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When an *Eruv* Falls on Shabbat

Rabbi Ezra Schwartz

In recent years the number of eruvin in Jewish communities throughout the United States has proliferated. This is clearly a positive development as it enables Jews to experience more freedom of movement on Shabbat. However, the ready availability of eruvin raises the concern that people may forget that there is a prohibition of carrying items from one domain to another on Shabbat. Therefore, it is essential to be aware of what may and may not be done in the (hopefully) rare cases that the eruv is not operational.

This discussion is particularly relevant in summer months when many people reside in camps and bungalow colonies. Unlike metropolitan eruvin which are comprised of a combination of walls, small breaks, and tzurot hapetach (a halachic door frame composed of two vertical poles at least ten handbreaths high with a lintel on top), eruvin in camps are often composed primarily of tzurot hapetach. The wires which form the lintels on these tzurot hapetach are often very weak and frequently tear in rain storms.[1] In contrast, the tzurot hapetach employed in metropolitan areas most often use

1. It must be noted that we are only dealing with cases where after the tzurat hapetach breaks there is a gap of more than ten amot, which is the approximate equivalent of eighteen feet. If the gap is smaller than eighteen feet the consensus of poskim is to treat the eruv as kosher. See Teshuvot Rabbi Akiva Eiger no. 35 and Mishnah Berurah 363:111. On rare occasions even though the gap created by the fallen eruv is less than ten amot, the entire eruv will be invalid. See Rabbi Shulem N. Weiss, Sefer Tikkun Eruvin page 114, note 2.

Fellow, Kollel L'Horaah, Yeshiva University

telephone or other strong wires as the lintel. These are strong and durable, thus significantly reducing the likelihood that the tzurot hapetach will tear on Shabbat. However, even these strong eruvin are known to break in harsh weather conditions.[2]

This article will present and analyze a number of the issues that arise when the eruv is down: Whether the rabbi or some other communal figure should inform the community, the permissibility of repairing an eruv on Shabbat and the appropriate procedure in doing so, and what the consequences are if the eruv was repaired in a forbidden manner. Finally, we will exmine permitted ways to carry necessary item.

Ho'eel V'hutra Hutra

There is a popular misconception that if an eruv was operational at the beginning of Shabbat it can continue to be utilized the rest of Shabbat. This misconception is not completely devoid of a basis in halacha. The Gemara (Eruvin 17a and elsewhere) teaches that Shabbat ho'eel v'hutra hutra, once carrying on Shabbat was permitted it remains permitted the rest of the day. However, this principle is very limited in application. In order to permit one to carry on Shabbat the entire area must be enclosed with halachic walls and food must be made available for all the people in town to partake of. In the terminology of the Gemara the food alone is termed eruv while the halachic walls are called mechitzot. Tosafot in Eruvin (17a s.v. eeraiv) explain that the principle of ho'eel v'hutra hutra only applies to the former case where the food or the actual eruv was consumed after Shabbat began. In a case where the mechitzot break after the commencement of Shabbat, Tosafot demonstrate that the Gemara forbids one to continue to carry. Tosafot's distinction is cited by Shulchan

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2. See Ketzot HaShulchan 105:26.

Aruch (Orach Chaim 374:2 and 365:7) and Mishnah Berurah (374:9 and 365:31,32). Consequently, when a string of the eruv tears after Shabbat has begun, it is forbidden to carry until the mechitza is repaired.

However, there is a dissenting opinion. In a few terse and cryptic teshuvot, Rabbi Shlomo Kluger writes that when a string of the eruv rips after Shabbat already began and it is impossible to find a non-Jew to repair it, one may continue to carry.[3] The reason offered by Rabbi Kluger in support of his psak is the aforementioned statement, Shabbat ho'eel v'hutra hutra. Rabbi Kluger does not tell us how he deals with the Gemara's qualification that this principle is not applicable when the mechitzot fall on Shabbat. For this reason, the vast majority of poskim dismiss Rabbi Kluger's argument entirely.[4]

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3. See Teshuvot HaElef Lecha Shlomo number 153. In the same teshuvot no. 162 and 172, Rabbi Kluger repeats this argument, which he originally formulated in response to a query from Sdei Halavan. See also Rabbi Yosef Shaul Nathanson, Teshuvot Shoeil U'maishiv Tinyanna, vol. 1 no. 89 who cites Shabbat ho'eel v'hutra as the basis for the eruv to be repaired, even by a Jew. It is not clear how he deals with the difference between eruv and mechitzot. Moreover, it seems that if we apply the principle of Shabbat ho'eel v'hutra, the eruv does not need any repair; consequently, it should be forbidden even for a non-Jew to repair the eruv. See Sefer Kovetz on Rambam Hilchot Shabbat 17:19. Nevertheless, both Rabbi Kluger and the Shoeil U'Maishiv allow a non-Jew to repair the eruv.

There is another fairly obscure modern day authority who, though he does not cite Rabbi Kluger or the Shoel Umaishiv, also applies Shabbat ho'eel v'hutra hutra. See Rabbi Yisrael Avraham Abba Krieger (originally rabbi in Koshdari, Lithuania, and later in Frankfurt and Boston) Taanugei Yisrael no. 75.

4. See Shmirat Shabbat keHilchata chapter 17, note 100, and Eretz HaTzvi page 66. Ordinarily, the operative principle with respect to eruvin is that the halacha follows the lenient position, (halacha k'divrei hameikal be'eruv). See Eruvin 46a. It would be tempting to apply this principle to our case and follow Rabbi Shlomo Kluger's

Should one announce that the Eruv is down

In the event that the string of the tzurat hapetach tears on Shabbat the rabbi or another communal figure will be confronted with the question whether he should announce that the eruv is not operative. Although common practice is to publicize the downed eruv, many prominent poskim are of the opinion that it is preferable not to announce the fallen eruv. They provide two basic reasons: mutav she'yihiyu shogegeim and mitaseik.

Mutav She'yihiyu Shogegim

The Gemara in Beitza (30a), develops the principle of mutav she'yihiyu shogegim v'al yihiyu meizidim: with respect to matters not stated explicitly in the written Torah, (we say) it is better to sin inadvertently than to sin deliberately. The case

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lenient opinion. However, there are three reasons why we may not apply this principle in our case. First, according to a large number of Rishonim this principle may only be applied to questions regarding the actual bread of an eruv, not to questions about the mechitzot. See Rosh, Eruvin Ch. 2 number 4. Moreover, we only say halacha k'divrei hameikal in the case of a minority opinion, not for a completely rejected opinion. R. Schachter has told me in the name of the late R. Sheps of Torah Voda'as that R. Shlomo Kluger's position is utterly rejected and will not qualify for halacha k'divrei hameikal. See R. Schachter's B'Ikvei HaTzon, p. 259, for sources that distinguish between minority opinions and completey rejected ones. Finally, according to Chazon Ish, Eruvin 112:10 the principle that we follow a lenient minority opinion in Eruvin only extends to disputes among tanna'im and amora'im and not to issues mentioned by later authorities. However, R. Elimelech Langa in Hilchot Eruvin, p. 75 note 121, supplies a possible source for R. Kluger's psak. Therefore, R. Langa posits that perhaps one may rely on R. Kluger's ruling under extenuating circumstances (sha'at hadechak). However, the source R. Langa supplies does not truly support Rabbi Kluger's position. It seems therefore that his psak may not be relied upon.

in point in the Gemara is the obligation to refrain from eating and drinking for a short time before the actual onset of Yom Kippur. The Gemara tells us that those women who eat and drink until darkness sets in should not be censured for doing so. Chazal assumed that those women would not refrain from eating even when told that they must. Consequently, it is better not to inform them, since it is better for them to violate Yom Kippur inadvertently than to violate it deliberately. Similarly, in our case, Rabbi Shlomo Zalman Auerbach and a number of other respected poskim maintain that it is better not to tell people that the eruv is down, since there are some people who will definitely not listen and carry nonetheless.[5]

It is worth noting that we only apply the principle of mutav she'yihiyu shogegim when we are certain that people will not conform to the strict halacha should it be presented to them. If however, there is any chance that people will adhere to the halacha once they are made aware of it, then there is an obligation to publicize the halacha.[6] In our case regarding whether one should announce that the communal eruv is not

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5. See Shmirat Shabbat KeHilchata Chapter 17 note 109. Rabbi Yaakov Yeshaya Blau, Netivot haShabbat chapter 15 note 103 quotes sources that this was the position of the Aderet and Rabbi David BeHaRan as well. The earliest source that argues against announcing to the community that the eruv has fallen is Rabbi Avraham Peitrokovsky, the author of Piskei Teshuvot, in his work Machashavot BeEitza (1902) no. 16. However, Rabbi Peitrokovsky distinguishes between a case where the eruv broke in two places one opposite the other where the community should be told, and a case where the eruv breaks in a single location, where the community should not be informed. It must be noted that those individuals who certainly will not carry when told that the eruv is not operative should be told of this in private. See Shmirat Shabbat KeHilchata, loc cit.

6. See Tosafot to Baba Batra 60 and Shabbat 55, and Mishnah Berurah 608:3.

operative, we may assume that there certainly are people who will listen and not carry once they are told that the eruv is down. However, there are others who will most likely not listen and will carry despite their knowledge that the eruv is not operative. What should be done in this case? Should the rabbi announce the fallen eruv for the benefit of those who will heed his directive, or remain silent in consonance with the principle of mutav she'yihiyu shogegim?

Rabbi Shlomo Zalman Auerbach obviously maintains that those who would carry despite being told that the eruv is down should take precedence. Thus he believes that the rabbi should not announce the fallen eruv. However, Rabbi Moshe Feinstein writes that those who will heed the rabbi's instructions have the upper hand.[7] Accordingly, the rabbi should announce the fallen eruv, despite the fact that there will be those who continue to carry after being told that the eruv is down. The common practice to announce a fallen eruv follows Rav Moshe's understanding of mutav she'yihiyu shogegim rather than Rav Shlomo Zalman's.

It is possible to find support for this practice in at least one early source. *Sefer Hasidim* (262) tells us that the principle of *mutav she'yihiyu shogegim* applies only in private, but not in synagogue. *Magen Avraham* (263:30) quotes the statement of *Sefer Hasidim* as halacha. Perhaps the reason behind *Sefer Hasidim's* statement is that in synagogue where many people are present, certainly there will be some who may heed the announcement and desist from performing the forbidden act. Consequently, we may not apply *mutav she'yihiyu shogegim.*[8]

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7. See Iggerot Moshe Orach Chaim 2:36.

8. This explanation is similar to the one offered by Machatzit HaShekel on the Magen Avraham 263:30. It is worth noting that the Mishnah Berurah (263: 64) in his citation of this Magen Avraham omits the concluding line that we do not apply mutav she'yihiyu

This is in agreement with Rav Moshe's understanding of *mutav*.

This entire discussion pertains to making a public announcement that the eruv is down. Of course, in the event that a person sees an individual carrying an item that would be impossible to leave behind, such as a young child, it is proper to apply mutav she'yihiyu shogegim, and not tell of the fallen eruv.

Mitaseik

A number of prominent poskim provide an entirely different reason for not announcing a fallen eruv. There is a principle in all of halacha that one is not culpable for a prohibition he violated completely unintentionally, b'mitaseik. Thus, if a person slaughters an animal unaware that the animal is a korban, sacrifice, he is not liable to bring a sin offering. In our case if a person carries on Shabbat believing that the eruv is operative only to subsequently discover that the eruv was down, he would not be obligated to bring a sin offering, since his violation was completely mitaseik, unintentional. Therefore, there is nothing to gain by announcing a fallen eruv. If people carry believing the eruv is operative they will not be transgressing any prohibition.[9]

There are some, however, who question whether carrying

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shogegim in synagogue. Perhaps Rabbi Shlomo Zalman and the others who agree with his understanding of mutav reject the statement of Sefer Hasidim. This would be in line with the position of Mishnah Berurah.

9. Rabbi Yosef G. Bechoffer, The Contemporary Eruv, second edition 2002, p. 101, writes that Rav Chaim Soloveitchik of Brisk argued that one should not publicize a downed eruv due to mitaseik. See also Machashavot B'Eitza no. 16, reason number 3. Rav S. Z. Auerbach, cited in Shmirat Shabbat Kehilchata chapter 17. 109, similarly argues not to announce the fallen eruv since this case qualifies as mitaseik of a rabbinic prohibition.

under the false impression that the eruv is operative can be considered mitaseik at all. Some have argued that if one carries oblivious to the fact that something is in his pocket, that is considered mitaseik. However, if one carries believing that he is in a private domain, only to discover that there was no eruv, this is not treated as mitaseik.

However, the assertion that carrying under the false presumption that an eruv is operative would be classified as mitaseik has firm support from the Gemara. The Gemara in Shabbat (73a) cites the case of a person who believes that he is in reshut hayachid, a private domain, but he turns out to be in a reshut harabim, public domain as an example of mitaseik.

Even so, there is room to question the assumption that mitaseik would dictate not to publicize a fallen eruv. The poskim who argue that a fallen eruv need not be announced believe that when a person commits a violation b'mitaseik he has done absolutely nothing wrong. However, this assertion is the subject of much discussion among the Acharonim. Rabbi Yaakov of Lissa, the author of Netivot HaMishpat, posits in his M'kor Chaim (431) that the rationale behind the exemption of mitaseik from bringing a sin offering is that an act done without any intention is the halachic equivalent of an act that occurred on its own. Therefore, since according to halacha the one who carried did not commit the act, there is no violation whatsoever. However, Rabbi Akiva Eiger disagrees.[10] According to Rabbi Akiva Eiger one who violates a prohibition b'mitaseik has committed an offense. It is only because there is a special passuk that he is exempted from bringing a sin offering. Even so, Rav Akiva Eiger draws a distinction between violations of Shabbat and the remainder of prohibitions in the Torah. Only

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10. See Teshuvot Rabbi Akiva Eiger no. 8.

with respect to ordinary prohibitions do we view an act of mitaseik as a commission of a prohibition, albeit an act that does not require the bringing of a sin offering. Completely inadvertent violations of Shabbat however, are not forbidden at all according to Torah law. There is a separate passuk, melechet machashevet (Shmot 35:33) that teaches us that mitaseik on Shabbat does not bring a korban chatat. Rabbi Akiva Eiger suggests that a special passuk is needed because unlike mitaseik in the rest of the Torah, which is prohibited but exempt from a korban, mitaseik on Shabbat is completely permitted according to Torah law.[11] These poskim likely assume that insofar as one who violates Shabbat b'mitaseik has done nothing wrong, the fallen eruv should not be announced.[12]

Rabbi Akiva Eiger however, notes at the end of his teshuva, that although mitaseik on Shabbat is not prohibited by Torah law, it is still forbidden medirabbanan, according to rabbinic

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11. Rav Soloveitchik (Shiurim L'Zecher Avi Mori vol.1 page 43 note 58) however, sided with the Netivot. This is also the opinion of Teshuvot Peri Yitzchak vol.2 no. 13. Rabbi Elchanan Wasserman, Kovetz Shiurim Pesachim, 215 cites a Raavad who argues with Rabbi Akiva Eiger's understanding of mitaseik.

12. See Teshuvot Minchat Shlomo vol. 2 no.80, who sides with the Netivot and consequently assumes that there is no prohibition involved with mitaseik.

It is worth noting that our case of carrying under the mistaken impression that the eruv is operative may be analogous to ordinary mitaseik rather than the special mitaseik of Shabbat. As Rav Yosef Shalom Elyashiv *shlit"a* notes in his Hearot to Mesechet Ketubot 5b (pages 19-20) the person who carries assuming that the eruv is valid has no intention of violating any prohibition. This is unlike Shabbat mitaseik where one was intent on violating a prohibition, and in fact violated that same prohibition albeit on a different article than intended. See Tosafot Shabbat 72b. If this case is analogous to ordinary mitaseik, certainly the fallen eruv should be announced, according to Rabbi Akiva Eiger.

law. The Lechem Mishneh (Hilchot Shabbat 1:8) also maintains that mitaseik on Shabbat is a rabbinic violation similar to the other halachot derived from melechet machashevet.[13] It

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13. Consequently, even if our case of a fallen eruv resembles the special mitaseik of Shabbat , Rabbi Akiva Eiger would argue that the fallen eruv should be announced to prevent any violations of rabbinic law. It is very possible that the Netivot would also maintain that mitaseik is a violation of rabbinic law.

See Rabbi Aharon Kotler, Teshuvot Mishnat Rabbi Aharon, no. 4 section 6, who argues persuasively that the meaning of the Lechem Mishneh and Tosafot, Shabbat 11a cannot be that an act of mitaseik must not be performed initially, since by definition, mitaseik means that the act was already performed. Rather, Rav Aharon Kotler maintains that the rabbinic prohibition involved in mitaseik forbids one to stand by idly and allow another person to sin b'mitaseik. There is an obligation to prevent a person from sinning even when the person who is sinning does not himself realize that he is doing anything wrong.

Regarding the case Rav Aharon Kotler addresses, whether it is permitted to tell another Jew who is unaware that when he opens the refrigerator the motor will turn on, see Minchat Shlomo vol. 1 no.91: 9.

Teshuvot Oneg Yom Tov no. 20 writes that according to Rabbi Akiva Eiger, since there is no prohibition of mitaseik, it is perfectly permitted to direct an unaware person to do an act that will produce a Shabbat violation. However, there is no indication from Rabbi Akiva Eiger's teshuva that this is true. To the contrary, Rabbi Akiva Eiger concludes that mitaseik on Shabbat is forbidden rabbinically. See Rabbi Yosef M. M. Rappaport's recent article in Kol HaTorah (vol. 55, Tishrei 5764 pp. 172-175). Rabbi Rappaport agrees with my conclusion that a fallen eruv should be announced.

There is a fairly prevalent practice not to carry items even when there is an operational eruv. Many reasons are cited for this stringency. See Rabbi J. D. Bleich Contemporary Halachic Problems Vol. IV, 354-357. Among the reasons cited is the fact that perhaps the eruv may break on Shabbat, and a person unaware of this will nonetheless carry. See Minchat Shabbat 82:6 who quotes Rabbi Yisrael Mattityahu Auerbach, Nezer Yisrael 57:3. According to this explanation clearly

should therefore emerge that according to Rabbi Akiva Eiger and the Lechem Mishneh's conclusion, a rabbi should inform his congregants when the eruv is down. Were his congregants to carry under the false assumption that the eruv is operative, they would be violating a rabbinic prohibition.

Rav Aharon Kotler (loc cit) quotes Menachot (37b) to buttress the argument that mitaseik must be at least a rabbinic prohibition. The Gemara there relates that Ravina once followed Mar bar Rav Ashi on Shabbat and noticed that a string from Mar bar Rav Ashi's tzitzit had ripped and he was therefore carrying the strings of his tallit on Shabbat. According to one version of the story, Ravina informed Mar bar Rav Ashi that his tzitzit had torn, despite the fact that they were in a carmelit (a semi-public area where carrying is only prohibited rabbinically.) Apparently, Ravina assumed that although Mar bar Rav Ashi was completely unaware that he was carrying and would be classified as a mitaseik on a rabbinic prohibition, still he should apprise him of the fact that his tzitzit had torn, to prevent him from violating a rabbinic prohibition. Mar bar Rav Ashi believed that Ravina should not have told him that his tzitzit had ripped. However, his dissent is based on kvod habriot, as Mar bar Rav Ashi's basic human dignity would have been violated had he disrobed in public. Absent this concern, Mar bar Rav Ashi would agree that it is proper to prevent a person from violating a rabbinic prohibition even if

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there is some prohibition involved in carrying when the eruv is down, even though the act would be classified as mitaseik and at worst a rabbinic prohibition could be violated.

It is worth noting, however, that there is at least one authority who assumes that there is not even a rabbinic prohibition involved in mitaseik. Rabbi Yitzhak Blazer, Teshuvot Peri Yitzchak vol.2 no.13, writes that mitaseik does not constitute any violation of Shabbat. Consequently, one who sees an adult about to violate Shabbat b'mitaseik has no obligation to stop him from doing so. See also Kuntres Acharon of Rabbi Chaim Mishkovsky there.

that person is violating b'mitaseik. This Gemara offers clear support for the common practice of announcing a fallen eruv.[14]

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14. It ought to be noted that whenever an eruv is constructed with tzurot hapetach, there is no possibility for a Torah violation of carrying. For a bona fide reshut harabim, doors would be necessary and tzurat hapetach, would be insufficient. See Shulchan Aruch 364:2. Consequently, when a person carries under the mistaken impression that the eruv is operative, he would be mitaseik on a rabbinic prohibition. See Shmirat Shababat KeHilchata, chapter 17 note 107. It could be argued that even if mitaseik is rabbinically forbidden, that is only when the prohibition involved is a Torah prohibition, but when the prohibition is rabbinic the rabbis never forbade mitaseik. This seems to be the reasoning of Rabbi Shlomo Zalman Auerbach. However, in defense of announcing a fallen eruv, it could be argued that mitaseik is not a rabbinic precaution lest one violate a Torah law but rather is intrinsically prohibited. Therefore, even if only a rabbinic prohibition is involved, mitaseik would still be forbidden. See Eretz HaTzvi, p. 58, who distinguishes between rabbinic prohibitions that are precautions lest one violate a more serious prohibition, and those which are intrinsically prohibited. See there, p. 52, whether the absence of melechet machashevet necessitates treating the rabbinic prohibition as a precaution rather than an inherent prohibition. Moreover, Menachot 37b, cited by Rabbi Aharon Kotler and quoted earlier, indicates that even mitaseik on a rabbinic prohibition is forbidden. See also Teshuvot Torat Refoel no. 26.

There may be other reasons for leniency since at worst the prohibition of carrying when the eruv is down is only rabbinic. According to certain authorities, when the prohibition at hand is rabbinic in nature, one can violate it only if he deliberately does so. Unlike Torah prohibitions that are intrinsically forbidden, rabbinic prohibitions are forbidden as acts of rebellion against the rabbis. Therefore, if one violates a rabbinic prohibition inadvertently he has not committed a sin. See Netivot HaMishpat, 234:3. The Netivot's son-in-law, in his Teshuvot MaHari Ashkenazi no.13, writes that his father-in-law's position (that it is impossible to violate rabbinic prohibitions inadvertently) is true only when there is no negligence involved. However, in the case of a fallen eruv, since it is abundantly clear

How to fix an *eruv* on Shabbat

Most often when an eruv breaks on Shabbat there are ways to correct the situation. The most common way to solve the problem, and the halachicly preferred manner of doing so, involves directing a non-Jew to repair the eruv.

Ordinarily there is a rabbinic prohibition against directing a non-Jew to commit an act that a Jew is forbidden to do on Shabbat. The Rishonim discuss under which circumstances directing a non-Jew to commit a Shabbat prohibition, amira l'akum, is permitted and when it is forbidden.[15] The Ba'al Halttur maintains that a Jew may direct a non-Jew to violate a Torah prohibition on Shabbat provided that the directive is given to assist in the performance of a mitzvah. Ramo (276:2) cites this opinion as the basis for the practice of those who direct a non-Jew to light candles in order that the Shabbat meal may be eaten in an illuminated environment. However, Ramo notes that most Rishonim disagree with Ba'al Halttur. According to the majority, a Jew may only direct a non-Jew to perform a rabbinic prohibition in order to facilitate the performance of a mitzvah.[16] Consequently, Ramo concludes that only in cases of great need may one rely on the Ba'al Halttur and allow a Jew to direct a non-Jew to violate a Torah prohibition even in order to facilitate the performance of a mitzvah. The Ramo's stringency notwithstanding, the Mishnah Berurah (276:25) rules that when an eruv breaks on Shabbat it

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that eruvin break, one cannot consider the violation free of negligence.

Others have argued that since carrying in a community that has an eruv can at worst be a rabbinic prohibition, even if the eruv is down, this prohibition can be relaxed in cases of great need. One could argue that in cases of great need a fallen eruv should not be announced. See Netivot HaShabbat, chapter 15 n. 103.

