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The Use of Electricity on Shabbat and Yom Tov

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Preface

> The topic of electricity in halacha is unique to our generation since there are no direct precedents in the Talmud or *rishonim* and the halachic discussion of this topic has been ongoing for less than 100 years. It is only since the technology developed and appliances became electrically powered that many of these questions arose... Over time many works were printed and it has become an established part of rabbinic literature.
>
> Quoted from "Electricity," *Encyclopedia Talmudit* 18:642.

Introduction

The advances of technology have posed practical challenge to decisors throughout the ages. One of the hallmarks of Jewish law is

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its ability — and desire — to assimilate technological advances into the practices of observant Jews. The application of ancient and venerated principles of halacha to new situations has been, and remains, one of the essential tasks of modern decisors of Jewish law. In the last one hundred years, this task has become considerably more difficult due to the rapid and frequent changes in the state of technology.

This article surveys halacha's response to one of the technological breakthroughs of the last 150 years: the invention of electricity. In particular, it explores halacha's understanding of the use of electricity on Shabbat and Yom Tov within the rubric of prohibited work (*melacha*).[1] The technological revolution caused by the widespread use of electrical appliances has led to great discussion and debate within halachic circles. Thousands of monographs, responsa, and books have been written by halachic authorities in the preceding decades relating to the use of electricity on Shabbat and Yom Tov.[2]

This article is divided into five sections. The first discusses the basis for the prohibition of turning on or off incandescent lights on Shabbat. The second addresses the use of electricity where no light and heat is produced (e.g., turning on a fan). The third discusses

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1. A number of issues are not addressed in this article. In particular, it does not address the use on Shabbat of electricity generated (in violation of halacha) by Jews. This issue is of pressing importance, but only in Israel. So, too, this article does not reflect the considerable debate among authorities whether an action done with an electrical appliance is considered as if it was done directly by the one who turned on the appliance. This would, for example, be relevant in determining whether matzo made by a machine could be used for the *seder* since that matzo must be made specifically for consumption at a *seder*. For a discussion of the use of electricity for Shabbat, Chanukah, and havdalah candles, see Rabbi J. David Bleich, *Contemporary Halachic Problems* 1:219-225 (Ktav 1977).
2. A number of works survey this topic thoroughly in Hebrew, and should be referred to for further analysis of the many issues discussed. See, *Encyclopedia Talmudit*, "Electricity" 18:155-190 (and appendix I (pp. 641-781)); Rabbi Shlomo Zalman Auerbach, *Minchat Shlomo* ch. 9-13; Rabbi Neuwirth, *Shemirat Shabbat Kehilchatah*, ch. 13; *Chashmal Behalacha* v.2 (this work is an annotated bibliography); and *Chashmal Leor Halacha*.

the differences between Shabbat and Yom Tov for purposes of the rules developed in sections one and two. The fourth analyzes various specific appliances in light of the rules developed, and the fifth discusses various issues relating to the use of timers to control appliances on Shabbat and Yom Tov.

I. Incandescent Lights on Shabbat

A. Turning On Incandescent Lights During Shabbat

One of the earliest issues involving electricity found in halachic literature was the permissibility of turning on an incandescent light on Shabbat.[3] The overwhelming majority of the decisors maintained (for reasons to be explained) that turning on an incandescent light on Shabbat violated a biblical prohibition.

The Mishnah (*Shabbat* 41a) rules:

> One who heats a metal pot [literally, a boiler] may not pour cold water into it to heat it; however, one may pour water into the pot or a cup in order to temper it.

The Talmud (*Shabbat* 41a-b) in discussing this mishnah states:

> Rav says this mishnah is only ruling [that it is permitted to pour water into a heated pot] when the water temperature is modified, but if the metal is hardened it is prohibited [to heat the metal]. Samuel says this is permitted even if hardening occurs. [The Talmud replied] if the primary purpose [of heating the metal] is to harden the pot, nobody permits its heating.

So, too, the Talmud (*Yevamot* 6b) declares:

> Rabbi Sheshet rules that the cooking [burning] of a wick [of metal], just like the cooking of spices is prohibited on Shabbat [because of the biblical prohibition to cook on Shabbat].

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3. An incandescent light generates light by causing electrical current to flow through a metal filament. The resistance to the current flow generates light and heat.

Rambam codifies these rules (*Shabbat* 12:1) by recounting:

> One who heats a metal bar in order to temper it in water has violated the biblical prohibition of lighting a flame.

Ravad immediately disagrees as to the nature of the biblical prohibition and rules that heating a metal bar until it glows is prohibited because of either cooking (as Rambam elsewhere appears to classify it (*Shabbat* 9:6)) or as *ma'keh bepatish,* completing a nearly finished process. Both authorities, however, agree that a biblical prohibition is violated when metal is heated until it glows. There is no biblical prohibition violated in generating light per se.

Based on the position of Rambam, which most commentaries accept (see *Shaar Hatziun, Orach Chaim* 218:1), the overwhelming majority of authorities conclude that turning on an electric light on Shabbat — an action which heats a metal filament until it glows — violates the biblical prohibition of lighting a flame.[4] Some disagree and, based upon the position of Ravad, maintain that while a biblical prohibition is violated, the prohibition is that of cooking (*bishul*) and not of lighting a flame.[5]

Yet a third position is found in the commentaries. These authorities limit the statement of the Talmud and codes — that it is prohibited to heat a metal bar until it glows — to the case where the heating is done in order to affect the metal (in the case of the Rambam, to temper the iron). According to these authorities, there is no *biblical* prohibition intrinsic in the generation of light and heat; rather, that action is only biblically prohibited when it is intended to affect the metal. The incidental heating of the metal in incandescent lights, however, is an action not intended for its

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4. See *Beit Yitzchak, Yoreh Deah* 1:120; *Achiezer* 3:60; *Melamed LeHoil Orach Chaim* 49; *Tzitz Eliezer* 3:17; *Pri Yitzchak* 62; *Brit Olam, Mechabe U'mavir* 1:98; *Chelkat Yaakov* 1:52 (see also the introduction to this work by Rabbi I.Z. Meltzer where Rabbi Meltzer agrees with this assertion); *Yesodei Yeshurun* 5:147.
5. *Chazon Ish Orach Chaim* 50:9; *Yesodei Yeshurun* 5:127 (some say); *Shevet Levi* 1:47 (alternative possibility).

designated purpose (*melacha she'einah tzrichah legufah*) because when one turns on a light one does not intend to affect the metal in the filament. Thus no biblical prohibition occurs. Even the authorities who follow this position concede, however, that a rabbinic prohibition is violated.[6]

This third position has been categorically rejected by most decisors.[7] In fact, in *Teshuvot Doveiv Meisharim* (1:87), Rabbi Weidenfeld states that the position of those who rule that turning on lights is only a rabbinic violation should not even be taken into consideration by decisors when rendering halachic decisions regarding matters of electricity. Rabbi David Tzvi Hoffman (*Melamed Lehoil* 1:49) states what has emerged as the consensus opinion: the verse (*Exodus* 35:3) "One may not create a fire on Shabbat in all your dwellings" describes the prohibition against creating fire *of any sort.* Current flowing through a filament and causing it to glow creates fire despite the absence of a "flame" and regardless of whether that which is on fire is consumed.[8] Rambam's assertion (*Shabbat* 12:1) that heating a metal is prohibited because of burning only proves this rule, and was not intended to limit it.

The consensus of opinion — accepted by nearly all rabbinic authorities — is that turning on an incandescent electric light on Shabbat violates a biblical prohibition, although the precise prohibition is in dispute; most authorities maintain the prohibition is lighting a flame, and a minority contends that the prohibition is either cooking or *ma'keh bepatish.*

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6. *Maharsham* 2:246; *Chasdei Avot* pp. 43-75; *Yam Gadol, Orach Chaim* 26 (in the name of some); *Levush Mordechai Orach Chaim* pp. 47-51. Rabbi Auerbach (*Minchat Shlomo* pp. 103-105) addresses this issue at great length and appears to demonstrate that these authorities are in error. He also states that even Ravad (who maintains that heating a metal constitutes cooking) would admit that causing a filament or heating element to glow is an act of burning (*mavir*).
7. See the authorities cited in notes 4 and 5.
8. One authority maintains that the biblical prohibition of creating a flame is always inapplicable to lighting an incandescent bulb because the prohibition only applies where the substance which is burning is consumed as per *Shulchan Aruch HaRav, Orach Chaim* 495:2.

B. Raising Intensity of an Incandescent Light

Raising the intensity of a light produced by an already glowing incandescent bulb on Shabbat contains issues distinct from that of turning on the light, and in fact a number of modern authorities appear to label this as only a rabbinic violation. Assuming that the prohibition in turning on a light is cooking (*bishul*), as the Ravad and others maintain, it is possible that raising the heat and light output of the light is analogous to reheating an item which is already cooked. The glowing light is similar to the cooked food. If that is correct, then raising the light intensity is not a biblical prohibition, just as reheating an already cooked food is not a biblical violation (*Minchat Shlomo* pp. 109-110). The Chazon Ish disagrees (*Orach Chaim* 50:9) and states that since the additional heating increases the light production, it is not analogous to reheating a cooked item, and a biblical prohibition is violated.

According to those authorities who locate the prohibition in turning on a light in burning, as most do, every increase in intensity would logically seem to be an additional violation.[9]

C. Turning Off or Dimming Incandescent Lights

As was first pointed out by R. David Tzvi Hoffman (*Melamed LeHoil, Orach Chaim 49*) and widely accepted since, the turning off or dimming of an incandescent light on Shabbat is considered to be only a rabbinic violation.[10] This is because according to biblical law (*deorayta*) the only time an action is prohibited on Shabbat is when the prohibited work is done for its direct consequences (*melacha she-tzrichah legufah*) and that the prohibited result must occur. For example, if one were to pour water onto another's field intending only to dispose of water — and not to irrigate the crops (the

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9. Rabbi Auerbach appears to argue with this also. He maintains that increasing current flow to a light is not similar to adding fuel; see *Minchat Shlomo* pp. 109-110. Logic appears to disagree with this.

10. See *e.g. Kuntres Gorem HaMalot* 185; *Maharsham* 2:146; *Minchat Shlomo* pp. 85-88; *Shemirat Shabbat Kehilchatah* 13:1. For reasons unclear to these authors, two authorities have taken a contrary position and ruled that a biblical violation occurs; see *Machaze Avraham, Orach Chaim* 41 and *Beit Yitzchak, Yoreh Deah* 2:31:8.

intended purpose of the biblical prohibition of watering a field) — although the actions are physically identical to a prohibited biblical action, the intent of the person (to wash his hands rather than irrigate the field) spares one from a biblical violation.[11]

The Talmud (*Shabbat* 44a, 42a, 134a) states that extinguishing a flame is biblically prohibited only when the person who is doing the extinguishing desires the product of the extinguished flame (e.g., ashes (carbon black) or dirt) and not when one "merely" intends to remove the flame and have darkness.[12] In all other instances, only a rabbinic violation is committed. Thus, turning off an electric light is certainly no worse than directly extinguishing a lit flame which, if done to create darkness rather than to produce ashes, is only a rabbinic violation.[13]

Rabbi Auerbach argues that there is another reason turning off incandescent lights on Shabbat is not a biblical prohibition. He claims that turning off a light by turning off the switch is analogous to removing all the fuel from an oil lamp on Shabbat in a manner which does not directly extinguish the flame. If this is so, it would unquestionably be only a rabbinic violation to extinguish a flame on Shabbat.[14]

D. Non-Incandescent Lights

The use of non-incandescent lights — such as fluorescent[15] or

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11. See e.g., *Chayei Adam, Shabbat* 11:1.
12. See *Chayei Adam , Shabbat* 45:1 and Tosafot *"Deculei Alma" Shabbat* 43b.
13. Tosafot (*id.)* states that this is a more serious rabbinic prohibition than the standard rabbinic prohibition on Shabbat.
14. *Minchat Shlomo* pp. 107-109; see generally *Shulchan Aruch, Orach Chaim* 277:1-3. (Of course, if any of the prohibitions explained in part II of this article were to be applicable, it is possible that a biblical violation would be present.)
15. Fluorescent lights generate light by exciting a gas and thereby causing light to be emitted; virtually no heat is generated. There was a time when fluorescent lights were considered *halachically* identical to incandescent lights because of the "starter" used in older model fluorescent lights. The starter produced a small spark which started the fluorescent light. Modern fluorescent lights are lacking this starter and thus are not considered to be identical to incandescent lights; see *Encyclopedia Talmudit* "Electricity" 18:715.

neon,[16] which do not produce light by heating a strip of metal which glows but rather by electrically exciting gases to emit light — are not prohibited on Shabbat because of the prohibition(s) discussed in this section. Since these lights do not contain a filament that glows, they are halachically identical to an appliance and not a light (and thus will be discussed in part II). There is no generic prohibition to create a light on Shabbat; rather, incandescent lights because of the way they operate happen to violate the prohibition to create a flame. So, too, extinguishing fluorescent "lights" on Shabbat is not rabbinically prohibited as a form of extinguishing since halacha does not recognize that there is a "light" to be turned off.[17]

Summary

The consensus of opinion is that turning on or raising the intensity of an incandescent light is biblically prohibited on Shabbat. Turning off or dimming such a light is rabbinically prohibited on Shabbat. Non-incandescent "lights" are not considered "lights" according to halacha.[18]

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16. Neon lights, like florescent lights, generate light by electrically exciting gasses; no flame is produced. So too, LE and LC displays have no filament. In fact, LCDs do not illuminate at all. Instead, when subjected to an electric potential, LCDs darken and become visible. Halogen lights appear to be identical to incandescent lights as a hot metal filament is the source of the light produced.
17. For a complete analysis of these issues, see Rabbi Y. Rosen, *"Ma'alit Automatit BeShabbat," Techumim* 5:75 (and particularly pp. 94-96) (5744).

    It is possible that extinguishing a fluorescent or neon bulb is prohibited because of *marit eyin* or *chashad*, because the casual observer might think that either incandescent lights may be extinguished or that the person who is doing the action is sinning; see *Chashmal Leor Halacha* 3:57. This would depend on whether the light produced by these systems appears similar to that produced by an incandescent light. Frequently it does not.
18. This section deals only with the prohibitions of lights qua lights. Obviously, many of the issues addressed in part II are also relevant to this section as well. For example, if one were to conclude that turning a circuit on or off of is biblically prohibited in all cases because of "building," it would not matter practically whether extinguishing a light violates the prohibition of *mechabe* (extinguishing); see *e.g.*, Rabbi J. David Bleich, "Microwave Ovens on Shabbat," 25:2 *Tradition* 68 (1990).

II. Using Electrical Appliances (Other than Lights) During Shabbat

Section one addressed the prohibitions associated with the use of electricity to generate heat and light. This section surveys the halachic issues involved in the use of electricity when there is no apparent generation of (and no intent to create) light and heat. The consensus of halachic opinion maintains that it is typically prohibited to turn on electrical appliances on Shabbat. However, a clear understanding has yet to emerge regarding *why* such a prohibition exists; indeed, one eminent authority maintains that the use of electrical appliances is only prohibited because of tradition. Seven reasons have been advanced to prohibit the use of electrical appliances on Shabbat.[19] The first six reasons are summarized as follows:

1) Turning on an appliance is analogous to creating something new (*molid*) which is prohibited on Shabbat.
2) Completion of a circuit is prohibited because it is a form of building (*boneh*).
3) Turning on an appliance violates the prohibition of *ma'keh bepatish* (completing a product).
4) Completion of a circuit must kindle sparks and therefore is prohibited because it creates a flame.
5) The use of any electrical current leads to an increase in fuel consumption at the power station, which is prohibited.

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19. One other reason was occasionally advanced by rabbinic authorities when electricity first became common. A number of authorities were of the opinion that the electrons in the wires were a form of a flame and that extending that flame was prohibited on Shabbat. See *Even Yekara* 2:168; *Beit Vaad Lechachamim* 1:1 (in the name of the Rabbi Y. M. Epstein). For a complete list of these authorities, see *Yabia Omer, Orach Chaim* 1:19; 2:26. See section III for a further discussion of this issue.

6) Heating of a metal transistor or wire, even when no visible light is emitted, is prohibited because of cooking or burning.

These first six possible bases for prohibiting the use of electrical appliances on Shabbat divide into two groups. The first four relate to the completion of a circuit which causes current to flow.[20] The final two locate the source of the prohibition in running (and not turning on) the appliance. If each of these prohibitions were to be found inapplicable, then only the following reason would remain:

7) The use of electricity without light or heat is actually permitted, but because observant Jews since the invention of electricity have maintained that it is prohibited to use electrical appliances on Shabbat, and rabbinic authorities approved of this stricture, it is prohibited to use such appliances — absent great need — because of tradition.

Each of the first six possibilities requires detailed analysis.[21]

While it is beyond the scope of a survey article to convey the full force of the complete halachic dialogue among the various authorities, an effort has been made to present, along with each opinion, some of the Talmudic proofs and some of the questions raised in opposition to each reason.

A. Creating Something New (Molid)

The possibility that the use of electricity on Shabbat violates

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20. For a discussion of the issue of completing a circuit when no current flow occurs see *Minchat Shlomo* pp. 91-95 and *Tzitz Eliezer* 6:5.
21. This article will not evaluate the correctness of the stricture contained in the final reason (that electricity should not be used because tradition prohibits it use, albeit incorrectly) as this reason involves considerations of halacha far beyond the scope of this article, and involves fundamental questions of the relationship between *minhag*, halacha and common practice; see generally Rabbi Herschel Schachter, "Is Canned Tuna Kosher?" *Journal of Halacha and Contemporary Society* 15:7, pp. 8-9 (1988).

the prohibition of *molid* was first suggested by Rabbi Yitzchak Schmelkes (*Beit Yitzchak* 2:31). Rabbi Schmelkes states that just as the Sages forbade creating a new fragrant scent in one's clothes on Shabbat, *molid reicha* (*Beitza* 23a) — an action which Rashi explains was prohibited because "one who creates something new is almost as one who performs a biblically forbidden act" — so too they forbade creating anything new on Shabbat, including appliances made "new" through the use of electricity or the creation of a current flow. Thus, he states, creating a current flow (*molid zerem*) is rabbinically forbidden because in doing so one has created something new — a functioning appliance.

Rabbi Shlomo Zalman Auerbach and many others[22] disagree with Rabbi Schmelkes' thesis. Essentially these authorities state that Rabbi Schmelkes' theory must be wrong because any creative act which is routinely done and undone throughout the day cannot be included in the rabbinic prohibition of creating something new. Moreover, there are many examples of "new creations" which were not prohibited by the Sages. Merely because creating a new fragrance is prohibited does not imply that all new "creation" is prohibited on Shabbat. Rabbi Auerbach insists that only a limited number of actions were prohibited in the Talmud because of *molid*, and one may not extrapolate from these limited examples that creating anything else new (like electrical current) is rabbinically prohibited.

A proof to this can be found in a responsum of the *Chacham Zvi* (# 92), which limits the prohibition of *molid* to the application of a fragrance to one's clothes. However, he permits one to apply fragrance to many things other than clothes. In addition, Rabbi Auerbach (*Minchat Shlomo* p. 74) provides numerous examples of new "creative actions" which the rabbis never forbade.

B. Building (Boneh)

The second possible basis for prohibiting the use of electricity

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22. *Minchat Shlomo* pp. 71-74; *Tzitz Eliezer* 1:20:10, and the authorities cited therein; *Tzalach Hachadash, Kuntres Acharon* 1.

can be found first in the works of Rabbi Abraham Isaiah Karelitz, commonly referred to by the name of his *magnum opus, Chazon Ish.*[23] He states that it is likely that completion of a live circuit constitutes a forbidden act of building (*boneh*) on Shabbat. He reasons that completing a circuit renders a previously useless wire into a functional wire, and this is analogous to completing a building or wall. In addition, completing a circuit is analogous to assembling an appliance composed of numerous parts — which halacha defines as building — and is thus prohibited on Shabbat.

The Chazon Ish's position has aroused great debate among halachic scholars. The most vigorous and thorough critique of this position is found in the eleventh chapter of Rabbi Shlomo Zalman Auerbach's work, the *Minchat Shlomo.* While Rabbi Auerbach advances numerous critiques of the Chazon Ish's position, the most crucial aspect of his criticism is that opening a circuit which is designed to be opened and closed routinely cannot be considered an act of building or destroying.[24] Closing a circuit is analogous to closing a door — an action which the halacha does not consider to be "building" since the door is intended to be opened and closed constantly.[25]

The overwhelming majority of halachic decisors appears to side with Rabbi Auerbach. As the *Encyclopedia Talmudit* (18:166) states:

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23. *Chazon Ish, Orach Chaim* 50:9; *Meorot Natan* 6:7; *Levush Mordechai* 3:25. See also the letters written by Chazon Ish to Rabbi Auerbach (published in *Minchat Shlomo* pp. 92-94) clarifying his position.
24. Rabbi Auerbach points out that all the outstanding authorities who have discussed the issue of electricity prior to the Chazon Ish never even alluded to the possibility that the completion of a circuit is an act of building; see section III. In addition he states that there is no prohibition in transforming a dead or useless object into a live or useful object on Shabbat.
25. Rabbi Moshe D. Tendler (in a lecture at Yeshiva University) has asserted that this argument appears to have convinced Rabbi Moshe Feinstein to reject the opinion of the Chazon Ish. Rabbi Feinstein's writings provide no precise definition of the prohibitions one violates when using electricity, although he does not appear to have accepted the Chazon Ish's opinion. See, *e.g., Iggerot Moshe, Orach Chaim* 3:42; 1:50; 4:84; and 4:85.

