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Edited by
Rabbi Alfred S. Cohen

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It is the purpose of this Journal to study the major questions facing us as Jews in the twentieth century, through the prism of Torah values. We will explore the relevant Biblical and Talmudic passages and survey the halachic literature including the most recent Responsa. The Journal of Halacha and Contemporary Society does not in any way seek to present itself as the halachic authority on any question, but hopes rather to inform the Jewish public of the positions taken by rabbinic leaders over the generations.

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On Yeshiva Men Serving in the Army

Rabbi Alfred S. Cohen

Since the founding of the State of Israel, the need for defense has been the highest priority of the community. Due to the overwhelming needs for security, virtually all able-bodied men - and many women - serve in the army for a period of a few years and then for additional service for decades thereafter.

However, when the state was created, the then-Prime Minister, David Ben Gurion, came to an agreement with leaders of the religious parties, whereby 400 yeshiva students were to be exempted from military service so that they might continue their Torah studies without interruption. After the government lifted restrictions on the establishment of new yeshivot, the number began to mount steadily. According to current figures¹ 18,400 yeshiva students were exempted from military service in 1988. Between 1976 and 1986, the proportion of yeshiva students out of the total population of 18-year olds more than doubled from 2.5 to 5.3 per cent, as the government steadily lifted the ceiling on how many students could acquire the exemption.

The exemption of boys and men involved in learning Torah from serving in the army has at times aroused much resentment. It is a practice which has been, and continues to be, challenged,

1. *Jerusalem Post*, 9/12/88.

*Rabbi, Young Israel of Canarsie; Rebbe, Yeshiva University High
School for Boys*

not only by secular Jews but even by many observant and dedicated Jews, even by some who benefit from the exemption.

We are dealing here with a very emotional issue. The families of soldiers who daily risk their lives are far from tolerant when they see yeshiva students strolling casually through the streets. There is anger, too, at the rabbis who instruct their students in the yeshiva to stand at attention on Yom Hazikaron² to honor the fallen war heroes - but at the same time teach their students not even to consider serving in the army. And there is frustration and bitterness in the yeshiva homes as well, where people live in privation all their lives in order to dedicate themselves to the ideal of learning Torah, and yet have to bear the contempt of their fellow citizens.

The present study will explore this issue, hopefully from a dispassionate and objective position. It is our intention to identify the sources from Jewish tradition which support the practice, as well as those which seem to question the validity of exempting one group from military service. Our aim is an halachic exposition, without recourse to emotional arguments; our intention is to clarify the halachic sources, as the basis for formulating an intelligent position.

Before we consider what role, if any, yeshiva students ought to take in the army, it would be appropriate to consider what Judaism has to say about war - whether it is ever right for any Jew, not only a yeshiva student, to serve in the army.

Jewish thought views war with great trepidation, not as a glorious adventure.³ War is a scourge: lives are lost, families

2. *Techumin* 4 p. 125.

3. For a complete discussion of the question whether there is any obligation for a person to place himself in danger in order to save another person from certain death, see *Choshen Mishpat* 426 and *Aruch Hashulchan Pitchei Teshuva*, *ibid*.

For a discussion if there is an obligation to put oneself in danger to save the Jewish community, see *Mishnah Makkot* 11a, *Or Sameach*

disrupted. When the Jewish Commonwealth existed, the decision to go to war was never undertaken lightly, no matter how pressing the situation might appear to be. Even when war was necessary or defensive, it retained a negative connotation. Thus, when King David expressed his desire to build a House of G-d, *Hashem* rejected the plan: "Much blood have you spilled, and great wars have you waged, [therefore] you shall not build a House for My Name."⁴

The rejection of King David is most surprising, in view of the fact that he had dedicated his life to freeing his people from the perpetual onslaughts of their inimical neighbors. His wars had been wars of defense, of retaliation, of prevention, wars of mitzvah if you will. Nevertheless, a certain opprobrium clung to them.

But Judaism does not condemn war entirely, for there are times when it is inescapable or necessary.⁵ And although taking someone's life is murder, Judaism does not consider war as murder; there are times when people are justified in going to war, such as when they are attacked or to take revenge for a previous injury.⁶ While it is true that the Torah commands "when you draw near to a city to battle with her, [first] you must call to her to make peace,"⁷ the Maharal is of the

Hilchot Rotzeach 7-8, *Meshech Chochma Perashat Shemot*, *Mishpat Kohen* of Rav Kook, 142-144. See also Rav Shlomo Zevin in *Talmud Torah Vesherut Latzava*.

4. *Divrei Hayammim* I, 22. See also commentary of N'tziv, beginning of *Pinchas*.

5. For the Jewish position on non-Jews engaging in war, see *Teshuvot Chatam Sofer* 14-19, *Devar Avraham* 1-11, and *Zera Avraham* 24.

6. *Gur Aryeh*, *Bereishit* 34:13. See *Hilchot Medina* II, *Shaar* I (written by Rav Eliezer Waldenberg, author of *Tzitz Eliezer*) 1; see *Hilchot Medinah* III, *Shaar* 4, for an analysis of the role of the minority and majority.

7. *Devarim* 20:10-11.

opinion that the rule applies only when they have not done anything to the people of Israel, but if they have done something, such as "they pressured them to do some abomination, then it is permissible to take revenge upon them."⁸

Hundreds of years later, the N'tziv echoes the view of Maharal, that at times war is permissible and warranted:⁹

When is the person punished? At a time when it is proper for him to act with brotherly love, but this is not true during wartime, and it is a time to change... and there is no punishment for this at all, because thus was the world established, as we see in Tractate *Shevuot* - and even a king of Israel is permitted to wage an optional war.

In *Orach Chaim*¹⁰, the Ramo even extends this permission to wage war to such time as the enemy has not yet attacked but only wants to attack the Jews. ואפילו לא באו עדיין אלא רוצים לבא. Such a pre-emptive strike is permitted even on the Sabbath.

Cognizant of the reality that sometimes war is the necessary option, despite its negative connotation, the halacha recognizes different types of war:¹¹

1) *milchemet mitzvah* - a war to conquer the land of Israel, such as those waged by Joshua when the Jews entered the

8. Bereishit 32:9. See *Torah Umedinah* 8-7, *Mishpat Kohen* 143, and *Tzitz Eliezer* 12-57 for other differences that apply during a war.

9. *Ha'amek Davar* Bereishit 9-5, *Devarim* 20-8; for a discussion to whom property captured in war belongs, see *Or Hahalacha* p.18.

10. *Or Hachayim* 329:6. See *Or Sameach*, Deut. 5-5, who uses the same argument in favor of giving Shimshon to the Philistines even though he was not liable to be put to death.

11. Rambam, *Melachim* 5-1. See also Rambam and Ramban end of *Hosafot to Taaseh*, that the *Urim Vetumim* are also necessary for all wars.

Land. Another such war is the battle to eradicate Amalek. These wars may be initiated without the mandate of the Beth Din, simply at the instigation of the king, who has the license to draft the people into his army at his discretion.

2) *milchemet reshut* - a war fought to expand the boundaries of Israel; this could be done only with the approval of the Beth Din of Seventy. An example is wars fought by King David.

3) Wars to reduce the heathen influence¹² so that they will not attack the Jews. Some scholars consider such wars as mandated (*mitzvah*) but others consider them optional. The Rambam¹³ rules that these wars are obligatory. "And which is a mandated war?.. to help Israel from an enemy who might come upon them."

4) An additional category has been suggested - a war to instill fear and respect into the nations, so that they will not even consider attacking the Jews.¹⁴

Behavior In Wartime: The Moral Imperative

The Jewish attitude towards war is singular. Unlike other cultures, we do not glorify the strength, vigor, and triumphs of war so much as we realize the tremendous moral dangers which lurk in the war zone. It is not our tradition, however, to be tolerant of the immorality and depravity which typically are rampant in an army camp, but rather to seize the opportunity to grow spiritually even from such a situation.

12. Mishnah *Sotah* 44b.

13. *Melachim* 5-1.

14. We do not mean that the attack has started and the war is on, for then all agree this is a *milchemet mitzvah*; see Meiri, *Sotah* 43b; also *Aruch Hashulchan*, *He'atid*, *Hilchot Melachim* 74-4. See however, *Chazon Ish Or Hachaim* 114-2, who does in fact say "who has already come against them."

Despite the exigencies of war, the Torah teaches us to maintain our high moral code: when a soldier falls in battle, he must be buried individually, not in a mass grave.¹⁵ Even though the soldier has the responsibility of fighting, we urge him to study Torah whenever he has free time.¹⁶ And if battle is necessary on the Sabbath, all booty of that day is dedicated to G-d.¹⁷ Even when serving in a non-Jewish army, the Jewish soldier is expected to observe whatever mitzvot are possible.¹⁸ Even while out on the front, the Jewish soldier must light at least one light each night of Chanukah, if he can;¹⁹ although he is permitted if necessary to eat before his morning prayer, nevertheless he is expected to pray daily.²⁰

The overriding concern of Judaism is not to sanction the immorality which is prevalent in an army situation, which has not abated appreciably with the passage of millennia. Even today, after thousands of years of civilization, rape, mayhem, looting are daily concomitants of war, and stealing and eating non-kosher foods might be considered only minor infractions.²¹ It is precisely in such a situation that the Torah admonishes the Jewish soldier: "When you go to war against your enemy, beware of all evil things..."²² That is the time when a person must be most careful in performing mitzvot. Rather than suspend the laws and observances, it is then that a person must be most careful in following the minutiae of the

15. Jerusalem Talmud *Eruvin* 1-10.

16. *Megillah* 3a. See *Machane Yisrael*, chapters 12 and 14.

17. *Tzitz Eliezer* 3-9, p.42.

18. *Machane Yisrael*, chapters 2 and 3.

19. *Ibid.* p. 165.

20. *Ibid.* p.30

21. Ramban, *Perashat Ki Teizei*. However, see *Sefer Hachinuch* 566 and also Jerusalem Talmud, *Shabbat* 2-6.

22. *Devarim* 23:10; also *Shabbat* 64.

Torah. Thus, it is our philosophy that learning Torah and praying with true concentration are outstanding weapons for the Jewish people to employ in their quest for victory. More mitzvot, more dedication to Torah, will bring us more protection from Above.²³

This belief, that purity of thought and deed and dedication to the ideals of Torah are the true strength of the Jewish people and the source of any victory they might enjoy, is the core of the argument that the yeshiva scholar is doing his share for the protection of the nation through his dedicated learning in the *Beit Midrash*. As the N'tziv points out (*Devarim* 31:1), the troops used to give a share of the spoils to the Torah scholars, in recognition of the fact that their learning Torah had kept the soldiers and the people safe.

If observance of mitzvot is so crucial that a minimum standard is not abrogated even for the soldier, doesn't it stand to reason, argue many, that those who are intensely involved in observing all the mitzvot of Torah, who spend all their hours involved in Torah, are surely adding to the protection of the nation just as are the armaments and tanks?

What role are the citizens supposed to play during a war? Are all equally obligated to serve on the battlefield? Are there distinctions to be made, exemptions to excuse certain

23. *Hachayil Vehachosen* p.99, who interprets the verse (*Devarim* 6-17) "*shamor tishmerun*" (you shall surely observe the mitzvot of Hashem) as a directive that in times of war extra care must be taken in the performance of mitzvot. The same is found on p.160 (*Devarim* 23-15) "Because the Lord your God walks in the midst of your camp to save you, and your camp must be holy, no unholy thing should be seen amongst you." On p. 115, the author maintains that even what one thinks is the purpose of the war is important. One should think that he is fighting for the sake of the group or because G-d so commanded, but not because he is desirous of booty. And surely it is wrong for him to think that "my strength and the might of my hand" win the victory. See. p.89.

people? Some answer emphatically "no", but others contend that the answer might be "maybe" or "yes." *Kelal Yisrael* is made up of diverse people, with many contributions to be made. An orchestra achieves its fulfillment when each of the musicians contributes his unique talent; so, too, the Jewish people are not monolithic. Different people can and should contribute to the welfare and security of the nation in different ways.

One of the Sages of Yavneh is quoted as reflecting, "I am a man, and my friend is a man; my work is in the city, and my friend's work is in the field. This goes to show that one complements the other, and no one person can or ought to do all the jobs."²⁴

Is such a differentiation defensible in the case of military service? Can a class of people legitimately claim that, as a group, they are serving a different, equally vital, need for the salvation of the community? On these grounds should they be exempted from military duty in order to fulfill their unique role in national security?²⁵

Rav Kook, the first Chief Rabbi of Israel, felt strongly that students in the yeshiva should not be called to the front, for in their *batei midrash*, through learning Torah, they were assuring the spiritual welfare of the nation, and ultimately, we rely on our spiritual superiority to save us, not on our military might. Others have also strongly maintained that the *z'chut* of learning Torah is a more effective and more important shield for the Jewish community than military service.²⁶

Others, however, scoff at such an argument. "Will you

24. *Techumin* 7, p. 332.

25. *Sanhedrin* 42a. If not for his ancestor David's having studied Torah, Asa would not have been successful in the wars he waged.

26. Rav Waldenberg and Rav Kook.

send your brothers to war, and yourselves sit at home?" rails Rav Zevin, in his call to yeshiva students to take up arms equally with their secular brothers. "Is your blood redder than theirs?" he wants to know. Yeshiva lives and families are being threatened the same as everyone else's, and he feels no person can excuse himself from the fray. He cites rabbinic dicta that in times of war, "all go out to fight, even the bridegroom from his chamber and the bride from her chuppah."²⁷

Exemption

Already in the Torah, there is indication that not all the Jews participated actively in the actual fighting:

אך את שבט לוי לא תפקד ואת ראשם לא תשא

But the tribe of Levi you shall not count [in the military census], nor number their heads.²⁸

The entire tribe of Levi was excluded from active warfare, and therefore there was no need to include them in the military census.²⁹ Rambam rules that the tribe of Levi did not inherit a portion of the land, "because they were separated for one task - to serve [in the Temple] and to teach His righteous

27. *Tradition*, Fall 1985, p.52. It is interesting that in the book he wrote about war, Rav Zevin does not raise this topic at all. One can only wonder why it was omitted, and then published as a separate article.

28. *Bamidbar* 1:49.

29. Rashbam, *Bamidbar* 1-39. However, see *Hilchot Medinah*, II, perek 3, #2, and *Sifre to Mattot* 31:4. We have not included as a source for this position the statement found in *Sifre to perashat Matot*: "le-hotzi shevet levi," since the correctness of the text is questionable. Some would read "le-havi shevet levi" which, of course, renders the exact opposite meaning. Moreover, even if the first version, excluding the tribe of Levi, is correct, it can be argued that this directive applies only to the war against Midian referred to in the biblical text and cannot be expanded to apply to all war situations.

ways... therefore they were separated from the ways of the world, and they do not wage war as do the other Israelites."³⁰

But then Rambam adds,

ולא שבט לוי בלבד, אלא כל איש ואיש מכל באי העולם אשר
נדבה רוחו אותו והבינו מדעתו.

Not only the tribe of Levi, but any individual whose spirit moves him to... separate himself to stand before G-d and to serve him, to know Him... and he removes from his neck the yoke of considerations which most people seek, behold this person becomes most holy.

Jewish thinking recognizes and respects those individuals who reject the pursuit of material goods as their goal and dedicate themselves instead to a higher ideal. Such a person should not be called up even for defense of the country.³¹ The source for this practice long predates the Rambam: the Gemara (*Nedarim* 32a) criticizes Avraham Avinu for having roused the scholars in his entourage and pressed them into joining his troop which gave chase against the four kings who had raided the land. Similarly, the Gemara in *Sotah* 10a concludes that King Asa was punished by heaven for conscripting Torah scholars into his army.³²

Most nations do not have universal conscription. People understand that not everyone is suited for the battlefield, or that some people should be doing something else. When America had the draft, clergy were excluded, students in the universities were deferred, and others in sensitive positions excused. Can

30. Rambam, *Hilchot Shemittah* 6:2 and 13:12.

31. See *Hilchot Medinah* II, *shaar* 3, *perek* 4, for a source for the Rambam and whether this applies to *milchemet mitzvah* or only to a *milchemet reshut*.

32. See *Hilchot Medinah* II, page 60, #7. See the exchange between Rav Waldenberg and Rav Schlesinger in *Hilchot Medinah* III, *perek* 6.

no justification be found for excusing yeshiva students from serving in the Israeli army?³³

However, all exemptions advocated by the rabbis seem to be predicated on the assumption that the Jewish army would be victorious without the missing troops; but, if there exists the possibility of their being overcome in battle, all agree that no one can be excused, all must rush out to battle. "And it is a mitzvah for all Israelites who can, to come and go out to aid their brothers who are under siege."^{34 35} This proviso, obviously, is not a minor issue in the current debate, and we will discuss it more fully further on.³⁶

Alternative Service

No one should imagine that those who were traditionally excused from active duty during war went on vacation instead. On the contrary, everyone was expected to do his or her share in saving the community, but it was recognized that there were a variety of necessary tasks to be performed. Those exempted from active duty were duly expected to serve in some other capacity.

Historically, there is evidence that Torah scholars who were excused from fighting used to accompany the troops to the front and learn and teach Torah there.³⁷ It is hard to imagine a more uplifting practice than thousands of soldiers encamped and equipped for war, each with a man next to him

33. *Tzitz Eliezer* II, 24, rules that a person who is exempt from taxes because of his status, nevertheless retains all the rights of a paying member of society.

34. Rambam *Shabbat* 2-23. *Tzitz Eliezer* 8, 3, par.9, #3 and 4.

35. This ruling is not universally accepted; see *Kol Mevasser* 1-47, and *Chazon Ish Or Hachaim, Eruvin Lekutin* 6,3, who disagrees on this point.

36. *Chazon Ish, Avoda Zara* 23:3.

37. *Hachayil Vehachosen* p. 74-5.

learning the Torah or reciting the *Shema*. Yet the difficulties inherent in such a relationship are quite evident, and ultimately the practice had to be stopped.

Who Should Be Exempt

When the State of Israel was first established, the number of men learning full time in yeshivot was small; the agreement that yeshiva students would be exempt from military service caused little concern. Today, thank G-d, the situation is quite different in the yeshivot, which are packed with students. As their numbers grow, so do the deferments - and the protests. An added factor is that in Israel many men remain yeshiva students for life, such that military deferment becomes de facto permanent exemption. Under these circumstances, should all yeshiva students be exempt from army duty?

In his monograph against exempting yeshiva men from the draft,³⁸ Rav Zevin rejects the contention that it is more important for them to be learning than fighting. He asks, if everyone were learning in yeshivot, "would we allow our enemies to ravage our land and kill our people without taking up arms to defend ourselves?" And he points to the halacha which teaches that all must go out in case of attack - even a bridegroom from his chamber and a bride from under her chuppah. Certainly it should apply to rabbinic students as well! How can one imagine it is right, he asks, to let others die for him rather than protect his own life and family?

Aside from the question of whether it is right to let others bear all the burden of physical defense, there are those who maintain that an exemption from military service based on the individual's involvement with Torah learning can apply only to the relatively few who truly disassociate themselves from all worldly concerns and do nothing but learn Torah. This definition, according to Rav Aharon Lichtenstein,

38. *Tradition*, Fall 1981, p. 53.

would disqualify very many yeshiva people from their present exempt status.³⁹

Finally, even if we grant that the Rambam's statement does imply a categorical dispensation in purely halachic terms, it remains of little practical significance. We have yet to examine just to whom it applies. A levi [sic] is defined genealogically. Those who are equated with him, however, literally or symbolically, are defined by spiritual qualities; and for these the Rambam sets a very high standard indeed. He presents an idealized portrait of a selfless, atemporal, almost ethereal person - one whose spirit and intelligence have led him to divest himself of all worldly concerns and who has devoted himself "to stand before God, to serve Him, to worship Him, to know God; and he walks aright as the Lord has made him and he has cast off from his neck the yoke of the many considerations which men have sought." To how large a segment of the Torah community - or, a fortiori, of any community - does this lofty typology apply? To two percent? Five percent? Can anyone... confront a mirror and tell himself that he ought not to go to the army because he is *kodesh kodashim*, *sanctum sanctorum*, in the Rambam's terms? Can anyone with even a touch of vanity or a concern for *kavod* contend this? Lest I be misunderstood, let me state clearly that I have no quarrel with economic aspiration or with normal human foibles per se. Again, least of all do I wish to single out *b'nei yeshivot* for undeserved moral censure. I do feel, however, that those who would single themselves out for saintliness should examine their credentials by the proper standard.

Despite this harsh appraisal of the unworthiness of present-day yeshiva scholars to claim exemption from community obligations, it appears that actually it was a widespread

39. Aharon Lichtenstein, *Tradition*, Fall 1985, p.212. See his footnote 30.

practice to excuse Torah scholars from many of the levies put upon all others. Nor were they generally expected to withdraw totally from the ordinary pursuits of most people. The common custom in Jewish communities was indeed to consider the Torah scholar as a person who, because of his holy dedication to Torah, should not be expected to shoulder the same burdens as ordinary citizens.

In truth, the question of military exemption is adumbrated in similar debates over the centuries. There, however, the issue was generally a different kind of community service, involving payment of taxes levied by the government on the entire Jewish settlement. Back in the 15th century, R. Isserlein, author of *Terumat Hadeshen*, had to address the problem of taxes which the government demanded from the Jewish community as a unit. There is a long halachic tradition exempting rabbis and Torah scholars from having to pay community taxes, and of course, every individual excused from paying a share meant that the share of the others was that much bigger. The author of *Terumat Hadeshen* appears reluctant to grant widespread exemption from community taxes.⁴⁰

אמנם ההזמון עם אינם סוברים כלל לפטור שום ת"ח אא"כ יושב
בראש ישיבה ואף זה דוקא באוסטרייך... והיה כמעט מנהג פשוט
שלא לחייב במס הרב היושב בישיבה בראש... אבל בגבול דבני
רינוס כמדומה לי שלא היו נוהגין לפטור ת"ח.... משום דצריך
דקדוק יפה שיחזור תמיד לתלמודו כשיפנה מעסקיו ואין נוהגין
האידנא.

However, ordinary people do not have any wish at all to exempt any Torah scholar unless he serves as the head of a yeshiva, and this is true only in Austria... and it is virtually a common practice not to require the Rabbi who serves as the head of the yeshiva to pay the tax. But it appears to me that in the provinces near the Rhine, it was not the practice to exempt Torah scholars... since it requires that he be very careful

40. *She'elot Uteshuvot* #342.

about returning always to his studies as soon as he is finished with his business...

But more than a century later, the *Shach* does not equivocate when he rules that anyone who makes the study of Torah his major concern, taking time out only to earn the requisites for supporting his family, is exempt from community tax.⁴¹

Similarly, the *Ramo* rules:

ואין חולקין בין שהוא תופס ישיבה או לא רק שהוא מוחזק לת"ח בדורו... בענין לפטור ממס אין מדקדקים בזה רק שיהיה מוחזק לת"ח

And it makes no difference whether he runs a yeshiva or not, only that he be known as a Torah scholar in his generation, ...as for exempting him from the tax, we are not overly particular about this, only that he should be accepted as a Torah scholar.⁴²

Perusal of these halachic sources provides a basis for exempting certain individuals from obligations which all other members of the community have to shoulder. Some rabbinic authorities interpret this rule quite broadly, while others give it a narrow scope.

In pleading for a change in the present system of exempting all yeshiva students from the draft, Rav Zevin seeks to find a middle ground. He notes that "a practical fear has been expressed, that if the students go to war, all the yeshivot will become depleted" and who knows that will happen then to the study of Torah in Israel? Therefore, he urges that "a mutually agreeable accommodation" be arranged, whereby the principle of the importance of Torah study would be established without, however, applying it universally.⁴³ The Hesder

41. *Yoreh Deah* 243 #7, *Hagahot Maimuni*; *Tefilla* 12, #7.

42. *Ibid* 243-2. See *Keter Ephraim*, Tel Aviv 5727, pp. 172-4. *Tzitz Eliezer* II 25.

43. *Tradition*, Fall 1981.

yeshivot seem to be a direct response to this plea, and we will discuss them shortly.

Saving Lives - or Learning Torah

A talmudic statement seems to give tremendous support to the position that yeshiva students should not join the army: "Rabbi Yosef said, 'learning Torah is greater than saving lives.'" (*Megillah* 16b) This talmudic text is often cited as evidence that maintaining the spiritual welfare of the nation is more important than maintaining its physical security. However, assuming that the Gemara considers learning Torah to be preferable to saving lives might be a simplistic conclusion. A great wealth of Torah literature leads one to conclude that many major Torah authorities did not take this statement literally.

In the *Shulchan Aruch*⁴⁴ we find the following rule:

"It is permissible to take money from the Torah fund in order to pay... the ruler, since it is for saving lives."

This ruling is based on a responsum of the Rosh to the effect that it is proper to divert even a large group from learning Torah in order to save lives. How could the Rosh render a ruling contrary to the Talmud? Numerous scholars have grappled with this difficulty,⁴⁵ and we shall look at some of their answers.

There are those who contend that the text in *Megillah* is aggadic in nature; wherever the aggada disagrees with the rules of halacha, it is halacha which takes precedence. Thus, the overarching rule of *pikuach nefesh*, doing virtually anything in order to save a life, applies in this case as well. Furthermore, it is not possible to take a statement concerning the life of one individual and use it to justify a situation in which the entire

44. *Shulchan Aruch* YD 251-14.

45. *Miluim* Y.D. Ibid.

Jewish community is threatened. On the contrary, we are confident that G-d will never allow the entire Jewish community to be annihilated, and succor will come to them somehow. In such a situation, it is more important to learn Torah. There is no such assurance of divine intervention, however, for an individual; thus, when one person is in danger, it is surely mandatory to save his life. But for the group, we can rely on G-d's providence.

In resolving the question of apparent contradiction, the *Perisha* rules that if there are others who can undertake to save lives, it is preferable for those who can, to study Torah.⁴⁶ However, if there are no others, then the rule of *pikuach nefesh* takes precedence. Another solution suggested by the *Perisha* is that in a situation where it is not possible to do both - save lives and learn Torah as well - then learning Torah takes precedence. However, in the case discussed in the halachic text, even though some of the money would go to pay off the governor, some would still be left over to provide for learning Torah, albeit not in great comfort.⁴⁷

The persistent lack of clarity in resolving the issue makes it apparent that, the importance of learning Torah notwithstanding, it cannot be the only consideration in determining normative Jewish practice. Our rabbis have introduced many other factors which at times may mitigate the primacy of the mitzvah of learning Torah.

