Gray Matter 2

Discourses in Contemporary Halachah

By Rabbi Chaim Jachter

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GRAY MATTER VOLUME 2

by Chaim Jachter

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Acknowledgments

It is most gratifying that the first volume of *Gray Matter* has been well received in the Jewish community. It is very encouraging to hear from many individuals that they have enjoyed reading it. I am especially honored that many community rabbis use the book as a resource for *shiurim* that they deliver to their congregants. I specifically wish to thank Rav Hershel Schachter for honoring us with his encouragement to write a second volume of *Gray Matter*. I thank Rav Schachter and Rav Mordechai Willig for reviewing my citations of their views for accuracy.

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as a *Talmid*, then as a co-author, and as a colleague at the Torah Academy of Bergen County for the past two years. I wish him well upon his forthcoming return to Yeshivat Har Etzion to teach and study Torah.

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Three basic goals motivate me to devote so much time and energy to produce both volumes of *Gray Matter* and the *Kol Torah* columns. First, I seek to serve as a bridge between the great *Poskim* of our generation and the rest of the Jewish People. The Ramban (*Bemidbar* 1:45) writes that one of the reasons that Hashem commanded *Moshe Rabbeinu* to count the nation was in order for each Jew to have the opportunity to encounter *Moshe Rabbeinu*. This teaches the importance of creating opportunities for every Jew to encounter *G'dolei Yisrael*. I wish to demonstrate that the rulings of the *Poskim* of our generation

(and all generations) are built on a rock-solid foundation of rigorous halachic logic and precedent. I seek to show that their rulings flow in a consistent pattern from one generation to the next, similar to a tree, to which the Torah is compared—*Etz Chaim Hee* (*Mishlei* 3:18).

Second, I wish to expose readers to the incredible drama of halachic decision-making in the modern age. I find it deeply inspiring to discover that *Poskim* consistently find sources in the Gemara and its many commentaries for virtually every new phenomenon that emerges in modern times. This is especially amazing in light of the fact that we are not authorized to deviate from the *Halachot* and worldview articulated and implied by the Gemara (see the Rambam's introduction to his *Mishneh Torah*). Thus, it is forbidden to add any new rules to the *Halachah*. Every ruling regarding any new phenomenon must be rooted in a Talmudic source and the spirit of the Talmudic sages. I believe that this demonstrates that Hashem's subtle hand was involved in the production of the Gemara. How else can we explain the fact that the *Halachah* is so readily applied to a world that has so dramatically changed in the realms of technology, sociology, economics, and politics in the past hundred years?

Third, Rav Hershel Schachter relates that Rav Yosef Dov Soloveitchik sought to replicate the phenomenon in the secular world where the latest advances of science are explained to intelligent laymen in popular magazines and newspapers. The Rav wanted rabbis to present the ideas of our greatest sages to all of *Am Yisrael* in a manner that everyone would be able to comprehend. Indeed, I recall that, in a conversation in 1985, the Rav told me this was his goal in writing his *Shiurim L'Zecher Abba Mori* z"*l* (the *Yahrzeit Shiurim*) and that he thought that he successfully met this goal. In both volumes of *Gray Matter* and in the *Kol Torah* columns I have sought to continue to realize Rav Soloveitchik's vision.

I hope that my writings enlighten readers and enhance their observance of *Halachah*. I hope the essays move them to deepen their connection with their *Rabbanim* and submit further halachic inquiries to them, as this work is not intended to resolve any halachic disputes.

I wish to thank the many *Talmidei Chachamim* who have devoted time to enhancing this book. They include Rav Craig Berkowitz, Rav Elchonon Grunwald, Rav Moshe Rayman, Rav Mendel Senderovic, and Rav Baruch Simon. I wish to thank several experts in various fields who have generously shared their time and expertise in their

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Since the publication of the first volume of *Gray Matter*, two people to whom I felt very close have departed this world. Dr. Moshe Bayewitz of Teaneck, New Jersey, and Mr. Binyamin (Nyuma) Taub of Hadera, Israel, were both incredibly dedicated to their respective families and to *Am Yisrael*. Dr. Bayewitz was highly intelligent, honest, and kind, and felt the hand of Hashem in all of his endeavors and accomplishments. He inspired many with his earnest and genuine *tefillah*. He was the recipient of an incredible outpouring of love from his family and friends. Nyuma was my father's first cousin who was wise, loving, and an authentic Jewish hero. He fought in the Jewish Brigades during World War II for four years and two hundred days and assumed positions of responsibility in both *Tzahal* and the Egged public transportation network. Nyuma's relatives had great affection for him and they were the joy of his life, especially in his later years. Both Moshe and Nyuma are sorely missed by all who knew them.

There are numerous people to whom I owe an enormous debt of gratitude. My parents, Shirley and Ben Jachter, *a"h*, were profoundly dedicated to their children and to *Am Yisrael*. Their life-long example of warmth, sensitivity and integrity light my path and guide my every action. I have been blessed with outstanding *Rebbeim* who have set a standard of excellence in all areas of life. I express my *Hakarat Hatov* to all of them and especially to my primary *Rebbeim*, Rav Yosef Dov Soloveitchik, Rav Yehuda Amital, Rav Aharon Lichtenstein, Rav Hershel Schachter, Rav Elazar Meyer Teitz, and Rav Mordechai Willig. I thank my in-laws, Rav Shmuel and Chana Tokayer, for all their continued encouragement and support. They serve as wonderful role models to their children, grandchildren, and community of dedication to Torah study, careful observance of *Mitzvot*, and dedication to *Am Yisrael*.

I cannot thank Hashem enough for the privilege of being married to my wonderful wife, Malca. Her wisdom, kindness, warmth, and patience are the joy of my life. I have been able to grow in Torah learning and write Torah essays and *Sefarim* only because of her self-sacrifice, encouragement and dedication. May Hashem merit us to raise our children Bracha, Binyamin, Chaya Ziporah, and Atara in the path of Torah study, careful observance of *Mitzvot*, and contributions to *Am Yisrael*.

Most importantly I would like to thank Hashem for giving me the strength and guidance to teach Torah to His children, the members of *Am Yisrael*. I close by paraphrasing the *Tefillah* of Rav Nechunya Ben Hakanah (*Berachot* 28b) asking that I be spared from making any mistakes and causing any errors through this *Sefer*.

Chaim Jachter
23 Sivan 5765

Dedicated by the Tonkin family to the memory of ELIANE TONKIN *Z"L* who saw paradox and ambiguity as doors to wisdom.

T'hei Nishmatah Tzrurah B'tzror Hachaim

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Laws of Shabbat

Saving Lives on Shabbat

PART I: GENERAL INTRODUCTION

In the next several chapters, we address issues related to *piku'ach nefesh* (saving a life) on *Shabbat*. We begin our discussion by outlining the basic parameters of *piku'ach nefesh*. In later chapters, we address specific issues that commonly arise.

Introduction

Any discussion of *piku'ach nefesh* on *Shabbat* must open with the *Shulchan Aruch*'s celebrated words (*Orach Chaim* 328:2):

> It is a *mitzvah* to violate *Shabbat* for one who is dangerously ill. Furthermore, one who acts quickly in such circumstances is worthy of praise, whereas one who poses a question [to a rabbi to see if it is permissible to violate *Shabbat* to preserve life], sheds blood.

The *Mishnah Berurah* (*Orach Chaim* 328:6) notes that the *Yerushalmi* (*Yoma* 8:5) condemns Torah scholars who are posed with the question of whether danger to life warrants the desecration of *Shabbat*. He explains that a Torah scholar should publicize the fact that one must desecrate *Shabbat* in case of *piku'ach nefesh*, so that, if such a

situation were to arise, people would not hesitate to do whatever is necessary to save human lives. The *Mishnah Berurah* also cites the Radbaz's ruling (*Teshuvot* 4:67) that anyone who refuses to desecrate *Shabbat* in order to save his own life may be coerced to do so. Before trying to coerce him, however, one should try to convince such an individual to desecrate *Shabbat*, presumably because coercion may further traumatize him.[1]

Moreover, the Rambam (*Hilchot Shabbat* 2:3) denounces as heretics (*minim*) those who believe that one may not violate *Shabbat* in order to save a life. He accuses those who expound such views as degrading the Torah by erroneously implying that "Torah laws are evil edicts according to which one cannot live," whereas, in truth, "the Torah's laws are not mean-spirited, but rather merciful and kind, and they promote peace in the world."

Rav Yosef Dov Soloveitchik (in a 1984 lecture at Yeshiva University) recounted a personal anecdote that illustrates the importance of preserving life even if it involves violating *Shabbat*. As a young boy, Rav Soloveitchik fell ill on *Shabbat* and his illustrious father and grandfather were at his side. His grandfather, Rav Chaim Soloveitchik, asked the doctor who had come to see the young boy if turning on a light would assist him. The doctor replied, "That would not be a bad idea." Rav Chaim immediately instructed his son, Rav Moshe Soloveitchik, to turn on the light to aid the doctor in his work. Rav Moshe hesitated, because the doctor never stated that the light was unquestionably necessary, so Rav Chaim called him an *apikores* (heretic). When Rav Chaim was asked how he could treat *Shabbat* so lightly, he responded that he was not acting leniently regarding *Shabbat*, but strictly regarding the laws of *piku'ach nefesh*.

Talmudic Background

The Gemara (*Yoma* 82a) asserts that *piku'ach nefesh* overrides every Torah law except for the prohibitions of idolatry, sexual immorality, and murder. A few pages later (85a–85b), it offers numerous sources for why *piku'ach nefesh* overrides *Shabbat*. Rabbi Elazar ben Azariah reasons that if circumcision overrides *Shabbat*, despite affecting only

1. See, for example, *Teshuvot Igrot Moshe* (*Choshen Mishpat* 2:73:5) and Rav Yigal Shafran's essay in *Techumin* (14:333–351).

one organ of the body, so the vital needs of the entire human body surely override *Shabbat*.[2] Rabbi Shimon Ben Menasya presents the famous principle, "Violate one *Shabbat* for [the endangered individual's] sake so that he will observe many future *Shabbatot*."[3] Shmuel adds that the Torah (*Vayikra* 18:5) urges us to "live" by its laws ("*Vachai bahem*"), implying that observing the Torah should not cause death ("*Velo sheyamut bahem*").

One could ask why one sage after another continued to seek additional sources for asserting that *piku'ach nefesh* overrides *Shabbat*. Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 8:15:1:2) suggests that since the Talmud equates desecration of *Shabbat* with idolatry,[4] one might think that *piku'ach nefesh* does not override *Shabbat*, just as one may not worship idols even in order to save a life (*Pesachim* 25a; Rambam, *Hilchot Yesodei Hatorah* 5:2,6). Hence, the Talmud emphasizes that one may nevertheless violate *Shabbat* in order to preserve human life.

Spiritual Danger

Interestingly, the *Shulchan Aruch* (*Orach Chaim* 306:14) rules that one must violate *Shabbat* in order to save someone from forced conversion to another religion. However, if a Jew is *willingly* converting out of Judaism, the *Mishnah Berurah* (306:56) writes that no halachic authority permits violating Biblical prohibitions to save such a person. He cites two opinions about the permissibility of violating rabbinic prohibitions to try saving such a person, and he is inclined to rule leniently.[5]

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2. The Gemara thoroughly discusses the laws of circumcision on *Shabbat* in the nineteenth chapter of *Shabbat*.

3. The Gemara derives this principle from the verse "And the Jewish people shall guard *Shabbat*" (*Shemot* 31:16). Rashi (s.v. Veshamru) explains that "guarding" any particular *Shabbat* includes ensuring that future *Shabbatot* will also be observed. (The same Hebrew word—"*lishmor*"—means both "to guard" and "to observe.")

Although this reason implies that we may save only a Jew's life on *Shabbat* in order that he will observe future *Shabbatot*, the *Biur Halachah* (329 s.v. *Ela*) writes that in practice one should violate *Shabbat* even to save a Jew who clearly will not observe *Shabbat* in the future (see, also, *Halichot Olam* 4:226 and *Teshuvot Minchat Shlomo* 2:34:39 and 40).

4. See, for example, *Eruvin* 69b and *Chulin* 5a.

5. The issue of violating *Shabbat* to save Jews from spiritual danger is very complex in practice. See Rav Shaul Yisraeli's essay in *Techumin* (2:27–34) and

The Observant or Non-Observant Physician?

Rav Shlomo Zalman Auerbach (cited by Rav Yehoshua Neuwirth, *Shemirat Shabbat Kehilchatah*, Chapter 32 note 125) rules that it is preferable to call an observant doctor to a medical emergency on *Shabbat* rather than a non-observant one.[6] He argues that the non-observant doctor drives on *Shabbat* in any event, so his driving to an emergency desecrates *Shabbat*.[7] According to this logic, summoning a non-observant doctor to an emergency situation on *Shabbat* violates *lifnei iver* (causing another to sin; see *Pesachim* 22b). Nevertheless, Rav Shlomo

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Prof. Nachum Rakover's essay in *Techumin* (17:25–34). Also see *Teshuvot Vehanhagot* (4:38 of the Rav Chaim Soloveitchik section), where Rav Moshe Shternbuch records a tradition that Rav Chaim Soloveitchik would violate *Shabbat* himself in order to save Jewish children from the draft, because the non-Jewish army would compel them to abandon Judaism.

6. It is important to note that despite Rav Shlomo Zalman's position, Rav Neuwirth nonetheless concedes that one should call the non-observant Jewish doctor if he is a bigger expert in the case at hand (32:45). Also see *Teshuvot Minchat Shlomo* 2:34:35, where Rav Shlomo Zalman rules that an observant doctor may not switch a *Shabbat* shift with a non-observant Jewish colleague, as the latter violates *Shabbat* due to his apathy towards it rather than violating *Shabbat* for the express purpose of saving a life. Presumably, one who does not accept Rav Shlomo Zalman's position would actually prefer to have non-observant Jews take the *Shabbat* shifts, since they would otherwise violate *Shabbat* for no valid reason. As we discuss later in this chapter, Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Orach Chaim* 4:79) adopts such a position. Also see *Teshuvot Vehanhagot* (3:309).

7. As support for his view, Rav Shlomo Zalman cites the *Beit Halevi*'s commentary to *Shemot* 2:25. The *Beit Halevi* claims that one who commits a sin accidentally or under coercion, such as desecrating *Shabbat*, receives gentler treatment than a deliberate sinner only if one would not have willingly committed the same sin. However, one who would have committed the same act without any duress is viewed as a sinner regardless of the circumstances under which he actually does it. Rav Hershel Schachter (personal communication to Rav Ezra Frazer) questioned whether the *Beit Halevi*'s idea applies in the case of a non-observant doctor. Rav Schachter argued that the *Beit Halevi*'s concern applies when one would have done **this specific act** anyway, such as a non-observant Jew who planned to drive to a specific place on *Shabbat*, and someone then forced him at gunpoint to drive to that same place. In such a case, the non-observant Jew would be considered a deliberate sinner, despite the fact that he was coerced to drive, because he intended to do **the very same** act of driving even before he was threatened. By contrast, a non-observant doctor is driving to a particular emergency only for the purpose of saving a life. Thus, even if the doctor might have driven **elsewhere** on *Shabbat* had he not been called to this emergency, the driving that he now does to the patient's home or to the hospital is for the purpose of *piku'ach nefesh*.

Zalman elsewhere writes that one may call a non-observant doctor, if necessary, for just as one may violate *Shabbat* in order to save a life, so too may he violate *lifnei iver* (*Teshuvot Minchat Shlomo* 2:34:41).

Rav Zalman Nechemia Goldberg (*Halachah Urefu'ah* 4:181–191) cites a Talmudic passage that appears to disprove the argument against calling a non-observant doctor. The Gemara (*Menachot* 64a) records a dispute regarding actions that intend to violate *Shabbat* but turn out to save a life. For example, the Gemara describes a case in which someone, despite hearing that a child was drowning, spread his fishing nets in the river with the sole intention of catching fish (*tzad*, a prohibited activity on *Shabbat*), and without intending to save the child. When he raised the net, it both saved the child and caught some fish. Rabah believes that such a person has not desecrated *Shabbat*, for we ignore his intentions and consider only his concrete action (which saved a life). Rava maintains, however, that the person has violated *Shabbat* because intent determines the character of one's actions. The Rambam (*Hilchot Shabbat* 2:16) rules like Rabah that such an action does not desecrate *Shabbat*, while the Ra'avad (*ibid*.) appears to rule that it does.[8]

Rav Zalman Nechemia derives from this passage that even if a doctor routinely desecrates *Shabbat*, he is not considered a sinner when his actions save a life (in accordance with the Rambam's view).[9] In fact, Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Orach Chaim* 4:79), favors having non-observant Jewish doctors take the *Shabbat* shift of being on call, because they would violate *Shabbat* anyway, but this way they will violate *Shabbat* for the sake of *piku'ach nefesh* (which is permitted). Rav Moshe writes explicitly that there is no problem of *lifnei iver* (causing another to sin) in such a situation.[10]

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8. The Ra'avad agrees that the *Halachah* should follow Rabah, because Rabah was Rava's teacher. However, the Ra'avad's text was apparently reversed, so he believed that Rabah ruled that the fisherman desecrated *Shabbat* (see *Magid Mishneh*, *ad loc*.).

9. Although the Ra'avad disagrees with the Rambam, Rav Zalman Nechemia asserts that the Rambam's opinion better corresponds to other halachic concepts and should thus be followed (p. 182).

10. For more on the topic of summoning a non-observant doctor on *Shabbat*, see Rav Eliyahu Schlesinger's essay in *Techumin* 21:189–192 and Rav Shlomo Min-Hahar's responsum (published in *Techumin* 22:85).

When Is There Danger to Life?

Contemporary authorities discuss the precise definition of a life-threatening situation.[11] Rav Moshe Feinstein (*Igrot Moshe*, *Orach Chaim* 1:129) posits that it is difficult to give an arbitrary definition of such a case. Instead, he writes that "anytime someone feels he has excessive fever we may violate *Shabbat* [to heal him]." One is forbidden to violate *Shabbat* only if it is clear that the fever poses no danger.[12]

Nevertheless, Rav Moshe does offer some guidelines regarding how to determine when a situation warrants violating *Shabbat*. He writes that 102°F constitutes excessive fever and thus demands violating *Shabbat* to help the patient. Additionally, one may violate *Shabbat* if the sick individual's temperature is approaching 101°F but he feels that he is in danger. Also, if an infant is quite distressed and appears to be ill, and has a temperature even slightly above 100°F, *Shabbat* should be violated. Rav Moshe concludes that while *Shabbat* may not be violated for a low-grade fever in the case of a common cold, it may be violated for a low-grade fever if the fever results from a respiratory infection or an infection of another internal organ.

Rav Moshe's precise parameters have engendered criticism. Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 8:15:7:3) recounts that he once told Rav Moshe's rulings to a group of doctors, and they responded with astonishment. Rav Waldenberg questions whether one whose fever is currently approaching 101°F faces any danger that cannot be treated on *Shabbat* with medicines that do not violate any

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11. See *Teshuvot Tzitz Eliezer* (22:23) regarding violating *Shabbat* in order to save someone from blindness.

12. Rav Moshe permits the use of a mercury thermometer to measure fever on *Shabbat* (*Teshuvot Igrot Moshe*, *Orach Chaim* 1:128), as does Rav Ovadia Yosef (*Halichot Olam* 4:194–196). Rav Ovadia similarly permits measuring one's blood pressure with mechanical (non-electronic) equipment, as caring for one's health constitutes a *mitzvah*, and measuring for the purpose of a *mitzvah* is permitted on *Shabbat* (see *Shulchan Aruch*, O.C. 306:7 and *Mishnah Berurah* 306:36). Rav Ovadia notes that some authorities do, however, prohibit shaking the thermometer in order to lower the mercury (see *Teshuvot Sheivet Halevi* 1:61:2), but he challenges their reasoning and cites many *poskim* who permit lowering the mercury. For further support of the view that one may use a thermometer on *Shabbat*, see *Halachah Urefu'ah* (1:113–115). Of course, these authorities all address mercury thermometers, which do not use electricity and are not digital.

Biblical transgressions. It is difficult to give definitive guidelines in these types of cases. If one is unsure, it is advisable at the very least to seek a physician's advice by telephone, since the use of a telephone most often does not violate a Biblical prohibition according to most authorities.[13]

It should be noted that even one who has no fever may still be dangerously ill.[14] Thus, at the very least a physician should be contacted even if the sick individual has no fever, whenever reason exists to assume that he is severely ill. Indeed, the Gemara (see *Shabbat* 129a) resolves questions as to whether a situation is sufficiently dangerous to warrant *chillul Shabbat* in the direction of leniency. The stated principle is "*safek nefashot l'hakeil*," one should be lenient when one is unsure as to whether there is danger to life.

Calming an Ill Individual

Sometimes, tending to an ill individual's psychological needs is essential to preserving his welfare. The Gemara (*Shabbat* 128b) permits lighting a candle in the room of a blind pregnant woman, while delivering the baby. Although the woman herself cannot see even with the light, the light helps calm her, as she knows that the candle will enable others to see. Putting her mind at ease constitutes *piku'ach nefesh*.[15]

Based on this principle, *poskim* discuss the propriety of relatives traveling to a hospital on *Shabbat* when a patient requests their

13. Rav Shlomo Zalman Auerbach (*Teshuvot Minchat Shlomo* 1:11) argues that using electric appliances does not violate *Shabbat* on a Biblical level unless a filament is heated until it glows (Rav Chaim Ozer Grodzinsky, *Teshuvot Achiezer* 3:60, seems to agree). Rav Yehuda Amital (personal communication), Rav David Cohen of Brooklyn, New York (personal communication), Rav Moshe Heinemann (in a lecture to a Young Israel rabbinical convention), Rav Shlomo Levy (personal communication) and Rav Hershel Schachter (in a lecture to the Rabbinical Council of America) have reported that this position is generally accepted.

14. See *Shemirat Shabbat Kehilchatah* 32:11 for many examples of ailments that warrant desecrating *Shabbat*.

15. In the above example, the Gemara addresses the psychological well-being of a woman who also faces a physical danger (childbirth). Also see Rav Yisrael Rozen's and Rav Mordechai Goodman's essays in *Techumin* (23:73–88 and 24:359–369) regarding whether social workers and family members may travel on *Shabbat* to the site of a terrorist attack in order to cope with the attack's tremendous psychological impact.

presence.[16] Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, O.C. 1:132) permits a husband to accompany his pregnant wife to the delivery room on *Shabbat* if she fears traveling alone.[17] Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 8:15 *Kuntres Meshivat Nafesh* 9) raises the possibility of permitting travel on *Shabbat* in a manner that constitutes only a rabbinic prohibition, to be with a dangerously ill relative if circumstances clearly indicate that one's arrival will calm the relative. As an example, Rav Waldenberg mentions someone who falls ill in a remote village, where he does not know anyone. This person likely feels extremely unsettled, because he is being treated by people whom he does not recognize. Hence, his relative's presence would calm him and hopefully expedite his recovery. Of course, both these authorities emphasize that one must assess each given situation, in order to gauge the severity of the prohibitions involved, in addition to determining whether the patient's emotional state is indeed so unsettled that it is actually harming his health.[18]

I was once told about an elderly Jewish woman who was rushed to the hospital, and subsequently released, all on a *Yom Tov*. Circumstances dictated that she could not remain in the hospital for the remainder of the *Yom Tov*, so Rav Hershel Schachter permitted asking a non-Jew to drive her home. He reasoned that the woman was still sick enough to be considered ill, and it is permitted to ask a non-Jew to violate *Shabbat* on behalf of an ill individual (even if the illness is not

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16. Also see *Teshuvot Yabia Omer* (O.C. 10:29). While the poskim whom we cite in this chapter address the patient's *emotional* well-being, it is important to note that one must also assess whether the patient would face *physical* danger by entering the hospital unaccompanied. In a busy hospital, a patient might need an advocate to ensure that the hospital staff does not neglect him.

17. Rav Moshe notes that his case is less straightforward than the Gemara's case. In the Gemara's case, the blind woman has good reason to fear the darkness. Although she cannot see even in the light, she worries that the midwife will encounter difficulty delivering the baby in the dark. By contrast, Rav Moshe writes that the woman does not have any serious reason to fear riding to the hospital alone. Nevertheless, Rav Moshe concludes that we should not make such fine distinctions in matters of life and death. Thus, while we might think that the fear of traveling alone to the hospital is unfounded, a woman who experiences this fear may be accompanied by her husband.

18. See, for example, *Tosafot* (*Shabbat* 128b s.v. *Ka Mashma Lan*), who distinguish between the impact of emotional stress on a woman during childbirth (which is presumed to be quite severe) and the effects of only partially feeding an ill individual on *Yom Kippur*.

life-threatening).[19] Rav Schachter also stated that it seems clear that just as the woman's grandson was permitted to accompany her to the hospital, so, too, may he accompany her home (if necessary for her emotional welfare), as the non-Jewish driver does nothing extra on behalf of the grandson.[20] Rav Schachter told me that there is no distinction between *Shabbat* and *Yom Tov* in such a situation.

19. See *Shulchan Aruch* (O.C. 328:17) and *Mishnah Berurah* (328:47).

20. See *Teshuvot Har Tzvi* (Y.D. 233), *Teshuvot Igrot Moshe* (O.C. 1:132), and *Contemporary Halakhic Problems* (1:137–138).

It should be noted that in the situation regarding which Rav Schachter issued his ruling, all of the traveling occurred within the *techum* (the area within which one is permitted to walk on *Shabbat* and *Yom Tov*). Rav Schachter rendered his decision only in regard to the questions of asking a non-Jew to drive a car and riding in the car on *Shabbat* and *Yom Tov*.

PART II: MINIMIZING PROHIBITED ACTIVITY (*HUTRAH VS. DECHUYAH*)

In the previous chapter, we established that *piku'ach nefesh* ("saving a life") overrides the restrictions of *Shabbat*. We will now explore whether one must attempt to minimize desecration of *Shabbat* in such situations. In technical terms, this discussion is called *hutrah* or dechuyah. *Hutrah* (literally, "permitted") means that life-saving acts performed when confronted with life-threatening circumstances are not viewed in any sense as desecration of *Shabbat*. *Dechuyah* (literally, "superceded") means that such acts are always viewed as fundamentally prohibited, but that they are permitted to the extent that they must be done to save a life.[1]

Talmudic Background

The Gemara never explicitly discusses whether violating *Shabbat* to save a life is *hutrah* or *dechuyah*, but these terms do appear in the Gemara in other contexts.[2] Although the Talmud does not address *piku'ach nefesh* explicitly, four sources implicitly address this issue in the context of *Shabbat*, with two sources seeming to support each possibility.

1. For additional sources on this topic, see *Teshuvot Yabia Omer* (vol. 1 *Orach Chaim* 22).

2. The Gemara and *Rishonim* distinguish between *hutrah* and *dechuyah* in several contexts. For example, the Gemara discusses the difference regarding the nature of the permission, in certain circumstances, to offer sacrifices despite the presence of *tumah* (ritual impurity). Rav Nachman and Rav Sheishet (*Yoma* 6b) debate whether offering sacrifices despite the impurity is unreservedly permissible (*tumah hutrah betzibur*) or the allowance is of a limited nature (*tumah dechuyah betzibur*). Rashi (s.v. *dechuyah*) explains that the opinion maintaining that the impurity is *dechuyah* requires performing any possible act in order to minimize offering sacrifices in such a state. A possible ramification of this is how hard one must search for ritually pure *Kohanim* ("priests"), despite the fact that, if necessary, even impure *Kohanim* could bring the sacrifices (also see *Encyclopedia Talmudit* 19:578–579).

The Gemara (*Shabbat* 128b) rules that one may light a lamp on *Shabbat* in a room where a blind woman is giving birth, if the blind woman requests that a lamp be lit. Although she will not directly benefit from the light, the Gemara explains that kindling the lamp soothes her mind. Many argue that this source demonstrates that *piku'ach nefesh* is *hutrah*. Otherwise, such a violation of *Shabbat* would not be permissible, for it does not directly contribute to saving her life.

Moreover, the Gemara (*Yoma* 84b) states that when *Shabbat* must be violated, *gedolei Yisrael* (literally, "big ones of the Jews")[3] should perform the act, rather than a non-Jew or a Jewish minor. If *piku'ach nefesh* were *dechuyah*, asking a child or a non-Jew to violate *Shabbat* would appear to be preferable, since their desecration of *Shabbat* is far less severe than that of an adult Jew.[4] Thus, *piku'ach nefesh* seems to be *hutrah*. However, those who maintain that it is merely *dechuyah* counter that it would be preferable to request a non-Jew to violate *Shabbat* instead of a Jew, except that this behavior would lead people to mistakenly believe that Jews may not violate *Shabbat* even for *piku'ach nefesh*. Such a mistake would likely lead to deaths in situations where no non-Jew is available, as the Jews present would not realize that they should violate *Shabbat* in order to save the endangered person. *Chazal* therefore commanded Jews to violate *Shabbat* in all life-threatening emergencies, even when a non-Jew could save the life and spare the Jews from desecrating *Shabbat*.[5]

In contrast to the last two sources, the Gemara elsewhere (*Shabbat* 128b) teaches that, whenever possible, one should violate *Shabbat* in case of emergency by using a *shinui* (a deviation from the normal way of doing something, which is only rabbinically forbidden). This qualification implies that saving a life on *Shabbat* is *dechuyah*, so one must try to lower the prohibited act to a rabbinic prohibition.

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3. The *Beit Yosef* (O.C. 328 and *Shulchan Aruch*, O.C. 328:12) interprets this term as referring to adults, rather than children. The *Taz* (328:5) disagrees, asserting that the term means respected Torah scholars, and that here the Gemara teaches that scholars should make a point of desecrating *Shabbat* themselves in life-threatening cases so that everyone else will learn to emulate their behavior.

4. It should be emphasized, though, that the Mishnah (*Shabbat* 121a) explicitly prohibits asking a child—under normal circumstances—to violate *Shabbat* on behalf of adults.

5. See *Teshuvot Yabia Omer* (vol. 8 O.C. 37:12), who explains the *Shulchan Aruch*'s view in this manner.

Furthermore, the Gemara (*Menachot* 64a) presents a scenario where one has two options for acting in a life-threatening situation, and he must choose the option that entails the least possible desecration of *Shabbat*. In the Gemara's case, two dates have been prescribed as a remedy for a critically ill individual. These dates could be obtained either by cutting one date from each of two branches or by cutting one branch that holds three[6] dates. The Gemara concludes that one should cut the lone branch containing three dates in order to reduce the number of prohibited acts of pruning (*ketzirah*). This source implies that, even while aiding a dangerously ill person, we must limit *Shabbat* violations as much as possible.

The Rishonim

The Rosh (*Yoma* 8:14) cites a dispute that appears to highlight the difference between *hutrah* and *dechuyah*. In the case that arose, a dangerously ill person needed to eat meat on *Shabbat*, but no kosher meat was available. Either he could eat non-kosher meat, which happened to be readily available, or another Jew could violate the laws of *Shabbat* by slaughtering a kosher animal for him.

The Rosh quotes some *Rishonim* who deem it preferable to eat the non-kosher meat, for eating non-kosher meat entails a less severe prohibition (a regular Biblical negative commandment) than desecrating *Shabbat* (a capital offense). Their position implies that even when acting to save a life, the act of slaughtering is merely *dechuyah*, so its severity must be weighed against alternative methods of saving the sick individual.

However, the Maharam of Rothenburg (cited by the Rosh) writes that it is preferable to slaughter the animal for the ailing person on *Shabbat*. He compares slaughtering an animal for a sick person to cooking or lighting a fire on *Yom Tov* ("festival day"). Even as cooking and lighting a fire constitute *melachot* (prohibited activities on *Shabbat* and *Yom Tov*), yet the Torah completely permits them under most

6. The Gemara presents a case where the lone branch contains more dates (three) than the other two branches combined, in order to teach that it is better to cut the lone branch even when this act detaches more dates than two acts of cutting one date each. In technical terms, this means that minimizing *ribui ma'aseh* ("a greater number of acts") is preferable to minimizing *ribui shiur* ("a greater number of fruits").

circumstances[7] on *Yom Tov*—"like on a weekday"—so, too, the act of slaughtering constitutes a *melachah*, but "any *melachah* done for a dangerously ill individual on *Shabbat* is *as if it is being done during the week*." Interestingly, the Maharam does state that the prohibition of eating non-kosher meat is merely *dechuyah* in the case of *piku'ach nefesh*.[8] Apparently, he views desecrating *Shabbat* as *hutrah* but eating prohibited foods as *dechuyah*.[9] The Ran (*Beitzah* 9b in pages of Rif, s.v. *Umiha*), though, asserts that while cooking on *Yom Tov* is not a transgression at all, *Shabbat* or *Yom Tov* is merely *dechuyah* when a life must be saved.[10]

The Rambam (*Hilchot Shabbat* 2:1–2) introduces the topic of life-threatening emergencies on *Shabbat* by positing that *Shabbat* is "*dechuyah*" in cases of danger to human life. On the other hand, he

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7. Even permitted *melachot* may not be done under all circumstances on *Yom Tov*. For a brief English summary of the parameters, see Rav Simcha Bunim Cohen's *Laws of Yom Tov* (pp. 17–22).

8. See *Yoma* 83a, which teaches that one whose life depends on eating forbidden foods should first eat those that entail less severe prohibitions. The Mabit (*Kiryat Sefer, Maachalot Asurot* 14:16) claims that on a Biblical level one need not be concerned about the level of a food's prohibition when it can save a life, so the Gemara requires seeking the lightest prohibition only on a rabbinic level. His understanding would allow one to argue that eating prohibited foods is *hutrah* in life-threatening situations, so on a Biblical level, the Halachah even permits violating a more severe prohibition than is absolutely necessary. However, Rav Shlomo Zalman Auerbach (*Teshuvot Minchat Shlomo* 1:7:1) cites many authorities who disagree with the Mabit and view the Gemara in *Yoma* as speaking on a Biblical level. Interestingly, the Rif omits this passage from the Gemara, leading some to believe that he considers all prohibitions to be *hutrah* in the face of *piku'ach nefesh* (see *Teshuvot Yabia Omer*, vol. 8 O.C. 37:12).

9. The Rosh cites other *Rishonim* who also prefer slaughtering the kosher animal to eating the non-kosher meat, but for reasons other than *Shabbat* being *hutrah*. The Ra'avad believes that it is better to slaughter the meat because cooking the non-kosher meat would violate *Shabbat* anyway. Consequently, the Ra'avad acknowledges that slaughtering the animal constitutes a prohibition (implying that *Shabbat* is merely *dechuyah* for emergencies), but he argues that it is better to increase the violations of *Shabbat*—which must all the same be desecrated by cooking—than to introduce the additional prohibition of non-kosher food. Others posit that it is preferable to slaughter the meat because the patient will likely find the non-kosher meat revolting and may refuse to eat it, endangering himself further.

10. The Ran even rules that one should try to avoid to violating *Shabbat* twice when it is possible to violate it only once. He thus appears to disagree with the opinion of the Ra'avad (cited in the previous footnote), who seems to believe that once *Shabbat* is violated for *piku'ach nefesh*, it does not matter how many times it is violated for this purpose.

writes that *Shabbat* should be viewed "as a weekday" when treating the gravely ill. It seems that he intends one of these two expressions in a non-technical manner, but he does not clarify which one, so the *Acharonim* thus debate whether he considers *Shabbat* to be *hutrah* or *dechuyah* when saving a life.[11]

Practical Halachic Ramifications

When only non-kosher meat is available on *Shabbat*, the *Shulchan Aruch* (*Orach Chaim* 328:14) rules that it is preferable to violate *Shabbat* and slaughter kosher meat. The *Mishnah Berurah* (328:39) adds that if the food is only rabbinically prohibited (such as certain foods cooked by a non-Jew—*bishul akum)* , then one should eat it rather than violate *Shabbat*. Based on the *Shulchan Aruch*'s ruling, Rav Yehoshua Neuwirth (*Shemirat Shabbat Kehilchatah* 40:17) notes that one may similarly violate *Shabbat* in order to bring kosher food to a dangerously ill patient in a hospital that does not serve kosher food. However, he cites Rav Shlomo Zalman Auerbach's opinion that if the hospital food has a reliable *kashrut* endorsement,[12] which the patient normally chooses not to accept, then one may *not* violate *Shabbat* to bring him food that meets his personal halachic standards (*ad loc*. note 48).[13]

Two more major issues arise in the *Shulchan Aruch* and its commentaries that may depend on this dispute. It should be noted, though, that each case also entails additional considerations. Thus, a *poseik* who fundamentally believes *Shabbat* to be *dechuyah* when a life is in danger might sometimes rule leniently in a manner that seems to indicate that it is *hutrah*, and vice versa. In fact, Rav Yitzchak Isaac Liebes

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11. See *Teshuvot Yechaveh Da'at* (4:30), *Halichot Olam* (4:145–146), and Rav Yosef Kafich's commentary to the Rambam (*ad loc*.) for a summary of this debate.

12. Of course, one must determine in each individual situation whether the supervision is in fact reliable. One wonders how Rav Shlomo Zalman would rule concerning reliable supervision that openly admits to permitting a type of food that certain communities prohibit, such as a reliable Ashkenazic rabbi who certifies that the meat is kosher but not *glatt*. (Ashkenazic practices regarding *glatt* vary, but Rav Ovadia Yosef rules that Sephardic Jews may not eat non-*glatt* meat; see *Teshuvot Yechaveh Daat* 3:56. Regarding Sephardic Jews who visit Ashkenazic Jews and wish to eat meat with them, see *Yalkut Yosef*, *Isur V'heter* vol. 1 pp. 119-–120).

13. Rav Shlomo Zalman adds that one may not mislead the patient into believing that food meets his *kashrut* standards when in reality it does not, lest he later find out the truth and be disgusted by the food, thus ultimately causing his condition to worsen.

(*Halacha Urefu'ah* 3:83) comments that it is quite difficult to find a practical case that truly depends on the question of *hutrah* versus *dechuyah* (see also *Halichot Olam* 4:157–158).

The *Shulchan Aruch* (*Orach Chaim* 328:12) writes that a Jewish adult should be the one to violate *Shabbat* in case of emergency, rather than a non-Jew or a minor. On the other hand, the Rama adds that if no delay would result from doing the action with a *shinui*, or asking a non-Jew to do it, then one should utilize either of these alternatives.[14] The *Taz* (O.C. 328:5) rejects asking a non-Jew even when this act requires no additional effort, but he does not challenge the Rama's ruling regarding a *shinui*. The *Mishnah Berurah* (328:37) thus rules that a *shinui* should be used whenever possible,[15] but one should not summon a non-Jew. However, Rav Moshe Feinstein (*Orach Chaim* 4:80) limits the Taz's position to the precise act that will save a life ("*inyan hahatzalah mamash*"). Rav Moshe claims that even the Taz would encourage using a non-Jew for an act such as driving in an emergency (provided that this will not take any extra time), because the driving itself does not save the victim's life.

Poskim also debate whether one may violate *Shabbat* in order to take care of the non-emergency needs of a dangerously ill person. The *Shulchan Aruch* seems to permit such acts: "We do for him what would be done for him on a weekday" (328:4).[16] The *Mishnah Berurah* (*Biur Halachah*, 328 s.v. *Kol*) extensively reviews the approaches to this

14. Also see the Rama's *Teshuvot* (76), where he indicates that *Shabbat* is *hutrah* in cases of *piku'ach nefesh*.

15. See *Teshuvot Minchat Shlomo* 1:7:3.

16. Assuming that this issue and the previous one both depend on the question of *hutrah* or *dechuyah* leads to the conclusion that the *Shulchan Aruch* undoubtedly considers *Shabbat* to be *hutrah* when saving a life, for the *Shulchan Aruch* both permits a Jew to violate *Shabbat* despite the presence of non-Jews and even permits violating *Shabbat* for all of an ill individual's needs. However, Rav Ovadia Yosef argues that the *Shulchan Aruch* actually considers *Shabbat* to be *dechuyah*. We have already mentioned that Rav Ovadia explains the *Shulchan Aruch*'s first ruling as a special measure to prevent people from erroneously concluding that Jews may not violate *Shabbat* themselves, but may only ask non-Jews to do so for them, even in life-threatening situations (*Teshuvot Yabia Omer*, vol. 8 O.C. 37:12). Elsewhere, Rav Ovadia questions whether only one who considers *Shabbat* to be *hutrah* in cases of *piku'ach nefesh* would permit violating *Shabbat* for an ill individual's other needs, or whether one could argue that all his needs override *Shabbat*, yet they are viewed as prohibited acts that must nevertheless be performed, as opposed to permitted acts (*Teshuvot Yechaveh Da'at* 4:30).

issue and notes that many *Rishonim* forbid violating *Shabbat* to take care of the non-emergency needs of a dangerously ill person. He concludes (328:14) by suggesting a compromise approach, recommending to refrain from Biblical prohibitions that do not directly contribute to saving his life, but allowing rabbinic prohibitions of this type. On the other hand, Rav Chaim Soloveitchik (quoted in Rav Yitzchak Ze'ev Soloveitchik's commentary on Rambam, *Hilchot Shevitat Asor* 2:8) and Rav Ovadia Yosef (*Teshuvot Yechaveh Daat* 4:30) rule that one may even violate a Torah prohibition in order to care for the non-emergency needs of a dangerously ill person, in accordance with the *Shulchan Aruch*.

Many questionable situations today involve the use of electric appliances. Most authorities appear to agree with Rav Shlomo Zalman Auerbach's assertion (*Teshuvot Minchat Shlomo* 1:11) that completing a circuit does not involve a Biblical prohibition (except in the case of an incandescent light bulb, or other appliance in which a filament is heated until it glows).[17] According to this view, the *Mishnah Berurah* would thus agree that one may turn appliances on or off for the patient's sake, even if they are not essential for saving his life. For example, Rav Hershel Schachter and Rav Mordechai Willig both told me that they believe one may turn on an air conditioner on *Shabbat* for a dangerously ill patient who feels unusually hot, although they ruled that it must be turned on in an unusual manner (*shinui*).[18]

It is important to note that even the *Mishnah Berurah* (*ibid.*) warns against refraining from prohibited acts only if one is *certain* that the illness will not worsen as a result. He concludes with a citation from the Meiri, that if the action violating *Shabbat* will strengthen the dangerously ill person, it should be performed.

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17. Rav Chaim Ozer Grodzinsky (*Teshuvot Achiezer* 3:60) appears to agree with Rav Shlomo Zalman's approach. Rav Yehuda Amital (personal communication), Rav David Cohen of Brooklyn, New York (personal communication), Rav Moshe Heinemann (in a lecture to a Young Israel rabbinical convention), Rav Shlomo Levy (personal communication) and Rav Hershel Schachter (in a lecture to the Rabbinical Council of America) have reported that this position is generally accepted.

18. For an explanation for why a *shinui* is necessary in this situation, see Rav Schachter's *Eretz HaTzvi* (chapter six).

PART III: PUTTING ONESELF IN *PIKU'ACH NEFESH* SITUATIONS

This section addresses steps that one should take in order to avoid a entering a life-threatening situation, which would necessitate desecrating *Shabbat*.

Background

The Gemara (*Shabbat* 19a) prohibits embarking on a boat that will travel through *Shabbat* if the trip begins within three days of *Shabbat*.[1] However, the Gemara limits this restriction to trips taken for one's own needs (*devar hareshut*), whereas one may set out for the sake of a *mitzvah* even in the latter half of a week.[2] The *Shulchan Aruch* codifies the Gemara's rulings (*Orach Chaim* 248:1). The Steipler Rav (*Kehilot Yaakov*, *Shabbat* 14) writes that the Gemara's prohibition is merely a rabbinic enactment. The *Shulchan Aruch Harav* (248:7) appears to agree with his view,[3] and Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Orach Chaim* 1:127) asserts that most authorities indeed consider this prohibition to be rabbinic.[4]

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1. The *Mishnah Berurah* (248:4) cites a dispute regarding whether this prohibition applies on Wednesday, or whether the phrase "within three days" includes *Shabbat* itself as one day.

2. The *Shulchan Aruch* (*Orach Chaim* 248:4) mentions a trip to Israel as an example of a trip for the sake of a *mitzvah*. See *Mishnah Berurah* 248:28 and *Teshuvot Chelkat Yaakov* (1:81) regarding whether this includes a temporary visit to Israel.

3. Rav Yisrael Rozen (*Techumin* 16:42) infers this position from the *Shulchan Aruch Harav*'s words.

4. Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 12:43:4) cites many authorities who indicate that this prohibition is merely a rabbinic enactment. See, however, *B'ikvei Hatzon* (p. 153), where Rav Hershel Schachter offers an explanation for why he believes it to be a Biblical prohibition.

The *Rishonim* offer a number of explanations for the prohibition against beginning a trip too close to *Shabbat*.[5] The Rif (*Shabbat* 7b, in pages of Rif) explains that people generally need three days until they adjust to sea travel. Hence, one who embarks within three days of *Shabbat* will probably experience an unpleasant *Shabbat* due to seasickness. The Rabbis thus prohibited such trips in order to ensure that people properly enjoy *Shabbat* (*oneg Shabbat*).

The *Baal Hama'or* (*Shabbat* 7a, in pages of Rif) claims that the three days immediately before *Shabbat* are considered "prior to *Shabbat*," so one who embarks on a voyage within that period intentionally enters a situation that will require violating *Shabbat* in case of *piku'ach nefesh* (saving a life).[6] The *Shulchan Aruch* (*Orach Chaim* 248:2 and 248:4) appears to codify both explanations.

Defining "For the Sake of a Mitzvah"

The Gemara permits embarking on a trip during the latter half of a week "for the sake of a *mitzvah*." Rabbeinu Tam (cited approvingly by the *Tur*, O.C. 248) interprets this concept in an extraordinarily lenient manner. He argues that traveling for business purposes or to visit a friend is considered a *mitzvah*, while only a purely recreational trip would constitute a *devar reshut* (trip for one's own needs). The Rama (248:4) accepts Rabbeinu Tam's view.

Belated Circumcisions

When a *brit milah* (circumcision) takes place later than the eighth day of a boy's life (such as with a baby who could not tolerate a *brit* on the eighth day due to health reasons, or a non-Jew who wishes to convert),[7]

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5. In this chapter, we discuss only the two explanation that appear in the *Shulchan Aruch*. For a summary and analysis of these and other opinions, see Ritva (*Shabbat* 19a s.v. *Tanu Rabanan*).

6. Travel was dangerous at that time, so it was likely that the crew would need to perform forbidden activities on *Shabbat* in order to insure the passengers' safety.

7. Of course, none of these concerns applies when circumcising a baby on the eighth day of his life, as circumcision on the eighth day overrides *Shabbat*. The Gemara discusses the laws of a circumcision on *Shabbat* at great length in the nineteenth chapter of *Masechet Shabbat*.

the *Tashbetz* (1:21) forbids performing it on a Thursday. He notes that on the third day after a *brit* (including the day of the *brit*), the baby is presumed to be in tremendous pain (see *Bereishit* 34:25 and Rashbam *ad loc*.). Thus, a baby who underwent a *brit milah* on Thursday may require medical treatment that will entail transgressing *Shabbat* (see *Shabbat* 86a). According to the *Taz* (*Yoreh Deah* 262:3), this problem exists when circumcising on Friday, too, as the baby suffers pain every day through the third day.[8] The *Shach* (*Yoreh Deah* 266:18) notes that some Rishonim do indeed assume that the baby suffers through the third day, but the *Tashbetz* explicitly permits circumcising on Friday even when it is not the eighth day.[9]

The *Shach* himself rejects even the *Tashbetz*'s position. He asserts that circumcising constitutes a *mitzvah*, so one may perform it even when it will later require violating *Shabbat* to save a life, just as one may embark on a trip for the sake of a *mitzvah* even during the latter half of the week. The *Chacham Tzvi* (*Teshuvot Nosafot* 14) and *Mishnah Berurah* (331:33) rule in accordance with the *Shach*. The *Chacham Tzvi*'s son, Rav Yaakov Emden (*Sh'eilat Yaavetz* 2:95), distinguishes between the late circumcision of a Jewish boy and the circumcision of a non-Jew who wishes to convert. A *mitzvah* already exists to circumcise the Jewish child, so Rav Emden agrees with the *Shach* that the *brit* should not be delayed. By contrast, the potential convert does not delay any *mitzvah* by pushing off his *brit milah*, for he is not bound by *mitzvot* prior to the conversion process.[10]

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8. The *Taz* indicates concern for the baby's pain and suffering per se, not for the desecration of *Shabbat* that it might necessitate. Apparently, he understands the problem of circumcising close to *Shabbat* in the same manner that the Rif explains the prohibition against traveling before *Shabbat*—concern for causing unnecessary discomfort during *Shabbat* (see *Teshuvot Tzitz Eliezer* 12:43).

9. See, however, *Teshuvot Yabia Omer*, Y.D. 5:23.

10. For more on this topic, see *Pitchei Teshuvah* (Y.D. 266:15) and *Teshuvot Tzitz Eliezer* (12:43). In practice, the *Magen Avraham* (331:9) notes that nowadays we rarely need to violate *Shabbat* in order to save a circumcised baby, so circumcising on Thursday should undoubtedly be permitted. Indeed, common practice among Ashkenazic Jews is to circumcise on Thursday and Friday under all circumstances, but Rav Ovadia Yosef (*Teshuvot Yabia Omer*, Y.D. 5:23) rules that Sephardic Jews should not perform a belated circumcision on Thursday or Friday unless their community has a custom to do so. Rav Shmuel Khoshkerman reports that the accepted custom of all Sephardic Jews is to prohibit belated circumcisions on Thursday and Friday.

Elective Surgery Prior to *Shabbat*

Rav J. David Bleich (*Contemporary Halakhic Problems* 2:19–20) cites the opinions of Rav Moshe Feinstein (*Hapardes*, *Tamuz* 5738) and the Lubavitcher Rebbe (*Hapardes*, *Tishrei* 5739), who both rule (based on the aforementioned sources) that one should avoid undergoing elective surgery during the three days before *Shabbat*. The Rif's reason applies in this situation, since people generally experience considerable pain for at least several days following surgery. The *Ba'al Hama'or*'s concern also arises, as post-operative care frequently requires acts that violate *Shabbat*.

Rav Yehoshua Neuwirth (*Shemirat Shabbat Kehilchatah* 32:33) rules that one should attempt to schedule elective surgery on Sunday, Monday, or Tuesday, provided that it is possible. However, he cites Rav Shlomo Zalman Auerbach (note 97) as ruling that if a more qualified surgeon is available during the second half of the week, then one may undergo the surgery on those days.

Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 12:43) adopts a different approach. In general, he believes that Halachah permits non-emergency surgery only if failure to perform it will eventually endanger the patient.[11] Therefore, he argues that elective surgery can be defined as an action done for the sake of a *mitzvah*, since any elective surgery that serves only a frivolous purpose is forbidden. Moreover, Rav Waldenberg asserts that it is nearly impossible for a hospital to arrange for elective surgeries to take place only on Sundays, Mondays, and Tuesdays. Such a policy could lead to the lack of availability of hospital beds, as one cannot accurately predict the number of arrivals in an emergency room. Indeed, he notes that Shaarei Zedek Hospital in

11. Rav Waldenberg (*Teshuvot Tzitz Eliezer* 11:41) prohibits cosmetic surgery unless it provides tangible health benefits, but not everyone shares his opinion. See *Teshuvot Igrot Moshe* (*Choshen Mishpat* 2:66), *Teshuvot Minchat Yitzchak* (6:105:2), *Teshuvot Chelkat Yaakov* (3:11), and Rav J. David Bleich's *Judaism and Healing* (pp. 126–128). One wonders whether Rav Moshe and the Lubavitcher Rebbe would have prohibited surgery during the end of the week if they permitted only those surgical procedures that protect a patient from eventual danger. One similarly wonders how Rav Waldenberg would have ruled regarding elective surgery during the latter half of the week if he believed that one could undergo surgery even when it does not eliminate any dangers to one's health.

Jerusalem (which functions according to Halachah) allows surgery on Thursday and Friday even if it can be safely postponed until the following Sunday or Monday.[12]

Conclusion

Generally speaking, one may not deliberately create a situation that will necessitate desecrating *Shabbat* in order to save a life. One may do so, however, for the sake of a *mitzvah*, so practical cases must be presented to a competent rabbi in order to determine whether they contain an element that might constitute a *mitzvah* for these purposes.

12. Interestingly, see *Kovetz Teshuvot* (43), where Rav Yosef Shalom Eliashiv rules that a woman is not obligated to go out of her way to be near a hospital for *Shabbat* during her ninth month of pregnancy (despite concern that she might go into labor and need to violate *Shabbat*), although he adds that doing so would be praiseworthy.

PART IV: RETURNING FROM AN EMERGENCY

In this chapter, we examine whether medical personnel may return home on *Shabbat* following their involvement in a life-saving mission. We open with the Talmudic background and then proceed to outline the three primary views regarding this issue, as presented by Rav Tzvi Pesach Frank, Rav Moshe Feinstein, and Rav Shlomo Zalman Auerbach.

Talmudic Background

The Mishnah in *Eruvin* (44b) states:

One who goes [2000 *amot*] outside one's city [on *Shabbat*] for a permitted reason[1] and is then informed that the issue has already been resolved may now go 2000 *amot* (3000–4000 feet) [like the *techum*[2] of local residents]. *All*[3] *who go to rescue [Jews from their enemies*[4] *on* Shabbat*] may return to their place [of origin]*.

1. Ordinarily, one may not walk more than 2000 *amot* beyond the city limits (*techum*). A midwife going to deliver a baby would be an example of a halachically valid reason (Rashi s.v. *Mi*). Someone who walks beyond the *techum* without such a reason is required to remain within four *amot* (six to eight feet) of where he is located (*Eruvin* 41b).

2. The *techum* ("boundary") refers to a 2000 *amah* radius around a city's limits (1 *amah* = 1.5 to 2 feet). A dispute exists regarding whether *the Rabbis decreed* that one may not walk beyond the *techum* on *Shabbat*, or the prohibition to leave the *techum* is *Biblical*. Some *Rishonim* maintain a middle view, believing that one may not walk beyond 12 *mil* (24,000 *amot*) on *Shabbat* on a *Biblical level*, and the Rabbis reduced the permitted distance to from 12 *mil* to 2000 *amot*. For a summary and analysis of the opinions, see Ritva (*Eruvin* 17b s.v. *Rabbi Yonatan*). In practice, the *Mishnah Berurah* (407:7 and *Biur Halachah* s.v. *L'man*) concludes that the prohibition to leave the *techum* is completely rabbinic, even beyond 12 *mil*. For a brief overview of the laws of *techumin*, see Rav Pinchas Kehati's introduction to *Eruvin*. These laws are discussed at great length by the *Shulchan Aruch* and its commentaries in *Orach Chaim* 396–416.

3. The *Yerushalmi* and most editions of the Mishnah read, "For all who go to rescue," thus rendering the continuation of this passage as a concluding phrase of the

Tosafot (s.v. *Kol*) note that the Rabbis sometimes permit the completion of an action on account of its beginning. For example, the Gemara (*Beitzah* 11b) delineates three cases in which the Rabbis permit the completion of an activity on *Yom Tov* (a Biblical festival), despite the fact that only its beginning serves a purpose on *Yom Tov*. The Rabbis decided that the early stages of these tasks meet important communal needs and forbidding their completion would inhibit people from ever beginning them.[5] Similarly, *Tosafot* imply, if those who go to save others' lives are forbidden to return home, they may hesitate to undertake the mission altogether, thus endangering lives. The *Nishmat Avraham* (*Orach Chaim* 329:7) cites the *Magen Avraham* (497:18), in a related context, as restricting the application of this Gemara to rabbinic enactments.[6] However, the *Chatam Sofer* (*Orach Chaim* 203) and Rav Yaakov Emden (*Sh'eilat Yaavetz* 1:132 s.v. *Udekashya*) believe that the Rabbis may even permit the completion of a Biblical prohibition when they deem it necessary so as not to discourage people from performing certain *mitzvot* on *Shabbat*.[7]

The Gemara (*Eruvin* 45a) questions how the above passage from the Mishnah could permit returning from a life-saving mission all the

previous sentence. We have, however, presented the Mishnah's text as it appears in the Babylonian Gemara, with the word "all" beginning a new sentence.

4. We have added these words based on the Gemara's interpretation on the following page (45a).

5. For example, it is rabbinically prohibited to place a bandage on a wound in certain circumstances on *Shabbat* (see *Eruvin* 102b and Rashi s.v. *Aval*). Nonetheless, a *Kohein* who removes a bandage in order that it not be a barrier (*chatzitzah*), which would prevent him from working in the *Beit Hamikdash* (Temple), may return the bandage to his hand after he has completed his service. The Rabbis permitted returning the bandage lest forcing him to remain the rest of *Shabbat* without his bandage might prompt him to avoid removing it initially. Work in the *Beit Hamikdash* with the bandage covering his hand would be prohibited (see Rashi, *Beitzah* 11b s.v. *Bemikdash*). We thus permit a *Kohein* to do a prohibited act (putting on the bandage) after he has completed working in the *Beit Hamikdash*, in order to ensure that he will begin his work properly, rather than hesitating to remove his bandage.

6. This reading of the *Magen Avraham* is not conclusive. He addresses the general concept of activities that are permitted because of their beginning, but he does not address the issue of life-saving missions.

7. See *B'ikvei Hatzon* (p. 52), where Rav Hershel Schachter suggests that this consideration does not apply to paid medical personnel. Since they receive financial compensation for their work, no concern exists that they will not do their job without being permitted to return home on *Shabbat*. Rav Schachter cites other examples of people who may not return home from life-saving missions because they did not undertake the missions purely for the *mitzvah* of *piku'ach nefesh*.

way to one's place of origin. After all, the Mishnah indicates elsewhere (*Rosh Hashanah* 23b) that both a midwife who comes to aid an expectant mother and someone who comes to rescue people from an invading army or a disaster may walk 2000 *amot* from the town of their immediate destination.[8] The Mishnah in *Eruvin*, by contrast, permits returning from saving a life without restricting the number of *amot* that one may travel after resolving the emergency. Hence, it appears to contradict the Mishnah in *Rosh Hashanah*'s limitaton of 2000 *amot* from the city limits.

The Gemara offers two resolutions to this contradiction. Rav (cited by Rav Yehudah) explains that the Mishnah in *Eruvin* does not intend to permit returning all the way home. Rather, it is specifically addressing "all who go to rescue" *in battle*,[9] and it states that they *may return*, assuming that we know from *Rosh Hashanah* that soldiers may return only 2000 *amot*. The Mishnah in *Eruvin* repeated the soldiers' permission to return in order to teach a different point: the soldiers may return (within 2000 *amot*) *while carrying their weapons*. Ordinarily, one may not carry in a public domain on *Shabbat*,[10] but the Rabbis decreed that soldiers should return from battle with their weapons in light of a tragic incident. The Gemara recounts that when war was waged on *Shabbat*, the soldiers used to place their arms in the house nearest to the town wall after the hostilities ceased, in order to avoid carrying the weapons unnecessarily on *Shabbat*. One time, however, the enemy realized this practice (and the resultant vulnerability of the soldiers), so enemy troops attacked the soldiers as soon as they had all dropped off their

8. The Mishnah records that, at first, those witnesses who had come to *beit din* from beyond the *techum* to testify about seeing the new moon were permitted to stay only within the immediate area of the *beit din* (see *Tosafot*, *Rosh Hashanah* 23b s.v. *Lo*). However, Rabban Gamliel I (referred to as Rabban Gamliel *Hazakein* in order to distinguish him from his grandson, Rabban Gamliel II of Yavneh) issued a decree permitting the witnesses to walk 2000 *amot* in any direction—just like residents of the *beit din*'s location.

9. The entire topic of waging war on *Shabbat* generated vigorous debate between the Maccabees (who fought even on *Shabbat*) and other groups of Jews during the Second Temple Period. Rav Yitzchak Herzog (*Pesakim Uktavim*, *Orach Chaim* 1:53) and Rav Shlomo Goren (*Torat Hashabbat Vehamo'eid* pp. 49–55 and *Machanayim* 20:6–13) analyze sources from that period that indicate that some Jews at the time erroneously believed that one may not defend oneself from enemy soldiers on *Shabbat*.

10. A community often may convert its public areas into a private domain by constructing an *eruv*. We offer technical definitions for public and private domain and discuss the laws of constructing an *eruv* in our first volume (pp. 165–199).

weapons. The Jewish soldiers scampered into the house to retrieve their weapons, and more Jews killed one another in the resulting confusion than died in the actual battle. Therefore, the Rabbis decreed that soldiers may return 2000 *amot* with their weapons.

Rav Nachman bar Yitzchak, however, resolves the apparent contradiction between *Mishnayot* differently. He claims that the Mishnah in *Rosh Hashanah* addresses *victorious* battles, when Jewish soldiers have no need to return beyond 2000 cubits. The Mishnah in *Eruvin*, according to Rav Nachman bar Yitzchak, is speaking of a time where the Jews regrettably lose a battle and thus fear remaining outside their homes. In such situations, they may return home even beyond the 2000 *amot* with their arms.[11] The Rosh (*Eruvin* 4:5) cites the Maharam of Rothenburg as accepting the opinions of both Rav and Rav Nachman bar Yitzchak. A Jewish soldier may thus return all the way home only if he is scared that the enemy might attack him should he stay within 2000 *amot* of the battlefield. When the Jews are stronger and this concern does not exist, he may go only 2000 *amot* from the battle site, in accordance with Rav Nachman bar Yitzchak's opinion. When the Jew is returning, he may carry his weapons in accordance with the view of Rav.[12]

The Rambam (*Hilchot Shabbat* 27:17) also writes that those who go to save endangered Jews may return with their weapons to their places of origin only if they fear that they may be attacked. He adds that other people who travel to save lives on *Shabbat* (such as going to save somebody from drowning) may similarly return all the way back to their homes (even outside of 2000 *amot*) if they fear attack. The *Shulchan Aruch* in *Orach Chaim* 407:3 appears to codify this ruling.

There is a problem, however, with the rulings of the Rambam and *Shulchan Aruch*. Earlier (*Hilchot Shabbat* 2:23), the Rambam writes that "Jews who go to war on *Shabbat* to aid their brethren are permitted to return to their place of origin carrying their weapons, so as not to cause danger in the future [by their hesitating to leave their homes again on *Shabbat*]." This passage does not limit the permission to

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11. Although the Gemara specifically mentions a case where Jews lost a battle, the Rambam (*Hilchot Shabbat* 27:17) appears to extrapolate from it that Jews may return all the way home in any situation where non-Jewish enemies pose a threat to Jews who remain within the *techum* of the emergency.

12. It is not entirely clear if he is permitted to carry his weapons during a time that the Jews are stronger and he is going only 2000 *amot* (see *Teshuvot Minchat Shlomo*, 1:8, p. 57), but a soldier may certainly carry his weapons in times of danger when he is traveling all the way home (see *Shulchan Aruch*, *Orach Chaim* 407:3).

return all the way home to cases where the Jews fear attack if they stay put. Similarly, the *Shulchan Aruch* (*Orach Chaim* 329:9) elsewhere asserts, "Those who go on a life-saving mission are permitted to return with their weapons to their place of origin," without limiting this rule to situations in which security is unstable.[13]

Twentieth Century Authorities

This seeming contradiction in both the Rambam and *Shulchan Aruch* has aroused much debate among *poskim* regarding how to rule in situations that commonly arise in modern times. It should be emphasized that one cannot simply sidestep the difficulty in their rulings by acting in accordance with the strictest possible interpretation. Rav Shlomo Zalman Auerbach (*Teshuvot Minchat Shlomo* 1:8 p. 58) writes that it is not proper to be more stringent than the letter of the law in these matters, as this behavior may pressure others to act excessively stringently and result in tragedies similar to the disaster in the battle recorded by the Gemara. We will now examine the approaches of three major authorities to practical cases.

I. Rav Tzvi Pesach Frank—The Strict Approach

Rav Tzvi Pesach Frank (*Teshuvot Har Tzvi*, *Orach Chaim* 2:10) presents the most strict approach to this topic. A physician who resided in Pardes Hannah and made an emergency trip on *Shabbat* to Hadera asked Rav Frank if he was allowed to drive home and turn off his car's engine on *Shabbat*.

Rav Frank ruled that the doctor may not drive home on *Shabbat*. In fact, he even forbade the doctor to turn off his engine at the site of the emergency (a *rabbinic* prohibition—*kibui she'einah tzerichah legufah*). Rav Frank ruled that the Rabbis permitted the rescuer to do only certain specific activities on *Shabbat*, but not to engage in all rabbinically prohibited activities. Thus, while the physician could walk within Hadera's *techum* (*Shabbat* boundary), no other restricted activity was permissible. Considering that Arabs have lived on the outskirts of Hadera since well

13. The *Shulchan Aruch* appears to apply this leniency to anyone who goes to save a life, even in a context other than war, as is apparent from the juxtaposition to his previous sentence (329:8).

before Rav Frank wrote his responsum (in 1950), an Arab could have transported the doctor back to Pardes Chanah on a donkey or horse and buggy, about a half-hour trip.[14] Rav Frank does not, however, suggest asking an Arab to transport the doctor home, apparently because he does not even permit asking non-Jews to perform prohibited activities on *Shabbat* in order to return the doctor home.

Rav Frank does not address the contradictory statements of both the *Shulchan Aruch* and Rambam. Presumably he accepts the places where they rule strictly (that one may return all the way home only in cases of danger from enemies) as authoritative and believes that they serve to qualify the sources that do not spell out any restrictions on the rescuer's ability to return home.

II. Rav Moshe Feinstein—The Lenient Approach

Members of Hatzoloh (New York's Jewish volunteer ambulance corps) asked Rav Moshe Feinstein if they could drive home after completing a rescue mission on *Shabbat* (*Teshuvot Igrot Moshe*, *Orach Chaim* 4:80). Rav Moshe presented an original interpretation of the Gemara, *Tosafot*, and Rambam mentioned above, concluding that one may even violate Biblical prohibitions, such as driving, when returning from a rescue mission.[15]

Rav Moshe focuses on the aforementioned comments of *Tosafot*, who imply that the Mishnah permits rescuers to return from their missions on *Shabbat* in order to ensure that they will not hesitate to undertake future rescue missions on *Shabbat*. Rav Moshe explains that, had it not been permitted for the rescuers to return home, they would have been reluctant to undertake the mission. In order to avoid future tragedies, where someone might die because nobody came to save him, the Rabbis permit rescuers to return home from their missions. Although we have already noted that the Gemara interprets the word "rescue" in the Mishnah as referring specifically to soldiers, Rav Moshe writes that the Mishnah's reasoning (as indicated by *Tosafot*) applies to midwives and other rescue personnel, too. This interpretation is quite innovative, as the Mishnah states that the midwife and rescuer

14. Binyamin Taub, a cousin of mine who lived in Hadera from 1935 until his death in 2003, informed me of these facts.

15. Driving a car repeatedly violates the Biblical prohibition of *hav'arah* (kindling a fire; *Shemot* 35:3), as every push of the accelerator feeds more fuel to the engine.

may walk within the local *Shabbat* boundary of the area in which the rescue took place.[16]

Rav Moshe also offers a unique resolution to the seemingly contradictory statements of the Rambam (and, by extension, the Shulchan Aruch). At first, the Rambam (*Hilchot Shabbat* 2:23) writes that rescuers are permitted to return home with their weapons, while he later limits this permission to cases in which the rescuers fear for their safety in the place where they have arrived (*Hilchot Shabbat* 27:17). Rav Moshe suggests that the first source addresses a short-term rescue mission, when the rescuers expect to act for a relatively short period of time (such as ambulance squad members on a rescue call). It sounds from the Rambam's description of the battle that non-Jews suddenly came and threatened a city. Rav Moshe claims that the Rambam means that the hostilities suddenly flared up, so the soldiers thought that they could quickly repel the enemy and return home the same *Shabbat*. The Rambam's later ruling, however, addresses a long-term task, such as a war. In this regard, the Rambam uses the vaguer phrase, "saving Jewish lives from non-Jews," which Rav Moshe interprets as meaning a general war. People in such situations may not return all the way home from their victory on *Shabbat* because they did not specifically expect their mission to end on *Shabbat*. Short-term rescuers, however, may return home on *Shabbat* because they do not expect to be away for an extended period of time, so they might hesitate to embark on another mission if it will separate them from their families for the entire *Shabbat* or festival.[17]

Based on his interpretation, Rav Moshe rules that Hatzoloh members may drive home from rescue missions, and I have heard that many Hatzoloh divisions follow his ruling in practice.[18] It should be noted

16. See Rashba, *Beitzah* 11b s.v. *Biplugta* (quoted in Rav Moshe's responsum), who appears to support what Rav Moshe suggests to be *Tosafot*'s opinion. See Rav Yitzchak Isaac Liebes's essay in *Halachah Urefu'ah* (3:73–85) for further analysis of the Rashba's comments.

17. Rav J. David Bleich (*Contemporary Halakhic Problems* 4:135) asserts that Rav Moshe is the sole authority to permit Biblical prohibitions in such a situation (see, however, *Techumin* 3:46, based on *Teshuvot Heichal Yitzchak*, O.C. 32, and *Techumin* 23:91). Rav Bleich (4:137) is particularly critical of Rav Moshe's explanation of the Rambam, as he feels that Rav Moshe's approach does not fit into the Gemara's cases. Nonetheless, Rav Bleich does offer his own justification for Hatzoloh's practice of returning home on *Shabbat* (see pp. 143–144, and see *Teshuvot Minchat Shlomo* 1:8, p. 59, where Rav Shlomo Zalman finds this justification difficult).

18. Rav Moshe does not clarify whether his ruling applies only to volunteers, or even to paid rescue workers. Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 21:59)

that there are other considerations that might permit the Hatzoloh workers to drive home on *Shabbat* and *Yom Tov*, as we shall later cite from Rav Yehoshua Neuwirth.

III. Rav Shlomo Zalman Auerbach—A Middle Approach

Rav Shlomo Zalman Auerbach (*Teshuvot Minchat Shlomo* 1:8) presents a detailed critique of Rav Moshe's responsum.[19] Rav Shlomo Zalman writes that the Talmud, Rambam, and *Shulchan Aruch* clearly indicate that a rescuer may return home with his weapons for only one reason—actual fears for his safety in the place where he performed the rescue. Thus, a physician may drive home only when he made an emergency call to a dangerous place. Rav Shlomo Zalman remarks, however, that if the physician has treated a patient in the safety of a hospital on *Shabbat*, why should he not remain in a comfortable office for the duration of *Shabbat*?!

Moreover, Rav Shlomo Zalman asserts that the Gemara never raises the concern that someone will refuse to save lives due to his desire to spend *Shabbat* and *Yom Tov* with his family.[20] He therefore rejects Rav Moshe's interpretation of the Rambam and prefers the traditional explanation that the second passage in the Rambam qualifies the first. Accordingly, Rav Shlomo Zalman fundamentally adopts Rav Tzvi Pesach Frank's approach, that the lone dispensation given the physician after a rescue mission is to walk within the *techum* of the place where he has arrived. Rav Shlomo Zalman writes, however, that since the *Chatam Sofer* (*Choshen Mishpat* 194) permits a doctor to ask a non-Jew to transport him home after a rescue mission, this may be done.[21]

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assumes that Rav Moshe does not distinguish between volunteers and professionals. See also note 7 above.

19. Rav Shlomo Zalman writes that he received permission from Rav Moshe to publish this critique. This is a beautiful example of the Gemara's statement that great Torah scholars should act pleasantly towards each other when debating Halachah (see *Sanhedrin* 24a).

20. In a later responsum (*Tinyana* 60:18), Rav Shlomo Zalman indicates that his primary objection to Rav Moshe's view lies in the absence of an explicit source in the Talmud and *Rishonim* that permits a doctor to violate a Biblical prohibition when returning from an emergency call.

21. *Riding* in a car without driving does not appear to violate any prohibition per se (besides *amirah l'nochri*); see *Teshuvot Har Tzvi* (Y.D. 233) and *Teshuvot Igrot Moshe* (O.C. 1:132). Also see *Contemporary Halakhic Problems* (1:137–138), where Rav Bleich quotes a professor of physics, "Frequency of acceleration is by no means solely a function of the weight of the automobile."

Rav Shlomo Zalman cautions, though, that the *Chatam Sofer*'s ruling is itself based on an unconventional interpretation, so it may not be extended to permit doctors to themselves violate Biblical prohibitions in order to return home on *Shabbat*.[22]

Other Authorities

Rav Yehoshua Neuwirth (*Shemirat Shabbat Kehilchatah* 40:66-69) rules in accordance with Rav Shlomo Zalman. However, he permits the physician to ride in a taxi driven by a non-Jew only within the *techum* of the emergency situation. Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 8:15:7:12) also accepts Rav Shlomo Zalman's ruling provided that serious concern exists that the doctor will otherwise stop saving people on *Shabbat*.[23]

Rav Neuwirth adds a critical provision for many practical situations. He rules that an ambulance driver may return to his place of origin if the area he serves does not have another ambulance to meet the emergency needs of its residents. Similarly, it seems that a doctor may drive home if "reasonable chance" exists that he will be summoned to another emergency during that *Shabbat* or *Yom Tov* and will not be able to respond appropriately without his car. However, Rav Yitzchak Isaac Liebes (*Halachah Urefu'ah* 3:73) notes that this leniency applies only when the ambulance driver or doctor will not be able to respond to a call quickly from his current location. On the other hand, if the ambulance brought a patient to a nearby hospital and could simply go from the hospital to any future emergency in the area, then the driver may not return it to its original station.[24]

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22. Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 11:39) also acknowledges that some of the *Chatam Sofer*'s responsa do seem to support Rav Moshe's view, but he argues that most authorities do not accept this view, and he adds a possible alternative way to interpret the *Chatam Sofer*'s words.

23. See also *Teshuvot Tzitz Eliezer* 21:59, where Rav Waldenberg reiterates that he disagrees with Rav Moshe but adds that one should not castigate doctors who follow Rav Moshe's view; and 22:95, where he writes to a doctor who was occasionally summoned more than once on the same *Shabbat* that it is completely permissible for him to ask a non-Jew to drive him home in his own car, so that, if necessary, he can return to the hospital quickly.

24. Regarding Rav Moshe's ruling that Hatzoloh members may return home on *Shabbat* even if their ambulance is not needed for additional emergencies on *Shabbat*, simply so they will not hesitate to undertake future rescue missions, Rav Liebes

Rav Moshe Shternbuch (*Teshuvot Vehanhagot* 3:105) appears to fundamentally accept Rav Moshe Feinstein's view (also see *Techumin* 23:91). Although he does not explain any of the sources in the manner that Rav Moshe suggested, Rav Shternbuch distinguishes between individuals who occasionally encounter a life-threatening situation and Hatzoloh members, who are constantly responsible for treating a large public. Ordinary citizens may not violate Biblical prohibitions on *Shabbat* in order to return from life-saving missions, as the aforementioned Gemara indicates,[25] and we do not worry that sometime in the future they will hesitate to embark on another mission. The possibility, however, that medical personnel will not respond to future emergencies on *Shabbat* itself constitutes *piku'ach nefesh*, as someone in their society always needs medical attention. In practice, Rav Shternbuch urges Hatzoloh to use reliable non-Jewish medics or Jewish medics who do not mind remaining at their destination until the end of *Shabbat* (also see *Teshuvot Sheivet Halevi* 6:26). If neither of these options exists, though, then he essentially permits using Jews who will return home on *Shabbat*, although he adds that Halachic authorities familiar with each community should rule regarding its ambulance corps.

Conclusion

We have outlined the basic views regarding the important question of whether medical personnel may drive home from an emergency on *Shabbat*. Rav Moshe Feinstein permits Hatzoloh drivers to drive home on *Shabbat*, Rav Shlomo Zalman Auerbach permits a doctor to summon a non-Jewish taxi driver to take him home, while Rav Tzvi Pesach Frank does not even permit a doctor to ask a non-Jew to drive him home.

We have presented only the basic considerations concerning this issue; many other variables must be considered in practical cases. Thus,

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concludes his essay by questioning whether any classical sources permit violating Biblical prohibitions for this reason, and thus writes that the matter requires further study (*tzarich iyun*).

25. Rav Shternbuch notes that *Tosafot* (*Pesachim* 46b s.v. *Rabah*) describe life-threatening emergencies as a rare occurrence. Thus, the traditional sources about returning from an emergency likely assume the same reality, which remains true for private citizens, but not for Hatzoloh members.

competent Halachic guidance must always be sought by medical professionals who face this problem.

Avinu Malkeinu Shelach Refuah Shleimah Lecholei Amecha!
May God heal His nation's sick!

Squeezing Lemons on Shabbat

Halachic authorities have debated the permissibility of squeezing lemons into a liquid (such as tea) on *Shabbat* ever since the time of the *Rishonim*. This issue thus presents us with an interesting example of how the same point can repeatedly generate debate from one generation to the next.

Talmudic Background

Although the Gemara does not explicitly address squeezing lemons on *Shabbat*, several Talmudic passages discuss the general ban on squeezing fruits on *Shabbat* and thus shed light on our specific issue. The act of juicing a fruit constitutes *mefareik* (detaching, also called *sechitah*), a subcategory (*toladah*) of the general category (*av melachah*) of prohibited activity on *Shabbat* known as *dash*, "threshing" (see Rambam, *Hilchot Shabbat* 8:10 and 21:12).[1] However, Rav (*Shabbat* 145a) rules, "The only fruits forbidden by the Torah to squeeze on *Shabbat* are olives and grapes," and nearly all *Rishonim* accept his view. The Ran (*Shabbat* 61a in pages of the Rif) explains that olive oil and grape juice are inherently more important than other fruit juices.

1. See, however, *Tosafot* (*Shabbat* 73b s.v. *mefareik*), who present a dispute regarding the general category to which *mefareik* belongs.

The Gemara (*Berachot* 38a, as understood by *Tosafot* s.v. *Hai*) expresses a similar idea regarding the laws of *berachot*, commenting that only wine merits a unique blessing (*hagafen*) because other fruit juices are considered as *ze'ah be'alma*, "mere sweat." The Rashba (*Shabbat* 145a) also argues that only the juices of olives and grapes are considered significant drinks. According to him, though, they do not possess any inherently superior qualities. He explains that we use grapes and olives primarily to produce wine and oil, whereas other fruits function mainly as food, even if they also provide us with juice. Regardless of the reason for the distinction, classical sources agree that squeezing fruits other than olives and grapes on *Shabbat* does not violate a Biblical prohibition.

Nevertheless, the Rabbis prohibited squeezing berries and pomegranates on *Shabbat*. The Gemara (*Shabbat* 144b) explains that people sometimes squeeze these fruits for their juice, so the Rabbis enacted a decree to treat their juice as a significant beverage, which one may not squeeze on *Shabbat*. The Rama (*Orach Chaim* 320:1) adds that this prohibition applies to *any* fruit in a place where some people squeeze it to drink its juice.[2] On the other hand, the Gemara (*Shabbat* 144b) permits squeezing *she'ar peirot* ("other" fruits, which are rarely squeezed for their juice) on *Shabbat*. Even if some atypical individuals do juice a particular fruit, we consider their practice eccentric and halachically insignificant (*batla da'ato eitzel kol adam*), hence permitting the fruit to be squeezed on *Shabbat*. Today, however, as Rav Yehoshua Neuwirth points out (*Shemirat Shabbat Kehilchatah* 5:2, note 2), the modern food industry produces a vast array of fruit juices, so one seldom finds a fruit that may be squeezed on *Shabbat*.

Rishonim

Lemons differ from most other fruit, for hardly anyone drinks lemon juice without first diluting it and (in most cases) adding sugar. Consequently, the *Rishonim* offer multiple ways to view the halachic status of lemons. Some *Rishonim* focus on the fact that lemons are frequently squeezed, thus placing them in the Talmudic category of berries and pomegranates (rabbinically prohibited due to the popular practice of

2. Regarding the status of juices that are squeezed only for medicinal purposes, see the continuation of the Rama's comments.

squeezing them). By contrast, many *Rishonim* note that people consume lemon juice only after adding other ingredients to it, perhaps rendering its juice halachically insignificant regarding the prohibition to juice fruits on *Shabbat*.

The *Shibolei Haleket* (90) cites Rabbeinu Yoshiah, who prohibits squeezing lemons on *Shabbat*. He equates lemons to pomegranates and berries because people routinely squeeze them for their juice. On the other hand, the *Shibolei Haleket* also cites Rabbeinu Yehudah ben Rabbeinu Binyamin as permitting one to squeeze lemons on *Shabbat*:

> It is permitted to squeeze lemons for lemon juice onto a plate, even if there is no food presently on the plate, since one will later mix the juice with food, and it is understood . . . that lemons are squeezed only to add flavor to the food and not to be consumed [on their own] as a drink.[3]

The Rosh (*Teshuvot Harosh* 22:2) adopts a lenient ruling based on similar logic: "Lemons are squeezed for the purpose of flavoring food and not for consumption as a beverage." The Rosh and Rabbeinu Yehudah base their lenient rulings on the assumption that people do not drink lemon juice, so presumably even they would forbid juicing lemons in those locales where people drink lemonade. Accordingly, the *Beit Yosef* (*Orach Chaim* 320 s.v. *Tutim*) expresses bewilderment at the common practice of Egyptian Jews to squeeze lemons into sugary water on *Shabbat*, without any of their Rabbis questioning this practice (see *Teshuvot Radbaz* 1:10). Since people routinely drank lemonade in Egypt, squeezing lemons should have been prohibited in their locale.

The *Beit Yosef* offers two ways to defend this practice. First, he proposes that the prohibition to squeeze fruit applies only when people consume its juice *independently*, whereas people drink lemon juice only after adding other ingredients, such as sugar and water. Alternatively, he suggests that we forbid squeezing only types of fruit that people normally squeeze directly into empty containers. Accordingly, the *Beit Yosef* concludes that one may squeeze lemons, since their juice is almost always squeezed into containers that already have water in them. Hence, lemon juice by itself lacks the status of a significant drink.

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3. It is normally permitted to squeeze fruits onto solid food; see *Shulchan Aruch* (O.C. 320:4–7).

The *Shulchan Aruch* and its Commentaries

Rav Yosef Karo (the author of both the *Beit Yosef* and the *Shulchan Aruch*) does not definitively indicate in the *Beit Yosef* whether he feels that lemons may be squeezed into another drink on *Shabbat*. In the *Shulchan Aruch* (*Orach Chaim* 320:6), however, he permits squeezing lemons on *Shabbat* in a succinct ruling. Although he does not explicitly write which of his two lenient considerations in the *Beit Yosef* lies behind his ruling in the *Shulchan Aruch*, Rav Hershel Schachter (in a personal communication) suggested that the highly terse manner in which Rav Karo writes that concern for *sechitah* does not apply to lemons indicates that he even permits squeezing the juice into an empty barrel. According to this inference, Rav Karo accepts the approach that the prohibition of *mefareik* does not apply at all to juices that are not consumed independently, rather than the approach that permits squeezing lemon juice only into empty containers that are not empty.[4] The *Shulchan Aruch* would thus not merely permit squeezing lemon juice directly into tea on *Shabbat*, but he would even permit squeezing lemon juice into an empty container.

Commentaries on the *Shulchan Aruch*, while they do fundamentally accept his lenient position regarding lemons, dispute the reason for it. The *Magen Avraham* (O.C. 320:8) appears to permit squeezing any fruit whose pure juice, without added ingredients, is not drunk (the first reason quoted above from the *Beit Yosef*). On the other hand, the *Taz* (O.C. 320:5), adopts the reasoning of Rabbeinu Yehudah ben Rabbeinu Binyamin (quoted above from *Shibolei Haleket*), who permits squeezing lemons only because lemon juice generally serves to flavor solid foods, rather than being consumed as a drink. This difference in reasoning affects our practice today, because we drink lemonade, so the *Taz*'s leniency might no longer apply, whereas we still do not drink pure lemon juice, so presumably the *Magen Avraham*'s lenient ruling would still stand.

