

Halachic Discussions

מאמרי הלכה

Volume 3 Issue 1

חשון תשפ"ג
November 2022



RABBINICAL ALLIANCE OF AMERICA

איגוד הרבנים ד'אמריקא

Office: 305 Church Ave.
Mailing: PO Box 190234
Brooklyn, New York 11219-0234

Editor: Rabbi Gil Student

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

Table of Contents

Sukkos Section.....	4
Waving the <i>Lulav</i> by Rabbi Yaakov Klass	4
Ushpizin by Rabbi Yaakov Klass	8
Tefillin On Chol Hamo'ed by Rabbi Yaakov Klass	11
Does a Sukkah Need WiFi? by Rabbi Gil Student	14
May a Yisrael Duchen? by Rabbi Gil Student.....	17
Select Topics	20
The Obligation to Build a Mikvah by Rabbi Ephraim Glatt, Esq.....	20
Expelling a Member from Shul by Rabbi Gil Student.....	23

Sukkos Section

Waving the *Lulav*

by Rabbi Yaakov Klass

Question: Is there a specific order in the *na'anim*, the way we wave the *lulav* in various directions, when reciting *Hallel* on Sukkot? Is there more than one way to do it?

Menachem
Via Email

Answer: The Torah states (*Vayikra* 23:40, *Parashat Emor*), “*U’lekachtem lachem bayom harishon pri etz hadar, kappot temarim, va’anaf etz avot ve’arvei nachal, u’semachtem lifnei Hashem Elokeichem shiv’at yamim* – You shall take for yourselves on the first day [of Sukkot] the fruit of a citron tree [an *etrog*], branches of date palms [a *lulav*], twigs of myrtle tree [*hadassim*], and willows of the brook [*aravot*]; and you shall rejoice before Hashem your G-d seven days.” [We are providing the literal translation of the *pasuk* as well as *Targum Onkelos*’ interpretation, which incorporates the various explanations found in Tractate *Sukkah* Ch. 3.]

The Mishna (*Sukkah* 37b) asks: And when did they [use to] wave [the *lulav*]? At “*Hodu La’Shem*,” beginning and end, and at “*Ana Hashem, hoshi’ah na*.” This is the view of Beit Hillel. Beit Shammai say, Also at “*Ana Hashem, hatzlichah na*” [all the above referring to verses included in *Hallel*]. The Mishna continues with the statement of R. Akiva who had observed that Rabban Gamaliel and R. Yehoshua did not wave their *lulavim* when the congregation did, but only at “*Ana Hashem, hoshi’ah na*.”

The Gemara opens the discussion with a question: Where is the waving of the *lulav* mentioned [for that appears to be the assumption of the Mishna]? It replies that it is referred to in the conclusion of the first Mishna of the chapter, where it is stated, “A *lulav* which is three hand-breaths in length, and long enough to wave, is valid.”

As to the procedure of waving, the Gemara continues with a reference to Tractate *Menachot* (61a), which deals with the waving of the Two Loaves [*shetei halechem*, the Shewbreads] and the Two Lambs’ offering [*shnei kivsei atzeret*] on Shavuot (*Leviticus*

23:20). How did the priest wave them? He put the two loaves on top of the lamb offerings and placed his hand beneath them, and waved them forward and backward, upward and downward, as it is written (*Exodus 29:27*), “*Asher hunaf va’asher hura* – That was waved and that was heaved” (and lowered, says Rashi *ibid.*, for whatever is raised has to be lowered). R. Yochanan explained: he waves it to and fro, to [honor] Him to Whom the four cardinal points belong; and up and down, [in acknowledgment] to Him to Whom the heaven and earth belong.

In the Land of Israel [lit. “the West” – this term always refers to the opinion of the academies of scholars in Jerusalem who concurrently developed the Jerusalem Talmud] they taught thus: R. Hama b. Ukba stated in the name of R. Yossi b. R. Hanina, He waves them to and fro to restrain harmful winds; up and down in order to restrain harmful dews. R. Yossi b. Abin – some say R. Yossi b. Zebila – noted: This implies that “*she’yarei mitzva me’akvin et hapur’anut* – even the dispensable parts [lit. remnants] of a precept prevent calamities”; for the waving is obviously only an ancillary and dispensable part of the command, and yet it shuts out ill winds and harmful dews. In connection with this Rava remarked: “And so it is with the *lulav*.” R. Aha b. Yaakov used to wave [the *lulav*] to and fro, saying, “This is an arrow in the eye of Satan.” However, continues the Gemara, this is not a proper thing [to say], since it might provoke [Satan].

Thus we see that waving the *lulav* was already established at the time of the *Tanna'im*; so were the directions in which the *lulav* was waved, according to the explanation of R. Yochanan. As for the procedure, namely, the order of the directions and the manner in which the *lulav* is waved, slightly variant traditions eventually developed.

In accordance with the opinion of Rashi (*Menachot 62a*, s.v. “*Molich u’meivi*”), the *lulav* is waved first in the northern direction, then to the south, the east and the west in order to stop the ill winds coming from any direction; it is then waved upward and downward [which is the water cycle of the dew] to restrain harmful dews.

The *Tur* (*Orach Chayyim 651*) focuses both on the sequence of the four directions and the manner of the waving itself. He starts by waving the *lulav* in front of him [which is obviously east], then he moves his hand and waves toward the north, toward the south, toward the west [which is behind him], and finally upward and downward. When he waves the *lulav* toward any one of the directions, he does it in a series of three shorter wavings, forward and backward, so that the palm leaves are shaken and they rub against each other. He does the same [three shorter wavings] when he moves the *lulav* backward. He applies the same method when moving the *lulav* upward and downward. According to this method, the waving in each direction engenders six wavings, for a total of 36. (The *Tur* refers to the *Ba’al Halachot*, who states that we are not required to wave six times, back and forth, in each direction, but only three times. For his part, the *Bach* deduces it from the inconclusive discussion on this matter in the Jerusalem Talmud [*Sukkah 3:8*] as to whether three or six wavings are required. See “*Rabbi Zeira ba’ei*” ad loc.).

Indeed, there is a discussion concerning this procedure in the *Taz* and the *Magen Avraham* (*Orach Chayyim* ad loc.). The question is whether each of the shorter wavings counts as one waving or two (since there is a forward and backward motion in each segment).

As for the sequence of directions, i.e., in which direction to start the waving of the *lulav*, R. Yosef Caro [as well as *Rema*] sets up the order by starting with the east, and proceeding in a clockwise manner to the south, the west, the north, and finally up and down. The *Taz* posits the same, noting that the reason for this sequence is that the Sages ruled that we always go “*derech yemin*”; we go to the right, or clockwise, when performing a series of actions. This is the *minhag* practiced according to *Nusach Ashkenaz*, as well as the Spanish and Oriental communities who usually follow the *Beit Yosef*, R. Yosef Caro. [An exception to the Ashkenazic practice is the *Levush*, according to whose opinion the order is: east, south, north, up, down — and west as the last direction.]

