

# Halachic Discussions

## מאמרי הלכה

Volume 1 Issue 4

סיון תשפ"א  
May 2021



RABBINICAL ALLIANCE OF AMERICA

איגוד הרבנים ד'אמריקא

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Halachic Discussions is a publication of halachic essays published by Igud HaRabbonim, the Rabbinical Alliance of America. Topics include the timely and the timeless, applying texts and sources from across the generations to contemporary life. While the primary language of halacha is Hebrew, for logistical reasons this is being published in English.

Submissions can be sent in ahead-edited English in Word format to [Igud.Halacha@gmail.com](mailto:Igud.Halacha@gmail.com)

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# Sefirah and Shavuos Section

## Pesach Sheni

by Rabbi Yaakov Klass

Question: What is the significance of Pesach Sheni that some have a custom to eat Matzah on that day?

Harry Koenig  
Via email

Answer: *Pesach Sheni*'s significance is actually more than just eating matzah as we shall set forth to explain.

We find the following in a Mishna in Tractate *Rosh Hashana* (18a): “For six [different] months, the messengers would go forth [Rashi explains s.v. “*shisha chodashim*” that this was in the earlier times, before our pre-calculated calendar was put into use, when *Beit Din* would send messengers, upon whose testimony they relied, to report if a new moon was present in order to calculate the start of the months and holidays]; *Nissan* [calculations were made] for Passover, *Av* for the fast [Tisha B’av]; *Elul* for Rosh Hashana; *Tishrei* for the setting of the Festivals; *Kislev* for Chanukah; and *Adar* for Purim. When the Holy Temple stood, they would go forth even on *Iyar* for *Pesach Kattan* (lit., little Passover, meaning that this was a minor festival).”

Rashi s.v. “*Pesach Kattan*” explains this as referring to *Pesach Sheni* [which occurs on the 14th of *Iyar*, based on the verses in *Parashat Beha’alotcha*, Numbers 9:9-11] “*Daber el B’nei Yisrael lemor, ish ish ki yi’hiyeh tamei lanefesh, o b’derech rechoka lachem, o l’doroteichem ve’asa Pesach L’Hashem bachodesh hasheni b’arba’a asar yom bein ha’arbaim ya’asu oto al matzot u’merorim yochluhu* — [G-d told Moses] Speak to the Children of Israel saying, if any man will become impure through a corpse or [will be] on a distant road, whether you or your [future] generations, he shall make the Passover offering for G-d in the second month [*Iyar*], on the 14th day in the afternoon shall they make it, with matzot and bitter herbs shall they eat it.”

Thus, the Torah offered one who was either ritually defiled or who was kept away from the *Beit Hamikdash* another opportunity to bring his Passover offering, on *Pesach Sheni*. Rashi seems to be the first to refer to this minor Passover as ‘*Pesach Sheni*,’ lit., the second Pesach.

As to the Mishna's referring to the day as *Pesach Katan*, meaning little or minor Passover, Rabbi Zev Cohen, in his sefer *Bein Pesach L'Shavuos* (*Kitzur Hadinim* 5:37-38) explains that it is only observed for one day and not seven, as the first Passover is. Also, the second Passover has many leniencies. Thus, compared to the first Passover, the second is 'minor'.

Rabbi Cohen adds that it is proper to learn about *Pesach Sheni* (in *Parashat Beha'alotcha*) and its laws on the 14th of Iyar, when the offering was made, and again on the following evening (the 15th of *Iyar*) when the offering was eaten.

Further, Rabbi Cohen states, "Though *Pesach Sheni* is not a festival and one is permitted to perform labor, it is nonetheless proper to rejoice somewhat."

We find other *halachos* pertaining to *Pesach Sheni*, as well, including those regarding prayer. *Sha'arei Teshuva* (*Orach Chayyim* 131), quoting the *Sha'arei Tziyon*, states, "Those that do not fall *Nefilat Apayim* (lit., the falling on one's face) in prayer and say *Tachanun* on the 14th of Iyar because of *Pesach Katan*, do so on the 15th. In Saloniki they protest strongly against one who does not do this, and such is the custom as well in Kushta, in Israel and in Egypt — to say it on the 15th."

*Sefer Likutei M'harich* (p. 113) mentions the above, and also quotes *Pri Megadim*, *Orach Chayyim* (*ad. loc.*), who states that our custom is to say *Tachanun* on the 14th of Iyar as well. In addition, *Likutei M'harich* discusses *Sefer Eishel Avraham* (*Orach Chayyim*, *ad. loc.*) who had the custom not to say *Tachanun* on the 14th. *Eishel Avraham* further comments that as we are *t'mei'ei meitim* — all considered as virtually defiled via a corpse, and thus we would not have been able to offer a sacrifice at the appropriate time, we fulfill our obligations on Passover at the seder with the recitation of the Haggadah. [It would thus seem that *Pesach Sheni* is of no consequence to us.] Nevertheless, it is correct to remind G-d of the merit of the *Pesach Sheni*, which was offered in the time the Holy Temple stood.

*Sefer Likutei M'harich* also discusses the opinion of *Hagashot Yad Shaul* (*Yoreh Deah* 401) which is that even though in the Gemara (*Pesachim* 95) we rule that the evening is not sanctioned as a festival and one does not say *Hallel* (Rashi *ad. loc.* defines the evening as that of *Pesach Sheni*) nevertheless, neither do we say *Tachanun*. The custom of the Gaon of Liske (*Sefer Hayashar V'Hatov* Vol. 2) is also mentioned. He did not say *Tachanun* for seven days [on *Pesach Sheni* and afterward – even though *Pesach Sheni* has no such *tashlumin*, i.e. additional days to bring one's *Korban*]. *Hagashot Yad Shaul* (*ad. loc.*) further rules that as regard the fast of *B'hab* (lit., Monday, Thursday, Monday), referring to the custom of fasting on these three days following a festival, if this occurred on *Pesach Sheni*, one would not fast.

*Eshel Avraham* (*ad. loc.*) disagrees and rules that not only would one fast, but *Selichot* would be recited as well; however, *Tachanun* would be omitted just as we are accustomed to doing when a *brit* occurs on a fast day.

*Likutei M'harich* then notes that it is the custom of people of piety and great deeds to eat *matzah* on *Pesach Sheni*, the 14th of *Iyar*. He poses a question: Was not *Pesach Sheni* observed by eating the sacrifice on the next evening [the 15<sup>th</sup>] as well, and how can that be commemorated today? The explanation provided is that indeed, the Gaon *Imrei Esh*, as well as his father-in-law Rabbi Dovid Deitch, would eat *matzah* on the eve of the 15th as well, together with a cooked egg, and they also studied the subject of *Pesach Sheni* in the Torah along with its *halachot*, as described in *Sefer Zichron Yehuda*.

It is our custom today to eat *matzah* at least at one meal, even with *chametz* present in the house [at the table]. This is based upon the *mishna* (*Pesachim* 95a), ``... on the second (*Pesach Sheni*) one may have in his house both *chametz* and *matzah*.