4. Presumably, those later authorities who prohibit squeezing lemons under some circumstances reject this inference.

Acharonim

This dispute continues even among the later authorities, including the *Shulchan Aruch Harav*, *Chayei Adam*, and *Mishnah Berurah*. The *Shulchan Aruch Harav* (320:10) appears to adopt the lenient view of the *Magen Avraham*. He notes, however, that there may be other reasons to be strict.[5] The *Aruch Hashulchan* (O.C. 320:17) appears to accept wholeheartedly the most lenient opinion of the *Shulchan Aruch* and the *Magen Avraham*:

> There is no concern [for *mefareik*] regarding lemons, because they are not squeezed in order for their juice to be drunk independently. Rather, [lemon juice] is squeezed for use as a condiment, or as an ingredient in a beverage . . . Therefore, lemons are entirely excluded from the prohibition of *sechitah [mefareik*].

The *Chayei Adam* (14:4), *Mishnah Berurah* (320:22), and *Eglei Tal* (*Melechet Dash* 16:30) adopt a compromise position. They agree with the aforementioned second reason of the *Beit Yosef*, that we do not consider lemon juice a significant drink as long as lemonade is usually made by squeezing the juice into a container that already has another liquid present. However, when the normal procedure for making lemonade is first to squeeze lemon juice into a container and then to add water, the status of lemon juice rises to the same significance as other fruit juices. Hence, squeezing lemons would constitute a rabbinic prohibition even if the juice then went directly into another liquid.

These three authorities all point out that the procedure for making lemonade in their time was to first squeeze lemon juice into empty containers and then to add water. Therefore, lemon juice was elevated to the status of a significant drink, rendering lemons' juicing on *Shabbat* a rabbinic prohibition.

The *Chayei Adam* and *Mishnah Berurah* cite a simple way to squeeze lemons into tea without violating any prohibition, the Radbaz's suggestion that one first squeeze the juice onto sugar (*Teshuvot* 1:10). As we mentioned earlier, there is no prohibition of squeezing any juice onto a solid. After the sugar absorbs the lemon juice, the mixture can

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5. See the end of the above source and contrast with *Biur Halachah* 320 s.v. *Mutar Lesochtan*.

be placed into the tea. Indeed, many observant homes today follow this practice.

However, while the *Mishnah Berurah* wholeheartedly endorses juicing lemons onto sugar, the *Chayei Adam* expresses some reservations about it. The *Chazon Ish* (56:7) firmly objects to it, arguing that people truly seek to squeeze lemon juice into their tea, so they share the same status as one who squeezes it directly into the tea (also see *Livyat Chein* pp. 83–84).

Contemporary Authorities

Contemporary authorities continue to disagree regarding which opinion to follow, and one can find people who follow all of the aforementioned views. Rav Yosef Dov Soloveitchik (reported by Rav Yosef Adler) and Rav Ovadia Yosef (*Livyat Chein* pp. 83–85)[6] rule in accordance with the lenient view of the *Shulchan Aruch*, *Magen Avraham*, and *Aruch Hashulchan* that one may squeeze lemons directly into a liquid even in a place where people commonly squeeze lemon juice into empty containers. Rav Shimon Eider (*Halachos of Shabbos* p.101) and Rav Yehoshua Neuwirth (*Shemirat Shabbat Kehilchatah* 5:6) fundamentally adopt the *Mishnah Berurah*'s approach, to first squeeze the lemon juice onto sugar.[7] Rav Zalman Nechemia Goldberg, however, told me that he believes one should follow the opinion of the *Chazon Ish*, who requires either juicing the lemon before *Shabbat* or placing it directly into the tea. One should consult a competent rabbi for guidance regarding which opinion to follow.

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6. Also see *Halichot Olam* (5:98), where Rav Ovadia rejects the critique of his opinion by those who thought that he ruled too leniently.

7. Rav Eider does write, however, that it is preferable to act strictly in deference to the *Chazon Ish*. Rav Neuwirth also cites the *Chazon Ish* as a secondary opinion.

The State of Israel

Can We Offer Korbanot Today

We live in a time, thank God, when many Jews have returned to *Eretz Yisrael*. In light of this situation, we hope to soon rebuild the Temple and offer *korbanot* (ritual sacrifices).[1] In fact, one might question why we do not attempt to reinstate *korbanot* even now. This question first arose in the nineteenth century, when Rav Tzvi Hirsch Kalischer (in a book entitled *Drishat Tzion*) strongly urged the Jews of his time to pursue offering certain *korbanot*.[2] The great authorities of that time, including Rav Akiva Eiger (in letters published in *Drishat Tzion*), Rav Yaakov Ettlinger (*Teshuvot Binyan Tzion* 1:1), Rav David Friedman (introduction to *Sh'eilat David*, *Kuntres Drishat Tzion Viy'rushalayim*), and Rav Moshe Sofer (*Teshuvot Chatam Sofer*, *Yoreh Deah* 236), debated his proposal. We review the basic issues that they discussed.[3]

1. Beyond the *mitzvot* to offer *korbanot*, Rav Yosef Albom (*Techumin* 5:439) notes that approximately one-third of the Torah's positive *mitzvot* are directly linked to the functioning of the *Beit Hamikdash*. The total rises to approximately half of the *mitzvot* if one includes *mitzvot* that connect indirectly to the *Beit Hamikdash*, such as the laws of *tumah* and *taharah* (ritual purity) and *kehunah* (priesthood).

2. The *Kaftor Vaferach* (Chapter 6) actually records that in the year 1257 Rabbeinu Yechiel of Paris declared that he was traveling to Jerusalem to offer *korbanot*. However, intensive discussion of their renewal began with Rav Kalischer.

3. Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 10:1:44) summarizes the pre-Six-Day War literature about offering *korbanot* today. Rav J. David Bleich

Rebuilding the *Beit Hamikdash*

Many sources indicate that we should not build the *Beit Hamikdash* (Holy Temple) today. The *Sefer Hachinuch* (95) writes that the *mitzvah* to build the *Beit Hamikdash* applies only when a majority of world Jewry lives in Israel (which seems not yet to have occurred as of this writing).[4] Furthermore, Rashi and *Tosafot* (*Sukkah* 41a s.v. *Iy Nami*) cite a Midrash that states that the Third Temple will not be built by humans, but will miraculously descend from the heavens as a complete edifice.[5] On the other hand, the Rambam (*Hilchot Beit Habechirah* 1:1,4) strongly implies that human hands will indeed build it. Elsewhere

(*Contemporary Halakhic Problems* 1:245, note 1), in the midst of his discussion of this topic, lists sources for the additional debate that arose following the Six-Day War.

4. We have presented the *Sefer Hachinuch*'s opinion according to its simple reading. See, however, *Teshuvot Tzitz Eliezer* (10:1:11 and 10:2:1), who entertains several other possible interpretations. He cites and rejects a view that whenever Jewish immigration to Israel is unrestricted, such as the present time, it is as if most Jews live in Israel. He also suggests that the *Sefer Hachinuch* requires that a majority of the inhabitants of Israel be Jews, but does not consider whether many more Jews live in the Diaspora. Rav Moshe Shternbuch (*Moadim Uzmanim* 5:351) notes that a simple reading of the *Sefer Hachinuch*'s view raises the difficulty that most Jews regrettably lived outside of Israel when the Second Temple was built. For further discussion of the *Sefer Hachinuch*'s position, see *Techumin* 12:490.

5. Rav J. David Bleich (*Contemporary Halakhic Problems* 1:246, note 3) argues that the *Nacheim* prayer (recited on *Tishah B'av*) also implies that the third *Beit Hamikdash* will descend from heaven and not be built by human hands. The *Binyan Tzion* (1:1) also demonstrates from our prayers that the *Mashiach*'s arrival will precede the *Beit Hamikdash*. He refers to a passage from the Gemara (*Megillah* 17b-18a) that explains the structure of the *Shmoneh Esrei*. The Gemara states that the blessing of *Et Tzemach David* (which prays for the return of David's dynasty) precedes *R'tzei* (which focuses on restoring the Temple service) by two blessings, because the return of David's dynasty will precede the Temple service's restoration by two steps in the redemption process. The *Binyan Tzion* thus explains that the Rabbis did not offer *korbanot* after the Temple's destruction, despite the fact that they had access to ashes of the *parah adumah* (red heifer) in order to purify themselves. Rav Waldenberg (*Tzitz Eliezer* 10:1:46 and 10:7:7) vigorously emphasizes this point. The Netziv (*Ha'ameik Davar*, *Vayikra* 26:31) also implies that *korbanot* may not be offered before the arrival of *Mashiach*, because he claims that a condition of exile is that God will not accept our *korbanot*. The Netziv argues, however, that the *Korban Pesach* is an exception to this rule and may be offered even before the *Beit Hamikdash* is rebuilt. (In fact, the Netziv believes that the *Korban Pesach* was actually offered during the years immediately following the Second Temple's destruction.) Later in this chapter, we cite Rav Avraham Yitzchak Kook's belief that *korbanot* may be offered before rebuilding the *Beit Hamikdash*.

(*Hilchot Melachim* 11:1,4), he adds that when someone successfully builds the *Beit Hamikdash*, we will know that he is the *Mashiach* (Messiah). According to the Rambam, it follows that we need not wait for a miracle in order to commence working towards a *Beit Hamikdash* and *korbanot*.

Rav Hershel Schachter (*Nefesh Harav* pp. 96–97) cites Rav Yosef Dov Soloveitchik as stating that the Torah (*Devarim* 12:10–11 and Rashi s.v. *V'haya Hamakom*) clearly indicates that we will build the *Beit Hamikdash* only after the Jewish people are settled in Israel securely, without any threats from our neighbors. Since, unfortunately, Israel's enemies still threaten her, we should not yet consider building the *Mikdash*. The proponents of building the *Mikdash*, however, counter that the Ramban (*Bemidbar* 16:21) writes that had the Jews sought to build the *Beit Hamikdash* during the period of the Judges, they could have done so despite the lack of security and stability during much of that period. In fact, the Ramban insists that the Jews were severely punished for their failure to seek the construction of the *Beit Hamikdash*.[6]

We find in *I Divrei Hayamim* (28:19) that King David notes receiving direction from God for the construction of every part of the *Beit Hamikdash*. This verse might imply that Divine guidance is necessary in building the *Beit Hamikdash*, even when it is built by human hands. In fact, the *Sifrei* (commenting on *Devarim* 12:5) indicates that, although humans should initiate a search to locate the proper place for the *Beit Hamikdash*, we cannot know for sure that we have identified it correctly until a prophet tells us so (see *Tzitz Eliezer* 10:2:1 and 10:5). Consequently, one might argue that even according to the Rambam, we may not take concrete steps toward building the *Beit Hamikdash* without prophetic direction.

Offering Korbanot in a State of Impurity

Nowadays, we are all *t'mei'ei meit* (ritually impure from being in close proximity to dead bodies), so our impurity seemingly precludes our offering *korbanot*. Moreover, we cannot purify ourselves, for we

6. The Ramban suggests that the plague that followed the census in King David's time (see *II Shmuel* 24) came as a punishment for the people's failure to "rally and say, 'Let us seek out God and build a home for His name.'"

lack the ashes of a *parah adumah* (red heifer), which remove *tum'at meit*. Accordingly, Rav Kalischer (*Drishat Tzion, Ma'amar Ha'avodah* 1:3) limited his proposal to the *Korban Pesach* and the communal offerings, which can sometimes be brought when the *Kohanim* are impure. The rule of *tumah dechuyah betzibur*,[7] which teaches that the impurity of a majority of the Jewish People overrides the prohibition to offer sacrifices in a state of *tum'at meit*, permits impure *Kohanim* to offer these sacrifices even in a time, such as our own, when we cannot change our state of impurity.[8]

Identifying *Kohanim*

Although we can bring certain *korbanot* without purifying ourselves, we must find and appoint *Kohanim* to perform this service. While any Jew may slaughter an animal sacrifice, only a *Kohein* may perform all subsequent actions (see Rashi on *Vayikra* 1:5). Before accepting a *Kohein* for Temple service, witnesses must testify that he descends from a *Kohein* who served in the Second Temple (see Rambam, *Hilchot Isurei B'iah* 20:2). After hearing their testimony, we can assume that a *beit din* authenticated the ancestor's status before admitting him for Temple service. The Rambam (*Hilchot Isurei Bi'ah* 20:1) writes, however, that all of today's *Kohanim* cannot prove their lineage, so they base their status purely on a family tradition (*Kohanei chazakah*). Although we generally treat *Kohanei chazakah* as full-fledged *Kohanim*,[9] they cannot function as *Kohanim* for the purpose of offering

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7. Regarding whether the proper term should be *tumah* ***dechuyah*** *betzibur* or *tumah* ***hutrah*** *betzibur*, see *Yoma* 7b-8a and *Encyclopedia Talmudit* 19:578–579.

8. See *Encyclopedia Talmudit* (19:559–641). Already the *Kaftor Vaferach* (Chapter 6) suggests that *tumah dechuyah betzibur* would permit offering *korbanot* nowadays. Rav Kalischer further claims that *tumah dechuyah betzibur* even permits ascending the Temple Mount in a state of impurity for the purposes of locating the appropriate spot for the *mizbei'ach* and constructing it.

9. See *Aruch Hashulchan* (*Yoreh Deah* 305:55), *Pitchei Teshuvah* (*Yoreh Deah* 305:12 and Y.D. 322:3), *Sdei Chemed* (Letter *Kaf* 92), and *Nishmat Avraham* (*Orach Chaim* 128:10) for a summary of the debate among the *Acharonim* whether to absolutely consider *Kohanei chazakah* to be *Kohanim* or to view their status as doubtful. Rav Yosef Albom (*Techumin* 9:456) claims that if one were to cast aspersions on the status of *Kohanim*, then one could (God forbid) cast aspersions on everyone's status as Jewish! We know that we are Jewish in the same manner that *Kohanim* claim to be *Kohanim*—family tradition. In fact, Rav J. David Bleich and Rav Mordechai Willig (in

korbanot. Hence, the absence of *Kohanim* with provable lineage (*Kohanim meyuchasim*) appears to preclude bringing *korbanot* until messianic times, when *Kohanim* will once again be able to attain the status of *meyuchasim* (see Rambam, *Hilchot Melachim* 11:3).

Rav Kalischer (*Ma'amar Ha'avodah* 1:4–5) asserts that we need to investigate a *Kohein*'s lineage only if we have reason to doubt its authenticity (*rei'uta*), but ordinarily even *Kohanei chazakah* may offer *korbanot*.[10] Rav David Friedman rejects this view. On the other hand, the *Chatam Sofer* (*Teshuvot*, *Yoreh Deah* 236) claims that the lack of *Kohanim meyuchasim* should not stop us from offering *korbanot*.[11] He explains that they would not use *Kohanei chazakah* in the Second Temple because the option of *Kohanim meyuchasim* existed, whereas today we have only *Kohanei chazakah*. Furthermore, even if some *Kohanim* turn out to have blemishes in their lineage, the *Chatam Sofer* argues that the blemishes would probably be minor enough that, *b'dieved* (*ex post facto*), they would not invalidate the *korbanot* (see Rambam, *Hilchot Bi'at Hamikdash* 6:10).

Priestly Garments

Even if we could locate *Kohanim* with the necessary lineage, they still may not offer *korbanot* without wearing the *bigdei kehunah*, the priestly garments (*Zevachim* 15b). Several of these garments require

a lecture at Yeshiva University's Yadin Yadin Kollel) stated that the consensus view among halachic authorities treats our *Kohanim* as definite *Kohanim*, without any doubt, regarding which women *Kohanim* may marry (see *Sdei Chemed*, *ibid*.). Similarly, Rav Hershel Schachter (reported by Rav Ezra Frazer) argued that once Rav Kalischer and the *Chatam Sofer* accepted *Kohanei chazakah* for Temple service (as we explain in this chapter), their position indicates that we follow the view that *Kohanei chazakah* are full-fledged *Kohanim*. Accordingly, no *Kohein chazakah* today may marry a woman prohibited to *Kohanim* by claiming that his lineage is in doubt. Even if a dispute exists regarding whether a *Kohein* may marry a particular woman (such as the daughter of a Jewish woman and non-Jewish man; see *Shulchan Aruch*, E.H. 4:5,19, and *Techumin* 15:292–296), the *Kohein*'s status as a *Kohein chazakah* could not be taken into consideration as additional grounds for leniency.

10. See *Chazon Ish* (*Even Ha'ezer*, *Hilchot Piryah Verivyah* 2:7), who also entertains the possibility that today we do not require *Kohanim meyuchasim*. For further discussion of using *Kohanei chazakah*, see *Mishkan Shiloh* (p. 405).

11. Regarding the *Chatam Sofer*'s general position on offering *korbanot*, Rav Eliezer Waldenberg (*Tzitz Eliezer* 10:7:7) seeks to demonstrate that the *Chatam Sofer* believed that we may not offer *korbanot* today.

wool dyed with *techeilet* (see *Shemot* Chapter 28), or else they are unacceptable.[12] *Techeilet*, a shade of blue (see *Menachot* 43b), comes from a creature known as the *chilazon*,[13] which we have not used for centuries (see Rambam's commentary to the Mishnah, *Menachot* 4:1). Great efforts have been made in recent years, however, to identify the *chilazon* as the *Murex Trunculus* snail (see *Techumin* 9:423–446). Dye from this snail has now been made available for use in *tzitzit* and could theoretically be used to dye *bigdei kehunah*. Although some prominent rabbis (such as Rav Hershel Schachter) treat many of the arguments for the use of the *Murex Trunculus* seriously, only time will tell if the observant community will widely accept this dye as authentic *techeilet*.[14]

Rav Kalischer (*Drishat Tzion*, *Ma'amar Kadishin* 3) argues that we could make *bigdei kehunah* without *techeilet*, just as, in the absence of *techeilet*, we wear *tzitzit* with white strings only (*Menachot* 38a). Most authorities reject his position, noting that the Tosefta (*Menachot* 6:6) explicitly states that *bigdei kehunah* cannot be made without *techeilet*. Moreover, the *bigdei kehunah* contain *sha'atnez* (a prohibited mixture

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12. Some debate exists regarding precisely which garments need *techeilet*; see Rambam (*Hilchot Klei Hamikdash* 8:1) and *Ir Hakodesh V'hamikdash* (5:5). We also do not know the identities of two other dyes, *tola'at shani* and *argaman*, which the Torah also requires for the *bigdei kehunah*.

13. See Rambam, *Hilchot Tzitzit* 2:1–2, and compare with *Hilchot Klei Hamikdash* 8:13. The *Mirkevet Hamishneh* (*Hilchot Tzitzit* 2:1) notes that the Rambam mentions the *chilazon* only regarding *tzitzit*. Accordingly, he suggests that the Rambam would permit dying the *bigdei kehunah* with any blue dye (including dyes that fade), and not only the "blood" of the *chilazon*.

The *Tiferet Yisrael* (*Kupat Harochlim*, *Klalei Bigdei Kodesh Shel Kehunah*; printed as an introduction to *Seder Mo'eid*) goes even further, arguing that even *tzitzit* do not actually require the *chilazon's* "blood," but rather can be made of any permanent (non-fading) blue dye (also see *Drishat Tzion*, *Ma'amar Kadishin* 3). He explains that the Gemara often contrasts the *chilazon* with a plant dye called *kaleh ha'ilan* because *kaleh ha'ilan* is the only dye that cannot be used for *techeilet*. Most authorities do not appear to accept the views of the *Mirkevet Hamishneh* and *Tiferet Yisrael* (see *Mishneh Lamelech*, *Hilchot Klei Hamikdash* 8:11, and *Mishkan Shiloh* p. 407). Indeed, Rav Yosef Dov Soloveitchik told me he believes that the *bigdei kehunah* are invalid without proper *techeilet*.

14. See *Tekhelet: The Renaissance of a Mitzvah* for essays by several *Rashei Yeshiva* of Yeshiva University regarding the use of *techeilet* from the *Murex Trunculus* in *tzitzit*. Rav Schachter, in his essay, describes the *Murex Trunculus* as *safeik techeilet* (possible *techeilet*). Also see *Kovetz Teshuvot* 2, where Rav Yosef Shalom Eliashiv rejects the use of the new *techeilet*.

of wool and linen; see *Devarim* 22:11). The positive commandment to make *bigdei kehunah* overrides this prohibition, but wearing *bigdei kehunah* that were made improperly would violate it.

Positioning the Mizbei'ach

The Mishnah (*Eiduyot* 8:6) records Rabbi Yehoshua's testimony that we may offer *korbanot* even in the absence of a *Beit Hamikdash*, and the Rambam (*Hilchot Beit Habechirah* 6:15) codifies his opinion.[15] However, although we may bring *korbanot* without the *Beit Hamikdash*, we still need a *mizbei'ach* (altar).[16] The Rambam (*Hilchot Beit Habechirah* 2:1) writes that the *mizbei'ach* must be built in an extremely precise location on the Temple Mount. Due to the difficulty in properly identifying the *mizbei'ach*'s place, when they constructed it the people consulted prophets shortly before building the Second Temple (*Zevachim* 62a and Rambam, *Hilchot Beit Habechirah* 2:4). Accordingly, the *Binyan Tzion* (1:1) asserts that we need a prophet to pinpoint the location for the *mizbei'ach*. Nevertheless, Rav Kalischer (*Ma'amar Kadishin*, "Comments to the *Av Beit Din* of Griditz" 4) argues that we may simply follow the measurements found in *Masechet Midot* to position the *mizbei'ach*. He explains that a prophet was required during the building of the Second Temple only because they lacked a written record of the *mizbei'ach*'s precise location. On the other hand, the Mishnah in *Middot* stipulates exactly how far the *mizbei'ach* should be from each wall. Similarly, Rav Avraham Yitzchak Kook (in the sources cited in *Techumin* 11:532–545) does not believe that a prophet is indispensable for renewing the *korbanot*. Nonetheless, Rav Moshe Shternbuch (*Moadim Uzmanim* 5:351) comments that we cannot easily implement Rav Kalischer's suggestion, because great uncertainty surrounds the size of an *amah* (cubit), the unit of measurement used by the Mishnah (see *Encyclopedia Talmudit* 2:29).

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15. See, however, *Teshuvot Binyan Tzion* (1:1), who raises the possibility that Rabbi Yehoshua's opinion applies only to times when the process of rebuilding the *Beit Hamikdash* has begun based on divine command, whereas one may not offer *korbanot* when no divinely sanctioned plans exist to rebuild it.

16. Constructing the *mizbei'ach* is also complicated, because its stones may not be cut with metal (see Shemot 20:22). See *Tosafot* (*Sukkah* 49a s.v. *shekol*) regarding the possibility of cutting the stones with metal before they have been sanctified for the *mizbei'ach*.

Unresolved Disputes

Our inability to resolve disputes in many areas of Halachah might further hinder our ability to bring *korbanot*. For example, Rav Akiva Eiger asserts that we must consider the opinion of the Ra'avad (commenting on *Hilchot Beit Habechirah* 6:14), who believes that the Temple Mount lost its sanctity following the Second Temple's destruction. According to this opinion, Rav Eiger argues that we cannot offer *korbanot* until the *Mashiach* arrives and once again sanctifies the Temple Mount.[17] Although the Rambam (*ibid.*) claims that the Temple Mount remains holy, Rav Eiger suggests that we lack the ability to resolve this dispute.[18] Rav Tzvi Pesach Frank (*Mikdash Melech*, Chapter 6) also indicates that this unresolved dispute prevents the offering of *korbanot* in our era.

Rav J. David Bleich and Rav Moshe Shternbuch (*Moadim Uzmanim* 5:351) add that we similarly do not know how to resolve halachic disputes concerning the Temple service, due to the lack of a tradition on how to conduct various rituals.[19] Only the *Mashiach*'s arrival will enable us to renew this tradition.[20] For example, Rav Bleich (*Contemporary Halakhic Problems* 1:266–267), citing Rav Meir Auerbach (*Halevanon* 1:8 p. 54), notes a disagreement between the Rambam and the Ra'avad (*Hilchot Korban Pesach* 10:11) about whether the *gid hanasheh* (sciatic nerve)[21] of the sheep is roasted along with the rest of the *Korban Pesach*. One cannot simply be strict and follow both opinions, since if one were to follow the Ra'avad and remove the nerve, the

17. Rav Shlomo Zalman Auerbach (*Minchat Shlomo* 3:140 and 3:162) entertains several ways to circumvent the problem posed by the Ra'avad's opinion. Nevertheless, he fundamentally agrees that unresolved disputes constitute a barrier to rebuilding the *Beit Hamikdash*.

18. Regarding how this dispute affects the question of whether one may visit parts of the Temple Mount nowadays, see *Teshuvot Minchat Yitzchak* (5:1) and several chapters in the recently published book *Kumu V'Naaleh*.

19. Rav Shternbuch notes that without the ability to resolve these disputes, offering *korbanot* risks violating many prohibitions entailing the severe punishment of *kareit*. He suggests, however, that the desire to explore the possibility of offering *korbanot* in the pre-Messianic era pleases God, as it shows that His people sincerely desire to fulfill His *mitzvot*. Rav Shternbuch uses this approach to explain the phenomenon of an extensive literature exploring the viability of offering *korbanot* today.

20. See *Tosafot* (*Pesachim* 114b s.v. *Echad Zeicher*), who write that Moshe and Aharon will instruct us in the rituals of the *korbanot* for the Third Temple.

21. The Torah prohibits eating this nerve (*Bereishit* 32:33).

animal would no longer be "whole" according to the Rambam, thus invalidating it. On the other hand, leaving the *gid hanasheh* in the animal invalidates it according to the Ra'avad. Rav Shternbuch lists a host of other gray issues regarding the priestly garments, such as how to design the *avnet* (belt), *ketonet* (tunic), and *migba'at* (hat) of the ordinary *Kohein*. We do not even know how to identify the color *argaman*, used in the making of the priestly garments.

It seems that the Rambam (*Hilchot Melachim* 11:1) may have been sensitive to difficulties such as these. He writes that the *Mashiach* will build the *Beit Hamikdash* and then *korbanot* will be offered. The Rambam may be telling us that only when the *Mashiach* comes will we be able to offer *korbanot*. Indeed, when I asked Rav Yosef Dov Soloveitchik what he felt about this subject, he responded immediately by quoting this passage from the Rambam. He told me (in 1984) that this passage shows that those who want to build the Third Temple today are incorrect.

On the other hand, Rav Kook (*Otzarot Har'iyah* 2:1251; cited in *Techumin* 11:544) writes that an eminent *beit din*, composed of the Jewish people's leading scholars and recognized by all Jews, should convene to resolve all the aforementioned disputes.[22] Rav Kook (*Otzarot Har'iyah* 2:929; cited in *Techumin* 11:532–533) insists that *Chazal* indicate in many places (most explicitly in the *Yerushalmi*, *Maaser Sheini* 5:2) that the *Beit Hamikdash* will be rebuilt before the arrival of the *Mashiach*.

However much *poskim* may currently debate the future sequence of these events, the Rambam (*Hilchot Melachim* 12:2), in his discussion of the ultimate redemption, has already noted that we can know how it will develop only once it actually unfolds:

> Regarding all of these matters, no man will know how they will be until they happen, for they are cryptic in the prophets. Even

22. Rav Shternbuch, though, believes that if these many disputes could not have been resolved in the generations of Rav Akiva Eiger and the *Chatam Sofer*, then certainly in our times, when the level of Torah scholarship has diminished considerably, we dare not decide which opinions to reject.

Regarding Rav Kook's general opinion of renewing *korbanot*, see *Techumin* 11:532-545. Also see Rav Kook's letter of approbation to the first volume of Rav Ovadia Hadaya's *Teshuvot Yaskil Avdi* (cited by Rav Eliezer Waldenberg *Teshuvot Tzitz Eliezer* 10:1:45), which seems to demonstrate that Rav Kook rejected the notion that we could offer *korbanot* in his time.

the Rabbis have no concrete traditions regarding the issues, just what they can interpret from verses in the Bible. Accordingly, there are many disputes about them. Regardless, neither their sequential order nor their precise details comprise a fundamental part of the religion, so one should not delve into these *aggadot* or spend much time on these types of *midrashot*.

Other Impediments

Rav Yaakov Emden (*Teshuvot Sh'eilat Ya'avetz* 1:89) raises two additional objections to offering *korbanot*: our inability to collect *shekalim* (coins to fund the communal *korbanot*) from every Jew and our inability to organize *ma'amadot* (shifts) for each Jew to watch the *korbanot*.[23] Rav Emden believes that the lack of a *ma'amad* invalidates the *korban*, so we cannot renew the *korbanot* until we know how to assign *ma'amadot*.[24] Rav Shlomo Zalman Auerbach (*Teshuvot Minchat Shlomo* 3:162) disputes both points. If we lack *shekalim*, he argues that we could simply acquire the communal *korbanot* on behalf of all of Jewry. Regarding *ma'amadot*, Rav Shlomo Zalman seeks to demonstrate that they are not indispensable.

The Presence of the Dome of the Rock

Rav Waldenberg (*Tzitz Eliezer* 10:1:44) cites that the *Teshuvot Shaarei Tzedek* (O.C. 96) opposes offering *korbanot* when the Dome of the Rock stands on the Temple Mount, viewing its presence as a disgrace to the *korbanot*. Rav Yosef Albom (*Techumin* 5:456–457) responds that the Moslems would deem the *korbanot* an affront to their religion, so offering the *korbanot* would not enhance the prestige of the Dome of the Rock.

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23. Israelites (as opposed to *Kohanim* or Levites) watch as the *Kohanim* perform the actual service of the *korbanot*. The Gemara discusses the *ma'amadot* in detail in the fourth chapter of *Ta'anit*, and the Rambam details their procedures in the sixth chapter of *Hilchot Klei Hamikdash*.

Rav Emden excludes the *Korban Pesach* from his concern for the lack of *ma'amadot*. In fact, he believes that the *Korban Pesach* was offered during the period immediately following the Second Temple's destruction despite the absence of *ma'amadot*.

24. Similarly, Rav Moshe Shternbuch argues that the a *Kohein* may serve only during the appropriate shift for his specific family (*mishmar*).

At the time of this writing, the Israeli police do not permit Jews to pray on the Temple Mount, due to concern that violence would erupt. Surely violence would flare if Jews attempted to offer sacrifices or build the *Beit Hamikdash* there. Rav Moshe Shternbuch believes that the *mitzvah* to build the *Beit Hamikdash* does not apply when it endangers lives. Rav Itamar Warhaftig (*Techumin* 11:543 note 4) also points out that no explicit source ever teaches that we must risk our lives to build the *Beit Hamikdash*.

Conclusion

The sources that we have cited explore many aspects of this complex topic. Although some prominent rabbis have encouraged rebuilding the *Beit Hamikdash* and offering *korbanot* in our time, the overwhelming majority of rabbis remain opposed to the idea. Nevertheless, we all still yearn for the day when we may renew *korbanot*. We conclude with a quotation from Rav Kook (printed in *Techumin* 11:532 from *Ginzei R'iyah* p. 154):

> The force that sustains the soul of the Jewish People is its incredible yearning to rebuild the *Beit Hamikdash* and to restore its glory to its perfect state. Only this yearning has uplifted the spirit of all the generations to know that there is a lofty purpose to their lives and their historical continuity. In this lofty point is hidden the lifeblood of the connection that the Jewish People have to *Eretz Yisrael*. All of the *mitzvot* that are contingent upon *Eretz Yisrael*, to whatever extent they apply, preserve the vitality of this fundamental dew of life.

Using Electricity from Israeli Power Plants on Shabbat

This chapter addresses the permissibility of using electricity generated by Israeli power plants on *Shabbat*.[1] The Rabbis prohibited benefiting from forbidden activities that another Jew performs during *Shabbat* (see *Shulchan Aruch*, *Orach Chaim* 318).

1. This entire topic depends on the many complex details of how power plants function, an area which has undergone major developments during the past hundred years. Consequently, besides the difficulty involved in determining these detailed facts, summarizing this topic entails the further challenge of identifying what the facts were in the time and place of each halachic authority who addressed the topic, as well as what that authority believed the facts to be. In researching this topic, we encountered varying accounts of when power plants in Israel became sufficiently automated to no longer require maintenance activities that violate *Shabbat*. Moreover, we were unable to determine the precise *Shabbat* routine in Israeli power plants today, due to the discrepancies between the different accounts that we saw. (In addition to the written sources cited in this chapter, Rav Ezra Frazer also spoke to one of the engineers involved in designing the plant that provides power to Gush Etzion.) Unquestionably, maintenance activities were necessary every few hours in the early twentieth century, whereas by the end of the century power plants functioned normally without such activities. We could not, however, identify a specific year as the time for this change, and presumably the automation did not take place at the same moment everywhere in Israel. Hence, throughout this chapter, when we present a point that depends on a particular fact, we provide the source for that fact, whereas other authorities cited in the chapter might have understood the reality differently.

Theoretically, one should therefore not be allowed to use electricity that Jews generate in violation of *Shabbat*. In light of this problem, Rav Levi Yitzchak Halperin (*Teshuvot Ma'aseh Chosheiv* 1:31) and Rav Yisrael Rozen (*Techumin* 16:36–50), two experts in issues of electricity in Halachah, wrote essays about using electricity in Israel on *Shabbat*.[2] Our chapter summarizes the main points of their essays,[3] while adding the comments of other contemporary authorities.

Introduction

Rav Rozen opens his essay by asserting that the State of Israel cannot function properly without electricity. Losing power in hospitals, army bases and outposts, and police stations clearly endangers lives. Furthermore, Rav Rozen claims that even lighting streets properly can be a matter of life and death. If streets were not lit, people's safety and security would be considerably reduced.[4] Moreover, refrigeration in many homes preserves medicines for people whose lives depend on them. Rav Rozen thus writes, "Cases of *safek piku'ach nefesh* ("possible threat to life") are widespread throughout Israel, yet it is impossible to separate and direct the electricity exclusively to those individuals and institutions that require it for *piku'ach nefesh*."

The workers and directors of the electric company cannot control electricity demand. Even if they wished to limit the use of electricity on *Shabbat* to essential needs, thereby eliminating unnecessary work at the power plant, there is little chance that the greater public would

2. See *Encyclopedia Talmudit* (18:736–749) for a review of the literature on this topic.

3. Rav Halperin's essay was printed in 1985 and Rav Rozen's essay was printed in 1996.

4. We dedicate four earlier chapters to issues of *piku'ach nefesh* (saving a life) on *Shabbat*. When dealing with public security, though, it is often difficult to define what precisely constitutes *piku'ach nefesh*, as opposed to a specific individual, whose health can be evaluated by a doctor. Halachah might assume a broader definition of *piku'ach nefesh* in the public sphere (see *Techumin* 12:382–384). Rav Ezra Basri (*Teshuvot Shaarei Ezra* 1:22) and Rav Yehoshua Neuwirth (*Shemirat Shabbat Kehilchatah* 1:32 note 174), who prohibit *Shabbat* repair of blackouts that affect very limited areas, presumably do not assume that needs such as street lighting constitute *piku'ach nefesh*. For an application of *piku'ach nefesh* in the public domain, see Rav Shlomo Dichovsky's essay in *K'lavi Shachein* (pp. 149–165).

cooperate. Rav Shlomo Zalman Auerbach (*Teshuvot Minchat Shlomo* 2:15 and *Tinyana* 24) and Rav Shlomo Goren (*Meishiv Milchamah* 1:366–385) both therefore permit Israeli power plant workers to violate *Shabbat* in order to enable the plants to function properly.[5]

Benefiting From Electricity Produced in Older Power Plants

Assuming that the power plant workers may maintain and repair what is needed on *Shabbat*, one could still question whether the general public may benefit for non-life-saving purposes from their work on *Shabbat*. Rav Shlomo Goren (*ibid*.) prohibits such benefit, noting that if one cooks for a dangerously ill person on *Shabbat*, the Gemara (*Chulin* 15b) rules that only the sick person may partake of the food during *Shabbat* (also see *Teshuvot Aseih Lecha Rav* 1:35). The Gemara explains that were others permitted to eat the food, then one might cook extra food (*shema yarbeh*), beyond what the sick individual actually needs, simply in order to feed healthy people.[6] Similarly, if one were permitted to use the electricity for non-*piku'ach nefesh* needs on *Shabbat*, then the workers would violate *Shabbat* not only to produce the minimally required electricity for hospitals and security forces but also to produce electricity for ordinary use.

Rav Goren writes, though, that during the first few hours of *Shabbat* one may use electricity. He notes that power plants in his time[7] required the addition of fuel and the cleaning of the burners approxi-

5. See, however, *Teshuvot Igrot Moshe* (*Orach Chaim* 4:127), who questions why Jews perform these maintenance activities themselves, rather than asking non-Jews to perform them on *Shabbat*. Rav Shlomo Zalman, in the closing paragraph of *Tinyana* 24, shares this concern. See also Rav Shlomo Zalman's responsum for the status of a Jewish-owned power plant where non-Jews violate *Shabbat* for mostly Jewish consumers.

6. The *Rishonim* debate whether adding additional food for healthy people is prohibited on a Biblical or rabbinic level when one is anyway cooking for a dangerously ill person. *Tosafot* (*Menachot* 64a s.v. *Shetayim*) consider it to be a rabbinic prohibition, while the Rashba (*Chulin* 15b) and the Ran (*Beitzah* 9b in pages of Rif) believe it to be Biblical. The *Mishnah Berurah* (318:13) cites both views and rules that it is forbidden on a Biblical level.

7. Rav Goren writes that his first visit to a power plant took place in 1958. He notes that much had been automated between that visit and the time of his writing, but the power plants still needed manual cleaning and manual addition of fuel. Although he printed *Meishiv Milchamah* in 1983, Rav Goren comments in the introduction that most of its content was written by 1971.

mately every eight hours, so Rav Goren rules that for the first few hours one may assume that no work has yet been done on *Shabbat*.

Rav Shlomo Zalman Auerbach (*ibid.*) takes a different approach. He writes that the situation regarding electricity production is far more analogous to another case that appears in the above Gemara. If one slaughters an animal to feed its meat to a dangerously ill person on *Shabbat*, the Gemara states that anyone may consume that meat, even during *Shabbat*. In this case, the rabbis did not worry that permitting others to eat from the animal would entice someone to violate *Shabbat* unnecessarily in order to feed healthy people. Since one is unable to obtain even the smallest amount of meat without slaughtering an entire animal, that same amount of work provides enough meat to feed even people who are not dangerously ill, so no concern exists that anyone will desecrate *Shabbat* again for no valid reason.

Similarly, the Mishnah (*Shabbat* 122a) states that a Jew may not benefit from work done by a non-Jew on *Shabbat* on behalf of a Jew, yet he may use the light that a non-Jew kindled for his own benefit. The Gemara asserts that the candle provides the same amount of light whether one or one hundred people use it (*ner le'echad ner leme'ah*). Hence, as Rashi (s.v. *Ner*) explains, the non-Jew lit the candle for his own sake, so he did no extra work on behalf of the Jew, even if the Jew later benefits from the light. Rav Shlomo Zalman argues that the production of electricity is analogous to these cases, so one may benefit from the electricity of power plants in Israel:

> Since it is impossible [for the operator] to generate electricity for the benefit of ill individuals unless he generates for non-*piku'ach nefesh* needs, too, it is analogous to when one slaughters for a very sick person, where even a healthy person is permitted to eat the meat . . . *It seems reasonable to say that it does not matter if the power plant worker intended to produce electricity for ill people, or for the needs of everyone in the city, since it is impossible to produce electricity for only one individual without producing it for others*.

Concern for Chilul Hashem

Despite Rav Shlomo Zalman's persuasive argument, some people refuse to benefit from the electricity produced in Israel on *Shabbat*.

Instead, these individuals own private generators which do not require maintenance over *Shabbat*.[8] This strict practice stems from a celebrated comment of Rav Avraham Yeshayahu Karelitz, the *Chazon Ish* (*Orach Chaim* 38:4):

> If the electricity was produced by a Jew who is not *Shabbat*-observant, it is forbidden to benefit from it. *Even if it is a situation in which Halachah technically permits benefiting from the electricity produced, it is [still] forbidden*[9] *since its use constitutes a chilul Hashem (desecration of God's name)* . . . because it is a public service, and the worker who [maintains the power plant] on *Shabbat* does so in a rebellious manner. *One who benefits from the electricity produced in this manner indicates that his heart is not pained by the desecration of Shabbat [by other Jews]*. May it be God's will that everyone should speedily commit to a complete *teshuvah* (repentance)![10]

Indeed, Rav Chaim Kanievsky, the *Chazon Ish*'s nephew, strictly prohibits any benefit from the Israeli national power grid on *Shabbat*, including the use of electric lights to read from a *siddur* ("prayerbook") in a synagogue that does not use a private generator on *Shabbat*.[11]

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8. Halachah normally prohibits the use of items that make a great amount of noise on *Shabbat* (see Rama, *Orach Chaim* 252:5, and *Mishnah Berurah* 252:48). Regarding whether that issue presents a reason to prohibit the use of these private generators on *Shabbat*, see *Teshuvot Sheivet Halevi* (1:47).

9 See Rav Halperin's aforementioned essay for an analysis of this line.

10. Rav Shlomo Zalman Auerbach's own responsum also closes with harsh words for the power plant administrators, because he feels that they should employ non-Jews to do those activities that violate *Shabbat*. Writing in 5708, Rav Shlomo Zalman laments the reality in which Jews working at the Jerusalem power plant needed to violate *Shabbat*. Moreover, he comments that, although it is nevertheless technically permissible to benefit from the electricity, doing so encourages the electric company to compel its Jewish workers to desecrate *Shabbat*. Interestingly, this closing paragraph appears only in the *Tinyana* edition of *Teshuvot Minchat Shlomo* (24), but not in *Teshuvot Minchat Shlomo* 2:15, where the same responsum appears.

11. Rav Kanievsky's view appears in two letters to Rav Moshe Harari, which Rav Harari printed in *Kedushat Hashabbat* pp. 320–321. Rav Harari also cites several rulings on this topic that he received from Rav Yosef Shalom Eliashiv, who does not rule as strictly as Rav Kanievsky but does fundamentally object to using electricity from the national grid on *Shabbat* (pp. 317–319).

Power Plants in Arab Neighborhoods

Rav Halperin was asked whether those who follow the stringent opinion could use electricity from plants where employees are predominantly Arab. For example, he notes that the power plant in East Jerusalem is maintained by Arab workers. Moreover, most of its consumers are also Arabs, thus mitigating the concern that non-observant Jewish consumers set automated procedures in motion by switching their appliances on and off on *Shabbat*. Nevertheless, Rav Halperin rejects distinguishing between the power station in East Jerusalem and Jewish-run plants elsewhere in Israel. He explains that all stations in Israel belong to one large network, so that an increase in demand in East Jerusalem affects power plants throughout the country, most of which serve Jewish consumers and have Jewish workers. As an indication of their interdependence, Rav Halperin cites a national power outage that once occurred due to a problem somewhere in the network, which also affected electricity in East Jerusalem. Thus, one who does not use power in Jewish neighborhoods in Israel may not use power from Arab-run plants either, provided that they belong to the national grid.

Today's Power Plants

While older power plants required the manual addition of fuel every eight hours, today's power plants are fully automated. This seemingly diminishes Rav Goren's concern that a Jew actually produced the power on *Shabbat*. Rav Rozen explains that electricity is generated automatically, and as long as demand is relatively stable, the flow of fuel and the regulation of steam production are entirely automatic. Indeed, already in the late 1970s, Rav Ezra Basri (*Teshuvot Sha'arei Ezra* 1:22) writes:

> My view, which had [anyway] inclined towards permitting [the use of electricity on *Shabbat*], was strengthened after a meeting that was arranged by the [Israeli] Chief Rabbinate in the Ashdod power plant, in which we went over the entire process of generating electricity in Israel . . . . It became clear to me that what the *Acharonim* have written in their books about this process does not correspond to the present-day reality, which has more reason

> to be lenient, since all the actions are automatic. No Jews work on the actual generating process, although there are Jews in an observation room, following the plant's activities, so that if there is a malfunction, they repair it. Hence, there is no guarantee that Jews will work on the actual generating process . . . . The rest of Israel's power plants operate in the same manner.[12]

Rav Halperin, however, questions whether there is any fundamental difference between manual and automatic addition of fuel on *Shabbat*. Although no Jewish *worker* desecrates *Shabbat* to adjust the fuel supply in modern plants, the automatic adjustments are triggered by changes in the demand for electricity. Since most changes in the demand regrettably stem from non-observant Jews (rather than non-Jews or the timers of observant Jews) turning appliances on and off in violation of *Shabbat*,[13] Rav Halperin argues that the automatic changes in the fuel supply have been caused by *chilul* ("desecration of") *Shabbat*.

In fact, Rav Halperin suggests that changes in an automated plant might be more problematic than in a manual plant. In a manual plant, the workers who adjust the fuel supply must do so for hospitals and security forces, so these adjustments are done for the sake of *piku'ach nefesh*. By contrast, adjustments at an automated plant are triggered by non-observant Jews who switch appliances on and off on *Shabbat*. These Jews are violating *Shabbat* for their personal needs, as opposed to the purpose of *piku'ach nefesh*.

On the other hand, Rav Halperin suggests that automated power plants might indeed alleviate the problem of benefiting from the desecration of *Shabbat*, as any individual non-observant Jew's behavior only indirectly contributes towards the eventual adjustments in the fuel supply. Thus, the automated adjustment might be considered a mere indirect result (*grama*) of *chilul Shabbat*. Additionally, even if most changes in the demand for electricity result from *chilul Shabbat*, the "straw that breaks the camel's back" and sets the automated adjustments in motion could well be the activity of a non-Jew or a timer.

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12. Rav Basri thus concludes that one may certainly use electricity in Israel nowadays. However, in deference to those who still rule strictly, he adds that one who nevertheless does not use electricity from the power plants should "be blessed" (*tavo alav berachah*) for this meritorious behavior.

13. Recall that Rav Halperin's essay was printed in 1985.

Even now that the generators operate automatically, workers do make telephone calls and record notations as part of regular plant operations, even on *Shabbat*. Rav Rozen raises the possibility that such actions might be considered *piku'ach nefesh*, as the power plant cannot run properly without vital communications and record keeping.[14] Even if they do not constitute *piku'ach nefesh*, writes Rav Rozen, the prohibition of *ma'aseh Shabbat* (benefiting from another Jew's violation of *Shabbat*) does not apply to these incidental activities. The power plant can, technically speaking, operate without such administrative work, so consumers do not directly benefit from it.

Maintenance activities that violate *Shabbat* similarly are not subject to the prohibition of benefiting from another Jew's desecration of *Shabbat*. For example, Rav Rozen writes that, unfortunately, workers clean burners during every shift, in violation of *Shabbat*, and non-emergency repairs take place specifically on *Shabbat* in order to take advantage of the lowered demand for electricity.[15] Nevertheless, these activities are not essential for a power plant's functioning, so one is not directly benefiting from their performance.

When, God willing, the State of Israel will run according to Torah law, the administrative routine can be adjusted to limit activity on *Shabbat* to the power plant's critical needs. For example, the burners can be cleaned immediately before and after *Shabbat* to compensate for not cleaning them during *Shabbat*. In the meantime, though, these activities do not affect the technical permissibility of benefiting from electricity produced in Israeli power plants. Of course, the *Chazon Ish*'s concern for *chilul Hashem* still applies, as the power plants do not yet obey the laws of *Shabbat*.

Changing Electricity Demand

Although modern power plants normally function automatically, a major change in demand for electricity still requires human interven-

14. See *Nishmat Avraham* (*Orach Chaim* 340:6) for a detailed discussion of the conditions that permit physicians and hospital administrators to write on *Shabbat* and *Yom Tov*.

15. Rav Halperin, however, cites the maintenance instructions for three Israeli power plants that were adjusted in 1980 to prevent routine repairs on *Shabbat*, in response to lobbying by the Institute for Science and Halachah, even though these plants still do not completely observe the laws of *Shabbat*.

tion. If the demand increases or decreases by at least 10%, someone must flip electric switches or type commands into a computer. Such actions potentially involve many Biblically prohibited activities, such as *hav'arah* (lighting a fire), *kibui* (extinguishing a fire), *bishul* (cooking) and *boneh* (building), as well as rabbinically prohibited activities, such as *molid* (creating something new) and *metaken mana* (repairing vessels).[16] As we have already discussed, workers may nonetheless perform these adjustments on *Shabbat* since power plants cannot serve *piku'ach nefesh* needs without them. Rav Rozen questions, though, whether consumers must do their part to avoid causing such changes in the demand and thereby forcing the workers to desecrate *Shabbat*.

Rav Rozen reports that the 10% changes in electric demand most often occur as a result of mass activation and deactivation of street lamps at dawn and dusk, as well as changes in large industrial power usage by large entities such as Israel's national water carrier. While individual citizens do not control either of these activities, Rav Rozen writes that they could theoretically reduce such major changes in electricity demand by not having their automatic timers activate and deactivate their appliances on *Shabbat*. The obligation to reduce such activity, though, depends on whether one must take such precautions to avoid a situation where a Jew (in this case, a power plant worker) will need to violate *Shabbat* for the sake of *piku'ach nefesh*.

In the third chapter of our discussion of life-threatening emergencies on *Shabbat*, we noted that even before *Shabbat* one may not deliberately create a situation of *piku'ach nefesh* that will require violating *Shabbat*, except for the sake of a *mitzvah* (see *Shulchan Aruch*, *Orach Chaim* 248). Accordingly, it should follow that one may not set a timer in Israel to operate on *Shabbat*, as altering the demand for electricity will force a power plant worker to violate *Shabbat* in order to prevent a power outage. Yet no major halachic authority has ever raised this objection to using timers in Israel on *Shabbat*, despite the fact that much has been written on the issue of using timers.[17]

Rav Rozen points to three reasons why Jews need not avoid using timers in Israel on *Shabbat*. First, the Gemara teaches that one may

16. For a summary of the possible prohibitions that one violates when switching electrical devices on or off, see *Encyclopedia Talmudit* (18:163–174).

17. See *Encyclopedia Talmudit* (18:672–686). Although Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Orach Chaim* 4:60) objects to the use of timers on *Shabbat* for most tasks, his concerns do not relate to the issue of causing workers to violate *Shabbat* for *piku'ach nefesh*.

embark on a boat trip prior to *Shabbat* for the purpose of fulfilling a *mitzvah*. The *Shulchan Aruch* (*Orach Chaim* 248:4) includes a trip to Israel in his list of permissible voyages, since the traveler is fulfilling the *mitzvah* of settling Israel (*yishuv Eretz Yisrael*).[18] This *mitzvah* includes not only physically dwelling in the land, but developing its economy, too.[19] Leaving lights turned on throughout *Shabbat* would greatly increase fuel consumption, which would increase Israel's dependence on imported oil and thus adversely impact Israel's economy. Just as one may deliberately enter before *Shabbat* a situation of *piku'ach nefesh* to move to Israel, Rav Rozen claims that one may also create before *Shabbat* a situation of *piku'ach nefesh* to protect the Israeli economy, even if this will require a power plant worker to violate *Shabbat*.

Aside from financial considerations, prohibiting timers would greatly inconvenience many people. Rav Shlomo Zalman Auerbach (*Teshuvot Minchat Shlomo* 1:7 and 2:15:4; also see *Tinyana* 38) demonstrates that one is not obligated to endure great inconvenience in order to prevent others from violating *Shabbat* for *piku'ach nefesh* purposes.[20] For example, healthy people at a hospital may eat hot food that was prepared prior to *Shabbat*, even if more food will consequently need to be heated later on *Shabbat* (either by them or by someone else) in order to feed dangerously ill patients.[21] Likewise, an ill

18. See *Mishnah Berurah* (248:28) and *Teshuvot Chelkat Yaakov* (1:81) regarding whether a temporary visit to Israel also constitutes a *mitzvah*.

19. See *Chatam Sofer*, *Torat Moshe*, *Parshat Shofetim* s.v. *Mi Ha'ish*, (and also see his commentary to *Sukkah* 36a s.v. *Domeh*) who writes that agricultural production in Israel fulfills the *mitzvah* of *yishuv Eretz Yisrael*. He adds, "Not just agriculture, but the study of all trades [is a *mitzvah*] of settling and glorifying *Eretz Yisrael*, so that people will not say that Israel has no cobblers or construction workers, and must bring them from abroad. Therefore, studying any trade [in Israel] is a *mitzvah*."

20. Also see *Kovetz Teshuvot* (43), where Rav Yosef Shalom Eliashiv rules that a woman is not obligated go out of her way to be near a hospital for *Shabbat* during her ninth month of pregnancy (despite concern that she might go into labor and need to violate *Shabbat*), although he adds that doing so would be praiseworthy.

21. Rav Shlomo Zalman rules this way in a situation where the hospital could not warm enough food for all the healthy and sick people before *Shabbat*. If they could do so, though, then he obligates them to heat all the food before *Shabbat*, rather than planning to heat some of it on *Shabbat* for the dangerously ill patients. Although Rav Shlomo Zalman (*Teshuvot Minchat Shlomo* 1:7) notes that some *poskim* disagree with his lenient ruling, the *Tzitz Eliezer* (8:15:11:7) cites two nineteenth-century *teshuvot* to support Rav Shlomo Zalman.

individual's neighbor is not required to give him hot water in order to spare his family from needing to warm their own water for him.[22] Rav Shlomo Zalman thus permits conducting oneself in a normal manner on *Shabbat*, even though this behavior might indirectly cause someone else to violate *Shabbat* for *piku'ach nefesh* reasons. Accordingly, Rav Rozen suggests that one may set a timer prior to *Shabbat* even if this behavior might cause a power plant worker to violate *Shabbat* for *piku'ach nefesh* reasons.[23]

Rav Rozen also points out that the chance of a particular consumer's timer being the "straw that breaks the camel's back," causing the 10% change in Israel's electric demand, is quite unlikely. In fact, at the precise second that a timer shuts off one person's appliance, it often happens elsewhere in the country that a more powerful appliance goes on, causing the power demand to rise, or vice versa. It is thus impossible to assert that any one person causes a change in power sharp enough that it would require workers to violate *Shabbat*. Rav Rozen asserts that each individual is accountable only for the changes caused by his own actions. If no person can prompt a significant enough change, the public as a whole need not worry about its collective effect on electricity demand.

Power Outages

If a blackout occurs on *Shabbat*, Rav Moshe Shternbuch (*Teshuvot Vehanhagot* 3:100) essentially permits using electricity on *Shabbat* after a Jew repairs it, in certain limited circumstances. He reasons, as we have cited from Rav Shlomo Zalman Auerbach, that maintaining electricity in the country constitutes *piku'ach nefesh*, and workers could not restore power to those who need it for *piku'ach nefesh* purposes without also restoring everyone's power. In practice, Rav Shternbuch cautions that he has not thoroughly investigated whether repairing blackouts necessarily constitutes *piku'ach nefesh* and whether or not the workers perform any additional activities in order to return elec-

22. As a proof, Rav Shlomo Zalman notes that the Rama (*Yoreh Deah* 374:4) rules that a *Kohein* does not have to spend money hiring workers in order to avoid the obligation of burying a *meit mitzvah* (a dead person with no one to bury him, whom a *Kohein* may bury if there is no one else available to do so).

23. On the other hand, when no excessive hardship is involved, one is generally obligated to prepare for emergencies that are expected on *Shabbat* in order to minimize violating *Shabbat* even for emergency needs (see *Sha'ar Hatziyun* 344:9 and *Shemirat Shabbat Kehilchatah* 1:32:34 and note 104).

tricity to non-sick individuals. However, assuming that the repairs do constitute *piku'ach nefesh* and do not entail any extra violations on behalf of the healthy residents, Rav Shternbuch permits benefiting from the electricity on *Shabbat*.

Rav Ezra Basri (*Teshuvot Sha'arei Ezra* 1:22) writes, based on what he was told by experts, that repairing a blackout normally requires repairs to local wires, rather than major power plants. These repairs do not constitute *piku'ach nefesh*, as the lack of power for a small area generally poses no life-threatening dangers. Even if the area has a hospital that needs electricity in order to save lives, most hospitals own private generators that they employ during a blackout. Thus, with local hospitals already using their own generators, fixing the local wires serves only the residents' non-emergency needs and consequently violates *Shabbat*.[24] Rav Basri warns that in such situations, some foods on an electric hotplate might be cooked after the power returns, in which case one would not be allowed to eat them until after *Shabbat*.

Rav Yehoshua Neuwirth (*Shemirat Shabbat Kehilchatah* 1:32 note 174) similarly distinguishes between blackouts that require repairs at a power plant and those that are repaired locally in a small neighborhood. Since the power plant must be fixed for *piku'ach nefesh* purposes, one may benefit from the electricity once it has been restored. If a worker, however, violates *Shabbat* to restore power in a small neighborhood where the lack of electricity poses no danger, then Rav Neuwirth prohibits deriving benefit from the electric lights in one's house, as well as eating some foods that were cooked on a hotplate after power returned. In such a situation, Rav Shlomo Zalman Auerbach (*Teshuvot Minchat Shlomo* 2:15:7 and *Tinyana* 24) encourages observant Jews to turn off their electrical appliances in an unusual manner (*shinui*) before power returns, so that their appliances will not be responsible for increasing the *chilul Shabbat* of the Jew who restores the power.

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24. In practice, it is often difficult for an individual to gauge the extent of a blackout, particularly on *Shabbat* (when one cannot turn on a radio or other electricity-powered media in order to hear news reports during the blackout). Moreover, even if the blackout clearly does not reach beyond a local neighborhood, an individual resident cannot easily assess whether any of his neighbors would be endangered by the lack of power for an entire *Shabbat*, such as people who depend on electrical machines for their basic bodily functions. It should be noted that in cases of doubt, the *Mishnah Berurah* (318:2) rules that the prohibition of *ma'aseh Shabbat* does not apply (also see *Teshuvot Minchat Shlomo* 2:15:8).

Conclusion

Although Israel's power plants regrettably do not run in accordance with Halachah, most authorities nevertheless permit benefiting from the electricity produced by them, especially in today's age of automation. In addition, one need not avoid setting electric timers prior to *Shabbat*. Those who follow the *Chazon Ish* use a private generator for *Shabbat* because they consider it a *chilul Hashem* to benefit from the national power network. Rav Halperin concludes his essay by urging the observant community to express its dissatisfaction with the unnecessary desecration of *Shabbat* that often takes place in Israeli power plants. We should feel pained by the fact that a completely acceptable situation still does not exist and look forward to the day when every aspect of Israel will run according to Halachah.

Which Parts of Israel Warrant Tearing Keri'ah Today

The Gemara (*Mo'eid Katan* 26a) teaches that one must tear *keri'ah* (rend one's garment) upon seeing[1] the ruins of three sites: Judean cities (*Arei Yehudah*), Jerusalem, and the *Beit Hamikdash* (Holy Temple).[2] In this chapter, we review this issue's classical sources and explore its application to each of the three locations in light of Israel's miraculous military victories in 1948 and 1967.

1. "Seeing" refers throughout this chapter to seeing in person. By contrast, if one sees the Temple Mount on a television set or computer monitor, Rav Yehuda Henkin wrote me that no obligation to tear *keri'ah* exists. For the status of these screens in other areas of Halachah that involve sight, see *Teshuvot Minchat Yitzchak* (2:84:10), *Teshuvot Yabia Omer* (*Orach Chaim* 6:12) and *Teshuvot Yechaveh Daat* (2:28, 4:7, and 4:17). In both *Yabia Omer* and *Yechaveh Daat*, Rav Ovadia Yosef strongly cautions against misinterpreting his analysis of television's halachic status as an endorsement of the terribly negative values that most television programs introduce into one's home.

2. For analysis of this *keri'ah*'s precise purpose, see *Teshuvot Igrot Moshe* (*Orach Chaim* 5:37:1) and *B'ikvei Hatzon* (Chapter 18).

Judean Cities—Modern Applications

The *Tur* (*Orach Chaim* 561) writes that one must rend his garments upon seeing "cities of *Israel*" in ruins. Rav Yosef Karo (*Beit Yosef ad loc*.) notes, however, that the Gemara mentions only cities in Judea, so the *Tur*'s reference to cities from anywhere in the Land of Israel is not specific.[3] Indeed, Rav Karo rules in the *Shulchan Aruch* (O.C. 561:1) that the obligation applies exclusively to Judean cities.[4] Rav Yechiel Michel Tukachinsky (*Eretz Yisrael* 22:1) believes that only ruined *cities* in Judea require *keri'ah*, but not areas where a Jewish city never stood.[5]

Rav Hershel Schachter (*B'ikvei Hatzon* p. 105)[6] discusses whether the Halachah requires *keri'ah* only upon seeing Judean cities, as opposed to other Israeli cities, due to Judea's *political* stature or her *religious* sanctity. The *Bach* (O.C. 561) writes that Judean cities are more "important" than the rest of Israel. He further comments that Judean cities are considered "destroyed" even when Jews continue to live in them, so long as non-Jews govern them.[7] Rav Schachter thus interprets the special "importance" that the *Bach* attributes to Judean

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3. See *Torat Hamedinah*, pp. 103–113.

4. It is unclear how to define Judea for purposes of *keri'ah*, for it can refer to either the boundaries of the tribe of Judah alone or the entire Kingdom of Judah from the First Temple Period, which also included the tribe of Benjamin's land. Rav Moshe Nachum Shapiro (*Har Hakodesh*, *Panim Me'irot* and *Panim Chadashot* p. 1) argues the latter possibility. See also *Pe'at David* on *Birkei Yosef* 561:1 and Rav Shlomo Wahrman's letter to me that we have included in the introduction to this book.

5. Rav Tukachinsky seeks to defend the practice in his time not to tear *keri'ah* over Judean cities (in the early 1950's, when Israel's borders included some of ancient Judea, but much of Judea remained under Jordanian rule). He thus suggests that people refrained from tearing *keri'ah* because they did not know the precise locations of ancient cities. He adds that they also generally did not see Judean cities before they had already seen Jerusalem, a reason that we cite later in this chapter to exempt one from *keri'ah* upon seeing Judean cities even nowadays.

6. This entire chapter in *B'ikvei Hatzon* originally appeared in *Torah Sheb'al Peh* 22:173–183.

7. The *Pri Megadim* (*Eishel Avraham* 561:1) cites a story about Rav Gershon Kitover (the famed brother-in-law of the Baal Shem Tov) that illustrates why we must tear *keri'ah* upon seeing cities located in areas of non-Jewish sovereignty even when they are physically built and Jews reside there. When Rav Gershon first arrived in Jerusalem (in the mid-eighteenth century), he exclaimed that although the "earthly Jerusalem" (the physical city) is built, the "heavenly Jerusalem" nevertheless remains destroyed.

cities as their political significance. Since Judea includes Jerusalem, which served as the capital city during the First and Second Temple Periods, tearing upon seeing Judea's ruins mourns the loss of Jewish political sovereignty.

Alternatively, one could view this *keri'ah* as grieving the desecration of a holy region. Although we generally do not view Judea as holier than the rest of *Eretz Yisrael*, the Gemara does single out Judea in one case. While discussing several laws of the Jewish calendar, the Gemara (*Sanhedrin* 11b) states that the Sanhedrin (Supreme Religious Court) must convene in Judea, as opposed to elsewhere in Israel, if it wishes to add a leap month to the Jewish year. The Gemara explains that Judea is "the residence of the *Shechinah* (Divine Presence)." Although no early sources explicitly link *keri'ah* to this law regarding leap years, the *Levush* (O.C. 561:1) does write that Judean cities warrant *keri'ah* "because they are near Jerusalem." Rav Moshe Shapiro (*Har Hakodesh*, p. 1) suggests that the higher level of holiness of Judea stems from its physical proximity to the Holy City, the same holiness implied by the Talmudic passage in *Sanhedrin* regarding the calendar. Indeed, the Ramban, in a celebrated letter describing his travels in *Eretz Yisrael* (in the mid-thirteenth century), notes that "the greater the *sanctity* of a place, the more profound is its desolation; Jerusalem is more desolate than anywhere else, and *Judea more so than the Galilee*" (*Kitvei Haramban* 1:368).

In our time, Jews maintain sovereign control over much of Judea, but the *Beit Hamikdash* remains in ruins. Hence, Rav Schachter suggests that the obligation to tear *keri'ah* upon seeing Judea depends on the two possible understandings of its purpose. If the obligation to tear *keri'ah* for Judean cities flows from their religious sanctity, then Rav Schachter argues that we must continue tearing until the *Beit Hamikdash* is rebuilt. Since the Gemara explains that the religious sanctity derives from Judea being "the residence of the *Shechinah*," we must continue to mourn Judea's destruction until the *Shechinah* returns to its home on the Temple Mount.

According to the *Bach*, however, it follows that one should not tear upon seeing Judean cities today. As we have already mentioned, the *Bach* rules that one should even tear upon Judean cities inhabited by Jews so long as non-Jews maintain sovereign control over their location. Requiring *keri'ah* under such circumstances implies that sovereignty determines a city's status, so Israeli control over Judean cities

should thus negate the need for *keri'ah*.[8] Based on this logic, Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, O.C. 5:37:1) and Rav Shlomo Yosef Zevin (*Hamo'adim Bahalachah* 2:442)[9] rule that we do not tear upon seeing Judean cities following their liberation by the Israeli army.[10] Rav Schachter notes that the Halachah follows the *Bach*'s reasoning, rather than the approach that links *keri'ah* to Judea's religious sanctity, as the *Mishnah Berurah* (O.C. 561:1) cites only the *Bach*'s opinion.[11] Indeed, common practice among virtually all observant circles today is not to tear upon seeing Judean cities, such as Beersheba.[12]

Rav Schachter remarks that some have criticized this approach, arguing that we must tear *keri'ah* until a Jewish government that operates completely in accordance with Halachah controls Judea.[13] Rav Schachter (note 10) rejects their argument, noting that during the First Temple Period there was no obligation to tear when seeing Judean cities even though many of the Jewish kings worshiped idols. One could present a similar argument regarding the Second Temple Period, when many of the Hasmonean rulers practiced Sadduceean Judaism

8. Rav Yehuda Henkin (*Teshuvot Bnei Banim* 2:24) challenges this reasoning. He questions whether the fact that non-Jewish sovereignty renders a city "in ruins" proves that Jewish sovereignty alone suffices to render it "rebuilt." Perhaps, he suggests, one must tear *keri'ah* upon seeing a physically desolate ancient city that is inhabited entirely by non-Jews, even if it is under Jewish sovereignty, and the aforementioned authorities merely add that non-Jewish sovereignty over an inhabited Jewish community *also* requires *keri'ah*.

9. We refer to the 1980 printing of Rav Zevin's book, but he reprinted it many times with different pagination. To find our reference in other editions, see the final page of his chapter about the destruction of Jerusalem.

10. Rav Zevin's ruling has received much publicity due to the glaring omission of his enthusiastic reference to the State of Israel, "With the establishment of the State of Israel (how fortunate we are that we have merited this!)," by the book's English translators (*The Festivals in Halachah* 2:294). For the debate surrounding this phrase's omission, see *Tradition* (22:4:120–121 and 23:1:98–99).

11. The *Magen Avraham* (561:1) also cites only the *Bach*'s view.

12. See, however, Rav Moshe Nachum Shapiro, *Har Hakodesh* (*Panim Chadashot* p. 6) and Rav Eliyahu Bakshi-Doron (*Teshuvot Binyan Av* 4:30) who are inclined to believe that one is obligated to tear *keri'ah* upon seeing Judean cities where Israel maintains only military control and which are inhabited entirely by non-Jews.

13. See *Teshuvot Sheivet Halevi* (7:78), who raises this point regarding *keri'ah* over Jerusalem. See also *Mo'adim Uzmanim* (7:211), who suggests that the secular aspect of the Israeli government might cause so much dismay to some people that they would not feel a strong additional sense of *churban* upon seeing the Temple Mount.

and persecuted Torah scholars, yet nobody tore *keri'ah* for the Judean cities under Hasmonean rule.

Judean Cities Controlled by the Palestinian Authority

In May 2000, I asked both Rav Hershel Schachter and Rav Yehuda Henkin whether one must tear *keri'ah* upon seeing Judean cities that are regrettably controlled by the Palestinian Authority, such as Bethlehem.[14] Rav Schachter replied that one should tear upon these cities, as the existence of Jewish sovereignty over an area determines its status regarding *keri'ah*. Following Operation Defensive Shield (in 2002), when the Israeli army began a policy of re-entering Palestinian-controlled cities when necessary to fight terror, Rav Schachter told Rav Ezra Frazer that he believes the obligation to tear *keri'ah* remains in effect even while Israeli troops temporarily control a Judean city, for they do not actually govern it.[15] Rav Henkin, though, argued that one should not tear *keri'ah* upon seeing these cities, as he deems it illogical to refrain from tearing *keri'ah* upon seeing Jerusalem while tearing when seeing a Judean city.[16] One should consult a competent rabbi for guidance regarding this question.

It should be noted, though, that many visitors to Israel do not actually face the question of whether to tear a complete *keri'ah* upon seeing

14. See *Binyan Av* (4:30), where Rav Eliyahu Bakshi-Doron criticizes those rabbis who required the soldiers who turned Bethlehem over to the Palestinian Authority to tear *keri'ah*. Rav Bakshi-Doron argues that the obligation to tear *keri'ah* for Bethlehem did not cease in 1967, so those who saw it under Israeli control did not suddenly become obligated to tear *keri'ah* when they evacuated it.

15. On the other hand, Rav Schachter stated that one need not tear *keri'ah* in areas of Judea where Israel retains full military control, such as Gush Etzion, despite the fact that the Israeli government has not formally annexed them. See also *Torat Hamedinah* (pp. 103–113), where Rav Shlomo Goren explains why these areas do not require *keri'ah* despite the fact that the government does not apply Israeli civil law to them.

16. Rav Henkin explains his view in *Teshuvot Bnei Banim* (2:24). Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, O.C. 4:70:11) apparently rejects his line of reasoning. Writing in 1969, Rav Moshe argues that one no longer needs to tear *keri'ah* upon seeing Jerusalem, yet he requires tearing over any Judean cities that remain under non-Jewish sovereignty. (Rav Moshe does not address the question of how to define the borders of Judea, nor does he discuss how those borders correspond to the areas that were conquered in 1967.)

autonomous Palestinian-controlled cities. Often, tourists visit the *Kotel* (Western Wall) soon after arriving in Israel, while they only later travel near Judean cities. Tearing *keri'ah* upon seeing the Temple's ruins, which they perform near the *Kotel*, absolves the obligation to tear a complete[17] *keri'ah* for Jerusalem or other Judean cities (*Shulchan Aruch*, O.C. 561:2–3). Similarly, Rav Yechiel Michel Tukachinsky (*Eretz Yisrael* 22:1), writing in the early 1950s,[18] records that in his time people would not tear *keri'ah* for Judean cities. In defense of this practice, he notes that it was possible to enter Jerusalem only from the west, so one would not encounter any other Judean cities before first seeing Jerusalem and tearing *keri'ah* there.

Hebron

Interestingly, the Chida (*Birkei Yosef* 561:1) notes that the common practice in his time was not to tear upon seeing the city of Hebron.[19] He writes that some justified this custom on the grounds that Hebron served as an *ir miklat* (city of refuge for those who negligently caused others to die; see *Bemidbar* 32 and *Yehoshua* 20). The cities of refuge belonged to the tribe of Levi, so, despite Hebron's location in Judea, it is technically a Levite city, rather than a Judean one. However, the Chida cites and agrees with those who consider this technicality a "weak" basis to excuse people from tearing upon seeing Hebron. Rav Schachter (*B'ikvei Hatzon* pp. 105–106) explains that even if Hebron does not meet the technical definition of a Judean city, its geographic location nevertheless places it near the seat of ancient Jewish governments. Since we accept the *Bach*'s claim that *keri'ah* over Judean cities mourns the loss of Jewish political authority, any destroyed city in that

17. The *Shulchan Aruch* rules that someone who sees the Temple Mount and tears there must add a little bit to the tear (*kol shehu*) upon seeing Jerusalem. Nowadays, when the prevalent practice is never to tear one's garment upon seeing Jerusalem, Rav Hershel Schachter told Rav Ezra Frazer that he believes the obligation to add a little bit to the tear applies when one sees a Palestinian-controlled Judean city after tearing *keri'ah* at the Temple Mount.

18. Rav Tukachinsky's son published this book in 1955 immediately after Rav Tukachinsky's death. His son comments in the preface that Rav Tukachinsky was editing the book even as he lay on his deathbed.

19. The Chida lived from 1724 to 1806, long before the Israeli liberation of Hebron in 1967.

region warrants *keri'ah*, regardless of whether the tribe of Judah technically owned it.[20] For further discussion of this issue, see Rav Shlomo Wahrman's letter, which we have included in the introduction to this book.

Tearing upon Seeing Jerusalem

Halachic authorities debate whether Israel's liberation of Jerusalem in 1967 exempts us from tearing *keri'ah* upon seeing the ancient city of Jerusalem. Many *poskim* believe that the obligation to tear *keri'ah* has ceased now that Jews maintain control over Jerusalem. They contend that the obligation to tear upon seeing Jerusalem derives from the loss of Jerusalem as the political capital of a Jewish government. Thus, now that a Jewish government once again controls Jerusalem, the obligation to tear *keri'ah* no longer applies.[21]

Rav Schachter (*B'ikvei Hatzon*, pp. 107–108) recounts that Rav Yosef Dov Soloveitchik disagreed, asserting that the obligation to tear upon seeing Jerusalem applies even after 1967.[22] Rav Soloveitchik argues that the obligation to tear flows from Jerusalem's status as an extension of the *Beit HaMikdash*, as the Mishnah (*Keilim* 1:6–9) implies when it delineates ten levels of holiness within *Eretz Yisrael*. As an expression of Jerusalem's unique holiness, the Mishnah cites the law that one may not eat certain sacrifices and tithes (*kodashim kalim* and *ma'aser sheini*) outside the city limits. Rav Soloveitchik extrapolates from this Mishnah that Jerusalem functions as an extension of the *Beit Hamikdash*, where sacrifices are brought, and this role grants

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20. Rav Schachter further challenges whether even the alternative approach, which links *keri'ah* over Judea to her religious sanctity, would necessarily exempt Hebron from *keri'ah*. Moreover, he claims that Hebron might have belonged to the tribe of Judah with reference to some areas of Halachah, rendering it a Judean city in even the most technical sense. For Rav Schachter's complete analysis of what it means for a tribe to "own" a city, see his *Eretz Hatzvi* (chapter 30).

21. Rav Shlomo Goren (*Torat Hamedinah*, pp. 103–113) argues that the obligation to tear *keri'ah* upon seeing Jerusalem depends on Jewish sovereignty. Besides the political sovereignty that Israel currently enjoys over Jerusalem, Rav Goren argues that the fact that most Jerusalem residents are Jewish further serves to exempt Jerusalem from *keri'ah*.

22. Rav Shlomo Zalman Auerbach (*Teshuvot Minchat Shlomo* 1:73) writes that the obligation to tear *keri'ah* over Jerusalem remains in effect so long as the city continues to be filled with foreign houses of worship.

the city its sanctity. Another proof for this assertion is that the *Tanach* (Bible) sometimes refers to Jerusalem as "before *Hashem*," and elsewhere the Tanach employs the same term for the *Beit Hamikdash*.[23] Describing both places with identical terminology indicates that Jerusalem's lofty status is intertwined with that of the *Beit Hamikdash*. Accordingly, Rav Soloveitchik believes that just as we must continue tearing *keri'ah* upon seeing the site of the *Beit Hamikdash* until its restoration, so too must we still tear upon seeing Jerusalem, Jewish sovereignty notwithstanding.

Poskim have not yet reached a consensus regarding whether *keri'ah* for Jerusalem stems from the city's role as our political capital (hence eliminating the need for *keri'ah* in our time) or its holiness and bond with the *Beit Hamikdash*. In practice, Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, O.C. 4:70:11) rules not to tear upon seeing Jerusalem. Although Rav Soloveitchik and Rav Shlomo Zalman Auerbach (*Teshuvot Minchat Shlomo* 1:73) disagree, Rav Schachter notes that common practice follows Rav Moshe's position.[24] Rav Schachter explains that when *poskim* dispute a law of mourning, we normally follow the lenient opinion (*halachah k'divrei hameikel b'aveil*).[25]

As another practical approach to the dispute regarding *keri'ah* for Jerusalem, Rav Moshe Shternbuch (*Mo'adim Uzmanim* 5:348 note 2) suggests that when tearing *keri'ah* over the loss of the *Beit Hamikdash* one should also have Jerusalem's destruction in mind. Moreover, he adds that tearing one's clothes for no reason violates the Biblical

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23. See *Devarim* 14:23 and *Tehilim* 98:6 (as interpreted by the Gemara, *Rosh Hashanah* 27a).

24. Rav Eliyahu Bakshi-Doron (*Binyan Av* 4:30) cites a number of *poskim* who require tearing *keri'ah* for Jerusalem even today. On the other hand, Rav Shlomo Goren (*Torat Hamedinah*, pp. 103–113) exempts Jerusalem from *keri'ah*, and Rav Yehuda Henkin (*Teshuvot Bnei Banim* 2:24) also presents Rav Moshe's view as generally accepted.

25. See *Mo'eid Katan* 19b, 22a, and 26b. The Gemara appears to exclude *keri'ah* from this principle, thus requiring one to tear *keri'ah* even in disputed cases. Rav Yehuda Henkin (*Bnei Banim* 2:24), however, explains that we treat doubts involving *keri'ah* strictly only in cases where one clearly must mourn a loss, but the obligation to perform the specific act of *keri'ah* is disputed. By contrast, the dispute over how to define a state of ruin questions the very obligation to mourn, as those who define "ruin" as a lack of sovereignty reject the basis for any form of mourning once Jews govern Jerusalem. Hence, regarding *keri'ah* over Jerusalem, the Halachah should follow the lenient view.

prohibition against needless destruction (*bal tashchit*).[26] Thus, acting stringently regarding the rabbinic obligation to tear upon seeing Jerusalem risks transgressing a Biblical prohibition.[27]

Tearing Upon Seeing the Site of the *Beit Hamikdash*

Virtually all *poskim* require tearing *keri'ah* upon seeing the *makom hamikdash* even today.[28] Rav Schachter cites Rav Yosef Dov Soloveitchik as explaining that tearing at the *makom hamikdash* mourns the destruction of the *Beit Hamikdash* itself, as opposed to the loss of Jewish sovereignty over the area. Thus, until we rebuild the *Beit Hamikdash*, the obligation to tear *keri'ah* at its location remains binding. Indeed, common practice among virtually all observant circles follows his view.

Rav Yechiel Michel Tukachinsky (*Eretz Yisrael* 22:7) writes that at first glance it would appear that the obligation to tear one's clothes over the *makom hamikdash* should commence only if one sees the actual ground of the Temple Courtyard ruins. He notes, however, that the *Bach* (O.C. 561) and the *Pe'at Hashulchan* (3:2) record the practice to tear as soon as one sees the Dome of the Rock. Rav Tukachinsky explains that although the Dome of the Rock is not technically a part of the Temple's ruins, seeing a mosque on the Temple Mount nonetheless warrants *keri'ah*, because it powerfully conveys the lack of a Jewish Temple on that location. Rav Moshe Shternbuch (*Teshuvot Vehanhagot* 1:331) also notes that in fact people generally tear *keri'ah* upon seeing the Dome of the Rock even if they do not see the actual ground upon which the *Beit Hamikdash* once stood. Although Rav Shternbuch comments that this practice has an acceptable halachic basis, he adds that he personally goes to a building that overlooks the

26. See *Devarim* 20:19 with the *Torah Temimah*'s comments and *Bava Kama* 91b.

27. See *Pitchei Teshuvah* (*Yoreh Deah* 340:1).

28. Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, O.C. 4:70:11 and 5:37:1), Rav Yosef Dov Soloveitchik (reported by Rav Schachter), Rav Shmuel Wosner (*Teshuvot Sheivet Halevi* 7:78), and Rav Shlomo Goren (*Torat Hamedinah* pp. 103–113). See also *Mo'adim Uzmanim* 7:211, who seeks to defend the custom of those who tear *keri'ah* only the first time in their lives that they see the Temple Mount. He adds, though, that "those who are meticulous" about performing *mitzvot* do tear *keri'ah* whenever thirty days have passed since they last saw it, and that it is particularly difficult to defend the practice of not tearing another *keri'ah* when a full year has passed since one last saw the Temple Mount.

Temple Mount in order to see the precise spot of the *churban*, and only then does he tear his clothes (also see *Mo'adim Uzmanim* 7:211).

Conclusion

The obligation to tear *keri'ah* over Judean cities, Jerusalem, and the site of the *Beit Hamikdash* reflects our deep religious and nationalistic connections to *Eretz Yisrael* throughout Jewish history. It also expresses our longing for a time when the *Beit Hamikdash* will be rebuilt and these laws will no longer apply.

Family Matters

Revealing Flaws of a Potential Marriage Partner

The desire to protect friends and relatives often poses a major dilemma in the area of *shidduchim* (introductions for the purpose of marriage). People seek to ensure that their loved ones do not err by marrying spouses with objectionable personality traits or other severe flaws.[1] On the other hand, one must ensure that this noble goal does not lead to wrongfully damaging the reputations of prospective marriage partners. In this chapter, we explore when Halachah permits and even obligates someone to reveal a significant flaw, versus when one must remain silent.[2]

1. In truth, arranging any *shidduch*, even when neither side possesses any unusually severe flaws, always entails revealing information about others, as the matchmaker must always provide the man and woman with some information about their prospective dating partner's background and personality. Thus, matchmaking in general requires sensitivity to the laws of *lashon hara* (negative speech). We have chosen, however, to limit our discussion to severe flaws, as divulging or concealing unusually major flaws can have particularly catastrophic results. The general topic of *lashon hara* in the context of *shidduchim* warrants its own essay.

2. For a summary of these laws, see *Hanisu'in Kehilchatam* (1:3:11–22).

One's Own Flaws

Rabbeinu Yehudah Hachasid (*Sefer Hachasidim* 507, in some editions 1163) writes that one should not conceal flaws from a potential marriage partner, lest the couple live a miserable life together. In fact, Rav Moshe Feinstein writes that, just as the Torah (*Vayikra* 25:14) forbids misrepresenting merchandise in order to deceive consumers (*ona'at mamon*),[3] surely one may not conceal information in a manner that misleads a potential marriage partner.[4] Moreover, if someone mistakenly marries without knowing that his/her spouse has an extremely severe flaw at the time of the wedding, the marriage's validity can be called into question.[5] One need not reveal every minor flaw, however, but only those that will likely undermine the marriage's happiness.[6]

Illness

Rabbeinu Yehudah Hachasid obligates people to disclose their illnesses when "if the prospective mates knew of the illness, they would not consent to marry."[7] Rav Moshe Shternbuch (*Teshuvot Vehanhagot* 1:879) similarly requires the revelation of illnesses that might negatively impact the marriage, but not of illnesses that do not affect married life. *Poskim* discuss many individual cases in this area, because the precise medical facts of each disease must be analyzed in order to

3. The Gemara discusses the laws of *ona'ah* at length in the fourth chapter of *Bava Metzia*. Regarding the severity of the sin of *ona'ah*, see *Mesilat Yesharim* (Chapter 11).

4. *Teshuvot Igrot Moshe* (*Even Ha'eze*r 4:73:2). See also *Teshuvot Divrei Malkiel* (3:90) and *Kehilot Yaakov* (*Yevamot* 38).

5. The laws of *kiddushei ta'ut* (marriages contracted under false pretenses) are exceedingly complex, such that only a major halachic authority can rule on practical cases of *kiddushei ta'ut*. We summarize the main issues surrounding *kiddushei ta'ut* in our first volume (pp. 40–47).

6. The distinction between major and minor defects applies to business, too. When I sought to sell a used automobile, Rav Hershel Schachter told me that I need not enumerate every flaw, but rather only highly significant defects. For a discussion of disclosing defects in advertising, see Rav Aaron Levine's *Economics and Jewish Law* (pp. 87–91).

7. Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, E.H. 4:10) encourages confidentially testing young adults for Tay-Sachs disease when they reach marriageable age, so that young men and women who both carry the recessive gene for Tay-Sachs can avoid marrying each other.

determine how it might impact married life. Rav Shternbuch thus urges presenting every practical situation to a *poseik* who will consult skilled doctors in order to obtain current information about the illness's impact and determine accordingly whether to notify the prospective marriage partner. Although any practical question must be asked to a duly qualified Rav, we will present a few examples from the responsa literature in order to offer the reader a sense of how *poskim* handle these cases.

Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Even Ha'ezer* 4:73:2) writes that one who suffers from Marfan's syndrome[8] must notify any potential mate of this flaw. Rav Shternbuch, after establishing that in theory one must reveal only illnesses that affect married life, encourages disclosing that one suffers from diseases that demand an unusual diet, such as diabetes or an ulcer, because their dietary restrictions can impact the couple's life together. On the other hand, if someone once suffered from an emotional problem but has recovered fully enough that he no longer needs medication, then Rav Shternbuch does not obligate him to reveal this problem from his past, provided that medical experts are of the opinion that his problem will not return.

Rav Malkiel Tannenbaum (*Teshuvot Divrei Malkiel* 3:90) discusses whether a man must reveal to prospective brides that during childhood he suffered a severe injury to his male organs.[9] Rav Tannenbaum initially rules that he must divulge this concern, as many women do not want to marry a man who might never be able to reproduce. Rav Tannenbaum acknowledges that revealing this information will, regrettably, likely prevent the man (who was also destitute) from ever finding a wife. As a possible solution, Rav Tannenbaum suggests that a doctor examine the man carefully. Should the doctor conclude that the man

8. Marfan's syndrome is a heritable condition that affects the connective tissue. In Marfan's syndrome, the connective tissue is defective. Because connective tissue is found throughout the body, Marfan's syndrome can affect many body systems, including the skeleton, eyes, heart and blood vessels, nervous system, skin and lungs (Source: The National Marfan Foundation, www.marfan.org).

9. See also *Kehilot Yaakov*, *Yevamot* 38, who indicates (but hesitates to rule in practice) that a certain man who lost his left testicle due to an illness need not inform a prospective wife of this fact, because doctors maintain that he will be able to procreate normally. Rav Yosef Shalom Eliashiv (cited in *Nishmat Avraham*, vol. 5, p. 118), though, reportedly disagrees with the *Kehilot Yaakov*'s ruling, reasoning that many women might not want to marry this man, regardless of the doctors' encouraging prognosis. Since this blemish might bother many women, Rav Eliashiv forbids its concealment.

will be able to reproduce, then he may conceal his defect.[10] Rav Tannenbaum reasons that most people trust doctors' judgment on medical matters. Accordingly, the man may assume that most women would not object to marrying him once a doctor confirmed his ability to procreate, and therefore he need not inform them of his injury. In practice, though, Rav Tannenbaum adds that it is proper nonetheless to tell his future bride about his injury.

Someone asked Rav Shmuel Wosner (*Teshuvot Sheivet Halevi* 6:205) if a woman must inform her prospective husband that she has temporarily lost all her hair due to an illness. Although the hair was expected to grow back three or four years later, Rav Wosner leans towards requiring her to reveal her current ailment because most men would not consent to marry a woman while she is still bald.[11] In practice, Rav Wosner recommends that she begin dating while wearing a natural-looking wig. Later, when a man has gotten to know her and developed a serious interest in her, she should explain to him that her natural hair will not return for a few years.

Questions of Lineage

The Gemara (*Yevamot* 45a) recounts that Rav Yehudah counseled the son of a Jewish woman and a non-Jewish man, who was experiencing difficulty in finding a wife, to move somewhere far away and conceal his lineage so that a woman from there would consent to marry him. The Gemara clearly assumes that many people hesitate to marry someone with a non-Jewish father (hence the motivation to conceal this fact), yet it implies that the child of a non-Jewish father may nevertheless conceal his lineage from a potential mate. Rav Meir Arik (*Teshuvot Imrei Yosher* 2:114:8) and Rav Eliezer Waldenberg (in comments printed in *Nishmat Avraham*, E.H. p. 252) assert that in practice one must reveal if one's father is not Jewish.[12] They interpret the

10. At present, Rav Gidon Weitzman (personal communication) notes that this type of medical examination is difficult to implement in a halachically acceptable manner. It is important to seek proper medical and rabbinical guidance in such situations.

11. Rav Wosner does not clarify whether the illness would have been severe enough to warrant notifying her dating partner even had her hair not fallen out.

12. See also *Teshuvot Minchat Yitzchak* (7:107), who requires revealing that one was conceived during the *nidah* period, and *Teshuvot Vehanhagot* (1:733), who disagrees. Rav Yehoshua Neuwirth (cited in *Nishmat Avraham* vol. 5 p. 118) equates one

Gemara's story about Rav Yehudah as an exceptional case,[13] because they refuse to accept that the Halachah sanctions deliberately concealing information that would clearly affect whether a woman would marry this man. Rav Waldenberg also requires one to reveal if either parent is a convert.

The Steipler Rav (*Kehilot Yaakov*, *Yevamot* 38), though, seemingly disagrees with them and interprets the Gemara as normative.[14] He argues that although most people initially hesitate to marry someone with a non-Jewish father, they would not go so far as to seek a divorce were they to find out *ex post facto* that their spouse's lineage possessed this blemish. The Steipler Rav suggests that deceiving people in a manner that they would forgive *ex post facto* only violates a rabbinic prohibition, so the Gemara apparently waives this prohibition for the sake of people who could not otherwise find mates.

Halachically Questionable Lineage

While the child of a non-Jewish father possesses merely *undesirable* lineage, sometimes one's lineage poses a serious problem of *actual illegitimacy*. For example, the child of a woman's second marriage faces concern for *mamzeirut* (illegitimacy) if his or her mother remarried without receiving a valid *get* (divorce document) from her first husband. Should the child indeed be a *mamzeir*, he or she may not marry anyone other than a fellow *mamzeir* or a convert. In many

whose father is not Jewish with one who was conceived during the *nidah* period, and he indicates that neither of them must share this part of his background with a prospective spouse. See also footnote 25.

13. Rav Arik suggests that the Gemara might permit moving only to a town where the man's lineage will *never* be discovered, but otherwise he may not conceal it, lest it embarrass his wife when she later learns that her father-in-law is not Jewish. In addition, Rav Arik indicates that the man may marry in this new town by *remaining silent* about his lineage but may not *explicitly lie* about it. Rav Waldenberg claims that in the Gemara's time authorities still debated the status of a child with a Jewish mother and a non-Jewish father, so Rav Yehudah issued an extraordinary ruling in order to publicize that such a child is Jewish. Under normal circumstances, however, one may not conceal one's lineage.

14. The Steipler concludes this chapter by cautioning that he has not studied the topic sufficiently, so his words should not be viewed as a decisive ruling. See also his comments elsewhere in *Kehilot Yaakov* (*Likutim* 2:23) and Rav Shlomo Zalman Auerbach's defense of his position (cited in *Nishmat Avraham*, vol. 5, pp. 117–118).

contemporary situations, though, *poskim* can permit the child to nevertheless marry because they determine that the mother's first wedding did not meet halachic standards.[15] In such situations, where one may marry only due to a lenient ruling of an eminent halachic authority, Rav Malkiel Tannenbaum (*Teshuvot Divrei Malkiel* 3:90) and Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 7:48:5:15–17) require divulging the full background to any prospective mate. Since questions of *mamzeirut* often depend on disputed points in Halachah, a prospective spouse could reasonably hesitate to rely upon the same view as the *poseik* who ruled leniently in a particular case. Hence, one may not conceal such issues from a prospective mate.[16]

Similarly, Rav Waldenberg notes that women sometimes receive permission from a prominent rabbi to temporarily employ contraceptives in order to protect their health, but this area has generated much debate among *poskim*.[17] Consequently, Rav Waldenberg claims that a woman must warn her prospective groom if a particular halachic authority permitted her to employ contraceptives at the start of her marriage, in case the man feels uncomfortable entering a marriage where he will need to follow this rabbi's lenient ruling.

Lost Virginity

Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Orach Chaim* 4:118) writes that a woman must reveal to any prospective husband that she has lost her virginity. Rav Yitzchak Yaakov Weisz (*Teshuvot Minchat*

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15. See our first volume (pp. 63-90) for a discussion of the halachic status of non-Orthodox marriages. As we repeatedly note in that discussion, one must make every effort to avoid such situations of possible *mamzeirut* by performing a proper *get* even when a civil court judge or Reform rabbi officiated at the wedding.

16. See, however, the Steipler Rav's aforementioned discussion of the Gemara in *Yevamot*. The Steipler Rav addresses a case involving a man who was permitted by prominent *poskim* to marry despite concern that he was a *petzu'a daka* (one with crushed testicles; see *Devarim* 23:2). The Steipler Rav focuses his discussion on whether the man must tell dating partners that this injury might affect his reproductive capabilities. Interestingly, though, he does not mention any obligation to tell the prospective bride that he could marry her only due to a lenient ruling (that he is not a *petzu'a daka*), perhaps implicitly disagreeing with the Divrei *Malkiel* and *Tzitz Eliezer*.

17. For an overview of *halachot* regarding contraception, see Rav Hershel Schachter's essay in *The Journal of Halacha and Contemporary Society* (4:5–32).

Yitzchak 3:116) also adopts this view,[18] explaining that virgins and non-virgins are entitled to different sums of money in their *ketubot* (marriage contract); in this case, a woman who conceals her past misdeeds thus tricks her groom into writing her a virgin's *ketubah*.[19] I have heard from Rav Mordechai Willig, though, that he does not obligate men or women who grew up in non-observant homes to reveal their past sexual indiscretions to prospective mates. Rav Willig reasons that, today, the general society unfortunately does not expect people to remain abstinent until marriage. Therefore, anyone who dates someone from a non-observant home has no right to assume that his or her dating partner is a virgin.

Revealing the Flaws of Others—Concern for *Lashon Hara*

Until now, we have addressed an individual's *own* obligation to divulge personal information to his or her prospective mate. This sensitive topic becomes even more complex when *others* must decide whether to reveal another person's flaw to his or her potential mate. An outsider must weigh the welfare of the unsuspecting dating partner against the sin of *lashon hara* (harmful speech).

The Rambam (*Hilchot De'ot* 7:1–6) outlines three general categories of prohibited speech: *rechilut* (telling stories about another even if they are true and contain nothing negative), *lashon hara* (spreading *true* negative facts about others), and *motzi shem ra* (spreading *false* negative information). In order to emphasize the severity of gossiping about others, he writes, "It is a severe sin and causes the destruction of many Jewish lives." He proceeds to cite a passage from the Gemara in *Arachin* (16b) that equates one who speaks *lashon hara* with one who

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18. Dayan Weisz importantly notes, however, that not every woman who believes herself to no longer be a virgin has actually engaged in behavior that alters her status according to the Halachah's technical definition of virginity. When presenting a practical case to a Rav, he must thus be informed of precisely why the woman believes that she has lost her virginity.

19. Under normal circumstances, a virgin receives 200 *zuzim* and a non-virgin receives 100 *zuzim*. (See *B'ikvei Hatzon* pp. 268–269, *Teshuvot Tzitz Eliezer* 22:81, and *Teshuvot Beit Avi* 3:137 for contemporary calculations of this value.) Rav Moshe and Dayan Weisz both discuss the groom's ability to write a virgin's *ketubah* for his non-virgin bride in order to spare her from humiliation (also see *Ketubah Kehilchatah* pp. 112–113).

rejects the existence of God. The Gemara further compares *lashon hara* to murder, adultery, and idolatry combined.

Elsewhere, the Gemara indicates just how restrictive the prohibition of *lashon hara* can be (*Yoma* 4b). It rules that if someone shares information with a friend, the friend may not repeat it without receiving express permission to do so. As a source for this principle, the Gemara refers to the manner in which God spoke to Moshe in the opening verse of *Vayikra*, "*Hashem* spoke to [Moshe] from the Tent of Meeting to say (*leimor*)[20] [to the children of Israel] . . . ." We see that God explicitly authorized Moshe to repeat what He had told him, implying that, absent this authorization, Moshe would have been forbidden to tell the nation what he heard from *Hashem*.[21]

Moreover, the Gemara (*Sanhedrin* 31a) teaches that a judge who informs a litigant that he voted against the majority opinion when a *beit din* issues a split decision violates the prohibition of *rechilut*. The Gemara adds that Rabbi Ami once expelled a student from the *beit midrash* (religious study hall) for revealing a secret 22 years after it occurred.

Unfairly Harming a Shidduch

In some cases, revealing a flaw to someone's prospective spouse or parents-in-law clearly constitutes *lashon hara*. Dayan Weisz (*Teshuvot Minchat Yitzchak* 6:139) forbids someone from telling his friend that a prospective groom for the friend's daughter committed a grave sin in his youth. Dayan Weisz explains that, as far as was known, the young man had never repeated his sin and instead devoted his time to Torah study, so his past sin did not reflect traits or habits that remained with him and might negatively impact his marriage.[22]

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20. The word *leimor* could also be translated as "saying," but here the Gemara interprets it as "to say."

21. We have followed the Maharsha's explanation of this derivation (*Yoma* 4b s.v. *Shehu*). See also Rashi (*Yoma* 4b s.v. Shehu), who offers a different explanation. For a summary of the need for permission to repeat what one heard from another *person*, see Rav Michael Taubes's *The Practical Torah* (pp. 212–213).

22. Dayan Weisz restricts his ruling to a situation of a *one-time* sin, which has not affected the groom's basic character. In the same responsum, he also discusses whether to reveal that a prospective groom *repeatedly* sinned if the groom has since repented, as well as what to do when the friend does not know if the groom has repented.

Certainly, one may not exaggerate minor flaws in a manner that unnecessarily harms a *shidduch*. The *Chafetz Chaim* (in a section added to *Hilchot Isurei Rechilut* 9) decries the fact that people often tell a young woman's family about her prospective groom's personality in a manner that depicts him in an unfairly negative light. Specifically, the *Chafetz Chaim* comments that people routinely describe young men as simpletons or fools simply because they lack the sharpness to outsmart sly individuals. Such a portrayal sometimes causes a young woman's family to reject a particular candidate even though his "foolishness" reflects admirable honesty, and he might in fact possess other intellectual gifts. Those who talk about such a person as a fool thus focus on an extremely minor shortcoming, which should not affect the *shidduch*, and exaggerate it to the point where it prevents a potentially wonderful husband from finding a wife.

"Do Not Stand Idly By"

Despite the severity of speaking *lashon hara*, at times one is permitted or even obligated to reveal others' flaws. The Rambam (*Hilchot Rotzeiach* 1:14) writes:

> Whoever can save another individual [from an assailant] and fails to do so violates the Torah's prohibition, "Do not stand idly by while your brother's blood is being shed" ("*Lo ta'amod al dam rei'echa*;" *Vayikra* 19:16). Similarly, if one sees someone drowning in the sea or sees that robbers are attacking him or a wild animal is pouncing on him, and one can save him . . . but fails to do so . . . one violates the prohibition of *lo ta'amod al dam rei'echa*.

The *Shulchan Aruch* (*Choshen Mishpat* 426:1) cites this passage from the Rambam almost verbatim. Consequently, as we shall discuss, one must balance the prohibitions of *rechilut* and standing by idly, by not revealing insignificant flaws while also not remaining silent about major flaws. The Netziv (*Ha'ameik Davar*, *Vayikra* 19:16) explains that God placed the prohibitions of *rechilut* and standing by idly in the same verse in order to clarify when one should not speak *rechilut*. Their juxtaposition indicates that, despite the prohibition against gossip,

one nevertheless may not remain silent about information that can save another person from danger.[23]

The Chafetz Chaim's Guidelines for Shidduchim

In accordance with the above passages from the Rambam and *Shulchan Aruch*, the *Chafetz Chaim* (*ibid*.) rules that one must reveal a serious flaw to the flawed individual's prospective spouse. However, he cautions that one must first determine that the flaw in question warrants revelation (*ibid*., *Be'er Mayim Chaim* 8). In a number of places, the *Chafetz Chaim* lists several criteria for judging whether one may divulge information.[24] Based on his criteria, one should examine six points before revealing any questionable information:

1. Is one positive that the information is completely true?
2. Is the flaw so significant that the parties involved must hear about it?
3. Does one intend to reveal the information purely to help those who must hear about it, or do malicious or vengeful desires taint one's motivation?
4. Will the information likely affect those who hear it? If they will most probably ignore the news anyway, then one may not reveal it.
5. Is one presenting the information accurately? One may not exaggerate the information at all.
6. Does any alternative exist to achieve the desired goal without revealing the information?

Examples of Gray Areas

Due to the distinction between divulging one's own personal information and divulging information about others, many *poskim*, when facing several of the same cases that we discussed earlier in the context

23. This insight is also attributed to the Netziv's grandfather-in-law, Rav Chaim of Volozhin (cited in *Teshuvot Vehanhagot* 1:879).

24. See *Hilchot Isurei Rechilut* 9 and *Hilchot Lashon Hara* 10:2. Rav Zelig Pliskin (*Guard Your Tongue*, Chapter 10) presents an English summary of these criteria as they apply to *shidduchim*.

of revealing one's own flaws, issued far more restrictive rulings regarding what others may reveal. For example, we have already mentioned that Dayan Weisz requires a woman to reveal if she has lost her virginity, yet he rules that friends whom she told of her misdeed should not divulge it to her groom themselves.

Similarly, we have already noted that Rav Moshe Shternbuch requires revealing certain illnesses to one's prospective spouse. Within those cases, however, he distinguishes between situations where only the bride and groom must reveal their illness and situations where an illness is so severe that anyone who knows of it must inform the affected person's dating partner. In certain situations, Rav Shternbuch does not require others to contact the dating partner themselves, but he permits them to answer an inquiry from the dating partner honestly.

We have already cited Rav Meir Arik and Rav Eliezer Waldenberg's view that one may not conceal one's blemished lineage. We have also mentioned Rav Malkiel Tannenbaum and Rav Waldenberg's view that one must inform any potential spouse if one may marry only due to the lenient ruling of a major halachic authority. A rabbi asked Rav Yaakov Breisch (*Teshuvot Chelkat Ya'akov* 3:6–7) about a young woman whose father was unknown, thus presenting both of these concerns. The father might not have been Jewish, blemishing her lineage. Alternatively, he may have been Jewish, in which case the woman might be a *mamzeret*.

After examining the precise details of her background and determining that she is not a *mamzeret*, Rav Breisch notes that nevertheless the woman's lineage bears three blemishes: her father might not be Jewish, she was born out of wedlock, and her mother conceived her as a *nidah* (during the period of her menstrual cycle when she was prohibited to have relations).[25] Although these defects do not prohibit her from marrying a Jew, they could dissuade men in many traditional Jewish communities from marrying her.[26] Rav Breisch concludes that

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25. The *Shulchan Aruch* (E.H. 4:13) alludes to the stigma against someone who was conceived during the *nidah* period. See *Teshuvot Igrot Moshe* (E.H. 4:14) and Rav Shimon Eider's *Halachos of Nidah* (vol. 1 p. 3 note 15) for the position of many contemporary *poskim* that one should not refrain from marrying someone with fine character traits simply because he or she was conceived during the *nidah* period. See also *Kehilot Yaakov* (*Likutim* 2:23), *Teshuvot Minchat Yitzchak* (7:107), *Teshuvot Vehanhagot* (1:732–733 and 2:627), *Teshuvot Sheivet Halevi* (4:162), and Rav Yehoshua Neuwirth (cited in *Nishmat Avraham* vol. 5 p. 118).

26. Regarding whether it is proper to reject a prospective spouse due to defects in his or her lineage, Rav Breisch cites Rav Aharon Walkin's vehement opposition to

the rabbi may not explicitly lie to prospective spouses about such blemishes,[27] but he may tell them that her lineage bears no stigmas that would render her illegitimate, without adding that it does have several more minor blemishes.

When One Must Reveal Others' Flaws

Of course, some defects are so severe that even an outsider must divulge them to the affected person's dating partner, even if the partner does not inquire about them. For example, Rav Shlomo Zalman Auerbach (cited in *Nishmat Avraham*, vol. 4, p. 182) ruled in 1989 that a doctor must inform someone if his or her spouse has been diagnosed with AIDS. Dr. Avraham S. Avraham presented Rav Shlomo Zalman with the medical facts of that time, according to which a 66% chance existed that the spouse would get infected within five years, and a 100% chance existed that the disease would eventually kill whomever it infected. Rav Shlomo Zalman thus concluded that informing someone that his or her spouse has AIDS was essential for saving that person's life from certain danger.

In another tragic example, an observant doctor asked Rav Yaakov Breisch whether he should inform a young woman that her groom, a twenty-year-old man, was suffering from cancer and most likely would not live more than a year or two. Rav Breisch (*Teshuvot Chelkat Ya'akov* 3:136) ruled that the doctor must inform the bride of her groom's illness, adding that failure to inform her would violate both *lo ta'amod al dam rei'echa* and placing an obstacle in front of a blind person (see *Vayikra* 19:14).[28]

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marrying the children of radical Reform Jews (*Teshuvot Zekan Aharon* 1:65). Rav Walkin bases his position on several classical sources that emphasize the value of unblemished lineage. However, Rav Breisch comments that in his time (1963, 33 years after Rav Walkin's responsum) many Reform children developed into observant Jews: "And what should these girls do? Should we send them back to the Reform, and prevent them from being 'under the wings of the *Shechinah* (Divine Presence)' [by observing] Torah and *mitzvot*?" Accordingly, while Rav Breisch acknowledges that traditional sources do promote seeking spouses with unblemished lineage, he nonetheless argues against openly educating people to follow these sources in the present reality (also see the previous footnote).

27. Rav Meir Arik (*Teshuvot Imrei Yosher* 2:114:8) explicitly prohibits deceiving a prospective husband in a similar situation.

28. It must be noted that revealing this information might potentially harm or ruin a doctor's career. Indeed, Alan Blumenfeld, Esq., of Brooklyn, NY, has informed me

In yet another unfortunate case, an observant doctor asked Rav Eliezer Waldenberg whether he must inform a young man that his fiancee, a patient of the doctor, lacked natural reproductive organs and would thus never conceive a child. Rav Waldenberg (*Teshuvot Tzitz Eliezer* 16:4) responded that the doctor must convey this information to the groom.[29] Although all doctors take the Hippocratic Oath, thereby swearing to never reveal confidential information about their patients, Rav Waldenberg insists that this oath cannot override Halachah.[30]

Acting With Prudent Judgment

The doctors who consulted Rav Breisch and Rav Waldenberg had patients with extremely serious flaws, whose concealment could not be tolerated. Everyone, however, has some flaws, so one may not rashly decide to reveal another person's flaws to his or her dating partner. Moreover, the impact on marriage of many flaws cannot be gauged easily, and sometimes it is not even clear whether someone's inappropriate conduct necessarily reflects a true character flaw. For example, in my experience as a *mesadeir gittin* (divorce officiant), I often meet people at a stressful time in their lives. If someone behaves inappropriately during divorce proceedings, it is difficult to assess whether this behavior reflects deep character flaws that will destroy the person's

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that a doctor could face a lawsuit for revealing confidential medical information. Accordingly, a doctor's obligation to inform the prospective spouse must be weighed against his need to earn a livelihood. For discussion of how a doctor should act in situations where revealing information might jeopardize his own career, see *Nishmat Avraham*, *Choshen Mishpat* 426:1 (vol. 5, p. 152) and *Teshuvot Vehanhagot* (1:869). See also Nishmat Avraham (4:96-98), where Rav Eliezer Waldenberg, Rav Shlomo Zalman Auerbach, and Rav Yosef Shalom Eliashiv all rule that a doctor may honor a Do Not Resuscitate (DNR) order that violates Halachah, if disobeying the order would cost the doctor his license. Of course, if practical situations arise, a doctor should first clarify all legal and financial ramifications of revealing the information and then present this data to a competent halachic authority.

29. Rav Waldenberg adds that no distinction exists regarding this flaw between the two genders. Hence, if a doctor knows that one of his male patients cannot reproduce, then he must notify the bride accordingly.

30. Rav Waldenberg advises that the doctor convene three people for *hatarat nedarim* (annulment of vows), lest he violate the prohibition of swearing falsely by betraying the Hippocratic Oath. However, Rav Waldenberg comments that he is unsure whether the doctor truly needs *hatarat nedarim* because observant doctors might never intend for the oath to take effect in situations where it contravenes Halachah.

next marriage, or whether the poor conduct merely resulted from the excessive stress that the divorce placed upon an otherwise decent individual. One must present these delicate cases to a competent and experienced Rav for adjudication, as a mistake in either direction can lead to devastating consequences.

Even when a flaw must be revealed, one must not hasten to reveal it before carefully considering how to present it in the least harmful manner. After ruling that a doctor must inform a groom that his bride lacks reproductive organs, Rav Waldenberg advises the doctor to first inform the woman that the Torah obligates her to reveal her flaw to her potential mate. Only if she fails to inform the groom herself should the doctor divulge the painful facts to him. It is hoped that this approach spares the woman from the humiliation that would likely result were the doctor to reveal this highly sensitive information directly to her groom. A Rav who is skilled in this area can devise similar strategies to help cushion the blow when revealing a flaw. In addition, Rav Gidon Weitzman has informed me that Machon Puah, a Jerusalem-based institute for issues of fertility and Halachah, can offer helpful advice in many situations where medical defects threaten a prospective *shidduch*.[31]

Waiting to Reveal a Flaw

Sometimes, it is wise to reveal a flaw after a couple has begun dating, so the flaw will be considered within the greater context of the person's character traits. For example, Rav Moshe advises the woman who had lost her virginity to withhold this information when she first begins dating a man. Although Rav Moshe requires her to reveal her past at some point before her wedding, he encourages her to wait until her relationship has progressed to serious discussions about marriage, when she can more comfortably explain to her prospective groom that she did indeed sin but has since repented completely. Regarding the woman who temporarily lost her hair, Rav Wosner similarly recommends that she begin dating while wearing a wig that appears natural, and she should reveal her medical condition only later in the relationship.

Along the same lines, Rav Hershel Schachter told Rav Ezra Frazer that a person must divulge that he or she has been previously engaged.

31. Machon Puah can be reached at *questions@puah.org.il*.

However, Rav Schachter suggested revealing this information after a few dates have passed, so that the relationship will have some time to develop in an unbiased manner before one's dating partner learns of the broken engagement. At the same time, Rav Schachter cautioned that one should not wait too long before divulging this information, lest one's dating partner later feel misled or deceived.[32]

Although *poskim* suggest waiting before revealing the aforementioned flaws, Rav Mordechai Willig has commented that one may temporarily conceal flaws only if they are not too severe. On the other hand, Rav Willig ruled that an extremely severe flaw, such as infertility, must be revealed at the outset.

Voluntarily Revealing One's Own Minor Flaws

Rav Gidon Weitzman offers one additional piece of practical advice. He often recommends that a man and woman even share minor flaws with one another, lest their revelation at a later stage might harm the couple's *shalom bayit* (peaceful relationship). In light of this insight, it would seem foolish to conceal one's age from a prospective spouse, even in situations when this information might be less significant than the blemishes that we have discussed in this chapter. Of course, sometimes concealing one's age can be as serious as many of the other cases that we have discussed.[33]

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32. It is impossible to specify the precise number of dates that should pass before revealing this type of information, as the period that couples date before engagement varies greatly in length from community to community. Rav Schachter suggested that the appropriate amount of time is when the man and woman have dated long enough to have developed an interest in one another but have not yet begun to discuss long-term commitment. Rav Schachter subsequently informed me that he heard that Rav Eliashiv rules that such information should be shared before the conclusion of the fourth date.

33. For example, if a woman in her 30s or early 40s would claim that she is even slightly younger than her actual age, her dishonesty could mislead dating partners regarding her ability to conceive children (even if the woman herself does not realize that she can no longer conceive). Thus, concealing one's age in such circumstances would be prohibited, just as we have already mentioned that one may not conceal infertility.

Conclusion

Both speaking *lashon hara* unjustifiably and withholding critical information from those who must know it constitute terrible sins. Rav Ovadia Yosef and Rav Eliezer Waldenberg cite the comments of Rav Yisrael Isserlin (*Pitchei Teshuvah*, *Orach Chaim* 156), who decries the fact that people often fail to speak *lashon hara* when they should. At the same time, revealing non-critical flaws can unfairly destroy wonderful *shidduchim*. A competent Rav who has significant experience in dealing with these issues must be consulted regarding practical questions. A skilled Rav can help explain challenges to couples and counsel them appropriately, in addition to formulating a technical halachic ruling in each situation. Even when a flaw must be revealed, utmost sensitivity must be exercised in order to notify the relevant party in the least humiliating manner.

"Orthodox Infertility": When Halachah Interferes with Conception

Observance of *taharat hamishpachah* (the laws of family purity) may be responsible for some observant couples experiencing difficulty conceiving children. Some health-care professionals in both the United States and Israel know of this problem and have even given it a name—"Orthodox Infertility." The problem arises when a woman ovulates before she visits the *mikvah* (ritual bath).[1] A couple, generally speaking, is capable of producing a child if they have relations from about two days before the wife's ovulation until a very brief time after her ovulation. Hence, if a woman cannot visit the *mikvah* before ovulation, then she will not be able to cohabit with her husband at a time when she can conceive. In this chapter, we summarize how halachic authorities of the past fifty years have grappled with this issue.[2] We also seek to provide some direction for couples who are experiencing this problem.

1. See *Nishmat Avraham* (*Yoreh Deah* 2:116), who notes that women encounter this problem of "Orthodox Infertility" due to one of two distinct causes: either they have very short menstrual cycles, or they bleed for more days than most women (such as bleeding for nine days in a thirty-day cycle). Rav Gidon Weitzman (personal communication) commented that it is important to identify which cause is responsible in each case, as they are treated differently.

2. See also Rav Getsel Ellinson and Dr. Mitchell Snyder's essay in *Proceedings of the Association of Orthodox Jewish Scientists* (6:157–176), which summarizes this issue's development until 1980.

Background: Seven Clean Days

In order to understand the problem, we must first define the Biblical concepts of *nidah* and *zavah*.[3] *Nidah* refers to a woman who sees menstrual blood on a day when she expects it to flow (*Vayikra* 15:19). This flow renders her ritually impure and prohibits relations with her husband for seven days. Even if she continues to see blood all seven days, she may go to the *mikvah* and purify herself immediately after they end. On the other hand, if a woman sees uterine blood at an unexpected time, then she becomes a *zavah*. If the bleeding persists for three consecutive days, she must wait until all bleeding ceases. She then counts seven days before she may visit the *mikvah* (*Vayikra* 15:25–28). Thus, once a *zavah* sees blood for three consecutive days, the total time that she remains impure will always last at least three days longer than the seven-day *nidah* period.

In numerous places in the Gemara (such as *Nidah* 61a), Rabbi Zeira recounts that Jewish women accepted upon themselves to treat even the slightest drop of blood as if it rendered them *zavot*. Hence, women wait for all bleeding to stop, and then they count seven "clean" (bloodless) days. The Rambam (*Hilchot Issurei Bi'ah* 11:1–4) explains that women accepted this stringency—commonly known as *chumra deRabbi Zeira*—to avoid confusion in distinguishing between expected and unexpected events. Rather than risk transgressing an extremely serious Torah prohibition, Jewish women opted to always wait seven clean days.

The Gemara (*Berachot* 31a) presents this practice as an example of *halachah p'sukah*, an undisputed rule. The Ramban (*Hilchot Nidah Leramban* 1:19) comments:

> This stringency that Jewish women have adopted was approved by Chazal, and they accorded it the status of *halachah p'sukah* in all locales. Therefore, it is never permitted to be lenient about this matter.[4]

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3. For a full introduction to these concepts, see Rav Pinchas Kehati's commentary to the Mishnah (*Arachin* 2:1) and *Badei Hashulchan* (Introduction to 183).

4. The Meiri adopts a similar approach in his commentary to *Berachot* (31a s.v. *Nimtza*). The *Shach* (*Yoreh Deah* 183:4) also writes, "*Chazal alway*s required the counting of the seven clean days."

Five Additional Days

Following the acceptance of *chumra deRabbi Zeira*, women could potentially begin counting seven clean days from the first day after they stop seeing blood. However, the Gemara (*Nidah* 42a) appears to rule that a woman may not count a day towards the required seven clean days if her body releases semen on that day (*poletet shichvat zera*; see *Tosafot*, *Nidah* 33a s.v. *Ro'ah*). Accordingly, were a couple to have relations shortly before the wife's menstruation, she would not be able to count clean days until she could be sure that her husband's semen was no longer in her body.

The majority opinion in the Gemara (*Shabbat* 86b) asserts that sperm can live inside the woman for three full days. For example, if a couple had relations on Sunday at 12:00 A.M., the woman could continue to release live sperm until 12:00 A.M. Wednesday. In such a situation, the clean days could not commence until Wednesday night even if the woman's entire menstrual flow started and ceased earlier in the week.

The *Terumat Hadeshen* (*Teshuvot* 245) records two additional stringencies that developed during the Middle Ages, which can further delay the start of the seven clean days. Since some couples might have relations just before the onset of menstruation, many *Rishonim* require *all* women to wait four days from when they first see blood before they count seven clean days. Even if a particular woman did not cohabit prior to menstruation, they rule that she, too, must wait these four days. The Rama (*Yoreh Deah* 196:11) codifies their position.

Furthermore, the *Terumat Hadeshen* adds a fifth day before the clean days may begin. He expresses concern that couples will cohabit immediately after sunset, while thinking that they had relations *before* sunset. Thus, they will calculate the four days incorrectly. For example, a couple will cohabit Sunday evening and think that it is still late Sunday afternoon. The wife will thus think that she can begin her clean days on Thursday, whereas in reality she had relations on Monday and must thus wait until Friday. In order to avoid confusion, the *Terumat Hadeshen* requires every woman to wait five days from when bleeding begins, so only the sixth day can count as the first clean day. The Rama (*ibid*.) accepts this stringency, as well.

In practice, Ashkenazic Jews universally accept the Rama's ruling and do not begin counting seven clean days until the sixth day after first seeing blood. Rav Ovadia Yosef (*Taharat Habayit* 2:13:11)

permits Sephardic Jews to rely on the *Shulchan Aruch* and start counting clean days on the fifth day. Nevertheless, Rav Shlomo Levy (in a lecture at Yeshivat Har Etzion) reported that most Sephardic women have traditionally followed the Rama on this issue, and Rav Mordechai Eliyahu (*Darchei Taharah*, p. 138) also rules in accordance with the Rama. Of course, a woman may *never* begin counting clean days until she stops seeing blood, regardless of how many days have passed.

The Problem

For most women, our present stringencies work out conveniently, as the night of immersion will often correspond to the ideal time for conception. For certain couples, however, ovulation occurs before the night of immersion. After ovulation, sperm cells cannot normally reach the egg, so the window of opportunity for conception has closed. The *poskim* of the past few decades have addressed which of the aforementioned stringent customs might be waived in order to facilitate immersion before ovulation for these couples.[5]

Response of the Twentieth Century Poskim

Waiving the *chumra deRabbi Zeira* would enable women who ovulate early to conceive. Without *chumra deRabbi Zeira*, they could immerse seven days after beginning to see blood, in accordance with the laws of a Biblical *nidah*. However, virtually all halachic authorities have forbidden this solution. Rav Yosef Dov Soloveitchik (as reported by Rav Aharon Lichtenstein and Rav Yosef Adler), Rav Ovadia Yosef (*Taharat Habayit* 1:1:6), and Rav Shlomo Zalman Auerbach (*Teshuvot Minchat Shlomo* 2:70:1:3) all cite the Ramban's aforementioned comments as proof that we may never waive the requirement for seven clean days, even when it interferes with conception.

One may ask, however, why does the Torah obligation of *peru ur'vu* (the obligation to have children) not override the rabbinic requirement for seven clean days, in cases where we are certain that the woman is

5. See *Teshuvot Minchat Shlomo* (2:70) for Rav Shlomo Zalman Auerbach's proposed solution, which generated much controversy (see *Badei Hashulchan* 188:35 and *Shiurei Sheivet Halevi* 188:3:1).

not truly a *zavah*.[6] Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, Y.D. 1:93) responds that there is no general halachic principle that permits violation of a rabbinic prohibition in order to fulfill a Torah obligation. In fact, the Gemara (*Shabbat* 130b) teaches that we may not carry a *milah* knife on *Shabbat* in an area where the Rabbis forbade carrying, the Biblical *mitzvah* of circumcision notwithstanding. Similarly, one may not violate the rabbinic prohibition against sprinkling the ashes of a *parah adumah* (red heifer) on *Shabbat*, even when this procedure would enable someone who came in contact with a corpse to offer the *korban Pesach* (*Pesachim* 92a and Rambam, *Hilchot Korban Pesach* 6:6).[7] Rav Moshe thus asserts that in most cases one may not violate a rabbinic prohibition in order to fulfill a Biblical obligation.

Rav Ovadia Yosef (note 6) offers a second approach for why *peru ur'vu* does not override *chumra deRabbi Zeira*, based on *Tosafot* in *Gittin* (41a s.v. *Lisa*). He notes that *Chazal* (*Gittin* 41) forced the owner of a partially emancipated slave[8] to free him completely, as the slave's hybrid status would otherwise prevent him from marrying Jews and slaves alike. *Tosafot* question why the *mitzvah* of *peru ur'vu* does not override the prohibition against a partial slave marrying a Jewish woman, thus alleviating the need to free him. They answer that we do not waive this prohibition because an alternative exists to accomplish the goal and violate a less serious prohibition (freeing a Canaanite slave). Rav Ovadia argues that we similarly do not waive the requirement for seven clean days since there are other halachic and medical options that allow the husband to fulfill *peru ur'vu* without violating it.

Tosafot also point out that women are not obligated in the *mitzvah* of *peru ur'vu* (see *Yevamot* 65b). Accordingly, even if the slave had no other options, we could not permit a Jewish woman to marry him—a sin for her—simply to facilitate *his* fulfillment of *peru ur'vu*. Similarly,

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6. See *Gittin* 41 regarding the weight of *peru ur'vu* when it conflicts with a halachic prohibition. See also Rav Asher Weiss's and Rav David Lau's essays in the twenty-third volume of *Techumin* (pp. 220–222, 231–236) for further discussion of conflicts between *peru ur'vu* and halachic prohibitions.

7. In *Bemidbar* 19, the Torah describes the process for purifying someone from the ritual impurity that results from contact with a dead body. This process includes mixing the ashes of a red heifer with other ingredients and sprinkling the mixture on the impure individual. An entire tractate of Mishnah, *Masechet Parah*, is dedicated to the laws of this process.

8. Someone becomes a partially emancipated slave by being owned by two partners, one of whom frees him.

Rav Ovadia argues, since the woman is not obligated in *peru ur'vu*, she may not skip counting seven clean days simply to enable her husband to fulfill his *mitzvah*.

Halachic and Medical Options

Rav Ovadia Yosef (*ibid*.) and Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Even Ha'ezer* 2:18) permit artificial insemination using the husband's sperm, before the wife has immersed in the *mikvah*.[9] Rav Ovadia and Rav Moshe write that the child will not bear the stigma of a *ben nidah* (child conceived during the *nidah* period) if it is conceived in this manner.[10] It is important to note that many *poskim* strongly urge that this process be performed under rabbinical supervision to insure that no tampering or mistakes occur during the process.[11]

As an alternative solution to "Orthodox Infertility," many halachic authorities permit a woman with this problem, subject to certain conditions, to examine herself in the prescribed manner (*hefseik taharah*) even before five days have passed since the bleeding began.[12] If her examination proves that she has indeed stopped bleeding, then she may immediately begin counting seven days. These authorities believe that

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9. Regarding the practice of many rabbis to permit this practice only after several years of marriage and unsuccessful attempts at all other methods, see Maharsham (*Teshuvot* 3:268), *Teshuvot Divrei Malkiel* (4:107), *Teshuvot Tzitz Eliezer* (9:51:4:6), *Teshuvot Yabia Omer* (E.H. 2:1), *Teshuvot Yaskil Avdi* (E.H. 5:10), *Teshuvot Mishpetei Uzziel* (2:19), and *Nishmat Avraham* (3:6–7).

10. For the opinions of other authorities regarding this point, see sources cited in *Proceedings of the Association of Orthodox Jewish Scientists* (6:169 and note 53). The *Shulchan Aruch* (E.H. 4:13) alludes to the stigma of *ben nidah*. See *Teshuvot Igrot Moshe* (E.H. 4:14) and Rav Shimon Eider's *Halachos of Nidah* (vol. 1 Chapter 1 note 15), who discuss this stigma and present the position of many contemporary *poskim* that one should not refrain from marrying someone with fine character traits simply because he or she was conceived during the *nidah* period. See also *Kehilot Yaakov* (*Likutim* 2:23), *Teshuvot Chelkat Yaakov* (3:6–7), *Teshuvot Minchat Yitzchak* (7:107), *Teshuvot Sheivet Halevi* (4:162), *Teshuvot Vehanhagot* (1:732–733 and 2:627), and Rav Yehoshua Neuwirth (cited in *Nishmat Avraham* 5:118).

11. Rav Mordechai Eliyahu (reported by Rav Gidon Weitzman) absolutely requires rabbinical supervision for this process.

12. These authorities include Rav Shlomo Zalman Auerbach (*Teshuvot Minchat Shlomo* 2:70:1:1), Rav Moshe Feinstein (*Teshuvot Igrot Moshe* Y.D. 4:17:22), Rav Yosef Dov Soloveitchik (reported by Rav Yosef Adler), and Rav Ovadia Yosef (*Taharat Habayit* 2:13 note 12).

the custom to wait five days (or four days for those Sephardic Jews who follow Rav Ovadia Yosef's view) from the start of the bleeding before beginning to count the seven clean days may be relaxed in order to fulfill the *mitzvah* of *peru ur'vu*, as we treat a custom significantly less stringently than a full-fledged rabbinic prohibition.[13] This approach helps solve the problem in those cases where a woman stops bleeding fast enough to permit her to perform an early *hefseik taharah*.

Another option might be for an especially competent doctor to prescribe medicine that will adjust the wife's cycle to avoid this problem. Rav Menachem Burstein (in a 2004 lecture at Yeshiva University) mentioned that medications have greatly reduced instances of "Orthodox Infertility." Care must be taken to insure that this process does not harm her health.

It is important to note that some couples mistakenly believe that the laws of family purity are preventing the wife from conceiving, because the wife believes that she is a *nidah* when, in fact, she is not. Rav Binyamin Forst (*The Laws of Niddah*, p. 34) explains, "Many women do not suddenly stop staining on the fifth day. It is very common to find a stain on the *Hefseik Taharah* cloth." Some women think that every one of these spots is a prohibited stain and thus do not begin the seven clean days when they are in fact permitted to do so. A couple should consult a competent halachic authority regarding this issue, as it might be the reason that the woman is not conceiving.

13. As we have explained, the five days that a woman waits before a *hefseik taharah* can be divided into two parts. The first four days, which all Jewish women wait, address the concern that a woman released semen from cohabitation that took place immediately prior to her bleeding. Theoretically, if a woman were to abstain from relations with her husband immediately before she began to bleed, then she should not need to wait these four days. Under normal circumstances, though, our practice nonetheless is to wait these days, as we have already cited from the *Terumat Hadeshen*. A fifth day, which all Ashkenazic women and many Sephardic women wait, was added to prevent confusion regarding the calculation of four days when a couple cohabited close to sunset. Therefore, in cases where waiting all five days will impede conception, a *poseik* has two options for helping the woman conceive while violating nothing more than a custom. He may simply waive the fifth day, or he may also advise that the couple abstain from marital relations a certain amount of time before the woman expects to see blood and shorten the four-day period accordingly. In practice, the latter option is difficult to implement, because most women do not stop bleeding quickly enough. Furthermore, Rav Gidon Weitzman reports that Rav Mordechai Eliyahu requires the couple to deliberately abstain from relations for this purpose, but he would not permit a woman experiencing fertility problems to shorten the four-day period if she had coincidentally abstained from relations well before seeing blood.

Home Remedies

Assorted sources have reported varying success in solving this problem with home remedies. Dr. Mordechai Halperin of Jerusalem once stated in a public lecture that he has experienced successful resolution of this problem in some cases simply by instructing the wife to eat breakfast. In fact, I recommended this course of action to a woman who approached me regarding her difficulty conceiving. A few months later, she reported that she conceived soon after she initiated a daily routine of eating a proper breakfast.

Interestingly, the Gemara (*Bava Kama* 92b) and *Shulchan Aruch* (*Orach Chaim* 155:2) urge us to eat breakfast. The Gemara quotes a folk saying, "Sixty people run, but they cannot keep up with one who ate breakfast." Furthermore, the Gemara (*Bava Metzia* 107b) states that 83 sicknesses are related to malfunctioning of the gall bladder, and eating breakfast can cure all of them. Rav Menachem Burstein (the head of the prestigious Machon Puah in Jerusalem) told me that eating breakfast sometimes solves Orthodox Infertility, because orderly nutritional intake might help bring order to a woman's cycle.

Other home remedies also exist, and Rav Burstein told me that he has heard reports of limited success with these approaches. These home remedies, however, offer only limited success and have some noteworthy drawbacks. They often take considerable time to take effect, and older couples cannot necessarily afford to wait a year or two in order to see if these remedies will work. Even younger couples, who do not feel the same urgency to conceive immediately, can still experience unhealthy emotional stress in their marriages as their period of infertility continues. Moreover, noted fertility specialists Dr. Zalman Levine and Dr. Harry Lieman (along with Dr. David Serur (Associate Professor of Medicine at Weil-Cornell Medical Center), have all pointed out to me that, thus far, no scientific evidence has proven the efficacy of eating breakfast or the other home remedies. Accordingly, it would seem wise to seek out competent medical advice before deciding to attempt home remedies instead of recognized medical procedures.

Conclusion

I have become aware of an urgent need to inform people about this problem and its potential solutions. Rabbis and doctors have told me that appropriate halachic and medical advice can help resolve this problem in almost all cases.

Postscript—Machon Puah

It is very important to bring to the community's attention a most wonderful resource for Jews throughout the world. Machon Puah in Jerusalem provides halachic guidance to couples who are experiencing difficulties conceiving a child. Currently, their rabbinical staff includes rabbis who speak five languages. Rabbis are available full-time to respond to questions regarding the interface of Halachah and fertility. Moreover, Machon Puah is at the forefront of offering rabbinical supervision of fertility procedures. It is highly worthwhile for rabbis and laymen to consult with Machon Puah in case of need. One may contact them by e-mail at *questions@puah.org.il*.

In Vitro Fertilization

The twentieth century saw humanity's perceptions of life transformed in almost every way possible. Rabbis have faced a seemingly endless list of new halachic issues. Challenged by a world that is growing increasingly sophisticated at a pace unparalleled in all of history, they must constantly apply Divine law to new phenomena.[1] In Vitro Fertilization (IVF), which consists of removing an egg from a woman's body, fertilizing it, and then transferring it into either her or another woman's womb, exemplifies the complex issues that now face halachic authorities.[2]

Is IVF Permitted?

A great contemporary authority, Rav Eliezer Waldenberg (*Tzitz Eliezer* 15:45) objected to the entire procedure of IVF. Rav Waldenberg argues that whenever the fertilization fails, the husband has ejaculated to waste. Even when one sperm cell does fertilize the egg, Rav Waldenberg notes that the rest of the semen goes to waste. Rav Waldenberg further claims that one does not fulfill the *mitzvah* to have children (*peru ur'vu*) on any level through IVF.[3] Thus, he writes:

1. See Rav Faitel Levin's essay, "*Cheiker Hahalacha B'idan Hatechnologia Hechadash*" (*Techumin* 7:464–485), which presents broad and fundamental perspectives on the way that Halachah grapples with the challenges posed by modernity. On p. 471, he specifically focuses on the issue of IVF.

2. Dr. Mordechai Halperin (*Proceedings of the Association of Orthodox Jewish Scientists* 9:197–212) summarizes the development of this issue through 1987.

3. It seems that both artificial insemination and IVF fulfill *peru ur'vu* according to most authorities. See *Taharat Habayit* (1:1:6, note 6), where Rav Ovadia Yosef rules

> What does one gain by presenting a way to create children in this manner, if the creators of this child will not fulfill any Divine command and the practice of IVF will create profound and complex problems, which have the potential to cause the level of human morality to deteriorate more than a thousandfold?

Rav Waldenberg expresses particular concern that IVF will lead to cloning, which he deems an utter abomination because it could distort the human character.[4] Most halachic authorities reject Rav Waldenberg's approach.[5]

Rav Ovadia Yosef (*Teshuvot Yabia Omer* vol. 8, *Even Ha'ezer* 21) permits IVF for an infertile couple. He specifically permits IVF when the wife's eggs are being fertilized, but he does not address the propriety of IVF when another woman donates the egg. Rav Yosef Shalom Eliashiv (cited in *Nishmat Avraham* 5:113) also permits IVF when the wife's eggs are used, but not when using the egg of another woman. He insists on supervision of the IVF process to insure that only the genetic material of the husband and wife are used.[6] Rav Shlomo Zalman

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that a man fulfills *peru ur'vu* by fathering children through artificial insemination, *Assia* (34:5), *Contemporary Halakhic Problems* (4:240), and *Techumin* (1:287 and 24:156–159). For Rav Waldenberg's opinion of artificially inseminating a woman with her husband's semen (as opposed to IVF), see *Teshuvot Tzitz Eliezer* 22:57.

4. For further discussion of the propriety of cloning see *Techumin* (18:150-160), *Tradition* (32:3:31–86), and *The Torah U-Madda Journal* (9:182–247).

5. For a critique of Rav Waldenberg's responsum, see Rav Avigdor Nebenzahl's essay in *Assia* (vol. 34, Tishrei 5743; summarized in *Nishmat Avraham* 3:14–15). Although most *poskim* reject Rav Waldenberg's approach in the context of IVF, they do consider it in other contexts. For example, Rav Yigal Shafran (*Techumin* 20:347–352) uses it to argue against inseminating a woman with the sperm of her husband who died childless, reasoning that "this is an action that creates *androlomosya* [pandemonium] in the classical family structure . . . . This type of action can reverse the moral level of the world a thousand levels." Rav Shafran writes that the same applies to a single woman being artificially inseminated.

6. See *The Jerusalem Report* (July 3, 2000, pp. 12–16), which notes several incidents of suspected improprieties by medical staff in Israel, the country presumed to have the highest IVF rate in the world. Rav Ovadia Yosef (see *Yabia Omer*, vol. 8, *Even Ha'ezer* 21:2) and Rav Yaakov Ariel (*Techumin* 16:180) also insist on proper supervision of the IVF process by observant Jews. Rav Gidon Weitzman reports that Rav Yosef Shalom Eliashiv believes that someone external to the system must supervise the IVF procedures. According to his view, even observant Jewish doctors require proper rabbinical supervision (also see *Nishmat Avraham* 3:8). In cases where it is impossible to have rabbinical supervision of the IVF process, Rav Zalman Nechemia

Auerbach (cited in *Nishmat Avraham* 5:113) adds that an infertile couple is not obligated to undergo IVF in order to have children.[7]

Although most authorities do not fundamentally object to IVF, at least for married couples, several major problems do arise during IVF procedures,[8] including procuring the husband's sperm in a halachically acceptable manner, the permissibility of paying a woman to donate an ovum (if one's Rav permits using a donated ovum), concern for the possible *mamzeirut* (illegitimate status) of the donor (if permitted),[9]

Goldberg told me that the couple should impress upon the doctors that Jewish belief places a great emphasis on the biological identity of the parents, and that any tampering would be viewed with severe distress and concern. Thus, the doctors will fear (*mirtat*) mixing up different eggs and sperm. Rav Zalman Nechemia noted that DNA testing that can detect if a doctor improperly tampered with the process. In Halachah, we even believe those whom we would not ordinarily trust if they know that a reasonable possibility exists of their deception being discovered (*milta d'avidi l'igluyei*). Accordingly, Rav Zalman Nechemia rules that we may trust a non-Jewish or non-observant doctor who understands that we condemn deception and realizes that he may be caught should he attempt to deceive us (see *Chagigah* 20b and *Rosh Hashanah* 22b). Rav Gidon Weitzman informs me, though, that Rav Eliashiv believes that in this situation we may not rely upon *mirtat*.

7. See *Nishmat Avraham* 4:186, where Rav Shlomo Zalman is cited as objecting to IVF when the egg is not from the wife or when a woman other than the wife "hosts" the fertilized egg and gives birth to the child.

8. See Rav Asher Weiss's and Rav Gidon Weitzman's essays in *Techumin* (23:220-230) regarding the performance of IVF-related procedures on *Shabbat*. Rav Weiss rules that the halachic status of *choleh she'ein bo sakanah* (victim of a *non*-life-threatening illness) applies to the couple (which entails certain leniencies, as we discussed in an earlier chapter), and Rav Weitzman cites many other authorities who share this view. Nevertheless, Rav Weiss notes that in practice, it is always preferable to perform all necessary procedures during the week, as halachic questions can arise during every step of a procedure on *Shabbat*.

9. Concern for *mamzeirut* (described in the *Sifrei*'s comments to *Devarim* 23:3) could arise if we were to worry that the donor is a Jew born from an illicit relationship (other than *nidah*) punishable by *kareit* (such as adultery or incest). Rav Zalman Nechemia Goldberg, Rav David Feinstein, and Rav J. David Bleich all told me (in 1991) that we generally need not worry about this problem when doing IVF (see *Techumin* 10:281), as the majority of donors (*rov*) are not *mamzeirim*. Nevertheless, if we know for sure that a particular donor was a *mamzeir*, the resulting child would presumably also be a *mamzeir* (see *Tzitz Eliezer* 15:45). Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Even Ha'ezer* 3:11) claims, however, that a man cannot transmit *mamzeirut* to children whom he fathers without a sexual act. Accordingly, were a *mamzeir* to donate sperm for IVF, the child would not be a *mamzeir*. However, other authorities give no indication of accepting Rav Moshe's opinion.

and the credibility of a non-observant or non-Jewish doctor's assertion that he used the sperm and/or ovum of a particular person.

Defining Motherhood

In some cases of IVF, doctors implant the fertilized embryos inside a woman other than the source of the ovum.[10] These situations raise the difficult issue of determining whom the Halachah views as the fetus's mother. Authorities vigorously debate the definition of motherhood, with each side seeking to marshal proofs from classical sources.

The Aramaic Targum (translation of the Torah) attributed to Yonatan Ben Uzziel (*Bereishit* 30:21) cites a tradition that Rachel conceived and carried Dinah, while Leah conceived and carried Yosef. Leah prayed on Rachel's behalf that she should give birth to a boy and thus be the mother of one of the tribes. God accepted Leah's pleas on behalf of her sister and exchanged the two fetuses, so Leah's womb carried Dinah and Rachel's womb carried Yosef. Since the Torah records Leah as Dinah's mother and Rachel as Yosef's mother, one might conclude that, according to this Targum, giving birth confers the status of motherhood.

However, the *Tur* (*Peirush Tur Ha'aroch* on *Bereishit* 46:10) explains this *midrash* in a manner that seemingly indicates the exact opposite, that the ovum donor is the halachic mother in a case of surrogate motherhood. In analyzing the *midrash* (quoted by Rashi on *Bereishit* 46:10) that Shimon married his sister, Dinah, the *Tur* wonders why their union did not constitute incest. After all, Shimon and Dinah were both children of Leah, and marrying a maternal sister was prohibited even before the giving of the Torah. The *Tur* answers that, as quoted above from Targum Yonatan, Dinah began in Rachel's womb. Even after she was switched to Leah's womb, the Halachah still considered her to be Rachel's daughter, so she and Shimon thus had different mothers. Before the Torah was given, one was allowed to marry

10. Understandably, couples who require IVF normally wish for the procedure to be performed on the wife's own egg, after which she will carry the fetus herself. However, sometimes the wife has a medical condition that prevents her from carrying a fetus. In such a situation, she might provide the egg for IVF and seek a surrogate mother to carry the fetus. In other cases, the wife cannot produce eggs, so she seeks an egg donor for IVF, but she then wishes to carry the fetus herself. A couple should consult their Rav, however, as to whether it is permissible to undergo either of these types of IVF.

a paternal half-sister.[11] Therefore, Leah's son, Shimon, did not violate the Halachah when he married Rachel's daughter, Dinah. We thus see that according to the *Tur*, the Halachah defines motherhood by the woman whose egg forms the fetus, even if another woman gives birth to the baby. Of course, Aggadic passages usually cannot serve as definitive halachic proofs.[12] Nevertheless, the *Tur*'s words merit serious halachic consideration, especially because he is explaining how to understand the story from a halachic perspective.

Arguments in Favor of the Birth Mother

Megillat Esther (2:7) appears to repeat itself by recounting both that Esther had no mother or father and that her parents died. The Gemara (*Megillah* 13a) explains that the apparent redundancy teaches that Esther never had a parent. After she was conceived her father died, and her mother died in childbirth. Rashi explains that at the moment at which she could have been identified as Esther's mother, the woman died. This seems to imply that the act of giving birth confers the status of motherhood, as opposed to the act of conception. Once again, however, we are dealing with an Aggadic passage, so it might lack halachic significance.

Rav Zalman Nechemia Goldberg (*Techumin* 5:252) offers the strongest proof for those who define motherhood by giving birth.[13] He cites a passage from the Gemara (*Yevamot* 97b) that discusses a non-Jewish woman who conceived twins and converted during her pregnancy. The Gemara considers the babies to be half-brothers on their mother's side.[14] If the mother-son relationship between the woman and

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11. Even nowadays, Noachide law (Halachah pertaining to non-Jews) permits marrying a paternal half-sister, while a Jew may not marry any half-sister; see *Vayikra* 18:9, Rambam (*Hilchot Melachim* 9:5), and Rashi (*Bereishit* 20:12).

12. See Yerushalmi (*Pe'ah* 2:4), *Encyclopedia Talmudit* (1:62), *Teshuvot Yabia Omer* (vol. 8, *Even Ha'ezer* 21:2), and *Nishmat Avraham* (3:17).

13. In his essay, Rav Zalman Nechemia (*Techumin* 5:249–252) seeks to demonstrate that Rav Akiva Eiger (commentary to *Yoreh De'ah* 87:6) believes that conception establishes motherhood, whereas Rav Yosef Engel (*Beit HaOtzar*, entry "*Avot*") considers birth the determining factor.

14. The child of a Jewish mother and non-Jewish father is not considered to be related to his father, so he does not have any paternal relatives (see *Kiddushin* 68b–69a and Rambam, *Hilchot Melachim* 8:8).

her twins had begun at the time of conception, her subsequent conversion would have terminated it, based on the principle of *ger shenitgayer kekatan shenolad dami* (a convert is like a newborn baby, so he is no longer related to his original family). Accordingly, if the Gemara rules that this woman is related to her twins, the mother-son relationship must have come into existence only after her conversion. We must hence conclude that birth, and not conception, confers the status of motherhood. Indeed, Rav Eliezer Waldenberg (cited in *Nishmat Avraham* 4:184–186) writes that the birth mother is the baby's halachic mother. Rav Eliashiv (cited in *Nishmat Avraham* 4:184) also favors treating the birth mother as the halachic mother, but, as recorded in 1990, he believes that no definitive halachic resolution has been reached. Rav Gidon Weitzman informs me that Rav Mordechai Eliyahu believes that it is clear that the birth mother is the halachic mother.

Arguments in Favor of the Ovum Donor

Rav Ezra Bick (*Techumin* 7:266–270) disputes these two proofs. He argues that birth establishes or completes a maternal relationship only if the woman who gave birth to the child donated the maternal genetic material. Both Esther's mother and the female convert conceived the babies to whom they ultimately gave birth. On the other hand, giving birth to a baby who was formed from another woman's egg does not establish a mother-child relationship.

Rav Bick, in turn, cites a Talmudic passage (*Chulin* 70a) that discusses the status of a fetus who is transferred from one animal to another. The Gemara uses the word "*dideih*" ("his") to describe the fetus's relation to his genetic mother, whereas the second female animal (the birth mother) is described as "*lav dideih*" ("not his [mother]"). Rav Bick therefore concludes that birth does not confer the status of motherhood upon a woman unless she has provided the maternal genetic material of the child. A counter-argument might be that, in the case of the animal-fetus transplant, removal of the fetus from the first animal constitutes an act of birth, so the second animal acts merely as an incubator. One cannot claim, however, that the harvesting of an ovum from a woman is considered an act of birth.[15] Nevertheless, Rav Aharon

15. Many of the articles that we cite address fetal transplants, which seem to depend upon many of the same halachic issues as IVF. Rav Bick's proof from *Chulin* 70a may

Lichtenstein believes that the woman who donates the ovum is the halachic mother.[16] Rav Yaakov Ariel (*Techumin* 16:177) writes that this position "appears more logical" than defining motherhood by giving birth.[17] Rav Mordechai Willig told me that he is also inclined to this position.

Rav Itamar Warhaftig (*Techumin* 5:268–269) cites another Aggadic source (*Nidah* 31a) to show that the woman who donates the ovum is the halachic mother. The Gemara describes the physical attributes that each of the "three partners" in childbirth—God, mother, and father—provides, taking for granted that the mother contributes to the genetic makeup of the child. Of course, since this passage is Aggadic, its halachic impact is questionable.

Rav J. David Bleich (*Contemporary Halakhic Problems* 4:251–258) points out that the passage in *Yevamot* (about the convert who gives birth to twins) merely proves that birth can establish a maternal relationship, but it does not prove that only birth can create this relation-

apply only to fetal transplants. See also Rav Bick's essay in the Fall 1993 issue of *Tradition* (28:1:28–45), where he offers a novel approach for the argument that the woman who gave birth is the halachic mother. Rav J. David Bleich sharply criticizes Rav Bick's essay in the subsequent issue of *Tradition* (28:2:52–56).

16. See *Alon Shvut Bogrim* (14:147), where Rav Shmuel David describes a ruling that he received from Rav Lichtenstein in an actual case. A *Kohein* and his wife donated the sperm and egg cells to create an embryo that doctors then transferred into the womb of a non-Jewish surrogate mother. The non-Jewish woman gave birth to triplets, a girl and two boys, and returned them to the Jewish couple to raise. Rav Lichtenstein told Rav David to convert the babies out of deference to those authorities who consider the non-Jewish woman to be their mother. Nevertheless, Rav Lichtenstein permitted the sons to perform all the functions of *Kohanim*, for he fundamentally believes that they are considered descendants of the Jewish couple, not converts. Similarly, he ruled that the daughter may marry a *Kohein*, whom a female convert may not marry (see *Kiddushin* 78a).

17. For an infertile woman who wishes to have a child with her husband's sperm and another woman's egg, Rav Ariel recommends obtaining the egg from a non-Jewish woman. According to his position, this child will not be Jewish. After converting the baby, he or she will lack any formal Jewish lineage, thus avoiding many future complications, such as concern for incest with the egg donor's relatives. If the husband in such a couple is a *Kohein*, Rav Ariel notes that he must inform his son that, although they are genetically related, they lack any halachic connection. Consequently, the son does not have the status of a *Kohein*. Rav Ariel insists that if the family has a name such as "Cohen" or "Katz," they must change the family's name, lest people mistake their children for *Kohanim*. Rav Gidon Weitzman (personal communication) observes that according to Rav Ariel's approach, it may be preferable to request from the fertility specialist only girls in this case.

ship. Accordingly, Rav Bleich suggests that perhaps a woman can become a mother either by conceiving or by giving birth. Hence, in cases of surrogate motherhood or ovum donations, a child might have two mothers!

Neither side has demonstrated its position in a conclusive manner.[18] Hence, absent a clear consensus, Rav Shlomo Zalman Auerbach (cited in *Nishmat Avraham* 4:186), Rav Zalman Nechemia Goldberg (*Techumin* 10:281), Rav David Feinstein (personal communication), and Rav J. David Bleich (personal communication) rule that one must act strictly in accordance with both opinions. According to them, if the donor of the ovum is not Jewish, the child needs a conversion. Moreover, *Kohanim*, who may not marry converts (*Kiddushin* 78a), should not marry any girls born from a non-Jewish donor (see *Techumin* 10:280). On the other hand, if the donor is Jewish, records must be kept to ensure that the child does not marry any of the donor's other children (see *Techumin* 10:273–281).

Subsequent Complications

A number of other major issues emerge from the process of IVF. For example, authorities discuss the propriety of discarding fertilized eggs that are not transferred into a womb or using them for medical research. Rav Zalman Nechemia told me that he believes a fertilized egg does not have the status of a human life.[19] He explained that an act

18. In addition to these two main positions, Rav Shaul Yisraeli (*Chavat Binyamin* 2:68) presents a third approach. Based on the Talmudic teaching that a fetus is "mere liquid" for its first forty days (*Yevamot* 69b), Rav Yisraeli argues that the woman who is carrying the fetus on its fortieth day becomes its only mother, regardless of whether she donated the genetic material. Rav Yisraeli insists that transferring the fetus to a new womb after forty days in no way affects motherhood, even if the new carrier gives birth to the fetus. See also Rav Shlomo Zalman Auerbach's comments (cited in *Nishmat Avraham* 4:186) regarding whether carrying the fetus for forty days or three months before it is transferred to another woman's womb would impact the determination of motherhood.

19. See *Teshuvot Sheivet Halevi* (5:47), who distinguishes between the halachic status of a fetus and a fertilized egg. Regarding the permissibility of violating *Shabbat* to save a fertilized egg, he leans towards prohibiting the desecration of *Shabbat* even if technology improves to the point where most fertilized eggs develop into viable babies. Rav Mordechai Eliyahu (*Techumin* 11:273) forbids desecrating *Shabbat* in order to save a fertilized egg that has yet to be implanted.

must occur (transfer into a woman's womb) in order for the fertilized egg to develop, so its status differs from fertilized ova in the mother's womb, which develop independently. Rav Gidon Weitzman (speaking at the 5761 convention of Young Israel rabbis) similarly reported that many *poskim* permit discarding unused frozen embryos.[20]

Interestingly, the Rabbinical Council of America and Orthodox Union jointly sent a carefully worded letter (dated July 26, 2001) to President George W. Bush, endorsing embryonic stem cell research on existing embryos, such as those created for the purpose of IVF, that would otherwise be discarded (see Appendix).[21]

IVF often results in a woman carrying many fetuses at once. In many cases, all of the fetuses will die if some of them are not eliminated. For a survey of the permissibility of reducing the number of fetuses in such a situation, see *Nishmat Avraham* (5:148–149), *Techumin* (11:272–275), and Rav J. David Bleich's essay in Spring 1995 issue of *Tradition* (29:3:47–60).

Poskim also discuss whether one may use IVF as a means of genetic screening. Rav Shlomo Zalman Auerbach and Rav Eliashiv (cited in *Techumin* 21:107–116) reportedly permit producing children through IVF so that doctors can inspect the genetic makeup of the sperm and egg to verify that they are free of genetic flaws.

Rav Shlomo Zalman Auerbach (*Minchat Shlomo* 3:98:4)[22] questions whether a boy conceived through artificial insemination should have

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20. Rav Mordechai Eliyahu (*Techumin* 11:272–273) and Rav Chaim David Halevi (*Teshuvot Mayim Chaim* 61) permit discarding fertilized eggs that were not chosen for transfer into a womb. See also *Techumin* (16:181–186) for Rav Itamar Warhaftig's discussion of a complicated case that occurred in Israel. An egg was harvested from a woman, which was then fertilized with her husband's sperm. However, the couple waited before transferring the embryo into the woman's womb. While the embryo remained frozen, the couple separated and the husband fathered a child through another woman. The husband sought to dispose of the embryo, arguing that he did not wish to father a child with his wife under the new circumstances. The wife insisted that this embryo offered her only chance to have a child. Moreover, she claimed that her husband could not renege on his prior consent to participate in the IVF process. Although the couple did not present the case to a *beit din*, Rav Warhaftig ponders how a *beit din* would have ruled about it. See *Techumin* (22:392–411) for actual rulings of Israeli *batei din* regarding this issue.

21. For a discussion of the halachic issues regarding stem-cell research, see Dr. Avraham Steinberg's essay in *Techumin* (23:241–255).

22. This responsum appears as 124:1 in the *Mahadura Tinyana* of the *Minchat Shlomo*.

his *brit milah* on *Shabbat*.[23] Rav Hershel Schachter (in a lecture at Yeshiva University) ruled in practice against circumcising such a baby on *Shabbat*, and Rav J. David Bleich (*Tradition* 35:2) asserts that the same applies to a child who is conceived through in vitro fertilization.[24] However, Rav Ovadia Yosef (comments to *Nishmat Avraham* vol. 4 p. 226; *Yalkut Yosef*, *Sova Semachot* 2:151–152) permits circumcising a baby conceived through artificial insemination or IVF on *Shabbat*.[25] Parents should ask their rabbi if they must discreetly inform the *mohel* of the baby's background (as the *mohel* probably does not know the conception's circumstances).

Conclusion

As is evident from our discussion, IVF constitutes an extremely sensitive area, both in terms of Halachah and in terms of human emotions. Only close cooperation between one's personal Rav and a leading halachic authority can help a couple through this difficult procedure with competent and sensitive guidance.[26]

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23. Rav Shlomo Zalman bases his concern on a passage from the Gemara (*Shabbat* 135a) and a comment of Rabbeinu Chananeil (*Chagigah* 16a). The Gemara rules that we may circumcise on *Shabbat* only when the birth matches the Torah's description: "When a woman conceives and gives birth to a boy"—in a natural manner, then he shall be circumcised "on the eighth day" (*Vayikra* 12:2–3)—even on *Shabbat*. A baby born by Caesarean delivery, however, may not be circumcised on *Shabbat*.

24. Rav Bleich permits the parents to tell people that they have postponed the *brit* due to jaundice, or some other reason, in order to avoid publicly revealing how the baby was conceived.

25. He reasons that in a Caesarean birth (see footnote 23), the birth process itself is unnatural, whereas artificial insemination involves an unusual *conception* followed by a *completely natural birth*. Rav Gidon Weitzman reports that Rav Mordechai Eliyahu (addressing the 5762 Machon Puah conference) permitted circumcising a baby on *Shabbat* if he was conceived through IVF. Rav Weitzman also reports that Rav Yosef Shalom Eliashiv permitted circumcising a boy on *Shabbat* who was conceived through intrauterine insemination (IUI).

26. It is also strongly advised to consult with Machon Puah (questions@puah.org.il), a highly acclaimed institute in Jerusalem that deals with the interface of Halachah and fertility treatments. They offer rabbinical supervision of fertility treatments in many Israeli hospitals.

The Beth Din of America's Handling of the World Trade Center Agunot

The tragic events of the September 11, 2001, terrorist attacks on the Twin Towers of the World Trade Center, resulted in over two thousand deaths. As a result of this tragedy, fifteen cases of *agunot*[1] were presented to *batei din* (rabbinical courts) in the New York metropolitan area. The Beth Din of America, the *beit din* of the Rabbinical Council of America and the Orthodox Union, handled ten of these cases. In this chapter, we outline the halachic sources and background that enabled the Beth Din to permit these women to remarry by determining that their respective husbands had indeed died. Several of the prominent rabbis who participated

1. Literally "chained women," this term refers to women who wish to remarry but may not do so according to Halachah. In our previous volume, the first several chapters address the problem of *agunot* who may not remarry because their husbands cruelly withhold *gittin* (bills of divorce). The present chapter deals with a different type of *agunot*, women who may not remarry because their husbands have disappeared and might still be alive. It should be emphasized that many of the special leniencies that we cite in this chapter regarding *agunot* (such as relaxations in the definition of acceptable testimony) apply only to the latter type of *agunot*, but not to women whose husbands refuse to divorce them.

in the deliberations regarding these women's status have published *teshuvot* (responsa) about the cases. The *teshuvah* of Rav Gedalia Schwartz, the *Av Beit Din* (Chief Justice) of the Beth Din of America, appears in the 5762 issue of *HaDarom*. Responsa from Rav Zalman Nechemia Goldberg regarding all of the cases and Rav Ovadia Yosef regarding one case (a Sephardic husband) appear in the fourth volume of *Kol Zvi* (pp. 3–63) and were reprinted in *Techumin* (23:97–119).[2] The same volume of *Kol Zvi* also includes Rav Mordechai Willig's careful and methodical presentations of the tragedy's facts and the related halachic issues on which the rabbis involved needed to rule.

When a Wife Disappears

A husband whose wife disappears may not remarry without proof of her death. We are much more lenient, however, for men whose wives disappear, as the prohibition for a married man to marry a second wife is only rabbinic in nature, whereas the prohibition for a married woman to marry another man involves a capital Biblical offense (see *Pitchei Teshuvah*, *Even Ha'ezer* 1:14). Rav Yonah Reiss,[3] Director of the Beth Din of America, informed me that a number of husbands called the Beth Din of America after their wives disappeared in the World Trade Center attacks. Rav Reiss said that the Beth Din followed the view of the *Gesher Hachaim* (1:19 note 4), who rules that a husband may remarry if adequate evidence exists that his wife was at the place where a tragedy occurred, and that most people who were in her location and situation perished.[4]

General Background

Before discussing the World Trade Center *agunot*, we will present a basic overview of the process for determining the death of a husband when no body is found. Rabbis throughout the generations devoted

2. Rav Ovadia's responsum also appears in *Teshuvot Yabia Omer* (E.H. 10:18).

3. Citations of Rav Reiss throughout this chapter come from two lectures that I heard him deliver, as well as personal conversations.

4. See *Teshuvot Minchat Yitzchak* (1:6) regarding the necessary level of evidence in order to permit a man to marry his wife's sister during her lifetime, a Biblical prohibition (*Vayikra* 18:18).

extraordinary efforts to resolve cases of *agunot*. In fact, the *Otzar Haposkim* (in its 1982 edition) devotes no fewer than eight volumes, spanning approximately 1500 pages, to this topic alone. Fifteen hundred pages merely summarize the responsa literature on the subject of *agunot*! An example of some rabbis' extraordinary efforts is Rav Yitzchak Herzog (*Teshuvot Heichal Yitzchak*, E.H. 2:9), who writes that, although his doctors gave him strict orders not to read anything (for the sake of his eyes' health), he violated their command in order to research and issue a ruling regarding an *agunah*, due to the compassion he felt for her. Some rabbis, such as Rav Yitzchak Elchanan Spektor, were famous specifically for their special attention, sensitivity, and creativity in this area of Halachah.

From the time of the Gemara, *poskim* have tried to be as lenient and creative as possible regarding *agunot* while maintaining the integrity of the halachic process.[5] The *Sam Chayei* (17) describes the attitude of a rabbi grappling with an *agunah* situation:

> It is comparable to one who is running away from a lion and has encountered a bear, as the battle has caught him from the front and behind; just as he fears being lenient so, too, does he fear being strict.

This process continued in the twentieth century, as *poskim* responded to the enormous challenges that arose in that war-filled century. For example, Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Even Ha'ezer* 1:41–51 and 4:56, 58) and Rav Tzvi Pesach Frank (*Teshuvot Har Tzvi* E.H. 1:64–70) deal extensively with *agunot* from the Holocaust. Rav Yitzchak Herzog (*Teshuvot Heichal Yitzchak*, E.H. 2:1) writes at length about the rulings he issued regarding *agunot* from Israel's War of Independence. Rav Ovadia Yosef (*Teshuvot Yabia Omer* E.H. 6:3) records his rulings regarding the *agunot* of the Yom Kippur War of 1973. Regrettably, *poskim* have once again been summoned to deal with the many *agunot* resulting from the World Trade Center terrorist attacks.

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5. For further discussion of the general attitude of profound urgency that *poskim* maintain towards *agunah* problems, see Rav Ovadia Yosef (*Teshuvot Yabia Omer*, E.H. 6:3) and *Otzar Haposkim* (8:203–211).

Methodology

The *Otzar Haposkim* (8:203–211) outlines the basic methodology of *poskim* regarding cases of *agunot*. *Poskim* emphasize that not just any rabbi may resolve questions in this area. Rather, only a rabbi of great stature should rule upon a matter of such great urgency (see the many sources cited in the *Otzar Haposkim* 8:206–207). Moreover, when possible, it is customary for three eminent rabbis to consult one another and agree upon a conclusion before issuing a lenient ruling. The *Aruch Hashulchan* (E.H. 17:255) documents this practice:

> It is a major principle (*klal gadol*) regarding permitting *agunot* to remarry that in any case where a lenient ruling is not straightforward and a rabbinical ruling is necessary, even the greatest of rabbis should not issue a permissive ruling until two other great rabbis concur with his ruling. This has always been the practice of all eminent rabbis, as is evident from all of the responsa literature . . . and one should not deviate from this practice.

In our case, the Beth Din of America's leading *dayanim* (judges)—Rav Gedalia Schwartz and Rav Mordechai Willig—deliberated concerning the World Trade Center *agunot*. In addition, before it permitted these women to remarry the Beth Din of America consulted with Rav Ovadia Yosef and Rav Zalman Nechemia Goldberg, who issued permissive rulings. The Gemara (*Yevamot* 121a) might provide a source for the practice of consulting numerous authorities before ruling on the status of *agunot*. In the context of a discussion about *agunot*, the Gemara cites a verse from *Proverbs* (11:14) to teach that salvation comes when one seeks much advice.[6]

The *Chavatzelet Hasharon* (E.H. 28) records his practice (as he learned from one of his teachers) in resolving *agunah* situations. First, he would thoroughly research the facts of the situation. He would employ his own common sense to consider whether it appeared logical to conclude that the husband had died, and only subsequently would he explore whether his initial assessment was consistent with Halachah. Rav Yosef Eliyahu Henkin writes (*Lev Ivra*, printed in *Kitvei ha-Gria*

6. The Gemara illustrates this principle by recounting how Rav once consulted Shmuel regarding a difficult question, and Shmuel saved him from issuing a mistaken ruling.

Henkin, p. 164) that this is the accepted practice. In the World Trade Center situation, Rav Yonah Reiss and his assistants at the Beth Din of America devoted months of meticulous research, in coordination with many public and private agencies and firms, to compile the "raw material" from which the *dayanim* of the Beth Din could reach conclusions. His research included obtaining telephone, cell phone, subway, and elevator records, as well as the results of DNA testing and dental records. In fact, the leniencies of the Gemara and all subsequent authorities are predicated on the assumption that exhaustive research has been undertaken.[7]

Meticulous proceedings in the *beit din* are a hallmark of properly resolving *agunah* situations. The *beit din* must know the appropriate questions to ask witnesses and how to collect information from the witnesses properly. Indeed, collecting evidence improperly has in the past impeded a lenient resolution of *agunah* situations (see for example, *Teshuvot Beit Shlomo*, E.H. 43).

Hearing the Testimony

The *Otzar Haposkim* (8:204) notes that the authorities always emphasize in their *agunah* responsa that they issued very stern warnings to the witnesses about the importance of testifying truthfully. Although a warning against perjury is a standard feature at all *beit din* proceedings (see *Shulchan Aruch*, *Choshen Mishpat* 28:7), in the context of *agunot*, the *beit din* administers sterner warnings than usual. This practice balances the fact that many rules regarding the validity of witnesses and evidence are relaxed for the purposes of permitting an *agunah* to remarry. For example, women (even including the *agunah* herself), relatives, and those who are inadmissible witnesses merely on a rabbinic level are all acceptable witnesses in this context (*Yevamot* 121–122 and *Shulchan Aruch*, E.H. 17:3). Hearsay evidence (*eid mipi eid*) and the testimony of one witness are also valid specifically regarding *agunot* (*ibid.*). The stern warnings counterbalance these leniencies.

Moreover, some well-meaning people might be tempted to lie in order to help free the *agunah*. If they believe that the husband has died based on questionable evidence, they might present their conclusion to *beit din* as absolute knowledge. The severe warnings serve to

7. "*Ishah dayka u'minsaba*." See *Yevamot* 115a; Ra'avad to Rambam, *Hilchot Geirushin* 13:29; and *Beit Shmuel* 17:10.

counter such attitudes. Indeed, the Rambam (*Hilchot Geirushin* 13:29) explains that *Chazal* relaxed the laws of testifying in the context of *agunah* because people are severely disinclined to testify falsely when the lie can be discovered, thereby ruining their reputations. The severe warning reinforces this attitude, as it instills fear in the witnesses that they will face harsh consequences if they are caught lying.

Interestingly, Rav Ovadia Yosef (*Teshuvot Yabia Omer*, E.H 8:18) accepts the testimony of most contemporary non-observant Jews in the context of *agunot*.[8] This ruling is quite noteworthy because Rav Ovadia repeatedly rules (in numerous *teshuvot* in the same volume of *Yabia Omer*) that a non-observant Jew is not a valid witness in any other area of Halachah.[9]

Issuing a Ruling

The *Otzar Haposkim* (8:210) notes that *poskim* try to collect many reasons to support a lenient ruling about an *agunah*, reflecting the enormous responsibility that weighs on the shoulders of *poskim* who issue rulings on this matter. Thus, even if one particular reason convinces a rabbi to rule leniently, he will still seek additional reasons to strengthen his ruling. Finally, *poskim* must act prudently when issuing lenient rulings regarding *agunot*. The *Otzar Haposkim* (*ibid*.) notes that many rabbis wait until the end of a year from the time the husband disappeared to issue a lenient ruling. Indeed, Rav Gedalia Schwartz reports that when he consulted with Rav Ovadia Yosef regarding one of the World Trade Center *agunot*, Rav Ovadia agreed with the ruling, but Rav Ovadia advised that the Beth Din wait until a year had elapsed since September 11, 2001, before issuing a lenient ruling.

The *Otzar Haposkim* (8:211) concludes by citing from the *Devar Emet* (108) that once a duly recognized and competent *beit din* has issued a lenient ruling to permit an *agunah* to remarry, another *beit din* or Rav should not attempt to revisit the case and review the cogency of the *beit din*'s ruling. Otherwise, the *agunah*'s plight would never be truly resolved until she received the approval of every halachic authority in the world, which is obviously unnecessary.

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8. Rav Ovadia addresses a case that depended on the testimony of an airline steward, who presumably worked on *Shabbat*.

9. For discussion of accepting contemporary non-observant Jews as witnesses at wedding ceremonies, see *Gray Matter* (1:83–90). [is this to be known as "*Gray Matter One*" or *". . . 1"*?]

The Range of Possible Scenarios

We shall divide our discussion of actual cases into three basic categories. In the first category, human remains have been found and the *beit din* must determine that the remains are those of the missing husband. In a more complicated type of case, no body has been discovered but evidence proves that the husband was, at the time of the attacks, in a part of the World Trade Center where all or nearly all people perished. The final category is when no empirical evidence proves that the husband was in the disaster's location, but following his usual routine would have led him to be there.

The Sequence of Events on September 11, 2001

Rav Willig records the key events of the attacks on the World Trade Center in his essay in *Kol Zvi*. The first plane hit the North Tower of the World Trade Center at 8:46 A.M. between floors 93 and 98. The Beth Din of America determined (after consultation with experts) that this immediately destroyed the elevators and all stairways from the ninety-second floor and above. Thus, anyone who was located in this part of the building at the time of the plane's impact could not escape. Indeed, there are no known survivors from the ninety-second floor or above. The building collapsed at 10:29 A.M.

The second plane hit the South Tower at 9:02 A.M. between floors 84 and 87, and this building collapsed at 9:59 A.M. Of those who were at floor 78 and above at the time of impact, only ten are known to have survived. The ten who survived were standing by stairwell "A." The elevators and stairwell "B" were destroyed by the impact of the plane. It seems that stairwell "A" remained intact only for a very brief time after the impact, and that only people who were standing immediately next to it were able to survive. The ten survivors sustained very serious injuries and would not have survived without immediate hospitalization.