15. See Shulchan Aruch Orach Chaim 307:5.

16. Ibid.

is permitted to direct a non-Jew to repair the eruv, despite the fact that the repair involves tying a knot, which is a biblical prohibition on Shabbat. The Mishnah Berurah distinguishes between directing a non-Jew so that an individual can perform a mitzvah, which is not permitted, and the eruv case in which an entire community will violate a prohibition if a non-Jew does not make the necessary repairs.[17]

Some authorities forbid directing a non-Jew to repair the eruv when the repair will involve tying a permanent knot. One of the thirty-nine forbidden categories of work on Shabbat is koshair, tying a knot. There is no violation of Shabbat involved in the tying of a simple bow. Therefore, these authorities permit a non-Jew to repair the eruv only if the repair is made by tying a bow.[18] In deference to these authorities, if possible, one should instruct the non-Jew to repair the eruv by tying a bow rather than a knot. Moreover, even if it is permitted to direct a non-Jew to repair the eruv by tying a knot, it is preferable to minimize the violation and have the eruv repaired by a non-Jew tying a bow.[19] Similarly, it would be preferable to instruct a non-Jew

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17. Many poskim assume that the Ba'al Halttur may be relied upon to enable a large group to perform a mitzvah and not only to prevent a tzibbur from violating an aveira as in our eruv case. See Rabbi Ovadia Yosef, Livyat Chein no. 17.

18. See Eishel Avraham of Buchach, end of Orach Chaim 307, who cites the sages of Brod who permitted a non-Jew to repair the eruv even when it would violate a Torah prohibition. He, however, maintains that only if the non-Jew can be directed to repair the eruv without violating a Torah precept can it be permitted. However, if the non-Jew is instructed to tie a bow, but on his own decides to tie a permanent knot, it is permitted to carry. Similarly, Teshuvot Teshurat Shai, vol. 2, no. 119 shows that the Panim Meirot, who was the earliest source to permit an eruv to be repaired by a non-Jew, only allowed it when no biblical prohibition such as tying a knot is involved.

19. The Beiur Halacha 362:3 s.v. mechitza notes that although the Chayyei Adam (62:11) allows a non-Jew to repair an eruv on

to direct another non-Jew to repair the fallen eruv.[20]

In the event that there is no non-Jew available to repair the eruv, poskim discuss whether a Jew may repair the eruv himself. The case at hand involves an instance in which the eruv can be repaired without tying a knot. There were early authorities who permitted a Jew to repair the eruv when there was no available non-Jew.[21] Although some later poskim cite this lenient ruling,[22] most contemporary poskim believe that it

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Shabbat, the Noda BeYehuda (Tinyana Orach Chaim, 44) forbids a non-Jew to repair an eruv, even on the second day of Yom Tov during which all prohibitions are only by rabbinic decree. However, the conclusion of Mishnah Berurah is that one may rely on the position of Chayyei Adam and direct a non-Jew to repair the eruv. Even so, the Mishnah Berurah cites the Machatzit HaShekel at the end of Orach Chaim 365 that it is preferable to repair the eruv with a bow rather than a knot.

20. See Rabbi Shaul Feina, Oz (publication of Sha'alavim, 1994) vol. 1, page 90 and Rabbi Shulem N. Weiss, Sefer Tikkun Eruvin page 117 note 6. This is based on the Chavot Yair no. 53 who permits amira lamira, when a Jew instructs a non-Jew to direct a second non-Jew to violate Shabbat. However, there is room to question this leniency. Many poskim disagree with the Chavot Yair. See Beiur Halacha 307:2, va'afilu. Moreover, it seems that even Chavot Yair permits amira lamira only when the second non-Jew believes that he is acting on behalf of the first non-Jew. If the second non-Jew knows that he is acting on behalf of a Jew, as is most likely the case when called upon to repair the eruv, even Chavot Yair would not be lenient. See Teshuvot Heichal Yitzchak no. 30.

21. See Teshuvot Shoeil U'maishiv, tinyana vol.1 no.89 who quotes Teshuvot Panim Meirot vol. 1 no. 30 as permitting a Jew to repair the eruv. However, a careful reading of the Panim M'eirot indicates that only according to the position of Rashi, which the halacha rejects, is it permitted for a Jew to repair an eruv on Shabbat. See Langa Hilchot Eruvin page 74 note 118.

22. See Shmirat Shabbat Kehilchata chapter 17 no. 25.

is never permitted for a Jew to repair an eruv on Shabbat.[23] One of the categories of prohibited labor on Shabbat is boneh, building. Included in this category is constructing an ohel or tent. Rashi posits that only when there are walls and a roof is this prohibition operative.[24] However, Tosafot disagree. According to Tosafot, the construction of any partition that serves to permit an otherwise forbidden activity is tantamount to constructing a tent.[25] Therefore, according to Rashi there is no prohibition of boneh when one puts up mechitzot that allow people to carry on Shabbat. However, the halacha follows Tosafot.[26] Consequently, many poskim rule that a Jew may never repair a fallen eruv on Shabbat.[27] Although there may be no prohibition of knotting involved, there still remains the prohibition of boneh, constructing a barrier that permits carrying.

An *Eruv* that was repaired on Shabbat

In the event that halacha was violated and a Jew repaired an eruv on Shabbat by tying a knot, or even with a bow according to most authorities, it is very possible that the eruv may not be used on Shabbat. A mechitza (partition) that was constructed on Shabbat is considered a valid partition and consequently, one who throws an item from a public domain

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23. See Netivot HaShabbat chapter 15 note 101. The source quoted there is in error and should read Teshuvot Shevet HaLevi vol. 6 no. 49. Also, Langa, Hilchot Eruvin page 72 note 113, argues that due to the prohibition to construct a mechitza on Shabbat it will always be forbidden for a Jew to repair a fallen eruv.

24. See Shabbat 125b s.v. she'ein.

25. See loc cit s.v. HaKol.

26. See Shulchan Aruch 315:1 and Mishnah Berurah there no.4.

27. See also Sefer Tikkun Eruvin page 118, note 7, who forbids a Jew to repair the eruv under all circumstances.

into the newly enclosed area has violated Shabbat. Even so, one may not rely on this partition as part of an eruv to permit him to carry if the partition was assembled in deliberate violation of Shabbat. However, in an instance where the Jew who repairs the eruv on Shabbat is unaware that it is forbidden for him to do so, then the eruv is kosher and it is permitted to carry.[28] This halacha is similar to the general principle in hilchot Shabbat that it is forbidden to derive benefit from a melacha that was performed on Shabbat. There the halacha also distinguishes between cases where the melacha was done deliberately and cases where the prohibited activity was done inadvertently. In our case when a Jew deliberately violates Shabbat and repairs the eruv it would still be forbidden to carry since carrying in the newly repaired eruv is the equivalent of benefiting from a Shabbat prohibition.[29]

According to the Magen Avraham (362:2) when the eruv was valid at the start of Shabbat, even if it later broke on Shabbat, it is permitted to carry in this eruv despite the fact that it was repaired in violation of halacha. Some contemporary authorities rely upon this opinion to permit carrying in cases

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28. See Shulchan Aruch Orach Chaim 362:3 for the details of this halacha.

29. Mishnah Berurah 362:19, and Shaar HaTziyun there 12, explicitly compares this case to the general rules of ma'ase Shabbat. For details regarding benefiting from melachot on Shabbat see Shulchan Aruch 318:1. However, Rabbi Shlomo Zalman Auerbach, Minchat Shlomo vol. 1 no. 5 page 23, questions whether carrying because a partition has been built is the equivalent of benefiting from a prohibited act on Shabbat. It is only forbidden to accrue direct benefit from a Shabbat prohibition; indirect benefit is permitted. One could argue that carrying on the basis of the mechitza that was built on Shabbat is not a direct form of benefit, since one does not benefit from the actual wall that was created but from the private domain that this new wall created. See also Minchat Shlomo vol. 2 no. 16:1.

of great need.[30] However, the Mishnah Berurah (362:26) disagrees with the Magen Avraham. Consequently, according to the Mishnah Berurah, even if the eruv was operative at the beginning of Shabbat, if it was subsequently deliberately repaired in a forbidden manner, it is forbidden to carry.[31]

Some Frequently Occurring Cases

It is worth addressing some of the more common instances that may arise when the eruv is down. One such case involves the carrying of children. There is greater room for leniency with carrying children than with carrying other items based on the Gemara in *Shabbat* (94a). There the Gemara teaches that chai nosei et atzmo, a live human being carries himself. Tosafot (94a s.v. she'hachai) explain that the entire prohibition of carrying must be based on the way items were carried in the mishkan (Tabernacle). In the mishkan live human beings were not carried.[32] Therefore, there is no biblical prohibition involved in carrying a live human being on Shabbat. However, one who carries a live human does violate a rabbinic prohibition. Moreover, according to most authorities we only apply chai nosei et atzmo to children who are old enough to walk on their own. Infants who are not ambulatory have the same status as sick or elderly adults, and one who carries them in a public

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30. See Langa, page 73 note 117, who relies on the Magen Avraham in cases of great need, since according to the opinion of Rabbi Shlomo Kluger one may carry even before the eruv is repaired.

31. Netivot HaShabbat chapter 15:32 cites both opinions.

32. See Pnei Yehoshua loc cit. Only with regard to hotza'a must the details of the melacha exactly resemble the way it was done in the mishkan. This is because of the unique status of hotza'a as a melacha gerua'a, a seemingly insignificant act that does not change an object at all. Other melachot, which create significant change need not exactly resemble the way they were performed in the mishkan.

thoroughfare would be violating a biblical prohibition.[33] Similarly, if the child himself is carrying anything there would be a biblical prohibition involved in carrying the child.[34]

As we already noted, carrying in a community that has an eruv can be no worse than a rabbinic prohibition even if the eruv is not operative, since by definition in such a community there are no truly public domains, only carmeliot, semi-public areas. Consequently, our case of carrying an ambulatory child when the eruv is down would be no worse than a rabbinic prohibition on two counts: carrying a live human being and carrying in a semi-public domain. However, at first glance even this is insufficient to permit carrying. Ordinarily, it is forbidden to perform an action that violates two distinct rabbinic prohibitions. However, we do put aside two rabbinic prohibitions to assist an ill person or to perform a mitzvah.[35]

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33. See Mishnah Berurah 308:154. Only Tosafot Shabbat 130a s.v. Rabbi Eliezer are of the opinion that we apply chai nosei et atzmo to infants who cannot walk.

34. See Mishnah Berurah 308:154 and 309:1.

35. Some have argued that we only put aside two rabbinic prohibitions in order to perform a mitzvah when one of these prohibitions is amira l'akum–directing a non-Jew to do something forbidden on Shabbat, which is ordinarily viewed as a less severe violation. This is the position of Peri Megadim (A. A. 307:7). However, the consensus of poskim is that a rabbinic prohibition on two counts may be put aside to perform a mitzvah. See Rabbi Ovadia Yosef, Livyat Chein no. 35. Rabbi Herschel Schachter, B'Ikvei HaTzon, page 48 permits a rabbinic prohibition on two counts to be done even by a Jew in order to perform a mitzvah. He shows that this is the opinion of the first answer of Tosafot Ketubot 5b, s.v. (im timtzi lomar). See also Chazon Ish 103:19 who is lenient for a Jew to violate a "double" rabbinic prohibition in order to perform a mitzvah. However, as Rabbi Yosef Menachem Mendel Rappaport notes in his recent article in Kol HaTorah, Chazon Ish 56:4 only permits violating a "double" rabbinic prohibition in the few cases that Shulchan Aruch explicitly grants this permission. This seems to contradict the other

The precise definition of what constitutes a mitzvah is complicated and could vary from case to case. If possible rabbinic guidance should be sought.

Based on the principles outlined, Rav Moshe Feinstein ruled that if one is outdoors with a crying child who refuses to walk, and the only way to quiet the child is by bringing him indoors, then one may carry the child home since in that instance there are two independent reasons why this is only a rabbinic prohibition.[36] Rav Moshe felt that the crying and screaming of a child is a better reason for leniency than an ordinary mitzvah and would be sufficient grounds to set aside a "double" rabbinic prohibition. According to the psak of Rav Moshe, a person who is informed that the eruv is down when he is outside with his ambulatory child should use all means of encouragement to get the child to walk home on his own power. Should the child refuse to do this, and if no non-Jew is available to carry the child home, the parent may carry the child on his own.[37] In those instances when we permit carrying the child based on chai nosei et atzmo, it is permitted even to wheel the child home in his stroller. This is because the stroller is intended to assist the child and acquires the same halachic

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ruling of Chazon Ish.

36. See *Iggerot Moshe Orach Chaim* vol.4, no.91:1. Rav Moshe implies that he would not permit a Jew to violate a "double" rabbinic prohibition to facilitate the performance of all mitzvot. Rav Ovadia Yosef and Rav Schachter would, however, relax double rabbinic prohibitions to facilitate the performance of all mitzvot.

37. See Rabbi Dovid Ribiat, The Thirty-Nine Melachos, page 1338. Rabbi Schachter has told me that one should try as much as possible to reduce the prohibition involved. Consequently, when an ambulatory child is carried, if possible the child should be passed from person to person with each pass being no longer than six feet. Moreover, a non-Jew rather than a Jew should transfer the child into the private domain. See later for details regarding the preferred method to employ when it is necessary to carry in a semi-public domain.

status as the child.[38]

If a person is carrying an item other than a live child in the semi-public domain when he is told that the eruv is not operative, chai nosei et atzmo is not a mitigating factor. Consequently, we confront a single rabbinic prohibition, which cannot be waived even for the sake of performing a mitzvah. A non-Jew should be sought to carry the item if that item is needed for the performance of a mitzvah. This will transform the act into a double rabbinic prohibition: carrying in a semi-public domain and instructing a non-Jew to carry. As we mentioned earlier a double rabbinic prohibition can be waived in order to facilitate the performance of a mitzvah.

When no non-Jew is available many poskim permit a child, under the age of bar or bat mitzvah, and preferably under the age of nine,[39] to carry the necessary item inside. This will only be permitted if the child is carrying an item that he will benefit from himself. When only the parent will benefit from the item carried by the child, it is forbidden to give the child anything to carry.[40] Carrying is no different than other items

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38. See Shmirat Shabbat Kehilchata, 18:51; and Rabbi Yosef Lieberman, Teshuvot Mishnat Yosef, vol 4, no. 38.

39. See the comment of Rabbi Chayim Konievsky in Teshuvot Rabbi Akiva Eiger, Achiza B'Eikev edition as to why RabbiAkiva Eiger only addressed the permissibility of a child under age nine carrying on Shabbat.

40. This is based on Teshuvot Rabbi Akiva Eiger 15 which is cited by Beiur Halacha 343 s.v. midivrei sofrim. Rabbi Akiva Eiger permitted reliance on the Rashba Yevamot 114 that an adult may give a child an item that is forbidden rabbinically only when the child himself benefits from that item. It must be noted that Shulchan Aruch Orach Chaim 343 rejects the Rashba. However, in cases of great need poskim rely on the Rashba. See Shulchan Aruch HaRav 343:6. There is an extensive discussion in poskim pertaining to allowing a katan to carry in a carmelit in order to facilitate the

forbidden by rabbinic prohibition which a may not be directly given to a child. Moreover, Rabbi Yaakov of Karlin, Teshuvot Mishkenot Yaakov (118) notes that a parent violates a biblical prohibition if his child performs a Shabbat prohibition on his behalf. The Aseret Hadibrot (Shmot 20:10) state explicitly that one's child may not perform a melacha for him on Shabbat.[41] Therefore, one must not direct his own child to carry the item for him; someone else's child should be utilized.

Our entire discussion until now was predicated on the assumption that the item a person is carrying when told that the eruv is down is a necessary item to facilitate the performance of a mitzvah. In that case a non-Jew or child under bar mitzvah may be directed to carry the item. In the event that a person is told that the eruv is down while carrying an item which is not necessary to perform a mitzvah, the simplest and often best option is to allow the item to drop from his hand in an unusual manner while still walking.[42]

If one is informed of the fallen eruv while indoors – for

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performance of a mitzvah. A summary of this discussion can be found in Rabbi Ovadia Yosef Livyat Chein no. 128. Shmirat Shabbat KeHilchata 18:54 rules like Rabbi Akiva Eiger, and Minchat Shabbat 82:2 is also inclined to be strict here.

41. Mishnah Berurah, in his Shaar HaTziyun 334:54, follows the stringency of Mishkenot Yaakov. However, he seems to contradict himself in the Beiur Halacha 266:6 s.v. Haghah he rejects the Mishkenot Yaakov. Mishkenot Yaakov goes so far as to forbid one's child from acting on his behalf, even when he is not directed to do so, and when the entire issue at hand is rabbinic, such as carrying in a carmelit. Rabbi Schachter often relates that Rav Chaim Soloveitchik of Brisk once davened in shul in Warsaw without his tallit since he agreed with the Mishkenot Yaakov that one may not allow his child to carry an item for him.

42. Rabbi Dovid Ribiat, The Thirty-Nine Melachos pp. 1345-1346. See there for discussion of what to do if the item is valuable and dropping it backhandedly would incur loss. Also Teshuvot Nefesh

example he is told that the eruv is down when he is in Shul – he should leave all the items that he carried behind in Shul. If for example, he brought his young child or keys with him to Shul and it would be impossible to leave them behind, then a non-Jew should be directed to carry the keys or child home for him. This is permitted since his keys are necessary for him to perform the mitzvah of eating the Shabbat meal. As mentioned earlier we are permitted to direct a non-Jew to violate a rabbinic prohibition such as carrying in a semi-public domain in order to facilitate the performance of a mitzvah.

When a non-Jew is not available, the preferred option would be to carry the item from the private domain through the semi public area and into another private domain without stopping to pause at all.[43] The Chazon Ish (103:19) teaches that the majority of Rishonim hold that transferring from a private domain to another private domain via a public thoroughfare is a rabbinic rather than biblical prohibition.[44] Therefore, in our

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Chaya, no.5, cited by Rabbi Gedalia Felder, Yesodei Yeshurun p. 202. The case cited in the text assumes, as is most often the case, that the person who carried the item into the semi-public domain stopped to rest at least once since arriving in that area.

43. I believe the Chazon Ish's suggestion is preferable to notno l'chaveiro v'chaveiro l'chaveiro and to pachot pachot mearba amot, since according to the Chazon Ish there is no problem of how to transfer from the private domain to the semi-public domain and from the carmelit back into the reshut hayachid.

44. Rabbi Benzion Sternfeld in his Teshuvot Shaarei Tzion, vol. 1 no. 8, quotes that the Beit HaLevi ruled that it is permitted to direct a non-Jew to carry items from one private domain to another private domain through a public thoroughfare. Rabbi Sternfeld explains the reasoning of the Beit HaLevi was that although Tosafot in Eruvin 33 assume that carrying from a private domain to another private domain via a public thoroughfare is a violation of a biblical injunction, Rashba, Ramban, and Ritva there disagree and consider it to be a rabbinic prohibition. Consequently, we have a doubt regarding a

communities where there is no true public domain we encounter a rabbinic prohibition on two counts: transferring from private domain to private domain via another area and carrying in a semi-private thoroughfare. The Chazon Ish permits a Jew to violate a rabbinic prohibition on two counts in order to perform a mitzvah. The Chazon Ish's suggestion is a viable option for carrying the keys to one's home, since these keys are needed to eat the Shabbat meal and carrying them would therefore be necessary to perform a mitzvah. Of course, great care must be taken not to stop. Consequently, when one arrives at a corner and must wait for traffic to pass, he must continue to walk back and forth rather than completely stop. However, when one's home is a great distance from *shul*, where it is nearly inevitable that he will stop along the way, other methods would have to be employed.

It seems that when no non-Jew is available and the Chazon Ish's method is not a viable option, then the best way to get one's child or keys home would be to pass the child or keys from person to person. In order to avoid the prohibition of traversing four amot in a semi-public domain care must be taken to ensure that each pass be less than six feet.[45] If there

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rabbinic prohibition: do we follow Tosafot or the other Rishonim? As with all doubts regarding rabbinic prohibitions we follow the lenient ruling, and it is therefore permitted to direct a non-Jew to carry from one private area to another private area via a public domain, in order to facilitate the performance of a mitzvah. The Chazon Ish has a different reason for permitting one to carry (according to Torah law) from a private domain to another private domain via a public thoroughfare. He rules that the position of Rashba et al is accepted and not that of Tosafot. See also Shmirat Shabbat Kehilchata, chapter 18, n. 233.

45. See Shulchan Aruch Orach Chaim 349:3. The Peri Megadim writes that even if there are only two people present the item may be passed back and forth between the two people, providing each pass is less than six feet. Biur Halacha (loc cit s.v. vachaveiro) however,

are not enough people to pass the item to, the parent may carry the item himself providing he stops to rest every six feet or less.[46] Preferably he should sit down at these junctures. It must be noted, however, that both these options of passing the item from person to person and the option of stopping every six feet will not truly solve our problem. The Taz (349:1) notes that carrying an item less than four amot only mitigates the prohibition of carrying an item while traversing four amot in the public domain. The prohibition of transferring from a private domain into a public or semi-public thoroughfare is not mitigated.[47] Consequently, a non-Jew would still be necessary to remove the necessary item from the private domain into the carmelit and back from the carmelit into the private domain.

The Even HaOzer, however, suggests a method to take the child out of the private domain into the carmelit or from the carmelit into the private domain without employing a non-Jew. This procedure is however complicated and involves the participation of two people. One person should lift the baby and stretch his arms into the carmelit. The person standing in

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assumes that this method is equivalent to a single person stopping every six feet, which is a less preferred method.

46. The Gemara in Shabbat 153b writes that we should not publicize the leniency of repeatedly carrying less than four amot in the public domain, since it is very likely that it will be abused leading to people violating the Shabbat. However, since Shulchan Aruch Orach Chaim (349) mentions this leniency, I feel that it is permitted to mention it here as well.

47. See Mishnah Berurah 349:13. The Taz *(*349:1) forbids a non-Jew to carry a Torah scroll from a semi-public thoroughfare and into a private domain, even though this involves directing a non-Jew to violate a rabbinic prohibition in order to perform a mitzvah. The Beiur Halacha (349:3 s.v. ve'litno*)* shows, however, that the *Taz* was following his own strict opinion that directing a non-Jew to carry an item in a semi-public domain is forbidden. The majority opinion that rejects the *Taz* would permit directing a non-Jew in that

the carmelit should then remove the baby from the outstretched arms of the person who remains indoors.[48] This is permitted since the prohibition of transferring an item from a public to private domain or vice versa, can only be violated if the same person makes both an akira, an act of lifting the item from one domain, and a hanacha, an act of placing the item down in the other domain. Should one person make an akira and another person make a hanacha, no biblical prohibition is violated. However, the Mishnah Berurah rejects the Even HaOzer's suggestion. According to the Mishnah Berurah the only permitted method to transfer an item from a private domain into a semi-private one, or vice versa, is for a non-Jew to carry the item.[49]

Needless to say this article did not address all of the

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case.

48. The solution given is mentioned by Even HaOzer 349. Shaar HaTziyun 349:14 notes that Beit Meir disagrees. It seems from Mishnah Berurah's presentation that he agrees with the Beit Meir. Similarly, Pitchei Teshuva to Orach Chaim 349 notes that Sefer Kovetz on Rambam, Hilchot Shabbat chapter 16, also disagrees. Pitchei Teshuva, however, agrees with the Even HaOzer. The dispute between Even HaOzer and the other poskim is in actuality a dispute among the early Acharonim. The Be'er Haitaiv 266:6 quotes that Teshuvot Avodat HaGershuni no. 104 permits one person to do an akira and another person to do a hanacha when they are in a semi-private domain. However, Yad Aharon 347 disagrees. Although both carrying in a semi-public domain and the act of one person making an akira while his friend makes a hanacha are precautions lest one violate a more serious offense, occasionally the rabbis do institute double precautions, (gezeira legezeira). See also Teshuva Mei'Ahava no. 19 who agrees with Mishnah Berurah and Yad Aharon that here we do institute a double gezeira since it is overly likely that one person making an akira and another person making a hanacha will lead to a single person violating a complete act of carrying.