Rabbis Don't Need Protection

In *Bava Bathra* 7b, the Talmud discusses the need for building walls around a settlement. Since walls are for communal protection, all residents have to share in the cost of erecting them. However, the Gemara rules that Torah scholars are exempt from this expense, since they are protected by virtue

46. Ibid.

47. *Techumin* 7, p. 339. Also *Techumin* I, p. 371.

of the Torah they learn. Can this talmudic exemption be compared to an exemption from the military draft?

Although the above statement, unlike the one in *Megillah*, is not aggadic - it is actually codified in the *Shulchan Aruch*⁴⁸ - nevertheless, it is not cited by the proponents of exemption as proof for their position. On the contrary, the rabbis opposed to exempting yeshiva students seize on this statement to argue that yeshiva students themselves don't believe that the Torah shields them enough!⁴⁹

When actual lives are at stake, may we rely on miracles? In 1929 at Hebron... didn't young students of the yeshiva, whose holiness shone like stars in the sky, fall before the malicious enemy? Please, did these martyrs need protection or not?... If you understand that the scholars need protection in relatively peaceful times and are exempt from building the protective walls, what consequence has this when compared to a life-and-death struggle, a war which is a mitzvah and in which all are obligated? The defense authorities ordered everyone to cover all windows as protection against shattering glass in case of an air raid. Would anyone think that some rabbis will not do so, claiming, "Rabbis do not need protection?" ...Why did rabbis leave areas under enemy fire along with the rest of the general population? Why did they not rely on this maxim?

Rav Lichtenstein, too, does not accept the dictum:

It may be stated... that such a claim (that since rabbis "don't need protection" they should be exempt from military service) raises a very serious moral issue. Can anyone whose life is not otherwise patterned after this degree of trust and *bitahon* argue for exemption on

48. *Yoreh Deah* 243-2. The *Chatam Sofer Bava Bathra* would apply the exemption only to situations where the protection is from theft; however, when lives are in danger, this principle would not be relevant.

49. *Tradition* Fall 1985, p. 54. See Footnote 25, *Techumin* I, p.371.

this ground? Is it possible to worry about one's economic future - in evident disregard of Rabbi Eliezer's statement that "whoever has bread in his basket and says 'What shall I eat tomorrow?' is but of little faith" - and yet not enter the army because one is presumably safe without it?⁵⁰

Effect on Others

No one lives in a vacuum. A person not only has to do that which is right for himself, he has to factor into his decision how his actions may affect the group. This is brought out by the N'tziv in his study of Scripture: The tribes of Gad and Reuven addressed Joshua as he prepared to commence the conquest of Canaan, urging him to be strong, and they would fight along with him. Although they had already taken as their inheritance the provinces conquered by Moshe in his lifetime, they had promised that they would fight along with the other Jews until all the land had been conquered, only then returning to settle in their own fields. Now that he was preparing for his campaign of conquest, they renewed their pledge: "Whoever rebels against your word and does not heed what you say, whatever you command, will be put to death. Only, be strong and persevere."

Isn't that somewhat excessive? Should a person really be put to death for failure to obey Joshua? But the N'tziv explains that the tribes of Reuven and Gad realized that if they failed to join the impending battles, it would have a devastating effect on the rest of the Jews. Perhaps these others would be overcome by fear or panic when they saw part of the army dropping out. Thus, had the two tribes failed to live up to their commitment, they might have fatally weakened the peoples's resolve. Therefore "be strong and persevere," kill anyone who stands in your way, if that is necessary to strengthen the nation.

50. *Tradition*, Fall 1981, p.209.

Also concerned with the effect exemption of a large group may have on others, Rav Waldenberg cites the Abarbanel⁵¹ that Deborah joined in the battle against Sisera, even though she didn't want to, only to placate Barak, the general of the troops. She did it only "because the Jews then were scared and frightened of the army of Sisera and his chariots and his hordes... [and she went along] in order to strengthen the hearts of the Jewish people when they would see the Prophetess with them." (Note that Deborah may even have been transgressing a biblical command - it is forbidden for women to wear armor - in order to raise the spirits of the soldiers.)

Perhaps this factor, too, has to be taken into account - the effect it has on the soldiers and on their families when certain people, for whatever reason, do not share in the common burden and are exempt from the danger and the sacrifice it entails.

Chilul Hashem

Possibly the greatest sin in Judaism is *Chilul Hashem* - desecration of the Name, which includes anything which lessens the respect and devotion of people for G-d and His Torah. Every sin can be forgiven, other than this one.⁵² On the other hand, the very greatest act a person can ever hope to achieve is *Kiddush Hashem*, the exact opposite of *Chilul Hashem*. Most mitzvot of the Torah can be violated in order to effect a *Kiddush Hashem*. The Book of Samuel (II 21:3-10) records a dreadful vengeance that the Gibeonites exacted from the Jewish people: G-d had sent a plague upon the Jews to punish them for King Saul's having put some Gibeonites to death. The only stratagem which would placate the Gibeonites and halt the plague was to kill a number of King Saul's descendants, which King David reluctantly agreed to do, at

51. *Hilchot Medinah* II, p. 70.

52. *Yoma* 87a.

the instruction of the Prophet. But then, instead of burying them immediately as Jewish law requires, the bodies were left hanging on trees for months. How could he allow this to happen? The Gemara answers:

It is better that a letter should be eradicated from the Torah so that the name of Heaven will be sanctified in public. For passersby would ask, "What is the nature of those men [hanging]?" [and they would be told] "They are sons of the king," "And what did they do [to warrant such a horrible punishment]?" "They violated the rights of aliens" [and then the passersby would exclaim] "Certainly there can be no nation more worthy for us to become attached to than this one, for if this is how they treat princes [who did wrong to foreigners - i.e., the Gibeonites] how much more so will they be strict with ordinary people!"⁵³

This is the greatest *Kiddush Hashem* - when people seeing our deeds are overcome with awe and respect for the justice and goodness of our behavior, which is predicated on the Torah's teachings. *Kiddush Hashem* remains the highest priority of the Jew. Even today, Rabbi Shear Yashuv Cohen warns, before engaging in a war or military foray, we should stop to consider whether the nations of the world might judge our deeds negatively, thus causing a *Chilul Hashem*.

So, too, Rabbi David Tzvi Hoffman relies heavily on the prohibition of *Chilul Hashem* when considering whether a Jew living in a gentile country may evade the draft. His ruling is that even if the Jew knows that service in the army will inevitably entail desecration of Shabbat and other laws, he is still not permitted to avoid his civic duty.

Is it valid to apply this line of reasoning to the question of yeshiva students serving in the Israeli army? Some say yes, while others disagree. After all, one can only cause a

53. *Yevamot* 79a.

Chilul Hashem if he is doing something wrong. But if a person acts in accordance with what is right and yet others react negatively, it can be argued that that is not his responsibility.⁵⁴ However, this disagrees with what the Gemara expressly says - that a person has to be careful about the impression he is making, even when he is doing the right thing.⁵⁵ Others maintain that such a delicate evaluation can be made only by a person of great stature and importance in the community, not by ordinary people, who need be concerned primarily that their behavior is in itself unimpeachable.

It is difficult to pin down an answer to the question whether the Orthodox Yeshiva community has to be concerned that the policy which exempts their sons from army duty is well-received by the secular Israeli public. For those who see the policy as arousing much animosity, resentment, and contempt for those who study Torah, it is indeed a terrible *Chilul Hashem*. For those with a different vantage point, the fact that their policy is subject to misinterpretation should not deter people dedicated to learning Torah from following this pursuit. Just because people do not appreciate their dedication, should that stop the inspired individuals from dedicating their lives to a high ideal?

It is easy to see that both intellectual and emotional arguments can be raised for either point of view, as well as halachic ones. But one truth is indisputable - when the nations of the world see Jews fighting among themselves, that is surely a *Chilul Hashem*.⁵⁶

The Hesder Yeshiva

The controversy about drafting yeshiva men for the army has roiled Israeli society for decades. Partly in response to

54. *Techumin* 7, p.333

55. *Yoma* 87a.

56. *Machane Yisrael* p. 197

the strong emotions engendered by the situation, there arose the institution of the Hesder yeshiva, where young men alternate months of learning Torah with months of active duty in the army. Many sincerely dedicated Torah students feel very strongly that, living in Israel, they want to participate in the defense of their country and their lives. At the same time, they realize that if they leave their yeshiva for two years while they serve in the army, the chances are slim that many of them will return. The Hesder yeshiva seeks to bridge that gap and indeed fills a very important role. The proponents of the Hesder yeshiva, however, do not see themselves as a compromise but rather as the right way to go.

We advocate it because we are convinced that, given our circumstances - would that they were better - military service is a mitzvah, and a most important one at that. Without impugning the patriotism or ethical posture of those who think otherwise, we feel that for the overwhelming majority of *b'nei Torah*, defense is a moral imperative.⁵⁷

There are any number of good reasons for the creation of the Hesder system. First of all, it is considered important that during the formative post-high school years, the *ben torah* should be firmly rooted in a Torah climate. Furthermore, many sincerely religious people consider it their ethical and halachic imperative to defend the State of Israel, even if only for the reason that they themselves live there. Lastly, in view of the military needs of this small nation, every able-bodied person should be trained for defense, even if only as part of the reserves.⁵⁸

57. *Tradition*, 1981. p.202. See letters of Rav Shach, Part IV, #320, where he writes that the Hesder yeshivas have diminished the stature and scope of the yeshiva.

58. *Ibid.*

The Hesder yeshiva is grounded in necessity, not in choice. It does not glorify militarism, but views army training as the necessary response to the critical political and military situation of the Jewish state.

Although this might seem like the perfect solution to the dilemma, many in the yeshiva world do not agree. They argue, and many scholars in other fields would agree, that there is nothing equivalent to a person's being able to devote himself entirely only to study, without interruption or distraction. Our rabbis observed in their pithy style: "The Torah cannot be acquired except by someone who is ready to sacrifice his entire existence for it".⁵⁹

Volunteering

Since the Torah specifically did not want certain people to go to war, does that mean that a person in the exempt category is not permitted to volunteer? Could an individual *kohen* or *levi* choose to serve in the army? Is exemption a privilege or a disqualification?

Rav Waldenberg cites numerous sources which, in his view, adequately prove that any individual Levite who was so moved was able to serve in the armed forces. His opinion is in agreement with that of the author of *Birkei Yosef*⁶⁰ who contends that although exempt, one may indeed volunteer. He cites a text in *Kiddushin* which questions whether a *kohen* who encountered a captive woman in battle would be permitted to marry her (under the conditions laid out in the Torah, in *perashat ki teitzeh*). How could a *kohen* even be in a position to take an enemy woman captive, if he could not have volunteered to fight? Obviously, counters *Birkei Yosef*, he could enlist.⁶¹

59. *Berachot* 43.

60. *Even Haezer* #6, quoted by Rav Zevin, *Or Hahalacha* p. 28.

61. A disagreement exists between the view of *Pirkei Avot*, chapter 5, (*Machzor Vitry*) and *Siftei Chachamim* to *Bamidbar* 4.

The question of volunteering is quite a serious one - may a person put himself in a life-threatening situation if he doesn't have to?⁶² Rav Waldenberg cites a novel proof⁶³ that if a person feels his death may bring salvation to the entire group, it is permitted: The Gemara in *Ta'anit* 10b praises Lulianus and Pappus, who gave their lives rather than permit a wholesale slaughter of the Jewish community. We know, says Rav Waldenberg, that a person who dies unnecessarily is considered equivalent to a suicide, culpable for his own murder.⁶⁴ Yet the Gemara praises the two who sacrificed themselves. We must conclude that dying to save many others is a heroic and highly commendable act.

A Non-Jewish Army

What we have said so far applies almost entirely to the situation of a Jew serving in a Jewish army. In a final note, let us turn to the question of a Jew's serving in a non-Jewish army. This is a relatively modern question, for until they were given civil equality, usually some time in the 19th century, Jews were generally not allowed to serve in the army. The Chafetz Chaim wrote a small monograph, *Machane Yisrael*, addressed to those who were called upon to serve, in which he seeks above all else to strengthen the Jewish commitment of those who are about to undertake this difficult assignment.

62. *Sotah* 44b. In *Kol Mevasser*, Rabbi Roth writes "I was very much surprised about this, for where do we find that we force someone to endanger his life for the sake of a mitzvah?"

63. *Sheiltot*, *perashat Ve'etchanan* 142. The N'tziv quotes other instances where this approach is applicable.

64. *Hilchot Medinah*, II, *perek* 5. Rav Waldenberg offers many proofs that the concept is already found in the writings of the *Rishonim*. The same conclusion is found in *Mishpat Kohen* Responsum 142-4, Note 31; in *Techumin* p. 162; *Shevut Yaakov* II 117; *Nodah Biyehudah Tanina Yoreh Deah* 161.

Forced to follow the directives of his non-Jewish superiors, the Jew, who will be unable to observe many mitzvot, is nevertheless encouraged to do as much as he can and always to continue to struggle to observe the Torah. The Chafetz Chaim encourages and prods the soldier, no matter how difficult his situation, to trust in G-d. In a homily, he shows that when a person gives another person a gift to hold for him, if the recipient misuses the gift, the donor will want to take it back. Not so with the *Ribono shel Olam*; even if a person misuses the precious gift of life, G-d does not want to take it back.⁶⁵ At all times, concludes the Chafetz Chaim, remember

65. Even if volunteering is permitted for the Jewish army, there is some debate whether one may opt to join a non-Jewish militia. In this century, R. David Hoffman (*Or Hachaim* 42-43) considered it the obligation of every citizen, including Jews, to participate in the army. Even if one can get deferment for 2 or 3 years, R. Hoffman opposes it and says one should enlist right away.

In a handbook for army chaplains *Responsa to Chaplains*, published by the Jewish Welfare Board, p. 19, the Chafetz Chaim is quoted as writing in *Machane Yisrael* that "it is a great sin to evade army service." However, this writer was not able to find that statement anywhere in the book of the Chafetz Chaim. Not only that, but at the end of the "Introduction," the Chafetz Chaim writes that only if one's life is in danger may he transgress the Sabbath.

On the other hand, *Imrei Eish* (Responsum 52) was quite comfortable with the prevalent custom in Eastern Europe (and in America) during the nineteenth century, of hiring someone to serve in the army in one's stead. Most *poskim* (See *Nodah Biyehudah Tanina*, YD, 74) hold that once a person has been drafted, no substitute should be sent, and surely no Jewish committee should ever be set up to decide which Jewish boys are to be conscripted. The only method they approve is a lottery.

Pitchei Teshuva Y.D. 157-13. This, too, is contrary to the JWB, who maintain that since military service is a mitzvah, recruitment to the chaplaincy is perfectly acceptable.

that you are still the child of G-d.⁶⁶ The Chafetz Chaim advises the soldier not to look for *chumrot* (stringent interpretations of the Jewish law);⁶⁷ on the other hand, he urges the soldier not to worry if gentiles make fun of his Jewish practices,⁶⁸ and to continue to study Torah whenever possible.⁶⁹ He further reminds the soldiers that every mitzvah is important,⁷⁰ and that his *yetzer hora* will continually try to impede his performance of mitzvot.⁷¹ He urges the soldier to be willing to expend considerable sums in order to return home as often as possible.⁷² And if he finds that his uniform contains *shatnes*, he must make every effort to correct it as soon as possible.⁷³

If all these precautions are necessary in a gentile army, how much more so do they apply in a Jewish one!

66. *Machane Yisrael*, "Introduction."

67. *Ibid* p.10.

68. *Ibid*, and also in "Introduction."

69. *Ibid*, p 57.

70. *Ibid*, chapter 12.

71. *Ibid*, chapter 18.

72. *Ibid*.

73. *Ibid*, p.167.

Halachic Perspectives on Pets

Rabbi Howard Jachter

Introduction

In recent decades it has become common among some observant Jews to own pets. A pet owner, however, is regularly confronted with a wide variety of halachic issues. This essay will discuss a number of these issues, among them caring for a pet's needs, removing reproductive organs, *Hilchot Shabbat* problems, and bringing a guide dog into a synagogue. The discussion will begin with an examination of a fundamental question, the halachic propriety of owning pets.

I. The Propriety of Owning Pets

The halachic literature indicates that it has been common practice among Ashkenazic Jews over the past several centuries to own non-farm animals, especially dogs¹. Rabbinic authorities have debated the propriety and permissibility of this practice. Their positions depend to a great extent on how they harmonize seemingly contradictory talmudic texts which appear in tractate *Baba Kama*. The Talmud (*Baba Kama* 15b) cites Rabbi Natan who asserts that one who raises an "evil dog" in his home violates the biblical prohibition "Do not

1. See Ramo, *Choshen Mishpat* 409:3; *Yam Shel Shlomo Baba Kama* 7:45; *Knesset Hagedola Choshen Mishpat* 409:4; *Shulchan Aruch Harav Hilchot Shmirat Guf Venefesh*, number 3.

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place blood in your home" (Deuteronomy 22:8).² The implication is that it is permissible to raise a dog in one's home provided that the creature is not an "evil dog". Rabbi Yishmael, in fact, permits one to raise a type of dog known as *kofri* dogs (Rashi: small dogs or large hunting dogs which do no harm) since they help eliminate rodents (*Baba Kama* 80a).

On the other hand, the Talmud (*Baba Kama* 79b) writes that one is forbidden to own a dog unless it is securely chained (if the dog is securely chained it will neither do any damage nor frighten anyone with its bark). Moreover, the rabbis of the Talmud (*Baba Kama* 83a) pronounced a curse upon one who owns dogs. These statements seem to apply to all dogs.

Rambam (*Hilchot Nizkei Mammon* 5:9), in fact, rules that it is forbidden to raise any dog unless it is secured by chains "since dogs frequently cause considerable damage." Rambam apparently believes that Rabbi Yishmael's permissive ruling is contradicted by the Mishnah and Gemara of *Baba Kama* 79b and 83a, respectively. Rabbi Yishmael accordingly would be the sole authority who permits raising *kofri* dogs, and thus Rambam believes that the consensus of opinion among talmudic authorities rejects his view.³

Most *Rishonim*, however, including *Smag*,⁴ *Yeraim*,⁵

2. See Rambam, *Hilchot Rotzeach*, 11.

3. There are two possible explanations of how Rambam interprets Rabbi Natan's statement which is cited *Baba Kama* 15b. One possibility is that, like Rabbi Yishmael, his opinion is a minority view which the majority opinion (presented on *Baba Kama* 79b and *Baba Kama* 83a) rejects. The other possibility is that the biblical prohibition applies only to an "evil dog". However, the rabbis extended this prohibition to all dogs. A careful examination of Rambam *Hilchot Nizkei Mammon* 5:9 appears to indicate that the prohibition is indeed on a rabbinic level.

4. Positive commandments, number 66.

5. Number 210.

Tur,⁶ and *Hagahot Maimoniyot*,⁷ disagree with Rambam and limit this prohibition to "evil dogs". These authorities believe that the statements that appear on *Baba Kama* 79b and 83a are limited to "evil dogs".⁸

Shulchan Aruch (*Choshen Mishpat* 409:3) rules in accordance with the opinions which limit the prohibition to an "evil dog". The *Acharonim* almost without exception accept these opinions as well.⁹ Rabbi Yaakov Emden¹⁰ appears to be the lone authority who believes one is forbidden to own any type of dog.

The question, though, is how to define an "evil dog". Rashi (explaining why the Mishnah (*Baba Kama* 79b) forbids raising a dog unless it is chained) writes "it bites and it barks, thereby causing pregnant women to miscarry." Rashi can be interpreted in one of two ways (since he uses the Hebrew letter *vav* which sometimes means "and" and sometimes means "or"). The first possibility is that an evil dog is one that both bites and barks, and the second possibility is that it is one that either bites or barks. Rabbi Shlomo Luria (*Yam Shel Shlomo Baba Kama* 7:45) is inclined to adopt the second possibility and suggests that a dog is considered to be "evil" if it barks, even if it does not bite. The reason for this, the

6. *Choshen Mishpat* 409

7.. *Hilchot Rotzeach* chapter eleven, number three.

8. See *Yam Shel Shlomo Baba Kama* 7:45.

9. Ibid. See also *Shulchan Aruch Harav*, *Hilchot Shmirat Guf V'nefesh* number 3, *Tosafot Yom Tov Baba Kama* 7:7, and *Aruch Hashulchan Choshen Mishpat* 409:4.

10. *Sheilat Yaavetz*, number 17. Rabbi Emden's position appears to be contradictory. First he states that it is forbidden to raise any dog and dismisses Rabbi Yishmael's permissive ruling as a lone view which the halacha rejects. However, later in the responsum he writes that it is permissible to possess dogs which are necessary for economic or security reasons.

Talmud recounts, is that a dog's bark¹¹ may cause a woman to miscarry. The Talmud (*Baba Kama* 83a), in fact, records two incidents of women who miscarried because they were frightened by dogs. Therefore, Rabbi Luria suggests that the only dogs one may own are the *kofri* dogs that Rabbi Yishmael explicitly asserts are permitted. Rabbi Luria seems to indicate that one is permitted to own these dogs even if they bark. Apparently, since people are aware that these dogs are not harmful, they know that they need not fear these dogs' bark.

Nevertheless, Rabbi Luria limits his ruling to "God-fearing individuals" and concludes his discussion by stating "therefore, we must excuse the Jewish people (i.e., those who own dogs which bark but do not bite) but praised is one who is careful [to limit his ownership to *kofri* type dogs] and blessings should be conferred upon him." The implication is that there is some halachic justification for those Jews who own dogs who bark but do not bite. The justification seems to be based on an interpretation of Rashi's description of an "evil dog" as one which both bites and barks. Accordingly, only a dog which bites would frighten a woman with its bark and possibly cause a miscarriage.

Shulchan Aruch Harav (*Hilchos Shmirat Guf V'nefesh*, number three) adopts a similar, albeit somewhat more firm, stance on this issue. He notes that Jews commonly own dogs that bark but do not bite and that some authorities justify the practice by limiting the definition of an evil dog to one that bites. *Shulchan Aruch Harav* asserts, however, that this view is rejected by the consensus of halachic authorities and that the category of "evil dogs" includes those dogs which bark even though they do not bite. Therefore, he concludes that "all God-fearing Jews should be certain to keep their dogs that

11. It seems that this refers only to a frightening bark and not to every dog's bark. Only a frightening bark would be likely to cause a miscarriage.

bark tied up in iron chains while people are awake, even if their dogs merely bark but do not bite." On the other hand, *Kneset Hagedola* (*Choshen Mishpat* 409:4) notes that common practice among Jews is not to accept the stringent view of *Yam Shel Shlomo* and *Shulchan Aruch Harav*. He indicates that the custom is to own dogs which bark as long as they do not bite.

Although *Kneset Hagedola* writes that common practice among observant Jews is not to follow the opinion of *Yam Shel Shlomo*, it appears proper to follow the latter's opinion. First, *Shulchan Aruch Harav*, which is recognized as a major halachic work, supports Rabbi Luria's position. Second, the Talmud considers a dog's fearsome bark to be a public nuisance. Hence, if one chooses to own a dog, one should be certain not only that the dog does not bite, but also that the creature does not frighten people with its bark. However, if one finds it absolutely necessary to raise a dog that may cause harm (for protection, for example), one must be certain that the animal is tied up securely at times when it may do damage either with its bite or its bark.

Rabbi Yaakov Emden (*Sheilat Yaavetz*, number 17) adds a further restriction to the type of dog one may own. He writes that one is permitted to own a dog if the creature serves an economic or protective purpose. However, he strongly condemns ownership of a dog as a pet as being a waste of time and "precisely the [abhorrent] behavior of the uncircumcised."

Nevertheless, Rabbi Emden does not marshal sources to support this position and appears to constitute a minority view.¹² *Shulchan Aruch* and most authorities limit the talmudic

12. A number of authorities disapprove of keeping animals as pets, such as Rabbi Yehudah He-chasid (*Sefer Chassidim* number 1038) who condemns owning birds as "adding nonsense" (*Midrash Kohelet* 6:11 seems to be the source for this statement). He adds that the money one spends on these birds should have been donated to

prohibition to ownership of "evil dogs". The clear implication is that one may own a dog for any reason, provided it is not an evil dog.¹³ Moreover, the Talmud indicates that Jews used various animals for recreational purposes. The Mishnah (*Shabbat* 90b) relates that children used to play with a certain type of locust. The Talmud (*Baba Batra* 20a) tells of a certain type of bird known as "*kalanita*", which can be used by a child to play. These two passages seem to demonstrate that the Mishnah has no objections to keeping animals for enjoyment,

charity. The Sephardic halachic authority, Rabbi Chaim Pelaggi (*Tochachat Chaim, Perashat Beshalach*, page 126) cites this opinion of Rabbi Yehuda He-chasid. Rabbi Yaakov Breisch (*Chelkat Yaakov* 3:87) also writes that it is inconsistent with the spirit of Judaism to own a dog. However, he does not offer any proof to this assertion. In addition, a number of authorities object to owning dogs based on Kabbalistic teachings (*Pele Yoetz*, s.v. *kelev*). However, these comments have not been incorporated into mainstream halachic works such as the *Shulchan Aruch*. It should be noted, though, that it is unquestionably permissible for a blind person to own a guide dog. These dogs are well-trained and do not pose a danger. In addition, owning such an animal does not mimic "the abhorrent behavior of the uncircumcised" since the owner has a great need for the dog. It also should be noted that a number of rabbinic authorities believe placing a bird into a cage to be a violation of *tzaar baalei chaim* - the prohibition to cause unnecessary pain to animals (see Rabbi J. David Bleich, *Contemporary Halachic Problems*, volume three, page 195, footnote 3).

