who says that the angels that Yaakov send to Eisav were the two angels that escort a man home on the way home from shul on *leil Shabbos* as the *gemara* teaches on *Shabbos* 119b that every Friday night, two angels escort you home from shul; one good angel and one bad angel. When they enter the house and see the

candles lit, the table set and the beds made, the good angel says “May it be like this next Shabbos as well,” and the bad angels answers *amen*, against his will.

With this in mind, we can explain what Yaakov says to Eisav, “*Im Lavan garti.*” Rashi explains that even though he lived with Lavan, he was still able to perform the 613 *mitzvos* and not learn from his bad ways, which is the same *gematria* as *garti* (*garti=taryag*).

How could he have claimed to perform all 613 *mitzvos*? Weren't there *mitzvos* that he could not do? However, the *medrash* explains that Shabbos is equal to all of the *mitzvos*. So, when Yaakov was saying that he kept all 613 *mitzvos*, he was saying that through the *mitzva* of Shabbos, he was able to keep all 613 *mitzvos*.

Rashi explained that Yaakov sent *Malachim mamash*. Why did Rashi choose the specific word *mamash*? The three letters of *mamash* spell: *menora*, which is a reference to the candles that are lit when the man comes home from shul, *mita*, which is a reference to the bed that is made when the man comes home from shul, and *shulchan*, which is a reference to the table that is set when the man comes home from shul.

He quotes the *Nezer Kodesh* on the *midrash* who quotes the *Magen Avraham* in the name of the *Shaar Hakavanos* of the *Arizal* that in the *nusach* of the *kiddush* there are seventy words; thirty-five in *Vayechulu* and thirty-five in *kiddush*.

The *Zohar* explains that these seventy words correspond to seventy names of Hashem. In the *zechus* of saying the *kiddush* on Shabbos we are *zoche* to combat the thirty-five nations of Yishmael and the thirty-five nations of Eisav. This is how Yaakov was able to thwart the *klipe* of Eisav which connected to that of Yishmael; he fought them with the *koach* of Shabbos. Yaakov sent angels to Eisav; and we explained above that the two angels that he sent are the same angels that escort us home on *leil Shabbos*.

Meaningful *Zemiros*

EITAN GELB



An oft-overlooked gem of Shabbos is the *zemiros* that elevate each meal of the day. We know little about the meaning behind these melodies, but if we look closer, we will actually find a lot of meaning in these *zemiros*.

I recently had the opportunity to learn *seforim* that discuss them and would like to share some of the most meaningful ideas that I have encountered.

Kol Mekadesh Shevi'i

In our analysis of *kol mekadesh shevi'i*, we will compare the approach of the *sefer Yosher Divrei Emes* (a *chassidische sefer* from the 1700's) with that of Rav Asher Weiss.

Both begin their explanations with an analysis of the line:

כל מקדש שביעי כראוי לו כל שומר שבת כדת מחללו.

Anyone who sanctifies Shabbos and keeps the Shabbos according to the level that is appropriate for him.

Although it is generally not a good idea to take on customs of *tzadikim* in ways that could appear arrogant,¹ the *sefer Yosher Divrei Emes* provides two ways in which one should imitate *tzadikim*; to center the entire week around Shabbos and to extend Shabbos as much as possible.

There are two ways to view the week, that Shabbos is a day of rest that makes our week more productive, and that the entire week, with all its work and pressure, is centered around Shabbos. The *sefer Yosher Divrei Emes* posits that although the second perspective is a high level, and one that is practiced only by the most special people, it is a state that every single person should aspire towards. He applies this idea to extending the Shabbos as much as one can.

¹ See *Pesachim* 55a for the application of this principle.

Eitan Gelb is a second year *talmid* at Yeshivat Sha'alvim.
His family have been members of Adas Torah since 2005.

Rav Asher Weiss interprets this line in a more practical way. He says that there are two forms of Shabbos observance – *shamor* and *zachor*. *Zachor* is a positive obligation; *shamor*, a negative one. The Ramban posits that positive *mitzvos* stem from love of Hashem, and prohibitions stem from awe of Hashem, *yirah*. Both *shamor* and *zachor* were said *b'dibur echad* to show that we cannot have one without the other. One can only be merit to receive *s'charo harbe me'od* if they achieve high levels of each.

Both peirushim further explain the next line of “*s'charo harbe me'od al pi fa'alo*.” The *sefer Yosher Divrei Emes* says very simply that since Shabbos is *me'ein olam haba*, just as the work we do in this world pays off in the world to come, the work we do during the week pays off on Shabbos.

Rav Asher says that Hashem gives us a huge *chessed* each time we engage in His service. We do not actually deserve anything – it is our honor, privilege, and duty to serve Him. It is a huge *chessed* that He created this world in order to love us and reward us. Further, “*karau lo*” implies that each person has specific, unique expectations in life. Each person’s reward is different for the same actions because we all have different *nisyonos* – we all come from different perspectives and have different challenges. Only Hashem actually knows the *gadlus* of the heart of each person.

Toras Chessed

In *Eishes Chayil* we say “*Pi’ha pascha b’chachma, v’Toras chesed al leshona*.” The *gemara* in *Sukkah* (49b) explains that there is a *Toras Chessed* and a *Torah She’eina Shel Chessed*. *Toras Chessed* is defined as learning with the intent to teach the material. In fact, this is the greatest possible kindness that one can do in this world, for the gift of *Olam Haba* is infinitely greater than any gift in *Olam Hazeih*.²

Furthermore, one who teaches Torah to others, having achieved the greatest possible *chessed*, will receive a *chessed* from Hashem. The *gemara* in *Avoda Zara* (35b) compares a *talmid chacham* to a flask of nice fragrance; when open it spreads its scent, but if it is closed it will contain all the good inside of itself. So too, one who teaches Torah to others will merit to receive great gifts from Hashem. The *gemara* says that He will gift him with greater clarity in his learning, and he will live well both in this world and in the world to come.

In *Hilchos Talmud Torah* 1:1, the Rambam explains why men are obligated to teach their sons (and why women are not obligated to teach their daughters). He says

² This idea is supported by various *gemaras* throughout *Shas*, such as *Bava Kamma* (17a) that one who teaches Torah is greater than one who performs *mitzvos* because the teacher enables others to perform *mitzvos*, and *Megilla* (29a) and *Kesubos* (17b) that one who teaches Torah has no limit to the honor that he deserves.

that “everyone who is obligated to learn is obligated to teach.” This obligation extends to a father teaching his sons and grandsons, as well as a Torah scholar being obligated to teach his students. We see the Rambam places great importance on teaching Torah as well.

Saying Hashem’s Name

Rav Asher Weiss is unsure whether to mention Hashem’s name during *zemiros*. The entire discussion is rooted in the opinion of the *Magen Avraham* and the *Mishna Berura* that if we have a unique, specific request from Hashem, we can and should use His name. Rav Asher thinks that, based on this, there is a certain level of respect and reverence that applies when we incorporate Hashem’s name into our *zemiros* as well.

However, we must be very careful because of the dangers of not having complete *kavana* while singing these songs. And in addition to a *hesech hada’as* from singing, we also tend to stop in the middle of verses or repeat words. This constitutes a serious violation of saying Hashem’s name in vain. Because of these concerns, Rav Asher Weiss leaves it as a *tzarich iyun*.

Yedid Nefesh

We begin every *shalosh seudos* with *Yedid Nefesh*, in which we say: "*nafshi cholas ahavasecha, ana El na refa na la.*" Rav Asher Weiss derives from this line a profound idea, that our *ahavas Hashem* should be so enveloping that we don’t even notice sicknesses; it essentially cures us from our diseases because it takes up all our thoughts. The Rambam (*Hilchos Teshuva* 10:3) underscores this, writing that a person’s love for Hashem should be even greater than his love for a woman – he should always be thinking about Him. That is why the verse concludes with "*behar’os la noam zivecha,*" when we encounter Hashem we will reach a state of contentment.

Driving on Shabbos for Medical Reasons

DR. IRA HOFER



Let us imagine a scenario. Avraham and Sarah are having their good friends Moshe and Miriam over for lunch on Shabbos. About halfway through the meal Miriam (a doctor) looks over at Avraham and notices he is pale and not looking well. She says something and Avraham says he just wants to go lie down. Miriam feels his pulse and says “I really think you should go to the hospital to get checked out.” Avraham protests that it is Shabbos and he wants to wait a few hours until Shabbos is over. Eventually, he relents but only if Sarah will go with him. Sarah then asks Miriam to come as well, saying, “Please, you are a doctor and I know having you there will make things much better.”

This story brings up several *halachic* issues regarding driving on Shabbos for medical purposes

- Should Avraham wait until after Shabbos to seek medical care?
- Is Sarah allowed to go with him?
- Can Miriam go, knowing that there are plenty of excellent doctors at the hospital?

We will now proceed to examine the *halachic* issues around each individual and what restrictions may remain.

Seeking Medical Care on Shabbos

The first, and probably simplest, question is the rules for the actual *choleh*, in this case Avraham. When can one be *mechalel* Shabbos to seek medical attention?

The answer starts with the degree of illness of the patient. For the purposes of this discussion we will assume that the patient is one where there is a definite or possible threat to life or limb, i.e. someone seriously ill. The exact definition of this is

Dr. Ira Hofer is an anesthesiologist in Los Angeles, CA.
He has been a member of Adas Torah since 2019.

beyond the scope of this article but the *Shulchan Aruch* (OC 328) rules that we set aside the laws of Shabbos for the seriously ill patient if anyone, even a non-medical professional, feels that the disease is potentially life-threatening.

With this proviso, how should the patient seek medical attention? Would it be preferable to call an Uber (*melacha d'rabanan*) as opposed to driving a combustion car oneself (*melacha d'oraysa*)?

The *Shulchan Aruch* (OC 328:12) specifically states that one should not seek to ask a non-Jew or other to do so, but rather “*Yisraelim gedolim*, Jews of high stature” should do so. The *Mishna Brura* states here that if a non-Jew can do the *melacha* without causing a delay they should be asked to do so. The Rambam (*Hilchos Shabbos* 2:3) states not “*Yisraelim gedolim*” but rather “*gedolei Yisrael*” so that they will be knowledgeable with regard to which laws to set aside.

This (and others that rule similarly) seems to make the case that the minimum necessary *melacha* (i.e. violating a *melacha d'rabanan* as opposed to *d'oraysa*) should be done to care for the sick, but only in the situation that no delay is caused. Thus, even taking a short time (potentially less than a minute in some cases) to consider what is the best course would be *assur*. The Rambam’s *psak* that we use *gedolei Yisrael* would seem to be so that it is an individual well-versed in what is allowed and the best manner to do things.

Thus the *halacha* is that Avraham most certainly should drive to the hospital (the fastest way) and should only act via *shinui* or other *melacha*-minimizing way if it would cause no delay in getting there.

Accompanying (or Visiting) a Person to the Hospital

So what about Sarah? Would she be allowed to accompany Avraham?

Without question if she would need to drive him that would be ok. As noted above, no effort should be made to avoid *melacha* if it would delay treatment. Thus, if Avraham were too ill to drive himself, and no non-Jew was immediately available, then Sarah could drive him. But if someone was available to drive him, could Sarah go along? Or could she leave shortly thereafter to join him?

There is some nuance to this question, but if the individual would be of benefit to the patient, or able to give information to the doctors (for example about a patient’s medical history) that the patient could not, they would certainly be able to ride with the patient in a car, or if necessary even take their own car (*Nishmas Avraham*, OC 318:a, 330:e). If however, the person would not be of direct benefit to the patient’s medical care and is only there as a comfort to the patient (i.e. to prevent them from

being very agitated and worsening their condition) then opinions differ. The *Nishmas Avraham* quotes *poskim* that the person may not drive their own car but would be able to accompany the patient or have a non-Jew drive them. However, in a similar circumstance I have been told by other *poskim* that driving oneself is permissible if the presence of the person would decrease the level of agitation of the *choleh* (and thus they are in a sense treating them).

Doctors Driving to the Hospital on Shabbos

We have established that both Avraham and Sarah can go to the hospital. What about Dr. Miriam? If she were the only doctor (or even the most qualified doctor) then it would certainly be permissible for her to go to the hospital as her traveling would explicitly be for *pikuach nefesh*. But in this hypothetical, where there are many qualified doctors at the hospital, would Miriam be allowed to drive?

There are questions that arise regarding if there are other capable physicians at the hospital, but in general if a physician is summoned to treat a patient, we can make the assumption that the doctor is needed for the treatment of the patient (even if that need is only that the patient feels more comfortable with their own doctor). While in a city like Los Angeles there are obviously many qualified physicians, including many non-Jews, the overall decision of what makes one doctor better qualified than another can be slight and may even involve rapport with a patient. Thus, if a physician is summoned to care for a patient, it can be assumed they provide some service or expertise that other physicians cannot.

Overall, *poskim* are *meikil* about a doctor driving for a variety of reasons. The *Nishmas Avraham* quotes Rav Moshe Feinstein *zt"l* (p. 108) about the question of if a physician should make his services available to patients on Shabbos. Rav Feinstein *zt"l* rules that if there are other physicians available in the area the doctor should close his/her offices on Shabbos, but if he was called by a patient he would be required to treat them.

In line with this, most *poskim* hold (and most doctors I know do this) that physicians who are likely to be called on Shabbos should leave the necessary documents in their car and arrange things in a way so as to minimize the *melacha* done on Shabbos.

To be clear, this analysis applies to a doctor who is called to the hospital on Shabbos unexpectedly. A doctor who has a standing shift on Shabbos or needs to go there to check on their patients is a somewhat different situation and would have different *halachos*.

Going Home

Let us fast forward a few hours. Avraham has been seen in the emergency room, and B'H is ok and ready to go home. However, there are a few hours left of Shabbos. Can he go home? What about his wife and Miriam?

Patients Being Discharged on Shabbos

The *heter* to drive to the hospital for the patient on Shabbos is because he/she is in need of immediate medical care. But once they are well enough to go home, clearly that particular *heter* no longer applies. However, in practice once one is discharged from the hospital they can no longer stay where they are, and they are often in such a state that they cannot walk a reasonable distance to go home.

The ideal situation would be to postpone discharge until after Shabbos. However, this is not always possible, especially in modern hospitals where there is a patient waiting for the occupied bed. Thus, vacating the bed is similar to helping a *choleh*.

If it is not feasible to wait in the lobby until after Shabbos, either due to hospital regulations or because of discomfort to the patient, in such a situation it is permissible for the patient to return home with a non-Jewish driver, if it is within the city limits (and thus he/she is not transgressing the *issur* of traveling beyond the *techum* on Shabbos). However, the patient should not do *melacha d'oraysa*.

Traveling Home after Visiting a Patient on Shabbos

As noted above, the *heter* for Sarah to go with Avraham to the hospital (or travel to meet him there) was to assist with his care (such as discussing his medical history). What about returning home?

If the patient is still in the hospital and the delay of the visitor returning home would agitate the patient (for example a parent who needs to return to care for young children) then this would be a similar case to the situation of a visitor traveling to the hospital to visit the patient and we would permit the performance of *melacha* because it is for the benefit of the patient. In this situation it would be allowed to travel home with *melacha* (even *d'oraysa* if the patient were deathly ill), however if possible the extent of *melacha* should be limited. For example, in almost all instances the visitor should attempt to get a non-Jewish driver. However, use of a driver, or any other form of *melacha*, would not be permitted if it is only for the benefit of the visitor, and returning home provides no solace to the patient.

If the patient is now ready to go home (as in our scenario), then the simplest solution would be for the visitor (Sarah) to return with the patient (Avraham). If that is not possible, and they are not needed for the patient's care at home then it would

seem that they should wait until Shabbos is over or walk home.

Doctors Returning Home on Shabbos

As above, we will examine the issue for Dr. Miriam to return home on Shabbos. This is different than the case of a doctor who has a particular shift that ends during Shabbos, which is subject to different rules.

The permission for a doctor to return home on Shabbos depends on one of two situations. First, if there is a possibility that the doctor would be summoned by another person at home on Shabbos then she/he would be allowed to return home so as to be available to other patients. This reasoning is part of the reason that Hatzalah members are allowed to drive home on Shabbos - so that they would be available for another call.

The other *heter* is based on the *Shulchan Aruch* OC 329:9:

כל היוצאים להציל חוזרים בכלי זיינם למקומם.

Anyone who goes out to save a life is permitted to return with their weapons.

However, the *Mishna Brura* notes the last part of the *halacha*, emphasizing that the *heter* here is to carry the weapons, not to do other *melacha*. This is actually a *melacha d'rabanan* which is why we are *meikil*. This is addressed in the *gemara* (*Rosh Hashana* 23b) in the case of a midwife who travels to another city. The *gemara* rules that the midwife may only walk within the confines of the new town, and cannot leave the *techum* (which would be *melacha d'oraysa*).