> From the writings of numerous *acharonim* it appears that turning on an electrical circuit does *not* violate the prohibition of fixing an object [*metaken mana* and *ma'keh bepatish*] or building [*boneh*].[26]

Nevertheless, at the very least halachic authorities do take into consideration the opinion of the Chazon Ish on this issue when rendering decisions regarding electricity.[27]

C. Ma'keh Bepatish (Completing an Appliance)

Some authorities believe that causing an electrical appliance to work is a biblical violation of *ma'keh bepatish*[28] (literally "the final blow of the hammer" but generally understood to mean the final act in finishing any product and making it useful[29]). These authorities cite as precedent those who prohibited winding a watch for this reason.[30] Purely by analogy, these authorities argue that since an electrical appliance is useless before electricity is added to it, the introduction of electric current causes it to become a useful piece of equipment, and is therefore prohibited because of *ma'keh bepatish.*

Rabbi Shlomo Zalman Auerbach (*Minchat Shlomo* pp. 69-73) and Rabbi Yaakov Breisch (*Chelkat Yaakov* 1:53) strongly disagree. They argue that since an appliance is designed to be frequently turned on and off, that action cannot be categorized as *ma'keh bepatish.* Moreover, they state that it is accepted that an action is considered to be *ma'keh bepatish* only when that final act is

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26. In footnotes 122, 123 and 133 to 139, the *Encyclopedia Talmudit* collects the numerous authorities who reject the Chazon Ish's approach.
27. See, *e.g., Yechave Da'at* 1:32; *Tzitz Eliezer* 6:6; *Minchat Yitzchak* 3:38 Rabbi Shlomo Zalman Auerbach as cited in *Shemirat Shabbat Kehilchattah* 1:28:29 (see also *Minchat Shlomo* p. 81).
28. *Chazon Ish, Orach Chaim* 50:9; *Mishpatei Uziel* 1:13; *Tzitz Eliezer* 6:6; *Edut Liyisrael* (Rabbi Y. E. Henkin) p. 121. (Rabbi Henkin states that perhaps only a rabbinic prohibition is involved. This prohibition, *metaken mana,* is a subprohibition of *ma'keh bepatish*).
29. See Rambam, *Hilchot Shabbat* 23:4.
30. See *Mishnah Berurah* 338:15; *Chazon Ish, Orach Chaim* 50:9. For a summary of the opinions on this topic see *Yechave Da'at* 2:48.

permanent or involves great effort. But, since one does not ordinarily intend to turn on an appliance permanently and since turning on an appliance does not involve great effort, this action cannot be considered as violating *ma'keh bepatish*. The majority of authorities agree that *ma'keh bepatish* cannot be the source of the prohibition to turn on electrical appliances.[31]

D. Sparks

The fourth reason advanced to prohibit turning on appliances during Shabbat is that the mechanical switching on or off of an electrical circuit generates sparks.[32] As a general rule, the creation of sparks is forbidden under the rubric of the rabbinic prohibition against producing sparks from wood or stones. Numerous authorities maintain that an electrical appliance that generates sparks is thus prohibited.[33]

A number of factors, however, indicate that this prohibition is inapplicable to the sparks created by turning mechanical switches on or off. First, these sparks are created unintentionally (*davar she'eino mitkaven*), and no prohibition exists when there is no intent to perform an action on Shabbat and that action might not occur.[34] Second, since these sparks are so small that one cannot detect any heat when touching them, and typically they are not

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31. See *Encyclopedia Talmudit* "Electricity" 18:166 (see text accompanying note 26).
32. Running a motor powered by direct current (as opposed to alternating current) also must generate sparks.
33. *Beitza* 33a; *Chazon Ish, Orach Chaim* 50:9; *Melamed LeHoil* 1:49; *Chelkat Yaakov* 1:55; *Minchat Yitzchak* 3:38. Some authorities believe that the creation of such sparks involves a biblical violation of the creation of fire (*mavir*). The Chazon Ish, however, asserts that it is merely a rabbinic prohibition of extracting fire from wood and stones.
34. See section IV, introduction. The creation of these sparks is dependent on many factors including voltage and humidity. Rabbi Auerbach (*Minchat Shlomo* pp. 86-87) insists that even were the creation of these sparks to be inevitable, they would not constitute a halachic problem. Since one derives no benefit from this act (*psik resha delo nicha leh*), some authorities permit this

visible, it is possible that these sparks should not be considered fire.[35] Additionally, the advent of solid state technology[36] and sparkless (arcless) switches frequently makes this issue technologically moot. Thus, Rabbi Auerbach (*Minchat Shlomo* pp. 86-87) states "practically (*lehalacha*) there isn't even a rabbinic prohibition in the unintentional creation of sparks."

E. Additional Fuel Consumption

Another possible problem is raised by the author of *Chashmal Leor Halacha* (2:6). He writes that completing a circuit and causing a current flow sometimes causes additional fuel to be consumed by the power station as a result of the increased need for electricity. Causing additional fuel to be consumed perhaps is to be considered in the category of burning which is forbidden on a biblical level. Thus, it might be prohibited to draw increased current on Shabbat.

Rabbi Auerbach (quoted in *Shmirat Shabbat Kehilchata* 1:23 n.137) disagrees.[37] First, one is only indirectly causing increased fuel consumption (*grama*). More significantly, greater fuel consumption

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act. Even those who are stringent in this matter generally would rule leniently in this particular instance because of three considerations. First, the prohibition to create these sparks is merely rabbinic, not biblical. Second, this is not the usual manner of creating sparks and the severity of prohibition is significantly diminished when performed in an unusual manner (*kil'achar yad*). Third, the severity of the action is reduced even further because it is a destructive act (*mekalkel*) since these sparks in time damage the points of contact in the circuit. He cites *Dagul Merevavah* (*Orach Chaim* 340:3) as a precedent to be lenient in such circumstances. (The *Mishnah Berurah* (340:17) does not fully accept the position of the *Dagul Merevavah.*)

35. As a general rule, halacha attaches no significance to anything which the naked eye cannot discern; see *Aruch Hashulchan, Yoreh De'ah* 84:36 and *Iggerot Moshe, Yoreh Deah* 3:120:5.

36. Prior to the advent of solid state technology, information (e.g. radio waves or the like) was transmitted by means of a filament enclosed in a vacuum tube. This process must cause a filament to glow, which is a biblical prohibition on Shabbat. Solid state technology (*e.g.* transistors or microchips) uses metal (or metal-like) devices to processes information, and therefore need not have a glowing filament or any other source light and heat.

37. For a similar view, see *Aseh Lecha Rav* 5:94

is not inevitable or even likely when one turns on one appliance, because statistically it is likely that at that very moment, someone elsewhere has turned off an electrical appliance, thereby eliminating the need for increased electric output. Finally, outside Israel the power plants are operated by gentiles (if they are not fully automated), and hence the prohibition would only be in directing a non-Jew to violate the Shabbat, which is only a rabbinic prohibition.

F. Heating a Wire or Filament

One other possible prohibition is raised by the Chazon Ish.[38] He states that when the current passing through a wire raises the wire's temperature above the temperature at which a human hand pulls away because of the heat (*yad soledet bo*),[39] it is considered to be an act of "cooking" (*bishul*) and thus prohibited. The Chazon Ish states that this "cooking" is prohibited even though the person who turns on the appliance is unaware that it is occurring and does not intend that there be any "cooking."

Rabbi Auerbach (*Minchat Shlomo*, p. 107) disagrees and states that a metal wire can only be "cooked" when one intends to soften (or temper) the metal and it glows. Although the wire is slightly softened, once the electricity is extinguished the wire immediately returns to its original state. In addition, one who turns on an appliance has no intention to soften the wires; hence this action can not be defined as "cooking" from the perspective of halacha.[40]

Additionally, in the last twenty years, solid-state technology has become dominant, and fewer and fewer appliances have wires

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38. *Chazon Ish, Orach Chaim* 50:9. Rabbi David Zvi Hoffman raises this as a possibility as well; see *Melamed Lehoil, Orach Chaim* 49.
39. A temperature between 110 and 170 degrees Fahrenheit. For a complete discussion of *yad soledet bo* for the purposes of Shabbat see Rabbi S. Eider, *Halachos of Shabbos* 4:242-243.
40. Of course, if the filament were to grow sufficiently hot that the metal visibly glowed, all would concede that to be prohibited for the reasons explained in part I.

that are heated (vacuum tubes), thus making this argument factually obsolete.

G. Electrical Appliances Permitted

Rabbi Auerbach (*Minchat Shlomo* 74, 84), after rejecting all the potential sources discussed above for prohibiting the use of electricity when no light or heat is generated, concludes that, at least in theory, electrical appliances that use no heat or light (*e.g.*, a fan) are permitted on Shabbat and Yom Tov. However, he declines actually to permit their use *absent urgent need.* He states:

> In my opinion there is no prohibition [to use electricity] on Shabbat or Yom Tov . . . There is no prohibition of *ma'keh bepatish* or *molid* . . . (However, I [Rabbi Auerbach] am afraid that the masses will err and turn on incandescent lights on Shabbat, and thus I do not permit electricity absent great need . . .) . . . This matter requires further analysis.
>
> * * *
>
> However, the key point in my opinion is that there is no prohibition to use electricity on Shabbat unless the electricity causes a prohibited act like cooking or starting a flame.

Rabbi Auerbach additionally states that since the tradition forbids the use of electricity, and this tradition received near unanimous approval from rabbinic authorities, in the normal course of events observant Jews should accept this tradition (even though he feels it is based on incorrect premises) and operate under the presumption that the use of electricity without light or heat is a violation, of rabbinic origin, based on *molid.*[41] Only in the case of urgent need does he allow one to rely on his opinion that electricity

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41. The analysis of Rabbi Shmelkes (*Beit Yitzchak*), that electricity is rabbinically prohibited because of *molid* (creating something new), seems to be the approach accepted by the largest number of authorities; see *Encyclopedia Talmudit* "Electricity" 18:163-4 and notes 98-114.

is permitted where no heat or light is generated.

In cases of urgent need it is possible to accept Rabbi Schmelkes' ruling that electricity is prohibited as a form of creating something new (*molid*) as correct, and perhaps still use electrical appliances. For example, in a recent work, *Shealot Uteshuvot Merosh Tzurim* pp. 501-509, Rabbi Shmuel David was asked by kibbutz members if it was permitted to use a telephone on Shabbat to call a veterinarian for advice on a mysterious plague that had struck the chicken coop. This plague was so devastating that it would destroy nearly all of the animals if professional help were not received. Furthermore, these chickens were a significant source of financial support to the kibbutz. Rabbi David ruled that it was permitted to use the telephone if it was used in an unusual manner. He reasoned that in all likelihood, Rabbi Auerbach is correct and no prohibition is violated, and even if the *Beit Yitzchak* is correct, in cases of great need (perhaps even great financial need, and certainly physical need), since this case involved suffering to living creatures (*tza'ar ba'alei chaim*), rabbinic prohibitions when done in an unusual manner may be violated.[42]

So, too, when one is forced to choose between prohibited actions, it is appropriate to realize that the consensus is that electricity without light and heat is a rabbinic and not a biblical violation. For example, if one has to bring a person to the hospital on Shabbat, it is unquestionably preferable to call a taxi (for a gentile driver) by telephone, which most consider only a rabbinic violation (see section IV:b), than to drive there oneself (which is unquestionably a biblical violation), if the few minutes differential in time are irrelevant.

H. Turning Off Appliances

While the tradition is well established that one does not turn

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42. It is a generally accepted rule within halacha that certain types of rabbinic law can be violated if done in an unusual way (*kelachar yad*) and great loss would result absent such violations. See Meiri, *Shabbat* 144b; Ran, (*id.*); Ramban, *Shabbat* 130b; Rashba, (*id.*); Rashi, *Pesachim* 66b; *Chazon Ish, Shabbat* 56:4.

off appliances on Shabbat, the reasons for this prohibition are unclear. Of the six reasons advanced above to prohibit turning on electrical appliances, the inverse of three of them is directly applicable to turning off appliances. These three reasons are:

1) Just as turning on a circuit is prohibited because it is a form of building (*boneh*), turning off a circuit is prohibited because of the biblical prohibition to destroy (*soter*). (Chazon Ish, Reason B above).
2) Turning off a circuit, just like turning on a circuit, causes sparks to kindle which is prohibited because of *mavir* (lighting a flame). (Sparks, Reason D above).
3) Removal of heat from a currently hot metal filament is rabbinically prohibited either because of extinguishing or because of a special prohibition of taking a cooking item off the stove. (Reason F above).

The viability of each of these reasons in the context of prohibiting turning off an appliance is closely connected to its correctness in prohibiting turning on such appliances. For example, if turning on an electrical appliance is actually building (*boneh*), then it is logical to maintain that turning off an appliance violates the complementary biblical prohibition to destroy (*soter*). On the other hand, if for the reasons explained above *boneh* is inapplicable, so too is *soter*.[43]

It is also worth noting that the tradition in observant houses is typically to refrain — absent need — even from practices that are

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43. Rabbi Auerbach states that even if the Chazon Ish was correct that turning on an appliance violates the prohibition to build, turning off such an appliance need not necessarily violate the prohibition to destroy; see *Minchat Shlomo* pp. 101-102.

The other three reasons advanced to prohibit the use of electrical appliances — *molid, ma'keh bepatish,* and increasing fuel burned — have no corresponding prohibition related to turning off, and standing alone would not prohibit turning off appliances.

apparently permissible according to all written discussion of this issue. For example, these authors are aware of no authority who prohibits one to reduce current flow (without turning off) a solid state appliance on Shabbat. Yet it is clear that the tradition is not normally to engage in such conduct on Shabbat.[44]

Summary

The reasons advanced to prohibit the use of electricity on Shabbat when no light or heat is generated are quite diverse. They range from the biblical prohibition of building to the rabbinic prohibition to create something new (*molid*) or to tradition without any precise basis in the laws of Shabbat. Whatever the basis, accepted practice generally prohibits the use of electricity on Shabbat even when no light or heat is generated.

III. Electricity and Lights on Yom Tov

The use of lights (and electricity) on Yom Tov differs significantly from that of Shabbat in one key respect. On Shabbat it is prohibited either to start or increase a flame. However, on Yom Tov it is permitted to add fuel to an already burning flame.[45] For example, while it is prohibited to light a match on Yom Tov, it is permitted to transfer a flame from one candle to another candle. Thus it is prohibited on Yom Tov, just like on Shabbat, to turn on an incandescent light — since turning on a light is (as explained above) halachically identical to lighting a match.[46] Unlike Shabbat,

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44. For example, when the alarm in a solid state radio accidentally goes off on Shabbat, the tradition in accordance with the Chazon Ish's approach would prohibit one from turning off the alarm because of *soter*. On the other hand, it would appear to us permissible to lower the volume of the alarm in an unusual way (*kelachar yad*) since none of the reasons discussed prohibiting electricity are applicable (no circuit is opened or closed and no appliance is turned on or off) and *oneg Shabbat* is otherwise greatly curtailed.
45. See *Shulchan Aruch, Orach Chaim* 502:1-3.
46. *Achiezer* 3:60; *Chashmal Leor Halacha* 3:11; *Minchat Shlomo* p. 69. For a

however, it is likely that on Yom Tov this is only rabbinically prohibited, as most authorities maintain that even creating a new flame on Yom Tov is only a rabbinic violation.[47] So, too, it is only rabbinically prohibited to turn off a light on Yom Tov.[48]

There are a number of authorities, however, who feel that it is permissible to turn on incandescent lights on Yom Tov. Three distinct reasons have been given to justify this practice.[49]

1) Turning on a light is only indirectly causing the light to go on. This type of indirect action (*grama*), while generally prohibited on Shabbat, is permitted for rabbinically prohibited actions on Yom Tov.

2) The prohibition to create a new flame is only violated by using wood, flint, or matches which will not directly contribute to *ochel nefesh* (food for Yom Tov) or which could have been done before Yom Tov began. Neither of these are applicable to creating new light or heat through electricity.[50]

3) Turning on an incandescent light actually is the equivalent of only transferring a flame,

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complete list of authorities who agree with this ruling, see *Encyclopedia Talmudit*, "Electricity" 18:177 n. 250.

47. *Shulchan Aruch, Orach Chaim* 502:1 and commentaries *ad locum* (specifically see *Mishnah Berurah* and *Biur Halacha "ain motzim"*).

48. See *e.g., Yabia Omer, Orach Chaim 1:19; 2:26.* This is the unanimous opinion of the authorities and is not in dispute.

49. Letter from Rabbi Yechiel Michel Epstein (the *Aruch HaShulchan*) published in *Kovetz Vaad Chachamim,* :1 (Shevat 5663); *Even Yekara* 3:168; *Ohr Chadash* p. 64; Rabbi Tzvi Pesach Frank, *Kol Torah,* (5694); *Mishpetei Uziel Orach Chaim* 19; *Hilchata Rabata LeShabbata* 1:7; for a complete list of authorities who agree with this ruling, see *Chashmal Behalacha* 2:5.

50. Reasons one and two are essentially unrelated to our topic, as they address the question from the perspective of the laws of Yom Tov, and not with any particular insight into the nature of electricity according to halacha. According to these opinions, *indirect* lighting of a flame is permitted on Yom Tov while prohibited on Shabbat.

> and not creating a new light, as the flame already resides in the wires.[51]

A number of rabbinic authorities, including Rabbi Tzvi Pesach Frank and Rabbi Yechiel Michel Epstein (the author of the *Aruch Hashulchan*), accepted the approach that permitted turning on lights on Yom Tov.[52] However, this is not the approach of most authorities. The consensus of rabbinic authorities maintain that it is prohibited to turn on an incandescent light on Yom Tov.[53] After summarizing all those authorities who discuss this issue and concluding that it is prohibited to turn on lights during Yom Tov, Rabbi Ovadia Yosef (*Yabia Omer, Orach Chaim* 1:19; 2:26), states:

> Since there are those who permit the lighting of electric lights on Yom Tov, one should not strongly rebuke people who turn on lights on Yom Tov — specifically since many congregations in the Diaspora have this tradition with the approbation of their rabbis. Nonetheless, it is proper to explain to such people in a mild voice that most rabbinic authorities are strict about this matter, and the law follows the majority.

This is supported by the fact that of the six substantive reasons advanced in part II for prohibiting the use of electrical appliances on Shabbat, five are equally applicable to Yom Tov.[54]

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51. This final reason has been generally rejected (see *Encyclopedia Talmudit* "Electricity" 18:179) as it is based on an erroneous understanding of the physical properties of electricity.
52. See note 49.
53. See note 46; *Iggerot Moshe, Orach Chaim* 1:115; *Otzar Chaim* 3:44; *Eretz Benyamin* (*Pri Sadeh*) 4:6; *Chazon Nachum, Orach Chaim* 1:30; *Chelkat Yaakov* 1:51; *Yaskil Avdi* 2:10; 4:27:3; *Shemirat Shabbat Kehilchatah* 13:2.

    It would seem logical, however, that either increasing the light intensity or dimming a light on Yom Tov (without turning off or completing a circuit) is permissible so long as it is needed for Yom Tov (*letzorech ochal nefesh*). This is analogous to adding fuel to a pre-existing flame on Yom Tov, which is permitted.
54. Those who prohibit electricity due to increased fule consumption at the power station on Shabbat would permit this on Yom Tov, as increasing fuel

Thus, each of the authorities discussed in part II who prohibit even electrical appliances without light or heat on Shabbat must maintain that incandescent lights are prohibited on Yom Tov for the same reasons. For example, if switching on a circuit during Shabbat is prohibited because of building (*boneh*) then turning on such a circuit on Yom Tov is also prohibited.[55]

It also appears that any authority who permits turning on lights on Yom Tov (except perhaps for those who do so based on the indirect causation analysis, see note 55) must agree with the position of Rabbi Auerbach that there is *no* halachic obstacle to using electricity when no light and heat are produced. Authorities who permit turning on lights on Yom Tov must have rejected the reasoning of those who forbid activating a circuit based on the prohibition of building (*boneh*), finishing a product (*ma'keh bepatish*), creating a new electrical flow based on *molid* (creating something new), or creating sparks, as there is no distinction between Shabbat and Yom Tov for these prohibitions. This analysis would add a large number of eminent decisors to the list of those who agree with Rabbi Auerbach that electricity used solely as a form of mechanical energy is theoretically permitted on Shabbat (and actually permitted in cases of great need).

Summary

Two distinct approaches have been taken to the use of electricity on Yom Tov. Most authorities

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consumption is generally permitted on Yom Tov.

55. It is possible that this is not quite correct. If one accepts that on Yom Tov turning on a light is permitted because one is only indirectly causing the light to turn on (*grama*, reason one discussed above), one could then conclude that indirect building (*gram boneh*) is permitted on Yom Tov, but prohibited on Shabbat. So, too, indirect creation (*gram molid*) could be permitted on Yom Tov, and prohibited on Shabbat. This argument appears incorrect to these authors, as that would label all uses of electricity on Shabbat to be only rabbinically prohibited since all indirect (*i.e.*, through *grama*) actions are only rabbinic violations even on Shabbat (a position which has attracted, to our knowledge, no support in the rabbinic literature).

maintain, and it is the accepted practice of observant Jews, to treat Yom Tov like Shabbat, and not to turn on lights or use electrical appliances on Yom Tov. A minority opinion, and the practice of some observant Jews, allows turning on lights (and perhaps other appliances also) on Yom Tov. All agree that it is prohibited to turn lights off on Yom Tov.