13. The Talmud (*Baba Metzia* 71a) urges a widow not to own a dog because she will be suspected of committing bestiality (presumably, this rule is limited to a widow who lives alone). *Shulchan Aruch* (*Even Haezer* 22:18) codifies this rule but *Taz* (ad. loc. 10) approvingly cites the opinion of Tosafot (*Baba Metzia* 71a s.v. *lo*) who state that this law is a "mere stringency" and that it is essentially permissible for a widow to own a dog "since the people of Israel are not suspected of committing bestiality" (see *Shulchan Aruch, Even Haezer* 24:1).

contrary to the position of Rabbi Emden. Rabbi Emden might respond that these passages do not discuss dogs and do not prove that one may keep a dog as a pet. Rabbi Emden might agree that one may own a pet which does not require much attention. Perhaps he believes that only keeping a dog as a pet mimics "the abhorrent behavior of the uncircumcised."

Our discussion regarding dogs appears to apply to ownership of other animals as well. *Shulchan Aruch* (*Choshen Mishpat* 261:1) rules that one may kill an "evil cat" which harms children. Once again the rule is limited to an "evil" animal. The general principle according to most authorities is that one may own a pet provided that the animal does not pose a danger to people or property.¹⁴

14. Three essays have recently been published on this topic in Hebrew. Rabbi Yaakov Navon, "*Gidul Kelavim, Nizkam, Vehamischar Bahem*" (*Techumin* IX, pp. 171-190), presents the opinions of Rabbi Luria and Rabbi Emden as authoritative. He fails to note both the *Knesset Hagedola's* recording of the common practice among Jews to follow a more lenient ruling than that of Rabbi Luria and the latter's defense of the practice of those who own dogs which bark but do not bite. Moreover, he fails to note that Rabbi Emden's position is rejected by most authorities. Rabbi Yigal Ariel's essay, "*Gidul Baalei Chayim*," (*Techumin* VIII, pp. 243-258) concludes that it is preferable to restrict one's ownership of dogs to those which do not frighten people with their bark (in harmony with the position of *Yam Shel Shlomo*). In his book "*Chayto Aretz*," Rabbi Menachem Slay examines the propriety of owning pets purely for recreational purposes in a chapter entitled "*Hachzakat Chayot Bayit Ketachbiu*" pp. 53-65, and provides a wealth of sources on this topic. He notes positive aspects of pet ownership such as acquiring an appreciation of the magnificence of God's creation. It is worthwhile to note that there exist in classical rabbinic writings positive comments regarding dogs' loyalty to their masters (see *Horiyot* 13a, Jerusalem Talmud, *Terumot* 8:3, *Bereishit Rabbah* 22:12, *Bereishit Rabbah* 73:11, and *Pesikta D'Rav Kahane*, Paragraph 10 (*Beshalach*)). On the other hand, *Sefer Hachinuch* (*mitzvah* 571) in his explanation of why the Torah (Deuteronomy 23:19) forbids offering a

II. Feeding Pets

This section will focus on three issues regarding feeding one's pets: feeding one's animal before eating, feeding a pet food which contains both milk and meat, and feeding the animal *chametz* during Passover.

A. Feeding Pets Prior to Eating

The Talmud (*Berachot* 40a and *Gittin* 62a) states that one may not eat before he has fed his animals. The source for this prohibition is the verse (Deuteronomy 11:15) "I will give grass in your fields for your animals and you shall eat and be satisfied." This rule is derived from the order in which the two sections of the verse are recorded. The Torah speaks first of providing for animals and only subsequently of satisfying human needs.

There exists, however, a controversy as to whether the keeping of the prohibition constitutes meritorious conduct which is beyond the essential requirements of Torah law (*midat chassidut*) or is a prohibition in the full sense of the term. While emphasizing the importance of doing more than what Torah law requires, Rambam (*Hilchot Avadim* 9:8) describes two examples of exemplary conduct not required by law: 1) The early sages fed their slaves the same type of food they themselves ate. 2) The early sages fed their slaves and animals before they fed themselves. It is clear that Rambam understands this rule as recommended righteous behavior but nevertheless not required by the letter of the law.¹⁵

sacrifice purchased with money acquired from the sale of a dog writes "it is well known that dogs are brazen and mean."

15. The fact that Rabbi Joseph Karo does not record this rule in the *Shulchan Aruch* would seem to indicate that he agrees with the Rambam's position in this regard. He writes only (*Orach Chaim* 167:6) that saying "feed the animals" does not constitute an improper

Magen Avraham (Orach Chaim 167:18), however, cites as halacha the talmudic statement that one is forbidden to eat before feeding the animals he owns. In fact, elsewhere (271:12) he cites an opinion that this is a biblical prohibition.¹⁶ *Biur Halacha* (167:6 s.v. *umikol makom*) demonstrates that Ramo and other authorities reject the opinion that this is a biblical prohibition. Furthermore, *Chayei Adam* (45:1), *Mishnah Berurah* (167:40), and *Aruch Hashulchan* (167:13) all cite this law as a prohibition. Accordingly, one should take care to properly observe this law, since most authorities view this as a rabbinic prohibition, not just exemplary behavior.¹⁷ It should be noted, though, that many authorities limit this prohibition to eating and permit drinking prior to feeding one's animals.¹⁸

B. Feeding a Pet Food Which Contains Milk and Meat

Although it is forbidden to eat non-kosher food, one is permitted to derive benefit from most non-kosher food. However, the prohibition to avoid a mixture of milk and meat includes not only eating but also not deriving any benefit from such a mixture (*Chullin* 115, *Yoreh Deah* 87:1). Halacha considers feeding an animal (according to most authorities even if one

interruption (*hefsek*) between a blessing recited over food and eating the food.

16. Rabbi Yaakov Emden (*Sheilot Yaavetz* 17) seems also to maintain that it is biblically forbidden to eat before feeding one's animals.

17. Rabbi Yaakov Emden (*Sheilot Yaavetz* 17) writes that this law essentially does not apply to dogs and cats because "food is available for them practically everywhere" since they can forage for food in garbage and the like and are not dependent on their owners for survival". (Rabbi Emden's ruling is cited by *Shaarei Teshuva* 167:9 and *Chayei Adam* 45:1). However, Rabbi Emden's ruling does not seem applicable to some animals which are confined to a house or yard and cannot find food on their own.

18. *Mishnah Berurah* (167:40) and *Aruch Hashulchan* (167:13).

does not own the creature) to be a form of pleasure since most people derive satisfaction from feeding an animal. This pleasure is considered to be a form of benefit forbidden to be derived from a mixture of milk and meat.¹⁹ However, the prohibition to derive benefit is limited to biblically-prohibited mixtures of milk and meat.²⁰ The biblical prohibition includes only the meat of kosher domesticated animals (excluding fowl and wild animals) and the milk of kosher animals which are cooked together.²¹ Hence, one should make sure that pet food contains no biblically-prohibited mixtures of milk and meat.²²

19. *Shulchan Aruch*, *Orach Chaim* 448:6; *Taz*, *Yoreh Deah* 94:6. For summaries of the discussion concerning feeding mixtures of milk and meat to ownerless animals see *Yad Avraham*, *Yoreh Deah* 94:3 and *Badei Hashulchan*, *Yoreh Deah* 87:10.

20. *Ramo*, *Yoreh Deah* 87:1; *Shach*, *Yoreh Deah* 87:2; *Taz*, *Yoreh Deah* 87:1.

21. *Shulchan Aruch*, *Yoreh Deah* 87:1-3.

22. Much commercial pet food contains horse meat and does not pose a halachic problem. In addition, much pet food is ground and not cooked and does not pose a halachic problem. However, steamed pet food is considered to be cooked insofar as mixtures of milk and meat are concerned. Even though many authorities rule that steaming is not considered to be cooking in the context of the prohibition of eating food cooked by a non-Jew (see *Yabia Omer* *Yoreh Deah* 5:9:2), this is not applicable to the laws of mixtures of milk and meat. These authorities regard the process of steaming foods to be analogous to the process of smoking foods, and smoked foods are not included in the prohibition of eating foods cooked by a non-Jew (*Yoreh Deah* 113:13). However, most authorities rule that smoking food is considered to be cooking food in the context of the laws of mixtures of milk and meat (see *Aruch Hashulchan* 87:25 and *Badei Hashulchan* 87:72), and therefore, regarding these laws, steaming is considered to be cooking. Furthermore, one of the considerations of those who rule that steaming food is analogous to smoking food in the context of food cooked by a non-Jew is that the prohibition involved is rabbinic in nature, in which case one may be lenient in case of

There is considerable debate whether it is forbidden to derive benefit from a mixture of milk and meat from kosher animals which have not been slaughtered in accordance with halachic standards. Rambam, in his commentary to the Mishnah (*Keritut* 3:4),²³ writes that meat which is prohibited because it is not slaughtered properly, cannot be assigned the additional prohibition of a mixture of milk and meat (*ein issur chal al issur*). This is not merely an academic issue, because a Jew is permitted to benefit from (though he is forbidden to eat) improperly slaughtered meat but is forbidden to benefit from a mixture of milk and meat. If Rambam's opinion is accepted as normative, then one may feed an animal commercial pet food which contains a mixture of milk and meat, since it is most likely²⁴ that the meat ingredients are not kosher. However, since many authorities²⁵ do not accept

doubt. However, since in the context of the laws of mixing of meat and milk a biblical prohibition may be involved, the possibility of ruling leniently in this context is significantly diminished.

23. It is unclear whether Rambam maintains this position in the *Mishneh Torah*; see *Hilchot Maachalot Assurot* 9:6, and *Dagul Merevavah Yoreh Deah* 87:3.

24. One may assume that the meat in the pet food is not kosher since most of the meat in this country is either not from a kosher animal or has not been slaughtered properly (*kol d'parish mei'ruba parish*).

25. *Pri Megadim*, in his introduction to the laws of mixtures of milk and meat, and *Chatam Sofer*, Responsum 92. *Dagul Merevavah, Yoreh Deah* 87:3, indicates that one may rely on the Rambam's view in case of great need and the *Aruch Hashulchan, Yoreh Deah* 87:12, accepts this leniency of the Rambam without any reservations or limitations. For an analysis of this issue see the essay by Rabbi Menachem Genack, "*Basar Bechalav Bevasar Neveilah*" *Mesorah* III, pp. 92-96. No halachic problem is involved with the purchase of non-kosher food on behalf of one's pets, see *Shach, Yoreh Deah* 117:3, *Aruch Hashulchan, Yoreh Deah* 117:19, and *Kerem Tzvi* number 55.

Rambam's view as normative, it is best to avoid relying on this leniency, especially since a biblical violation may be involved.

C. Feeding a Pet During Passover

One is also forbidden to benefit from *chametz* during Passover. Hence, on Passover one may not feed an animal food which contains *chametz* (much pet food, in fact, does contain *chametz*). One may not even instruct a non-Jew to feed his animals *chametz* since by doing so he derives benefit from *chametz* inasmuch his animal is thereby being nourished (*Shulchan Aruch* 448:17). However, if one's pet must eat *chametz*, he is permitted to sell the animal to a non-Jew. The animal should be given to the non-Jew to keep in his home,²⁶ where he may feed it *chametz*. In doing so one is not deriving benefit from *chametz* since after the sale the animal is not his. A competent rabbi, though, should be consulted to ensure that the sale is halachically valid.²⁷

On Passover, one is forbidden even to own *chametz*. Accordingly, care should be taken to either remove pet food which contains *chametz* from one's property or include it with the *chametz* that is to be sold to a non-Jew. However, Ashkenazic Jews, whose custom it is to avoid eating *kitniyot*²⁸ (rice, legumes,

26. *Mishnah Berurah* 448:33 and *Aruch Hashulchan* 448:12-13. Some authorities question the validity of the sale of the animal if the animal remains in his home and a gentile comes and feeds it *chametz*. Placing the animal in the gentile's home strengthens the validity of the sale (*Aruch Hashulchan* 448:13) and avoids the halachic difficulties that are involved when a non-Jew brings *chametz* into one's home during Passover.

27. Care should be taken to ascertain that the animal was not included in the general sale of *chametz* to a non-Jew. If the animal was already sold, then one may not sell the animal to another non-Jew.

28. *Shulchan Aruch* 453:1. For a discussion of *kitniyot* see Rabbi

and the like) on Passover are permitted to own and derive benefit from these foods on Passover. Hence, one may feed pets *kitniyot* during Passover.

III. Removal of Reproductive Organs

Halacha forbids removal of reproductive organs from humans or animals, whether male or female²⁹ (though debate exists regarding whether removal from females constitutes a biblical or rabbinic prohibition).³⁰ The Talmud (*Sanhedrin* 56b) records a dispute whether the Torah forbids non-Jews to remove reproductive organs (even from animals not owned by a Jew), and *Rishonim* differ regarding which opinion is accepted as normative.³¹ *Beit Shmuel* (*Even Haezer* 5:16) rules that this controversy has not been resolved and when rendering halachic decisions a rabbinic decisor must consider the position that non-Jews are forbidden to remove reproductive organs. On the other hand, *Aruch Hashulchan* (*Even Haezer* 5:26) rules in accordance with what he perceives as the majority opinion, that non-Jews are not commanded concerning this prohibition.

A difference between the two opinions is whether we are forbidden on a biblical or rabbinic level to instruct a non-Jew to remove the reproductive organs of an animal (see *Shulchan Aruch*, *Even Haezer* 5:14 and comments of *Chelkat Mechokeik* and *Beit Shmuel* thereupon). If non-Jews are included in this command, then instructing a non-Jew to remove reproductive organs would be a biblical violation of "do not put a stumbling

Alfred Cohen, "Kitniyot in Halachic Literature, Past and Present," *Journal of Halacha and Contemporary Society* VI, pp. 65-78.

29. *Shulchan Aruch*, *Even Haezer* 5:11.

30. For a summary of this issue see Rabbi Moshe Feinstein, *Iggerot Moshe Even Haezer* IV, 34 and Rabbi Joseph Ozer, "Tubal Ligation and Jewish Law: An Overview," *Journal of Halacha and Contemporary Society* VII, pp. 42-52.

31. For a summary of the issue see *Otzar Haposkim* 5:76.

block in front of the blind" (Leviticus 19:14) which prohibits enabling and encouraging others to sin.³² On the other hand, if non-Jews are not included in this commandment, then the prohibition involved in instructing a non-Jew to remove reproductive organs is the general rabbinic prohibition which forbids a Jew to instruct a non-Jew to perform an act forbidden by the Torah on behalf of a Jew.

A practical difference between these two opinions is whether one may instruct a non-Jewish veterinarian to remove an animal's reproductive organs in order to alleviate the animal's suffering due to sickness. Whereas one may not violate a biblical prohibition to alleviate an animal's suffering, it would appear that one may violate the rabbinic prohibition to ask a non-Jew to do what a Jew may not do in order to alleviate suffering.³³ Since *Beit Shmuel*, considered to be one of the most authoritative commentaries on the *Even Haezer* section of *Shulchan Aruch*, rules that one must consider the opinion which asserts that non-Jews are forbidden to remove reproductive organs, one should not ask a non-Jew to remove an animal's reproductive organs even to alleviate suffering.

Nevertheless, there are a number of possible solutions to this problem. Some of the most prominent halachic

32. This prohibition applies even to encouraging or enabling a non-Jew to violate the Noahide code, see *Pesachim* 22b. For a thorough discussion of this prohibition see Rabbi Michael Broyde and Rabbi David Herzberg, "Enabling a Jew to Sin: The Parameters," *Journal of Halacha and Contemporary Society* XIX pp. 7-34.

33. *Shulchan Aruch, Orach Chaim* 305:20. Halacha permits one to instruct a non-Jew to perform a biblically-prohibited act on Shabbat to alleviate an animal's suffering. Accordingly, it seems to be logical that one may ask a non-Jew to remove an animal's reproductive organs in order to alleviate the creature's suffering since the prohibition to remove reproductive organs is less severe than the prohibition to violate Shabbat (violation of Shabbat constitutes a capital crime and removal of reproductive organs does not).

authorities³⁴ of the nineteenth century record (with varying degrees of approval) a common practice among observant Jews who owned animals for commercial purposes. This involved selling an animal to a non-Jew and instructing this non-Jew to ask another non-Jew to spay the animal. The purpose of this procedure is to create a situation of "aiding an aider" (*lifnei delifnei iver*) - encouraging one person to encourage another to violate a Torah law - which is not a violation of "do not put a stumbling block in front of the blind."³⁵ It also creates a situation of "*amira leamira leakum*" - instructing a non-Jew to instruct another non-Jew to perform an act a Jew may not do - which many authorities believe to be permissible.³⁶ In addition, by transferring title of the animal to a non-Jew, one avoids the rabbinic penalty which requires one who has had his animal's reproductive organs removed to sell the creature.³⁷

Although many contemporary halachic authorities³⁸ believe it inappropriate to utilize this procedure with household pets for purposes of convenience (e.g. to eliminate unwanted litters or to prevent the animal from trying to leave the house), it is quite possible that one may do so if it is necessary to alleviate an animal's suffering due to sickness. *Aruch Hashulchan* would very likely agree with this conclusion since he rules that non-Jews are not forbidden to remove reproductive organs. *Beit Shmuel* might also agree since in using this procedure one may avoid violating "do not put a stumbling block in front of the blind." In addition, there is

34. *Shoel Umeishiv* 3:1:229; *Chatam Sofer Choshen Mishpat* 185; *Haelef Lecha Shlomo Even Haezer* 23; and *Maharam Schick* 11.

35. *Avoda Zara* 14a, *Ramo, Even Haezer* 5:14; *Beit Shmuel* 5:19; and *Broyde and Herzberg, JHCS*, XIX p. 12.

36. *Chavot Yair* 53 and *Mishnah Berurah* 307:24.

37. *Shulchan Aruch Even Haezer* 5:14.

38. Communications from Rabbi J. David Bleich, Rabbi Reuven Feinstein, Rabbi Herschel Schachter, and Rabbi Moshe Tendler.

greater room for leniency when a female pet is involved since many authorities believe neutering a female to be a rabbinic prohibition, and a minority opinion (*Taz, Even Haezer* 5:6) believes that one is permitted to neuter a female animal if the procedure is performed for the creature's benefit.

A different solution to this problem has been offered by Rabbi I. Y. Unterman (*Otzar Haposkim* I, pp. 164-165). He describes a procedure of neutering which he believes constitutes only a rabbinic prohibition since it does not involve direct removal of reproductive organs. Instead, the blood supply to the testicles is eliminated, the testicles begin to shrivel, and the animal is rendered sterile. Rabbi Unterman asserts that one who performs this procedure violates the prohibition indirectly (*grama*) which is permitted on a Torah level and forbidden by the rabbis. The authorities who rule that non-Jews are forbidden to neuter animals concede that non-Jews are forbidden only to perform biblically-forbidden acts of neutering. Non-Jews are not required to follow rabbinic legislation since, unlike Jews, they are not obligated to adhere to rabbinic rulings. According to this approach, one does not violate the prohibition of enabling another to sin if one instructs a non-Jew to perform this procedure. In addition, Rabbi Unterman writes that the prohibition to instruct a non-Jew to perform an act forbidden to a Jew does not apply to rabbinic prohibitions (other than the rabbinic prohibitions associated with the observance of Shabbat).³⁹ Therefore, he rules that one may instruct a non-Jew to neuter an animal in this indirect manner. However, Rabbi Unterman cautions against implementing his opinion until eminent halachic authorities concur with this ruling. Hence, competent halachic guidance must be sought regarding whether one may follow this ruling.

The best solution to this problem seems to be the use of

39. Ramo, *Orach Chaim* 468:1, *Biur Ha-gra*, *Orach Chaim* 468:4, and *Beit Ephraim*, *Yoreh Deah*, number 62.

one of the many newly developed (though still experimental) alternatives to castration and ovariectomy which do not involve removal (direct or indirect) of reproductive organs.⁴⁰ There appears to be no halachic opposition to these methods since the animals are only rendered infertile. The prohibition of "*sirus*" appears to apply only to the removal of reproductive organs and not to causing the animal to become infertile. One must consult a competent halachic authority to ascertain the permissibility of any of these procedures.

IV. Hilchot Shabbat Issues

Many issues in the area of *Hilchot Shabbat* regularly confront pet owners. They include whether household pets are considered to be *muktza*, the permissibility of walking a pet with a leash, pets wearing tags in an area not encompassed by an *eruv*, and possible violation of "*tzeida*" (trapping). This section will examine these four issues.

A. Are Pets Muktza?

The Talmud (*Shabbat* 128b) states that animals are *muktza*. The reason for this, explains *Magid Mishnah*⁴¹ (commentary to Rambam *Hilchot Shabbat* 25:25), is that animals have no utility on Shabbat and Yom Tov. Hence, they are comparable in this regard to sticks and stones which are classified as

40 See, for example, McRae, G.I., et. al. "Long-term Reversible Suppression of Estrus in Bitches with Nafarelin Acetate, a Potent LHRH agonist," *Journal for Reproductive Fertility*, (1985) 74 389- 397; and Olson, P.N., et. al. "A Need for Sterilization, Contraception, and Abortifacients: Unwanted Pets Part IV. Potential Methods of Controlling Reproduction," *Compendium of Continuing Education*, Vol. 8, No. 5, May 1986, 303-307.

41. This explanation is also cited by *Beit Yosef* (*Orach Chaim* 308 s.v. *kofin*) and *Mishnah Berurah*(308:146).

"*muktza machmat gufa*,"⁴² *muktza* by its very nature (i.e., because they have no utility on Shabbat and Yom Tov).

The *Rishonim*, however, debate whether an animal which can be used to quiet a child from crying is considered to be *muktza*. Tosafot (*Shabbat* 45b s.v. *hacha*), Mordechai (*Shabbat* 316) and *Hagahot Oshri* (commenting on Rosh, *Shabbat* 3:21) cite authorities who believe that such animals are not *muktza* by virtue of the fact that they have utility. Yet Tosafot, Mordechai, *Hagahot Oshri*, and Rosh (cited in the responsa of *Maharach Or Zarua*, 82) reject these authorities because of two possible considerations. First, the fact that an animal can be used to quiet a child from crying is insufficient utility to render the creature no longer to be considered *muktza machmat gufa*. Second, the rabbis classified all animals as *muktza* regardless of whether a particular animal has utility on Shabbat and Yom Tov. This is an example of "*lo plug rabbanan*", rabbinic legislation which was instituted for a reason, yet embraces even the cases for which the reason does not apply. *Shulchan Aruch* (308:39) appears to accept the position that all animals are considered to be *muktza* since Rabbi Karo states that animals are *muktza* without exception. Indeed, *Shulchan Aruch Harav* (308:78) rules stringently in this regard.⁴³

The question arises, though, whether circumstances have changed since the time of the *Rishonim*. These authorities discuss animals which can possibly be used to amuse children

42. See *Tehilla Ledavid* 308:42 for a distinction between kosher and non-kosher animals regarding the category of *muktza* under which they should be classified.

43. However, see Responsa *Halachot Ketanot* (number 45) who adopts a lenient position in this matter. Rabbi Shmuel David (*Sheilot Uteshovot Meirosh Tzurim* 38:6) cites Chief Sephardic Rabbi Mordechai Eliyahu who rules leniently in this matter since the issue debated by the *Rishonim* is a rabbinic law where one may rule leniently in case of doubt.

but not animals whose entire purpose is to entertain and provide companionship to their owners. Rabbi Shlomo Zalman Auerbach (cited in *Shmirat Shabbat Kehilchata* 27, footnote 96), in fact, raises the possibility of making this distinction, yet he rules that pets are *muktza*. Rabbi Moshe Feinstein (*Iggerot Moshe Orach Chaim* 4:16 and cited in "The Halachos of Muktza" p. 7 of the Hebrew section, paragraph twenty-four) and Rabbi Ovadia Yosef (*Yabia Omer*, 5:26) also reject the possibility of making such a distinction. It appears that this question is contingent on one's acceptance of one of the two reasons (stated above) offered by the *Rishonim* for why an animal that can be used to quiet a child from crying is *muktza*. If one adopts the position that the rabbis have deemed all animals to be *muktza*, regardless of their utility, then even household pets are to be included in this category. However, if one assumes the position that the possibility of using an animal to amuse a child is insufficient utility to remove it from being considered *muktza*, then a cogent argument can be made that a pet is sufficiently useful to the extent that one no longer can say that they have no purpose to their owners on Shabbat and Yom Tov, and hence are not *muktza*.⁴⁴

44. Rabbi Shmuel David (*Sheilot Uteshuvot Meirosh Tzurim*) cogently argues that one who is accustomed to move his pets is analogous to someone who prepares a rock prior to Shabbat for use on Shabbat. In such cases the rock is no longer *muktza* since he has demonstrated that the rock has utility for him on Shabbat (ordinarily, rocks are *muktza* since they serve no purpose on Shabbat; once one demonstrated his use for a rock then it is no longer classified as *muktza*.) Similarly, one who ordinarily moves his pets demonstrates thereby that they have utility on Shabbat and hence are not *muktza*. Rabbi Auerbach (cited in *Shmirat Shabbat Kehilchata* 18, footnote 62) rules that seeing-eye dogs are not *muktza*. He reasons that since their essential function is such that they must necessarily be moved, then one surely intends to move them on Shabbat and hence their designation as *muktza* is avoided. Rabbi David points out that a rabbinic authority who rules that a seeing-eye dog is not *muktza* would not

Rabbi Shmuel David (*Sheilot Uteshuvot Meirosh Tzurim* 38:6) concludes his discussion of this issue with a citation of the opinion of Rabbi Aharon Lichtenstein.

It is proper to conduct himself in accordance with the stringent opinion in this matter, since this appears to be the opinion of Tosafot, Mordechai, *Hagahot Oshri*, and Rosh. Yet one need not admonish those who practice in accordance with the lenient opinion in this matter since this issue is embroiled in a dispute amongst the *Rishonim* and the logic of those who rule leniently is compelling.

However, even according to the stringent opinion it is reasonable to say that one may move a household pet to alleviate its suffering (*Yabia Omer* 5:26). This is because some authorities permit moving items which are undoubtedly *muktza* to spare an animal from suffering (see *Mishnah Berurah* 305:70 and *Chazon Ish* 52:16). Since the question as to whether household pets are *muktza* is in dispute, there exists a *s'fek s'feka*, a double doubt, which would lead one to rule leniently in this regard.⁴⁵

It should be emphasized, though, that one may not violate Shabbat even to save an animal's life. One may, however, ask a non-Jew to do something forbidden for a Jew to do on Shabbat in order to alleviate an animal's suffering. In addition, one may give a sick animal medicine on Shabbat (see, generally,

necessarily rule that a household pet is not *muktza*. One can distinguish between seeing-eye dogs whose function requires their being moved (and hence one surely intends prior to Shabbat to use them on Shabbat) and household pets which are ordinarily moved but are not necessarily moved.