Rav Moshe Feinstein zt"l was asked specifically about Hatzalah driving back and was *meikil* because their family would not allow them to take calls on Shabbos otherwise. This would seem to contradict the logic above, and Rav Shlomo Zalman Auerbach zt"l seems to have struggled with this ruling (*Nishmas Avraham* 1 p. 220).

This is a serious and contested question, and every doctor should consult with his or her *posek* well in advance of the situation arising so that they will be prepared when it does arise.

A Summary and Some Practical Solutions

Overall, when one is traveling directly for patient care (either a patient to the hospital or one to treat/care for a patient) there is leniency to perform *melacha d'oraysa* on Shabbos. In other instances that are more peripheral to direct patient care (such as returning home) *melacha d'rabanan* is at times permissible.

Practically, the modern world (especially in a city like Los Angeles) has provided us some easy solutions. First, in a large city such as LA, the issues of leaving the *techum*

on Shabbos are minimal as there are many excellent hospitals well within our city. In more rural areas, this may be a real concern.

The second common *melacha d'oraysa* involved in travel today is the use of a combustion engine. However there are two potential solutions. Most *poskim* (but not the Chazon Ish) hold that electricity is *melacha d'rabanana* on Shabbos. Thus, the use of ride sharing apps (Uber, Lyft, etc.) provide an easy way to obtain a non-Jewish driver without directly doing *melacha d'oraysa* (assuming the driver doesn't pick you up and mention he or she is Jewish).

Secondly, according to the opinion of most *poskim*, an electric car would not be *melacha d'oraysa* as there is no combustion engine. I asked Rabbi Casen this question and he agreed (with the major exception of the Chazon Ish), but he stated it would still be preferable to have a non-Jewish driver than to drive an electric car yourself.

Thus, as a practical matter there are now numerous options for minimizing or even eliminating *melacha d'oraysa* should one have the need to seek medical attention on Shabbos, with the proviso that these should not be used if care would be delayed.

May we never need to use any of this knowledge.

Halacha and Machshava



Rabbi Pinchas Gelb

Rabbi Evan Silver

Rabbi Yaakov Siegel

Joshua Glettner

Moshe Carron

Prayers Hiding in Plain Sight

RABBI PINCHAS GELB



Is prayer mainly the act of petitioning authority – is it like filing a brief with a court (indeed, the outcome sought in American trial practice is called the “prayer for relief”) – or is it a deeply unconscious yearning rooted in the core of what it means to be human, a reaching up from the coarse thickness of this world to speak to God with the confidence of being heard by Him? If the second, then prayer is not necessarily limited to its daily formal act. Rather, there are visceral prayers that resonate above with lasting impact even though they do not appear to be prayers at all.

Rashi pinpoints three examples of these through subtle but powerfully concise formulations regarding Yaakov’s dream, Yehoshua’s name, and *Bnei Yisrael’s* cry in Egypt. Prayer within a dream, someone else’s prayer about a person that becomes part of that individual’s own identity, and prayer at the core of a human outcry do not look like standard *tefillos*. Yet, by characterizing these as expressions of *tefilla* in his Torah commentary, Rashi dramatically broadens the category to expand what prayer means, highlighting it as an essential part of humanity.

Yaakov’s Prayerful Dream

Fleeing from Eisav toward Lavan, Yaakov famously dreams of a ladder touching the heavens with angels going up and down and Hashem standing above:

ויחלם והנה סלם מצב ארצה וראשו מגיע השמימה והנה מלאכי אלקים עלים וירדים בו. והנה ה' נצב עליו ... (בראשית כח:יב-יג)

And he dreamed and behold a ladder was standing toward the ground and its top reached toward the heaven and behold angels of God were ascending and descending on it. And behold Hashem was standing over it [or him] ...

This article is dedicated in memory of Mr. Emil Sassover z”l.

Rabbi Pinchas Gelb is a lawyer in Los Angeles.
He has been a member of Adas Torah since 2005.

This evocative image results in sweeping interpretations. The Ramban views it as a prophetic vision about the rise and fall of future empires. The Rambam, in *Hilchos Yesodei HaTorah* 7:3, likewise understands this dream as a prophesy about future global events. In *Moreh Nevuchim* 1:15, the Rambam further interprets it as a vision of the prophetic experience itself, in which the angels represent prophets who reach great heights of understanding and then descend to enrich other people with the insights that they have acquired (see also *Moreh Nevuchim* 2:10).

Rashi, in contrast, appears to avoid interpreting the beginning of Yaakov's dream as a metaphor or symbol of anything at all. Rather, the dream is Yaakov's perception of his spiritual surroundings. As Yaakov journeys to Charan, the angels accompanying him inside the land depart while the angels who will escort him outside the land arrive, all by way of this ladder touching heaven. Moreover, in Rashi's understanding, rather than standing above the ladder, Hashem is standing above Yaakov, and it is for a single purpose: "leshamro," to watch over him. Rashi interprets this dream, not symbolically, but as Yaakov's awareness of actual spiritual presence accompanying him. It is not distant or future-oriented, but deeply personal. Hashem stands right over Yaakov, who is otherwise bereft and alone, as the angels protecting him within the land depart and, in their climb upwards, pass by the descending angels who will go with Yaakov outside of the land. In this manner, Rashi zooms the lens of Yaakov's dream away from the panorama of history and toward Yaakov's experience as an individual.

But Rashi then adds a further point of focus. After the dream, Yaakov awakens and exclaims that this place is "beis Elokim" (the "house of God") and "sha'ar hashamayim" ("the gate of heaven"). Rashi interprets the phrase "the gate of heaven" to mean that this place is defined, not by "prophesy," but by "prayer." He comments:

זוה שער השמים. מקום תפלה לעלות תפלתם [ס"א תפלות] השמימה ומדרשו
 שביית המקדש של מעלה מכון כנגד בית המקדש של מטה. (בראשית כח:יז)
*And this is the gate of heaven. A place of prayer for prayers to ascend toward
 the heavens. Its midrashic interpretation is that the Beis haMikdash
 above is aligned with the Beis haMikdash below.*

Thereby, Rashi explains "the gate of heaven" to refer to prayer, rather than prophesy or any other form of *hashra'as haShechina*. The implication of Rashi's approach is that Yaakov formulated the depictions in the first part of his dream from within himself, as a prayer that his Divine connection will continue even when he leaves the land. Instead of appearing to Yaakov as prophesy from above him (per the Ramban's and the Rambam's interpretations) or even as Yaakov's astute awareness of

the spiritual presence around him (as understood at first glance from Rashi's earlier comments), Rashi clarifies here that the images at the beginning of Yaakov's dream constitute a prayer primarily from inside of him. And Hashem answers this prayer affirmatively, prompting Yaakov's exclamation following his dream that this truly is "a place of prayer."

Moreover, explaining the other phrase that Yaakov uses when reacting to his dream, "*beis Elokim*," Rashi emphasizes that Yaakov went out of his way to return to this place where his father and grandfather had prayed, which was the future location of the *Beis haMikdash*. Shlomo later concretized this when he built the *Beis haMikdash* and referred to it, not only as a place to bring sacrifices, but also repeatedly as a "house of prayer" (*Melachim Alef* 8:28-30, 33, 42, 44-45, 48-49). Rashi's connection between the phrase "*beis Elokim*" and the *Beis haMikdash* further underscores *tefilla* as the main focus of Yaakov's startled exclamation in response to his dream.

In addition to centralizing prayer as the topic of Yaakov's reaction right after his dream, Rashi also emphasizes prayer in Yaakov's conduct immediately before the dream. Rashi cites *Brachos* 26(b) that the phrase "*vayifga bamakom*" leading up to the dream is a term for prayer, which teaches that Yaakov initiated the *Maariv* service (see Rashi to *Bereishis* 28:11). Hence, according to Rashi, Yaakov's dream is bookended by expressions of prayer.

Given this context, and in view of the fact that Yaakov's dream is the specific catalyst for his profound awareness of this as "a place of prayer," his dream, itself, apparently is a *tefilla*. The ladder to heaven with its ascending and descending angels and Hashem standing over him watchfully, "*leshamro*," is Yaakov's poignant prayer at the edge of exile that his connection with the Divine presence will continue even when he leaves the land. This first part of Yaakov's dream is not prophesy imposed from without. Instead, it is a prayer expressed deeply from within. Hashem then affirmatively responds to Yaakov's *tefilla* by promising to remain with him and protect him and bring him toward a bright future and that He will not abandon him (*Bereishis* 28:13-15).

Yaakov's prayer within a dream, which perhaps was a continuation of his *tefilla* right beforehand, established enduring precedent with regard to *Maariv*. Indeed, the *Sfas Emes* points out that *Maariv* can be said any time during the night and also that it has a more voluntaristic quality than *Shacharis* and *Mincha* (so much so that, according to one view, it is "*reshus*"), which exemplifies the spontaneous, visceral nature of Yaakov's prayer as well as the fact that this prayer reflected his strong determination to keep his Divine connection even during his foreboding experiences and night consciousness (*Sfas Emes, Vayeitzei* 5637 & 5651). This is the essence of

what *Maariv* is: a deep yearning that, in the dark of night, there is a ladder near the ground reaching heavenward and teeming with life while Hashem's presence stands watchfully over us. In Yaakov's case, Hashem answered this prayer affirmatively.

Yehoshua's Prayerful Name

Following the list of prominent individuals sent by Moshe to scout the land, the verse in *Parshas Shelach* conspicuously adds that Moshe called Hoshea bin Nun "Yehoshua" (*Bamidbar* 13:16). Rashi explains why:

ויקרא משה להושע וגו'. התפלל עליו י-ה יושיעך מעצת מרגלים.¹
*Moses called Hoshea, etc. He prayed for him: "May God save you from the
 advice of the spies."*

Yehoshua's name is a contraction of the phrase "*ka yoshiacha mei'atzas meraglim*," "may God save you from the advice of the spies," which was Moshe's ardent desire for him. Yet, this phrase that Rashi quotes is stated in the second person directly to Yehoshua, not as prayer addressed toward Hashem. Indeed, although *Sota* 34(b) characterizes this statement as Moshe's prayer about Yehoshua, the *Medrash Tanchuma* 6 implies that it was a blessing. So, why does Rashi conclude that this new name involved "prayer" to Hashem about Yehoshua ("*hispallel alav*") instead of saying, as the phrase itself indicates by being formulated in the second person to Yehoshua, that Moshe was "blessing" him directly ("*beirach oso*")?

Rav Shimshon Raphael Hirsch observes that the name Yehoshua does not derive only from the root *י-ש-ע*, which means to save or deliver from distress. If it did, then the new name would have been Yehoshiya, like we say in Hallel: "*dalosi ve-li yehoshiya*" (*Tehillim* 116:6, see also *Shmuel* I 17:47) and as in the phrase "*hoshiya es amecha*" (*Tehillim* 28:9, see also *Tehillim* 12:2, 20:10, 60:7, 98:1 & 118:25). While the noun form of the root is "*yeshua*" (deliverance or salvation), the verb form within this new name should have been "*yehoshiya*" rather than "*yehoshua*." Even Rashi's formulation is stated as "*ka yoshiacha*," not "*ka yoshuacha*." The fact that Moshe changes his name to Yehoshua, instead of Yehoshiya, shows that, simultaneously, there is a second root within the name Yehoshua: *י-ש-ע*, which generally means to "cry" and most often is understood specifically as a cry directed toward Hashem, i.e., to "pray," like in the

¹ Many versions of Rashi use the word "*nispallel*" instead of "*hispallel*." The word "*nispallel*" means "we will pray," which makes no sense in this context. The correct version of Rashi's statement has to be "*hispallel*," "he prayed." Indeed, the change from a "*hay*" (in *hispallel*) to a "*nun*" (in *nispallel*) can be readily attributed to scribal error given the similarity between "*hay*" and "*nun*" in Rashi script.

phrase “*shivati eilecha vetirpa’eini*” (*Tehillim* 30:3, see also *Tehillim* 18:7, 34:16, 39:13, 40:2, 88:14, 102:2 & 145:19). Indeed, the word “*shav’a*” is one of the ten expressions of prayer listed in the *Medrash* (*Sifrei* 26) that Rashi cites at the beginning of *Parshas Va’eschanan*.

Thus, Moshe’s act of praying, his “*shav’a*,” is woven directly into the fabric of his new name for Yehoshua. Besides expressing the content of Moshe’s desire for him (“*ka yoshiacha mei’atzas meraglim*”), the name “Yehoshua” also expresses Moshe’s act of prayer itself (“*hisparallel alav*”). Both the substance as well as the fact of Moshe’s prayer for Yehoshua were part and parcel of his name. This is why Rashi specifies that the name Moshe gave Yehoshua conveys, not only a “blessing” spoken directly to him, but also a “prayer” directed to Hashem about him.

With this insight centralizing Moshe’s act of prayer as an integral element of Yehoshua’s new name, we gain perspective in understanding how the name “Yehoshua” rather than “Hoshea” was used in *Parshiyos Beshalach* (17:9-14), *Mishpatim* (24:13), *Ki Sisa* (32:17 & 33:11), and *Beha’aloscha* (11:28), starting more than a year before the events in *Parshas Shelach* took place.

In reality, the “*atzas meraglim*” from which Moshe asked Hashem to save Yehoshua was not a one-time event. Rather, from the moment of leaving Egypt, there was a persistent temptation for individuals and the nation to assume the viewpoint later articulated by the spies who stated that they simply are incapable of ascending to the land:

והאנשים אשר עלו עמו אמרו לא נוכל לעלות אל העם כי חזק הוא ממנו... ושם ראינו את הנפלים ונהי בעינינו כחגבים וכן היינו בעיניהם. (במדבר יג:לא, לג)
The men who had ascended with him said: “We cannot ascend to that nation for it is too strong for us.” ... “There we saw the giants, the sons of Anak, descended from the giants; in our eyes we seemed like grasshoppers, and so we were in their eyes.”²

In contrast, Kaleb asserted that they would definitely go up into the land:

ויהס כלב את העם אל משה ויאמר עלה נעלה וירשנו אתה כי יכול נוכל לה. (במדבר יג:ל)
Caleb silenced the nation toward Moses and said: “We shall certainly ascend and conquer it for we certainly can do it.”

² Rashi adds, based on the *gemara* in *Sota* 35a, that they were actually arguing that they would not be able to ascend into the land because, *kivyachol*, it is too much for Hashem.

The “*atzas meraglim*” was a defeated approach and an unappreciative disregard for the Divine promise, and the Divine charge, that had been given to them. Kalev articulated exactly the opposite viewpoint. My father-in-law, Rabbi Levi Meier z”l, would say that, at each important life juncture, there is the voice of “the ten spies” and the voice of “the two spies,” and we should make every effort to listen to “the two spies” and ignore “the ten spies.”

Moshe’s prayer for Yehoshua began around the time that Amalek attacked, not long after the people asked (*Shemos* 17:3): “*lama zeh he’elisanu miMitzrayim lehamis osi ve’es banai ve’es miknai batzama*,” “why is this that you have brought us up from Egypt to kill me and my children and my livestock through thirst,” and further (*Shemos* 17:7): “*hayesh Hashem bekirbeinu im ayin*,” “is Hashem among us or not?” This statement was substantially the same as the later-articulated “*atzas meraglim*,” except that these people asserted it at an early juncture soon after leaving Egypt. Right then and there, when the name Yehoshua is first used in the Torah (see *Shemos* 17:9), Moshe began his perennial prayer asking Hashem to safeguard him from this caustic outlook, even though it would find its most pronounced application only later, during the events of *Parshas Shelach*, when Moshe would send him with the *meraglim* to view the land.

This also solves the problem how Moshe sent the spies at all because, if he changed Yehoshua’s name when he sent them, then the implication is that he knew they were going to bring back a bad report. According to this approach, however, Moshe did not know the spies would take the position that they ultimately did. He simply knew that the outlook they ended up asserting (which Rashi calls the “*atzas meraglim*” as a short-form reference to this viewpoint) already existed because other people articulated it soon after leaving Egypt right before Amalek attacked. Starting then, Moshe changed Yehoshua’s name and began praying for him to avoid this perspective.

The possibility that Moshe, in fact, changed his name to Yehoshua around the time of the battle against Amalek is buttressed by Rashi’s interpretation of *Divrei HaYamim Beis* 36:4 where he cites Moshe changing Yehoshua’s name as an example of kings and leaders who distinguish their assistants by giving them a new name when they first start performing service:

ויסב את שמו יהויקים. כך דרך המלכים והשרים שמכנים למשרתיהם שם שהם רוצים. דוגמא (בראשית מ"א) ויקרא פרעה שם יוסף וגו' וכן (במדבר י"ג) ויקרא משה להושע בן נון יהושע וכן (דניאל א') וישם להם שר הסריסים שמות וגו' והכל כדי להודיע שהוא מושל בו לכנות לו שם כרצונו.

And he changed his name to Jehoiakim. It is the custom of kings and princes to bestow a by-name upon their servants as they wish. An example is (Gen. 41:45): "And Pharaoh named Joseph, etc.," and so (Num. 13:16): "and Moses called Hoshea the son of Nun, Joshua," and so, (Dan. 1:7): "Now the chief officer gave them names, etc." All this is to make known that he rules over him to name him as he desires.