The custom of the *Ari z”l* [R. Isaac Luria] as quoted by the *Magen Avraham* (among others) is to wave the *lulav* to the south, the north, the east, up, down, and finally to the west. *Yalkut Yosef* (*Seder Mo’ed* p. 168) remarks that although the general *minhag* of the *Sefaradim* [the Spanish and Oriental communities] follows the *Beit Yosef*, in Jerusalem they follow the practice of the *Ari*. This is the practice that is also adopted by the Chasidim [who follow *Nusach Sefarad*].

As to the appropriate times during the prayer that the *lulav* is waved, the *Mechaber* (*Orach Chayyim* 651:8) rules that we wave it when we recite the blessing “*Al netilat lulav*,” and again during *Hallel* when we say “*Hodu La’Shem*.” *Rema* adds, “and at every mention of ‘*hodu*’” — which is the congregational response, and thus they also wave four times in response (according to *Rema*). The *sheliach tzibbur* and the congregation then wave twice at “*Ana Hashem, hoshi’ah na*,” as well as at the end, when we repeat “*Hodu La’Shem*.” *Rema* adds that the *sheliach tzibbur* also waves, together with the congregation, at “*yomar na*,” but not at “*yomru na*.” The *Taz* explains that “*yomar na*” is a rejoinder to the congregation to repeat “*Hodu La’Shem*,” while “*yomru na*” is not. The additions of *Rema* form the practice of *minhag Ashkenaz*.

However, a dispute comes into play at the end of the psalm, where the *Ari z”l* opines that we only wave the *lulav* once at the concluding “*Hodu La’Shem*,” although it is repeated by both the *chazzan* and the congregation. This is obviously based on our originally quoted Mishna, which states: “*Hodu La’Shem*, beginning and end.”

Insofar as fitting in the waving of the *lulav* with the verses we say, we proceed as follows: For “*Hodu La’Shem ki tov, ki le’olam chasdo*” [seven words], we wave in a different direction at each word, except when we mention Hashem’s name, for according to *Machatzit HaShekel* (*ad loc.*) we have to concentrate on Hashem’s name exclusively. When saying “*Ana Hashem, hoshi’ah na*” [four words], we again do not wave when

pronouncing Hashem's name but wave twice [in two directions] at each of the other three words.

Rabbi Yaakov Klass, rav of Congregation K'hal Bnei Matisyahu, Flatbush, Brooklyn; is Torah Editor of The Jewish Press; he also serves as chairman of the Presidium of the Rabbinical Alliance of America. He can be contacted at yklass@jewishpress.com and Rabbi@igud.us.

Ushpizin

by Rabbi Yaakov Klass

Question: What are the *ushpizin* and why are there two different versions of their order on Sukkot?

Avrohom Zins
(Via E-mail)

Answer: The term *ushpizin* is Aramaic for guests. Who are these guests? As we say in this *tefillah*, “*Ushpizin lla'in kadishin* (Aramaic) – *orchim elyonim kedoshim* (Hebrew) – the exalted holy guests” are our patriarchs Abraham, Isaac, and Jacob, and Moses, Aaron, Joseph, and David.

The *ushpizin* is also a prayer which we recite upon entering our *sukkah* before we partake of our *Yom Tov* meals.

Rabbi Yosef Grossman (*Otzar Erchei Hayahadus os samach*) cites the *Zohar* as follows, “When Jews leave their homes and enter the *sukkah* of the Holy One Blessed Is He, they merit to receive the *Shechina* – Hashem’s Divine Presence. Then, all seven *ro'im ne'emanim* – faithful shepherds descend from their heavenly repose to enter the *sukkah* and they become guests. These are the seven *ushpizin*, the honored guests who descend to sit with us in the *sukkah*.”

On the first day of *Sukkot*, Abraham enters first, followed by the other six *ushpizin*. On the second day, Isaac enters first, followed by the other six. On the third day Jacob leads the honored guests into the *sukkah*. On the fourth day, Moses leads, Aaron on the fifth day, Joseph on the sixth day and finally, on the seventh day, King David leads the other honored guests.”

Thus, every day, when we enter our *sukkah*, and eat, sleep or study there, we do so in the presence of all seven of these honored guests.

The custom is that when we enter the *sukkah*, we recite the *ushpizin* prayer to welcome them. It is actually an invitation. There is even a custom among the Sephardic communities to set a special chair in the *sukkah* and place upon it *sefarim* – holy books – and proclaim, “This is the chair of the *ushpizin*.”

There seem to be two varying customs regarding the order of their visits. Some have the order we listed above. (Others place Joseph before Moses and Aaron, their reason being quite simple – they follow the generational/chronological order, with exception of Moses

and Aaron, where we find Moses always preceding Aaron, even though Aaron was his elder.)

Today, prefabricated and decorated *sukkos* are available and many manufacturers silkscreen the prayer onto the walls of the *sukkah*. Amusingly, this author recalls sitting in a *sukkah* where the prayer was printed on the walls – not once, but twice. On one wall was the order with Moses and Aaron preceding Joseph, and on the other wall, the order had Joseph preceding Moses and Aaron.

Rabbi Avraham Yitzchak Sperling (*Ta'amei HaMinhagim* p.267) cites the *Minchas Elazar* (who writes in his *Shaar Yisaschar – Ma'amar Tishrei – Yemei Hachag*, third day of Sukkot) the following, which he heard from the *gaon* Rabbi Mordechai Dovid Unger, Dombrover Rebbe, in this regard.

The verse at the end of *Parashat Ha'azinu* (Deuteronomy 32:50) states, “*U'mut bahar asher ata oleh shama ve'he'asef el amecha ka'asher met Aharon achicha behor hahar va'ye'asef el amav* – And (you, Moses) die on the mountain where you will ascend, and be gathered to your people as Aaron your brother died on Mt. Hor and was gathered to his people.”

Rashi on this verse explains that when Moses saw the manner of Aaron's death, *mitat neshika* – G-d's kiss of death – Moses desired that and said, “Praised is he who dies such a death.”

The Dombrover Rebbe asks about the seeming repetition in the Torah's text, “... Die on the mountain ... *ve'he'asef el amecha* – and be gathered to your people.”

Indeed, we find the same repetition in *Parashat Chukat* (supra Numbers 24-29) as regards the death of Aaron. “... *V'Aharon ye'asef u'met sham* – and Aaron shall be gathered in and die there.”

The Dombrover Rebbe then clarifies that we learn from various verses that Aaron died on *Rosh Chodesh Av* – the first of the month of Av (see *Rosh Hashanah* 3a) and according to our calendar, each year, that same day of the week (i.e., this year – Wednesday) corresponds to the fifth day of *Sukkot* – the day Aaron leads the *ushpizin*.