45. Rabbi Y. Neuwirth rules leniently in this regard, though he expresses some hesitation in doing so; see *Shmirat Shabbat Kehilchata* 27:28 and 30 and footnote 98.

Mishnah Berurah 332:5, 6, and 9 and *Shmirat Shabbat Kehilchata* 27:54-58).

B. Tags Worn by Pets

The Torah (Exodus 20:10) requires one to allow the animals he owns to rest on Shabbat and Yom Tov. This entails permitting the animal to avoid activity prohibited for a Jew to perform on these days, unless such activity is done for the benefit of the animal. Hence, it is forbidden to take an animal to enter an area in which a Jew is forbidden to carry⁴⁶ while the animal is wearing something from which it derives no benefit. *Shulchan Aruch* (*Orach Chaim* 305:1) rules that decorative items should not be worn by an animal when its owner takes it into an area not enclosed by an *eruv* since an animal does not benefit from such items. Furthermore, *Shulchan Aruch* (*Orach Chaim* 305:17) rules that items which animals wear for purposes of identification are not considered beneficial for the animal. They are worn solely for the convenience and benefit of its owner.

The question arises, though, regarding identification tags which clearly benefit the animal, such as those which show that it has an owner and therefore should not be put to death for fear of rabies. *Aruch Hashulchan* (305:5), after some initial hesitation, rules stringently. He believes that halacha considers all identification markers to be in the category of items which a Jew may not permit his pet to wear in a public domain on Shabbat or Yom Tov. However, Rabbi Shlomo Zalman Auerbach (cited in *Shmirat Shabbat Kehilchata* 27, footnote 33) disagrees since these tags are worn for the benefit of the dog.⁴⁷

46. Rabbinical authorities disagree as to whether this prohibition applies in an area in which one is forbidden to carry only on a rabbinic level; see *Mishnah Berurah* 305:43.

47. Rabbi Y. Neuwirth's stringent ruling in this matter (*Shmirat*

Rabbi Auerbach cautions, though, that if the tags are worn by the animal merely to verify that its owner has paid all the required taxes and fees associated with owning the animal, then the animal may not wear them since they serve only the needs of the owner. Rabbi Auerbach's ruling appears not to be limited to tags worn to prevent the animal's death. It seems to apply to any tag worn for the benefit of the animal, such as identification tags which allow the animal to be returned to its owner in case it is lost (provided that it is in the animal's interest to be with its owner).

C. Use of a Leash

One needs to exercise caution when walking a pet on Shabbat and Yom Tov in an area not enclosed by an *eruv*. First, *Shulchan Aruch* (*Orach Chaim* 305:16) rules that the handle of the leash should not protrude more than a handbreadth (approximately three inches⁴⁸) from under the hand of the individual walking the animal. The halacha forbids a considerable protrusion because it would appear as if the individual walking the animal is carrying the leash instead of merely holding on to the leash. In addition, *Shulchan Aruch* (*ibid.*) rules that one must be sure to keep the leash reasonably taut, so that the leash does not hang within three inches of the ground. If the leash would hang so close to the ground it would appear to be an article which the animal wears unnecessarily.

Shabbat Kehilchata 27:9) is surprising in light of the cogency of Rabbi Auerbach's reasoning.

48. It is appropriate to use a smaller *shiur* for a *tefach* in this context. Rabbi Feivel Cohen (*Badei Hashulchan, Hilchot Basar Bechalav*, p. 385) writes that he believes that common practice is to accept Rabbi Avraham Chaim Noeh's (smaller) measurements in a situation where adopting his approach leads to a stringent result. *Eruvin* 3b may serve as a source for this practice.

D. Tzeida (Trapping)

Rabbi Y. Neuwirth (*Shmirat Shabbat Kehilchata* 27:31) succinctly defines the prohibited activity of "tzeida" as "any act an individual does to eliminate the freedom of an animal". The Mishnah (*Shabbat* 106b) states that this prohibition includes closing the door of one's home if in so doing he traps an animal inside the home. Does this prohibition apply to household pets?

The Talmud and Codes distinguish between three categories of animals.⁴⁹ One category includes those animals regarding which, the Talmud (*Beitza* 24a) writes, one would say "let us bring a trap and catch it." In other words, Rashi (ad. loc.) explains, one must expend great effort to catch this animal. It is prohibited on a biblical level to catch such an animal.⁵⁰ At the other extreme are those animals which offer no resistance to their master. Regarding this type of animal the Talmud (*Shabbat* 128b) writes that one is forbidden to lift (because it is *muktza*) but is permitted to push so that they enter their quarters. No prohibition of tzeida applies to such animals, since one cannot speak of capturing or hunting a completely obedient animal. *Tzeida* is an act of eliminating an animal's freedom and these animals have no freedom since they are completely obedient to their masters.

The middle category of animals is a subject of debate. This category includes those creatures who return to their masters at night but offer a limited degree of resistance when their masters seek to bring them home. Regarding such animals the Mishnah (*Shabbat* 107a) states "one who hunts a wild animal or bird that is in one's possession is exempt from punishment". Rashi (ad. loc.) explains that the exemption

49. This is evident from the Talmud's discussion which is found on *Beitza* 24. In addition, see *Aruch Hashulchan* 316:36 and 37.

50. *Chayei Adam Hilchot Shabbat* 30:4, *Mishnah Berurah* 316:57,59, and *Aruch Hashulchan* 316:36.

from punishment is based on the fact that these animals have already been tamed.

Some *Rishonim* (Rashba⁵¹, Ravva⁵², and *Baal Haitur*⁵³), believe that the Mishnah's term "exempt from punishment" should in this instance be understood as implying complete permissibility since the animal already "has been caught". Other *Rishonim* (Rambam⁵⁴, Tosafot⁵⁵, and many other authorities⁵⁶) believe that the Mishnah should be understood as stating that one who performs this act is exempt from punishment but has violated a rabbinic prohibition. This approach is supported by the fact that this is the way the term "exempt from punishment" is generally understood with the exception of three cases (see *Shabbat* 3a). These authorities believe that even though these animals have been tamed, capturing them is rabbinically prohibited because it has the appearance of trapping since these creatures offer some resistance to their masters. *Biur Halacha* (316:12 s.v. *V'yeish Omrim*) urges one to do his best to follow the stringent opinion.⁵⁷ The implication is that in case of great need one may follow the lenient opinion.⁵⁸

51. *Beitza* 24a, s.v. *ha detanya*.

52. *Shabbat* no. 235 and *Hilchot Yom Tov* no. 763.

53. Cited by Rosh, *Beitza* 3:1. Rosh seems to accept this position as authoritative. See *Biur Halacha* 316:12 s.v. *veyaish omrim*.

54. *Hilchot Shabbat* 10:24 (and see *Hilchot Shabbat* 1:3)

55. *Shabbat* 106b. s.v. *veain notnin*, however, see the Rosh, *Beitza* 3:1.

56. *Biur Halacha* 316:12 s.v. *veyaish omrim* lists the many *Rishonim* who subscribe to this position.

57. Maharshal (responsum number 10) rules in accordance with the lenient opinion and *Aruch Hashulchan* (*Orach Chaim* 316:35) adopts the stringent opinion.

58. Rabbi Y. Neuwirth (*Shmirat Shabbat Kehilchata* 27:35) writes that one may follow the lenient position to avoid significant financial loss or an animal's suffering.

Accordingly, the laws of *tzeida* depend on how well one's pet is disciplined. If when its master⁵⁹ seeks to move it, the animal offers no resistance, then the prohibition of *tzeida* does not apply to the creature. If the animal returns to its quarters every evening without its master's intervention, but when the master seeks to bring the animal home it offers some resistance, the *Rishonim* disagree as to whether a rabbinic prohibition exists to trap this type of animal. In practice, *Biur Halacha* concludes that one should follow the stringent opinion absent great need. However, if an animal has rebelled and will not return by itself to its quarters and it resists its master, a biblical prohibition forbids catching this animal and under no circumstances (absent a possible threat to human life) may one attempt to trap this animal.

A practical application of these halachot occurs when one removes the leash of a pet to allow the animal to run freely in an open area. One would be permitted to reattach the leash on the pet on Shabbat and Yom Tov only if the animal is obedient to its owner. However, if the animal is somewhat disobedient to its owner and resists its owner, it is best not to reattach the leash. It is proper not to remove the leash of such an animal in an open space in order to avoid the necessity of relying on the lenient opinion.

In addition, care needs to be taken to avoid "trapping" a less than obedient animal. For example, one should not put a leash on such an animal if the door to the house is not closed and one should not close the door to one's home unless the creature is already "trapped" (i.e., tied to a post or closed within a room). However, one can avoid the prohibition of

59. Even if the master is the only person the animal offers no resistance, the animal is viewed as "already caught" and anyone may return the animal to its home; see *Biur Halacha* 316:12 s.v. "*chaya veof birshuto*" and Rabbi Shlomo Zalman Auerbach's opinion cited in *Shmirat Shabbat Kehilchata* 27: footnote 117.

"trapping" when opening a door by immediately filling the gap created with one's body and closing the door as one enters. One does not violate trapping in such case since an animal did not have an opportunity to escape.

Special care needs to be taken with birds in this regard. Unlike most pets which are considered to be "trapped" in one's home, many birds would not be considered to be trapped in one's home if great effort would be required to return the creature to its cage. Therefore, if a bird returns to its cage by itself but gives its owner some resistance when the latter seeks to return the former to its cage, then in case of great need one may return such a bird to its cage and/or close the door to its cage. However, if a bird does not return to its cage by itself, one is forbidden in all circumstances (absent possible danger to human life) to return such a bird to its cage or even to close the cage door in order to prevent the creature from escaping.

V. Guide Dogs in the Synagogue

Rabbinic opinion is divided concerning the permissibility of a blind individual's bringing a guide dog into a synagogue. Rabbi Moshe Feinstein (*Iggerot Moshe Orach Chaim* I, 45) offers two different arguments why it is permissible to do so. First, he cites the Jerusalem Talmud (III, 3) which states:

Rabbi Yehoshua Ben Levi states that synagogues and study halls are built to be used by Talmud scholars [to eat and drink there] ... Rabbi Imi instructed the teachers of youngsters [who were present in the synagogue during the course of the day] to permit even a marginal scholar to enter the synagogue with his donkey and his tools [or clothes].⁶⁰

Accordingly, the Jerusalem Talmud regards permitting an animal to enter a synagogue or study hall to be no more

60. See *Korban Haeida* and *Pnei Moshe* ad. loc.

disrespectful to the sanctity of these places than eating or drinking in them. Hence, argues Rabbi Feinstein, just as the practice has developed to permit eating and drinking in the synagogue, at the very least in case of urgent need,⁶¹ so too an animal should be permitted to enter the synagogue in case of urgent need. Even though these actions constitute disrespect for the synagogue they are permitted since synagogues outside of Israel are built on the condition that their sanctity does not forbid their use for mundane purposes in case of urgent need. Enabling a blind person to attend the synagogue most certainly constitutes urgent need, insists Rabbi Feinstein, and accordingly a guide dog may be brought by its blind master into the synagogue.

Rabbi Feinstein also suggests (although he expresses some hesitation concerning this line of reasoning) that bringing an animal into the synagogue for mundane purposes (such as protecting the animal from theft) undoubtedly constitutes an expression of dishonor to the sanctity of the synagogue. However, when an animal is brought into the synagogue to enable a blind person to pray with the community, no disrespect is shown towards the holiness of the synagogue.⁶²

61. For a discussion and summary of the issue see *Biur Halacha*, 151:11 s.v. *aval* and Rabbi Joseph Stern, "The Contemporary Synagogue," *Journal of Halacha and Contemporary Society* X, pp. 49- 52.

62. According to this approach one would be permitted to bring a guide dog even into synagogues in Israel (which are not built with a stipulation to permit mundane activities to take place within them). However, Rabbi Feinstein expresses reservations regarding this line of reasoning and stops short of asserting that his lenient ruling also applies to Israeli synagogues. However, according to Rabbi Joseph B. Soloveitchik's approach to this issue (which will be discussed subsequently) a blind person may bring a guide dog into a synagogue even in Israel.

Rabbi Aharon Lichtenstein⁶³ has cited Rabbi Joseph B. Soloveitchik as permitting a blind man to bring a guide dog into a synagogue, albeit utilizing a different approach than that of Rabbi Feinstein. Rabbi Soloveitchik points out that the Talmud's (*Berachot* 63a) standard for what constitutes permissible behavior in the synagogue is what one would permit to be done in his home. The Talmud states that just as one would not allow a stranger to use his house as a shortcut, so too one is forbidden to use the synagogue as a shortcut. However, just as one would allow a stranger to enter his home and not require him to remove his shoes, so too one is not required to remove his shoes when he enters a synagogue. Similarly, argues Rabbi Soloveitchik, just as one would certainly permit a blind person to enter his home with his seeing-eye dog, so too a blind person is permitted to enter the synagogue with his guide dog.⁶⁴

However, a number of authorities rule that a blind person is forbidden to bring a guide dog into the synagogue. Rabbi Menachem Mendel Kasher (*Torah Shleima* XV, p. 147) points out that the Torah (Deuteronomy 23:19) forbids one to offer a sacrifice which was purchased with money acquired from the sale of a dog. Accordingly, Rabbi Kasher asserts, it is certainly forbidden to bring a dog into the Temple area. Rabbi Kasher argues that since many early authorities consider the sanctity of the synagogue to be of biblical origin and similar to the

63. Rabbi Lichtenstein stated this in a lecture at Yeshivat Har Etzion. However, other leading students of Rabbi Soloveitchik recall that he believed it to be forbidden to bring a guide dog into a synagogue. Apparently, Rabbi Soloveitchik maintained conflicting views regarding this matter at various times.

64. Similarly, Rabbi Herschel Schachter cites ("*Beinyanei Beit Haknesset Ukedushato*" *Ohr Hamizrach* Tishrei 5746 pp. 54-55) Rabbi Soloveitchik's opinion that one is forbidden to wear galoshes or winter boots into the sanctuary of the synagogue since one removes these articles before entering a home.

sanctity of the Temple, then just as one is forbidden to bring a dog into the Temple, so too one is forbidden to bring a dog into the synagogue.

Rabbi Kasher's argument is not persuasive. The fact that an activity is forbidden in the Temple does not at all imply that it is forbidden in a synagogue.⁶⁵ The laws regarding the sanctity of the Temple differ from those regarding the sanctity of the synagogue. Many activities are forbidden in the Temple and yet are permissible in the synagogue, such as wearing shoes (see *Berachot* 62b). Furthermore, Rabbi Kasher fails to prove that one is forbidden to bring a guide dog into the Temple.

Two other prominent rabbis argue that a guide dog may not be brought into the synagogue. Rabbi Yaakov Breisch (*Chelkat Yaakov* 3:87) and Rabbi Solomon Braun (*Shearim Metzuyanim Behalacha* 13:2) cite Chatam Sofer's assertion (*Orach Chaim* 31) that if non-Jews forbid a particular activity in their place of worship then if Jews were to permit that activity it would constitute a desecration of God's name. Hence, they argue, since non-Jews do not permit animals in their houses of worship, it would be a desecration of God's name to

65. Despite the fact that the sanctity of the synagogue is similar to that of the Temple, the intensity of their respective levels of sanctity differs. Rambam expresses this distinction by stating (*Hilchot Tefilla* 11:5) that a synagogue must be treated with respect (*kavod*) as opposed to the Temple (*Hilchot Beit Habaichra* 7:1) towards which we must maintain an attitude of awe (*yirah*). Rabbi Soloveitchik explains that the distinction derives from the fact that the Temple is God's home in which we are visitors, in contradistinction to the synagogue which is our home in which God (so to speak) is a visitor (see *Shiurim Lezecher Aba Mori Zal*, pp. 63-65). Halachic authorities differ to what extent various laws regarding the synagogue should be extrapolated from the laws of the Temple. See *Haelef Lecha Shlomo Orach Chaim* 76, *Binyan Tzion* 9, *Meishiv Davar* II, 14 and Rabbi Herschel Schachter, *Ohr Hamizrach*, Tishrei 5746, pp. 54-61.

permit a guide dog in the synagogue. Regardless of the merits of this argument,⁶⁶ it appears to be factually incorrect. In fact, the various Christian denominations in this country do not have a policy forbidding a blind person to enter their houses of worship with a guide dog.⁶⁷

Rabbi Breisch's other criticisms of Rabbi Feinstein's responsum include concern that a guide dog will disrupt prayer services. However, those familiar with seeing-eye dogs report that these animals are well-trained and are very unlikely to cause a disruption. Rabbi Breisch also writes that he cannot imagine why there is no alternate means of enabling a blind person to attend the synagogue. The fact is, however, that there is a training period in which the dog and the blind individual must be together at all times. Though Rabbi Breisch has other criticisms of Rabbi Feinstein's responsum, Rabbi Feinstein's argument appears far more persuasive than that of Rabbi Breisch.

Conclusion

Most halachic authorities permit ownership of harmless pets. A pet owner, however, is confronted with many halachic problems, but with appropriate care and attention one can with relative ease overcome these problems.

66. Rabbi Breish criticizes Rabbi Feinstein in a similar manner regarding the latter's ruling permitting artificial insemination (*Chelkat Yaakov* 3:45). Rabbi Feinstein responds to this criticism (*Chelkat Yaakov* 3:48 and also published in the addendum to Rabbi Feinstein's commentary to tractate *Ketubot*) by limiting the principle cited by Rabbi Breisch. For a summary of this debate see Rabbi Alfred S. Cohen, "Artificial Insemination," *Journal of Halacha and Contemporary Society* XIII pp. 51-54.

67. Communications from the National Council of Churches, The Chancery of the Roman Catholic Diocese of New York, and the Guide Dog Foundation for the Blind.

Modern Technology and the Sabbath: Some General Observations

Rabbi Michael Broyde

Introduction

Mishnah Berurah, in the forward to the section of his work dealing with Shabbat laws, states the obvious: an occasional review of the laws of Shabbat is valuable even to one experienced in Jewish law. This statement applies especially to modern technology and Shabbat; the impact of modern technology is frequently felt most immediately in Shabbat laws. This article will review and explore ten halachic principles all related to one situation and sharing one common motif: they all involve situations where the person doing the act on Shabbat does not directly or intentionally cause a prohibited action to occur. The principles discussed are not limited to any particular one of the categories of "work," prohibited on Shabbat; rather, they are tools of analysis used to discuss practical situations within the framework of any and all of the prohibited types of "work." It does not matter, in analyzing if a secondary action from which one derives no benefit is permissible or forbidden (*pesik resha delo nicha lei*), whether the secondary act is the prohibited action called *boneh* (building) or the prohibited act called *bishul* (cooking). It is the principle that is of interest.

While this topic is by no means a new one, but rather has clear talmudic precedent and origins, it is a topic whose

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practical importance has increased significantly in the last fifty years. While the Sages could and did envision situations where a person's permissible actions could also cause prohibited work, the frequency with which those situations were encountered has dramatically increased, as has their relevance. We live in an era of motion detectors, video security cameras, and kitchen appliances that are generally interactive with their environment in a way that was not possible even five years ago. These devices are designed to detect and react to a permissible activity; frequently the reaction involves some form of violation of Shabbat rules, such as taking a picture, adjusting a thermostat, or turning on a light.¹ This article will survey halacha's approach to actions which are permissible, but which lead (or might lead) to prohibited work. In situations where examples need to be given, such examples will be taken from cases that involve modern technology, as that is where these issues are most relevant.

There are thirty-nine particular categories of "work," (*melacha*) which are biblically prohibited on Shabbat² as

1. It will be assumed in this article that on Shabbat:

- 1) turning on incandescent lights is a biblical prohibition and turning them off is rabbinically prohibited;
- 2) turning on or off any other electrical appliance is rabbinically prohibited;
- 3) turning on or off a circuit is not a biblical violation.

While it is possible to argue with these assumption, they appear to represent the normative rules accepted by most decisors; for further explanation, see Broyde & Jachter, "The Use of Electricity on Shabbat and Yom Tov," *Journal of Halacha and Contemporary Society* 21, pp. 4-23 (1991).

References to talmudic passages without any specific tractate always refer to Tractate *Shabbat*; references to *Shulchan Aruch* or to responsa without any specific section always refer to *Orach Chaim*.

2. The thirty nine prohibited categories of work are: 1)plowing; 2)sowing; 3)reaping; 4)gathering sheaves; 5)threshing; 6)winnowing;

well as numerous rabbinically-proscribed actions, most of which are sub-prohibitions of a biblical prohibition, some of which are not.³ Neither the Torah nor the Sages *per se* forbid engaging in any activity on Shabbat which *might* lead to any prohibited work being done; rather, halacha establishes certain rules governing situations where permissible activity might lead to a prohibited action. These rules have become uniquely relevant in our modern era. Especially when one discusses modern technology and Jewish law, it is critical to realize that intended actions and unintended actions are treated differently in Shabbat law.

One caveat is needed: occasionally this article will conclude that in a certain circumstances a particular activity which is typically prohibited rabbinically is in fact permissible. The Sages did not, however, create completely uniform rules for discussing when extenuating circumstances or special types of conduct permit one to violate rabbinic prohibitions, and not all rabbinic prohibitions are of equal value. Merely because

7)separating; 8)grinding; 9)sifting; 10)kneading; 11)baking; 12)shearing; 13)bleaching; 14)combing; 15)dyeing; 16)spinning; 17-20)various steps in weaving; 21)knotting; 22)untying a knot; 23)sewing; 24)tearing; 25)trapping; 26)slaughtering; 27)skinning; 28)tanning; 29)ruling lines; 30)scraping hides; 31)cutting to size; 32)writing; 33)erasing; 34)building; 35)destroying; 36)finishing a job; 37)lighting fire; 38)extinguishing; 39)carrying. See *Shabbat* 73b and Rabbi Shimon Eider, *Halachos of Shabbos* I.D. for a more detailed discussion in English of each of them.

3. There are three categories of rabbinically prohibited work. Sometimes an activity is prohibited because it resembles a biblically prohibited activity; for example cooking by sunlight is biblically permitted but rabbinically prohibited, since it resembles cooking with a flame. Other times an activity is prohibited because it frequently leads to a biblical prohibition; for example, money lending is prohibited since it frequently leads to writing. Finally some activities are forbidden because they negate the spirit of Shabbat; for example, moving heavy boxes or lifting heavy items is prohibited.

the Sages permitted the violation of a particular rabbinic prohibition in one context, does not mean that they permitted a different rabbinic violation in what might be an analogous context.⁴

I. *Davar she'eino mitkaven*: Unintended Act

The Talmud⁵ recounts a dispute between Rabbi Yehuda and Rabbi Shimon about the following case: A person is pulling furniture along the floor on Shabbat in a manner that might or might not dig furrows in the dirt floor. (Intentionally digging furrows on Shabbat is biblically prohibited.) Is the person liable for the unintended violation his action might cause? Rabbi Yehuda states that a person is liable for the unintended and unexpected prohibited actions that he might cause. Rabbi Shimon is of the opinion that such actions are permitted. The Talmud indicates that this dispute, which was first discussed in the Mishnah, is also under dispute in the Talmud, with Rav accepting the opinion of Rabbi Yehuda, and Shemuel accepting the ruling of Rabbi Shimon.

The Talmud rules, however, that the law is codified in accordance with the position of Rabbi Shimon: a person may do action "A," which is permitted, even if it is *possible* that action "A," will cause action "B," to occur and action "B," is biblically prohibited.⁶

4. There are three categories of rabbinically prohibited work. Sometimes an activity is prohibited because it resembles a biblically prohibited activity; for example cooking by sunlight is biblically permitted but rabbinically prohibited, since it resembles cooking with a flame. Other times an activity is prohibited because it frequently leads to a biblical prohibition; for example, money lending is prohibited since it frequently leads to writing. Finally some activities are forbidden because they negate the spirit of Shabbat; for example, moving heavy boxes or lifting heavy items is prohibited.

5. *Beitza* 23b-24a.

6. See *Shabbat* 95a and 46b; Rambam *Shabbat* 1:5; *Shulchan*

This ruling is of great significance, particularly in the context of modern technology and Shabbat, where very frequently intended actions have unintended side effects that occasionally occur. For example, it is certainly true that occasionally the motor of a refrigerator starts immediately because one opens the door; since this does not happen all the time – even if it regularly occurs⁷ – it is not halachically significant, even if one is aware of this possibility, since unintended actions that might occur are permitted on Shabbat.⁸

Permitting unintended actions which sometimes occur might appear at first glance contrary to the general rule of halacha: in cases of biblical prohibition, one must be strict when in doubt.⁹ Why should this case be treated differently from any other case of possible prohibition? The simplest answer is that halacha treats differently the case where one intends to do an action which might be prohibited, and the case where

Aruch 337:1. *Levush* (337:1) seems to adopt the opinion that unintended acts are permitted only when they are only rabbinically prohibited, but even R. Shimon prohibits unintentionally causing biblically prohibited actions. *Levush's* approach has been rejected by all authorities after him; see *Mishnah Berurah* 337:1. It is worth noting that the position of Rabbi Yehuda, even though it is rejected in the context of the Shabbat laws, is accepted by some authorities as correct for the purposes of other areas of Jewish law; see *Sheiltot* #105; *Tosafot, Shabbat* 110b.

7. There are authorities who prohibit (or permit) the opening of the refrigerator door for other unrelated reasons; see "The Use of Electricity," *supra*, note 1 at 28-31, for a survey of this issue.

8. One authority rules that Rabbi Shimon's position is accepted only when it is obvious to an observer that the prohibited result is unintended, such as in the case of walking on the grass. See *Pnei Yehoshua, Shabbat* 41a. This ruling is not considered normative and is not quoted in any of the standard codes.