In this comment, Rashi specifically states that Yehoshua received his new name when he began under Moshe's tutelage. The Rashbam reaches the same conclusion in his explanation of *Bamidbar* 17:9 (see also the Ramban on *Shemos* 13:16). From the time that Yehoshua started assisting Moshe in matters of leadership, long before the ten spies articulated their perceived inability to ascend into the land, other people asserted the same thing. Moshe changed Hoshea's name to Yehoshua right then as a sustained prayer that Hashem should save him from this kind of advice and enable him, instead, to maintain the countervailing conviction later asserted by Kalev in connection with entering the land: "We shall certainly ascend."³

The heartfelt prayers of our role models to Hashem about us are a great gift. Moshe's prayer to Hashem on Yehoshua's behalf, which persisted and continued to resonate long after its initial utterance, was integral to his new name. And Yehoshua's own identification with Moshe's prayer for him was not bound up with just one incident but started early on and became an essential part of who he was perpetually.

Bnei Yisrael's Prayerful Outcry

The verses in *Shemos* 2:23-25 state, after a prolonged period of deepening servitude and increasingly abject oppression:

ויהי בימים הרבים ההם וימת מלך מצרים ויאנחו בני ישראל מן העבדה ויזעקו ותעל שועתם אל האלקים מן העבדה. וישמע אלקים את נאקתם ויזכר אלקים את בריתו את אברהם את יצחק ואת יעקב. וירא אלקים את בני ישראל וידע אלקים. (שמות ב:כג-כה)

It was during those many days that the king of Egypt died and the Children of Israel groaned from the servitude and they cried out, and their outcry [or prayer] from the servitude went up to God. God heard their cry, and God

³ This debate between the "atzas meraglim" and Kalev's outlook whether or not we can "ascend" might also be spiritualized to refer to inner capacity, rather than being limited only to going up to the land, by the statement of Chizkiya in the name of Rabbi Yirmiya in the name of Rabbi Shimon bar Yochai in *Sukka* 45b and *Sanhedrin* 97b: "Ra'isi bnei aliya vehein mu'atin," "I have seen elevated people and they are few."

remembered His covenant [with] Abraham and Isaac and Jacob. God saw the Children of Israel and God knew.

The verse says that the people “groaned” (*yei’anchu*) in response to the hard labor and “cried out” (*yiz’aku*). The Ramban comments that Hashem “received their prayers in His compassion because of their cry,” “*mipnei hatza’aka kibbel tefillasam berachamav.*”

The implication of the Ramban’s statement is that the people prayed. Indeed, this is supported by the end of this verse which states that their “*shav’a*,” which often indicates prayer, went up to Hashem (see also *Ohr HaChaim* 2:23). But where does the verse actually say that the people prayed in the first place? On the contrary, it states that they “groaned” (*yei’anchu*) from their servitude and that they “cried out” (*yiz’aku*). These were cries by the people from the weight of their hard labor. They do not appear to have been addressing themselves toward Hashem in prayer.

HaRav Yosef Dov Soloveitchik *zt”l* explains the Ramban’s conclusion which characterizes their “cry” as a “prayer” to mean that, even though the people themselves just hollered in pain, Hashem elevated their outcry and received it as prayer:

At this point in their slavery experience, Israel had no intention of formulating prayer as such. This initial stage of prayer was little more than a poorly articulated, instinctive cry. According to the Ramban, Hashem Himself ‘lifted’ their groaning, allowing their cry to rise up before Him.⁴

Thus, the Rav understands the Ramban’s statement to mean that the people did not direct their cry as a prayer to Hashem on any level, but Hashem accepted it as a *tefilla* anyway. In this sense, it was a kind of miracle (one of the many that occurred during the events of the redemption from Egypt), an alchemy of the spirit whereby Hashem, as an act of compassion, transformed the people’s reactive primal cry into efficacious human prayer.

HaRav Hershel Schachter adds, based on the *Haggada*, that there additionally was an intrinsic prayer within their outcry. The *Haggada* interprets the verse in the *Mikra Bikkurim* which states “*vanitzak el Hashem Elokei avoseinu*,” “and we cried to Hashem the God of our forefathers” (*Devarim* 26:7) by quoting the verse in *Parshas Shemos* about the people’s cry in Egypt from the burden of their labor:

⁴ Dr. Arnold Lustiger, *Before Hashem You Shall Be Purified: Rabbi Joseph B. Soloveitchik on the Days of Awe* (New Jersey, 1998), p. 160.

ונצעק אל ה' אלקי אבותינו (במדבר כו ז) – כמה שנאמר (שמות ב כג) ויהי בימים הרבים ההם וימת מלך מצרים ויאנחו בני ישראל מן העבדה ויזעקו ותעל שועתם אל האלקים מן העבדה.

“We cried out to Hashem the God of our forefathers” (Num. 26:7) – As it is said (Ex. 2:23): “It was during those many days that the king of Egypt died and the Children of Israel groaned from the servitude and they cried out, and their outcry [or prayer] from the servitude went up to God.”

In this manner, the *Haggada*'s drasha contextualizes the verse about people's cry in Egypt as the proof text for the statement in the *Mikra Bikkurim* that “we cried to Hashem the God of our forefathers,” thereby framing the people's outcry in reaction to their servitude under Egypt as inherently having been addressed to Hashem as prayer. Based on the *Haggada*'s statement of *Torah Shebe'al Peh*, Rav Schachter concludes that, ensconced deeply within the people's cry in Egypt, was human prayer:

But why should G-d consider the crying out from pain and agony as if the Jewish people had offered a prayer? It would appear that prayer is so essential and intrinsic to the human soul that we assume that subconsciously man would always like to pray. The Rabbis of the Talmud formulated as a halacha (Brachos 21a) that we would wish that man would be able to pray all day long.⁵

Rashi appears to make this association as well. In his comment to *Shemos* 2:24, he defines the word “*na'akasm*” to mean “*tza'akasm*,” which is the verb in the *Mikra Bikkurim* that the *Haggada* correlates with this outcry in Egypt: “*vanitzak el Hashem Elokei avoseinu*,” “and we cried to Hashem the God of our forefathers” (*Devarim* 26:7). As support for this definition of “*na'akasm*,” Rashi then quotes the first part of the verse from *Iyov* 24:12, but the whole verse additionally equates the word “*na'aka*” with the word “*shav'a*.” Thereby, Rashi indicates that the cry of the people in Egypt was inherently prayerful based on two connections:

1. First, Rashi's definition of “*na'aka*” to mean “*tza'aka*” identifies it with the term “*tza'aka*” in the *Mikra Bikkurim*, as the *Haggada* does, reflecting that the people's outcry in Egypt, at least on some level, was addressed to Hashem.
2. Moreover, the verse in *Iyov* 24:12 cited by Rashi equates this cry (*na'aka*) with the type of cry that usually is directed toward Hashem as prayer (*shav'a*).

According to Rashi, it was not that Hashem turned the people's cry into prayer,

⁵ HaRav Hershel Schachter, “The Prayer of the Jews in Egypt” (TorahWeb.org, 2004).

as the Rav understands the Ramban to be saying. Rather, as established by the *Haggada's* drasha about the *Mikra Bikkurim* and as further emphasized by Rashi's citation of *Iyov* 24:12 to explain the verse here, their cry actually was prayer at its unconscious core.

This idea that people have multifaceted, and even contradictory, layers of intent is more conspicuously stated by Rashi in his comment to *Vayikra* 1:3:

יקריב אתו. מלמד שכופין אותו. יכול בעל כרחו תלמוד לומר לרצונו הא כיצד כופין אותו עד שיאמר רוצה אני.

He shall bring it. This teaches that they force him. One might think that they force him to bring it against his will. To teach us otherwise, the verse says "in accordance with his will." How can this be? They force him [to fulfill his pledge] until he says: "I want to."

The fact that Rashi's reconciliation of the verse that the court pressures this individual to fulfill his pledge until he says "I want to" is considered, not as duress (which would be an unwilling act and would not work), but as a bona fide expression of "*ratzon*," reflects that there is an underlying layer of human will – in this case, the basic desire to keep one's word – which might contradict a more visibly apparent decision but nevertheless is wholly authentic. While latent, this separate layer of intentionality is genuine (see Rambam *Hilchos Geirushin* 2:20 and *Gur Aryeh* explaining Rashi). In other words, people's will and self-awareness can operate on many planes simultaneously.

So too with regard to the people's outcry in Egypt. Consciously, it was a cry of pain in reaction to their servitude. But more essentially, there was a stirring of human prayer resounding deeply from within the maelstrom of each individual's infinite soul. These were inarticulate, ineffable, undifferentiated, yet profoundly authentic prayers that, while unrecognized even by the people expressing their outcry, reached far and resonated deeply with Hashem: "...*vata'al shav'asam el HaElokim min ha'avoda... vayeida Elokim*,"⁶ prompting the beginning of their redemption from Egypt.

Conclusion

It turns out that, besides its overt expressions, prayer is (1) an unconscious dialogue directed toward Hashem, even and especially during times when a person is completely alone (per Yaakov's prayer within a dream), (2) the gift of a role model

⁶ Rashi comments (*Shemos* 2:25): "*Vayeida Elokim. nasan aleihem lev ve-lo he'elim einav mei-hem*," "And God knew. He focused upon them and did not hide His eyes from them."

who articulates hopes to Hashem about a person, elevating these aspirations and further enabling them to become integral to the individual's own core identity (per Moshe's name for Yehoshua which was a sustained prayer), and (3) a cry from vulnerable humanity who still assert with piercing inner conviction that Hashem is the *Shome'a Tefilla* who hears (per *Bnei Yisrael's* outcry in Egypt which, at its heart, was also a prayer). Accordingly, with just a few well-placed words, Rashi highlights these visceral types of prayers that – in the verses and in life – are hiding in plain sight.

Kim Lei B'deraba Minei: A Torah Perspective on Victimhood

RABBI EVAN SILVER



In the Torah's introduction to monetary cases, Rashi teaches that in any area where one might think Jewish and secular law have similarities, there is an obligation to bring our cases to Jewish courts i.e. *beis din*.¹ While on the surface secular and Torah law might seem similar, there are significant differences in the nuances of the laws which stem from the foundational values of the two systems. The constant exposure we have to secular laws and values, particularly those that could be subtly antithetical to Torah values, requires even greater clarity to the Torah approach in order to live a Torah observant life. One such topic that illustrates a divergence in the laws of these two systems is Torah concept of *kim lei b'deraba minei*, when someone who is guilty of two crimes is only obligated to the stricter punishment. This approach relies on a different concept of justice than cotemporary law.

The general underpinning of contemporary secular law is the desire to both punish the criminal and provide restitution to a victim, regardless of if it stems from a single criminal act or concurrent criminal acts. As a basic example, if someone were to face capital punishment for murder, they could still be held responsible to compensate the victim for the monetary damages they suffered. While Jewish law imposes damages when injuring someone, there are no damages required to the family

¹ *Shemos* 21:1. This specifically applies between two Jewish litigants and there are possible exceptions about which a *posek* should be consulted with should the situation arise.

Thank you to Doni Schanzer for learning this sugya together and helping with the article and thank you to my wife, Dalia, for proofreading and editing like always.

Rabbi Evan Silver is a real estate professional in Los Angeles, CA, and a member of Hatzolah. He has been a member of Adas Torah since 2016.

of a murder victim because the offender faces more capital charges. This is true even if capital punishment is not imposed for lack of sufficient evidence. In this scenario we would still not try the criminal for the lesser punishment of monetary damages. This is expanded to include situations where the two offenses are for different crimes altogether. Clearly, Torah values have a different understanding of justice relating to the transgressor/victim dynamic, resulting in vastly different legal principles, which can be better understood through examining exactly how to apply this principal of *kim lei b'deraba minei*.

If someone is running after someone to kill them, the law is that any bystander is allowed to stop the pursuer by any means necessary, including lethal force. Since the attempted murderer is now subject to death, he is not obligated to pay for any property damage incurred while in pursuit of the potential victim. Astonishingly, according to Rava, the intended victim would be obligated to property damages for his damage to someone else's property in his attempted escape. The case of the pursuer is unique in that since anyone can kill him, everyone is a related party. One explanation for why the victim is liable for damage, while the pursuer is exempt, is an idea of *mamon l'ze unefashos l'ze*, death for one offense and payment for another offense, which is an exception to the general rule of *kim lei b'deraba minei*.² Applying this concept, according to some opinions, we could apply two punishments if there are two victims. Since the damaged party has the right to kill the pursuer, he might not be considered like a separate victim for any damages incurred to him by the pursuer, resulting in just applying more severe punishment to the pursuer.

In another case, the law is applied slightly differently. A husband accuses his wife of committing adultery by bringing witnesses, thereby subjecting her to the death penalty and causing monetary damages by reducing her *kesuba* payment. Her father then brings his own witnesses accusing the original witnesses of lying. The general rule is that *eidim zomemim* (false witnesses), are subject to the damage they tried causing to their victim. Here, these witnesses only get the death penalty and don't suffer the monetary damages, which seems consistent with the idea of *kim lei b'deraba minei*. If the husband now brings a third set of witnesses to invalidate the second set, the second set would face the death penalty and also pay money to the husband, for the husband could have been required to pay money for false defamation of his wife. This is due to the principal of *mamon l'ze unefashos l'ze*.³

² *Sanhedrin* 74a

³ *Sanhedrin* 9b

A third example of this principle exists when trying to understand the ramifications of heavenly punishment for eating *teruma* (tithe given the *kohen*). The *gemara* (*Kesubos* 30b) asks what happens if one eats and steals *teruma*, and concludes that if in theory both could occur simultaneously, one would be exempt from paying damages for theft while incurring capital punishment for eating *teruma*. Another example of potential simultaneous crimes that could occur while eating *teruma* is someone that damages someone else's shirt while eating *teruma*. Rav Ashi's case of tearing a shirt creates a problem of those who apply Rava's principle to the case of multiple sets of witnesses, where he differentiates when there are two victims. Rashi answers that it is simply a *machlokes*. The case of a shirt is *mamon l'ze unefashos l'ze*; Rava holds one is *chayav* for both offenses and Rav Ashi disagrees. *Tosafos* is not satisfied with this answer of Rashi because it would insinuate that Rava holds *mamon l'ze unefashos l'ze* is *chayav* when one of the crimes is against Hashem, not just when there are two different people. This would seemingly run contrary to a *Mishna* that clearly states that when one burns someone's grain on Shabbos, they are exempt from damages when facing the capital offense of violating Shabbos. This proves that violating a commandment against Hashem while committing a crime against another victim is not considered two different people in terms of obligations. Our case of ripping a shirt would be the same where there is only one person and the other crime is only against Hashem, so he should be exempt from monetary damages, even according to Rava. Apparently Rava applies *mamon l'ze unefashos l'ze* only when there are two human victims, which would not apply in the case of Shabbos or the ripped shirt. The Ri's answer for Rashi is that the case of *teruma* is considered to be two different people, because even though it's not two actual people, there are two distinct physical acts. Rava would consider the case of the false witness referenced above as two separate acts of testimony but the case of fire on Shabbos as a single act. The difference in the cases is if we can separate the acts, not whether or not we consider Hashem as second victim when the sin is only between man and Hashem. *Tosafos* cites the Rashbam, who does not like the previous approach, because he considers the case of false witnesses all one act, meaning it should be *kim lei*. *Tosafos* then bring the opinion of Rebbeinu Tam, who states that while Rava usually would agree that when there are two different victims there is an exemption from the lesser punishment, *eidim zomemim* is a unique case. He proves this from the case of someone who kills a slave and goat, with two different owners, in the same act, where Rava does apply *kim lei*. This leaves *eidim zomemim* as the only case where we do not simply say, *kim lei*, and therefore it is the only case where *mamon l'ze unefashos l'ze* applies.

Tosafos concludes that the disagreement between Ri and Rabbeinu Tam is based on how they understand the case of a man who kills a pregnant woman and is then exempt from the usual damages for causing a miscarriage. This is the source for *kim lei* because the Torah tells us that there is only a monetary penalty for the miscarriage if *lo yihiyeh ason*, the woman is not killed. Rabbeinu Tam understands this as case of two separate victims, and yet *kim lei* still applies. The Ri understands that there's really only one victim, the woman, so Rabbeinu Tam's source could not be used to teach us how to learn what happens when there are multiple victims. This is a case of regular *kim lei*, allowing Rava to apply principle of *mamon l'ze unefashos l'ze* when there are two victims. The Riva will hold that when there are two distinct parties, one is always obligated for both punishments, but since in a case of the slave and the pursuer, anyone can stop the killer, everyone is considered a relevant party, and therefore it's just one victim.