In the sefer of Rabbi Z. Cohen (*ad. loc.*), we also find three other *halachot* regarding *Pesach Sheni*, those dealing with death and mourning: One does not offer a eulogy or say *Tzidduk Hadin*. One does not recite the *Kel Maleh*, *hazkarat neshamot* for the memory of the souls. Finally, unveilings of monuments for the departed are not performed on this day.

In spite of all the *Halachot* and *Minhagim* that we delineated in the first segment of our discussion, which would seem to suffice insofar as describing *Pesach Sheni* and its relevance to us there is yet need for further discussion.

Unfortunately, due to our 'comfort' in our present *Galut* – dispersion in the Diaspora, we at times fail to appreciate or even see the wider picture – the reason not only for *Pesach Sheni* but for *Pesach* itself.

The festival of *Pesach* is so named because Hashem skipped over the Jewish households at the toime that he smote the Egyptian first born, but us he saved. He thus commanded us to offer a sacrifice the *Korban Pesach* – the Paschal sacrifice in commemoration of that event and to bring such sacrifice every year thenceforth on the Fourteenth of *Nissan* and to partake of it on the evening of the fifteenth. This sacrifice imbued with such sanctity that one who is uncircumcised or one who is *tamei* – ritually impure is forbidden to partake of it. Yet it is nevertheless incumbent upon him to partake of this sacrifice, thus what is his solution? In response to this Hashem established a date one month later when his personal impediments will have been resolved enabling him to perform this commemorative *mitzvah*.

We therefore arrive at *Pesach Sheni* and the opportunity for all those who were impeded in their performance of this *Mitzvah Overet* – seasonal passing commandment to now do so. The Talmud (*Yebamot* 72a) relates that for the duration of the forty-year journey in the *Midbar* – the desert of Sinai the children of Israel did not circumcise themselves. Why so? Because there was no *Ruach Tzphonit* – North Wind, without which circumcision would place them in severe danger, as it is those winds that help in the healing process. The Gemara offers numerous reasons for the lack of such winds, either due to the possible dispersal of the Clouds of Glory – the *Ananei HaKavod* that served as their guide in their travels or due to their being rebuked [Rashi - due the sin of the *eigel* – the

golden calf]. It was when they finally entered the land of Canaan that Joshua proceeded to circumcise the people, they were thus able to offer the *Korban Pesach*.

We thus see from a historical perspective that there were times after the commandment [in our case the *Korban Pesach*] was issued that unrelated matters hindered its performance. But as soon as those matters were resolved they were able to attend to the mitzvah in its proper time.

Now, let us consider, should the advent of Moshiach occur with great haste before the date of Pesach Sheni coupled with that the restoration of the Temple in Jerusalem, would we not be required to bring the Korban Pesach on Pesach Sheni. One impediment would be the fact that we are all considered as bearing corpse defilement rendering us *T'mei'ei Met* and as such we are the classical case of the Torah that would not allow our participation in this Mitzvah. Yet we find the Mishnah (*Pesachim* 79a) states as follows: “If the congregation [of Israel] was rendered defiled; or [even] a majority or the Kohanim – the priests were defiled but the congregation were ritually pure then [in either circumstance] they shall do it [even] in the impure state. Now if a minority of the congregation is ritually impure, then the ritually pure shall offer [on] the first [Pesach] and those defiled shall [upon the conclusion of their defilement] offer on the second [Pesach Sheni].”

Now should you question how is one to partake of the Korban Pesach in a state of defilement? We refer to the previous Mishnah (supra 76b) that notes the uniqueness of the Korban Pesach, that it may be eaten even in a defiled state because it is brought specifically that it shall be eaten [its sole purpose is for us eating it, not that it is offered up on the altar to Hashem].

Thus we enter a dispute in the Jerusalem Talmud (*Pesachim* 9:1) “If the Jews will be allowed to rebuild the Temple [after the conclusion of Pesach] the individual will bring the:Korban Pesach on Pesach Sheni but not the congregation. R. Yehuda differs and states that the congregation will bring the Korban Pesach, he cites as a proof King Chizkiyahu where many were defiled and later they brought the Korban Pesach on Pesach Sheini. The question arises if we follow the rule that *Tum'ah hutra b'tzibbur* – that defilement when it involves the entirety of the congregation [populace] may be bypassed, then why delay until Pesach Sheni? Rashi (Sanhedrin 12a) explains that the type of Tum'ah that was entailed there, in the instance of King *Chizkiyahu* was not Tum'as Met, which surely would have been overridden but rather the Tum'ah of idolatry that needed to be cleansed from the Temple. That type of Tum'ah could not be overridden hence the need to delay the Korban Pesach until Pesach Sheni.

Rambam (*Hilchot Korban Pesach* chap 7:1) rules like the Tanna Kamma that insofar Pesach Sheni only [some] individuals will be allowed to bring the Korban. Now why allow only individuals to bring the Pesach? We might offer the following that it seems to be apparent, that today because we are all Tme'iei Met – we are all ritually defiled with corpse tum'ah, overriding that tum'ah would only apply to Pesach but would not apply to Pesach Sheni.

Yet the very essence of Pesach Sheni was only a response to those individuals who were restrained from participating with their brethren in the Pesach on the 14<sup>th</sup> of Nissan toward the evening, as the verse in Parashat B'halotecha (Numbers 9:6-7) "*Va'yehi anashim asher hayu tmei'im l'nefesh odom ve'lo yochlu la'asot ha'pesach bayom hahu vayik'revu lifnei Moshe v'lifnei Aharon bayom hahu* – And there were men who were impure due to human corpse tum'ah and were therefore unable to offer the paschal sacrifice on that day [14<sup>th</sup> of Nissan], they came before Moses and before Aharon on that day; *Vayomru ha'anashim ha'hema eilav anachnu tmeim l'nefesh odom lama nigara l'vilti hakriv et Korban Hashem b'moado b'toch Bnei Yisrael* - And those men said to him we are defiled due to human corpse tum'ah why should we be at a loss by not being able to offer Hashem's sacrifice [the Korban Pesach] in its proper time among the Children of Israel" Moses then tells them to stand as Hashem will issue a ruling on their behalf and that is the solution for these individuals to offer a Pesach on a later date, one month later the 14<sup>th</sup> of the second month [Iyar]. Thus we see that Pesach Sheni was not the response as a solution for the congregation [the nation] as a whole but rather only for *yechidim* – individuals.

Thus that would seem to resolve that should we merit the arrival of Moshiach and the post haste rebuilding of the Temple in time for Pesach Sheni, nevertheless, only certain individuals will bring the Pesach but not the masses of the congregation. On the other hand the matter will find its ultimate resolution through the sages of that time.

No matter which way, every day with great anticipation we await his arrival, speedily in our days.

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## An Early Shabbat During Sefira

by Rabbi Yaakov Klass

Question: What if one forgot not only to recite the *berachah* on a Friday, but the actual counting for that day as well, and then after having gone to the synagogue to accept an *early Shabbat*, suddenly reminded himself? May he then count the missing *sefirah* before it turns dark so that he would be able to continue counting with a blessing?