This is what Moses was desirous about such a death, that it is a good omen that the day of the week of his death will also be his day of the *ushpizin* on *Chag Ha'asif* – the Festival of the Gathering (of the harvest), the joyous festival of *Sukkot*. Therefore, Hashem assured him that the day of the week of his passing (on the seventh of Adar, which this past year was on a Tuesday) will always fall on the day of his *ushpizin*, the fourth day of *Sukkot*.

Now we understand the double usage *u'mut bahar* – and die on the mountain [on that day], *ve'he'asef el amecha* – and be gathered unto your people – that your *ushpizin* is on that day of the Festival of the Ingathering, just as occurred with Aaron.

Therefore, Rabbi Unger explains, our Chassidic custom has a solid basis that Moses' *ushpizin* day should be on the fourth day of *Sukkot* and Aaron's on the fifth. [Thus he also solves any difficulty that Aaron the elder brother follows Moses.] He adds another intriguing fact: *Lag B'Omer*, which has the *gematria* (numerical value of letters added up) of 345 is the equivalent of 'Moshe,' and is the date of Rabbi Shimon Bar Yochai's death – whose soul's source was Moses.

Therefore, the day of the week when *Lag B'Omer* falls is also the same day of the week as the fourth day of *Sukkot*, Moses' *ushpizin*.

Another possible hint which we might offer for the *nusach* – order – of the chassidim is derived from the verse cited above, "... *Ve'yasef el amav* – And you shall be gathered to your people." *Ve'yasef* we might conjecture as being an allusion to Joseph (Yosef) following both Moses and Aaron.

Rabbi Sperling cites the *Kocho d'Rashbi* where the source for the above order is the *Zohar*. However, he notes that the opposite order of the "Ashkenazim," (here he actually means the non-Chassidim) with Joseph before Moses and Aaron, is also mentioned one time in the *Zohar*.

He cites his teacher Horav Avraham Simcha Horowitz, the Barniv Rav, as well, who offers that both *nusachot* are alluded to in *Parashat Vayechi* (Genesis 48:3), "*Vayomer Yaakov el Yosef Kel Sha-dai nir'ah elai...* – And Jacob said to Joseph *Kel Sha-kai* [G-d] had appeared to me..." The words *Kel Sha-kai* equals 345 with *gematria*, the equivalent of 'Moshe,' and the word '*ni'rah*' that follows equals 256 – and is comprised of the same letters as 'Aharon', but in a different order.

Thus, we see that after Jacob comes Joseph, then Moses, and then Aaron. The Chassidim, however, would explain that the word "*elai* – to me" which follows "*nirah*" alludes to Jacob's wish that Moses and Aaron should follow him, and then Joseph.

May we all experience an uplifting *Sukkot* as we invite these exalted guests to enhance our joy of the festival.

Rabbi Yaakov Klass, rav of Congregation K'hal Bnei Matisyahu, Flatbush, Brooklyn; is Torah Editor of The Jewish Press; he also serves as chairman of the Presidium of the Rabbinical Alliance of America. He can be contacted at yklass@jewishpress.com and Rabbi@igud.us.

Tefillin On Chol Hamo'ed

by Rabbi Yaakov Klass

Question: My custom is not to don tefillin on Chol Hamo'ed. What should I do if I come to a shul where it is the custom to don tefillin on Chol Hamo'ed?

M. Jakobowitz
Via E-mail

Answer: Your question is relevant during the current festival of Sukkot as well as Chol Hamo'ed Pesach. To satisfactorily respond, it behooves us to understand and set forth the fundamental reasons underlying the different customs that have evolved over the centuries.

The Torah states in Parashat Ki Tissa (Exodus 31:16-17), “*Ve’shomru Bnei Yisrael et ha’Shabbat la’asot et ha’Shabbat l’dorotom brit olam. Beini u’vein Bnei Yisrael ot he l’olam ki sheshet yomim asah Hashem et hashamayim v’et ha’aretz u’vayom hashevi’i shavat va’yinafash* — The Children of Israel shall observe the Sabbath (and not defile it — see Ibn Ezra ad loc.), to make the Sabbath an everlasting covenant. Between Me and the Children of Israel it is a sign forever that in six days G-d created the heavens and the earth, and on the seventh day He ceased from work [shavat] and was refreshed.” (Rashi notes that “*vayinafash*” denotes a type of rest that restores one’s soul and breath, adding that the use of such language is one that the human ear is able to comprehend [as G-d does not need to rest]).

In most congregations these verses are part of the Friday evening service. [Nusach Ha’Ari – Chabad and Nusach Ha’Gra – Minhag Eretz Yisrael is not to recite this tefillah.] We see from this text that the Sabbath was given to the Children of Israel as a sign that Hashem created the world in six days. As for the Festivals, the Talmud states (Shabbos 60b), “There is no difference between Festivals and the Sabbath except for [the preparation of] food for [the need of] a person” (*ochel nefesh bilvad* — see Tosafot, ad loc. *sv* “*ein bein Yom Tov l’Shabbat...*”). Thus Yom Tov, like Shabbat, is regarded as a sign.

Likewise, we find that tefillin are referred to as a sign, as stated in Parashat Bo (Exodus 13:16), “*Ve’hoya le’ot al yadcha u’letotaphot bein einecha ki b’chozek yad hotzianu Hashem mi’mitzrayim* — And it shall be a sign upon your arm, and frontlets between your eyes, for with a strong hand did G-d bring us forth from Egypt.” Donning tefillin serves as a sign to remind us of the omnipotence of our Creator who molded us into a nation.

We find a Baraita in Tractate Menachot (36b) in the name of Rabbi Akiva: One might have thought that one should don tefillin on Sabbaths and on Festivals, therefore

Scripture says (loc.cit.), “‘And it shall be a sign upon your arm ...’ that is, [only on those days] that need a sign, but Sabbaths and Festivals are excluded, since they themselves are a sign.” Tosafot (s.v. Yatz’u) explain that the Sabbath and the Festivals are excluded but not because it is forbidden to engage in work on those days. Even though work is permitted on Chol Hamo’ed, the Intermediate Days are still an integral part of the sign of Yom Tov, which manifests itself in the prohibition to eat chametz all through Pesach and the obligation to eat in the sukkah during the entire festival of Sukkot. Tosafot then quote a passage in Mo’ed Katan (19a), which seems to indicate that one is required to don tefillin on Chol Hamo’ed. Tosafot discuss at length the juxtaposed views, seeking to reconcile the two Talmudic passages. There is, however, no clear statement in the Talmud regarding the donning of tefillin on Chol Hamo’ed.

The Tur (Orach Chayyim 31:2) states that there is a doubt, according to some authorities, whether donning tefillin is required on Chol Hamo’ed, and therefore we put them on but do not recite the blessing. Others rule that the beracha is to be recited.