49. For a thorough treatment of two people collaborating to violate a melacha, see Rabbi Yitzchok Elchonon Spektor, Teshuvot Be'er

issues that can arise in the event that the eruv falls on Shabbat.[50] Actual cases should of course be referred to a competent moreh hora'ah. The complexity of the procedure to follow when one must carry on Shabbat requires true mastery of the sources, which any work of synopsis cannot provide. This article is intended only as a preliminary outline of some issues. Hopefully, raising these issues will help people make better decisions about what to do if an eruv is not operative.

Yitzchak no. 14 and Rabbi Bezalel Zolty, Mishnat Yaavetz no. 39:2-5.

50. For example, we did not address carrying in atypical ways as a method to mitigate the prohibition, nor did we address possible ways to adhere items to one's garments to permit carrying them.

Choosing a Name for a Child

Rabbi Aryeh Lebowitz

I. Introduction

The importance of giving a child an appropriate name is well documented in rabbinic literature. The Talmud , based on a verse in Tehillim, states that one's name can determine his lot in life.[1] The Maharsha explains that God's actions are sometimes influenced by a person's name. The Gemara comments that Ruth merited Dovid as a descendant as a result of her name. The name of Ruth is alluded to in the phrase *shirot v'tishbachot*, a reference to the songs and praises that were written by Dovid. In a similar vein, the *Midrash* warns us to be careful in choosing a name for a child, as his name may predispose him to certain tendencies. The Midrash proceeds to show how each of the spies who slandered the land of Israel had a name that would indicate a predisposition to this sin.[2] In a positive light, the Talmud teaches that *Chushim* (a plural

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1. Berachot 7b.

2. Midrash Tanchuma, Parshat Ha'azinu 7. Although the Midrash and Talmud speak of tendencies that originate with a person's name, they hardly suggest that one is incapable of overcoming such tendencies. In fact, Midrash Rabbah Berishit 71:3 states that some people had names that would suggest a predisposition toward service of God, and had overcome that predisposition and failed miserably in their service of God. Others had names that would suggest rebellion against God, but became faithful servants of God.

Rebbe, Davis Renov Stahler Yeshiva High School for Boys, Woodmere, N.Y.; Assistant Rabbi, Congregation Shaaray Tefila, Lawrence, N.Y.

word in Hebrew) had many children as a result of his name.[3]

In light of the importance of the decision, parents can be overwhelmed by the task of choosing a name for their child. To compound the problem, very often the choice of a name can be a source of tension between husband and wife, and even between families. In this essay we will outline some of the guidelines, based on traditional sources, for naming a baby. It should be noted at the outset, however, that few if any of the sources cited suggest a halachic imperative governing the choice of a name. Indeed, the Talmud and the Shulchan Aruch provide few if any rules on how to choose an appropriate name for a child. Most of what we will discuss is based on minhag (custom), as observed and recorded by the gedolei haposkim throughout the generations. Their differing positions often reflect viewpoints that attempt to balance and prioritize alternative ethical considerations or traditions.

It should be clear that circumstances both historical and personal led to diverse practices that reflect the application of rabbinic sensitivities to situations that arose. Even the practice of giving a child the precise name of an ancestor became widespread only in the period of the Tannaim. Most often those historical and personal circumstances are not recorded and are in any case beyond the scope of this essay.

We will begin with a discussion of who should be naming the child. We will then move on to the issue of for whom it is most appropriate to name the child, followed by a discussion of names to be avoided. Finally, we will discuss the custom to give multiple names to a single child, and the varying viewpoints of the poskim on this practice. Obviously, there are many more issues that may arise when choosing a name for a child (naming

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3. Bava Batra 143b and Tosafot s.v. she'hayu.

for an individual of another gender,[4] naming adopted children,[5] the Sephardic custom to name after the living and the origin of the Ashkenazic custom not to name after the living,[6] etc.). This article attempts to address only the most general and common issues, and to provide sources for each custom.

II. Does the mother's family or the father's family have the rights to the first name?

It is very clear from all of the poskim that both the father and the mother have the right to decide the name of the child. In fact, the Midrash refers to a person's name as the one that his "father and mother give to him."[7] Whose side of the family should name the first child, is entirely dependent on custom.

A. The Sephardic custom has always been to name the first child from the father's side of the family. The poskim suggest two biblical sources for this custom:

1. Rav Ovadia Yosef[8] points to the naming of Yehudah's children in Sefer Bereishit[9] as the source of this custom. The Chumash records that Yehudah named his first son (Er), and his wife named the second son (Onan). Although, the Torah

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4. For a treatment of this issue, see Nachalat Shiva page 122 and Sefer Hametzaref #86.

5. See Iggerot Moshe Yoreh Deah I #161.

6. For a thorough treatment of the custom to name after people who are deceased, and whether we may bypass this custom, see Rabbi Nachum Lamm's article in Beit Yitzchak 5747.

7. Kohelet Rabah 7:3. In this light, it should be pointed out that the child's name is solely the decision of the parents and they should not be pressured by anybody (grandparents, etc.) into using names with which they are uncomfortable.

8. Responsa Yabia Omer V:Yoreh Deah:21:1

9. Bereishit 38, verses 3-5.

mentions that his wife named the third son as well, Da'at Zekeinim Mi'balei Hatosafot points out that the Torah specifically tells us that Yehudah was out of town at the time of the naming of his third child and was therefore unable to name him.[10] If both parents are present, however, it seems that they should alternate naming the children, with the father naming the first child. Although the Ramban rejects this interpretation of the pesukim,[11] later in this essay we will demonstrate that he normally supported the custom to have the first child named from the father's side.

2. The Ben Ish Chai points out that the two sons of Aharon Hakohen who died young were both named for family members. The elder son, Nadav, was named for his maternal grandfather Aminadav. The name of the younger son, Avihu, is a reference to his paternal grandfather. The name is a combination of the words "Avi" and "Hu" (he is my father). The Ben Ish Chai's startling suggestion is that both of these sons died during the lifetimes of their parents as a tragic consequence of their names being given in reverse order.[12]

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10. Commentary to Bereishit ibid.

11. Commentary to Bereishit ibid. For a novel approach to this issue, specifically how it relates to these pesukim, see Rav Yaakov Kaminetzky's Emet L'Yaakov al hatorah pages 171, 197, 198, and 201, where he suggests that the mother is naturally more capable of choosing an appropriate name for her child as she is able to recognize the child's disposition. However, the custom was for the father to name the first child because traditionally the oldest son took the father's place as leader of the family. It is only appropriate that the father should determine the nature of the one who will carry on his legacy. This is also why Yaakov Avinu named Levi because he was the one to carry on the legacy of Torah set by Yaakov (see Rambam Hilchot Avoda Zara 1:3).

12. Ben Ish Chai Parshat Shoftim II:27. See also Responsa Yabia Omer V:Yoreh Deah:21 who writes that if the paternal grandfather is

B. The current Ashkenazic custom is that the mother's side of the family has the rights to the first name.[13] Rav Moshe Feinstein goes even further and rules that if the first child died at a very young age the woman maintains her right to name the next child.[14] There is no clear source for this custom, but

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willing to forgo the honor, they may name for the maternal grandfather. This ruling is based on the Shulchan Aruch Yoreh Deah 240:19 that gives a parent the right to forgo the honor that they deserve. Although a parent may not forgive being embarrassed, naming after the other side of the family first can hardly be deemed an embarrassment (bizayon). This ruling, however, is difficult for another reason. The Sefer Chasidim 573 (cited countless times by the Chida (Birkei Yosef Yoreh Deah 240:12-13, Yosef Ometz 87, Shiyurei Berachah 9, amongst other places) points out that while one is not held accountable in human courts for failure to respect parents when they are mochel, one is still going to be punished in the heavenly court. If this is the case, some have questioned why one may name for the maternal grandfather first, even when the paternal grandfather is willing to forgo the honor. Sefer Mora Horim V'kibudam Hashalem 3:56 addresses this question and writes that even the Sefer Chasidim would acknowledge that if the parent is mochel before any act showing a lack of respect is done, one is exempt even b'dinei shamayim. More fundamentally, however, the Sefer Chasidim would agree that we may rely on the mechila when it is b'makom mitzvah. This is clear from the ruling of the Shulchan Aruch Orach Chaim 472:5 that a son is obligated to lean at the Pesach seder even when in front of his father because the father is mochel. If we may not rely on mechilah even b'makom mitzvah the son should still not be permitted to lean. In our case, the need to maintain shalom bayit would certainly qualify as a makom mitzvah.

13. See Kuntros V'yikarei shemo b'yisrael (written by Yosef Hakohen Oppenheimer) page 17 footnote 20 where after citing many conflicting biblical sources, leaving no conclusive proof from *Tanach* regarding who names the first child, the author writes that the current custom is clearly to allow the mother the first rights to the name of the child.

14. Iggerot Moshe Yoreh Deah 3:101.

the Yalkut states that a bat kol came from heaven declaring that a tzadik will soon be born and his name will be Shmuel, and all of the women then named their children Shmuel,[15] giving the slight indication that the women had the right to the name. Although there are no clear sources for the custom to allow the mother to choose the first name, various reasons have been suggested, each reflecting strong ethical sensitivities.

1. Responsa Keter Ephraim explains that the bond between a daughter and her parents is weakened by her marriage because she leaves their home and now has responsibilities to her husband. Indeed, this weakened bond manifests itself in the halacha that a married woman is no longer obligated in the mitzvah of kibud av v'eim as it may interfere with her responsibilities toward her husband.[16] In order to strengthen this newly weakened bond, the first child is named from the mother's side of the family.[17]

2. Sefer Otzrot Yerushalayim suggests another reason for this custom. He explains that in many communities the father of the bride would accept all of the young couple's financial responsibilities for the first two years of marriage. It is therefore most appropriate that in exchange for his support, the first child should be named for somebody in his family.

III. Should precedence in naming be given to a Rebbe or religious leader, or a family member?

Sometimes a student who feels close to his Rebbe will want to name a child for his Rebbe rather than for a family member.

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15. Midrash Yalkut, Shmuel, 78.

16. See Shulchan Aruch Yoreh Deah 240:17. See also Torah Temimah Vayikra 19:3 who suggests that this exemption only applies to the obligation of kibud but not the obligation of mora.

17. Responsa Keter Ephraim #39.

This practice is especially prevalent in Chassidic circles where a high percentage of children are named for the previous leader of a particular Chassidic dynasty. There is considerable debate among poskim concerning this practice. We will outline the sources that would support each viewpoint and an approach to perhaps reconcile them.

A. Sources to indicate that one should name for a Rebbe.

1. The Talmud tells the story of Rabbi Eliezer b'Rabi Shimon who one day arrived at the Beit Medrash and had to rule on blood stains from sixty different women. After analysis of each stain, he determined that all of the women were tahor and therefore permitted to be with their husbands without having to immerse in a mikvah first. The women all went home, conceived and subsequently gave birth to male children, all of whom were named Eliezer after the Rabbi.[18]

2. The Talmud relates the story of a woman who had already lost two sons due to illness resulting from their brit milah. Upon the birth of her third son, she went to Natan Habavli to seek his advice. Natan examined the baby and noticed that his blood level was deficient and circumcision would probably endanger his life. He suggested that the woman wait until his blood level improve and only then circumcise the child. The woman heeded the rabbi's advice and the child survived his circumcision. The woman then named her child Natan after the rabbi who may have saved his life.[19]

3. The Sefer Habrit[20] cites the Sefer Chemdah Genuzah

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18. Bava Metzia 84b.
19. Shabbat 134a.
20. Page 320.

who relates the story of the birth of the Ramban's grandson. Although the custom was to name the first child after the father's side, the Ramban told his son to name the child after the child's maternal grandfather Rabbeinu Yonah because he was also the Rebbe of the child's father, and honor for one's Rebbe supersedes the honor due to one's parents.

B. Sources to indicate that priority should be given to names from the family.

1. The Midrash notes that in earlier generations when people were sufficiently familiar with the history of their ancestors, they would name their children based on the events surrounding their birth. In fact, most of the names that are found in Tanach were original names whose etymology is often explicitly traced to an event or an emotion of the parents at the time of the birth. Now that people are no longer as familiar with their family history, people name their children after their ancestors. Another opinion in the Midrash traces the change in naming custom to the loss of ruach hakodesh.[21] One can only choose an appropriate name for a child based on ruach hakodesh. In the absence of ruach hakodesh one can only choose an appropriate name by naming after a family member. Notably absent from the midrash is the notion that one should name a child after a rebbe.[22]

2. The amora Abaye is sometimes referred to as Nachmeini.

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21. The Midrash is addressing the issue of what seems to be a long forgotten biblical custom. In biblical times we find that most names that were given were original names invented by the parents based on the events surrounding the birth, or based on the experiences of the child's ancestors. The Midrash attempts to examine the origins of the current custom to name after another person who already had that name.

22. Midrash Rabbah Bereishit 37:7

Rashi explains that Abaye was orphaned as a baby. Rabbah Bar Nachmeini raised Abaye in his home and taught him Torah. Rabah called the child Nachmeini after his father.[23]

3. Sdei Chemed quotes the sefer She'eilat Shalom who proves that the custom to name for a family member is an ancient one from the fact that Rabban Gamliel named his son Shimon after his father.[24] In fact this younger Shimon later named his own son Gamliel after his father.

C. The practical opinions of the poskim.

1. Sefer Ziv Hasheimot cites the Noam Elimelech and the Sefer Brit Olam who rule that the name of a Rebbe takes precedence over the name of a family member. He relates this to the general rule that honor of a Rebbe takes precedence over honor of a parent because the Rebbe brings the person to olam haba whereas the parent only brings the person to olam hazeh.[25] Indeed all of the above mentioned sources in section

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23. Rashi Gittin 34b s.v. v'helchita k'Nachmeini. See also *Gilyon Hashas* ibid. in the name of the *Aruch* who suggests that Abaye's real name was Nachmeini, but Rabbah could not call him by this name as it was also the name of Rabbah's father. Instead, Rabbah invented the nickname Abaye (from the root *"av"* to mean father) for the child. See also Chidushei Chatam Sofer Gittin ibid. and Rashi to Horayot 14b.

24. Ma'arechet kaf, klal 104, "u'b'ikar". My Rebbe, Rav Ahron Silver, has pointed out that this proof is somewhat puzzling as R' Shimon may have also been Rabban Gamliel's Rebbe.

25. Bava Metzia 33a One possible application of this concept can be found in the Ramo Yoreh Deah 242:1 who suggests that when one's father is his principal teacher he should refer to him as "Rebbe" and not as "Father" because the honor due to one's teacher exceeds the honor due to one's father. The Ramo proves this assertion from the Gemara Avoda Zara 52b where Rabbi Shimon refers to his father as "Rebbe". See, however, Shach Yoreh Deah ad loc. It is important

A seem to support this contention.

2. The author of the Machaneh Chaim wrote a letter to the author of Divrei Yirmiyahu stating that he regrets promising his Rebbe (the author of Sha'arei Torah) that he would name his son after him. He explains that there are important kabbalistic reasons to specifically name a child after a family member.[26] Indeed, the Chatam Sofer who had a legendary relationship with his Rebbe, Rav Natan Adler,[27] did not name any of his sons for his Rebbe, even though Rav Adler had no children who could perpetuate his name. Although the Machaneh Chaim does not reveal his reasons for wanting to name only for family, it would seem that he would give precedence to all relatives (even aunts, uncles, etc.) over somebody who is not related. Rabbi Betzalel Stern explained that naming after the relative of a father or mother is a fulfillment of the mitzvah of kibud av v'eim.[28]

3. A third approach has been suggested on this matter.[29] Based on the aforementioned sources we may conclude that one should name a baby for the people most responsible for his birth and existence in this world. The name is not given for

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to note that the mishnah there rules that if one's father is also a chacham his honor takes precedence. See Hagahot Hagra ad loc. regarding whether the father must be equal in stature to the Rebbe for this to hold true.

26. Responsa Mishneh Halachot VI #252;258.

27. As a young boy, the Chatam Sofer left his parents' house and lived with his Rebbe, Rav Natan Adler. See Responsa Chatam Sofer Yoreh Deah 214. In many of his writings he refers to Rav Adler in the most glowing terms. See Responsa Chatam Sofer Choshen Mishpat #50 where he writes "My hand literally did not move from his hand until I learned all of his ways, his goings and his comings, etc." See also Derashot Chatam Sofer pages 371 – 373.

28. Responsa B'tzel Hachochmah III, 108:12.

29. Approbation to Sefer Ziv Hasheimot.

one who may well in the future impact the child's spiritual development in preference to one who has already contributed to the child's physical existence. It is therefore most common to name for an ancestor from whom the child descends directly. This is the most accepted custom, as suggested by the Midrash. In all of the sources cited above that indicate that a name was given for a Rebbe, the rabbi played a crucial role in the birth or survival of the child. Had Natan Habavli not told the woman to wait before performing the circumcision, the child would not have survived. Had Rabbi Eliezer not permitted the sixty women to their husbands their sons would not have been conceived. When someone other than a family member is chiefly responsible for the birth or survival of the baby (i.e. fertility doctor, marriage counselor) they, too, should rightfully take precedence in the naming of a child. Conversely, it would seem according to this approach that there is a less compelling reason to name a child for a relative whose contribution is less direct (i.e. aunt, uncle).

IV. People Who Should Not be Named For

A. Reshaim. The Talmud explains the meaning of the verse "v'sheim reshaim yirkav" (literally "the name of the wicked will rot") that people should not name their children for wicked people, and in this way the name will become "rusty" from disuse.[30] Rabbeinu Chananel writes that one who is named for a wicked person will not be successful in life.[31] The Maharsha states explicitly that one is forbidden to name his child for a wicked person.[32]

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30. Yoma 38b. This Gemara is also the source for naming a child after a tzadik as a fulfillment of zecher tzadik levracha.

31. In his commentary to the Gemara, ibid.

32. Chidushei Aggadot to Ta'anit 28a. Rav Chaim Paladgi (Sefer Chaim B'yad #70) takes this one step further. He writes that even

1. Exceptions to the rule: While the sources clearly indicate that one should not name a child after a wicked person, many exceptions to this rule can be found throughout rabbinic literature.[33] The following is a list of circumstances where at least some poskim would allow a child to be named for a rasha:

a. When a tzaddik (and certainly a righteous biblical figure) also had that name. Tosafot note that there was a Tanna named Shevna even though we find in Sefer Yeshaya[34] that Shevna was a rasha. Tosafot therefore explain that there was another Shevna[35] who was righteous. Tosafot conclude that one may give a child the name of a rasha if there was a tzaddik who had the same name.[36] If this were not the case, one would not be able to name his child Avraham if there was ever a wicked

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when one has a child who is a certain mamzer (born from a married woman), and they announce at the brit that he is a mamzer, he should still not be named for a rasha. See also Agudah, Shabbat Chapter 1 #17. Rav Meshulam Roth (Responsa Kol Mevaser 1:31:1) uses this as a consideration in ascertaining somebody's Hebrew name for the purposes of a get.

33. One interesting exception may be found in the Responsa Yehudah Ya'aleh Orach Chaim #199 (authored by Rav Yehudah b. Yisrael Assad, a nineteenth century Hungarian authority). He writes that King Shaul was called by this name even though one of the evil kings mentioned in Parshat Vayishlach was also named Shaul because the source for avoiding names of the wicked is a verse in Mishlei, which was written by Shlomo Hamelech. Prior to Shlomo Hamelech writing this verse, such as during the days of King Shaul, there would have been no objection to naming a child after a wicked person.

34. Chapter 22.

35. Found in Yeshayahu chapter 37.

36. Commentary to Yoma ibid. See also Tosafot to Ketubot 104b s.v. shenei, Megillah 10b s.v. Rabbah, and Shabbat 12b s.v. Shavna. See also Responsa of the Ramo #41 who arrives at a similar conclusion.

person named Avraham.[37] Obviously, not every Avraham in history was righteous, and people still name their children Avraham. Rabbi Moshe Shternbuch was asked about naming a baby for a relative who was not religious, where the family would be very upset if they do not name after this family member. He points out that one may name a baby after a grandfather who did not observe Shabbat if the name is a common biblical name, and the father should silently intend that he is really naming the child for the righteous biblical figure who shared the same name.[38]

b. When a name is added. Rabbi Moshe Shternbuch suggests that when naming after a rasha one should add a name for blessing (such as Baruch, Aryeh, Rafael, and other generally positive names). He points out that although the Chazon Ish was known to disapprove of the custom to give a child two names, in this case even the Chazon Ish would acknowledge that it is the best option available. As a word of caution, Rav

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37. Tosafot Shabbat ibid. Magid Meisharim (parshat Shemot) explains this leniency as a reflection of the fact that when a person receives a name, he also receives something of the character of the very first or original bearer of that name. Therefore, if one is named Avraham, he will be inclined toward kindness.

38. Responsa Teshuvot V'hanhagot I 606. Although Brit Avot 8:39 suggests that it is inappropriate to combine the name of a wicked person with the name of a tzaddik, that is only because of the disrespect shown to the name of the *tzaddik*, but adding a random name to the name of the wicked would certainly be permissible. This ruling of Rabbi Shternbuch seems to be in contrast to the ruling of Responsa Binyamin Ze'ev #204 (a 16th century halachic authority) who writes in the strongest terms that people should not try to save their own embarrassment or their parents' embarrassment by keeping the same name. In fact, if one has a father who is irreligious, he should not be called to the Torah by his and his father's name, but by the name of his grandfather. It would follow that naming after a rasha in order to pacify a family member who is a rasha would be most inappropriate.

Shternbuch adds that one should certainly not allow these issues to cause an argument in the family.[39] It would seem that a minor modification of the name would also suffice in this case.[40]

c. Somebody who was not a completely wicked person: Piskei Hatosafot writes that if somebody violates only a single aveirah they should not be considered a rasha and we may name after them. Only one who is entirely wicked like Doeg should not be named for.[41]

d. When the rasha did teshuvah. Many commentators grapple with the issue of how one of the greatest of the Tannaim was named Yishmael if, after all, Yishmael was a legendary rasha. The *Tosafot Yeshanim* and Ritva explain that if the rasha does teshuvah before passing away, we may name after him, and Yishmael did teshuvah before dying.[42]

e. God-given names: In dealing with the question of Yishmael, *Tosafot Yeshanim* writes that since God mandated that the first son of Avraham be called Yishmael one may name their child Yishmael.[43] The Chida extends this dispensation to all biblical names.[44]

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39. Responsa Teshuvot V'hanhagot ibid.

40. See Tosafot Gittin 11a s.v. shabta'i.

41. Sotah #20.

42. Commentaries to Yoma ibid. The Gemara Avoda Zara 17a states that when one does teshuvah at the end of their life, they are remembered as righteous. The Gemara proves this from Rabbi Eliezer ben Durdaya who had relations with every prostitute in the world and only repented in the last moment of his life, yet he is called by the title "Rabbi".

43. In a similar vein, the Midrash Rabbah Bereishit 71:3 states that the name Yishmael would suggest a predisposition to listening to God. Yishmael was wicked in spite of his name, not because of his name.

44. Sefer Yosef Ometz.

B. People who died young: Rabbi Yehudah Hachasid suggests that one refrain from naming a child after a person who died young, for it is feared that it may have been the name that caused the untimely death of that person.[45] The Maharshal writes that people do not name their children Yeshayahu, after the prophet because he was killed at a young age. Instead, people call their children Yeshaya (without the concluding vav). This minor change serves to mitigate any problem of naming for somebody who met an unfortunate end.[46] (Interestingly, the Beit Shmuel explains that people named Yeshaya are actually named after a different Yeshaya whose name appears in Divrei Hayamim, and who was not killed.[47]) Similarly, the Chatam Sofer explains that people who name their children Akiva tend to spell it with a heh at the end instead of the alef that appears in the name Rabbi Akiva in the mishnayot because Rabbi Akiva also met an unfortunate end, and the change of name serves to neutralize any negative effect the name may have.[48]

What emerges from all of these sources is that one should be careful to avoid calling a child by the name of somebody who met an untimely death. However, the Ramo writes that usually the name Gedalyahu is spelled with the concluding vav because it is usually after Gedalyahu ben Achikam.[49] It

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45. Sefer Chasidim 363 – 364.