Pesach Bernstein  
via e-mail

Answer: It is precisely for this reason that some are reluctant to make an early Shabbat until the conclusion of the Sefirah period. Nevertheless there are many who do so out of real need. In many instances they have young children whom they wish to include in the Friday night seuda, but who need to go to sleep at an earlier time. Or simply they cannot eat late and properly digest their food.

Rest assured, though, that you were correct, as we see from the ruling of Hagaon Rabbi Moshe Feinstein (Igrot Moshe, Orach Chayyim Vol. 4, 99:3) that one may still count in such a circumstance [for the previous evening]. Your question really pertains to the matter of counting on subsequent nights with a beracha and indeed, you may do so.

We find the following regarding a niddah in Parashat Metzora (Leviticus 15:28), “Ve’rim tohara mizovah ve’safra lah shiv’at yomim ve’achar tit’har – If she ceases her flow she must count for herself seven days and after that she can be purified.”

According to Rema (Yoreh De’ah 196:11), today we follow the view that she first needs an interval of five full days from the cessation [a bride waits only four days], then she checks, dons “whites,” and begins to count the seven days.

Now, what if the evening that the woman is to don “whites” and begin the count is a Friday night, and the congregation recited both the Kabbalat Shabbat and Ma’ariv prayers early – will she be able to begin her count at shekia (sundown) that night after the interval of five full days (as these five days must be full 24-hour days), or must she wait until Motza’ei Shabbat?

Rema discusses this (infra Y.D. 196:1), citing two views. The first (Terumat HaDeshen) is that the early Friday night congregational prayer affects her and she must wait until the following evening. The other view (Agur, in the name of Maharil) is that the congregational acceptance of the Sabbath has no bearing on the woman and she will, indeed, start her count of seven [days] that evening.

Rema explains that our custom is to rely on the view of Terumat HaDeshen. Post facto, however, the view of Agur will suffice to permit such a count.

Should one ask what relevance the count of the niddah has to our obligation to count Sefirat Ha'omer, the Taz makes such a connection (Yoreh De'ah ad loc.). When commenting on Agur's view, he states that even where the congregation has accepted the Sabbath early, such acceptance bears no relevance on the niddah's situation as [each of] her [five] day[s] requires a full 24 hours. [This means that she would begin her count at shekia.]

Taz there cites Sefirat Ha'omer as one of his proofs. When Shabbat is accepted early, the counting of the Omer cannot take place until nightfall, in spite of the fact that tosefet Shabbat, adding time to the Sabbath or the early acceptance of Shabbat, is a Biblical concept.

It is obvious that the Taz took a cue from Tosafot (Ketubbot 72a, s.v. Ve'safra lah, le'atzmah) who ask the following: If the Torah required her to count, why does she not recite a blessing [on this mitzvah] just as one blesses when one counts the Omer, as the Torah states "ve'safra – she shall count," the same language that is used for Sefirat Ha'omer?

Tosafot answer [that the only such comparison can be regarding the Jubilee, as] "we only bless in regard to [the commandment of] the Jubilee year, as the beit din bless each and every year, since they can always count correctly, with absolute certainty, similar to Sefirat Ha'omer. However, as regards the niddah, it is possible that her count may be overturned [and not be completed]. Therefore she may not count with a blessing."

We see that a comparison is drawn between Sefirat Ha'omer and Sefirat HaNiddah, and what applies to one would apply to the other, at least in regard to the counting itself, although one of them does not require a blessing. Therefore, the actual time for counting in both situations should be at nightfall.

However, the Mechaber reminds us (Orach Chayyim 489:3): "If an individual prayed [Ma'ariv] with the congregation when it is yet day, he counts with them without a blessing, and if he remembers at night he blesses and counts." Rema adds that even if he answered Amen to the blessing uttered at the prayer service, he repeats the count with a blessing if his intention was not to discharge his obligation at the earlier time.

The Taz (ad loc.) takes issue with this statement of the Mechaber. He explains: "Is our discussion entailing a situation of wicked desecrators (who violate the rules of Sefirat Ha'omer and count while it is yet day)?" He concludes that the Mechaber's rule refers to the period of bein ha'shemashot, the time of dusk that is a safek layla and can possibly be considered as the evening.

Indeed, Rabbi Feinstein at the end of his discussion of this matter (Igrot Moshe, Orach Chayyim Vol. 4, 99:3) posits that it is more reasonable to conclude like those who require one to count after shekia, even though Ma'ariv may be prayed at the earlier time, immediately after Plag HaMincha. Thus, one may still count the Omer of the previous evening even after the congregation has prayed [an early] Ma'ariv.

Obviously, then, you may count after shekia for that evening and continue every subsequent evening with a blessing.

May we merit the coming of Moshiach so that we may not only fulfill the mitzvah of counting the Omer but merit to actually bring the Omer to the third Beit Hamikdash.

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## ‘Lag BaOmer - Shavuot’

by Rabbi Yaakov Klass

Question: On the evening of Lag BaOmer [the thirty-third day of the count of the Omer between Passover and Shavuot], if one simply mentions that it is Lag BaOmer [e.g. “Now that it is Lag BaOmer, let’s celebrate”], is it considered as if he counted Sefirah, which would not allow him to count the day again that evening with a blessing?

*M. Goldblum*  
*Miami Beach, FL*

Answer: It all depends on what was said. If all one said was, “I am now headed to a *Lag BaOmer* celebration” or even if one said, “It is now *Lag BaOmer*,” we generally rule that it is not considered as if he counted, and he may count that evening with a *beracha*. Similarly if one remarked on his way to the synagogue *Shavuot* before the Tefillah in a manner that referred to it as now being *Shavuot*, yet it was before *shekia* and he had not yet counted the 49<sup>th</sup> day he may still do so.

There are numerous factors involved in this particular situation. Let us first review the source of our requirement for *Sefirat Ha’omer*.

The Torah (*Parashat Emor, Leviticus 23:15-16*) states as follows: “*U’sefartem lachem mimochorat haShabbat miyom haviachem et omer hatenufah sheva Shabbatot temimot tih’yena. Ad mimochorat haShabbat hashevi’it tisperu chamishim yom vehikravtem mincha chadasha LaHashem* – You shall count for yourselves from the morrow of the Sabbath [i.e. the 15th day of Nissan, the first day of the Passover festival] from the day when you bring the *omer* of the waving, seven complete weeks shall there be. Until the morrow of the seventh week you shall count fifty days and you shall offer a new meal offering to *Hashem*.”

The formula our Sages instituted for counting requires us to count days and weeks in order to satisfy the verse’s requirement of “seven complete weeks shall there be.” Thus, based on this verse Abaye ruled (*Chagiga 17b*) that one is required to count days as well as weeks. [As relates to the ‘Fiftieth Day’ I have seen some who say that the blessing of the day in the Amida and or Kiddush

Yet we find in Responsa *Yabia Omer (Orach Chayyim 43:9)* that the Gaon Rav Ovadiah Yosef Zt”l cites *Birkei Yosef (Orach Chayyim 489:9)*, who states as follows: “There is a dispute among the *Acharonim* (the later authorities) regarding the case where one counted with ‘*rashei teivot*’ [that is, abbreviations that use Hebrew letters to indicate numeric values, such as *lammed* (30) *gimmel* (three) – *Lag* – to represent 33]. Yet the *Get Pashut* (126:73) agrees that he has fulfilled his obligation [of counting].”