IV. The Use of Refrigerators, Telephones, Radios or Televisions, and Generating Static Electricity on Shabbat and Yom Tov

The previous sections explained the rules concerning the use of electricity on Shabbat and Yom Tov. This section summarizes the halachic discussion concerning four common appliances: refrigerators, telephones, radios, and televisions, as well as the question of generating static electricity on Shabbat. Since this section will integrate the rules developed into the general framework of the laws of Shabbat, four Shabbat rules will be used throughout this section. They are:

1) *Melacha she'einah tzrichah legufah* (an action not needed for its result). This occurs when one does a prohibited action on Shabbat not intending to commit the action prohibited by halacha. For example, pouring water on a field to dispose of the water, rather than to irrigate the field, is a *melacha she'eina tzericha legufah.* This is normally a rabbinic violation.

2) *Pesik resha* (undesired act). This occurs when a permitted act will inevitably and directly lead to a prohibited act. As an example, the Talmud states that if one cuts off the head of a chicken on Shabbat to play with the head, even though one does not care if the chicken lives or dies, a biblical violation has occurred since the action will inevitably lead to killing an animal (a biblical prohibition on Shabbat).

3) *Davar she'eino mitkaven* (unintended act). This is identical to a *pesik resha* except that the second act might not occur, and is thus permitted.

4) *Pesik resha delo nichah lei* (undesired act with no

benefit). This is a *pesik resha* where the second act, even though it must occur, will provide no benefit to the person causing it. Most authorities maintain this is a rabbinic violation; some maintain it is permitted.

A. Refrigerators

The opening of a refrigerator door on Shabbat has been the topic of vigorous debate in past decades. Opening the refrigerator door allows warm air to enter, thus causing a drop in temperature which causes the motor to go on sooner. If one accepts that turning the motor on during Shabbat is prohibited, then it would appear that opening the refrigerator door on Shabbat when the motor is not already[56] running is prohibited. Indeed, many prominent rabbinic decisors have adopted this position.[57] However, many authorities[58] assert that one is permitted to open a refrigerator even when the motor is off.[59]

The prohibition associated with intentionally starting the motor in the refrigerator must be discussed first. It is possible that

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56. Opening the door when the motor is already running is permissible because all that is done then is causing the motor to stay on for a longer period of time; see also section V.
57. See *Har Zvi* 1:151; *Mishnat Rabbi Aharon*, 1:4; *Minchat Yitzchak* 3:24; and *Chelkat Yaakov*, 1:54. Rabbi Ovadia Yosef, *Yabia Omer* 1:21 and Rabbi Yosef Eliyahu Henkin, *Edut Leyisrael* p. 152, recommend that one be stringent in this regard, although they both accept that it is permissible to open a refrigerator even when the motor is off.
58. Rabbi Shlomo Zalman Auerbach's argument can be found in his *Minchat Shlomo* pp. 77-91. Others who are lenient include Rabbi Waldenberg, *Tzitz Eliezer* 8:12 and 12:92, Rabbi Uziel, *Piskei Uziel* no. 15. Rabbi Aharon Lichtenstein reports that Rabbi Joseph B. Soloveitchik subscribes to the lenient position in this regard.
59. Almost all authorities accept that it is forbidden to open a refrigerator when the light inside will go on. Notwithstanding one's lack of intent to turn on the light when opening the refrigerator, this action is forbidden, since the light will inevitably go on (*psik resha*).

    However, Rabbi S.Z. Rieger (the Dayan of Brisk) rules leniently in this regard (*Hapardes* 1934, volume three). His lenient ruling is based on two assumptions. First, he states that when the forbidden act has no benefit to the

no prohibition exists at all since, as explained above, Rabbi Auerbach asserts that no prohibition is violated when initiating an electric current if there is no heating element. Thus, Rabbi Auerbach contends that no Shabbat violation occurs when one causes a motor to run which in turn causes a gas to vaporize and thereby cools down the refrigerator; *Minchat Shlomo*, p. 84.

Moreover, Rabbi Auerbach writes that even the Chazon Ish, who believed that completion of an electric circuit constitutes a forbidden act of building (*boneh*), would concede that no violation occurs when one causes the motor to start prematurely by opening the door. Rabbi Auerbach maintains that the Chazon Ish limits the biblical prohibition of building to placing the plug in the socket. However, causing the motor to start earlier cannot be considered "building" for two reasons. First, an act cannot be defined as building if that act will occur later naturally. Turning on an appliance could only be defined as building because human intervention is required to stop this action. However, the refrigerator's motor will go off automatically shortly after it has begun to work. Second, the reasoning of the Chazon Ish is based on bringing the appliance "from death to life."[60] However, by allowing

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one who performs it, and it is only incidental (*psik resha d'lo nicha leh*), no prohibition exists. Rabbi Rieger assumes that the lenient ruling of the *Aruch* (see *Aruch* defining the word "*sever*") is accepted. Second, Rabbi Rieger states that the light in the refrigerator provides no benefit to the one opening the door.

His first assumption is disputed by most authorities (see *Yabia Omer* 1:21,5; *Minchat Shlomo* p. 87). The consensus appears not to accept the *Aruch's* ruling as normative. The second assertion appears to be entirely incorrect. The light serves as a convenience to locate items in the refrigerator and cannot be described as having no benefit to one who opens the door.

Most authorities, however, maintain that it is acceptable to ask a Gentile to open the door of the refrigerator even if the light will go on; see *Iggerot Moshe, Orach Chaim* 2:68; and *Shemirat Shabbat Kehilchatah* pp. 100-101. So too, it would appear to these authors that one could allow a fellow Jew to open the door when he does not know the light will go on, as that is only in the category of *mitasek* (unknowing) and thus permitted; see *e.g.*, Rabbi Joseph D. Soloveitchik, *Shiurim Lezeicher Avi Mori*, p.30 n. 58; but see *Teshuvot R. Akiva Eiger* #9.

60. See letter of the Chazon Ish printed in *Minchat Shlomo* p. 93.

hot air to enter, one has not caused any change in the operation of the refrigerator. The refrigerator is operational before opening the door; once the temperature reaches a certain degree, the motor will start. Hence, Rabbi Auerbach states that even the Chazon Ish would concede that causing the motor to start early cannot be considered "building." Accordingly, all agree that no biblical prohibition is violated by causing the motor to run prematurely.

A rabbinic prohibition, though, is violated by starting a current according to the *Beit Yitzchak*. Therefore, possibly one violates at most a rabbinic prohibition in causing the motor to run.[61] Rabbi Auerbach and others (see note 58) maintain that a number of factors are present in this case so as to render this rabbinic prohibition inapplicable. First, by opening the door one does not directly cause the motor to run since there is a thermostat that serves as an intermediate regulator.[62] Indirect actions are generally permitted only in cases of great monetary loss.[63] But Rabbi Auerbach rules that rabbinic prohibitions performed in an indirect fashion are permitted even absent potential monetary loss. Since one does not intend to cause the motor to go on, this action is an *unintentional* side effect (*davar she'eino mitkaven*) and therefore permitted.[64]

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61. The sparks caused by the running of the motor do not constitute a halachic problem according to Rabbi Auerbach (see section II:F above). However, Rabbi Yaakov Breisch, who rules stringently in this matter, believes that the generation of these sparks does constitute a halachic problem. (See *Chelkat Yaakov* 1:54.)
62. Rabbi Auerbach writes at length why this is considered to be an indirect action; *Minchat Shlomo* pp. 90-91.
63. See Ramo, *Shulchan Aruch, Orach Chaim* 334:22 and *Biur Halacha "degram kibui mutar."*
64. The use of electric card keys to open hotel rooms on Shabbat or Yom Tov is more problematic, as none of these otherwise permissive factors are present. Using such a card closes a circuit which, according to the Chazon Ish, is a biblical violation of either building (*boneh*) or finishing an appliance (*ma'keh bepatish*). Rabbi Auerbach, for reasons explained above, states that since this "building" or completing of an appliance (the lock) is transient, no violation occurs even according to the Chazon Ish. Those who base the prohibition to use electricity during Shabbat on *molid* (creating) would rule that a rabbinic violation is present. Since absent great need one should, even according to

Moreover, Rabbi Auerbach argues by way of *reductio ad absurdum*, if one rules stringently and prohibits opening the refrigerator door lest it cause the motor to run prematurely, then it should also be forbidden to open the windows or curtains, or bring hot foods in close proximity to the refrigerator. These actions, he points out, also cause the motor to run earlier than it would have otherwise.

Rabbi Yaakov Breisch[65] objects to this reasoning and rules that indirectly causing prohibited actions cannot be permitted on a regular basis. Rabbi Auerbach counters that only when one intends the resultant action to occur is it prohibited if performed regularly.

Common practice among observant Jews in America appears to accept those authorities who allow the opening of the refrigerator door even if the motor is not running.

B. Telephones

Five different aspects of using the telephone are relevant from a halachic perspective: lifting the receiver, dialing, talking, holding the receiver, and returning the receiver to its place.

Lifting the receiver involves a number of possible problems. Most significantly, it closes an electric circuit, thereby causing a current flow. If one adopts the position of the Chazon Ish, one has violated a biblical prohibition; Rabbi Schmelkes would assert that a rabbinic prohibition has been transgressed. Additionally, in some (but not many) telephone systems, a light goes on when a person lifts a phone off the hook. Rabbi Levi Yitzchak Halperin (*Maaseh Choshev* 1:60) advances the argument that causing the dial tone to work violates the rabbinic prohibition of "making a noise be heard"

Rabbi Auerbach, function as if creating electricity is a rabbinic violation, it is prohibited to use such a card on Shabbat or Yom Tov. It is, however, permitted to ask a Gentile to open one's hotel room if no other options are available. So, too, many authorities would permit one, in a case of need, to use the card in an unusual way (*kelachar yad*) to open the door. Cards which are mechanical, and not electric, may be used on Shabbat and Yom Tov.

65. *Chelkat Yaakov* 1:54, based on the comments of Rabbeinu Chananel *Shabbat* 120b s.v. *"Amar Rav Yehuda."*

(*hashma'at kol*).[66] This seems incorrect, however, as that sound is not audible to any other person, and in fact most authorities[67] who discuss telephones do not mention the noise made by the dial tone as a halachic problem.[68]

The next area of discussion concerns the prohibitions related to dialing. Again, circuits are completed, bringing about a biblical prohibition according to the Chazon Ish, a rabbinic prohibition according to Rabbi Schmelkes, and possibly no prohibition according to Rabbi Auerbach. Rabbi Benzion Uziel (*Mishpetei Uziel* 1:13) writes that when dialing, one has violated the biblical prohibition of "the final blow" (*ma'keh bepatish*) by turning the telephone into a functional object. Rabbi Ovadia Yosef (*Yabia*

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66. The Sages prohibited making a loud noise on Shabbat to prevent one from violating the biblical prohibition of fixing an instrument or utensil. The *rishonim* debate whether the Sages limited their prohibition to making a noise with musical instrument or whether it applies even to making a noise with objects such as a door knocker. The Ramo adopts the stricter position; see *Shulchan Aruch, Orach Chaim* 338:1. In addition, see *Biur Halacha* s.v. *hoil vehakli meyuchad lekach.*

67. They discuss whether causing the phone to ring and speaking on the telephone are a violation of "making a noise." See *Minchat Shlomo* pp. 75-76; *Achiezer* 4:6; *Beit Yitzchak* 2:31; *Tzitz Eliezer* 1:20:10 and *Yabia Omer* 1:20.

68. Another possible problem associated with lifting the receiver is that it might cause a wire to be heated, which constitutes a biblical prohibition. However, as Rabbi Shmuel David (*Shealot Uteshuvot Meirosh Tzurim* p. 503) writes, one need not be concerned with this since in most cases when the telephone is used, no filaments are heated. Since lighting this filament is not intended (*davar she'eino mitkaven*) and is not an inevitable result of lifting the phone, it is permitted. It may, however, be a *safek psik resha leshe'avar*. When one is not sure that a prohibited action will occur *in the future*, it is permitted to perform the act despite the uncertainty. However, if a prohibited action may occur as a result of already existing circumstances, some authorities prohibit this action; see Rabbi Akiva Eiger's comments to *Shulchan Aruch, Yoreh Deah* 87 *"yesh omrim deasur lachtot haesh"* and *Taz, Shulchan Aruch, Orach* Chaim 316:3. In our case, the question as to whether the filament will be heated depends on circumstances which exist prior to lifting the phone (namely, the distance between the phone and the phone center and the degree of electrical resistance). The consensus of rabbinical opinion appears to be lenient in this matter. See generally, *Melamed Lehoil* 3:102; *Biur Halacha* 316 *"velachen yesh leezaheir;" Minchat Shlomo* pp. 88-90; and Rabbi Levi Yitzchak Halperin, *Maaseh Choshev* p. 56.

Omer 1:20) disagrees because the phone is a fully functional object prior to the dialing. Dialing a number is considered to be merely using the phone, not fixing it.

Rabbi Yitzchak Schmelkes and Rabbi Chaim Ozer Grodzinski[69] assert that since dialing causes a phone to ring, one has violated the rabbinic prohibition of causing noise to be heard (*hashma'at kol*). Rabbi Shlomo Zalman Auerbach (*Minchat Shlomo* pp. 75-76) suggests that since it only indirectly causes the phone to ring, one may be lenient, because indirect causation of rabbinic prohibitions is permissible on Shabbat.[70]

The next issue is speaking on the telephone. Rabbi Yitzchak Schmelkes (*Beit Yitzchak* 2:31) states that one violates the rabbinic prohibition of "causing a noise to be heard" (*hashma'at kol*) since one's voice is heard elsewhere due to the telephone. Rabbi Auerbach and Rabbi Eliezer Waldenberg, however, disagree[71] in light of Ramo's ruling (*Shulchan Aruch, Orach Chaim* 338:1) that no prohibition of "causing a noise to be heard" applies when the sound is created by a human voice.[72]

Talking on the telephone causes an increase in the current used. Whether increasing current usage is prohibited on Shabbat is

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69. *Beit Yitzchak* 2:31; *Achiezer* 4:6.
70. Rabbi Auerbach expresses his reservations about this position. Since the act of causing a phone to ring is always performed in this manner, this may no longer be defined as "indirect causation" insofar as the laws of Shabbat are concerned; see *Baba Kama* 60a. Rabbi Auerbach, in an article appearing in the Torah journal *Sinai* (5705, p.152), advances another reason to rule leniently in this regard. The Rabbis prohibited making a loud noise to prevent one from fixing a machine or instrument. When one causes the phone to ring in another's home, the likelihood of a person's going to another's home to fix his telephone ringer in case of dysfunction is remote. It is quite possible that the rabbinic prohibition is inapplicable in such circumstances.
71. *Minchat Shlomo* p. 67 and *Tzitz Eliezer* 1:20:10.
72. Rabbi Schmelkes, though, could respond that Ramo's ruling is limited to a case when the voice is heard exclusively through speech without the aid of any instrument. The question as to whether speaking into a microphone is considered to be a violation of "causing a noise to be heard" is contingent upon this disagreement between Rabbi Schmelkes and Rabbi Waldenberg; see *Iggerot Moshe, Orach Chaim* 4:84 and *Minchat Shlomo* pp. 66-68.

a major halachic issue.[73] Rabbi Auerbach maintains that there are no halachic prohibitions associated with causing an increase or decrease in current, in appliances without a heating element or glowing filament.

Upon close examination, Rabbi Auerbach appears to be correct even according to those who typically disagree with him. For example, while the Chazon Ish states that completion of a circuit constitutes an act of building, once a circuit has been completed, one does not "build" anything by increasing current. Similarly, Rabbi Schmelkes, who states that creating a current violates a rabbinic prohibition to create something new, probably would concede that one may increase current. The paradigmatic example he uses of creating something new is the prohibition to create a new scent in a garment. However, it is permitted according to many authorities to increase the intensity of a fragrance in a garment once a scent already exists, because the prohibition is limited to *creating* a *new* scent.[74]

Those who believe that turning on an appliance violates the prohibition of "the final blow" (*ma'keh bepatish*), would limit this assertion to turning on the appliance and not increasing current. After the appliance has been turned on, it has been rendered into a usable item and no further prohibition of "the final blow" is violated when increasing current. Finally, even if one views the creation of sparks as a halachic problem (see section II:F above), no such problem exists when increasing current because an increase in

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73. Professor Zev Lev discusses this issue at length in *"Molid Zerem Chashmali BeShabbat," Techumin* 2:35-58 (5741). According to some, this issue is related to whether causing more electricity to be generated at the power station constitutes a halachic problem. An increase in current may cause additional generation of electricity and hence, those authorities who rule stringently in this matter would forbid one to cause an increase in current. However, most believe one need not be concerned with this possibility; see *Shemirat Shabbat Kehilchatah* 1:23:137; see also note 81.

74. *Minchat Shlomo*, p. 110. This is the view of the *Shulchan Aruch Ha-Rav, Orach Chaim* 511:7. However, *Mishnah Berurah* 511:26 and *Aruch Ha-Shulchan, Orach Chaim* 511:12, both assert that this prohibition encompasses even adding scent to a garment that already has a scent.

current does not lead to increased creation of sparks.

Rabbi Yitzchak Yaakov Weiss and Rabbi Binyamin Yehoshua Silber[75] disagree and prohibit increasing current for two reasons. First, it is far from universally accepted that one may increase the intensity of a fragrance already present in a garment (see n. 74). Second, increasing current may not be analogous to increasing the intensity of a scent. One can argue that in many instances the increased current is what enables a desired activity to take place and, thus, is more analogous to adding on an entirely different additional scent to a garment,[76] which all agree is prohibited.

Whether one is permitted to increase current has many halachic ramifications. A few examples are adjustment of (not to turn on or off) a hearing aid,[77] speaking directly to someone wearing a hearing aid,[78] going up on an automatic elevator,[79] and riding an escalator.[80] The consensus of rabbinic opinion appears to side with Rabbi Auerbach on this matter.[81]

The last set of problems that arises from the use of a telephone on Shabbat are "hanging up" and returning the phone to its holder. The Chazon Ish would prohibit these acts since one opens circuits, thereby violating a biblical prohibition of destroying (*soter*). As explained above (section II), many authorities disagree with the Chazon Ish's position on this issue.[82]

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75. *Minchat Yitzchak* 3:38; 3:60; and *Brit Olam "Mechabe' Umavir"* no. 2.
76. *Maaseh Choshev* p. 47 and Rabbi Halperin's *Maaliot BeShabbat* p. 166.
77. See *Shemirat Shabbat Kehilchatah* 34:28.
78. Rabbi Auerbach (*Minchat Shlomo* p. 67) permits doing so but Rabbi Feinstein (*Iggerot Moshe, Orach Chaim* IV:85) permits doing so only in extenuating circumstances.
79. For an excellent review of the extensive halachic literature discussing the use of automatic elevators on Shabbat, see *Encyclopedia Talmudit*, "Electricity" 18:691-704.
80. See *Shemirat Shabbat Kehilchatah* 23:52.
81. *Yabia Omer* 1:19; *Shemirat Shabbat Kehilchatah* 23:52 (and elsewhere); *Shealot Uteshuvot Meirosh Tzurim* p. 504: Rabbi Yisrael Rosen. *"Maalit Aotomatit BeShabbat," Techumin*, 5:75 (5744).
82. There have been two other suggestions of prohibitions that one would violate if one returns the phone to its holder on Shabbat. First, by hanging up the

C. Radios and Televisions

Turning on radios or televisions involves completion of a circuit; current flow, as shown above, involves a biblical prohibition according to the Chazon Ish, and a rabbinic prohibition according to Rabbi Schmelkes. Since newer radios and televisions do not contain heating elements or glowing filaments, Rabbi Auerbach raises the theoretical possibility that turning on the radio per se does not involve any prohibition, as he does not accept either the opinion of the Chazon Ish or Rabbi Schmelkes as correct. However, it is well established that by turning on a radio, one violates the rabbinic prohibition of "causing a noise to be heard with an instrument designed for this purpose" (*hashma'at kol al yedei keli hameyuchad lekach*). Thus, even Rabbi Auerbach rules that a rabbinic prohibition is present when one turns on a radio.

Whether one may raise the volume on Shabbat depends upon whether one is permitted to increase current flow on Shabbat.[83] However, whether moving the dial from one station to another constitutes a violation of the rabbinic prohibition of "making a noise be heard" is disputed. Rabbi Waldenberg (*Tzitz Eliezer* 3:16:12:5) believes that a violation takes place because no coherent sounds are heard in-between stations. By tuning in the desired station, one has caused noise to be heard which would not have been heard previously. Rabbi Auerbach (*Minchat Shlomo* p. 67) disagrees because the broadcasters are the ones who create the sound and only they violate the prohibition of "creating a noise that is heard."

D. Static Electricity

Whether it is permissible to separate (or wear) clothes on Shab-

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phone, one makes the person listening on the other end hear a dial tone. Some authorities assert that this is a violation of the rabbinic prohibition "to cause a noise to be heard." Second, one opinion states that returning the phone to its holder violates the biblical prohibition of "the final blow" (*ma'keh bepatish*); Rabbi Y. A. Zalmonowitz, *Noam*, 4:178; for those that dispute this view, see text accompanying note 68.