Rav Yosef Dov Soloveitchik gives a deeper understanding to the various views.⁴ There are two distinct ways to understand why someone would only get one punishment. The first is that one is completely exempt from the lesser crime. The second is that somehow the lesser punishment becomes embedded in the more severe punishment. This explains the disagreement when there are two victims. With the second approach we would require two punishments, except for the circumstances of a pursuer, whereas previously established we considered there to be one victim. This comes from Rabbeinu Tam's two distinct principles and *pesukim* that teach *kim lei*, one is *lo yihiyeh ason* and the second is *kdei rishaso*. The full quotes are:

וכי ינצו אנשים ונגפו אשה הרה ויצאו ילדיה ולא יהיה אסון ענוש יענוש כאשר ישית עליו בעל האשה ונתן בפללים.

When [two or more] parties fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one responsible shall be fined according as the woman's husband may exact, the payment to be based on reckoning. (Shemos 21:22)

והיה אם בן הכות הרשע והפילו השפט והכהו לפניו כדי רשעתו במספר.
If the guilty one is to be flogged, the magistrate shall have the person lie down and shall supervise the giving of lashes, by count, as warranted by the offense. (Devarim 25:2)

⁴ *Shiurei Harav, Sanhedrin 9b*

The first verse specifically says that one is only liable for a miscarriage when there is no other damages i.e., the woman isn't killed, and teaches us that when there are two punishments the lesser punishment is fulfilled through the more severe punishment. The second verse teaches us that there is one punishment, learned from the singular noun, "his offense," showing that even when there are two victims the guilty party has a complete exemption from the lesser punishment. If it is a complete exemption, it does not matter if there are different victims, but for the lesser punishment to be embedded in the more severe punishment, it would require there to be a single victim. Neither reason would apply to the case of false witnesses, which has its own source in the Torah (*Devarim* 19:19) to be obligated in both punishments, *ka'asher zamam*, as they conspired, making it unique as stated above. The Rav explains further why this case is unique. *Lo yihiye ason* applies when there are two punishments with one physical victim, and thus the lower punishment is embedded in the higher one. The lesson of *kdei rishaso* is when there two separate owners and two independent *chiyuvim*. The case of *eidim zomemim* is neither; there are two owners and only one act, so instead of standard *kim lei*, it is *mamon l'ze unefashos l'ze*.

The Rambam, in *Moreh Nevuchim* 3:41, explains that the primary purpose of punishment is to deter sin. This provides another philosophical reason why one would not need to suffer both punishments. In the example of causing damage, while being liable for the death penalty for violating Shabbos, the death penalty should serve as more of a deterrent than the damages. The assumption is that a normal person would not intentionally commit a criminal act on Shabbos instead of a weekday to suffer death instead of paying mere damages.

No matter how the issue is ruled, the *gemara* and commentators consistently focus on punishment to the culprit and not on justice to the victim. The two Torah sources focus on the guilty party having to suffer a punishment because the purpose is to bring atonement. While understanding when someone is obligated to pay for both offenses is nuanced, the victim's restitution is not the paramount factor. The culture around us is focused on the idea of bringing justice to a victim. This extends beyond monetary cases to the idea of victimhood and equity in many aspects of life, which has no basis in the Torah's legal or moral system. The Torah seems more concerned about the damaging party's atonement or creating a deterrent from committing the sin in the first place. Perhaps because we believe everything is from Hashem, the loss from uncompensated damages was either meant to be suffered or Hashem will even it out elsewhere.

The dichotomy between Torah and secular law in this case is important for all of

us to understand when we think of how we treat a victim, which can easily be skewed by what we hear and see on the news. Rabbi Daniel Stein brings down that the reason Hashem took the Jews through the desert requiring numerous miracles is that as much as Hashem generally avoids making unnecessary miracles, this was better than the risk of going through another land and being influenced by their cultures.⁵ This is a warning as to how careful we need to be to screen out non-Torah influences. There's a famous *midrash*⁶ (and song) that the other nations refused the Torah because of what was inside, for they wanted to kill, steal, and perform other transgressions. I always found that troubling. One would think that based on a social contract most civilized nations do not allow killing and stealing, so wouldn't something like *kashrus* be a stronger objection to accepting the Torah? One possible explanation is it that the other nations wanted to define killing and stealing based on their moral code and values of when life begins or ends, and their definition of property law. Secular law allows things that the Torah considers to be murder. Monetary ruling in secular court could in theory be stealing according to the Torah. A difference in monetary court is not just a simple difference in a legal ruling, but it is based on the morals of which Hashem created the world as illustrated by the Torah's laws, which we must internalize.

This is just one of many areas where we need to take a step back and look at Hashem's definition of morality, which can be gleaned through the Torah and *halacha*. The Torah approach is unique regarding victim compensation; it is distinct from secular law in all areas. The antidote to constantly being infused with secular values from the world around us is to learn Torah to better comprehend and internalize the Torah's approach and values.

⁵ *Chamudei Daniel, Parshas Beshalach*

⁶ *Sifrei Devarim 343*

Maris Ayin in Non-Kosher Restaurants

RABBI YAAKOV SIEGEL



M*aris ayin* (literally “appearance to the eye”) is the prohibition against doing something that looks *assur* (forbidden) even though it’s not. Examples found in the *gemara* include eating fish blood, wearing wool and silk, and bending over in front of an idol. A common, and much more relevant example discussed by contemporary *poskim*, is eating kosher food in a non-kosher restaurant. In a 1959 *teshuva*, Rav Moshe Feinstein ruled that eating kosher in non-kosher restaurant is *assur* (*Igros Moshe* OC 2:40):

אף ליכנס לשם לאכול דברים הידועים שאין בהם שום חשש איסור, יש לאסור מפני
מראית עין וחשד.

Even to enter there to eat things that are known to have no concern of non-kosher at all, should be prohibited because of maris ayin and chashad.¹

So how wide-reaching is the *issur* of going to a non-kosher restaurant? Can one not attend a business meeting in a non-kosher restaurant even if he’s only having a glass of water or a bowl of blueberries? Can one go on a date to a lounge that serves non-kosher food, and only have drinks? What about a coffee shop that serves non-kosher food – can one just have coffee or tea there? Can one go into a non-kosher eatery just to use the restroom?

To answer these questions, we first need a better understanding of the *halachos* of *maris ayin*.

¹ These two concepts will be explained momentarily.

Rabbi Yaakov Siegel works in commercial real estate in Los Angeles, CA. He has been a member of Adas Torah since 2007, and currently serves as its vice president.

The Sources and Reasons for *Maris Ayin*

The *mishna* in *Shekalim* (3:2) describes that when the *kohanim* took money from the treasury of the *Beis Hamikdash*, they made sure to avoid any suspicion that they were stealing money:

אין התורם נכנס לא בפרגוד חפות, ולא במנעל... לפי שאדם צריך לצאת ידי הבריות כדרך שצריך לצאת ידי המקום, שנאמר (במדבר לב) והייתם נקיים מה' ומישראל, ואומר (משלי ג) ומצא חן ושכל טוב בעיני אלהים ואדם.

A kohen who would take the money from the treasury could not enter wearing a cuffed garment, shoes, [or with anything else in which money could be hidden]. This is because one must appear righteous before people just as he must be righteous in front of Hashem, as it says (Bamidbar 32:22), "You shall be innocent before Hashem and before Israel." And it says (Mishlei 3:4), "find favor and good understanding in the eyes of God and man."

This is the first reason one is not allowed to do something that looks *assur*; one is not allowed to do something that arouses suspicion that he or she is a sinner. This is called "*chashad*" (suspicion) by the *rishonim*.

The second reason is seen in Rashi in *Kerisos*. The *gemara* (*Kerisos* 21b) says that it is forbidden to eat fish blood that has been gathered in a cup or bowl, even though the Torah prohibition of eating blood only applies to the blood of animals and birds. Rashi (*d"h shekansu bakli assur*) explains the reason:

דמיחליף בדם בהמה, והרואה אומר מותר לאכול דם.
Since it can be confused with animal blood, one who sees [fish blood] being eaten will think that it is permitted to eat [animal] blood.

This is the second reason for the *issur* of *maris ayin*. If an onlooker sees a God-fearing Jew doing something that he thinks is forbidden (in this case eating blood), the onlooker may come to erroneously think it's that it's actually permitted.

While it is clear from the *gemara* in numerous places (*Shabbos* 64b, 146b, *et.al.*) that *maris ayin* is an *issur derbanan* (Rabbinic prohibition), the *poskim* debate whether *chashad* and *maris ayin* are two separate prohibitions, and if they are, whether *chashad* – which is learned from a *pasuk* – could be an *issur de'oraisa* (Torah prohibition).²

² See *Chesed L'Avraham* (2:1:21) who quotes a letter from his grandfather Rav Yaakov Mi'Lisa (author of the *Nesivos Hamishpat* and *Chavos Daas*) which says that *maris ayin* and *chashad* are two different *halachos*. Rav Moshe Feinstein (*Igros Moshe* OC 4:82) agrees and says that *chashad* is an *issur de'oraisa* while *maris ayin* is an

What if Onlookers Won't Get Confused?

We began by defining *maris ayin* as the prohibition against doing something that is completely *mutar*, but gives the appearance to onlookers that it is *assur*. There are a few situations in which a person could do something that ordinarily would be prohibited because of *maris ayin*, but in these cases, because of special circumstances, onlookers would not think he is doing an *issur*. Would there still be an *issur* of *maris ayin*?

For example, let's discuss meat cooked with almond milk, which the Rema (YD 87:4) says is *assur* because of *maris ayin*, since an onlooker would think this person is eating meat cooked with real milk.

First, let's say it has become commonplace – like it is today – to use non-dairy milk substitutes. An onlooker could reasonably assume the person is eating the meat with fake milk. Would it still be *assur* because of *maris ayin*?

Second, what if the person is eating meat with almond milk in his own kitchen, with no one else home, and the windows shades are closed. Since there are no onlookers, would it still be *assur* because of *maris ayin*?

Third, what if the person has the carton of almond milk on the table, in effect notifying any onlookers that what he's eating is not *basar b'chalav*. Would this still be *maris ayin*?

These three questions are discussed extensively by the *gemara*, *rishonim*, and *poskim*, and provide the *halachic* framework as to what is, and what is not, *assur* because of *maris ayin*. Analyzing these questions will help us determine when one is allowed to go to a non-kosher restaurant.

Common Knowledge and Good Excuses

One example of *maris ayin* quoted in the *mishna* (*Kilayim* 9:2) is wearing a blend of wool and silk. Even though the Torah prohibition of *shatnez* is only wool and linen, since silk can be confused with linen, *Chazal* prohibited wearing wool and silk because of *maris ayin*. Based on this, the *Tur* (YD 298:1) quotes his father, the Rosh, with a very important *p'sak*:

כתב א"א הרא"ש ז"ל: ומפני זה אסרתי באשכנז שלא לתפור בגד קנבוס תחת בגד צמר לפי שאין בגד קנבוס מצוי באשכנז ויהיו סבורין שהוא בגד פשתן. והאידינא מצויין בגדי משי בינינו והכל מכירין בו הילכך מותר לתפור בגדי משי תחת בגדי צמר.
My father, the Rosh, wrote that based on this, in Germany he prohibited

issur derabanan. But See *Encyclopedia Talmudis* on *chashad*; *maris ayin*; *gidreihem* that brings many examples from *tosefta*, *rishonim*, and *achronim* that conflate *chashad* with *maris ayin*.

attaching a cannabis (hemp) garment underneath a wool garment, because hemp is uncommon in Germany and people will think it is linen. But here and now, silk garments are common and everyone recognizes them. So it is permitted to sew a silk garment under a wool garment.

The Rema (298:2) quotes this *Tur* and *Rosh* as the *halacha* regarding both silk and hemp – that whether there is an *issur* of *maris ayin* in mixing them with wool will depend on how widespread their use is in that locale. The *Shach* (298:2) adds a very important point:

וכתב הב"ח דכיון שמצוי נוהגין היתר אע"פ שלא נמצא מי שמכירו להבין שהוא בגד קנבוס כ"א על המעט.

The Bach writes, that since [hemp] is commonly used, we allow it to be mixed with wool even though almost no one can discern that it is hemp and not linen.

In other words, if it looks like a person is using something *assur*, but most people know that there is a permitted substitute, there is no problem of *maris ayin* **even if the assur item and its mutar substitute are identical**. This Rema and *Shach* have widespread applications which *poskim* use to permit many kinds of substitutes, including margarine with meat, pareve ice cream, fake cheese, *shaitels* that look real, shaving with an electric shaver or depilatory creams, and matza meal on Pesach.³

Rav Asher Weiss (*Minchas Asher* 1:67) applies this Rema to eating kosher in a non-kosher office cafeteria, and also to business meetings in a non-kosher restaurant. He writes:

ונראה כן גם בני"ד דמאחר ומסעדה זו מיועדה בעיקר לעובדים של החברות השוכנות בבית ואין מקום אחר שנוח לאכול בו, למה יחשדו בכשרים מישראל שהם נכנסים לאכול בשר תמותות באשר מסתמא נכנסים לאכול בשר שחוטות? וכי שבקי היתירא לעבוד איסורא? וכך גם לגבי פגישות עסקים כנ"ל. ומשו"כ נראה עיקר דלאחר שרבים נוהגים כן שוב אין בו איסור מראית עין.

Since the restaurant is primarily used for workers who work in the building, and there's no other nice place for them to eat, why should anyone suspect that an observant Jew is entering there to eat non-kosher?... And the same applies for business meetings. Since it's common for [observant Jews to have such meetings and lunches] there's no problem of maris ayin.

³ See for example *Igros Moshe* (EH 2:12), *Shevet Halevi* (9:157), *Yabia Omer* (Vol. 6 YD 8), *et. al.*

But for other purposes, Rav Weiss concludes with a warning:

ומ"מ נראה דראוי להמנע מלהיכנס למסעדה שאין בה הכשר ראוי באופן הנראה שהוא נכנס לבלות ולהתארח לסעודה.

Nonetheless, it appears that it is correct to avoid entering a restaurant that does not have a proper hechsher in a way that appears that he's going to spend time and enjoy a meal.

Based on the *heterim* of the Rema, *Shach*, and Rav Weiss's *teshuva*, we can answer many of our restaurant-related questions: Business meetings would be allowed if it appears that the person is there for business. If a person is wearing business attire for lunch in a business district, it is easy to see that such a meeting should be allowed. Casual attire for dinner far from a business district, however, would be harder to permit. It is likely that in most (but not all) situations, if the person is carrying a briefcase, folio, or notebook, he would look sufficiently businesslike that an onlooker would reasonably assume that the observant Jew is at the restaurant for business, not to eat non-kosher.

This *heter* should also apply to "date places." It's common for people (even non-Jews) to get together to meet in a nice hotel lobby or lounge and only have drinks. So even if the place serves food, an onlooker should assume that the couple (whether they are unmarried or married) are there to have an enjoyable date, not to eat non-kosher, and there should be no problem of *maris ayin*.

The same should also apply to coffee shops that serve non-kosher food. If it's the type of coffee shop in which it would be reasonable for people to come in and just have coffee or tea, there should be no problem of *maris ayin*. (The *kashrus* of the coffee and tea, and whether one must use disposable cups is beyond the scope of this discussion and should be investigated and discussed with a Rov and *kashrus* expert.)

This same *heter* should also apply to non-kosher bars and breweries, where people (even non-Jews) primarily come to drink alcoholic drinks, many of which are kosher. While *maris ayin* should not be a problem, bars and breweries present other serious potential *halachic* issues including immodesty, promiscuity, and *shechar shel akum* (alcoholic drinks from a non-Jew). These serious issues are beyond the scope of our discussion on *maris ayin*, and if there is a pressing need, it should be discussed with a Rov.

The Rema and *Shach's heter* – that there is no *maris ayin* when there's common knowledge that what the person is doing may be permitted – could also be applied to

entering a non-kosher restaurant to use the restroom. This, however, would depend on the situation. If the non-kosher restaurant is on the side of a highway, it's easy for an onlooker to assume that the person is stopping in to use the restroom. Similarly, if the person entering is incorrectly dressed for the restaurant (e.g. dressed formally in a casual or quick-serve restaurant), or is entering with small children, an onlooker should assume the person is going to use the restroom, and there would be no problem of *maris ayin*. But if the person is dressed appropriately for the restaurant in question, and it is not a roadside restaurant, it is better to find a different restroom, unless there is an urgent need.⁴

Makom Pirtza

A word of caution, however. If the restaurant is one that Jews regularly eat at based on the incorrect assumption that it is kosher (or "kosher enough"), one should try to avoid it, even for a business meeting. In the 1959 *teshuva* from Rav Moshe Feinstein that we referenced at the beginning of our discussion (*Igros Moshe* OC 2:40), Rav Moshe addressed a shul where the main *minyán* did not have a *mechitza*, but there was a second *minyán* that did. Rav Moshe forbade *davening* in the "mechitza *minyán*" even if it was well publicized, and onlookers could reasonably assume someone entering the shul was *davening* at the kosher *minyán*:

יש לחוש יותר דאפשר שימצאו אנשים שרוצים להקל ויסמכו עליו לומר שהלך
לעיקר ביהכ"נ כרוב הנכנסין לשם.