Rav Yosef notes his own inclination to rule like the later authorities – that such a count is of no value – yet he cites Maharam ibn (ben) Chaviv, who opines like *Birkei Yosef* that one indeed fulfills his obligation through such counting.

Rav Yosef also notes that since today, when we have no *omer* sacrifice and no Temple in which to bring the sacrifice, our counting is a Rabbinical and not a Biblical obligation, there is no requirement of *kavana* – intention. Thus, merely referring to *Lag BaOmer* on that evening should accomplish the *mitzvah*.

However, there is another matter in our case [as we understand it to be] that we cannot infer from Rav Yosef's citation. This is the requirement to say "*Hayom yom...*" meaning "*Today is...*" just as the verse states, "...you shall count fifty *days*..."

The *Taz* and the *Magen Avraham* [*Orach Chayyim* 489:4; see also *Ba'er Heitev*, *Mishna Berura ad loc.* and *Chayyei Adam* (131:6)] rule that if one did not refer to the count with the word "*Hayom*," there is no [valid] count as regards *Sefirat HaOmer*, and a person would [be required to] count that evening with a blessing and would continue counting with a blessing on subsequent evenings as well.

Thus as we see the preponderance of views in this matter is that mere mention of the colloquial name of that day is not sufficient reason nor a hindrance to the counting the *sefirat ha'omer* that night or succeeding nights with a blessing. Similarly as we noted at the outset referring to the day by that colloquial name before *shekia* is not a hindrance to catching a missed counting of the day before, either in the course of the *sefirah* or at its conclusion as well.

May we merit the return of the Biblical requirement to count the Omer without any Halachic dispute and that will be with the advent of *Moshiach* and the rebuilding of the Holy Temple in Jerusalem. Amen, may it be His will, speedily in our days.

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## Staying Awake Shavuot Night

by Rabbi Yaakov Klass

Question: Many people are accustomed stay awake Shavuot at night and learn Torah. Is this recommended even at the expense of proper kavana at Tefillah the next morning? Would it not be far better to get a good night's rest and then learn with more fervor the next day?

No name please

Via e-mail

Answer: The custom Shavuot at night to remain awake is an age-old minhag – custom, and even if individuals decide not to do so, to nullify the minhag for the congregation at large would be wrong. What we do find is that many congregations have two minyanim for Shacharit on Shavuot, the first at Vatikin for those who stayed awake the entire night learning and a second minyan at the usual am time for those who choose not to stay awake the entire night.

The concept of following a minhag at times can have broad Halachic considerations. An example, the Mishnah (*Berachot* 44a) cites the following dispute, “ One who drinks water to quench his thirst, blesses *She'hakol nih'yeh bidvaro* - all was created with His utterance. R. Tarfon says *Borei nefashot rabbot*... – He has created many creations and all of their needs.... R. Tarfon disputes the Tanna Kamma, now what is the resolution of this dispute? Raba b. R. Chanan (*Gemara infra* 45a) said to Abaye and some say [his query was directed] to R. Yosef and what is the Halacha? The latter responded: See what the people do.

Rashi (ad loc 45a, sv “ *mai ama devar*”) explains [Let us see] what is the common practice of the people [in this matter]. And it has already become accepted practice [custom] to bless *She'hakol nih'yeh bidvaro prior* [to one's drinking] and *Borei nefashot rabbot* after one has finished [his drink]. Thus we see that even though it is only a minhag that has become the accepted Halacha.

Rabbi Shlomo Aviner, Rosh Yeshivat Ateret Yerushalayim (*Responsa She'eilat Shlomo* 1:26-27, 222 ) discusses this matter at length. He first cites Magen Avraham (*Orach Chayyim* 494; in the name of Zohar), who explains that the custom of learning and dedicating the entire night of Shavuot to Torah study is an attempt to rectify the misdeed of the Jewish nation at the time of the Giving of the Torah. When Hashem “arrived” to give them the Torah, He found them sleeping and they had to be awoken. The custom therefore developed to stay awake all night as a spiritual rectification both for our fathers having overslept and more so to show our true zeal for the Torah.

Yet, Rabbi Aviner cautions, one should take into account that staying awake an entire night might cause a lack of proper concentration for Tefillat Shacharit. If one feels this is the case for him personally, then it is far better not to stay awake. To daven with proper

concentration is more important than staying up all night learning, due to the fact that Tefillah is clearly a time-related obligation [that would override learning which is beyond the scope of time]. Indeed, he refers to a later citation of Magen Avraham (*infra. Orach Chayyim* 619:sk11) where he again makes this very same point regarding those who have a custom of staying up all night on Yom Kippur, he warns against staying up all night on Yom Kippur if it will result in a lack of proper concentration in the day's Tefillot.

Rabbi Yitzchak Ze'ev Soloveitchik, the Brisker Rav (*Uvdot Ve'Hanhagot Le'Beit Brisk* vol. 2, p. 79) expresses his surprise that people are so particular to stay awake the entire night of Shavuot, which is only a custom, yet on Pesach night, where there is an actual law to discuss the Exodus from Egypt until one is overcome by sleep, people are not always so careful. Indeed, in the city of Brisk, people were not meticulous in following the custom of staying awake the entire night of Shavuot. They simply did not see that night as different than any other night. One can only imagine the Torah learning on an "ordinary" night in Brisk! He also reasoned that learning on Shavuot night is not more important than learning during the day of Shavuot.

In the *Sefer Ha'Shakdan* (vol. 2, p. 240) we see that Rabbi Yosef Shalom Elyashiv was asked by his grandson as to why Rabbi Elyashiv does not stay awake all night on Shavuot to learn Torah like others do but rather follows his regular learning schedule of waking up at 2:00 AM to learn Torah. Rabbi Elyashiv explained that he made a calculation and found that if he changed his routine by foregoing his usual few hours of sleep on that night, not only would he not gain more learning time, but also he would actually lose 15 minutes of learning! So as not to lose even a few precious minutes of learning Torah, he decided that it is preferable to go to sleep at the beginning of the night as usual.

Each person should carefully consider if it is worthwhile for him to stay up all night since there is the concern (*Avot* 5:11) "yatza secharo b'hefseido – the gain that is offset by its loss."

Nevertheless, one who wishes to remain awake learning all night, and feels he will do so without detriment to Tefillah the next morning, should be aware of some pertinent Halachot to be followed as morning approaches.

As regards one who wore Tzitzit all night he should not recite a new blessing on it in the morning. Rather he should try to hear the blessing said by someone who is obligated to recite it or he should have the Tzitzit in mind when he recites the blessing over his Talit (*Mechaber, Orach Chayyim* 8:16 with *Mishnah Berurah* sk42).

Now, as relates to Netilat Yadayim one should wash without a blessing, or hear it from someone who is obligated to recite it (*Shulchan Aruch Horav* 4:sk13). Another option, which is preferable, is that one use the restroom and thus become obligated according to all opinions to wash Netilat Yadayim. After washing, the blessings of Al Netilat Yadayim and Asher Yatzar (*Mechaber, Orach Chayyim* 4:13 with *Mishnah Berurah* sk27, 29, 30).