46. Yam Shel Shlomo Gittin 4:31.

47. Hilchot Gittin, Sheimot Anashim, yud.

48. Responsa Chatam Sofer IV: Even Haezer #28. Interestingly, the Sefer Ohr Zarua received its title based on the author's dream that he was shown the verse "ohr zarua latzadik u'liyishrei lev simchah" in response to his query about the proper spelling of the name Akiva (the last letter of each word in the verse spells out the name Akiva with a heh).

49. Even Haezer 129:26.

seems that the Ramo believes that we need not worry about naming for people who had an untimely passing, as we know that Gedalyahu ben Achikam was murdered,[50] and people are named after him. Perhaps the point of contention between the Ramo and the Maharshal/Chatam Sofer is whether one should avoid naming for somebody whose death, while untimely, was al kiddush Hashem. In the view of the Ramo one need not refrain from naming after one who died a noble death regardless of the tragic circumstances surrounding the death. A contemporary practical application of this dispute would be whether one should avoid naming for people who were murdered in the Nazi Holocaust. However, we may suggest that even the Maharshal and Chatam Sofer, who discourage naming after those who died young even if it was al kiddush Hashem, would agree that one should name after somebody who perished during a national catastrophe involving indiscriminate murder of Jews (al Kiddush Hashem).

1. How young is considered too young to name for? There are two basic approaches taken by the poskim:

a. Some poskim give an exact number as the cutoff point. Responsa Minchat Elazar places this cutoff point at the age of fifty.[51] If one wants to name for somebody who died before the age of fifty, a name should be added to the person's name. Rav Yaakov Kaminetzky ruled that one who died before the age of sixty is considered to have died an early death and should not be named for directly.[52]

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50. See Rosh Hashana 18b.

51. Volume IV #27.

52. Cited by Kuntros Ziv Hasheimot 15:1. My brother, Rav Avi Lebowitz, suggests that this dispute may depend on whether death at the hands of heaven or karet is the barometer for an unfortunate end. Tosafot Yevamot 2a writes that death at the hands of heaven is before the age of fifty, whereas karet is before the age of sixty.

b. Rav Moshe Feinstein, on the other hand, does not give an exact number as a cutoff point. Instead, he argues, we must evaluate, qualitatively, whether the person had a particularly difficult or incomplete life. Rav Feinstein argues that it is very difficult to quantify what is considered a "shortened life" considering that we do not know how many years a person was originally supposed to live. Among the indicators of a life that met an unfortunate end are those who die unnatural deaths and those who die without children. After all, Shmuel Hanavi and Shlomo Hamelech died at the age of fifty-two,[53] and Chizkiyahu died at the age of fifty-four,[54] yet people have traditionally named their children Shmuel, Shlomo, and Chizkiyahu.[55]

V. Choosing Multiple Names for a Child

The issue of somebody who has two (or more) names is one that has major halachic ramifications in the area of gittin.[56] A thorough discussion of this topic is well beyond the scope of this article. We will focus specifically on trying to ascertain when the practice of giving a child two names became prevalent,[56] and the propriety of this practice.

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53. Midrash Hagadol Bereishit 3:26.

54. II Melachim 20:21.

55. Responsa Iggerot Moshe, Yoreh Deah 2:122.

56. The Acharonim in Hilchot Gittin debate whether two names have the status of one long name or two separate names. See Shulchan Aruch, Even Haezer 129:1 and commentaries.

56. Perhaps an even more interesting question, but one that is beyond the scope of this essay, and beyond the abilities of this author to properly address, is why the custom of two names began. Did it begin in a single community? Was it a result of mass death resulting in fewer children receiving more names? Did it begin with a Yiddish translation of the Hebrew name and develop into two different names? For our purposes, we will only prove that the custom is a relatively

A. There are various sources in rabbinic literature that seem to mention people who had two names from early in Jewish history. The poskim do not accept all of these sources at face value. What follows is a list of possible sources to suggest that the custom to give two names, while virtually non-existent in biblical times,[57] may have begun as early as the times of the Talmud, and to examine how the poskim address each source.

1. In the times of the Talmud. Rabbi Yechezkel Landau boldly declared that "with my weak memory I cannot recall a single instance in shas, be it a tanna or amora who was given two names."[58] When discussing names that appear in tanach, Rabbi Landau merely says that it "was not so common" to call somebody by two names. In shas, he insists, "it was not prevalent at all." There are, however, several passages in the Talmud that seem to suggest otherwise. Rabbi Landau dealt with some of these sources directly and some are addressed by other authorities.

a. Rav Oshia Beribi, Rabbi Eliezer Hakefar Beribi. There are several places in shas that these names are mentioned.[59] On other occasions the name Beribi is used alone, indicating that it is a name and not a title.[60] Rabbi Landau, however, explains that sometimes the word Beribi is a used as a title that means this particular person is the greatest of his generation,

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recent one and deal with the halachic ramifications of such a new custom.

57. Although we do find biblical figures with multiple names (i.e. Yaakov was renamed Yisrael, Moshe had many names, Yitro had many names) we never find anybody called by both names simultaneously.

58. Responsa Noda B'yehudah Tinyana; Orach Chaim 113.

59. See Eruvin 53a, Avoda Zara 43a, Chullin 28a, 84b.

60. Chullin 52b, Makot 5b, see Rashi there who explains that Beribi is the name of an amora.

and on other occasions it is merely a person's name. Rabbi Landau points out that whenever Beribi is used in conjunction with another name, Rashi comments that it is a reference to the amora's standing as a gadol hador. When, however, Beribi appears alone, Rashi comments that it is the name of a particular chacham.[61]

b. Abba Shaul, Abba Yosi: Rabbi Landau comments that the term Abba as used in these names, is merely a title indicating the importance of a person. Rabbi Landau finds support for this in a statement in the Talmud that generally slaves should not be referred to with the title Abba, but the slaves of Rabban Gamliel were such people of stature, that they may be accorded the title Abba.[62] This comment can also be applied to the wife of Rabbi Eliezer who is identified as Ima Shalom.[63]

c. Ayeh Mari. The Talmud refers to someone by the name Ayeh Mari. Rashi comments that this is the person's shem chanichah (surname or nickname).[64] Sefer Torat Chesed comments that one can argue that for a shem chanichah people would use two names, but not for a regular name. Furthermore, it could be argued that the name Ayeh is a title much like

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61. Rabbi Landau points out one exception to this rule, in Chullin 11b, and points out another difficulty in that Gemara, leaving both difficulties unanswered. Rabbi Landau neglects to mention that there are two places in shas (Sotah 29b, Chullin 57a) where Beribi is used alone and Rashi comments that it refers to other well known amoraim (R' Yosi and Chizkiyah) who are identified by the title Beribi because they were gedolei hador. In both cases, however, it is clear from the context who the subject of the passage is.

62. Berachot 16b. See Rashi there who explains that the terms Abba and Ima used to be used much the way Mr. and Mrs. are used today.

63. See Bava Metzia 59b, and comment of Rashash to Moed Kattan 20a.

64. Gittin 35a.

Abba.[65]

2. In the times of the Rishonim: It is exceedingly rare to find any rabbinic authority from the times of the rishonim who had two names. The lone exception is a ba'al hatosafot who is mentioned very rarely by the name Yaakov Yisrael.[66] Rav Moshe Sofer cites further proof that the custom used to be to give only one name from a story related by the Maharshal. The Maharshal writes that there was once a dispute between a husband and wife who to name their son after. The husband wanted to name the boy after his father, Meir, while the wife wanted to name for her father, Yair. Since both names contained the root of "ohr" (light) they decided to call the child Shneur (two kinds of light) thereby encapsulating the names of both grandfathers.[67] From the fact that they did not merely call the

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65. Torat Chesed Even Haezer 39 s.v. ach.

66. Cited in Tosafot Ketubot 98b s.v. amar rav Papa, and Tosafot Chullin 112a s.v. hani mili, and Sefer Hayashar l'Rabeinu Tam, cheilek hashut 48, 53-54. It should be noted, however, that the names Yaakov and Yisrael are a natural fit as they originate with the same biblical figure who had his name changed. This does not provide us with an early source for having two totally unrelated names. In fact, we find many acharonim who had two names that naturally went together, very often one Hebrew and one Yiddish translation (i.e. Shlomo Zalman, Aryeh Leib, Dov Ber etc.). See also Responsa Chatam Sofer Even Haezer II #18 who points out that even Yaakov Avinu is never referred to by both names simultaneously.

67. Yam Shel Shlomo Gittin 4:26. There the Maharshal relates the story with the name Uri in place of the name Yair, but the basic idea remains the same. Interestingly, Sefer Tiv Gittin, Sheimot Anashim, shin, writes that this is not the first time in history the name Shneur is found. In fact the Ramban occasionally mentions the name Shneur. Additionally, the Chida, Ma'arechet Gedolim, shin, kuntros acharon, Shneur, points out that Rabbeinu Yonah refers to a Rebbe named Shneur as well. These sources indicate that the name was not invented for the purpose of satisfying both parties in this dispute, but that it served as a convenient method to make peace between the

child Yair Meir (or vice versa) we may deduce that it was not customary to give two names.[68]

B. Is there anything wrong with giving two names? Although we have shown that the custom to give two names is of relatively recent vintage, we have not yet addressed the propriety of doing so. In order to properly analyze this question it is

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two.

68. Chatam Sofer Even Haezer 2:18. The proof cited by Chatam Sofer is most difficult because the name of the father of the child in the Maharshal's story was Menachem Tziyon, clearly an indication that some people did have two names. Furthermore, Rav Ahron Silver shlit"a from Yerushalayim has pointed out that perhaps giving both names would not have solved the problem as there may have been a subsequent machloket which was to be the first name and which would be the second name. See, however, Nachalat Shivah 45:21:12 who writes that he has heard that there are places where they give a child two names at the time of his brit. He also writes that he actually knew somebody with two names, further indicating that this was not the accepted practice. See also Introduction to Sefer Tiv Gittin of Rav Ephraim Zalman Margoliyos who cites all of the above sources and concludes that today it is commonplace for people to have two names. Rav Moshe Feinstein suggests that the custom originated out of necessity. When Jews were locked in ghettos, and they had to obtain something from outside the ghetto walls, they would have to bribe the guard to allow one of them out. The guard would not let them out unless he was relatively certain that they would not be caught. As such, the guards were unwilling to accept bribes to allow people who only had Jewish names out of the ghetto as this would surely get them caught. Giving a non-Jewish name only for the trip out of the ghetto also would not suffice because one who is not used to their non-Jewish name is also likely to get caught. To counter this problem they began to give people two names, a Jewish and non-Jewish one. They would be called by both names so that they would be used to their non-Jewish names as well in case the need ever arose to use it.

important that we distinguish between giving two names in general (after the same person or just picking two names that the parents like), giving two names after two different people, and adding a second name due to illness.

1. Giving two names under normal circumstances: While Rav Yechezkel Landau and Rav Moshe Sofer don't explicitly forbid giving two names, their tone suggests negative feelings toward this custom. Additionally, the Chazon Ish is reported to have disapproved of the custom to give two names (even though he had two names himself).[69] No reason is offered for this opinion, but presumably it is due to the resulting complexities in the laws of gittin and because it is a relatively recent custom. It seems that the Chazon Ish is somewhat of a da'at yachid on this matter, as the custom to give multiple names is very prevalent and has not been met with any criticism from other leading poskim. In fact, Rav Moshe Feinstein was reported to have ruled that although it was certainly inappropriate to start such a practice, since it is not forbidden, any rabbinic objection would certainly go unheeded.[70]

2. Giving two names after two different people: Assuming that there is no objection to giving a child multiple names, Sefer Brit Avot cites the Rav of Staratin who says not to name a child after two different people. In light of the custom to do so, Brit Avot suggests that this authority merely meant that one should not name his child for two people who did not get along with each other in their lifetimes.[71] This ruling is most

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69. Quoted in Responsa Teshuvot V'hanhagot 1:606. See the language used there that suggest that the Chazon Ish was not in favor if the custom but certainly did not forbid it.

70. Responsa Iggerot Moshe, Orach Chaim.

71. We can prove that there is generally no problem with naming a single child after two different people from the previously cited Da'at Zekeinim M'ba'alei Hatosafot regarding Yoseph naming

likely based on kabbalistic considerations.

Another consideration when giving two names after two different people is that the combination of the two names may be considered a third, independent name, and may not be considered to be after the two people who originally had those names. This point seems to be the subject of conflicting views of the rabbis.

a. Rabbi Eliezer Silver went so far as to rule that somebody named Yitzchak Isack may name his child Avraham Yitzchak, as the different combination is clearly a totally different name. He proved this from the pesukim at the end of Parshat Matot where the Torah says that Yair the son of Menashe went and captured villages (chavot) and these villages were renamed Chavot Yair. In contrast the next verse states that Nobach captured Kenat and called it Nobach "after his name." The addition of the phrase "after his name" suggests that only in Nobach's case where the name remained exactly the same is it considered "after his name." In Yair's case where the title Chavot was added, it is not considered to be "after his name."[72]

b. The Da'at Zekeinim M'ba'alei Hatosafot point out that Yoseph named his son Ephraim after both Avraham and Yitzchak. Avraham refers to himself as efer (ashes)[73] and Yitzchak was like *efer* (ashes) on the mizbeach. The name Ephraim means "two e*fer*s (two people referred to as ashes)."[74] Implicit in this comment is the notion that one may name for two different people, even if each name is changed.

Ephraim, and the story of the Maharshal with the name Shneur.

72. Sefer M'shulchan Govoha end of Parshat Matot, as related by Rabbi Isac Osband, Rosh Yeshiva in Telz Yeshiva.

73. Bereishit 18:27.

74. Da'at Zekeinim M'ba'alei Hatosafot Bereishit 42:52.

3. Adding a name due to illness. The Talmud teaches us that one of the methods of removing an evil decree is to change one's name.[75] Rav Yosef Caro records the custom to change one's name in the face of terrible illness in the hope that the decree against the person will be changed.[76] Many authorities rule that only a person who has attained a lofty spiritual status can change the name that somebody had been given at birth.[77]

VI. Summary and Conclusion.

We have discussed four major issues people face when naming children.

First, whether the father's or mother's family should take precedence in supplying the name for the baby. The proper approach varies depending on the community. Currently, the Ashkenazic practice is to name for the mother's family first, while the Sephardic practice is to name for the father's family first.

Second, there are varying customs regarding whether people should name for family members exclusively or should name for great rabbis as well. While most have the custom to name for family members initially, some have the custom to name for a Torah scholar once the names of all of the closest relatives have been perpetuated.

Third, we have discussed the various people who should not be named for. When it comes to naming for people who

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75. Rosh Hashanah 16b, Ta'anit 16a, and Baba Kama 125a.

76. Beit Yosef Yoreh Deah 338.

77. Kuntros Ziv Hasheimot Chapter 28 cites Sefer Rachamei Av that the name a person is given at birth is a lifeline for him, and taking away that name may be to equivalent cutting off whatever life he has left. See also Sefer Chasidim 245, and Yalkut Shimoni Yeshaya 449 that only God is truly qualified to name people.

were not religious Jews, most have the custom to either add a name or slightly change the name. Regarding people who died young, the definition of "dying young" is the subject of considerable debate, and the custom therefore varies. All poskim seem to agree, however, that a change in the name or an additional name would resolve any problems.

Finally, we discussed the custom of giving more than one name to a child. While the origins of this custom remain somewhat unclear, it has become prevalent with minimal rabbinic opposition. Customs, however, vary regarding naming a child after two different people.

Obviously, the choice of a name, while an important decision, should never be the source of strife in a home, as the lack of shalom bayit is likely to damage a child far more than even the least preferable choice of a name.[78] This essay is not intended to make decisions for people, nor to aid one side of an argument, but merely to organize for the reader varying rabbinic viewpoints and sensitivities in choosing an appropriate name.[79]

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78. The Chida (Yosef Ometz page 288, 362) writes that it is especially important to avoid any sort of strife in the house of a newborn and his mother, as this can cause danger to the baby. He then adds that even arguing over the name of the child can be dangerous to the child. See also Kaf Hachaim, Yoreh Deah 116:107.

79. Many sources presented in this essay were found in Kuntros Ziv Hasheimot, a comprehensive collection of sources relating to names. The author is most grateful to Dr. William Gewirtz for his valuable help in determining the content and style of this essay, and to Rabbi Ahron Silver, Rabbi Jacob J. Schachter and Rabbi Avi Lebowitz for their insightful comments and additional sources.

Halachic Perspectives on Alternative Medicine

Rabbi Joshua Flug

Introduction

Over the last two decades, many people have been turning to "alternative therapies" to treat, cure, alleviate or prevent disease. These practices are variously described as "complementary, traditional, holistic, dubious, fraudulent, quackery,"[1] unorthodox, and unconventional. The common term for these practices is complementary and alternative medicine (CAM). There are different ways to define CAM. One author defined CAM as "medical interventions not taught widely at U.S. medical schools or generally available at U.S. hospitals."[2] Another author defined it as "[medicine] that has not been scientifically tested and its advocates largely deny the need for such testing."[3] These definitions do not really distinguish between what types of therapies are included or excluded, and so the possibility is open to combine both

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1. Aimee Doyle, "Alternative Medicine and Medical Malpractice," Journal of Legal Medicine, 22 (2001): 533-552.

2. David Eisenberg et al., "Unconventional Medicine in the United States," New England Journal of Medicine, 328 (1993): 246-252.

3 Marcia Angell and Jerome P. Kassirer, "Alternative Medicine-The Risks of Untested and Unregulated Remedies," New England Journal of Medicine, 339 (1993): 839-841.

Fellow, Bella and Harry Wexner Kollel Elyon,
Yeshiva University

definitions and define CAM as medicine that has not been scientifically tested and its theories are not accepted by the conventional science community. This offers a working definition of CAM for the purposes of this article.

CAM may be divided into five categories: 1) The spiritual and psychological category includes faith healers, medical astrologers, mystics and psychics; 2) The nutritional category includes those who "prescribe" dietary supplements including vitamins, herbal treatments and macrobiotic diets; 3) The drug and biological category include those who recommend assorted chemicals, and drugs. The most popular form of treatment in this category is homeopathy; 4) Treatment using physical forces such as magnet therapy, hydrotherapy, and touch therapy; 5) A miscellaneous category including aromatherapy and iridology.[4]

In considering the halachic ramifications of alternative

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4. Raymond Murray and Arthur Rubel, "Physicians and Healers-Unwitting Partners in Health Care," New England Journal of Medicine, 326 (1993): 61-64.

The following definitions are attributed to Marjory Spraycar ed., PDR Medical Dictionary, Montvale, N.J., 1995, pp. 804, 818, 892, 1054:

Homeopathy: A system of therapy …which holds that a medicinal substance that can evoke certain symptoms in healthy individuals may be effective in the treatment of illness having symptoms closely resembling those produced by the substance.

Hydrotherapy: Therapeutic use of water by external application, either for its pressure effect or as a means of applying physical energy to the tissues.

Iridology: A system of medicine based on an examination of the iris, using a chart on which certain areas of the iris are diagnostically specific for particular organs, systems and structures.

Magnetotherapy: Attempted treatment of disease by application of magnets.

The following definitions are attributed to Jack Raso, The

medicine, there are two types of questions that must be addressed: 1) Questions that relate to the areas of Jewish law affected by various medical treatments. Questions that arise in this category are not questions of medical ethics, rather of Jewish jurisprudence. 2) Ethical questions involved in alternative medicine and how Jewish law addresses issues that the general medical community must also address.

The primary jurisprudential question that must be addressed is whether one may violate prohibitions such as Shabbat and Kashrut in the use of CAM. One is permitted to violate Torah law in order to save the life of a person in a life-threatening situation. Does this dispensation extend to violation of Torah law for the use of CAM as well? Further, the Torah prohibits following the ways of idol worshippers.[5] The Mishnah, Shabbat 67a, refers to this prohibition as Darchei Ha'Emori, the ways of the Emorites. Additionally, the Torah prohibits seeking the advice of sorcerers and the like.[6] Does halacha permit the use of therapies considered Darchei Ha'Emori or sorcery in curing someone who is ill?

With regards to the ethical aspect, the Torah mandates us to pursue a healthy life. Included in this mitzvah is an obligation to seek the advice of doctors in treating diseases.[7] Is one

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Expanded Dictionary of Metaphysical Healthcare: Alternative Medicine, Paranormal Healing, and Related Methods (www.hcrc.org/diction/ dict.html):

Aromatherapy: "Branch" of herbal medicine that centers on using fragrant substances, particularly oily plant extracts, to alter mood or to improve individuals' health or appearance.

Therapeutic Touch: Derivative of the laying on of hands… theory posits chakras and manually transmittable "human energies."

5. Vayikra 18:3. See note 20.

6. Vayikra 19:26,31. See Yoreh De'ah 179.

7. Issur V'heter (60:8) writes that one who chooses to forgo

permitted to forgo conventional medicine and use CAM in its place to treat a life threatening disease? Conversely, the Torah prohibits us from putting our lives at risk.[8] May one partake in CAM in situations where conventional medicine warns of a possible health risk?

To answer these questions, one must explore the attitudes of the sages of the Talmud and its commentaries toward "alternative" practices that existed in talmudic times.

Healing with Non-Kosher *Segulah* Medicine: The Stringent Opinions

The Mishnah, Yoma 83a states: "If one was bitten by a rabid dog, we do not give him to eat the lobe of the liver of that dog, and R. Mattia ben Cheresh permits this." Rashi, ad loc. s.v. ain ma'achilin, explains that the first opinion maintains that even though there are those who are treated in this manner, since the treatment is not a refu'ah gemurah, an absolute

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medical treatment is in violation of the verse v'ach et dimchem l'nafshoteichem edrosh, but the blood of your souls I will demand (Bereishit 9:5). He adds that based on the verse "v'chai bahem," and you shall live by them [the mitzvot] (Vayikra 18:5), one is required to pursue a healthy lifestyle. Magen Avraham 328:6, asserts that one who has a life-threatening ailment and refuses treatment is subject to physical compulsion by a rabbinic court. Although this notion is highly impractical nowadays, it certainly emphasizes the halachic importance of treating life-threatening conditions. See note 38.

8. The Gemara, Berachot 32b, seems to imply that self endangerment is a violation of the verses hishamer l'cha ush'mor nafsh'cha me'od, guard yourself and greatly guard your soul (Devarim 4:9), and v'nishmartem me'od l'nafshoteichem, , you shall greatly guard your soul (Devarim 4:15). See however, Maharsha, Berachot ad loc. who opines that the prohibition of self endangerment is only rabbinic in nature. See R. Dov Etinger, Pe'er Tachat Efer, pp. 57-92, for a lengthy discussion of this topic.

treatment, it does not warrant violating the prohibition against eating non-kosher animals. R' Mattia ben Cheresh, who permits the practice of eating the dog's liver lobe, is of the opinion that this treatment is an absolute treatment.

Maharam (Prague), no. 160, seems to be of the same opinion. Maharam was asked if one may feed a certain non-kosher bird to an ailing patient in light of rumors that someone was cured by eating this bird. Maharam responded that unless the medicament is a refu'ah yedu'ah, a well-known medicament, one may not violate Torah law.[9] Ramo, Yoreh De'ah 155:3 codifies the opinion of Maharam and writes that one may only violate a Torah prohibition if the medicament is a refu'ah yedu'ah. If one accepts Ramo's position at face value, it is prohibited to use any medicine whose use entails violation of a Torah prohibtion unless the medicine is well known. This would even include medicines in the experimental stage.