One needs to be extra concerned that he will be seen by people who are

⁴ There are three reasons why if one urgently needs to go to a restroom, one can go to a non-kosher restaurant and disregard any concerns of *maris ayin*. In Rav Asher Weiss's *teshuva*, he quotes the *Pri Chadash* (OC 461:2) that using matza meal on Pesach cannot be a problem of *maris ayin* because we cannot add *issurim* of *maris ayin* that were not made by *Chazal* in the *gemara*. While the *Magen Avraham* (463:5) and most *poskim* reject the *Pri Chadash*, Rav Weiss says that at a time of great need, one may rely on the *Pri Chadash*. Since entering a non-kosher restaurant was never prohibited by *Chazal*, it would be allowed at a time of great need. Additionally, Rav Moshe Feinstein, in the *teshuva* we mentioned at the beginning of our discussion (OC 2:40), allows one to go into a non-kosher dairy restaurant when he has great pain from hunger or thirst, as long as no one he knows sees him there without him first explaining that he is only going in to eat kosher because of his hunger pains. This is consistent with the *Shulchan Aruch Harav* (OC 244:17) who rules that there's no *issur* of *maris ayin* when it comes to *hefsed meruba* – a great financial loss. The third reason to permit going to a non-kosher restaurant if one has an urgent need to use the restroom is *kavod habrios* – human dignity. The *gemara* in *Menachos* (38a, and explained clearly *l'halacha* by the *Mishna Brura* 13:9) says that one may violate an *issur derbanan* because of *kavod habrios* – to protect human dignity. The *Mishna Brura* (13:15) rules further that a Torah prohibition could be violated if there is *g'nai gadol* – a great embarrassment. Not having a place to go to the bathroom would at least be *kavod habrios*, and in some cases could even rise to the level of *g'nai gadol*.

looking to be lenient and will rely on him and say that he went to the main [non-mechitza] minyan, like of most of the people at the shul.

Rav Moshe explains that when “*nifritzu bazeh harbe anashim,*” many Jewish people are inappropriately violating a *halacha*, one must prohibit something because of *maris ayin*, even if it is just as plausible that a person is doing something permitted as it is that he is doing something forbidden.

In that *teshuva*, Rav Moshe continues to forbid someone from entering a dairy restaurant run by non-observant Jews, even even if he’s only eating kosher, if the restaurant serves non-kosher cheese, *bishul akum*, and/or non-kosher fish. This was obviously a “*pirtza*” in his days when many Jews would eat at such restaurants claiming that it was “kosher enough.” Rav Moshe ends his *teshuva* by allowing one to enter such a restaurant only if he’s in great pain from hunger or thirst and has nowhere else he can go, and even then Rav Moshe only allows him to enter if there’s no Jews in the area who could see an observant Jew entering the restaurant, or if at least he can inform any Jew who sees him that he’s only entering to eat kosher because he’s so hungry or thirsty.⁵

So today, in a community where people might eat at non-kosher vegan restaurants, with inappropriate disregard for *bishul akum* and *bedikas tolaim* (being certain that there are no insects), Rav Moshe would likely prohibit attending a business meeting at such a restaurant unless there would be a serious risk of loss otherwise, and even then it would only be allowed if no one saw him, or he could inform anyone who saw him why he is entering the restaurant.

It is likely that the same should apply to a restaurant that has a *hechsher* that is not up to the *halachic* standards of one’s community. Often, in such cases, people are looking to be *omer mutar*, and come up with justifications to eat in such establishments. If they would see someone who’s careful about *kashrus* sitting in such a restaurant, they might overlook that the person is there for a business meeting, and say, “if so-

⁵ Rav Moshe actually says that if one is in great hunger, he can only enter if *no one he knows* sees him, unless he notifies them - not if there are *no Jews who could see him*, as I presented above. Logically, if the concern is other Jews learning the wrong idea about *kashrus* from an observant Jew entering a non-kosher restaurant, it shouldn’t matter whether the observers know the person or not. When Rav Asher Weiss presents Rav Moshe’s *teshuva*, he too paraphrases Rav Moshe in the way I did, that the issue is whether there are Jews around, not whether there are people who recognize him. Perhaps the reason Rav Moshe presented it his way, is that in 1959 New York, almost anyone entering a restaurant would be wearing a suit, tie, and hat - regardless of whether he was an observant Jew or a Christian. Thus, the only concern of *maris ayin bimakom pirtza* would be if an onlooker would recognize the person, and therefore know he was an observant Jew.

and-so is there it must be kosher.” It makes sense that Rav Moshe’s guidelines for *mikom pirtza* should apply. That means avoid entering such a restaurant unless it is to avoid a great loss or because one is in great pain. And even then, only enter if no Jews would see him enter, or at least alert any onlookers that no food is being eaten.⁶

Behind Closed Doors

If the problem of *maris ayin* is that others might see an observant Jew and suspect him of violating an *issur* (*chashad*), or maybe they would learn from what they see and mistakenly think that an *issur* is permitted, what happens if there’s no one around to see, or no one would recognize this person as an observant Jew?

This question is addressed in many places in *Shas* (*Shabbos* 64b, 146b, *Avoda Zara* 12a, *Beitza* 10a et. al.), and the general conclusion of the *poskim* (see *Mishna Brura* 301:165) is “*maris ayin afilu bechadrei chadarim assur*”, something that the rabbis forbade because of *maris ayin*, would be forbidden even behind closed doors where no one would see what the person is doing. The Ran (on Rif to *Beitza* 5a *d”h u’mihu*) explains that if one was allowed to do something in private that is ordinarily prohibited because of *maris ayin*, they might come to do it in public too when they think it’s unlikely to be seen. The Ran gives a second explanation that even in private it’s possible that someone might be seen. The *Pnei Moshe* (*Kilayim* 40b *d”h afilu bichadrei chadarim*) adds another explanation: that when *Chazal* prohibited certain things because of *maris ayin*, they said they were completely *assur*, regardless if anyone was watching. For example, once *Chazal* said wool and silk was forbidden, that means it is forbidden even if no one can see the person wearing it.

Tosafos in *Kesubos* 60a (*d”h mima’achan*) says that the *chumra* of *bichadrei chadarim assur* only applies if the *issur* that might be suspected is an *issur de’oraisa*, but if it’s an *issur derabanan* one may do the *maris ayin* if no one can see. While this *p’sak* of *Tosafos* has widespread ramifications in the general *halachos* of *maris ayin*, it is mostly irrelevant when it comes to non-kosher restaurants, since nearly all non-kosher restaurants serve food that is *assur mede’oraisa*.⁷

⁶ One could make the case that a substandard *hashgacha* is better than an *issur derabanan*, in which case maybe even the Maharshal (*Yam Shel Shlomo* 25:52) who prohibits *maris ayin* on an *issur drabanan* would agree with the Rema who allows it. I discussed this with Rav Aryeh Lebowitz *shlit”a*, and he felt strongly that in nearly all cases of substandard *hashgachas*, if one eats everything on the menu, he would certainly be eating something that his Rov holds is an *issur de’oraisa*.

⁷ An exception is vegan restaurants, where much of what they serve is *assur miderabanan*, but they are unlikely to serve any *issurei mide’oraisa*. (*Bishul akum* is *assur midrebanan*, and vegetables that were not checked for bugs, are also *assur miderabanan* if they were washed and there is a less than 50% chance of the presence of bugs).

At Last, All that Aluminum Foil is Good for Something

If *maris ayin* is *assur* out of concern for what onlookers will think, would it help to notify onlookers that the person is not eating non-kosher in the restaurant?

Previously we mentioned the *gemara* in *Kerisos* (21b) that quotes Rav who prohibited eating fish blood gathered in a cup or bowl because of *maris ayin*. The *gemara* there elaborates:

כי קאמר רב אסור דלית ביה קשקשים.

Rav only said this when there were no scales in the blood.

If, however, there were scales in the blood it would be permitted since an onlooker would recognize that it's fish blood, which is kosher. Based on this, the Rema (YD 87:3) ruled that one could have almond milk with meat if he places almonds next to the milk so that onlookers will realize he is not eating *basar bichalav*.

There is not much discussion in the *poskim* about if a Jew is in a far-flung place where it's highly unlikely to find other Jews, whether that's considered "*bechadrei chadarim*," for which *maris ayin* for an *issur derabanan* would be allowed. One could bring a proof from the *gemara* in *Avoda Zara* (12a) as understood by *Tosafos* (*d"h kol makom*) that having no Jews around would be considered "*bechadrei chadarim*." *Tosafos* explains the *gemara* that the permissibility of bending down in front of an idol to take a thorn out one's foot, if there's no Jews around to see him, would depend on whether *maris ayin bechadrei chadarim* is *mutar* or *assur*. Obviously, the person doesn't have the idol in his bedroom, so you see *bechadrei chadarim* could mean in public, just without any Jews who would see him. Nonetheless, as we discussed previously, since too many Jews eat at non-kosher vegan restaurants with disregard to the serious *issurei derabanan* involved, it should be considered "*makom pirtza*," and one should not eat kosher food in a non-kosher vegan restaurant, even in a far flung place where he's unlikely to be seen. One leniency that does come up (although rarely enough that it can be kept at the end of a very long footnote), is based on a *teshuva* of the *Chesed L'Avraham* (Rav Avraham Teomim, 19th century Rav of Botatch, and grandson of Rav Yaakov Mi'Lisa (author of *Nesivos Hamishpat*). The *Chesed L'Avraham* (2:1:21) quotes a letter from his grandfather that says that *maris ayin* and *chashad* are two different concepts and therefore could have very different *halachos*. Based on this, the *Chesed L'Avraham* says that for *chashad*, the *issur* is to do something that people will suspect you of doing something wrong, whereas for *maris ayin*, the *issur* is to do something from which people might mistakenly come to think that something *assur* is actually *mutar*. Since the risk for *maris ayin* is much greater than *chashad*, as it risks other people doing *aveiros*, "*maris ayin afilu bichadrei chadarim assur*" only applies to actual *maris ayin*, but not to *chashad*. Now, even though most cases of *chashad* are also cases of *maris ayin*, the *Chesed L'Avraham* notes that there is an exception. If someone does something that looks like it is unquestionably *assur* (e.g. eating fake shrimp before fake shrimp became common), it would only be a problem of *chashad*, and not *maris ayin*, because no onlooker will think "since I saw that observant Jew eating shrimp, it must be that shrimp is kosher." Something like that would therefore be allowed *bechadrei chadarim* since there's only *chashad* and not *maris ayin*. So getting back to our Jews vacationing in a far-flung place where they won't be seen by other Jews – according to the *Chesed L'Avraham*, they should be allowed to have kosher food in a non-kosher seafood restaurant. Since customers generally only go there to have shrimp, crabs, and lobster etc. which everyone knows is non-kosher, the only concern is *chashad* and not *maris ayin*. And since they are "*bichadrei chadarim*" i.e. out of view from other Jews, it should be permitted.

Based on this, in the recent past, when margarine, non-dairy creamer, and pareve ice cream were less common, *poskim*⁸ allowed them to be eaten with meat only if the package would be displayed so onlookers would realize that what they're seeing is not *basar bichalav*. Additionally, Rav Ovadia Yosef (*Yabia Omer* YD 6:8) quotes the Chida (*Machzik Bracha* YD 87:6) that if one could tell from the dishes that the food being served after the meat is non-dairy, there would not be a problem of *maris ayin* even if the food itself looks dairy.

Based on this, if one is on vacation, and brought or had delivered kosher meals wrapped in aluminum foil, it should be permitted to eat the meals in the hotel's non-kosher restaurant, provided the aluminum foil is on display, as it will serve – like the almonds – as notice to any onlookers that the person is eating kosher even though he is in a non-kosher restaurant.

Summary of Halachos

To summarize, the *issur* of *maris ayin* prohibits a Jew from entering a non-kosher restaurant, since onlookers might suspect the Jew of eating non-kosher, or might mistakenly think that it's permitted to eat at that restaurant. There are two main exceptions. First, if it's common for people to go to that type of restaurant, or to go in that type of way, and *not* eat non-kosher, then onlookers should reasonably assume the person won't be eating non-kosher. Based on this, many situations could be permitted:

- The person looks like he's going for a business meeting.
- A couple goes on a date to a hotel lobby or lounge that serves non-kosher food, since even non-Jews regularly go and only have drinks.
- A coffee shop at which it would be common for non-Jewish customers to come just to have coffee or tea (but one needs to be cautious about the *kashrus* of the coffee or tea).
- A bar or brewery at which it would be common for non-Jewish customers to come just for drinks (but one needs to be concerned about immodesty, promiscuity, *kashrus*, and *shechar shel akum*).
- Entering a non-kosher restaurant to use the restroom if it's on the side of the highway, the person enters with children, or if the person is not dressed suitably to be eating at that restaurant. (If the person has an urgent need to

⁸ See *Badei Hashulchan* (YD 87:47 quoting *Da'as Torah*) and *Pischei Halacha* by Rav Binyomin Forst pp. 187-189.

use the restroom and has no other choice, entering any non-kosher restaurant would be permitted).

The second relevant exception to the *issur* of *maris ayin* is if there is an indication on or near the food that it is in fact kosher. Based on this it would be permitted to eat kosher food wrapped in aluminum foil at a hotel restaurant, if the aluminum foil is on display so any onlookers would realize that the food is not from the restaurant.

None of these *heterim*, however, should be used to eat kosher at a vegan restaurant without a *hechsher*, if it is an example of “*makom pirtza*” in that community, and if people eat there with inappropriate disregard for *bishul akum* and *bedikas tolaim*. In the words of Rav Moshe Feinstein, “one needs to be extra concerned that he will be seen by people who are looking to be lenient and will rely on [this seriously observant Jew] and say that he...” is eating any and all of the food served there. So even for a business meeting, or with food wrapped in aluminum foil, this should be avoided unless a person stands to have a great loss, and even then he should avoid being seen, or he should notify any Jewish people he sees that he is only eating kosher.

At the end of the day, *maris ayin* and *chashad* are prohibitions against doing things that look wrong in the eyes of God and Man. How much more so do we need to be careful not to do things that are wrong in the eyes of God and Man.

The Count, the Maccabees, and the Desecrated Shul

JOSHUA GLETTNER



The count's entourage rode down before the small manor. A group of knights leapt down from their mounts, preceding their liege. A trumpeter signalled the arrival with a stirring call. The knights ran towards the door, and with no small degree of pleasure, they began to bang the door fiercely. The knights grinned with glee hearing the scurrying behind the door.

"Open up," shouted one of them. Obeying his command, an elderly man let them in. His coat bore the familiar star of the Jews, his long arm bestrode with the red marks of the strain of the recent tefillin straps. The man feigned confidence against the boisterous knights who stood before him. The knights then separated into two separate lines, letting the count through.

"My lordship, the Count of Bentheim-Beinthen" announced the announcer.

The count smiled and passed his hat to one of his companions. Realising the importance of the occasion, the householders had now all come to the door besides the old man.

"May we enter?" asked the count politely. The Jews quickly took out chairs and let the large procession of men into the large antechamber. After light chatter, the count quickly spoke of the business of his coming.

"As you know, my friends, my dear father perished this past year. I have examined several of his decisions, specifically concerning your race, and to be perfectly honest, I object to the level of his restrictions. I have decided to reverse his seizure of your former synagogue in the good town of Uelsen in the year." The count motioned for one of his staff to pass forward a document with the details. "Yes, in the Christian

Joshua Glettner is a student at Yeshiva University.
He has been part of the Adas Torah community since 2020.

year 1423, my lord father confiscated the synagogue of Uelsen and passed it over to the Church. Now in this year 1455,¹ I think it fit to return the property to the Jews for the return of all ritual services as per the local charter, good? I will have the keys and deed sent by later today.”

The older man thanked the count profusely, leaving the count to glow in his self-congratulation for his beneficence. After short remarks, the count strode out, leaving his minor officials to sort out the practical details of his kind donation. After some time, they, too, left, followed by the troop of knights. In the vacuum of silence, the Jews sat down to absorb the weight of their liege’s kindness. This was to be the first shul in the whole county for the last thirty years. Since then, the men had *davened* quietly at various houses.

One of their number, a learned man named Shmuel Dovid, leaned forward, and raised a large potential problem with their joy. “Can we really use a building once a church as a synagogue? Is it permitted under *halacha*? I remember hearing about problems with this sort of thing when I was in yeshiva.” The men thought over Shmuel Dovid’s words. Most of the men were not so learned, but the little they knew was enough to suggest that Shmuel Dovid had a point. As was the practice, they sent a letter to the local Rav several towns over in Meistri, Rabbi Judah Orbalk. Rav Judah felt discomfort as ruling on such an immense issue, so he sent the question down to his prestigious rebbe, Rav Yisroel Isserlein, residing in lower Austria. The letter arrived on a circuitous route, carried like Yosef over a series of merchant caravans, for it was nearly a month’s journey from Lower Saxony to Rav Isserlein’s Lower Austria home.