9. For example, if one is factually unsure if a particular piece of meat is kosher or not, one may not eat it.

one intends to do a permitted act which might additionally cause a prohibited act. As will be explained in section VI, Shabbat law, on a biblical level, prohibits only actions which are intended.¹⁰ Thus, even in a case where the secondary action is normally prohibited biblically, since it is not intended and might not occur, no violation ensues.¹¹

Kaf Hachaim notes an interesting application of this rule. A person who unintentionally backs into a light switch and thus turns a light on or off has, he states, committed no violation of the Shabbat laws – not even an unintentional one. The reason that no violation occurs is that turning the switch is an unintended act that might or might not occur when one bumps against the wall. Since secondary unintended acts that might or might not occur are permitted on Shabbat, no violation occurs.¹²

The Talmud records two disagreements on how to apply the rule that *davar she'eino mitkaven* is permissible.¹³ The first is when there are two possible ways¹⁴ to do permitted action "A,, only one of which might cause prohibited action "B,, and the person deliberately chooses the mechanism that might lead to "B,. While there are some early authorities who rule it prohibited to choose the manner of action that

10. See section VI.

11. Tosafot, *Shabbat* 110b; *Encyclopedia Talmudit* 6:736-743 contains a lengthy discussion of the issues raised by unintended actions outside of Shabbat law. According to this opinion, even Rabbi Yehuda who prohibits unintended acts on Shabbat would maintain that they are only rabbinically prohibited; see Tosafot *Shabbat* 41b; Meiri *Shabbat* 95a (in the name of other authorities); Rashi, *Shabbat* 121b.

12. *Orach Chaim* 277:4. One cannot of course do this intentionally, since by its very definition, it is only in situations where the secondary act is not intended that this permissive ruling is in place.

13. *Shabbat* 29b; *Pesachim* 25a.

14. To do them with ease; Tosafot, *Pesachim* 25b.

might lead to prohibition “B.”,¹⁵ most authorities disagree and accept that Rabbi Shimon’s permissive ruling is valid whether it is possible to do the permitted action in a different way or not.¹⁶ Thus, even though one could wait – without much difficulty – to open the refrigerator until the motor is already on, and thus avoid the possibility of doing a prohibited act, such is not necessary to avoid perhaps causing a secondary prohibited action.

The second question addresses the situation where the person doing the permitted action actually also intends to derive benefit from the prohibited action as well.¹⁷ For example, if one is worried that the refrigerator is not working well, and one hopes by opening the door to get food out and also to spark the engine into functioning by opening the door, one would confront this issue. It is accepted that when one actually intends to derive benefit from the secondary activity, even Rabbi Shimon would prohibit this, as the secondary conduct is no longer unintentional.¹⁸

II. *Pesik Resha*: Secondary Act

The Talmud, after establishing that it is acceptable to engage in a permitted act even though a prohibited additional

15. See *Sefer Yerayim*, ch. 274. The logic of this position is that when an alternative mechanism exists, and one declines to use it, the action closely resembles a *pesik resha*.

16. See *Shulchan Aruch* 337:1 and commentaries ad loc. For a detailed discussion of the various early authorities, see *Beit Yosef, Orach Chaim* 337.

17. *Pesachim* 25b-26a.

18. This is not explicitly codified in the *Shulchan Aruch*, although all of the early authorities accept this rule. See e.g., commentaries of Rabbenu Alfasi, Rabbenu Channanal, Rabbenu Nissim, and Rabbenu Asher on *Pesachim* 26a. It is quoted in Rambam, *Maachalot Assurot* 14:12.

result *might* occur (in harmony with the opinion of R. Shimon above), discusses situations where the prohibited action will *definitely* occur.¹⁹ The rabbinic convention refers to these cases as *pesik resha*, which literally is translated as “removing the head,” since it is around the following case that much of the talmudic dialogue occurs. The Talmud discusses the hypothetical situation of a person who desires to cut the head off a chicken on Shabbat, but does not care if the chicken lives or dies – rather the person either desires to feed the chicken’s head to his dog, or to use the chicken’s blood or even to give a child a round ball-like object to play with.²⁰ The Talmud proposes that perhaps this person should be excused from liability for killing an animal on Shabbat since there was no affirmative intent to kill the chicken – merely that the chicken should continue to live *without its head* (literally: *pesik resha*).

The Talmud states that this reasoning is incorrect. Rather, all agree that when the unintended secondary action will happen with *absolute certainty*,²¹ it is prohibited to engage

19. *Shabbat* 41a, *Ketubot* 5b (and many other locations).

20. Rabbenu Channanel, *Shabbat* 111b; *Aruch* “*pask*,” Rambam, *Shabbat* 1:6 (and comments of *Merkevet Hamishnah* 1:1,6 about the importance of the various examples). Some of these examples might appear to involve no benefit; that is precisely the issue raised by a *pesik resha delo nicha lei*; see section IV.

21. In order for an action to be classified as a *pesik resha*, the second act must occur with certainty. Statistical likelihood is not sufficient. As the Ritva states (*Ketubot* 5b) “any time it is possible that the prohibited action will not occur, even through an unlikely event, it is not considered a *pesik resha*.” Similar statements can be found in Rashba, *Ketubot* 5b; Tosafot, *Shabbat* 101a; Rambam *Shabbat* 1:6. There are occasions where the Sages specifically prohibited actions that are statistically close to a *pesik resha*. Thus the Talmud recounts (*Shabbat* 120b) that it is prohibited to open a door when there is a candle near the door lest the candle be extinguished. As the Maharsha notes (commenting on id.) this rabbinic prohibition applies even if the

even in the permitted activity, since the permitted activity will *inevitably* lead to a prohibited activity. Most authorities accept that a biblical prohibition is violated when the secondary activity will definitely occur and is of benefit²² to the one who does the action.²³

There are two different explanations of why a permitted action which inevitably leads to a prohibited activity should be prohibited. Rashi explains that since the forbidden action

candle will not unquestionably be extinguished, but merely probably will be extinguished. Furthermore this ruling is accepted as authoritative and is quoted without dissent by the *Shulchan Aruch*, 277:1. However, merely because the Sages chose specifically to prohibit actions in one circumstance that resemble a *pesik resha* does not mean that all situations that resemble a *pesik resha* are also prohibited; see *Maharam Padua* #33 and *Yabia Omer* 4:37; for a contrary view see *Shevitat Hashabbat Klalei pesik resha* #3; Rabbi Eider *Halachos of Shabbos*, III.F.4.

It is possible that there actually is no dispute among the authorities. All agree when the prohibited act is extremely likely to occur (even if not absolutely certain), it is prohibited; when it reasonably might not occur, it is permissible; see *Rivash* #394. Thus the theoretical possibility that the light bulb in the refrigerator burnt out rather than was turned off the last time the refrigerator was closed would not rise to the level of a doubt; see also section V.

22. As explained in section IV, when the secondary act is of no benefit, some authorities permit it, although most do not; for reasons explained in section VI, in a case where the secondary action is not beneficial, only a rabbinic violation occurs; see note 67 for an explanation of the difference between a *pesik resha* and *melacha she'eino tzericha legufa*.

23. See Rambam *Shabbat* 1:6; Ramban, *Shabbat* 74b, Ritva, *Shabbat* 74b, Ran, *Shabbat* 74b; *Mishnah Berurah*, *Shaar Hatzion* 320:53; see *Yabia Omer* 4:34 for a complete listing of authorities who rule that a *pesik resha* is biblically prohibited. A number of authorities rule *pesik resha* to be only rabbinically prohibited; see *Turei Zahav* 340:2 and *Ma'amar Mordechai* 316:10, although their opinion is generally rejected; see *Shulchan Aruch Harav* 278:4 and *Mishnah Berurah* *id.*

will definitely occur and the person benefits from the result, it is as if it was intended by the person.²⁴ Others adopt the explanation that since the action is inevitable, halacha assumes that the person is aware that a prohibited result which is desired will occur. The fact that the person is aware that this result will occur constitutes a violation.²⁵

Thus it is biblically prohibited to engage in a permitted course of conduct which inevitably and with certainty causes a biblically prohibited activity which the actor is aware of and from which he derives some benefit. For example, opening a refrigerator door which always causes an incandescent light to go on in the refrigerator is prohibited, since the light will inevitably go on, and turning on incandescent lights is generally viewed as biblically prohibited on Shabbat.²⁶

24. Rashi, *Succah* 33b.

25. Rabbenu Channanel, *Shabbat* 133a. Just as a person who cuts off the head of another human being is not believed when he asserts as a defense that he did not intend to kill the person but only to cut off the head, so too, lack of intent of the results is not typically believable in the Shabbat rules according to this explanation.

26. A number of authorities add that the only time halacha assumes that one's intent is to also do the inevitable secondary act, is when the primary action cannot ever be done without the secondary act. Precisely because the secondary act is unavoidable, it is assumed – when beneficial – it is desired. However, when there are numerous ways to accomplish the primary action, only some of which lead to the secondary prohibited activity, these authorities rule that this is really a *davar she'eino mitkaven*, and not a *pesik resha*, since the prohibited action need not happen and one derives no benefit from it; Rashi, *Zevachim* 91b; *Merkevet Hamishnah*, *Shabbat* 1:1 (asserting this to be Rambam's position); Ravva, *Shabbat* p. 227; Rashba, *Shabbat* 107a; *Yeshuot Yaakov* 316:5. Most *Rishonim* seem not to adopt this approach (Rabbenu Channanel *Shabbat* 111b; *Aruch*, verse "*pasak*,"; *Smag*, negative commandment 65; Mordechai, *Shabbat* #329). Many other *Rishonim* seem to reject this position inferentially; see *Encyclopedia Talmudit*, 6:654 n.284; most latter authorities also seem not to adopt

III. *Pesik resha derabbanan*

The above analysis concludes that when one's actions will definitely cause a biblical prohibition to occur, it is prohibited to engage in that activity. The Talmud does not address the question of a *pesik resha* where the secondary activity is itself only rabbinically prohibited. This occurs when one is doing permitted action "A," which will certainly lead to a rabbinic prohibition "B," occurring. For example, opening a refrigerator door when the light inside is fluorescent or neon rather than incandescent is only rabbinically prohibited.²⁷ Is it then permissible to open the refrigerator door knowing that the light inside will go on? Perhaps when the underlying prohibition is rabbinic in nature it is permissible to incidentally cause a rabbinic violation to occur?

The early authorities are divided on this issue. In a celebrated responsum, *Terumat Hadeshen*²⁸ argues, based on an *en passant* comment found in the *Mordechai*, that it is permitted to engage in an activity that causes a secondary prohibited activity – providing that the secondary activity is prohibited only rabbinically.²⁹ A significant number of early authorities

this opinion as correct; *Eliyah Rabbah* 316:6. As *Mishnah Berurah* states (*Shaar Hatzion* 316:32) "It is not the opinion of decisors to use this liberality under any circumstances..." *Mishnah Berurah* indicates that perhaps this can be used to reduce what is otherwise a biblical prohibition to a rabbinic one.

27. See "The Use of Electricity," *supra* note 1, at 10-11 for a detailed explanation of why this is so.

28. *Terumat Hadeshen* #64 & 67.

29. Other than a biblical prohibition lowered to a rabbinic one because of *melacha she'eino tzericha legufa*. See comments of Meiri in the name of most authorities, commenting on *Shabbat* 120b; See 2 *Menuchat Ahava* 1 n.20.

appear to support this position³⁰ as do a number of latter-day authorities.³¹

Magen Avraham, one of the premier commentaries on *Orach Chaim*, disagrees with *Terumat Hadeshen*, and indicates that Rabbi Karo in the *Shulchan Aruch* also disagrees.³² The overwhelming majority of modern authorities, as well as many early authorities,³³ accept the opinion of the *Magen Avraham* and rule that just as a *pesik resha* which leads to a biblical offense is biblically prohibited, so too a *pesik resha* that leads to a rabbinic violation is rabbinically prohibited.³⁴ These authorities argue that the rationale for prohibiting side effects that are beneficial is that secondarily-caused actions of benefit to a person are considered as if done directly; therefore, it should make no difference whether those beneficial actions are biblically or rabbinically prohibited.

Virtually all contemporary authorities rule that there is no practical distinction between a biblical and a rabbinic

30. See *Sefer Hashlamah*, *Shabbat* 41b (in his own name) *id.* at 65a in the name of Rosh of Luneil; Meiri, *Shabbat* 29b, 41b (and other locations). It is possible that this was the position of the *Tur* also; see *Tur* 317 (in the case of capturing flies). Rambam also appears to agree with this assertion; see Rambam *Shabbat* 25:5. R. Avraham ben HaRambam asserts this as his father's position; see *Responsa* of R. Avraham #19 (sometimes printed in introduction to *Shevitat Shabbat*); Rabbenu Tam also adopts this position; see *Sefer Hayashar* #233.

31. See *Genot Uveridim Orach Chaim* 3:16; *Mateh Yehudah* 321:1; *Maharsham* 2:229; *Shevut Yaakov* 253:14 (and other places); R. Akiva Eiger (quoted in *Chatam Sofer* Y.D. 140); For a more extensive list of those who permit *pesik resha miderabbanan*, see *Yabia Omer* 4:34.

32. *Magen Avraham* 314:5.

33. See e.g., Rashba, *Shabbat* 120b; Ritva, *Ketubot* 6b.

34. *Eliyahu Rabbah* 314:2; *Tosafot Shabbat* 316:8; *Shulchan Aruch Harav* 337:1; *Gra* 314:1; *Chaye Adam Shabbat* 3:2; *Mishnah Berurah* 314:11; *Kaf Hachaim* 314:15; *Yabia Omer* 4:34.

prohibition for the purposes of the rules of *pesik resha*; both are prohibited, one biblically and the other rabbinically.³⁵ However, many authorities acknowledge that a minority position permitting *pesik resha derabbanan* exists, and use it as one factor in the halachic equation when discussing cases of doubt. For instance, when there would be a well-established dispute among the rabbinic authorities as to whether any given action is rabbinically prohibited or permissible, when that debatable action is done merely as a secondary side effect, a strong claim could be made that it is permitted, since there exists a double doubt which might normally permit at least rabbinic prohibitions.³⁶ For example, it has been reported that removing the cooking pot from a slow cooker on Shabbat will in some models cause a change in the current flow to the heating element.³⁷ A strong claim can be made that notwithstanding that fact (if true), it could be permissible to remove the pot, since even directly raising or lowering current on Shabbat according to many authorities is not prohibited,

35. Ibid.

36. I.e., is the action actually prohibited and even if it is actually prohibited, maybe *pesik resha miderabbanan* would permit it. This rationale is explicitly found in *Yabia Omer* 4:34 and *Mishnah Berurah* 314:11 and this rationale is one of the factors cited which permits a *pesik resha delo nicha lei miderabbanan*; see infra note 50. While R. Yosef in his responsum does not permit one to rely on *pesik resha miderabbanan* alone, it has been reported in his name that he actually feels it is permissible to assume that a *pesik resha miderabbanan* is permitted in a case of great need; See 2 *Menuchat Ahava* 1 n.18.

37. The heating element in these units never glows red hot under any circumstances; if it did, that would be biblically prohibited, and this rationale would not apply. *Chazon Ish's* assertion that even raising the temperature of the heating element above *yad soledet bo* is a biblically prohibited form of cooking (*Chazon Ish* 50:9) has been generally rejected; See *Minchat Shlomo* p. 107 accepting *Chazon Ish's* stricture.

and in this case one is doing so only through a *pesik resha* on what is at most only a rabbinic prohibition.³⁸

IV. *Pesik resha delo nicha lei*: Secondary act with no benefit

Having established that a *pesik resha* is prohibited (and when it might be permitted), it is necessary to analyze the status of a *pesik resha delo nicha lei* – a secondarily-caused act in which the one who does the action does not derive benefit from the prohibited activity.

The Talmud only discusses the status of *pesik resha* when one derives benefit from the prohibited activity. The early and later authorities discuss the status of such activity when the prohibited action which occurs is of no benefit to the person who is doing it. One could argue that since one derives no benefit from the prohibited activity, it is similar to an unintended action, which according to Rabbi Shimon is permitted. This is the opinion of the *Aruch*, one of the earliest commentaries on the Talmud. Thus, for example, he permits one to drag furniture through another person's field, even if that would definitely create furrows in the ground, since that biblical prohibition is not desired and of no benefit to the one moving the furniture.³⁹

38. See text accompanying notes 52 for a discussion of raising current. In addition, a claim could be made that this action is a *pesik resha delo nicha lei* and since it involves a thermostat, a *pesik resha delo niha lei begrama*; see sections IV and X. In addition, since the item works on a cycle of powering on and off, there might be no power flowing at the time the cooker is removed; this would be a *safek pesik resha* and permissible; see section V.

39. See *Aruch*, verse "*pasek*."; See also *Tosafot Shabbat* 103a in the name of *Aruch*. A number of authorities have asserted that this is the opinion of Rambam also; see *Chidushei R. Chaim HaLevi* on Rambam, *Shabbat* 10:17. Ravya and Rabbenu Yerucham also agree with the *Aruch*; see Ravya #194; Rabbenu Yerucham *Netiv* 12:14.

Most early authorities disagree with this ruling and instead accept the principle that no analytic distinction can be made between an unintended act that is desirable and one that is not. According to these authorities, it is the certainty of the result which makes it as if the person actually did the action directly. Even these authorities, however, admit that a *pesik resha delo nicha lei* is only a rabbinic, rather than a biblical prohibition, since an action not done for the betterment of the doer is always not a *melechet machshevet*.⁴⁰ According to these authorities, any time a person performs an action which will inevitably lead to a biblically prohibited action, even if the prohibited action is not beneficial, he violates a rabbinic prohibition.⁴¹

While a small number of contemporary authorities accept the opinion of the *Aruch* as normative,⁴² the overwhelming majority of authorities, both early and modern, accept that a *pesik resha delo nicha lei*, when the underlying prohibition is biblical, is prohibited.⁴³

Even according to this view, most authorities limit the permissive ruling to Shabbat laws only. Unintended and undesired side effects would be nonetheless be prohibited in all other areas; see Rosh, *Shabbat* 14:9.

40. Every time, however, something is *lo nicha* it is also always a *melacha she'eino tzericha legufa* and thus only rabbinically prohibited; see *infra* section VI for further explanation.

41. See Tosafot, *Shabbat* 103a; Rosh, *Shabbat* 103a; Or Zaruah #54; Magid Mishnah, *Shabbat* 12:6; Hagahot Maymoniot, *Shabbat* 21:10; Mordechai, *Shabbat* 141a.

42. *Mishpatei Uziel Orach Chaim* 19; it is commonly asserted to be the position R. Chaim Soloveitchik adopted; see Rabbi S.Z. Reiger, *Hapardes* v.3, (1934); see also R. Naphtali Tzvi Yehuda Berlin, (*Netziv*), *Haamek Sheilah* 105:5.

43. *Tur*, 320; *Shulchan Aruch* 320:18; Commentaries of *Taz* (*id.* n.1), *Magen Avraham* (*id.* n.1), *Mishnah Berurah* (*id.* n.55); *Yabia Omer* 4:34.

However, there are many halachic authorities who accept that a *pesik resha delo nicha lei* is permissible when the underlying prohibition is only rabbinic. Two distinctly different arguments support this conclusion. Some latter day authorities argue that this is a case of *s'fek s'feka lekula* (double doubt leading to a leniency). In essence, these authorities argue that a minority of authorities rule that a *pesik resha delo nicha lei* is always permissible, even when the underlying prohibition is biblical, and a larger minority of authorities accept the principle that a *pesik resha miderabbanan*, a secondary rabbinically-prohibited action, is permissible. In a case where these two permissive rulings intersect, a majority of authorities would rule permissively, albeit for two different reasons.⁴⁴

Other authorities, most significantly Tosafot,⁴⁵ advance a different analytic reason to permit a *pesik resha delo nicha lei* of a rabbinic prohibition. A *pesik resha delo nicha lei* should be prohibited only when the underlying prohibition is biblical, argue Tosafot, since that closely resembles a biblical prohibition, and one might confuse situations of *pesik resha delo nicha lei* with situations of a regular *pesik resha*. However, there is no logical reason to prohibit a *pesik resha delo nicha lei* when the underlining prohibition is only rabbinic, since even if a person were to grow confused and accidentally commit this beneficial action, only a rabbinic prohibition would be violated. It was not necessary in this case for the Sages to prohibit that which was permissible lest one err and do something which is rabbinically prohibited on the Shabbat.

Many contemporary rabbinic authorities – and nearly all

44. See *Yechave Daat* 2:46 who accepts this approach and lists others who adopt this analysis.

45. Tosafot, *Shabbat* 103a; *Be'er Yitzchok* 15; *Sho'el Umeishiv* 1:210; *Maharsham* 5:48; *Divrei Malkiel Yoreh Deah* 2:42.

Sefardic authorities⁴⁶ – accept one of these two lines of reasoning and permit a *pesik resha delo nicha lei* when the underlying prohibition is only rabbinic. According to these authorities it would be permissible to walk in front of a video camera when entering a building other than the one one lives in, since the prohibition involved in appearing on video is rabbinic,⁴⁷ and it is of no benefit to the one walking in.⁴⁸

This permissive ruling is of particular significance in the context of unintended devices designed to monitor people's presence or absence. For example, alarm systems are quite frequently connected to motion detectors. Even when not set to alert homeowners to intruders, they nonetheless monitor a room for motion; often that movement in the room will cause LED or LCD displays to turn on or off. Since both LED and LCD displays involve only rabbinic prohibitions,⁴⁹ if one accepts that a *pesik resha delo nicha lei* on a rabbinic prohibition is permissible, it is permissible to leave the alarm on in a state where it monitors people entering the room.

A number of decisors reject this rule and rule a *pesik resha*

46. 2 *Menuchat Ahava* 1:8 n.22-23; *Yabia Omer* 4:34 (citing other authorities).

47. Even deliberately allowing one's image to be captured on Shabbat on a video camera would at most be a rabbinic prohibition, as the changes in imagery involve only increase or decrease in current levels and the image is only temporary. The question left unresolved is whether the person whose picture is being taken is anything more than a *mesayei'a* (passive assister); there is, however, a dispute concerning whether an assister whose assistance is not needed violates any prohibition on Shabbat; compare *Nekudat Hakesef* Y.D. 198:20 (completely permissible) with *Taz* 328:1 (rabbinic prohibition).

48. See sources cited in notes 44 and 45. *Yabia Omer* 4:34 cites numerous other authorities who accept that a *pesik resha delo nicha lei miderabbanan* is permissible.

49. See "The Use of Electricity," *supra* note 1, at 10-11.

delo nicha lei to be prohibited even when the underlying prohibition is rabbinic. They argue that precisely because both a *pesik resha delo nicha lei* and a *pesik resha miderabbanan* are prohibited, it is illogical to permit a *pesik resha delo nicha lei miderabbanan*. These authorities are inclined to permit a *pesik resha delo necha lei* only when there are two overlapping independent rabbinic prohibitions.⁵⁰ Among the authorities who appear to adhere to this stricter position are *Magen Avraham*, *Dagul Merevavah* and *Chazon Ish*.⁵¹

Even according to those authorities who would normally prohibit a *pesik resha delo nicha lei* even when the prohibition is rabbinic, it is possible to suggest a line of reasoning that would permit walking in front of an electrical device that monitors one's presence in a manner which is of no benefit to a person. The *Shulchan Aruch* (*Orach Chaim* 320:18) records (albeit with some reservation) that it is the tradition to rely on the position of the *Aruch* that a *pesik resha delo nicha lei* even for a biblical prohibition is permissible when there is another minority opinion that permits this conduct even deliberately.

50. This is the position advocated by *Mishnah Berurah* in 316:15 and considered by *Chazon Ish* 56:4. See section IX for a detailed discussion of *kilachar yad*.

51. *Chazon Ish*, 50:5; *Dagul Merevavah* 340:3; and *Magen Avraham* 316:8; *Shevitat Shabbat Klalei pesik resha* #3, R. Eider, *Halachos of Shabbat* III.F.8. Although *Mishnah Berurah* is cited as among those who prohibit this, in fact he adopts conflicting positions on the question of whether a *pesik resha delo nicha lei miderabbanan* is permissible; see *Mishnah Berurah* 321:57 (*Shaar Hatzion* 68); *Mishnah Berurah* 340:17; *Shaar Hatzion* 337:2; and 337:10.

Even those who argue that a *pesik resha delo nicha lei miderabbanan* is prohibited might limit this ruling to a situation where it is possible to do the permissible action without also doing the prohibited action. When that option is not available, even these authorities might rule permissively. This would explain what are otherwise contradictions within the *Ramo*; compare 320:13 with 337:2.

In the context of raising or lowering current level in an electrical appliance, there are many modern authorities who maintain that no prohibition is violated.⁵² The tradition is not to rely on these authorities *ab initio* and intentionally raise or lower current; however, in combination with the *Aruch*, it would appear to be permissible to rely on these authorities to the extent that this permits one to engage in conduct which unintentionally raises current level in a manner which is of no benefit. The same reasoning should perhaps permit one to engage in activity which even turns a switch on and off unintentionally and in a manner that one derives no benefit, since there are authorities who rule that even turning on and off electrical appliances is theoretically permitted on Shabbat, providing that no incandescent lights go on.⁵³

Pesik resha delo nicha lei discusses situations where one derives no benefit from the prohibited act, but yet no harm is done either. A number of authorities posit that in a situation where the secondarily-prohibited act is actually bad for the person, all authorities would then permit this activity.⁵⁴ According to these authorities, the Sages only prohibited secondarily-caused prohibited activity when one derived benefit from the prohibited activity or one suffered no loss.⁵⁵

52. *Yabia Omer* 1:19; *Shemirat Shabbat Kehilchata* 23:52; *Be'er Moshe Kuntress Electricity* #56. For a broader survey of this topic, see "The Use of Electricity," *supra* note 1, at 35.

53. "The Use of Electricity," *supra* note 1, at 20-21.

54. Meiri, *Shabbat* 29b. For a more complete list of authorities who subscribe to this position, see *Encyclopedia Talmudit* 6:650.

55. This position is undoubtedly related to the rule that there is no biblical violation on Shabbat when one does a prohibited act in a manner that does damage to the object (called in Hebrew, *derech kilkul*); *Shabbat* 105b; Rambam *Shabbat* 1:17.