Identifying the Man's Remains: Classical Simanim

The simplest way to solve an *agunah*'s case is to find the husband's body intact within three days of his presumed death. The *Shulchan Aruch* (E.H. 17:24–26) codifies the Mishnah (*Yevamot* 120a) according to which one may identify a husband within three days of death and

only if the face (including the nose) is intact. In the absence of such evidence, however, *simanim* (identifying characteristics) on the body of the deceased are necessary for identification. Many of the most obvious traits, such as a ruddy complexion or the fact that he is either tall or short, do not suffice, as they are quite common. Rather, witnesses must find a *siman muvhak* (a unique characteristic) in order to identify the husband (*Shulchan Aruch* E.H. 17:24). The *Beit Shmuel* (17:72) and *Aruch Hashulchan* (E.H. 17:172) cite the *Mas'at Binyamin* (63) as asserting that if fewer than one in a thousand people share this feature, then it is classified as a *siman muvhak*.

In the absence of a *siman muvhak*, we check for a middle category, *simanim beinoniyim*, features that are neither very common nor very rare. Rather than automatically accepting or discounting a *siman beinoni*, the practice is to treat two such *simanim* as equivalent to one *siman muvhak*. Furthermore, one such average *siman* may be combined with other relatively convincing evidence that indicates that the body is that of the missing husband.[10] The *Aruch Hashulchan* (*ibid*.) cites an opinion that "numerous" inadequate *simanim* may be combined to constitute one *siman beinoni*,[11] but each case must be judged independently by the leading halachic authorities of the time, who must evaluate whether all the various types of inadequate *simanim* in the particular case indeed combine to render the odds of a mistaken identity less than one in a thousand (the aforementioned definition of a *siman muvhak*).

An enormous volume of literature exists concerning the classification of specific features. For example, the *Otzar Haposkim* (5:288–324) summarizes responsa addressing no fewer than 165 bodily features. In addition, the *Otzar Haposkim* (5:206–280) summarizes the various opinions regarding what combinations of *simanim* are adequate to identify a husband.

Identifying the Remains: Modern Techniques

Classifying dental records and DNA evidence in terms of the above categories of *simanim* is critical in resolving the plight of World Trade Center *agunot*. The *Beit Shmuel* (17:72) rules that a hole that goes

10. See *Pitchei Teshuvah* (E.H. 17:106). Also see *Aruch Hashulchan* (E.H. 17:172), who cites many *poskim* as ruling that two *simanim beinoniyim* may combine to form one *siman muvhak*.

11. See *Teshuvot Ein Yitzchak* (vol. 1 E.H. 20).

through an entire tooth constitutes a *siman muvhak*. The *Aruch Hashulchan* (E.H. 17:173), writing in the late nineteenth century, asserts that holes in teeth do not constitute a *siman muvhak*, as they are very common. However, Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, E.H. 4:57, writing in 1959) and Rav Ovadia Yosef (*Teshuvot Yabia Omer*, E.H. 6:3:4:20, writing in 1974) rule that dental records may help identify a missing husband, in conjunction with other evidence. Rav Ovadia explains that the dental records are much more specific than the identifying marks that the *Aruch Hashulchan* addresses. Rav Zalman Nechemia Goldberg mentions in *Kol Zvi* that halachic authorities in Israel commonly accept dental records as a *siman muvhak*. The Beth Din of America partially relied upon dental records for identifying some of the missing husbands.[12]

In recent years, *poskim* have been asked to address the halachic status of DNA testing.[13] *Poskim* do not accept or require a DNA test to determine an individual's status as a *mamzeir* (illegitimate child).[14] However, Rav Shmuel Wosner and Rav Nissim Karelitz (*Techumin* 21:123) rule that DNA is admissible as partial evidence together with other corroboratory evidence to determine the identity of a missing husband. They believe that DNA evidence constitutes a *siman beinoni*.[15] Rav Wosner and Rav Karelitz far prefer a DNA test using a sample from

12. Rav Zalman Nechemia even accepts dental records that were procured by halachically invalid witnesses, especially since they acted as government workers (which increases their trustworthiness, as we explain later).

13. See the Torah journal *Yeshurun* (12:480-535) for a collection of discussions and rulings about the halachic status of DNA testing.

14. See Rav Yosef Shalom Eliashiv (*Kovetz Teshuvot* 135), *Teshuvot Yabia Omer* (E.H. 10:8), Rav Shmuel Wosner and Rav Nissim Karelitz (*Techumin* 21:123), and Rav Shlomo Dichovsky's responsum (published in *Teshuvot Bikurei Asher* 6). It should be noted that Rav Dichovsky wrote his responsum in 1982. One wonders how further technological advances would impact his position. Interestingly, Rav Mordechai Willig (in his essay in *Kol Zvi*) suggests that DNA testing does not prove *mamzeirut*, despite its high accuracy, because the child could have been fathered through artificial insemination, which does not create *mamzeirut* according to Rav Moshe Feinstein and a number of other *poskim* (see *Teshuvot Igrot Moshe*, E.H. 1:10.71 and 2:11; three responsa printed as an addendum to *Dibrot Moshe* on *Ketubot*; *Teshuvot Chelkat Yaakov* 1:24, and *Nefesh Harav* p. 255).

15. More precisely, they consider DNA evidence from a relative to be a *siman beinoni* and DNA evidence from the person himself to be better than a *siman beinon*i but incapable alone of permitting an *agunah* to remarry, without additional evidence. See *Techumin* 24:396, where Rav Yitzchak Oshinsky delineates the reasons that some authorities do not consider DNA tests to constitute a *siman muvhak* despite their exceedingly high accuracy.

the missing person's personal effects (such as hair from his hairbrush or saliva from a toothbrush) to a DNA test that uses the DNA of immediate family to make an identification.

Rav Zalman Nechemia Goldberg writes at some length on this issue and concludes that DNA evidence constitutes a *siman muvhak*. He notes that the chance of error regarding DNA evidence ranges from a billion to one to a quintillion to one, far exceeding the requirement that a *siman* be shared by no more than one in a thousand people in order to constitute a *siman muvhak*. Rav Zalman Nechemia draws an analogy between DNA evidence and Rav Yitzchak Elchanan's ruling (*Teshuvot Ein Yitzchak*, E.H. 1:31) that a photograph of a missing husband showing that he is dead is sufficient evidence of his death.[16] Rav Shlomo Zalman Auerbach (cited in *Nishmat Avraham*, E.H., p. 37) similarly seems to regard DNA evidence as conclusive proof regarding all areas of Halachah. Rav Eliezer Waldenberg is cited (*Nishmat Avraham*, *ibid*.) as ruling that DNA evidence constitutes partial evidence for halachic purposes. The Beth Din of America partially relied upon DNA testing in the identification of some of the missing husbands.

Assuming that these forms of evidence fundamentally may identify a husband, one could still question whether civil authorities should be trusted when they report the results of these processes. The *Shulchan Aruch* (E.H. 17:14) codifies a ruling of the Gemara (*Gittin* 28b) that one may not rely upon the report of a non-Jewish court that it has executed a Jew. *Rishonim* explain that the authorities might falsely report that they executed the Jew in order to glorify the effectiveness of their judicial system, or simply to instill fear in the residents of the land.

Acharonim debate, though, whether we may rely upon a government-issued report that someone has died when it is clear to us that the concerns offered by the *Rishonim* do not seem relevant. In the early nineteenth century, two premier authorities of the time debated this issue. Rav Mordechai Banet sent a letter to the *Chatam Sofer* (E.H. 43), arguing against the validity of such a report, but the *Chatam Sofer*

16. The Netziv (*Teshuvot Meishiv Davar* 4:23) and Rav Ovadia Yosef (*Teshuvot Yabia Omer*, E.H. 6:3:3:19) also regard photographs as a *siman muvhak*. Presumably, a *beit din* nowadays would need to verify that a photograph was not forged before admitting it as evidence. Otherwise, technological advances enable unscrupulous individuals to fabricate evidence. For example, Rav Shlomo Fischer once voiced his concern to me (when I observed the workings of the Jerusalem Rabbinical Court in 1993) that conducting divorce proceedings by video teleconference (see *Techumin* 14:272–276) runs the risk of forgery.

replied that one may accept it. Later nineteenth century authorities such as Rav Yitzchak Elchanan Spektor (*Teshuvot Be'er Yitzchak*, E.H. 5:4)[17] and Rav Shlomo Kluger (*Teshuvot Ha'elef Lecha Shlomo*, E.H. 97) accept the *Chatam Sofer*'s lenient view. Rav Kluger explains that non-Jewish government officials fear the consequences of being caught as liars, so we may trust their reports. In fact, the *Aruch Hashulchan* (E.H. 17:80), writing in the late nineteenth century, records that the lenient view has generally become accepted[18] (also see *Teshuvot Yaskil Avdi*, E.H. 5:20:3).

Rav Yitzchak Elchanan's reasoning on this matter appears quite cogent. He notes that, unlike other areas of Halachah, a non-Jew's testimony *is* valid regarding *agunot* if he speaks about the matter in passing (*meisi'ach l'fi tumo*). On the other hand, a non-Jew has credibility in other areas of Halachah only if he testifies about a matter in his professional capacity (*uman lo mar'ei anafshei*), such as a chef testifying that a food item does not taste like a non-kosher ingredient that fell into it by mistake.[19] Accordingly, reasons Rav Yitzchak Elchanan, a non-Jew testifying in his professional capacity is certainly believed in the context of *agunot*, where the Halachah is extraordinarily lenient about the type of testimony that is acceptable.

Rav Moshe Feinstein (*Teshuvot Igrot Moshe* E.H. 1:48) admits the testimony of the United States War Department that the plane of a missing pilot plunged into the English Channel during World War II; elsewhere (E.H. 4:58:7), he similarly accepts the testimony of the Belgian government that the Nazis transported a missing husband to Auschwitz. Rav Ovadia Yosef (*Teshuvot Yabia Omer*, E.H. 7:14) admits the testimony of the Russian government that a missing husband died in a battle with the Nazis during World War II.

Accordingly, the Beth Din of America partially relied upon the New York City Medical Examiner's testimony regarding DNA tests

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17. It should be noted that Rav Yitzchak Elchanan's responsum shows clear signs of being edited in order not to offend the non-Jewish government. He adds an entire disclaimer explaining that concern for dishonesty among non-Jewish government officials existed only in Talmudic times, so he is discussing these laws only for their theoretical value. Nevertheless, he seems to sincerely trust non-Jewish governmental records.

18. He adds, though, that as thorough an investigation as possible should be conducted in order to corroborate the report.

19. See *Shulchan Aruch*, *Yoreh Deah* 98:1; *Shach*, Y.D. 98:2; and *Bei'ur Hagra*, Y.D. 98:2.

administered under his auspices. Rav Willig notes that he and other members of the Beth Din of America were permitted to visit and evaluate the procedures of the New York City Medical Examiner's laboratory. Rav Willig was duly impressed by the professionalism of this office and concluded that the chance of error in the operation of this office is virtually nil. In fact, Rav Yonah Reiss reports that the Medical Examiner's office told him that dental records are examined no fewer than five times to insure an accurate identification.

In addition, Rav Zalman Nechemia writes that we may rely upon American Airlines' assertion that a missing husband was on board one of the planes that crashed into the World Trade Center. He reasons that they also have a professional reputation to uphold and thus may be trusted according to Halachah. He adds that there is no apparent reason for American Airlines to lie about such a matter, as it only serves to increase their exposure to liability for the passenger's death.

Personal Items in the Wreckage

In some situations, a husband's body cannot be found, but people do discover personal items of his near the scene of the disaster. In fact, a pair of pants (that had pieces of skin and bones) were found in the World Trade Center wreckage containing the wallet (including a driver's license and credit cards) of a missing husband whose body was not found.

The *Shulchan Aruch* (E.H. 17:24) rules that even highly unique items that are found on a body cannot serve to identify the body, for the missing husband might have lent these items to someone else. The *Shulchan Aruch* makes no exceptions, apparently disqualifying even items that one normally does not lend. However, the *Chelkat Mechokeik* (17:42) cites a dissenting opinion, which permits identifying a body based on the discovery of highly unique and personal items such as one's wallet or ring, which one does not normally lend to others.[20] The *Beit Shmuel* (17:69) adopts the latter position. The *Otzar Haposkim* (5:173–205) summarizes rabbinical rulings about whether any of ninety-five personal items constitutes something that people would not normally lend.

20. See *Pitchei Teshuvah* (E.H. 17:95) for a lengthy summary of this issue.

Rav Moshe Feinstein (*Teshuvot Igrot Moshe* E.H. 4:57) and Rav Ovadia Yosef (*Teshuvot Yabia Omer*, E.H. 6:3:2) combine the discovery of such items with other evidence in order to identify a missing husband.[21] Thus, Rav Gedalia Schwartz reports that the Beth Din of America partially relied upon the discovery of the pants containing personal items of the aforementioned missing husband. One may add that although one might lend clothing to others, one does not normally share business attire with others. Businessmen in many companies are quite meticulous about their appearance and generally wear only items that are professionally tailored to fit them perfectly. Thus, it would be highly unlikely for someone to lend his pants to a friend to wear at his business office on a workday. Rav Zalman Nechemia further comments that in today's affluent society, men do not commonly lend their pants to others.

When No Remains are Found

Those missing husbands whose remains did not turn up posed a much greater challenge for the Beth Din of America. If a man is lost in *mayim she'ein lahem sof* (waters that have no visible boundary), the Gemara (*Yevamot* 121) prohibits his wife from remarrying. Although most people who are lost in *mayim she'ein lahem sof* perish, the Rabbis were concerned that the husband might have surfaced somewhere down the river, unbeknownst to us. *Tosafot* (*Yevamot* 36b s.v. *Ha*) note that a significant minority (*mi'ut hamatzui*) of husbands might have been saved in such situations. Thus, in any situation where no remains were found, the wife may not remarry if a significant minority of people could have survived her husband's situation. Although the Halachah normally follows the *rov* (majority; see *Chulin* 11), *Tosafot* explain that the Rabbis treated the case of a missing husband especially strictly due to the severity of adultery (which would result if the woman "remarried" when her husband was still alive).

Nonetheless, once it has been proven that a husband entered a situation in which most people die, there are many circumstances that can permit his wife to remarry. For example, the *Shulchan Aruch* (E.H. 17:23), based on the Mishnah (*Yevamot* 122a), presents a situation

21. Rav Ovadia suggests that finding a husband's army uniform is better evidence than other garments, as the army does not permit lending it to other people.

where people witnessed a man from afar proclaim, "I, so-and-so the son of so-and-so, have been bitten by a snake and am about to die." The people later discovered an unrecognizable body. The Mishnah permits the wife to remarry even though the man's body was not positively identified at a later time. Rav Jonas Prager (*The Journal of Halacha and Contemporary Society* 44:5–30) records that the *beit din* of the Belzer community released a woman from the status of *agunah* based on similar circumstances, even though the husband's body was not yet found. The husband, who was trapped in the World Trade Center, called a friend on his cellular phone and said that he was about to die.[22] He remained on the phone until the moment of death.

The first step for a *beit din* to issue a lenient ruling in such a case is to establish that husband and wife were at peace with each other, in order to guarantee that the man had no apparent motivations to flee his family (see Mishnah, *Yevamot* 114b). Rav Yechezkel Landau (*Teshuvot Noda Biy'hudah*, E.H.2: 47) adds that the *beit din* should investigate whether the man established a regular pattern of returning home each day after work or immediately after a brief trip. Rav Landau explains that once this is established, then there are serious indications (*raglayim ladavar*) that the husband is no longer alive. Rav Landau explains:

> Although this is insufficient basis upon which to issue a permissive ruling, nonetheless, it is a point of departure from which it is appropriate to search for leniencies within the Halachah [to permit the woman to remarry].

After determining that the couples were all at peace, the Beth Din of America then sought to establish that each husband was in a section of the World Trade Center where very few or no people survived at the time of the terrorist attacks. This goal was accomplished by finding e-mail messages (as noted by Rav Ovadia Yosef in his responsum on the World Trade Center *agunot*), telephone calls, or eyewitnesses. For example, Rav Ovadia Yosef verified a husband's presence in the World Trade Center based on the fact that the man called his wife from there

22. Rav Ovadia Yosef (in his responsum regarding a World Trade Center *agunah*) notes that Halachah regards voice recognition (*t'viut eina d'kala*) as a valid means of identification (*Gittin* 23a), and many *poskim* accept a woman's telephone appointment of an agent to receive a *get* (divorce document); see *Teshuvot Beit Yitzchak*, E.H. 2:13; *Teshuvot Sha'arei Deah* 1:194; *Teshuvot Maharshag* 2:250; and *Teshuvot Igrot Moshe*, E.H. 1:139.

after the plane hit the North Tower, stating that he was evacuating his office in the North Tower, which was located above the ninety-second floor.

In a less simple case, one husband phoned his wife that he arrived in his office in the North Tower (above the ninety-second floor) at 8:20 A.M. and was not heard from subsequently. Accordingly, he clearly arrived at work before a plane hit his building, but there is no evidence that he was in the building at the time the plane hit it. Rav Zalman Nechemia ruled that one may rely on the halachic principle of *chazakah* (that the status quo was maintained). Halachah permits relying upon the status quo (*chazakah*) unless there is a *rei'utah* (a disturbance to the *chazakah*). For example, we routinely rely upon the validity of an *eruv* on *Shabbat* based on an inspection that took place before *Shabbat*, as normally there is no reason to believe that the *eruv* was damaged since its last inspection.[23] Regarding the World Trade Center, the assumption that there was no disturbance to the *chazakah* applies to those who were in the North Tower before 8:46 A.M., but not to the South Tower's occupants, as many people evacuated the South Tower after the North Tower was hit.

Rav Mendel Senderovic (in the aforementiond *Kol Zvi*) writes that it appears difficult to rely on *chazakah* in cases of *agunot*, as the Halachah does not permit relying upon *rov* in such situations. In general, the Gemara (*Kiddushin* 80a) states that a *rov* is more effective than a *chazakah*, so it appears obvious that the Halachah cannot rely upon *chazakah* to permit an *agunah* to remarry. Rav Senderovic cites that Rav Yitzchak Elchanan (*Teshuvot Ein Yitzchak* 2:1) did not rely upon *chazakah* alone to permit an *agunah* to remarry. However, in Rav Yitzchak Elchanan's case, he ruled leniently as there was also a *rov* upon which to base a leniency. Rav Yitzchak Elchanan asserts that a combination of a *rov* and *chazakah* may be relied upon to permit an *agunah* to remarry. In the World Trade Center situation, Rav Senderovic argues that in addition to the *chazakah*, there exists a *rov* that if the missing husband actually survived, he would have contacted his family. Thus, while he questions Rav Zalman Nechemia's reasoning, Rav Senderovic does not challenge his actual lenient ruling.

Once they established that the husband in question was in the World Trade Center during the attacks, the Beth Din of America began exploring ways to establish that he indeed perished, rather than viewing the

23. For a discussion of the laws of *eruvin*, see *Gray Matter* (1:165–199).

World Trade Center as parallel to *mayim she'ein lahem sof*. The *Shulchan Aruch* (E.H. 17:30), based on the Gemara (*Yevamot* 121b), rules that one who witnessed a husband fall into a cauldron of fire may testify that the husband died. The *Beit Shmuel* (17:92) cautions, though, that this ruling obviously applies only to a fire from which the husband would be unable to extricate himself. Once it has been proven that the husband entered a situation that no person could survive, the Halachah does not concern itself with the possibility that a miracle occurred and the husband was saved in defiance of the laws of nature.[24]

Rav Ovadia Yosef ruled that those who were caught at or above the floors where the hijacked planes hit the World Trade Center parallel the case of one who fell into a burning cauldron. A huge fire erupted upon impact, as the terrorists chose very large planes that were on cross-country flights and thus held huge amounts of fuel. Those individuals who were unfortunately caught at that point can be described as being trapped in a cauldron of fire. Rav Gedalia Schwartz adds that although we did not see the individual husbands being trapped in the fire, knowledge that they were located in the relevant area constitutes sufficient evidence of their death. Rav Schwartz compares this situation to a case cited in the *Otzar Haposkim* (6:255) in which a fire erupted on a ship. The *Tzeil Hakesef* (2:4) permitted the wife of a prisoner who was held in the bottom of the boat to remarry. Despite the fact that witnesses did not actually see her husband being engulfed by the fire, he could not have possibly survived because he was shackled in chains, with no possibility of escape.

Rav Gedalia Schwartz suggested another avenue of leniency, which Rav Ovadia Yosef also adopted. The Gemara (*Yevamot* 114b) rules that a wife who asserts that her husband died in a building collapse is believed only if she also states that she buried him (see *Shulchan Aruch*, E.H. 17:51). The Gemara explains that we do not believe her otherwise, lest she actually know only that he was in the building and erroneously assumes that he died in its collapse. The Gemara's ruling seemingly complicates attempts at permitting the World Trade Center *agunot* to remarry, as the husband's presence in a building during its collapse does not prove that he died.

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24. See *Tosafot* (*Yevamot* 121b s.v. *Ein*), who note that the *Yerushalmi* (*Yevamot* 16:3) actually does raise the possibility that a miracle occurred. Regardless of the *Yerushalmi*'s position, we follow the rulings of the Babylonian Gemara, which does not concern itself with such an eventuality.

Nonetheless, a responsum from World War I demonstrates that there are situations where a husband's presence in a collapse constitutes sufficient proof of his death. Rav Avraham Yitzchak Kook (*Teshuvot Ezrat Kohein* 25, cited in *Otzar Haposkim* 8:83) was presented with a case in which a Jewish soldier was in a railway station that was attacked by German artillery, resulting in a mountain of dirt falling upon the building. Among his reasons for permitting the wife to remarry, Rav Kook suggests that only in the case described by the Gemara and *Shulchan Aruch* does the building collapse not constitute evidence of death, because there was a possibility that the husband was not hit by the collapsing building materials. Thus, it is analogous to *mayim she'ein lahem sof*, where most people die, but the woman may not remarry because her husband could have been one of the significant minority who survived. However, in the case presented to Rav Kook, the mound of dirt was so massive that it was impossible to survive the collapse.

Similarly, Rav Meir Arik (*Teshuvot Imrei Yosher* 2:24) determined that there could not be any survivors when a particular train fell off a bridge while transporting troops. Hence, he ruled that demonstrating a husband's presence on the train constituted sufficient proof that he perished. In light of Rav Kook's and Rav Arik's responsa, Rav Schwartz and Rav Ovadia argued that even if the husband somehow survived the fire on the top floors of the World Trade Center, he would have been inevitably killed by the collapse of the Twin Towers or by falling from a very high story.

Moreover, the *Aruch Hashulchan* (E.H. 17:247) raises the possibility that in a case where people thoroughly searched the rubble of a collapsed building for survivors and did not find the husband, then one may assume that he perished in the building collapse.[25] Rav Ovadia applies this ruling in the case of the World Trade Center tragedy, as an extensive and sophisticated search was conducted for survivors.

Six Leniencies Regarding Mayim She'ein Lahem Sof

Moreover, there are at least six potential ways to distinguish between the situation of *mayim she'ein lahem sof*, in which the Gemara forbids the woman to remarry, and disasters such as the World Trade Center attacks. First, *Tosafo*t (*Avodah Zarah* 40b s.v. *Kol* and *Yevamot*

25. He concludes that he is unsure whether to adopt this position in practice.

36b s.v. *Ha*, but see *Bechorot* 20b s.v. *Chalav*) explain that *Chazal* were strict in a case of *mayim she'ein lahem sof* because the husband may have survived the calamity in a significant minority of cases. However, very few, if any, individuals who were at or above the point of the planes' penetration survived the attacks. Thus, the stringency that *Chazal* applied to *mayim she'ein lahem sof* might not apply to the World Trade Center tragedy. Moreover, even if there is doubt as to whether a situation should be equated with *mayim she'ein lahem sof*, the *Taz* (E.H. 17:48), *Beit Shmuel* (17:105), and *Aruch Hashulchan* (E.H. 17:224) rule leniently, since the prohibition to remarry in a case of *mayim she'ein lahem sof* is only rabbinic in nature.

Second, Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, E.H. 1:43) suggests a novel interpretation of *mayim she'ein lahem sof* in the course of his ruling regarding husbands who disappeared in the Holocaust. Rav Moshe argues that *Chazal* issued the stringency of *mayim she'ein lahem sof* only in situations that generally involve *individuals*, such as an individual being swept away in a body of water with no visible boundary. However, Rav Moshe contends, *Chazal* did not legislate the same concern for a significant minority of survivors in situations that involve *many* people, even if the large group entails a similar statistical probability of perishing in *mayim she'ein lahem sof*.

Thus, Rav Moshe rules that if there is adequate knowledge that a husband was taken to a Nazi concentration camp and has not been heard from in the years following World War II (and there is no reason to believe that the husband was living in the Soviet Union), then the wife may remarry, even though a minority of people did survive the concentration camps. Similarly, one could argue that the status of *mayim she'ein lahem sof* does not apply to the World Trade Center tragedy because so many people were involved.

Interestingly, Rav Moshe comments that his quite lenient approach to the *agunot* of the Nazi Holocaust is motivated in part by his concern that a strict ruling might be too difficult for most of these women to bear. Rav Moshe notes that the *Or Zarua* (*Hilchot Agunah* 693) already alludes to this concern. Rav Moshe observes that if this concern was relevant in the time of the *Or Zarua*, then it is most certainly relevant in the modern era.

Third, many *Acharonim* develop the idea that the stringency of *mayim she'ein lahem sof* does not apply in a situation where there are *trei rubei* (two majorities), two factors, each of which is probably true and if either is true, then it alone would prove that the husband died.

For example, Rav Chaim of Volozhin and other eminent rabbis in Vilna (cited by the *Pitchei Teshuvah* (E.H. 17:133) were consulted regarding a man who fell from a tall bridge onto ice and subsequently fell from the ice into water with no visible boundary. Although no body was ever found, Rav Chaim ruled leniently, as there were *trei rubei* in this situation: most people who would fall from the bridge onto the ice would perish, and most people who are swept into water with no visible boundary (and are not found) have perished. If the probable result occurred at either stage, it would mean that the man died.

The *Pitchei Teshuvah* (*ibid*.) notes that some *Acharonim* do not subscribe to this leniency. In fact, many *Acharonim* point out that *Tosafot* (*Yevamot* 121a s.v. *V'lo*) appear to reject reliance on *trei rubei*. *Tosafo*t note that the Gemara (*Yevamot* 121a) prohibits remarriage even when a renowned Torah scholar was lost in *mayim she'ein lahem sof*, despite the fact that word would usually spread if a Torah scholar survived, with his wife thus being informed of his survival. Accordingly, there exist *trei rubei* to permit the woman to remarry, since a majority of those who are lost in a *mayim she'ein lahem sof* have perished and a majority of Torah scholars who survive are known to have survived. Nevertheless, the Gemara forbids the wife of a missing Torah scholar to remarry! Rav Yitzchak Elchanan (*Teshuvot Be'er Yitzchak*, E.H. 18; *Teshuvot Ein Yitzchak*, E.H. 1:22 and 2:1) defends the *trei rubei* leniency by distinguishing between the case of the Gemara and that of Rav Chaim of Volozhin. The two factors of Rav Chaim of Volozhin emerged virtually simultaneously, whereas the *trei rubei* of the Gemara's case do not. The second "majority" in the Gemara's case emerges only after time, when it is realized that word has not come that the renowned Torah scholar has survived.

Many *poskim* have come to accept reliance on *trei rubei*, as Rav Zalman Nechemia notes in his World Trade Center responsum (see *Teshuvot Heichal Yitzchak*, E.H. 2:8). Rav Simcha Zelig Rieger, a *dayan* in Brisk, Lithuania, in the early twentieth century, writes that *trei rubei* has become an accepted approach in Halachah provided that the husband has been missing for quite some time (*Devarim Achadim* 43, cited in *Teshuvot Yabia Omer*, E.H. 7:14). Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, E.H. 1:48) applies this principle to a case where a plane crashed into the English Channel during World War II, and Rav Ovadia Yosef (*Teshuvot Yabia Omer* 6:4) similarly employs it in a case where an Israeli pilot's plane was shot down by enemy fire and fell into the sea. In both cases there were *trei rubei*, as most will die if

their plane crashes into the sea and most people who are lost at sea (*mayim she'ein lahem sof*) will not survive in the water. Rav Yitzchak Herzog (*Teshuvot Heichal Yitzchak*, E.H. 2:8) applies this principle in a case where a car plunged down a steep incline and into the sea in Milan, Italy.

Rav Ovadia Yosef applies *trei rubei* to the World Trade Center attacks. He reasons that most (if not all) people at or above the point of the plane's impact perished, and most (if not all) of those who survived were discovered by the rescuers who made an extraordinary effort to rescue any survivors.[26] Rav Ovadia adds that even if the application of *trei rubei* is not appropriate, one may rely upon a *s'feik s'feika* (a double doubt): the husband might have perished in the fire, and if he survived the fire, then he might have died falling down. Rav Ovadia thoroughly reviews the dispute among the *Acharonim* regarding whether a *s'feik s'feika* is a valid halachic tool for resolving *agunah* situations.[27] He concludes that it is certainly a valid principle according to Sephardic tradition, and the World Trade Center case that Rav Ovadia discusses involved a Sephardic husband.

A fourth avenue of leniency is an approach that is often quoted in *agunah* cases of the past 150 years. The Gemara (*Yevamot* 121a) is strict in the case of *mayim she'ein lahem sof* because of concern that the husband has survived unbeknownst to his wife. Rav Ashi suggests that perhaps we might be lenient in case of the wife of a renowned Torah scholar because if he survived word would have spread of his survival. This Gemara reflects the reality that even during times of poor communication, Jews managed to spread the information about a great Torah scholar.

Although the Gemara ultimately rejects Rav Ashi's position, the *Terumat Hadeshen* (*Pesakim* 139) suggests that in his time (the late medieval period) there was more reason to be lenient because changes in where Jews lived enabled better communication than during the

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26. Rav Yonah Reiss further notes that a *trei rubei* may exist for the husbands who were proven to be located at the 78th floor or above when the South Tower was hit. Most people at the 78th floor or above perished soon after the impact, and most of the survivors sustained severe injuries, which they could not survive without prompt hospitalization (see Rav Tzvi Pesach Frank, *Teshuvot Har Tzvi* E.H. 1:62).

27. See *Techumin* 22:184-187, where Rav Ovadia Yosef and Rav Shalom Messas permit an *agunah* to remarry based on a *s'feik s'feika*. For a discussion of the relationship between the principles of *trei rubei* and *s'feik s'feika*, see *Teshuvot Har Tzvi* (E.H. 1:64 pp. 135–138).

Gemara's time. He reasons that the Gemara did not wish to distinguish between a wife of a Torah scholar and others because of the principle of *lo plug* (that the Rabbis do not make special exceptions to their rules). However, reasons the *Terumat Hadeshen*, in a time of improved communication, the reasoning that a husband's surviving *mayim she'ein lahem sof* would be communicated to the wife applies to **everyone** equally, so there should not be any need to rule strictly in cases of *mayim she'ein lahem sof*.

The reasoning of the *Terumat Hadeshen* was not accepted as normative (see *Shulchan Aruch* E.H. 17:34). Nonetheless, the *Chatam Sofer* (E.H. 1:58, cited in the *Pitchei Teshuvah*, E.H. 17:135) argues that more room existed to be lenient in his day (the early nineteenth century), as post offices functioned in every village and newspapers spread news throughout the world. If the husband survived, then he or the local rabbi would have had an opportunity to send a letter or advertise in a newspaper in order to publicize his survival. Thus, not hearing from someone who was lost in *mayim she'ein lahem sof* would prove that he perished. This approach of the *Chatam Sofer* engendered much discussion, which is summarized by Rav Ovadia Yosef (*Teshuvot Yabia Omer* E.H. 7:14:7 and his responsum in *Kol Zvi*).

Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, E.H.1:43,48), writing about the *agunot* from the Nazi Holocaust, states that in his time, there was even more reason for leniency than in the time of the *Chatam Sofer*, as methods of communication had made many strides.[28] Rav Ovadia, writing in regard to the World Trade Center tragedy, asserts that the logic for leniency is even greater in 2001, as telecommunications and other methods of communication have improved immensely.

We should note that *poskim* do not rely on this line of reasoning alone, as it would completely eliminate a rule from the Gemara, something *poskim* are loath to do. Furthermore, relying on this line of leniency increases the pressure on the *beit din* to definitively establish that the husband and wife were on good terms before the husband's disappearance, lest the husband has taken advantage of the tragedy to disappear and establish a new identity.

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28. In 1:43, Rav Moshe notes the postal service's marked improvement over mail deliveries in the *Chatam Sofer*'s time. In 1:48 (written in 1954), Rav Moshe adds that telephones and telegrams did not exist at all in the *Chatam Sofer*'s time.

A fifth avenue of leniency is the opinion of Rav Eliezer of Verdun (cited in *Teshuvot Zichron Yehudah* 94 and Mordechai, *Yevamot* 92). He acknowledges that the Gemara forbids the wife to remarry in any case of *mayim she'ein lahem sof*. However, he argues, the Gemara does not say that she is forbidden *forever*. Thus, he reasons, if after a very long period of time it seems obvious to the great rabbinical authorities of the time that the husband has died, then the rabbis have the right to permit the wife to remarry. Rav Eliezer of Verdun reports that he relied upon this in a case when a husband was lost at sea and had not been heard from in four years.

Poskim have vigorously debated the cogency of this argument. The Mordechai (*ibid*.) cites two major authorities who oppose Rav Eliezer of Verdun's leniency. The *Beit Yosef* (E.H. 17 s.v. *Nafal*) rejects it entirely, claiming that lacks any basis in the Gemara. Other authorities, however, such as the Mahri Bei Rav (*Teshuvot* 13) and the Mabit (*Teshuvot* 1:187), defend Rav Eliezer of Verdun's view. In practice, *poskim* from the time of Rav Yechezkel Landau (*Teshuvot Noda Biy'hudah* E.H. 2:47) through Rav Moshe Feinstein (*Teshuvot Igrot Moshe* E.H. 1:43), Rav Tzvi Pesach Frank (*Teshuvot Har Tzvi* E.H. 1:65) and Rav Ovadia Yosef (*Teshuvot Yabia Omer* E.H. 7:14) use the leniency of Rav Eliezer of Verdun as a *senif lehakeil*, an additional reason to be lenient. However, as noted by Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 15:59), *poskim* disagree about the length of time it is necessary to wait before concluding that the missing husband is dead: one year, two years, or four years. In the case of the World Trade Center tragedy, Rav Ovadia Yosef advised the Beth Din of America to wait a year before issuing permission for the *agunah* to remarry.

Finally, a sixth avenue of leniency is the approach of *Shevut Yaakov* (3:110). He notes that, in a case of *mayim she'ein lahem sof*, if the woman mistakenly remarried, then *b'dieved* (*ex post facto*) the Gemara (*Yevamot* 121b) does not require her to separate from her new husband. The *Shevut Yaakov* further notes the Talmudic principle that *sh'at had'chak k'b'dieved dam*i, in a case of great need one may permit what is normally permitted only *ex post facto*. The *Shevut Yaakov* reasons that when an *agunah* is a young woman and anxiously wishes to remarry, a great need exists that justifies permitting that which is normally permitted only *b'dieved*. In such a situation, he suggests that the young *agunah* should be permitted to remarry. This ruling of the *Shevut*

Yaakov engendered much discussion and controversy (see *Otzar Haposkim* 7:37–39), and, in practice, many *poskim* use this leniency as a *senif lehakeil*.[29] Indeed, the *Shevut Yaakov* himself uses this point only as one of several lenient considerations. Rav Yonah Reiss notes that many of the *agunot* from the World Trade Center attacks were young women, so the approach of the *Shevut Yaakov* functioned as a minor consideration in the rulings of the Beth Din of America.

No Empirical Evidence That the Husband Was There

The most difficult task faced by the Beth Din of America was one situation where the Beth Din was unable to discover any empirical evidence that a particular missing husband was inside the World Trade Center at the time of the attacks. The Beth Din investigated the possibility of identifying a pattern in the husband's daily routine that would prove he arrived at work. Using various travel records, Rav Yonah Reiss was able to prove that the man routinely entered his office during August and early September a few minutes before the time of day when the attacks occurred. It was after making this determination that DNA identification was made on the missing husband's remains.

Several responsa serve as precedents for asserting that a man followed his regular routine.[30] Rav Yitzchak Herzog (*Teshuvot Heichal Yitzchak*, E.H. 2:9:2) considers the possibility of partially relying on a husband's patterns to determine that a man was at a particular place where a bridge collapsed into the water.[31] He notes that the *Taz* (*Yoreh Deah* 69:24) rules that if a woman is unsure if she salted a piece of meat before she cooked it, she may assume that she followed her normal pattern of salting the meat. As a precedent, the *Taz* cites the Gemara's ruling (*Berachot* 16a) that if one is reading the *Shema* and is unsure if he has read the verse of "*Uch'tavtam*" from the first section of *Shema* or the second section, the doubt is resolved if he had begun

29. See, for example, Rav Yitzchak Elchanan Spektor (*Teshuvot Ein Yitzchak*, E.H. 1:22), Rav Tzvi Pesach Frank (*Teshuvot Har* Tzvi E.H. 1:65), Rav Yitzchak Herzog (*Teshuvot Heichal Yitzchak* 2:9), Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 15:59), and Rav Ovadia Yosef (*Teshuvot Yabia Omer*, E.H. 7:16).

30. In addition to the sources that we discuss, see *Teshuvot Igrot Moshe* (E.H. 1:7).

31. Although a pattern is sometimes called a "*chazakah*," it is a very different concept than the *chazakah* that we mentioned earlier, which referred to the assumption that the status quo has been maintained.

to read the verse of "*L'ma'an yirbu*," which follows "*Uch'tavtam*" in the second section (see *Devarim* 6:9 and 11:20–21). Since people normally recite *Shem*a in the proper order, a person may assume that he followed his usual routine and proceeded to the next verse of the second section, because he had recited everything up until that point.

Rav Herzog ultimately rejects the analogy between the *Taz*'s ruling and an *agunah* situation. Meat that was cooked without proper salting is prohibited only on a rabbinic level, whereas here we wish to rely on the husband's routine in order to permit the woman to remarry, which could lead to a violation of the Biblical prohibition of adultery. Hence, the *Taz*'s lenient ruling regarding the salting of meat cannot serve as a precedent for permitting an *agunah* to remarry. The routine of one who is reading *Shema* also differs from the husband's situation, because we know for sure that the person began reciting *Shema*, and we merely doubt which verse he was reading. Regarding the *agunah*, however, we do not know if the husband crossed over the bridge at all on the day of its collapse.

Despite his inability to demonstrate from the *Taz* that we may rely on a husband's patterns, Rav Herzog concludes that the woman in this case may remarry, by combining the likelihood of the husband following his routine with other lenient considerations that existed in that case.

Rav Yehoshua Ehrenberg (*Teshuvot Devar Yehoshua*, vol. 3 E.H. 13) relies on a similar approach, determining that a husband's usual pattern of travel to work placed him at the point where a terrorist attack occurred in Tel Aviv in 1950, and combining this information with other lenient factors, he issued a lenient ruling.[32] Rav Schwartz and Rav Zalman Nechemia rule that this approach may be used as a consideration to be lenient in the World Trade Center case. We might add that there is actually more reason to be lenient regarding the World Trade Center, as the Beth Din of America thoroughly documented the missing husband's travel patterns in the months of August and September, with a level of detail that was not provable in the situations addressed by Rav Herzog and Dayan Ehrenberg.

32. Dayan Ehrenberg cites the Mabit (135) as a precedent in this context.

Conclusion

Every tragedy that befalls the Jewish People adds another layer to the voluminous literature regarding the status of *agunot*. In the case of the attacks of September 11, 2001, the Beth Din of America was ultimately able to permit all of the *agunot* to remarry. We hope and pray to God that the World Trade Center tragedy should be the last of these tragedies and that the days of the Messiah should arrive, when the halachic literature regarding *agunot* will be of purely theoretical interest.

Chatzitzot and Tevilah

Part I: General Discussion

This chapter begins our discussion of *tevilah*, proper immersion of one's body in a *mikvah* (ritual bath).[1] We focus on the laws of *chatzitzot*, obstructions between one's skin and the water, which have the potential to invalidate the *tevilah* (immersion). Due to their complexity, many of these issues require the attention of a major halachic authority if they arise.

Talmudic Background

While describing the purification of a man who ejaculated semen, the Torah (*Vayikra* 15:16) teaches, "He shall immerse all of his flesh in water and remain unclean until the evening." The Gemara (*Eruvin* 4b) derives from the words "all of his flesh" that nothing may separate between the person's flesh and the water.[2] The Gemara limits this problem of separating flesh from water to objects that meet two conditions: they must cover a majority of the body, and the person must object to their presence there (*rubo umakpid*).[3] It adds, however, that the Rabbis

1. The laws of constructing a *mikvah* will be addressed in five later chapters of this book.

2. For analysis of the requirement that all one's flesh be immersed in the water, see Rav Elyakim Krumbein's essay in *Alon Shevut* (140–141:92–101).

3. "Objecting" to something's presence means that one is bothered by its presence while engaging in normal activities, such as working, bathing, or shopping. If, however,

legislated to invalidate a *tevilah* even when only one of these conditions exists, lest people erroneously permit *chatzitzot* that meet both conditions. If an object touches only less than half of the body *and* one does not mind its presence (*mi'ut ve'eino makpid*), then it does not even constitute a *chatzitzah* on a rabbinic level, since it meets neither condition.

Mi'ut Ve'einio Makpid

Nevertheless, the Rama (*Yoreh Deah* 198:1) writes that one preferably should not immerse even with a *chatzitzah* that the Rabbis did not forbid (such as *mi'ut ve'eino makpid*). Although this stringency has no source in the Gemara, it has been adopted as a *minhag* (custom). However, both the *Chochmat Adam* (119:3) and *Aruch Hashulchan* (*Yoreh Deah* 198:9) comment that in a situation of great need, a woman need not adhere to this stringency and may immerse with an object covering less than half of her body, provided that its presence does not bother her.

If one is not bothered by an object's presence, Rashi (*Eruvin* 4b s.v. *V'she'eino*) explains that it does not constitute a *chatzitzah* because "it becomes an inherent part of the body," rather than an external addition. Over the past two centuries, authorities have debated over how long a foreign object must be attached to the body in order for it to become part of that body. The *Chelkat Yoav* (*Yoreh Deah* 1:30) asserts that if the obstruction is intentionally kept on the body for more than seven days and is only a *chatzitzah* on a rabbinic level—such as cotton placed in the ear—it is considered an integral part of the body and is not a *chatzitzah* (even rabbinically). He bases his ruling on the laws of *Shabbat*, where, according to many authorities, a knot that remains in place for more than seven days is considered "permanent" (*shel kayamah*) on a rabbinic level (Rama, *Orach Chaim* 317:1).[4] Similarly, the *Chelkat Yoav* argues that a foreign object is considered permanently attached to a person if it remains in place for more than seven days, so it does not invalidate immersion as a *chatzitzah* unless it meets the Biblical criteria for a *chatzitah* (covering a majority of the body and bothering the person).

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one worries about its presence only at the time of *tevilah* (due to one's piety), then the object is not a *chatzitzah* (see Rav Binyomin Forst's *The Laws of Niddah* 2:274).

4. The Rama also cites a second opinion, which considers a knot "permanent" on a rabbinic level even if it lasts only for one full day.

The *Chelkat Yoav*'s opinion has generated much discussion. The *Avnei Neizer* (*Yoreh Deah* 262) contends that a foreign object loses its status as a *chatzitzah* only after being attached to the body for longer than six months. He explains that the Rabbis legislated rabbinic *chatzitzot* lest one accidentally immerse while covered by a Biblical *chatzitzah*. Accordingly, if we permit *tevilah* with an object that has been present for seven days, then people might immerse while covered by a Biblical *chatzitzah*, erroneously believing that even a Biblical *chatzitzah* becomes a part of the body after seven days.

In all of his responsa about *chatzitzot*, Rav Moshe Feinstein does not accept any variation of the *Chelkat Yoav*'s opinion. Indeed, Rav Moshe even writes in one place that he does not understand why a *chatzitzah* should lose its status after a set amount of time if the Gemara does not stipulate an amount of time for this purpose (*Teshuvot Igrot Moshe*, Y.D. 1:97:1). Rav Shlomo Zalman Auerbach (cited in *Nishmat Avraham*, *Yoreh Deah* 198:1) adopts a compromise approach. He notes that *poskim* generally base their rulings on what seems to be the standard of the *Beit Yosef* (*Orach Chaim* 317), that if a knot is tied for more than thirty days, it is viewed as permanent (at least on a rabbinic level). Similarly, a foreign object is not considered a *chatzitzah* if it is attached for more than thirty days.

Objective vs. Subjective

The *Rishonim* debate whether to define *hakpadah*, objection to the presence of a foreign object, subjectively or objectively. The Rambam indicates that if the individual immersing does not object to the item's presence, even if others would find it objectionable, it is considered *eino makpid* (not objectionable).[5] On the other hand, the Rashba (*Torat Habayit* 7:7) and the *Tur* (*Yoreh Deah* 198) rule that if most people would object to an item's presence, then they set an objective standard for *hakpadah*; an individual's own preferences are nullified by the majority's perceptions (*batlah da'ato eitzel rov bnei adam*).

In practice, the *Shulchan Aruch* (*Yoreh Deah* 198:1) adopts the opinion of the Rashba and the Tur. The *Shach* (198:2) rules that we must act strictly in accordance with the views of both the Rambam (as interpreted by the *Beit Yosef*) and Rashba. Thus, an item constitutes a *chatzitzah*

5. *Hilchot Mikva'ot* 2:15, as interpreted by the *Beit Yosef*, *Yoreh Deah* 198.

either if most people would object to its presence *or* if this individual finds it objectionable.

An Object that Comes Off by Itself

A question often arises regarding whether something is considered a *chatzitzah* if it normally falls off by itself. Rashi (*Shabbat* 15b s.v. *Bichli*) writes that people do not object to the presence of items that fall off by themselves, so they do not constitute *chatzitzot* (on less than half of the body). Contemporary authorities discuss possible applications of Rashi's principle to contemporary situations, such as stitches that come off "automatically" by dissolving.[6] In another example, Rav Tzvi Pesach Frank (*Teshuvot Har Tzvi*, *Yoreh Deah* 163) rules that iodine that has discolored one's skin is not a *chatzitzah* because it dissipates by itself.[7]

Beit Hasetarim and Balua

A foreign object can constitute a *chatzitzah* even on some parts of the body that are not normally exposed to the *mikvah* waters. These areas, known as *batei hasetarim* (Nidah 66b), include the outer ear canal and inside the nose and mouth. Although the *mikvah* waters need not *actually* come in contact with the *batei hasetarim*, the Gemara nonetheless requires that no intervening substance preclude the *theoretical* possibility of such contact.

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6. Rav Yosef Shalom Eliashiv and Rav Nissim Karelitz (cited in *Mar'eh Kohein* p. 115) reportedly consider dissolving stitches to be a *chatzitzah* (also see Rav Eliashiv's *Kovetz Teshuvot* 88 regarding stitches in general). On the other hand, Rav Shlomo Zalman Auerbach (letter printed in *Mar'eh Kohein*, p. 183), Rav Moshe Shternbuch (*Teshuvot Vehanhagot* 1:508:36) , and Rav Shmuel Wosner (letter printed in *Mar'eh Kohein*, p. 186, *Shiurei Sheivet Halevi* 198:11:3) rule that dissolving stitches do not constitute a *chatzitzah*, although Rav Wosner adds that they would be considered a *chatzitzah* if their presence bothered the woman (which they should not).

7. See Rav Frank's responsum for additional reasons that he provides for his ruling. See also *Chochmat Adam* 119:16. Rav Binyomin Forst (*The Laws of Niddah* 2:292) points out that many iodine and ink stains can be removed with vinegar, lemon juice, or bleach, thereby eliminating any possible problem. It is always advisable to consult experienced rabbis regarding such issues, as they know practical suggestions, such as these forms of stain removal, in addition to their knowledge of Halachah.

The *Rishonim* (commenting on *Kiddushin* 25a) debate whether the rules of *batei hasetarim* are Biblical or rabbinic in nature. *Tosafot* (s.v. *Kol*) detail how these laws can be derived from verses in the Torah, implying that they are Biblical. On the other hand, the Ramban, Rashba, and Ritva believe that they are rabbinic; on a Biblical level, they maintain that water does not even need the theoretical ability to enter *batei hasetarim*. The *Acharonim* disagree concerning which opinion to follow. The *Avnei Neizer* (*Yoreh Deah* 260) rules like *Tosafot* that they are from the Torah, whereas Rav Akiva Eiger (*Teshuvot*, *Mahadura Kama* 60) rules that they are actually rabbinic. One's ability to rule leniently concerning questionable areas of *chatzitzot* in the areas of *batei hasetarim* depends on this dispute.[8] If the *chatzitzah* is situated in a *beit hasetarim*, there is considerable room to be lenient, assuming these rules are only rabbinic (see, for example, *Nishmat Avraham*, *Yoreh Deah* 198:12).

Many *Acharonim* discuss precisely which body parts qualify as *batei hasetarim*. Rav Akiva Eiger (198:7 s.v. *Liflof*) writes that these *halachot* apply only to "places that sometimes are exposed," such as the eyeballs or mouth.[9] Places that are never exposed, however, such as the inner recesses of the ear and nose, do not even need the theoretical possibility of touching the water. Rav Yechezkel Landau (*Teshuvot Noda Biy'hudah*, *Yoreh Deah* 1:64, cited by *Pitchei Teshuvah* 198:16) presents a similar approach to that of Rav Akiva Eiger.

Refuyah-Looseness

In order to invalidate the *tevilah*, a *chatzitzah* must cling to the body, whereas an object that is loosely attached (*refuyah*) does not constitute a *chatzitzah* (see *Mikvaot* 8:5 and *Shulchan Aruch*, *Yoreh Deah* 198:28). Thus, a woman may theoretically immerse while wearing loose-fitting clothing (see *Shulchan Aruch*, *Yoreh Deah* 198:46 and Shach 198:56).[10] A competent rabbinical authority should be consulted

8. For example, the status of a *chatzitzah* that remains for more than seven days depends on the *Chelkat Yoav*'s aforementioned lenient ruling. A *poseik* might be more likely to permit immersing with such a *chatzitzah* in a *beit hasetarim* if he rules like the Ramban, Rashba, and Ritva.

9. The Rashba (*Kiddushin* 25a s.v. *Ha*) seems to agree with this assertion.

10. Rav Ovadia Yosef (*Yabia Omer*, Y.D. 1:19) writes that a female convert may immerse with a sheet beneath her head that does not allow the members of the *beit din*

should a need arise to rely on this ruling, as it is often difficult to determine the precise definition of the term "loose."

Earplugs

Acharonim have suggested several ways to allow *tevilah* for women who cannot expose their ear canals to water. The outer part of the ear canal is considered a *beit hasetarim*. Thus, based on the criteria described above, water must theoretically be able to enter the canal, but it need not actually do so during her immersion. Dr. Avraham S. Avraham (*Nishmat Avraham* 198:12) reports that Rav Shlomo Zalman Auerbach permitted placing loose-fitting cotton in the ear. It does not constitute a *chatzitzah*, based on the concept of *refuyah* described above. Following the immersion, the cotton should immediately be removed in order to prevent the entry of water into the ear canal. Of course, an ear, nose and throat specialist should be consulted to determine that this procedure does not endanger the individual in question.

Rav Tzvi Pesach Frank (*Teshuvot Har Tzvi*, *Yoreh Deah* 170) writes that the cotton should be placed so deep within the ear that its location will not even be considered a *beit hasetarim*. In this deep position, the cotton will be *balua* (completely absorbed within the body), so the *tevilah* will be valid even if water cannot possibly reach that part of the ear.[11] Also, he requires that the woman place the cotton in her ear for a week before the *tevilah* so that it is considered "non-objectionable" (*eino makpid*). The cotton should remain in her ear for a few days after the *tevilah*, as well, further showing that she does not object to its presence.

It should be noted that Dr. Yisrael Bramma (an Israeli ENT specialist) warns that, from a medical perspective, it is not advisable to keep cotton in one's ear for an extended period of time (*Techumin* 5:227). A competent specialist should therefore be consulted should this situation arise.

(rabbinical court) to see beneath her head. Rav Gedalia Schwartz (speaking at a convention of the Rabbinical Council of America) reported that prominent American authorities (such as Rav Avraham Steinberg, who headed the RCA Beth Din for many years) agreed to this ruling (also see *Shulchan Aruch*, Y.D. 268:2).

11. See *Nishmat Avraham* (*Yoreh Deah* 198:12) for application of *balua* to catheters and intrauterine devices (I.U.D.s), which require competent rabbinical and medical consultation regarding their use.

Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Yoreh Deah* 1:98–103) presents a solution that he defends at length. He permits immersing immediately after inserting cotton somewhat deeply within the ear canal, without waiting a week between the cotton's placement and the *tevilah*. Rav Moshe (Y.D. 1:98) proves that cotton in an ear cannot constitute a *chatzitzah*, from the Mishnah (*Shabbat* 64b), which permits a woman to wear a small piece of cotton in her ear when she walks into the public domain on *Shabbat*. The Gemara prohibits wearing *chatzitzot* in public domains on *Shabbat*, so apparently a piece of cotton is not a *chatzitzah*.

Although Rav Moshe's proof seems textually compelling, it appears to contravene the principles that we have presented for *batei hasetarim*. After all, we have already noted that water must be able to theoretically enter *batei hasetarim*, such as the ear canal. Does the cotton not preclude this possibility and thus invalidate the *tevilah*? Rav Moshe solves this difficulty by distinguishing between two types of *chatzitzot*. Some items, such as nail polish, actually *attach* themselves to the nail, whereas others, such as cotton in the ear, remain separate from the skin while still preventing contact between the skin and water.

Although the presence of either type of *chatzitzah* on the *body* invalidates a *tevilah*, Rav Moshe suggests that only the former type presents a problem when found in *batei hasetarim*. He explains that when a *chatzitzah* is not physically attached to the body, it could theoretically be moved to allow water to enter. Accordingly, if someone immerses with cotton in his ear canal, the canal was theoretically fit for water to enter. Although no water will actually touch the canal's skin, a *tevilah* is effective as long as water has the theoretical possibility to enter the *batei hasetarim*. Of course, if the cotton were on the outside of the body, it would invalidate the *tevilah* because water must actually touch all exposed skin.

In order to prove his distinction, Rav Moshe develops an original interpretation of the rule that one may close one's mouth and eyelids during *tevilah*, provided that one does not close them too tightly.[12] Logically, we would expect closing the mouth to invalidate the *tevilah*, for the water needs the theoretical ability to enter the mouth (a *beit hasetarim*). Closing the lips and eyelids blocks the water's path to these

12. See *Nidah* (67a and *Tosafot* s.v. *Patchah*) and *Shulchan Aruch* (*Yoreh Deah* 198:38–39).

batei hasetarim. Rav Moshe's approach provides a rationale for this law. Closed lips are the type of *chatzitzah* that does not seal off the *beit hasetarim*, because the person could theoretically open his mouth.[13]

Rav Moshe thus concludes that a pad placed somewhat deeply within the ear canal is merely a barrier to water entering the ear, but it is not attached to the ear. Hence, it does not prevent the ear canal from being "capable of coming into contact with water." Based on his line of reasoning, Rav Moshe (*Igrot Moshe*, *Yoreh Deah* 1:104) claims that, fundamentally, contact lenses do not constitute a *chatzitzah*, although he requires removing them, when possible, to eliminate any doubt.[14]

Dr. Yisrael Bramma (*Techumin* 5:275–279) suggests a different approach to the problem. In most situations that the ear canal must be kept dry, surgery can repair the eardrum. He claims that this procedure entails minimal risk—far less than the ongoing danger of having an ear that cannot get wet—and can improve the woman's hearing while removing a major *safeik* (halachic doubt). In cases where the ear's damage is too severe for this minor surgery, Dr. Bramma suggests placing antibacterial drops in the ear before and after the *tevilah* in order to prevent infection. He adds that a woman must consult her rabbi and doctor for guidance regarding how to handle these more severe situations.

Casts

Casts present one of the most difficult *chatzitzah* problems. Dr. Avraham (*Nishmat Avraham*, *Yoreh Deah* 198:4) writes that one should try to have a cast removed before *tevilah*. Rav Zalman Nechemia Goldberg told me that he agrees with this assertion.

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13. If the lips are tightly sealed shut, Rav Moshe explains that they invalidate the *tevilah* because water will not even touch the outer surface of the lips themselves. This surface is a regular part of the body, so, unlike a *beit hasetarim*, it must actually touch the water, rather than sufficing with the theoretical ability to touch water.

14. The eye's inside is a *beit hasetarim*, so the lenses, which are the same type of *chatzitzah* as cotton, do not invalidate the *tevilah*. Rav Yitzchak Yaakov Weisz (*Teshuvot Minchat Yitzchak* 6:89) rejects Rav Moshe's position, as he prohibits immersing with contact lenses or artificial eyes. Also see *Nishmat Avraham* (vol. 4 p. 109), where Dr. Avraham discusses the case of someone who forgot to remove contact lenses prior to *tevilah*, and *Shiurei Sheivet Halevi* (198:7:2).

If removing the cast is not possible, Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 4:9) rules that it is not considered a *chatzitzah*. He reasons that it does not cover a majority of the body, and one does not object to its presence (*mi'ut v'eino makpid*) since it is necessary for medical purposes. Even though most people would find a cast "objectionable" and would want it to be removed, they realize its importance and therefore accept its presence. The Rama (Y.D. 198:17) explains, "A *shocheit* or butcher whose hands are soiled with blood is not considered to have a *chatzitzah* on him, since most people in those fields do not object to the presence of blood on their hands." A similar argument can be made concerning those who are wearing casts.

On the other hand, Rav Frank (*Teshuvot Har Tzvi*, *Yoreh Deah* 165) cites the *Sidrei Taharah*'s claim that if a woman fundamentally would not want a particular foreign object on her body, it is considered objectionable even if she presently wishes to leave it on herself for medical reasons. Thus it follows that a cast should constitute a *chatzitzah*, as people normally would object to a cast's presence, if not for its medical function. This argument is based on the *Shulchan Aruch*'s ruling (198:10) that plaster on a wound constitutes a *chatzitzah*.

However, other *Acharonim* interpret the *Shulchan Aruch*'s ruling differently. The *K'tav Sofer* (Y.D. 1:91) claims that the plaster constitutes a *chatzitzah* only because it is removed occasionally in order to inspect the wound. On the other hand, if a cast is going to be in place for a considerable amount of time, then it is possible to say that it is not a *chatzitzah*.[15] Rav Frank concludes that one should avoid immersion while wearing a cast, but he permits doing so in cases of great difficulty.[16] The issue of casts remains very sensitive, so an eminent Rav must be consulted in situations where a cast cannot be removed.

In practice, one other critical factor exists regarding casts. Rav Gidon Weitzman has informed me that more modern casts have been developed that allow water to reach the skin underneath without damaging the cast. Therefore, before a woman has a cast attached to herself, she should consult a competent rabbi and her doctor in order to arrange for a cast that will pose the fewest possible halachic problems.

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15. Although the *K'tav Sofer* presents this reasoning, he concludes his responsum by refusing to actually permit immersing in a cast, noting that he read of three other *poskim* who consider casts to be *chatzitzot*. See *Badei Hashulchan* (198:87 and *Bei'urim* s.v. *Chotzetzet*) for a review of the two interpretations of the *Shulchan Aruch*.

16. Also see *Shiurei Sheivet Halevi* (198:10:2), who is inclined to prohibit immersing with a cast except in extreme cases and after consulting with a competent rabbi.

Splinters

The Mishnah (*Mikvaot* 10:8; codified in *Shulchan Aruch*, *Yoreh Deah* 198:11) rules that a splinter constitutes a *chatzitzah* only if it is visible. If it remains beneath the skin, and it cannot be seen, then it is not a *chatzitzah*, as it is *balua* (absorbed within the body). The *Tur* (Y.D. 198) and *Taz* (Y.D. 198:15) note that even if the splinter can be seen through a thin layer of skin, it ceases to be a *chatzitzah* once the skin covers it completely.

Conclusion

In the matters of *nidah* it is tempting to rule strictly "just to be on the safe side." Rav Mordechai Willig reports that he heard directly from Rav Moshe Feinstein that it is *forbidden* to rule strictly on issues of *nidah* "just to be safe," because stringency in this area presents a barrier to the *mitzvot* of *onah* (a husband's conjugal responsibilities) and *peru urevu* (procreation). On the other hand, one cannot simply rule leniently without adequate support from halachic sources. Highly competent rabbis, therefore, must be consulted when these complex issues arise.

Part II: Teeth and Fingernails

Continuing our discussion of the laws of *chatzitzot*, we now discuss how they apply to dental fillings, braces, and fingernails. The status of dental work, especially temporary work, within the laws of *chatzitzot* has generated considerable debate.[1]

Permanent Fillings

The *Chochmat Adam* (119:18) presents an extraordinarily stringent ruling by asserting that even a permanent filling constitutes a *chatzitzah*. Rav Yaakov Ettlinger (*Teshuvot Binyan Tziyon*, *Chadashot* 57) advises to act strictly in accordance with the *Chochmat Adam*'s view, although he adds that one should not castigate those who do not treat it as a *chatzitzah*. These two *poskim* reason that the woman would not have wanted the filling if not for her mouth's medical needs. Hence, the filling constitutes a *chatzitzah* on a rabbinic level, just as any item whose presence on a minority of the body is objectionable (see previous chapter).

Almost all authorities have rejected this ruling,[2] and they present a number of reasons to be lenient. The Maharsham (1:79) argues that it is nearly impossible for a woman to remove the filling herself, without the help of a dentist, so the filling can thus be considered a permanent feature of her body. Accordingly, the filling is not a *chatzitzah*. Moreover, the filling *does* serve a non-medical purpose, since its removal would disfigure the woman's teeth, so it surely should not be a *chatzitzah*. Moreover, there is considerable room to be lenient in this case since it might be a situation of *trei derabanan* (an intersection of two

1. For a summary of many different types of dental work that may raise concern for *chatzitzot*, see *Shiurei Sheivet Halevi* (198:24:2) and *Nishmat Avraham* (*Yoreh Deah* pp. 129–134).

2. For a full listing of these authorities, see *Nishmat Avraham* (*Yoreh Deah*, p. 130).

rabbinic enactments).[3] If a filling is a *chatzitzah* at all, it is so on a rabbinic level, since it does not cover most of the body (see the previous chapter). Additionally, some *Rishonim* (Ramban, Rashba, and Ritva to *Kiddushin* 25a) believe that a *chatzitzah* in a *beit hasetarim* (such as the mouth; see previous chapter) constitutes only a rabbinic problem.

Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Yoreh Deah* 1:97) represents the consensus view in his explanation of why a permanent filling does not constitute a *chatzitzah*. He points out that the only time a foreign object constitutes a *chatzitzah* is when one minds its presence. Rav Moshe reasons that someone is thought to mind the presence of an object when it prevents him from performing a certain task, or if it causes pain or cosmetic disfiguration. A bandage on a wound is considered a *chatzitzah* because, had it not been for medical considerations, no reasonable person would want the bandage attached to his body. Consequently, as soon as the wound is healed, the bandage will be removed. However, once someone has a cavity in his tooth due to decay, he will not be disturbed by the presence of a permanent filling in his mouth. After all, the filling enables the person to chew better and to drink with ease, and it improves his appearance.

Rav Moshe writes that it is the accepted practice of even the most scrupulous individuals to be lenient on this issue. He speculates that the *Chochmat Adam* was stringent only regarding primitive fillings that were necessary to prevent tooth loss without allowing for chewing in a comfortable manner. However, there is no reason to consider today's permanent fillings to be *chatzitzot*, so even the most halachically meticulous individual can feel comfortable following the lenient approach.[4]

Temporary Fillings

Temporary fillings present a serious problem for *tevilah* (immersion). They cannot simply be considered part of the body because they are meant to be removed from it. Rav Yechiel Michel Tukachinsky (*Taharat Yisrael* 15:28–29) rules that temporary fillings do indeed constitute *chatzitzot*, and several other authorities agree with his view (see *Nishmat Avraham*, *Yoreh Deah*, p. 131). Rav Meir Arik (*Teshuvot Imrei*

3. See *Teshuvot Chatam Sofer* (Y.D. 192) and *Teshuvot Imrei Yosher* (2:112).

4. Nevertheless, if a dentist decides that he must remove a permanent filling for some reason, such as an illness, it might present a problem; see *Mar'eh Kohein* (p. 118, note 47), citing Rav Yosef Shalom Eliashiv.

Yosher 2:112) leans towards their position, explaining that one should not seek out leniencies when the woman merely needs to delay her immersion a short time, until the fillings are removed.[5]

Many authorities, including Rav Moshe (*ibid*.) and Rav Tzvi Pesach Frank (*Teshuvot Har Tzvi*, Y.D. 169), rule leniently. One might think that temporary dental work should be similar to tightly fitting rings, which are considered to be *chatzitzot* if one removes them while kneading dough (see *Taz*, *Yoreh Deah* 198:23).[6] This case seems to indicate that an object constitutes a *chatzitzah* if one intends to remove it. Rav Moshe (based on *Pitchei Teshuvah*, Y.D. 198:1), however, distinguishes between a ring and temporary dental work. He argues that people remove their rings whenever they wish to knead dough, whereas dental work is meant to remain in place until the dentist removes it.

Rav Tzvi Pesach and Rav Moshe offer a second reason that temporary fillings are not *chatzitzot*. They argue that since the woman intends to replace the temporary fillings with permanent ones, it is clear that she does not object to their presence.[7]

Rav Feivel Cohen (*Badei Hashulchan* 198:179) adopts a middle approach. He believes that if the dental work is intended to remain in place for at least thirty days after the immersion, then a woman may leave it in during the immersion.[8] One should consult a Rav for guidance concerning this issue.

Braces

Rav Moshe (*Teshuvot Igrot Moshe*, *Yoreh Deah* 1:96) suggests that tight braces are definitely considered *chatzitzot* if they serve only a cosmetic purpose, such as straightening the teeth. If, however, they prevent teeth from falling out, they are possibly not a *chatzitzah*.[9] In such

5. Rav Arik addresses a situation where a woman would need to delay her immersion by two weeks in order to have her filling removed. He does not specify the parameters of a "short" time.

6. See Rav Binyomin Forst's *The Laws of Niddah* (2:301–303) for a complete discussion of the status of rings as *chatzitzot*.

7. See also Rav Yosef Shalom Eliashiv's *Kovetz Teshuvot* (90).

8. The significance of thirty days comes from the laws of tying knots on *Shabbat*, as was explained in the previous chapter.

9. Dr. Avraham S. Avraham (*Nishmat Avraham*, *Yoreh Deah*, p. 134) reports hearing from a dentist that concern always exists that teeth will be damaged if they are not

a case, the braces can be seen as part of the teeth, since they are fundamentally crucial for dental health and development.[10] He writes that this concept parallels the law that a pregnant non-Jewish woman's *tevilah* for the purpose of conversion takes effect on the fetus as well (*Yevamot* 78a-b). The Gemara explains that the mother's body is not considered a *chatzitzah* between the water and the fetus because the fetus naturally develops in its mother's womb.

Rav Feivel Cohen (*Badei Hashulchan* 198:179) rules that braces do not constitute a *chatzitzah* if they will be in place for more than thirty days after her immersion, just as he rules regarding fillings.[11] In practice, though, Rav Binyomin Forst (*The Laws of Niddah* 2:135) notes that the technology of braces has changed slightly since many of these rulings were issued. Nowadays, small elastic ties are usually changed every month, so their impermanence could create a problem of a *chatzitzah*. A woman, therefore, should consult her rabbi and dentist before installing braces, in order to find the best possible option.

Fingernails

Both the *Shulchan Aruch* and the Rama (Y.D. 198:18–20) record the practice of cutting fingernails and toenails prior to immersion in the *mikvah*. This custom developed due to concern about dirt beneath the fingernails, which is sometimes considered a *chatzitzah*.[12]

This issue frequently arises in today's society, where many women grow their nails quite long.[13] Rav Chaim Ozer Grodzinski (*Teshuvot*

straightened, so braces always serve a medical purpose, even if a particular woman only desires them for cosmetic purposes.

10. Our discussion addresses only whether the braces themselves constitute a *chatzitzah*. Rav Shmuel Wosner (*Teshuvot Sheivet Halevi* 2:98:8 and 5:117) notes that one must also make sure to clean the braces thoroughly, or else pieces of food might get stuck in the braces and constitute a *chatzitzah*. Rav Binyomin Forst (*The Laws of Niddah* 2:315) notes that several methods exist for properly cleaning braces, such as proxy brushes and hydro-irrigation devices.

11. See also *Teshuvot Sheivet Halevi* (2:98:9), who permits any braces that a non-professional cannot remove, whether their function is medical or cosmetic.

12. The *Shach* (198:25) also cites concern that a long fingernail may itself constitute a *chatzitzah*, because the woman intends to cut it off; therefore it cannot be considered a part of the body. See *Taz* (198:21) for a critique of this reason.

13. If a woman has false fingernails, which can be removed only by a professional manicurist, then Rav Gidon Weitzman (personal communication) notes that she must consult her rabbi to determine whether they constitute a *chatzitzah*.

Achiezer 3:33:1) discusses this issue. He reasons that most women do not consider the presence of the nails to be objectionable, so nails should not constitute a *chatzitzah*. Nevertheless, Rav Chaim Ozer concludes that women should be encouraged to cut their nails before *tevilah*:

> I have not found an explicit source among the *Acharonim* to permit [women to forgo the custom of cutting their fingernails before immersion], and concern exists for future disasters [if women will invalidate their immersions by failing to clean their long nails properly]. Therefore [rabbis] cannot explicitly permit [immersion without first cutting long nails], although [they] should instruct the *mikvah*'s supervisors not to rebuke those women who refuse to cut their manicured nails.[14]

Conclusion

This concludes our discussion of the rules of *chatzitzah* and *tevilah*. We hope that our discussion will motivate people to study these laws carefully and to consult with their rabbis whenever questions arise. As Rav Binyomin Forst writes, "One should never attempt to solve a *chatzitzah* problem without consulting a competent Rav." (*The Laws of Niddah* 2:277)

14. Rav Chaim Ozer's ruling has become accepted; see *Badei Hashulchan* (198:18 *Bei'urim s.v. Ulefi*) and *Teshuvot Yabia Omer* (Y.D. 2:13). See *Techumin* 19:102–112 for a discussion of when a rabbi should make concessions to those who do not fully observe Halachah.

Beit Din

Lifnim Mishurat Hadin:

Acting Beyond the Letter of the Law

In the coming chapters, we examine the procedures of *batei din* (rabbinical courts). Before addressing many of these details, we first review the importance of behaving lifnim mishurat hadin, beyond the strict requirements of the law. Our discussion focuses mostly on Talmudic usage and applications of this concept.[1]

Source of *Lifnim Mishurat Hadin*

The Gemara (*Bava Metzia* 30b) cites the verse, "You should do the straight (*yashar*) and the good (*tov*) in the eyes of God" (*Devarim* 6:18), as the source for the importance of acting lifnim mishurat hadin.[2] The Ramban (*ad loc*.) explains:

1. For further discussions of *lifnim mishurat hadin*, see Rav Aharon Lichtenstein's essay, "Does Jewish Tradition Recognize an Ethic Independent of Halacha?" (*Leaves of Faith* 2:33–56). See also Rav Walter Wurzberger's *Ethics of Responsibility* and Dr. David Shatz's review of this book (*Tradition* 30:2:74–95).

2. The *Semak* (*Mitzvah* 49) includes the *mitzvah* to act *lifnim mishurat hadin* in his list of 613 *mitzvot*.

> The intention of this verse is to teach that while we must keep God's specific laws, we must also institute what is "the good and straight" in those areas for which God did not issue any specific rules. This is a great matter because it is impossible for the Torah to regulate every area of human behavior on both an individual level and a communal level. After the Torah presents a number of general ethical commands, such as not to gossip and not to take revenge, it commands us to do good and right in all areas.[3]

In this vein, the Ramban writes that a person should speak kindly and gently with everyone and should establish a positive reputation for himself. As one example, one must follow the Talmudic rule of *bar mitzra* (*Bava Metzia* 108a), that when selling property, one's neighbor automatically has the right of first refusal.[4] In the context of *bar mitzra* the *Maggid Mishneh* (*Hilchot Shecheinim* 14:5) presents an important overview of lifnim mishurat hadin:

> Our perfect Torah gave principles for correcting man's character and behavior in the world when it said, "Be holy" (*Vayikra* 19:2). This verse means, as the Rabbis taught, "Sanctify yourself with what is permitted to you," that a person should not excessively pursue physical desires (even via permitted means). Similarly, the Torah commanded, "You should do the straight (*yashar*) and the good (*tov*) in the eyes of God" (*Devarim* 6:18), which means that one should act in a proper and honest manner towards other people. There was no purpose [for the Torah] to legislate details of these ideas, for the Torah's *mitzvot* apply in every period of history. In every situation, a person must act accordingly, but the appropriate behavior can change, depending on the time and people involved. Nonetheless, the Rabbis wrote several worthwhile details that fall under these principles. The Rabbis enacted some of them as absolute law, while others are merely *lechatchilah* (ideal) or *midat chasidut* (especially pious behavior).

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3. See *Leaves of Faith* 2:41–43, where Rav Aharon Lichtenstein discusses the Rambam's view of *lifnim mishurat hadin* and how it contrasts with the Ramban's.

4. The Rabbis instituted the rule of *bar mitzra* as an absolute obligation, but they based it on the idea of acting *lifnim mishurat hadin* (see Rambam, *Hilchot Shecheinim* 12:5). See *Encyclopedia Talmudit* 4:168–195 for a review of the parameters of this issue.

Importance of *Lifnim Mishurat Hadin*

Rashi (*Bereishit* 1:1) notes that God's name "*Elokim*" appears alone in the first chapter of *Bereishit*, whereas the tetragrammaton ("YKVK") appears next to "*Elokim*" in the second chapter. Rashi explains that God intended to create the world "with strict justice" (*midat hadin*, the attribute associated with "*Elokim*"), but when He saw that the world could not exist this way, He presented "the Divine attribute of mercy" (*midat harachamim*, the attribute associated with the tetragrammaton) and coupled it with *midat hadin*. We are obligated by the verse "*Vehalachta bidrachav*" (*Devarim* 13:5 and 28:9; see *Sotah* 14a) to follow in His footsteps, so must therefore combine our own sense of rigid justice with our sense of compassion. Indeed, the Rambam (*Hilchot Yesodei Hatorah* 5:11) writes that a Torah scholar should always act *lifnim mishurat hadin*. If we follow only strict law, the world cannot exist.

The Gemara (*Bava Metzia* 30b) stresses the importance of a *beit din* ruling *lifnim mishurat hadin*, suggesting that Jerusalem was destroyed because its courts ruled only according to strict justice, and not *lifnim mishurat hadin*. *Tosafot* (s.v. *Lo*) point out that elsewhere (*Yoma* 9b) the Gemara seems to contradict itself by attributing the destruction of the *beit hamikdash* instead to *sinat chinam* (baseless hatred). *Tosafot* explain that both the prevalence of the *sinat chinam* and the lack of judging *lifnim mishurat hadin* were responsible for the destruction of the Temple.

Rav Mordechai Willig (*Beit Yitzchak* 26:140) offers an alternate resolution to this contradiction. He suggests that *sinat chinam* arises because of the lack of acting *lifnim mishurat hadin*. People who refuse to compromise on certain issues come to hate each other. Rav Willig further laments the prevalence of this problem, arguing that hatred constitutes *sinat chinam* even if the person making the demands is, objectively speaking, correct. Usually, both sides in a dispute are somewhat correct in their arguments. In light of this, all parties should act *lifnim mishurat hadin*.

Talmudic Examples and Explanations

Two examples from the Gemara illustrate how to act *lifnim mishurat hadin*. The Gemara (*Berachot* 45b) addresses the requirement of three men who eat together to recite *birkat hamazon* with a *zimun*. The

Gemara rules that if two of the three men have completed their meal, the third must (as proper manners—Rashi) stop and join them in a *zimun*. If only one person has finished his meal, the other two individuals need not interrupt their meal to accommodate his desire for a *zimun* now. Nevertheless, the Gemara relates that Rav Papa and a companion acted *lifnim mishurat hadin* and interrupted their meal to allow his son Aba Mari to recite the *zimun*.

Elsewhere (*Bava Metzia* 83a), the Gemara records another application of *lifnim mishurat hadin*:

> Some porters [negligently (see Rashi and Maharsha)] broke a barrel of wine belonging to Rabbah bar bar Channah. He seized their garments [as a form of payment], so they went and complained to Rav. Rav told [Rabbah bar bar Channah], "Return their garments." [Rabbah] asked, "Is that the law?" Rav replied, "Yes, [as it says in *Mishlei* 2:20], 'You shall walk in the way of good people.'" So [Rabbah] returned their garments. They further claimed [to Rav], "We are poor men, have worked all day, and are hungry. Are we to get nothing?" Rav ordered [Rabbah], "Go and pay them." He asked, "Is that the law?" [Rav] responded, "Yes, [as the same verse continues], 'And keep the path of the righteous.'"

Rashi (s.v. *Bederech*) explains that Rav's ruling was not strict law, but *lifnim mishurat hadin*.

Emulating Sodom

The Gemara (*Ketubot* 103a, *Bava Batra* 12b) employs a similar principal, *kofin al midat Sedom* ("We coerce to prevent Sodom-like behavior"), to urge *batei din* to prevent an individual from acting unreasonably rigidly. Sodomite behavior is defined as refusing to allow another to infringe upon one's rights even when such infringement causes one no harm while at the same time enabling the other person to secure a benefit or avoid a loss (*zeh nehene v'zeh lo chaseir*).[5]

5. See Radbaz (*Teshuvot* 1:146).

A Modern Application—Severance Pay

Although Halachah does not specifically provide for severance pay, the Rabbinical Court of Haifa (*Piskei Din Batei Din Harabaniyim* 3:91–96) issued a ruling *lifnim mishurat hadin* in 1958 that required an employer to pay severance pay to an older worker who was experiencing an extended period of unemployment and was living in poverty. The worker, a custodian in an Orthodox school, had served the school for twelve years before being released when his job came under the control of the local government (which did not wish to hire an elderly worker). After his release, he continued working for an additional year, despite the presence of a new custodian (hired by the local government), and the Chinuch Atzma'i network (to which this school belonged) independently raised his salary for this year. After the year, the Chinuch Atzma'i network said it could no longer afford to pay him.

The *beit din* accepted that the Chinuch Atzma'i network was not technically required to pay the janitor even for his extra year, because they no longer needed his services once they received a new janitor from the government. Nevertheless, the *beit din* urged Chinuch Atzma'i to pay slightly over 40% of his salary for one more year as an act of *lifnim mishurat hadin*.

A ruling of the Kiryat Arba Rabbinical Court (printed in *Techumin* 10:204–215) similarly illustrates how a *beit din* might apply *lifnim mishurat hadin* in practice. A Judaic studies teacher in a local religious school encountered difficulties during his first year there. Although the school rehired him at the end of the school year, they informed him at the beginning of the summer that they were changing his work assignment to administering secular studies—a task for which the teacher lacked the necessary training or inclination. Moreover, the new assignment would pay only 70% of his previous year's salary. The teacher successfully convinced the *beit din* that the assignment change amounted to a *de facto* firing. The teacher's contract, however, authorized the school to fire him even in the middle of the school year, with the school merely paying him basic severance pay.

The *beit din* found that, technically, the school could legitimately fire the teacher at any time. Nevertheless, they placed him in an exceedingly difficult situation, as he now needed to seek a job for the upcoming school year during the summer, while almost all schools fill their openings before the summer. In fact, the teacher failed to find a

job for the next year. The *beit din* required the school to pay generous severance compensation, based on the principle of *lifnim mishurat hadin*, even though the strict letter of Torah law did not entitle the teacher to receive it.

Coercing to Act Lifnim Mishurat Hadin

The Gemara (*Bava Metzia* 24b) relates that Mar Shmuel ruled that one "must" return a lost object if one positively knows the owner's identity. Mar Shmuel based his ruling on *lifnim mishurat hadin*, whereas the strict letter of Torah law often entitles the finder to keep a lost item.[6] The *Rishonim* debate the nature of Mar Shmuel's insistence that one "*must*" act *lifnim mishurat hadin*.[7] The Mordechai (*Bava Metzia* 257) cites the Ra'avan and Ra'avyah, who assert that a *beit din* may coerce a litigant to act *lifnim mishurat hadin* provided that he can afford to do so. However, the *Beit Yosef* (*Choshen Mishpat* 12) notes that the Rosh (*Bava Metzia* 2:7) writes, "We do not coerce him to act this way, as we cannot coerce to act *lifnim mishurat hadin*."

The Rama (C.M. 12:2) cites both opinions about coercion to act *lifnim mishurat hadin* without clearly ruling which opinion is normative, although he appears to prefer the Rosh's opinion.[8] The *Aruch Hashulchan* (C.M. 12:2) notes, however:

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6. The Gemara devotes the second chapter of *Bava Metzia* to discussing when one may keep a lost item, when one should leave the item where it is, and when one must attempt to return it to its owner.

7. The possibility of coercing to act *lifnim mishurat hadin* raises the question of how precisely *lifnim mishurat hadin* differs from the letter of the law if a Jew *must* comply with both. Rav Aharon Lichtenstein (*Leaves of Faith* 2:46–48) grapples with this question at length and argues, "*Lifnim mishurat hadin* is the sphere of contextual morality . . . . Guided by his polestar(s), the contextualist employs his moral sense to evaluate and intuit the best way of eliciting maximal good from the existential predicament confronting him."

8. See *Pitchei Teshuvah* (Y.D. 12:6) and *Teshuvot Minchat Yitzchak* (6:167). See also *Techumin* (24:44–50), where Rav Avraham Sherman discusses an interesting case in which a bank fired a long-time worker who was caught embezzling its money. She then sued the bank in a *beit din*, and the subsequent ruling and appeal depended on whether the *beit din* could coerce the bank to act *lifnim mishurat hadin*.

> This disagreement addresses only whether *beit din* may literally coerce a litigant to act *lifnim mishurat hadin*. All agree, however, that a *beit din* may "verbally coerce" a litigant to act *lifnim mishurat hadin* by telling him that he must act ethically, by rebuking him, and by conjuring up feelings of kindness towards his adversary.

Elsewhere (C.M. 259:5), the Rama adds that we do not urge a financially strapped individual to act *lifnim mishurat hadin* in monetary matters. Similarly, the *Aruch Hashulchan* limits his comments to people who can afford to act *lifnim mishurat hadin*. Rav Yoezer Ariel (*Techumin* 12:156) adds that, if the litigants signed an arbitration agreement (*shtar borerut*) in advance of the hearing, authorizing the *beit din* to rule "in accordance with law, compromise, and discretion (*shikul hada'at*)," then even the Rosh would agree that the *beit din* may coerce a litigant to act *lifnim mishurat hadin*, "in a case where there exists a special reason to do so."

Conclusion

The great importance of acting beyond the letter of the law is clear. In fact, the Gemara (*Berachot* 7a) states that God prays that He should act *lifnim mishurat hadin*. Rav Walter Wurzberger (*Ethics of Responsibility*, p. 32) reports that Rav Yosef Dov Soloveitchik once said, "Halachah is not a ceiling but a floor." Similarly, Rav Aharon Lichtenstein writes, "Traditional halachic Judaism demands of the Jew both adherence to Halachah and commitment to an ethical moment that, though different from Halachah, is nevertheless of a piece with it and in its own way fully imperative" (*Leaves of Faith* 2:52). Rav Yitzchak Herzog (*Techumin* 7:278–279) vigorously argues with some (unidentified) non-Jewish writers who assert that rigid law represents the Jewish ideal of justice. Rav Herzog insists that *lifnim mishurat hadin*, an expression of kindness within our legal framework, characterizes our true ideal.[9]

9. See also the Maharal's comments on this point (*Netivot Olam*, "*Netiv Gemilut Chassadim*," Chapter 5).

The Prohibition Against Using Civil Courts

Jews no longer live in autonomous communities in the Diaspora, as they did for many previous generations. Consequently, the temptation to bring court cases to civil courts has grown stronger. In this chapter, we discuss when the Halachah permits using the civil court system.