When a messenger arrived at Rav Isserlein’s home, the Rav was quite sick. He had been ill with various maladies for a long while, but he had nonetheless persisted in his learning. A few *talmidim* accompanied the Rav at his bedside, reading the questions aloud and recording the Rav’s responses.

“Something here from Orbalk” announced one of the older students, “an interesting question about a shul in Uelsen.”² With Hashem’s kindness the count there

¹ The dating was arrived at by me for two details. The count controlling Uelsen died in 1454, within Rav Isserlein’s lifetime, for Rav Isserlein died in 1460. In the *teshuva*, Rav Isserlein mentions the Mahari Weill as Rav of Erfurt. The Mahari Weill died in the later 1450’s, with Graetz suggesting prior to 1456 (this is because the Jewish community of Erfurt was expelled in 1456, and the Mahari Weill mentions nothing, implying he died prior, see *Ashkenazic Jewry in Transition the Life of Mahari Weill* chapter two footnote 71). This implies the *teshuva* of Rav Isserlein was likely written between 1454–1456.

² *Leket Yosher* 2:13

has given the shul back to the Jews. The question is that since the *goyim* used it as a church, can it be used as a shul?”

What are the *halachic* sources behind the question? The fundamental place is the ancient precedent of Chanuka. The Talmud records that the Chanuka story begins with the Greeks entering the *Beis Hamikdash* and making it impure, only for the Maccabees to restore the Temple. The Second Book of the Maccabees describes how the Greeks not only banned Judaism but also “filled the temple with debauchery and revelry... so that the altar was covered with abominable offerings prohibited by the laws (*Sefer Hamakbim* II.6).” Famously, the Jews succeeded in saving the Temple, in particular in restoring the service of the lighting of the *menora*. But how were they to clean up the Temple after what had been done? It was not merely enough to resume normal service, as the Temple had been defiled with idolatry.

Hint to such intense renovations is seen in a cryptic line in *Maseches Middos* (1:6), describing the floorplan of the Temple. The *mishna* mentions a “Chamber of Stones,” the place where the “*Chashmonaim* (Maccabees) stored the stones of the altar that the Greek rulers had defiled.” How are we to understand the applicability of the Maccabean example to other cases of desecration?

The *gemara* takes on the mantle of such a question in *maseches Avodah Zara* (53b), in the midst of an intriguing dispute regarding the rogue temple of Onias, built by a pretender to the priesthood around the Maccabean period. However, any construction of temples outside of the *Beis Hamikdash* in Jerusalem is clearly forbidden by the Torah. Thus, the *gemara* questions whether the sacred utensils used in the pretender temple were permitted to be used in the actual Temple, or whether their use in the pretender temple rendered them forbidden because of their participation in the forbidden services. The *gemara* quotes the story of the Maccabee altar stones as a proof that any utensil used in forbidden activities becomes forbidden. Rashi explains that this is not due to the strict letter of the law. The use for idol worship does render an item forbidden in benefit. However, this prohibition is only when the item belongs to the one who made it forbidden. The *gemara* does not permit one to forbid the items that belong to others, such as the altar which belonged to the property of the *Beis Hamikdash*. However, Rashi explains that the altar case is proof that the rabbis decreed a prohibition on all items used in non-Jewish rituals even absent a formal prohibition.

The *gemara* then distinguishes between the altar case and that of Onias’ temple, as the case of the *mizbeach* is not proof that the rabbis decreed a prohibition even where no formal prohibition existed. Rather, the stones of the *mizbeach* were really forbidden

in use because the property of the *Beis Hamikdash* became ownerless and desanctified when it was breached by the Greek invaders. The *gemara* cites the source for this concept under the phrase “the breachers came and they desanctified it (the *mikdash*).”

Rav Ovadia Yosef (*Yabia Omer* 8 OC 16) notes that the commentators disagree over the mechanics of “the breachers.” He quotes the *Baal Hameor* as insisting that the *psak* of “the breachers” does not create an innovative concept; rather it indicates that the items became desanctified via *meila*, misuse of Temple property. Once the items were desanctified, they could then become forbidden by the non-Jews because they were now ownerless. However, only Jews can violate *meila*, not non-Jews, so the *Baal Hameor* proposes that the desanctification was done by heretical Jews allied with the Greeks. The connection with *meila* limits the force of the concept, given that it can only be done by Jews and it is not accessible to ownership of sacred land and building, like the Temple proper. In contrast to the *Baal Hameor*, the Ramban insists that “the breachers” is an innovative concept in *halacha* not directly derived from the normative rules of *meila*. Rather the Ramban writes that rule of “the breachers” works by the right of conquest, removing sanctity even from the *Beis Hamikdash* proper, and even at the hands of non-Jews.^{3 4} The Ramban’s view is modified by others, like the Maharam of Padua, who argues that while it is true that the “rule of breachers” is a distinct novelty, it is only applicable to that which can be controlled.

Rav Isserlein notes in his response that it seems that based on the precedent of the altar stones, use of the shul should be forbidden. However he suggests that one can make a distinction between artifacts like the stones proper, which were movable, and a synagogue which merely served as a site of idol worship, but was not actually comparably under control. Rav Ovadia Yosef notes that Rav Isserlein’s view is clearly that of the Maharam of Padua, which is contradicted by that of the Ramban, who explains that foreign invasion makes everything forbidden even if not directly touched.⁵

3 The startling implication of the Ramban’s words is that there should be no prohibitions on entering the Temple mount presently in impurity. In contrast to the Ramban’s view, the Maharam of Padua limits the concept of “breachers” only to moveable objects, like the stones of the altar, not the entire Temple mount. (Chacham Ovadia)

4 Chief among the questions are two important assumptions. First, is a shul parallel to the *Beis Hamikdash* in sanctity? The *gemara* refers to shuls as a “little *mikdash*.” Rav Isserlein infers from this question that the rules applied are fundamentally similar. Just as a Temple can be rendered forbidden, so too a synagogue. Second, there seems to be a strong working assumption that Christianity is to be considered fully idolatry, a very complicated discussion among the *poskim*.

5 It is not immediately clear that one can assume like Chacham Ovadia that Rav Isserlein is mentioning “the breachers.”

The *Magen Avraham* quotes Rav Eliyahu Mizrachi, who permitted one to turn a place of idolatry into a synagogue. The *Magen Avraham* explains that buildings are permitted because they cannot be made forbidden given that they are immovable, and immovable items cannot be rendered forbidden.⁶ The *Yaskil Avdi*, a later 20th century *posek*, is quoted by Chacham Ovadia in connection with an intriguing case. During the Japanese conquest of Singapore, the Great Synagogue was desecrated by the Japanese, and large Christian icons were placed around the aron. The *Yaskil Avdi* ruled simply according to Rav Eliyahu Mizrachi. He seems to have understood the ruling as stating that a synagogue could not lose its sanctity. In contrast, Rav Ovadia Yosef rejects his rationale, noting several responsa where *poskim* understood that the “breacher’s case” was quoted several times in connection with synagogues, implying that synagogues were treated the same as the Temple. Rather, Rav Ovadia Yosef quotes Rav Isserlein as the lynchpin in his ruling, suggesting physical modification in the actual structure is what forbids, not an inherent property of the synagogue.

As mentioned, Rav Isserlein responded to the confused men of Uelsen by permitting the rebuilding of the synagogue. He argued that the Greek precedent permitted usage of the synagogue because the Greek case involved actual physical control over the stones of the altar, in contrast to a synagogue. This connected to a dispute among the commentators whether the Greek case should be understood as a normal case of *meila* and deconsecration, or whether the example should be understood as a respective case of anything goes, not otherwise following normal limits. This dispute in turn underpins whether the sacred item would be considered ownerless, and thus be subject to the prohibition of *avoda zara*. This in turn leads to a debate whether a synagogue is ownerless merely if non-Jews are present, or whether it requires that the object of control be moveable. Finally we saw the dispute between Rav Ovadia and the *Yaskil Avdi* whether synagogues are subject to the breachers case.

But what of the men of Uelsen? Rav Isserlein tempers his seemingly lenient

⁶ Some raise serious objections from an intriguing comment of *Tosafos* in *Megilla*. The *gemara* there writes “in the future the theatres and circuses in *Edom* (the West) shall be used by the Princes of Judah to teach Torah to the masses.” *Tosafos* there questions what is meant by circus and theatre. *Tosafos* states “Some say that these (theatres and circuses) are meant as a reference to actual houses of idolatry.” However *Tosafos* quickly rejects such a possibility, insisting that the theatre is merely a reference to a place of secular enjoyment.

Rav Gil Student notes a dispute among the European *poskim* in the 19th century over how to adjudicate between the *Tosafos* and *Magen Avraham*. In the 1850s, a massive question arose over the conversion of a Welsh church on the eastside of New York City into a synagogue. The famed *Shoel UMeshiv* defended the same arguing that *Tosafos* could not be understood as making an actual *halachic* comment, but merely a philosophical observation. <https://www.torahmusings.com/2017/04/turning-lower-east-side-church-synagogue/>

ruling with the insistence that it cannot take effect without the approval of his rabbinical peer, Rav Yaakov Weill, the Rav in Erfurt. Unfortunately, such approval is not found in any of the writings of Rav Weill. Perhaps he died before any such approval could be given. In any case, Rav Isserlein's response did not make its way into the main collection of his responsa, the famed *Terumas Hadeshen*, rather residing in a collection of his rulings known as the *Leket Yosher*. The *Leket Yosher* went missing in the meantime, and it was not printed until the beginning of the 20th century. Uelsen's Jewish community is unknown except for this responsa, so it is unclear whether they ultimately followed Rav Isserlein's ruling. In the earlier discussion mentioned, Rav Ovadia Yosef maintains that Rav Isserlein's ruling may be accepted in full despite the lack of fulfillment of Rav Isserlein's condition. Rav Ovadia argues that Rav Isserlein's insistence was not due to a lack of confidence but rather a sense of modesty. Therefore Rav Ovadia bases his later ruling on the use of a shul on Rav Isserlein's ruling. However, he nevertheless insists that one be careful to repaint the shul in order to at the very least be stringent for the opinion that would argue the shul became forbidden.

This article is in memory of my great-grandparents, Mr. and Mrs. Rubenstein (Rivka bat Shlomo and Dovid ben Tzvi). They independently survived the Holocaust and married after the war. It is no exaggeration to compare them to the Maccabees and their consecration of the Beis Hamikdash. They grew up in a shattered world and they lived not only to see it rebuilt but also to assist in its rebuilding. It is intriguing that in our focus of Chanuka we neglect to speak of the stained stones of the altar, instead focusing on the miracle. But it is essential that we appreciate the enormity of the Maccabee's achievement, not merely to continue what was always done in the Beis Hamikdash, for their simple act of ordinary life was itself revolutionary. To the contrary, for before they could do anything they had to face up the remnants of their mikdash and quite literally imbue it with the necessary holiness before it could even function. So too with my great grandparents, for whom the act of living an ordinary Jewish life was itself an immense achievement of willpower given their immense burden of trauma. May we attempt to embody their strength and carry on their perfect understanding that what we take for granted is their constructed foundation.

All the Fish in the Sea

JOSHUA GLETTNER



The skink joyfully traversed the desert. To avoid the heat, the skink plunged beneath the warm sand, sliding back and forth like a fish. Yet, the skink wasn't hungry. Jumping out of the sand, it spied a cricket stumbling beside a rock. It pounced on the unknowing prey, whose meager jumps couldn't avoid the skink's bite of death. Chowing down on the pleasant taste of the cricket, the skink prepared itself to dive back into the sand.

Yet, while the skink planned, a young Berber laughed. The Berber extended his hands stealthily over the unknowing creature. He trapped the poor skink, writhing to no avail. The Berber threw the skink into the large basket he had prepared. The skink encountered his trapped compatriots within the basket, all attempting to escape their captor.

"Very nice," muttered the Berber as he spied his finds. They were a difficult day's work in the hot desert sun. Very often, the creature escapes his grasp. But at the very least, he has captured fifteen unfortunate lizards.

What compelled his unusual behavior? The Berber knew a trader by the name of Muntas, who regularly sold village goods in the big port city of Algiers. Muntas heard the news that the Europeans wanted skinks. The demand was high; rumors abounded in Europe over the skink's medicinal purposes.

So Muntas had gone to the Berber, offering him fifteen dirhams for twenty skinks. Muntas would sell the skinks to the merchants, who would, in turn, have them sent to Europe. The Berber followed the terms of the deal, and brought the skink collection to Muntas when his basket was full. Muntas was delighted, as were his European interlocutors. In Algiers, the now dead-skinks were pickled for preservation. From there, the dockmen packed the skinks for shipment to Venice, and from there they were loaded on a river barge and sailed up to Vienna.

Rabbi Aaron the doctor, a leading *talmid chacham* in Vienna, spotted the jar of skinks positioned at the back of the apothecary. "What's that," he asked the pharmacist.

"It's a new shipment from the Spanish Sea. They call them sandfish. Crazy, no? They swim in the ocean, sometimes coming up on land."

“What does it treat?”

“I’ve heard headaches and constipation. But I will tell you that I have heard they are poisonous, so you have to skin the creature before putting it on as a treatment.” The rabbi displayed his interest by taking out his wallet. The pharmacist replied quickly, “Ten ducats.” The rabbi laid out the requisite coins on the counter, and the pharmacist lifted the stiffened skink from the wider bowl, placing it in a smaller jar for easy transportation.

The rabbi ran eagerly to the house of the Chief Rabbi, taking care not to drop his precious goods. He stomped up the narrow stairway and impatiently smacked the door. A startled maid let him in. He paced down the edge of the hallway, finding Rav Yom Tov Lippman Heller staring intently at a difficult *gemara*. Besides the Talmudic volumes, he is immersed in a massive stack of commentaries.

Rabbi Aaron showed Rav Yom Tov the glass jar and pulled out the dripping specimen. “What is this?” asked Rav Yom Tov.

“A sandfish. I have heard this creature is found near the seas of Spain. It lives in the ocean. I cannot help myself; I had to know whether such a thing is kosher.” Rav Yom Tov inspected the creature. It had scales, all right, but no fins. Was it kosher? The Talmud states that all fish that have scales, have fins. Can we use this statement to permit this strange creature, despite its apparent lack of fins?

Furthermore, this sandfish had the shape of a lizard. Should it have the *halachic* categorization of a fish and thereby be permitted for consumption? Or should it be considered among the forbidden *sheratzim* and therefore be non-kosher?

Rav Yom Tov Lippman Heller shook his head in confusion. “I don’t know. The only thing I can think to say is that maybe when the Talmud states everything that has scales has fins, it means only creatures alive at the time of Hashem’s creation of the world. I don’t know what this thing is, but it might be a product of grafting.” Rav Yom Tov Lippman Heller later recorded the question in his commentary on the *halachic* rulings of the Rosh:

ואני בהיותי אב"ד ור"מ בק"ק ווינא הביא אלי החכם מוהר"ר אהרן רופא נר"ו דג נקרא בלשונם שטינק"ס מרינו"ס ונמצא בים הספרדי והוא סם המות והרקחים יודעים פעולות להוציא הארס ממנו ואז עושין מבשרו במיני רפואות ויש לו שדרה וראשו רחב וגם יש לו קשקשים על כל גופו ואין לו שום סנפיר רק יש לו ארבע רגלים כרגלי בהמה או חיה ושאלני על זה דממ"נ אם נחשב רגלים לסנפירים הלא דרכיה דרכי נועם א"א לומר שהתורה מסרה לנו כלל שע"י כן נבוא לאכול סם המות ואם בר"פ לולב הגזול הוציא כופרא מכלל לולב משום שנאמר דרכיה וגו' דבכופרא יש

קוצים ומסרטים הידים כ"ש בכגון דא סכנת נפש ואשתומם על זה מאוד ולא ידעתי להשיב רק אמרתי שאפשר שהוא מין מורכב ולא הורכב קודם מ"ת כמו הימים שאמרו בב"ר שהקב"ה לא בראם בששת ימי בראשית ואף זה מין הורכב אחר קבלת חז"ל כל שיש לו קשקשת יש לו סנפיר. (מעדני יום טוב מסכת חולין פרק ג)

When I was the head of the Beis Din and a Rav in the holy community of Vienna, the brilliant rabbi doctor Aaron brought to me a fish which they call in Latin "Stinkus Marinus" found in the Spanish Sea. It is poisonous, and pharmacists know various ways to extract the poison. They [pharmacists] then make from the flesh kinds of cures. It has a spine and a wide head, and also scales all over its body. But it does not have a single fin, only four legs like the legs of an animal or beast. [Rabbi Aaron] asked me about this - "if we consider the creature to be kosher, how could the Torah, whose ways are peace... permit us to eat a food so poisonous?" I was completely startled by this and I did not know how to answer him. I only said, "Maybe it is a grafted creature not from the times of creation and the rulings of the sages that anything which has scales has fin [i.e. that when the Talmud says that everything which has scales has fins, it did not speak regarding species then nonexistent].¹

Rav Yom Tov corresponded with the other *poskim* of Europe questioning the proper approach to such a creature. How should it be classified? What is a fish?