This interpretation of Ramo begs an obvious question. The Gemara, Yoma 84b, quotes Shmuel as saying that although one would normally follow the statistical majority in deciding halachic matters, when it comes to matters of life and death, one must attempt to save a life even if the possibility is somewhat remote. Thus, lo halchu b'piku'ach nefesh achar harov, when it comes to life and death matters, statistical data is ignored.[10]

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9. There does not seem to be any difference between refu'ah yedu'ah and refu'ah gemurah. See Teshuvot Yabia Omer VIII, O.C. no. 37:8, who equates the two terms.

10. Rambam, Hilchot Shabbat 2:20, and Teshuvot HaRambam 33 (Pe'er HaDor), is of the opinion that Shmuel's opinion is not followed. However, later authorities note that even Rambam will concur that the majority is not always followed. See Iggerot Moshe, Even HaEzer, IV no. 17. See also Yeshu'ot Ya'akov, Even HaEzer 4:15 for an alternative analysis of Rambam's opinion. Yeshu'ot *Ya'akov*'s analysis seems to produce a similar practical result.

Even if there is remote possibility of saving someone's life, all means are employed to do so. If statistical data is not a factor, why should one require that the medicine be refu'ah yedu'ah? Shouldn't a medicine with questionable effectiveness be permitted on the basis that there exists at least a remote possibility of saving the patient's life?

Based on this question, Pri Megadim, Eshel Avraham 328:1, reinterprets Ramo's postion. He concludes that the only cases where known medicine is required are cases where there is no threat to the person's life. In a life-threatening situation, one must try whatever is possible to save a life, even the use of a medicament whose effectiveness is questionable. The opinion of Pri Megadim certainly does not seem to reflect the intention of Ramo,[11] nor is it the accepted opinion.[12] Nevertheless, if one rejects Pri *Megadim*'s interpretation, one must explain why the requirement of refu'ah yedu'ah does not contradict the principle of lo halchu b'piku'ach nefesh achar harov.

The resolution to this problem may lie in the commentary of Rambam to the aforementioned Mishnah. Rambam, in explaining why it is prohibited to eat the dog's liver lobe, assumes that consumption of the liver lobe is a form of segulah medicine. Segulah medicine is medicine based on mystical assumptions rather than scientific or rational understanding. Rambam states:

> The law with regard to this is not in accordance with R. Mattia ben Cheresh who permits feeding a person the liver of a dog that bites because this does not benefit other than by way of *segulah*. But the sages declare that one may not transgress the commandments other than in conjunction with a therapy, i.e., with regard to things

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11. See Teshuvot Yabia Omer VIII, O.C. no. 37:8.
12. See Mishnah Berurah 328:5 and Aruch HaShulchan 328:9.

> which cure in accordance with nature... But to treat by means of things that cure by virtue of their *segulah* is forbidden because their power is weak, not [known] by virtue of reason and its [demonstrated efficacy on the basis of] experience is far-fetched; its advocacy by one who is in error is weak.[13]

However, Rambam's opinion requires further clarification. The Mishnah, Shabbat 67a, states that one may wear the tooth of a fox and the nail of an incarcerate into the public domain on Shabbat. Rambam, in his Guide for the Perplexed 3:37, writes:

> In order that we may keep far from all kinds of witchcraft, we are warned not to adopt any of the practices of the idolaters, even such as are connected with agriculture, the keeping of cattle , and similar work…Our sages call such acts "the ways of the Amorite"; they are kinds of witchcraft, because they are not arrived at by reason…Our Sages say distinctly, "whatever is used as medicine" does not come under the law of "the ways of the Amorite"; for they hold that only such cures as are recommended by reason are permitted, and other cures are prohibited….It is not inconsistent that a nail of the gallows and the tooth of a fox have been permitted to be used as cures; for these things have been considered in those days as facts established by experiment.[14]

Teshuvot HaRashba, I, no, 413, points out an apparent inconsistency between the two passages. In Rambam's commentary to the Mishnah, it is clear that one may not violate

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13. Translation taken from Rabbi J. David Bleich, "Experimental Procedures: The Concept of Refu'ah Bedukah," Contemporary Halakhic Problems IV (New York 1995), 206. Translation follows the Ibn Tibbon version.

14. Translation taken from M. Freidlander (trans.), Guide for the Perplexed, ad loc.

any prohibition in the use of segulah medicine. Yet, in the Guide, Rambam allows violation of the prohibition of Darchei Ha'Emori for medicinal purposes. Kapot Temarim resolves Rambam's opinion by distinguishing between the prohibition of Darchei Ha'Emori and other prohibitions.[15] Rambam's leniency regarding the use of medicine that would normally entail violation of Darchei Ha'Emori is not due to the fact that all prohibitions are lifted for the use of segulah medicine. Rather, the scope of the prohibition of Darchei Ha'Emori is limited to activities that are performed without purpose. If one were to perform an activity for medicinal purposes, there is no prohibition of Darchei Ha'Emori. Thus, the leniency does not stem from any leniency attributed to the health of the user, rather to the scope of Darchei Ha'Emori.

Based on the comments of Kapot Temarim, Rambam's use of the term "facts established by experiment" in the Guide is understood to mean that the medicine has shown signs of effectiveness. These standards are not the highest standards of experimentation, as the medicines listed in this category do not necessarily warrant violation of Torah law for their use. Only when the medicine is "derived by reason or experience that approaches truth" may one violate Torah law in its use.

According to Kapot *Temarim*'s understanding of Rambam's opinion, three types of medicine exist: 1) Medicine based on "reason or experience that approaches truth" is a valid form of refu'ah and its use is permitted to save a life even if its use entails violation of Torah prohibitions; 2) Medicine not based on "reason or experience that approaches truth," if it shows signs of effectiveness, is not considered Darchei Ha'Emori, but nevertheless may not be taken in violation of Torah

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15. Commentary to Yoma 83a entitled Tosefet Yom HaKippurim.

prohibitions;[16] 3) Medicine that shows no signs of effectiveness and is not derived by reason, is considered Darchei Ha'Emori.[17]

A number of commentaries understand that Rashi's terse explanation of the Mishnah is in concordance with that of Rambam's lengthier explanation. If this equation is correct, one can understand that Rashi's prohibition of taking non-kosher food unless the medicament is proven only applies to segulah medicine. However, if medicine is rooted in scientific knowledge, one may partake of the medicament even if it has not yet shown effectiveness. Thus Ramo's requirement of refu'ah yedu'ah only applies to segulah medicine. This is evident in Ramo's statement that it is permitted to ingest non-kosher medications as long as they are proven medications or are administered through an expert. The fact that Ramo allows for the opinion of the expert shows that there are two tracks of medicine: conventional and non-conventional medicine. Ramo allows a physician to prescribe non-conventional medicine if the physician is of the opinion that the medicament will heal the patient. Ramo's allowance for an expert opinion is not derived from Rashi or Maharam, as they only mention the

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16. Teshuvot HaRadvaz no. 1436, maintains that Rambam will concur that one may use segulah medicine whose use violates rabbinic prohibitions. See Teshuvot Yabia Omer VIII, O.C. no. 37:3,15, who supports this view.

17. The leniency that is apparent by Darchei Ha'Emori as opposed to other prohibitions is evident in the fact that Rambam only prohibits partaking of the dog liver because of its non-kosher status. If this medicament were to be from a kosher animal, it would seem that Rambam would permit its use and would not consider it Darchei Ha'Emori, despite the fact that it is a segulah medicament. It is therefore clear that the reason why Darchei Ha'Emori is not an issue in the Mishnah is because it has shown signs of effectiveness. Nevertheless, since the medicament's effectiveness wasn't proven, one may not violate any prohibition in its use.

allowance of refu'ah yedu'ah. Rather his allowance is derived from Rambam who allows for any medicine based on reason. The expert opinion is tantamount to medicine based on reason.

With this understanding of Ramo one can resolve the apparent contradiction from the principle of lo halchu b'piku'ach nefesh achar harov. Although this principle dictates that one may violate a Torah prohibition even if the possibility of saving the patient is remote, it only applies to methods based on "reason or experience that approaches truth."

The Lenient Opinions

Not all Rishonim accept Rambam's opinion. Rashba, Teshuvot HaRashba, I, no. 167, permits the molding of a lion onto an amulet to be worn for the purposes of curing a disease. Rashba notes that Ramban concurred with this position. Rashba was questioned on this position as use of the amulet seems to violate the prohibition of Darchei Ha'Emori as per Rambam's formulation.[18] Rashba Teshuvot HaRashba, I, no. 413 responds by questioning Rambam's position on three points.[19] First, the prohibition of Darchei Ha'Emori is limited to cases listed in the Tosefta, Shabbat chapters 7 and 8. Anything that was not included cannot be considered Darchei Ha'Emori.[20] Second,

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18. The text of the question does not appear in Teshuvot HaRashba. However, the text of the question can be found in Minchat Kena'ot, no. 1.

19. The ideas are not presented here in the same order as in the original text.

20. See Yerei'im 313, who is also of the opinion that the prohibition of Darchei Ha'Emori is limited to practices listed in the Tosefta. He explains that Chazal had a tradition as to which practices constitute Darchei Ha'Emori. Maharik 88, however, adds that even if the prohibition is limited to these practices, there exists an additional prohibition to follow practices of other nations that don't seem to

the standard of medicine should not be limited to medicine based on Galen and Aristotle. Perhaps there are other forms of medicine that are equally as acceptable even if they take on somewhat of a paranormal character.[21] The third point, the most fundamental of his arguments, is that one must understand that the ultimate source of healing is G-d. Sickness as well as health are in the hands of G-d. However, the Torah states, "verapo yerape," "he shall compensate him for his medical expenses," in detailing the various payments that one must pay for wounding a fellow man. This teaches us that one is permitted to partake of medicine.[22] One who partakes in

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have any purpose to them. Teshuvot Divrei Chayyim Y.D., I, no. 30, explains the difference between these two prohibitions. The practices listed in the Tosefta are intrinsically prohibited practices, regardless of whether they are currently practiced. The additional prohibition listed by Maharik is limited to practices which are currently practiced.

21. The second argument attempts to elevate the status of segulah medicine. Ra'shba is of the understanding that natural science has no more weight than that of the paranormal. This seems to be rooted in a fundamental dispute between Rambam and Ramban regarding the reason behind the prohibition of practicing sorcery. Rambam, Hilchot Avodat Kochavim 11:16, is of the opinion that sorcery is prohibited precisely because its existence is unfounded. Ramban, Teshuvot HaMeyuchasot LaRamban 283, disputes this position and assumes that there are paranormal powers that were created as part of the world. Nevertheless, the Torah prohibits us from exploration and exploitation of these powers. Therefore, logic would dictate that according to Ramban, segulah medicine can be as effective as natural medicine and it should be given equal weight. Interestingly enough, many Rishonim subscribe to the opinion of Ramban with regards to this point. See Nimukei Yosef, Sanhedrin 16b, s.v. Tannu Rabanan, Derashot HaRan, no. 4, and Bi'ur HaGra, Yoreh De'ah 179:13.

22. The Gemara, Berachot 60a cites the verse "verapo yerape," (Shemot 21:19), and states that from this verse a physician is given the license to practice medicine. Rishonim give various interpretations

medicine is not considered to be lacking in faith in G-d. In this dispensation there is no difference between conventional medicine and segulah medicine.[23]

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as to what message is being conveyed. Rashi, Baba Kamma 85a s.v. shenitna, writes that one might have thought that if G-d caused a person to be ill, one should not attempt to undermine the divine decree. The verse therefore states that one is permitted to heal an ill patient. Tosafot ad loc. s.v. shenitna, comment that there is an added dimension to this verse. If the Torah would have only written 'verapo', one might have thought that one may only heal wounds inflicted by other individuals. However, it would be prohibited to cure diseases as it appears to contradict the divine decree. Therefore, the Torah repeats the term by writing 'yerape,' that it is permitted to treat diseases as well as wounds. Moshav Zekeinim MiBa'alei HaTosafot, Shemot ad loc., add that this is not limited to treating diseases, but rather the repetitive language seeks to undermine any conception one might have that a given treatment contradicts the divine decree. Therefore, if one receives treatment from one physician and the treatment is unsuccessful, there is no reason to assume that this is the divine decree, rather the individual may seek the advice of a second physician. Tosafot HaRosh, Berachot 60a s.v. mikan, quotes Rabbeinu Ya'akov as saying that the verse is granting permission to a physician to receive money for his efforts. Without the verse one might have thought that the physician may not receive money for performing a mitzvah.

23. With regards to this point, Teshuvot Machane Chayyim Y.D. II, no. 60 contends that the basis of Rashba's opinion is rooted in a comment of Ramban in his commentary on the Torah, Vayikra 26:11. Ramban writes that ideally, one who is ill should not turn to a physician for the treatment of the illness, but rather one should rely on G-d to provide the necessary healing. That the Torah gives license for a physician to heal, was only said in a situation where an ill person lacks the proper faith in G-d. Should this person approach a physician for healing, the physician is permitted to treat him.

Teshuvot Machane Chayyim asserts that both Rambam and Ramban agree that one must consider G-d the ultimate source of healing. However, Rambam is of the opinion that the Torah requires one to seek the care of physicians in times of illness, even in the face of Torah prohibitions. Nevertheless, since the allowance and

Rashba does not address the issue of using segulah medicine when its use entails violation of a Torah prohibition. Nevertheless, Rashba's opinion is cited as the grounds justifying the actions of those who violate Torah prohibitions in using various forms of segulah medicine.[24] Rashba does seem to subscribe to this opinion. In a different responsum, Rashba allows for the writing of an amulet on Shabbat in order to save a life.[25] Writing an amulet is clearly a form of segulah medicine. Yet, Rashba allows for the violation of Shabbat in order to use this segulah medicine.

May one rely on Rashba's opinion in light of the fact that Rambam clearly disagrees? Some authorities permit reliance upon Rashba's opinion.[26] Others conclude that although one may justify the actions of another on this basis ex post facto, one should not rely on Rashba's opinion ab initio.[27] Others

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requirement to partake in medicine is an innovation, this innovation should be limited to rational medicine and should not apply to paranormal therapies. Ramban, on the other hand, who assumes that all forms of medicine are in principle, prohibited, does not distinguish between rational medicine and the paranormal.

Based on Teshuvot Machane Chayyim, if one would attempt to reject the position of Rambam based on the third argument of Rashba, one would first have to accept the opinion of Ramban with regards to the prohibition of medicine in general. Halachic authorities have been reluctant to allow patients who refuse medical care to rely on Ramban's opinion as a basis for refusing medicine. See Avnei Nezer, Choshen Mishpat 193, Yechave Da'at, I no. 61, and Tzitz Eliezer VIII, no. 15:2. See also, note 40. Therefore, according to Teshuvot Machane Chayyim, it is difficult to accept Rashba's third claim as a basis for rejecting Rambam's opinion and providing grounds for leniency.

24. Teshuvot Admat Kodesh, Yoreh De'ah no. 6.

25. Teshuvot HaRashba, IV, no. 145.

26. Teshuvot Admat Kodesh op cit. and R. Shalom Mizrachi, a noted kabbalist, cited in Mekor Baruch III, pg. 1216.

have concluded that one may not rely upon Rashba's opinion under any circumstances.[28] Additionally, those who permit reliance upon Rashba are all of Sephardic tradition. Ashkenazim, who generally follow Ramo's position, are noticeably absent from the list of those who rely on Rashba's opinion. This seems to be due to the fact that Ramo's ruling on this matter clearly rejects Rashba's opinion.[29]

Halachic Status of CAM

With Ramo's position in mind, one must determine the status of CAM in comparison to segulah medicine. Regarding the prohibition of Darchei Ha'Emori, so long as a medicament shows signs of effectiveness, there is no prohibition against its use. In this respect, the use of CAM does not seem to violate

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27. Birkei Yosef, O.C. 301:6. Teshuvot Yabia Omer VIII, O.C. no. 37:15 seems to side with this opinion. He does not allow outright reliance upon Rashba's opinion. However, he does allow one to rely on Rashba's opinion in cases where the medicine has shown repetitive signs of effectiveness.

28. Teshuvot Maharsham III, no. 225 and Teshuvot Zerah Emet III, no. 123. Teshuvot U'vacharta BaChayyim no. 87, does not see any grounds for leniency in permitting violation of Shabbat in the use of segulah medicine. Additionally, Magen Avraham 328:1, Mishnah Berurah 328:5 and Aruch HaShulchan 328:9, cite Ramo's opinion as normative and do not mention any leniencies on the matter.

29. There is an additional reason to question reliance upon Rashba. Rashba reportedly retracted his position in allowing the use of the molded lion carving. See Beit Yosef, Bedek HaBayit, Yoreh De'ah 141 (pg. 238a). Shayarei K'neset HaGedolah, Y.D. 178:7, questions whether Rashba retracted because he felt that the lion's face constituted a more serious prohibition of idol worship or because he felt that the lion's face constituted Darchei Ha'Emori. If the latter is correct, Rashba in essence, retracted from his three arguments on Rambam's position.

the prohibition of Darchei Ha'Emori.[30]

However, with regards to the use of CAM in violation of Torah prohibitions, Rambam's point of distinction between conventional medicine and segulah medicine lies in the fact that conventional medicine is "derived by reason or experience that approaches truth." The indication is that the problem with segulah medicine is not that it is paranormal, rather it is "not [known] by virtue of reason and its [demonstrated efficacy on the basis of] experience is far-fetched." CAM, certainly cannot be described as "derived by reason or experience that approaches truth" and would be better described as "not [known] by virtue of reason."

The application of the laws of segulah medicine to CAM, is further evident in the responsum of Maharam.[31] The case presented by Maharam was not a case of segulah medicine, rather an unproven medicine, which was not rationalized. In fact, because the medicine was not segulah medicine, Maharam was more lenient in his standards of proof of effectiveness.[32] Although the Mishnah, Shabbat 60a, requires that an amulet cure three times before being considered effective, Maharam

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30. See Paul Fontanarosa and George Lundberg, "Alternative Medicine Meets Science," JAMA 280 (1998):1618-1619. The authors suggest that not all forms of CAM are the same. Some show signs of effectiveness while others do not. If this assessment is true, those that do not show any signs of effectiveness and are not based on rational theories would be considered Darchei Ha'Emori according to Rambam.

31. Op. cit.

32. See Hagahot Maimoni'ot, Hilkhot Ma'achalot Assurot 14:2, who has a slighty different version of Maharam's responsum. In this version, Maharam stressed that this medicine did not work through mazal, rather through its strong taste. For this reason, Maharam was more lenient in his standard of proof.

felt that this type of medicine is considered effective after curing just one person.

One might argue that based on Maharam's ruling, CAM should be permitted as any form of alternative therapy has many people that can testify to its effectiveness. This seems to exceed Maharam's position that refu'ah yedu'ah is achieved when one person is cured from the medicine. However, this argument is invalid as Tosafot Shabbat 61a s.v. af al gav, quote the opinion of Ri that just as an amulet gains effectiveness by curing three people, it loses its status as effective if it fails to cure three people. This opinion is cited as normative.[33] Therefore, any testimonial "evidence" is nullified by clinical trials which call its effectiveness to question.

Maharam is the source for Ramo's ruling. Therefore, it follows that CAM may not be used in situations where its use entails violation of any prohibition. Many of these medications contain non-kosher components derived from ox bile, shark cartilage, bovine and porcine extracts and derivatives, snakes (Lachesis and Naja), cockroaches (Blatta O.), ants (Formica Rufa), beetles (Cantheris), dog spit (Lyssin), rotten meat (Pyrogenium), cancer tissue (Carcinosin), crab, shrimp or lobster shells. There are many other examples of non-kosher components.[34] Similarly, one may not violate the Shabbat to see a CAM practitioner or for the use of any CAM medicament. Furthermore, one may not seek the advice of a medical astrologer

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33. See Mishnah Berurah 301:97.

34. See R. Dovid Heber, "She Sells Sea Shells - But Are They Kosher? The Kashrus Status of Glucosamine and Other Arthritis Remedies," and "Vitamins, Nutritionals & Homeopathic Remedies: Kashrus and Halachic Guidelines," Kashrus Kurrents (www.star-k.com/cons-kash-articles.htm). Although some of these components may be nullified in the overall mixture, one must at least be aware that there is a potential Kashrut question in many of these medications.

or any other sorcery-based healer, for the Torah prohibits seeking their advice even for the purpose of healing.[35]

Ethical Issues in the Use of CAM

May one forgo conventional medicine and turn to CAM to treat a life threatening disease?[36] Ramban writes that the license that the Torah gives to a physician to practice medicine is only given to a physician who is an expert in the field and is the best physician available.[37] Likewise, it would seem that a patient should seek out the best physician available.[38] This ruling of

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35. See Terumat HaDeshen, Pesakim, no. 96 who maintains that it is permitted to consult an astrologer for the purposes of healing an ill person. Teshuvot HaRadvaz no. 485, disputes the position of Terumat HaDeshen and maintains that there is a biblical prohibition in consulting an astrologer. See Shach, Y.D. 179:1, who summarizes the various opinions on this matter.

36. This discussion is limited to situations where one is required to be treated. There are stages in certain illnesses where one is no longer required to engage in medical intervention. See Minchat Shlomo 91:24 and Igrot Moshe, C.M. II, nos. 93, 94 and 95. See also, R. Zalman Nechemia Goldberg, "Piku'ach Nefesh V'Hagdarat D'chiyat Nefesh Mipnei Nefesh," Moriah 8:4 (1978): 48-59.

37. Torat Ha'Adam, Sha'ar HaSakana. See Tzitz Eliezer V, Ramat Rachel 22:5 who writes that this ruling of Ramban does not apply to routine procedures whose methods are universally accepted by the medical community.

38. There seems to be a dispute between Taz, Y.D. 336:1, and Birkei Yosef, Y.D. 336:2, with regards to Ramban's opinion on the obligation of an ill person to seek medical attention. See note 24. Taz maintains that Ramban's comment that in principle one should not partake in medicine, is limited to very righteous individuals. Those who are not in this category are obligated to seek medical attention for life-threatening ailments. Birkei Yosef is of the understanding that Ramban's position applies to all people. Therefore, there is no obligation on the part of the ill person to seek medical attention.

Ramban comes despite the fact that Rashba claims to have received approval from Ramban on his decision with respect to segulah medicine. How did Ramban allow the use of unproven segulah medicine when there is a requirement to seek out the best physician available?

One can explain that although the actual act of healing is just a token act to allow G-d to run his world through natural order, one has not fulfilled the obligation of healing oneself until one is healed. One who undergoes treatment that fails, cannot claim that a heavenly decree called for his demise and then give up on treating himself. However, Ramban expands this obligation by requiring one to start with the best physician, seemingly to avoid delay in treatment of the disease. Ramban's opinion is codified in Shulchan Aruch, Yoreh De'ah 336:1. Based on this, it would seem that one may not treat a life-threatening disease using CAM, without first receiving the treatment of a licensed medical doctor. Unfortunately, many people forgo conventional medicine altogether for CAM.[39]

There is an additional reason why the Ramban insisted on seeking the best physician. In the very same essay, Ramban writes that the Torah, in allowing the use of medicine, is doing so despite the fact that any given medicament can cure one person and kill another. One might have thought that because of the risks involved, it is preferable to avoid medicine completely. Thus the Torah states, 'verapo yerape,' to teach that one may assume a certain risk in partaking in medicine. Clearly, Ramban's interpretation of the verse is not a carte

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39. See Max J. Coppes et al., "Alternative Therapies for the Treatment of Childhood Cancer," New England Journal of Medicine, 339 (1993): 846. The article addresses the concern that the popularity of CAM results in the abandonment of conventional treatments by cancer patients. This, unfortunately results in spread of the disease causing the premature demise of the patient.

blanche license to assume the greatest of risks even for the most minor health benefit. Risk-benefit ratios must be factored into every medical decision. Advice on these issues must be given by those who are competent in assessing the risks and benefits. For this reason, it would seem logical to require a patient to seek the advice of the best physician available.