According to Darkei Moshe [Rema’s commentary on the Tur], people do don tefillin on Chol Hamo’ed [in Eastern Europe], but the blessing is recited quietly in the synagogue, unlike the rest of the year. It is interesting to point out that Rabbi Ovadia Yosef, Zt”l, notes that even if the blessing is not recited, one may not talk between donning the hand phylactery and the head phylactery, except when responding to Kaddish and Kedusha [as quoted by his son the current Sefardic Chief Rabbi of Israel, Rabbi Yitzhak Yosef, Shlit”a in Yalkut Yosef].

Rabbi Yosef Caro in his longer Bet Yosef commentary to the Tur (Orach Chayyim ibid.) after much discussion avers to the opinion that tefillin are not to be donned on Chol Hamo’ed. However, Rema (Shulchan Aruch, O.C. ibid.) quotes him (Beit Yosef on the Tur, obviously quoting but not concurring) as citing the Rosh [Rabbi Asher b. Jehiel], who rules that one does don tefillin on Chol Hamo’ed.

The Mishna Berura (ad loc.) states that those who don tefillin on Chol Hamo’ed take them off before Hallel — and some do so after the Kedusha [of Shacharit]. As for the tefillin of Rabbenu Tam, which some people regularly put on, he quotes the Pri Megadim who says that they are not to be donned on Chol Hamo’ed.

The Aruch HaShulchan (ad loc.) stresses that while the Talmud, Rambam and the Rif do not state whether it is required to put on tefillin on Chol Hamo’ed, the Rosh (Rabbenu Asher) and the Mordecai rule that since we are permitted to engage in work, we are also required to don tefillin. He lists numerous other early poskim who rule that it is required, as well as those who rule that it is not required. The dispute culminated in the rulings of the Beit Yosef and Rema: the former ruled not to don tefillin on Chol Hamo’ed, while the latter ruled that we should don tefillin on Chol Hamo’ed. He then continues: “All the Sefaradim do not put on tefillin [on Chol Hamo’ed] while all the Ashkenazim do, but without reciting the blessing, and this is the proper way. Many of Gedolei Ha’Acharonim continue the discussion ... and therefore each should follow his minhag. There are now

many Ashkenazim who do not don tefillin on Chol Hamo'ed." For example, the Gaon of Vilna and the Ba'al Shem Tov, who follow the Zohar.

The Gaon Rabbi Moshe Feinstein (Iggrot Moshe, Orach Chayyim, Chelek 5, Responsum 24) discusses the matter at great length, including the problem of violating the lo ta'aseh – prohibitory command, cited in Parashat Re'eh, (Deuteronomy 14:1) "Lo titgodedu... (Yevamot 14a) expounded as – you shall not form separate sects", i.e. there is a preclusion to form different groups and by extension we are precluded from conducting two different customs within one community, which is mentioned both by the Mishna Berura and the Aruch HaShulchan. This reference of "lo titgodedu" in the context of our discussion varies from the simple interpretation of the verse as noted by Rashi in Chumash, that one is forbidden to make cuts on his body. Rashi, (Yevamot 13b s.v. "lo ta'asu agudot, agudot") explains the rationale for this command, as doing so would appear as if there are two sets of [contradictory] Torah laws.

Rabbi Feinstein seems to conclude that as long as the existence of two established customs is generally well known, a person is allowed not to don tefillin on Chol Hamo'ed — if that is his own custom — even if he joins the prayer service in a synagogue where it is the custom for the congregants to don tefillin on Chol Hamo'ed, and he himself prays there because of convenience of location or time. That would not be considered a transgression of lo titgodedu.

This reasoning of Rabbi Feinstein is illustrated in two adjacent teshuvot (*Iggrot Moshe*, O.C. Chelek 4, Responsa 33, 34). In the first responsum he permits several families who follow (and practice) Nusach Ashkenaz to join the membership of a congregation that follows Nusach Sefard. In the second case he does not allow individuals to practice customs that are obviously different from the local practice. The first case refers to New York, and would equally apply to other relatively new communities, where there is no defined established custom. The other responsum deals with Paris [several decades ago], where there is an established age-old custom [Nusach Ashkenaz – possibly, today, where the majority of French Jewry are Sefaradim, he would have ruled differently]. Rabbi Feinstein refers to the Biblical principle of "lo titgodedu," as well as to the Rabbinic injunction to avoid dispute – *machloket*, as stated in the Gemara (*Pesachim* 50).

Rabbi Yaakov Klass, rav of Congregation K'hal Bnei Matisyahu, Flatbush, Brooklyn; is Torah Editor of The Jewish Press; he also serves as chairman of the Presidium of the Rabbinical Alliance of America. He can be contacted at yklass@jewishpress.com and Rabbi@igud.us.

Does a Sukkah Need WiFi?

by Rabbi Gil Student

I. A Usable Sukkah

A *sukkah* needs to be usable. Rav Moshe Isserles (Rema, 16th cen., Poland; gloss to *Shulchan Aruch, Orach Chaim* 640:4) writes that a *sukkah* in which you cannot do certain basic things is an invalid *sukkah*. For example, if you cannot sleep in a specific *sukkah*, then it is invalid for all uses and you may not eat in it either. Presumably, this would invalidate most sidewalk *sukkos* that restaurants put up in city business districts, where it is quite dangerous at night. However, *Mishnah Berurah* (ad loc., 20) quotes some authorities who disagree and allow such a *sukkah*. According to Rema, does a *sukkah* today need WiFi?

I ask this because many people cannot take vacation from work for all of Sukkos. They have to work on some or all of Chol Ha-Mo'ed. However, particularly since the changes to work habits caused by Covid, many people will work from home during Sukkos. Do they need to work in their *sukkah*? If they do, they probably need WiFi in their *sukkah* so they can work. If so, a lack of WiFi might raise questions about the validity of the *sukkah* of someone who needs to work on Chol Ha-Mo'ed, at least according to Rema.

II. Mundane Conversation

Are you allowed to work in your *sukkah*? Throughout the holiday, you are supposed to live in the *sukkah* and go through all your usual activities as if it was your house. However, you must maintain the holiness of the *sukkah*, for example by removing garbage and dirty dishes. Rema (ibid., 639:1) says that you should not do any disrespectful activities in the *sukkah*. *Mishnah Berurah* (ad loc., 2) quotes Rav Ya'akov Moelin (Maharil, 15th cen., Germany; *Sefer Maharil, Hilchos Sukkah*, no. 19) who says that if you want to chat with a friend, you should converse in the *sukkah*. Similarly, Rav Ya'akov Weil (15th cen., Germany; Responsa, no. 191) says that if you want to play a game of dice (presumably in a permissible way), you should play in the *sukkah*. *Mishnah Berurah* then quotes Rav Yeshayahu Horowitz (17th cen., Germany-Israel; *Shelah*) who says that you should minimize your mundane conversation in the *sukkah*. Ideally, you should only discuss Torah matters in the *sukkah* but you certainly should avoid forbidden talk like gossip. Which is correct? Should you do all your talking in the *sukkah* or just Torah matters? What about work? Should you work in your house rather than your *sukkah*, to maintain its holiness by avoiding mundane activity and conversation? Or should you work in your *sukkah*, if possible?