To answer our question, we must probe the integral definition that the Torah uses to define a fish and examine various unusual cases that illustrate how the Torah's definition of fish is not exactly straightforward. The Torah states:

את זה תאכלו מכל אשר במים כל אשר לו סנפיר וקשקשת במים בימים ובנחלים
אתם תאכלו. (ויקרא יא:ט)

And this you shall eat from all that is in the water, that which has fins and scales, in the water, in the oceans, and in the rivers, you shall eat.

Does the Torah mean to permit a specific species, or is anything that has fins and scales automatically allowed?

The question first appeared in the medieval ages among the french *rishonim*, who

¹ The questioner assumed the sandfish was permitted and thus asked why the Torah would permit it, but Rav Yom Tov attacks the questioner's assumption. Rav Yom Tov goes on to construct a very difficult argument, stating that while we say for fish that "whatever has scales has fins," the same is not true for marine animals. Nevertheless, Rav Yom Tov does say that if a marine animal had fins and scales, the distinction is where the species in question only has one of the two requirements.

wondered whether the barbuda fish should be permitted.² Many argued that the fish should be permitted since it had fins and scales. However, Rabbi Yehuda the Chasid, a 12th-century German commentator, forbade consuming barbuda because it had an adjoined tail, unlike the separated tale usually seen in fish. He argued that the shape of the tail was necessary because “a kosher fish has a split tail, unlike the barbuda fish.” Rav Hershel Schachter³ explains that this dispute seems to question whether a fish must have a specific shape. Do we state that a fish is kosher even if it is shaped in an unusual manner?

The question expanded in the aftermath of Rav Yom Tov’s ruling on the sandfish. Many asked whether a skink would be kosher if it did have both fins and scales. It is important to note that a skink only has scales. The primary question was 1) could we assume the presence of fins from the presence of scales, and 2) if we stated that a skink had fins and scales, would it be kosher? Skinks appear similar to lizards, although they display fishlike behavior. The *Pri Chadash* (YD 83), writing at the end of the 17th century, notes that there should be no reason to distinguish between fish and marine animals. The Torah does not explicitly state that a species known as fish existed, merely that a creature with fins and scales would be permitted.

However, the Rambam in *Hilchos Maachalos Asuros* 2:12 seems to disagree. In the *Mishne Torah*, he explicitly requires that the creature be a fish, stating that anything which lacked the appearance of a fish, whether “seal, dolphin, or frog,” would “be considered neither a kosher nor non-kosher fish,” but merely as an aquatic insect. The Rambam seems to exclude any aquatic animals from the permission of fish.

A second intriguing dispute sparked by the skink dispute is whether a fish that spends time on land is permitted. If a fish can live outside water, is it kosher? The skink, in truth, is not even a marine creature. It lives exclusively on land. However, in the time of Rav Yom Tov, it was thought to be primarily marine, albeit spending some time on land.

The *gemara* in *Maseches Makkos* quotes Rav Yehuda “Anyone who eats the *beinta debeirava* is to be punished for consuming an insect.” Rashi explains that “*beinta debeirava*” is a worm that infests cabbage. *Tosafos* questions Rashi’s interpretation; is it not obvious that a worm is an insect? *Tosafos* suggests that “*beinta debeirava*” refers to a fish that burrows on land, like the African Mudskipper. *Tosafos* states that the Talmud prohibits the consumption of this fish if caught on land. But what difference does it make where

2 *Sefer Mitzvos Katan*, *Hagahos Rabbeinu Peretz Mitzva* 211

3 Rav Schachter on YUTorah “*Kashrus in the Home*,” seems to be based off of the *Pri Chadash*’s understanding.

the fish is caught? If a fish has fins and scales, it is kosher, and if not, not. We have already noted a dispute among the commentators about whether marine creatures with fins and scales are permitted. But why would one distinguish over the place of death?

The Ramban argues on a variation of *Tosafos*, suggesting that *Tosafos* means to say that if a fish can live on land, it is treated like an insect and thus prohibited. This makes sense; it argues on a definite basis that fish that live on land are forbidden. But why would *Tosafos* make a distinction predicated not on the grounds of an entire species, but rather on an individual creature?

We can perhaps suggest as a fundamental basis that when the Torah permits us to consume creatures of the sea, it does not mean to give signs of a species. Perhaps from the Torah perspective, fish do not exist as a separate entity. In contrast, for animals and birds, we have precise physical descriptions; in fish, we merely have a permitted form of an insect, an intriguing prospect.

Such an understanding like that of *Tosafos* is understandable in the context of the *Pri Chadash's* ruling on marine animals. Both opinions are based on a notion not predicated in species proper but in various behaviors that enable it to be consumed. As we have seen, their opinion leads both to stringency; even a kosher fish is forbidden while on land; and to leniency that any marine animal with fins and scales is permitted.

The *Darchei Teshuva* quotes an intriguing discussion over how *halacha* accepted *Tosafos'* stringency. It is not quoted in the *Shulchan Aruch*. Nevertheless, the *Darchei Teshuva* quotes the responsa *Imrei Shefer*, written in the 19th century, who notes that there existed two unusual *chumros* concerning the Tanca Fish. A group insisted that they had a tradition from the Baal Shem Tov that it was forbidden to consume the fish. Another group abstained from eating the fish only during the summer. The *Imrei Shefer* wondered at the source of this unusual stringency. He explained that the opinions correlated to the various opinions of *Tosafos* and the Ramban, for the Tanca fish are known to burrow during the summer when the river runs shallow. Some completely abstained from eating the fish according to the stringent opinion of the Ramban because the fish spent some time on land. Those who abstained from eating only during the summer followed the middle way of *Tosafos* that the fish were only prohibited during the time they typically lived in burrows.

An intriguing question emerges within flying fish. Are those stringent with burrowing fish equally stringent with flying fish? The *Korban Mincha Hilchos Ketanos* (*Daf* 97) argues that perhaps flying fish spend too much time out of the land. However, the *Korban Mincha* quotes a *mishna* in *Kelim* that states, “Everything in the

sea cannot contact impurity except seals because they flee to the land." This *mishna* seems to imply that a creature must live on the land for a long time to be considered a land creature, and mere leaping is not enough. The *Korban Mincha* notes that many fish leap, go out of the water, and then return.

The *Darchei Teshuva* quotes this ruling but raises a tough question. Even if it is true that the flying fish merely leap into the water for brief times, the fact they can leave the water shows that they can live without water. For the *Darchei Teshuva*, the emphasis on fish out of water is that the fish is not restricted to water. However, the *Korban Mincha's* approach suggests that the primary thing is that the creature is primarily land-based. Is the problem of fish out of water that the fish does not need the land, or is the problem that the fish spends too much time on land?

Unfortunately for Rabbi Aaron, over the 19th century, zoologists discovered that skinks did not dwell in the sea but were a land-dwelling variant of lizards that appeared to behave as fish. Interestingly enough, scientists have found that when skinks burrow, rather than using their limbs, they employ the movement of a fish. Furthermore, it has been discovered that skinks can breathe under the sand, much like a fish. Thus, it seems that in our day, the major thrust of the question is moot; the skink is now known conclusively as a lizard, but nevertheless the ramifications of the question still live on.

To conclude, we examined the intriguing question of defining a fish. We noted two major disagreements; 1) whether marine animals with fins and scales are permitted and 2) whether fish that live on land become forbidden. The result has been an intriguing dispute about whether fish have a real species category. If so, only fish proper should be permitted, as opposed to the suggestion that anything with fins and scales. Furthermore, there is a dispute about whether a fish must primarily be an inhabitant of the sea. Two extreme opinions argue all such fish are either permitted or forbidden. Then we looked at the intriguing middle way of *Tosafos* that such fish are only temporarily forbidden while on land, suggesting that the exemption of fish is not based on species. We also noted that while mainstream *halachic* opinion did not primarily accept *Tosafos* and the Ramban's opinion, a stringency in Europe developed seemingly by the Baal Shem Tov was still stringent in *Tosafos'* minority opinion. We also discussed whether flying fish are encompassed in the fish out of water problem. May we appreciate the great and unusual creations of Hashem's world that astound us in their complexity. And, it resolves the *poskim* of the generations to absorb this wild world and makes clear guidelines from the Torah. The *poskim* construct models that not only teach us *halacha* but also teach the messages *Chazal* took in their division of the natural world.

The Pirates Make a Deal¹

JOSHUA GLETTNER



Captain Fulvio² watched the enemy ship drifting on the horizon. They were a gang of Albanian pirates, and Fulvio had got them. Fulvio was a captain in the navy of Venice, the leading merchant power in the Mediterranean. Venice was responsible for guarding the seas against the pirates that preyed on merchant shipping, and Fulvio was among the most prominent and successful of Venice's pirate hunters.

He had been watching this Albanian gang for a while; at the last port, Fulvio had heard rumours that the pirates were sailing close to the vicinity of Vlore. He had sent out faster galleys to scout the coast, and they had collectively pinpointed the pirates.

The pirate fleet was caught in the trap; all that was needed was for Fulvio to send out the flag signal. He glanced once more at the pirates and nodded. A line of cannons burst out from all sides, supplemented with a series of musket fire. The Venetian ships sped against the dazed pirates and fired once more; the encirclement was now complete.³

The pirates, brave as they might have been, knew a lost fight when they saw one. They surrendered immediately, shouting pleas in broken Venetian to cease the brutal gunfire. The marines boarded the rogue ships and bound the Albanians. Fulvio commanded his fleet to pull back to the Venetian base at Corfu. The prisoners would be deposited at the naval prisons, where Venetian officers would interrogate them

1 Maharshadam, CM 344

2 Dated sometime in the 16th century, as the Maharshadam lived from 1506–1589. On a cursory look into Albanian piracy, one sees reference to an incident in 1554 where Venetian authorities captured Albanian pirates and would not release them until their pirate compatriots released a group of prisoners. This incident is quoted as having been described in Venetian records, although I cannot read Italian, so I cannot look further. At the basic level this incident could perhaps be the responsa's case.

3 "In 1554, 6 pirate vessels returned to Vlorë and were intercepted by a Venetian squadron who captured them, liberated their captives and then held the pirates under captivity.[24]"The role of money in wartime. Second Conference of the Museum of the Bank of Albania. 2018. Tirana p. 101. https://www.bankofalbania.org/rc/doc/LIBRI_KONF_MUZEUT_2018_anglisht_15837.pdf

and then negotiate with the Albanian pirate organisation to ransom their prisoners.

In Corfu, the Venetian authorities rejoiced at the reception of their prisoners, a new bargaining chip in the constant tit-for-tat that played out along the Adriatic. The Venetians had a goal in mind; recently, the Albanians had captured a group of Jewish merchants and their cargo sailing out of Patras. “We will offer you a deal,” insisted Captain Lorenzo to the Albanians, “we will give you back your men if you free our Jews and their cargo. That’s it; otherwise, the men are goners!”

Captain Lorenzo sent the message to the Albanians through an unofficial intermediary, where the message came to the attention of the pirate chief Pasha Mustafa. Mustafa had no problem with the agreement; it was clear that things had gone too far, and the pirates had been too bold. Mustafa visited the Jewish prisoners to inform them of the negotiations. The Jews were excited to go free until Mustafa raised a difficulty. “The Venetian dogs, God curse them, say they will give us our pirates back if we free you and your cargo. We have agreed to their deal. However, we must inform you that we don’t have your goods. Everything has been stripped and sold and divided, probably in some shuk in Istanbul by now. We have a Venetian fellow here who will take you back to Venice. When you tell him that you have received satisfaction in our dealings, we will free you, and he will free our brothers in prisons in Corfu; God protect them.”

Mustafa left the Jews to discuss among themselves. Yosef Mechas, an elder merchant, spoke first, “I think we can all agree that we must take our chance here. The value of freedom is worth more than any of our cargo. That’s simple.”

Yechiel Shaki shook in a fury. “I cannot believe you are falling for this Albanian plot! They are just playing with us. I’m sure they’re hiding our stuff in some warehouse, and they want to pressure us to give up. But *rabbosai*, we have the leverage! Without us, those pirates won’t go free. If we hold out against the pirates, we’ll get all of our money.”

“Is that a risk worth taking?” insisted Yosef. “They can easily kill us here and now, and it is because of Hashem’s mercy that He has given us a door from our cell. He has heard our *tefillos* and we must take advantage, not wait around like some shuk deal. Besides, you can recoup such losses, you are without a doubt a wealthy man.”

Yechiel Shaki turned his head to and fro and jumped up, “All due respect Yosef, but not in a million years! You call this *rachamim*? Do you know what I brought? Silk! Ten thousand ducats, all mortgaged against my lands. I cannot hold such a loss; this is a humiliation! I’ll not permit you to abandon the claims against the pirates, that is *gezeila* (theft), a crime against Hashem!”

The prisoners tried to persuade Yechiel, but he persisted in his stubborn refusal to even consider the possibility of going free without his silk in hand. The group of prisoners pondered how they could possibly convince Yechiel to agree. Yosef realised that the only individual who could convince Yechiel would be a rabbi, not any rabbi in fact, but the great decider of the generation, Rav Shmuel Medina (the Maharshadam, 1506–1589), a brilliant scion of an old Sephardic family based in nearby Salonika. They would send the question to him, and the Rav would impel Yechiel to abandon his continued resistance. The Albanians agreed to send a messenger with the letter; they wanted the whole thing resolved as soon as possible.

The principal source for this question is a *gemara* in *Bava Kama* that states that if a boat “is travelling in the ocean and a storm arose to sink it, and they need to lighten the load (by throwing off cargo), it should be divided according to weight and not according to the value of the cargo.” This slightly confusing statement is understood that each individual must throw off an amount of cargo in proportion to the weight of the cargo. Rashi states as an example that if one has to toss off one hundred ounces of iron, the other passenger has to toss off one hundred ounces of gold, even though the gold is worth more significantly than the iron.

Rambam records this statement of the *gemara* as the final *halacha*. However, elsewhere in Maimonides’ *Mishna Torah*, the Rambam states an unusual statement that seems to contradict the *gemara*. He writes that if a boat seems to break under its heavy load, then anyone can throw off cargo into the water because the cargo on the boat is considered to be a *rodef*, a term for one who attempts to kill someone and therefore is permitted to be killed in order to save his potential victim. The implication of the statement here in the Rambam is that any cargo may be thrown in the water, whereas the other statement of the Rambam based on the *gemara* implies that there has to be an equitable split in the division of the destroyed cargo. If one has to divide, then you can understand that there is a financial obligation for the other passengers to compensate the one whose cargo is improperly destroyed, in contrast to the statement of the Rambam.

The *Magid Mishna* explains that we must resolve this textual issue by distinguishing between two cases. In the first case the boat is not overloaded, and thus the baggage is not the *rodef*. One is throwing the baggage into the ocean not because the boat is overweight but rather that by lightening the load it would be easier to navigate the boat; thus the passengers are obligated to equitably divide the luggage thrown over. In the second case, the boat is overweight and the baggage is considered a *rodef* and thus any baggage can be thrown over.

The Raavad, notable critic of the Rambam, admits that the *Magid Mishna's* distinction is not without merit, based on a different *gemara* in the *Bava Kama*. Someone boarded a boat with his donkey. As they sailed in the ocean the donkey began wildly jumping, thereby putting the boat at risk of sinking. One sailor went over to the donkey and threw it in the ocean, thereby saving the boat and its passengers. The *gemara* questions whether the sailor should be liable, and it ultimately concludes that the sailor is exempt from damages because the donkey was a “*rodef*.” The Raavad notes that one may understand this as the source for the Rambam’s ruling but he firmly maintains that the luggage cannot be considered the status of *rodef* because otherwise one ends with a clear contradiction between these *gemaros*. The Raavad concludes that one must assume the cargo does not have the status of *rodef* and he thus rejects the Rambam’s ruling.

The Raavad’s ruling is explained in the *Nimukei Yosef*, who writes that no single bag can be considered the *rodef* even though in total the boat is overweight. The *Nimukei Yosef* suggests that the last person who signed onto the boat could be considered the one putting the boat over the weight limit. But while on a physical level that bag is weighing down the boat and thus in a physical sense considered a *rodef*, nevertheless in order to be a *rodef* there has to be a reason for personal negligence.