Use of CAM can entail potential dangers. A study of herbal medications found that many of them contain extremely high levels of lead, mercury or arsenic.[40] Additionally, some of these medications prevent conventional treatments from taking effect. Federal laws limit the regulation of CAM medications and hold them to a lesser standard compared to prescription drugs.[41] When one partakes of medications that are untested there is no way to determine if there will be any harmful results. Although most often the side effects are treatable, it is possible to for a person to receive what seems to be mild symptoms, which are in truth life-threatening if not treated.[42]

Conclusion

Based on the analysis of the comments of Rambam and Maharam, it seems that CAM has the same halachic status as that of segulah medicine. According to Rashi and Rambam, these medicines may not be used in situations when their use entails violation of Torah prohibitions. Within the opinion of Rashba and Ramban an argument can be presented that segulah medicines may be taken even in violation of a Torah prohibition.

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40. Richard J. Ko, "Adulterants in Asian Patent Medicines," New England Journal of Medicine, 339 (1998): 847.

41. Richard T. Penson et al., "Complementary, Alternative, Integrative, or Unconventional Medicine?," The Oncologist, 6 (2001): 463-473.

42. Angell, op. cit.

Ramo cites the opinion of Rashi as normative. Yet, some authorities are willing to rely on Rashba and Ramban in certain situations.

Nevertheless, it seems that even Ramban agrees that one may not replace conventional medicine with alternative medicine to treat a life-threatening disease. Similarly, one must consult with a medical doctor before taking medicines with potential risks.

However, from a halachic standpoint, one is only required to abide by the physician's instructions if the physician feels that there is a danger in the use of that particular therapy. If the physician advises not to use CAM because he believes that the therapy is not worth expenditure of time and money, one is not required to follow his advice.

It should be noted that this presentation is not meant to be relied upon as halacha l'ma'aseh. A Rav should be consulted on any halachic matter discussed in this article, certainly on issues that relate to piku'ach nefesh.

CAM can serve as a complement to conventional medicine or it can serve as an alternative. Tolerance for CAM should be centered on its use as a complement to conventional medicine and not as an alternative. A study concluded that only 30% of those who use CAM inform their medical doctor that they use these therapies, and less than 50% use the therapies in conjunction with their medical doctor. This can lead to harmful consequences.[43] One must inform the conventional practitioner of any use of CAM.

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43. Eisenberg, op.cit.

Choices and Values in the Mitzvah of *Talmud Torah*

Rabbi Gidon Rothstein

A primary challenge facing many Jewish communities is how to involve their members in regular Torah study; such communities often need to accept and celebrate whatever study occurs, since it represents a tremendous advance over a complete lack thereof. With the current interest in Torah study of various kinds, such as the rise of Daf Yomi and Internet shiurim, that discussion can move to the question of the optimal fulfillment of the mitzvah.

Reviewing the fundamental halachot of the mitzvah of Talmud Torah is thus meant to provide a useful background for rethinking and, if necessary, adjusting the Torah study choices contemporary halachic society makes, in order to better approximate the highest implementation of this central mitzvah.

Sources of the Obligation to Study

One interesting aspect of the mitzvah is that the Gemara adduces several verses in the context of Talmud Torah, each emphasizing a different nuance of the obligation. We will first lay out the various citations, and then return to discuss the issues they raise.

The primary source is the pasuk in the second paragraph of Shema, ולמדתם אותם את בניכם, "and you shall teach them to your children,"[1] from which the Gemara derives the obligation for a father to teach his sons, the obligation for any son whose

Gruss Scholar in Residence, NYU Law School, 2003-2004

father did not teach him to study on his own, and the exemption of women from the obligation to either teach or study.

The Gemara also cites Moshe Rabbenu's warning to remember Har Sinai as providing information about the mitzvah of Torah study. The pasuk reads,

> רק השמר לך ושמר נפשך מאד פן תשכח את הדברים אשר ראו עיניך ופן יסורו מלבבך כל ימי חייך והודעתם לבניך ולבני בניך
>
> Only guard yourselves and care well for your soul, lest you forget the matters that your eyes saw, and lest they stray from your heart all the days of your life, and you shall make them known to your sons and grandsons.[2]

From here, the Gemara derives an obligation for grandfathers to teach Torah to their grandsons,[3] while a Mishnah in Pirkei Avot sees a prohibition against forgetting the Torah one has learned.[4]

Three midrashic readings of the phrase ושננתם לבניך, "and you shall teach them to your children," also made their way into the halachic discussion of the mitzvah. First, the Gemara suggests that ושננתם should actually be read as ושלשתם, you should divide in three, which the Gemara takes to mean that a person must divide his Torah study time among מקרא, משנה, and תלמוד. In the continuation of that section, the Gemara assumes that the pasuk also indicates an obligation to know the Torah well enough to answer any question without hesitation.[5] Finally, Midrash Tannaim on that verse informs us

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1. Devarim 11:19.
2. Devarim 4:9.
3. Kiddushin 30a.
4. Avot, 3:8. We will discuss below the definition of the forgetting that must be avoided.
5. Kiddushin 30a; the Gemara sets the standard of שיהו דברי תורה

that "sons" can also mean "students."

The last verse that becomes important in a consideration of the mitzvah is that of "לא ימוש ספר התורה הזה מפיך, והגית בו יומם ולילה, this book of the Torah shall not depart from your mouth; rather you should contemplate it day and night,"[6] which the Gemara quoted to assert a requirement to study at least a minimal amount of Torah morning and evening, despite the pasuk appearing in Navi rather than Torah.[7]

Even before we delve further into the halachic understanding of these verses, we should pause to note the panoply of issues they raise. First, we will need to consider who is obligated in this mitzvah, at what stage of their lives, and for what amount of time during that stage. Second, we can already note that the sources refer to an obligation to be thinking about Torah (והגית בו יומם ולילה), an obligation to study and teach Torah (ולמדתם אותם את בניכם), and an obligation to know Torah (both in being able to answer questions on any topic and in the requirement to avoid forgetting). For each of those, of course, we will need to understand how extensive an obligation is meant and the material that falls under that requirement.

The "Who" of Torah Study

In discussing the obligation, the Gemara seems primarily concerned to establish that fathers and sons are the ones involved, and not mothers and daughters.[8] Currently, many

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מחודדים בפיך, that the words of Torah should be sharp in your mouth, such that if someone asks a question, you should be able to answer immediately.

6. Yehoshua 1;8;this translation is from Rabbi Nosson Scherman, ed., The Stone Edition Tanach (New York: Mesorah, 1998).

7. Yehoshua 1:8, as interpreted in Menahot 99b.

8. So, too, Rambam opens up his discussion of the halachot by

people pay more attention to the second part of that sentence than the first, wondering why women are left out of the mitzvah, but that is a topic beyond our present scope.

We will here only point out that the exemption is not as overarching as might first seem; Ramo, citing earlier sources, assumes that women are required to study those halachot that apply to them.[9] Although Aruch haShulchan claims that that only means women learning the halachic information they need to know from their mothers,[10] it is nonetheless already a minimal assumption that women, too, need to understand central elements of the observance of Judaism.[11]

Moving back to a clear responsibility to study, the Gemara focuses on the father's being required to teach his sons, which reflects the wording of the pasuk, "and you shall teach them to your children." To that end, the Gemara notes that a father who was never taught is required to study on his own; indeed, the Gemara and Shulchan Aruch assume that, if forced to choose, the father who has not yet learned should study himself rather than finance his son's study, unless the son is more capable than the father.[12]

Aside from fathers and sons, Talmud Torah is one of the only – if not the only – mitzvah where grandfathers bear an

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mentioning who is exempt from the obligation, when he might more logically have opened by stating who is required to study Torah, as did Tur and Shuchan Aruch.

9. Yoreh De'ah, 246:6.

10. Yoreh De'ah 246:19.

11. Again, it is not our intention to delve into either the local question of women's relationship to Torah study, nor of the broader question of how and why God differentiated them from men within Judaism.

12. Kiddushin 29b and Yoreh De'ah 245;2.

obligation towards their grandsons, derived by the Gemara from the pasuk והודעתם לבניך ולבני בניך, and you shall make them known to your sons and grandsons.[13] In addition, as we mentioned before, Rambam and Shulchan Aruch cite the tradition that the obligation extends to all students as well as biological sons,[14] with the references to sons and grandsons only telling us who has priority in making a claim on the father's knowledge – the son takes precedence over the grandson, and the grandson over outsiders.

The mitzvah focuses on lineage to explain the Gemara's conflation of the verse about remembering Har Sinai with the mitzvah of Talmud Torah. As we mentioned, the source verse for a grandfather's obligation, and for Pirkei Avot's prohibition against forgetting Torah, was actually discussing יום אשר עמדת לפני ה׳ אלקיך בחורב, the day you stood before Hashem at Horev (Sinai). This suggests that fathers and grandfathers, in teaching Torah to their descendants, are supposed to be passing along not just the specific Torah knowledge involved, but they are supposed to be connecting those sons and grandsons to the experience of Sinai, which is fundamental to the Jew's relationship to Hashem.[15]

An Alternative to Actual Study?

Although ideally every male Jew is required to study Torah, preferably through the vehicle of ancestors passing both the knowledge of Torah and the experience of Har Sinai to their

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13. Devarim 4:9.

14. Hilchot Talmud Torah 1:2 and Yoreh De'ah 245:3.

15. I have many times mentioned the debt I owe my father, ע״ה for the answer he gave me as a teenager when I asked about the source of his faith. As the Kuzari before him, he answered that it was the lineage of tradition going back to Matan Torah, providing me with a lasting bedrock of my own faith ever since.

descendants, the Tur and Shulchan Aruch (departing from Rambam's codification) assume that supporting those who study Torah can substitute for actual study. They limit this possibility to those whose lack of education or pressing other responsibilities make personal study impossible, although they do not define the level of illiteracy[16] or types of time pressures that allow taking this substitute option.

The source of this idea is the Midrash's assumption that two of the original tribes, Zevulun and Yissachar, had an arrangement where Zevulun supported Yissachar's constant study, and shared equally (or even more) in the reward for that study.[17] Without delving fully into this issue, we can mention that the earliest source to place this Midrash in a halachic context seems to be Rabbenu Yeruham (late thirteenth and early fourteenth century),[18] who restricts the possibility of such an arrangement to where the agreement was made before the Torah was studied; one cannot give money to a scholar to gain a portion of Torah already studied. In addition, the agreement would appear to have to be between two people, rather than just supporting the Torah study of a particular institution, and necessarily involves the person studying Torah foregoing some of his reward for the sake of the money he will be given.

When Does the Mitzvah Apply?

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16. Especially in a time when so much Torah knowledge has been digested and translated, it seems hard to imagine this exemption applying today.

17. We have it, among other places, in Bereshit Rabbah 72;5; Beit Yosef attributes it to Sifrei, but I was unable to find it there.

18. Toldot Adam ve-Havah, Netiv 2, Helek 5, 23a. He was followed by R. Shimon Duran, both in מגן אבות, his commentary to Avot, 1:14, and Tashbetz.

Having discussed who has to study, the next question might be when they must do so, a question that applies both to life as a whole and within each day. For life as a whole, we mean to ask at what stages of life the mitzvah applies, and here there is more clarity on the ending stage than on the beginning. Once the mitzvah has started, there is no end to it; a Jew must study Torah until the day of his death.[19] That continuing obligation, at least according to Rambam, is related to the prohibition against forgetting asserted by the Mishnah in Avot; since the verse refers to not forgetting Torah כל ימי חייך, all the days of your life, Rambam requires study for all those days.[20] Here again, note that the obligation to study seems to stem from a need to be connected to Har Sinai and the Torah taught there – since the pasuk was only talking about Sinai – rather than just to the Torah itself.

On the beginning side, however, sources provide less exact guidance. The Mishnah in Avot rules that once a boy is five he should start learning Mikra (Scripture),[21] but the Gemara mentions six as the proper age for beginning study, a

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19. Shulchan Aruch 246:3, echoing the language of Rambam, Hilchot Talmud Torah 1:10.

20. So, too, Rabbenu Yonah sees the Mishnah in Avot as obligating review, since forgetting is certain without it. He only accepts old age and illness as the excuses included in the Mishnah's absolving one who forgets because of circumstances beyond one's control. Both Rambam and Rabbenu Yonah apparently assumed that the Mishnah's limiting liability to where a person actively removes Torah from his heart includes negligently allowing that Torah to be forgotten.

21. Ramo 245:8 quotes Abarbanel's commentary on Avot to suggest that the child should already know how to read Hebrew by that point, so that he is ready to begin studying Torah. It is interesting to note that Ramo only quotes Abarbanel twice in Shulchan Aruch, here, and in the next siman, justifying rabbis' accepting salaries for their positions.

contradiction resolved by including the child's physical readiness as an important factor.[22] By the age of twelve, however, the Gemara assumes that the father is required to insist on the child's study, to the point of יורד עמו לחייו, which Rashi defines as extending even to beating him and withholding some of his food. Although the specific mechanisms are not fixed, it seems clear that the halacha envisions a period when the child is dealt with gently on the issue, and then, when he is older, a period where he is to be forced to study Torah.

Within each day, there is also little specific guidance as to how much one is required to study, perhaps because the ideal is to study as much as possible. Some interesting numbers, however, are mentioned. First, as a bare minimum, the Gemara requires some study morning and evening, to fulfill the need for לא ימוש, God's command to Yehoshua that the Torah never fully leave his mouth.[23] That same Gemara allows the already-obligated recitation of Shema to fulfill that requirement, so that this is not a difficult standard to attain.

The requirement of some at day and some at night also governs halacha's prescriptions for how to teach children. Picking up on Rambam's ruling, Shulchan Aruch recommends teaching children all day and a little bit of the night, in order to prepare them for their obligation to learn at both times each day.[24] To some extent, of course, that needs to be balanced against the Gemara's recommendation that the process of education be relatively gentle until the age of twelve, offered only to the extent that the child is ready to absorb.

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22. Avot 5:21, with Ketubbot 50a, and Beit Yosef, Yoreh Deah, 245:8.

23. Menahot 99b.

24. Yoreh Deah 245: 11-14. Note the emphasis on building as full an education as possible.

Beyond the realm of children's education, halacha does not specify times or amounts of time, probably because each person must study as much as possible, with the boundaries of possibility set by extremely individual factors of health, wealth, and competing obligations.

One interesting example in Rambam's discussion, though, suggests that he thought all Jews should be spending the bulk of their waking hours in study. In trying to illustrate a point he was making, Rambam incidentally mentions that an ordinary person will work for three hours, leaving nine hours of the day open for Torah study. Whether he meant that as a practical example or not,[25] it seems clear that the obligation of study is ever-present, and that the more one is able to study, the better.[26]

At a bare minimum, then, halacha demands that men study some Torah day and night. Although that obligation can be fulfilled in the most minimal way possible, through recitation of words already otherwise required, it reminds us that halacha insists on avoiding a Torah-free day in a Jew's life. Beyond that, the times of Torah are left open, probably because there is no point at which one has completed one's study for the day; it is all merely a question of how much time for Torah one is able to carve out among all of the other pressing concerns of life.

What Are We Obligated to Study?

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25. Perishah assumes that Rambam used those numbers because of another statement of the Gemara that righteous people used to spend nine hours on their daily prayers, so Rambam assumed that three hours was sufficient to complete one's labors.

26. When stated so fluidly, however, the obligation needs always to be measured against other priorities; a discussion of how to choose which of several possible acts of mitzvah to perform in various circumstances is, however, beyond our scope here.

Sources are clearer about the material included in this obligation. The Gemara defines the minimum of a father's obligation to his son as mikra (a term we will define below),[27] but immediately adds that the ideal would be to teach a child all the Torah available to be known. Perhaps because of that, halacha only recorded this minimum in terms of what a father is required to pay for in his son's education – he must pay to insure that the child learns mikra, but has no such obligation to insure that the child achieve the fullest ideal within Torah study, knowledge of all of Torah.

Even there, however, Tur already records R. Meir haLevi Abulafia's comment that the exemption from paying for a child's Torah education beyond mikra only applies to those who cannot afford more; to the extent that finances and other factors permit, the father should insure that his sons receive as full an education as possible.

Another factor that may have led codifiers to leave out the mikra-as-minimum discussion is the Gemara's statement requiring a person to divide his Torah study time in three, with equal time going to mikra, mishnah, and Talmud. Since that Gemara was taken as operative halachically, the only ramification of the Gemara's limiting the father's obligation to mikra was in the issue of payment.

That later Gemara also raises the issue of the definition of mikra. In the earlier Gemara, Rava said "מקרא זו תורה, mikra means Torah," which Rashi interprets as excluding the Prophets.(Nach) Were that applied to the later Gemara as well, it would mean that Rashi saw no obligation for people to include Nach as a part of their regular Torah study curriculum.[28]

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27. Kiddushin 30a.

28. Note, however, that Tzitz Eliezer, 17; 3, suggests that Rashi only said it for occasions when the Gemara explicitly referred to

On the other hand, Rambam, followed by Tur and Shulchan Aruch, included all of Tanach in the meaning of the word mikra in both circumstances. For them, the father's minimal obligation, one he must pay to fulfill if necessary, is to teach his sons all of Tanach. Beyond that, in each Jew's own Torah study, Nach must be part of the tripartite curriculum. Bach strongly supports the requirement to include Nach in the minimum criteria of education, and Maharshal, R. Solomon Luria, mentions that his custom was to read verses from each of Torah, Neviim, and Ketuvim immediately after reciting his blessing on the Torah each morning.[29]

Shach rejects that comment of Bach, noting that most of his contemporaries rely on Rabbenu Tam's claim, followed by other codifiers such as Sefer Mitvot Gadol, that studying just Gemara can fulfill the three-part Torah study mentioned in Kiddushin. Based on the Gemara's characterization of Bavli as incorporating everything, Rabbenu Tam suggested that studying Bavli fulfills the desire for a mixed curriculum.[30]

In applying Rabbenu Tam's idea to the father's obligation to his son, Shach is making a nontrivial jump. It is easily possible – even probable, since Bavli certainly does not cover

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mikra as being "Torah." If so, we could argue that Rashi only meant that a father who teaches his son only Torah has fulfilled his minimal obligation, but that Rashi would agree that it should be part of the weekly curriculum prescribed by the Gemara.

29. Shut Maharshal 56; reciting those pieces of Torah was one way of insuring that one divided one's study among all three parts the Gemara mentioned; Tosafot, Kiddushin 30a, s.v. La Tsricha, mention that this can already be found in Seder R. Amram Gaon. In including Nach, Maharshal is signaling his assumption that that, too, was supposed to be part of the ongoing curriculum of study.

30. Shach, Yoreh De'ah 245:5; Rabbenu Tam was citing Sanhedrin 24a to the effect that Bavli has everything mixed together.

all of Torah, let alone Tanach – that Rabbenu Tam only meant to justify his contemporaries' failure to divide their time among the several topics of Torah. He might have agreed, though, that the father must insure that his son know all of mikra before proceeding to other subjects. Aruch haShulchan seems to have understood Rabbenu Tam exactly that way.[31]

Before we discuss the question of the full adult curriculum, we should stop to summarize the debate about the minimum level of a father's obligation towards his son. Rashi, apparently a lone figure, thought it only extended to Torah, to the exclusion of Nach. Rambam, Tur, Bach, Shulchan Aruch and Aruch haShulchan assumed it meant all of Tanach, while Shach claimed that Bavli covered mikra sufficiently for this requirement as well.[32]

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31. Compare Aruch haShulchan 245;5 and 13. In the first paragraph, discussing the father's minimal obligation, he makes no mention of the possibility of Bavli substituting for mikra; in the second, when he is questioning the neglect of the curriculum set up by Pirkei Avot (5 years old for mikra, 10 for Mishnah, etc.), he offers two suggestions. First, he says that since we no longer need to memorize Tanach or Mishnah, there is no need to devote five years to each of those subjects. Second, Bavli has it all in it, as Rabbenu Tam said. Note, first, the subordinate position he gives Rabbenu Tam's idea, and, second, that it does not at all affect his view of the father's obligation towards his son.

The very fact that Tur and Shulchan Aruch placed the two topics in different simanim – 245 for the obligation to the son, 246 for the requirement to divide one's Torah time in three – also indicates that they have different rules.

32. The relatively narrow focus of that requirement fits well with the connection between the mitzvah of Talmud Torah and the experience at Har Sinai that we noted above, since it only obligates the father to pass on to his sons the record of God speaking directly to prophets (or, according to Shach, to Moshe alone).

Aside from the mitzvah of Talmud Torah, part of teaching children

Returning to the statement that people must divide their time equally among the three parts of Torah knowledge, Mikra, Mishnah, and Talmud, the two words after Mikra are also not as clear as they might seem. Rashi does not translate the word Mishnah, meaning he may have thought that it meant the corpus of collected statements we call the Mishnah. Rambam, however, substitutes the words Torah she-be-`al Peh for Mishnah, and notes that studying interpretations of Nach count as Torah she-be-`al Peh. For Rambam, then, the term seems to have meant the collected knowledge of how to interpret the written Torah, in both halachic and non-halachic areas.[33]

The third of the Gemara's terms, Talmud (or Gemara, in Rashi and Rambam's version of the text), strays furthest from our instinctive interpretation. With a moment's thought, we realize that it cannot mean the actual Gemara, since the statement was made before that text had been organized and codified. Instead, Rashi explains the word as meaning

> סברות וטעמי סתימתיהן של משניות ולתרצם במה שסותרות זו את זו.
>
> The underlying reasons and the explanation for the conclusions reached by the Mishnah, and to explain the ways in which they do not contradict each other.

Rashi's explanation already suggests that the purpose of the third part of study was to delve more deeply into the facts presented by the Mishnah, to understand how and why the

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to do mitzvot includes at least the text of Torah and Rashi, in order to be able to fulfill the rabbinic requirement to read each week's Torah portion shenayim mikra ve-ehad targum, twice in the text and once with an authoritative translation, generally thought to be either Onqelos or Rashi.

33. This interpretation is borne out by Rambam's use of the term in the הקדמה to the Mishneh Torah, as I heard the late Rosh Yeshiva of Ner Israel, R. Shmuel Yaakov Weinberg zt"l, explain in a shiur at Lincoln Square Synagogue, c. 1994.

Mishnah said what it did, and how halacha arrived at its conclusions. Rambam went even further, defining Gemara as meaning that the person should

> יבין וישכיל אחרית דבר מראשיתו ויוציא דבר מדבר וידמה דבר לדבר ויבין במדות שהתורה נדרשת בהן עד שידע היאך הוא עיקר המדות והיאך יוציא האסור והמותר וכיוצא בהן מדברים שלמד מפי השמועה.
>
> ...understand the end of a matter from its beginning, infer one matter from another, compare matters to each other, and understand the hermeneutics of Torah until he can know the essence of these hermeneutical rules, and how to derive what is prohibited and permitted and similar matters that were learned by tradition.

In Rambam's view certainly, and Rashi's quite possibly, this third part of the curriculum involves not a mastery of certain material, but a way of thinking about the material already studied. When Rabbenu Tam included this third part in the Gemara's statement that Bavli has it all, he would seem to have meant that it leads students in the direction of the full understanding of Torah that the Gemara was seeking.

The definition of that third part of the Gemara's ideal curriculum becomes even more intriguing when we realize that Rabbenu Tam was not the only later authority who resisted dividing his Torah time into three. Rambam himself limits that divided curriculum to the early stages of one's Torah study. Beyond that – meaning, it seems in context, once a person has reasonable knowledge of mikra and the traditional interpretations of and protective boundaries around that mikra – the person should spend most of his time on Gemara (meaning sophisticated consideration of the material already studied), with regular review to insure he not forget the other two areas.[34]

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34. Hilchot Talmud Torah 1:11. Rambam's definitions are quoted by Tur and Shulchan Aruch.