Literally, mundane conversation is translated into Hebrew as *sichas chullin*. What constitutes *sichas chullin*? The Gemara (*Yoma* 19b) says that there is an obligation (most say of rabbinic origin) to speak about Torah and not mundane matters. Someone who speaks *sichas chullin* violates a positive commandment. However, another Gemara (*Avodah Zarah* 19b) says that the *sichas chullin* of Torah scholars requires study. How can Torah scholars speak *sichas chullin* if doing so violates a positive commandment?

Rashi (*Yoma* 19b s.v. *ve-lo*) seems to define *sichas chullin* as childish, frivolous conversation. Similarly, elsewhere Rashi (*Sukkah* 28a s.v. *sichas*) defines it as frivolous and joking conversation. It seems reasonable that the Torah forbids this kind of meaningless chatter but why are Torah scholars having these conversations?

III. Five Types of Speech

I believe that by applying Rambam's classification of conversation we can clarify this issue. In his commentary to *Avos* (1:16), in the context of discussing the value of silence, Rambam (12th cen., Egypt) differentiates between five types of speech. Some words are obligations, like prayer and Torah study. Others are forbidden, like false testimony and slander. A third category is inadvisable, which includes meaningless stories and the denigration of specific attitudes and character traits. A fourth category is proper and includes praise of good behavior and attributes, and denigration of negative attitudes. Also within this category are stories about the righteous and denigration of the wicked. The fifth category is optional — details about life, food, business, etc.

The first category consists of words of Torah and blessings, obligatory talk. Everything else falls within the broad spectrum of *sichas chullin*. Presumably, when not engaged in obligatory talk, Torah scholars focus on proper talk and occasionally dip into neutral talk about money and business — two of the five categories. For example, Rav Chisda is described as giving practical life advice which is neutral but still valuable (*Shabbos* 82a). We benefit by studying the way Torah scholars talk within these two categories because, aside from the relevant content, we learn how to speak in a refined way (Rashi, *Avodah Zarah* 19b s.v. *sichas*).

We do not need a positive commandment to teach us not to say forbidden speech like slander. Rather, the commandment must be telling us to avoid the category of frivolous, meaningless speech, as Rashi teaches in *Avodah Zarah*. Of Rambam's five categories, one is obligatory (not *sichas chullin*), two are positive or neutral forms of *sichas chullin*, one is prohibited explicitly and the final category is *sichas chullin that is forbidden by this positive commandment*. Similarly, Rav Avraham Gombiner (17th cen., Poland; *Magen Avraham* 156:2) quotes this commandment as forbidding “insulting matters and lightheadedness.”

IV. Work in a Sukkah

What is allowed in a *sukkah* and what is forbidden? It seems that the category of *sichas chullin* that constitutes frivolous speech and behavior, such as playing dice, is allowed but discouraged. If you are going to do them on Sukkos, you should do them in a *sukkah*. The worst type of *sichas chullin*, that of forbidden speech, defiles the sanctity of a *sukkah* and may not be said inside one. This includes being careful not to allow forbidden images, words and songs into your *sukkah*. However, the middle category, that of neutral speech, seems completely allowed in a *sukkah*. While Shelah recommends speaking only obligatory or praiseworthy speech in a *sukkah* (the two highest categories), if you need to discuss business (the middle category), you should do it in a *sukkah*. Therefore, it would seem that if you have to work from home, you should set up a workstation in your *sukkah*. If that requires WiFi, then you should make sure your WiFi extends to your *sukkah* and use it only for things that are permissible in a *sukkah*. It might even be true that according to Rema, your *sukkah* is invalid if you cannot work inside it but have to work from home on Chol Ha-Mo'ed. However, according to *Mishnah Berurah*, even though you should be able to work from your *sukkah*, if for whatever reason you cannot, your *sukkah* is still kosher.

Rabbi Gil Student runs the website TorahMusings.com and serves as the Director of the Halacha Commission of the Rabbinical Alliance of America.

May a Yisrael Duchen?

by Rabbi Gil Student

I. Who May Duchen?

The Torah commands *kohanim*, male descendants of the priestly families, to bless other Jews while raising their hands and reciting a specific formula, i.e. to *duchen*, to do *Nesi'as Kapayim*. “Speak with Aharon and with his sons, saying: In this way you shall bless the children of Israel; you shall say to them...” (Num. 6:23). For reasons that are not completely clear, Ashkenazim outside of Israel only do this on holidays. It seems from this verse that only *kohanim* may *duchen*. We see this explicitly from a Gemara about lineage.

How much proof does a *kohen* need to possess to be considered a verified descendant of Aharon (a blue-check *kohen*)? Even in the times of the Mishnah, over a thousand years after Aharon died, it could not have been easy to have a family tree going back that far. The Gemara (*Kesubos* 24b) suggests different options. If you can trace your lineage to a *kohen* who served in the Temple, that is sufficient. If you can trace your lineage to someone who ate *terumah*, that also works. And if you can trace your lineage to someone who did *Nesi'as Kapayim*, that verifies you as a *kohen*. Why? The Gemara explains that it is a violation of a positive commandment for a non-*kohen* to *duchen*. Rashi (ad loc., s.v. *de-isur*) explains that the positive commandment is from the verse above (Num. 6:23), that the *kohanim* should do the blessing and not anyone else.

However, a statement by R. Yossi complicates things. The Gemara (*Shabbos* 108b) quotes R. Yossi as saying that even though he is not a *kohen*, if his friends tell him to go up to *duchen*, he does what they say. How could R. Yossi do that in violation of the positive commandment? Further complicating things, Tosafos (ad loc., s.v. *ilu*) quotes Ri (12th cen., France) as saying that he does not know of any reason why a non-*kohen* may not *duchen*, except reciting an unnecessary blessing. What about the positive commandment?

Later commentators and authorities offer a number of ways to reconcile the positive commandment mentioned in *Kesubos*, R. Yossi's behavior mentioned in *Shabbos*, and Ri's seeming lack of awareness of the problem. Rav Moshe Isserles (Rema; 16th cen., Poland; *Darkei Moshe, Orach Chaim* 128:1) suggests tentatively that the positive commandment is only a barrier if there are no *kohanim*. A Yisrael or Levi may not go up alone and do *Nesi'as Kapayim*. However, if *kohanim* already are going up to bless the people, a non-*kohen* may join them. He even quotes an anonymous text that suggests it is good for a non-*kohen* to join the *kohanim* because of the general rule *be-rov am hadras melech*, there is more glory to God with a larger group. It is beautiful when a large group says the blessings together. However, both in *Darkei Moshe* and in his gloss to *Shulchan*

Aruch (ad loc., par. 1), Rav Isserles concludes with *tzarich iyun*, this requires further study.