We see a similar rationale in the *Teshuvos Maimonios*, a collection of medieval *Ashkenazi* responsa printed with the *Mishna Torah*. This responsum discusses the Talmudic case of the donkey and the sailor, and states that the sailor case is only where the passenger brought the donkey without permission. If, however, the passenger was allowed to bring the donkey but it later erupted in dangerous behaviour, the sailor would be liable. Even though the sailor had done a *mitzva* by saving the lives of the crew he is still liable for the value of the donkey. The overall thrust of this position seemingly also expressed by the Raavad is that even if something is physically causing danger, one is only exempt for destroying such an item if there is clear negligence in the part of the one who brought it

In summary, there is a contradiction in the Rambam whether baggage is considered a *rodef*, which the *Magid Mishna* explains as predicted in two different circumstances, between where the boat is overweight and where throwing off baggage merely assists the ship. If the baggage is considered a *rodef*, then one can throw off anyone’s baggage even without division.

How does this relate to our pirate deal? The question is whether one individual's property may be sacrificed to save the collective. The Maharshadam notes that one may understand this case to fall in the dispute between the Rambam and the

Raavad. The Rambam would understand that Yechiel must be obligated in giving way because just as one can have a case where the baggage is considered *rodef*, so too one may consider Yechiel's silk as a *rodef* by keeping the group imprisoned, whereas the Raavad would argue that just as baggage cannot become a *rodef* so too Yechiel's silk is not considered a *rodef* and thus he cannot be forced to part with it. The Maharshadam thus asserts that one may think that if we are stringent for the opinion of the Raavad, we should not force Yechiel to give up the silk. However, he challenges this conclusion on two points. First he notes that even according to the Raavad one can have a case where baggage is considered the *rodef* if it is known which item is causing the problem. In our case it is clear that Yechiel's demand for his silk is the material perpetrator. However, as we noted, perhaps the Raavad would require active negligence of the item's owner for the item to be forcefully destroyed. The Maharshadam goes on to say that even if the Raavad would not obligate Yechiel to give up his claim, nonetheless we should not be stringent for the Raavad's opinion since the Rambam is the primary *halachic* desire and furthermore we are dealing with a case where there is clear potential bodily harm and a prohibition of "you shall not stand by the blood of your fellow." Thus the Maharshadam obliged Yechiel to end his quixotic struggle to keep his forever lost silk and thus the pirates freed the group.

The *Halachic* Considerations of Giving Gifts to Non-Jews

MOSHE CARRON



Working as a professional in a secular environment involves various daily interactions with both Jews and non-Jews. How *halacha* guides us through those interactions is one of the many beautiful elements of a Jewish Torah lifestyle. One *halachic* circumstance that could occur either at the office or at home, revolves around the question of giving non-Jewish coworkers or colleagues presents or gifts. Whether it's a coworker's birthday, a maid's holiday season, or tipping a taxi driver or a waiter - what are some of the governing *halachic* rules for when it is or is not ok to give something to a non-Jew?

The *pasuk* states:

כי יביאך ה' אלקיך אל־הארץ אשר־אתה בא־שמה לרשתה ונשל גוים־רבים מפניך, החתי והגרגשי והאמרי והכנעני והפרזי והחוי והיבוסִי, שבעה גוים רבים ועצומים ממך. ונתנם ה' אלקיך לפניך והכיתם, החרם תחרים אתם לא־תכרת להם ברית ולא תחנם.

When the L-rd, your G-d, brings you to the land whither you are coming to inherit, and He shall cast out many nations before you: the Chitti, the Girgashi, the Emori, the Canaani, the Perizi, the Chivi, and the Yevussi — seven nations more numerous and mightier than you. And the L-rd, your G-d, will deliver them before you and you will smite them. You must surely annihilate them. Do not make a covenant with them and you shall not grant them grace/mercy. (Devarim 7:2)

The *gemara* in *Avoda Zara* 20a brings a *beraisa* which cites this *pasuk* and derives three prohibitions relating to our relationships with gentiles from the particular

Moshe Carron is a Civil Engineer at Arup, a global engineering, design, architecture, and consulting company.

He has been a member of Adas Torah since 2021.

written format of the verse *lo sechanem*:

- *Lo siten lahem chania b'karka*: Not to provide gentiles any encampment or acquisition of property in the land of Eretz Yisrael.
- *Lo siten lahem chein*: The prohibition against giving gentiles praise or grace/favor.
- *Lo siten lahem matanos shel chinam*: Not to gift a gentile an undeserved free gift.

The *gemara* learns these three prohibitions from the three possible ways of reading and pronouncing the word תַּחֲנֵם. As it's written in the Torah with its current spelling, with no *yud* or *vav*, the word תַּחֲנֵם is from the word *chaniya*, meaning “holding/acquisition.” However, since the Torah does not have *nekudos*, it lends *Chazal* the ability to pronounce words in different ways with different vowels and learn multiple lessons from but one single word. Here the word תַּחֲנֵם can also be read as though there was a *vav* as in the form *techuneim*, which translates to *chein*, “grace/favor.” As a third way of reading, an unwritten *yud* could be added changing the pronounced reading into *techinam*, with the *shoresh* root of חִינם meaning “free.” Hence, from the one word we derive three prohibitions from the three possible readings of the word.

Continuing, the *gemara* there correlates the prohibition against presenting gifts to non-Jews with a dispute between Rabbi Meir and Rabbi Yehuda. The two *tanaim* argue regarding the interpretation of the verse:

לֹא תֹאכְלוּ כָּל נְבִילָה לְגֵר אֲשֶׁר בְּשַׁעֲרֵיךָ תִּתְנֶנָּה וְאָכְלָהּ אוּ מְכֹר לְנֹכְרִי...

You shall not eat anything that has died a natural death; give it to the stranger in your community to eat, or you may sell it to a foreigner...

(Devarim 14:21)

When the *pasuk* mentions “sell it to a foreigner/*nachri*,” is it specifying that the only transactional way to give a *neveila* to a *nachri* is via a “sale?” Or perhaps, are the “giving” and “selling” verbs mentioned in the *pasuk* interchangeable in regard to which people they apply to? Rabbi Meir is of the opinion that they are interchangeable, and one has the option to either give or sell to either a *ger toshav* or a *nachri*. Rabbi Yehuda, however, holds that the *pasuk* is telling us the specific types of transactions we are to perform with certain categories of non-Jews. Depending on if the person is a *ger toshav*, then one can only “give” them the non-kosher animal. But if the person is a *nachri*, one is to only “sell” them the non-kosher animal and is not permitted to “give” it to them. The *gemara* resolves that the *beraisa* above, and by extension the *halacha*, to be in parallel with the opinion of Rabbi Yehuda that one is not to “give” a free gift to a *nachri*.

Tosafos Avoda Zara

Already from the discussion in the *gemara*, distinctions between the different classifications of gentiles begin to form and arise. Which gentile does this prohibition of not giving free gifts apply to? Are all non-Jews treated equally when it comes to this law, or are there exceptions?

Tosafos in *Avoda Zara* (20a d"h d'amar) picks up on this distinction between the different groups of gentiles and questions the *gemara*. When taking a look at the context of the primary *pasuk* in *Devarim* 7:2, it is clear to see that the *pesukim* there seem to only be discussing prohibitions relating to the seven nations inhabiting the land of Israel, such as *lo sischaten* and *lo sichyeh*. Therefore, it should stand to reason that the prohibition of *lo sichanem* should also only apply to these seven nations, and not the general gentile world at large. Why then does our *gemara* assume the *lo sichanem* prohibitions apply to all *ovdei kochavim*? *Tosafos* answers that although the context of the *pasuk* is in reference to the seven nations, there really is no reason in logic why the *lo sichanem* prohibitions should not also apply to all other *ovdei kochavim* as well. With regard to the commandments of *lo sichyeh* (eradicate the seven nations) and *lo sischaten* (never allowing them to marry into the Jewish nation), one can say that there is more reason that these prohibitions/commands should only strictly apply to the seven nations. For example, there is no commandment obligating us to kill all the other nations of the world. Likewise, it's only for the seven nations that the *gemara* (*Kiddushin* 68) says that they are forever prohibited from marrying into the Jewish nation, even if they had a Jewish conversion. However when it comes to not praising a non-Jew or giving them a free gift, there really is no reason to distinguish between the seven nations and other *ovdei kochavim*.

Shulchan Aruch

Rabbi Yosef Karo in his *Shulchan Aruch* (YD 151:11) simply writes that "It is prohibited to give a free gift to *ovdei kochavim* that one does not recognize." The commentators (*Be'er Hetev* and *Sifsei Kohen* *ibid.*) seek to expound on this opinion held by Rabbi Karo and clarify which "*ovdei kochavim*/gentiles" he is referring to by referencing his other *sefer*, the *Beis Yosef*. In the *Beis Yosef* (CM 248), he rules that the prohibition of giving free gifts "applies equally to all non-Jews, even Muslims, with the only exception being is a *ger toshav*, who is defined as a gentile abiding by the seven Noahide laws and about whom we are commanded to support." From the *Beis Yosef* we see a larger umbrella of general non-Jews being included under term *ovdei kochavim* and the prohibition of not giving free gifts.

Rabbi Karo's choice to include Muslims is also of an interesting note, especially when considering an opinion of the Rambam. The Rambam, in his *Iggeres Hashmad*, writes that the religion of Islam is not considered to have the same severe status of idol worship, over which one is obligated to forgo one's life and die rather than transgress. Hence, it might be possible to infer from Rabbi Yosef Karo's emphasis and choice of words to include Muslims in the prohibition of *matnas chinam* that he is of the opinion that even a general non-idol worshipping gentile is included.

Meiri

Meanwhile there is a clear dissenting opinion of the *Meiri* about which gentiles are included in the prohibition. The *Meiri*, a 13th century *rishon*, wrote the following:

We find that the Torah in many places wished to distance us from serving idols and gods. It warns us about not having idol worship present in our land or borders and tells us to prevent the intermarrying of our daughters with the non-Jewish religions. When it comes to lo sichanem, this is the approach as well, with us being told not to praise their actions or even to praise non-Jews for their beautiful appearance. On the matter of giving gifts, one should not give free gifts to a non-Jew whom one is not more obligated towards. By giving gifts to such a non-Jew, it deprives and in effect steals from other non-Jews such as a ger toshav, whom we are obligated to support... But as explained in the Tosefta, if it is a non-Jew who you recognize and know, it would be permissible to give a gift. Certainly so, if the non-Jew is from one of the nations bounded by morals who are religious and accept the existence of God, it is permitted to give them a gift. Even if you don't recognize the person, it would be proper. (Beis HaBechira, Avoda Zara 20a)

From the *Meiri's* words, the prohibition of *matnas chinam* is much more limited in applicable scope. His opinion is that the prohibition of *lo sichanem* primarily only applied to the barbaric idol worshipping people of talmudic times. However nowadays when it comes to non-Jewish people who have been civilized by justice, law and acceptance of monotheism, these prohibitions would not apply.

Sefer HaChinuch

The *Sefer HaChinuch* (426.3) explains how the root of the mitzva of *lo sichanem* comes from a psychological recognition that thoughts and mental acceptance are the beginning roots of action. When a person starts saying or thinking that there is even

the slightest component of validity to idolatry, it begins the journey to possible action and practice. Hence, *Chazal* in their wisdom forbade us from engaging in praising one who worships idolatry, by saying “how beautiful this gentile is” or “how fine and pleasant he is,” and from giving them free gifts. All these prohibitions of the *lav* of *lo sichanem* sprout from one underlying root. We are preventing ourselves from bonding with them, joining and pursuing their same interests, and from learning from any of their immoral bad deeds.

This command of *lo sichanem* applies to men and women alike and in all times and places. The *Sefer HaChinuch* points out that the prohibition of not giving free gifts applies specifically to one who worships idolatry, but not to one who does not, for example a *ger toshav*. We are commanded to help support a *ger toshav*. However, as the *gemara* in *Erchin* 29a notes, we only accept a *ger toshav* at a point in time when *yovel* is practiced. Another case of where it's permissible to give a gift to a non-Jew besides a *ger toshav*, is to a poor gentile. There *Chazal* say in *Gittin* 61a that one could support a poor gentile along with the poor of *Klal Yisrael* because of *darchei shalom*, “ways of peace.”

The *Sefer HaChinuch* defines the prohibition of *lo sichanem* to only be regarding idol worshipers. However, it is unclear what he would hold with regard to a non-Jew who is not a *ger toshav* or an idol worshiper. His example of a non-idol worshiper jumped to the opposite end of the spectrum to a righteous gentile, leaving the gray area unclear. Perhaps one can read the *Sefer HaChinuch* that any general non-idol worshiping gentile, even a non-*ger toshav*, would be ok to give a gift to.

Which Gentile?

Classifying the different kinds of gentiles discussed, there are three main categories. The first type of non-Jew is a *ger toshav*, defined as a righteous non-Jew who abides by the seven Noahide laws. Type two are *ovdei kochavim*, idol worshipers. And the third type is an in-between who falls into neither category #1 or #2.

If the non-Jew were to be a *ger toshav* abiding by the seven Noahide laws, all opinions would agree that there would be no issues regarding giving them a gift. In fact, one is even obligated to give them when possible. Yet the likelihood of coming in contact with a modern day *ger toshav* is highly improbable, especially when considering the requirements of *yovel* being practiced and those opinions that state the *ger toshav* must dwell in the land of Israel.

When it comes to actual idol worshipers, the vast majority of opinions would agree that the prohibition of *lo sichanem* would apply and pose a serious concern. Idol

worshipping gentiles, such as those practicing Hinduism, should follow the same rules as the seven nations, and thus would have the same prohibition against giving them gifts or praise.

The in-between gentile who is neither a *ger toshav* or an *oveid kochavim* is the real subject of the *halachic* debate. The *Shulchan Aruch* would hold that the prohibition of *matnas chinam* would have full effect on them. By contrast, the *Meiri* and possibly the *Sefer HaChinuch* are of the opinion that they are not included in this prohibition.

Free vs. Not Free Gifts

Assuming we follow the opinion of the *Shulchan Aruch* that all gentiles are included in the *lav* of *matnas chinam*, how do these *halachos* play out in the workplace? Can one give their non-Jewish employee or co-worker a gift? As pointed out before, there is really only a strong *issur* when it come to someone who you don't know. As the *Tosefta* noted, if it's a gentile that one recognizes, it would be permissible to give them a gift. In the case of an employee or co-worker, they might be more inclined to do a better job for you as a result of your gift. This concept of the gentile providing you a benefit in exchange for your gift is one of the other possible *heterim*.¹ The gift is no longer a "free" gift in which you get nothing, but rather it is more transactional and exchange-like, similar to how the *gemara* mentioned a sale to a gentile is permitted.

Similarly, Rabbi Moishe Dovid Lebovits quotes in the name of Rabbi Yisroel Belsky that giving a mailman a gift around the non-Jewish holiday season would be ok for the same reason. As a result of the gift you gave them, the mailman will likely take on a higher level of responsibility to deliver your mail packages safely and on time. Thus again you are gaining a benefit from your gift. (Though it is best not to give the gift on their holiday date itself² or make any specific mention of the holiday.³)

How about tipping a taxi driver who you do not know and who you will likely never see again? Since they are strangers the rule of the *Tosefta* would not apply and there is no future relationship benefit to be gained by you. The *Be'er Moshe* (3:117) writes that it is still permissible to tip, since tipping ensures that taxi drivers will not

¹ This idea comes from a Ran in *Gittin* 38b. The *gemara* there brings a story with Rabbi Eliezer freeing his gentile servant (thereby causing his servant to be a *ger*/convert) to make a *minyan*. How could he free his servant when we know there is no greater gift than one's own freedom? The answer is that it wasn't a "free" gift. In exchange for freeing his servant, Rabbi Eliezer gained the benefit for himself of having a *minyan*. Thus we see that one can give something to a gentile, so long as a benefit to a Jew is to occur.

² Rama, YD 148:12

³ YD 147:2

bear a grudge against any other future recognizable Jews and avoid picking them up since he might think Jews don't tip. What about giving a candy bar or some snacks to an unfortunate homeless gentile on a street corner? For this case, it would be permissible as the *Sefer HaChinuch* pointed out because of *darchei shalom*.

Reason Behind the Mitzva

Although it may be possible to find *heterim* for the various types of cases that could arise, it is worth recalling the root of this prohibition. The Torah and *Chazal's* ultimate intention was to preserve the Jewish identity and religion. When we praise or give gifts to gentiles, it begins to implant inside an individual an interest in the secular world that could lead them to follow after their non-Torah ways. This mitzva is to discourage fraternization with *ovdei avoda zara*, for it could lead to a following of their wrongful ways (Rambam, *Meiri*). All three of the aforementioned prohibition derivatives share a commonality - not to become too close to an idol worshiper, per the fear that the Jew may be influenced to follow their pagan idolatrous ways.

Even in our modern world, where most non-Jews would likely meet the criteria of the *Meiri* of civilized law-abiding gentiles who accept the oneness of God, these concerns ring true. May we continue to bring about a *kiddush Hashem* in our daily interactions with the non-Jewish world. And merit the line of *hen am levadad yishkon uvagoyim lo yischashav* (*Devarim* 23:9) of our nation's distinctness, as the *Targum* there translates, to be the nation that prevails and does not get wiped out like the other nations of the world.