83. For reasons explained in note 44, no prohibition to reduce current exists.

bat if that action will generate static electricity is a topic that a number of decisors have addressed. If one adopts Rabbi Auerbach's aforementioned lenient ruling regarding the creation of sparks during use of a circuit, one might be lenient in this regard as well. Indeed, Rabbi Auerbach is cited (*Shemirat Shabbat Kehilchatah* 15:72) as maintaining that the unintentional creation of static electricity from clothes does not pose a halachic problem.

Rabbi Eliezer Waldenberg (*Tzitz Eliezer* 7:10) rules leniently in this regard also. Rabbi Waldenberg argues that these sparks last hardly a moment and have no impact whatsoever. In addition, there is no precedent for these sparks in the labor performed during the construction and functioning of the tabernacle, and hence there is no precedent whatsoever to classify the creation of these sparks as forbidden acts of labor. Therefore, he rules that the unintentional creation of static electricity does not pose a halachic problem.[84] At the conclusion of his responsum, Rabbi Waldenberg adds another consideration to be lenient in this regard — that one does not intend to create the static electricity.

Rabbi Ovadia Yosef's primary reason to rule leniently in this matter (*Yabia Omer* 5:27 and *Yechave Daat* 2:46) is based on the lack of intent to create the sparks. Rabbi Yosef writes that unintentional acts from which no benefit is derived (*pesik resha delo nichah lei*) are permitted if the underlying prohibition is itself only a rabbinic violation; he agrees that if a biblical violation would occur, they are prohibited. This leniency is not universally accepted.[85]

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84. Rabbi Waldenberg adds a ground that appears to be factually incorrect. He states that the sparks created from clothes are electrically different from the sparks created when closing and opening a circuit, since the latter can cause a fire to ignite and the former cannot; it is possible that his first reason is connected conceptually to this.

85. See e.g. *Chazon Ish, Orach Chaim* 50:5 who disagrees and rules stringently in this matter. The *Mishnah Berurah's* position appears to be contradictory. Compare and contrast *Mishnah Berurah* 321:57 (especially *Shaar Hatziyun* 68); 340:17; *Shaar Hatziyun* 337:2 and 337:10.

All, however, accept that it is permitted to use a product on Shabbat which is designed to *prevent* the generation of static electricity in clothes.

Summary

The use of specific appliances is enveloped in the controversy of electricity generally. Many authorities permit opening refrigerator doors on Shabbat whether the motor is on or off. Some permit this only when the motor is on. While most authorities agree that the use of telephones is prohibited on Shabbat, Rabbi Auerbach asserts that it is possible that telephones are not prohibited. While all agree that neither radios nor televisions can be used on Shabbat, there is dispute over the nature of the prohibition. The unintentional generation of static electricity is permitted.

V. Timers on Shabbat and Yom Tov

The use of timers on Shabbat and Yom Tov involves two distinct halachic issues, one of which has been settled and one of which has not. The first is whether it is permitted to set a timer on Friday so that a prohibited action will take place on Shabbat. The second is whether it is permitted to adjust that timer on Shabbat in order to change the time when the action will occur.

A. Using Timers Set on Friday

Setting a timer on Friday so that a prohibited act will occur automatically on Shabbat seems at first glance to be very similar to a well-established halachic rule. Based on a Talmudic discussion (*Shabbat* 17b-18a), Rambam (*Shabbat* 3:1) states:

> It is permitted to start an action [*melacha*] on Friday even though that action is completed on Shabbat, since it is only forbidden to start work on Shabbat. However, when the work is done by itself on Shabbat, it is permitted to benefit from that work.

So too, *Shulchan Aruch* (*Orach Chaim* 252:1) states:

> It is permitted to start an action on Friday near darkness even though the work cannot be completed on Friday and can only be finished on Shabbat.

Two exceptions to this rule were established. The Talmud

(*Shabbat* 47b) states that one may not place a dish of water around a flame (which is emitting sparks) on Friday lest one shift the water on Shabbat and thus extinguish the flame.

More relevantly, the Talmud (*Shabbat* 18a) quotes in the name of Rava that it is prohibited to add wheat on Friday to a water mill that runs automatically on Shabbat, since the mill produces a large amount of noise and this noise denigrates Shabbat (*zeluta deShabbat*).[86] Furthermore, people will say that the owner of the mill is running it on Shabbat (Ramo, *Orach Chaim* 252:5). Rav Yosef is quoted in the Talmud as disagreeing with Rava and permitting any action done prior to Shabbat even if it creates large amounts of noise.

Rishonim disagree as to which opinion, Rava's or Rav Yosef's, is accepted as normative by halacha. Rabbenu Tam, Rambam and Rif all accept the opinion of Rav Yosef.[87] On the other hand, Rabbenu Chananel, Rosh, *Semag* and *Semak* all appear to accept Rava's approach.[88] Rabbi Karo in the *Shulchan Aruch* states that it is permitted to place wheat in a self-grinding water mill on Friday (*Orach Chaim* 252:5). Rabbi Isserles (Ramo), however, adds:

> There are those authorities who prohibit placing wheat in the mill on Friday. We [Ashkenazic Jewry] should worry about the prohibition of creating sound. This is the proper approach *ab initio* [*lechatchila*]. In cases of financial loss, it is permitted to be lenient.

Based on this stricture of the Ramo, there are some who claim that using a timer on Shabbat should be prohibited when it creates audible or visible action.[89] For example, absent some significant

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86. Rashi, *Shabbat* 18a.
87. Tosafot *Shabbat* 18a; Rif on *id.*; Rambam quoted in *Beit Yosef, Orach Chaim* 324 *"ain."*
88. Rabbenu Chananel commenting on *Shabbat* 18a; Rosh on *id.*; see generally *Beit Yosef* commenting on *Orach Chaim* 252 and 324 for a complete list of authorities.
89. *Responsa Ben Yehudah* 151; *Goren David, Orach Chaim* 15; *Etan Aryeh* 110-111.

need, both Rabbi Feinstein[90] and Rabbi Auerbach (*Minchat Shlomo* pp. 68-69) agree that this rule prohibits one from playing a radio on Shabbat even if it is left on for all of Shabbat. Placing a radio on a timer is analogous to putting wheat into a water mill. Both cause noise on Shabbat and arouse suspicion that its owner has violated the laws of Shabbat. Hence, they rule that it is rabbinically prohibited to set a radio on a timer or to let it run the entire Shabbat.[91]

Others have advanced different reasons to prohibit timers on Shabbat. Some claim that merely because the Talmud permitted finishing a prohibited action on Shabbat when it is started on Friday, it does not mean that a timer which does the entire action on Shabbat is permitted.[92] Others have argued that just as it is forbidden to place a dish of water around a sparkling flame (see above) *lest one adjust it*, so too, it is prohibited to use a timer lest one set it on Shabbat.[93] Finally, others argue that the only time it is permitted to start an action on Friday and finish on Shabbat is when no benefit is derived from the action on Shabbat. However, when a prohibited action is done for the sake of having the product on Shabbat, it is prohibited.[94]

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90. *Iggerot Moshe, Orach Chaim* 4:84. Rabbi Feinstein writes that the same prohibition applies to the use of television on Shabbat.
91. It would appear to these authors that this ruling is inapplicable to taping a television program on a video recorder on Shabbat (assuming the television is left off). In our opinion, that should be permitted because taping creates no visible sound or image on Shabbat and does not cause any disruption of Shabbat.
92. In fact, some maintain (based on *Nemukei Yosef, Bava Kama* 22a) that a biblical prohibition is violated; see Responsa *Ben Yehuda* 151.
93. *Etan Aryeh* # 111; *Mishpatei Uziel* 1:223.
94. For a discussion of this, see *Magen Avraham* commenting on *Shulchan Aruch, Orach Chaim* 307:3; *Iggerot Moshe, Orach Chaim* 4:60. Rabbi Feinstein writes that use of timers to automatically regulate machines to perform work forbidden to Jews on Shabbat is generally forbidden, with the exception of turning lights on and off. He believes that use of timers would severely disrupt the Shabbat atmosphere, since all of one's work could be performed by machines. Rabbi Feinstein asserts that just as the Sages did not want, and therefore forbade, our asking non-Jews to perform work on our behalf on

The consensus of the *acharonim* as well as the accepted practice is not in harmony with any of the opinions which prohibit timers. As the *Encyclopedia Talmudit* ("Electricity" 18:679) states:

> Many of the *acharonim* permit one to set a Shabbat clock on Friday — and this is the common practice — even those who prohibit creating a sound permit the use of timers. . . since all know that these timers are set before Shabbat.

Essentially, since it has become common practice to use timers, there is no appearance of impropriety when timers are used. This approach has been accepted by most contemporary decisors such as Rabbi Waldenberg, Rabbi Breisch, Rabbi Henkin, Rabbi Auerbach, Rabbi Ovadia Yosef, the Chazon Ish, Maharam Schick and many others.[95]

B. Adjusting Timers on Shabbat and Yom Tov

Before discussing whether a substantive prohibition exists to adjust a timer on Shabbat and Yom Tov, it is necessary to address a threshold question: are timers *muktza*? If timers are *muktza*, it is obviously prohibited to adjust them.

In a brief and cryptic responsum, Rabbi Moshe Feinstein asserts, without explanation, that one may not adjust a timer during Shabbat and Yom Tov because the timer is *muktza*.[96] Other decisors have offered reasons for this assertion. Rabbi Benjamin

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Shabbat for fear that this would disrupt the Shabbat atmosphere (see *Rambam Hilchot Shabbat* 6:1), so too the Sages would not want machines to do work on our behalf during Shabbat. Rabbi Feinstein appears to be the lone authority to adopt this approach.

95. See *Tzitz Eliezer* 1:20:9; *Chelkat Yaakov* 1:49; *Edut Leyisrael* p. 122; *Minchat Shlomo* p. 66; *Yechave Daat* 2:57; *Chazon Ish, Orach Chaim* 38:3 and 38:4; *Maharam Shick, Orach Chaim* 157; *Minchat Moshe* 8; *Even Yekara* 3:85; *Yaskil Avdi, Orach Chaim* 4:17.

96. *Iggerot Moshe, Yoreh Deah* 3:47:4. He states that some adjustments are forbidden on a biblical level and others are not, but he does not offer a rationale for these assertions.

Silber states[97] that a timer is *muktza* "due to concern for monetary loss" (*muktza machmat cheesaron kis*).

Rabbi Auerbach (*Minchat Shlomo*, p. 111) and Rabbi Ovadia Yosef (*Yabia Omer* 3:18:2) disagree and rule that timers are not *muktza*. They advance a number of reasons including the argument that the fact that the owner is presently using the timer makes it absurd to state that it is *muktza* due to a concern for monetary loss. This category of *muktza* is limited to items which are not regularly used and carefully stored due to concern that the item be damaged. However, one cannot reasonably assert that a timer is withheld from use *as it is presently being used.*[98] This argument appears to be correct; it is difficult to grasp why a timer should be considered *muktza* if it is permitted to adjust it on Shabbat.[99]

Assuming that timers are not *muktza*, four distinct issues need to be addressed.

1) May one adjust the timer so that the appliance will start earlier than originally intended, (*e.g.*, move the dial so that a light scheduled to go on at midday goes on at 11 a.m.)?

This question is dependent on whether adjusting such a timer involves direct or indirect causation (*grama*) of the prohibited work. As a general rule, actions done through indirect causation only are on a much lower level of prohibition on Shabbat; in many circumstances they are completely permitted. The Talmud (*Shabbat* 120b) states:

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97. *Oz Nidberu* 3:25 and 4:46:7. See *Tzitz Eliezer* 1:20:9, where Rabbi Waldenberg asserts that timers are *muktza* due to other considerations. Rabbi Breisch, *Chelkat Yaakov* 1:58 and 2:45, and Rabbi Weiss, *Minchat Yitzchak* 2:110, also consider timers to be *muktza*.
98. Moreover, since timers (according to Rabbi Auerbach) only indirectly cause work to be done, they cannot be considered to be in the category of *muktza* known as "utensils of prohibited usage" (*kli shemelachto leissur*).
99. If it is prohibited to use or adjust a timer, then such an appliance could be *muktza*. However, *muktza* cannot be the source of the prohibition and can only reflect a prohibition based on some other status.

> [Deuteronomy 12:4] states "One may not do any work;" however, work done directly is prohibited, but work done indirectly is permitted.

The definition of "indirect" for the purposes of Shabbat, however, is in dispute. The resolution of this issue resides to a great extent in the harmonization of two apparently contradictory Talmudic texts. In *Shabbat* 120a the Mishnah states that it is permitted to place barrels of water in the path of a fire with the intent that the barrels catch fire, burst, and their content extinguish the flames. The Talmud (*Shabbat* 120b) explains that this is an example of indirect causation which is permitted in cases of need. Elsewhere the Talmud (*Bava Kama* 60a) distinguishes between tort law and Shabbat rules, by stating that for the purposes of Shabbat rules one is responsible for indirectly caused activity (but in tort one is not). The example the Talmud gives is one who is winnowing (separating wheat and chaff) on Shabbat violates the biblical prohibition by throwing the wheat into the air and letting the wind separate the wheat from the chaff. This is prohibited even though it is done indirectly and requires the presence of an additional force (the wind) to complete the action. The question that emerges is why is the barrel case permitted and the winnowing case forbidden?[100]

Three answers are given. The first answer posits that the critical distinction is the time delay. The barrel case is permitted because the fire will not destroy the barrels until a considerable amount of time has elapsed, whereas the wind separates the wheat and chaff immediately. According to this definition, because there is a clear time delay between the action and the effect, this would be indirect causation. Since actions done via indirect causation are permitted on Shabbat in case of need or in order to facilitate performance of a mitzvah, a timer set to go on at midday could be

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100. *Biur Halacha, Orach Chaim* 334:22 *"degram kebui mutar"* notes that the accepted opinion is that indirect causation is permitted in all categories of prohibited work, and not just extinguishing. For a general review of these issues, see *Afikei Yam* 4:2 and *Har Tzvi, Orach Chaim* 148.

adjusted at 9 a.m.so that the appliance will go on at 10 a.m., if this were a case of need or mitzvah. On Yom Tov, indirect causation is permitted even absent special need, and thus such adjustments are always permitted according to this reasoning.[101] This is the view of Rabbi Ovadia Yosef and others.[102]

The second position, that of Rabbi Joseph B. Soloveitchik and others, states that the critical factor is whether the additional force needed to finish the action is present at the time of human activity. Winnowing in the wind is prohibited only when the wind is blowing at the time the wheat is thrown into the wind; the barrel case is permitted since one is placing the barrels away from the fire. Placing the barrels actually in the fire would be prohibited.[103] Since, when adjusting a timer the additional force needed to finish the action, namely the rotation of the dial, is present at the time of human activity, all adjustments that hasten an action are prohibited. Thus, Rabbi Soloveitchik rules that under no circumstances may one adjust the timer so that an appliance will begin to operate earlier than expected.

A third view asserts that the critical factor is whether the indirect process used is the normal process. If the indirect process is the normal one, it is prohibited on Shabbat. Otherwise it is permitted. The barrel case is permitted only because it is not the normal manner to extinguish fire through a time delay. Winnowing, however, is frequently done through wind power.[104] According to this approach, adjusting a timer is prohibited since it was designed to be used in this manner; however, placing ice cubes (or hot water) on a thermostat to increase the flow of heat (or cold

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101. *Shulchan Aruch, Orach Chaim* 334:22 (and *Biur Halacha*).
102. *Yabia Omer* 3:18; *Ketav Sofer, Orach Chaim* 55; *Zera Emet, Orach Chaim* 44. See also, *Maharam Shick, Orach Chaim* 157; *Chazon Ish, Orach Chaim* 38:2; *Chelkat Yaakov* 1:49.
103. Rabbi Soloveitchik's position is fully explained in an article by Rabbi Hershel Schachter, *Maseh Vegramah Behalacha*, 1 *Beit Yosef Shaul* 70-72 (1985). Rabbi Schachter cites both earlier and later authorities who agree with this approach.
104. *Even Ha'ezer, Orach Chaim* 328; *Meorei Eish* pp. 201-202. See *Achiezer* 3:60 for a further explanation of this position.

air), would be permitted since that is an indirect and unusual manner of making the adjustment.

2) May one adjust the timer so that an appliance operates later than originally intended? (*E.g.*, move a dial on a timer so that a light set to go on at midday, now goes on at 2 p.m.)

In this type of adjustment, no prohibited act occurs because one merely is maintaining the status quo of no work taking place. Thus nearly all authorities permit this type of adjustment.[105] However, Rabbi Auerbach (*Minchat Shlomo* p. 111) cautions that this permissive ruling most likely does not apply to those timers where the timer is adjusted by removing and reinserting a peg.[106] In those timers where the dial is rotated, adjustment to delay current flow is permitted.[107]

3) May one adjust the timer so that the electric current is extinguished earlier than expected? (E.g., a light on a timer is set to go off at midday and one wants to move the dial so as to turn the light off at 10 a.m.).

Adjusting a timer to extinguish an appliance prematurely involves the same considerations as adjusting the timer to extend the current flow. According to Rabbi Joseph B. Soloveitchik's

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105. *Minchat Shlomo* p.111. Rabbi Feinstein (*Iggerot Moshe, Orach Chaim* 4:60) writes that a Sabbath violation is caused by delaying the onset of current, but he does not explain the reason for his position. See *Oz Nidberu* 8:32 where Rabbi Silber argues that any adjustment of a timer is a violation of building (*boneh*). It is possible that the Chazon Ish felt that way also; see *Chazon Ish, Orach Chaim* 38:2.

106. Only removing the peg is permitted, since that delays the onset of the electrical flow. Reinserting the peg to turn the current off at the time desired is only permitted if one accepts those authorities discussed above that one can hasten the extinguishing of an appliance.

107. *Shemirat Shabbat Kehilchatah* 13:25, n. 94, cites Rabbi Auerbach as maintaining that one may also delay the onset of current in those timers whose adjustment involves the pressing of a button to allow movement of the dial and releasing this button to set the dial.

definition of indirect causation, such an action is forbidden. If one accepts time delay as the critical factor in determining whether an action is a result of direct or indirect action, then in case of need or mitzvah one may adjust the timer to extinguish current flow earlier than expected; *Yabia Omer* 3:18.

One distinction, though, does exist between causing current to flow or be terminated. When the current flow turns on a light, a biblical violation occurs, whereas terminating a current flow involves at most a rabbinic violation (see sections I and II). Rabbi Auerbach (*Minchat Shlomo* p. 110) states that since the halacha is unclear as to which definition of indirect causation is correct, one should avoid manipulating a timer to hasten an action which, if prohibited, would be a biblical violation. He does however permit the adjusting of timers where only rabbinic prohibitions are present.

> 4) May one adjust the timer so that the electric current is extinguished later than expected? (*E.g.*, a light is set to go off at midday and one wishes to move the dial so as to delay the turning off until 2 p.m.).

Some authorities maintain that delaying extinguishing a light is forbidden, since it is analogous to adding fuel to a fire, which is a violation of "burning" (*mavir*).[108] Most authorities[109] argue that this is incorrect and that it is analogous to shutting a window so as to prevent the wind from extinguishing a flame — one is only maintaining the status quo by removing an impediment to its continuation, as in situation (2) (moving a dial on a timer so that a light set to go on at midday, now goes on at 2 p.m.)

Summary

While initially a subject of some controversy, it has now become accepted that one may use a timer set on Friday to control all appliances. The issue of adjusting timers on Shabbat has yet to be settled.

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108. *Yaskil Avdi, Orach Chaim* 7:23 and *Oz Nidberu* 8:32. 109. *Minchat Shlomo*, p. 111; *Yabia Omer* 3:18.

Some authorities prohibit any adjustment of a timer on the grounds that it is *muktza*. Even if timers are not considered to be *muktza*, some authorities prohibit adjusting a timer to start or terminate current flow earlier than expected. Other authorities, accepting a different understanding of causation, permit this. Adjusting a timer to delay the onset of current flow appears not to violate any Shabbat prohibition other than *muktza* according to most authorities.

Conclusion

The use of electricity on Shabbat and Yom Tov is a relatively new, and exceedingly complex, area of halacha. The variety of positions taken by the decisors is broad, and these differences are extremely relevant to the conduct of observant Jews. It is the near unanimous opinion that the use of incandescent lights on Shabbat is biblically prohibited. Beyond that, there is little agreement. Some authorities maintain that any time a circuit is opened or closed a biblical violation occurs. Other authorities insist that the use of electricity absent lights is only a rabbinic prohibition. Still other authorities accept that *in theory* the use of electricity without the production of light or heat is permitted — although even those authorities admit that such conduct is prohibited, absent great need, because of tradition.

The variety of grounds prohibiting the use of electricity is reflected in discussion of specific appliances. Many authorities permit opening a refrigerator door on Shabbat even if the motor is off; some do not. While all concede that the radio and television cannot be used on Shabbat and Yom Tov, the nature of the prohibition is in dispute. So, too, all but Rabbi Auerbach concede that a telephone cannot be used on Shabbat (even he prohibits it absent great need) — however there is no consensus as to the source of the prohibition. The use of timers is equally in dispute. While nearly all concede that timers may be set on Friday to work on Shabbat, adjusting such timers on Shabbat and Yom Tov is still in dispute.