II. Limited Duchenen

Rav Avraham Gombiner (17th cen., Poland; *Magen Avraham, Orach Chaim* 128:2) questions Rav Isserles' distinction between a non-*kohen* saying the blessing on his own and with others. From where does this distinction emerge? Rav Gombiner suggests that perhaps this is what Ri means when he says that there is a problem of an unnecessary blessing. This unnecessary blessing is the positive commandment mentioned in *Kesubos*. Rav Yechezkel Landau (18th cen., Czech; *Noda Bi-Yehudah*, vol 1, *Orach Chaim*, no. 6) discusses whether Rav Gombiner's reference to an unnecessary blessing means the blessing before doing *Nesi'as Kapayim* (“*asher kideshanu bi-kdushaso she Aharon...*”) or the actual *Nesi'as Kapayim* itself. He concludes that it probably means the latter, reciting the blessings contained in the biblical verses. Rav Ovadiah Yosef (*Ma'or Yisrael, Shabbos* 118b) asks how there could be a problem reciting an unnecessary blessing by saying biblical verses. Anyone can say a full verse with God's name.

However, Rav Yosef of Trani (17th cen., Israel; *Responsa Maharit* 1:149) explains that the problem of a non-*kohen* doing *Nesi'as Kapayim* is the unnecessary recitation of God's special name, which was only said in the Temple in Jerusalem. The *kohanim* would use the special name in *Nesi'as Kapayim*. If a non-*kohen* said that name, he would violate the positive commandment to fear God's name. Therefore, during the Temple, only a *kohen* was allowed to do *Nesi'as Kapayim*. After the Temple's destruction, a non-*kohen* is allowed to do *Nesi'as Kapayim* because even the *kohanim* no longer use God's special name. R. Yossi lived after the Temple's destruction and that is why he would do *Nesi'as Kapayim* under pressure from his friends. According to Maharit's approach, we can understand why the problem is saying the biblical verses — if he uses God's special name.

Rav Gombiner (ibid.) offers another resolution between the two Gemara passages, setting aside Ri's comment in Tosafos. Perhaps R. Yossi went up to *duchen*, in deference to his friends, but just stood there silently so as not to violate the positive commandment that only *kohanim* may bless the people in that way. Rav Yoel Sirkes (17th cen., Poland; *Bach, Orach Chaim* 128) says something similar. He suggests that R. Yossi, under pressure from his friends, would go up to *duchen* where he would say just the biblical verses of blessing but without the preceding blessing (“*asher kideshanu...*”) and, significantly, without lifting his hands in blessing. Rav Avraham Shmuel Binyamin Sofer (19th cen., Hungary; *Responsa Kesav Sofer, Orach Chaim*, no. 13) takes the same approach. A *kohen* only fulfills the mitzvah if he lifts his hands while reciting the blessings. That is why it is called *Nesi'as Kapayim*. As long as a Yisrael or Levi does not lift his hands, he is not fulfilling the mitzvah and therefore not violating the positive commandment. Rav Sofer suggests that this is why the Gemara in *Shabbos* says that R. Yossi went up to *duchen* while the Gemara in *Kesubos* discusses tracing lineage based

on *Nesi'as Kapayim*. Anyone may say the blessings (*duchen*) but only a *kohen* may do it with raised hands (*Nesi'as Kapayim*).

III. Maybe a Yisrael May Duchen

Rav Gombiner suggests a third explanation of the conflicting Gemara passages. There is a recurring debate throughout the Talmud whether women may voluntarily lean on the head of a sacrifice (e.g. *Rosh Hashanah* 33a). Men who bring an animal are obligated to lean on it. R. Yehudah holds that since women are not obligated to lean on it, they are forbidden to do so. R. Yossi and R. Shimon hold that leaning is optional for women. Rav Gombiner suggests that the same debate applies to *Nesi'as Kapayim*. Since R. Yossi holds that women may lean on a sacrifice if they want, he also holds that a non-*kohen* may recite the blessings if he wants. The Gemara in *Shabbos* follows R. Yossi and the Gemara in *Kesubos* follows R. Yehudah. Rav Yitzchak Nunez Belmonte (18th cen., Turkey; *Sha'ar Ha-Melech, Hilchos Shabbos* 19:23) points out that the Gemara in *Kesubos* invokes R. Yossi within the discussion of proving *kohen* lineage from *Nesi'as Kapayim*. If R. Yossi holds that a non-*kohen* can do *Nesi'as Kapayim*, then there is no room for this discussion. This seems to rule out this approach.

As an aside, Rav Baruch Epstein (20th cen., Russia; *Torah Temimah*, ch. 6 n. 131) quotes a textual variant to the Gemara in *Shabbos*. In that variant, R. Yossi says that even though he is not worthy (*kedai* rather than *kohen*), if his friends tell him to go the *duchen* then he does. Rav Epstein suggests that in this version, *duchen* refers to the podium. In other words, even though R. Yossi feels he is unworthy, if his friends ask him to speak publicly he agrees to do so. This makes the passage completely unrelated to *Nesi'as Kapayim*. Clearly, *Tosafos*, *Ri* and most others did not have this textual variant.

In summary, may a Yisrael *duchen*? According to Rema's suggestion, if there are *kohanim* doing *Nesi'as Kapayim*, a Yisrael can join them completely. According to the *Magen Avraham's* second answer, a Yisrael may go up to *duchen* but he must remain silent. According to the *Bach* and *Kesav Sofer*, a Yisrael may also recite the biblical verses but he may not recite preceding blessing nor may he raise his hands. According to Maharit, outside the Temple, anyone can do *Nesi'as Kapayim*. However, due to the different and contradictory opinions, in practice a non-*kohen* is never allowed to do *Nesi'as Kapayim*.

Rabbi Gil Student runs the website TorahMusings.com and serves as the Director of the Halacha Commission of the Rabbinical Alliance of America.

Select Topics

The Obligation to Build a Mikvah

by Rabbi Ephraim Glatt, Esq.

Question: Which takes precedence: building a mikvah or a shul?

Short Answer: According to many poskim, building a mikvah takes precedence to building a shul.

Explanation:

I. Importance of Mikvah

The Chofetz Chaim (Taharas Yisroel, end of Perek 6) writes that it is forbidden for a married couple to live ("bikvius" - for a set time) in a city without a mikvah, as it will invariably lead to the couple violating an issur kares. The Chofetz Chaim adds that it is even forbidden to live in such a city if the couple feels that it is the only place where they can earn a living, as it is not permissible or advisable to trade in olam habah for olam hazeh.