As relates to Elokai Neshamah and Ha-Ma'avir Sheinah, the former should be recited without its concluding blessing [hamachazir neshamot...] and the latter should be recited sans mention of Hashem's Name, or better yet, if at all possible, it should be heard from someone who is obligated to recite them [one who has slept], since these blessings were established as a praise to Hashem for the daily restoration of our souls and the removal of sleep. When one did not sleep all night, neither of these occurred (Mishnah Berurah, Orach Chayyim 47: sk30 and Biur Halachah). If one sleeps even half an hour, the obligation to recite these blessings does apply (Mishnah Berurah Orach Chayyim 4: sk34-35 and Biur Halacha s.v "Dovid v'chulu...").

Now, as relates to Ha-Noten Le-Ya'ef Koach [He has given the weary renewed vigor], nevertheless one should recite this blessing even though he is very tired, since this blessing was not established for the person's individual state, but as a general praise of Hashem who created His world which includes the removal of tiredness (Mechaber, Orach Chayyim 46 with Mishnah Berurah #22 and Mechaber, Orach Chayyim 47 with Mishnah Berurah #28). Chasidim recite all of the morning blessings even if they remain awake all night (Shulchan Aruch Horav 47:7 and Siddur Chabad in the laws printed before the morning blessings and blessings over learning Torah).

As relates to Birkat Ha'Torah, there is a dispute whether these blessings should be recited in the instance where one remained awake all night. One option is that the morning before Shavuot, one make the following stipulation: "the blessings that I now recite shall be for the following day as well." Of course the other option is that one hear the blessings from someone who slept with both the reciter and the listener having in mind that the blessings apply to both of them (Mechaber, Orach Chayyim 47:12 with Mishnah Berurah sk25-28). If neither of these is a possibility, one may recite the blessings, based on the Halachic opinion of Sha'agat Aryeh (Responsa 24-25) that these blessings are a biblical Mitzvah so in the case of a hefsek - doubt, one is strict and recites them. This ruling is found in Rabbi Kook's commentary to the siddur "Olat Re'eiyah" (vol. 1, p. 59 note 5) and in Rabbi Ovadiah Yosef's Responsa (Yabia Omer vol. 5, Orach Chayyim #6 and Yechaveh Da'at 3:33).

As relates to women it is important to note that they are also required to recite the blessings over learning Torah and these blessings are printed in all of the siddurim for women. Since women are not obligated to learn Torah, how can they recite the blessing "Blessed is Hashem...who has made us holy and commanded us to engage in words of Torah"? Magen Avraham (Orach Chayyim 47: sk14) opines that since they are required to learn those laws that apply to them, they are required to utter this blessing.

Rabbi Yitzchak Ze'ev Soloveitchik, the Brisker Rav (Griz, to the Rambam, at the end of Hilchot Berachot, p. 10) and Maran Rabbi Kook (Orach Mishpat 11, 2) offer a very novel and completely different reason. They explain that these are not blessings over performing a mitzvah, but rather blessings of praise. If the Torah had not been given, the world as we know it would be in total darkness. This would be equally so both for men and women. Women therefore give thanks to Hashem for the Torah's presence in the world.

May we experience a joyous Yom Tov with complete Kabbalat Ha'Torah - true receiving of the Torah - that will lead to the geulah sheleima speedily in our days.

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## Shavuos Early Shacharis

by Rabbi Gil Student

### I. Learning Torah All Night

It is common practice today for men to stay up all night learning Torah the first night of Shavuos. It is not clear to me when this custom originated but it began spreading broadly in the 16th century and became standard practice in the 17th century. Rav Avraham Gombiner (17th cen., Poland; *Magen Avraham* 494:intro) says that most learned people observe this custom. Similarly, Rav Yeshayahu Horowitz (17th cen., Germany & Israel; *Shenei Luchos Ha-Beris*, beginning of *Maseches Shavuos*) writes that all young and old men in Israel and the region observe this practice.

Many learn specific material. Rav Horowitz says that even in his time, there were printed *Tikkun* booklets that people would learn all night. To this day, many continue this practice. However, in the yeshiva world, it is more common to follow the practice mentioned by Rav Ya'akov Reischer (early 18th cen., Germany; *Chok Ya'akov* 494:1) in the name of his grandfather-in-law, Rav Aharon Shimon (Maharash) of Prague, that it is best to learn any Torah independently while the booklets are intended for those who cannot do so for the full night. Instead, they study the booklets together in groups. Regardless, after a full night of learning Torah, we pray as early as possible.

### II. When to Pray

The Gemara (*Berachos* 26a) says that the proper time to pray in the morning is at sunrise (*hanetz ha-chamah*). However, the Gemara later (30a) says that when Avuha di-Shmuel and Levi would leave on a trip, they would pray before sunrise. Tosafos (ad loc., s.v. *Avuha*) explain that they prayed after dawn. Dawn (*alos ha-shachar*) is when light first appears in the sky. Sunrise is later, when the sun appears in the horizon. Sometimes there can be a long gap between dawn and sunrise. Even though it is best to pray at sunrise, when there is a need you may pray earlier but not before dawn (*Shulchan Aruch, Orach Chaim* 89:1). A further complication is the earliest time to say *Shema*, which is when there is enough light for you to recognize someone a few feet away (*mi she-yakir*). That comes between dawn and sunrise. Since we have to say *Shema* before we reach the *Amidah* prayer, technically we cannot pray at dawn.

Do we have to wait for sunrise in order to pray in Shavuos morning? According to MyZmanim.com, in Brooklyn on May 17, 2021, *alos* is at 3:57am, *mi she-yakir* is at 4:38am and *hanetz* is at 5:36. The difference between praying after *mi she-yakir* and praying at *hanetz* is approximately an hour! Rav Yosef Te'omim (18th cen., Germany; *Peri Megadim, Orach Chaim, Eshel Avraham* 494:intro) writes that even though it is proper to wait for sunrise, on Shavuos morning we can pray earlier. His justification for this leniency is that waiting later to pray constitutes a burden on the community (*torach tzibbur*).

### III. Burden on the Community

The idea of refraining from placing too much of a burden on the community allows certain leniencies. For example, the Gemara (*Yoma* 70a) says that the *Kohen Gadol* on Yom Kippur would read from a Torah scroll a passage from *Parashas Emor* and then say by heart a passage from *Parashas Pinchas*. Waiting to roll the Torah scroll from one passage to the other would be too much of a burden on the community. This concept was utilized by halachic authorities throughout the ages to maintain a proper balance within the synagogue. Rav Shlomo Ben Aderes (Rashba, 13th cen., Spain; Responsa 1:115) says that if the only *kohen* in the synagogue is still praying when the community reaches Torah reading, the community should call a non-*kohen* to the Torah rather than wait for the *kohen* to finish his prayer because of honor for the Torah scroll that is waiting and because of the burden imposed on the community by waiting.