The Laws of Usury and Their Significance in our Time

Rabbi Yechiel Grunhaus

The Laws of Usuary

The laws of usury (*ribit*) are quite complex and on the whole not very well understood. They are, however, highly relevant to the observant Jew, since they encompass almost all transactions involving credit between Jews. This article will attempt to clarify these laws as they pertain to certain day-to-day transactions in our time.

We will provide a brief overview of the laws and principles of *ribit* and then will use these laws to analyze two timely, seemingly simple, transactions: Using a friend's credit-card to make a purchase, and leasing a car.

Principles of Ribit

כללא דריביתא כל אגר נטר ליה אסור.[1] *The axiom of ribit is as follows: Any charge for time is forbidden.*

In explaining the principle of *ribit*, Rav Nachman used this guideline: Any charge for time is, by definition, *ribit*. This is one of the basic rules that we use in determining whether a transaction

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1. בבא מציעא דף סג ע"ב.

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incorporates *ribit*. Let us elaborate a bit on this very important rule.

To be able to expand, businesses borrow, using the money to build new plants, factories, etc. It is usually in the businessman's interest to borrow, even if he has to pay interest, since the return on his investments would more than offset the interest expense. A lender, realizing that his money has value to a business, charges for its usage. Charging for such usage is defined as *ribit*. In short, we can easily understand that when it comes to money, "time is money," and getting a loan for a month or a year is obviously worth something.

In assessing a potential business venture, one would automatically incorporate the cost of money into an evaluation of the proposed deal. Since nowadays this is the standard procedure in doing business, complying with the laws of *ribit* is indeed very difficult. The observant Jew who wishes to comply with the halacha must therefore change his perspective with respect to the "cost" of money.

To illustrate this perspective let us consider buying a new car. The new car dealer has a special deal today, 0% financing or a $1000 rebate. Why is the dealer willing to give so much off if we pay cash? The answer is simple: giving 0% financing will probably "cost" him about the same. If the dealer is a Jew, would he be allowed to offer us the same "deal"? Probably not!

In making this offer, the dealer has set two prices for the car, one if we pay cash, and the other if we choose to finance the car. The actual cost of the car is the price that one will pay if he pays right away, which is the price after the rebate. If we choose the 0% financing option, we will be paying the dealer *ribit*.

Even though the dealer has termed the offer "0% financing," we are still paying interest. Since we can buy the car for $1000 less if we pay now, paying full price is actually a financing charge. As a rule, any offer that includes two different prices, one being lower for immediate payment, and the other being higher for later payment, must be questioned.

The "kosher" way for the dealer to sell the car would be just to offer the rebate, which is like "running a sale" — perfectly legal and in full compliance with the halacha.

It may seem like a minor difference at first, but this minor distinction is the deciding factor in determining whether a transaction is in compliance with the halacha.

The Ramo in *Shulchan Aruch* quotes Rav Nachman's rule (that the axiom of *ribit* is that it means any charge for time) and applies it to all forms of *ribit*,[2] whether it be a loan or the purchase of merchandise on credit. The case of the car dealer is an example of *ribit* in connection with the acquisition of goods. A case where R. Nachman's rule applies in connection to a loan agreement would be a "late penalty." A late payment charge that is not time dependent and does not accrue with the length of time that a payment is overdue, is not considered *ribit*.[3]

Another instance where Rav Nachman's rule would determine the status is points on a mortgage, which in some cases are not related to the length of the loan; interest points, therefore, would be considered a cost of arranging the loan and not interest on the loan. In the same way, a loan application fee would not be considered interest on the loan but rather a cost of arranging the transaction. It is however important to note that sometimes these charges are a combination of the two — namely, an interest charge and a processing fee. For example: If the minimum application fee is $50 plus $10 for every thousand, then the $50 is a processing fee and the additional charges may be considered interest. The lender will claim that all these charges are processing fees. However, as defined by the halacha, a fee which is time dependent or one which increases in proportion to the size of the loan is, by definition, *ribit*.[4]

The laws of *ribit* are divided into two groups, namely: biblical

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2. שו"ע יו"ד סימן קסא' סעיף א.
3. It is therefore permissible in cases of buying merchandise. It is however not permitted in a regular loan since it appears like a trick to get around the rules of *ribit*.
4. יו"ד סימן קסא' סעיף א.

ribit, and *ribit* by rabbinic decree (ריבית דאוריתא וריבית דרבנן). The following is a synopsis of their respective rules.

ריבית דאוריתא Biblical Interest Or Usury

In order for a transaction to be considered in violation of biblical *ribit* it must meet certain criteria. These include the following:

1) Any agreement between the lender and the borrower which provides for the lender to receive more than he actually loaned is *ribit*, and will be considered biblical *ribit* if it is agreed upon at the time the loan is made (ריבית קצוצה).

2) The lender and the borrower must both be Jews.[5]

3) The borrower must not be an "*apikores*" (a heretic).

4) The borrower has to be an individual acting as such in this transaction, and not a corporate entity whose liability would be limited under the law.[6]

5) The transaction must be a loan, and not a monetary obligation resulting from a sale of goods or monies owed for work.[7]

6) The loan agreement includes the agreed-upon interest rate, or any other monies to be paid by the borrower in addition to the principal.[8]

The form of interest (*ribit*) that is charged does not have to be a specific rate of interest in order to be considered of biblical degree. Any amount paid in addition to the actual sum owed is *ribit*. This includes paying a sum agreed upon between the parties, even if this third party is a non-Jew and has no dealings with the lender. (Even agreeing to donate a sum to charity may be biblical *ribit*).[9]

7) Non-monetary compensation can also be considered *ribit* forbidden by the Torah; for example, if the borrower agrees to hire

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5. יו"ד סימן קנט' סעיף א'.
6. אגרות משה ועיין ברית יהודה פ"ז אות כה.
7. יו"ד סימן קסא' סעיף א.
8. רמב"ם הלכות מלוה ולוה פ"ו הלכה א.
9. יו"ד סימן קס' סעיף יד'.

the lender, who is a painter, to paint his house in return for the loan.[10]

8) A late payment penalty is considered biblically-proscribed *ribit* according to some authorities: For example, making an interest-free loan for a month, but specifying a late penalty of 2% per month thereafter. Even though no interest will be paid if the loan is repaid on time, and the transaction does not guarantee the lender any usury, it will still be *ribit*. Since the deal specifies that under certain conditions more will be charged, we consider the whole transaction in violation of the biblical ordinance against *ribit*.[11]

9) A late penalty which only specifies a lump sum and is not based on the amount of extra time that a loan is held is not biblical *ribit*. This type of remuneration is not time dependent, and is therefore not *ribit*, which by definition is money for time. It may however be a violation of the rabbinic stricture,[12] as will be explained below.

10) An interest-free loan that comes due and is extended by the lender in return for interest is considered biblical *ribit* according to some rabbinic authorities. Even though it was not part of the original loan agreement, an extension of a loan is considered like a new one by these authorities.[13]

One important note: Unlike other prohibitions concerning monetary transactions, the stricture of *ribit*[14] applies to the *actual agreement* between the parties to pay and/or charge usury, whether or not the agreement is carried out. Even if, at the time the loan is repaid, the lender has received only his principal, a transgression of the biblical prohibition has taken place. But this applies only if a written loan agreement was drawn up between the parties

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10. The issue of whether or not this is ריבית דאוריתא depends on the monetary value of such an agreement.
11. יו"ד סימן קעז סעיף טז'.
12. שם, סעיף יד.
13. עיין רמב"ם הלכות מלוה ולוה פ"ו הלכה ג'.
14. "לא תשימון עליו נשך".

(מלוה בשטר); according to some authorities, a verbal agreement does not constitute a violation unless it was actually executed.[15]

ריבית דרבנן Interest Forbidden By Rabbinic Decree

Ribit by rabbinic decree is far more complex than biblical *ribit*. It encompasses almost all monetary obligations or debts resulting from a sale of merchandise, monies owed for work, etc. It also includes different types of interest on loans which would not qualify as *ribit* under the laws of the biblical prohibition.

Rabbinic law expands the biblical prohibition to include interest payments that were not agreed upon at the loan's inception, non-tangible payments, and payments-in-kind that are made before a loan is initiated (in anticipation) or after its return (as a thank-you gesture).

Rabbinic *ribit* is governed by the same basice rules as biblical *ribit*, with certain extensions. These includes the following:

1) A lender should not receive in return from the borrower more than the principal amount of the loan.

A. The definition of a loan is expanded under rabbinic interpretation.

Under biblical law, a loan is defined as money loaned on condition of being returned, but in rabbinic law this definition is expanded to include monetary obligations that result from business transactions other than loans. The money owed is not a result of a loan which was taken, but a result of some business transaction. For example, monies might be owed for goods that were purchased or for work that was done. These obligations are viewed as loans, and prohibit the seller or worker from charging more than the actual obligation for a late payment.

B. The definition of a lender "receiving more than his principal in return" is also expanded.

The biblical concept of "more" means more money or getting an object of tangible value, but under rabbinic definition "more" would include non-tangible payments or favors. Thus "more"

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15. עיין פתחי תשובה סימן קס אות ב. וב"מ דף סב ע"א.

might include using the lender's services as an accountant, if he would normally use somebody else.

Other favors would also be prohibited; for example, the borrower allowing the lender to live in his vacant apartment rent-free. Even if this apartment would otherwise not be rented out, it is a favor which is too obvious, and we assume that he is only doing it because of the loan.[16]

2) In order for the additional payment to be considered biblically proscribed, it must have been agreed upon at the time that the loan was made.

A. Under rabbinic *ribit* this rule is expanded to include *any* payments that are made in addition to the actual principal owed, even though they were not agreed upon at the loan's inception. This would include giving the lender more than his principal at the time that the loan is repaid, even without specifying that the additional sum is interest for the loan.[17]

B. It also includes payments that are made *before* a loan is obtained (in anticipation) or *after* a loan has been repaid (as a thank-you gesture) (ריבית מוקדמת וריבית מאוחרת).[18]

In order for a payment to be in violation of this type of *ribit* it has to be clear that it is intended for the loan. This would mean saying something like, "this is to show my appreciation," or "this is a gift for the loan which you will give me."[19] Another prohibited instance is if the gift is so large that it speaks for itself.

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16. Even if they both know that they would do each other such favors anyway, public favors, such as living in somebody else's apartment, are not permissible. The public does not know the details and assumes that a favor of this kind is acceptable.
17. Such an additional payment would be permitted, if the money which is repaid was not a loan, but rather an obligation which resulted from a business transaction. This is true only if nothing is mentioned by the borrower.
18. יו"ד סימן קס' סעיף ו'.
19. The gift is not contingent on his obtaining a loan. If the gift however is conditional, and its return is expected if no loan is made, it is considered ריבית דאוריתא (יו"ד סימן קס).

3) The basic definition of *ribit* is "a charge for time." This definition excludes some late penalties from being considered *ribit*.[20]

The same basic rule applies to rabbinic law as well. Thus, a late penalty on a car payment, which does not accrue as a function of the length of the delay, is not *ribit*. The penalty is defined as a fine, rather than an interest charge.

Applying the information we now have about *ribit*, let us analyze the two instances cited earlier.

In the first example the question was, how would the laws of *ribit* affect one's use of a friend's credit-card? To better understand the question, suppose the following: Mr. Smith is planning a trip with a friend. His friend makes all the arrangements, but, while at the travel agency, he realizes that he doesn't have Mr. Smith's credit card. He contacts Smith, and they agree that his friend will put the charges on his own card, and collect Smith's share from him when the bill arrives. But when the bill arrives, Mr. Smith finds himself short of cash. His friend suggests that he take advantage of the payment plan offered by the credit-card company. The installment plan includes finances charges that have to be paid, and Smith is obviously willing to pay them. He even offers to pay the company directly. The halachic view of their agreement would be as follows:

Mr. Smith's friend borrowed the money from the credit-card company and then loaned that money to Smith. Of course, one could claim that it is Smith who borrowed the money and only used his friend's credit, but that is not the case. The credit company does not know Mr. Smith, and it will hold his friend responsible for the money. By definition, one who owes money and is responsible for its return is a borrower. Therefore, Mr. Smith and his friend are both borrowers — Smith from his friend, and his friend from the credit-card company. For the purposes of our discussion, then, we must define Mr. Smith as a borrower and his friend as the lender.

What we now have is a loan between two Jews. The problem

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20. See section on Usury By Biblical Decree.

arises when Mr. Smith offers to pay the finance charges incurred. Even if he pays the credit-card company directly, it may still be considered a violation of the biblical *issur*.[21] Since he owes his friend the money, paying off the friend's debts is the same as paying him directly.

We have to determine whether this would constitute biblical or rabbinic usury, and whether there might be a "kosher" way for Mr. Smith to pay back his friend.

Since there was no agreement between the parties that would obligate Mr. Smith to pay these finance charges, it is not considered biblical *ribit* (ריבית קצוצה).[22] However, if the friend extends the loan in return for Mr. Smith's paying off the credit-card bill, it may indeed be considered biblical *ribit* according to some authorities.

There may be another angle of approach to the problem. Let us assume that Mr. Smith was away when the bill came, and his friend is now faced with the problem of paying. Supposing that he had the money but chose not pay on time, would that still be Mr. Smith's obligation? Probably not; he may never have intended to delay his payment. If on the other hand his friend could not make the payment, and was therefore forced to pay the finance fee, that finance fee may very well be Mr. Smith's fault. The question would now be, whether the laws of *ribit* prohibit him from compensating his friend for the finance charges incurred.

In *Shulchan Aruch*,[23] in reference to a co-signer on a loan who had to pay *ribit* to a non-Jew and wants to recover those charges from his fellow Jew who was the actual debtor, the Ramo states the following:

> אבל אינו צריך לתת ריבית שנותן בשבילו דאין אומרים ליתן ריבית.
>
> But he does not have to repay him the interest, which

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21. Ibid. item #6.
22. Ibid. item #1.
23. שו"ע יו"ד סימן קע.

he has paid for him, since we do not tell him to pay *ribit*.

Even though the co-signer sustained a loss due to his friend's non-payment, recovering interest charges is not permitted. The rationale for this is as follows: Having to pay interest is not considered a loss. Even absent the issue of *ribit*, if the co-signer went to Beth Din to recover his loss he would not win, for the damages would be defined as "גרמא"(causative), which is not considered a tort.

The general rule in these disputes is that one who indirectly injures his fellow man is not held liable for damages.[24] If the debtor would like to make up the co-signer's loss, even though he is not obligated to do so, it will be looked upon as a usury payment. Every lender can make the claim that he lost money since his funds were tied up by the borrower — but that is precisely the law of *ribit*.

There are opinions that the Ramo's ruling applies only to cases where the injured party was at fault.[25] In the case of the co-signer it was his fault, since he entered into an agreement which was questionable. In the credit-card situation, however, there may have been nothing wrong with their original actions. It may therefore be acceptable for Mr. Smith to make up his friend's loss.[26]

Let us now analyze the example of leasing a car. Suppose the following:

Mr. Jones is looking for a new car. The dealer offers him several options:

A) He can buy the car by financing it, making a down payment and then making monthly payments for three years.

B) He can lease the car for three years with a buy-out option.

C) He can lease the car, with no buy-out option.

If the dealer is Jewish, some of these options may constitute a violation of the laws of *ribit*.

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24. עיין שו"ע חו"מ סימן רצב" ס"יח, וסימן פא' ס"לב.
25. עיין ברית יהודה פרק ט' אות יג.
26. Since the matter is somewhat complex a Rav should be consulted on a specific case.

The first option, financing the car, would most certainly be prohibited. The car belongs to the buyer, and the money which he still owes for its purchase is viewed as a loan. The finance charges would therefore be considered interest on the loan, or *ribit*.

The money owed is a result of a purchase, which would make it rabbinic usury.[27] But it might even be considered interest forbidden at a biblical level, if a separate financing agreement is made. It will be considered a loan with the lien being the car.[28]

The third option, simply leasing the car, is like a long-term rental, which is permissible.

The second option is a combination of the other two, and must be more carefully examined. Such a lease is intended to give the lessee the best of both worlds. He can walk away from the lease if he so desires, or buy the car and thereby justify all the payments which he has been making. If the lessee chooses to take the buy-out option at the end of the term, he then becomes the owner. The lease payments which he has been making up to that point will count as a down payment, and his buy-out cost is determined accordingly.

The problem results from the fact that he has been paying interest on the money for the term of the lease. One could claim that the lease was a long-term rental, and the buy-out now is a separate deal. But closer observation of these agreements reveals a different story. A typical advertisement for such a lease might read:

"Purchase option available at lease end: Sentra — $2875."

The buy-out price is fixed today, regardless of what the car's value may be three years hence. This would indicate a sale by the dealer. Why would the dealer sell a car at today's price and receive payment in three years?.

The dealer is selling the car now and charging interest on the unpaid balance. If the lessee chooses to buy the car by exercising his option, he will be consummating a sale which was made today. His total cost will be much higher since he did not pay right away.

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27. See section on Usury by Rabbinic Decree 1-A.
28. עיין ברית יהודה פרק ב' אות ט.

The increased cost will then be a direct result of the finance charges involved.

However, one may wonder, what could be wrong with the lease now, since the lessee does not *have* to exercise the buy-out option? An agreement whereby a person pays interest, only if he chooses to satisfy an agreed-upon condition, has a special name: "צד אחד בריבית," "one side in usury."

The case where the Gemara[29] uses this concept concerns a down payment on a piece of property. The buyer makes a down payment and hopes to be able to pay up the balance and complete his purchase. If he completes his purchase, he will be consummating a buy which he made today. However, if he is unsuccessful in completing the purchase, the deal will fall through, and he gets his down payment back from the seller.

The question in the Gemara is, who eats the fruits of the property? If the seller eats the fruits and the buyer completes his purchase, then the seller was eating the buyer's produce, which is usury for the balance he was owed by the buyer. On the other hand, if the buyer eats the fruit, then we have a problem if he does not complete his purchase. The money which he gave as a down payment turns out to be a loan to the seller, and eating the seller's produce would be considered usury.

We have an analogous situation in the car lease with a buy-out option. If the lessee decides to exercise his option, it means that retroactively his first payment was a down payment and the subsequent payments were loan installments. He will actually end up paying more for the car because of the loan. Although it is not clear at the onset of the deal that his monthly payments will actually be loan installments, it is still "one side in usury."

This brief study makes it amply clear that the law against taking or giving interest has a far wider application than is commonly supposed. Hopefully, the present analysis helps illustrate how far reaching these strictures can be. Consequently, it is advisable to consult a rabbinic expert before undertaking even commonplace commercial transactions which involve credit.

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29. בבא מציעא דף סה ע"ב.
30. שו"ע יו"ד סימן קעד' סעיף ו'.

The International Date Line and Related Issues

David Pahmer

Introduction

The twentieth century has seen advances in technology to the point that one person may be in simultaneous communication with many others all over the Earth. Although for him it may be the morning, for others it is the middle of the night, afternoon, evening, or any time of day at all, depending on where on the globe they are. Although the time differential has always been a natural phenomenon, it has never caused as much excitement in the world of halacha as it has recently.

By convention, all countries of the world have agreed to begin each new day at midnight. Since it is not midnight all around the world at the same instant, the new day does not begin simultaneously for all places. When it is midnight in New York, it is only 11 PM in Chicago and 9 PM in Los Angeles. That means that it becomes Friday in Chicago an hour after it does in New York, and in Los Angeles two hours after that. Several hours later it becomes Friday in Hawaii (at Hawaiian midnight) and several hours later Japan follows suit. Eventually, Pakistan, Iran, Israel and France will all begin Friday in turn. After several more hours, it will again be midnight in New York. Does that mean that it will then

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become Friday? Surely not, since 24 hours earlier Friday already set in! Somewhere along the line we must stop saying that it becomes Friday midnight, and say that now it becomes Saturday at midnight. This point is known as the International Date Line, which is an imaginary line in the Pacific Ocean, extending from the North to the South Pole.

From this we see two things. First of all, the need for a date line is real. Second, the location of the date line is arbitrary.

When all the people in the world lived in the same area, this was not an issue. Everybody lived in one region and it was 2:35 PM on Thursday for everybody simultaneously. When people began to wander to other lands, those who wandered east were always ahead of the ones who stayed home. Similarly, those who wandered west were always behind those who stayed home. Theoretically, if the east nomads met up with the west nomads, there would be a problem, because the east nomads kept track of the days ahead of the original settlement, and the west nomads kept track of the days behind. Thus, when they met, they would be one day apart. This never came up for many thousands of years, because in order to meet, someone had to circumnavigate the world, which did not happen until after the Middle Ages.

The Halachic Problem

An arbitrary date line is unacceptable for Jews, though, because we must keep accurate count of the days, since many halachot depend on the day of the week — most significantly, Shabbat. We cannot simply agree to treat tomorrow as Shabbat, on our own whim! We must figure out which halachic day it is for every point on the Earth that Jews are found.

The Torah records that *Hashem* provided the Jews wth manna in the desert. This manna had miraculous properties — everyone gathered precisely the appropriate allotment for his family, and any manna left over spoiled. No manna fell on Shabbat, so a double portion fell on Friday to supply for Shabbat.