Source of the Prohibition

The Torah (*Shemot* 21:1), in introducing monetary laws, commands, "And these are the laws that you shall present to *them*." The Gemara (*Gittin* 88b) interprets "them" as referring to ordained *dayanim* (rabbinical judges), whereas one may not approach "non-Jews or unqualified Jews" to adjudicate a case against a fellow Jew. The Gemara adds that even if the non-Jewish courts judge according to Halachah, we nevertheless may not submit our internal disputes to them.[1] The *Tashbetz*

1. This prohibition applies even if both Jewish litigants wish to adjudicate in civil court. Rav Uri Dasberg (*Techumin* 24:49–50) offers an interesting suggestion as to why the Halachah prohibits litigating in civil courts, even in cases where civil law and Halachah coincide. He argues that the role of a *beit din* is not merely to rule on the disputed monies, but also to offer moral criticism. A *beit din* might recommend that a litigant pay more than the strict law requires, as an act of decency. Moreover, a *beit din* demands of the litigants that they conduct themselves in an ethical manner, above and beyond the strict letter of the law (see our previous chapter). By contrast, a civil court

(vol. IV, *Tur Hashelishi* 6) rules that this prohibition even precludes the use of non-Jewish judges who do not practice idolatry, such as Muslims.

Although the Gemara names two groups of unacceptable judges, non-Jews and uncertified Jews, in the same sentence, the Ramban (*Shemo*t 21:1) notes a critical distinction between them (codified in *Shulchan Aruch*, *Choshen Mishpat* 26:1):

> Even though *Chazal* have mentioned these two groups together, there is a difference between them. If the two litigants consent to come before unqualified Jews for [monetary] judgment, and accept them as judges, it is permissible to do so, and these litigants must abide by the unqualified judges' decision. It is forbidden, however, to be judged by non-Jewish judges under all circumstances, even if the non-Jewish statutes are identical to our laws.

Nature of the Prohibition

The Rambam (*Hilchot Sanhedrin* 26:7) and *Shulchan Aruch* (*ibid*.) add a surprisingly harsh condemnation of those who adjudicate their disputes in non-Jewish courts:

> Whoever submits a suit for adjudication to non-Jewish judges . . . is a wicked man. It is as though he reviled, blasphemed, and rebelled against the Torah of Moshe.

Why do the Rambam and *Shulchan Aruch* include such a sharp exhortation in their legal codes? Apparently, this strong language defines the character of the prohibition against being judged by non-Jewish courts—the litigants implicitly reject the Torah in favor of a foreign legal system.[2] This analysis helps explain a curious law in the *Shulchan Aruch* (C.M. 26:2):

> If the non-Jews' hands are powerful (i.e., if Jews lack political sovereignty or, at the very least, communal autonomy) and [a Jewish plaintiff's] adversary is a difficult and violent person, such

judge has no mandate to demand more than the letter of the law. Thus, a Jew who adjudicates in civil court, even if the court rules just as a *beit din* would have ruled, rejects the value system that we strive to integrate into our legal system.

2. See the analysis of Rav Yaakov Ariel in (*Techumin* 1:322–325) and Rav J. David Bleich (*Tradition* 34:3:58–87).

> that [the plaintiff] is unable to recover the money in *beit din*, the defendant should first be summoned to *beit din*. If the defendant refuses to come to *beit din*, the plaintiff receives permission from the *beit din* to recover the money through the non-Jewish court system.

Permission of this type is commonly referred to as a *heter erka'ot* (permission to submit the claim to civil court).[3] For example, Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, C.M. 1:8) discusses how to deal with a dishonest merchant who sold non-kosher meat with forged kashrut certification. Rav Moshe writes that the community should initially sue this merchant in a *beit din* (as opposed to a civil court), but the *beit din* may permit them to sue him in civil court should the *beit din* be unable to halt his activities.

The *Klei Chemdah* (in his first essay on *Parshat Mishpatim*) asks, if the Halachah requires sacrificing one's entire wealth to avoid violating a negative prohibition (see Rama, *Orach Chaim* 656), why may *beit din* issue a *heter erka'ot*? He answers that submitting a dispute to a non-Jewish court does not transgress anything unless it demonstrates a rejection of the Torah system of justice. If one makes a genuine effort, therefore, to adjudicate the matter in *beit din*, but the other party resists, *beit din* may authorize one to press charges in non-Jewish court.[4]

Israeli Courts

The halachic status of the State of Israel's civil courts has generated extensive discussion since the establishment of the State. These courts seldom judge according to Halachah (with some notable exceptions); instead, they base their rulings primarily on a mixture of British, Turkish, and modern Israeli laws.

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3. Rav Yitzchak Yaakov Weisz (*Teshuvot Minchat Yitzchak* 9:155) and Rav Mordechai Willig (personal communication) note that a *heter erka'ot* is necessary even when suing a non-observant Jew. See also *Yeshurun* (12:537–540), where Rav Chaim Kohn discusses whether a *heter erka'ot* is required in a place where no *beit din* exists, and *Teshuvot Sheivet Halevi* (10:263), where Rav Shmuel Wosner offers further parameters for when a *heter erka'ot* is necessary.

4. For further elaboration on the *Klei Chemdah*'s comments, see Rav Michael Taubes's *The Practical Torah* (pp. 144–145).

The Gemara (*Sanhedrin* 23a) permits litigation in Syrian *erka'ot* (civil courts) because no competent judges resided there. The judges in this type of court rule based on life experiences and common sense. Similarly, the Rama (C.M. 8:1, citing the Rashba) rules that if no viable alternative exists, a community may appoint three well-respected people with sound judgment to serve as judges. Accordingly, former Israeli Supreme Court Justice Menachem Elon (*Hamishpat Ha'ivri* 1:22, note 80, and 1:122, note 174) suggests that the Israeli civil courts enjoy the same status as these Syrian *erka'ot* and their later parallels.

The Chazon Ish (*Sanhedrin* 15:4), however, emphatically forbids litigation in Israeli civil courts, asserting that they do not share the status of Syrian *erka'ot*. He explains that Syrian *erka'ot* judged entirely based on common sense, whereas Israeli courts implement an organized non-Torah legal system.[5] Thus, Israeli civil courts attain the status of a non-Jewish court system, despite the fact that the judges and law enforcement officials are mostly Jewish. Moreover, the *Chazon Ish* adds that Israeli courts are worse than non-Jewish courts, for we expect non-Jews to judge by their own laws, whereas we disapprove of Jews "who have abandoned the laws of the Torah for laws of nonsense."[6] Indeed, Rav Ovadia Yosef (*Teshuvot Yechaveh Da'at* 4:65) rules that one who presents a case to a secular Israeli court violates both the prohibition against using non-Jewish courts and the prohibition against causing another Jew to sin (*lifnei iveir*), because the case provides Jewish judges with an opportunity to apply secular laws.[7]

Virtually all authorities accept the *Chazon Ish*'s position.[8] Thus, one may not present a civil case against another Jew to Israeli civil courts for adjudication.

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5. The *Chazon Ish* also suggests that perhaps the Syrian *erka'ot* attempted to rule by Torah law, but they made mistakes out of ignorance, whereas Israeli courts make no attempt to apply Torah law.

6. Israeli courts also differ from Syrian *erka'ot* in that the latter operated only in places where no halachic experts (*mumchim*) resided to function as a proper *beit din*. For further discussion of Syrian *erka'ot*, see Rav Shlomo Goren's essay (printed in *Techukah Leyisrael Al Pi Hatorah* 1:149–152).

7. See, however, *Teshuvot Beit Avi* (2:144), who questions whether a Jewish civil judge violates any prohibition when he adjudicates a case involving Jewish litigants. (Unlike Rav Ovadia, Rav Liebes did not live in Israel, so he is addressing the case of a Jewish judge in the American court system. See also Rav Mordechai Eliyahu's comments in Techumin 3:244.)

8. Rav Yitzchak Herzog (*Hatorah Vehamedinah* 7:9–10), Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 12:82), Rav Ovadia Yosef (*Teshuvot Yechaveh Da'at* 4:65),

Preliminary Injunctions, Collections, and Filing for Bankruptcy

Despite the severity of the prohibition against using the civil court system, several cases exist where a Jew may possibly use the civil court system. The Rambam (*Hilchot Sanhedrin* 26:7) and *Shulchan Aruch* (*Choshen Mishpat* 26:1) formulate the prohibition against using non-Jewish courts as a ban on being "judged" by a non-Jewish court.[9] Accordingly, utilizing civil courts for non-judiciary purposes would appear to be permitted.

Thus, Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Choshen Mishpat* 2:11) permits requesting that a civil judge issue a preliminary injunction, an order to freeze the status quo of property until verifying its owner. Since a preliminary injunction does not entail judgement, seeking this order does not violate Halachah.[10] Similarly, Rav Mordechai Eliyahu (*Techumin* 3:244) rules that one may utilize civil courts to collect an undisputed debt. Once again, no prohibition exists when no judgement is involved.[11] Rav Hershel Schachter (in a lecture delivered at The Fifth Avenue Synagogue) ruled that one may file for bankruptcy in civil bankruptcy court, equating it conceptually with filing for a civil marriage license.[12] Rav J. David Bleich (*Tradition* 34:3:74) permits probate of an undisputed will in civil court, and Rav Ezra Basri (*Dinei Mamonot* 1:348) rules that Halachah recognizes a monetary custodian appointed by a civil court.

Rav Tzvi Pesach Frank (cited by Rav Waldenberg and Rav Ovadia), Rav Shmuel Wosner (*Teshuvot Sheivet Halevi* 10:263), and Rav Moshe Shternbuch (*Teshuvot Vehanhagot* 1:795).

9. See Rama (*Teshuvot* 52) who states "the Torah is concerned only with the judgment [of the non-Jewish courts]."

10. Not all authorities agree with Rav Moshe, though. See *Teshuvot Sheivet Halevi* (10:263:4), who completely disagrees with him, and *Dinei Mamonot* (1:347), who permits requesting an injunction only in cases of significant financial loss.

11. See *Teshuvot Maharsham* (2:252 and 3:195) who cites Rav Avraham David Wahrmann as permitting the use of civil courts to collect an undisputed debt in places where *batei din* have no legal authority. Rav Yonah Reiss (personal communication) comments that *batei din* sometimes take this position into account, but he notes that it is rare for debts to be undisputed. In addition, see *Teshuvot Sheivet Halevi* (10:263:2–3).

12. For an extensive study of the halachic complexities surrounding bankruptcy, see Rav Steven Resnicoff's essay in the Fall 1992 issue of *The Journal of Halacha and Contemporary Society* (24:5–54).

Arbitration Panels

At least two prominent authorities permit individuals to submit disputes to an arbitration panel for resolution. They reason that the arbiters base their rulings on common sense, as opposed to non-Jewish codes of law, so these forums are not considered non-Jewish courts. Thus, the Rabbinical Court of Ashdod (*Piskei Din Batei Din Harabaniyim* 13:330–335), then headed by Rav Shlomo Dichovsky, ruled that one may submit a dispute to the Israel Union of Engineers and Architects. Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 11:93) also permits bringing disputes to professional arbitration panels, such as the arbiters of the Association of Israel Cooperative Apartments. Rav Yonah Reiss pointed out to me that Rav Waldenberg's ruling has added significance because it includes panels that the Israeli government requires (thus making them closer to actual civil courts).

The above authorities address arbitration in Israel, where the arbiters are mostly Jewish. Outside of Israel, the issue may be somewhat more complex. The *Shach* (C.M. 22:15, as understood by the *Aruch Hashulchan*) permits submitting a dispute to an arbitration panel consisting of non-Jews, provided that they are not bound by non-Jewish laws. However, the *Netivot* (C.M. 22:14) disagrees with the *Shach* and forbids submitting a dispute to an arbitration panel consisting of non-Jewish members. The *Aruch Hashulchan* (C.M. 22:8) rules in accordance with his interpretation of the *Shach*,[13] but Rav J. David Bleich (*Bin'tivot Hahalachah* 2:169) and Rav Hershel Schachter (personal communication) think that the strict opinion of the *Netivot* should be followed (see *Halachah Pesukah Al Choshen Mishpat* 22:2).

Moreover, some have questioned whether arbitration panels are merely less formal courts or truly panels that are not bound by secular law. On the other hand, Rav Dr. Dov Bressler (*The Journal of Halacha and Contemporary Society* 9:115–116) cites the following statement from the Committee on Arbitration of the Association of the Bar of the City of New York (emphasis added):

13. Rav Akiva Eiger (gloss to C.M. 3:1) appears to support the *Shach*, as he does not specify that Jews must serve as the arbiters. Rav J. David Bleich (*Tradition* 34:3:71–74) limits the *Aruch Hashulchan*'s lenient ruling to arbitration carried out by laymen and entirely outside of the judicial arena.

> The arbitrator need not apply substantive principles of law. The arbitrator is not bound by evidentiary rules; he need not give reasons to support his ultimate determination and his award is not subject to judicial review for errors of law or fact. The arbitrator, *free from rules of law*, may decide solely on the equities of the case.[14]

Accordingly, Rav Bressler concludes, "Individuals who may ordinarily tend to ignore rabbinical courts should therefore be counseled into selecting arbitration rather than a strict judicial hearing." Someone who faces this issue should consult both his rabbi and his attorney for competent guidance. Rules and practices are subject to change and variation from one locale to another, so a Rav must conduct a careful investigation of the facts before determining the Halachah in a particular situation.

Equitable Distribution

An increasing number of engaged couples in the Orthodox community today sign prenuptial agreements to prevent situations of *igun*.[15] These agreements include a binding arbitration agreement that designates a specific *beit din* to adjudicate a divorce settlement, should the need unfortunately arise. Rav Zalman Nechemia Goldberg (*Yeshurun* 11:698) suggests that a couple could sign a prenuptial agreement that would empower the *beit din* to divide the property between husband and wife based on civil equitable distribution laws.[16] Rav J. David

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14. In reality, Alan Blumenfeld, Esq., of Brooklyn, NY, has informed me that the relationship between law and arbitration depends on the place and context, such that arbitration will not necessarily be completely detached from law.

15. In our first volume, we discuss the importance of these agreements as a means of preventing situations of *igun* (pp. 8–16).

16. See Rav Willig's essay in *The Prenuptial Agreement* (p. 33) and *Beit Yitzchak* (36:25–26). This agreement is not the first example of a financial arrangement to provide women with money that they would not otherwise receive according to Halachah. A better known example relates to the laws of inheritance, where observant Jews have routinely used a document called a *shtar chatzi zachar* to arrange for daughters to inherit a portion of the estate even when the Halachah does not entitle them to this portion (see Rama, C.M. 281:7, *Ketzot Hachoshen* 33:3, and Rav Feivel Cohen's *Kuntres Midor L'dor*). Indeed, Rav Shlomo Dichovsky (*Techumin* 18:30–31) writes that daughters have received a portion of the estate in every case of inheritance that he has ever

Bleich (*Tradition* 34:3 and *Bin'tivot Hahalachah* 2:169–172; based on the *Taz*, *Choshen Mishpat* 26:3, and other sources) opposes this proposal, arguing that it violates the prohibition against using the civil legal system, because the beit din will now replace Halachah with non-Torah laws. Even if the bride and groom wish to apply equitable distribution, Rav Bleich asserts that their desire is irrelevant, for they may not stipulate conditions that contravene Halachah *(matneh al mah shekatuv batorah*).

Rav Willig (in an address to the Rabbinical Council of America) defended Rav Zalman Nechemia's proposal, noting that in order to be considered a non-Torah system, the *beit din* would need to rule based on civil law as it will be codified on the day of the *beit din hearing*. By contrast, the agreement authorizes the *beit din* to employ the equitable distribution laws as of the *signing* of the agreement. Thus, the parties are not submitting their case to a non-Torah legal system, but are merely structuring a settlement in case of divorce. Rav Willig and Rav Zalman Nechemia understand that the *Taz*, cited by Rav Bleich, objects only to accepting whatever the civil laws will be at the time of adjudication, for that truly replaces Halachah with a new source of law. Here, however, where both sides spell out at the time of the agreement how they wish to divide their property, they have the right to make arrangements as they see fit (*kol tnai sheb'mammon kayam*), as long as they do not blindly submit to the authority of the civil court or civil laws.[17]

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encountered (as a *dayan*), including the daughters of prominent Torah scholars. Accordingly, Rav Dichovsky argues that one should not object to equitable distribution agreements on the grounds that they undermine Halachah, because the entire Orthodox world sanctions equitable inheritance agreements, which serve the same purpose.

17. The Rabbinical Council of America's Beth Din of America (Rules and Procedures 3(d) and 3(e)) follows Rav Willig and Rav Zalman Nechemia's view:

> (d) In situations where the parties to a dispute explicitly adopt a "choice of law" clause, either in the initial contract or in the arbitration agreement, the Beth Din will accept such a choice of law clause as providing the rules of decision governing the decision of the panel to the fullest extent permitted by Jewish Law.
>
> (e) In situations where the parties to a dispute explicitly or implicitly accept the common commercial practices of any particular trade, profession, or community—whether it be by explicit incorporation of such standards into the initial contract or arbitration agreement or through the implicit adoption of such common commercial practices in this transaction—the Beth Din will accept such common commercial practices as providing the rules of decision governing the decision of the panel to the fullest extent permitted by Jewish Law.

Serving as a Lawyer or Juror

Rav Ovadia Yosef (*Teshuvot Yechaveh Daat* 4:65) distinguishes between representing the *plaintiff* in Israeli civil court, which he prohibits, and representing the *defendant*, which he sometimes permits. Rav Ovadia argues that the plaintiff's attorney actively endorses a non-Torah legal system by helping a Jew utilize it, in violation of Halachah, to collect money.[18] The defendant, on the other hand, does not necessarily wish to appear in secular court. He might prefer to follow the Halachic requirement to submit the dispute to a *beit din*. Rav Ovadia thus permits representing a defendant who sought to have a *beit din* adjudicate his case, equating such a situation with "saving a victim from his robber."

Rav Menashe Klein (*Teshuvot Mishneh Halachot* 4:213) prohibits serving on a jury, especially when the case includes a Jewish litigant, because performing jury duty glorifies a non-Torah legal system.[19]

Rav Yonah Reiss notes (*Shaarei Tzedek* 4:295) that following their view encourages couples who might otherwise use the civil courts to adjudicate in *batei din* instead. Rav Reiss also defends Rav Willig and Rav Zalman Nechemia's approach based on *Teshuvot Divrei Chaim* (C.M. 30), *Teshuvot Igrot Moshe* (C.M. 1:72), and *Teshuvot Minchat Yitzchak* (9:112). See also Rav Avraham Sherman and Rav Shlomo Dichovsky's debate regarding the applicability of Israeli equitable distribution laws when a couple did not specifically agree to them (*Techumin* 18:18–40 and 19:205–220), and Rav Ronald Warburg's analysis of their debate (*Hadarom*, vol. 70–71 [5761], pp. 129–148).

18. See also *Teshuvot Shemesh Umagein* (vol. 3, E.H. 44), where Rav Shalom Messas invalidates a wedding because one of the witnesses served as a judge in the Israeli civil court system. Although the witness was a practicing Orthodox Jew, Rav Messas claims that anyone who serves as a judge in civil court is considered a thief because he forces people to pay money even when the Halachah does not necessarily require the payment. In this brief responsum, Rav Messas does not address the fact that Orthodox judges generally believe that they are not violating any prohibition; rather, they presumably view themselves as following Justice Menachem Elon's aforementioned opinion that Israeli civil courts do not share the status of non-Jewish courts. Although this opinion is not accepted by halachic authorities, we have discussed in our first volume (pp. 83–89) several cases where authorities accept a sinner as a valid witness because he does not perceive himself to be sinning (based on *Sanhedrin* 26b). One wonders how those authorities would rule in Rav Messas's case. Furthermore, Rav Mordechai Eliyahu (Techumin 3:244) believes that under current circumstances, observant judges can make a positive contribution to the Israeli civil court system. See also *Teshuvot Beit Avi* (2:144).

19. Rav Klein believes a Jew should not sue even a non-Jew in civil court. Some *poskim* share his position, but *poskim* continue to debate this matter. See, for example,

Rav Hershel Schachter told Rav Ezra Frazer that he strongly disagrees with this ruling. He explained that the Halachah requires non-Jews to establish a legal system, so a Jew does nothing wrong by participating as a juror in civil courts, unless both litigants are Jewish (in which case facilitating their trial supports a sin).[20] Regarding capital trials, Rav Schachter argues that every government has the right to punish criminals within reason. For example, if a Jew murdered, a non-Jewish government may legitimately execute him. Accordingly, Jewish jurors may vote to convict a Jewish defendant if solid evidence convinces them that he committed murder.[21] Rav Yitzchak Isaac Liebes (*Teshuvot Beit Avi* 2:144) also permits Jews to perform jury duty in both civil and capital cases.[22]

Criminal Law

Chazal condemn *mesirah*, turning a Jew over to non-Jewish authorities, as a terrible sin (see *Rosh Hashanah* 17a and Rashi s.v. *Vehamesurot*).[23] Accordingly, we might expect halachic authorities to disapprove of assisting the government in apprehending Jewish

Dinei Mamonot (1:347) and Rav J. David Bleich's aforementioned essay in *Tradition* (pp. 80-83). One point that Rav Bleich addresses is suing a Jew with insurance coverage in civil court to collect payment from the insurance company. Rav Bleich concludes:

> Since it is readily perceived that the cause of action is really against a non-Jewish insurance company that will not appear before a Beit Din, it would appear that judicial proceedings in such circumstances do not constitute aggrandizement of a non-halachic legal system and hence such suits are not forbidden.

20. Regarding the correlation between non-Jews' obligation to establish a court system and the halachic weight of their governments' legislation, see *Even Ha'ezel* (*Hilchot Nizkei Mamon* 8:5), based on Rashi (*Gittin* 9b s.v. *K'sheirin* and s.v. *Chutz*).

21. See also *Teshuvot Yabia Omer* (C.M. 10:7), where Rav Ovadia Yosef permits handing over a Jewish murderer to a non-Jewish government that will incarcerate him for life, but not to a government that will execute him.

22. It is also important that Jews not attempt to exempt themselves dishonestly from jury duty by fabricating excuses. This type of dishonest behavior can lead to public *chilul Hashem* (desecration of God's name). See *Teshuvot Melamed Leho'il* (1:42).

23. For further discussion of the concept of *mesirah*, see *Pitchei Choshen* (vol. 5, Chapter 4) and *Minchat Shmuel* (2:143–155).

criminals.[24] Nevertheless, many authorities distinguish between just and unjust situations. Following the same line of reasoning as his ruling on capital jury duty, Rav Hershel Schachter (*The Journal of Halacha and Contemporary Society* 1:118) explains:

> A "*moser*" is one who aides a pirate, a crooked government official, or a tyrant-king to obtain money illegally from his fellow Jew. Even if the Jew has actually done something wrong, but if the secular government or the ruler would exact a punishment far beyond that which the crime should require, then it is likewise forbidden to report him. If, however, the government is entitled to its taxes, or is permitted to punish criminals as offenders, there is no problem of *mesirah* in telling the government information needed for them to collect their taxes or to apprehend their man.[25] One critical point should however be added: There is no problem of *mesirah* in informing the government of a Jewish criminal, even if they penalize the criminal with a punishment more severe than the Torah requires, because even a non-Jewish government is authorized to punish and penalize above and beyond the law, *shelo min hadin*, for the purpose of maintaining law and order. However, this only applies in the situation when the Jewish offender or criminal has at least violated some Torah law. But if he did absolutely nothing wrong in the eyes of the Torah, then giving him over to the government would constitute a violation of *mesirah*.

Rav Hershel Schachter applied this approach in a case where I consulted him. An Orthodox woman, who was serving as an assistant district attorney (ADA) in an American city, was assigned the task of prosecuting an Orthodox man accused of severe child abuse. She asked me if Halachah permitted her to do so, and I consulted Rav Schachter. Rav Schachter responded that she may prosecute him,[26] as *batei din*

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24. Regarding the permissibility of a Jew working for the IRS or another job that would similarly require him to routinely assist in the punishment of Jewish criminals, see *Teshuvot Igrot Moshe* (C.M. 192), *Teshuvot Minchat Yitzchak* (4:51), and *Teshuvot Sheivet Halevi* (2:58).

25. See, however, *Teshuvot Vehanhagot* 1:807.

26. This ruling was based on Rashi (*Gittin* 9b s.v. *K'sheirin* and s.v. *Chutz*) and *Teshuvot Maraham Schick* (C.M. 50).

today lack any jurisdiction in criminal matters, so otherwise the accused would go unpunished and repeat his heinous crime.[27]

Rav Yitzchak Herzog (*Techukah Leyisrael Al Pi Hatorah* 1:173) notes that rabbis in Israel similarly acknowledged their inability to punish criminals, and they consequently chose to abdicate responsibility for criminal matters:

> In a rabbinic convention held in Tel Aviv [immediately before the establishment of the State of Israel] the rabbis unanimously voiced their opinion that they wish to give up control of any jurisdiction over criminal matters. They noted that even in Eastern Europe, the rabbinate ceded jurisdiction on the matters to the non-rabbinic authorities, such as the famous *Vaad Arba Aratzot* [Council of Four Lands], who acted as the equivalent of the Talmudic *shivah tovei ha'ir*—seven recognized community leaders—and had exclusive control of imposition of taxes and punishing rebels.[28]

Rav Itamar Warhaftig (*Techumin* 10:190) argues:

> The rabbis themselves did not wish to deal with [criminal law], but rather were prepared for civil courts to adjudicate this area. Hence, it is unthinkable that rabbis should not recognize an arrangement that they [or their predecessors] themselves desired!

Accordingly, Rav Naftali Bar-Ilan (*Techumin* 10:190) permits testifying in civil court if one witnessed a fatal automobile accident.[29] He

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27. Indeed, Rav Yonah Reiss has told me that the RCA Beth Din of America does not adjudicate criminal cases.

28. Rabbeinu Nissim (*Derashot Haran*, *Derosh* 11) explains how the Torah's ideal system for enforcing criminal law requires the king and the *Sanhedrin* to work in tandem. In the modern State of Israel, the *batei din* and the government do not enjoy a close enough relationship to facilitate this type of collaboration. Thus, the *batei din* could not uphold the Torah's criminal legal system, so they relinquished their jurisdiction over criminal law (see *Techumin* 24:313, note 1).

29. Ordinarily, the *Shulchan Aruch* (C.M. 28:3) and Rama (*Teshuvot* 52) prohibit testifying in secular courts when all litigants are Jewish or in a case where the court will take money away from a Jew in violation of Halachah (such as being the lone witness to testify that a Jew owes money to a non-Jew, where the court might force the Jew to pay based on one witness's testimony, whereas a *beit din* requires two witnesses). See also *Teshuvot Tzitz Eliezer* (19:52), who appears to accept Rav Bar-Ilan's position.

notes, however, that if monetary disputes arise from the accident, these should be submitted to a *beit din*.

Despite the above positions of many *poskim* to permit cooperation with the government in the just prosecution of Jewish criminals, one must always present an eminent Rav with practical questions of *mesirah*. *Poskim* do not necessarily agree on the definition of a just situation, so some *poskim* might prohibit notifying the authorities of cases where others believe that no problem of *mesirah* exists.[30] Moreover, questions of *mesirah* often potentially involve questions of life-and-death.

Extradition From Israel

Rav Shaul Yisraeli (*Chavat Binyamin* 1:23) discusses, in a specific case, whether the State of Israel may extradite a Jew to a foreign country where he is wanted for murder. Rav Yisraeli notes that failure to extradite the alleged criminal would not leave him unpunished, for an Israeli court could try him. Furthermore, in that specific case Rav Yisraeli argues that there is concern that the judge abroad might harbor anti-Semitic views or be influenced by anti-Semitic terror organizations. (The case he addresses involved a Jew suspected of murdering an Arab in a European country with a large Arab population.) He adds that "the Halachah does not recognize international borders," so Israel should not hesitate to punish her citizens for crimes committed abroad. Accordingly, Rav Yisraeli concludes that Israel should not extradite the Jewish individual in the specific case he addressed and he also

30. See *Teshuvot Tzitz Eliezer* (19:52), who, depending on the circumstances, permits informing the Israeli police of many situations in which Jews abused children physically and sexually, and *Nishmat Avraham* 4:210, who cites Rav Yosef Shalom Eliashiv as permitting the reporting of a sexually abusive teacher to the police (in both Israel and non-Jewish countries) if the school administration did not discipline him appropriately after hearing of the allegations against him. (When practical cases of this type arise, it is important to consult a competent attorney, in addition to an eminent rabbi, as one's legal responsibility to notify the police about abuse might vary from state to state.) See also *Teshuvot Minchat Yitzchak* (9:9:2) and *Teshuvot Mishneh Halachot* (7:285), who address cases where they do not permit reporting a Jewish criminal to the government; *Techumin* (24:306–313), where Rav Tzvi Yehudah Ben-Yaakov permits reporting Jewish burglars and violent criminals to the police; and *Yeshurun* (12:536–537), where Rav Avraham Weinfeld permits reporting a Jewish thief to the police in certain circumstances.

urges the government to legislate that any Jew who deserves extradition will instead be tried in Israel.

On the other hand, Rav Chaim David Halevi[31] (*Teshuvot Mayim Chaim* 67) argues that Israel fundamentally may sign extradition agreements with other countries and defends the extradition laws as they existed in his time (1991). Rav Halevi records that at that time, Israel would extradite a Jew only when he committed a crime with no religious or political connection, if the other country provided sufficient evidence to warrant a trial, if the Jew were not an Israeli citizen at the time of the crime, and if the Jew would not face the death penalty for a crime that is not a capital offense in Israel.

Conclusion

It is fundamentally prohibited for two Jewish litigants to present their case to a civil court for adjudication. Nevertheless, one should consult a competent Rav and lawyer in questionable situations, as this prohibition has many exceptions. In Israel, the prohibition against civil courts is further complicated by the fact that the judges are mostly Jewish and are thus themselves bound by Halachah. Rav Yaakov Ariel (*Techumin* 1:319–320) summarizes the present state of Israeli courts:

> One of the most painful problems for those who believe that there is a place for Torah in the State of Israel is the law status accorded to Jewish civil law . . . Israel, the Jewish state, should have traditional Jewish civil law as the law of the land. Just as it is inconceivable to have a Jewish state whose official language is not Hebrew or that does not follow the Jewish calendar, so too the State of Israel should not adopt foreign civil codes. No Jew, despite his identification with the positive aspects of the State of Israel, should tolerate the current situation regarding civil law. The love of the State of Israel should cause every Jew to long for the day when halachic civil law will be returned to its original great status . . . . Just as the Religious Zionist community educates its community in state religious schools, so too we must settle our monetary disputes in the state rabbinical courts.

31. Rav Halevi addresses the propriety of Israel signing extradition treaties in general.

Regrettably, *batei din* in both America and Israel handle a relatively low number of cases, apparently because many observant Jews are not fully sensitized to the severity of the prohibition against litigating in civil court. Rav Itamar Warhaftig told me (in 2004) that many qualified *dayanim* in Israel are not able to find work as *dayanim* due to the small number of monetary disputes that reach *batei din*. Similarly, Rav Yonah Reiss told me that (as of 2004) the Beth Din of America adjudicates approximately 100 monetary disputes a year, a small number considering how many Jews live in the New York area. However, both Rav Warhaftig and Rav Reiss did note that the number of cases in their respective countries' *batei din* is growing each year, hopefully indicating that people are slowly learning about the importance of resolving their disputes in *batei din*.

Summons to Beit Din

Part I: Issuing the Summons

In the next two chapters, we focus on the topic of *hazmanah*, summons to *beit din* (a rabbinical court). We begin by discussing the details of how a *beit din* issues a *hazmanah*.

Source of the Rule

The Gemara (*Mo'eid Katan* 16a) provides the source for summoning a defendant (*nitba*) to a *beit din*:

> From where do we know that an agent of *beit din* is sent to summon a defendant? As it is written (*Bemidbar* 16:12), "Moshe[1] sent forth to summon Datan and Aviram the sons of Eliav." [How do we know that] we inform the defendant that he will be judged in the presence of a great man? As it is written (*Bemidbar* 16:16), "Moshe said to Korach, 'You and your entire assembly, appear before Hashem.'" [How do we know that] we mention the plaintiff? As it is written (*ibid*.) "You, they, and Aharon." [How do we know that] a set date is mentioned in the *hazmanah*? As it is written (*ibid*.), "Tomorrow." [How do we know that] a second *hazmanah* is

1. See *Nimukei Yosef* (*Mo'eid Katan* 8a in the Rif's pages s.v. *Ata Uploni*) regarding whether Moshe was considered the equivalent of an actual *dayan* or merely a messenger of the *beit din* in the dispute with Korach.

> sent? As it is written (*Yirmiyahu* 46:17, as explained by Rashi; however, see Ritva), "Place Paroh, King of Egypt, in excommunication for having ignored his appointed time more than once." From where do we learn that the agent of the court [who delivers the summons] is permitted to report to the *beit din* [about the actions of a recalcitrant defendant] without concern for violating *lashon hara* (slander) prohibitions? As it is written (*Bemidbar* 16:14), "Even if you would gouge out the eyes of those men, we shall not go up." [The court agent must have told Moshe that Datan and Aviram made these remarks, or else he would not have known about the remarks in order to respond angrily—Rashi s.v. *Ha'einei*.] From where do we derive that we excommunicate (*nidui*) one who refuses to appear in *beit din*? As it is written (*Shoftim* 5:23), "Curse Meroz [for their refusal to join the battle against Chatzor]."

Delivering the Hazmanah

The *Shulchan Aruch* (*Choshen Mishpat* 11:1) describes the process of issuing the *hazmanah* as follows: "*Beit din* sends their agent (*sh'liach beit din*) to summon the defendant to appear before *beit din*." Hence, the *hazmanah* is served the same way that Moshe summoned Datan and Aviram; a messenger appears personally to the defendant and issues a verbal summons.[2] Of course, presenting the *hazmanah* in person often cannot be done today. Therefore, the Israeli Rabbinate's *batei din* permit delivering a written *hazmanah* by mail (*Takanot Hadiyun* [5753 edition] 4:36). *Batei din* in America also issue *hazmanot* by mail. Professor Eliav Shochetman (*Seder Hadin* p. 148), addressing the Israeli *beit din* system, explains the justification for this practice:

> The reason [that contemporary authorities permit delivering the *hazmanah* by mail] appears to be the great number of cases litigated in *beit din*—tens of thousands per year.[3] Bear in mind that

2. See *Encyclopedia Talmudit* (8:646 note 9) for a discussion of whether the *dayanim* themselves, or only their *shaliach*, may serve a *hazmanah*.

3. Rav Itamar Warhaftig told me (in 2004) that, in truth, *batei din* in Israel handle a relatively low number of monetary disputes, apparently because some observant Jews are not fully sensitized to the severity of the prohibition against litigating in civil court (see previous chapter). Presumably Prof. Shochetman's calculations also include

> each case has at least two litigants to be summoned, and if we consider that court dates are postponed and that *hazmanot* thus need to be sent a second time, for this and various other reasons, it turns out that tens if not hundreds of thousands of *hazmanot* are sent per year. This reality certainly does not allow for a *shaliach* to deliver each *hazmanah* personally.[4]

On a practical note, I have found that a personally delivered *hazmanah* can often influence a recalcitrant party to appear in *beit din*. A personal visit sends a message to the recalcitrant husband that the *beit din* "means business" and is serious about doing whatever it can to ensure that justice is served.

Sometimes, though, it is difficult to serve a *hazmanah*. Some unscrupulous individuals unfortunately try to evade receipt of the summons. Thus, the Israeli Rabbinate's *batei din* provide alternative means for delivering *hazmanot*, such as printing a notice in a newspaper or leaving the *hazmanah* with neighbors or co-workers.[5]

Content of the Hazmanah

Acharonim debate whether the *hazmanah* must include the matter to be adjudicated in *beit din*, as the Gemara does not mention such an obligation. The *Shach* (*Choshen Mishpat* 11:1) requires that the *hazmanah* inform the defendant what the case is about. Otherwise, the defendant can claim that were he to know the issue in advance, he would appease the plaintiff outside of *beit din*. The *Shach* notes that the *Be'er Sheva* (54) does not obligate the *hazmanah* to contain any details of the case. Nevertheless, both the *Netivot* (11:1) and the *Aruch Hashulchan* (*Choshen Mishpat* 11:2) adopt the *Shach*'s own position.

Interestingly, Rav Moshe Feinstein (*Igrot Moshe*, C.M. 2:6) limits the *Shach*'s ruling to the *hazmanot* of a non-recognized *beit din*.

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divorce cases, thereby greatly increasing the total number of *hazmanot* that are sent for all cases handled by *batei din*.

4. Prof. Shochetman notes that the Israeli Rabbinate's official policy permits mailing *hazmanot* only if no possibility exists to send a *shaliach*. Nevertheless, he acknowledges that *batei din* routinely mail *hazmanot*, presumably because the reality he describes in the above passage does not allow for sending personal shlichim.

5. *Takanot Hadiyun* of 5753, 4:34–37. See also *Encyclopedia Talmudit* (8:650–651) regarding the delivery of a *hazmanah* to a neighbor of the defendant.

However, he argues that the defendant can assume that a recognized *beit din* never would have sent a *hazmanah* for a matter that the litigants could easily settle out of *beit din*.

Rav Gedalia Schwartz told me that experience teaches that all *batei din* should inform defendants what the trial will be about, as the parties will often resolve the matter without litigation in *beit din*. Indeed, the Israeli Rabbinate's *batei din* mention the cause of action in their *hazmanot* (*Takanot Hadiyun* of 5753 4:32).

How Many Hazmanot are Sent?

The *Shulchan Aruch* (C.M. 11:1) speaks of sending three *hazmanot* to a rural resident who occasionally visits the city and one *hazmanah* to a city dweller. *Acharonim* (*Tumim*, cited approvingly by *Netivot* 11:4; *Pitchei Teshuvah*, C.M. 11:1; *Aruch Hashulhan*, C.M. 11:1) note that nowadays we send three *hazmanot* even to city dwellers, because our lives have become so hectic that we need reminding. In America, we follow the practice of always sending three *hazmanot*. In Israel, the practice has developed to send only one *hazmanah*, in both the non-government *batei din* (Badatz) and state-sponsored Israeli Rabbinate *batei din* (see *Teshuvot Minchat Yitzchak* 9:155 and *Takanot Hadiyun* of 5753, Chapter 4).[6]

The practice of Yemenite *batei din* is particularly interesting. If a party would respond only to a second or third notice, the *dayanim* would conduct the proceedings without asking him why he ignored the earlier *hazmanot*, lest they be biased against him. However, after the final decision was issued (*gemar din*), they inquired as to the reason for the delay. If he failed to provide a legitimate excuse for the tardy response, the *dayanim* would reprimand him (Rav Yosef Kafich, *Halichot Teiman*, p. 71).[7]

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6. See *Shulchan Aruch* (Y.D. 334:74), who writes that one who ignores *hazmanot* is excommunicated. The consequences for refusing to appear in *beit din* are delineated in Y.D. 334:2. Rav Mordechai Willig (in a 1992 lecture) mentioned that he would consider applying a form of communal pressure known as *harchakot d'Rabbeinu Tam* (see *Gray Matter* 1:17–20) after a husband ignores even a first *hazamanah*.

7. Rav Kafich also records another unique practice of the Yemenite community regarding *hazmanah*. Initially, the plaintiff himself would request of his adversary to appear in *beit din* at a particular time, without the *beit din* issuing a *hazmanah*. If the defendant did not appear in *beit din* as requested, then the *dayanim* would write a *hazmanah*, which *the plaintiff himself* would deliver to the defendant.

One other change has evolved in recent generations. In the time of the *Shulchan Aruch*, the respondent received one day (!) to appear in *beit din*, presumably because Moshe demanded that Korach appear "tomorrow." Today, *batei din* allow more time for the parties to respond to *hazmanot*, depending on the determination of the particular *beit din*.[8]

8. Rav Yonah Reiss (in a letter dated July 25, 2003) referred me to the RCA Beth Din of America's Rules and Procedures (Section 2) regarding the practice of allowing 30 days to respond to a summons before issuance of a *shtar seruv*. He explains:

> The practice of waiting at least thirty days before taking action against a *mesareiv* is codified in our Rules and Procedures and is generally consistent with the principle of *z'man beit din shloshim yom* (see *Bava Metzia* 118a and *Aruch Hashulchan*, C.M. 16:1). This practice is based in part on the principle articulated in C.M. 11 that time is always extended to the defendant following a summons because he may not be able to attend to the summons immediately based on other distractions (see *Aruch Hashulchan*, C.M. 11:1). Since it is deemed appropriate that time be given anyway, I believe the practice developed to extend that time to thirty days based on *z'man beit din shloshim yom*.

PART II: SELECTING A COURT

In this chapter, we discuss the appropriate response to a *hazmanah* (summons) if one does not wish to submit to the jurisdiction of the particular *beit din* that has summoned him.

An Alternate *Beit Din*

The *Aruch Hashulchan* (*Choshen Mishpat* 26:5) rules in accordance with Rav Yonatan Eybeshutz (*Urim* 26:13), who writes that a defendant (*nitba*) who wishes to have his case heard in an alternate *beit din* should not be equated with one who refuses to appear in *any beit din*. The *Aruch Hashulchan* adds, however, that if the *beit din* believes the defendant to be intentionally procrastinating, they may treat him as if he refuses to appear in any *beit din*. Let us cite several examples of how this distinction has worked in practice.

In 1957, someone wished to press a claim in the Jerusalem District Rabbinical Court (*Seder Hadin*, p. 151, note 43). Upon receiving the *hazmanah*, the defendant responded that he wished to adjudicate the case in the (Jerusalem) *beit din* of the eminent Rav Tzvi Pesach Frank. The Jerusalem District Court found the defendant to be recalcitrant and permitted the plaintiff to seek relief in the civil court system.[1] The defendant appealed to the Israeli Rabbinate's Court of Appeals. This *beit din* (which included Rav Yosef Shalom Eliashiv) ruled in favor of the defendant, overturning the decision of the District Rabbinical Court. It reasoned, "The defendant had the right to have the case adjudicated in a different *beit din* in Jerusalem and thus should not have been characterized as recalcitrant."

Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, C.M. 2:9) ruled similarly regarding a divorce case in Bnei Brak where a husband demanded

1. The state of Israel grants the Israeli Rabbinate's *batei din* exclusive jurisdiction only over matters of Jewish personal status, such as conversions, marriage, and divorce.

to adjudicate in a non-government *beit din*, while his wife (the defendant) insisted on going to a state-recognized *beit din* of the Israeli Rabbinate. Rav Moshe ruled that the wife's demands were not of a recalcitrant nature, because she preferred a *beit din* with the necessary government recognition to enforce its rulings.

The right to choose a court applies only if the alternate *beit din* is an absolutely neutral venue. For example, Tel Aviv Rabbinical Court (cited in *Seder Hadin*, *ibid.*) heard a case in 1986 where the defendants, members of a particular Chassidic group, sought to move the case to a *beit din* consisting of their group's rabbis. The plaintiff was not Chassidic, so he did not wish to use their *beit din*. The Tel Aviv Rabbinical Court, which consisted of outstanding *dayanim* (including Rav Shlomo Dichovsky and Rav Avraham Sherman), denied the motion of the defendants:

> The *beit din* of [this Chassidic group] is not situated in the locale where the disputants reside . . . . It is inconceivable to force one who is not [Chassidic] to submit to the jurisdiction of a [Chassidic] *beit din* . . . . It is reasonable to say that the [Chassidic] *dayanim* will be more sympathetic towards [their group's Chassidim] than towards one who is not affiliated with [their group].[2]

Using Arbitration Instead of an Established *Beit Din*

Rav Akiva Eiger (gloss to *Shulchan Aruch*, C.M. 3:1) ruled that the defendant may claim that he wishes to bring the case before people (not necessarily rabbis) who will adjudicate it according to prevalent business practice (*minhag hasocharim*), and not according to Halachah. Rav Eiger explains, "Since this is the local custom, in such a case we say that prevalent business practice overrides Halachah (*minhag mevateil Halachah*)."

In 1982 the Ashdod Rabbinical Court (*Piskei Din Batei Din Harabbaniyim* 13:330), headed by Rav Shlomo Dichovsky, faced a plaintiff who sought to summon the defendant to the arbitration panel of the Israel Union of Engineers and Architects. The plaintiff pointed out that the parties' contract contained a clause stating that all disputes would

2. Rav Mordechai Willig (in a lecture to the Yeshiva University Yadin Yadin Kollel) similarly advised against congregational rabbis serving on *batei din* when one of their congregants is a litigant.

be brought to that body. The defendant refused to cooperate, arguing that the clause violated Halachah. The *beit din* ruled in favor of the plaintiff, citing the comments of Rav Akiva Eiger to prove that the arbitration claim did not contravene Halachah. The *beit din* explained that the panel made judgments based on common sense and common business practice, rather than ruling based on secular law.[3]

A Zabla Beit Din

According to the *Shulchan Aruch* (C.M. 3:1), a defendant has the right to claim that he wants "*zabla*," an acronym for "*zeh boreir lo echad*" ("each picks one for himself"). The litigants create a *zabla beit din* by each party selecting one *dayan* and then those two *dayanim* choosing their third colleague. The Rosh (*Sanhedrin* 3:1; based on Rashi, *Sanhedrin* 23a s.v. *Yeitzei*) explains the logic of this system:

> Truth will emerge from such a *beit din*, because litigants will be inclined to follow this *beit din*'s ruling. Each side will reasonably believe that he chose a *dayan* who will argue in his favor, if such an argument is indeed plausible. The *dayanim* themselves will seek to find sound arguments for both sides.[4]

Nevertheless, the Rama (C.M. 3:1) rules that a litigant cannot insist on *zabla* if there is a local established *beit din* (*beit din kavu'a*). The *Chazon Ish* (*Sanhedrin* 15:7) offers an explanation for the Rama's ruling:

> This [ruling] applies specifically when the community has enacted this policy . . . . They would find reason to enact such

3. We address the permissibility of using arbitration panels in our earlier chapter, "The Prohibition Against Using Civil Courts."

4. Unfortunately, the reality of creating a *beit din* with three *dayanim* who do not necessarily wish to work with one another often does not correspond to the Rosh's idyllic portrayal. Rav Mordechai Willig (addressing the Rabbinical Council of America) recounted that he has participated in many *zabla batei din* and finds certain types of them "complicated." He commented that it is almost always preferable to submit a dispute to a standing *beit din* rather than opting for *zabla*. I have heard similar comments from many other rabbanim. In addition, see Rav Willig's important discussion regarding the practices of certain arbiters in certain types of *zabla batei din*, in *Beit Yitzchak* (36:17–21).

> legislation due to crooked individuals, who utilize the right to select a judge as a means of escaping justice, by delaying until the *beit din* is assembled. In addition, the litigant has the right to reject the *dayan* selected by his adversary [and dishonest people abuse this right to delay the application of justice]. Moreover, sometimes a litigant appoints an unscrupulous *dayan* (or arbiter) and it is [often] difficult to prove that he indeed is unscrupulous. It appears that just as the defendant cannot insist on *zabla* if the city has a *beit din kavu'a*, he similarly cannot insist on going to another *beit din* in the same city, even if it is greater.

The System's Pitfalls

Rav Yosef Eliyahu Henkin (*Eidut Leyisrael* p. 167) laments the fact that all of the major Jewish communities in America lack centralized *batei din*. Consequently, the *Chazon Ish*'s concerns reportedly remain relevant today. Indeed, Rav Moshe Feinstein (*Igrot Moshe*, C.M. 2:3) and Rav Yitzchak Isaac Liebes (*Teshuvot Beit Avi* 5:142) point out that there is no *beit din kavu'a* in New York. Thus, any defendant may insist on *zabla* with all its resultant pitfalls. In Rav Moshe's words:

> That which the Rama writes, that if there is a *beit din kavu'a* in the area one may not refuse to submit to its jurisdiction, applies only to situations such as in the cities of the "old country" where the local community appointed the *beit din*. In the old country, the town Rav had the authority to summon people to submit to his jurisdiction. However, in New York there are no established *dayanim* appointed by the Jewish community. Moreover, there are *batei din* of the many and varied rabbinic organizations [Rabbinical Council of America, Igud Harabanim, Agudat Harabanim, Hitachdut Harabanim-Satmar—C.J.] so that not even all the rabbis of a particular community subscribe to the jurisdiction of a particular *beit din*. Thus, if one party requests *zabla*, the other side must agree to it.

Rav J. David Bleich (*Contemporary Halakhic Problems* 4:5–6) details the difference in communal structure between European communities of past generations and contemporary America:

> In many communities it was customary for all householders to affix their signatures to the formal *ketav rabanut*, a rabbinic contract, presented to a newly appointed rabbi specifically designating him as the presiding judge of the local *beit din*. That practice was instituted in order to assure that no person might refuse to obey a summons issued by the communal rabbi on the plea that he didn't recognize the rabbi's judicial authority. Thus was the commandment "Judges and officers shall you place unto yourself" fulfilled. Not so in America. The *kehillah* system has not been replicated in this country. Rabbis are engaged by individual congregations rather then by the community at large. Membership in a synagogue doesn't ipso facto imply binding acceptance of the synagogue's rabbi, no matter how qualified he may be, with regard to religious or jurisprudential matters that are personal in nature. The result is that no rabbi enjoys the authority to compel a litigant to appear before him and to accept his judicial authority.

A Practical Example

A practical example illustrates the chaos that prevails in the Jewish community in America. Rav Moshe Snow placed a bid on a house in Brooklyn approximately 30 years ago. The bid was immediately accepted, but soon after a higher bid was offered. The homeowner then informed Rav Snow that he must match the higher bid, or he would call the original deal off. Rav Snow sought the advice of Rav Moshe Feinstein, who warned that the homeowner was going to receive a *mi shepara*.[5] Rav Snow reported Rav Moshe's comments to the homeowner, and he impudently responded, "Rav Moshe is not my rabbi; I don't have to follow him!" Consequently, the homeowner ignored Rav Moshe's warning and sold the house to the highest bidder.

Rav Bleich's Proposed Solution

Rav Bleich (p. 16) presents a solution to this problem, organizing a national *beit din*:

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5. *Mi shepara* is a curse given by *Chazal* when one violates a verbal commitment in business (*Bava Metzia* 44a). It warns, "He who punished the generation of the flood and the generation of the Tower of Bavel, He will eventually punish those who fail to abide by their verbal commitments."

> By establishing a fairly large roster of *dayanim* and permitting litigants to use a limited form of the *zabla* system—litigants might be permitted to designate the members of the *beit din* that would hear this case but would be limited in being able to select a panel of *dayanim* only from among the designated list of members of the national *beit din*.
>
> This type of *beit din* adopts the advantages of the *zabla* system, yet has the potential to control the problems with it. The national *beit din* could carefully monitor and verify the integrity of the *dayanim* participating in the *zabla*. Such an organization could also monitor the behavior of the *to'anim* [rabbinical lawyers, whose status is discussed in two later chapters—C. J.], who in the current system are essentially not monitored.

Comments on Rav Bleich's Proposal

Rav Bleich's proposal seems like the appropriate solution to the chaotic system that exists today. As he notes, it would also help ameliorate the *agunah* problem, by empowering the entire community in pressuring a recalcitrant spouse to participate in the *get* ceremony.[6] In fact, Rav Bleich writes that Rav Yaakov Kaminetzky suggested this approach to him.

However, Rav Leib Landesman told me that even if a national *beit din* were to be formed, he believes that one still retains the right to insist on *zabla* to the point of choosing a *dayan* whose name does not appear on the roster. According to Rav Landesman, even such a national roster would not attain the status of a *beit din kavu'a*. Rav Landesman reasons that people lose their right to request *zabla* only if they themselves take positive action to accept a *beit din kavu'a* (such as by signing the European *ketav rabanut* that Rav Bleich describes). On the other hand, if rabbis or Jewish communal leaders adopt a national roster, their adoption of the roster would not bind their congregants. Thus, Rav Bleich's proposal appears difficult to implement in practice.

I have heard of a couple of additional suggestions to modify *zabla* in a manner that can prevent turmoil. Sometimes, each litigant will select a *beit din* (rather than an individual *dayan*), and each of the selected *batei din* will assign one of its *dayanim* to the case. Those two *dayanim*

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6. For further discussion of the *agunah* problem, see our first volume (pp. 3–59).

then select a third *dayan*. Initially selecting *batei din*, rather than individual *dayanim*, reduces the sense that each rabbi should advocate on behalf of the litigant who selected him. Alternatively, rather than each *beit din* assigning one of its own *dayanim*, the two *batei din* can select a third *beit din* to hear the case. Finally, a system has been suggested whereby the defendant would name three reputable *batei din*, and the plaintiff would select one of these *batei din* to hear the case.[7]

Rav Willig and Rav Goldberg's Proposals

In the absence of a national roster of *dayanim*, Rav Mordechai Willig (in a lecture to the convention of the Rabbinical Council of America) reported that Rav Zalman Nechemia Goldberg suggested a proposal for as many communities as would cooperate. All member synagogues of a particular umbrella organization could designate that organization's *beit din* as their community's *beit din*. For example, every synagogue that belongs to the Orthodox Union could accept the (OU/RCA) Beth Din of America. Consequently, the synagogues would require, as a condition for receiving synagogue membership, that every congregant sign a binding arbitration agreement to litigate all disputes with his fellow congregants at the Beth Din of America. From that point on, nobody in the synagogue could ever demand *zabla* as a means to procrastinate.

Of course, it is hard to imagine many synagogues imposing such a precondition for membership. Accordingly, Rav Willig suggested a more modest goal, which he said that Rav Goldberg also considered halachically viable. Rav Willig's proposal calls for each synagogue, as a community, signing a declaration that all disputes must be submitted to its umbrella organization's *beit din*. The document would seem to have no authority in American law, but Rav Willig and Rav Goldberg believe that it would halachically establish the specified *beit din* as a *beit din kavu'a*, stripping requests for *zabla* of their halachic merit.[8] Orthodox communities could then pressure one who fails to cooperate

7. The *Be'er Hagolah* to *Choshen Mishpat* 14:10 might serve as a source for the latter two alternatives.

8. Rav Leib Landesman's aforementioned objection to Rav Bleich's proposal would appear to similarly apply to this proposal, as each individual congregant does not sign the agreement.

with the designated *beit din* as they would someone who refuses to appear in any *beit din*.[9]

Conclusion

Some leading contemporary rabbis have offered interesting proposals to alleviate the current chaos in the Jewish community in America. Nevertheless, *batei din* in America today have not yet found a completely effective way to prevent people from procrastinating or avoiding a particular *beit din* by demanding *zabla*. In situations where the two litigants begin their relationship amicably—such as two people planning their future partnership—they can sign a binding arbitration agreement that commits them to the jurisdiction of a particular *beit din*. Similarly, marrying couples should sign a binding arbitration agreement as part of their halachic prenuptial agreement.[10] On the other hand, when no agreement has been signed in advance, *batei din* lack any enforceable means to prevent the system's potential abuses. Although the system in America is chaotic, one should strive to act honorably in cases of monetary dispute. When monetary disputes arise, the *Mishnah Berurah* (606:1), in the context of the laws of repentance prior to *Yom Kippur*, advocates approaching a Rav for guidance on how to act in the most honest way, lest people's own temptations get the best of them. The *Mishnah Berurah*'s comments are especially relevant in our present situation.

Postscript

Due to the reported existence of unscrupulous *batei din*, we have chosen to add a few criteria by which to assess a *beit din*'s credibility. An honorable *Beit Din* must avoid conflicts of interest (*Shulchan Aruch*, C.M. 7:12 and 37:1), anything that even slightly resembles bribery (C.M. 9:1), and excessively high fees (C.M. 9:5).[11] In addition, they

9. Rav Mordechai Willig's suggestion on how to create a *beit din kavua* in the contemporary American setting, appears in *Beit Yitzchak* (36:13–17).

10. We discuss halachic prenuptial agreements in detail in our first volume (pp. 8–16).

11. Also see *Teshuvot Minchat Yitzchak* (7:131), who assumes that honorable *dayanim* will charge only enough to compensate them for the fact that they could not do other work during the court proceedings (*s'char batalah*), and they will not charge more than the litigants can afford.

may not accept the testimony of one litigant when his adversary is not present (C.M. 17:5), and they must thoroughly investigate all facts (see Rashi's commentary to *Bereishit* 11:5). Indeed, the *Chazon Ish* is often quoted as saying that most erroneous halachic rulings stem from a deficient understanding of the facts.[12] Finally, the *beit din* must not allow rabbis of ordinary stature to rule on matters of great complexity or import (see *Teshuvot Meishiv Davar* 4:50). For example, the *Noda Biy'hudah* (vol. 2, Y.D. 88) criticizes an ordinary rabbi for ruling on a case of *ro'eh machmat tashmish*, a complex area of the laws of family purity that can potentially result in forcing a couple to divorce (see *Shulchan Aruch*, *Yoreh Deah* 187). Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Even Ha'ezer* 1:64) similarly writes that ordinary rabbis should not rule on matters of contraception.[13]

12. For example, Rav Mordechai Willig (addressing an RCA convention) once recounted how Rav Yonah Reiss traveled to a Midwestern city in order to investigate whether a particular woman had been institutionalized (which might have enabled her husband to receive a document known as a *heter me'ah rabbanim*). Rav Reiss could have relied on the testimony of local rabbis in that city regarding the woman's mental state, but he nevertheless traveled there himself, as *dayanim* must always investigate the facts as thoroughly as possible.

13. Regarding the pervasiveness of this problem in our generation, see *Nishmat Avraham* (4:13–16) and Rav Tzvi Gartner's essay in *Tradition* (32:3:94–95). See also *Pitchei* Teshuvah (Y.D. 99:6).

Pesharah in Theory and in Practice

Promoting *pesharah* (compromise) has become a key element in the practice of *batei din* today. Our present approach, however, evolved from mixed attitudes in earlier generations. In this chapter, we explore the development of *pesharah* in *batei din* from Talmudic times until now.[1]

Talmudic Background

Although nowadays *pesharot* play a major role in the rulings of *batei din*, not all *Tannaim* viewed them favorably. Rabbi Eliezer ben Rabbi Yose Haglili (*Sanhedrin* 6b) prohibits encouraging a *pesharah*, condemning *dayanim* who promote it as sinners who "insult the Divine!" Rabbi Eliezer ben Rabbi Yose Haglili apparently believes that *pesharah* compromises judicial integrity. He approves of *pesharah* outside of the *beit din*, following the practice of Aharon, who privately coaxed disputing parties into compromising (see Rashi and *Tosafot ad loc*.). However, he objects to judges veering from the model of Moshe, who imposed rigid justice, "letting the ruling split the mountain" in court.[2]

1. For further discussion of *pesharah*, see Professor Eliav Shochetman's *Seder Hadin* (pp. 207–216) and the sources mentioned there.

2. For Rav Yosef Dov Soloveitchik's analysis of the roles of Moshe and Aharon, see *Reflections of the Rav* 1:160–168.

Rabbi Yehoshua ben Korchah adopts the opposite approach to *pesharot*. He not only permits judges to encourage *pesharot*, but he even argues that they are performing a *mitzvah* in doing so. He notes that the prophet Zechariah (8:16) implores judges to pursue both truth and peace. At first glance, these goals appear contradictory, but Rabbi Yehoshua explains that a *pesharah* achieves both truth and peace. The Halachah follows his opinion (Rambam, *Hilchot Sanhedrin* 22:4, and *Shulchan Aruch*, *Choshen Mishpat* 12:2).

A proper *pesharah* does not merely divide the responsibility equally between the litigants. In fact, the Gemara (*Bava Batra* 133b) specifically condemns those judges who routinely engage in this practice, derogatorily referring to them as "midway judges" (*dayanei chatzatzta*). Moreover, in some ways we treat *pesharah* as simply an alternative form of true justice. For example, the *Shulchan Aruch* (*Choshen Mishpat* 12:2) equates them when he asserts, "Just as the judge is forbidden to pervert *din* (justice), so too he is forbidden to pervert compromise." Rav Akiva Eiger adds that just as a judge who rules incorrectly in *din* must reverse his verdict, so, too, when a judge errs when making a *pesharah*, his decision should be reversed.

Rav Soloveitchik's Explanation of Pesharah

In *Reflections of the Rav* (1:53–54), Rav Yosef Dov Soloveitchik's eloquent explanation of the distinction between *din* and *pesharah* is presented:[3]

> *Din* pits one party against the other. The *dayan* analyzes the relevant facts of the case and applies the appropriate legal sanctions as described by the *Choshen Mishpat*. The law is administrated with cold impartiality and its decisions are dictated by objective data. One party emerges the victor, his case vindicated. The plea of the other is denied. Discord and resentment persist even as the court docket is cleared and the case is closed. The legal issue has been resolved, but human bitterness continues to fester.

3. Also see *Nefesh Harav* (pp. 267–268), where Rav Hershel Schachter cites how Rav Soloveitchik commonly used the term *yosher* ("equity") in explaining the concept of *pesharah*.

> In *pesharah*, however, social harmony is the primary concern of the *dayan*.[4] The fine points of the law and the determination of precise facts are of secondary importance. The goal is not to be judicially astute but to be socially healing. The psychology of the contenders, their socio-economic status and values, as well as the general temper of society are the primary ingredients employed in the *pesharah* process. These considerations are evaluated within the broad halachic parameters of the *Choshen Mishpat*, and the final resolution of the conflict is a delicate and sensitive blending of both objective legal norms and subjective humanistic goals. For this reason, *pesharah* is the preferred alternative . . . . *Pesharah* is a juridical procedure presided over by the *dayan*; it does not contradict the law but is its preferred and finest fulfillment.

Should a Dayan Suggest and Encourage Pesharot?

The *Shulchan Aruch* (C.M. 12:2; based on *Sanhedrin* 6b) rules that a *dayan* should initially ask the litigants if they wish to engage in pure *din* or in *pesharah*. Commentaries to the *Shulchan Aruch* debate whether he means that *dayanim* should merely raise the possibility of making a *pesharah*, or that they should strongly urge the parties to compromise. The *Taz*, citing the Maharal of Prague, writes that the *dayan* should suggest *pesharah*, but he does not have to "pursue *pesharah* so vigorously." The *Sema* (12:6), on the other hand, asserts that the *dayan* should strongly encourage the litigants to agree to a *pesharah* by convincing them that *pesharah* is in their best interest.

The majority of authorities side with the *Sema*, that *dayanim* should actively promote *pesharah* (*Aruch Hashulchan*, C.M. 12:2; *Kovetz Haposkim* on C.M. 12:2; and aforementioned comments of Rav Soloveitchik). In fact, the *Shulchan Aruch* seems to endorse the *Sema*'s interpretation, as he states, "Any *beit din* that engages exclusively in *pesharah* is worthy of praise" (*ibid.*). Rav Itamar Warhaftig reports that Rav Zalman Nechemia Goldberg tries to motivate people to choose *pesharah* by informing them that it is faster and cheaper than pursuing a ruling according to strict Halachah.

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4. See Rashi (*Sanhedrin* 6b s.v. *Poteir Mayim*), who writes that the aim of *pesharah* is to "bring peace between the parties." In addition, see *Maharsha* (*Sanhedrin* 6b s.v. *Oheiv Shalom*).

Indeed, the *Shulchan Aruch* (C. M. 12:20) goes as far as to say that *dayanim* should avoid, if at all possible, judging strictly according to *din*. The Vilna Gaon (*Biur Hagra* 12:30) cites a passage from the *Yerushalmi* as a basis for this concept. The *Yerushalmi* relates that rabbis refused to judge according to strict *din* for fear that they would err. The corpus of Jewish monetary law, with all its intricate and complex details, intimidates even the greatest scholars. By stating at the outset that they will not judge the case according to strict *din*, the *dayanim* obviate concern for errors.

What is Pesharah?

Although we generally translate *pesharah* as compromise, significant debate surrounds the actual substance of *pesharah*. Some view the goal of a *pesharah* as somewhat akin to marriage counseling or mediation—coaxing the parties to accept a compromise. Professor Eliav Shochetman (*Seder Hadin*, pp. 210–211) cites the practice of Tunisian *dayanim* to suggest a *pesharah* to each litigant individually, in the absence of his opponent. Thus, neither litigant feels pressure to resist *pesharah* simply to maintain his dignity and pride in the presence of his opponent. Interestingly, I heard from Rav Israel Leiter (in 1994) that judges in pre-war Galicia also followed this practice.

Moreover, the Tunisian rabbinic court judges (cited in *Seder Hadin*, p. 210) would suggest to the litigants' friends that they, too, should privately urge the litigants to accept a *pesharah*. Professor Shochetman compares this approach to asking attorneys to urge their clients to accept a *pesharah*. Professor Shochetman writes (*Seder Hadin*, p. 211, note 19) that this is a reasonable suggestion only if the lawyer practices law ethically, working for the benefit of his client and not seeking to prolong the case in order to increase his billable hours.[5]

Other authorities also appear to understand *pesharah* as a form of mediation. The *Shevut Yaakov* (2:145, cited by *Pitchei Teshuvah*, C.M. 12:3) writes that *pesharah* serves "to mediate peace." Rav Shmuel Mohilewer (*Teshuvot* C.M. 9, p. 328) similarly writes:

5. See the next two chapters where we address the general permissibility of having lawyers in the *beit din* system.

> The practice among all *batei din* is that if the judges realize that their final ruling will lead to serious fights, and it might lead to the *beit din*'s ruling being ignored, then they try to convince a litigant to forgive some of the debt in order to preserve and maintain peace.

Rav Yosef Dov Soloveitchik (quoted in *Nefesh Harav*, pp. 267-268) asserts that a *pesharah* should incorporate *lifnim mishurat hadin*[6] (beyond the letter of the law) and equity. Rav Soloveitchik's approach depicts *pesharah* as a loftier, more ideal form of justice, as opposed to a pragmatic way to preserve peace. Rav Soloveitchik bases his understanding on Rashi and the Ramban (on *Devarim* 6:18), who seem to equate *pesharah* with the concept of acting *lifnim mishurat hadin*.[7] Similarly, the Rama (*Choshen Mishpat* 12:2) juxtaposes his discussion of *pesharah* and *lifnim mishurat hadin*.

In practice, not all rabbinical courts follow the same procedures for *pesharah*, nor do they all harbor the same attitude towards it.[8] Accordingly, before submitting a case to a particular *beit din*, one must clarify how the *beit din* defines and implements *pesharah*.[9]

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6. We dedicated an earlier chapter to the topic of *lifnim mishurat hadin*.

7. Whether Rashi in fact equates *pesharah* with the concept of acting *lifnim mishurat hadin* might depend on the proper text of his commentary. Commenting on the Torah's commandment to do "the right and the good in the eyes of God," some editions read, "This is *pesharah* and *lifnim mishurat hadin*," while other editions omit the word "and." Without the word "and," Rashi appears to consider *pesharah* and *lifnim mishurat hadin* to be one and the same, but adding the word "and" might indicate that Rashi considers the two concepts to be similar, but not identical.

8. For example, Rav Itamar Warhaftig told me some of Rav Zalman Nechemia Goldberg's practices regarding *pesharah*. When *pesharah* is chosen by the litigants, Rav Zalman Nechemia considers *dinei shamayim* (a moral obligation, which *beit din* cannot enforce as strict *din*, such as paying for *grama*, damages that one indirectly causes; see *Bava Kama* 55b). Rav Zalman Nechemia is unsure whether to consider a litigant's financial situation when rendering decisions using *pesharah*. The Beth Din of America (footnote to Rules and Procedures) does not consider the parties' relative wealth when formulating *pesharot*.

9. For example, the Beth Din of America's Rules and Procedures specify the following guidelines for *pesharah*:

> (a) In the absence of an agreement by the parties, arbitration by the Beth Din shall take the form of compromise or settlement related to Jewish law (*p'shara krova l'din*), in each case as determined by a majority of the panel designated by the Beth Din, unless the parties in writing select an alternative Jewish law process of resolution.

Pesharah to Avoid Taking an Oath

The Gemara (*Sanhedrin* 6b) asserts that once the *beit din* has issued its ruling (*gemar din*), it is no longer permitted to impose a *pesharah*.[10] Nevertheless, if the ruling requires a litigant to swear, *Tosafot* (s.v. *Nigmar Hadin*) write, "If the *beit din* concludes that one of the parties is obligated to take an oath, the *beit din* may suggest a *pesharah* in order to avoid having an oath taken." The *Shulchan Aruch* (C.M. 12:2) codifies *Tosafot*'s opinion.

Chazal generally hesitated to administer oaths. The Gemara (*Shevuot* 39a) describes that the entire world shook when God issued the prohibition of swearing falsely. Indeed, the Mishnah (*Bava Metzia* 33b) tells of people who were willing to spend considerable sums of money rather than take an oath. The consequence of swearing expresses itself in the Talmudic story (*Gittin* 35a) of a woman who took an oath without realizing that it contained a minuscule falsehood. Soon afterwards, one of her children passed away.[11]

(b) The Beth Din will strive to encourage the parties to resolve disputes according to the compromise or settlement related to Jewish law principles (*p'shara krova l'din*); however, the Beth Din will hear cases both according to Jewish law as it is understood by the arbitrators or compromise (*p'shara*) alone, if that is the mandate of the parties.

When administering *pesharah k'rovah l'din*, the Beth Din of America's guidelines state (in a footnote) that the court does not consider "levels of religiosity, relative wealth of the parties, or gender." The Beth Din of America's guidelines are available online at *www.bethdin.org/rules.htm*. They include a footnote that articulates their definition of the difference between *pesharah k'rovah l'din* and absolute *pesharah*. See *Teshuvot Shevut Yaakov* (2:145) for further discussion of the distinction between these two categories.

10. Rashi (s.v. *Nigmar Hadin*) indicates that until the *beit din* actually announces which litigant won the case, it may still suggest a *pesharah*. *Tosafot* (s.v. *Nigmar Hadin*) question whether the *beit din*'s ability to suggest a *pesharah* should remain once the *dayanim* have resolved in their minds how they will rule, even though they have not yet publicized their decision. The *Shulchan Aruch* (C.M. 12:2) rules in accordance with Rashi.

11. In practice, we should always choose to affirm rather than to swear (see Rambam, *Hilchot Shevu'ot* 12:12, and *Shulchan Aruch*, *Orach Chaim* 156:1). Fortunately, I have heard that American courts accept an affirmation instead of an oath. In Israel, many observant soldiers affirm their loyalty to the army by saying "I proclaim" (*ani matzhir*) during the swearing-in ceremony, rather than reciting "I swear" (*ani nishba*). There is one interesting exception, where even today *batei din* continue to administer oaths. When a husband sends a *get* (bill of divorce) with an agent, the *beit din* requires him to swear that he will not nullify the *get* (*Shulchan Aruch*, E.H. 154 *Seder Haget* 76).

Accordingly, it is not surprising that almost all *batei din* today impose a *pesharah* when the strict Halachah obligates one of the sides to take an oath. They usually permit a *pesharah* (in the sense of making peace, not ruling according to equitable presumptions) to deviate up to one-third from the monetary award mandated by strict Halachah (seemingly based on *Teshuvot Shevut Yaakov* 2:145). Indeed, the practice today is not only to *suggest* a *pesharah* in this case (as permitted by *Tosafot* and the *Shulchan Aruch*) but to *impose* a *pesharah* in such a situation.[12] For example, Rav Itamar Warhaftig recounted that Rav Shlomo Min Hahar (a prominent Jerusalem rabbi) once paid a considerable amount of money in order to avoid an oath. Indeed, Rav Gedalia Schwartz told me that he has never seen an oath taken in any *beit din*.[13]

However, Rav Shlomo Levy (*Techumin* 12:327–334) argues forcefully that, the valid reasons to avoid an oath notwithstanding, the policy of imposing a *pesharah* instead might be driving thousands of Jews away from litigation in *batei din*. Without the ability to obtain a ruling according to strict *din*, many Jews might be opting to instead litigate in civil court (in violation of Halacha). Moreover, Rav Levy argues that the practice of imposing a *pesharah* may not have such a strong halachic basis. He urges *dayanim* to strictly curtail the frequency that an oath is replaced by *pesharah*.[14]

Current Practice

In our present time, *batei din* often require the litigants to sign a *shtar beirurin* (binding arbitration agreement; see *Mo'eid Katan* 18b), which includes a clause empowering *dayanim* to judge according to either *din* or *pesharah*.[15] Moreover, some *batei din* regard a litigant

12. This practice is evident from *Teshuvot Tzitz Eliezer* 7:48:6:5, *Aseih Lecha Rav* 5:42, and *Piskei Din Batei Din Harabbaniyim* 11:259–274.

13. However, Rav Itamar Warhaftig told me that he has heard of *batei din* in Israel administering oaths.

14. Of course, when the parties are agreeable to mediation, Rav Levy's concerns do not apply. See *Techumin* (23:456–460), where Rav Dr. Dov Fogel outlines the benefits of mediation. The RCA Beth Din of America (reported by Rav Yonah Reiss) also has a policy of encouraging mediation as much as possible between parties, especially regarding the monetary aspects of divorce. In fact, Rav Reiss is himself a trained mediator. We should note, though, that mediation is not necessarily identical, either in concept or in practice with *pesharah*.

15. See, for example, Rav Zalman Nechemia Goldberg and Rav Mordechai Willig's prenuptial agreement (for a current version of this document visit *www.ocweb.org*)

who insists on *din* and will not agree to *pesharah* as one who refuses to come to *beit din*. We see how far *batei din* often go to strongly encourage the parties to accept *pesharah*.[16] Nevertheless, contemporary *batei din*'s strong encouragement of *pesharah* does not necessarily preclude them from ruling unequivocally in favor of one party. Rav Mordechai Willig once commented that "100% to 0%" is sometimes an appropriate *pesharah*.[17] In some cases, one side presents such a persuasive argument that even a *beit din* seeking to find a compromise must wholeheartedly accept his claims.

where the bride and groom authorize the Beth Din of America to adjudicate disputes based on Halachah or *peshara krova la-din*.

16. See *Piskei Din Batei Din Harabbaniyim* 11:259 and the analysis by Rav Shlomo Levy (*Techumin* 12:332–333).

17. The Beth Din of America's Rules and Procedures explicitly state this idea.

The Role of Lawyers in Beit Din

Part I: The Problem

To'anim, rabbinical lawyers or pleaders, often represent clients in many *batei din*. However, this practice raises serious halachic questions, so we will outline the basic approaches to utilizing *to'anim*.

Introduction

The Torah (*Shemot* 22:8) commands that the litigants' "words should be spoken to the judges." The *Mechilta* comments that this verse teaches that the litigants (*ba'alei din*) may not use lawyers in *beit din*. The *Torah Temimah* explains:

> It appears that the *Mechilta* is teaching that the litigants should not present their case to the *dayanim* through interpreters or *to'anim*. Rather, the *dayanim* must hear testimony from the mouths of the litigants themselves, as the verse states, "The words of both parties should come before the *dayanim*". . . . However, when *to'anim* are employed, the words of the litigants reach the ears of the *to'anim* and not the *dayanim*. [The *Mechilta*] also precludes lawyers who try to convince the *dayanim* of the correctness of their client's perspective, as is done in the non-Jewish

courts. The reason for this appears to be that the majority of these professional *to'anim* are hired by one litigant to present his claims. They are sly people who find clever and deceitful means of misleading the *dayanim* to rule in favor of their clients. Therefore, the Torah sought to eliminate this problem by not permitting *to'anim* to appear in court; rather, the litigants themselves should plead their case to the *dayanim*.[1]

Halachic Support for the Torah Temimah's Explanation

Many halachic sources support the *Torah Temimah*'s emphatic assertion that the Torah wants the *dayanim* to hear the litigants' claims directly. For example, the Halachah (*Shevu'ot* 31a and *Shulchan Aruch*, C.M. 17:5) forbids one litigant from presenting his case to the *dayanim* in the absence of his adversary. The *Sema* (17:10) explains that if the opposing litigant is not present, the litigant who is present will not be afraid to lie. Similarly, one might not hesitate to lie to his lawyer, so the lawyer will subsequently not hesitate to present a false case.

In addition, the Halachah (*Shulchan Aruch*, C.M. 17:6) forbids witnesses from testifying through a translator.[2] According to the *Pitchei Teshuvah* (C.M. 17:12), litigants may not use translators even if both parties have them. We hesitate to accept translators because a *dayan* stands a better chance of discovering and clarifying the truth when he hears the testimony directly from the witnesses.

For this reason, the *Shulchan Aruch* (C.M. 124) requires the litigants to appear in court in person. Only Torah scholars and "dignified women" (*nashim yekarot*) may claim that it is beneath their dignity to

1. Rav Ezra Basri (*Dinei Mamonot* 1:441) recounts how a husband and wife would often come to his *beit din* when they were experiencing marital problems. Rav Basri could sense that the couple themselves were still interested in reconciliation, but each one's lawyer would nevertheless come up with extremely divisive claims (which would push the couple towards separation), in order to be paid more money by their prospective clients. See also Rav Yonah Reiss's essay in *Shaarei Tzedek* (2:202), where he urges greater stringency regarding the laws of *to'anim* in light of the many negatives that have been observed when they act unscrupulously.

2. Rav Ezra Basri commented to me that a *dayan* in Israel today should be fluent in English, Russian, French, and Spanish (besides Hebrew, of course). If the *dayanim* understand a language better than they speak it, they may address the witnesses through a translator, but they must still hear the testimony directly from the witnesses (*Shulchan Aruch*, C.M. 17:6).

appear in *beit din*. In these two instances, a court agent (*sh'liach beit din*) comes to the sage or woman, transcribes his or her arguments, and subsequently presents them to the *dayanim*.

Preserving the Innocence of the Litigants

Traditional sources also seem to discourage the presence of lawyers in *beit din* in order to preserve the "innocence" of the litigants. For example, the Rama (C.M. 17:5) rules that a Torah scholar should not inform a litigant whether his position is correct, lest the litigant deduce from the information how to fraudulently win his case. The Mishnah (*Avot* 1:8) prohibits acting as an attorney (*k'orchei hadayanim*). In his commentary to the Mishnah (ad loc.), the Rambam explains that one should not coach a litigant by teaching him which claims will help him win the case.[3] The Rambam adds that this prohibition applies even when one knows that the litigant deserves to win. Even in such a case, the litigant must present the facts truthfully to the *beit din* and may not lie in order to ensure his victory. Similarly, the Gemara (*Ketubot* 52b) discourages Torah scholars from advising individuals (offering "lawyerly" advice) even outside the context of *beit din*.

In order to understand the incident described in the Gemara properly, we must provide some background in Jewish family Halachah. According to Halachah, a deceased man's heirs must support his widow, unless she demands the payment of her *ketubah* (*Shulchan Aruch*, *Even Ha'ezer* 93:1–2). The heirs may not compel her to receive the *ketubah* payment in lieu of support from the estate. Moreover, Halachah requires that the widow's continuing medical expenses be charged to the heirs of her late husband's estate, rather than deducting the expenses from her *ketubah*. On the other hand, fixed-cost contracts for medical care may be subtracted from the *ketubah* payment. Based on these laws, the Gemara records:

> The relatives of Rabbi Yochanan had [to support] their father's wife [widow] who needed daily medical treatment. They approached Rabbi Yochanan for advice. He responded, "Go, fix a price with the

3. Not all commentators accept the Rambam's interpretation of "*orchei hadayanim*." See Rashi and *Midrash Shmuel* on this Mishnah for a variety of interpretations of "*orchei hadayanim*."

> doctor [for all the widow's future medical treatment]." Rabbi Yochanan later [regretted his action and] stated, "We have made ourselves like lawyers (*orchei hadayanim*)." Initially, what did Rabbi Yochanan think [when he decided to advise his relatives]? Since the *Tanach* states, "From one's relatives one should not turn away (*Yeshayahu* 58:7)," [he thought that he should assist his relatives]. In the end, [he regretted his decision because] a prominent figure (*adam chashuv*) is different [and this behavior does not befit him].[4]

Rabbi Yochanan's advice to the heirs enabled them to deduct her medical expenses from future *ketubah* payments, thus saving them a significant amount of money at her loss. From this story, we see the negative attitude *Chazal* maintained towards Torah scholars offering legal advice even outside the context of *beit din*. *Chazal* sought to maintain the innocence of all parties concerned and tried to avoid people contriving means to circumvent laws established for the betterment of individuals, families, and society.[5]

The first Mishnah in *Bava Metzia* exemplifies this concern. If two people each claim full ownership of an object, the Mishnah rules that, after taking a rabbinically mandated oath, each party receives half of the disputed item. However, if one party claims to own only half of the item, then, after taking oaths to buttress their arguments, the litigant who claims the entire object receives three-fourths of the object, while his adversary receives only a quarter.

If the litigants knew the Halachah in advance, the man who believes that he owns half the disputed object might be tempted to falsely state that it is entirely his, for that claim would entitle him to what he believes he truly deserves, half of the disputed item (see *Tosafot* s.v. *V'zeh*).

While training in the Jerusalem District Rabbinical Court in May 1994, I witnessed another example of why we should not brief litigants.

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4. See *Encyclopedia Talmudit* 1:175–180 for a discussion of the status of "*adam chashuv*." Rav Yonah Reiss (*Sha'arei Tzedek* 2:202) suggests that all Torah scholars act like "prominent figures" regarding this issue.

5. Indeed, Rav Ezra Basri (*Dinei Mamonot* 1:443) writes that people often ask him to discuss the *halachot* of a "hypothetical" case with them, when they are about to litigate an identical case in *beit din*. Upon discovering that they are actually seeking his assistance for an actual situation, he refuses to provide them with halachic knowledge and instead demands that they honestly present the facts to *beit din*.

A couple appeared in *beit din*, without lawyers, regarding a marital dispute. The wife demanded that *beit din* order her husband to give a *get* (divorce document), charging that he physically abused her.[6] After she presented her argument, the *beit din* asked the husband for his response. He answered that he did indeed beat her, but he thought there was just cause to do so; she had a tendency to fall asleep when he delivered a *d'var Torah* at the family's Friday night table. Immediately, Rav Shlomo Fischer berated the husband and sternly warned him that he must give his wife a *get* or face a jail sentence from the *beit din* (see *Shulchan Aruch*, *Even Ha'ezer* 154:3).

This case was resolved extremely expediently, largely due to the absence of a lawyer. The husband presumably responded that he engaged in spouse abuse because he mistakenly believed that the *beit din* would condone his behavior under the circumstances he described. A *to'ein* might have prevented him from admitting his guilt.[7]

Conclusion

The Mishnah (*Pirkei Avot* 1:8) teaches that one should not act as a lawyer. Both Rashi and Rambam explain that this passage refers to coaching a litigant so he will emerge victorious in *beit din*. Advising the litigants interferes with the proper functioning of a *beit din*, which needs candid presentations from the litigants to the *dayanim*.

6. We address the issue of coercing a man to give a *get* in our first volume (pp. 3–7). See *Teshuvot Tzitz Eliezer* 6:42:3 for a discussion of coercing a physically abusive husband to give a *get*.

7. See *Sema* (C.M. 17:14), who writes that it is easier for *dayanim* to clarify the truth when they hear the claims from the litigants themselves.

PART II: PERMISSIBLE SITUATIONS

Although we have seen that many traditional sources frown upon the presence of lawyers in *beit din*, they have nevertheless become an integral part of many trials. In this section, we trace the development of this phenomenon.