Similarly, Rav Te'omim says that waiting for sunrise on Shavuos constitutes too much of a burden on the community and therefore we may pray earlier. This ruling is quoted approvingly by Rav Ya'akov Lorberbaum (19th cen., Poland; *Derech Ha-Chaim* 28:1) and Rav Yisrael Meir Kagan (*Mishnah Berurah* 89:1).

We find this concept applied elsewhere on Shavuos. There is a custom to read a *megillah* on each of the three festivals — *Shir Ha-Shirim* on Pesach, *Koheles* on Sukkos and *Rus* on Shavuos (Rema, *Shulchan Aruch, Orach Chaim* 490:9). On Pesach and Sukkos, the *megillos* are read on Shabbos Chol Ha-Mo'ed. There is no Shabbos Chol Ha-Mo'ed on Shavuos so the *megillah* has to be read on Yom Tov. Rav Te'omim (*Peri Megadim, Eshel Avraham* 490:8) says that we read *Rus* on the second day of Shavuos. He offers two reasons for this practice: 1) because now that the Jewish calendar is pre-calculated, the second day of Shavuos always falls on 7 Sivan, the day the Torah was given at Mt. Sinai, 2) on the first day of Shavuos, people have been learning all night and reading *Rus* adds a burden to the community.

In practice, my experience has been that despite this leniency we wait the extra time to pray at sunrise. After learning Torah all night, we are inspired to fulfill *mitzvos* in the ideal way.

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# Select Topics

## Shabbos Shoes

by Rabbi Gil Student

### I. Shabbos Clothes

We greet Shabbos and spend the entire day clean and proper, dressed in fine clothes. Do we also need to wear fine shoes that we have designated for Shabbos? The Gemara (*Shabbos* 119a) says that R. Chanina and R. Yannai would wear special clothes to greet Shabbos. The Gemara (*Shabbos* 113b) quotes Naomi's instruction to Rus: "And you shall bathe, and anoint yourself, and put on your dress" (Ruth 3:3). R. Eliezer explains that Naomi told Rus to wear her Shabbos clothes.

Based on the above, *Shulchan Aruch (Orach Chaim 262:2)* rules that you should strive to have special, nice clothes set aside for Shabbos. If not, you should at least make your regular clothes look nice. Should we also have Shabbos shoes? For some people, the cost of an extra pair of shoes for a large family is within reach but difficult. Is there a need to spend that much money on Shabbos shoes or can people make do with one pair of shoes and allocate the money differently? This all boils down to whether shoes are considered clothing.

### II. Are Shoes Clothing?

Rav Ephraim Hacoen, a 17th century rabbinic judge in Vilna (whose grandson was the author of *Chacham Tzvi*), was asked about someone who committed to pay for his friend's clothing (*Sha'ar Ephraim*, no. 124). The friend assumed that this includes shoes while the man who made the promise refused to pay for shoes. Rav Hacoen rules that clothing does not include shoes. He brings proof from the Mishnah (*Sanhedrin* 60b) that lists different forms of worshipping an idol that are forbidden but are not punished either execution. These include: "one who hugs (an idol), kisses it, cleans it, sprays water before it, washes it, rubs it with oil, puts clothes on it (*malbish*, or puts shoes on it (*manil*)." From the fact that the Mishnah distinguishes between putting clothes on an idol and putting shoes on it, Rav Hacoen deduces that shoes are not considered clothing. Although he admits that this proof is not irrefutable.

Rav Ya'akov Reischer (18th cen., Germany; *Shevus Ya'akov* 1:24) quotes other texts that distinguish between clothing and shoes. For example, "And they clothed them, and gave them shoes, and fed them, and gave them drink" (2 Chronicles 28:15). Similarly, "Your

clothes did not wear out on you and the shoes on your feet did not become tattered” (Deut. 29:4). However, he disagrees with this entire line of argument. He explains that shoes are a type of clothing. They might be singled out for emphasis but they remain an item of clothing. The Mishnah includes putting shoes on an idol separately because putting only shoes on an idol, without putting any other clothes on it, is enough to violate the prohibition. Similarly, the Gemara (*Eruvin* 4a) says that: “One who enters a leprous house, and his clothes are draped over his shoulders, and his sandals and his rings are in his hands, he and they, immediately become ritually impure.” Rashi (ad loc., s.v. *keilav*) explains that these are all items of clothing but he is not wearing them normally so they also become impure.

In the addenda at the beginning of volume two of *Shevus Ya'akov* (no. 24), Rav Reischer points out that we sometimes see language of feeding and offering drink. The above-quoted verse in 2 Chronicles uses such language, as does the Gemara (*Kiddushin* 31b) about the obligations a child has to a parent. Just like drink is a subset of food, so too shoes are a subset of clothing (see the variant text in the *Ein Ya'akov*, ad loc.). Based on the above, Rav Reischer disagrees with Rav Hacoen and rules that someone who committed to pay for his friend's clothing must also pay for his shoes. (Rav Chaim Yosef David Azulai, *Chaim Sha'al* 1:76 s.v. *ve-da*, reaches the same conclusion.)

Based on what we have seen so far, it would seem that Rav Reischer would require you to have special Shabbos shoes, if possible, and Rav Hacoen would consider them unnecessary.

### III. Shabbos Shoes

Rav Yosef Chaim of Baghdad (20th cen.; *Rav Pe'alim*, vol. 4, *Orach Chaim*, no. 13) addresses this question directly and does not quote the responsa above. Rather, he focuses on the blessings we recite in the morning. We recite on blessing on clothing (“*malbish arumim*, who clothes the naked”) and another on shoes (“*she-asah li kol tzorki*, who has provided me with all I need). The latter blessing was instituted regarding shoes (*Berachos* 60b). Since we have separate blessings, shoes must not be considered an article of clothing and therefore is not covered by the blessing on clothes. Rav Yosef Chaim also quotes the Talmud Yerushalmi (*Shabbos* 6:2) which says explicitly that it is not normal practice to have separate shoes for the weekday and for Shabbos. Therefore, Rav Yosef Chaim rules that you do not need special Shabbos shoes. (Rav Yosef Rosen, known as The Rogatchover Gaon, in a letter in the back of *Ketzos Ha-Shulchan*, vol. 4, seems to assume likewise.)

Rav Shlom Zalman Braun (20th cen., US; *She'arim Metzuyanim Ba-Halachah* 72:37) quotes Rav Ya'akov Moelin (Maharil, 15th cen., Germany), cited in *Ba'er Heitev* (529:4). *Shulchan Aruch* (*Orach Chaim* 529:1) says that your Yom Tov clothes should be nicer than your Shabbos clothes. *Ba'er Heitev* adds in the name of Maharil that if you cannot afford special Yom Tov clothes, you should buy nicer shoes for the holiday. Rav Braun infers from this language that shoes are not considered clothing. Normally you do not need special shoes for Shabbos or Yom Tov but if you cannot afford special clothes, you should buy special shoes.