While the Chofetz Chaim does not cite a source for this prohibition, the sefer Avnei Derech (15:163) suggests that the source is from the Rambam (De'os 4:23). The Gemara (Sanhedrin 17b) rules that a talmid chacham is prohibited from living in a town that does not have ten enumerated items, including a butcher. The Rambam (ibid), however, apparently had a different version of the Gemara and replaces butcher with spring water (i.e. to serve as a mikvah). This Gemara is thus the source that a city must have a mikvah.

II. Shul v. Mikvah

What about where a new community only has funds for either a shul or a mikvah? Which takes precedence?

The Igros Moshe (C" M 1:42) discusses this very issue and rules that a mikvah takes precedence even if the absence of a mikvah will not lead to kares violations. R' Moshe explains that a mikvah takes precedence because any hindrance of marital relations -- even for a short time -- as well as any obstacle to marital harmony must be avoided, even if that means selling a sefer torah or refraining to build a shul. In fact, the Gemara (Megilla 27b) rules that one may sell a sefer torah in order to get married and cites a proof from a posuk discussing the mitzvah of l'sheves yitzrah. The Beis Shmuel (E" H 1:2) proves from the Gemara's usage of this posuk that even a man who has already fulfilled the mitzvah of peru u'revu may sell a sefer torah to get remarried. R' Moshe explains that if you can sell a sefer torah for one person's mitzvah, certainly you can sell a sefer torah or refrain from building a shul for a community's mitzvah of mikvah.

R' Moshe concludes by adding a few points: (i) a mikvah takes precedence even if the city already has other mikva'os, as a more convenient (for Shabbos or Yom Tov) mikvah will prevent at least some people from marital discord; (ii) a city may even sell a previously-existing shul to pay for a mikvah if there is no other option; and (iii) the erasing of Hashem's name by a sotah teaches us the importance of doing radical things for shalom bayis, so certainly a mikvah -- a bedrock of shalom bayis -- takes precedence over building a shul.

III. The Chasam Sofer's Opinion

The Chasam Sofer (Y" D 2:244) likewise addresses the issue whether one may sell a shul's seforim and use the funds to build a mikvah. A person bequeathed seforim to a shul in his will. The seforim however were never used in the shul and instead were left in storage. The Chasam Sofer was asked whether the seforim can now be sold and the funds used to build a mikvah? After a discussion about the prohibition of downgrading devarim shebikdusha (i.e. items infused with holiness), the Chasam Sofer concludes that it is absolutely forbidden to sell the seforim and use the funds for a mikvah. There is no greater tzedakah than supporting torah learning by donating seforim and thus it is forbidden to downgrade their kedusha, especially after the donor's name has already been attached to these seforim. While a mikvah is certainly a community mitzvah, it is a "mitzvah zuta" (a small mitzvah) in comparison to limud hatorah.

At first glance, this Chasam Sofer appears to disagree with the above ruling of R' Moshe which allowed the sale of a shul for a mikvah. However, the sefer Sha'arei Mikva'os (R' Yissachar Chazan, p.266) cites the sefer Taharas HaMayim who distinguishes the ruling of the Chasam Sofer as limited to a case where they otherwise could raise funds for the mikvah from different sources. However, the Chasam Sofer would agree that a mikvah takes precedence to seforim where the alternative is for there to be a kares violation.

IV. Practically Speaking

Many poskim agree with the ruling of the Igros Moshe, that a mikvah takes precedence to a shul. Indeed, the Chofetz Chaim (Al HaTorah, p.239) expressly writes that a mikvah

takes precedence to a shul. R' Aharon Kotler zt"l is cited (Hamaor, 29:6, 5737, p.17) as encouraging the building of a new mikvah if people need to walk more than a mile to the current mikvah.

Moreover, the Beis Avi (O"C 3:33) cites the Meishiv Davar who ruled that one may sell a village shul and use the funds to build a mikvah. The Beis Avi also cites R' Yonasan Steif who ruled that it is much preferable for a city to build a mikvah than to direct their efforts to combating chillul shabbos in the neighborhood.

Similarly, the Minchas Yitzchak (5:83) wrote to the Taharas Y"t in 1964 to bemoan the fact that the Saratoga Springs mikvah was recently shuttered. The Minchas Yitzchak added that a community must spend as much as they can to fund the upkeep up the mikvah, as building a mikvah takes precedence over building a shul.

VI. Mikvah or Hospital?

Chashukei Chemed (Yoma 86a) asks whether building a community mikvah takes precedence to building a community hospital? He cites R' Y.S. Elyashiv zt"l who ruled that a mikvah takes precedence. Having marital relations in a state of tumah (i.e. where there is no community mikvah) causes sickness to children and to their parents. A mikvah will thus cause the fulfillment of the verse "v'hasirosi machalah mikirbecha" - Hashem will remove sickness, thereby alleviating the need for a hospital. Moreover, sick people can always be sent to a neighboring town's hospital, while a mikvah must be within walking distance (for Shabbos/Yom Tov).

R' Zilberstein himself adds that there will always be donors for a hospital. Thus, if a community has a donor willing to fund a mikvah or a hospital, the community should certainly choose the mikvah, as inevitably someone else will donate a hospital. He concludes that a mikvah likewise fulfills the dictum of "lo sa'amod al dam rei'echah" according to the Minchas Chinuch, as it prevents people from sinning.

Rabbi Ephraim Glatt, Esq. is Assistant Rabbi at the Young Israel of Kew Gardens Hills and a practicing litigation attorney. Rabbi Glatt can be reached at EphraimGlatt@gmail.com.

Expelling a Member from Shul

by Rabbi Gil Student

It is both a privilege and an obligation to belong to a shul. However, sometimes a community finds it necessary to expel a member. Under what conditions is it permissible to tell someone he is no longer welcome in shul? Surprisingly, even though this has been an issue for at least a thousand years (probably longer), there are no straightforward guidelines as to when a shul may expel someone. I would like to discuss some general principles found in the responsa literature.

I. Protecting the Vulnerable

Certainly, an overriding principle has to be *lo sa'amod al dam rei'echa*, the prohibition against standing idly by someone's blood. This requires taking great care to protect shul attendees from physical harm. If someone poses a physical danger to others, he cannot be allowed in shul. Of course, regarding this and everything else we will discuss, the specific details and facts make a great deal of difference. It is not the purpose of this article to establish how to determine when someone poses a danger or raises any other concern.

We are obligated to protect others from not only a physical danger but also a spiritual danger. *Shulchan Aruch (Orach Chaim 306:14)* permits violating Shabbos to try to prevent a Jew from being converted to Christianity. We are obligated to protect our shul members from those who proselytize for other religions or for no religion. Again, exactly how that translates into practice depends on the details.