For example, a person who causes an electrical circuit to spark on Shabbat has not violated a biblical prohibition of burning since

Tosafot argue with this line of reasoning and posit that all of these situations are halachicly identical to *pesik resha delo nicha lei*, which most authorities prohibit when the underlying prohibition is biblical.⁵⁶ The trend among the latter authorities is to reject the distinction between cases of no betterment and of detriment; however, some authorities will use this distinction when there are other permissive factors present.⁵⁷

One question requires attention: what is meant by the term *lo nicha lei*, "of no benefit.. Obviously when the secondary act is *actually* the one desired by the person, that is assumed to be to the person's benefit.⁵⁸ In fact, the definition of "of no benefit.. is defined more broadly than that. A number of possibilities exist. The first possibility is that the person actually doing the act must derive some benefit from the secondary act; if the particular person derives no benefit, it is

sparking by electrical appliances is always a form of damage to the appliance.

56. Tosafot, *Shabbat* 78a.

57. In combination with other concepts, this rule will frequently be used to permit unintentional side effects that are damaging, such as the sparking of a circuit; *Dagul Merevavah* 340:3 permitting an action when it is done *derech kilkul*, *pesik resha delo nicha lei* and *kilachar yad*; *Minchat Shlomo* pp. 86-87; but see *Mishnah Berurah* 340:17.

58. *Chazon Ish* (51:14) notes that even if one does not derive benefit from the prohibited action on Shabbat, but rather derives benefit at some time in the future it is considered as "of benefit.. Rabbi Auerbach disagrees and seems to limit the concept of "benefit.. to that which is currently beneficial; *Shemirat Shabbat Kehilchata* 1:39(114). In addition, nearly all decisors posit that there is no difference between *pesik resha delo nicha lei* and *pesik resha delo echpat lei* (secondary act to one's detriment and to no benefit); see *Mishnah Berurah*, *Biur Halacha* 320:18; *Encyclopedia Talmudit* 6:649-50; Rabbi Eider, *Halachos of Shabbat* III.F.3.

lo nicha lei even if others derive benefit.⁵⁹ Thus, for example, passing in front of a working video camera on Shabbat which records all those who go in and out of a building is considered a *pesik resha delo nicha lei*, since it is of no benefit to a person who does not live in the building.⁶⁰ The *Mishnah Berurah* seems to adopt this position, when he states that a *pesik resha delo nicha lei* occurs when one “derives no benefit from the action that one does with one’s hands, and it makes no difference to the person whether the action occurs or not.”⁶¹ The phrase “makes no difference to the person,” seems to indicate that the individual’s state of mind is dispositive.

A second possibility is that the particular person derive no benefit because of special circumstances operative now. For

59. This seems to be the opinion of *Beit Yosef Orach Chaim* 336 and *Magen Avraham, Orach Chaim* 336:6. A blind person who opens a refrigerator door which thus causes the light to go on has only caused a *pesik resha delo nicha lei* since this blind person derives no benefit from the light *ever*. This might be identical to a situation where the light in the kitchen is extremely bright, and thus a person derives no additional benefit from the refrigerator light.

60. A strong claim could be made, however, that it is a *pesik resha denicha lei* for a person who lives in the building, since increased security is generally beneficial to all who live in the building. Rabbi Dovid Cohen of Congregation Gevul Yavetz has noted to this author that “if the person knows that he is not a crook, then no one derives benefit by seeing him enter or leave the building.” See also notes 61 and 62.

61. *Biur Halacha*, 320:18. Rabbi Yitzchak Yosef, son of Rabbi Ovadia Yosef, asserts that turning on the motor or fan of a refrigerator through a *pesik rasha* is always *lo nicha lei* ...of no benefit... since the person who opens the door does not care, *at this moment*, if the fan or engine goes on or not. Since, even if electric flow to the refrigerator ceased completely, it would not affect the food on Shabbat. He defines *lo nicha lei* as dependent solely on what the person wants *now*; R. Yitzchok Yosef, *Yalkat Yosef* 4:253 (8).

example, a person who is aware that the light will go on in the refrigerator when the door is opened could close his eyes while opening the door, keep his eyes closed the whole time the door is open, and argue that action is *lo nicha lei* in this circumstance since no benefit actually accrues. Rabbi Auerbach (*Minchat Shlomo* pp.548-549) rejects this possibility, and argues that *lo nicha lei* is defined by whether one "normally" derives benefit from this action. Special conduct by the person doing the action on Shabbat cannot change whether the secondary act actually is *lo nicha lei*.⁶² A claim could be made that this seems contrary to the position of the *Mishnah Berurah* quoted above, as the individual who closes his eyes before opening the door in fact "derives no benefit from the [turning on of the light] . . . and it makes no difference to the person whether the action occurs or not."

V. *Safek pesik resha*: possible secondary act

A *pesik resha* is prohibited since the prohibited action will definitely occur; *davar she'eino mitkaven* is permissible since it is factually unclear if the prohibited action will occur. The authorities disagree about the status of a situation in which at the time that the permitted action occurs one does not know if the prohibited action will or will not occur, but that doubt arises from a lack of factual information about what previously occurred, rather than from an inability to predict the future. An example of this would occur in a situation where one does not remember if he disconnected the light in

62. Rabbi Auerbach also demonstrates that generally positive actions that have negative halachic ramifications are considered of benefit according to halacha. Thus one cannot argue that a generally positive action is considered *delo nicha lei* merely because it is prohibited. In this writer's opinion, it does not necessarily follow, as Rabbi Auerbach states, that when one actually does performs an act which deprives one of the benefit, that that too should be of no halachic significance.

the refrigerator prior to Shabbat and wants to open the door on Shabbat, realizing that there is a chance that the light will go one.

Turei Zahav (*Taz* O.C. 316:3) states that this is permissible. He reasons that this is similar to the case where the prohibited action might or might not occur (*davar she'eino mitkaven*) and is thus permissible, since any situation where a prohibited secondary action might or might not occur is permissible.⁶³

One authority has indicated disagreement with this rule based on a logical argument. Rabbi Akiva Eiger⁶⁴ states that there is a conceptual difference between a permitted action that might or might not lead to a prohibited action (a *davar she'eino mitkaven*) and permitting an action that either certainly will or certainly will not lead to a prohibited action, but the person doing the action simply does not know which is factually correct. *Davar she'eino mitkaven* is only permissible because it cannot be determined if the prohibited action will or will not occur; the doubt is as to a future, rather than a past event. Such is not the case, Rabbi Eiger claims, for a *safek pesik resha*. Thus, Rabbi Eiger counsels one to be strict in this matter. According to Rabbi Eiger it is only when the prohibited act might or might not occur that halacha permits the action;

63. One authority limits *Taz's* ruling to a situation where the underlying prohibition is itself only rabbinically prohibited; see *Tosefet Shabbat Orach Chaim* 317:7; see also Eider, *Halachos of Shabbos* III.F.6 for a similar analysis.

This appears to be incorrect as *Taz* adds that factor only as an additional ground. The normative rule for reading decisors of Jewish law is when an authority states that a particular action is permitted without any qualifying language, and then later states that this rule is particularly true in the case at hand which is only rabbinically prohibited; the decisor actually maintains that the conduct is permissible even when the underlying prohibition is biblical; see *Sedei Chemed Klalei Haposkim* 16:38.

64. Commenting on *Yoreh Deah* 87:6.

when the doubt is only in our own knowledge, no halachic liberality is possible.

Most authorities, both early and later,⁶⁵ appear to agree with the position of *Taz*, and it is permissible to follow this position. However, it is not inappropriate to be strict in this matter when the underlying prohibition is biblical since the position advanced by Rabbi Eiger appears to be highly persuasive.⁶⁶

VI. *Melacha she'eino tzericha legufa*: Work done for a different reason

Normally, Jewish law prohibits one from doing a particular forbidden action regardless of the reason that one desires the act. Thus, for example, it is prohibited to eat non-kosher food for *any reason*. One who eats non-kosher food is biblically liable even if he eats the food without any desire to derive culinary benefit, such as if one were one to eat the food to win a wager. This is not completely true for the Shabbat laws. On Shabbat, any time one does a biblical prohibition for the "wrong" reason or purpose, it is a *melacha she'eino tzericha legufa* and only rabbinically prohibited.⁶⁷

65. *Shulchan Aruch Harav*, 316:4; *Mor Uketzia* 316:4; *Ben Ish Chai Varah* #6; *Mishnah Berurah* (*Biur Halacha*) 316:3. Among the early authorities who agree with this ruling are: Ramban, (*Milchamot*) *Shabbat* 41b; Meiri, *Shabbat* 41b; Rashba, *Shabbat* 41b (in the name of Tosafot); *Magid Mishnah*, *Shabbat* 12:1; Ran, *Shabbat* 41b.

66. See *Melamed Lehoil* 3:102.; 2 *Minchat Ahava* 1:8. A *safek pesik resha delo nicha lei* is always biblically permissible according to all.

67. This is disputed in the Talmud, *Shabbat* 93b. Rabbi Shimon states this is only a rabbinic violation and Rabbi Yehudah states it to be a biblical violation. Nearly all of the authorities accept the permissive opinion of Rabbi Shimon; see *Tur* 278: 316; 334; *Shulchan Aruch* 316:8; *Mishnah Berurah* 316:34. Rambam accepts the opinion of Rabbi Yehudah; see *Shabbat* 1:7, as do a number of other authorities; see e.g., *Yerayim* #274.

Tosafot adopt the explanation that the biblical prohibition to engage in the thirty-nine particular forms of work on Shabbat is limited to situations where one does those actions for the specific prohibited purposes, which are derived from how this work was done in the Tabernacle.⁶⁸ For example, digging holes is biblically prohibited on Shabbat. However, the purpose of hole-digging in the time of the Tabernacle was as part of the building process, i.e., to place items in the holes; if one were to dig a hole simply because one needed the dirt, that would be, according to Tosafot, a *melacha she'eino tzericha legufa*.⁶⁹

Rashi advances a slightly different explanation: Rashi posits that any time one does a biblical prohibition for a positive purpose, it is not a *melacha she'eino tzericha legufa*. The only time an action is a *melacha she'eino tzericha legufa* is when one desires merely to remove the object or protect oneself from a danger.⁷⁰ For example, carrying from a private domain into a public domain is biblically prohibited. However, the biblical prohibition is limited to situations where one desires to move the object from one place to another – i.e., the biblically-prohibited form of “working,” is limited to moving an object via carrying. If one were to carry an object from a private domain to a public domain not intending to move the object, but rather because the item emitted a foul odor and one wanted to remove the item from one’s residence so as to remove the odor, since the purpose of the action is different from the

The difference between a *melacha she'eino tzericha legufa* and a *pesik resha* is that a *pesik resha* involves doing a permissible act which must lead to a prohibited act which is beneficial. A *melacha she'eino tzericha legufa* involves deliberately doing a prohibited act, but with an intent that spares one from a biblical violation.

68. See Tosafot, *Shabbat* 94a.

69. *Mishnah Berurah*, *Biur Halacha* 316:8.

70. Rashi, *Shabbat* 93b.

purpose of the prohibited Shabbat "work," that is only a rabbinic violation.

A more relevant example (and one agreed on by both Rashi and Tosafot) is that a person who extinguishes a light or flame in order that there be darkness (an absence of light), rather than in order actually to benefit from extinguishing of the flame, has not violated the biblical prohibition of extinguishing, since in the Tabernacle the designated purpose of the prohibition to extinguish was to generate carbon black (ash) to use in the Tabernacle building.⁷¹ Thus, turning off incandescent lights on Shabbat is always a rabbinic prohibition.

The Sages permitted this type of rabbinic violation to occur when needed to prevent injury to the public. For example, hunting on Shabbat is normally a biblical prohibition; however, trapping or killing a wild animal that might injure many people is permitted on Shabbat, since this type of trapping or killing is not done to capture or kill the animal, but rather to prevent injury to people.⁷² It is important to realize that the Sages only allowed one to do a *melacha she'eino tzericha legufa* to prevent injury to the public; they did not permit this rabbinic violation to be suspended in the face of mere financial loss to the individual.⁷³

71. *Mishnah Berurah* 278:3. All authorities note that a *melacha she'eino tzericha legufa* is the most serious type of rabbinic prohibition on Shabbat since the same action is sometimes a biblical violation; *id.* A claim could be made that one who accidentally opened a refrigerator door forgetting that the light would go on, could, according to some authorities, close the door even though the light would thus go off, if one closed the door *kilachar yad*, since turning off the light is always only rabbinically prohibited and in this case would be *pesik resha delo nicha lei* done *kilachar yad* on a rabbinic prohibition; see e.g., 1 *Menuchat Ahava* 24:21 n.62.

72. *Shulchan Aruch* 334:27

73. See comments of Ran, *Shabbat* 145a; Meiri, *Shabbat* 120b; Tur, 278; *Shulchan Aruch* 308:18.

VII. *Mitasek*: Involved

One who violates a biblical prohibition in a manner where the violator is completely unaware that a prohibition is occurring - because the person is focusing on another aspect of his action - is excused from any legal culpability on Shabbat.⁷⁴ For example, one who is walking on the street unaware that there is a motion detector that will turn a light on when he approaches, has committed no legally culpable action when his body motion turns on the light. The rationale for distinguishing this from a *pesik resha* is that a *mitasek* not only does not desire the action or does not care if the action will occur, but is completely unaware that the action will happen. A *pesik resha* occurs when the person is aware that a prohibited action will occur but the prohibited action is not the primary focus of activity; *mitasek* is when one is simply unaware that one is causing the prohibited activity. Frequently the first time one commits a *pesik resha* one is a *mitasek* since not only did one not desire the action to occur, but was even unaware that it was occurring.

There is a dispute among the later authorities over whether one who commits a permitted action completely unaware of its ramifications (i.e., *mitasek*) has committed any sort of a sin in God's eyes. Rabbi Akiva Eiger asserts that while there is no legal culpability, some sort of an unintentional violation has occurred.⁷⁵ Rabbi Yaakov of Lissa, (author of the *Netivot*) and Rabbi Joseph B. Soloveitchik, writing in the name of his father, Rabbi Moshe Soloveitchik, have both stated that

74. Tosafot, *Kreitut* 19b, Rambam *Shabbat* 1:10. Ravad and Rashi adopt the position that even if one intends to do prohibited act "A," and accidentally does prohibited act "B," one is not biblically liable; Ravad, *Shabbat* 1:10; Rashi, *Kreitut* 19b. See generally *Shevitat Shabbat* pp. 16-17 for a discussion of this issue.

75. *Responsa R. Akiva Eiger* #8.

this appears incorrect.⁷⁶ Rabbi Yaakov states "one who is completely without intention [as to his actions] is behaving permissibly." Rabbi Soloveitchik comments that the opinion of Rabbi Eiger appears to be contrary to the position taken by the Rambam and that "one who is *mitasek* is completely lacking any sinful action." While there are few later authorities who comment on this issue, a number of *Rishonim* appear to hold that *mitasek* is completely permissible.⁷⁷

If one accepts this approach, it is permissible to allow a person unintentionally to violate Shabbat through a *pesik resha* when he is completely unaware that a prohibited action will result, since there is no culpability, legal or otherwise. There would be no halachic obligation to stop a person who is about to engage in a completely unintended *pesik resha*. Thus, there would be no obligation to warn people that there is a motion detector in place, a video camera recording movements, or a tape recorder registering speech if they are unaware of it. Rabbi Auerbach (*Minchat Shlomo* p.549) posits that in a case of *pesik resha delo nicha lei* (and perhaps even simply a *pesik resha*) when in addition the person is *mitasek*, it is appropriate to rely on this analysis. On the other hand, if one accepts R. Eiger's ruling, since there is some culpability, it would be best to advise this person to avoid the route with the motion detector.⁷⁸

76. Rabbi Yaakov, *Mekor Chaim, Orach Chaim* 431:1. Rabbi Joseph Soloveitchik, *Shiurim Lezecher Avi Mori*, p.30 n. 58, quoting Rambam, *Issurei Biah* 1:12. See also R. Soloveitchik, "*Beyesod Davar She'eino Mitkaven*," *Mesorah* 5:25-26; Rabbi Yoel Teitelbaum (Satmar Rebbe) also agrees with this analysis; *Divrei Yoel* 2:107; see also R. Chaim Ozer Grodzinski, *Achiezer* 3:57.

77. See e.g. comments of Ramban, Meiri and Rashi on *Shabbat* 72a; Rashi, *Pesachim* 33a. See also *Chaye Adam, Shabbat* 9:8; *Eglei Tal, Kotzer* 24:14; *Shevitat Shabbat* p.16.

78. It is important to realize that any liberality that flows from the status of *mitasek* is removed once one is aware that one's actions

VIII. *Melacha she'eina mekuyam*: Temporary work

The Mishnah recounts that one who does a biblically-prohibited action that normally is permanent in such a way that it cannot possibly last until Shabbat is over, has violated only a rabbinic, rather than a biblical violation.⁷⁹ Thus, the Talmud states that one who writes letters, with an ink that naturally disappears, has violated only a rabbinic prohibition.⁸⁰ It would appear to this author that writing on a computer screen on Shabbat is a modern example of a form of writing that is not intended or capable of lasting on the screen throughout Shabbat and is thus only a rabbinically prohibited form of writing.⁸¹

In addition, nearly all authorities rule that when the underlying prohibition is itself only rabbinic in nature, it is permissible (perhaps only in a case of need) to do the action in a manner that is only temporary and will not last through

are causing a secondarily prohibited act. The difference between a *pesik resha* and a *mitasek* is solely in the mental state of the one doing the action.

79. *Shabbat* 120b.

80. *Shabbat* 104b. Of the 39 prohibited types of work, at least knotting, building, weaving, writing, dyeing and sewing are only rabbinically prohibited when they are temporary; Rabbi Eider, *Halachos of Shabbos* III.F.10. There is a dispute between Rambam (*Shabbat* 9:13) and Rashi (commenting on *Shabbat*, 102b) as to whether the action actually has to last through Shabbat; see *Mishnah Berurah*, *Shaar Hatzion* 303:38.

81. There is a dispute between Rabbi Feinstein and Rabbi Auerbach as to the permissibility of doing an action that does not last at all (*eino mekuyam clal*). Rabbi Feinstein posits that if an action does not last at all, it is completely permissible on Shabbat even if done intentionally; see *Iggerot Moshe* 1:114. Rabbi Auerbach disagrees and rules anytime one intends to do the action, even if it does not last at all, it is prohibited; *Shemirat Shabbat Kehilchata* 14:58 (158).

the day (providing that the action is normally permanent).⁸² According to this ruling, in a situation where one's presence causes an electrical appliance to turn on and off in a way that can only be temporary and could not possibly last through Shabbat, if the action is only rabbinically prohibited, a strong case could be made that it is permissible to do this act.

IX. *Kilachar yad or shinui: work done in a changed manner*

One who does a biblically-prohibited action on Shabbat in a manner different from the way it is typically done during the week violates only a rabbinic, rather than a biblical prohibition.⁸³ Thus, the Talmud recounts that a right-handed person who writes with his left hand on Shabbat violates only the rabbinic, rather than the biblical prohibition.⁸⁴ In addition, this rabbinic prohibition is different from all other rabbinic prohibitions on Shabbat, since most authorities accept that the Sages permitted this type of rabbinic violation in the case of either great financial need or intense physical pain (even if not life threatening).⁸⁵

The rationale for this permissive ruling – which distinguishes a biblical prohibition done *kilachar yad* and every

82. *Mishnah Berurah Biur Halacha* 340:5 (in name of *Eliyah Rabbah* quoting Rif, Rosh and Rambam) asserts that the action is completely permissible. 2 *Minchat Ahava* 1:20:n. 65 quotes that this appears to be true only in a case of need.

83. This is recounted in many places; see e.g. *Shabbat* 92a (carrying); *Shabbat* 104b (writing); Rambam *Shabbat* 11:14; *Shulchan Aruch* 301:7 and 328:35.

84. See *supra* note 83.

85. *Shulchan Aruch* 328:17; *Beit Yosef* 334; *Mishnah Berurah* 307:21; *Chazon Ish* 56:4; *Yabia Omer* 5:33:3; but see *Shmirat Shabbat Kehilchata* 33:2 (compare n.17 with n.17*).

other biblical prohibition – is expressed by Rashba in the name of his teacher Ramban. He states:

Actions done in a manner different from the way they are normally done, even though they are prohibited by rabbinic interdiction, are different from all other rabbinically prohibited actions since the onlooker clearly sees that the action is being done in a peculiar manner [and no one will be misled and think the action is permitted]. Thus the Sages permitted this action in the case of an ill person.⁸⁶

There is however some dispute about what type of change renders an action in the category of “actions done in a manner different from the way they are normally done.” The Talmud addresses the case of a right-handed person who writes with his left hand; this change has two different components. The first is that the action is done in a different manner; the second is that the writing, when complete, looks different and less well done. Are both of these components needed to make something *kilachar yad*, or is only one needed? Rabbi Avraham Borenstein, the author of *Avnei Nezer*, in his introduction to *Eglei Tal*, states that both are needed.⁸⁷ If the action upon completion is the same as when it is done in a normal manner, that is not *kilachar yad*. According to this approach, the liberality associated with *kilachar yad* would be of no use in turning on most appliances, since, even if one turns them on in a unique manner (e.g., with one’s nose), they operate equally effectively no matter how they are started.

Nearly all authorities reject this ruling and state that it

86. Rashba, *Shabbat* 129b; also quoted by Ran, *Shabbat* 145a. Meiri expands this permissive ruling to include not only pain, but financial loss also.

87. *Eglei Tal*, Introduction #3; Rabbi Moshe Feinstein is quoted (in Rabbi Tendler and Dr. Rosner, “Dental Emergencies on *Shabbat* and *Yom Tov*,” *Journal of Halacha and Contemporary Society* 14:49, 52 (1987)) as agreeing with this position.

is sufficient for an action to be classified as *kilachar yad* merely if the action is done in a manner that is visibly different from the way the action is done, even if the end product is the same.⁸⁸ The proof that these authorities quote is found in the discussion of *kilachar yad* by the early commentaries. They note that Rashba's assertion, "since the onlooker clearly sees that the action is being done in a peculiar manner [and no one will be misled and think the action is permitted], focuses exclusively on how the action is done, and not on the result. Similar comments can be found in numerous early authorities,⁸⁹ and the law is codified in harmony with this position.⁹⁰

Thus, turning on or off electrical appliances on Shabbat in a manner other than the way they are normally turned on or off is considered *kilachar yad*. For example, one who has forgotten to remove the light from the refrigerator prior to Shabbat and who now wishes to take food out to eat on Shabbat, could, according to many authorities, simply unplug the refrigerator in a manner which is *kilachar yad* (with one's foot, for example) and then take the food out.⁹¹ So, too, it would appear that a doctor may treat a patient who is in great pain (even if not life-threatening pain) through the use of electrical appliances turned on *kilachar yad*. An ill person who is bedridden in a hospital bed that can only be raised or lowered electrically may, *kilachar yad*, raise or lower himself from the bed if that is needed to prevent physical pain or allow some other medically-necessary activity (including eating).⁹²

88. *Mishnah Berurah* 397:21; *Chazon Ish* 56:4; *Yabia Omer* 5:33; *Shevitat Shabbat*, *Dosh* 4:6.

89. Sources quoted above; see also *Tosafot* and *Rosh* commenting on *Bechorot* 25a.

90. *Mishnah Berurah* 397:21; *Chazon Ish* 56:4; *Yabia Omer* 5:33.

91. See e.g., 1 *Minchat Ahava* 24:20. For a list of alternative solutions to this problem, see "The Use of Electricity," *supra* note 1, at n.59.

92. See *Shemirat Shabbat Kehilchata* 33:2-4; *Mishnah Berurah* 328:49-

X. *Grama*: indirect causation

The Mishnah (*Shabbat* 120a) considers that the biblical phrase "One may not do any work,," (Deuteronomy 12:4 and Exodus 20:10) prohibits only work *directly* caused by the person; however, work done indirectly – not caused by a human being, but by itself – is biblically permitted. As an example of indirect causation, 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 contents extinguish all the flames.

Most authorities rule that even though indirectly caused actions are biblically permissible, they are rabbinically prohibited unless financial loss will be caused.⁹⁴ A minority of decisors accept that biblically prohibited actions done indirectly are completely permissible on Shabbat.⁹⁵

The definition of "indirect," for the purposes of Shabbat, however, is in dispute. Three answers are given. The first answer posits that the critical distinction is the *time delay*. In

51. This assumes that this activity, even if done for a well person, is only rabbinically prohibited; see note 1. There is some dispute over whether it is better to do for a Jew to do this act *kilachar yad* or to ask a Gentile to do the work directly; compare *Mishnah Berurah* 328:54 with *Shemirat Shabbat Kehilchata* 33:(17*).

93. The details of the talmudic dispute have been explained in greater detail elsewhere; see "The Use of Electricity," *supra* note 1, at 38-47.

94. See *Tosafot, Beitza* 22a; *Ma'amar Mordechai*, 514:10; *Rashba, Avodat Hakodesh Shaar* 3:3; *Ran, Shabbat* 120b; *Meiri Shabbat* 120b; *Ramo, Shulchan Aruch*, 334:22; *Maharam Shick* 157; *Yabia Omer* 1:21; *Chazon Ish* 38:2. Indirect causation is permitted in all categories of prohibited work, and not just extinguishing, in a case of need; see *Mishnah Berurah, Biur Halacha* 334:22.

95. See e.g. comments of *Magen Avraham* on *Orach Chaim* 514:3 explaining *Rosh Beitza* 22a; comments of *Karban Netanel, Beitza* 22b.

any situation in which, according to this definition, there is a clear time delay between the action and the effect, this would be classified as indirect causation.⁹⁶ The second position states that the critical factor is whether an additional force is needed to finish the action and whether that force is present at the time of human activity. Only when the additional force is not present at the time of human activity is the action considered indirect.⁹⁷ 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.⁹⁸

Modern decisors resolve this three-way dispute in different manners. Rabbi Shlomo Zalman Auerbach (*Minchat Shlomo* p.110) states that since the halacha is unclear as to which definition of indirect causation is correct, one should avoid deliberately doing a *grama* which, if prohibited, would be a biblical violation.⁹⁹ *Minchat Ahava*, a recent work by a modern Israeli decisor, seems to adopt only the second theory as normative.¹⁰⁰ Finally, Rabbi Ovadia Yosef adopts the position that the first view is to be considered normative.¹⁰¹

96. *Katav Sofer* 55; *Maharam Shick* 157; *Chazon Ish*, 38:2.