Shevu'ot 31a

To begin our discussion, we cite at some length one last Talmudic passage that illustrates *Chazal*'s negative attitude towards hiring a professional representative in *beit din*:[1]

> From where do we know that if one litigant comes to *beit din* dressed in rags and the other in the finest of clothes, then the *beit din* orders the latter, "Either dress similarly to your adversary or give your adversary clothes of the same quality to wear"? As it says, "Avoid all falsities" (*Shemot* 23:7) [whereas the *dayanim* might judge a litigant more favorably due to his clothing] . . . . From where do we derive that one should not plead his case to the *dayanim* in the absence of the opposing litigant? [Also] as it says, "Avoid all falsities" . . . .
>
> [The *Navi* addresses] "he that does something not good among his nations (*Yechezkel* 18:18)." *Rav says that this verse refers to one who appoints a* representative [to present a case] in ***beit din*** (*ba beharsha'ah*).[2] Shmuel says that it refers to a rough person

1. We quote the Gemara at some length to provide context for the Gemara's negative statement towards legal representation in *beit din*.

2. Rav Ezra Basri (*Dinei Mamonot* 1:440; based on *Gidulei Terumah* p. 300) argues that Rav's harsh comments do not apply to *paid* representatives of the litigants. Rav is criticizing those who meddle in other people's business for no reason, whereas paid representatives (provided that they present only truthful claims) are legitimately

> who purchases property [at a low price] which has liens upon it [and believes he will not be evicted by the lienholder due to his roughness].

In this general discussion of methods to ensure a fair trial, Rav again demonstrates *Chazal*'s displeasure with appointing legal representatives. Rashi (s.v. *Zeh*) explains that the agent will not agree to a compromise (*pesharah*), because he is not halachically empowered to do so.[3] *Tosafot* (s.v. *Zeh)* , however, limit Rav's statement, paving the way to permit appointing a *to'ein* under certain circumstances:

> This [prohibition] applies only when he hires a violent representative or an exceedingly argumentative individual who is entering a conflict in which he should have no part. However, if the representative is working to retrieve lost money that the litigant would otherwise be incapable of retrieving, then he is performing a *mitzvah*.

The Rambam adopts a somewhat similar approach (*Teshuvot* 272, Blau edition):

> In my opinion, it is forbidden to appoint a representative unless it is absolutely necessary to do so—such as if the plaintiff lives in a different city than the defendant [and is unable to come to the defendant's city],[4] or if the plaintiff is ill, or other similar justifiable needs.

Rav Tzvi Yehuda Ben Yaakov (*Techumin* 16:352) suggests that perhaps an inarticulate individual, who is incapable of competently representing his case, should also be permitted to send a representative.

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working for their own benefit (*hana'at atzman*). See also *Beit She'arim* (2:202) for Rav Yonah Reiss's critique of Rav Basri's comments.

3. The client could reject the compromise, claiming, "I appointed you to help me, but not to hurt me."

4. Halachah requires the plaintiff to present the case in the *beit din* in the defendant's city (Rama, C.M. 14:1).

Acharonim Note the Change

The *Shulchan Aruch* (*Choshen Mishpat* 123:15 and 124:1) strictly limits when a litigant may appoint a representative to plead his case in *beit din*. He permits only the plaintiff to send a representative, and only if he is not present in the town where the trial takes place. According to the *Shulchan Aruch*, the defendant may never appoint a lawyer. Since the trial takes place in a *beit din* in the locale of the defendant, the *Shulchan Aruch* does not see a legitimate reason for the defendant to appoint a lawyer. However, the Rama (based on the above-cited passage from *Tosafot*) disagrees and permits the plaintiff to use a lawyer even if he could attend the trial himself, provided that the lawyer seeks to help him legitimately recover his money and is not simply a combative individual meddling where he has no business.

The *Shach* (C.M. 124:1) notes that even the Rama, who permits a plaintiff to send a representative to a nearby *beit din* in his stead, forbids the plaintiff from coming to *beit din* himself *and* bringing a lawyer to coach him. Nonetheless, the *Shach* reports that in his time (the seventeenth century), the practice developed that a counsel routinely accompanied the plaintiff to *beit din*. He explains that the plaintiff can, technically, transfer title of his monetary claim to the lawyer, making the lawyer himself a litigant. This option does not exist for the defendant, so he may not appoint a lawyer.

The *Aruch Hashulchan* (C.M. 124:2) cites the *Tumim*, who notes that in his time, the practice was that even the defendant could appoint a lawyer to act on his behalf. In Israel, the *batei din* permit the appearance of counsel (see *Takanot Hadiyun of 5753* 5:41). In the United States, *batei din* also permit the appearance of counsel. Without the presence of people acting as lawyers, Rav Yonah Reiss (*Beit She'arim* 2:201) notes that civil courts will not honor a *beit din*'s decision, even if the litigants sign a binding arbitration agreement.

Limitations on Lawyers

Despite the eventual acceptance of lawyers in *beit din* proceedings, a fundamentally unfavorable attitude towards legal representation of litigants nevertheless persists. For example, the *Aruch Hashulchan* (*ibid*.) writes:

> If the litigants do not appear in *beit din* and the *beit din* sees that the Halachah in the particular case cannot be determined merely with the lawyers present, the *beit din* may insist that the litigants themselves appear in *beit din*.

Moreover, the guidelines for the Israeli Rabbinate's *batei din* state, "*Beit din* may forbid the presence of a lawyer if it sees that the lawyer is obstructing justice, fails to adhere to *beit din* procedures, or behaves disrespectfully towards the *beit din*" (*Takanot Hadiyun* of 5753 5:45). They further demand that the litigants plead their cases to the *dayanim* before their lawyers speak (6:54). Thus, the *dayanim* can hear the litigants speak candidly before their lawyers put a "positive spin" on their clients' claims.

Rav Yonah Reiss (*Beit She'arim* 2:200–201) similarly notes that *to'anim* should be allowed only in cases where they are necessary. For example, there is no need for *to'anim* if the litigants are capable of representing themselves. Moreover, the *to'anim* must be known as honest individuals, and there must be some way to rescind their license should they act unscrupulously. Due to this last consideration, the Beth Din of America (Rules and Procedures, Section 12) permits only licensed attorneys to serve as *to'anim*.

Reasons for Change

There are a number of reasons for the trend to permit lawyers to appear in *beit din*. Professor Nachum Rakover (*Legal Representation and Halacha*, p. 343) cites the *Teshuvot Choshen Ha'eifod* (*Choshen Mishpat* 43:1), who explains that it is especially important for a lawyer to represent the sides in a domestic dispute because "often the parties become emotionally overwhelmed and are unable to respond effectively." He further notes that "it is possible to make peace when objective individuals are involved who will not hurl invectives at the other side."[5]

5. This approach appears to contradict Rashi's explanation for *Chazal*'s opposition to lawyers. As we cited above, Rashi suggested that a lawyer would not compromise on behalf of his clients, lest they reject the agreement and accuse him of harming their interests. Perhaps, according to the *Choshen Ha'eifod*, a lawyer might successfully convince the litigant himself to compromise, even though he could not commit to a compromise without his client's consent.

Professor Eliav Shochetman (*Seder Hadin*, p. 68) quotes Rav Shear Yashuv Cohen (*Torah Shebaal Peh* 22:64) as suggesting a different approach. Rav Cohen seeks to view *to'anim* as officers of the *beit din*, assisting the *dayanim* to arrive at a truthful verdict. Along these lines, Rav Moshe Shternbuch (*Teshuvot Vehanhagot* 1:794) writes:

> If the *to'ein* acts as many lawyers do—teaching his clients to win a case despite the fraud involved—there is no greater sin. However, if the *to'ein* acts like a *dayan* and is sincerely convinced of the correctness of his client's position . . . then acting as a *to'ein* is certainly permissible, and even constitutes a *mitzvah* of helping someone retrieve a lost object, or preventing a theft.

Reb Elya Lichter suggested to me that the *Shulchan Aruch* (C.M. 17:9) requires the *dayanim* to maintain a perilously tight balance between two competing halachic principles. In order to preserve objectivity, Halachah forbids *dayanim* "putting words in the mouth" of a litigant (*al ta'as atzm'cha k'orchei hadayanim*). On the other hand, *beit din* must assist a litigant who is struggling to present his claim but is unable to do so (*p'tach picha l'ileim*). Accordingly, Reb Elya Lichter proposed that the presence of a lawyer eliminates the need for the *beit din* to maintain this delicate balance.

I am familiar with an interesting example of *p'tach picha l'ileim* that occurred when only one side brought a *to'ein* to *beit din*. A divorced couple appeared in the *beit din* to resolve a number of outstanding monetary disputes, including payment of the *ketubah*. A *to'ein* vigorously defended the man, who had confessed to physically abusing his ex-wife, while she came without counsel. After the woman presented her demands, the *beit din* saw that she knew far less than her husband's *to'ein* and was thus unable to present nearly as coherent a case. The *Av Beit Din* (Chief Justice) then raised the possibility that she deserved the return of the money her family had paid for the couple's wedding. Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Even Ha'ezer* 4:8) rules that since the groom must pay for the wedding celebration (see *Ketubot* 10a), the money paid by the bride's family for the wedding should be considered money that the wife brought into the marriage.[6] The

6. Rav Hershel Schachter (addressing a rabbinical convention of the National Council of Young Israel) reported hearing that *dayanim* in Israel do not accept Rav Moshe's ruling regarding the wedding expenses.

husband must pay such funds in addition to the *ketubah* when the couple divorces. The *beit din* thus discharged its obligation of *p'tach picha l'ileim*, presenting a claim for thousands of dollars that the woman did not know to ask for herself.[7]

Conclusion

Halachah certainly does not view legal representation in *beit din* as an ideal situation. Nevertheless, various realities effected an adjustment in policy, so for at least the past hundred years, legal representation has been the norm in *batei din*. A compromise of sorts requires that the litigants plead first, and the counsel speaks later.

7. See, however, *Techumin* (23:448–455), where Rav Uri Dasberg presents many limitations to the principle of *p'tach picha l'ileim*.

Pesach

May One Kasher A Conventional Oven for Pesach?

In many observant homes, people wish to kasher (render as kosher) their conventional ovens for *Pesach*. No consensus has emerged regarding the proper way to perform this task, so different families and communities follow different practices. This chapter explores the opinions of several major contemporary authorities.

An Introduction to Kashering

In *Parshat Matot* (*Bemidbar* 31:21–23) the Torah presents the basic rules of kashering: "Every object that has gone through fire, you shall pass through fire and it will become pure." This verse teaches that every non-kosher utensil that was used directly with fire must be kashered with fire. Rashi (*ad loc*., based on *Pesachim* 30b and *Avodah Zarah* 75b) explains that the phrase "has gone through fire" alludes to one of two methods for kashering utensils, depending on how the utensil cooked the non-kosher food. If the non-kosher food was cooked directly on the utensil (such as on a grill), absent a liquid medium, then one kashers the utensil by heating it in a fire (*libun*). If, however, the non-kosher food was boiled in a pot containing hot water, then the utensil may be kashered via boiling hot water (*hag'alah)*. The Torah

also teaches that if only cold non-kosher food was placed in a utensil, one merely needs to clean the dish before using it with kosher food (*Bemidbar* 31:23).[1]

Rashi articulates the general principle that emerges from these verses: *kederech tashmisho hag'alato*—the manner in which a utensil was used for non-kosher food preparation is the manner in which it should be kashered. The Gemara (*Pesachim* 30b) formulates this rule similarly: *kevol'o kach polto*—the manner in which the utensil absorbed the flavor of non-kosher food is the same manner in which it will let out that flavor.

Preventing the Non-Kosher Food's Reentry

At first glance, the kashering process appears to contain a glaring contradiction. Kashering a utensil extracts the non-kosher flavor that had been absorbed within it from past cooking. However, the process itself essentially cooks the same food particles in the utensil! Why do we not worry that the flavor will thus immediately reenter the utensil?

Tosafot (*Avodah Zarah* 76a s.v. *Mikan*) acknowledge this problem and therefore suggest kashering utensils in at least sixty times as much water as their own volume. In this manner, the immense quantity of water nullifies the non-kosher flavor emitted into the hot water, so the flavor does not reenter the utensil.

Tosafot add that if the utensil has not been used within the past 24 hours (*eino ben yomo*), then such a great volume of water is not necessary. Their ruling stems from the principle that after 24 hours of sitting in a utensil, the non-kosher food develops a foul taste (*notein ta'am lifgam*), so the flavor no longer prohibits use of the pot. This reason alone, though, does not suffice to permit use of the pot without kashering, because the Gemara (*Avodah Zarah* 76a) mentions that the Rabbis prohibited even using a pot containing a foul non-kosher taste, lest one come to use a pot containing a non-kosher taste *within* 24 hours, when the taste has not yet spoiled. The Rosh (*Avodah Zarah* 5:36) explains that kashering a utensil solves this problem, as the pot releases the flavor into the water and then reabsorbs it. Thus, by the end of the process the foul taste is permitted even on a rabbinic level

1. Of course, any metal or glass utensil acquired from a non-Jew must also be immersed in a *mikvah* (see Rashi, *Bemidbar* 31:23).

because it is several steps removed from the non-kosher food that emitted it (*nat bar nat*).[2]

The Rama (*Yoreh Deah* 121:2) rules that one may kasher a utensil only if it has not been used within the past 24 hours. However, the *Chazon Ish* (*Yoreh Deah* 23:1) offers a method of kashering utensils that have been used within 24 hours, without requiring a huge volume of water. He suggests placing a foul-tasting substance in the kashering water, so the extracted taste from the utensil will instantaneously turn foul upon contact with the water (see *Shulchan Aruch*, Y.D. 95:4).[3] Thus, even if the utensil reabsorbs what it released into the pot, the utensil will remain kosher. I have heard that many reliable *kashrut* agencies follow this leniency of the *Chazon Ish* in cases of great need.

Deliberately Nullifying a Prohibition

Kashering also seems to violate the prohibition against intentionally mixing small quantities of non-kosher food with larger amounts of kosher food for the purpose of nullifying the non-kosher food (*ein mevatlin isur lechatchilah*). However this prohibition applies only when one intends to benefit from the non-kosher food that is nullified in the kosher food.[4] When kashering, though, one has absolutely no interest in the utensils' non-kosher taste.

The Distinction Between Hag'alah and Libun

We mentioned that sometimes kashering is effected by placing a vessel in boiling water (*hag'alah*), while other times a utensil must be placed directly in a fire (*libun*).[5] The two processes function differently;

2. Moreover, this "non-kosher" flavor is fundamentally permissible because 24 hours have passed since it entered the utensil (*nat bar nat d'heteira*). See also *Encyclopedia Talmudit* (8:202–209).

3. However, see *Mesorah* (12:72–73), where Rav Yosef Efrati cites Rav Yosef Shalom Eliashiv as requiring a 24-hour wait after the last time that machinery processed non-kosher food before using the machinery. Rav Efrati implies that Rav Eliashiv permits the *Chazon Ish*'s method of kashering only in cases of need. Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, Y.D. 2:31) also objects to kashering within 24 hours, in the manner described by the Chazon Ish, except in cases of great need.

4. See *Semag* (Negative Commandments 78), *Biur Hagra* (*Yoreh Deah* 121:7), *Taz* (*Yoreh Deah* 99:7 and 84:18), and Shach (*Yoreh Deah* 84:38).

5. Kashering with a flame is called libun (literally, whitening) because fire often heats the substance to the point where it has a white glow.

kashering with boiling water extracts (*maflit*) absorbed taste, whereas kashering with fire chars the absorbed taste until it is utterly destroyed, removing its halachic status as food.[6]

The Problem with Kashering Conventional Ovens

Kashering a conventional oven is significantly more difficult than kashering a pot. *Hag'alah* is not practical, and it seems that libun would anyway be required because the oven's walls appear to absorb directly from the fire.[7] The *Shulchan Aruch* (*Orach Chaim* 451:4) rules that *libun* is accomplished when sparks fly (*nitzotzot nitzin*) from the object being kashered.[8] Rav Hershel Schachter told me that it seems to him that the general practice is to require 950 degrees Fahrenheit for *libun*, since that is the temperature at which sparks fly from untreated iron.[9] Since conventional ovens that do not self-clean can be heated only to approximately 550 degrees Fahrenheit, it would seem that they cannot accomplish *libun*. Nevertheless, as we shall see, contemporary authorities have debated this point.

The Strict View-Rav Moshe Feinstein

Both Rav Shimon Eider (*Halachos of Pesach* 1:180) and Rav Aharon Felder (*Ohalei Yeshurun*, p. 77)[10] record that Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Yoreh Deah* 1:59) requires libun for an oven, which may be accomplished only by focusing a blowtorch for seven minutes on an area no larger than eight square inches at a time. Since this task is time-consuming and difficult for many people to perform, many families instead thoroughly clean their ovens and then insert a box that covers the walls of the oven. In this way, no *chametz*

6. See *Taz* (*Yoreh Deah* 121:7) and *Shach* (*Yoreh Deah* 121:17).

7. See, however, *Mesorah* (4:83–96, especially pp. 86-87), where Rav Mordechai Willig notes that the oven's walls only absorb either through steam or through liquids that spray or spill.

8. This ruling is based on a passage from the *Yerushalmi* at the conclusion of *Masechet Avodah Zarah*.

9. See, however, *Badei Hashulchan* (92:8 *Bei'urim* s.v. *Lechatchilah*) for a dissenting opinion. Also, see *Sefer Hagalat Keilim* (13:464, note 432) that states in the name of Rav Moshe Feinstein that *libun* is accomplished at 700 degrees Fahrenheit.

10. In note 136, Rav Felder cites many other twentieth-century authorities who discuss this issue.

can move from the oven walls to the food, as the *chametz* particles do not penetrate the insert's walls.[11]

The Lenient View— Rav Yosef Dov Soloveitchik and Rav Aharon Kotler

Many families follow the lenient opinion of Rav Yosef Dov Soloveitchik and Rav Aharon Kotler (quoted by Rav Eider, *ibid*.) that one can kasher a conventional oven by setting it to its maximum temperature for an hour or two.[12] They base their view on the aforementioned principle of *kevol'o kach polto* (flavor is extracted from a utensil in the same manner as it was absorbed). Rav Soloveitchik argues that this principle can determine precisely how to kasher a specific item.[13] Since an oven never absorbs flavor at a higher temperature than its maximum setting, it can be kashered at that temperature.[14] On the other hand, Rav Moshe Feinstein believes that this rule merely determines *which fundamental method* of kashering should be used (*hag'alah* or *libun*), and that once one has determined that *libun* is required, rather than *hag'alah*, the general parameters of *libun* apply. Thus, sparks must fly from the utensil even if it never absorbed food at such intense heat.[15]

Libun Kal for Chametz?

Rav Ovadia Yosef (*Teshuvot Yechaveh Daat* 2:63) bolsters the position of Rav Soloveitchik and Rav Kotler. He notes that the Rama (*Orach Chaim* 451:4) cites some *Rishonim* who believe that *libun* is

11. See Rama (*Yoreh Deah* 92:8) and *Teshuvot Igrot Moshe* (*Yoreh Deah* 3:10:1).

12. Rav Soloveitchik's position is cited by Rav Mordechai Willig (*SOY Guide to Kashrut*, p. 67), and I have also heard it from Rav Aharon Lichtenstein (in a lecture at Yeshivat Har Etzion) and Rav Yosef Adler.

13. The *Aruch Hashulchan* (O.C. 451:14–18) appears to share Rav Soloveitchik's conceptual understanding of *kevol'o kach polto*.

14. See *Yesodei Yeshurun* (6:157–158), *Minchat Chein, Hagadah Shel Pesach* (pp. 12–14) and *Badei Hashulchan* (92:8 *Bei'urim* s.v. *Lechatchilah*) regarding the efficacy of *libun* when the heating source is outside the item that one wishes to kasher and how this issue impacts the kashering of ovens.

15. The *Mishnah Berurah* (451:85) appears to share Rav Moshe's interpretation of *kevol'o kach polto* (also see *Shaar Hatziyun* 451:100). For a thorough discussion of this issue, see *Teshuvot Minchat Yitzchak* (3:66), *Sefer Hag'alat Keilim* (introduction to Chapter 4), and Rav Mordechai Willig's essay in *Mesorah* (4:83–96).

accomplished (regarding *Pesach*, see *Mishnah Berura* 451:30) when the oven reaches the temperature at which straw burns (*kash nisraf*). Rav Hershel Schachter told me that it seems to him that common practice in America is to consider the temperature for *libun kal* to be 550 degrees Fahrenheit. Hence, this lighter form of *libun* (*libun kal*) can be accomplished even in most conventional ovens. Although the Rama himself requires *libun* until sparks fly (*libun gamur*) for utensils that truly need libun, he permits the more lenient *libun kal* for items that merely require *hag'alah*.[16] While *hag'alah* does not normally suffice for kashering items that cook food without a liquid medium, the Gemara (*Avodah Zarah* 76a) permits kashering such items through mere *hag'alah* if they absorbed only *kosher* food (*heteira bala*), even though the food subsequently became non-kosher (see Rashi, Avodah *Zara*h 76a s.v. *L'olam*).[17]

Many *Rishonim* equate *chametz* with food that was absorbed while it was still kosher and only later became non-kosher (since *chametz* was permitted at the time it was absorbed into the oven, before *Pesach*). Consequently, *hag'alah* would suffice to kasher utensils even if they absorbed *chametz* through fire.[18] Based on this logic, Rav Ovadia Yosef argues that many authorities would permit kashering an oven for *Pesach* through *libun kal*. Those *Rishonim* who equate *chametz* before *Pesach* with food that only later became non-kosher would permit kashering an oven for *Pesach* by heating the oven to 550 degrees even if they did not accept Rav Soloveitchik's interpretation of *kevol'o kach polto* as applying to individual utensils. Accordingly, Rav Ovadia rules (like Rav Soloveitchik and Rav Kotler) that one may kasher an oven for *Pesach* by running it on its highest setting.

Despite Rav Ovadia's reasoning regarding *chametz,* Rav Gedalia Felder (*Yesodei Yeshurun* 6:157–158) writes the exact opposite, that one should be even stricter regarding *Pesach* than when kashering non-kosher ovens for year-round use. He notes that we routinely treat the prohibition against *chametz* on *Pesach* with unusual stringency (*chumra*

16. One might, for example, wish to perform *libun kal* on an item that merely requires *hag'alah* if it cannot come in contact with boiling water for practical reasons.

17. For example, when the meat of a *korban* (sacrificial offering) is cooked in a dish, the flavor of this meat remains in the dish past the time that the *korban* may be eaten. When this time expires, the meat becomes forbidden (*notar*; see *Vayikra* 19:5–8), so the dish now contains flavor that was absorbed from kosher food but is no longer kosher.

18. See *Shulchan Aruch* (*Yoreh Deah* 121:4) and *Bi'ur Hagra* (Y.D. 121:9).

d'chametz) , so even one who kashers an oven during the year by running it on its highest setting should obey Rav Moshe's view when kashering for *Pesach*.

Conclusion

Since there are cogent arguments for both strict and lenient approaches to kashering conventional ovens before *Pesach*, one should consult a Rav for guidance regarding this issue. This chapter does not address self-cleaning ovens, which appear to be easier to kasher. As Rav Elazar M. Teitz (based on the position of his father, Rav Pinchas Teitz) writes in his community *Pesach* guides (for Elizabeth, New Jersey), "Self-cleaning ovens are self-kashering."[19] Indeed, Rav Noach Oelbaum (*Minchat Chein, Hagada Shel Pesach* p. 23) writes that a regular cleaning cycle suffices to kasher a self-cleaning oven "since experience indicates that its heat exceeds the heat generated by conventional *libun*."

It is worth noting that the rules for kashering between milk and meat during the year might differ from kashering for *Pesach*.[20]

19. Nevertheless, some people blowtorch or cover the door of self-cleaning ovens, as the door reportedly does not reach such intense heats even during the self-cleaning cycle. See *Yesodei Yeshurun* (6:159–160), where Rav Gedaliah Felder expresses concern regarding the parts of a self-cleaning oven that do not reach a high enough temperature. Indeed, Rav Aharon Felder (*Ohalei Yeshurun*, p.77) cites Rav Moshe Feinstein who requires that the door of a self-cleaning electric oven be kashered with a blow torch. In addition, see *Badei Hashulchan* (92:8 *Bei'urim* s.v. *Lechatchilah*) who rules that self-cleaning ovens cannot be kashered.

20. One might rule more leniently during the year because in general we act more strictly regarding *Pesach* than regarding separating milk and meat. For example, we do not require a 24-hour waiting period before kashering an oven from meat to milk, or vice versa, because the original flavor in the oven passes through many stages before reaching food that will be cooked in the oven (see *Tosafot*, *Avodah Zarah* 76a s.v. *Bat Yoma* and *Shach*, *Yoreh Deah* 94:15). Also, *libun kal* would suffice for kashering between milk and meat, because they are both kosher (*heteira bala*; see our earlier discussion of whether *libun kal* suffices for *chametz* before *Pesach*). On the other hand, the *Chelkat Yaakov* (2:136) objects to kashering an oven at all between meat and milk, for there is an Ashkenazic custom (recorded in the *Magen Avraham* 509:11) not to kasher between them. However, Rav Yaakov Kaminetzsky (cited in *Emet L'Yaakov*, p. 307, note 41) permits kashering ovens between milk and meat, apparently believing that the Ashkenazic practice does not apply to ovens. For an explanation of this position, see my article about cooking milk and meat in the same oven (*The Journal of Halacha and Contemporary Society* 32:34–35, note 19).

Kashering Dishwashers for Pesach

Dishwasher interiors are normally coated with porcelain, metal, or plastic. In this chapter, we discuss the feasibility of kashering dishwashers whose interiors are made of these materials.

Kashering Earthenware

The Torah (*Vayikra* 6:21) teaches the laws concerning vessels in the *Beit Hamikdash* which absorbed "taste particles" of *korbanot* (sacrifices), and what happens when these tastes become forbidden as *notar* (leftovers from an expired *korban*).[1] The Torah states that earthenware vessels that were used to cook *korbanot* must be destroyed. The Gemara (*Pesachim* 30b) states, based on this verse, that the flavor absorbed by an earthenware vessel can never be completely purged. Thus we see that metal can be kashered while earthenware generally

1. For example, a vessel in which a *korban chatat* (sin offering) was cooked contains *notar* taste particles within its walls the morning after the *korban* was brought. Since it absorbed the taste particles from the *korban*, the same laws apply to the particles as would apply to an actual offering. Thus, when the *korban* becomes *notar*, the vessel also becomes forbidden. The vessel may not be used until the taste particles have been purged from it. The Torah teaches that metal utensils may have their *notar* taste particles purged by being placed in boiling-hot water and subsequently being rinsed in cold water. Outside of the Temple, the rinsing is not necessary, although it is done anyway as a reminder of the customs that were performed in the Temple (see *Tosafot*, *Avodah Zarah* 76b s.v. *Mikan*, and *Aruch Hashulchan*, *Orach Chaim* 452:20).

cannot. The only way to kasher earthenware is by running it through a kiln (see *Shulchan Aruch*, *Orach Chaim* 451:1). Rabbeinu Tam (*Tosafot*, *Pesachim* 30b s.v. *Hatorah*) explains that a kiln does not purge the taste particles, but it recreates the utensil into a new object (*cheftza*), which has never been used to cook a *korban*.[2]

The Status of Porcelain

Of the many types of earthenware, porcelain specifically is often used to coat dishwashers. Porcelain is essentially non-porous earthenware and therefore does not absorb in the same manner as regular earthenware. Consequently, *Acharonim* debate whether it absorbs anything from non-kosher food or not, due to its non-porous nature, and, assuming it does absorb, whether it can be kashered. The *Darchei Teshuvah* (121:26) cites numerous opinions regarding porcelain, ranging from those who believe that porcelain requires no kashering whatsoever (*She'eilat Yaavetz* 1:67) to those who believe that it may never be kashered. The *Mishnah Berurah* (451:163) rules strictly, that porcelain shares the same status as other earthenware, which may not be kashered at all. Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 4:6) summarizes this issue:

> Much ink [has been] spilled in attempting to rule that since porcelain is non-porous it need not be kashered. Nevertheless, the consensus of halachic opinions, along with the accepted practice, is to treat porcelain as earthenware, which may not be kashered.

Accordingly, it would seem that a porcelain-coated dishwasher cannot be kashered. However, the *Darchei Teshuvah* cites those who factor in the lenient opinions on this issue when rendering decisions in

2. I heard Rav Moshe Tendler state that a self-cleaning oven can function as a kiln in this respect. According to Rav Tendler, a non-kosher earthenware dish may be kashered by staying inside an oven for an entire self-cleaning cycle (assuming that the intense heat does not break or damage the dish). Obviously this kashering procedure cannot be used to kasher a dishwasher, since there is no practical way to put a dishwasher into a kiln without destroying the dishwasher. I have heard that Rav Yosef Weiss disagrees with this ruling, arguing that a self-cleaning oven will only subject the dish to intense heat but not actual fire. See *Teshuvot Avnei Neizer* (*Yoreh Deah* 110) for a discussion of whether *libun* works because of fire touching the dishes or because of the dishes being subjected to intense heat.

already questionable cases, as an added reason to be lenient (*senif lehakeil*). As an example of such a case, Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Yoreh Deah* 3:28–29) rules that if one purchases a home containing a non-kosher porcelain dishwasher, the dishwasher may be kashered. He reasons that not kashering the dishwasher would incur a significant monetary loss, leading to a situation in which the above leniencies may be used (also see *Teshuvot Yabia Omer*, Y.D. 1:6). However, he rules that it may be kashered only after it has not been used for a full year, and it must be fully kashered three times.

Rav Moshe combines three unrelated lenient minority opinions in this ruling. As mentioned above, some authorities permit kashering porcelain because of its non-absorbent nature. Additionally, Rav Moshe factors in the *Baal Ha'itur*'s view (cited by the *Tur*, *Yoreh Deah* 121) that although an earthenware vessel cannot be kashered in the conventional way, in certain situations it may be kashered by performing the kashering process three times. Although this represents only a minority view, halachic authorities occasionally cite it as an added consideration in their lenient rulings in case of great need.[3] As a third lenient consideration, Rav Moshe quotes a celebrated opinion of the *Chacham Tzvi* (75, cited by the *Shaarei Teshuvah* 451:1). The *Chacham Tzvi* believes that after twelve months, the absorbed non-kosher flavor becomes "mere dust," with no halachic status as a prohibited food.[4] Hence, while after 24 hours an absorbed taste becomes rancid (*noten ta'am lifgam*; see *Avodah Zarah* 75b–76a) and is only rabbinically forbidden, after twelve months the flavor disappears completely.

Reactions among halachic authorities to the *Chacham Tzvi*'s ruling have been mixed. The *Aruch Hashulchan* (*Yoreh Deah* 122:4) rejects this leniency entirely, while the *Chochmat Adam* (55:4) appears to accept it. Adopting a middle approach, the *Sha'arei Teshuvah* (*ibid.)* rules that the *Chacham Tzvi*'s leniency may be used only as one lenient consideration, in combination with the *Ba'al Ha'itur*, if there is also a third lenient consideration.

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3. See for example *Aruch Hashulchan* (*Yoreh Deah* 121:26–27) and *Teshuvot Melamed Leho'il* (2:52).

4. The *Chacham Tzvi* bases his position on Talmud's assertion that vessels that have absorbed non-kosher wine lose their non-kosher status after twelve months (*Avodah Zarah* 34a). He applies this statement regarding wine to other areas of *kashrut*, too. In practice, the *Chacham Tzvi* writes that one should follow his lenient ruling only in *b'dieved* (*ex post facto*) situations, where something was already cooked after the pot had not been used for twelve months.

Rav Moshe apparently follows the approach of the *Sha'arei Teshuvah*, combining three lenient approaches: those of the *Ba'al Ha'itur* and the *Chacham Tzvi*, along with that of Rav Yaakov Emden (*She'eilat Ya'avetz* 1:67), who maintains that porcelain does not require kashering.[5] Rav Moshe therefore permits, in case of significant monetary loss, to kasher non-kosher porcelain dishwashers for the rest of the year, provided that the kashering is done three times after the appliance has not been used for an entire year.[6] On the other hand, Rav Yosef Adler reports that Rav Yosef Dov Soloveitchik does not subscribe to Rav Moshe's leniency. Rather, Rav Soloveitchik maintains that porcelain dishwashers may never be kashered.

It is vitally important to note that Rav Moshe does not apply his ruling to Pesach *use*. In a separate responsum, he rules that porcelain dishwashers may not be kashered for *Pesach* use under any circumstances (*Teshuvot Igrot Moshe*, *Orach Chaim* 3:58). His position conforms to the general trend of treating the prohibition against *chametz* on *Pesach* more strictly than the laws of *kashrut* for the rest of the year (*chumra d'chametz*). Just as we do not apply the leniencies of nullification by a 60:1 ratio (*bitul beshishim*) and (according to Ashkenazic practice) *notein taam lifgam* on *Pesach*,[7] so, too, Rav Moshe does not apply his lenient view regarding dishwashers to Pesach.[8]

Metal-Lined Dishwashers

In his aforementioned responsum, Rav Moshe rules that a metal-lined dishwasher may be kashered provided that it is first cleaned thoroughly. Several classical sources highlight the necessity of properly cleaning a utensil before kashering.[9] Indeed, the *Mishnah Berurah* (451:156) writes, "Any utensil that one cannot extend his hand into [in order to thoroughly clean it] may not be kashered."

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5. See *Teshuvot Melamed Leho'il* (2:52), who combines a somewhat similar list of minority opinions to permit kashering earthenware dishes in a complex and problematic situation.

6. In cases of great need, Rav Moshe does not require waiting a year.

7. See *Shulchan Aruch*, O.C. 447:1 and 447:10.

8. See Rav Moshe's view as quoted in Rav Shimon Eider's *Halachos of Pesach*, p.138, note 15.

9. See Rabbeinu Tam's explanation of *Pesachim* 30b (cited in *Tosafot*, *Chulin* 111b–112a s.v. *Hilch'ta*), *Shulchan Aruch* (*Orach Chaim* 451:3), Rama (*Orach Chaim* 451:18) and *Mishnah Berurah* (451:56, 156).

While Rav Moshe does permit the kashering of those dishwashers that can be thoroughly cleaned, some rabbis object to kashering all dishwashers for *Pesach* due to the concern that they can never truly be cleaned thoroughly. A dishwasher's many nooks and crannies generate this concern, and these rabbis worry that the many holes and crevices within the dishwasher make cleaning it thoroughly nearly impossible.[10]

Nonetheless, some authorities do permit kashering metal dishwashers, but it is not entirely clear how to do so. The Torah articulates the basic guidelines of kashering in *Bemidbar* (31:23), "That which became not kosher through contact with fire must be kashered with fire, and that which became not kosher in a water medium, must be kashered in a water medium." This verse establishes the principle that an item must be kashered in the same manner as its use. Dishwashers come in contact with food particles through hot water, so they should be kashered with hot water (*hag'alah*). Rav Moshe writes that when kashering a dishwasher, a hot brick must be placed inside the dishwasher to boost its water's temperature to the boiling point,[11] based on the practice of using boiling water whenever water is required (see *Taz*, *Yoreh Deah* 94:3 and *Mishnah Berurah* 452:8). Hence, even though the water's temperature never climbs higher than 190º F in dishwashers,[12] kashering them still requires boiling water.

On the other hand, Rav Mordechai Willig (*SOY Guide to Kashrut*, p. 66) and Rav Yosef Adler (personal communication) quote Rav Soloveitchik's view that if one is absolutely certain of the maximum temperature that the water reaches when the dishwasher absorbs non-kosher (or *chametz*) taste, then it may be kashered at that temperature. Rav Soloveitchik requires boiling water only when one is unsure of the maximum temperature to which the appliance has been exposed. Since one knows the maximum temperature that the dishwasher has reached, it may be kashered (after being left unused for at least

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10. Some authorities raise similar objections to kashering microwave ovens, as we discuss in the next chapter. Rav Moshe apparently does not share that concern either, as he permits kashering a microwave for *Pesach* (quoted by Rav Shimon Eider, *Halachos of Pesach*, p. 182).

11. Dr. Joel Berman notes that, scientifically speaking, it is difficult to imagine how this brick would raise the water to the boiling point. The brick would not access all of the water, and the brick's outside temperature would rapidly fall as the water cooled it down.

12. In a lecture at Yeshiva University in 1989, Rav Moshe Tendler reported that at that time the water did not get hotter than 190º F.

24 hours) simply by running it through a full wash cycle. In such a manner, the water in the machine is the hottest to which the appliance has ever been exposed and will thus purge the non-kosher flavor. The *Mishnah Berurah* (*Shaar Hatziyun* 451:196) seems to agree with Rav Soloveitchik's contention by suggesting that most authorities understand the rule of *kevol'o kach polto* as meaning that each utensil is kashered with water that is as hot as the water that it uses (see our earlier chapter regarding kashering ovens).

Plastic-Lined Dishwashers

Many dishwashers today are lined with plastic. The ability to kasher them depends on how to categorize materials (such as plastic) that did not exist in the time of the Talmud. Rav Moshe (*Teshuvot Igrot Moshe*, *Orach Chaim* 2:92) writes that one may not kasher synthetic rubber "since it is new and unaddressed in the classical sources." The same would seemingly apply to plastic. Interestingly, though, it seems that Rav Moshe ruled this strictly only concerning *Pesach*, as Rav Shimon Eider (*Halachos of Pesach*, p. 138, note 10) writes that Rav Moshe does permit kashering plastic during the rest of the year. Apparently, he considers this area to be another example of the *chumra d'chametz* (special *Pesach* stringencies).

Many contemporary authorities do not share Rav Moshe's objection to kashering synthetic materials. Rav Eider (*Halachos of Pesach*, p. 138, note 10) cites that Rav Yosef Eliyahu Henkin went so far as to rule that plastic does not require kashering at all, because it is smooth and does not absorb (*shi'a velo bal'i*). Although Rav Henkin's view is a minority opinion,[13] many contemporary authorities who assume that plastic does absorb non-kosher flavor nevertheless permit kashering it, even for *Pesach*. Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 4:6) and Rav Ovadia Yosef (*Chazon Ovadia*, vol. 2 [*Hagaddah Shel Pesach*], p. 78) permit the kashering of plastic utensils for *Pesach*, as does Rav Gedalia Felder (*Yesodei Yeshurun* 6:170–173) in case of great need.[14] According to these authorities, a utensil may be kashered as

13. Mr. Phillip Berman (of Springfield, Massachusetts) informed me that, in fact, most forms of plastic do indeed absorb. Mr. Berman worked for many years as a senior research plastics scientist at the Monsanto Corporation.

14. Rav Yaakov Breisch (*Teshuvot Chelkat Yaakov* 2:163) also permits the kashering of plastic (and does not distinguish between *Pesach* and non-*Pesach* use), as does

long as it does not contain earthenware. Indeed, Rav Yechiel Yaakov Weinberg (*Teshuvot Seridei Eish* 1:46) writes that the accepted practice is to kasher plastic, without limiting his ruling to non-*Pesach* use.

Conclusion

Each of the three types of dishwashers presents its own challenges in terms of kashering for *Pesach*. In addition, many of the relevant facts, such as the heat of a dishwashing cycle, are subject to change in light of technological developments. One should consult a competent rabbi regarding which approaches to follow.

Rav Yitzchak Yaakov Weisz (*Teshuvot Minchat Yitzchak* 3:67) under some limited circumstances. The Maharsham (3:233) also appears to permit the kashering of synthetic materials.

Kashering a Microwave Oven for Pesach

This chapter discusses whether one may kasher a microwave for *Pesach*, as well as how to perform the kashering according to those authorities who permit it. While we outline the relevant points of debate, the reader is urged to consult his Rav for guidance concerning this complicated issue.

Objections to Kashering Microwaves

The very possibility of kashering a microwave presents two problems. Some rabbis express reservations about kashering microwave ovens due to the difficulty in thoroughly cleaning their many vent holes and crevices.[1] Additionally, Rav Mordechai Willig told me (in 1992) that he believes one cannot kasher a microwave for *Pesach* if it is lined with plastic. He notes that Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Orach Chaim* 2:92) prohibits kashering synthetic materials for *Pesach*. Indeed, in his discussion of kashering microwaves (*Halachos of Pesach*, pp. 182–183), Rav Shimon Eider quotes Rav Moshe as permitting a

1. The Rama (*Orach Chaim* 451:18; as explained by *Mishnah Berurah* 451:100) prohibits kashering certain items for *Pesach*, such as sieves, due to the difficulty in cleaning them thoroughly from *chametz*. For this reason, Rav Aharon Lichtenstein told me (in 1987) that one should not kasher a toaster oven, as it is too difficult to clean thoroughly.

microwave to be kashered only if the microwave is not lined with plastic. On the other hand, Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 4:6), Rav Yechiel Yaakov Weinberg (*Teshuvot Seridei Eish* 1:46), and Rav Ovadia Yosef (*Chazon Ovadia*, vol. 2 [*Hagaddah Shel Pesach*], p. 78) permit kashering plastic for *Pesach*. Assuming that one fundamentally can kasher a microwave, we will examine the proper ways to implement the kashering.

Kashering Glass

Many microwaves contain revolving glass plates, which should seemingly require kashering for *Pesach*. However, *poskim* strongly debate the status of glass.[2] The *Shulchan Aruch* (*Orach Chaim* 451:26) rules that glass need not be kashered, even for *Pesach*, for it is smooth and thus does not absorb the flavor of non-kosher foods or *chametz*.[3] On the other hand, the Rama, adopting (at least concerning *Pesach*) the opposite extreme position among *Rishonim*, equates glass with earthenware, which cannot be kashered at all.[4] The *Rishonim* who advocate this position note that glass resembles earthenware in two ways: it originates from sand, and the Rabbis (*Shabbat* 15b) assigned glass utensils the status of earthenware for *tumah* (ritual impurity). A third opinion, not codified by the *Shulchan Aruch* or Rama, is that glass shares the status of metal, so it may be used only after being properly kashered (*Or Zarua*, *Pesachim* 256, and Ra'ah, cited by Ritva to *Pesachim* 30b). Accordingly, it would appear that Sephardic Jews merely need to clean their glass plates, while Ashkenazic Jews undoubtedly must remove or replace them during *Pesach*.[5]

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2. For a full review of the halachic literature concerning kashering glass, see my essay in the Fall 1993 issue of *The Journal of Halacha and Contemporary Society* (26:77–87).

3. The *Shulchan Aruch*'s ruling follows the opinion of *Tosafot* (*Avodah Zarah* 33b s.v. *Kunya*), the Ra'avyah (Chapter 464, near end), and the Ran (*Pesachim* 9a in the Rif's pages).

4. The Rama follows Rabbeinu Yechiel of Paris (cited in the Mordechai, *Pesachim* 574) and the *Semag* (cited in *Terumat Hadeshen* 132).

5. See (*Techumin* 8:35–36), where Professor Zev Lev (of the Jerusalem College of Technology) writes that it is best to remove the glass plate from the bottom of the microwave. There might be room for Ashkenazic Jews to kasher a microwave's plate if it is made of duralex or pyrex; see *Teshuvot Yabia Omer* (vol. 4, O.C. 41) and *Teshuvot Tzitz Eliezer* (9:26).

A Heating Element

Rav Yitzchak Yosef (*Yalkut Yosef*, *Kitzur Shulchan Aruch* p. 588) writes that if there is a heating element in the microwave, then it must be kashered in the same manner as an electric oven—by turning the oven to its highest possible temperature for an hour.[6] Kashering by steam suffices only if the absorption occurs exclusively by steam. However, the heating element constitutes a fire and thus requires similar fire to be kashered (*libun*).

Rav Moshe Feinstein's Ruling

Rav Shimon Eider (*Halachos of Pesach*, p. 182, note 166) reports that Rav Moshe requires thoroughly cleaning a microwave, waiting 24 hours (since its last use), and then boiling a glass of water in the microwave. The steam will then kasher the entire microwave. This report seems to contradict Rav Moshe's opinion elsewhere (*Teshuvot Igrot Moshe, Yoreh Deah* 1:60), that he prohibits using steam for kashering.[7] Rav Eider quotes Rav Moshe as explaining that steam works specifically to kasher microwaves, for the steam that rises from the *chametz* cooking in the microwave is the only means by which its walls absorb *chametz*. Since we kasher ovens and utensils through the same process that they absorbed *chametz*, we may kasher a microwave with steam. In fact, the *Badei Hashulchan* (92:164) cites many *Acharonim* who permit kashering vessels through steam when that is how they absorb flavor, although he notes (*Tziyunim* 92:367) that the *Chavat Da'at* (*Bei'urim* 92:26) disagrees.

It should be noted that the Rama's opinion applies only to *Pesach*, but not to kashering between milk and meat. See *The Journal of Halacha and Contemporary Society* (26:83–84) for a summary of how *Acharonim* interpret the Rama's opinion regarding kashering glass for year-round use.

6. Considerable controversy surrounds this procedure; see *Halachos of Pesach*, pp. 180-181, and our earlier chapter regarding the kashering of ovens.

7. Rav Moshe explains that although steam is hotter than boiling water, perhaps steam cannot extract (*maflit*) non-kosher food particles as hot water can. There has been a great debate over whether steam can be used for kashering; see *Hag'alat Keilim* 10:4 for a review of the literature regarding this issue.

Criticism of Rav Moshe

Rav Yitzchak Yosef (*Yalkut Yosef*, *Otzar Dinim La'ishah V'labat*, p. 310) and Rav Yisrael Rozen (*Techumin* 8:35, note 34) question Rav Moshe's view because we do not find steam as a method of kashering in any traditional codes, which explicitly endorse kashering only via fire or boiling water.[8] Another problem with Rav Moshe's suggestion is that the steam does not kasher the place underneath the cup of boiling water (since it cannot reach there). The location that had been under that utensil should be kashered separately either by pouring boiling water on it or by kashering the microwave again, with the cup of water in a different place.

Rav Eider himself challenges Rav Moshe's ruling because the microwave actually absorbs *chametz* even without steam. Hot foods often spill and splatter, *directly* imparting their taste into the walls, without a medium such as steam.[9] Thus, Rav Eider advises that the places on which *chametz* may have fallen should be kashered by pouring boiling water directly onto them.[10] However, Rav Eider's personal suggestion presents its own difficulties. Pouring boiling water into a microwave is not always a simple task. Moreover, during the course of a year, hot *chametz* splatters throughout the microwave, so hot water

8. Rav Yitzchak Yosef does not entirely reject kashering via steam, but, after stipulating several conditions that must be met in order to kasher via steam, he writes that it is "more appropriate" not to rely on this method of kashering. In the context of kashering for *Pesach* (*Yalkut Yosef*, *Kitzur Shulchan Aruch*, p. 588 in the 5760 edition), he similarly presents the option of kashering via steam but adds that frequently used microwaves should preferably not be used at all on *Pesach*.

9. Even if the microwave's walls do not reach *yad soledet bo* (the heat at which Halachah believes that absorption occurs), the food is hot. In this situation, called *cham letoch tzonein* (warm into cold), Halachah assumes that a thin layer of the walls does absorb flavor (*kedei kelipah*). See *Shulchan Aruch*, *Yoreh Deah* 91:4. Indeed, during extended use of a microwave, steam can raise the walls' temperature above *yad soledet bo*, as noted by Prof. Zev Lev (*Techumin* 8:35). Rav Binyomin Forst (*The Laws of Kashrus*, p. 234) expresses similar reservations about Rav Moshe's lenient view.

10. Perhaps Rav Moshe would respond that, during *Pesach* use, only steam will extract the food particles from the spills and splatters in a microwave. Accordingly, if we accept that the steam can extract *chametz* particles and thus create a problem on *Pesach*, then it can also extract *chametz* to kasher the microwave. One might counter, though, that kashering is a formal procedure, and the prohibition to cook food in a utensil containing non-kosher or *chametz* particles applies regardless of the fact that they cannot render the food non-kosher (see *B'ikvei Hatzon* 24:11).

would have to be poured over every internal surface of the microwave in order to thoroughly eliminate any traces of *chametz*.

Support of Rav Moshe's Ruling

Three lenient considerations exist to buttress Rav Moshe's ruling. Firstly, a minority opinion permits kashering with steam.[11] Moreover, the *Shulchan Aruch* (O.C. 451:25) determines the method of kashering by the way the utensil is *generally* used (*rov tashmisho*). For example, if one usually uses a utensil to boil food, but occasionally uses it to cook directly over a fire, boiling water alone suffices to kasher it, without employing fire. Accordingly, if we fundamentally permit kashering through steam, the occasional splattering onto a microwave's walls would not force us to use boiling water for kashering. However, the Rama does not accept this ruling, so Ashkenazic Jews cannot utilize this leniency. Nevertheless, Ashkenazic *poskim* might take the *Shulchan Aruch*'s position into account when other lenient considerations exist. Rav Ovadia Yosef rules that Sephardic Jews may rely on the *Shulchan Aruch* (see *Yalkut Yosef*, *Kitzur Shulchan Aruch* p. 588 [in the 5760 edition]).

Finally, some authorities (cited in *Darchei Teshuvah* 92:165 and *Badei Hashulchan* 92:166) claim that steam cannot extract that which is already absorbed in the microwave. It may be inferred that the *Shulchan Aruch* and Rama (*Yoreh Deah* 92:8) also subscribe to this view (see *Mesorah* 4:86). A major concern during *Pesach* is that steam rising from cooking foods will potentially extract previously absorbed *chametz* from the microwave's walls. However, no *chametz* would be extracted according to this lenient view. Rav Yechezkel Landau (*Dagul Meirvavah*, *Yoreh Deah* 92:8), though, adopts the strict opinion that steam can extract taste particles, so an unkashered microwave may not be used on *Pesach*.[12] Nonetheless, perhaps the lenient view (which we do not generally accept) might be used in conjunction with the two considerations mentioned above, as additional reasons (*senifim lehakel*) to further support Rav Moshe's ruling.

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11. See *Darchei Teshuvah* (121:16), *Teshuvot Achiezer* (4:9), and *Teshuvot Melamed Lehoil* (2:51).

12. For a discussion of this point, see my essay in the Fall 1996 issue of the *The Journal of Halacha and Contemporary Society* (32:26–37).

Contaminating the Water

Rav Yitzchak Yosef (*Yalkut Yosef*, *Kitzur Shulchan Aruch*, p. 588 [in the 5760 edition]) and Professor Lev (*Techumin* 8:35) advise putting a detergent into the water before boiling it to kasher the microwave. The detergent ensures that any *chametz* particles absorbed into the microwave walls will not impart a positive flavor should they come in contact with food on *Pesach*.[13] Thus, even if we were to assume that steam cannot kasher, the microwave's *chametz* particles would not render any food non-kosher on *Pesach*.[14]

Conclusion

Several considerations can buttress Rav Moshe's lenient ruling to permit kashering a microwave for *Pesach*. Many rabbis, however, feel that it is inappropriate to rely on these opinions for *Pesach*, since we generally act strictly concerning this holiday's dietary laws.[15] Rav Eider even suggests that it is preferable to cover the surfaces of the microwave, as well as the food being cooked in it, during *Pesach*, even after it has been kashered according to Rav Moshe's method. One should consult a Rav for guidance in this issue, especially since many of the relevant facts are subject to change in light of technological developments.

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13. Interestingly, adding detergent to the water might facilitate kashering non-kosher dishes for year-round use without waiting 24 hours for the dish's non-kosher flavor to spoil (see *Shulchan Aruch*, *Yoreh Deah* 95:4, and *Chazon Ish*, *Yoreh Deah* 23:1). Instead of waiting for the flavor to naturally turn bad, the absorption of the detergent spoils it immediately. However, see *Mesorah* (12:72–73), where Rav Yosef Efrati implies that Rav Yosef Shalom Eliashiv permits this method of kashering only in cases of need. Rav Efrati cites Rav Eliashiv as normally requiring one to wait 24 hours after the machinery's last use with non-kosher food. Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, Y.D. 2:31) also objects to kashering within 24 hours, in the manner described above, except in cases of great need.

14. This logic holds true according to the *Shulchan Aruch* (O.C. 447:10); see, however, Rama (*ad loc*.), who cites the Ashkenazic custom to prohibit foods that absorbed the flavor of *chametz* even if the *chametz* imparted a displeasing flavor.

15. See *Teshuvot Vehanhagot* 2:212 where Rav Moshe Shternbuch expresses serious reservations regarding Rav Moshe's lenient ruling.

Electricity

Fulfilling Mitzvot Through Electronic Hearing Devices

Modern authorities have vigorously debated whether a sound heard through a microphone, hearing aid (which functions much like a microphone),[1] or telephone shares the status of the original sound. This issue impacts the fulfillment of numerous *mitzvot*, such as listening to the blowing of a *shofar* or to Torah and *Megillah* readings, by hearing them through these electronic media.

How Does a Microphone Work?

Before addressing the halachic aspects of electronic devices, Rav Shlomo Zalman Auerbach (*Teshuvot Minchat Shlomo* 1:9) describes the workings of a microphone in great detail.[2] It receives sound waves (the original voice or sound) and converts them into electronic signals. An amplifier/speaker system then reconverts the electronic signals into

1. Regarding why hearing aids do not violate *Shabbat*, see *Igrot Moshe* (*Orach Chaim* 4:85), *Teshuvot Minchat Shlomo* (1:9), and *The Journal of Halacha and Contemporary Society* (41:62–98).

2. In the 1980 reprint of his *Me'orei Eish*, he explains that he attained a sophisticated understanding of electric mechanisms through much reading, as well as consultation with experts who were observant Torah scholars, too.

an amplified replica of the original sound. A similar operation takes place within hearing aids and telephones. Of course, radios and televisions translate radio waves instead of electrical signals.

Can One Fulfill a *Mitzvah* with Such a Mechanism?

A number of early twentieth-century authorities believed that one can fulfill the *mitzvot* of *shofar* and *Megillah* even through a microphone system (see *Encyclopedia Talmudit* 18:749–753). However, they lacked access to precise scientific information, so they formulated their opinion based on common-sense perception, without conclusively knowing whether a microphone simply broadcasts a human voice or first transforms it into electronic signals.

A number of prominent authorities who understood microphones more accurately nonetheless considered permitting their use for *mitzvot* that entail listening. The *Chazon Ish* (in an oral communication to Rav Shlomo Zalman Auerbach, cited in *Minchat Shlomo* 1:9) suggests that perhaps, "since the voice that is heard via microphone was created [at first] by the [human] speaker and the voice is heard immediately,[3] as it would be heard in regular conversation, it is also defined as 'actually hearing' the *shofar* blower or the [voice of the human] speaker."

Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Orach Chaim* 2:108) and Rav Tzvi Pesach Frank (cited in *Teshuvot Minchat Yitzchak* 2:113 and *Teshuvot Tzitz Eliezer* 8:11) suggest a similar line of reasoning. Rav Moshe indicates that one never hears a sound directly from its source; rather, the vibration created when a person speaks then passes through the air to the listener's ear. The vibrating air next to the listener is not the same air that vibrated near the speaker's vocal chords. Thus, indicates Rav Moshe, perhaps any sound that reaches the listener as a direct result of the original sound shares the same halachic status as the speaker's own voice. Nevertheless, Rav Moshe discourages the use of a microphone even for rabbinic *mitzvot*, such as reading the *Megillah*.[4] Rav Shlomo Zalman, however, attacks any possibility of claiming that one can equate an electronically reproduced sound with a person's original voice:

3. Dr. Joel Berman notes that there is, technically, a slight gap between the time it takes to hear a live sound and the time to hear a sound through a microphone. Nevertheless, human beings can hardly perceive this gap, so the *Chazon Ish* presumably did not consider it to be significant.

4. See also *Igrot Moshe*, *Orach Chaim* 4:126, and *Teshuvot Sheivet Halevi* 5:84.

> Does not the *Mishnah* (*Rosh Hashanah* 27b) state that if one blows a *shofar* into a pit and hears only an echo, then he has not fulfilled the *mitzvah* of *shofar*? Why is hearing something through a microphone different from hearing an echo? They are both replications of the original sound![5]

Rav Shlomo Zalman concludes that the *Chazon Ish*'s possible leniency is highly questionable, "and I do not comprehend it."

Argument that a *Mitzvah* Cannot be Fulfilled

The majority of authorities believe that one does not fulfill any *mitzvot* by hearing a sound through a microphone. In particular, most mid- and late-twentieth-century authorities, who benefited from a greater understanding than their predecessors of how microphones operate, reject the use of microphones for the performance of *mitzvot*,[6] with the possible exception of Torah reading.[7] They argue that one hears an electronically reproduced sound over these devices, whereas the Halachah requires one to hear the actual sound of a *shofar*, or voice of the reader. They note that this reproduction is substantially inferior to hearing an echo since it lacks any trace of the original sound, whereas echoes come from the original sound waves. According to Rav Shlomo Zalman, blowing the *shofar* over a sound-system is analogous to pressing a button on a computer that produces the sound of a *shofar*.

Rav Shlomo Zalman therefore writes that he is pained to rule that one cannot fulfill the *mitzvot* of *shofar* and *Megillah* through a hearing aid. Accordingly, hearing-disabled individuals should remove their

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5. The *Minchat Elazar* (2:72) writes that only the *mitzvah* of *shofar* requires an original sound, as opposed to an echo. However, an echo would suffice for Torah or *Megillah* reading, so one may also read them over a microphone. Rav Shlomo Zalman and Rav Ovadia Yosef (*Teshuvot Yechaveh Daat* 3:54) counter that a microphone is far worse than an echo, as the connection between the reader and the hearer has been entirely disrupted. The microphone and speakers completely reconstitute the voice, so it is as if the listener heard it from wood or stones. Thus even if one could fulfill most *mitzvot* through an echo, a microphone is surely unacceptable.

6. Besides Rav Shlomo Zalman Auerbach, these authorities include Rav Yosef Eliyahu Henkin (*Kitvei Hagaon Rav Y. E. Henkin* 1:122), Rav Moshe Shternbuch (*Teshuvot Vehanhagot* 1:155 and *Mo'adim Uzmanim* 6:105), Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 8:11), Rav Ovadia Yosef (*Teshuvot Yechaveh Daat* 3:54), Rav Levi Yitzchak Halperin (*Teshuvot Ma'aseih Chosheiv* 1:1), and Rav Yitzchak Yaakov Weisz (*Teshuvot Minchat Yitzchak* 3:38:16).

hearing aids during *shofar* blowing and *Megillah* reading. If they cannot hear the *shofar* or *Megillah* without their hearing aids, they must not recite the blessings for these *mitzvot*.

Hearing the *shofar* and *Megillah* with a hearing aid still has some value because of the opinion of the *Chazon Ish* and Rav Moshe that one might fulfill these *mitzvot* even with a sound system. Similarly, Rav Waldenberg (*Teshuvot Tzitz Eliezer* 8:11) writes that if a Rav decides to broadcast the *Megillah* reading throughout a hospital so as to enable patients to hear it, he should not be denigrated, for he is ruling according to the reasoning of the *Chazon Ish* and Rav Moshe in a case of very great need (as these patients otherwise would not hear the *Megillah* at all).[8] Rav Moshe (*Igrot Moshe*, *Orach Chaim* 4:91) rules that one may recite *havdalah*[9] over the telephone on behalf of a

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7. Many authorities also prohibit reading the Torah over a microphone or hearing it through a hearing aid (see *Kol Mevaser* 2:25; *Minchat Yitzchak* 3:38:16; and Rav Shlomo Zalman Auerbach, cited in *Yabia Omer*, vol. 1, *Orach Chaim* 19:18). However, Rav Moshe Shternbuch (*Teshuvot Vehanhagot* 1:149 and 1:155) claims that there is no *mitzvah* to hear the reader's voice per se during the Torah reading, but rather "to hear words of Torah" (1:155) from a public reading, "for the purpose of Torah study" (1:149). Rav Shternbuch thus suggests that someone who cannot hear the Torah reading without a hearing aid may nonetheless be called to the Torah for an *aliyah* (1:149). He further defends the practice of reading the Torah over a microphone during the massive services that take place on *Chol Hamo'eid* at the Western Wall (1:155). Nevertheless, he encourages trying to hear the reader's natural voice in deference to authorities who reject his reasoning. Rav Ovadia Yosef (cited in *Yalkut Yosef*, vol. 2 [*Dinei Keri'at Sefer Torah U'veit Haknesset*], pp. 107–108, note 14) also believes that a community fulfills its obligation to read the Torah even by reading it over a microphone.

8. See also *Teshuvot Tzitz Eliezer* 4:26, where Rav Waldenberg vehemently opposes the use of microphones for prayers. Besides his halachic concerns, Rav Waldenberg claims that using a microphone in shul denigrates the sanctity of the prayers.

9. See Rav Yisroel Dov Webster's *The Halachos of Pregnancy and Childbirth* (*Teshuvot Meraboteinu*, pp. 12–13), where he cites Rav Yitzchak Isaac Liebes who distinguishes between *havdalah* and other *mitzvot*. He suggests that, unlike other *mitzvot*, one may recite *havdalah* over the telephone under pressing circumstances for people (particularly women; see *Shulchan Aruch*, O.C. 296:8) who could not hear it otherwise. From a practical perspective, it should be noted that there have been incidents of elderly women who have burned themselves during *havdalah*, which might provide an added reason to rely on Rav Liebes's position in their situation. Alternatively, one might advise them to follow the *Biur Halachah*'s opinion (296:8 s.v. *Lo*) that women should not recite *borei m'eorei ha'eish* (the blessing for the candle) at *havdalah* (see, however, *Teshuvot Igrot Moshe*, *Choshen Mishpat* 2:47:2, who disagrees), or one might encourage them to rely on those authorities who permit reciting *borei me'orei ha'eish* on a non-frosted incandescent bulb. (The *Shemirat Shabbat Kehilchatah*, 61:32, summarizes

listener who has no other way to hear it (such as a patient in a distant hospital).[10]

Responding "*Amen*" to an Electronically Reproduced *Berachah*

Assuming, like most authorities, that we do not equate an electronically reproduced sound with a natural voice, one who hears a *berachah* (blessing) over a microphone merely knows that it has been recited at that moment, but has not actually heard it. This situation appears analogous to the Great Synagogue of Alexandria (described in *Sukkah* 51b), which was so large that many congregants could not hear the leader. In order that they would know when to answer "*amen*," someone would wave a banner to indicate that the leader had recited a *berachah*.

Rashi (*Berachot* 47a s.v. *Yetomah*) and *Tosafot* (*Sukkah* 52a s.v. *Vekeivan* and *Berachot* 47a s.v. *Amen*) both ask, why could the Alexandrians answer "*amen*" on the basis of a banner if the Gemara (*Berachot* 47a) forbids answering "*amen*" without hearing the actual *berachah*? The Gemara refers to such a reply as an *amen yetomah*, "an orphaned *amen*." Rashi and *Tosafot* (in *Berachot*) explain that the people in Alexandria knew which *berachah* was being recited, despite the fact that they did not hear it, whereas the problem of an *amen yetomah* exists only when one lacks any knowledge of what the leader has uttered. Elsewhere (*Sukkah* 52a), *Tosafot* cite Rabbeinu Nissim Gaon, who suggests a different approach. He claims that the prohibition against reciting an *amen yetomah* applies only when answering "*amen*" to a *berachah* that one is obligated to recite and he wishes to fulfill his obligation by answering "*amen*," such as the *berachot* before blowing the *shofar* or reading the *Megillah*. On the other hand, he suggests

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the dispute regarding incandescent bulbs and concludes that they should not be used in place of classical *havdalah* candles except in cases of great need.) Since each of these options is subject to much debate, one should consult a competent rabbi regarding how to deal with cases of *havdalah* for elderly relatives.

10. If one has already recited or heard *havdalah*, it could present a problem for that person to recite *havdalah* on behalf of a telephone listener, because Rav Moshe is not sure if such a recitation is effective. If the listener does not fulfill his obligation through this recitation, then the caller will have recited the *berachot* in vain. To avoid this problem, either the one reciting *havdalah* should be sure to not recite or hear *havdalah* beforehand, or someone who has not yet recited or heard *havdalah* should listen to the natural voice of the one reciting *havdalah*.

that the Alexandrians relied on the flag system for responding only to those *berachot* that they were not obligated to recite.

The *Shulchan Aruch* (*Orach Chaim* 124:8) rules that the problem of an *amen yetomah* applies only to those *berachot* that one is obligated to recite, while the Rama and Ashkenazic *Acharonim* rule that the problem exists in other cases, too. Accordingly, the Rama prohibits responding "*amen*" to any *berachah*, even when one is not obligated in it, if one does not know precisely which *berachah* is being recited.[11]

Accordingly, Rav Shlomo Zalman rules that if one hears via a microphone a *berachah* that he is not obligated to recite, he may answer "*amen*." This situation commonly arises at weddings, where members of the audience hear the *berachot* only over loudspeakers. The bride and groom, who must hear these *berachot*, do hear the actual sound, as they stand right next to those who recite the blessings.[12]

In another interesting ruling, Rav Shlomo Zalman forbids answering "*amen*" to a *berachah* that one hears while listening to a radio (or telephone), even during a live broadcast. He argues that only one who is present in the place of a *berachah*'s recitation is eligible to answer "*amen*" (e.g., the situation in Alexandria). However, if he is not present in the place where the blessing is recited, he must not answer "*amen*" under any circumstances. Rav Yosef Shalom Eliashiv (cited in *Avnei Yashfeih* 1:9) equates hearing a *berachah* over a telephone or radio to

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11. For more on the topic of *amen yetomah*, see *Taz* (*Orach Chaim* 124:4), *Biur Halachah* (124 s.v. *Veyeish*), and *Mishnah Berurah* (124:33).

12. Rav Ovadia Yosef (*Teshuvot Yechaveh Daat* 3:54) permits hearing the *Megillah* over a microphone from such close range that one can hear the reader's natural voice, reasoning that the microphone's presence does not detract from the natural voice. Rav Eliezer Waldenberg (*Tzitz Eliezer* 8:11:4) mentions the common practice of reciting *sheva berachot* over a microphone at weddings and expresses no objection to it. Rav Moshe Shternbuch (*Teshuvot Vehanhagot* 1:155), however, suggests that one does not fulfill *mitzvot* by hearing a mixture of a natural voice and its electronic reproduction (also see Rav Doniel Neustadt's *The Weekly Halachah Discussion*, pp. 563-565). He notes that these two noises sound identical, so one cannot distinguish between them and focus only on the natural sound. Consequently, Rav Shternbuch (1:743) questions whether *sheva berachot*, which require the presence of ten men, may be recited over a microphone, because often there are not ten men who hear the actual *berachot* clearly, without their sound mixing with their electronic reproduction. Rav J. David Bleich opposes using microphones at weddings, as the Gemara (*Rosh Hashanah* 27a) states that two sounds (*trei kalei*) cannot be heard at the same time. Indeed, at the wedding of Rav Bleich's son, Rav Moshe Bleich, to Viva Hammer (in 1993), no microphone was used at the Chupah.

receiving a telegram that someone will recite a *berachah* at a certain time. Just as we would never think of reciting *amen* in the latter situation, so, too, a radio listener is so far removed from the *berachah*'s recitation that he should not answer *amen*. Rav Moshe Shternbuch (*Teshuvot Vehanhagot* 1:155) similarly rules that one should answer "*amen*" only when close enough to at least hear the natural voices of other people answering *amen* to the *berachah*, but not when hearing a *berachah* from extremely far away.

Not all halachic authorities agree with this assertion. Rav Moshe Feinstein (*Igrot Moshe*, *Orach Chaim* 4:91) rules that one should answer *amen* to a *berachah* recited on the radio (if it is a live broadcast) or on the telephone, because of a *safeik* (doubt). As we have already quoted from Rav Moshe, he was not sure whether a reproduced sound shares the status of a person's voice, so he rules that one should respond "*amen*" in case the *berachah* does share a natural voice's status.[13]

Conclusion

Under normal circumstances, most contemporary authorities (cited earlier) accept Rav Shlomo Zalman Auerbach's contention that electronically reproduced sounds do not suffice for *mitzvot* that require hearing a specific natural sound. Therefore, as a general rule, one should not use a microphone for any *mitzvot* that entail hearing an actual sound (with the possible exception of Torah reading, according to some authorities). However, one should consult a competent rabbi if an unusually pressing situation arises, as some authorities believe that performing *mitzvot* through electronically reproduced sound is preferable to not performing them at all.

Rav Moshe (*Teshuvot Igrot Moshe*, *Orach Chaim* 2:108) writes, "In general, we should forbid the introduction of microphones into synagogues to discourage people from being obsessed with new things, a

13. It would seem that Rav Moshe considers the recitation of an *amen yetomah* to be a rabbinic prohibition, so he felt we should recite "*amen*" in such a questionable situation. However, Rav Moshe does not explicitly address the issue of an *amen yetomah* in his responsum, so it is not clear if he thinks that any concern exists for an *amen yetomah* when one hears a *berachah* over a telephone or live radio broadcast. See also *Biur Halachah* (124 s.v. *Veyeish*), who implies that "*amen*" should not be recited when a doubt exist regarding whether it constitutes an *amen yetomah*.

regrettable fixation in modern American society." Rav Avraham Yitzchak Kook (*Or Ha'emunah*, *Chofesh Hamachshavah Veha'emunah*) expresses a similar sentiment, "So many spiritual problems that befall individuals and the world in general . . . can be attributed to disregarding all that is old for . . . everything new."

Of course, we should not reject positive new phenomena. Rav Moshe and Rav Kook are trying to teach us to see the new with a critical eye, while remaining anchored in our glorious past and keeping an eye on the promise of the future.

Why Don't We Use Electric Chanukah Menorahs?

Common practice has developed to refrain from lighting electric menorahs as *Chanukah* candles.[1] This chapter focuses on the reasons for this practice.

Introduction

People often wonder why electric menorahs cannot be used on *Chanukah*. After all, lighting an incandescent bulb on *Shabbat* constitutes a forbidden act of *hav'arah* (creating a fire) on a biblical level,[2] so Halachah apparently considers a lit incandescent bulb to be a fire. In fact, most authorities agree that one can fulfill the *mitzvah* of lighting

1. Early in the development of electric lights, some authorities permitted lighting them as *Chanukah* candles. Even then, many of their peers disagreed, and the latter view has been accepted. For a thorough review of this issue's development see *Hachashmal Bahalachah* (1:3). See also *Encyclopedia Talmudit* (18:186) and Rav Faitel Levin's essay in *Techumin* (9:317–340).

2. See Rambam and Ra'avad (*Hilchot Shabbat* 12:1), *Sha'ar Hatziyun* (318:1), *Teshuvot Minchat Shlomo* (1:11), *Encyclopedia Talmudit* (18:174–180), and *The Journal of Halacha and Contemporary Society* (21:6–10).

Shabbat or *Yom Tov* candles with incandescent lights.[3] For example, the *Shemirat Shabbat Kehilchatah* (43:4c) writes:

> There are authorities who hold that the *mitzvah* [of *Shabbat* candles] can be satisfactorily performed by turning on electric light bulbs. A person who does this should recite the appropriate *berachah* (blessing) in the usual way, provided he indeed switches on the lights in honor of *Shabbat*.

Of course, only lights with a glowing metal filament, such as incandescent bulbs, merit any consideration as *Chanukah* candles. By contrast, it appears that fluorescent or LED lights would surely not fulfill the *mitzvah*, because "cold" lights cannot be considered fire. Assuming that *Shabbat* and *Chanukah* require the same form of candles, logic would suggest that incandescent bulbs, though, could be used on *Chanukah*.

The Act of Kindling

Rav Tzvi Pesach Frank (*Teshuvot Har Tzvi*, *Orach Chaim* 2:114:2) suggests that the *mitzvah* of lighting *Chanukah* candles requires a kindling action (*ma'aseh hadlakah*),[4] and switching on an electric bulb falls short of fulfilling this requirement. Rav Ovadia Hadayah supports Rav Frank's approach.[5] He explains that *Shabbat* candles must provide light in order to make *Shabbat* enjoyable (*oneg Shabbat*), so an incandescent bulb—a "fire" that results in the emission of light—fulfills that *mitzvah*, even though it was not lit by a full-fledged act of kindling. By

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3. Rav Yitzchak Shmelkes (*Teshuvot Beit Yitzchak*, *Yoreh Deah* 1:120), Rav Chaim Ozer Grodzinsky (*Teshuvot Achi'ezer* 4:6), Rav David Tzvi Hoffman (*Teshuvot Melamed Leho'il* 1:47), and Rav Moshe Soloveitchik (cited in *Nefesh Harav* pp. 155–156) all permit reciting a *berachah* when using incandescent lights as *Shabbat* or *Yom Tov* candles. Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 1:20:11) cites and rejects Rav Ben-Zion Uzziel's objection to electric *Shabbat* candles (lest a power outage extinguish them). Rav Waldenberg himself permits electric *Shabbat* candles, provided that they are special lights designated for *Shabbat*. Rav Ovadia Yosef provides a comprehensive discussion of the use of electric lights as *Shabbat* candles in *Yabia Omer* (*Orach Chaim* 2:17; also see *Yechaveh Da'at* 4:38).

4. See *Shulchan Aruch* (*Orach Chaim* 675:1) and *Me'orei Eish* 5:2.

5. *Teshuvot Yaskil Avdi* (*Orach Chaim* 3:17). The *Kaf Hachaim* (O.C. 673:19) also appears to agree with Rav Frank.

contrast, *Chanukah* candles are clearly not meant to provide light for a functional purpose, because one may not benefit from their light (*Shulchan Aruch*, *Orach Chaim* 673:1). Accordingly, Rav Hadayah argues that the essence of their *mitzvah* is the act of kindling itself (see *Shulchan Aruch*, O.C. 673:2 and 675:1). Hence, electric bulbs, which Rav Hadayah believes emit light without an act of kindling, satisfy the *mitzvah* of *Shabbat* candles but not the *mitzvah* of *Chanukah* candles.[6] Nevertheless, many authorities reject Rav Frank's claim and assume that turning on a light bulb constitutes a full-fledged act of kindling.[7]

Torch

Rav Eliezer Waldenberg (*Teshuvot Tzitz Eliezer* 1:20:12) questions whether an incandescent bulb may be used for *Chanukah* since its filament is shaped like an arc, rather than a straight wick. Thus, an electric bulb resembles a torch, whereas *Chanukah* candles must contain one single wick each (see *Shulchan Aruch*, *Orach Chaim* 671:4). The *Kaf Hachaim* (O.C. 673:19) similarly writes that a light bulb constitutes a torch because the entire bulb lights up.[8]

Resembling the Original *Menorah*

Rav Shlomo Zalman Auerbach (*Me'orei Eish* 5:2) and Rav Ovadia Yosef (*Yabia Omer*, O.C. 3:35, and *Yechaveh Da'at* 4:38) contend that electric lights, although they meet the halachic definition of fire, differ

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6. Rav Hadayah concludes with the phrase *tzarich iyun*, indicating uncertainty as to the status of electric lights for *Chanukah*.

7. Rav Moshe Stern (*Teshuvot Be'er Moshe*, vol. 6, *Kuntres Electric* 59:7) rejects Rav Frank's argument in his discussion of electric menorahs. *Poskim* also discuss whether turning on electric appliances constitutes a direct action in other contexts, most notably regarding the laws of *Shabbat*. See, for example, Rav Chaim Ozer Grodzinsky (*Teshuvot Achiezer* 3:60), who argues that turning on a light bulb desecrates *Shabbat* as a full-fledged action of kindling a fire. For a summary of whether turning a switch constitutes an action in Halachah, see *Encyclopedia Talmudit* 18:155–163.

8. See, however, *Teshuvot Be'er Moshe* (vol. 6, *Kuntres Electric* 60:14). For the complete correspondence between Rav Waldenberg and Rav Ben-Zion Uzziel regarding whether a light bulb constitutes a torch, see *Mishp'tei Uzziel* (O.C. 3:34). For analysis of the concept of a torch in the laws of *Chanukah*, see Rav Moshe Karp's *Mishmeret Chanukah U'Purim* (*Ner Yisrael* 15).

significantly from the menorah in the *Beit Hamikdash* (Temple), which *Chanukah* candles should commemorate.[9] They note that electric lights contain a glowing filament but lack any actual flame, a key element of the lights in the *Beit Hamikdash* (see Rashi, *Bemidbar* 8:2). Moreover, conventional candles contain both a wick and a source of fuel. Although wax candles do not correspond precisely to the lights in the *Beit Hamikdash* (which burned olive oil), they may nevertheless be used on *Chanukah* because they include the basic structure of a wick and fuel. Incandescent bulbs, by contrast, clearly lack a combustible source of fuel to parallel oil. Rav Ovadia and Rav Moshe Stern (*Be'er Moshe*, vol. 6, *Kuntres Electric* 58–59) even question whether the filament parallels a wick.[10]

The Fuel Source

Rav Shlomo Zalman further comments that electric lights lack the required amount of fuel to last at least one half-hour (see *Shulchan Aruch*, *Orach Chaim* 672:2). They continue to burn only because they receive more power from an outside source (via power lines), whereas a candle's wick consumes adjacent oil or wax. One might overcome this obstacle by using a flashlight or a battery-operated menorah.[11] In fact, Rav Chaim David Halevi (*Aseih Lecha Rav* 6:57) writes that one who cannot light *Chanukah* candles (such as an airplane passenger or hospital patient) should light a flashlight without reciting a *berachah*.[12]

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9. The Ramban (*Bemidbar* 8:2) and *Ba'al Hama'or* (*Shabbat* 9a in Rif's pages) develop the idea that *Chanukah* candles commemorate the lights that the *Kohanim* lit in the Temple. See, however, *Teshuvot Tzitz Eliezer* (1:20:12), where Rav Eliezer Waldenberg argues that *Chanukah* candles need not be so similar to the original menorah as to invalidate electric menorahs. We have already cited Rav Waldenberg's own objections to electric menorahs, due to other reasons.

10. Rav Ben-Zion Uzziel (*Mishp'tei Uzziel*, O.C. 1:7) explains that although the filament becomes hot, it does not actually catch fire as a true wick does. Indeed, Dr. Joel Berman further notes that, from a scientific perspective, candles and electric bulbs generate light in different manners. Regarding candles, a chemical process of oxidation produces light. A filament, on the other hand, produces light through black body radiation, a process that involves no chemical change.

11. See Rav Eliyahu Schlesinger's *Mitzvat Ner Ish Uveito* revised edition (7:12, note 27). He notes, though, that there might be other halachic problems with using a flashlight.

12. Rav Yosef Shalom Eliashiv (cited in *Mitzvat Ner Ish Uveito* 7:12, note 27) reportedly questions the very idea of lighting *Chanukah* candles in an airplane, because

The Israel Defense Forces' *siddur* (p. 693) similarly advises that soldiers who find themselves in situations where they cannot light proper *Chanukah* candles should turn on their flashlights outside their doors without reciting a *berachah*.

If the opportunity to light oil or wax candles presents itself later, Rav Halevi and Rav Ovadia Yosef (*Yechaveh Da'at* 4:38) require doing so *with* the appropriate *berachot* (blessings).[13] However, one could argue against reciting the *berachah* in such a situation, as we always omit *berachot* when a doubt surrounds their obligation (*safeik berachot lehakeil*). In our case, the passenger, patient, or soldier who lit an electric menorah might have already fulfilled the *mitzvah* of *Chanukah* candles, in which case he would be reciting the *berachah* in vain when he later lights oil or wax candles.[14] Indeed, some *poskim* from the early days of electric lights, such as Rav Chaim Ozer Grodzinsky (*Achiezer* 4:6), indicate that electric menorahs at least minimally fulfill the *mitzvah*

flights end quickly enough that the airplane cannot be considered a residence. See *Contemporary Halakhic Problems* (3:54–58) for a summary of the various opinions concerning whether an airplane passenger is obligated to light *Chanukah* candles.

13. In such a situation, perhaps one should have in mind that turning on the light bulb will not fulfill the *mitzvah* if it becomes possible to light proper candles.

14. *Berachot* should precede the performance of their related *mitzvot* (*oveir la'asiyatan*; see *Pesachim* 7b). Accordingly, the Rambam (*Hilchot Berachot* 11:5-6) writes that once one completes the performance of a *mitzvah*, the *berachah* may no longer be recited. However, the *Or Zarua* (*Hilchot Shechitah* 367 s.v. *Hashocheit*; cited in *Hag'hot Oshri*, *Chulin* 1:2) believes one may recite a *berachah* even after performing a *mitzvah*. The *Shach* (Y.D. 19:3) rules in accordance with the Rambam, while the *Sha'agat Aryeh* (*Hachadashot, Hilchot Berachot* 26) follows the *Or Zarua*. The *Aruch Hashulchan* (Y.D. 19:4) rules that the matter remains unresolved, so one may not recite a *berachah* after completing a *mitzvah*. In this case, the *Or Zarua*'s view might be combined with the many authorities who invalidate electric menorahs to permit reciting a *berachah* (see *Pitchei Teshuvah*, E.H. 149:5, who appears to rule that if a *berachah* may be recited after a *mitzvah*'s performance, then it may be recited even *long after* its performance). Thus, there are two distinct factors that could permit reciting a *berachah* in this case. See, however, *Mishna Berura* 215:20, *Shaar Hatziyun* 489:45, *Teshuvot Yechaveh Daat* 6:10 and *Taharat Habayit* 2:486–487 for a debate as to whether one may recite a *berachah* when there are two distinct factors to permit reciting a *berachah* (*s'feik s'feikah*). Moreover, our situation is particularly complex because, starting on the second night of *Chanukah*, the person adds another level to the *mitzvah* when he lights multiple candles upon arriving at home (as opposed to the one bulb in the flashlight). Also, *Chanukah* candles involve two *berachot* (three *berachot* on the first night), which do not necessarily share the same status. See Rav Akiva Eiger's *Teshuvot* (*Tinyana* 13) with Rav Daniel Bitton's footnotes.

of *Chanukah* candles.[15] Similarly, Rav Waldenberg and Rav Hadayah question the validity of electric menorahs but do not definitively assert that they are absolutely invalid. Although Rav Waldenberg and Rav Hadayah do not permit electric menorahs in practice, and many other *poskim* dismiss the use of electric menorahs out of hand, perhaps the fact that the *poskim* were not unanimous means that one should avoid the risk of reciting a *berachah* in vain (*berachah levatalah*) by lighting the proper candles *without* a *berachah*.[16] One who encounters a situation where he lights proper candles after having lit an electric bulb when he had no candles should thus consult his rabbi regarding whether to recite a *berachah*.

Publicizing the Miracle

The Rama (O.C. 571:7) writes that one should not light *Chanukah* candles in the same location where one lights ordinary candles during the year, because candles in their regular location do not stand out and therefore fail to publicize the miracle of *Chanukah*. Based on the Rama's position, Rav Yitzchak Shmelkes (*Teshuvot Beit Yitzchak*, *Yoreh Deah* 1:120) objects to using electric lights for *Chanukah* candles. Rav Shmelkes argues that electric lights fail to publicize the miracle because people use them all the time. However, Rav Ovadia Yosef (*Yechaveh Da'at* 4:38) and Rav Gavriel Zinner (*Nitei Gavriel*, *Hilchot Chanukah* 18:23, note 35, in the revised edition) comment that Rav Shmelkes's objection should not apply to electric *menorahs* that were clearly built specifically for *Chanukah*.[17]

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15. Rav Chaim Ozer writes that it is preferable to use olive oil, rather than electric lights, implying that they share the same status as wax candles. For more sources, see footnote 1.

16. It is interesting to note, though, that Rav Ovadia Yosef is generally known for his staunch opposition to risking the recitation of a *berachah* in vain even when the slightest concern exists. Nevertheless, he rules that a *berachah* should be recited in this case, apparently assuming that the view of those *poskim* who permitted the use of electric menorahs has been completely rejected.