Thus, the Jews in the desert had physical evidence which day of the week was Shabbat. As long as everyone stayed in the desert

and kept accurate records, there would be no doubt which day of the week it was.[1]

כי אות היא ביני וביניכם

One might suggest that since we are sure that Shabbat began in the Sinai desert at sundown, then at that instant Shabbat started all around the globe. If so, Shabbat would begin in New York at about 11 o'clock Friday morning, and in California at about 8 o'clock Friday morning. The whole world would begin Shabbat simultaneously, at the time when Shabbat was starting in the Sinai.

However, this is not correct. The Radvaz *(Teshuvot,* Vol. 1, *siman* 76) insists[2] that the period of Shabbat (and presumably the other days of the week as well) are determined by sunset at the particular location under consideration.[3]

Similarly, the *Mishne Lamelech (Parashat Derachim, drush* 23) notes an interpretation of a midrash which presumes that in Heaven the days parallel those of Yerushalayim (Jerusalem). When Shabbat begins in Yerushalayim, it begins in Heaven as well. Nevertheless, he assumes, like the Radvaz, that Shabbat in every given region begins when the sun goes down in that spot on Friday.

As we travel farther from the desert, and from Israel in general, we become doubtful as to whether we have crossed the halachic date line. Unless we identify a halachic date line, Jews might never be allowed outside of Eretz Yisrael for fear of violating Shabbat every week, based on erroneous assumptions of the identity of the day! Obviously, then, as Jews travel all across the

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1. Tradition has it that the Sambatyon River is physical evidence of the day of Shabbat, even nowadays. During the week, the river thunders from agitation and turbulence. On Shabbat, the river is calm and placid [*Sanhedrin* 65b]. Of course, the location of this river is shrouded in mystery.
2. This idea is derived from a *pasuk,* [*Shemot* 31:13] כי אות היא ביני וביניכם "For Shabbat is an individualized sign between Me and you . . . " implying that the Shabbat relates to each Jew individually, which the Radvaz applies to the issue of time.
3. This is also found in the *Shulchan Aruch Harav* [2nd ed. 1:8], as well as in the *Sha'ar Hakolel* [Chap. 1, and Chap. 49].

globe, it becomes of overwhelming importance halachically to determine precisely where the day begins and ends.

Talmudic Sources

There is one Talmudic text [*Rosh Hashana* 20b] that may hold the answer to our problem in its entirety, depending on how we understand that passage. It says that the *Beit Din* (court) may not pronounce a day to be *Rosh Chodesh* unless the new moon appeared before noon on that day. (We will discuss this passage in depth later.) This Gemara sheds no light whatsoever on our discussion according to many *Rishonim* such as Rashi. They explain that this text is relevant only to the details of declaring *Rosh Chodesh.*

Several other *Rishonim,*[4] though, interpret this Gemara to be addressing our issue precisely. They interpret the passage in the following manner:

If the astronomical new moon *(molad)* occurs slightly before noon (Israel time), then the *Beit Din* may declare that day as the *Rosh Chodesh.* If the *molad* occurs any time after noon, then the next day is *Rosh Chodesh.* The Gemara further states that this is a consequence of the requirement that we cannot declare *Rosh Chodesh* unless the newly sanctified *Rosh Chodesh* will last a full 24 hours. For example, if the *molad* occurs in Israel three hours after nightfall on Wednesday night, (that is, three hours after the beginning of Thursday, since the Jewish day begins at nightfall) the *Beit Din* can still declare Thursday as *Rosh Chodesh,* because it is not yet Thursday in New York. Similarly, if the *molad* occurs in Israel eight hours after nightfall on Wednesday, then Thursday is still acceptable for *Rosh Chodesh,* because it is not yet Thursday in California. How long can we continue this pattern? The Gemara here designates noon Israel time as the latest time for which any locale has not yet begun the new day. Now, noon is 18 hours after nightfall, which means that there is still a region in the world where

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4. Particularly the *Ba'al Hama'or* [loc. cit.] and the *Kuzari* [section II, *siman* 20]. The Ran and Ritva prefer the explanation of the *Ba'al Hama'or* to that of Rashi.

Rosh Chodesh has not yet begun, and that is the farthest west we can travel for which this is true. In other words, more than 18 hours west of Israel we cross the date line and enter the next day, 6 hours ahead of Israel.

Thus, according to these *Rishonim*, the Gemara established the date line six hours (90°) east of Israel (see map). This is the interpretation of the *Ba'al Hama'or* and several other *Rishonim*. But according to Rashi and other *Rishonim*, as we have said, there is no explicit Talmudic source at all to help us locate the halachic date line.

Various Opinions

Some are of the opinion that if the Gemara above is not dealing with our issue, we are free to suggest any other spot as the date line. Rabbi M. M. Kasher,[5] for example, postulates that since there is no Talmudic source for the date line, any arbitrary point is acceptable, and since the International Meridian Conference of 1884 has already chosen an International Date Line 180° from Greenwich, England, that should be the date line for halacha as well. His opinion has been rejected by nearly all later *poskim*.[6]

The Kazhiglover (*Teshuvot Eretz Tzvi, siman* 44) cites three versions of the opinion of the *Kuzari* on this matter.[7] (A) the date line is located along the eastern edge of Asia; (B) it is in the center of the Eurasian continent; (C) or it is actually in Israel or the

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5. *Hapardes*, Chicago, 28th year, vol. 5 p. 3 ff.
6. R. Chaim Zimmerman, in a brief essay printed in *Hama'or*, feels R. Kasher has misrepresented the sources.
7. His understanding of the *Kuzari* is taken from the commentaries *Kol Yehuda* and *Otzar Nechmad*, which do not necessarily explain the position of the *Kuzari* correctly. The Kazhiglover concludes, oddly enough, that since there are several opinions on the location of the date line, we cannot dare to decide the matter conclusively. The date line remains a mystery, and any Jew traveling to that part of the world (which according to the Kazhiglover may be Eretz Yisrael itself!) simply keeps Shabbat after seven days from the last time he kept Shabbat. Nevertheless, his basic premise is that there is a halachic date line, and he insists that the International Date Line is irrelevant to the halacha, in opposition to R. Kasher's suggestion.

desert.[8] It seems very difficult to assume that the date line would be located in a region inhabited by the Jews of old; since crossing the date line entails some responsibilities, and the Gemara never implies that travelers dealt with these responsibilities, they could not have crossed the date line in their travels. We conclude, rather, that wherever the date line is, it falls outside the area inhabited in the ancient world.

The two most accepted opinions of the location of the line are those of the Chazon Ish and R.Y.M. Tukitchinsky (see map). The Chazon Ish places the line at 125° east longitude (corresponding to 90° east of Yerushalayim) while R. Tukitchinsky places it at 145° west longitude (corresponding to 180° from Jerusalem). We shall now examine these two opinions in more depth.

Chazon Ish

In 1941, several hundred *talmidim* from different European yeshivas (primarily from Mir) escaped Nazi persecution by fleeing to the Far East, where they were granted asylum. They stayed temporarily in Kobe, on the Japanese island of Honshu, but soon went to Shanghai. Kobe is located at 135° east longitude (100° east of Jerusalem), still west of the official International Date Line. Concerned that they had possibly crossed the *halachic* date line, some *talmidim* kept two days of Shabbat every week, because of doubt.[9] Since this practice could hardly continue, they sent telegrams to the *gedolim* in Europe and Eretz Yisrael for advice.[10]

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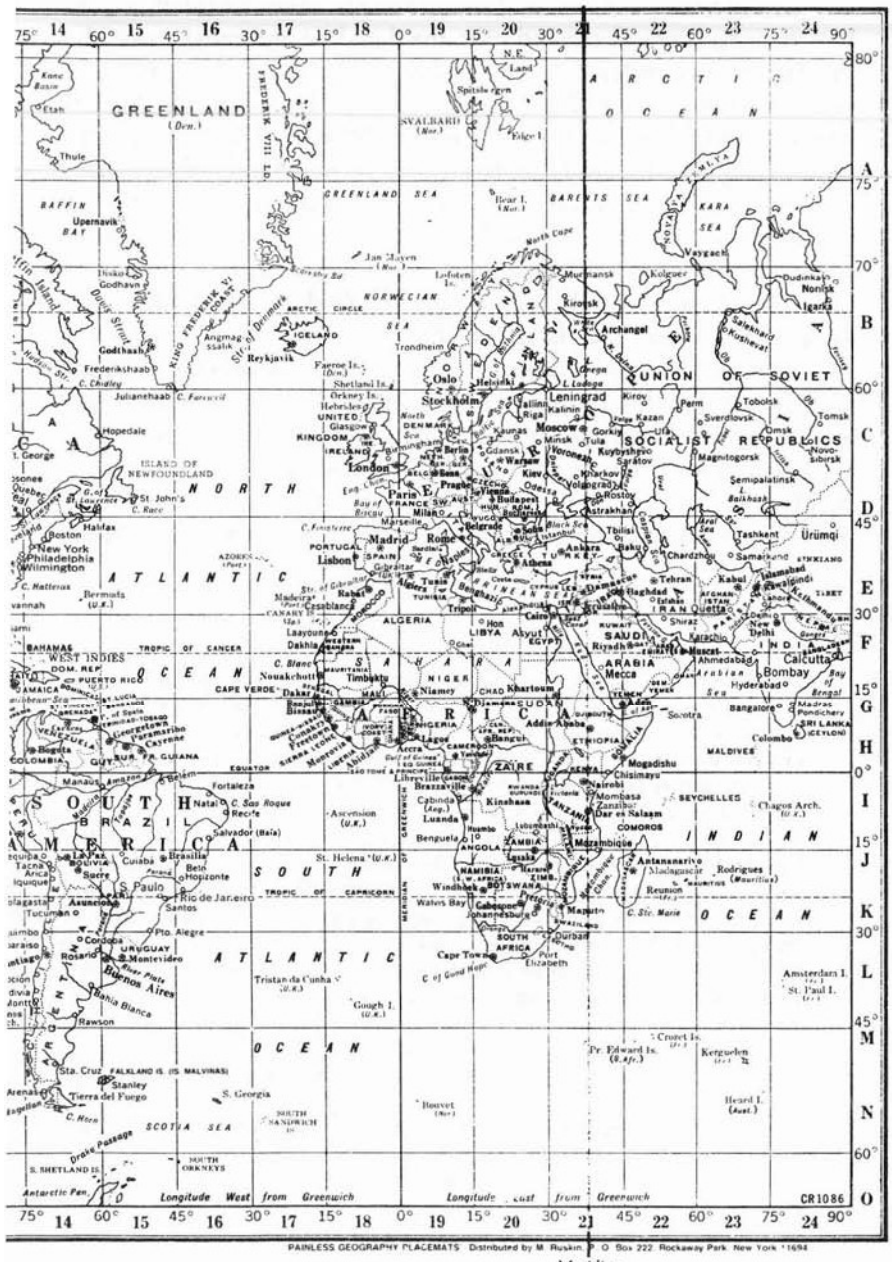
8. This is possibly also the opinion of the kabbalist, R. Moshe Cordovero, in his work *Shiur Komah* [section 52].
9. Incidentally, in late 1941, some 50 *talmidim* from Mir staying in Shanghai were preparing to travel to Canada, and upon realizing that their ship would cross the date line on Yom Kippur, which would require them to fast two consecutive days, chose to wait for the next available ship. Meanwhile, the Second World War broke out between Japan and the U.S., blocking any passage between Shanghai and the Americas. The *talmidim* were forced to wait out the war until 1946.
10. By the time Yom Kippur came, most of the *talmidim* were sent to Shanghai, with very few remaining in Japan.

The map indicates three lines of longitude which are relevant to the halachic discussion of determining the dateline for religious purposes:

1) the longitude which passes through Jerusalem
2) the longitude 90° of Jerusalem

3) the line 180° east of Jerusalem

Notice that Japan, New Zealand, and much of Australia and the USSR lie to the west of the International Date Line but to the east of the 90° line. Also note that Alaska and Hawaii lie to the east of the IDL but to the west of the 180° line.



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Meridian
Through
Jerusalem

The Chazon Ish, as well as numerous other *gedolim*, replied that they had indeed crossed over the date line and must treat what the Japanese considered to be Sunday as Shabbat.[11] To explain his position, the Chazon Ish wrote an essay in which he declared unequivocally that any point more than 90° east of Yerushalayim is no longer six hours *ahead* of Israel, but 18 hours *behind* (see map). According to the Chazon Ish, this is the opinion of all *Rishonim* who discuss the topic.[12] Any *Rishon* who expresses a position on this matter identifies 90° east of Israel as the meridian[13] of the date line. They understand the Gemara above [*Rosh Hashana* 20b] in the same way as does the *Ba'al Hama'or*.[14]

The *Rishonim* proceed to offer an additional, rational explanation for this position. The Gemara [*Sanhedrin* 37a] as well as the verse [*Yechezkel* 38:12] refer to Eretz Yisrael as *"tabur ha'aretz,"* the center of the world. This means that if we were to divide the globe into two hemispheres, an upper one and a lower one, we would position it so that Jerusalem is in the center of the

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11. Interestingly, R. Simcha Zelig Rieger, the *dayan* of Brisk at that time, sent a letter advising the *talmidim* as follows: Since the *minhag* among the Jews there at the time was to treat Saturday as Shabbat, (albeit contrary to the halacha as he understood it) regarding rabbinic laws we say that custom overrules rabbinic law; so the *talmidim* should join the community in Shabbat davening on Saturday. But as far as biblical laws are concerned, the real date line is 90° east of Jerusalem, and they should thus keep Shabbat on Sunday.

    R. Yechzkel Levenstein, spiritual leader of the *talmidim* of Mir, insisted that the *talmidim* follow the Chazon Ish entirely, even for rabbinic laws.

12. The Chazon Ish interprets the *Yesod Olam* (a *talmid* of the Rosh) to support this position as well, contrary to other readings in the *Yesod Olam*. R. Zimmerman, in his monumental work on our topic, *Agan Hasahar*, understands some of the *Rishonim* differently from the Chazon Ish, yet adds the Rambam to the list of *Rishonim* who support him. R. Zimmerman learns that the *Yesod Olam* places the date line an hour and a half to the east of the Chazon Ish's line, yet he suggests that this may be based on a factual error.

13. A meridian is a line of longitude, stretching from the North Pole to the South Pole.

14. He adds that even those *Rishonim* who reject the *Ba'al Hama'or's* interpretation of the Gemara agree that the date line is 90° east of Yerushalayim. They merely claim that the words of the Gemara are to be understood differently, not dealing with the placement of the date line.

upper one. Since the cradle of civilization is in the upper hemisphere, and exploration of the lower hemisphere dates back no further than a few centuries, the upper hemisphere is the portion of "*yishuv*," settlement, whereas the lower hemisphere is "uninhabited."[15] If we were to draw a flat map of the *settled* area, then the east edge would fall 90° to the east of Israel, and the west edge 90° to its west. This map would define one indivisible region. The easternmost edge represents the region which becomes a new day first, and the westernmost edge the region which is last to become a new day. With the globe in this orientation, we can understand why the Gemara would define the date line six hours to the east of Israel. The eastern edge of the settlement, representing the earliest portion of the globe, lies six hours to the east of Israel. The halachic date line lies right beyond this edge of the hemisphere (see map).

Positioning the halachic date line 90° east of Israel (in the ocean east of China) is very convenient for most purposes. Very few Jews live in that part of the Orient, or in the part of Siberia which fall along this meridian. However, it is enormously inconvenient when the occasional traveler actually gets to that part of the world. It may theoretically occur that he is staying on one side of the street where it is Friday, while across the street it is Shabbat! This is the opinion of the Brisker Rav as well as several other *poskim*.[16] The meridian corresponding to 90° east of Jerusalem is an aboslute demarcation regardless of its position on the ground.

The Chazon Ish, however, blends the Talmudic source above with the rationale of the *Rishonim*, and postulates that the *estimated* determination of the upper hemisphere is governed by the 90° rule, but the upper hemisphere conforms halachically to the eastern coastline of any landmass which would otherwise be split by the 90° rule. This means that if any significant part of a given

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15. This makes even more sense in light of the study of plate tectonics, where the theory of continental drift may suggest that at one time the continental plates were all located on the "upper" hemisphere.
16. R. Zimmerman concurs with this opinion as well.

landmass falls within the upper hemisphere, that whole landmass is in the upper hemisphere and the date line bends around it; all of it is then considered "east" of Israel (and west of the date line). The Chazon Ish bases this notion on the *Sefer Yesod Olam*. This is a tremendous variation, placing all of continental Russia and China to the west of the date line; more surprisingly, all of Australia just to the west of the date line as well. The Brisker Rav would insist that whatever portion of Australia lies to the east of 125°e longitude[17] is over the date line, and consequently at the tail end of the day. This would be very uncomfortable because the International Date Line is well to the east of Australia, so that Shabbat would fall on Australian Sunday. In contrast, the Chazon Ish unites the whole landmass of Australia, so Shabbat corresponds with Australian Saturday.

The upshot is that even according to the view of the *Rishonim* that the date line lies 90° to the east of Israel, major portions of Siberia and Australia are in constant doubt over their date.[18]

R. Yechiel Michel Tukitchinsky

Several years before the 1941 sortie to the Far East, the date line issue had already presented itself. During World War I, between 1914 and 1916, several hundred Jews fled to Japan for safety, and they asked Rabbi M.A. Kisilow[19] which day to consider as Shabbat. He told them to rest on Saturday like the rest of the world.[20] It appears that this set a precedent, because when the Yeshiva students escaped to Japan in 1941 and sent out the aforementioned telegrams, some came back with instructions to keep Shabbat on Saturday, contrary to the opinion of the Chazon Ish.

The major opponent of the Chazon Ish in this matter was

17. This is the heavily populated area, including Sydney, Melbourne, Brisbane, and Canberra.
18. It depends on whether or not to accept the Chazon Ish's suggestion that the date line conforms to the coastline.
19. Author of the Responsa, *Mishberei Yam*.
20. One factor in his decision was that he could not bear to see Jews keeping their Sabbath on Sunday with the non-Jews.

Rabbi Y. M. Tukitchinsky. His position was that the location of the halachic date line is 180° from Jerusalem (see map). If so, the Japanese settlement was well to the west of the date line, and Shabbat in Kobe is Saturday!

In an attempt to settle the matter, the Chief Rabbinate of Jerusalem convened a metting of rabbis in 1941 (at the home of Chief Rabbi Herzog). R. Tukitchinsky, present at that meeting, succeeded in convincing the other rabbis of his opinion, so they sent a telegram to Japan advising them to keep Shabbat on Saturday. He based his opinion on *his* understanding of the *Yesod Olam*, as well as on additional *Rishonim*. Presumably, this opinion is predicated on the assumption that the Gemara in *Rosh Hashana* does not deal with our issue, contrary to other *Rishonim* mentioned above.

The only other authoritative source from which to derive an answer is the statement that Israel is the center of the world. As such, a map of the *entire* world with Israel at the center would have 180° on one side of Israel and 180° on the other. The same rationale, which above implied a date line 90° east of Jerusalem, would compel us to place the date line along the east edge of *this* map, meaning 180° from Jerusalem.

This opinion, whether it sounds reasonable or not, is against the majority of the *Rishonim*, and quite possibly against all *Rishonim*. Therefore, the Chazon Ish attacked R. Tukitchinsky for arguing with all of the *Rishonim* without sufficient grounds. How can anyone in our generation decide to reject the unanimous opinion of the *Rishonim!?*

גבוה מכל הארצות

A final argument deserves mention. According to this, even if we had absolutely no sources from which to draw, we would still conclude that the date line lies 90° to the east of Israel. If we could turn back time to the very beginning of history, we would be able to see the orientation of the globe when *Hashem* set the world in motion. When *Hashem* created the world on the first day, or the sun on the fourth day, the Earth was spinning, and the clock was ticking. At the end of that day, *Hashem* was finished with the

creation of the fourth day. Immediately afterward, *Hashem* began the creation of the fifth day. There was clearly one instant dividing the fourth day from the fifth day. At that instant, one spot on the globe was at midnight, one spot at 6:00 PM, one spot at 11:00 AM, and so on. In other words, although the sixth day (for example) lasted for a whole day, there was one spot on the globe in which it became the "sixth day" first. That spot marks the first spot in the world to begin the new day. If we could see the orientation of the globe when *Hashem* declared that the new day had just begun, then we would "see" the "real" date line! Simply find the meridian which was just at sunset at that instant, because that is the beginning of the day.

The *midrashim* are replete with references to Eretz Yisrael as "גבוה מכל הארצות," higher than all other lands. In what sense is Eretz Yisrael so distinguished? As we have explained above, if we view the world as a globe with Eretz Yisrael in the center of the "upper" hemisphere, then Eretz Yisrael is indeed objectively higher than all other lands. Typically, the sun defines the "highest" point in the sky, which means that when the sun is highest in the sky, that part of the globe is "on top." During the course of the day, every part of the globe is thus "on top" for an instant. At what instant is Israel "on top"? Naturally, at the *first* instant of creation! This means that at the first instant of time, Israel faced the sun, which means that 90° east of Israel was at sunset! That must then be the location of the "real" date line in accordance with the opinions of the *Rishonim*, the Chazon Ish, R. Chaim Brisker, and their group of *poskim*.[21]

Nevertheless, the matter of the date line is not completely resolved. Some authorities are still convinced that the date line is

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21. This reasoning appears in the *Agan Hasahar* as the rational of the *Ba'al Hama'or*, although it is not explicit in his commentary. The *Yesod Olam* interprets the *p'sukim* to indicate that the sun was situated exactly antipodal to Eretz Yisrael at the instant that it was created. Nevertheless, the *Chazon Ish* stresses that the *Yesod Olam* himself very clearly distinguishes between the halachic day and the Creation day.