97. *Tephila LeMoshe* 2:23:3-4; Rabbi Hershel Schachter, "Maseh Vegramah Behalacha," *Beit Yosef Shaul* 1:70-72 (1985) quotes Rabbi Joseph B. Soloveitchik as agreeing with this analysis.

98. *Aruch Hashulchan* 316:11; *Chazon Ish* 38:1.

99. *Shemirat Shabbat Kehilchata* 13:25(94) appears to adopt a slightly different rule.

100. 1 *Minchat Ahava* 1:14.

101. *Yabia Omer* 3:18. This author's sense is that none of these authorities disagree that when the normal way to do an action is to do it indirectly, it is biblically prohibited on Shabbat.

All concede that reason three is correct; the question is whether any other factors are also needed. *Aruch Hashulchan* provides talmudic proof that this is true; see *Aruch Hashulchan* 316:11.

Thus, running a dishwasher on a timer on Shabbat, (where a Jew places the dishes in the dishwasher and closes the dishwasher in a way that absent this closing of the dishwasher it would not function) is normally considered rabbinically improper, unless it is a situation of financial loss, since running the dishwasher would be a causing a biblical prohibition through a *grama*.¹⁰²

Some authorities permit indirectly done work on Shabbat even absent significant financial loss if the underlying prohibition is itself only rabbinic.¹⁰³ For example, turning on or off an electrical appliance that generates no light or heat, like a fan or air conditioner, through a *grama* would normally be permitted according to these authorities.¹⁰⁴ Many authorities reject this ruling;¹⁰⁵ rather they argue that the only time indirectly-caused actions are permitted absent need is in a situation where the indirectly-caused work is also not the intended result, but only secondarily produced. This is called *pesik resha begrama*, and combines the attributes of both *pesik resha* and *grama*.¹⁰⁶

102. For a recent work that analyzes this issue (and reaches the same conclusion), see R. Yosef Yitzchak, *Mitbach Behalacha* (Microwaves and Dishwasher in Halacha), chapter 4.

103. This was first noted by *Beit Yosef, Orach Chaim* 265 (quoting from a responsum of the *Maharil* (apparently #24)). This is noted also by *Magen Avraham, Orach Chaim* 265:2 and *Machatzit Hashekel* (id.); *Yabia Omer* 3:17.

104. A dishwasher might actually be in this category also, providing the hot water used in the dishwasher can be used on Shabbat, and the dishwasher does not use a heating element to additionally boost the temperature of the water.

105. *Mishnah Berurah* 265:6; *Shulchan Aruch Harav* 265:4.

106. *Tosafot, Shabbat* 47b; *Meiri, Shabbat* 120b; R. Channanel, *Shabbat* 120b; *Rashba, Shabbat* 120b; *Ran, Shabbat* 120b; *Shulchan Aruch* 265:4; *Yabia Omer* 4:34; *Har Tzvi* 1:133, 135; *Avnei Nezer* 194; *Machazeh Eliyahu* 42:1; *Shemirat Shabbat Kehilchata* 23:(137). The rationale for

Many electrical appliances that interactively operate with their environment do so in a manner that could be classified as a *grama*. For example, many authorities rule that any form of an appliance that is controlled by a thermostat is considered to operate indirectly and thus can be manipulated indirectly on Shabbat in some circumstances.¹⁰⁷ Opening or closing a door to an air-conditioned or heated room is permissible, even if opening the door will cause hot or cold air to enter the room which will later turn the heater or air conditioner on or off prematurely.¹⁰⁸

An oven whose heating element is controlled by a thermostat may be opened or closed on Shabbat to take food out of the oven, even if that activity hastens the oven's going on or off, since the intent of the person taking out the food is not to turn the oven on or off, and the thermostat operates on a *grama*.

Four different rationales converge in this case that indicate that it is permissible to open the oven door. First, opening the door when the heating element is on is permitted by nearly all authorities, as that simply extends the time that the element will remain on, which is permissible;¹⁰⁹ second, opening the door when the element is off only unintentionally hastens the element's going on, which is a *pesik resha begrama* and normally considered permissible; third, one normally cannot tell if the element is on or off, which is a *safeik pesik resha*, which is also permissible; finally, eating hot food on Shabbat

this rule is very simple. The Sages only prohibited indirect actions lest it lead to direct actions. In a situation where the indirectly prohibited work is also unintentional, it is not prohibited; see *Avnei Nezer*, *id.*

107. For a lengthy discussion of this issue, see *Encyclopedia Talmudit*, "Electricity," 18:662-671 and "The Use of Electricity," *supra* note 1, at 43-45.

108. *Shemirat Shabbat Kehilchata* 23:21; *Minchat Yitzchak* 3:24.

109. *Minchat Shlomo*, p. 111; *Yabia Omer* 3:18.

is a form of a mitzvah itself, which might permit a *grama* alone.¹¹⁰

Numerous authorities accept that merely removing an item which impedes a prohibited action from occurring is not considered a *grama*, but rather is as if the action were done directly. Thus, if there were a vat of dye with a cork in the bottom such that if one removed the cork the dye would flow out, removing the cork so as to allow the dye to flow onto a cloth and dye it violates the biblical prohibition of dyeing on Shabbat.¹¹¹ Some authorities rule this too is a form of indirect causation.¹¹²

On the resolution of this dispute hinges the permissibility of keeping on standby – rather than turning off – many types of alarms and detection devices on Shabbat, since these devices are designed so that the presence of a person or object merely removes an impediment to a circuit; upon removal of the impediment, the alarm is sounded. In addition, many of the devices deliberately designed to work on the *grama* principle (such as the “*grama*-telephone,” marketed to physicians)¹¹³ are halachically considered items that function

110. Ramo, *Shulchan Aruch Orach Chaim*, 257:8. Some authorities counsel doing this *kilachar yad* (1 *Menuchat Ahava* 24:25) although this seems unnecessary to this author. See also text accompanying notes 52 and 38.

This same rationale allows one to intermittently refill a hot water urn with cold water on *Yom Tov*, even though the indicator light on the urn will be switched off when the water temperature falls below a particular level; since this is a *pesik resha begrama* on a rabbinic prohibition it is permissible; see *Natei Gavriel* 13:21(36).

111. *Yabia Omer*, 4:35; *Rav Pealim* 1:25; *Ish Matzliach* 35; *Har Tzvi* 134.

112. *Chatam Sofer* Y.D. 214; *Maharsham*, vol. 3 *Hashmatot* 1:44; *Chelkat Yoav Orach Chaim* 11; *Ramo, Yoreh Deah* 339:1.

113. See e.g., “What’s Up in Israel? Elevators, Thanks to a Special Institute; Engineer-Theologians Solve Conflicts of Ancient [Jewish]

as a *grama* only according to the second opinion.

Conclusion

This article has surveyed a number of different principles used by halacha that are conceptually linked in two different ways; first, they are general principles used to understand all of the prohibitions that are part of the Shabbat laws; second, they are united by their importance to modern technological developments. The relationship between technology and halacha in Shabbat observance is a complex one that requires continuous re-analysis of the relevant facts to insure that the halacha is properly observed.

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The author wishes to dedicate this article to the memory of his grandmother Debra Last Broyde (דבורה בת מתתיהו) who passed away on February 15, 1992 (י"א אדר א' תשנ"ב).

Law and Modern Technology," *Wall Street Journal*, December 3, 1990, A1 ("On a regular phone, pressing a button creates a current [circuit] – thus the problem of using energy on the Sabbath. The Sabbath telephone, however, has a continuous stream of current that the user interrupts in order to operate and dial...")

Dreams

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translated from the Hebrew by
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A dream (*chalom*) is a night vision, an apparition, a revelation¹ or a vision that a person occasionally sees in his sleep.²

Sometimes, the term "dream" is also used to describe a phenomenon without permanence, something fleeting which rapidly evaporates.³ "Dream" also refers to a strong desire which is unfulfilled⁴ or to something which is farfetched and unlikely.⁵

¹. Maimonides' *Guide for the Perplexed* 2:41 states that these names denote similar things with variations in degree. See also *Guide* 2:45 and *Mishneh Torah, Yesodei Hatorah* 7:2-3. Other scholars state that there is a fundamental difference between a dream and prophecy and these names are not all the same.

2.. Some rabbis write that the word dream (*chalom*) means health as found in Isaiah 38:16, "And you healed me (*vatachleemeini*) and made me live;" see Rabbenu Bachya on Genesis 40:9.

3.. "Like a dream which evaporates," - Job 20:8.

4.. "When a hungry man dreams, and behold, he is eating," - Isaiah 29:8.

5.. Like a dream in Asfamia, - *Niddah* 30b.

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A. Scientific Background

The study of dreams is an ancient one. People since antiquity have been agitated and fascinated by dreams and have made many attempts to explain the nature of dreams, their purpose and their interpretation.⁶

In spite of thousands of years of effort and study of the nature and interpretation of dreams, science has advanced very little in this area. The modern era of the study of dreams begins with the publication of Sigmund Freud's *The Interpretation of Dreams* in 1900.⁷ Freud claimed that all details of a dream (even the most ridiculous) have significance. In his view, various feelings and sensations which one experiences in a dream are those pushed out of consciousness because of various social prohibitions. Further, contents of dreams satisfy hidden desires. There are struggles in man's nature between intellect and impulse. During waking hours, logical tendencies predominate. During a dream, instinctive desires and experiences occur which are important to satisfy a person's needs. The approach of Freud is based more on theories and hypotheses than on scientific facts. His views were strongly opposed by many people even during his lifetime and more so nowadays in view of new scientific knowledge about the structure of dreams - knowledge which was not known to Freud.⁸

In the first half of the present century, the numerous studies of dreams were based on psychological and/or psychiatric considerations. Dreams form the basis of

6..Concerning the historical view of ancient people toward dreams and their interpretation, see S.M. Oberhelman, *Bulletin of the History of Medicine*, vol. 61, pp. 47ff, 1987; R.G.A. Lieshout, *Greeks on Dreams*, Utrecht, Hes Publishers, 1980; G.E. Von Grunebaum and R. Callois (Editors), *The Dream and Human Societies*, Berkeley, 1966; *Encyclopedia Ivrit*, Vol. 17, s.v. *chalom*, pp. 456-457.

7.. S. Freud, *Die Traumdeutung*, 1900.

8..See the section entitled "Sleep."

psychoanalytical theory. Even nowadays, some psychiatrists and psychologists believe that dreams have important significance to the dreamer. Various psychiatric theories are based on the diagnosis and treatment of the contents of dreams.

In 1953, the various stages of sleep which form the physiological basis of sleep were first identified.⁹ In that year, the stage of sleep of rapid eye movements (REM) was described as the most important stage of dreams.¹⁰ The connection between a large number of dreams and the REM stage of sleep was established in 1957.¹¹ On the other hand, some people lack this stage of sleep, lack any known dreams during sleep, yet have no functional problems.¹² During the past 50 years, dreams have been intensively studied by physiologists and others specializing in sleep disorders. There are still no clear scientific facts which prove that dreams are psychological, physiological, or a combination of both. Therefore, we still do not have a clear understanding of the nature and function of dreams nor of their genesis.

The importance and function of dreams has not yet been scientifically clarified. According to the theory put forth by Freud, the function of dreams is to release the contents of our subconscious and to transfer these contents to our consciousness. Primarily these contents are sexual in nature. Other psychoanalysts, such as Adler and Jung, theorize that dreams are important to express other contents such as aggressive tendencies or various personal desires. Other psychiatrists state that the main purpose of dreams is to forget some learned material, thereby producing "cleanliness of the head" and to

9. Ibid.

10. E. Aserinski and N. Kleitman, *Science*, Vol. 118, pp. 273-274, 1953.

11. W.C. Dement and N. Kleitman, *Journal of Experimental Psychology*, Vol. 53, pp. 339-346, 1957.

12. P. Lavie et al, *Neurology*, Vol. 34, pp. 227ff, 1984.

liberate brain energy to gather other and varied material.¹³ Yet other psychiatrists believe that the purpose of dreams is to transfer memory, temporarily stored in subcortical areas, to cortical areas in the brain where memory is stored for prolonged periods of time.¹⁴ Finally, some psychiatrists suggest a combination of the two theories, namely the transfer of memory from subcortical to cortical areas, and the simultaneous erasure of memory which was temporarily stored in those subcortical areas, for an intermediate period of time, thereby allowing a fresh collection of memories and experiences to be collected and stored.¹⁵

Some psychiatrists believe that the storage of memory in our brain is effectuated through parables. When awake, we immediately try to interpret them. During sleep, the dream is an expression of the amorphous from the memory. This matter resembles vision and learning which enter the brain and are stored as electrical impulses. Only when our brain is awake does it translate the impulses into pictures and sounds.

B. Dreams in the Bible and the Talmud

The phenomenon of dreaming seems to be a universal human experience. A number of dreams are portrayed in the Bible: the dream of Abimelech,¹⁶ the dreams of Jacob,¹⁷ of Laban the Aramean,¹⁸ the dreams of Joseph,¹⁹ and of the butler and

13. F. Crick and G. Mitchison, *Nature*, Vol. 304, pp. 111, ff, 1983; J.J. Hopfield et al, *Nature*, Vol. 304, pp. 158, ff, 1983.

14. The hippocampus (in the brain) is here referred to since it is thought to be the source of dreams.

15. C.P. Maurizi, *Medical Hypotheses*, Vol. 23, pp. 433 ff., 1987.

16. "And G-d came to Abimelech in a dream by night," Genesis 20:3.

17. "And he dreamed, and behold a ladder set up on the earth," Genesis 28:12; "I lifted up mine eyes and saw in a dream," Genesis 31:10.

18. Genesis 31:24.

the baker,²⁰ the dreams of Pharaoh,²¹ of the two Midianites about Gideon,²² of Solomon,²³ of Nebuchadnezzar,²⁴ and the dream of Daniel.²⁵

The interpretations of all these dreams are described in the Bible except for the first dream of Jacob, about the ladder whose top reached up to heaven.²⁶

Dreams and dreaming are often discussed in the Talmud, but their ultimate significance is debatable. "Dreams are hidden and concealed things, and their purpose is concealed from human beings."²⁷ "In the matter of dream interpretation there are nostrums or concealed things. Their purpose has not been revealed to us."²⁸ Thus, in the Torah and the Talmud we find statements and opinions which indicate that dreams have no significance, are not true, are not fulfilled, and only represent deceptions of one's imagination for a variety of reasons. On the other hand, we also find statements which indicate that dreams are significant in telling us about the future and in

19. "And Joseph dreamed a dream," Genesis 37:5; "And he dreamed another dream," Genesis 37:9. See *Chizkuni's* commentary there which says that Joseph had another dream which was not fulfilled and is therefore not recorded.

20. "And they dreamed a dream, both of them," Genesis 40:5.

21. "And Pharaoh awoke and, behold, it was a dream," Genesis 41:7.

22. "Behold, a man told a dream unto his fellow," Judges 7:13.

23. "The Lord appeared to Solomon in a dream by night," I Kings 3:5.

24. "And Nebuchadnezzar dreamed dreams," Daniel 2:1.

25. "Daniel had a dream," - Daniel 7:1.

26. See *Torah Sheleimah*, Genesis, Chapter 28:70 in the name of *Lekach Tov*.

27. Responsa *Shivat Tzion* #52.

28. Responsa *Rashba* attributed to *Ramban* #287; Responsa *Rashba*, Part 1 #800.

establishing Jewish law or ethical conduct. Some dreams are completely true and correct, while others are at least partially correct. There are also numerous conflicting opinions in Jewish writings about the origins and purposes of dreams, as discussed below.

Confirmed dreams which have significance and which can be used to determine a halacha or a custom are called "true dreams."²⁹ By contrast, dreams which are insignificant or meaningless are called false dreams³⁰ or vain dreams.³¹

Our rabbis apparently considered that true dreams can be significant and meaningful. Examples include the dreams cited in Scriptures,³² which have true prophetic meaning, and the dreams cited in the Talmud whose forecasts become established according to the contents of the dreams.³³ The laws about voiding a bad dream, fasting for bad dreams, and excommunication³⁴ testify to the various meanings our rabbis attributed to dreams. Other mentions of dreams as authentic harbingers of some kind of divine message include "If there be a prophet among you ...I will speak to him in a dream;"³⁵ "And when Saul inquired the Lord... neither by dreams..."³⁶ "a dream is one sixtieth part of prophecy;"³⁷ "the Lord said: Although I hide My face from them, I shall speak to them in

29. For example *Kuzari*, Treatise 3:53; Responsa *Tashbatz*, Part 2 #128.

30. Zachariah 10:2.

31. Ecclesiastes 5:6.

32. See above in section B.

33. See above in section C.

34. See below in the section on Specific Laws.

35. Numbers 12:6.

36. I Samuel 28:6.

37. *Berachot* 57b; *Zohar*, part 1, pp. 149a and 238a, Part 3, pp. 222b and 234b. See *Maharsha*, *Berachot* 57b and *Maharatz Chayot*, *Sotah* 5a for an explanation of "one sixtieth" in this context.

a dream;"³⁸ "unripe prophecy is a dream."³⁹ "Three types of dreams are fulfilled: an early morning dream, a dream which a friend has about one, and a dream which is interpreted in the midst of a dream. Some also add, a dream which is repeated."⁴⁰ "Every dream just before morning is fulfilled immediately."⁴¹ "Nowadays, there is no prophecy nor voice from heaven, but people still have dreams."⁴²

Some rabbinic dicta suggest that a dream should not be understood as totally meaningful and true. However, it may be partially meaningful, as stated in the Talmud: "Just as wheat cannot be without straw, so there cannot be a dream without some nonsense."⁴³ Kabbalists hold that although part of a dream is fulfilled, the whole of it is not fulfilled.⁴⁴ And

38. *Chagigah* 5b.

39. *Genesis Rabbah* 44:19. See the differing explanations of this phrase in Maimonides' *Guide* 2:36 and Abarbanel there at the end of the chapter in the third introduction.

40. *Berachot* 55b. Ramban, *Genesis* 41:7 states that a dream during sleep following an earlier dream with a different content is not sustained. See M. Spero's *Judaism and Psychology*, New York, Ktav, 1980, pp. 107-108 for a scientific psychological explanation of this verse.

41. *Genesis Rabbah* 89:6.

42. *Zohar*, *Genesis*, p. 238b. Some sources provide additional signs validating dreams over and above those cited in the Talmud. For example *Chafetz Chayim* #88 and *Responsa Yad Eliyahu* #32 write that Sabbath dreams are true because of the extra Sabbath spirit one experiences; *Responsa Meshivat Nefesh*, Part 1 #30, states that if one hears G-d's name in any language the dream is true; *Minchat Yehuda*, *Miketz* states that if one hears one's name called to accept a Torah honor the dream is true; Abarbanel and Malbim *Miketz* say that excitement from a dream means it is a true dream.

43. *Berachot* 55a. Rashi, *Genesis* 37:10 and *Zohar*, *Genesis*, p. 183a state that there is no dream without some falsity mixed in.

44. *Berachot* 55a. See *Torah Shelemah*, *Genesis*, Chap. 37:80 for the various textual readings of this adage.

while not all of a good dream is fulfilled, neither is all of a bad dream fulfilled.⁴⁵ Some dreams are totally true and some contain both truth and falseness.⁴⁶

These elusive, sometimes contradictory, opinions regarding the validity of a dream sequence and its possible relevance reflect the wide range of rabbinic positions regarding the importance one ought to ascribe to a dream.

Clearly, there is a difference between the dreams of true prophets, which are meaningful and represent an expression of prophecy, and the usual dreams of ordinary people. The latter dreams are the ones whose content, function, and significance are discussed in the Talmud and by the rabbis, to probe to what extent they may be meaningful.

Rabbinic decisors employ a variety of approaches to reconcile the apparent contradictions in talmudic teachings about dream interpretation and to explain the origins of dreams and their significance. Some rabbis write that there is an essential identity between a dream and prophecy - the difference between them is only quantitative.

A dream originates in the imaginative faculty of the soul. What a person perceives in a dream are concepts which he already had and whose impressions remain engraved in his imagination together with all his powers of imagination. When any idea becomes nullified, only those impressions remain. According to this view, there are various levels of prophetic experience; a prophet's dreams represent certain stages of prophecy. The prophetic dream levels are a dream in which the prophet sees an allegory, a dream in which the prophet hears things, a dream in which the prophet is addressed by an angel, a dream in which it appears to the

45. *Berachot* 55a.

46. Maimonides' *Guide* 2:36-38. See also *Zohar, Vayechi* p. 238a, *Pikudei* p258a and *Pinchas*, p. 222b, who seems to agree with Maimonides.

prophet as if G-d spoke to him.⁴⁷ Consequently, some rabbis describe true dreams as a "minor prophecy."⁴⁸

By contrast, other rabbis believe that there is a substantive difference between a dream and prophecy and that the similarity between them is only external. For a dream is derived from the individual human imaginative faculty according to his own expressed characteristics and the constitution of his body, whereas prophecy comes from divine revelation from above.⁴⁹

Whether the difference between prophecy and a dream is qualitative or quantitative, apparently most rabbinic decisors and commentators believe that the majority of dreams originate from an imaginative faculty which is not healthy, or from a physical reason such as the digestion of food which produces gases in the brain, or from weakness of the body constitution which allows alterations in the body humors, or from provincial expressions and thoughts during the course of the day. A dream is the revelation of disorganized thoughts that are suppressed during waking hours and released during sleep. Such dreams are vain, have no meaning, and have no effect one way or the other. One should pay no attention to them.⁵⁰ Even if something in the dream is true, it is a very small part of the dream. Prophecy, however, is completely true, without any falseness at all.⁵¹

47. Maimonides' *Guide* 2:45. See also Ralbag's *Milchamot Hashem*, Treatise 2; Rabbi H. Creskas' *Or Hashem*, Treatise 2, rule 4, Chap. 3.

48. Rabbenu Bachya, Genesis 41:1.

49. Abarbanel's commentary on Maimonides' *Guide*, end of Chap. 36, third introduction; see there for the difference of opinion between Abarbanel and Maimonides concerning the explanations of scriptural and talmudic statements about the essence of dreams.

50. Abarbanel, Genesis 40:24 and beginning of *Miketz*; Rabbenu Bachya, Genesis 41:1; Responsa *Tashbatz*, Part 2 #128; *Radak*, Jeremiah 23:28; Responsa *Shivat Tzion* #52.

51. *Radak*, Jeremiah 23:28.

The rabbis also maintain that although the imaginative faculty is in part correct, much worthless material is contained therein,⁵² and consequently most dreams are useless things. Even "true dreams," which derive from prophecy and intellect, also contain useless things.⁵³ Some rabbis write that a dream can only contain a true or prophetic matter if it pertains to the future; if it relates to the past, however, it is considered meaningless.⁵⁴ Similarly, some rabbis write that whether a person dreams about himself or another person dreams about him, the contents of dreams have no effect one way or another. This is a general rule for all dreams.⁵⁵

There is, however, a very small minority of dreams which are true and correct and which have no relationship to physical causes but occur due to strength of the soul. If the imaginative faculty in a person is very strong and healthy, dreams can be a teaching from heaven, - "a small prophecy," one sixtieth part" of prophecy.⁵⁶

Despite the ephemeral nature of the dream experience, Jewish thinking is not quite ready to discount these experiences altogether. Thus, halacha (law) and *hashkafa* (philosophy) do address the issue.

Certain general principles apply to the validity of dreams from a halachic viewpoint. Most dreams are considered of questionable validity and therefore, in monetary matters, the doubt is resolved leniently - money is not taken from one person and given to another merely on the basis of a dream, but only upon clear and convincing evidence. However, in matters of what is permitted or forbidden, the doubt as to the dream's importance is resolved stringently, and one must be concerned

52. Meiri, *Sanhedrin* 30a.

53. *Levush Orah* in *Levushim*, Vayeshev.

54. Responsa *Shivat Tzion* #52; Responsa *Beer Moshe*, Part 3 #170.

55. Responsa *Tashbatz*, Part 2 #128.

56. Abarbanel, beginning of *Miketz*; Rabbenu Bachya, Genesis 41:1; Responsa *Shivat Tzion* #52.

about the contents of the dream.⁵⁷ Some rabbis, however, rule that even in such matters one need not be concerned with a dream because dreams have no effect one way or another.⁵⁸

In general, Jewish law follows the rule of the majority and considers most dreams as meaningless. However, in matters of danger to life, the law does not follow the rule of the majority. There is concern even for a minority circumstance. Therefore, a dream whose contents deal with danger to life is of concern.⁵⁹

In matters which are not contrary to Jewish law, one should be concerned about the contents of a dream. For example, if one dreams that raging troubles will occur to the general populace, one should pay attention thereto, fast, and do penitence. However, if the dream indicates that one should nullify biblical or even rabbinic commandments, one is not allowed to heed the dream.

In halachic literature, there is a difference of opinion among rabbinic decisors whether or not a scholar is allowed to inquire in a dream about a halachic decision, and whether, if he saw the answer to a halachic question in a dream, he should pay attention to it. In biblical times dreams were frequently consulted, and some rabbis note that talmudic sages at times inquired of dreams.⁶⁰ A number of early rabbinic

57. Responsa *Tashbatz*, Part 2 #128; *Haamek She'ela*, *Sheilta* 29:15 according to *Tashbatz*; *Yad Malachi*, general laws, section *dalet* #167 in the name of *Maavar Yabok* in his introduction; *Sedei Chemed*, section *dalet*, rule 45. See also Responsa *Rav Pealim*, Part 2, *Yoreh Deah* #32 and Responsa *Chayim Beyad* #92.

58. Novellae *Ran Sanhedrin* 30a; *Haamek She'ela*, loc. cit. See also Responsa *Shivat Tzion* #52.

59. *Nechmad Lemareh*, Part 1, p. 171; Responsa *Chikrei Lev*, *Choshen Mishpat*, *Prat* 1 #118; Responsa *Shivat Tzion* #52. See also *Sedei Chemed*, section *dalet*, rule 45.