Rambam seems to have stressed the latter area of study because of the value he placed upon reaching a deep understanding of halacha and the derivation of halacha from a proper interpretation of Torah. Aruch haShulchan reaches a similar conclusion from the other direction, saying that people are simply no longer able to accomplish as much as they need to in the realms of Mishnah and Talmud with only two thirds of their time. They therefore rely on their childhood study of mikra, and devote all their time to the other two.[35]

We end up with a general consensus that the lasting curriculum need not involve a balance among all three parts of Torah despite the Gemara's statement. Instead, halacha seems to allow people to rely on a childhood mastery of Tanach followed by regular review, but not spending a third of one's time on that material. The bulk of time spent on Torah as an adult, assuming that Tanach has been mastered, would be on Mishnah and Talmud, both as material and as ways of thinking about the system of Torah.

One last curricular note has to do with what the late Professor Isadore Twersky zt"l often referred to as meta-halacha. Many rabbinic authorities of the past assumed that, in addition to the text of the Talmud, other areas of study were essential to the full Torah study experience. Rambam, for example, assumed that both physics (which for him meant an understanding of how the physical world works) and metaphysics (matters of God and His relationship to the world) qualified as part of Gemara.[36] Many others assumed and assume that kabbalah is such an area of esoteric knowledge. In these views, focusing only on Talmud and halacha is not only unnecessarily restrictive,

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35. Aruch haShulchan, Yoreh De'ah, 246: 14.

36. Hilchot Talmud Torah 1:12. Interestingly, Tur and Shulchan Aruch do not record this statement.

but does not capture the essence of what the Torah sought.

For our purposes here, however, we need not dwell on these issues at length, since Rambam's other statement on the issue – that one must have a full understanding of fundamental issues of Torah before proceeding on to deeper matters[37] – takes esoteric wisdom off the table for most students of Torah. As Rambam explains, one should not move on to other matters before becoming well versed in the primary works of Tanach, Mishnah, Talmud, and the halachic writings based on those works. Although they are in some sense subordinate to the deeper matters of Torah, they are nonetheless the necessary first step – what Rambam calls bread and meat, the modern equivalent of meat and potatoes – of understanding the Torah. Those who proceed on to deeper matters will have no need of the present article for guidance in how to do so.

What One Has To Know

We have so far spoken of the mitzvah as primarily a question of a type of activity, Torah study. Underlying the discussion, though, is an assumption that the mitzvah obligates Jews to acquire a certain set of knowledge. We have mentioned the question of Torah and/or Tanach in terms of the father's obligation, but several sources make it clear that the issue of what to know can compete with the ideal statements we have recorded about how to structure one's study time.

The first such area is the question of halacha. Both R. Yehoshua Falk, in his Derisha on the Tur, and להבדיל בין חיים לחיים, R. Ovadia Yosef in Yehaveh Daat, make clear their preference for reasoned knowledge of halacha as compared to simply reviewing Gemara repeatedly. Derisha, cited

37. Hilchot Yesodei haTorah 4:13.

approvingly by Shach, mentions that he objected to ordinary Jews spending their time solely on Gemara with Rashi and Tosafot, since they had only three or four hours a day (!) for study. In his view, people with such limited time should instead study the codifications of the Gemara, such as Rif, Mordechai, and Rosh, who provide the essential experience of Torah. Rabbenu Tam's comment about the Bavli containing everything in it, he adds, was only for those who had nine hours a day to study. Those with less time need to adjust their study accordingly.

Similarly, R. Ovadia was asked whether to forego Daf Yomi to attend a shiur that would teach halacha.[38] He responded strongly affirmatively – although mentioning that the ideal would be to attend both – explicitly noting that people spend a great deal of time in study without knowing how to observe Shabbat or how and when to recite ברכות, blessings. In addition, since he values knowledge of halacha above the simple study of Gemara, he did not even require a התרת נדרים, an annulment of the implicit vow to study Daf Yomi, before switching to the other shiur. Havvot Yair[39] expresses a comparable concern for knowledge of practical halacha when he complains that students in his time spend a great deal of effort on Choshen Mishpat, but neglect Orach Chayim, which covers the fundamental daily rituals of a Torah lifestyle.

R. Moshe Feinstein raised the bar of required knowledge even higher, declaring his belief that a Jew is required to know all of Torah. Unable to accept the invitation of Daf Yomi shiur to join their celebration of completing a tractate of Gemara, he sent them a long discussion of the issue of Daf Yomi; based on the prohibition of forgetting Torah, which Rambam saw as

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38. Yehaveh Da'at 6:52.
39. Responsum 124.

obligating repeated review, R. Moshe assumed that the true obligation of Torah study was to know everything. The Gemara's statement that mikra fulfilled the father's obligation to teach his son Torah was meant only in terms of what the father was required to pay to achieve; money aside, the father had to teach his son as close to all of Torah as he could.

Given that broad obligation, he closed his letter by congratulating the Daf Yomi, since covering all of Bavli largely fulfills that requirement.[40] In a later responsum elaborating his view, R. Moshe made it clear that he thought that ideally every Jew would have at least a superficial knowledge of at least all the Bavli.[41]

Conclusion

Torah has many times been described as ארוכה מארץ מדה, as longer than the Earth in measure.[42] As soon as a task is recognized to be beyond accomplishment, establishing priorities becomes vitally necessary. We have here laid out some of those priorities as set up by halacha.

We have seen, first, the requirement to be involved in some minimal form of study morning and evening. Beyond that, we have noted the obligation for fathers and grandfathers to teach their offspring – and all Jews – at least the Written Torah, generally understood to mean Tanach. Embedded in that teaching is supposed to be a sense of the events at Har Sinai, events that the Torah warns us never to forget, and, by extension, creating a responsibility not to forget the Torah one has learned.

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40. אגרות משה יו"ד 2:110.

41. Ibid., 4:36.

42. The pasuk is from Iyov 11;9; numerous commentaries have used it as a reference to Torah, including Rabbenu Yonah on Avot 2;8.

Written Torah was a bare minimum of what one should strive for in the study of Torah, with the Gemara setting up a curriculum that would cover three different parts of Torah – Written, Oral, and the way to deeply understand the two in order to infer accurate halachic understanding. That curriculum was later modified, either because it was too easy or too hard, so that many came to accept a regular review of Written Torah rather than allotting it a full third of one's study time. In addition, several authorities prefer the study of halacha to the study of Gemara, particularly given most people's highly limited time for such study. As an ideal, however, R. Moshe Feinstein reminds us of the preference in halacha that each Jew know, or at the very least, have an acquaintance with, the entirety of Torah. We hope that, in reviewing this article, we will all have a chance to recalibrate our priorities in our personal study of Torah, as well as in the types of study promoted by our schools and shuls, to approach ever closer to the fullest ideal of the mitzvah of Talmud Torah.

The Value and Significance of the *Ketubah*

Rabbi Michael Broyde
Rabbi Jonathan Reiss

Introduction

One of the questions frequently posed in contested divorces is how to assess the value of a ketubah, the marriage contract that serves as an indispensable part of every Jewish wedding. People generally understand that the ketubah describes the Jewish law obligations of a husband towards his wife during marriage, as well as his financial obligations upon death or divorce. For example, the standard form ketubah states that the husband obligates himself to pay his wife 200 zuz as well as 200 zekukim of silver upon death or divorce. However, many people view the ketubah more as a quaint symbol of the marriage ritual rather than as a legally enforceable document. What happens, however, when one party seeks to enforce their ketubah rights?

This article will explore three different issues related to enforcing ketubot.[1] The first is the value – in dollars – of the payments mentioned in the ketubah. The second is whether the ketubah is still an enforceable agreement in cases of divorce according to Jewish law, in light of Rabbenu Gershom's ban on

1. Ketubot is the plural of ketubah.

Rabbi Reiss is the Director, Beth Din of America; Rabbi Broyde is Associate Professor of Law, Emory University and a member of the Beth Din of America.

coerced divorce. Finally, this article discusses whether a ketubah creates a contract legally enforceable in American law.

I. The Dollar Value of the *Ketubah*

A. Zuzim, Zekukim and Dollars

The ketubah recounts the following recitation of obligations by the husband:

> Be thou my wife in accordance with the laws of Moses and Israel, and I will work, honor, support, and maintain you in accordance with the practices of Jewish husbands who work, honor, support, and maintain their wives in faithfulness. And I will give you 200 zuz[2] as dowry.... which is due to you under the law of the Torah as well as food, clothing, needs, and cohabitation according to the way of the world.

The Talmud makes clear mention of the fact that the standard amount of money in a ketubah was 200 zuz for a first marriage.[3]

The amount of 200 zuz is equivalent to 50 shekalim in the Jewish monetary system.[4] Each shekel is generally valued at approximately 20 grams of silver,[5] so that 200 zuz, strictly speaking, should equal the value of about 1000 grams of silver, or one kilogram (2.2 pounds) of silver.[6] Yet other halachic

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2. In cases where the woman was previously married or has converted to Judaism, the amounts written in the ketubah are generally 100 zuz for the base amount, and 100 zekukim for the additional amount.

3. See e.g., Ketubot 10b; Rambam, Ishut 10:7; Shulchan Aruch EH 66:6.

4. A pidyon haben requires. 5 selaim or shekalim, and in each sela/shekel there are four dinarim; a dinar and a zuz are the same amount. See Encyclopedia Talmudit, Dinar, 7:398- 406.

5. Ibid.

authorities posit an even lower amount, as many Sefardic authorities rule that the ketubah can be paid in diluted silver (called kesef hamedina, commercial grade silver) which might only contain as little as 120 grams of silver in 200 zuz.[7] Thus, if the ketubah is valued by the silver content of 200 zuz, it is a paltry amount.[8]

The standard Ashkenazi ketubah also recounts as follows:

> The dowry that she brought from her father's home in silver, gold, ornaments, clothing, household furnishing, and her clothes amounting in all to the value of 100 zekukim of pure silver, the groom has taken upon himself. The groom has also consented to match the above sum by adding the sum of 100 zekukim of pure silver making a total in all of 200 zekukim of pure silver.

Based on this recounting of the pre-agreed-upon value of the assets of the wife, Ashkenazi halachic authorities concluded that it would be more appropriate to value the ketubah in accordance with this understanding of the value of the "200 zekukim of pure silver" that are added in every standard ketubah in addition to the base amount of 200 zuz that is the husband's obligation, as this amount also needs to be returned

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6. Chazon Ish EH 66:21 notes that much silver sells in the modern market place as only 84% silver, with the rest being additives, and thus one has to add 16% additional weight to sterling silver to make it "pure". In addition, Chazon Ish notes that one needs to factor in the costs of delivery and taxes into the husband's payment obligations. In fact, in modern America, silver sells in a number of different purity grades; pre-1965 coins are 90% silver, and thus sell at a discount to the spot silver market for pure silver. Other silver coins are only 40% silver and thus sell at a deeper discount. For a discussion of the modern silver market, see www.certifiedmint/silver.htm.

7. See Sefer Nisuin Kehilchata 11:80-83.

8. Chazon Ish himself posits that 200 zuz is worth only 570 grams of silver, or a little more than 1 pound.

to the wife upon divorce. [9]

However, the term zekukim is not a talmudic term, and there is quite a bit of disagreement as to what it means and to what coin it refers. Rabbi Moshe Feinstein places the value of 200 zekukim of silver at 100 pounds of silver (approximately 45.5 kilograms).[10] A similar such view can be found in the Chazon Ish,[11] who posits that the value is closer to 127 pounds of silver (approximately 57 kilograms).[12] Both of these views assume that the term zekukim is a reference to a large medieval coin of considerable value. Each zakuk weighs half a pound or more.

There are at least two other viewpoints concerning the valuation of the 200 zekukim of silver described in the ketubah: the first is that of Rabbi Chaim Naeh[13] who ruled that the value of 200 zekukim is 8.5 pounds of silver (approximately 3.85 kilograms).[14] Yet others posit that the term zekukim reflects yet some other coin, and 200 zekukim are valued at between 10 and 14 pounds of silver.[15] Of course, there is the view of

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9. Indeed, this is the standard and unchangeable text of the ketubah for Ashkenazim, thus increasing its universality and thus its enforceability. See Otzar Haposkim Even Haezer, Nusach Haketubah Volume 19, pages 57-103.

10. Iggerot Moshe EH 4:91-92.

11. Even Haezer 66:21.

12. Based on the comments of the Vilna Gaon to Yoreh Deah 305:3.

13. Shiurei Torah 50:44.

14. It should be noted that this amount is also consistent with, although perhaps not identical to, the view of the author of the Nachlat Shiva. See Nisuin Kehilchata 11:97. (Nachlat Shiva 12:49 is sometimes quoted as holding that 200 zekukim is worth 2.5 times the value of 200 zuz, but probably held that 200 zekukim is closer to 3.75 times the value of 200 zuz.)

15. See Rabbi Aryeh Kaplan, Made in Heaven page 113.

many Sefardic poskim who posit that the 200 zekukim can be paid with diluted silver, thus drastically reducing the amount that needs to be paid.[16]

Once we value the ketubah based on 200 zekukim of silver and follow the view of Rabbi Feinstein or the Chazon Ish concerning the amount (rather than focusing on the base amount of 200 zuz), most decisors generally follow the view of the author of Bet Shmuel[17] that we do not separately add the value of the base ketubah obligation of 200 zuz to our calculation, but rather consider everything included in the 200 zekukim of silver, since the face value of 200 zuz, as noted earlier, represents such a paltry amount in comparison to 200 zekukim that it is considered to be subsumed within that amount (although it may be appropriate to add the 200 zuz separately if the view of Rav Chaim Naeh is adopted).[18]

One final view is worth noting. The Mishnah and the Jerusalem Talmud[19] indicate that the base amount of "200 zuz" is meant to correspond to a year's worth of support for a single person.[20] Rabbi Shimon Mishantz and Rabbi Ovadya Bartenura state explicitly that "One who has 200 zuz cannot take charity, as this amount [200 zuz] is the cost of food and clothes for a year."[21] Based on this understanding of the function of 200 zuz as a year's support, it has been the practice of a number of

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16. The Israeli work, Nesuin Kehilchata 11:97(note 200) avers that such in the practice of the Israeli Rabbinical courts.

17. Even Haezer 66:15.

18. See Drisha, Even Haezer 66:3. See generally Nisuin Kehilchata 11:98.

19. Peah 8:7 (in the standard Mishnah, it is 8:8).

20. For an elaboration on this, with a full discussion of the many sources supporting this view, see Rabbi Chaim Benish, Midot Usheurai Torah Chapter 23, at pages 398-405. He explicitly states that in talmudic times 200 zuz was a year's support.

rabbinic tribunals to assess the 200 zuz in the ketubah in accordance with the amount of contemporary currency that would reasonably correspond to one years's support, even if this amount is far in excess of the formal value of the silver coinage described in the ketubah document itself.[22] By this measure, all Jewish law weights and measures change, as it is their food-and goods-purchasing power (in dollars) that the talmudic rabbis focused on, and not their silver content.[23] The silver coins used in the ketubah represented certain values corresponding to different purchasing power, but did not necessarily establish a fixed value for all time based on the worth of the silver alone. Therefore, some poskim have concluded that, irrespective of the current value of silver, the value of the ketubah should be equivalent to one year's support.[24]

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21. Rabbi Shimon Mishantz and Rav Ovadya Bartenura on Peah 8:8.

22. This view is clearly contemplated by Sema, Choshen Mishpat 88:2, and is perhaps accepted as correct by Shach YD 305:1. (See also Derisha, CM 88 who elaborates on the above Sema.) See Avnei Meluim 27:1 who avers that Rashi and Ritva accept this view. (But see Chazon Ish Even Haezer 148, who posits that the Ritva rejects this view). See also Rivash 153 who also poses this question, but rejects the conclusion of the Sema.

23. Indeed, there are significant halachic authorities who suggest that this is the rule for most amounts found in the Talmud, such as the perutah or the dinar, which should be linked to the price of food for a day, week, month, or year. See Sema, Choshen Mishpat 88:2, who states "according to this, nowadays, when one can purchase with a perutah only a very small amount, according to Jewish law we should say that a woman cannot marry with a perutah." A perutah in talmudic times was one-thirteenth of the amount a person needed to support himself for a day; see Rabbi Benish, supra note 20 at page 401.

24. The mean cost of living in Switzerland is 1.67 that of the mean

B. A Sample Calculation in Dollars

A troy ounce of .999% silver was worth approximately $4.60 on August 6, 2002, in the New York City silver spot market, and this can be used to calculate the value of a ketubah, according to the various views.[25] The net cost on that day for actual delivery of one ounce of pure silver was about $5.60 per ounce.[26]

1. The current value of the ketubah (zuzim plus zekukim) according to the Chazon Ish would be approximately $10,263.
2. The current value of the ketubah (zuzim plus zekukim) according to Rabbi Feinstein would be approximately $8,192.
3. The current value of the ketubah (zuzim plus zekukim) according to Rabbi Chaim Naeh would be approximately $693.
4. The value of 200 zuz alone[27] would be approximately $180.[28]

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cost of living in the United States ($167,000 in Switzerland purchases that which $100,000 purchases in America). The cost of living in Atlanta, Georgia, is less than half the cost of living in Manhattan.

25. One kilogram equals 32.15076 troy ounces. One gram equals .03215 troy ounces.

26. See Chazon Ish, supra note 6, for an explanation.

In order to actually purchase and take delivery of a 100 ounce silver bar, one needs to add between 65 and 85 cents per ounce delivery fee, plus sales tax of 6%. (Verified by operator, at Certified Mint Inc, and noted as correct at http://certifiedmint.com/silver.htm#Silver Bullion and SilverCoins.)

For this article, we assume an average of 75 cents.

27. Representing the base amount of the ketubah, which is equivalent to 50 shekalim, which would be 10 times the amount of the value of Pidyon Haben.

28. See also Piskei Din Rabannim 11:362. According to these values, the current monetary value of the 5 "shkalim" that need to be given for Pidyon Haben, which is variously evaluated at either 96 grams,

5.The value of the ketubah as one year's support would be between $15,000 and $55,000.[29]

Each of these amounts would be reduced by 87.5% according to those Sefardic authorities who allow for diluted silver (kesef hamedinah) which is only one-eighth silver (although harldy any Ashkenazic decisors accept this view).[30]

C. How To Rule on this Dispute

Given the diversity of views found in the normative halacha, whose view should one follow? Three different answers to that question are found.

One view is that matters of ambiguity in a document are decided against the one who is seeking enforcement. Thus, Rabbi Ovadya Yosef and Rabbi Yosef Kapach adopt the view that the woman receives the lowest amount plausible, as she bears the burden of proof, which she cannot meet.[31]

Another possible answer is accepted by Rabbi Mordechai Eliyahu, who posits that normative halacha accepts the view of Rabbi Feinstein and the Chazon Ish, and that a ketubah is worth about 120 pounds of silver.[32] Indeed, a strong claim

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100 grams (or 101 grams of pure silver), would be between $14.20 (96 grams of silver) and $14.94 (101 grams of silver; 100 grams of silver would currently be $14.79). Since the 5 for Pidyon Haben is equivalent to 3,840 "Perutot" it follows that the technical value of a Perutah is currently less than half a penny.

29. And would vary depending on location; see note 24. If the possibility of 200 zuz being equal to perpetual support were seriously considered, the amount would be even more; but see the end of note 20.

30. See Nesuin Kehilchata 11:77-83.

31. See the Israeli Rabbinical Court in PDR 11:362 (5740) in a psak din co-signed by Rabbi Ovadya Yosef and Rabbi Yosef Kapach. See, e.g., Yevamot 89a.

could be made that minhag Ashkenaz [the custom of European-based Jewry] is to follow this view, and it is only Sefardic decisors (such as Rabbis Yosef and Kapach, above) who reject this view.[33] For that reason, all Ashkenazi ketubot make clear reference to the 200 zekukim standard, rather than the Sefardic practice of varying the amount depending on the woman and man.

Another possible answer is that matters of interpretation have a local context to them, particularly in words such as zekukim that are ill defined, and that one should follow local custom on these matter;[34] in America, this would mean following the view of Rabbi Feinstein in evaluating the ketubah, inasmuch as Rabbi Feinstein was the pre- eminent decisor for American Jewry.

This view is additionally supported by the basic talmudic principle that the purpose of the ketubah was to mandate payments in cases of divorce high enough so that a man would not hastily divorce his wife. Payments of $25, $100, or even $1,000 hardly accomplish this talmudic mandate. Consistent with this notion, it is noteworthy that Rabbi Feinstein dismissed the European practice which was to evaluate the ketubah at 75 rubles because this sum would be laughably small

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32. See the dissent by Rabbi Mordechai Elayahu in Israeli Rabbinical Court in PDR 11:362 (5740).

33. Indeed no Ashkenazi decisor with the stature of these two authorities has argued with them.

34. This is explicitly noted as a significant factor by Maharashdam EH 187. Indeed, there is an open question whether to stipulate that the one who is seeking to enforce a contract has the weaker hand in cases such as this, where the woman had no hand in the crafting of the document; see for example, Nachal Yitzchak 61:4, who notes that there are cases where a document is constructed against the one who wrote it, and not against the one who is seeking to use it.

nowadays.[35]

All of this, however, assumes that the ketubah is of worth in resolving financial disputes related to divorce. As explained below, that itself is subject to dispute.

II. Is a *Ketubah* Enforceable as a Matter of Jewish Law?

A. Talmudic Rules

The intrinsic nature of marriage and divorce in halacha is different from that of any other mainstream legal or religious system, in that entry into marriage and exit from marriage through divorce are private contractual rights rather than public rights. Thus, in the Jewish view, one does not need a governmental "license" to marry or divorce. Private marriages are fundamentally proper, and governmental or even

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35. See Iggerot Moshe YD 1:189-191 where Rabbi Feinstein clearly endorses the view that the ketubah has to be an amount large enough to deter divorce, no matter what the price of silver really is. Indeed a plausible argument can be advanced that Rabbi Feinstein fundamentally accepts the view that 200 zuz is a reference to a year's support, and that Rabbi Feinstein wrote his responsun because the rapid increase in silver prices at the time (circa 1980) had created the anomalous situation where the value of the 200 zekukim of silver in the ketubah exceeded the cost of supporting a single woman for a year (silver peaked in 1980 at $25 an ounce for pure silver, in which case 100 pounds of pure silver delivered to the door would have been worth more than $40,000, which would be much more than one year's support in 1980 for a single person. According to this position, Rabbi Feinstein's view is that one pays the greater of the two options (1) the value of 100 pounds of silver or (2) the cost of supporting the woman for one year.

hierarchical (within the faith) regulation of marriage or divorce is the exception rather than the rule.[36]

This view of entry into and exit from marriage as contractual doctrines is basic and obvious to those familiar with the rudiments of talmudic Jewish law. While the Gemera imposes some limitations on the private right to marry (such as castigating one who marries through a sexual act alone, without any public ceremony[37]) and the Shulchan Aruch imposes other requirements (such as insisting that there be an engagement period[38]), basic Jewish law treats entry into marriage as one of private contract requiring the consent of both parties.[39]

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36. This view stands in sharp contrast to the historical Anglo-American common law view, which treats a private contract to marry or divorce as the classical examples of an illegal and void contract; the Catholic view, which treats marriage and annulment (divorce) as sacraments requiring ecclesiastical cooperation or blessing; or the European view, which has treated marriage and divorce as an area of public law.This should not be misunderstood as denying the sacramental parts of marriage (of which there are many); however the contractual view predominates in the beginning-of-marriage and end-of-marriage rites. This is ably demonstrated by Rabbi J. David Bleich, Jewish Divorce: Judicial Misconceptions and Possible Means of Civil Enforcement, 16 Conn. L.R. 201 (1984).

37. Even though such an activity validly marries the couple; Rav mangid aman demekadesh beviah, Yevamot 52a; Shulchan Aruch, Even Haezer 26:4.