17. Rav Ovadia also strongly questions Rav Shmelkes's entire line of reasoning.

Conclusion

For a myriad of reasons, the overwhelming majority of halachic authorities object to lighting electric menorahs as *Chanukah* candles.[18] Nevertheless, many *poskim* advise that one who lacks any access whatsoever to proper candles, such as an airplane passenger, a hospital patient, or an active soldier, should light an incandescent menorah—or even a flashlight—without reciting a *berachah*. One should consult a competent Rav regarding such situations in order to determine in each case whether it is preferable for the passenger, patient, or soldier to light a flashlight in his current location or to have someone else light proper candles on his behalf in his regular home, or both.

18. In addition to those already cited in the chapter, see Rav Mordechai Eliyahu's *Hilchot Chanukah* (48), Rav Shaul Yisraeli (cited in Rav Moshe Harari's *Mikra'ei Kodesh*, *Hilchot Chanukah* 5:10, note 30), *Teshuvot Rivevot Ephraim* (O.C. 8:267:2), *Yalkut Yosef* (*Mo'adim, Dinei Hashmanim V'haptilot* 3), *Hilchot Chag B'chag* (8:14), *Y'mei Hachanukah* (4:24), and *Mitzvat Ner Ish Uveito* (7:12).

Building and Maintaining Mikva'ot

Part I: The Community's Responsibility to Build a Mikvah

We all use a *mikvah* (ritual bath) at some point in our lives, yet many of us do not know how *mikva'ot* are constructed and maintained. Over the next few chapters, we will outline the basic principles of *hilchot mikva'ot*. We begin with a discussion of the parameters of a community's obligation to create *mikva'ot*.

The Obligation to Build a Mikvah

The Rama (*Choshen Mishpat* 163:3) codifies a ruling of the Mahari Mintz (*Teshuvot* 7) that the entire community must pay for the building of a *mikvah*. Even those individuals who do not normally use a *mikvah*, such as elderly couples, must share in the cost of its construction and maintenance.[1] According to Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, C.M. 1:42), this communal obligation applies even when an amply large *mikvah* already exists in a nearby area, if the community is not within walking distance of the existing *mikvah*. In fact, if the nearest *mikvah* is two miles away, Rav Moshe (C.M. 1:40) requires

1. Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, C.M 1:41) outlines how community leaders should divide the costs of building a *mikvah* among community members.

the entire community to help build a closer *mikvah*, provided that most of the community supports the new *mikvah*'s construction.[2]

An anecdote from the *Chazon Ish* (*Pe'er Hador* 2:157) vividly illustrates the seriousness of this obligation. The only option available to a certain community in Tel Aviv to construct a *mikvah* was to transform an existing synagogue into a *mikvah* and subsequently add a second story where the synagogue's sanctuary would be rebuilt. However, the *Shulchan Aruch* (*Orach Chaim* 153:9) explicitly forbids transforming a synagogue into a *mikvah*, so the local rabbi consulted the *Chazon Ish* regarding how to act. The *Chazon Ish* pondered the question for a few moments and then dramatically replied, "Better that the learned Jew violate a minor prohibition so that the ignorant Jew will not violate a major transgression." The *Chazon Ish* stated his readiness to accept eternal punishment (for condoning the transformation of a synagogue into a *mikvah*) in order to spare marginally observant Jews from violating the terrible sin of not using the *mikvah* when necessary.[3]

The Priority to Build a *Mikvah* Before Other *Mitzvot*

The *Chafetz Chaim* (*Kuntres Ma'amarim v'Kol Korei*, p. 26) forbids residing in a city that has no *mikvah*, adding that building a *mikvah* "enjoys priority over building a synagogue, purchasing a Torah scroll, or any other mitzvah." Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, C.M. 1:42) buttresses this point by citing the law that one may

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2. In this responsum, Rav Moshe addresses the Monsey, NY, community in 1959, when its residents needed to walk two miles to the nearest *mikvah*. He rules that the community may force everyone to pay for a new *mikvah* if most people wish to build a closer *mikvah*. He explains that those who oppose the new *mikvah*'s construction would benefit somewhat from it, so the majority can force them to pay their share. However, if most people prefer to save money and walk two miles to an existing *mikvah*, Rav Moshe rules that the minority may not force them to contribute towards a new *mikvah* that most of the community deems unnecessary. Rav Moshe adds that even the majority may not impose its will on the minority for an invalid reason. For example, they may not force the minority to build a *mikvah* simply because they do not trust the rabbis who supervise the existing *mikva'ot* (provided that these rabbis received legitimate ordination and are qualified to supervise *mikva'ot*).

3. See *Igrot Moshe* (C.M. 1:42), where Rav Moshe permits selling a synagogue in order to finance a *mikvah*, although he urges communities to exhaust all other options before resorting to selling their synagogue. The *Chazon Ish* faced a more dire situation, as the community in Tel Aviv needed to physically demolish its synagogue.

sell a Torah scroll in order to marry (*Megillah* 27a). Since the Mishnah (*Megillah* 25b–26a) teaches that the holiness of a Torah exceeds the holiness of a synagogue, it logically follows that one may also sell a synagogue to facilitate a marriage. Moreover, the Gemara bases the priority of marriage on the need to procreate, as the prophet Yeshayahu states, "[God] did not create the world to be wasted; He formed it to be inhabited" (45:18). Accordingly, Rav Moshe explains that the high priority accorded to marriage applies not just to the wedding itself, but also to anything necessary for the continuity of the marriage. Since *mikva'ot* play a critical role in the appropriate functioning of a marriage, reasons Rav Moshe, building a *mikvah* enjoys priority over building a synagogue.

Indeed, the incoming Rav of a community whose members were mostly non-observant asked Rav Yonatan Shteif (*Teshuvot Mahari Shteif* 187) whether his top priority should be to promote *Shabbat* observance or *mikvah* construction and use. Rav Shteif initially replied *mikvah* should receive the highest priority because one must sacrifice one's life rather than cohabit with a *nidah*,[4] whereas one may desecrate *Shabbat* in life-threatening situations.[5]

Ensuring Modesty and Comfort

Rav Moshe (*Teshuvot Igrot Moshe*, *Yoreh Deah* 2:91) writes that the community must build a *mikvah* in a place that guarantees the women's privacy. Rav Yirmiyah Katz, based on his extensive experience in the area of *mikva'ot*, has told me that it is critical that communities not use the same *mikvah* for men and women on a regular basis. The knowledge that men regularly immerse in the same *mikvah* causes some women discomfort, as they feel that this arrangement compromises their

4. Only three sins take precedence over human life: murder, idolatry, and *gilui arayot* (illicit relationships). Most authorities include *nidah* in the category of *gilui arayot* (see Rambam, *Hilchot Isurei Bi'ah* 21:4; *Beit Yosef*, *Yoreh Deah* 195 s.v. *V'katav Od*; and *Badei Hashulchan* 183, *Beiurim* s.v. *Kol*). See, however, Rabbeinu Tam's *Sefer Hayashar* (*Teshuvot* 80). See also *Teshuvot Chavalim Banimim* (*Yoreh Deah* 3:55).

5. We cite this passage in order to highlight the importance of family purity in Judaism. Later in the same responsum, however, Rav Shteif adds that he sees no reason why the rabbi could not teach his community about both *Shabbat* and *nidah* at the same time. Many other factors might also impact a Rav's course of action when dealing with a community of beginners.

privacy (even though the men and women have different hours there, of course). Rav Yitzchak Yaakov Weisz (*Teshuvot Minchat Yitzchak* 3:64) also mentions the practice of building separate *mikva'ot* in order to alleviate this concern.[6]

Rav Moshe (*Yoreh Deah* 2:90), the *Chazon Ish* (Y.D. 123:5), and the *Minchat Yitzchak* (9:94) also encourage communities to maintain high aesthetic and hygienic standards at the *mikvah*, lest any woman hesitate to use it.

Temporary Closing of a *Mikvah*

The need often arises to expand or otherwise renovate a *mikvah*. The question then arises whether we are permitted to temporarily close a *mikvah* in order to expedite the completion of the necessary work.[7] Rav Meir Arik (*Teshuvot Imrei Yosher* 2:201) and Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Yoreh Deah* 2:91) both forbid temporarily closing a *mikvah*. They cite a passage from the Gemara (*Megillah* 26b) that prohibits temporarily closing a synagogue to facilitate its repair, lest the people will procrastinate and fail to expend the money and effort to rebuild the synagogue. This concern should similarly apply to a *mikvah*, for we have seen that building a *mikvah* is even more important than building a synagogue. Indeed, Rav Moshe forbids closing the *mikvah* "even for one day."

Building a *Mikvah* to the Highest Halachic Standards

Already since the time of the *Rishonim*, the practice has been to act exceptionally strictly regarding a *mikvah*'s construction and maintenance.[8] We seek to accommodate even opinions that represent a small minority of halachic authorities and are not even cited in the *Shulchan Aruch*.[9] Rav Yirmiyah Katz (*Mikveh Mayim*, vol. 3, pp. 13–17) assem-

6. See, however, *Teshuvot Sho'eil Umeishiv* (3:1:123), writing in the middle of the nineteenth century.

7. In the next chapter, we note the practice to inspect *mikva'ot* specifically on *Tisha B'Av* so as not to interfere with *mikvah* use.

8. See *Tashbetz* 1:17, *Beit Yosef* 201 (p. 100a in the new editions), and *Teshuvot Radbaz* 1:85.

9. The closest analogy in most Jews' direct experience is our exceptionally stringent avoidance of *chametz* on *Pesach*.

bles a long list of authorities who record this practice.[10] Indeed, although Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Orach Chaim* 1:136) regards the size of an *amah* (cubit) to be 21.25 inches in the context of almost all *halachot*, including the laws of *Shabbat*, regarding *mikva'ot* Rav Moshe urges treating an *amah* as 24 inches. Moreover, in a later responsum (Y.D. 2:89), Rav Moshe is even stricter and advises treating an *amah* as 24.5 inches in the context of *hilchot mikva'ot*.

A popular story about the *Chazon Ish* claims he once remarked that he had never seen an invalid *mikvah*, due to the many stringencies that we practice when constructing *mikva'ot*. Moreover, my cousin Rav Yosef Singer (who for many decades supervised the Lower East Side of Manhattan *mikvah* under the guidance of Rav Moshe Feinstein) relates that Rav Moshe utilized every possible opportunity to enhance and upgrade the *mikvah*. For example, although the *mikvah* originally used metal pipes to transport water from the roof to the *mikvah*, Rav Moshe later installed plastic pipes.[11]

The *poskim* offer a number of reasons for this stringency. The *Divrei Chaim* (Y.D. 2:99) writes, "One should strive to construct a *mikvah* that will be acceptable to all opinions because *mikvah* embodies the holiness of the Jewish People." Rav Yaakov Breisch (*Teshuvot Chelkat Yaakov* 3:57) notes that if a community's rabbis decide to rule leniently when certifying the *kashrut* of a particular food product or establishment, then those rare individuals who observe additional *chumrot* (stringencies) may simply decline to purchase their food there. However, we must create a *mikvah* with the highest possible standards,

10. These authorities include Maharam Lublin (*Teshuvot* 97), *Teshuvot Divrei Chaim* (2:99), *Teshuvot Divrei Malkiel* (4:75), *Teshuvot Minchat Elazar* (4:7), *Teshuvot Mahari Shteif* (71), *Teshuvot Chelkat Yaakov* (2:90 and 3:57), and *Teshuvot Minchat Yitzchak* (9:94). In fact, already the *Tashbetz* (1:17) and Radbaz (*Teshuvot* 1:85) urge constructing *mikva'ot* that conform to all opinions. The Maharam Lublin adds, however, that when he came to a town with a preexisting *mikvah* that did not satisfy a particular opinion, he chose not to change it, so as not to imply that the community's earlier generations had sinned in building a *mikvah* that relied on a legitimate lenient opinion. See, on the other hand, *Mikveh Mayim* (vol. 3, pp. 25–29), who cites many authorities who either limit or altogether reject the notion that we must hesitate to upgrade a *mikvah* lest we cast aspersions (*la'az*) on prior generations.

11. See Rama (*Yoreh Deah* 201:36) and *Pitchei Teshuvah* (Y.D. 201:24) regarding the use of both wooden and metal pipes, and *Teshuvot Minchat Yitzchak* (4:36:2), *Taharat Hamayim* (Chapter 52), and *Mikveh Mayim* (vol. 3, pp. 171–172) regarding the use of plastic pipes.

accommodating the needs of even the most pious and stringent individuals, for they cannot refrain from using the *mikvah*.

Rav Moshe Heinemann elaborated on this point during a lecture at a conference of the Council of Young Israel Rabbis. He noted that in the classical Jewish communities in Europe, North Africa, and the Middle East, the local Rav constructed the *mikvah* in accordance with that area's traditions and practices. However, now that Jews from a wide range of places and traditions have settled in America, we must construct *mikva'ot* in a manner that satisfies all of these traditions.[12] For example, when Rav Heinemann helped plan the construction of a *mikvah* in Lakewood, NJ, he consulted Rav Yoel Teitelbaum, the Satmar Rav, to ensure that the *mikvah* would meet his standards.[13] The Satmar Rav (quoted in the *Teshuvot Minchat Yitzchak* 9:94 and the aforementioned *Teshuvot Chelkat Yaakov*) himself favored constructing *mikva'ot* that satisfy all views, reportedly stating that the *mikvah* is supposed to purify us, rather than us needing to "purify" it by defending its validity.

On the other hand, Rav Moshe (*Teshuvot Igrot Moshe*, Y.D. 1:111) cautions that those who believe they can create a *mikvah* that will satisfy literally all opinions are incorrect. In practice, rabbis must pay attention to accepted norms among observant communities and exercise their judgment accordingly regarding which minority opinions to accommodate. For example, Rav Moshe notes that we routinely immerse in warm *mikva'ot* even though some *Rishonim* forbid this practice.[14] We also do not follow the small group of *Rishonim* who require a *zavah*[15] to immerse in a natural spring rather than a *mikvah*.[16] Elsewhere (*Teshuvot Igrot Moshe*, Y.D. 2:89), Rav Moshe writes, "In

12. Rav Moshe Shternbuch (*Mo'adim Uzmanim* 4:308, note 1) adopts this approach as well.

13. The Satmar Rav is considered a leading authority in the area of *mikva'ot*.

14. See *Shulchan Aruch* (Y.D. 201:75) and *Aruch Hashulchan* (Y.D. 201:214-217).

15. We explain the concept of *zavah* and its applications for today in our chapter entitled "'Orthodox Infertility': When Halachah Interferes with Conception." Today, we assume that all women might have the status of *zavah* (see *Nidah* 67b). Consequently, if we accepted this minority opinion, women would always be required to immerse in natural springs rather than *mikva'ot*.

16. Rashi (*Shabbat* 65b s.v. *V'savar*) cites and rejects this view. Rav Yaakov Emden (*Teshuvot Sh'eilat Ya'avetz* 1:88) offers a logical defense of this view, even though he notes that we do not accept it in practice. See also *Bach* (beginning of Y.D. 201), who explains this view as a rabbinic enactment.

small towns, one should certainly not be especially strict to impose an enormous financial burden" to accommodate minority opinions.[17] Indeed, Rav Yirmiyah Katz stated in 2001 at a conference of Young Israel Rabbis that it is possible to create a basic *mikvah* (that does not accommodate every stringency) in the range of $20,000 for a small and outlying Jewish community. Even in large communities, excessive stringency can inhibit the construction of a much needed *mikvah*. Indeed, the *Divrei Malkiel* (3:67), who elsewhere encourages building *mikva'ot* that conform to all opinions (4:85), endorses the decision of a rabbi in Paris to build a *mikvah* that met the rabbi's own standards, with which the *Divrei Malkiel* agreed, even though it disregarded a stringent minority opinion. He explains:

> You ruled properly to permit the *mikvah* in this manner; *yasher ko'ach* for doing a great service to such a large city. We must be exceedingly careful to create *mikva'ot* that are readily accessible to all, lest they will—God forbid—altogether avoid immersing. In such situations, an astute scholar will not apply *chumrot* (stringencies) that lack any foundation according to the pure letter of the law.

Supervision by Major Authorities

As we have seen, building and maintaining *mikva'ot* requires a very advanced level of Torah scholarship, as well as the judgment to balance appropriately the desire to accommodate all views with practical considerations (such as financial limitations). These issues arise not only during the *mikvah*'s construction, but also during its ongoing maintenance. Accordingly, every *mikvah* needs a qualified Rav to supervise its construction and maintenance. In a letter from 1990, Rav Moshe Stern (author of *Teshuvot Be'er Moshe*) and five other prominent rabbis outlined several criteria for proper *mikvah* supervision.[18] They require the

17. Rav Moshe is addressing the views of the Ra'avad and Rabbeinu Yerucham regarding *zeri'ah* and *hashakah*, which we discuss in the third and fifth chapters of our discussion of *mikva'ot*.

18. The letter appeared on Rav Stern's stationery, but it was also signed by Rav Reuven Feinstein, Rav Avraham Pam, Rav Tuvia Goldstein, Rav Avraham Asher Zimmerman, and Rav Avraham Fischel Hershkovitz. See also Rav Shlomo Dichovsky's comments, cited at the beginning of the next chapter, and *Teshuvot Minchat Yitzchak* (9:94) regarding the high level of expertise required for building *mikva'ot*.

supervising rabbi to have achieved a level of scholarship where people trust him to rule on any halachic topic (and not just the laws of *mikva'ot*). A rabbi of this stature must supervise the construction of the *mikvah* and continue to supervise its maintenance by inspecting at least once a month (preferably bi-weekly). In addition, the rabbi must appoint someone trustworthy to supervise the *mikvah* from day to day, yet this appointee may never rule himself on halachic questions that arise regarding the *mikvah*. Moreover, the supervising rabbi's identity must be publicized to the Jewish community.

Mystical Considerations

The Baal Shem Tov (cited in *Mikveh Mayim*, Introduction to vol. 3) reportedly suggests that *Chabbakuk* 3:12, "Through *za'am* (fury) You [God] march through the land; with anger You crush nations," alludes to the power of *mikva'ot*. The Baal Shem Tov interprets "*za'am*" as an acronym for ***z****evichah* (ritual slaughtering), '***e****iruvin*, and ***mikva'ot***. Thus, when God sees that we scrupulously observe these three areas, he eradicates our enemies.

In fact, Rav Katz records that in 1943, when Hitler (may his evil name be blotted out) positioned his troops in Egypt, poised to conquer *Eretz Yisrael*, a group of leading Chasidic Rebbes assembled in Jerusalem and pledged to do their utmost to build and enhance *mikva'ot* throughout *Eretz Yisrael*, hoping to thus prevent the Nazis from entering. Shortly after their meeting, Hitler suffered military losses that forced him to abort his plans for invading *Eretz Yisrael*. That meeting also sowed the seeds of the establishment of the *Va'ad L'Taharat HaMishpachah*, which supervises the functioning of the more than 1,500 *mikva'ot* in Israel today.

Conclusion

Rav Katz told the 2001 conference of the Council of Young Israel Rabbis that, in contrast to Israel, only about three hundred *mikva'ot* function in the United States. He urged rabbis and community leaders to do their utmost to change the facts on the ground and establish a wider network of *mikva'ot* in this country to facilitate easy access to *mikva'ot*, so women will not need to endure long drives or long lines in order to immerse.

Part II: Distinguishing Between Mikvah and Ma'ayan

After discussing a community's responsibility to build a *mikvah* in the last chapter, we now begin the basic rules for creating a *mikvah*. Maintaining a *mikvah* also requires a high level of general competence and vigilance, as well as certain specific skills. We thus emphasize at the outset the words of Rav Shlomo Dichovsky (*Techumin* 16:112):

> The building of *mikva'ot* today requires a combination of thorough halachic knowledge and specific engineering knowledge. Hence, very few people are regarded as competent in this critical field.

The Biblical Concepts

The Torah (*Vayikra* 11:36) states, "A *ma'ayan* (natural spring) or *bor* (cistern), a gathering of water, shall be pure." The Torah mentions two bodies of water, a *ma'ayan* and a *bor*, neither of which can become *tamei* (ritually impure). The *Sifra*, commenting on this verse, understands that they cannot become *tamei* because they are themselves sources of purity. Hence, besides their own inability to become *tamei*, immersion in them purifies people and utensils that were *tamei*.

The *Sifra* further interprets the phrase "a gathering of water" (*mikveh mayim*) as alluding to a more general category derived from the cistern's traits. A cistern unites waters that would have no connection to one another had they not flowed into it. Thus, their presence within the same "gathering of water" defines the cistern's contents as one unit. A *ma'ayan*'s waters, on the other hand, are one body by virtue of the link to their source, so they can purify others even without gathering in one spot. Thus, the term *mikvah* ("gathering") is routinely used in place of the term "*bor*, *mikveh mayim*" when describing cisterns and other pools of water that lack a natural source in the ground.

Differences Between a *Mikvah* and a *Ma'ayan*

The Mishnah (*Mikva'ot* 1:7–8) indicates two major differences between a *mikvah* and a *ma'ayan*. A *ma'ayan* is effective even though it is running water (*zochalin*), whereas a *mikvah*'s waters must be stationary (*ashboren*). Also, a *mikvah* must contain a minimum of forty *sa'ah*[1] of water, while no such minimum exists for a *ma'ayan*.

Several other differences between a *mikvah* and a *ma'ayan* exist according to many, but not all, authorities. For example, discoloration of the water (*shinui mar'eh*) invalidates a *mikvah*, but the *Shulchan Aruch* (*Yoreh Deah* 201:28) rules that a *ma'ayan* is effective regardless of its water's color.[2] Some authorities also believe that concern for *natan sa'ah v'natal sa'ah*,[3] which relates to replacing the *mikvah*'s water in a halachically acceptable manner, does not apply to a *ma'ayan*.[4] Moreover, most *Rishonim* believe that the problem of *mayim she'uvim* (water poured from a vessel), which we explain in the next chapter, does not apply to a *ma'ayan*.[5]

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1. We discuss the contemporary equivalent of this measurement later in the chapter.

2. See, however, *Mishkenot Ya'akov* 46 (cited as 44 by *Pitchei Teshuvah*, *Yoreh Deah* 201:20), who questions the *Shulchan Aruch*'s ruling.

3. We discuss the concept of *natan sa'ah v'natal sa'ah* in detail in the fourth chapter of our discussion of *mikva'ot*.

4. *Dagul Mer'vavah* (commenting on *Shach*, Y.D.201:63), *Teshuvot Beit Shlomo* (Y.D. 2:59), and Maharsham (*Teshuvot* 1:44).

5. The *Terumat Hadeshen* (258) records that Ashkenazic communities in his time followed the strict view even though they knew it was the minority opinion. In practice, the *Shulchan Aruch* (Y.D. 201:15), and *Aruch Hashulchan* (Y.D. 201:106–110) rule

Many *Acharonim* strongly encourage the use of a *ma'ayan* because these differences make it far easier to ensure that the *ma'ayan* remains acceptable for immersion.[6] Indeed, it was common in the time of the *Rishonim* to use *ma'ayanot* for *tevilah* because they avoid many halachic pitfalls (see *Terumat Hadeshen* 258). The *Beit Shlomo* (Y.D. 2:59), living in the late nineteenth century, records that "everyone knows" that most *mikva'ot* in his time were actually *ma'ayanot*. Even nowadays, there are some communities that adopt a stringency and supply the immersion pool with water from a well instead of tap water.[7] This water might have the status of a *ma'ayan*. However, *Teshuvot Minchat Yitzchak* (7:76) states that one cannot simply regard this water as a *ma'ayan*. Rather, this water must also be made acceptable by *hashakah* and *hamshacha*. Rav Katz told me that some Rabbanim require *zeri'ah* as well (as indicated in *Teshuvot Mahari Shteif* 142) to make the water acceptable. First, we are concerned that separating spring water from its source removes its status as a *ma'ayan*, despite the water's origins (see *Shulchan Aruch*, Y.D. 201:10).[8] In addition, the *Mishkenot Ya'akov* (Y.D. 45, cited as 43 in *Pitchei Teshuvah* 201:28) further limits the application of the rules of *ma'ayanot*. He argues that most natural springs do not qualify as halachic *ma'ayanot*

that concern for *mayim she'uvim* does not apply to *ma'ayanot*. The Rama fundamentally agrees, but he nevertheless encourages following the strict opinion when doing so does not require tremendous effort. The *Mishkenot Ya'akov* (Y.D. 45; cited as 43 by *Pitchei Teshuvah*, Y.D. 201:28) urges us not to rely on the lenient view under any circumstances. For an analysis of the strict view, see the aforementioned *Terumat Hadeshen*.

6. *Teshuvot Sh'eilat Ya'avetz* (1:88), *Lechem V'simlah* (*Lechem* 201:3), and *Teshuvot Arugat Habosem* (Y.D. 2:210).

7. Rav Yirmiyah Katz (personal communication) explains that they dig a small hole (five to ten inches in diameter) deep underground (sometimes as deep as 500 feet). They insert a narrow pipe into this hole and then blow air into the pipe through a compressor. The resultant air pressure causes water to rise into the *mikvah*. See *Teshuvot Minchat Yitzchak* (7:76) and *Teshuvot Mahari Shteif* (142). See also *Teshuvot Seridei Eish* (2:88) regarding a pump that brought spring water into a *mikvah*. Rav Yirmiyah Katz told me that the process of building a *ma'ayan* is frought with Halachic complexity. Since mistakes can easily be made, the *mikvah's* supervising rabbi needs to personally oversee each step of the building process. Rav Katz told me that this is a labor-intensive project.

8. See *Shach* (Y.D. 201:30) and *Encyclopedia Talmudit* (12:38-39) for a discussion of whether the spring water loses its status as a *ma'ayan* as soon as it is severed from its source, or only after it stops flowing and settles in one place. The *Shach* vehemently opposes the latter possibility.

because the springs are located too close to rivers to be considered independent of them. Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, Y.D. 3:64) accepts the *Mishkenot Ya'akov*'s claims.[9] Finally, *ma'ayanot*, Rav Katz reports, can easily be disqualified, so at most they should be used to supplement and further enhance the rainwater *mikva'ot* but never substitute for rainwater *mikva'ot* in the contemporary setting.

Water Quantity in a Ma'ayan

We have already mentioned that a *ma'ayan* does not need any minimum amount of water. However, *Tosafot* (*Nazir* 38a s.v. *Bar*) limit this leniency to the immersion of utensils (*tevilat keilim*).[10] According to *Tosafot*, people must immerse in a minimum of forty *sa'ah* regardless of whether they are using a *mikvah* or a *ma'ayan*. The Ra'avad (*Baalei Hanefesh*, beginning of *Sha'ar Hamayim*) disagrees, requiring only that a *ma'ayan* contain enough water to cover the person immersing. The Rambam (*Hilchot Mikva'ot* 9:6) never mentions a requirement of forty *sa'ah* for people to use a *ma'ayan*, implying that he agrees with the Ra'avad.[11] The *Shulchan Aruch* (*Yoreh Deah* 201:1) and almost all of its commentaries rule in accordance with *Tosafot*, but the Vilna Gaon (*Bei'ur Hagra*, Y.D. 201:6) defends the Rambam and Ra'avad's view.[12]

Contemporary authorities debate how to measure forty *sa'ah* in liters. The opinions range from 648 liters to 964.3 liters.[13] The

9. In addition, the author of *Teshuvot Divrei Chaim* writes that we should not rely on *ma'ayan*ot due to numerous concerns (introduction to *Hilchot Mikva'ot* 1:47).

10. In this context, *tevilat keilim* refers to immersing a utensil in order to purify its ritual impurity (as was commonly done before the Temple's destruction, when the laws of ritual impurity were properly observed), but not to the immersion that we perform upon purchasing a utensil from a non-Jew. Immersing utensils that were owned by a non-Jew requires forty *sa'ah* according to all opinions.

11. For a conceptual analysis of this dispute, as well as its implication for the issue of *zochalin* (which we address later in this chapter), see *Bei'ur Hagra* (Y.D. 201:91).

12. It is unclear whether the Vilna Gaon intends to actually rule in accordance with the Rambam and Ra'avad, or if he is simply noting that he finds their logic persuasive. See *Aruch Hashulchan* (Y.D. 201:10) for questionable situations where a *poseik* might rely on the Rambam and Ra'avad's view.

13. For a complete discussion of the proper dimensions of a *mikvah*, see *Mikveh Mayim* (vol. 3, pp. 50-59).

Cheishev Ha'eifod (150:2) records that common practice is to build *mikva'ot* with at least one thousand liters, in order to avoid all doubts.[14]

Zochalin vs. *Ashboren*

We have already noted that *mikvah* water must be stationary. The Rama (Y.D. 201:2) rules that *zochalin* (water that flows outside a *mikvah*'s boundaries) invalidates the *mikvah* on a Biblical level.[15] Almost all *Rishonim* believe that the water need not flow in a torrent in order to be considered *zochalin*. Rather, even water flowing through a minor crack in the *mikvah*'s wall is defined as *zochalin*.

The Rashba (*Torat Habayit*, *Sha'ar Hamayim*, *Sha'ar* 2) believes, though, that in order to disqualify the *mikvah*, the water flow must at least be noticeable (*zechilah hanikeret*).[16] The *Shulchan Aruch* (Y.D. 201:51) rules in accordance with this view. The *Acharonim* subsequently debate how to define a *zechilah hanikeret*, with quite a wide range of opinions on this matter (see *Encyclopedia Talmudit* 12:25–26 and *Mikveh Mayim*, vol. 2, pp. 23-31).

However, the Vilna Gaon (*Bei'ur Hagra* 201:96) appears to rule that even an indiscernible water flow (*zechilah she'eina nikeret*) disqualifies a *mikvah*.[17] Rav Chaim Soloveitchik (cited in *Teshuvot Vehanhagot* 1:513) vigorously supports this view. In practice, halachic authorities urge *mikvah* administrators to avoid even the slightest *zechilah* in a *mikvah*.[18] Indeed, my cousin Rav Yosef Singer reports, regarding the

14. Rav Moshe Heinemann also mentioned this practice in a lecture to the Council of Young Israel Rabbis. Although this large quantity far exceeds any reasonable calculation of forty *sa'ah*, we already noted in the last chapter the common practice to be exceedingly stringent regarding *hilchot mikva'ot*.

15. Virtually all authorities agree with this position; see *Encyclopedia Talmudit* (12:20).

16. See *Encyclopedia Talmudit* 12:25 for other *Rishonim* who agree with the Rashba.

17. The Vilna Gaon's comments are somewhat cryptic. He appears to invalidate a *mikvah* with even the slightest *zechilah*, provided that the crack is low enough in the *mikvah*'s wall that less than forty *sa'ah* of water would remain if all the water above the crack would leak out. However, due to his cryptic language, some have argued that he does not actually disagree with the *Shulchan Aruch*. Rav Katz (*Mikveh Mayim*, vol. 2, pp. 35–41) dedicates an entire chapter to presenting the varying interpretations of this passage in the *Bei'ur Hagra*.

18. *Teshuvot Ein Yitzchak* (Y.D. 22), *Teshuvot Achiezer* (4:40), and *Teshuvot Igrot Moshe* (Y.D. 3:63). All these authorities agree that if a woman immersed in the *mikvah*

mikvah on the Lower East Side of Manhattan, that Rav Moshe Feinstein insisted that there be not even a *zechilah she'einah nikeret*. Practically speaking, Rav Yirmiyah Katz (*Mikveh Mayim*, vol. 2, p. 31) notes that even the slightest *zechilah* eventually develops into a *zechilah hanikeret* and thus should not be ignored.

Filters

The use of filters in *mikva'ot* has aroused concern for *zechilah*. Rav Katz (in a speech to the Council of Young Israel Rabbis) noted that *mikva'ot* in Israel do not use filters due to this concern. In the United States, though, *mikva'ot* commonly use filters, so special care must be taken to avoid problems of *zechilah*.[19] Rav Yirmiyah Katz told me (in 2003) that a new filter was recently developed in Montreal in order to avoid any problems of *zechilah*.

Concrete

The necessary care to prevent *zechilot* begins with the *mikvah*'s construction. For example, in previous generations *mikvah* walls were lined with clay or stone (*Mikveh Mayim*, vol. 1, p. 139). However, concrete was introduced in the early twentieth century because it reduces concern for *zechilah*. Rav Katz (*Mikveh Mayim*, vol. 3, p. 40) advises that *mikvah* builders should pour the concrete for the floor and walls simultaneously in order to strengthen the foundation and further reduce concern for *zechilah*. Indeed, avoiding *zechilot* comprises a key element of the practical engineering expertise and experience required for building *mikva'ot* today. Indeed, Rav Katz told me that it is vital that the supervising rabbi oversee the pouring of the cement. He added that it is

without realizing that it contained a *zechilah she'einah nikeret*, then she need not immerse again. Once the *zechilah* is discovered, though, they recommend closing the *mikvah* until it is repaired. The *Achiezer* qualifies this position, adding that if a town Rav worries that his congregants will violate the prohibition against having relations with a *nidah* because they must wait until the repairs are completed in order to immerse, then the Rav may permit them to continue using the *mikvah* with the *zechilah she'einah nikeret*. Nevertheless, the *mikvah* should be repaired as soon as possible.

19. For a thorough discussion of the use of filters in a *mikvah*, see *Mikveh Mayim* (vol. 2, pp. 67–84). See also Rav Shmuel Wosner's responsum in *Techumin* (22:445–446) and Rav Dov Brisman's *Teshuvot Shalmei Chovah* (Y.D. 37).

insufficient for the supervising rabbi to make blueprints and rely on a contractor to follow directions on how to pour the cement. Rav Katz told me of the severe problems experienced by those communities that relied solely on the rabbi's blueprint.

We should note that there was some debate regarding the halachic propriety of using concrete in the creation of a *mikvah*. However, it quickly became the universal practice to use concrete.[20]

Checking for Leaks

Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, Y.D. 2:89) requires periodically inspecting a *mikvah* for *zechilot*. Rav Katz (*Mikveh Mayim*, vol. 3, p. 133) notes that *poskim* do not specify how often to check a *mikvah* for *zechilot*. He surmises that it depends on the age and condition of the structure, as an older structure probably needs more frequent inspections. Rav Katz notes that the process of checking for *zechilot* involves marking the water level of the *mikvah*, closing it for a day, and then inspecting the water level to see if it has fallen. Rav Yosef Singer told me that Rav Moshe Feinstein used to check the Lower East Side *mikvah* for *zechilot* annually on *Tisha B'Av*, when marital relations are prohibited, so as not to close the *mikvah* when people needed to immerse in it. Checking *mikva'ot* on *Tisha B'Av* is a widespread practice for this reason.[21]

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20. The primary concern was that the concrete walls and floor could stand on their own were they removed from the ground. Thus, perhaps they would be considered a vessel (*kli*), whereas a *mikvah* must consist of water resting in the ground, not in a vessel (*ein tovlim b'keilim*; see *Shulchan Aruch*, Y.D. 201:6). The Maharsham (*Teshuvot* 2:102) records that he initially prohibited constructing *mikva'ot* with concrete due to this concern. He partially retracted this objection after learning that people normally build by laying a concrete foundation. Because people normally build in this manner, the Halachah considers the concrete to be part of the ground. Nevertheless, the Maharsham sanctions building a *mikvah* out of concrete only when no other options exist. Rav Meir Arik (*Teshuvot Imrei Yosher* 1:99) adopts the same logic as the Maharsham's retraction (although he notes that he lacked a copy of the Maharsham's responsum), but he concludes that a concrete *mikvah* is absolutely acceptable, "without any reservations." The *Chavatzelet Hasharon* (vol. 1, Y.D. 68) and the Satmar Rav (*Teshuvot Divrei Yoel*, Y.D. 77:7) also endorse the practice of building *mikva'ot* with concrete. For more on the Satmar Rav's view, see *Teshuvot Cheishev Ha'eifod* (150:1).

21. Rav Yirmiyah Katz has told me that the practice of checking *mikva'ot* for *zechilot* on *Tisha B'Av* exists worldwide, and Rav Ezra Frazer reports hearing similar comments from Rav Shlomo Levy.

In previous generations, *mikva'ot* were built with drains on the bottom. Despite the serious risks of the drains creating a *zechilah* or their plugs being subject to the laws of *tum'ah* (ritual impurity), they used to be the only practical way to remove water from the *mikvah*. However, with the advent of electric pumping machines in the twentieth century, it became accepted to construct *mikva'ot* without drains (see *Teshuvot Divrei Yoel*, Y.D. 76, and *Teshuvot Mahari Shteif* 71).

Rivers, Oceans, and Lakes

Until now, we have discussed *zochalin* within the context of leaks. Of course, the problem of *zochalin* clearly invalidates a flowing stream of rainwater, as the entire stream is one large *zechilah*. By contrast, we have already mentioned that one may immerse in a natural spring even if the water is flowing. From the time of the Talmud, authorities have debated whether to treat rivers as streams of rainwater or as springs. In reality, many rivers consist of a combination of rainwater and underground springs, so the debate revolves around how to judge such a mixture.[22]

Rav (*Shabbat* 65b), determines each river's status based on which type of water comprises a majority of the river at any given time. If it consists mostly of rainwater, then we treat the river as a *mikvah* and invalidate it as *zochalin*. If, however, underground springs provide most of its water, then it attains the status of a *ma'ayan*. One can measure the rain's impact on a particular river by observing its size before the rainy season[23] and attributing any growth to rainfall. Accordingly, the same river might be a *ma'ayan* during a drought and lose this status after a downpour.

The Gemara cites one statement of Shmuel that appears to agree with Rav.[24] On the other hand, Shmuel elsewhere adopts a contradic-

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22. Indeed, Rav Yirmiyah Katz (personal communication) cautions that it is very difficult in practice to distinguish between rivers and springs. In addition to the ramifications for the laws of *mikva'ot*, Rav Elazar M. Teitz told me that this difficulty also arises regarding the laws of writing a *get* (Jewish divorce document; see *Aruch Hashulchan*, E.H. 128:33, and *Pitchei Teshuvah*, E.H. 128:30).

23. Babylonia, where Rav and Shmuel lived, has distinct rainy and dry seasons during the year. The end of the dry season is the time when a river is considered most likely to be a *ma'ayan* since several months have just passed without any rain.

24. According to this version of his view, Shmuel says that the only river that purifies is the Euphrates, and only in the late summer (when it rarely rains in the Middle

tory view. This Gemara presents a somewhat enigmatic statement, "*Nahara mikipei mivrach*" ("A river grows from its rocks [in the riverbed]"). *Tosafot* (s.v. *D'amar Shmuel*) interpret this quotation as meaning that a river's primary source of water is its underground springs. *Tosafot* explain, based on the Gemara (*Ta'anit* 25b), that for every unit of rain that falls, twice that amount of water percolates into the river from underground aquifers. Consequently, even if we observe that the river swells tremendously after rain has fallen, we may assume that the river still contains more fresh water than rainwater, because double the amount of rainfall emerges from the aquifers.[25] This latter interpretation of Shmuel's view thus shows him as considering all rivers to be *ma'ayan*ot. However, if a river or stream dries up *completely* when there is a drought, then the Rama (Y.D. 201:2) notes that it is clearly nothing more than a flow of rainwater (*chardalit shel geshamim*), which no authority would consider a *ma'ayan* (see *Mikva'ot* 5:6).

The *Rishonim* debate which opinion to follow. Most *Rishonim* accept Rav and the stricter version of Shmuel, which judge each river by the majority of its waters.[26] *Tosafot* (*ibid*.), however, cite Rabbeinu Tam as ruling in accordance with the lenient version of Shmuel. *Tosafot* conclude, "We rely upon this view to immerse in rivers, even if they are quite swollen [from rain]." Some *Rishonim* adopt a compromise view. They suggest that if a river swells after significant rainfall, then even Rav would permit immersing specifically in the part of

East). This statement implies that rainwater generally comprises most of a river's water, invalidating it for immersion. Shmuel identifies the Euphrates as an exception because it contained so much spring water that late in the summer, after several months without rain, it contains more spring water than rainwater.

25. The *Shach* (Y.D. 201:14) presents this line of reasoning. *Tosafot* in *Bechorot* (55b s.v. *Ein*) cite an alternative rationale for this version of Shmuel from Rabbeinu Tam. They suggest that even if most of a river's water comes from rain, it may yet be considered a *ma'ayan*. Rabbeinu Tam notes that at the moment that each raindrop hits the river, the spring water in the river vastly outnumbers this lone drop. Accordingly, the river nullifies it (*bitul*), thus giving that drop the status of spring water. This process repeats itself indefinitely (*kama kama batil*) as every drop falls. Hence, although the sum total of rainfall is greater than the amount of original spring water, the rainwater has been systematically converted into spring water before it can harm the river's status as a *ma'ayan*.

26. These *Rishonim* include the Rambam (*Hilchot Mikva'ot* 9:13), the *Tur* (beginning of Y.D. 201), the Ramban (in his commentary to *Shabbat* 65b), and the Rashba (*Torat Habayit*, *Sha'ar Hamayim*, *Sha'ar* 11).

the river that existed even before the rain, as this original section clearly came from natural springs and not from the rain.[27]

The *Shulchan Aruch* (Y.D. 201:2) prohibits immersing in rivers under any circumstances. The Rama, though, records that communities located far from *mikva'ot* would immerse in rivers. The Rama concludes that it is preferable to follow the *Shulchan Aruch*'s opinion, but one should not admonish those who do immerse in rivers. Writing in the late nineteenth century, the *Aruch Hashulchan* (Y.D. 201:42) notes approvingly that women who lived at a great distance from a *mikvah* would immerse in rivers.

Today, with the advent of modern means of travel, *poskim* rarely, if ever, sanction immersion in rivers. Moreover, Rav Yirmiyah Katz (in 2001) told the National Council of Young Israel rabbis that he has made small *mikva'ot* for less than $20,000 in private individuals' backyards and garages in places which are far from centers of Orthodox Jewish life. A Rav perhaps might sanction an Ashkenazic Jew relying on a river for *tevilat keilim* in case of great need, such as for *baalei teshuvah* visiting parents who live extremely far from a *mikvah*. Such a decision would depend on the specific circumstances and available alternatives in each case.

Finally, the *Tannaim* debate whether oceans are acceptable for immersion despite the fact that they are *zochalin* (*Mikva'ot* 5:4). Rabbi Yosei classifies oceans as *ma'ayan*ot regarding exemption from concern for *zochalin*.[28] The *Shulchan Aruch* (Y.D. 201:5) codifies his view.[29] The *Aruch Hashulchan* (Y.D. 201:42) adds that lakes with still water are acceptable for immersion even if they dry up completely during a drought. Their water does not flow beyond their boundaries, so it does not present a problem of *zochalin*. In practice, though, a skilled Rav must thoroughly investigate a lake before it can be used for immersion, in order to verify that its water indeed does not flow beyond its boundaries.

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27. See Ran (*Nedarim* 40b s.v. *Umikol Makom*) and *Beit Yosef* (Y.D. 201 s.v. *Vekatav Od Haran*). The *Shach* (Y.D. 201:11) claims that even Rabbeinu Tam, who permits *tevilah* in rivers, intends to allow it only in the section of the river that remains in the dry season.

28. See *Beit Yosef* (Y.D. 201 s.v. *Vechol Hayamim*) regarding the status of oceans in other aspects of *hilchot mikva'ot*.

29. Rav Yirmiyah Katz (personal communication) notes that many practical problems arise during the actual implementation of immersion in an ocean, so an eminent rabbi must be consulted before doing so.

Conclusion

Natural springs and oceans avoid many halachic pitfalls, but reality generally prevents us from immersing in them.[30] Thus, we routinely use *mikva'ot*, despite the risk that leaks will invalidate them. Modern technology has enabled us to minimize concern for leakage by constructing *mikva'ot* from concrete and by pumping water out of them from the top, rather than draining them from the bottom. Nevertheless, we must check *mikva'ot* from time to time (usually on *Tisha B'Av*) to ensure that leaks do not develop.

30. Rav Yirmiyah Katz (personal communication) notes that *hot* springs routinely employ man-made pipes to regulate their temperature. Such springs may not be used for *tevilah*.

Part III: Mayim She'uvim

We continue our discussion of the construction of *mikva'ot* by exploring how one directs rainwater into the *mikvah* in a halachically acceptable manner.

Defining *Mayim She'uvim*

In the last chapter, we distinguished between the two bodies of water that purify, a *ma'ayan* (natural spring) and a *mikvah* (collection of rainwater). The *Sifra* (commenting on *Vayikra* 11:36) draws a parallel between them, teaching that just as God creates *ma'ayanot* naturally, without human intervention, so, too, must the water in a *mikvah* reach it without passing through receptacles.[1] If, for example, one drew water

1. Conceptually, passing through man-made receptacles indicates human intervention, as opposed to a natural process directed by God. However, the *Sifra* does provide one exception. If no human indicated any interest in water passing through the receptacle, then the water remains acceptable for *mikvah* use. For example, if someone places his pot outside to dry in the sun, and then rain falls unexpectedly, whatever rainwater collects in the pot does not automatically become *she'uvim*, as the pot's owner—seeking to dry his pots in the sun—clearly does not desire the water. However, if the owner, upon realizing that his pot contains water, lifts the pot to use its water, then the water becomes *she'uvim*. Thus, in order to use the water for a *mikvah*, the owner must knock over the pot without lifting it, allowing the water to continue its natural flow without human redirection. Moreover, had the owner initially placed the pot outside for the purpose of collecting rainwater, then the water would become *she'uvim* the moment it enters the pot—even if the owner promptly knocks the pot over—because the pot received the water as a result of deliberate human actions (see Mishnah, *Mikva'ot* 4:1).

from a well with a bucket and then poured the water into a pit, the water would be considered *mayim she'uvim* (drawn water) and would hence be disqualified for use in a *mikvah*. In the modern context, water from the tap constitutes *mayim she'uvim* because it passes through receptacles in purification plants and water meters.[2]

Since rainwater must reach the *mikvah* without ever having been in a receptacle, the pipes that bring the water to the *mikvah* must not include any cavity (beit kibul), which would halachically define the pipe as a receptacle. Thus, the pipes should be smooth, without indentations.[3] Ideally, elbow pipes should be avoided, as the Ra'avad (gloss to Rambam, *Hilchot Mikva'ot* 8:7) indicates that they constitute a receptacle.[4]

Level of the Prohibition of *She'uvim*

The *Rishonim* debate whether *mayim she'uvim* are[5] disqualified on a Biblical or rabbinic level. Rabbeinu Tam and the Rashbam (cited in *Tosafot*, *Bava Batra* 66a s.v. *Michla*l) believe that a majority of *mayim she'uvim* invalidates a *mikvah* on a Torah level, while the Rabbis enacted that a smaller amount can also disqualify it, as we shall soon see. They note that the aforementioned *Sifra* derived the concept of *mayim she'uvim* from a verse in the Torah, so some circumstances must exist where *mayim she'uvim* invalidate a *mikvah* on a Biblical level.

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2. Rav Moshe Heinemann explained this fact in a lecture to the Council of Young Israel Rabbis. In previous generations, the *Aruch Hashulchan* (*Yoreh Deah* 201:169) and Rav Moshe Feinstein (cited in *Taharat Hamayim*, Chapters 40–42) actually permitted building *mikva'ot* with tap water under extremely dire circumstances, but Rav Yirmiyah Katz (*Mikveh Mayim*, vol. 3, pp. 93–95) argues that water today passes through many places between the reservoir and the faucet that did not exist a couple of generations ago, so nobody would permit using tap water nowadays. Indeed, Rav Moshe himself writes that tap water should generally be presumed to be unacceptable for *mikva'ot* (*Teshuvot Igrot Moshe*, Y.D. 3:63).

3. *Shulchan Aruch* (*Yoreh Deah* 201:36). Regarding indentations that develop naturally over time, see Rama (*ibid*.) and *Pitchei Teshuvah* (Y.D. 201:24).

4. For a lengthy discussion of the practical aspects regarding pipes that are used to transport rain from the roof to the *mikvah*, see *Mikveh Mayim* (vol. 3, pp. 142-218).

5. Although the English word "water" is singular, its Hebrew equivalent, "*mayim*," is plural.

On the other hand, the Rambam (*Hilchot Mikva'ot* 4:1–2) and Ri (cited in *Tosafot*, ibid.) claim that the entire problem of *mayim she'uvim* exists only on a rabbinic level, while the Torah itself even permits a *mikvah* comprised entirely of *mayim she'uvim*. Although the *Sifra* derives the concept of *she'uvim* from a verse in the Torah (*Vayikra* 11:36), the Rambam believes that the *Sifra* merely intends that the Rabbis saw an allusion (*asmachta*) in the Torah to their enactment. The *Aruch Hashulchan* (Y.D. 201:11–17) reviews two additional opinions that appear in the *Rishonim*.

The Rama (Y.D. 201:3) disqualifies a *mikvah* on a Torah level if it contains mostly *mayim she'uvim*, in accordance with Rabbeinu Tam. Although the *Shulchan Aruch* does not explicitly address this dispute, the *Shach* (Y.D. 201:17,117) notes that he repeatedly implies that even a *mikvah* comprised entirely of *mayim she'uvim* is invalid only on a rabbinic level.[6]

The Rabbinic Level: Three Logim

Regardless of how one interprets the laws of *mayim she'uvim* on a Biblical level, everyone agrees that three *logim* (a Talmudic measure) of *mayim she'uvim* suffice to disqualify a *mikvah* on a rabbinic level (*Eiduyot* 1:3, *Mikva'ot* 2:4). Rav Heinemann stated that we treat three *logim* as the equivalent of less than one quart.[7] Accordingly, this relatively small amount of water can invalidate the contents of an entire *mikvah*. However, once the *mikvah* contains forty *sa'ah* of acceptable water (over one thousand liters, as we have mentioned in previous chapters), then adding *mayim she'uvim* to the *mikvah* does not disqualify it (*Mikva'ot* 2:3 and 6:8).

Although space does not allow us to discuss them in depth, we should mention that a number of other ways exist to disqualify rainwater for use in a *mikvah*. These include discoloration (*shinui mar'eh*), the water entering the *mikvah* via an item that can become ritually

6. See, however, *Taz* (Y.D. 201:63 and 201:84), who apparently believes that the *Shulchan Aruch* agrees with the Rama.

7. Three *logim* are 1/320 of forty *sa'ah*. Thus, our contemporary practice is extremely stringent. By assuming that three *logim* are less than one quart while forty *sa'ah* are over a thousand quarts, we follow the smallest possible view for the minimum quantity of *mayim she'uvim* that can invalidate a *mikvah*, yet we do not use the *mikvah* until it contains the largest possible interpretation of forty *sa'ah*.

impure (*havayato al y'dei tum'ah*), and human involvement in the water's transportation to the *mikvah* even without using a receptacle (*tefisat y'dei adam*). These issues all appear in the *Shulchan Aruch* and its commentaries in *Yoreh Deah* 201, and Rav Yirmiyah Katz thoroughly discusses their practical ramifications in his three-volume work, *Mikveh Mayim*.

Making *Mayim She'uvim* Acceptable—*Hamshachah*

Pits of rainwater located in caves often served as *mikva'ot* in Talmudic times. After a short while, however, these *mikva'ot* became dirty and difficult to use. Consequently, people would bathe to clean themselves after immersing in the *mikvah*, a practice that the Rabbis disliked.[8] Today, in order to prevent such dingy conditions, we fill our *mikva'ot* with tap water, and regularly drain and refill them. However, as we have already explained, tap water has the status of *mayim she'uvim*, so we will now examine how contemporary *mikva'ot* solve this problem.

If three *logim* of *mayim she'uvim* reach a *mikvah* before it has forty *sa'ah* of rainwater, the *mikvah* remains disqualified no matter how much rainwater is added. However, the Halachah provides several ways to remedy the water's status as *mayim she'uvim*. One such way, the process of *hamshachah*, consists of pouring the *mayim she'uvim* on the ground outside the *mikvah*, leaving them to naturally flow from there into the *mikvah*.[9] The Gemara (*Temurah* 12a) records that if the *mikvah* contains over twenty *sa'ah* of acceptable rainwater, then Rabbi Eliezer ben Yaakov permits obtaining the rest of the forty *sa'ah* by running *mayim she'uvim* along the ground into the *mikvah*. The Rambam (*Hilchot Mikva'ot* 4:8) and *Shulchan Aruch* (Y.D. 201:44) codify his opinion.

The Radbaz (*Teshuvot* 1:85) prohibits deliberately using *hamshachah* to bring water into a new *mikvah*. He asserts that we permit *hamshachah* only if *b'dieved* (*ex post facto*) water unintentionally reached a *mikvah* in this manner. Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, Y.D. 3:64:3) and Rav Yonatan Shteif (*Teshuvot* 142) rule accordingly.

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8. The Gemara (*Shabbat* 14a) explains that by bathing immediately after leaving the *mikvah*, people came to think that the bath water purified them, rather than the *mikvah* water.

9. For a conceptual analysis of the process of *hamshachah*, see Rav Yitzchak Ze'ev Soloveitchik's commentary to *Temurah* 12b.

The *Rishonim* dispute several details related to the process of *hamshachah*. For example, the Rambam (*Hilchot Mikva'ot* 4:9) cites and rejects the view of some anonymous sages who believe that an entire *mikvah* may be created through the process of *hamshachah*.[10] On the other hand, the *Chazon Ish* (Y.D. 130:14) indicates that he believes the Ra'avad disqualifies a *mikvah* on a Torah level if all of its water entered via *hamshachah*. *Tosafot* (*Bava Batra* 66a s.v. *Michlal*) suggest a middle position (between the Ra'avad's view and the view of the anonymous sages cited and rejected by the Rambam), that a *mikvah* whose water consists entirely of *mayim she'uvim* revitalized through *hamshachah* is disqualified only on a rabbinic level. Many (but not all) later authorities adopt this approach.[11]

Authorities also debate whether water must move across a minimum area of land in order to qualify as *hamshachah*. The *Beit Yosef* (Y.D. 201 s.v. *Shiur Hamshachah*) cites a debate among the *Rishonim* regarding whether the water must roll along the ground for three *tefachim* (handbreadths, approximately nine to twelve inches), or perhaps even a tiny bit of land suffices. The *Shulchan Aruch* (Y.D. 210:45) rules in accordance with the strict opinion that three *tefachim* are required. Interestingly, the *Chazon Ish* (Y.D. 126:6) adds that the three *tefachim* for *hamshachah* may curve, rather than move in a straight path.

A third debate surrounds what type of ground may be used for *hamshachah*. The *Shulchan Aruch* (Y.D. 201:46) rules in accordance with the majority of *Rishonim*, who permit any surface for *hamshachah*. The Rama (*ibid*.), though, comments that it is proper to follow the strict opinion of the Mordechai that the surface used for *hamshachah* must be capable of absorbing water. Early twentieth-century authorities debate the permissibility of cement, which includes dirt as a major component. Rav Meir Arik (*Teshuvot Imrei Yosher* 2:67 and 85) claims that one should not do *hamshachah* on cement because it does not absorb, while the *Chazon Ish* (Y.D. 123:1) and Maharshag (*Teshuvot* 1:65 and 2:6) rule that cement is regarded as absorbent for the purpose of *hamshachah*.[12] Rav Shlomo Dichovsky (*Techumin*

10. Some attribute this view to the Rif and Rashi (see *Beit Yosef*, Y.D. 201).

11. These authorities include *Tashbetz* (3:12), Maharit (*Teshuvot*, Y.D.2:17), *Yeshu'ot Ya'akov* (201:15), and Chazon Ish (Y.D. 126:1 and 130:14).

12. At first glance, this argument seems quite peculiar, for we should be able to simply pour water on cement and observe whether it absorbs the water. The *Chazon Ish*, however, explains that cement has the *halachic* status of earth (presumably because

16:117) remarks that we rely on the latter view in practice. Rav Yirmiyah Katz (*Mikveh Mayim*, vol. 3, p. 228) adds that some adopt a compromise view by using cement that contains an unusually high concentration of dirt.

Rav Dichovsky (*Techumin* 16:117) further notes that most *mikva'ot* employ the process of *hamshachah* as an added precaution to insure the *mikvah*'s validity. Thus, in most contemporary *mikva'ot*, any water that enters the *mikvah* moves along the ground on its way. Many *poskim* recommend this setup because it immediately reduces any concern for *mayim she'uvim* from a Torah level to merely a rabbinic level.[13]

Hamshachah alone reduces concern for *sheu'vim* to the rabbinic level, but it does not completely permit tap water. In order to completely permit tap water, we also employ the methods of *hashakah* and *zeri'ah*, which we will now discuss, to permit the actual use of tap water in our *mikva'ot* even on a rabbinic level.

Hashakah

Hashakah (literally, "kissing") means that two bodies of water can become one entity by their waters meeting each other. For example, if the waters of a valid *mikvah* touch the waters of an adjacent pool of tap water, this "kiss" unites them as one body. Since the valid *mikvah* already contains forty *sa'ah* of rainwater, the addition of the neighboring *mayim she'uvim* does not invalidate it. Instead, the pool's contents now lose their status as *mayim she'uvim* and obtain the status of the *mikvah*'s rainwater. One may thus purify oneself by immersing in the pool of tap water, too.

In order to practically implement *hashakah,* we construct two adjacent pools, separated by a common wall. Pipes that do not create a problem of *mayim she'uvim* (see our discussion above) direct rainwater into one pool, after which we fill the other with tap water. The tap water "kisses" the rainwater through a hole in the adjoining wall, rendering both pools fit for immersion. When the tap water is changed

it is the primary ingredient) whose nature is to be absorbent. Accordingly, even though cement does not absorb water, it is defined as a substance that absorbs water since from a *halachic* perspective it has the status of earth. In addition, see *Cheishev Ha'eifod* (150:5) for further discussion of this issue.

13. *Teshuvot Igrot Moshe* (Y.D. 1:119) and *Teshuvot Maharsham* (1:145).

periodically to ensure a high level of cleanliness, the new water touches the rainwater through the hole, thereby remedying its prior status of *mayim she'uvim*.

The Mishnah (*Mikva'ot* 6:7) formulates a general principle that merging two *mikva'ot* requires a hole the size of a *shefoferet hanod* (the opening of a container), which it equates with a diameter that comfortably fits two fingers. Conversions of this measurement into inches range from approximately 1.5 inches (Rav Avraham Chaim Na'eh, *Shiur Mikvah*, p. 163) to three inches (recommended by *Teshuvot Igrot Moshe*, Y.D. 2:89). According to the *Shulchan Aruch* (Y.D. 201:53), this measurement is necessary only when one of the bodies being merged is invalid on a Biblical level.[14] A *mikvah* of *mayim she'uvim*, though, is invalid only rabbinically,[15] so it needs a hole only the size of a strand of hair to merge with a completely valid *mikvah* (see *Beit Yosef*, Y.D. 201 s.v. *Haba Le'areiv*).[16] The Rama (*ibid*.), who disqualifies a *mikvah* of *mayim she'uvim* on a Biblical level, disagrees regarding the hole, too, and requires a hole the size of a *shefoferet hanod* between the two pools.

Assuming (like the Rama) that the hole between the two *mikva'ot* must be at least the size of a *shefoferet hanod*, the tap water in the *mikvah* must reach the top of the hole. In order to determine whether the water has reached this height, Rav Katz (*Mikveh Mayim*, vol. 3, p. 107) encourages constructing the adjoining wall with two colors of tiles. The color of the tiles below the hole should differ from the tiles above it, so one can easily notice if the water has dropped below the required level. Rav Katz describes several scenarios of how well-meaning people can accidentally invalidate a *mikvah* that lacks a clear system for easily verifying the water level.

After the two pools have merged, an opinion cited by Rabbeinu Yerucham (26:5) requires the hole between them to remain open at the time of immersion. Otherwise, the tap water loses its connection to the rainwater and returns to its former status as *mayim she'uvim*. The Rosh (*Teshuvot* 31:2) and *Tur* (Y.D. 201) explicitly permit closing the hole,

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14. For example, if one of the *mikva'ot* contains less than forty *sa'ah*, then it must be connected to a larger *mikvah* through a hole the size of a *shefoferet hanod*.

15. According to the *Shulchan Aruch*, as we explained earlier.

16. We have explained the *Shulchan Aruch*'s view according to the *Shach* (Y.D. 201:117). The *Taz* (Y.D. 201:63 and 201:84), however, would apparently disagree with this interpretation, as he implies that he believes the *Shulchan Aruch* to invalidate a *mikvah* on a Biblical level if a majority of its waters are *mayim she'uvim*.

arguing that once the two pools have come into contact, the tap water has been permanently "purified" from its status as *mayim she'uvim*.[17] The *Shulchan Aruch* (Y.D. 201:52) rules in accordance with their view. Nevertheless, the *Shach* (Y.D. 201:112) concludes that it is best to accommodate the opinion cited by Rabbeinu Yerucham, so most *mikva'ot* today indeed open the hole whenever someone immerses.

Conclusion

Contemporary *mikva'ot* include tap water, raising the issue of *mayim she'uvim*. The process of *hashakah* alone solves this problem, but we also employ *hamshachah* as an added precaution. *Zeriah*, a third process to alleviate concern for *mayim she'uvim*, will be addressed in the next chapter.

Postscript

Rav Yirmiyah Katz graciously permitted us to reprint the illustrations of *hashakah* and *hamshachah* from his *Mikveh Mayim*. We hope the diagrams enhance and clarify our discussions.

17. For a conceptual analysis of this dispute, see Rav Chaim Soloveitchik's commentary to Mishnah, *Mikva'ot* 1:7.

Part IV: Zeri'ah

In our last chapter, we explained *hamshachah* and *hashakah*, two processes that permit filling a *mikvah* with *mayim she'uvim*, such as tap water, which would otherwise be unsuitable for immersion. This chapter discusses a third option to render *mayim she'uvim* suitable for immersion, the procedure commonly referred to as *zeri'ah*.

The Process of *Zeri'ah*

The Mishnah (*Mikva'ot* 6:8) describes a situation in which two pits exist along a mountainside, one above the other. The upper pit contains the required volume of rainwater for a *mikvah* (forty *sa'ah*; see previous chapters) while the lower pit is empty. In order to fill the bottom pit without waiting for rainfall, the Mishnah advises pouring buckets of water into the upper *mikvah* so that the resulting overflow will fill the bottom pit. Recall from the last chapter that once a *mikvah* contains the requisite amount of rainwater, one may add an unlimited amount of *mayim she'uvim* to the *mikvah* and it remains valid. Moreover, the added water is halachically transformed from *mayim she'uvim* into valid *mikvah* water. Thus, the buckets of water become fit for immersion the moment they touch the upper *mikvah*; the water then flows into the lower pit, resulting in two valid *mikva'ot*.

Most contemporary *mikva'ot* employ this process, called *zeri'ah*, by building a pool to hold rainwater (*bor zeri'ah*) next to a pool (*bor tevilah*) that will be filled with water that will overflow from the *bor zeri'ah*. After forty *sa'ah* of rainwater enter the first pool, we open the

faucet above it, causing it to overflow into the adjacent pool (see diagram for clarification) through a hole in their common wall. The *bor zeri'ah*, which already constitutes a valid *mikvah*, converts the *mayim she'uvim* into valid *mikvah* water. When the water in the *bor tevilah* needs to be changed for health or aesthetic reasons, we empty it and repeat the process of *zeri'ah*. This term literally means "planting." Conceptually, the water is replanted into a body of natural water, thus removing its status as *mayim she'uvim* (see *Teshuvot B'tzeil Hachochmah* 3:127), just as a seed achieves a new status when it is planted in the ground.

Zeri'ah vs. *Hashakah*

The process of *zeri'ah* differs from *hashakah* (see last chapter) because *hashakah* validates water, which entered the *bor tevilah* unfit for immersion, by **subsequently** connecting it to an adjacent pool of valid rainwater (*bor hashakah*). By contrast, *zeri'ah* validates the water **before** it enters the pool.

The *Chatam Sofer* (Y.D. 203; cited in *Pitchei Teshuvah*, *Yoreh Deah* 201:24) and the *Chazon Ish* (Y.D. 123:1-5) vigorously support the use of *zeri'ah* to create *mikva'ot*. In fact, *mikva'ot* in pre-war Hungary normally used the process of *zeri'ah* alone to render the water fit for immersion. Similarly, *mikva'ot* built in Bnei Brak and elsewhere in Israel under the supervision of the *Chazon Ish* operate with *zeri'ah* alone, without *hashakah*.[1] Interestingly, this phenomenon might have ancient roots. In an essay published in *Techumin* (17:389–398), Asher Grossberg argues, based on archeological findings, that the ancient *mikvah* at Masada was filled solely through *zeri'ah*.[2]

Problems with *Zeri'ah*

Three problems can arise if a *mikvah* is created exclusively through *zeri'ah*. The primary concern stems from the fact that the water already

1. These *mikva'ot* do, however, use *hamshachah*.

2. See also *Techumin* (19:448–455), where Asher Grossberg argues that ancient *mikva'ot* found in Jerusalem used either *zeri'ah* or *hashakah*. For a general discussion of the acceptability of archaeological evidence in halachic discourse, see Rav Yonatan Adler's essay in *Techumin* (24:495–504).

enters the *bor tevilah* as valid *mikvah* water, rather than undergoing a process inside the *bor tevilah*. As we discussed last chapter, three *logim* (a bit less than a quart) of *mayim she'uvim* disqualify a *mikvah* that lacks forty *sa'ah* of valid water. Accordingly, if the *bor tevilah* contains three *logim* of *mayim she'uvim* when *zeri'ah* is performed, then these three *logim* will invalidate the new flow of water as it arrives from the *bor zeri'ah*. Rav Katz (*Mikveh Mayim*, vol. 1, pp. 43, 59-60) relates incidents where more than three *logim* of *mayim she'uvim* were unintentionally present in the *mikvah* before the *zeri'ah* procedure and people subsequently immersed in the *mikvah* without realizing that it was not fit for immersion.

Today, this problem routinely arises when we employ pumps to drain the *mikvah*. The pump can never remove every last drop of water from the *mikvah*, as some backwash of water always enters the pump, then leaves the pump and returns to the *mikvah*. In this situation, some *mayim she'uvim* will remain in the *mikvah* because the receptacles in the pumps will render the water *mayim she'uvim* before it returns to the *mikvah* (see *Teshuvot Minchat Yitzchak* 5:90 and *Teshuvot Chelkat Yaakov* 3:54). Hence, the *mikvah* must be dried thoroughly by hand to ensure that three *logim* of *mayim she'uvim* do not remain.

Due (in part) to this problem, most contemporary *mikva'ot* employ both *zeri'ah* and *hashakah*. If either process fails, then the other serves as a backup. Rav Avraham Chaim Na'eh (*Shiur Mikvah*, p. 165) notes that the accepted practice in Jerusalem is to employ both *zeri'ah* and *hashakah*. Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, Y.D. 1:111) similarly recommends using both *hashakah* and *zeri'ah* whenever possible without great financial difficulty. Moreover, most *mikva'ot* also use *hamshachah* (as described in our previous chapter), in addition to the *zeri'ah* and *hashakah* processes, to further insure their validity. This combination recalls the words of *Kohelet*, "Two is better than one . . . and a threefold cord is not quickly broken" (4:9-12).

Zeri'ah B'Zochalin

The *Acharonim* raise a second challenge to *zeri'ah*, which relates to the problem of *zochalin*. Recall from two chapters ago that a *mikvah* is invalid if its waters flow beyond its boundaries (into a hole, crack, etc.). Accordingly, a number of *Acharonim* question how *zeri'ah* can work if

the water flows out of the *bor zeri'ah* during the process.[3] If a *mikvah* is disqualified when its water flows out, then the *bor zeri'ah* should lose its status as a valid *mikvah* while it overflows into the *bor tevilah*. Without this status, it should not render the tap water fit for immersion.

There are several ways to address this problem, and different *mikva'ot* have adopted various approaches. The *Chazon Ish* (*ibid*.) notes that the problem is less severe in *mikva'ot* where the tap water is validated by *hamshachah* even before it enters the *bor zeri'ah*. As we discussed last chapter, most *Rishonim* believe that even a full *mikvah* of *mayim she'uvim*, which have undergone *hamshachah*, is acceptable on a Torah level and invalidated only by rabbinic legislation. Thus, use of *hamshachah* reduces the entire issue to a rabbinic level and consequently allows greater room for leniency.

In order to completely resolve the problem of *zochalin*, the *Chazon Ish* suggests an approach that many *mikva'ot* today employ. He proposes constructing (see diagram at the conclusion of this chapter) the *bor zeri'ah* so that tap water enters through a hole in the wall's lower portion and the overflow exits into the *bor tevilah* through a hole in the upper part of the wall that is shared by the *bor zeri'ah* and the *bor tevilah*.[4] According to the *Chazon Ish*, this method alleviates concern for *zochalin* because the tap water enters the lower part of the *bor zeri'ah*, which is completely stationary. Rav Yaakov Breisch (*Teshuvot Chelkat Yaakov* 3:53:2) writes that he employed this method when constructing the *mikvah* in Zurich in 1959,[5] and Dayan Yitzchak Weisz (*Teshuvot Minchat Yitzchak* 2:23) recounts using it for the *mikvah* in Manchester in 1957. Others criticize this approach, questioning how part of the *mikvah* can be considered stationary at the same time that another part constitutes *zochalin*.[6]

Rav Yaakov Landa (in a letter printed in *Taharat Hamayim*, p. 183) suggests a third approach to solving concern for *zochalin* during *zeri'ah*. He recommends closing the hole between the *bor zeri'ah* and

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3. *Chazon Ish*, Y.D. 123:1; *Teshuvot Maharam Schick*, Y.D. 198; and *Teshuvot Maharsham* 1:122, 145.

4. For a discussion of a variation on the *Chazon Ish*'s solution employed by some *mikva'ot*, see *Mikveh Mayim* 2:64.

5. The *bor hashakah* in Rav Breisch's *mikvah* actually held enough for two *mikva'ot*, as we will explain in the following chapter.

6. See *Mikveh Mayim* (1:27-34) for a review of this issue.

the *bor tevilah* while performing *zeri'ah*. In this manner, all the water remains in the *bor zeri'ah*, without any flow that raises concern about *zochalin*. After completing *zeri'ah*, the hole is then reopened and the excess water from the *bor zeri'ah* flows into the *bor tevilah*. Aside from practical concerns, such as the need for a *bor zeri'ah* that can hold an enormous volume of water, some criticize this method from a halachic perspective. They express concern that the water ultimately enters the *bor tevilah* through *tefisat ye'dei adam* (human intervention) when a human opens the hole leading from the *bor zeri'ah* to the *bor tevilah*.[7]

Some *Acharonim* deny the need for any of the aforementioned solutions. They believe that the issue of *zochalin* does not actually present a problem for *zeri'ah*.[8] Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, Y.D. 1:112) explains that a *zechilah* does not disqualify a *mikvah* per se; rather, the concept of *zochalin* means that an individual may not immerse even in a valid *mikvah* so long as its waters are flowing out. Accordingly, the *bor zeri'ah* retains its status as a valid *mikvah* throughout the *zeri'ah* process, so it renders the tap water fit for immersion and enables the creation of a second valid *mikvah* in the adjacent *bor tevilah*. Rav Moshe cites the aforementioned Mishnah in *Mikva'ot* as support for his approach, because *zochalin* do not arouse concern regarding the validity of the upper pit when water overflows from it into the lower pit.

Natan Sa'ah V'Natal Sa'ah

The process of *zeri'ah* also raises concern for an issue known as *natan sa'ah v'natal sa'ah*. The Mishnah (*Mikva'ot* 7:2) writes that if a *mikvah* contains exactly forty *sa'ah* and one adds a *sa'ah* of fruit juice (without changing the water's color) and subsequently removes a *sa'ah* of rainwater (*natan sa'ah v'natal sa'ah*), the *mikvah* remains valid. Although the *mikvah* no longer contains the minimum forty *sa'ah* of water, it still has forty *sa'ah* of liquid and the water nullifies the inde-

7. For a summary of the rich literature regarding *tefisat ye'dei adam* in this context, see *Mikveh Mayim* (*ibid.*).

8. *Teshuvot Imrei Yosher* (1:94 and 2:73), *Teshuvot Chelkat Yo'av* (Y.D.1:32), and *Teshuvot Igrot Moshe* (Y.D. 1:112). See, however, *Teshuvot Maharam Schick* (Y.D. 198).

pendent character of the one *sa'ah* of juice. The Gemara (*Yevamot* 82b) limits this leniency to a situation where more than twenty *sa'ah* of rainwater (a majority of its contents) remain in the *mikvah*. If, however, one repeated the process of adding fruit juice and then removing water until half or more of the *mikvah*'s contents were fruit juice, the *mikvah* would no longer be valid.

Most *Rishonim* believe that only fruit juice presents a problem when it becomes half or more of the *mikvah* because a *mikvah* must be comprised of water. On the other hand, adding *mayim she'uvim* and then removing the original water does not create a problem, because the original forty *sa'ah* remove the *she'uvim* status from new water upon its arrival in the *mikvah*. Thus, when water is later removed from the *mikvah*, we do not distinguish between the original water and the *she'uvim*, since all the water is now valid. Unlike a situation where the *mikvah* is transformed from a *mikvah* of water to one of fruit juice, here the *mikvah* remains a *mikvah* of water throughout.[9]

However, the Rambam (*Hilchot Mikva'ot* 4:7) and the Ra'avad (*Ba'alei Hanefesh, Sha'ar Hamayim*) rule that *natan sa'ah v'natal sa'ah* even invalidates a *mikvah* when *mayim she'uvim* become half or more of its contents.[10] According to the Rambam and Ra'avad, it appears that more than twenty *sa'ah* of the original rainwater must remain in the *mikvah* in order for it to validate *mayim she'uvim*.

The *Shulchan Aruch* (Y.D. 201:24) and most of its commentaries rule in accordance with the lenient opinion advocated by the majority of *Rishonim*. The *Shach* (201:63), though, cites that the Tashbetz concludes that we should accommodate the strict opinion of the Rambam and Ra'avad, too. This poses a serious problem for the process of *zeri'ah*, as the repeated implementation of *zeri'ah* eventually removes at least half of the original forty *sa'ah* of rainwater from the *bor zeri'ah*. In order to avoid this problem, most contemporary *mikva'ot* employ both *zeri'ah* and *hashakah* (see, for example, Rav Moshe Feinstein *Teshuvot Igrot Moshe*, Y.D. 1:111). This custom assumes that *hashakah* satisfies even the opinion of the Rambam and Ra'avad. The *Chazon Ish*, however, argues vehemently that the original forty *sa'ah* of rain-

9. Rashi (Yevamot 82b s.v. Natan), Ramban (*Yevamot* 82b s.v. *Ha Ditnan*), Rashba (*Yevamot* 82b s.v. *Ha Ditnan*), Ritva (*Yevamot* 82b s.v. *Natan*), Rosh (commentary to *Mikva'ot* 7:2), and Rabbeinu Shimshon (commentary to *Mikva'ot* 7:2).

10. For an analysis of the Rambam and Ra'avad, see *Chazon Ish*, Y.D. 123:1-3. For further analysis of the Ra'avad's position, see *Teshuvot Beit Yitzchak*, Y.D. 2:27.

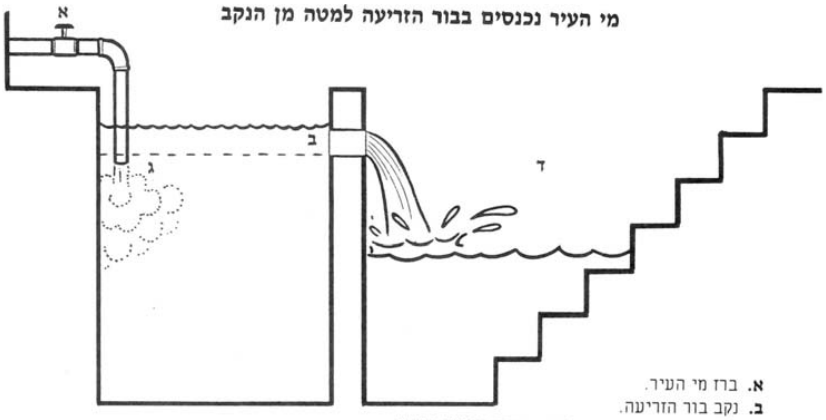
water does not remain even in a *bor hashakah*. Although it takes longer than a *bor zeri'ah* to lose the original rainwater, the *Chazon Ish* believes that the waters in the *bor tevilah* and the adjacent pool for *hashakah* easily mix and soon the original rainwater in the *bor hashakah* is lost. Hence, the *Chazon Ish* felt that there is no benefit to employ both *hashakah* and *zeri'ah*; rather, *zeri'ah* and *hamshachah* suffice in his view.[11]

Conclusion

Most *mikva'ot* employ *zeri'ah*, *hashakah*, and *hamshachah* to insure their validity. The *Chatam Sofer* and *Chazon Ish*, though, felt that *zeri'ah* without *hashakah* suffices. An oral tradition explaining why the *Chazon Ish* strongly opposed using *hashakah* appears in Rav Katz's *Mikveh Mayim* (vol. 1, p. 43). Again, we thank Rav Katz for graciously permitting us to reprint illustrations from his book to help clarify the concepts that we have discussed.

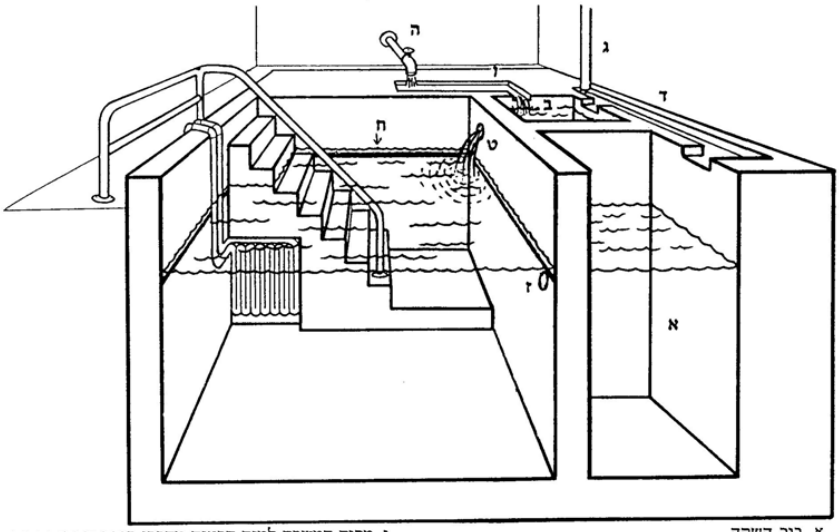
11. In Y.D. 123:3, the *Chazon Ish* questions whether the Ra'avad would necessarily invalidate all forms of *zeri'ah*.

מי העיר נכנסים בבור הזריעה למטה מן הנקב



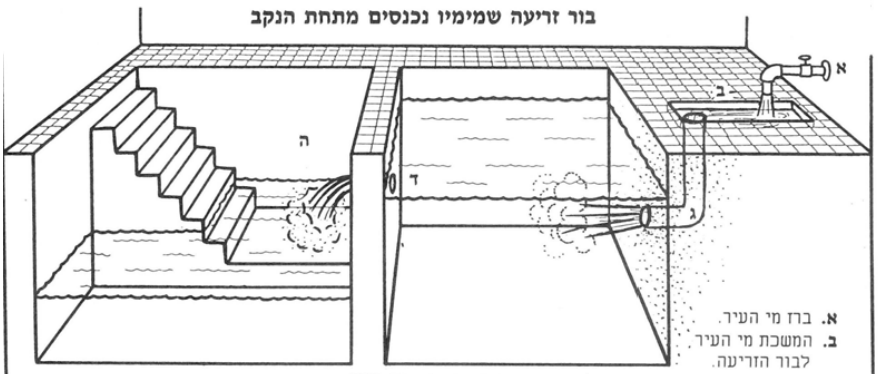
א. ברז מי העיר.
ב. נקב בור הזריעה.
ג. צינור מי העיר יורד עד למטה מנקב יציאת המים.
ד. מקוה הטבילה.

מקוה עם בור השקה ובור זריעה



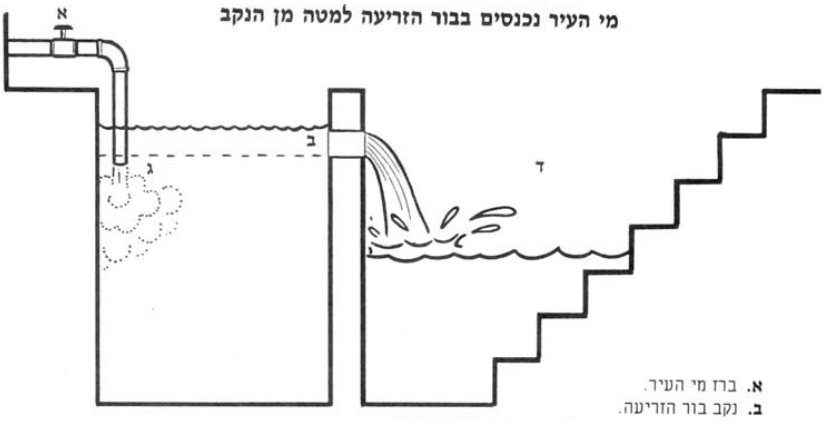
א. בור השקה.
ב. בור זריעה.
ג. צינור המביא מי גשמים מהגג.
ד. המשכה למי גשמים לבור השקה ולבור הזריעה.
ה. ברז מי העיר למלאות המקוה דרך בור הזריעה.
ו. מקום המשכה למים הבאים מהברז קודם שהמים נכנסים לבור הזריעה.
ז. נקב בור השקה.
ח. סימן לגובה הכותל ע"י שורת רצפות לסימן גובה המים הנצרך להשקה.
ט. נקב בור זריעה, משם נכנסים המים אל המקוה.

בור זריעה שמימיו נכנסים מתחת הנקב



א. ברז מי העיר.
ב. המשכת מי העיר לבור הזריעה.
ג. מי העיר נכנסים לבור הזריעה למטה מנקב בור הזריעה (ומן הצד).
ד. נקב בור הזריעה.
ה. מקוה הטבילה.

מי העיר נכנסים בבור הזריעה למטה מן הנקב



א. ברז מי העיר.
ב. נקב בור הזריעה.
ג. צינור מי העיר יורד עד למטה מנקב יציאת המים.
ד. מקוה הטבילה.

Part V: Five Approaches to Creating a Mikvah

In the previous two chapters, we have outlined how to render tap water suitable for immersion through either *hashakah* or *zeri'ah*. We now outline five practical approaches to building a valid *mikvah*.

Rav Moshe Feinstein—*Hashakah* and *Zeri'ah*

In the previous chapter, we noted that *mikva'ot* in Jerusalem traditionally employed both the processes of *hashakah* and *zeri'ah*, an approach advocated by Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, *Yoreh Deah* 1:111).[1] *Zeri'ah* serves as a backup in case of failure in the *hashakah* process's execution, but *zeri'ah* alone does not appear to satisfy the Ra'avad's belief that more than twenty *sa'ah* (which we consider to be 500 liters)[2] of the original rainwater must remain in the pool to render *mayim she'uvim* (such as tap water) fit for immersion. Rav Moshe believes that the use of a *bor hashakah* satisfies the Ra'avad's view, because the original rainwater in the *bor hashakah* remains in place.

1. Rav Moshe Shternbuch, *Mo'adim Uzmanim* (4:308, note 1) records that this custom began in Jerusalem in 1900, but before then *mikva'ot* sufficed with *zeri'ah* alone.

2. As we have explained in previous chapters, our practice is to convert the Talmudic measurement *sa'ah* into liters in a very strict manner, in light of the dispute surrounding its size.

Chazon Ish—Zeri'ah Without *Hashakah*

We also mentioned in the last chapter that *mikva'ot* in Hungary before World War II utilized *zeri'ah* alone (following the *Chatam Sofer*), without *hashakah*.[3] The *Chazon Ish* (Y.D. 123:1-5) strongly advocates this approach, arguing that *hashakah* adds nothing to a *mikvah* that employs *zeri'ah*. He believes that the process of *hashakah* does not satisfy the aforementioned opinion of the Ra'avad any more than the process of *zeri'ah* does. Although the original rainwater in the *bor hashakah* may remain longer than the water in the *bor zeri'ah* (which has tap water poured into it), some exchange of water undoubtedly occurs between the immersion pool and the *bor hashakah* whenever the plug between them is open. While these encounters might not remove large quantities of rainwater at once, the *Chazon Ish* argues that eventually less than twenty *sa'ah* of rainwater will remain in the *bor hashakah*.