Rav Shmuel Kamenetsky (cont., US; *Kovetz Halachos*, Shabbos, vol. 1 1:32) rules that you should have special Shabbos shoes. Effectively, he follows Rav Reischer and not

Rav Hachohen, Rav Yosef Chaim or Rav Braun. Rav Moshe Isserles (16th cen., Poland; *Shulchan Aruch, Choshen Mishpat* 248:11) writes that someone dying (*shechiv me-ra*) who says that he gives all his clothes to a certain person, that person acquires anything called clothing, whether for the weekday or for Shabbos. Rav Akiva Eiger (19th cen., Poland; Glosses, ad loc.) quotes Rav Reischer's above responsum and says that the dying person's shoes also go to the recipient because shoes are considered clothing. Rav Daniel Kleinman, the editor of Rav Kamenetsky's *Kovetz Halachos* series, cites this ruling of Rav Akiva Eiger as a precedent for Rav Kamenetsky's ruling (ad loc., n. 56). Rav Kleinman points out that Rav Yosef Chaim reads the Yerushalmi like the *Korban Ha-Edah* commentary. However, the *Pnei Moshe* commentary explains the Yerushalmi as meaning that it is customary to have special shoes for Shabbos. Rav Kleinman also questions Rav Yosef Chaim's argument from the morning blessings since there is also a separate blessing on a hat ("*oter Yisrael be-sifarah*, who crowns Israel with glory," *Berachos* 60b). The separate blessing does not indicate that shoes are not an item of clothing.

Rav Betzalel Zev Shafran (20th cen., Ukraine; *Responsa Ha-Rabaz*, vol. 1 no. 12) quotes the Mishnah (*Kesubos* 64b) about a man who travels for business and leaves a third party as a trustee to providing for his wife. The man's assets must be used to pay for many things, including a new pair of shoes every holiday (the Gemara qualifies that based on location and need). Rav Shafran notes that she gets only one pair of shoes, not two — one for weekday and one for Shabbos. Even if we would challenge this and say she uses her Shabbos shoes less frequently and needs a new pair only once a year, that isn't mentioned at all. Apparently, Rav Shafran concludes, there is no need for special Shabbos shoes.

Rav Ovadiah Yosef (*Yechaveh Da'as* 5:23) suggests that even if you accept that you need special shoes for Shabbos, polishing your weekday shoes suffices. When you polish your shoes before Shabbos, you make them as-if new or at least as-if a different pair of shoes.

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## Honor and Family Conflicts

by Rabbi Gil Student

Honor is best given rather than received. We are required to honor Torah scholars, older family members, and the elderly in general. However, this becomes complicated when we face conflicting priorities. When faced to choose between two or more family members, whose honor comes first? When dealing with family situations, *halachah* offers guidelines although you always have to remember that individual circumstances can differ.

A parent takes priority over others because *kibud av ve-em* is a core mitzvah. The Gemara (*Kiddushin* 31a) asks what to do if both a mother and a father at the same time ask a child to bring them water. It is good parenting policy to avoid such conflicts. But when they occur, the Gemara concludes that, if the mother and father are married then since both the child and mother must honor the father, the child should bring water first to the father and then to the mother. This case is important not only for the guidance itself but for its implications to other cases, as we will see shortly.

### I. Honoring Grandparents

You might be surprised to learn that there is a debate whether we must honor our grandparents (not all grandparents are elderly). The old custom was that only one person says Kaddish at a time. This created a need for specific priorities and definitions of who is obligated to say Kaddish. Rav Yosef Kolon (Maharik, 15th cen., Italy; *Responsa*, no. 30) argues that a grandchild has no obligation to say Kaddish for a grandparent and therefore takes no priority over anyone else in the line to say Kaddish. Maharik says that there is no biblical or Talmudic source for honoring a grandparent. Since the obligation for Kaddish stems from the obligation to honor, therefore a grandchild has no obligation to say Kaddish for a grandparent.

This issue became the subject of disagreement between two sets of famous brothers-in-law. Rav Yosef Katz (16th cen., Poland; *She'eris Yosef*, no. 19) says that you are obligated to honor your rebbe's rebbe over your own rebbe. Since you are obligated to honor your rebbe's rebbe (as a Torah scholar) and your rebbe is required to honor him, both of you are obligated to honor him so his honor takes precedence. Rav Katz adds that this is different from a grandparent because only the parent is obligated to honor the grandparent; the child is not obligated at all. Therefore, for a grandparent, we do not say that both are obligated and the grandparent's honor takes precedence but rather the parent's honor takes precedence. In other words, Rav Yosef Katz follows the Maharik who holds that there is no special mitzvah to honor a grandparent.

However, Rav Katz's brother-in-law, Rav Moshe Isserles (Rema, 16th cen., Poland; *Yoreh De'ah* 240:24; *Darkei Moshe*, ad loc.) disagrees. He quotes Rashi (Gen. 46:1), in the name of the midrash, that you are obligated more in the honor of your father than

your grandfather. This clearly implies that you are obligated to honor your grandfather, albeit your father's honor takes precedence.<sup>1</sup>

Rav Eliyahu Shapiro (early 18th cen., Austria; *Eliyahu Zuta*, first responsum in the back) agrees with Maharik against Rema.<sup>2</sup> Rav Shapiro explains that Rashi means that a grandson is obligated to honor his father over his grandfather, not honor “more” but honor over. He points to the story in *Sotah* (49a) in which Rav Acha Bar Ya'akov raised his grandson. He once asked his grandson to bring him water and the grandson replied, “I am not your son.” This implies that a grandson is not obligated to honor a grandfather.

Rav Ya'akov Reischer (early 18th cen., Germany; *Shevus Ya'akov* 2:94), Rav Shapiro's brother-in-law, follows Rema on this issue. Rav Reischer points out that Rashi (*Sotah* 49a s.v. *bar*) says that a grandchild does not have to honor a grandparent like a parent — implying that he still must honor the grandparent just not like a parent. (Rav Reischer adds that a grandparent who raises a grandchild deserves also the honor of an adoptive parent.)

## II. Honoring In-Laws

It seems that all authorities agree that if your parent and grandparent ask you to do two conflicting things, you should follow your parent's request. This is true either because you must honor your grandparent but you must honor your parent more or because you have no Torah obligation to honor your grandparent. What if your father-in-law and grandfather ask you to do two conflicting things? Whose request should you fulfill? Rav Elazar Shapiro (20th cen., Hungary; *Minchas Elazar* 3:33) addresses this question.

Rav Ya'akov Ben Asher (14th cen., Spain; *Tur*, *Yoreh De'ah* 240) says that you are obligated to honor your father-in-law because David said very respectfully to Shaul, “My father, now see, indeed” (1 Sam. 24:12). Rav Elazar Shapiro (*ibid.*) notes that *Yalkut Shimoni* (*Nach*, no. 133) says on this verse, “from here we learn that a man is obligated to honor his father-in-law.” Rav Ovadiah Yosef (*Yechaveh Da'as* 6:51) adds that even though Shaul was the king, the midrash learns from David's use of the term “father” that this was about honoring family, not the king.

Rav Yoel Sirkes (17th cen., Poland; *Bach*, *Yoreh De'ah* 240) deduces from the fact that the *Tur* says that you have to honor your older brother like your father but only says that you have to honor your father-in-law, without saying like your father, that you only need to honor your father-in-law like you would honor an old man. *Shach* (ad loc., 22), *Chayei Adam* (67:64) and many others agree.