180° from Israel, whereas the majority of *poskim* hold that the line is 90° east of Israel, thus placing a quarter of the world in constant doubt of the day! In this "doubtful zone" lie Hawaii, Japan, the populous sections of Australia, and many other islands and cities. Furthermore, even if we decide that the date line is definitely not 180° from Israel,[22] eastern Australia and eastern USSR would still be in doubt as explained above.

אין מוקצה לחצי השבת

Regardless of where the date line is, there are several related issues which deserve our attention. What is the ruling regarding a person who boards an airplane right after Shabbat ends, and flies "into" Shabbat? Similarly, can one prematurley end Shabbat by crossing the date line into Sunday?

The Kazhiglover [loc. cit] and the Gerer Rebbe,[23] among numerous other *poskim*, deal with these questions. Based on a fascinating theorem, the Kazhiglover suggests that if one travels on Shabbat over the date line to Sunday, he must still keep Shabbat.

The Gemara [*Succah* 46] states that something which is *muktza* in the twilight of Shabbat remains *muktza* throughout Shabbat. Similarly, if a town's *eruv* was acceptable at the beginning of Shabbat, then even if the box of matzohs validating the *eruv* disappears during Shabbat, the *eruv* remains valid. (This is known as the principle of הואיל והותרה הותרה.) We see that the *beginning* of Shabbat determines the status of all objects for the entire Shabbat. In other words, if it was permissible to carry in this *reshut hayachid* at the onset of Shabbat, it remains permissible to carry in that same *reshut hayachid* throughout Shabbat. (If the walls fall down during Shabbat, then it is not the same *reshut hayachid* anymore.) This explains why an object which was *muktza* when

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22. Deciding to follow a rigorous 90° date line,as does the Brisker Rav, would be uncomfortable for Jews in Japan and Australia (not Hawaii) because Shabbat would fall on Sunday, and all calendars would be one day off, and more importantly — the prevailing custom among Jews there today is to keep Shabbat on Saturday!

23. פסקי תשובה ח"ג סי' רנ"ב.

Shabbat commenced remains *muktza* throughout.[24]

Should we then say that if an object was not *muktza* at the beginning of Shabbat, it cannot become *muktza* on Shabbat? Ostensibly, this is not so. The Mishnah states that food which is left as bones or peels does become *muktza* on Shabbat. Furthermore, the Gemara states that a dish which shatters into useless shards on Shabbat becomes *muktza*. This seems to imply that an object which was not *muktza* at the beginning of Shabbat is not guaranteed to remain permissible throughout that Shabbat. Yet, these cases are actually different. Just as a *reshut hayachid* whose walls fall down on Shabbat loses its status as *reshut hayachid*, these peels or shards lose their prior status due to the physical change in them. In other words, anything which is permissible to be handled at the onset of Shabbat will remain so throughout the day, but only provided that the object does not undergo a physical change. For example, the Ramo rules [*Yoreh Deah* 266:2] that after the *brit mila*, the *mohel's* knife does not become *muktza* (even though now it is useless on Shabbat).[25]

Although all these examples, to show that the beginning of Shabbat governs the whole Shabbat, are only rabbinic laws, there is a rule, כל דתקון רבנן כעין דאורייתא תקון, any rabbinic enactment is patterned after a biblical law. We should thus be able to find biblical laws which reflect the notion that the the whole Shabbat is determined by the status at the beginning of Shabbat.[26] The Rosh

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24. R. Soloveitchik also used this rationale to explain the principle.
25. The *Taz* on *Yoreh Deah* there (note number 1)quotes the Maharshal that the reason is אין מוקצה לחצי השבת. When the Gemara invokes this rule, it refers to a case in which the object was not *muktza bein hashmashot*, but during Shabbat it became *muktza* for reason X. During the same Shabbat, reason X disappeared, so we say אין מוקצה לחצי השבת, and the object reverts back to being permissible. That only applies when the reason for the *haktza'ah* vanishes. But if there continues to be a reason for the object to be *muktza*, the rule does not apply. Neverthless, the Maharshal, the Ramo, and the Ran borrow the expression from there and apply it also to our case wherein the object was permissible at the onset of Shabbat and does not change, and they state that it cannot become *muktza* in the middle of Shabbat.
26. The Chazon Ish tacitly assumes the same premise in his essay on the date line. The *Kuzari* states that Shabbat begins in Eretz Yisrael, and only afterwards does

quotes Maharam Rothenburg, who compares the law regarding a child who becomes bar mitzva in his period of mourning to a child who becomes bar mitzva in the middle of Shabbat. The Rosh rejects the comparison, noting that every second of Shabbat carries with it the day's obligations, whereas the obligation to mourn sets in only at the beginning of the mourning period. The Maharam presumably disagreed with the Rosh, understanding that the obligation to keep the entire day of Shabbat is only because the beginning of Shabbat so requires.[27]

From this analysis, the Kozhiglover states that if one travels on Shabbat to a place where it is weekday, he must continue to observe Shabbat, since at the beginning of Shabbat he became obligated in all of its laws. (He does not suggest when his Shabbat will end, though.)

Similarly, the Gerer Rebbe writes that if one flies from a weekday into the middle of Shabbat, he does not have to keep Shabbat (or the laws of Yom Kippur, if he flew into Yom Kippur) biblically, since he had not experienced the beginning of that day. It does seem that the Gerer Rebbe would require him to keep Shabbat for rabbinic reasons.

Crossing Time Zones and Date Lines

Although the Earth looks like a smooth ball from space, it is full of mountains and valleys and looks entirely uneven from the

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the rest of the world follow. The Chazon Ish explains the *Kuzari* as follows: When *Hashem* taught us the laws of Shabbat in the desert, the part of the world east of there began the new day earlier than the desert. Therefore, since the Shabbat had not yet been commanded to the Jews, those regions east of Israel had begun the day without the sanctity of Shabbat. Thus, the first Shabbat in the world began with Israel, and the eastern regions had their first Shabbat the next week. In this way the Shabbat began in Israel.

This explanation is based on the assumption that the eastern regions could not suddenly begin their Shabbat in the middle of the day, in accordance with our rule that the restrictions of Shabbat can set in only at the beginning of the day.

27. For further elaboration on this point see *Beit Yitzchok* Vol. 22, "בין השמשות רתחילת השבת."

surface. Do we determine sunrise and sunset from the actual appearance of the sun's rising or setting for any given location, or do we pretend to level the Earth, and calculate that sunrise occurs at the theoretical sunrise at sea level on this spot? In other words, someone standing on a mountain will see the sun rise earlier than someone in a valley. Can he fulfill the mitzva of *lulav*, for example, at that time? R. Moshe Feinstein writes (*Orach Chaim* Vol. 1, *siman* 97) that the halachic sunrise and sunset are determined for every given set of coordinates, regardless of altitude.[28] That is, someone standing on a mountain peak must wait until the sun has risen enough that it would be sunrise for that spot even if there were no mountain there. Similarly, it would follow that passengers in an airplane must follow the times as they are on the ground below (at sea level). Therefore, an airplane crossing the 125°e meridian has just jumped into another day. If it crossed traveling eastbound, the passengers have just gained an extra day. If it crossed westbound, they lost a day.

Even if we decide to follow the opinion of the Chazon Ish, wherein the date line is not a straight line of longitude 90° east of Jerusalem, but instead bends to include any contiguous portions of land, it could be that airplanes would not be affected. In other words, the Chazon Ish agrees in principle that the date line is a straight line 90° from Jerusalem. He simply adds that the date line cannot divide the solid land into two pieces. In the air, however, this rule might not apply, (according to Rabbi Hershel Schachter), so an airplane flying over the eastern portion of Australia is still

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28. This is based on the Gemara [*Shabbat* 118a] which tells that the inhabitants of Tiberias used to begin Shabbat early because they lived in a valley and the sun appeared to set. Clearly, this was not required of them, because the Gemara would not have praised them for merely keeping the basic law. Similarly, the same passage lauds those of Tsippori for keeping Shabbat until the sun appeared to set for them, although they were situated on a hill.

    The Maharil (15th century) justifies the practice in Germany in his time to *daven mincha* slightly after sunset. He explains that the apparent sunset is actually a bit earlier than the halachic sunset, since the region lies in a depression.

east of the line. Only when it crosses 125°e will the date change. If Rabbi Schachter's reading is correct, this means that according to the Chazon Ish, if an airplane takes off on Saturday night from eastern Australia, as soon as it lifts off it flies into Shabbat!

Consider someone crossing the date line from Tuesday, 3:00 PM into Wednesday, 3:00 PM. According to the above interpretation, even if he has already *davened mincha*, he must *daven* again because his first *mincha* was for the obligation to *daven* on Tuesday, and he now has an obligation to *daven* on Wednesday. Similarly, he must put on *Tefillin* because we generally assume that there is a daily requirement to wear *Tefillin*.[29] If he crosses the line during the 49 days of the Omer, he must count for the new day.[30] A woman in the midst of the seven clean days of *niddut* has just jumped into the next day. Generally, the date line affects any issue which depends on the calendar day.[31]

Fast Days

When an airplane flies west, it travels in the same direction as the sun, so the time will not advance significantly throughout the flight. If so, one who flies west on the morning of a fast day should theoretically not be allowed to eat until the fast is over, which is some time after sunset. His fast would then be much longer than everyone else's, because he began his fast in the morning of his departure place, but ended it at night in his destination place. This may not actually be required. The *Nachal Eshkol* writes that he was asked to justify the custom among the Stockholm Jews to break their fast at 9:30 PM even though the sun had not yet set. He

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29. He would not have to make up the *davening* for *Shacharit*, though, since he was never obligated to *daven* on that morning, as he never experienced it.
30. He has not missed a day, so although his count at 3:00 PM on Wednesday will be without a *bracha*, he resumes that evening counting the next day with a *bracha*. (The Lubavitcher Rebbe has a different opinion regarding determining the day of the Omer and Shavuot, for one who crosses the dateline, *Sefer Yagdil Torah*, pp.154-163).
31. *Pidyon Haben* might be an exception, because it might not depend on the calendaric passage of 30 days, but on the actual time elapsed since birth, down to the last second.

suggests that since the Gemara states that the fast days nowadays are only a *minhag* (custom) and not an official rabbinic enactment, the parameters of the fasts depend solely on what we have accepted upon ourselves. At the time the *minhag* was established, there were no Jews as far north as Stockholm, so no one accepted the fast longer than approximatley 9:30 PM.

With this reasoning, some have argued[32] that one who travels westbound on a fast day must fast only until it becomes 9:30 PM on his watch (set to the time at the departure location). Nevertheless, this only applies to the minor fasts. *Tisha B'av*, however, which is a bona fide obligation not resting merely on custom, would perhaps require the traveler to wait until the actual sunset to break his fast.[33]

Arctic Regions

The Arctic circle is an imaginary line slicing the globe at 66.5° latitude. Above this line, the sun is visible for 24 hours at some time during the summer months. During the winter months, there is a time when the sun is below the horizon for over 24 hours. This poses a halachic problem for someone who finds himself in these regions at these times. Does his halachic "day" correspond to a 24 hour period, or does it depend completely on the motions of the sun? Several *poskim* deal with these questions, including the *Tiferet Yisrael* (in his commentary to *Masechet Brachot*). He suggests that perhaps the day is partially determined by the 24 hour period in which the sun appears to move around the sky and returns to its original spot, even if it does not set. This opinion is clearly not rooted in concrete sources, and it appears to be questionable. R. Chaim Volozhiner commented that since there is no clear solution to this problem, religious Jews should avoid traveling to these places.

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32. R. Yoseph Cohen in *Harerei Kodesh* (notes on the *sefer Mikraei Kodesh)* vol. 2, p 214.
33. See *Mikra'ei Kodesh* R. Tz. P. Frank, Pesach Vol. 2, p. 214, and the notes, *Harerei Kodesh*. But compare *Iggerot Moshe. O.H.* III, no. 9b.

Kabbalat Shabbat and Mikva on Erev Rosh Hashana

The Gemara derives from a *pasuk* that although the day begins at night, one must accept upon himself the sanctity of Shabbat and Yom Tov a bit earlier, while it is still the previous day.[34] There is no specified minimum amount that one must add to Shabbat, yet there is a maximum. The author of *Shulchan Aruch* rules that one cannot accept Shabbat before sunset.[34a] Ashkenazim follow the Ramo who says that one may accept Shabbat as early as *plag hamincha* (one and a quarter hours before sunset, as measured by the Gra).

R. Yitzchok Luria (the *Arizal)* writes that one may go to mikva on *erev* Rosh Hashana as early as the fifth hour of the day. There is a dispute among later authorities whether he meant 10:00 or 11:00 in the morning. What possible significance could this hour have? On the assumption that he meant 10:00, R. Sternbuch[35] quotes a novel approach from a certain kabbalist who points out that if the *Ari* held as did the Chazon Ish, that the date line bends around the eastern edge of a landmass which straddles the 90º line, then 10:00 is a perfectly sensible time. At 10:00 in Eretz Yisrael, it is 6:00 PM on the eastern shores of Australia. If that is the first part of the world to begin the new day,[36] then at that instant the sanctity of Yom Tov is present somewhere in the world. Consequently, the inhabitants of Eretz Yisrael may then begin to prepare for Rosh Hashana by going to the mikva.

The *Shulchan Aruch* [581] cites the custom to immerse in a mikva on the eve of Rosh Hashana. The *Mishnah Berurah* quotes the *Chayei Adam* who prescribes 11:00 as the earliest time for this

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34. Although the Rambam's opinion is that the Torah requires this only for Yom Kippur, and not for Shabbat, most *Rishonim* disagree.

34a. *Orach Chaim* 261:2. See also the *Mechaber* on 263:4 and 267:2 where he appears to contradict himself. Resolution of this difficulty is beyond the scope of this essay.

35. *Moadim Uzmanim,* Vol. 7, *siman* 236.

36. Although the eastern edge of Russia continues to jut out much farther east than the eastern edge of Australia, perhaps the *Arizal* considered that part of Siberia uninhabitable, and not eligible to be considered in this discussion.

immersion, based on his reading in the *Ari*. According to the understanding of the *Ari* that we have suggested, the earliest time for the immersion in Eretz Yisrael is 10:00, but the earliest time in New York would be 3:00 (since at that instant, Australia is beginning Rosh Hashana).[37]

Tele-fax Machines

There are other ways of crossing the time zones and date line without traveling anywhere. After Shabbat, may one pick up the telephone and call a place where Shabbat has not yet ended? Similarly, may one fax "into" Shabbat? In general, may a person, located in a place which is not Shabbat, cause a *melacha* to occur in a place where it is Shabbat?

These questions are moot if we presume that the beginning of Shabbat is the operative forbidding principle (אוסר) as mentioned above in the name of the Kazhiglover, the Gerer Rebbe, and R. Soloveitchik. Since the caller has ended his Shabbat, even if he does *melacha* in a place where it is the middle of Shabbat, there can be no biblical prohibition. A rabbinic prohibition might still apply though, as above.

The *Sha'arei Teshuva* deals with a related issue: can a guest touring in Israel ask an Israeli to do *melacha* for him on the second day of Yom Tov? Nowadays, it seems that the consensus is to permit this, contrary to the *Sha'arei Teshuva*. This perhaps should indicate also that a Jew for whom it is Shabbat may ask another Jew for whom it is not Shabbat to do *melacha* for him.

Yet, it would also seem that there is a rabbinic prohibition for a Jew for whom Shabbat has ended to do actual *melacha* himself in a place where it is still Shabbat. Thus one should not fax to a place where the output would be printed on Shabbat.

Mechirat Chametz

The Torah requires us to eliminate *chametz* from our posses-

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37. It is not clear how early an Australian should use the mikva.
38. Unless he is a גר תושב.
39. See *Taz* to *Orach Chaim*, end of *siman* 263.

sion by noon on *erev* Pesach.[40] The common practice of selling the *chametz* to a non-Jew, to avoid the biblical prohibition of owning *chametz* on Pesach, works only before the prohibition of owning *chametz* sets in. If the owner waits until the prohibition begins, he cannot sell his *chametz*, and it will remain forbidden even after Pesach (חמץ שעבר עליו הפסח.) But if the *chametz* is in one place and the owner is in another, must the *chametz* be sold by noon where the owner is located, or by noon according to where the *chametz* is located? In other words, if an American goes to Israel for Pesach, Pesach for him begins several hours before the rabbi in America sells his *chametz*. Yet, at that time the *chametz* is still permissible in America. Similarly, an Israeli visiting America for Pesach has the same problem, just reversed. For him, after Pesach the rabbi in Israel buys back the *chametz* while it is still Pesach for him in America.

The responsa *Chesed L'Avrohom* rules that the sale of the *chametz* depends exclusively on where the owner is. The American who goes to Israel for Pesach must sell his *chametz* seven hours before the Jews in America. He should have the rabbi conduct the sale for him separately, and it should take effect before *chametz* is prohibited in Israel. The responsa *Oneg Yom Tov* says exactly the opposite. According to him, the only consideration is where the *chametz* is. Thus, the American in Israel can include his *chametz* in the rabbi's regular sale.[41] Because there is such a dispute, it is preferable to have the rabbi arrange the sale for travelers separately, to insure that the *chametz* is sold in time, for both the person and the *chametz*. Similarly, he should not buy back the *chametz* until it is no longer Pesach for both the person and the *chametz*.

Ma'aser Sheni

An additional point should be mentioned. The Torah states

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40. Actually, we are required rabbinically to destroy all of the *chametz* an hour before that.
41. See *Mikra'ei Kodesh, Pesach* Vol. 2. R. Moshe Feinstein has a novel opinion on this matter. See *Iggerot Moshe, Orach Chaim* Vol. 4 *siman* 94.

that every year, before eating of the new crops (which grew in Israel), we must separate the tithes *(teruma* and *ma'aser).* The *teruma* belongs to the kohen, and the *ma'aser rishon* belongs to the levite. On the first, second, fourth and fifth years of the *Shmitta* cycle, the farmer must also separate *ma'aser sheni,* which he can eat himself, but only in Jerusalem. If he does not want to bring all of the actual food to Jerusalem, he may redeem the food for money. The Torah is explicit[42] that for this redemption only actual cash is acceptable. The Gemara defines cash as legal tender in *that particular country.* Canadian currency, for example, is invalid to redeem *ma'aser sheni* in Israel.

If the farmer does not take care of the necessary tithes, then the consumer must do so, even if the produce is shipped out of Israel. When one redeems the *ma'aser sheni,* he does not have to hold on to the money — he may simply state that the *ma'aser sheni* is transferred to a certain designated coin in a certain location. In fact, he does not even have to be in the same place as the food to do this. Now the problem is clear. If the person is in one country, and the *ma'aser sheni* is in another, and the money is in yet another, which country must the money belong to, to be recognized as currency? This question is clearly discused in the Gemara [*Bava Kama* 97], but the outcome of the Gemara is disputed among the *Rishonim.* The Rambam [*Ma'aser Sheni* 4:14] says the money must be legal tender in the country that the *redeemer* is in, regardless of where the money is. The Ra'avad, who has our reading in the Gemara, understands that the money must be legal tender in the place that the *money* is, regardless of where the redeemer is. The location of the food is immaterial according to both readings.

Since there is such a debate in the *Rishonim,* and if the redemption is done improperly the *ma'aser sheni* retains its status as *kodesh,* one should redeem the *ma'aser sheni* only with money which is legal tender both where he is and where it is. For instance, someone in America should not rely on Israeli currency (like a פרוטה חמורה), even if it is located in Israel.

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42. This is clearly expressed in the *Tosefta, Bechorot* [6:4].

Our study has discussed a number of questions in religious law which arise from the international character of Jewish society and lifestyle in the modern era. Many *poskim* have dealt with the problem of locating the halachic date line. According to most, Jews in Japan, New Zealand, some of the Philippines, and the islands in that vicinity of the Pacific should keep Shabbat on Sunday, but Jews in Alaska and Hawaii should observe Shabbat on Saturday. According to some, Jews in Japan, New Zealand, and some of the Philippines should keep Shabbat on Saturday, while Jews in Alaska and Hawaii should keep Shabbat on Friday. Eastern Australia is a further question, as explained above. Travelers to this part of the world should consult their rabbi to determine what opinion to follow, and how to deal with crossing the line.

Jewish Law and Copyright

Rabbi Israel Schneider

In our highly advanced technological age, the duplication of original works of authorship has become almost effortless. While at one time, manuscripts or books had to be copied laboriously by hand, it is now possible within several minutes to produce high-quality reproductions of entire works. Similarly, audio tapes, videos, and computer programs can all be reproduced quickly, effectively, and cheaply. The purpose of this essay is to explore the halachic implications of making or using unauthorized duplications and to inquire if there are precedents which could serve as grounds for the protection of an author's or creator's proprietary rights.

Halachic literature is rich in detailing the rights — and limitations — of an author to his original work. Not surprisingly, the People of the Book were constantly involved in determining what type of protection could be granted to an author or publisher.