It appears that this approach (using *zeri'ah* alone) does not satisfy the opinion of the Ra'avad.[4] Nonetheless, this shortcoming does not bother the *Chazon Ish*, since most *Rishonim* reject the Ra'avad's opinion, as do the *Shulchan Aruch* (Y.D. 201:24) and most of its commentaries. In fact, Rav Moshe Feinstein (*ibid*.) also acknowledges that the overwhelming majority of authorities do not accept the Ra'avad's view, so he rules that a community need not accommodate it if building both a *bor zeri'ah* and a *bor hashakah* will place a tremendous financial burden on the people.

Divrei Chaim—Zeri'ah and Momentary *Hashakah*

Some *mikva'ot* seek to satisfy all opinions by employing both *zeri'ah* and a momentary *hashakah*, an approach that first appears in a responsum of the *Divrei Chaim* (*Choshen Mishpat* 37). A momentary *hashakah* consists of closing the connection between the *bor hashakah* and immersion pool save for a brief moment when it allows the waters to touch. In this manner, the original rainwater in the *bor hashakah*

3. *Mikva'ot* that follow the *Chazon Ish*'s approach also bring in the water with the process of *hamshachah* as an added halachic precaution.

4. See, however, *Chazon Ish* (Y.D. 123:3) who questions whether the Ra'avad would necessarily invalidate all forms of *zeri'ah*.

barely mixes with the immersion pool's tap water. As the *Chazon Ish* notes, water is exchanged between the two pools primarily during the time when people immerse. Thus, minimal opportunity exists for the original rainwater in the *bor hashakah* to be lost without opening its connection to the *mikvah* during immersion.

The momentary *hashakah* does not satisfy the opinion (cited by Rabbeinu Yerucham) that requires opening the connection between the pools during the time of immersion.[5] Although the *Shulchan Aruch* does not cite this view, the *Shach* (Y.D. 201:112) nevertheless encourages acting strictly in deference to it. However, *mikva'ot* that follow the *Divrei Chaim*'s approach also use *zeri'ah*, so the process of *zeri'ah* should negate the need for *hashakah* during the immersion. The momentary *hashakah* merely serves to also satisfy the Ra'avad's concern for always maintaining over twenty *sa'ah* of original rainwater, an added stricture.

Most *mikva'ot* do not use momentary *hashakah*, due to concern that the opinion cited by the Rabbeinu Yerucham and the Ra'avad's opinion derive from the same conceptual understanding. The opinion cited by Rabbeinu Yerucham (as explained by many *Acharonim*, including Rav Chaim Soloveitchik, commenting on the Mishnah, *Mikva'ot* 1:7) requires *hashakah* during immersion because it apparently maintains that the tap water remains fundamentally unacceptable for immersion unless it is actively connected with a rainwater pool. By contrast, the majority view maintains that contact with the *bor hashakah* transforms the tap water itself into valid water for immersion. Thus, following this transformation, the tap water need not maintain its physical connection to the rainwater.

Similarly, those who disagree with the Ra'avad argue that entering the *bor zeri'ah* renders the tap water itself fit for immersion, so a majority of the original forty *sa'ah* of rainwater need not remain in the *bor zeri'ah*. The Ra'avad presumably does not accept their position because he views the tap water as fundamentally invalid even after it enters the *bor zeri'ah*. Hence, only the presence of a majority of the original forty *sa'ah* of rainwater can validate the pool for immersion. According to this analysis, momentary *hashakah* would not validate the *mikvah* according to the Ra'avad. Although it prevents the *bor hashakah* from losing its original rainwater, the Ra'avad would not accept the *mikvah*

5. We explain this position two chapters earlier, in our third chapter about *mikva'ot*.

without the tap water in the immersion pool physically touching rainwater during the immersion.[6]

Lubavitch—*Bor Al Gabei Bo*r

Rav Shalom Baer Schneersohn developed a new style of creating *mikva'ot*, which has become the standard manner of creating *mikva'ot* for Lubavitcher Chasidim and is thus commonly referred to as the "Lubavitcher *Mikvah*."[7]

Traditionally, the hole that connects the immersion pool with the *bor hashakah* is on the side wall of the *mikvah*. Rav Shalom Baer suggested placing the *bor hashakah underneath* the immersion pool, with a hole in the immersion pool's floor connecting it to the *bor hashakah*. Rav Shalom Baer required two holes at the bottom of the *mikvah*, to insure constant contact between the two pools even if someone steps on one of the holes. He further added that the holes should be a *tefach* (handbreadth, approximately four inches) in diameter, rather than the Mishnah's measurement of a *shefoferet hanod* (a tube in the opening of a container, between 1.5 and three inches). The reason for this final requirement remains a mystery, although many have attempted to explain it.[8]

These innovations attain at least three very significant achievements. Always leaving the hole between pools open eliminates concern lest the caretaker of the *mikvah* forget to open it before a woman immerses. Moreover, placing the hole in the immersion pool's floor removes concern that the water level in the immersion pool could drop below the height of the hole in the side wall.

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6. The *Acharonim* vigorously debate whether the Ra'avad's view is conceptually identical to the view cited by Rabbeinu Yerucham. For those who equate the two opinions, see *Teshuvot Tzemach Tzedek* (Y.D. 171), *Teshuvot Eimek She'eilah* (Y.D. 48), and *Gidulei Taharah* (*Teshuvot* 10). Rav Yirmiyah Katz (*Mikveh Mayim* vol. 1 pp. 48-49) cites their position and infers that several other *Acharonim* reject this equation, such as *Teshuvot Beit Shlomo* (Y.D. 2:68), the Maharshag (*Teshuvot* 1:65), *Teshuvot Divrei Yoe*l (Y.D. 71), and *Teshuvot Igrot Moshe* (Y.D. 3:63).

7. Rav Shalom Baer's instructions for creating a *mikvah* were recorded by Rav Yaakov Landa. His innovation generated a fierce debate that is summarized in *Mikveh Mayim* (vol. 1, pp. 53–98).

8. See *Teshuvot Minchat Yitzchak* (5:23), *Teshuvot Sheivet Halevi* (2:104), and *Mikveh Mayim* (vol. 1, pp. 65–66).

Thirdly, Rav Shalom Baer's approach also seems to satisfy the Ra'avad's requirement that a majority of the forty *sa'ah* of the original rainwater remain in the *bor hashakah*. In most *mikva'ot*, water in the immersion pool is heated, whereas the *bor hashakah* remains cold (because no one immerses there). Since hot water rises above cold water, the rainwater in the *bor hashakah* underneath the immersion pool will not mix with the warmer water in the immersion pool.[9]

Despite the tremendous appeal of Rav Shalom Baer's approach, it has met considerable opposition. The *Divrei Chaim* (Y.D. 2:88) rejects the proposal of a community that wished to build a *mikvah* with the *bor hashakah* underneath the immersion pool. He cites the principle that water flowing along a slope (*katapreis*) into a *mikvah* does not join with the *mikvah* to purify objects that it envelops (Mishnah, *Taharot* 8:9). The *Divrei Chaim* extrapolates from this Mishnah that waters can merge halachically only if they lie side-by-side, rather than one above the other.[10]

There are numerous approaches to defend the *mikvah* of Rav Shalom Baer from its detractors. Rav Shlomo Ganzfried (*Lechem V'simlah*, *Simlah* 201:98) suggests that a *katapreis* does not prevent a pool from combining with water to which it was deliberately connected. The *Pnei Yehoshua* (*Gittin* 16a) claims that a *katapreis* prevents the connection of waters only if the water that connects the two *mikva'ot* does not originate from the *mikva'ot* themselves. However, when the water that connects the two *mikva'ot* does originate from the *mikva'ot* themselves, such as when the water from the upper *mikvah* flows into the lower *mikvah*, it is a valid connection despite the fact that it is accomplished by *katapreis*. The *Chatam Sofer* (Y.D. 209) limits concern for a *katapreis* to small amounts of water, whereas here abundant water connects the two pools.

Moreover, it seems that even the *Divrei Chaim* would accept the *mikva'ot* that Lubavitchers commonly construct nowadays. Despite his

9. See *Techumin* (13:307 and 16:120–121), where Rav Shlomo Dichovsky seeks to demonstrate that the top and bottom *mikva'ot* do not exchange significant amounts of water.

10. Rav Yirmiyah Katz (*Mikveh Mayim*, vol 1, p. 71) explains that the *Divrei Chaim* is basing his opinion on an original understanding of the concept of *katapreis*. At first glance, this concept would seem to invalidate only a slope of *running* water, but the *Divrei Chaim* argues that even stationary water can be considered invalid if it is defined as a *katapreis*.

concern for a *katapreis*, the *Divrei Chaim* acknowledges that water that has undergone *hamshachah*[11] and therefore constitutes *mayim she'uvim* only on a rabbinic level can connect to a *mikvah* while flowing down a slope.[12] In most contemporary *mikva'ot*, the water enters the *mikvah* through the process of *hamshachah*, so a *katapreis* would not prevent the two pools from merging.

Furthermore, when the two *mikva'ot* lie one above the other with only the separation of a floor, many authorities comment that even the *Divrei Chaim* appears to accept the *mikvah*.[13] They argue that the *Divrei Chaim* explicitly rejects only connecting two separate *mikva'ot* with a vertical pipe, as the water flow within the pipe constitutes a *katapreis* and thus cannot merge the *mikva'ot*. If, however, one pool lies directly above the other one, with merely a thin floor dividing them, then they are considered one large pool, so even the *Divrei Chaim* would not object to such a setup. In practice, Lubavitch *mikva'ot* are created with only a floor between the two pools. In fact, many non-Lubavitch communities build the *mikvah* for immersing utensils in this manner in order to save money. Although these communities do not wish to follow the Lubavitch custom regarding their women's *mikva'ot*, there is not as great a need to be strict regarding a *mikvah* for utensils.

Rav Yaakov Breisch—The Split-Level *Bor Hashakah*

When Rav Yaakov Breisch built a *mikvah* in Zurich in 1959, he introduced a manner of creating a *mikvah* that attempts to satisfy the Ra'avad's requirement to preserve more than twenty *sa'ah* of the original rainwater in the *mikvah*.[14] His *mikvah* (described in *Teshuvot Chelkat Ya'akov* 3:53–54) contained both a *bor zeri'ah* and an immersion pool. In addition, he built an unusually large *bor hashakah*, which contained more than twice the required amount of rainwater. He subsequently placed horizontally a fiberglass sheet with a tiny hole in the middle of the *bor hashakah*, splitting it into two *mikva'ot*. He connected

11. We explain this concept two chapters earlier, in our third chapter about *mikva'ot*.

12. This leniency appears in Rabbeinu Shimshon's commentary to the Mishnah (*Mikva'ot* 6:8).

13. Rav Meir Arik (*Teshuvot Imrei Yosher* 2:73:4), Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, Y.D. 3:65), the Satmar Rav (*Teshuvot Divrei Yoel*, Y.D. 80:2), and Rav Yitzchak Yaakov Weisz (*Teshuvot Minchat Yitzchak* 5:92).

14. Some attribute this idea to the Satmar Rav and Rav Michael Dov Weissmandel.

the *bor hashakah*'s upper *mikvah* to the immersion pool, while the bottom *mikvah* remained detached from it. Thus, even if one accepts the *Chazon Ish*'s contention that a *bor hashakah* normally loses its original rainwater, the bottom *mikvah* in Rav Breisch's *bor hashakah* should retain the original rainwater.

In effect, Rav Breisch followed the same concept as Rav Shalom Baer's *mikvah*, positioning a *bor hashakah* so that its rainwater would not mix with tap water from the immersion pool.[15] He enhanced this approach, though, because his upper *bor hashakah* connects to the immersion pool's side, avoiding the *Divrei Chaim*'s concern for a *kat-apreis*. Moreover, since no one immerses in the top *mikvah* of the *bor hashakah*, chances are even greater that the rainwater in the bottom *mikvah* will be preserved (see *Teshuvot Minchat Yitzchak* 5:92).

The two halves of the *bor hashakah* are connected by only a tiny opening, further reducing the opportunity for the original rainwater to be lost. The Rosh (commentary to *Mikva'ot* 6:8) claims that a hole must be a *shefoferet hanod* in order to connect water that is unfit for immersion to a valid *mikvah*, but any size can connect two valid *mikva'ot*. Thus, here a tiny hole suffices because each half of the *bor hashakah* contains enough water to function as an independent *mikvah*.

In general, other authorities have responded favorably to Rav Breisch's innovation, and many *mikva'ot* throughout the world are indeed built on this system (sometimes with minor variations). For example, Rav Yitzchak Yaakov Weisz (*Teshuvot Minchat Yitzchak* 2:23 and 5:92) implemented this approach in the *mikvah* he built in Manchester. Rav Moshe Feinstein (*Teshuvot Igrot Moshe*, Y.D. 3:65), though, claims that this *mikvah* does not satisfy the opinion of the Ra'avad any better than a traditional *bor hashakah*. Rav Moshe argues that the Gemara's principle of *yeish bilah* (*Zevachim* 80), which teaches that waters that touch are presumed to mix completely, runs counter to Rav Breisch's assertion that the water in the bottom *mikvah* does not mix with the top *mikvah*.[16]

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15. In fact, Rav Yirmiyah Katz reports hearing from Rav Yaakov Posen that Rav Zalman Shimon Dworkin (a Lubavitch *poseik*) considers Rav Breisch's approach an acceptable manner to build *mikva'ot* even for those who observe Lubavitch practices.

16. See also *Chazon Ish* (Y.D. 124:3), from which Rav Ariel Buchwald (in an essay at the end of his edition of the Ra'avad's *Baalei Hanefesh*) infers that the *Chazon Ish* would also be concerned about *yeish bilah* even if it appears to us that the liquids do not mix.

Rav Nissen Telushkin (*Taharat Hamayim* p. 270), on the other hand, criticizes Rav Moshe's application of this principle to Rav Breisch's *mikvah*. According to him, *yeish bilah* means that *when* liquids mix with one another, they do so thoroughly.[17] However, in situations where two bodies of water only touch each other through a tiny hole, they do not mix at all.[18]

Conclusion

Each of the five styles of *mikva'ot* that we have described is acceptable beyond a doubt, as Rav Moshe Feinstein notes (*Teshuvot Igrot Moshe*, Y.D. 1:111 and 3:65). The debate regarding which method to use revolves around how to satisfy various stringent minority opinions. Indeed, the great halachic authorities of all generations have expended tremendous energy discussing and probing the laws of *mikva'ot* to insure that all our *mikva'ot* meet the highest possible halachic standards.

17. See also *Mikveh Mayim* (vol. 1, pp. 67–70).

18. For further discussion of this *mikvah*, see *Mikveh Mayim* (vol. 1, pp. 107-124) and Rav Moshe Shternbuch's *Mo'adim Uzmanim* (4:310, note 1). Rav Shternbuch records that the Satmar Rav also followed the *Chelkat Yaakov*'s approach, with one variation. Rather than having a tiny hole in the fiberglass sheet between the upper and lower halves of the *bor hashakah*, the Satmar Rav used a hole the size of a *shefoferet hanod*. Rav Yirmiyah Katz reports that the accepted practice is to use a *shefoferet hanod*, as the Satmar Rav did.

Biographical Notes

Aaronberg, Rav Yehoshua—The late author of *Teshuvot Devar Yehoshua* who served as a *dayan* on the Tel Aviv Beit Din.

Acharonim—Great rabbinical authorities of the sixteenth century to the present.

Achiezer—Responsa of Rav Chaim Ozer Grodzinsky, a halachic authority who resided in Vilna (1863–1940).

Adler, **Rav Yosef**—Principal of the Torah Academy of Bergen County and Rav of Congregation Rinat Yisrael in Teaneck, New Jersey. Student of Rav Yosef Dov Soloveitchik.

Ahavat Chessed—A halachic work on the laws regarding acts of kindness, by Rav Yisrael Meir Kagan. See **Mishnah Berurah**.

Alon Shevut—Torah journal of Yeshivat Har Etzion in Alon Shevut, Israel.

Alon Shevut Bogrim—Torah journal of Yeshivat Har Etzion's alumni.

Amital, **Rav Yehuda**—Rosh Yeshivat Har Etzion, Israel.

Ariel, **Rav Yaakov**—Rav of Ramat Gan, Israel.

Ariel, **Rav Yoezer**—*Dayan* in Tiberias, Israel.

Aruch Hashulchan—A halachic work on the *Shulchan Aruch* authored by Rav Yechiel Michel Epstein (1829–1908), Rav of Novardok, Russia.

Arugat Habosem—Responsa of Rav Moshe Greenwald, Rav of Chust, Romania (1853–1911).

Aseih Lecha Rav—Responsa of Rav Chaim David Halevi, Rav of Tel Aviv-Yafo and author of *Mekor Chaim* (d. 1998).

Assia—Journal of Halachah and medicine.

Auerbach, **Rav Meir**—Born in Poland, moved to Jerusalem in 1860. Authored responsa on parts of *Shulchan Aruch* and glosses on Talmud and Rambam's *Mishneh Torah* (1815–1878).

Auerbach, **Rav Shlomo Zalman**—A renowned halachic authority and the author of *Teshuvot Minchat Shlomo* and *Me'orei Eish*. He resided in Jerusalem and served as Rosh Yeshiva of Yeshivat Kol Torah (1910–1995).

Avnei Neizer—Responsa by Rav Avraham Bornstein, Rav of Sochaczov, Poland (1839–1910). He also wrote the *Eglei Tal*.

Baal Hama'or—Title of Rabbeinu Zerachiah Halevi (twelfth century), derived from his commentary on the Rif, part of which is entitled *Hama'or Hagadol* and part of which is entitled *Hama'or Hakata*n. Born in Spain, he settled in Lunel, Provence.

Baal Shem Tov (Israel ben Eliezer)—Founder of the Chassidic movement (ca. 1700–1760).

Baalei Hanefesh—Code of the laws of *nidah* and *mikva'ot* by the Ra'avad. See **Ra'avad**.

Badei Hashulchan—Halachic work discussing various sections of *Yoreh De'ah* by Rav Feivel Cohen, Rav in Brooklyn, NY.

Bakshi-Doron, **Rav Eliyahu**—Former Sephardic Chief Rabbi of Israel.

Banet, **Rav Mordechai**—Author of *Parashat Mordechai*, responsa on the *Shulchan Aruch*. Born in Hungary; *dayan* in Moravia (1753–1829).

Basri, **Rav Ezra**—Sephardic *dayan* who resides in Jerusalem and is the author of *Teshuvot Shaarei Ezra*.

Be'er Heitiv—Commentary to *Shulchan Aruch* by Rav Zechariah Mendel of Belz, Ukraine (d. 1706).

Be'er Moshe—Responsa of Rav Moshe Stern, Rav in Debreczin and, later, in Brooklyn, NY (d. 1997).

Be'er Sheva—Responsa of Rav Yissachar Baer Eilenberg, student of the authors of *Levush* and *Sema*. Born in Poland, he served as a Rav in Italy, and died in 1623 on his way to become the Ashkenazic Rav of Safed, Israel.

Be'er Yitzchak—Responsa of Rav Yitzchak Elchanan Spektor. See **Ein Yitzchak**.

Beit Avi—See **Liebes**, **Rav Yitzchak Isaac**.

Beit Ephraim—Responsa of Rav Ephraim Zalman Margolies (1760–1828).

Beit Halevi—Responsa and Bible commentary of Rav Yosef Dov Soloveitchik, Rav of Brisk, Lithuania (1820–1892). The Rosh Yeshiva at Yeshiva University bearing his name was his great-grandson.

Beit Shlomo—Responsa of Rav Shlomo of Skole, Poland (d. ca. 1873).

Beit Shmuel—Major commentary to the *Even Ha'ezer* section of the *Shulchan Aruch* and authored by Rav Shmuel ben Uri Shraga Feivish (Poland, seventeenth Century).

Beit Yitzchak—A halachic journal published annually by Yeshiva University.

Beit Yitzchak—Responsa of Rav Yitzchak Shmelkes, a prominent authority in Galicia (1828–1906).

Beit Yosef—Commentary of Rav Yosef Karo to the *Tur*.

Ben Yaakov, **Rav Tzvi Yehudah**—*Dayan* in Tel Aviv, Israel.

Berlin, **Rav Naftali Tzvi Yehudah** (**Netziv**)—Head of Yeshivat Volozhin in Russia and the author of *Teshuvot Meishiv Davar*, *Ha'eimek Davar* on the Torah, *Meromei Sadeh* on the Talmud, and *Ha'eimek She'eilah* on the *She'iltot* of Rav Achai Gaon. The Netziv lived from 1817 to 1893.

Berman, **Dr. Joel**—Science Department Chairman at the Torah Academy of Bergen County, NJ. He holds a doctorate in chemical physics.

Bick, **Rav Ezra**—Rebbe at Yeshivat Har Etzion in Alon Shevut, Israel.

Bikurei Asher—Responsa of contemporary Jerusalem Rabbinical Court *dayan* Rav Massoud Elchadad.

B'ikvei Hatzon—Collection of essays by Rav Hershel Schachter. See **Schachter**, **Rav Hershel**.

Bintivot Hahalachah—Responsa of Rav J. David Bleich; see **Bleich**, **Rav J. David**.

Binyan Av—Collection of essays and responsa by Rav Eliyahu Bakshi-Doron. See **Bakshi-Doron**, **Rav Eliyahu**.

Biomedical Ethics and Jewish Law—Collection of essays about medical ethics by Dr. Fred Rosner, Professor of Medicine at Yeshiva University's Albert Einstein College of Medicine, partially adapted from his earlier book, *Modern Medicine and Jewish Ethics*.

Birkei Yosef—Commentary on the *Shulchan Aruch* by the Chida (Rav Chaim Yosef David Azulai), a major Sephardic authority who lived in Israel and later in Leghorn, Italy, and authored dozens of books (1724–1806).

Biur Hagra—Commentary of the Vilna Gaon (1720–1797), Rav Eliyahu Kramer of Vilna, to the *Shulchan Aruch*.

Biur Halachah—Analytical commentary to the *Orach Chaim* section of the *Shulchan Aruch* by Rav Yisrael Meir Kagan; see **Mishnah Berurah**.

Blau, **Rav Yaakov**—Contemporary halachic authority who resides in Jerusalem, who authored the *Netivot Shabbat* and *Pitchei Choshen*.

Bleich, **Rav J. David**—Rosh Yeshiva at Yeshiva University in New York and the author of *Bintivot Hahalachah* and *Contemporary Halakhic Problems*.

Bnei Banim—Responsa of Rav Yehuda Henkin. See **Henkin**, **Rav Yehuda**.

B'tzeil Hachochmah—Responsa of Rav Betzalel Stern, older brother of Rav Moshe Stern (author of *Be'er Moshe*) and Rav in Rome, Melbourne, Vienna, and Jerusalem (1911–1989).

Chacham Tzvi—Responsa of Rav Tzvi Ashkenazi of Amsterdam (1660–1718).

Chafetz Chaim—Rav Yisrael Meir Kagan's comprehensive code of *hilchot shemirat halashon* (laws of proper speech). See **Mishnah Berurah**.

Chatam Sofer—Responsa of Rav Moshe Sofer, Rav of Pressburg, Hungary (1763–1839).

Chavalim Banimim—Responsa of Rav Yehuda Leib Graubart, Rav in Toronto in the early twentieth century (d. 1938).

Chavat Binyamin—Collection of essays on halachic topics by Rav Shaul Yisraeli. See **Yisraeli**, **Rav Shaul**.

Chavot Yair—Responsa of Rav Yair Chaim Bachrach, Rav of Worms, Germany (1638–1702).

Chazon Ish—Major halachic work by Rav Avraham Yeshayah Karelitz of Bnei Brak, Israel (1878–1953).

Chazon Ovadia—Responsa and summary of the laws of *Pesach* by Rav Ovadia Yosef. See **Yosef**, **Rav Ovadia**.

Cheishev Ha'eifod—Responsa of Rav Chanoch Padwa, Rav in London in the mid-twentieth century.

Chelkat Mechokeik—Major commentary on the *Even Ha'ezer* section of *Shulchan Aruch* by Rav Moshe of Brisk, Lithuania (seventeenth century).

Chelkat Yaakov—Responsa of Rav Yaakov Breisch, Rav in Zurich, Switzerland (d. 1977).

Chelkat Yoav—Responsa of Rav Yoav Weingarten, Rav in Kinsk, Poland, in the early twentieth century.

Chok Yaakov—Commentary to the laws of Passover of the *Shulchan Aruch*, by Rav Yaakov Reisher (Germany, 1670–1733).

Choshen Mishpat—The section of *Shulchan Aruch* that deals with monetary laws.

Choshen Ha'eifod—Responsa of Rav David Pipano, Rav in Sofia and Sephardic authority in the late nineteenth century and early twentieth century.

Cohen, **Rav Shear Yashuv**—Chief Rabbi of Haifa, Israel.

Contemporary Halakhic Problems—A review of contemporary responsa literature by Rav J. David Bleich, Rosh Yeshiva at Yeshiva University in New York.

Daf Kesher—Weekly publication of Yeshivat Har Etzion that contains *divrei Torah* and Yeshiva news. Every few years, these publications are combined into a book.

Dagul Meir'vavah—Commentary on the *Orach Chaim* section of the *Shulchan Aruch* by Rav Yechezkel Landau, author of *Noda Biy'hudah* and Rav of Prague (1713–1793).

Darchei Moshe—The Rama's commentary to the *Tur*. See **Rama**.

Darchei Taharah—Discussion of the laws of *nidah* by Rav Mordechai Eliyahu, former Sephardic Chief Rabbi of Israel. See **Eliyahu**, **Rav Mordechai**.

Darchei Teshuva—A compilation of the responsa literature to the *Yoreh Deah* section of the *Shulchan Aruch* by Rav Tzvi Hirsch Shapira (1850–1913).

Dasberg, **Rav Uri**—An editor of *Techumin* who resides in Alon Shevut, Israel.

David, **Rav Shmuel**—Rav of Afula, Israel, who is a student of Rav Aharon Lichtenstein and the author of *Sh'eilot Uteshuvot Meirosh Tzurim*. He is a former rabbi of Kibbutz Rosh Tzurim.

Devar Avraham—Responsa of Rav Avraham Shapira, Rav of Kovno in the early twentieth century (d. 1939).

Devar Emet—Responsa of Rav Yedidiah Monsonego, Sephardic authority.

Devar Yehoshua—Responsa of Rav Yehoshua Ehrenberg, Av Beit Din of the Tel Aviv Rabbinical Court (1904–1976).

Dibrot Moshe—Lectures on the Talmud by Rav Moshe Feinstein. See **Feinstein**, **Rav Moshe**.

Dichovsky, **Rav Shlomo**—Member of the *Beit Din Hagadol* of the Chief Rabbinate of Israel.

Dinei Mamonot—Study of Jewish monetary law by Rav Ezra Basri. See **Basri**, **Rav Ezra**.

Divrei Chaim—Responsa of Rav Chaim Halberstam, Chassidic Rebbe of Sanz, (1793–1876).

Divrei Malkiel—Responsa of Rav Malkiel Tannenbaum of Lomza (late nineteenth and early twentieth centuries).

Divrei Yoel—Responsa of Rav Yoel Teitelbaum, the Chassidic Rebbe of the Satmar community (d. 1979).

Drishat Tzion—Discussion of renewing the offering of *korbanot* (ritual sacrifices) by Rav Tzvi Hirsch Kalischer (1795–1874).

Eglei Tal—Discussion of many laws of *Shabbat* by Rav Avraham Bornstein, Rav of Sochaczov, Poland (1839–1910). He also wrote the *Avnei Neizer*.

Eider, **Rav Shimon**—The author of numerous halachic works in English who resides in Lakewood, NJ.

Eiger, **Rav Akiva**—Author of many responsa and a commentary to the *Shulchan Aruch* (1761–1837). He served as Rav of Posen, Poland.

Eimek She'eilah—Responsa of Rav Mordechai Dov Twersky (1840–1904). At age thirteen, he married the daughter of the *Divrei Chaim*, and he later served as a Chassidic Rebbe in Hornistopol.

Ein Yitzchak—Reponsa of Rav Yitzchak Elchanan Spektor, Rav of Kovno, Lithuania (1817–1896). He also wrote *Be'er Yitzchak*.

Eliashiv, **Rav Yosef Shalom**—Halachic authority who resides in Jerusalem. Many of his responsa were collected and published under the title *Kovetz Teshuvot*.

Eliyahu, **Rav Mordechai**—Halachic authority who resides in Jerusalem. He served as Israel's Sephardic Chief Rabbi from 1983 to 1992.

Encyclopedia Talmudit—Encyclopedia of Talmudic concepts published as an ongoing project of *Yad Harav Herzog*.

Even Ha'ezer—The section of the *Shulchan Aruch* that deals with family law.

Eretz Hatzvi—Collection of essays by Rav Hershel Schachter. See **Schachter**, **Rav Hershel**.

Eretz Yisrael—Summary of laws pertaining to the Land of Israel by Rav Yechiel Michel Tukachinsky. See **Tukachinsky**, **Rav Yechiel Michel**.

Ezrat Kohen—Responsa on the *Even Ha'ezer* section of *Shulchan Aruch* by Rav Avraham Kook. See **Kook**, **Rav Avraham Yitzchak Hakohen**.

Feinstein, **Rav David**—Son of Rav Moshe and Rosh Yeshiva of Mesivta Tifereth Jerusalem in Manhattan, New York.

Feinstein, **Rav Moshe**—A renowned halachic authority who authored *Teshuvot Igrot Moshe* and served as Rosh Yeshiva of Mesivta Tifereth Jerusalem in New York (d. 1986).

Feinstein, **Rav Reuven**—Son of Rav Moshe and Rosh Yeshiva of Mesivta Tifereth Jerusalem in Staten Island, NY.

Fischer, **Rav Shlomo**—*Dayan* in Jerusalem and author of *Beit Yishai* (insights to Gemara).

Frank, **Rav Tzvi Pesach**—Rav of Jerusalem who authored *Teshuvot Har Tzvi* and *Mikra'ei Kodesh*, a discussion of laws of festivals (1873–1960).

Gesher Hachaim—Classic work on the laws of mourning by Rav Yechiel Michel Tukachinsky. See **Tukachinsky**, **Rav Yechiel Michel**.

Goldberg, **Rav Zalman Nechemia**—A son-in-law of Rav Shlomo Zalman Auerbach who serves on the *Beit Din Hagadol* of Israel's Chief Rabbinate and resides in Jerusalem.

Goren, **Rav Shlomo**—Israel's Ashkenazic Chief Rabbi from 1972 to 1982 (d. 1994). He wrote several books, including *Torat Hamedinah* and *Torat Hashabbat Vehamo'eid*.

Gra—Gaon Rabbeinu Eliyahu, acronym for the Vilna Gaon. See **Biur Hagra**.

Greenblatt, **Rav Ephraim**—Rav in Memphis, TN author of *Teshuvot Rivevot Ephraim*.

Gulot Iliyot—An extensive analysis of *Masechet Mikva'ot* from the Mishnah by Rav Dov Baer Lipshitz (nineteenth century).

Ha'ameik Davar—The Netziv's commentary on the Torah. See **Berlin**, **Rav Naftali Tzvi Yehudah**.

Hachashmal Bahalachah—Bibliography of halachic issues related to electricity, published in 1978 by the Institute for Science and Halacha in Jerusalem.

HaDarom—The Torah journal of the Rabbinical Council of America.

Ha'elef Lecha Shlomo—Responsa of Rav Shlomo Kluger (1785–1869).

Halevi, **Rav Chaim David**—Rav of Tel-Aviv-Yafo, author of *Aseih Lecha Rav* and *Mekor Chaim* (d. 1998).

Hag'alat Keilim—Discussion of the laws of kashering by Rav Tzvi Cohen, published in 1980.

Hailperin, **Rav Levi Yitzchak**—Director of the Department of Halacha for the Institute for Science and Halacha in Jerusalem. He has written several books on issues of Halachah and electricity, including his responsa, *Maaseh Chosheiv*, and *Maaliyot B'shabbat* (elevators on *Shabbat*).

Halachah Urefu'ah—Multi-volume symposium on Halachah and medicine, edited by Rav Moshe Hershler and published in the 1980's by the Beit Hamidrash Latorah in Chicago, IL.

The Halachos of Pregnancy and Childbirth—Summary of these laws by Rav Yisroel Dov Webster, Rosh Yeshiva at Yeshiva Emek Halacha in Brooklyn, NY.

Halichot Olam—Rav Ovadia Yosef's eight-volume commentary on the *Ben Ish Chai*. *See* **Yosef**, **Rav Ovadia**.

Halichot Teiman—See **Kafich**, **Rav Yosef**.

Halperin, **Dr. Mordechai**—Chief officer of Medical Ethics at the Israeli Ministry of Health; editor of *Assia*.

Hamishpat Ha'ivri—A comprehensive discussion of Jewish legal systems throughout history by Justice Menachem Elon, former Deputy Chief Justice of Israel.

Hamo'adim Bahalachah—Discussion of the laws of holidays by Rav Shlomo Yosef Zevin, editor of the *Encyclopedia Talmudit* (1890–1978).

Hanisu'in Kehilchatam—Digest of the laws of the marriage process by Rav Binyamin Adler, who resides in Jerusalem.

Har Hakodesh—Extensive commentary on the *Pe'at Hashulchan* by Rav Moshe Nachum Shapiro.

Har Tzvi—Responsa of Rav Tzvi Pesach Frank, Rav of Jerusalem (d. 1960).

Heichal Yitzchak—Responsa of Rav Yitzchak Isaac Herzog (1888–1959), Ashkenazic Chief Rabbi of Israel at the time of its independence. He also wrote *Techukah Leyisrael Al Pi Hatorah*.

Heinemann, Rav Moshe—Rabbinic Administrator of the Star-K and Rav in Baltimore, MD.

Henkin, **Rav Yosef Eliyahu**—A halachic authority who was born in Belorussia resided in New York after his emigration to the United States in 1922; author of *Teshuvot Ibra* and *Peirushei Ibra* (1880–1973).

Henkin, **Rav Yehuda**—A halachic authority who has authored *Teshuvot Bnei Banim* and *Equality Lost* and is the grandson of Rav Yosef Eliyahu Henkin. He resides in Jerusalem.

Hilchot Medinah—Discussion of laws pertaining to the State of Israel by Rav Eliezer Waldenberg. See **Tzitz Eliezer**.

Igrot Moshe—Responsa of Rav Moshe Feinstein. See **Feinstein**, **Rav Moshe**.

Imrei Yosher—Responsa of Rav Meir Arik, Rav in Tarnow, Galicia (1855–1926).

Ir Hakodesh V'hamikdash—A work about issues pertaining to Jerusalem authored by Rav Yechiel Michel Tukachinsky, Rav in Jerusalem (1872–1955). See **Tukachinsky**, **Rav Yechiel Michel**.

The Journal of Halacha and Contemporary Society—A halachic journal published semi-annually by the Rabbi Jacob Joseph Yeshiva in Staten Island, NY.

Kaftor Vaferach—Discussion of laws pertaining to *Eretz Yisrael* written by Rabbeinu Ashtori Haparchi, who traveled from Europe to Israel (thirteenth/fourteenth centuries).

Kafich, **Rav Yosef**—Leading Torah scholar of the Yemenite community in Israel and member of the Israeli Chief Rabbinate's *Beit Din Hagadol* (Supreme Rabbinical Court), he authored a comprehensive commentary on the Rambam and translated many medieval religious texts from Arabic into Hebrew, including *Moreh Nevuchim*, *Ha'emunot Vehadei'ot*, *Chovot Halevavot*, and the *Kuzari*. He also wrote *Halichot Teiman*, a thorough description of Jewish communal and religious life in Yemen (1917–2000).

Kaminetsky, **Rav Yaakov**—Rosh Yeshiva of Torah Vodaath (d. 1986).

Kanievsky, **Rav Chaim**—Rav in Bnei Brak, Israel, and son of Rav Yaakov Kanievsky (author of *Kehilot Yaakov*).

Karelitz, **Rav Nissim**—Rosh Kollel Chazon Ish in Bnei Brak, Israel, and nephew of the *Chazon Ish*.

Karo, **Rav Yosef**—Great halachic authority who lived in Safed (1488–1575) and authored *Shulchan Aruch*, *Kesef Mishneh*, *Beit Yosef*, and responsa.

Katz, **Rav Yirmiyah**—Rav in Brooklyn, NY, known for his expertise in the laws of *mikva'ot*; authored *Mikveh Mayim*.

Kedushat Hashabbat—Discussion of the status of electricity in Halachah on *Shabbat* and holidays by Rav Moshe Harari. See **Mikra'ei Kodesh**.

Kehilot Yaakov—Insights to the Talmud by the Steipler Rav, Rav Yaakov Kanievsky, Rav in Bnei Brak, Israel, and brother-in-law of the *Chazon Ish* (1899–1985).

Kiryat Sefer—Commentary of the Mabit on the Rambam's *Mishneh Torah* to explain whether laws cited by the Rambam are Biblical or rabbinical. See **Mabit**.

Kitover, **Rav Gershon**—Brother-in-law of the Baal Shem Tov (d. ca. 1760).

K'lavi Shachein—Collection of essays in memory of Gad Ezra, an Israeli soldier who died attempting to rescue a wounded soldier in Jenin during Operation Defensive Wall (2002).

Klei Chemdah—Commentary on the Torah by Rav Meir Dan Plotzki, Rav in Poland (ca. 1867–1928).

Kol Zvi—Torah journal of Yeshiva University's *Kollel Elyon*.

Kook, Rav Avraham Yitzchak Hakohen—Ashkenazic Chief Rabbi in Israel from 1921 through 1935 and the author of numerous halachic and philosophical works, including *Teshuvot Orach Mishpat*.

Kook, **Rav Tzvi Yehuda**—Son of Rav Avraham Yitzchak Hakohen Kook who served as Rosh Yeshivat Merkaz Harav (d. 1982).

Korban Netaneil—Commentary on the Rosh by Rav Netaneil Weil (1687–1769).

Kovetz Teshuvot—Collection of Rav Yosef Shalom Eliashiv's letters and essays. See Eliashiv**,** Rav Yosef Shalom.

K'tav Sofer—Responsa of Rav of Pressburg, Hungary, who succeeded his father, Rav Moshe Sofer (author of *Chatam Sofer*).

Kumu V'Naaleh—Collection of essays about the contemporary status of the Temple Mount, printed by the Zomet Institute in Alon Shevut, Israel (Rav Yisrael Rozen and Rav Yehudah Shaviv, eds.).

Landa, **Rav Yaakov**—Rav in Bnei Brak, Israel, in the mid-twentieth century.

Landesman, **Rav Leib**—*Dayan* on the Kollel Harabbonim *beit din* in Monsey, NY.

Leaves of Faith—Collection of essays by Rav Aharon Lichtenstein. See **Lichtenstein**, **Rav Aharon**.

Lechem Mishneh—Commentary on Rambam's *Mishneh Torah* by Rav Avraham Boton, Rav in sixteenth century Salonika.

Lechem Vesimlah—Commentary on the laws of *nidah* and *mikva'ot* from the *Shulchan Aruch*, by Rav Shlomo Ganzfried (1804–1886), author of the *Kitzur Shulchan Aruch*.

Leiter, **Rav Israel**—Rav in pre-war Galicia and Poland who served as a Rav in Brooklyn, New York, after the war (1910-2003).

Lev Aryeh—Responsa of Rav Aryeh Grossnass, late *dayan* of the London Beth Din (twentieth century).

Lev Avraham—Discussion of medical *halachot* by Dr. Avraham S. Avraham. See **Nishmat Avraham**.

Levin, **Rav Faitel**—Rav in Melbourne, Australia.

Levush—Halachic code written by Rav Mordechai Jaffe, a student of the Rama.

Levy, **Rav Shlomo**—Rosh Kollel of Yeshivat Har Etzion in Alon Shevut, Israel.

Lichtenstein, **Rav Aharon**—Rosh Yeshivat Har Etzion in Alon Shevut, Israel, and son-in-law of Rav Yosef Dov Soloveitchik. He has written several books and essays, including *Leaves of Faith*.

Lichter, **Reb Elya**—Noted *sofer* (scribe) for *gittin* who resides in the Williamsburg section of Brooklyn, NY.

Liebes, **Rav Yitzchak Isaac**—Late Av Beit Din of the Iggud Harabanim of America and author of *Teshuvot Beit Avi* (d. 1999).

Lior, **Rav Dov**—Rav of Kiryat Arba and Rosh Yeshiva of Yeshivat Kiryat Arba, Israel.

Livyat Chein—Rav Ovadia Yosef's comments on the *Mishnah Berurah*'s laws of *Shabbat*. *See* **Yosef, Rav Ovadia**.

Maaseh Chosheiv—Responsa of Rav Levi Yitzchak Hailperin. See **Hailperin**, **Rav Levi Yitzchak**

Mabit—Rav Moshe ben Yosef Trani, younger contemporary of Rav Yosef Karo in sixteenth-century Safed, Israel.

Machanayim—Torah journal of the Israel Defense Forces Chief Rabbinate.

Magen Avraham—Commentary to the *Orach Chaim* section of the *Shulchan Aruch*, authored by Rav Avraham Gombiner (ca. 1634–1682).

Maggid Mishneh—Commentary to the Rambam's *Mishneh Torah* by Rav Vidal of Tolosa (fourteenth-century Spain).

Maharam Lublin—Acronym for Moreinu Harav Meir of Lublin, a Polish authority who wrote responsa and a commentary on the Gemara (1558–1616).

Maharam of Rothenburg—Rabbeinu Meir ben Baruch Halevy of Rothenburg, who authored numerous responsa. The Mordechai and the Rosh are his disciples (1320–1390).

Maharil—Rav Yaakov ben Moshe, German Rav in the late fourteenth and early fifteenth centuries.

Maharit—Acronym for Moreinu Harav Yosef of Trani, son of the Mabit, Rav in early seventeenth-century Safed, Israel.

Maharsha—Acronym for Moreinu Harav Shmuel Eidels. He authored a commentary to the Talmud and the commentaries of Rashi and Tosafot to the Talmud (ca. 1555–1632).

Maharshag—Acronym for Moreinu Harav Shimon Grunfeld, author of many responsa and Rav of Munkacz and Smahali in pre-World War II Europe (1881–1930).

Maharsham—Acronym for Moreinu Harav Shlomo Mordechai Schwadron, author of responsa, who served as Rav in Berzan, Galicia (1835–1911).

Mar'eh Kohein—Discussion of the laws of *nidah* by Rav Yitzchak Mordechai Rubin, Rav in the Har Nof neighborhood of Jerusalem.

Mas'at Binyamin—Responsa of Rav Binyamin Solnik, student of the Rama and Maharshal (d. ca. 1620).

Mayim Chaim—Responsa of Rav Chaim David Halevi. See **Halevi**, **Rav Chaim David**.

Mechilta—Midrash that derives many details of the Oral Law from verses in *Shemot*.

Meiri—Commentary to the Talmud by Rabbeinu Menachem Hameiri (ca. 1249—ca. 1306), mostly entitled *Beit Habechirah*.

Meishiv Davar—Responsa of the Netziv. See **Berlin**, **Rav Naftali Tzvi Yehudah**.

Meishiv Milchamah—See **Goren**, **Rav Shlomo**.

Melamed Leho'il—Responsa of Rav David Tzvi Hoffman, a halachic authority who headed the Orthodox Rabbinical Seminary of Berlin and wrote a Bible commentary to refute Bible critics (1843–1921).

Me'orei Eish—Discussion of the status of electricity in Halachah by Rav Shlomo Zalman Auerbach. See **Auerbach**, **Rav Shlomo Zalman**.

Mesilat Yesharim—Classic work of the Ramchal (Rav Moshe Chaim Luzzato**—b. 1707, Padua, Italy; d. 1746, Acco, Israel) designed to help people improve their character traits.**

Mesorah—Torah journal of the Orthodox Union's *kashrut* division.

Mikdash Melech—Discussion of the laws of sacrifices, especially the issue of beginning to offer sacrifices once again, by Rav Tzvi Pesach Frank. See **Frank**, **Rav Tzvi Pesach**

Mikra'ei Kodesh—Discussion of the laws of festivals by Rav Tzvi Pesach Frank. See **Frank**, **Rav Tzvi Pesach**.

Mikra'ei Kodesh—Discussion of the laws of festivals by Rav Moshe Harari, Yeshivat Merkaz Harav, Jerusalem, including many rulings that Rav Harari heard from contemporary Israeli authorities.

Mikveh Mayim—Comprehensive study of the laws of *mikva'ot* (ritual baths) by Rav Yirmiyah Katz. See **Katz**, **Rav Yirmiyah**.

Minchat Chein—Sefarim authored by Rav Noach Oelbaum, Rav in Queens, NY.

Minchat Chinuch—Commentary on the *Sefer Hachinuch* authored by Rav Yosef Babad, who served as Rav of Tarnipol in the Ukraine (1800–1875).

Minchat Elazar—Responsa of Rav Chaim Zev Elazar Shapiro, Chassidic Rebbe of Munkacz.

Minchat Shlomo—Responsa of Rav Shlomo Zalman Auerbach. See Auerbach**,** Rav Shlomo Zalman.

Minchat Shmuel—Essays on contemporary halachic topics by Rav Shmuel Khoshkerman, Sephardic Rav in Atlanta, GA.

Minchat Yitzchak—Responsa of Rav Yitzchak Yaakov Weisz, *dayan* of the Eidah Chareidit of Jerusalem (d. 1989).

Mishkan Shiloh—Collection of essays by Rav Shilo Raphael, *dayan* on the Jerusalem Rabbinical Court (d. 1994).

Mishkenot Yaakov—Responsa of Rav Yaakov of Karlin (d. 1845).

Mishnah Berurah—Commentary to the *Orach Chaim* section of the *Shulchan Aruch* authored by Rav Yisrael Meir Hakohen Kagan, who lived in Radin, Poland (1838–1933). He is commonly known as the *Chafetz Chaim*, the title of his work on the laws of slander, and also wrote the *Biur Halachah*, *Shaar Hatziyun*, and *Ahavat Chessed*.

Mishnat Hasar—Collection of essays by Rav Lord Yisrael (Immanuel) Jakobovits, former Chief Rabbi of the United Kingdom (1921–1999).

Mishpetei Uzziel—Responsa of Rav Ben-Zion Uzziel, Israel's Sephardic Chief Rabbi from 1939 to 1953. He lived from 1880 to 1953.

Mitzvat Ner Ish Uveito—Discussion of *Chanukah* in Halachah and Aggadah by Rav Eliyahu Shlezinger, Rav of the Gilo neighborhood of Jerusalem and member of the Jerusalem Rabbinical Court.

Mo'adim Uzmanim—A collection of essays on the Jewish holidays by Rav Moshe Shternbuch, *dayan* on the Eidah Chareidit's *Badatz* (rabbinical court) and author of *Teshuvot Vehanhagot*.

Mohilewer, **Rav Shmuel**—Rav of Bialystok and author of responsa, *Teshuvot Maharash Mohilewe*r (1824–1898).

Mordechai—Halachic compendium on most tractates of the Talmud authored by Rav Mordechai ben Hillel (ca. 1240–1298).

Nefesh Harav—Rav Hershel Schachter's collection of Rav Yosef Dov Soloveitchik's insights and personal halachic practices. See **Soloveitchik, Rav Yosef Dov** and **Schachter**, **Rav Hershel**.

Netivot Hamishpat—Commentary on the *Choshen Mishpat* section of *Shulchan Aruch* by Rav Yaakov of Lissa. He also wrote the *Torat Gittin* on the laws of Jewish divorce and the *Mekor Chaim* on the laws of *Pesach* (d. 1832).

Netziv—See **Berlin**, **Rav Naftali Tzvi Yehudah**.

Neuwirth, **Rav Yehoshua**—Halachic authority who resides in Jerusalem; author of *Shemirat Shabbat Kehilchatah*.

Nishmat Avraham—Discussion of *halachot* pertaining to medicine by Dr. Avraham S. Avraham, a physician who resides in Jerusalem, Israel.

Nitei Gavriel—Digest of the laws of festivals and several other halachic topics by Rav Gavriel Zinner, Rav in Brooklyn, NY.

Noam—Halachah journal edited by Rav Menachem Kasher in the mid-twentieth century.

Noda Biy'hudah—Responsa of Rav Yechezkel Landau, who served as Rav of Prague (1713–1793).

Orach Chaim—The section of the *Shulchan Aruch* that deals with the laws of daily living.

Orach Mishpat—Responsa of Rav Avraham Yitzchak Hakohen Kook. See **Kook**, **Rav Avraham Yitzchak Hakohen**.

Orchot Chaim—Halachic work that gathers opinions of various *Rishonim* by Rav Aharon of Lunel (late thirteenth and early fourteenth century Provence).

Orchot Chaim—Summary of the responsa literature on the *Orach Chaim* section of *Shulchan Aruch* by Rav Nachman Kahane of Spinka (early twentieth century).

Otzar Haposkim—An encyclopedic compilation of responsa literature on the *Even Ha'ezer* section of *Shulchan Aruch* published in Jerusalem.

Pam, **Rav Avraham**—Rosh Yeshivat Torah Vodaath, Brooklyn, NY (d. 2001).

Pe'at Hashulchan—Discussion of laws pertaining to the Land of Israel by Rav Yisrael of Shklov, a student of the Vilna Gaon who immigrated to Israel and resided primarily in Safed (ca. 1770–1839).

Pe'er Hador—Collection of stories about the *Chazon Ish*. See **Chazon Ish**.

Piskei Din Batei Din Harabaniyim—Records of rulings issued by the *batei din* of the Israeli Rabbinate.

Pitchei Choshen—An authoritative discussion of business laws by Rav Yaakov Blau of Jerusalem.

Pitchei Teshuvah—Commentary on the *Orach Chaim* section of *Shulchan Aruch* printed in 1874 by Rav Yisrael Isserlin, Rav in Vilna.

Pitchei Teshuvah—Summary of the responsa literature from the seventeenth century to the early nineteenth century presented as a commentary to the *Shulchan Aruch*. It was written by Rav Tzvi Hirsh Eisenstadt, Rav of Utian, Russia (1812–1868).

Pnei Yehoshua—Insights to the Gemara and Responsa by Rav Yaakov Yehoshua Falk, Rav in Lvov, Poland, and Frankfurt, Germany (1680–1756).

The Practical Torah—Essays on halachic topics, organized according to the weekly Torah readings, by Rav Michael Taubes, *Menahel* of the Mesivta of North Jersey and Rav of Kehillas Tzemach Dovid in Teaneck, NJ.

Pri Megadim—Commentary on the *Shulchan Aruch* by Rav Yosef Te'omim, Rav of Frankfurt (1727–1792).

Raavad—Acronym for Rabbeinu Avraham ben David of Posquieres, France, who wrote many works, including critical comments to Rambam's *Mishneh Torah* (ca. 1120–ca. 1197).

Raavyah—Acronyom for Rav Eliezer ben Yoel Halevi, Ashkenazic *Rishon* of the early thirteenth century. He wrote *Aviasaf*.

Rabbeinu Chananeil—Eleventh-century author of a commentary to the Talmud and Rav in Kairouan (Tunisia).

Rabbeinu Tam—Rabbeinu Yaakov ben Meir, Rashi's grandson, who lived in France and was the most prominent of the Tosafists (1100–1171).

Radak—Acronym for Rabbeinu David Kimchi, author of a Bible commentary (1160–1235).

Radbaz—Acronym for Rabbeinu David ben Zimra, who authored numerous responsa and a commentary on parts of the Rambam's *Mishneh Torah* and served as Chief Rabbi of Egypt (ca. 1480–1573).

Rakover, **Nachum**—Former Deputy Attorney General of Israel, who has written extensively about the relationship between Halachah and secular law.

Rama—Acronym for Rav Moshe Isserles. He authored glosses to the *Shulchan Aruch*, most of which are considered authoritative by Ashkenazic Jewry. He served as Rav in Cracow, Poland and wrote other works such as the *Darchei Moshe* commentary to the *Tur* and responsa.

Rambam—Acronym for Rabbeinu Moshe ben Maimon, also known as Maimonides. He authored a halachic code called the *Mishneh Torah*, a commentary to the Mishnah (*Peirush Hamishnayot*), and a philosophical work, *Moreh Nevuchim* (Guide of the Perplexed). He was born and raised in Spain and later moved to Egypt (ca. 1135–1204).

Ramban—Acronym for Rabbeinu Moshe ben Nachman, also known as Nachmanides. He authored major commentaries to the Torah and Talmud. He lived in Spain and Israel (1194–1270).

Ran—Acronym for Rabbeinu Nissim, who authored a commentary to the Talmud (ca. 1290–1375).

Raphael, **Rav Shilo**—Late *dayan* on the Jerusalem *beit din* (d. 1994).

Rashba—Acronym for Rabbeinu Shlomo ben Avraham Aderet, who served as Rav of Barcelona, Spain, and authored a commentary to the Talmud, numerous responsa and *Torat Habayit* (1235–1310).

Rashbam—Acronym for Rabbeinu Shlomo ben Meir. He authored a commentary to the Torah and certain tractates of the Talmud. He was the grandson of Rashi and the older brother of Rabbeinu Tam and lived in France (ca. 1085–1174).

Rashi—Acronym for Rabbeinu Shlomo Yitzchaki, author of the premier commentaries to the Bible and the Talmud, who lived in Troyes, France (1040–1105).

Rav Pe'alim—Responsa of Rav Yosef Chaim of nineteenth-century Baghdad. He also wrote *Ben Ish Chai*.

Reflections of the Rav—Rav Abraham Besdin's compilation of lectures by Rav Yosef Dov Soloveitchik. See **Soloveitchik**, **Rav Yosef Dov**.

Reiss, **Rav Yonah**—Director of the Beth Din of America, a *beit din* affiliated with the Rabbinical Council of America and the Orthodox Union.

Ri—Acronym for Rabbeinu Yitzchak, twelfth-century Tosafist and nephew of Rabbeinu Tam.

Rif—Acronym for Rabbeinu Yitzchak al-Fasi of Fez, Morocco, who wrote an abridged version of the Talmud that elucidates the Talmud and issues rulings regarding matters disputed in the Talmud (1013–1103).

Rishonim—Great rabbinical authorities of the eleventh century to the fifteenth century.

Ritva—Acronym for Rabbeinu Yom Tov ben Avraham ibn Asevilli who wrote a commentary to the Talmud and lived in Spain during the fourteenth century.

Rivash—Acronym for Rabbeinu Yitzchak ben Sheishet who authored many responsa. He was born in Barcelona in 1326 and died in Algiers in 1408.

Rosh—Acronym for Rabbeinu Asher ben Yechiel, who lived in Germany and Spain. He wrote a halachic commentary to the Talmud and responsa and edited an edition of *Tosafot* known as *Tosafot Harosh* (ca. 1250–1327).

Rozen, **Rav Yisrael**—Director of the Zomet Institute (which deals with issues of Torah and science and operating the State of Israel according to Halachah) in Alon Shevut, Israel, and an editor of *Techumin*.

Salant, **Rav Shmuel**—Rav of Jerusalem, Israel (1816–1909).

Sam Chayei—Responsa (printed in 1746) of Rav Chaim Asael, who was born 1650 in Salonika; moved in 1690 to Jerusalem; became emissary to Turkey in 1704; and died in Smyrna ca. 1707.

Schachter, **Rav Hershel**—Rosh Kollel of Yeshiva University and author of *B'ikvei Hatzon*, *Eretz Hatzvi*, and *Nefesh Harav*.

Schneersohn, **Rav Shalom Baer**—The Lubavitcher Rebbe from 1866–1920, known to Chassidim as "The Rebbe Rashab."

Schwartz, **Rav Gedalia**—Av Beit Din of the Beth Din of America (the *beit din* of the Orthodox Union and the Rabbinical Council of America).

Seder Hadin—Discussion of the workings of Israeli rabbinical courts by Professor Eliav Shochetman Dean of Sha'arei Mishpat College (Law School) and Professor Emeritus of Jewish Law at Hebrew University, Jerusalem.

Sefer Hachinuch—Enumeration and discussion of the 613 *mitzvot* written in the thirteenth century by an unknown author (attributed by some to the Ra'ah, Rabbeinu Aharon Halevi).

Sefer Hayashar—Responsa and insights to the Gemara of Rabbeinu Tam. See Rabbeinu Tam.

Sefer Hayovel Larav Yosef Dov Halevi Soloveitchik—A collection of articles written in honor of Rav Yosef Dov Soloveitchik. See **Soloveitchik, Rav Yosef Dov**.

Seforno—Commentary to the Torah authored by Rav Ovadia Seforno of Italy (1470–1550).

Sema—Acronym for *Sefer Me'irat Einayim*, commentary of the *Choshen Mishpat* section of *Shulchan Aruch* by Rav Yehoshua Falk (Poland, 1555–1614).

Semag—Acronym for the *Sefer Mitzvot Gadol*, written by Rav Moshe ben Yaakov of Coucy, France, in the thirteenth century.

Semak—Acronym for the *Sefer Mitzvot Katan*, written by Rav Yitzchak ben Yosef of Corbeil, France (d. 1280).

Senderovic, Rav Mendel—Av Beit Din and Rosh Kollel in Milwaukee, WI.

Seridei Eish—Responsa of Rav Yechiel Yaakov Weinberg, Rav in Montreux, Switzerland after World War II (1885–1966).

Shaagat Aryeh—Responsa of Rav Aryeh Leib Gunzberg (1695–1785). Born in Lithuania, he served as a Rav in Minsk, Volozhin, and Metz. He also authored *Turei Even* and *Gevurot Ari* on the Talmud.

Shaar Hatziyun—Footnotes to the **Mishnah Berurah**.

Shaarei Deah—Responsa of Rav Chaim Yehudah Leib, Rav in Brody (nineteenth century).

Shaarei Ezra—Responsa of Rav Ezra Basri, Sephardic *dayan* in Jerusalem, Israel.

Shaarei Tzedek—Collection of essays on topics of Jewish monetary law, based on presentations from an annual conference (edited by Rav Ratzon Arusi).

Shach—Acronym for *Siftei Kohen*, the premier commentary to the *Yoreh Deah* and *Choshen Mishpat* sections of the *Shulchan Aruch*, authored by Rav Shabtai Hakohen of Vilna, Lithuania (1622–1663).

Shafran, **Rav Yigal**—Head of the Israeli Chief Rabbinate's medical ethics department, who has written and lectured extensively about medical ethics.

Shapira, **Rav Avraham**—Rosh Yeshiva of Yeshivat Merkaz Harav, who served as Israel's Ashkenazic Chief Rabbi from 1983 to 1992, and resides in Jerusalem.

Sh'eilat David—Responsa of Rav David Friedman (1828–1915) of Karlin.

Sh'eilat Yaavetz—Responsa of Rav Yaakov Emden, who lived in Emden (western Germany)(1697–1776). He published responsa and other halachic works.

Sheivet Halevi—Responsa of Rav Shmuel Wosner, *dayan* in the Zichron Meir neighborhood of Bnei Brak and Rosh Yeshivat Chachmei Lublin. His students summarized his lectures on the laws of *nidah* and printed them under the title *Shiurei Sheivet Halevi*.

Sheivet Miy'hudah—Responsa of Rav Isser Yehudah Unterman, former Ashkenazic Chief Rabbi of Israel (1886–1976).

Shemesh Umagein—Responsa of Rav Shalom Messas, longtime Sephardic Chief Rabbi of Jerusalem (d. 2003).

Shemirat Shabbat Kehilchatah—A presentation of the laws of *Shabbat* by Rav Yehoshua Neuwirth, who resides in Jerusalem.

Sherman, **Rav Avraham**—Member of the *Beit Din Hagadol* of the Israeli Chief Rabbinate, who resides in Bnei Brak.

Shevut Yaakov—Responsa of Rav Yaakov Reisher, Rav of Prague, Worms and Metz (ca. 1670–1733).

Shibolei Haleket—Halachic work by Rabbeinu Tzidkiyahu Harofeh (Italy, thirteenth century).

Shiur Mikvah—Discussion of the relevant halachic measurements for creating a *mikvah* by Rav Avraham Chaim Na'eh, who served as a Rav in Jerusalem during the twentieth century.

Shiurei Sheivet Halevi—See **Sheivet Halevi**.

Shochetman, **Professor Eliav**—Dean of Sha'arei Mishpat College (Law School) and Professor Emeritus of Jewish Law at Hebrew University, Jerusalem.

Sho'eIl Umeishiv—Responsa of Rav Yosef Shaul Nathanson, who served as Rav of Lemberg, Ukraine (1810–1875).

Shteif, Rav Yonatan—Rav in Budapest, Hungary, and Brooklyn, NY (1877–1959).

Shulchan Aruch—The authoritative halachic work authored by Rav Yosef Karo of Safed (1488–1575), who also authored *Kesef Mishneh* and *Beit Yosef*.

***Shulchan Aruch* Harav**—Halachic work written by Rav Shneur Zalman of Liadi (1745–1813).

Sidrei Taharah—Discussion of the laws of *nidah* by Rav Elchanan Ashkenazi (late eighteenth century).

Singer, **Rav Yosef**—Rav on the Lower East Side of Manhattan, who served as Rav in Pilzno, Galicia before World War II.

Soloveichik, **Rav Ahron**—Son of Rav Moshe Soloveitchik who served as a Rosh Yeshiva at Yeshiva University and at Yeshivas Brisk in Chicago (1917–2001).

Soloveitchik, **Rav Chaim**—Succeeded his father (the *Beit Halevi*) as the Rav of Brisk and authored commentaries to Rambam's *Mishneh Torah* and parts of the Talmud (1853–1918).

Soloveitchik, **Rav Moshe**—Son of Rav Chaim who served as a Rosh Yeshiva at Yeshiva University (1876–1941).

Soloveitchik, **Rav Yitzchak Zev**—Succeeded his father (Rav Chaim) as Rav of Brisk, moved to Jerusalem in 1941, and authored a commentary to Rambam's *Mishneh Torah* (1886–1959).

Soloveitchik, **Rav Yosef Dov**—Great-grandson of the *Beit Halevi* and son of Rav Moshe who was a Rav in Boston, MA, and the Rosh Yeshiva of Yeshiva University (1903–1993). His students refer to him as "the Rav."

SOY Guide to Kashrut—A collection of essays pertaining to the laws of *kashrut*, published in 1981 by Yeshiva University's Student Organization of Yeshiva.

Steinberg, , Dr. Avraham—Senior Pediatric Neurologist in the Department of Pediatrics at Shaare Zedek Medical Center (in Jerusalem), Clinical Associate Professor in Medical Ethics at The Hebrew University**—**Hadassah Medical School, and author of the *Encyclopedia of Jewish Medical Ethics* and many articles about medical ethics. Dr. Steinberg received the Israel Prize for Torah and Talmudic Literature in 1999.

Taharat Habayit—Rav Ovadia Yosef's two-volume work on *Hilchot Nidah*. It includes an abridged version entitled *Taharat Habayit Hakatzar*. See **Yabia Omer**.

Taharat Hamayim—Discussion of *hilchot mikva'ot* by Rav Nissen Telushkin, a major mid-twentieth century authority regarding *hilchot mikva'ot*. He resided in Brooklyn, NY, and played a major role in the building and maintaining of *mikva'ot* in the United States.

Taharat Yisrael—a brief summary of the laws of family purity by Rav Yechiel Michel Tukachinsky. See **Tukachinsky**, **Rav Yechiel Michel**.

Takanot Hadiyun—The Israeli Chief Rabbinate's guidelines for the conduct of *batei din*. We cite from their 1993 edition.

Tashbetz—Responsa of Rav Shimon bar Tzemach Duran, a late Sephardic *Rishon* who served as a *dayan* in Algeria (1361–1444).

Taz—Acronym for the *Turei Zahav*, a major commentary to the *Shulchan Aruch* authored by Rav David Haleivi of Poland (1586–1667).

Techukah Leyisrael Al Pi Hatorah—Discussion of laws pertaining to the State of Israel by Rav Yitzchak Herzog. See **Heichal Yitzchak**.

Techumin—A halachic compendium published annually by the Zomet Institute in Alon Shevut, Israel.

Teitz, **Rav Elazar Meyer**—Rav of Elizabeth, New Jersey and head of its *beit din*; son of Rav Pinchas.

Teitz, **Rav Pinchas**—Rav of Elizabeth, New Jersey (1908–1995).

Tendler, **Rav Dr. Moshe David**—Rosh Yeshiva and Professor of Biology at Yeshiva University; son-in-law of Rav Moshe Feinstein.

Terumat Hadeshen—Responsa of Rav Yisrael Isserlein of Germany (1390–1460).

Teshuvot Vehanhagot—Responsa of Rav Moshe Shternbuch, member of the Eidah Chareidit's *Badatz* (rabbinical court), who also wrote *Mo'adim Uzmanim* who resides in Jerusalem.

Torah Sheb'al Peh—Journal of Talmudic and halachic topics, printed by Mossad Harav Kook.

Torah Temimah—Commentary on Talmudic and other Midrashic interpretations of verses in the Torah and *Megillot* by Rav Baruch Epstein, son of Rav Yechiel Michel Epstein (author of the *Aruch Hashulchan*).

The Torah U-Madda Journal—A publication of Yeshiva University.

Torat Habayit—Code of laws of *nidah*, *mikva'ot*, and *kashrut* by the Rashba. See **Rashba**.

Torat Hamedinah—Collection of Rav Shlomo Goren's essays about the State of Israel. See **Goren**, **Rav Shlomo**.

Torat Hashabbat Vehamo'eid—Collection of Rav Shlomo Goren's essays about *Shabbat* and the festivals. See **Goren, Rav Shlomo**.

Tosafot—Talmudic commentaries of the Tosafists, Talmudic scholars in France and Germany in the twelfth and thirteenth centuries.

Tradition—A journal of Orthodox thought published by the Rabbinical Council of America.

Tukachinsky, **Rav Yechiel Michel**—Rav in Jerusalem who authored the *Gesher Hachaim*, *Eretz Yisrael* and *Ir Hakodesh V'hamikdash* (1872–1955).

Tur—A code of Halachah which served as the prototype of the *Shulchan Aruch*. It was authored by Rabbeinu Yaakov *Baal Haturim*, son of the Rosh (ca. 1275–ca. 1340). He also wrote a commentary to the Torah.

Tzitz Eliezer—Responsa authored by Rav Eliezer Waldenberg. See **Waldenberg**, **Rav Eliezer**.

Waldenberg, **Rav Eliezer**—Member of the *Beit Din Hagadol* of the Israeli Chief Rabbinate who resides in Jerusalem. He authored responsa (*Tzitz Eliezer*) and *Hilchot Medinah*.

Warhaftig, **Rav Itamar**—Senior lecturer in Jewish law at Bar Ilan University, who serves as an editor of *Techumin* and who has written extensively about contemporary halachic issues.

Weiss, **Rav Asher**—Rav of the Ramot neighborhood of Jerusalem and author of *Minchat Asher*.

Weiss, Rav Yosef—Rosh Yeshiva at Yeshiva University, New York, NY.

Weitzman, **Rav Gidon**—Head of the English Department of Machon Puah, a Jerusalem institute for issues of fertility and Halachah.

Willig, **Rav Mordechai**—Rosh Yeshiva at Yeshiva University and Rav of the Young Israel of Riverdale, NY.

Wosner, **Rav Shmuel**—See **Sheivet Halevi.**

Yabia Omer—Responsa authored by Rav Ovadia Yosef, Sephardic halachic authority in Jerusalem and former Sephardic Chief Rabbi of Israel. He has also written *Teshuvot Yechaveh Daat*, *Taharat Habayit*, *Halichot Olam*, *Livyat Chein*, and countless other works.

Yad Ramah—Talmudic commentary of Rabbeinu Meir Halevi.

Yalkut Yosef—Expansive halachic code written by Rav Yitzchak Yosef, Rosh Kollel of Chazon Ovadia and son of Rav Ovadia Yosef.

Yam Shel Shlomo—A commentary to the Talmud by the Maharshal, acronym for Moreinu Harav Shlomo Luria, who also authored responsa.

Yaskil Avdi—Responsa of Rav Ovadia Hadayah, Sephardic halachic authority and member of the Israeli Chief Rabbinate's Supreme Rabbinical Court (1890–1969).

Yechaveh Daat—Collection of brief responsa authored by Rav Ovadia Yosef. See Yabia Omer.

Yerushalmi—The Jerusalem Talmud, redacted in northern Israel sometime between 350 and 410.

Yeshu'ot Yaakov—Commentary to *Shulchan Aruch* by Rav Yaakov Ornstein, Rav in Lemberg (d. 1839).

Yeshurun—Torah journal printed in New York starting in 1996.

Yesodei Yeshurun—Discussion of laws of *Shabbat* and *Yom Tov* by Rav Gedalia Felder who resided in Toronto, Canada (d. 1992).

Yisraeli, **Rav Shaul**—Rosh Yeshivat Merkaz Harav, Rosh Kollel of Eretz Chemdah, and member of the Israeli Chief Rabbinate's *Beit Din Hagadol*; author of *Eretz Chemdah*, *Chavat Binyamin*, and other works (d. 1995).

Yoreh Deah—One of the four sections of the *Shulchan Aruch*, which discusses the laws of kashrut, family purity, mourning, and other laws.

Yosef, **Rav Ovadia**—see **Yabia Omer**.

Zekan Aharon—Responsa of Rav Aharon Walkin, Lithuanian Rav who was murdered in the Holocaust (1865–1942).

Zichron Yehudah—Responsa of Rabbeinu Yehudah, son of the Rosh. He was born in Germany in 1270, died in Spain in 1349, and headed the *beit din* in Toledo.

Appendix

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July 26, 2001
6 Av, 5761

Dear President Bush:

We write to you on behalf of this nation's largest Orthodox Jewish synagogue umbrella organization and Orthodox Jewish rabbinical organization with regard to a serious matter you are currently considering—whether to permit federal funds to support embryonic stem cell research. On the basis of consultations with leading rabbinic authorities in our community as well as with scientists sensitive to traditional Jewish values, we write to express our support for federal funding for embryonic stem cell research to be conducted under carefully crafted and well-monitored guidelines.

As you no doubt appreciate, the decision you face is one with complex moral dimensions. On the one hand scientific research indicates that there is great life-saving potential in embryonic stem cell research, potential that warrants federal support. On the other hand, we must be vigilant against any erosion of the value that American society affords to human life, including potential human life.

Our Torah tradition places great value upon human life; we are taught in the opening chapters of Genesis that each human was created in G-d's very image. The potential to save and heal human lives is an integral part of valuing human life from the traditional Jewish

perspective. Moreover, our rabbinic authorities inform us that an isolated fertilized egg does not enjoy the full status of person-hood and its attendant protections. Thus, if embryonic stem cell research can help us preserve and heal humans with greater success, and does not require or encourage the destruction of life in the process, it ought to be pursued.

Nevertheless, we must emphasize, that research on embryonic stem cells must be conducted under careful guidelines. Critical elements of these guidelines, from our perspective, relate to where the embryonic stem cells to be researched upon are taken from. We believe it is entirely appropriate to utilize for this research existing embryos, such as those created for IVF purposes that would otherwise be discarded but for this research. We think it another matter to create embryos *ab initio* for the sole purpose of conducting this form of research.

Because of the ethical concerns presented by embryonic stem cell research and the reports of potentially garnering similar benefits from research on adult stem cells, we would urge you to simultaneously increase funding for adult stem cell research.

Other elements of an ethically sensitive oversight regime would include a rigorous informed consent process from future IVF procedure participants, a fully funded and empowered oversight body comprised of scientists and bio-ethicists, and periodic reviews by relevant Executive branch agencies and congressional committees.

We hope these views are useful to you in your deliberations over this critical issue of public policy. We wish you the paramount blessing for political leaders that the Jewish tradition offers—wisdom.

Sincerely,

Harvey Blitz
President, UOJCA

Rabbi Herschel Billet
President, RCA

Nathan Diament
Director of Public Policy, UOJCA

Rabbi Steven Dworken
Exec. Vice President, RCA

הרב הערשל שכטר
ראש ישיבה וראש כולל
ישיבת רבינו יצחק אלחנן

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יפה עשה ידידי הרב חיים שיחי' להדפיס בחנגלית בירורי הלכות בחופן נכון ומוסבר היטב. הרבה בזמננו נמחים לשמוע את דבר ד', ואין ביכלתם לחפש בעצמם בספרים. והר"ר חיים סילר הכל כשלחן הערוך לפני הקורחים, וזכות ת"ת דרבים תעמוד לו שימשיך לרווות רוב נחת דקדושה מכל בניו ומריבוי תלמידיו.

בכבוד,

הערשל שכטר

ד' לסי' בת, ג' שבט, תשס"ה

בס"ד

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בקיו גארדענס הילס, נ. י.

בס"ד

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דינים מתשובות גדולי הפוסקים עד גדולי זמנינו.

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הכו"ח לכבוד התורה ולומדי'.

נח אייזיק אהלבוים

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בס"ד

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מח"ס שו"ת רבבות אפרים ח"ח

Rabbi Ephraim Greenblatt
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הסכמה

תשרי תשס"ו.

הנה ידידי הרב ר' חיים גקטר שליט"א, שלח לי דפים מספרו שעומד להוציא לאור עולם,
בשם "ובאת לחופה", שנערך על ידי [illegible] ר' [illegible] שליט"א.
ומתפרש את הספר בלשון אנגלית, עבור הבני תורה שקשה להם להבין לשון הקודש,
והם צמאים לדבר ה' לדעת דיני התורה, ולכן ידידי המחבר שליט"א ומגיש להם
על שלחן ערוך שיוכלו מיד להבין, כי כתב בהסבר טוב, וכל מי שצמא לדבר ה' יוכל ללמוד מספרו.
והוא לוקט הלכות למעשה מגדולי פוסקי דורנו. ועשה מלאכה חשובה כמו שערכתי וראיתי,
הוא כתב ענינים הלכה למעשה שנוגע [illegible] שהספר יצא לאור בעזה"י,
ויתפשטו בדברי תורה. ואשרי שזכה לכך שתורה תתרבה בישראל, כי ישאלו שאלות ויקבלו תשובות,
וידידי המחבר יושב כל ימיו ועוסק בתורה ובן עמי להפיץ הלכות דין דבר ודין דעל פה,
[illegible] ובוא לספסל כדי שיקבלו וילמדו בספרו,
ולכן הנני מברכו [illegible] תורה [illegible] בתורה,
ויזכו [illegible] להפיץ ספרו, ולהוציא עוד ספרים לזכות הבני תורה,
[illegible] כי כך [illegible] הוא וגם לבנות [illegible] תורה, ומתק ואמת,
ובזה באתי על החתום [illegible] לכבוד המחבר שליט"א,
פה דמעמפיס טענעסי,
הכ"ד אפרים גרינבלאט
רב, ושו"ב, ומו"צ,
מחבר שאלות ותשובות
רבבות [illegible] חוט [illegible]
וכרכות [illegible] על התורה

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Hebrew Academy of Nassau County

RABBI SHLOMO WAHRMAN
ROSH HAYESHIVAH

ישיבה תיכונית
דנאסו קאונטי

ב"ה

יום ג' לסד' תרומה תשס"ה לפ"ק

לכבוד ידידי מע"כ הרה"ג הנכבד המהולל בתשבחות מוהר"ר חיים ג'קטר שליט"א

אחדשה"ט כיאות בתוה"ר,

הן הובאו לפני עלים הכתובים בלשון אנגלית מספרו הנפלא שבדעתו להדפיס ולהוציא לאור עולם. תפקידו באותו ספר להסביר לשכבות הנרחבות של המון עם – שקשה להם לעיין בספרי קודש שנכתבו בלשון הקודש – הרבה דינים ומנהגים נחוצים ולהראות מקור מחצבתם ומתוכן הדברים נראים, השתדל לענות לא רק על שאלות "מה" ו"מתי" אלא גם על שאלות כמו "איך" ו"מדוע".

הספר הוא באמת מלא וגדוש. ראיתי כי ידיו רב לו ללקוט שושנים וחידושי דינים. כל דבריו מסודרים בסידור נאה דבר דבור על אופניו בהסבר קל ובסגנון צח ושוטף. דבריו מלאים זיו ומפיקים נוגה. מובטחני שספר זה יביא תועלת רבה לכל העוסקים בענינים אלו.

אשרי מי שעמלו בתורה ואשרי חלקו אשר חבלים נפלו לו בנעימים לשעבד נפשו וגופו בשעבודא דאורייתא.

לכן אמינא לפעלא טבא איישר חילו. יהי נא ה' עמו שיוציא את חבורו לפועל ושיברך על המוגמר. יוסיף אומץ ועוז חיילים להגדיל תורה ולהאדירה. יפוצו מעינותיו חוצה ויתענגו עליהם שוחרי תושי'. יראו ישרים וישמחו.

כ"ד הכו"ח לכבוד התוה"ק ולומדי',

שלמה הלוי ווהרמן

הערות מהר״ר שלמה הלוי וואהרמאן שליט״א

בעמוד נ״ח של ספרו החשוב הביא מש״כ בברכ״י בשם בעל חסד לאברהם שכתב שנהגו העולם שלא לקרוע על חברון תובב״א. וכתב ששמע מפי גדולים לפי שחברון מערי מקלט שניתנו ולא מערי יהודה מיקריא. וכתב בגליון בר בריהי׳ הרב הגדול בדורו מוהר״ר אברהם יצחקי ז״ל שדברים חלושים הם. ומסיק הברכ״י שאין לסמוך על זה. ועי׳ בשע״ת בחו״ח בסי׳ תקס״ח עיי״ש.

והנראה בזה לומר דהנה במע״ש (פ״ה מע״ד) מיתת דגרים ועבדים משוחררים הוים מתודים שאין להם חלק בארץ. ר׳ מאיר אומר אף לא כהנים ולויים לא נטלו חלק בארץ. ר׳ יוסי אומר יש להם ערי מגרש. ושם בירושלמי (פ״ה ה״ה) מיתת לפי גירסת בית הגר״א תני למחלוקת ניתנו דברי ר׳ יוסי ור׳ מאיר אומר לבית דירה ניתנו. מתיב ר׳ יהודה בר׳ יוסי ור׳ מאיר כדעתי׳ דתניין מעלות היו שכר לגויים דברי ר׳ יהודה ר׳ מאיר אומר לא היו מעלות להם שכר. ועי׳ בפנ״מ שם מש״כ בזה.

ובבית פלוגתתם נראה דר׳ יוסי דס״ל למחלוקת ניתנו ס״ל דערי מקלט ניתנו לגויים להיות לחלקם ולאחוזתם ומתינה זו היתה בכלל חלוקת הארץ דהגויים קבלו חותן הערים בתורת חלוקה. ולפי״ז שפיר דס״ל דמתודים שהרי יש להם חלק בגוף הארץ ויכולים שפיר לומר את האדמה אשר נתת לנו. וכן ס״ל בר׳ יהודה דס״ל במכות (כג.) דהרוצחין היו מעלין שכר לגויים דהרי לדידי׳ גוף הקרקע הוא שלהן ממש. אולם ר״מ ס״ל דערי לויים לבית דירה ניתנו דלא ניתן לגויים אלא רשות לדור שם אבל גוף הקרקע לא נעשה שלהם שיהא חלקם ואחוזתם ולכן לדידי׳ אין יכולין להתודות דהרי אין להם חלק בגוף הארץ ולא היו מעלין

להם שכר להערים לו ויתנו להם חלק לבית דירה ואין להם בהערים חלק זכות השתמשות גרידא.

ועי׳ בברכות (כ:) למיבעי לי׳ נשים בברכת המזון לתורייתא או דרבנן ופירש״י לכתיב על הארץ הטובה אשר נתן לך והארץ לא ניתנה לנקבות להתחלק. והק׳ בתוס׳ לשם כדבריו כהנים ולויים נמי תבעי שלא נטלו חלק בארץ. ורלתי במעדני יו״ט שכתב דמכהנים ולויים ל״ק כלל שהרי היה להם מ״ח ערי מגרש. ועי׳ בהרש״ם בברכות שם שכתב שקו׳ התוס׳ היא אליבא דר״מ דס״ל בפ״ה דמע״ש דכהנים ולויים אינם יכולים להתודות מפני שלא נטלו חלק בארץ ולדידי׳ לא מהני הא דהיה להם ערי מגרש עיי״ש. ואולי תליא בדברינו דשם ערי מגרש למחלוקת ניתנו שוב שפיר לנדקו דברי רש״י דל״ל לנשים שנפקעו מדין החלוקה לגמרי משנ״כ שם לבית דירה ניתנו דגוף הקרקע לא נעשה שלהם שיהא חלקם ואחוזתם דלפי״ז שפיר דהק׳ התוס׳ דתבעי לי׳ נמי בכהנים ולויים דל״ש מנשים.

ואולי י״ל דזה תליא עיקר ההלכה שם קורעין בחברון דהרי חברון היתה בחלק של שבט יהודה והיא היתה אחת מהערים שהופרשו וניתנו ללויים ושם ס״ל דלמחלוקת ניתנו שוב ה״ה חברון מחלקם של הלויים שקיבלו בתורת חלוקה והרי״ז כאחוזתם של הלויים וכשאר חלקי הארץ שניתנו לשאר השבטים בתורת חלוקה ושוב נפקעה מלהיות מערי יהודה ורק ברואה ערי יהודה בתורבנן קורע משנ״כ שם חברון לבית דירה ניתנה אבל גוף הקרקע היינו של הלויים ונשארה מחלקו של יהודה לזו בודאי שקורע דהרי עדיין היא בכלל ערי יהודה.

ועי׳ ברמב״ם בפי״ג מהל׳ מע״ש הי״ז דכהנים ולויים מתודים שמע״פ שלא נטלו חלק בארץ יש להם ערי מגרש ומבואר דפסק כר׳ יוסי. וכ״פ הרע״ב שם במע״ש. ולפי״ז הרי לשיטת הירושלמי ס״ל להרמב״ם והרע״ב דערי הלויים למחלוקת ניתנו

ונעשה לשם בתורת חלוקה וגם גוף הקרקע נעשה שלהם. והשתא שפיר דכתב בחסד לאברהם דנהגו העולם שלא לקרוע על חברון דה"ה מערי הלויים ולא מקריע עוד מערי יהודה ורק על ערי יהודה מיבע הלכה דקורעין כשרואין חותן בחורבנן.

אולם אכתי יש לדון בזה אם נימא דכוונת הגמ' דקורעין על ערי יהודה היא על נחלת "מלכות" יהודה וכדמוכח מדברי הפתח השלחן דקורעין על ערי יהודה משום דשם היתה עיקר המלוכה (ולא על נחלת "שבט" יהודה) ומלכות יהודה הרי כוללת גם נחלת שבט בנימין ושוב לפי"ז קורעין גם על נחלת שבט בנימין. ואולי זהי כוונת הברכ"י בהשגתו דלפ דחברון הוא נחלת הלויים ומשום דערי הלויים למחלוקת ניתנו מ"מ יש לקרוע עלי' דמ"מ היא אחת מערי "מלכות" יהודה. ועי' בס' ארץ ישראל מהגרי"מ טוקצ'ינסקי בסי' כ"ג שהאריך בהא דאין נוהגין לקרוע על ערי יהודה בזמננו עיי"ש.

ובאמת יש להאריך טובא בדברי הנאמרים אלא דכבר הגיע עת הקנור ולקונרים אומרים יברכך ה' ועוד חזון למועד. יעזרהו ה' שיוכל לשבת בנוחה על התורה ועל העבודה מתוך בריאות איתנה ונהורא מעליא, לאורך ימים ושנות חיים ברוב אושר ועושר וכבוד וכל טוב.

הכו"ח לכבוד התורה ולומדיה ומפיציה,

שלמה הלוי וואהרמאן