If there is a conflict between instructions from a grandfather and a father-in-law, the resolution would depend on the disagreement between Rema and Maharik. If, like Maharik, there is no obligation to honor a grandparent, then your obligation to honor your father-in-law takes precedence. If, like Rema, there is an obligation to honor a grandparent but not as much as a parent, then that would take priority over the limited

<sup>1</sup> See also Reponsa Rema, no. 118.

<sup>2</sup> I am puzzled by how Rav Akiva Eiger describes this responsum in his gloss to *Yoreh De'ah* 240:24.

obligation to honor a father-in-law. Of course, in all such matters you would do best to avoid conflict and find a way to make everyone happy.

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# Private Eruvin and Emergency Keys

by Rabbi Gil Student

Many people have their own private *eruv*, structures that allow them to carry on Shabbos. They do this with one or more neighbors by ensuring the area is closed, whether by gates, walls or doorway-like structures — a complicated matter that requires rabbinic oversight or approval. Additionally, they keep food for two communal meals, usually matzah, in a central location. This will be the focus of our discussion. (We will be discussing *eruvei chatzeiros*, which permit carrying that is otherwise rabbinically forbidden, although the same applies to *eruvei techumin*, which permit walking beyond the rabbinically limited range.)

## I. Access to Eruv Matzah

The Mishnah and Gemara in *Eruvin* (26b-36b) discuss the need for the *eruv* food to be accessible at the beginning of Shabbos, during the few minutes of *bein ha-shmashos* after sunset. For example, if the *eruv* is placed in a tree, we are not allowed to climb a tree on Shabbos. However, since the requirement is that the food be accessible during *bein ha-shmashos*, and generally speaking rabbinic prohibitions do not apply *bein ha-shmashos* (with some exceptions), you have to be able to access the food only without violating biblical prohibitions of Shabbos. Climbing a tree is only rabbinically forbidden, so the *eruv* would be good for you even if the food is in a tree (setting aside *reshus ha-rabbim* issues, as discussed in *Eruvin* 32b).

As a rule, if you cannot access the *eruv* matzah without violating a biblical prohibition, you cannot carry within that *eruv*. The Gemara (*Eruvin* 32b-33a) discusses cases in which the key to the box or house containing the *eruv* matzah is lost. If the food is kept inside a wooden box, then you can carry because breaking the box is only rabbinically prohibited. But if the food is inside a house, you cannot carry because breaking down the wall is biblically forbidden.

Presumably, this means that you must have keys to your neighbor's house, if that is where you keep the *eruv* matzah. If your neighbor goes away for Shabbos, you must be able to access the matzah in their home without violating a biblical prohibition. Otherwise, you cannot carry within the *eruv*.

## II. Breaking Into Your Neighbor's House

Perhaps it is sufficient to be able to break into your neighbor's house, whether by breaking the door's lock or a window. Since you can do that in theory, you have access to the *eruv* matzah and do not have to actually break into the house. But is this rabbinically or biblically prohibited? If it is biblically prohibited, then it is insufficient to permit carrying in the *eruv*.

The general rule is that it is biblically forbidden to destroy a building (even partially) in order to rebuild it; just to destroy it without intent to rebuild is rabbinically prohibited. If you destroy a door or lock in order to get into the room, is that biblically or rabbinically

forbidden? Rav Yitzchak Halevi Segal (brother of the Taz, 17th cen., Poland; *Responsa Mahari Halevi*, no. 30) discusses whether you are allowed to ask a gentile to pick a lock on your door on Shabbos, or are we concerned that he might break it? He says that at most breaking the lock is only rabbinically forbidden and therefore you are allowed to ask a gentile to pick the lock, even if it might break.

Rav Chaim Yosef David Azulai (18th cen., Israel; *Machazik Berachah, Orach Chaim* 314:2) quotes the *Zera Emes* who disagrees and forbids asking a gentile to pick a locked door. Chida doesn't quote the details of the case but Rav Chaim Mordechai Margoliyos (19th cen., Poland; *Sha'arei Teshuvah* 314:2) does. A synagogue's ark was locked shut on Shabbos. The *Zera Emes* permits asking a gentile locksmith to open the door but only if he does not break the lock. If he has to break the lock, they should instead leave the ark closed and bring a Torah scroll from another synagogue. The *Zera Emes* seems to consider breaking a lock to be biblically prohibited.

The same would seem to apply to breaking into a house any other way — you are destroying (partially) a house in a way that you will rebuild. According to Mahari Halevi, this is rabbinically forbidden and therefore does not pose an *eruv* problem. According to the *Zera Emes*, it is biblically forbidden and an *eruv* problem.

### III. Possible Solutions

Rav Avraham Danzig (19th cen., Lithuania; *Nishmas Adam* 72:1) asks why the Gemara concerns itself with the distinction between rabbinic and biblical prohibitions. This can all be alleviated very simply. The whole concern is the brief time after sunset of *bein ha-shmashos*. During *bein ha-shmashos*, you are allowed to ask a gentile to perform for you even biblically prohibited labors (*Shulchan Aruch, Orach Chaim* 261:1). Therefore, whether the *eruv* matzah is up a tree or in a locked house or anywhere, since you can ask a gentile to get it for you, the *eruv* must be good. Why doesn't the Gemara give this answer? Rav Danzig struggles with this and suggests that the Sages made a special exception of asking a gentile regarding an *eruv*. His answer seems a bit forced.

Perhaps we can answer with an explanation of Rav Gershon Ashkenazi (17th cen., Poland; *Avodas Ha-Gershuni*, no. 104). He addresses a case in which the *eruv* is placed beyond the reach of where you are allowed to walk. Why, he asks, can you not have different people pass (in theory) the matzah hand to hand, person to person, so it will be in your reach? He explains that the rule is that you must be able to access the *eruv* food. If you need someone to bring it to you, then you do not really have access to it. He proves it by pointing the case of *eruv* food in a cemetery for a kohen. The Gemara (*Eruvin* 30b) has to find creative ways for a kohen to enter a cemetery (in a portable box that somehow prevents him from becoming impure). Why can't he just ask a Yisrael to get him the *eruv* food from the cemetery? Rather, if he cannot access the food himself, he does not have access and therefore cannot carry in the *eruv*. Similarly, we can say, if you need a gentile to access the food, you do not have access yourself and cannot carry in the *eruv*.

Rav Shlomo Zalman Braun (20th cen., US; *She'arim Metzuyanim Ba-Halachah, Eruvin* 35a) deduces from the Ritva's commentary (*Eruvin* 35a s.v. *ba-sadeh*) that while you must have access to the *eruv* food yourself, you can have help accessing the key. Therefore, he allows an *eruv* if you can ask a gentile to bring you the key from someone's

house. Even in a place where carrying is biblically prohibited, asking a gentile to carry it is only rabbinically forbidden.

According to our discussion, if your neighbor has the *eruv* matzah and goes away for Shabbos, someone nearby must have an emergency key to their house. It can be you or anyone else. Since you can ask a gentile to carry the key from that other person's house and then use the key to open your neighbor's door to access the *eruv* matzah, you may carry in that *eruv*.

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