However, weighing against these concerns, is the reality that expelling someone from shul will severely impact him psychologically and religiously. While this cannot override the safety of others, it still must be at the forefront of thought (see also *Taz* and *Nekudos Ha-Kessef* to *Yoreh De'ah 334:1*).

II. The Private Minyan

In the early 1500's, the town of Reggio in Italy had a *minyan* in a private home. The *minyan* was open to the public, both local residents and visitors from afar. The owner of the home got into a heated personal argument with one of the attendees and did not want that man praying in his home. The homeowner told his antagonist to leave and not come back. The man did come back and pointed out that one part of Rabbeinu Gershom's *cheirem* protects against this very situation. There are a number of enactments

attributed to Rabbeinu Gershom (11th cen., Germany). Among them is a prohibition against the individual host of a *minyan* from prohibiting a single person from praying in his house. Rather, he must either allow everyone or expel everyone (*Jewish Self-Government in the Middle Ages*, pp. 120, 130).

The homeowner then promptly discontinued his *minyan* and started a new *minyan*. In order to attend this new *minyan*, every person had to sign a contract giving the homeowner the right to expel anyone he wanted. The homeowner then asked the highest halachic authority in Italy, Rav Meir Katzenellenbogen (Maharam) of Padua. Maharam Padua (Responsa, no. 85) replied that this solution works. The homeowner can set any condition he wants and it retains halachic force.

However, the expelled individual did not give up and continued trying to bring in other rabbis to disagree. Eventually the homeowner died and his son continued the shul under the same conditions. This question reached Krakow, where Rav Moshe Isserles was the chief rabbi. His brother-in-law, the *dayan*, Rav Yosef Katz, sent a responsum to Reggio declaring that the *minyan* must remain open to everyone (*She'eris Yosef*, no. 69). Rav Katz invokes the Talmudic ruling (*Bava Kamma* 28a) that it is prohibited to remove public access from a path that the masses established. Once the public establishes access to the path, even on private property, people have the right to that path and the owner cannot revoke that right. Similarly, argues Rav Katz, once a person establishes a *minyan* that is open to the public, he cannot revoke that access. He could have asked that, if so, what did Rabbeinu Gershom accomplish with his *cheirem*? Even without it, you can't expel anyone from an established public *minyan*. Rav Yishmael Ha-Kohen of Modena (19th cen., Italy; *Zera Emes, Orach Chaim* no. 25) answers that normally you are not allowed to expel anyone from even a private shul. However, you could still take a vow forbidding an individual from receiving benefit from your property. Rabbeinu Gershom's *cheirem* prevents even this.

Rav Moshe Isserles (Rema) was Rav Katz's brother-in-law and Maharam Padua's younger first cousin. According to whom should he rule? In *Darkei Moshe (Orach Chaim* 153:9) and his glosses to *Shulchan Aruch (Orach Chaim* 153:16; *Yoreh De'ah* 221:1), Rema quotes Maharam Padua's responsum but only in regard to someone who opens a shul on condition. Rema rules that a condition works, like the contract required by the homeowner in Reggio. However, Rema does not take a stand on whether a homeowner can take a shul once open to the public and restart it based on a condition that attendance can be limited. Therefore, it is not clear according to whom Rema follows on that issue. Interestingly, Maharam Padua's son, Rav Shmuel Yitzchak Katzenellenbogen, had initially ignored the attempts to bring him into this controversy. However, after he saw the responsum from Rav Katz, who lived so far away in Krakow, he felt he needed to get involved. In response, the younger Rav Katzenellenbogen wrote a lengthy response to Rav Katz, quoting large portions and responding directly to them (Responsa Maharshik, no. 26).

III. Shul Rules

What emerges from the Reggio controversy, and particularly from Rabbeinu Gershom's earlier *cheirem*, is that the owner of a private shul may not expel an individual due to personal dislike. What is the underlying rationale of this rule? Is it that this would prevent the individual expelled from performing *mitzvos*, which requires justification? Or is it that expelling an individual for personal reasons constitutes hurtful behavior, similar to the story of Kamtza and Bar Kamtza (*Gittin* 55b) in which a host expelled Bar Kamtza from a party which eventually led to the destruction of the Second Temple?

If the reason not to expel an individual from shul is that of preventing someone from doing *mitzvos*, then as long as there is another shul in the area you should be allowed to expel anyone you want from a private shul. He can go somewhere else to fulfill his *mitzvos*. If it is due to hurtful behavior, you should not be able to expel someone even if there is another shul nearby. I am sure that Bar Kamtza could have gone to another party but being kicked out of a party once he was there was particularly hurtful.

Somewhat similarly, can you start a shul on condition that someone specific cannot attend? If the reason for the *cheirem* is so as not to prevent someone from doing *mitzvos*, then this condition should not be allowed. You are preventing this individual from doing *mitzvos*. However, if the reason is not to expel him like they did to Bar Kamtza, then this case is not the same. Here, you only are not inviting him to your shul. Who says that you have to invite everyone? Once he is there, you can't expel him. But when deciding whom to invite, you can choose not to invite everyone.

Significantly, *Mishnah Berurah* (20th cen., Poland; 153:88; *Bi'ur Halachah*, s.v. *le-osrah*) follows the view that this is prohibited due to the insult to the person expelled, like Bar Kamtza. Therefore, you may not expel him even if he can go to another nearby shul. This is about a private shul. Can you expel someone from a communal shul because of a disagreement with a shul leader, like the rabbi or the president? Presumably, this applies equally to a communal shul. The *cheirem* was only needed for a private shul in which the homeowner might feel like he can expel someone from his property. But the reasons for the *cheirem* apply equally, perhaps even more strongly, with a communal shul.

IV. Misbehavior

Rav Yishmael Ha-Kohen of Modena (19th cen., Italy; *Zera Emes*, *Orach Chaim* no. 25) adds that you may also expel someone from shul for being quarrelsome. Rabbeinu Gershom's *cheirem* only applies to a personal grudge between two people. Someone who causes fights and disagreements with many people is different. The disruption he causes in the shul justifies expulsion. Rav Simcha Rabinowitz (cont., Israel; *Piskei Teshuvos* 153:24) adds that this also applies to someone who talks during prayers and Torah reading. Of course, you should first try speaking with him privately and asking him to stop. However, as a last resort, expulsion is allowed because he disrupts the shul's prayers.

Based on the above, we see that expelling someone from a shul is a significant matter. The insult and pain is substantial and could lead to tragedy. However, the public needs protection and the shul needs to enable prayer. Therefore, someone who is dangerous to the community or disruptive to the prayers may need to be expelled from shul. It is a serious question that requires significant consideration and consultation with greater authorities.

Rabbi Gil Student runs the website TorahMusings.com and serves as the Director of the Halacha Commission of the Rabbinical Alliance of America.