38. Shulchan Aruch, Even Haezer 26:4.

39. Marriages entered into without consent, with consent predicated on fraud or duress, or grounded in other classical defects that modern law might find more applicable to commercial agreements are, under certain circumstances, void in the Jewish tradition. For more on this see Michael Broyde, Marriage, Divorce and the Abandoned Wife in Jewish Law: A Conceptual Approach to the Agunah Problems in America. (Ktav, 2001) in Appendix B, entitled "Errors in the Creation of Jewish Marriages."

Exit from marriage was also purely contractual (except in cases of fault), but according to Torah law, was a unilateral contract that did not require the wife's consent. Thus, according to unmodified Torah law, exit from marriage was drastically different from entry into marriage. Divorce did not require the consent of both parties. Marriage was imbalanced in other ways as well; a man could be married to more than one wife, any of whom he could divorce at will, whereas a woman could be married to only one man at a time, and she had no clearly defined right of exit, perhaps other than for fault.

From very ancient times, and according to some authorities, even according to Torah law,[40] the husband's unrestricted right to divorce was curtailed through contractarian means, the ketubah. The ketubah was a pre-marital contract, agreed to by the husband and wife, that contained terms regulating the conduct of each party in the marriage and discussing the financial terms should the marriage dissolve through divorce or death. While the ketubah does not explicitly restrict the unilateral right of the husband to divorce his wife for any reason, it does impose a significant financial obligation on the husband should he do so without cause – he must pay her a considerable amount of money. Indeed, the Talmud readily states that the ketubah was instituted so that "it will not be easy [cheap] for him to divorce her."[41] In addition, and more significantly, the Talmud mandates that the couple may not commence a marital (sexual) relationship unless both the husband and wife have agreed on the provisions of the ketubah and it has been executed.

Thus, while the right to divorce remained unilateral with

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40. There is a dispute as to whether this requirement is biblical or rabbinic in cases of a first-time marriage; all agree it is rabbinic for second marriages; see Shulchan Aruch EH 65:.

41. Yevamot 89a, Ketubot 11a.

the husband, with no right of consent[42] by the wife, it was now restricted by a clear financial obligation imposed on the husband to compensate his wife if he exercised his right to unilateral divorce (absent judicially-declared fault on her part). There are even views among the Rishonim that if the husband cannot pay the financial obligation, he is prohibited from divorcing her except in cases of fault.[43] Indeed, the wife, as a precondition to entry into the marriage, could insist on a ketubah payment higher than the minimum promulgated by the rabbis.[44] Of course, divorce could be by mutual consent, subject to whatever agreement the parties wished.

Thus in talmudic times, the economic rules for divorce were as follows:

1. The husband had a unilateral right to divorce and had to pay a pre-agreed upon amount to his wife (agreed to in the ketubah, but never less than 200 zuz) upon divorce, except in cases of fault.

2. There was divorce by mutual consent with payment to be determined by the parties.

Consequently, in a case where the husband wanted to divorce his wife, he could do so against her will, and pay her the ketubah. She could not under such circumstances sue for divorce[45] as a general rule, although she could perhaps restrict

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42. The wife, however, needs to be aware of the divorce, even if she does not consent. See Rambam, Gerushin 1:1-3.

43. See Shulchan Aruch, Even Haezer 119:6, and Chelkat Mechokek 119:5 for a presentation of the different views on this matter.

44. And, as noted above, the Ashkenazic custom was to do just that and add the term 200 zekukim to the ketubah.

45. Unless she had not yet had a child with him, which was a form of fault on his part; Ta'anat b'eyna hutra l'yada, see Yevamot 64a,

his rights through a ketubah provision.[46]

B. The Ban of Rabbenu Gershom

In the eleventh century Rabbenu Gershom, through his bans on polygamy and forced divorce, fundamentally changed the basic halacha in divorce. The decree of Rabbenu Gershom [47] was enacted for a variety of reasons, and in order to equalize the rights of the husband and wife to divorce, it was necessary to restrict the rights of the husband and prohibit unilateral no-fault divorce by him.[48] Divorce was limited to cases of provable fault or mutual consent. In addition, Rabbenu Tam posits, and the normative halacha accepts, that fault is narrowed to exclude cases of "soft" fault such as unprovable repugnancy, and in only a few cases could the husband be actually forced to divorce his wife or the reverse.[49]

Shulchan Aruch, Even Haezer 154:6-7 and Aruch HaShulchan, Even Haezer 154:52-53.

46. Yevamot 65a; but see view of Rav Ammi.

47. See "Cherem Derabbenu Gershom", Enclycopedia Talmudit, 17:378. But see Teshuvot Maharam MiRothenburg 4:250 who indicates a different framework for the rights of the woman to divorce even after the ban of Rabbenu Gershom.

48. See Responsa of Rosh 43:8, who indicates that one of the consequences of this model is that women (and men) will not be able to leave a marriage when they wish. See also his responsum 42:1, which indicates that the basic purpose of the ban of Rabbenu Gershom is to create balance of rights between the husband and the wife.

49. This insight is generally ascribed to Rabbenu Tam in his view of meus alay; see Tosafot, Ketubot 63b s.v. aval. In fact, it is worth noting that this view fits logically with the view of Rabbenu Gershom, who not only had to prohibit polygamy and coerced divorce, but divorce for easy fault, as Rambam's concept of repugnancy as a form of fault is the functional equivalent of no fault, identical in result to the Geonim's annulment procedure. What exactly is hard fault remains a matter of dispute, but it generally includes adultery, spouse beating,

Equally significant, this decree prohibits polygamy, thus placing considerable pressure on the man in a marriage that is ending to actually divorce his wife, since not only would she not be allowed to remarry, but neither would he.[50] According to Cherem deRabbenu Gershom, Jewish law now permits divorce only through mutual consent or fault on her part.

Since the promulgation of the ban in the name of Rabbenu Gershom against divorcing a woman without her consent or without a showing of hard fault,[51] the basic question of the value of the ketubah has been questioned. Since the talmudic rabbis instituted the ketubah payments so as to deter the husband from rashly divorcing a wife, the basic value and purpose of the ketubah in cases of divorce is limited to cases where the husband can divorce his wife without her consent, and yet has to pay the ketubah. However, in cases where the husband cannot divorce his wife without her consent, there is no need or purpose to a ketubah. For example, Rambam[52] and Shulchan Aruch both agree that when a man rapes a woman and thus has to marry her (if she wishes to marry him) and may not divorce her, there is no ketubah payment. Shulchan Aruch 177 states in such a case:

> A man who rapes a woman who is a virgin is obligated to marry her, so long as she and/or her father wish to marry him, even if she is crippled or blind, and he is not permitted to divorce her forever, except with her

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insanity, and impotence; see Shulchan Aruch Even Haezer 154.

50. Absent the prohibition on polygamy, the decree restricting the right to divorce would not work as well, as the husband who could not divorce would simply remarry and abandon his first wife. This prevented that conduct.

51. In which case, the value of the ketubah need not be paid as a penalty for misconduct imposed on the woman.

52. Rambam, Ishut 10:10.

> consent, and thus he does not have to write her a ketubah. If he sins, and divorces her, a rabbinical court forces him to remarry her.[53]

The logic seems clear. Since he cannot divorce her under any circumstances without her consent, the presence or absence of a ketubah seems to make no difference to her economic status or marital security. When they want to both get divorced, they will agree on financial terms independent of the ketubah, and until then, the ketubah sets no payment schedule. Should she insist that she only will consent to be divorced if he gives her $1,000,000 in buffalo nickels, they either reach an agreement or stay married. The ketubah serves no economic purpose in such a divorce.

This case stands in clear contrast to the standard marriage in previous times. In such a marriage, prior to marriage the husband and wife negotiated over the amount the husband would have to pay the wife if he divorced her against her will or he died. She could not prevent the husband from divorcing her, except by setting the payment level high enough that the husband was economically deterred from divorce by dint of its cost.

All this changed in light of the two decrees of Rabbenu Gershom. Rabbenu Gershom decreed that a man may not divorce his wife without her consent, except in cases of serious fault on her part, and a man may not marry a second wife under any circumstances.

What then is the purpose of the ketubah in cases of divorce after the ban on polygamy and unilateral no-fault divorce? Rabbi Moshe Isserless (Ramo) provides a very important answer. He states in the beginning of his discussion of the laws of

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53. Shulchan Aruch Even Haezer 177:3.

ketubah:

> See Shulchan Aruch Even Haezer 177:3[54] where it states that in a situation where one may divorce only with the consent of the woman, one does not need a ketubah. Thus, nowadays, in our countries, where we do not divorce against the will of the wife because of the ban of Rabbenu Gershom, as explained in Even Haezer 119, it is possible to be lenient and not write a ketubah at all; but this is not the custom and one should not change it.[55]

Almost all of the classical commentators disagree with this Ramo and rule that one still needs a ketubah even after the ban of Rabbenu Gershom. Chelkat Mechokek, Bet Shmuel and Gra all state that one should not rely on this view. The Mishneh Lemelech posits that since there was a rabbinical decree mandating a ketubah, latter rabbinic authorities are incapable of repealing that obligation, and thus the Ramo ought not be relied on.

Avnei Mishpat[56] argues that Ramo's central analogy is incorrect, in that the ketubah serves a purpose in the case of widowhood; Chazal did not decree a ketubah even in the case of widowhood in the case of a rape victim who marries the rapist, as the mandatory payment of 50 shekalim directed by the Torah as his punishment was equal (not by coincidence, either, it is claimed[57]) to the value of the ketubah). So too, the

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54. The case of rape discussed previously in text.

55. Even Haezer 66:3.

56. EH 66:10.

57. See Toldot Adam EH 66:3. See also Derech Hamelech on Rambam Ishut 10:10 . Tosafot Chaim 2:10 notes another difference, which is that a man who violates Cherem Derabbenu Gershom is not forced to remarry his ex-wife, whereas when the rapist divorces his victim against her will, he is forced to remarry her.

ketubah establishes rights in the marriage itself that can be enforced,[58] and death benefits, and effects rights in cases of chalitza as well.

Indeed, the custom and practice is not to follow the possibility suggested by the Ramo,[59] without other lenient factors present as well. Thus, every Jewish wedding still starts with a ketubah, as Ramo himself notes to be the custom.

However, no one argues with the basic economic assertion of the Ramo: The purpose of the ketubah written to impose a cost on the husband for divorce – so that he should not divorce his wife rashly – has become moot. In situations where Cherem Derabbenu Gershom is not applicable due to misconduct, fault is always found, and thus no ketubah payment is mandated by Jewish law. The only practical case where the ketubah is relevant is where the husband's fault generates the grounds for divorce, and the wife seeks a divorce grounded in her husband's fault, and payment of the ketubah.[60] Although it might have some value in cases of widowhood as well as a matter of theory, normally it does not.[61]

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58. In Jewish law, a bet din can compel support of one spouse by another even absent divorce.

59. See for example, Teshuvot Vehanhagot 760. But see Aruch Hashulchan EH 177:1 in the parentheses and the last line She'elot Uteshuvot Mutzal MeAish 21, Sefer Kinyan Torah (page 14).

60. Since the central purpose of the ketubah was not to allow the husband to easily divorce his wife, Ramo might not have considered these matters truly significant insofar as the main purpose of the ketubah was to protect the woman from divorce in cases which she desired to stay within the marriage.

61. The reason this is so is that widows are entitled according to Jewish law to either perpetual support from the husband's estate or their ketubah payment, as the widow wishes; see Shulchan Aruch EH 93:3 and Pitchai Choshen, Volume 8, Chapter 11:1-3. Since the former is much more valuable than the latter, no reasonable person

Consider the observation of Rabbi Moshe Feinstein on this matter. He states:

> The value of the ketubah is not known to rabbis and decisors of Jewish law, or rabbinical court judges; indeed we have not examined this matter intensely, as for all matters of divorce it has no practical ramifications, since it is impossible for the man to divorce against the will of the woman; [the economics of] divorce are dependent on who desires to be divorced, and who thus provides a large sum of money as they wish to give or receive a divorce.[62]

Elsewhere Rabbi Feinstein writes:

> I will write briefly the value of the ketubah in America nowadays, for use in those circumstances where it is needed. One should know that in divorce there is no place for evaluating the ketubah, since the ban of Rabbenu Gershom prohibited a man from divorcing his wife without her consent. Thus, divorce is dependent on who wants to give or receive the get and who will give or receive money as an inducement. But it is relevant to a widow, or a yavamah who wishes to have chalitza done, and who wishes to have her ketubah paid from the assets of the brother who is doing chalitza.[63] Only infrequently, in farfetched cases, is the value of the

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would exercise her ketubah rights in cases of widowhood, and thus the proper evaluation of the ketubah is practically irrelevant.

62. Iggerot Moshe Even Haezer 4:91 (This teshuva was written in 5740/1980).

63. The formulation used in this teshuva is different from the Iggerot Moshe EH 4:91 where, with regards to the rights of the widow, Rabbi Feinstein posits that:

> Even widows, even when they are not the mothers of the surviving children, in most cases there is a will, and there is also secular law [i.e, spousal offset] which many people wish to actually use [to resolve disputes].

> ketubah relevant to divorce, such as when she agrees to be divorced, only if she is paid the amount owed by her ketubah.[64]

A simple example from commercial law helps explain the point of Rabbi Feinstein in divorce law. Suppose someone owns a painting that another likes. The fair market value of this painting is $100. For how much must the owner of this painting sell it to the one who wishes to buy it? The answer is that Jewish law does not provide a price. The seller need sell it only at a price at which he or she is comfortable selling it, and the buyer need buy it only at a price at which he is comfortable buying it (so long as they are both aware of the fact that the fair market value is $100). The same is true for a divorce, Rabbi Feinstein posits, after the ban of Rabbenu Gershom. Absent a finding of fault, neither party needs to consent to divorce unless he and she agrees to a financial arrangement or agrees to go to a Din Torah about this matter, and the bet din resolves this matter in accordance with the rules of compromise or equity. If they cannot work out a deal, or agree on a compromise or a process of compromise, divorce cannot be compelled.

III. Enforcing of the *Ketubah* in American Law

The enforceability in American law of the ketubah payment is a matter that has rarely been litigated, and there is not a single case where a court has enforced the ketubah obligation to mandate a payment. Consider, for example, in 1974 a widow tried to collect the amount of her ketubah and claimed that it superseded her prior waiver of any future claims pursuant to a pre-nuptial agreement between herself and her husband. The ketubah had been signed after the pre-nuptial agreement, and

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64. Iggerot Moshe Even Haezer 4:92 (This teshuva was written in 1982).

thus, if it were a valid contract, would have superseded it. In denying her motion, the New York Supreme Court concluded that "even for the observant and Orthodox, the ketubah has become more a matter of form and a ceremonial document than a legal obligation."[65]

Although the New York Court of Appeals, in a subsequent case, enforced a provision of the ketubah pursuant to which the parties agreed to arbitrate future marital disputes before a bet din, the court did not revisit the issue of the enforceability of the financial obligations included in the ketubah.[66] While it is true that in dicta, an Arizona court suggested that financial obligations described in a ketubah could perhaps be enforceable if described with sufficient specificity,[67] the practice has never been to seek to conform the text of the ketubah to the contract requirements of American law.[68] The description of the financial obligations – in zuzim and zekukim, which require determinations of Jewish law to ascertain the proper value – are not considered sufficiently specific to be enforceable.[69] So, too, the absence of an English text and the absence of signatures of the husband and wife, would seem to make the ketubah void as a contract in American law.

When might a ketubah be enforceable in the United States? When it is executed in a country (such as Israel) where it is recognized as legally enforceable. This is because American

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65. In re Estate of White, 356 N.Y.S.2d 208, at 210 (NY Sup. Ct, 1974).

66. Avitzur v. Avitzur, 459 N.Y.S.2d 572 (1983).

67. Victor v. Victor, 866 P.2d at 902 (1993).

68. See e.g., Hurwitz v. Hurwitz 216 AD 362 (NY Appellate Division, 1928).

69. Whether or not the language of a ketubah forms a basis for compelling a Get according to secular law doctrine is a question beyond the scope of this article.

conflict of law rules might determine that the rules governing the validity of the ketubah are found in the location of the wedding, where the ketubah was a legally enforceable document.[70]

To the best of these writers' knowledge, no American court has ever enforced the financial component of a ketubah either in cases of divorce or death.

Conclusion

There are multiple views regarding how to assess the value of the 200 zuz and 200 zekukim described in the standard form ketubah as payable by the husband (or his estate) upon divorce or death. The breadth of the dispute – from a few hundred dollars to many thousands – is quite astonishing. What the normative practice is is also in dispute and is hard to determine.

Additionally, as Rabbi Feinstein points out, since women today cannot be divorced against their will due to the famous eleventh-century enactment of Rabbenu Gershom, a divorce today requires the husband to placate his wife with an amount that she would deem sufficient. Therefore, a woman can effectively "negotiate" for an amount greater than the value of the ketubah if her husband wants to divorce her. Thus, the calculation of the amount of the ketubah becomes relevant

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70. This principle was first noted in Montefiore v. Guedalla 2 Ch 26 Court of Appeals, England (1903), where a British court enforced the ketubah of a Sefardi (Moroccan) Jew who had moved to England, since the law of Morocco would have enforced this ketubah. These same conflict of law principles could well enforce an Israeli ketubah in America. It has been followed in many American cases where the parties were married in another jurisdiction; see Miller v. Miller 128 NYS 787 (Sup. Ct., 1911) and Shilman v. Shilman 174 NYS 385 (Sup. Ct., 1918).

only in very limited cases, such as when both parties expressly stipulate that they want the payment amount from the husband to the wife upon divorce to be determined solely based upon a rabbinical court's evaluation of the ketubah.

Hence, most couples never expect that the ketubah will actually be used for collection purposes and in fact the majority of Jewish women who have become divorced (or widowed) do not seek to collect their ketubah but rather use other channels to settle their claims. It is, therefore, virtually impossible to ascertain an established custom or practice with respect to the valuation of the ketubah in America.[71] Given these questions, it is not surprising that there is no clear halachic answer relating to the value of the ketubah.

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71. Rabbi Zalman Nechemia Goldberg, taking note of this problem, has recommended that a dollar amount be inserted in the ketubah — just as Israeli ketubot often include an explicit amount in Israeli shkalim or even dollars — so that in the event the wife does register a claim pursuant to the ketubah, there will be no confusion concerning the proper amount to be paid. However, given the infrequency of cases in which parties intend to invoke the ketubah for financial purposes, it is presently unlikely that there will be a movement to accept such a proposal here in America.

Letters

To the Editor:

Regarding your interesting and highly informative article concerning Daat Torah (Number XLV):

On page 88 you mention the Responsa of the Rosh (Kellal 15:7) describing the type of talmid chacham exempt from communal taxes. Your quote gives the impression that such a talmid chacham must not be engaged in any livelihood other than learning Torah. However, it is explicit in the Rosh there (and also in Bava Bathra) that he only rejects one who works in order to become wealthy, but approves of one who does what is necessary to support himself and his family.

The following two quotes, describing the exempt talmid chacham, show this clearly:

"Every talmid chacham who is Torato Umanuto and makes his Torah [learning] fixed and his work temporary; who contemplates Torah constantly and does not interrupt [his Torah learning] for frivolous things but only to engage in his livelihood, **for this is his obligation,** for 'The study of Torah together with an occupation is an excellent thing... while any study of Torah without some kind of work must fail in the end and is conducive to sin' (Avot 2:2)" ... (beginning of aforementioned Responsum).

"A talmid chacham who has a craft or [engages] in business in order to provide for his basic needs and not to become wealthy and every free moment from pursuing his livelihood he returns to the words of Torah and learns Torah, he is called Torato Umanuto" (Rosh, Bava Bathra, I:26).

I hope this note will benefit your readership,

Sincerely,

DAVID KAHN
Bayit Vegan, Israel

Dear Rabbi Cohen;

It is always a pleasure to read the articles in the Journal of Halacha and Contemporary Society. Rabbi Aryeh Lebowitz's article, "Brushing Teeth on Shabbat" in Number 44 was especially well written and balanced. His presentation of the various shitot, especially that of Rav Soloveitchik which was never put into print, is most welcome.

However I was surprised that Rabbi Lebowitz did not include one of the classic published tshuvot on the subject. I refer to the shita of Rav Chaim David Regensburg zt'l in Siman Tet of his work Mishmeret Chaim, entitled, "Nikui Shinayim B'shabbat B'mivreshet U'v'mishchah." Rav Regensburg was the late Rosh Yeshiva of Chicago's Bet Midrash L'Torah (Hebrew Theological College, now in Skokie IL), a member of the Rabbinical Council of America's Halacha Commission and Beth Din, and founding Av Bet Din and Posek of the Chicago Rabbinical Council. He was a major gadol of an earlier generation, whose opinions have been cited in other halachic works.

Rav Regensburg clearly allows brushing teeth on Shabbat. He deals with the various halachic aspects, offering a lenient approach to the various issues of Mimachaik, Mimarayach, Refuah, Nolad and Sechita. He also writes, "There is great need (tzorech harbei) for brushing teeth in our time, since it is impossible to go out amidst people without clean teeth because of bad breath."

The current Av Beth Din of the Chicago Rabbinical Council, Rav Gedalia Dov Schwartz, shlit'a (who is also Av Beth Din of the Beth Din of America) while respectful of the position of his predecessor, takes the other shitot into consideration. Rav Schwartz's position was disseminated in the Kislev 5761 edition of Chadashot, the internal newsletter of the Chicago Rabbinical Council. He writes, "...it would seem proper to use toothpaste

on Shabbos only if the individual would feel absolutely uncomfortable without it, rather than brushing the teeth without the paste which would probably have the same effect."

Sincerely,

RABBI JOSEPH S. OZAROWSKI
Executive Director and Menahel
Beth Din Zedek
Chicago Rabbinical Council

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This letter is in response to a letter from Dr. Mark Spitzer, commenting on an article by Rabbi Brander. Dr. Spitzer's letter appeared in the last Journal.

To Dr. Spitzer,

First, let me thank you for sharing this article with your patients. I have received numerous calls from doctors, like you, acknowledging the service the *Journal of Halacha and Contemporary Society* has performed by publishing this article. Halachic Jews must be informed that many procedures which cause a bloody show do not automatically create the status of *niddah*.

I believe that your description regarding polyps and fibroids is more consistent with the medical literature. Polyps and fibroids are responsive to hormonal changes; they do cause a hormonally induced release of blood.

"This non-synchronous surface mucosa responds with irregular bleeding to subtle changes in hormonal level unrelated to the normal remaining endometrial lining." – P*rinciples and Practice of Clinical Gynecology* (page 549) edited by Nathan G. Kase and Allan B. Weingold (John Wiley & Sons, New York 1983).

In future publications I will rephrase my comments to more accurately reflect the above statement.

However, the halachic conclusions stated in the article remain the same. Since bleeding caused from fibroids/polyps may also contain blood that is hormonally induced, we cannot dismiss a bloody show from fibroids/polyps as *dam makkah*. The concern is that it may mask d*am niddah.* Additionally, *dam makkah* in the uterus is normally precipitated by an external object causing bleeding. With polyps/fibroids the blood originates from a growth in the uterus or the cervical canal. These are unique concerns for polyps/fibroids and not for any other medical procedure that might cause staining or a bloody show. For this reason Rav Burstein of Machon Puah, stated that in many discussions he has had with *poskim* they were unwilling to treat the blood of polyps/fibroids as *dam makkah*. The approach to polyps/fibroids stated in my paper is consistent with the approach of this group of *poskim* in Eretz Yisrael. Rav Burstein indicated that the *poskim* include Rav Mordechai Eliyahu and Rav Wosner. However, I wish to inform you that Rav Waldenburg differs from the majority and classifies blood from polyps/fibroids as *dam makkah*.

I hope I have clarified any confusion raised.

Thank you for your communication.

Sincerely yours,

RABBI KENNETH BRANDER