60. *Baba Metzia* 107b states that Rav went to the cemetery and did what he did. *Rach* and *Shitah Mekubetzet* there and *Aruch*, s.v.

decisors affirm that in dreams they saw answers to and interpretations of halachic questions.⁶¹ Rabbi Yaakov from Marvish, one of the Tosafists,⁶² inquired in dreams about

avad (2) explain that Rav did so by consulting a dream. *Baba Metzia* 147a and *Menachot* 67a state, "Rava said: may it be Thy will that I see it in a dream;" *Berachot* 18b cites the story of a pious man which Maharsha there explains refers to the fact that he consulted a dream. *Yerushalmi Kilayim* 9:3 cites an incident involving Rabbi Jose who fasted for 80 days in order to see Rabbi Chiyah the Great in his dream. See also the introduction to the Talmud of *Maharatz Chayot*, Chap. 28 in the name of *Kaftor Vaferach*.

61. Responsa *Maimoniyot* to *Kinyan* #31 in the name of Maharam of Rottenberg concerning an ill teacher; *Ravan* #26 and Mordechai, *Avodah Zarah* Chap. 5 #858 concerning a vessel of wine of libation; *Semag*, negative precept #64 (cited in Migdal Oz, *Hilchot Deot* 2:3); Responsa *Tashbatz*, Part 2 #159 concerning an abdominal wound; *Hagah*, *Avodah Zarah* #41 in the name of Rabbi Ephraim concerning a fish; Mordechai, *Baba Kamma*, beginning of Chap. 5 concerning the payment of workers; *Bet Joseph*, *Orach Chayim* 651 in the name of Rakenati concerning the apposition of the *etrog* to the *lulav*; Responsa *Radvaz*, Part 6 #2286 concerning phylacteries of *Rashi* and *Rabbenu Tam*; *Taz*, *Even Haezer* 129:35 in the name of *Or Zarua* concerning the name Akiba; Rabbi Chayim ben Itar's *Peri To'ar* #85 concerning locusts. Responsa *Chayim Beyad* #92 cites *Avodat Mikdash* authored by Rabbi Menachem di Lonzano who wrote his book on the basis of a dream in 1572. Concerning additional dreams of early rabbinic decisors (*Rishonim*) which clarified and established halacha, see the introduction of Rabbi R. Margoliot to Responsa *Min Hashamayim*. Concerning dreams of later rabbinic decisors (*Acharonim*), see *Taz*, *Orach Chayim*, end of 585 and 551:14; *Taz*, *Choshen Mishpat*, end of 88; Chidah in *Midbar Kademot*, section 20:8; Rabbi A.Z. Margoliot's *Yad Ephraim*, *Orach Chayim* 692; Rabbi J.S. Nathanson's *Divrei Shaul*, Genesis, p. 31. Responsa *Maharsham*, Part 1 #29. Margoliot, loc. cit. also cites dreams of medieval poets which inspired them to write liturgical prayers and poetry.

62. Some writers identify him as Rabbi Jacob of Corbeil whereas others dispute this identification. See Margoliot, loc. cit. and A.A. Auerbach, *Baale Hatosafot*, p. 129.

legal questions and disseminated the questions and divine answers in his book.⁶³

By contrast, some rabbis write that a person should refrain from asking in a dream which woman to marry and in which business undertaking he might succeed.⁶⁴ Although some later rabbinic decisors accept as authoritative the content of dreams which revealed Jewish law to them,⁶⁵ most rabbis reject his view. Dreams should have no effect one way or another, for the Torah is "not in the heavens," and a dream is "fleeting and without substance."⁶⁶

63. See about him in Responsa *Radvaz*, Part 1 #10 and Part 2, end of #340; Chidah's *Shem Hagedolim*, section *gedolim* 10:224; Margoliot, *loc. cit.* However, see *Shibolei Haleket* #157 who dismisses the use of dreams for practical purposes since the Torah is not in heaven and dreams are of no effect one way or another. This author is responded to by Responsa *Yabia Omer*, Part 1, *Orach Chayim* #41:25.

64. *Sefer Chasidim* #205, 469 and 1173. He bases his opinion on Deuteronomy 18:13, "Thou shalt be perfect with the Lord, thy G-d." See Y. Pacha, *Techumin*, Vol. 5, 5744 (1984) pp. 402ff who explains *Sefer Chasidim* as giving good advice but not enunciating a prohibition.

65. Chidah in *Yair Ozen*, Part 1 #15 and *Shem Hagedolim* *loc. cit.*, states that, according to Maimonides, if a prophet asserts that it was revealed to him in a dream that the opinion of such and such a rabbi is the correct one, he is strangled as a false prophet. This rule applies if the Sages of that generation can decide the matter. However, if the Sages disagree among themselves, it is allowed to ask that heaven reveal the correct rule and to abide by the answer received in a dream.

66. *Shach*, *Choshen Mishpat* 333:25 speaks of the dream of Maharam of Rottenberg about the law of the sick teacher. Responsa *Noda Biyehuda*, 2nd edition, *Yoreh Deah* #30 describes the dream of Rabbenu Ephraim about the *barbuta* fish; *Yafeh Lalev*, Part 2, last *kuntres* #269; Responsa *Maharshag*, Part 2 #40; Responsa *Torah Jekutiel*, *Orach Chayim* #31; *Artzot Hachayim* #9:21. Responsa *Chayim Beyad* #31 writes that nowadays it is forbidden to inquire about a dream in order to predict the future concerning normal matters. See *Sedei Chemed*, Section *dalet*, rule 45. Concerning the method of inquiring about a dream,

However, books and treatises have been written attempting to interpret various dreams, according to the view that dreams do have significance and one should pay attention to their contents.

C. Specific Laws

Since by their very nature it is very difficult to determine whether a person's dreams are nonsense or should be taken seriously, Jewish law and literature reflect a cautious approach, based on the possibility that the dream might indeed carry a portent.⁶⁷

see *Sefer Razi'el*, cited in Ibn Ezra, Exodus 14:19. See also Margoliot's introduction to *Responsa Min Hashamayim* who cites many sources concerning inquiring of a dream and what to do with answers received. See also the introduction to *Responsa Min Hashamayim* by the author of *Keset Sofer* who writes that since the time of Baal Shem Tov there is no inquiring of dreams because he nullified this practice.

In a similar way, some rabbis discuss whether or not a legal ruling which comes from "holy spirit" should be given credence. See for example Ravad's commentary on Maimonides' *Mishneh Torah*, *Lulav* 8:5, *Bet Habechirah* 6:14 and *Mishkav Umoshav* 7:7. In his book *Baale Nefesh*, end of *Shaar Hamayim*, Ravad says "thus was shown to me from heaven." Ramban disagrees with Ravad; See Chidah's *Devash Lepi*, section *nun* #12. See also Rabbi Joseph Karo's *Magid Mesharim* and Rabbi Moshe Chayim Luzzato's *Megilat Setarim*, *Razin Genizin* and *Tikonim Chadashim*. In the introduction to his *Safra Detzianuta*, Rabbi Chaim of Volozhin writes that many orators came to the Vilna Gaon from heaven and tried to give him legal rulings effortlessly but he refused because he wanted to "work" at the study of Torah. See further about "holy spirit," "voice from heaven," and "Elijah's Clarification" in Margoliot's introduction to *Responsa Min Hashamayim*.

⁶⁷. *Mifashar Chalmin* authored by Shlomo Almoli (1490-1542), published in 1516. In the introduction, Almoli writes that Rav Hai Gaon composed essays on dream interpretation. Some writers state that Rashi and Rav Saadya Gaon also wrote treatises on dream interpretation; the latter's is entitled *Magid Atidot*. Recently a book entitled *Pitron Chalomot Hashalem* ("Complete Book of Dream

"Neutralizing" a Bad Dream

On going to bed one recites the prayer "Who causes the bands of sleep to fall upon my eyes" (*hamapil*), part of which includes "and let not evil dreams and evil thoughts disturb me."⁶⁸

The way to "neutralize" a bad dream is as follows: if one has a dream which makes one sad, even if it contains nothing bad but only makes him sad,⁶⁹ he should have a "good turn" given to it in the presence of three people. Let him go to three of his friends and say to them, "I have seen a good dream". And they should say to him, "Good it is and good may it be. May the Holy One, blessed be He, turn it to good. Seven times may it be decreed from heaven that it should be good and may it be good." They should then say three verses in which G-d promises to turn bad to good, three verses with the word redemption and three verses with the word place.⁷⁰ Some sources interpret the "seven times may it be decreed"...

Interpretation") was published in 1965 by Meyer Bakal.

The Greeks and Romans also wrote many books on this topic; these are called *oneirocritica*. Some are attributed to physicians, others to philosophers. See S.M. Oberhelman, *Bulletin of the History of Medicine*, Vol. 61, pp. 47ff, 1987.

68. *Berachot* 60b; Maimonides *Mishneh Torah*, *Tefilah* 7:1. See also *Berachot* 55b and *Sanhedrin* 103a which interprets "There shall no evil befall thee" (Psalms 91:10) to mean that thou wilt not be frightened by nightmares and dread thoughts.

69. *Derisha*, *Orach Chayim*, beginning of #220; *Peri Megadim*, *Orach Chayim* 202, in *Aishel Avraham* 1; *Mishnah Berurah* 202:1.

70. *Berachot* 55b; *Rosh*, *Berachot*, Chap. 9 #5; *Tur*, *Shulchan Aruch*, *Orach Chayim* 220:1. Alfasi and Maimonides omit this law from their codes. *Yad Hamelech*, *Hilchot Tefilah* and *Maharatz Chayot*, *Berachot* 55b explain that Maimonides omits from his *Mishneh Torah* all laws pertaining to the neutralization of bad dreams and the "Sovereign of the Universe" prayer recited in the priestly blessing. He also omits all the portrayals of dreams and their interpretations cited in the Talmud.

to be part of the text of the incantation.⁷¹ In this view, the entire incantation is recited three times.⁷² Other rabbis state that this sentence is not part of the text of the incantation. Rather, the incantation should be recited seven times and one should respond "Amen" after it seven times.⁷³

During the "neutralization" one should remember the dream in one's mind.⁷⁴ One rabbi states that the dreamer should describe his dream to the three people, who should then "interpret" it for good.⁷⁵ The time to perform the neutralization ritual, according to some rabbis, is at the end of the day after one leaves the synagogue;⁷⁶ other rabbis suggest that morning is the proper time.⁷⁷

In general, the rabbis advise people not to pay attention to dreams because most are meaningless. However, if he is sad and anxious about a dream, he should perform the neutralization ritual.⁷⁸

The Talmud advises that if a person had a dream but does not remember what he saw, (whether he cannot remember whether it was good or bad or whether he entirely forgot the dream), let him stand before the *Kohanim* when they raise their hands to offer the priestly benediction and offer a prayer that the dream have a good outcome.⁷⁹

71. Tosafot, *Berachot* 55b, s.v. *sheva*, 1st explanation; Meiri, *Berachot* 55b.

72. Ri in Tosafot, loc. cit; Magen Avraham, *Orach Chayim* 220:2.

73. Tosafot, loc. cit, 2nd explanation; Tur, *Orach Chayim* 220 state that this is the custom. See other explanations in the *Encyclopedia Talmudit*, Vol. 8, s.v. *hatavat chalom*, p. 754.

74. Magen Abraham, *Orach Chayim* 220:1.

75. Meiri, *Berachot* 55b.

76. Derisha, *Orach Chayim* 220.

77. Magen Avraham 220:2 in the name of Shalah.

78. Aruch Hashulchan, *Orach Chayim* 220:4.

79. "Sovereign of the Universe, I am Thine and my dreams are

In Israel, where the *Kohanim* bless the people daily, one does not recite this prayer every day but only if he had a dream the night before.⁸⁰ In countries where the priests offer the priestly benediction only on Jewish Holidays, it is customary for the entire congregation to recite this prayer during the priestly benediction - even the people who did not dream.⁸¹

Fasting On Account of a Bad Dream

Halachic literature indicates that a person who experiences a bad dream should fast the next day, because fasting is as potent against a dream as fire against tow.⁸²

It is permissible to fast on account of a bad dream, even on the Sabbath,⁸³ but he must afterward observe the next day of

Thine. I have dreamt a dream and I do not know what it is. Whether I dreamt about myself or my companions dreamt about me or I dreamt about others, if they are good dreams, confirm them and reinforce them like the dreams of Joseph. If they require a remedy, heal them, as the waters of Marah were healed by Moses our teacher, and as Miriam was healed of her leprosy, and Hezekiah of his sickness, and the waters of Jericho by Elisha. As Thou didst turn the curse of the wicked Balaam into a blessing, so turn all my dreams into something good for me." The Jerusalem Talmud, *Berachot* 5:1, has a different textual reading: "...may all the dreams that I dreamt this night or on other nights, whether I dreamt them or others dreamt about me - if they are good dreams, confirm them for me for happiness, rejoicing, blessing and life. ..."

80. *Taz and Magen Avraham* 130:1.

81. *Mishnah Berurah* 130:1. The reason is that it is nearly impossible that a person does not dream at least once between one holiday and the next.

82. *Shabbat* 11a; *Taanit* 12b; *Genesis Rabbah* 44:15. See also *Responsa Or Zarua* #407 and *Birkei Joseph, Orach Chayim* 288 who write that the reason is possible danger to life. By contrast, Maimonides, in his *Mishneh Torah, Taanyot* 1:12 writes that the reason is that he should examine his deeds and do penitence.

83. See *Otzar Hageonim* on *Berachot* 30a in the name of Rav Hai

fasting in penance for having failed to make the Sabbath a delight.⁸⁴ If one is weak and unable to fast on two consecutive days, he should fast on another day.⁸⁵ Some rabbis, however, rule that one should not fast on the Sabbath on account of a bad dream unless he saw that dream three times.⁸⁶ Others rule that nowadays one should not fast on the Sabbath at all on account of a bad dream because we are not experts on dream interpretation to know which dream is good and which is bad.

It is commonly stated in ancient books that for three types of dreams one should fast on the Sabbath: If one sees a Scroll of the law (*Sefer Torah*) burning,⁸⁷ or if one sees Yom Kippur at the time of the late afternoon service, or if one sees the walls of one's house or one's teeth falling out. Other types of dreams are sometimes included in this list.⁸⁸ Some rabbis rule that one should not fast on the Sabbath for any of the aforementioned occurrences but should fast two weekdays, one on account of the bad dream and the other to compensate for the Sabbath.⁸⁹ In any event, one should not fast on the Sabbath

Gaon that a person has no greater pleasure than fasting on account of a bad dream in order to have the evil decree annulled.

84. Tosafot, *Nazir* 2b, s.v. *ve'amei* states that it is meritorious to neutralize the dream on the Sabbath but it is sinful to fast on the Sabbath. Therefore, one should make up the fast on another day. See also *Sheiltot* #1; *Meshech Chochmah*, Numbers 6:14.

85. *Berachot* 31b; Maimonides' *Mishneh Torah*, *Taaniyot* 1:12; *Tur*, *Shulchan Aruch*, *Orach Chayim* 288:4.

86. *Tur*, *Shulchan Aruch*, *Orach Chayim* 288:5. See Rabbi H. Plagi's *Chafetz Chaim* #88 which states that if a dream is repeated, it is fulfilled.

87. According to *Mishnah Berurah* 288:16, this rule only applies if one sees a Scroll of the Law or phylacteries burning but not if they are seen falling on the ground.

88. *Shulchan Aruch*, *Orach Chayim* 228:5.

89. *Shelah*, *Shabbat*, Part 2, p.i 85. See also *Shaar Hatzion* 288:15.

unless fasting gives him pleasure; for example, if he is very sad, fasting may give him peace of mind.⁹⁰

While some rabbis minimize the need to fast for a bad dream, others seem to feel that it is important to do so - both for the individual personally or even for the benefit of the community.

Vows in a Dream

What if a person in his dream swore to do something, or vowed not to perform a certain act?

Some rabbis rule that the oath does not require cancellation (*hatarah*, literally: regret)⁹¹ whereas others rule that it does.⁹² Some rabbis even maintain that a vow made in a dream is more stringent than one made while awake and therefore requires ten persons to cancel it.⁹³ Some rabbis rule that a husband cannot nullify his wife's vow⁹⁴ made in her dream, but that she needs ten people to cancel it.⁹⁵ Other rabbis however, rule that the law in regard to a woman's vow is the same whether it occurs in a dream or while awake.⁹⁶

90. *Mishnah Berurah* 288:15.

91. Ran, *Nedarim* 8b; Responsa *Rosh* 8:11; Tur, *Yoreh Deah* 210 in the name of Rosh; *Shulchan Aruch*, *Yoreh Deah* 210:2, the first opinion; Maharal, cited in *Taz*, *Yoreh Deah* 210:4.

92. Responsa *Rashba*, Part 1 #668, and in the name of *Teshuvat Geonim*; Responsa *Rashba* attributed to Ramban #265; *Nimukei Joseph*, *Nedarim* 8b in the name of Ritva; *Shulchan Aruch*, *Yoreh Deah* 210:2 in the name of "some say." See also Responsa *Tashbatz*, Part 2 #128; Responsa *Shemesh Tzedakah*, *Yoreh Deah* #5; Responsa *Shivat Tzion* #52; *Torah Sheleimah*, Genesis, Chap. 37:80.

93. This is the opinion of the *Geonim* as cited in Responsa *Rashba*, *loc. cit*; see also *Taz*, *Yoreh Deah* 210:4.

94. As he can in ordinary circumstances.

95. *Bach*, *Yoreh Deah* 210; *Shach*, *Yoreh Deah* 210:4; Responsa *Bet Yehuda*, *Yoreh Deah* #8.

96. *Taz*, *Yoreh Deah* 210:4.

Some rabbis write that one need be concerned only with obligatory vows made in a dream but not with vows which are only made as a sign of piety and asceticism.⁹⁷ Interestingly, some rabbis rule that if a person swears or vows in a dream to fulfill a commandment, he is obligated to do so, such as if he vows in a dream to write a Scroll of the Law,⁹⁸.

Monetary Matters in a Dream

The Gemara talks about a person who was distressed over some money which his father had left him but whose location was not disclosed. In a dream the specific amount and its location were disclosed to him - and also the fact that it was money for the redemption of second tithe. On that occasion, the rabbis ruled that dreams do not matter one way or the other and the money was not considered tithe money and could be used by him for any purpose.⁹⁹ The same rule applies if a person was told in his dream that the money belongs to so-and-so; even if it was given for safekeeping to his father, he can keep it.¹⁰⁰ So, too, if he was told in the dream that so much is earmarked for charity, he can keep it.¹⁰¹ The rabbis explain that one cannot rely on a dream to remove money from

97. Responsa *Chatam Sofer*, *Yoreh Deah* #222. See also Responsa *Beer Moshe*, Part 3 #170.

98. Responsa *Radvaz*, Part 4 #1170. See also *Pitchei Teshuva*, *Yoreh Deah* 210:2-3; Responsa *Beer Moshe*, Part 3 #169.

99. *Sanhedrin* 30a; Maimonides *Mishneh Torah*, *Maaser Sheni* 6:6 and *Zechiya Umatana* 10:7; *Tur*, *Shulchan Aruch*, *Choshen Mishpat* 255:9. The reason given is that although what he sees in his dream is true, he is being made to suffer through the dream for his sins; alternatively only part of the dream may be true - *Sheiltot*, *Sheilta* #29; Meiri, *Sanhedrin* 30a; *Magid Mishneh*, *Zechiya Umatana* 10:7. See also Responsa *Shivat Tzion* #52.

100. *Sheiltot*, loc cit; Rif, *Sanhedrin* 30a; Maimonides, loc cit; *Tur*, loc cit.

101. *Sheiltot*, loc cit; Ramo, *Yoreh Deah* 259:6.

the person who is in possession of it.¹⁰² It matters not whether or not he is distressed; in every instance, these dreams are of no significance.¹⁰³

Some rabbis write that the principle that dreams are of no effect applies only in regard to commandments. But if one dreams about a deceased person and his indignity, one should pay attention to the dream.¹⁰⁴ The aforementioned applies, however, only within thirty days of the death of a relative. Later than that, one pays no attention to the dream.¹⁰⁵

If a physician is prepared to prescribe a medication for a patient but is warned in a dream not to do so because the patient might die - if he is in doubt about that medication, he should not prescribe it. If he is sure it will not harm the patient, he should pay no attention to the dream. If he is in doubt but another physician is not in doubt, the second one should pay no attention to his friend's dream.¹⁰⁶

The various rabbinic teachings cited herein hardly offer a concrete or coherent approach toward the question of the relative importance one should ascribe to a dream. Dreams are evanescent, and the laws pertaining to them seem similarly obscure. If a person is troubled by a dream experience, it would appear to be prudent to consult a Torah scholar wise in the depths of this deep issue, in order to receive direction and guidance on the proper reaction.

102..Responsa *Tashbatz*, Part 2 #128. See also Mordechai, *Baba Batra* #658.

103..See *Yerushalmi Maaser Sheni* 4:6; *Haamek Sheelah*, *Sheilta* #29; *Torah Shelemah*, Genesis, Chap. 37:80; *Encyclopedia Talmudit*, Vol. 7, p. 86.

104..*Sefer Chasidim* #727. See also *Ikrei Hadat*, *Yoreh Deah* #38:5; *Yad Malachi*, *Kelalei Hadinim* #166.

105.. Responsa *Shevut Yaakov*, Part 2 #103; *Sedei Chemed*, section *dalet* #45.

106..*Sedei Chemed*, loc. cit. in the name of *Yad Neeman*. See also Responsa *Beer Moshe*, Part 3 #173.

To The Editor

Your Succot issue (Fall 1990) included a scholarly review by Dr. Rosner on the profound influence of Rabbi Moshe Feinstein on medical halacha. As a *talmid* of the Rosh Yeshiva zt"l and as a clinician, I was impressed by Dr. Rosner's commemoration of the singular role that this giant among *poskim* served in availing guidance and inspiration to those who sought his help. I recalled an incident some fifteen years ago when, while doing a fellowship, I was approached by the Chief of Neurology at the hospital, a man who was Jewish but not observant. The doctor overheard me mention that I had studied in the Yeshiva of Rabbi Feinstein and proceeded to relate how he had had an encounter many years earlier in New York and had never forgotten the blend of intensity, perceptiveness, and warmth generated by the Rabbi in investigating a question of critical nature. As Dr. Rosner states (p. 75), Rabbi Feinstein "left us many legacies" and this one, his ability to relate to all people and to leave such an impression, is certainly one more quality that those of us involved with patient care can emulate.

In the section on Psychiatry (pp. 63-64), Dr. Rosner writes that "Rabbi Feinstein expresses disapproval of hypnosis in general but permits it for medical purposes." It is noteworthy that others have not inferred such disapproval from this responsum.¹

As a caveat to Dr. Rosner's statement, however, I have observed elsewhere (Fox, D. "Mind/Body, Brain/Soul: Halachic Explorations of Hypnotic Trance Phenomena," invited address to the Third International Conference on Orthodox Psychotherapy, May 20, 1990, Forest Hills, New York, Association of Orthodox Jewish Scientists) that in fact, there are two well-known responsa where Rabbi Feinstein addresses the question of hypnosis. In the more recently published one (1981) cited by Dr. Rosner (I believe that there is an editorial error here; your journal cites "Ibid., Part 3 no. 44" referring to *Iggerot Moshe Orach Chayim* when in actuality the responsum is found in *Yoreh Deah*, part 3 no. 449), Rabbi

1. viz. Spero, M.H. "Handbook of Psychotherapy & Jewish Ethics", New York: Feldheim, 1986: 116n.

Feinstein includes the concern of self-disgrace (*zilzul*) regarding non-therapeutic hypnosis. He also qualifies with the concern that therapy not be administered by one likely to lead the patient away from Torah.

In the responsum published earlier (1973, *Yoreh Deah* 2, no. 29), Rabbi Feinstein did not include these concerns and seemed rather to permit hypnosis without stipulation (although it is reasonable to assume that the latter concern would hold as per the Rosh Yeshiva's general principle that psychological therapies require a therapist with Torah-compatible values [*Iggerot Moshe*, *Yoreh Deah* 2, no. 57]). The concern regarding a possible slight to the dignity of one under hypnosis, though, is not mentioned in the first responsum.

In a forthcoming article, (Fox, D. "Halachic Explorations of Hypnotic Trance Phenomena," *Journal of Psychology and Judaism*, Summer, 1992), I suggest that there may be some historical variables of significance in understanding the focus of these two responsa. In reality, the second responsum was written first (it is dated 1954) whereas the first one to be published was written later (it is dated 1972). In the chronologically older responsum, Rabbi Feinstein states that he formulated his decision after consulting with some "who know a little bit about it and also with Rabbi Henkin." It is in this responsum that Rabbi Feinstein raises the aforementioned concerns, which Dr. Rosner considered an expression of disapproval. It may be noteworthy that through the end of the 1950's, the scientific community in this country had not come out with formal clarification as to the medical/scientific efficacy of hypnosis as compared with hypnotism and similar techniques drawing theatrically on human suggestibility and gullibility. It is possible then that the consultants advising Rabbi Feinstein mentioned the possibility of manipulation and disgrace which may take place when using hypnotism.

Clinical and medical hypnosis were given scientific sanction in this country as research proliferated in the 1960's. Currently, national and international societies in medicine, psychiatry, and psychology authorize the scientific practice of clinical hypnosis by competent professionals. It is generally recognized that coercion,

brainwashing, and other unprofessional manipulations that might slight the dignity of the patient are not part of this practice. Stage hypnotism is another matter and may indeed deserve the concerns registered by Rabbi Feinstein and by other *poskim* cited in my aforementioned article. The validity of my hypothesis — that the earlier responsum referred (also) to generic hypnotism and the latter expressly to clinical hypnosis — may even be implied by the terms employed by Rabbi Feinstein herein: the former responsum actually uses the Hebrew transliteration “hypnotism” whereas the latter uses the word “hypnotismus”.

It might follow, then, that when the first-published but actually second-written responsum was formulated nearly three decades later, Rabbi Feinstein’s consultations and appraisal of the question of therapeutic hypnosis found no further scientific concerns impinging on the halachic concern about the likelihood of *zilzul*. The reader might refer to my article in reviewing the generally supportive attitude given therapeutic hypnosis by recent and contemporary authorities and *poskim*. Meanwhile, it is not clear that Rabbi Feinstein’s attitude was one of “disapproval in general.”

Thank you for another fine article and for providing a forum for Dr. Rosner’s excellent work.

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