With regard to what is termed "copyright," the halachic material can be divided into two subjects. One category deals with the rights of a printer who has issued a work in the *public domain* (e.g. the Talmud, Ramban). The limited appeal of *seforim*, coupled with the expensive outlays necessary for their printing, contributed to the need for protectionist measures to permit a publisher to recoup his investments. For this reason, rabbinical bans were issued against competing printers who would print the same work. The scope of these bans was the subject of ferocious debate. The time period (anywhere from three to twenty-five years), subject (printer

Member of Kolel, Telshe Yeshiva; Researcher, Ofeq Institute

or purchaser), and geographical extent of the ban (printer's country or worldwide) were issues which were disputed and which generated significant halachic output. This body of halachic literature does not deal, however, with the rights of an *author* or *creator* to his original work. The aforementioned bans, or limited monopolies, were aimed at protecting not the author's creativity, but the economic viability of the publisher. We will briefly survey the responsa literature which deals with these protectionist measures and present the halachic antecedents which grant an author full legal rights in respect to his creation.

Copyright Works In The Public Domain

A cursory scan of seventeenth through nineteenth century rabbinical *haskamot* (approbations), customarily printed in the prefatory section of rabbinic works, will reveal that these approbations served two distinct purposes. Firstly, the writer of the approbation would put a "seal of approval" on the work by testifying to the erudition and competence of the author. Secondly, the rabbinic authority would declare a ban against publication, for a fixed period of time, of the same work by another publisher. Rabbi Moshe Sofer[1] (Chatam Sofer) theorizes that the prevalence of this practice can be traced to a sixteenth century incident which involved two publications of the Rambam's *Mishneh Torah* by two competing publishers.

Rabbi Meir Katzenellenbogen of Padua (known by his acronym, Maharam) published an edition of the *Mishneh Torah* in 1550-1551. Almost immediately, a rival non-Jewish publisher, Marcantonio Justinian, printed another edition of the same work and priced it lower (one gold coin less) than Rabbi Katzenellenbogen's edition. Rabbi Moshe Isserles (Ramo), in addressing the issue, invoked the rule of *Hasagat Ge'vul* — legislation which protects one's commercial rights from undue competition — in declaring a ban upon anyone who purchased the

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1. *Responsa Chatam Sofer, Choshen Mishpat* no. 41.

Justinian edition of *Mishneh Torah*.[2] The ruling of Rabbi Isserles, argues Rabbi Sofer, ushered in the era of rabbinic *haskamot* which embodied, by force of ban or excommunication, protection for the rights of publishers of religious works.

In substantiation of Rabbi Moshe Sofer's theory, it should be noted that just three years after the *Mishneh Torah* controversy, the Rabbinical Synod of Ferrara enacted a regulation that the first edition of any book written by a Jew must receive the approbation of three rabbis. It was Rabbi Meir Katzenellenbogen who headed the list of signatories.[3] A close reading of the enactment indicates, however, that its primary concern was not to protect the interests of the publishers, but rather to prevent publication of books whose contents were deemed inappropriate. Rabbi Batzri[4] suggests that although unfair publishing competition might have been the issue at stake, nevertheless no explicit mention of that concern was made in order not to strain relationships between the Jewish and non-Jewish communities.

Ironically enough, although the Chatam Sofer views Rabbi Isserles' ban as the prototype of all future rabbinical bans, he himself writes that the enactment of these bans is *not* out of concern for the financial loss of the first publisher (as Rabbi Isserles suggested). Rather, he writes,

> אי לא נסגור הדלת בעד מדפיסים אחרים אם כן מי פתי יכנוס עצמו בספק הפסד כמה אלפים ותתבטל מלאכת הדפוס ח"ו ותפוג תורה ע"כ לתקנת כל ישראל ולהרם קרן התורה הנהיגו קדמוננו...
>
> If we were not to close the door in the face of other publishers [i.e. prohibit competition], which fool would [undertake the publication of Judaica and] risk a heavy financial loss [lit., a loss of several thousands]? The publication [of Jewish works] will cease, G-d forbid, and Torah [study] will be

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2. Rabbi Moshe Isserles, *Responsa*, no. 10.
3. *Encyclopedia Pachad Yitzchak* Vol. 10. p. 157b, *Takanot She'nitkinu.*
4. *Techumin*, Vol. 6 (5745), p. 179.

> weakened. Therefore, for the benefit of the Jewish people and for the sake of the exaltation of the Torah, our early sages have enacted...[5]

Hence, it was not concern for any individual printer's financial balance sheet which prompted the bans, but rather a concern for the facilitation of the perpetuation of Torah.

However, Rabbi Mordechai Benet[6] takes issue with the rabbinical bans, on both theoretical and technical grounds. Conceptually, he argues that the interests of the Jewish nation and its Torah will best be served by an open economic system without any outside, albeit rabbinical, restraints. Free competition will ultimately yield an economic environment which will be most favorable to the consumer (i.e., the student of sacred texts). Granting monopolies to publishers will only serve to drive up the prices of these rabbinic works, thereby stifling Torah-study.

In addition, he argues, the ban is invalid on two technical grounds. A ban is legally binding only if it is pronounced orally; a ban written in the prefatory section of a book is not considered valid. Moreover, a ban is binding only for those within the area of jurisdiction of those imposing the ban; a rabbi who declares a world-wide ban on the purchase or sale of religious works has overstepped his bounds. Consequently, such a ban is legally invalid.

Rabbi Moshe Sofer[7] disputes both of Rabbi Benet's claims. He opines that a written ban is enforceable, citing the antiquity of usage of the *cherem* (ban) and arguing that it can be "activated" upon all Jews — even those outside a particular rabbi's sphere of influence.

In certain instances, when it is difficult to decide between two conflicting opinions, the halachic authority is enjoined to observe the actual practice of the Jewish nation. History seems to have come down firmly on the side of Rabbi Sofer. Between 1499 and 1850,

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5. *Responsa Chatam Sofer*, Vol. 6, no. 57.
6. *Responsa Parashat Mordechai, Choshen Mishpat*, nos. 7 and 8.
7. *Responsa Chatam Sofer, Choshen Mishpat* no. 79; Volume 6 no. 59.

3,662 *haskamot* were issued and appended to books and religious works![8]

Halachic Grounds For Copyright Of Original Works

Until now, we have dealt primarily with the concept of the "protectionist" copyright — granted to a publisher to insure him against staggering financial losses. We will now present four halachic principles which are employed in providing copyright protection to the creators of original works. Interestingly, rabbis may approach the issue from radically differing perspectives and nevertheless arrive at similar conclusions. Thus, although Rabbi Benet argues against the efficacy of bans, he ultimately agrees with Ramo to ban the Justinian edition of *Mishneh Torah,* for he reasons that Rabbi Katzenellenbogen's edition — by dint of its explanatory notes, corrections, and comments — should be deemed to be original and thereby worthy of copyright protection. An even more startling example of this dichotomy is the inclusion of a ten-year printing ban in the introduction (written by Rabbi Benet's granddaughter's husband, Rabbi Avraham Yitzchak Glick) to Rabbi Benet's *own* work, Responsa *Parashat Mordechai.*

The Rule Of Benefit And Loss

Rabbi Yechezkel Landau, in his magnum opus *Nodah B'Yehuda,*[9] approaches the copyright issue from the perspective of the Talmudic passage, familiar to any Yeshiva student:

זה נהנה וזה חסר

> One who derives benefit and the other suffers loss [is liable].[10]

The case addressed by Rabbi Landau involved a scholar who authorized a Talmudic commentary and paid the publisher the

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8. *Encyclopedia Judaica,* Vol. 7, p. 1454. While a great portion of these "*haskamot*" were written for original works, nevertheless, many were issued for books already in the public domain.
9. *Nodah B'Yehudah* Volume 2, *Choshen Mishpat* no. 24.
10. *Bava Kama* 20a.

stipulated amount for printing his work (upon the margin of the page of Talmud). After completion of the printing, the publisher discarded the characters used in the printing of the commentary, but retained the typeset characters of the Talmudic text for use in printing an edition of the Talmud. The scholar claimed that by paying for the entire printing, he owned a share in the letter arrangement of the Talmudic text and was therefore entitled to a portion of the revenues realized by the sale of these volumes of Talmud. The defendant claimed that the actual print characters belonged to him and, as such, the plaintiff had no claim to any of the profits.

Rabbi Landau ruled that in cases where the author paid for the typesetting, the author retains rights to any reprintings made from those selfsame characters.

> כאן מחסרו הרבה שהרי אם לא היה שמעון מדפיס ספרים הללו הוו שכיחי וקפצי זביני על ספריו של ראובן... ועכשיו שמדפיס שמעון יהיו סדרים הללו שכיחי ובזול ולא ימצאו כל כך ברוח קונים שיקנו מראובן וכיון שגורם הפסד לראובן בזה מגלגלין עליו כל מה שנהנה לפי חלקו מסידור האותיות

> He [the printer] has caused a great loss [to the author], for if the printer had not published these [second] books, there would have been a great demand for Reuven's [the author's] work [which included the Talmudic text].... Now, that Shimon [the printer] has printed [his volumes], these volumes which are cheap and in great supply will reduce the demand for Reuven's [the author's] work. Since the printer has caused the author a financial loss, we obligate him to pay all that he benefited from the author's share in the typeset arrangement.

Although the actual ruling of Rabbi Landau applies to the reprinting of the Talmud, a work in the public domain, the ruling would certainly apply to an original work of scholarship. If we guard the rights of one who has merely paid for the *arrangement* of an *unoriginal text*, so much more should the rights of a creator of an *original work* be protected.

Rabbi Zalman Nechemia Goldberg, in an essay published in *Techumin,*[11] writes that the *Nodah B'Yehudah's* comparison of this case to the Talmudic cases of benefit and loss is a subject of dispute among the earlier commentators. As we shall see, Rabbi Goldberg's point reflects the struggle of both halacha and civil law to deal with intangibles as property susceptible of being owned. He argues that although the rule of benefit and loss uneqivocally obligates one who has benefited directly from someone else's property, it is not clear whether this law extends to benefit from the intangibles (e.g. form, arrangement, and composition) that are a product of one's labor and creativity. While the particulars are beyond the scope of this article, Rabbi Goldberg concludes that Rabbi Landau's ruling is consistent with the opinion of Rabbenu Tam,[12] and in conflict with that of Rabbi Yitzchak.[13]

Hasagat Ge'vul

As noted earlier, Rabbi Moshe Sofer wrote many responsa concerning the issue of copyright.[14] Most of the material, however, deals with the exclusive rights granted to a printer in order to make the printing of Jewish scholary works economically feasible. However, Responsa *Chatam Sofer, Choshen Mishpat,* no. 79, deals with a work of original authorship, and provides another source for the concept of ownership of incorporeal property.

The *Chatam Sofer* addressed the issue whether Rabbi Wolf Heidenheim, editor of the nine-volume *Roedelheim Siddur and Machzor,* could prevent others from republishing his prayer books. After a lengthy discussion of printer's rights in general, Rabbi Sofer writes:

> וא"כ בשארי מדפיסים, כ"ש במי שהוציא דבר חדש... וכגון החכם השלם מו"ה וואלף היידנהיימר שי' כילה כמה זמנים

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11. *Techumin,* Volume 6, (5745), pp. 195-197.
12. Cited by *Tosafot, Ketubot* 98b.
13. Ibid.
14. *Responsa Chatam Sofer, Choshen Mishpat* no. 41; ibid no. 79; ibid no. 89; Volume 6, no. 57.

בהגהת הפיוטים ולתרגמם בלשון אשכנז... ולמה יהנה במה שהוציא הוא וה"ל כצד דגים... שהוא הציד גרם קיבוץ הדגים...

> If the case is so [that limited protection is granted] for printers of other texts [already in the public domain], so much more so for one who created a new entity... for example, the consummate scholar, Rabbi Wolf Heidenheim, who spent countless hours in the editing and translation of the *Piyutim*... and why should others profit from his creativity? It [our case] can be compared to the case of the fisherman who by means of his actions caused the gathering of the fish...

The analogy to the fisherman is particularly intriguing. The Talmud[15] cites a ruling: מרחיקים מצודת הדג מן הדג כמלא ריצת הדג "Fishing nets must be kept away from a fish [which has been targeted by another fisherman] the full length of the fish's swim."[16]

The commentators point out that the targeted fish, which is yet uncaught, is common property (*hefker*). Nevertheless, other fishermen must distance themselves from this fish and must stake out other territories. Rabbi Meir, father of Rabbenu Tam, explains that the fisherman who originally staked out the area baited the net with dead fish. This action of the fishserman resulted in the clustering of other fish in the vicinity of the net. For this reason, the other fishermen are enjoined to steer clear of reaping the profits of their fellow fisherman's labors.[17] Hence, a fisherman who placed his bait within the proscribed area is guilty of poaching on the preserves of the first.

Rabbi Sofer draws a rather sweeping, far-reaching principle, based on the "fisherman model." It can be formulated as such: One who has expended effort in the attainment of a certain state (apart and beyond the ownership of any tangible property) is legally entitled to the ensuing profits. Hence, the author who has utilized

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15. *Bava Batra*, 21b.
16. Defined there as one *Parasang* (appx. 2 1/2 miles).
17. Cited by *Tosafot, Kiddushin*, 59a.

energies in the creation of work, is no less entitled to enjoy the fruits of his labor than is the fisherman who has assiduously baited his traps.[18]

In conclusion, Rabbi Sofer finds the antecedent for the protection of author's right under the rubric of "*Hasagat Ge'vul*" — the legislation promulgated to prohibit the encroachment upon the economic and commercial rights of others.

Dina De'Malchuta Dina

Beit Yitzchok[19] approaches the issue from an entirely different angle. Even if we are to assume, he writes, that Torah law doesn't explicitly award exclusive propietary rights to an author, it nevertheless enjoins us to recognize and obey "the law of the land."[20] Consequently, all authorship rights rights provided to an author under civil law are recognized by Torah law as valid and binding. Writing in the late 19th century, Rabbi Yitzchok Schmelkes states that our country[21] prohibits the copying of original works of authorship. One hundred years later, on these American shores, the identical situation exists. Statutory protection of an author's work(s) is guaranteed by the Copyright Act of 1976 (Pub. L. No. 94-533, 90 Stat. 2541). For this reason any infringement of civil copyright law would be, by definition, an infringement upon Torah law as well.

In truth, the validity of this argument hinges upon a dispute among the medieval commentators as to the scope of "*Dina De'Malchuta Dina*" ("the law of the land is law"). Rabbi Baruch ben Yitzchak[22] cites the opinion of his teachers, in the name of the French Tosafists, that "the law of the land" is binding to the extent

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18. It is interesting to note that Rabbi Sofer's analogy was later employed by a twentieth century author. "What happens to a poet when he *poaches* upon a novelist's preserves...." (Virginin Woolf).
19. *Responsa, Yoreh Deah,* Volume 2, no. 75.
20. Mar Shmuel's principle, cited in *Nedarim* 28a.
21. The responsum was written in Przemysl, a city in Galicia (Austrian Poland).
22. *Sefer HaTerumot.* 46:8.

that it applies to the government's right to levy and collect taxes. However, legislation enacted by the government for the benefit of its citizens, without any direct profit for the government, cannot be considered binding. Hence, copyright legislation, whose objective is the protection of the public, is not included within the parameters of *Dina De'Malchuta Dina*. The Ramban,[23] however, disputes this point and rules that all just and fair legislation enacted by the government falls under the category of "the law of the land" and, consequently, is legally binding. The *Shach*,[24] citing a host of codifiers who employ the principle of *Dina De'Malchuta Dina* in regard to legislation which does not directly serve to profit the government, rules that the halacha is in accordance with the Ramban.

A note of caution is certainly in order: the issue of interaction between halacha and civil law is complex. Indeed, there are times when the civil law, in conflict with the halacha, is not binding.[25] However, it is Rabbi Schmelke's opinion and subsequently also that of Rabbi Ezra Batzri,[26] that copyright legislation, whose thrust is the preservation of social justice and fairness, is recognized by Torah law as binding.

Shiur

Rabbi Nechemia Zalman Goldberg advances a novel theory to serve as the basis for the proprietary rights of an author,[27] based upon the legal concept of "*Shiur*" (retention). It is possible for a seller to sell an item to a purchaser, yet to retain certain aspects of

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23. Cited in *Sefer HaTerumot*, ibid.
24. *Yoreh Deah*, 165:8.
25. See *Journal of Halacha and Contemporary Society*, Vol. 1 no. 1, pp. 122-125, for Rabbi Hershel Schachter's treatment of the subject. In addition to the source material cited there, see *Shiurei Halacha*, Rabbi Yosef Yehuda Leib Block, p. 57. It seems to this writer that copyright legislation meets the criterion developed by Rabbi Block for the applicability of halachic legitimacy for "*Dina De'Malchuta Dina*".
26. *Techumin*, Volume 6, (5745), pp. 181-182.
27. Ibid. pp. 185-207.

ownership for himself. For example, the Talmud[28] speaks of one who sells an animal, yet retains for himself its shearings and offspring. The purchaser is entitled to do with the animal whatever he wishes. Nevertheless, the purchaser's ownership is limited. In regard to shearings and offspring, the animal is considered as if it still belongs to the seller.

Based on this principle, Rabbi Goldberg posits that one who sells a cassette tape can stipulate that the purchaser is entitled to all usages of the tape but one — the right to copy it. Since this right was retained by the seller, the purchaser who copies the tape without the consent of the seller has committed an act of theft, and, as such, is obligated to make restitution to the owner of the reproduction rights of the tape — namely, the seller.[29]

Rabbi Goldberg writes, though, that this approach has two major limitations. Firstly, this line of reasoning is valid only if it is specifically stipulated that the sale is of a limited nature, with all rights of copying retained by the seller. If, however, the seller merely states that reproduction or copying of the work is prohibited, without specifying that the scope of the sale is limited, it follows that one who copies without consent is not guilty of theft and is not liable to make restitution to the owner. Secondly, this approach protects only against the primary reproduction of an original work. However, once a reproduction has been made, the new copy certainly cannot be construed as belonging partially to the seller. Consequently, one who copies a copy is certainly not guilty of theft, and by the same token, not liable to make restitution. Rabbi Goldberg does concede, however, that even in these two situations, grounds for copyright protection may be found in the other principles which have already been discussed.

Minor Alterations

Rabbi Joseph Shaul Nathanson was asked whether one who

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28. *Bava Metziah* 34a.
29. See, however, *Techumin*, Volume 7, (5746), pp. 360-380, for debate between Rabbi Nechemia Zalman Goldberg and Rabbi Naftali Bar-Ilan about validity of sale with seller's retention of *intangibles*.

reproduces an original work, but makes minor additions or deletions, is in violation of the copyright legislation.[30] He responded that the argument to permit such a practice is "laughable," and consequently, one who attempts to bypass the copyright restrictions by making insignificant changes is still in violation of the halacha. To permit the circumvention of the copyright laws by insignificant alterations of the original material, he claims, would render these safeguards ineffective and defeat the purpose of the enactment.

Photocopied Handouts

Rabbi Shmuel Wozner addresses the issue whether a teacher is permitted to photostat one article or essay, out of an entire publication, for classroom use.[31] He rules that the copyright restrictions would not apply in this case. Although Rabbi Nathanson's extended definition of the copyright concept includes reproductions of an entire work, with but minor changes, it does not include the copying of a mere fraction of a publication. Consequently, a teacher who uses these photostated handouts is not in infringement of the author's rights. He does add, however, that the copies should not be circulated to the public but rather used only within the classroom setting. Rabbi Wozner comments that the teacher who uses photocopied material for classroom usage is not only well within his legal rights, but, in addition, has performed a mitzvah by sparing the students the additional expense of purchasing books unnecessarily!

Sometimes it may happen that one *Posek's "Mitzvah"* is another *Posek's "Aveirah"*. Rabbi Yaakov Blau questions Rabbi Wozner's conclusion and advances that opinion that although a teacher would be permitted to copy an article for personal use, it would be prohibited to copy an article for classroom distribution.[32] In the opinion of this writer, this dispute might hinge upon the aforementioned grounds for halachic protection of copyright. If the

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30. *Responsa Shoel U'Meshiv, Mahadura Kamma,* 1, no. 44.
31. *Responsa Shevet Halevi,* Volume 4, no. 202.
32. *Pitchei Choshen,* "Laws of Theft and Fraud," p. 287, note 27.

halachic legitimacy of copyright is based upon the statutory protection provided by civil law, it stands to reason that any exclusions which might exist in the civil law provisions will, similarly, be recognized by halacha as valid. Since the Copyright Act codifies the so-called "doctrine of fair use" as a limitation on the rights of copyright holders, then halacha too will award the public this benefit. If, however, there exists an independent halachic interdiction against the pirating of literary creation, then, it can be argued, this prohibition extends beyond the reach of the civil law.

Conclusion

Based on the above, it is clear that sufficient halachic grounds exist to protect an author's proprietary interest in his work. Indeed, Rabbi Moshe Feinstein[33] rules unequivocally that one is prohibited to copy a Torah (cassette) tape without the explicit consent of its creator. From the phrasing of the responsum, it cannot be determined which line of reasoning was employed by Rabbi Feinstein. He adds, however that one who illegally copies a tape has committed a form of theft.

Obviously, this essay does not claim to be a comprehensive study of all the ramifications of copyright law within the context of halacha. Nevertheless, it may serve as a guideline to the many questions which still require definitive rulings.

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33. *Responsa Iggerot Moshe, Orach Chayim,* Vol. 4, no. 40 sec. 19.