

Journal of Halacha and Contemporary Society

Number LIII

Published by
Rabbi Jacob Joseph School

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<p>Rabbi Alfred S. Cohen, Editor</p>

The Journal of Halacha and Contemporary Society

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Pesach 5767
Spring 2007

TABLE OF CONTENTS

The Unscrupulous Butcher	
Rabbi Rabbi Joshua Flug	5
The Valance of Pain in Jewish Thought and Practice	
Rabbi Alfred Cohen.....	25
Woman and Prayer	
Rabbi Menachem Genack.....	53
Kashrut for Children	
Rabbi Aryeh Lebowitz	65
<i>Pareve</i> Meat	
Rabbi Daniel Friedman.....	93
Yemenite <i>Shofar</i> : Ideal for the Mitzvah?	
Rabbi Ari Z. Zivotofsky, PhD	106
Letters	
Rabbi Hanan Balk.....	125

The Journal of Halacha and Contemporary Society is published twice a year by the Rabbi Jacob Joseph School, Dr. Marvin Schick, President. The Rabbi Jacob Joseph School, located at 3495 Richmond Road, Staten Island, New York 10306, welcomes comments on this issue and suggestions for future issues.

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

Manuscripts which are submitted for consideration must be typed, double-spaced on one side of the page, and sent in duplicate to the Editor, Rabbi Alfred Cohen, 5 Fox Lane, Spring Valley, New York, 10977. Each article will be reviewed by competent halachic authority. In view of the particular nature of the Journal, we are especially interested in articles which concern halachic practices of American Jewish life.

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The Unscrupulous Butcher

Rabbi Joshua Flug

In September 2006, the Jewish community in Monsey was shocked to learn that one of the community's butchers was caught with non-kosher chicken in his refrigerator.¹ Unfortunately, this is not the first time in Jewish history a butcher was caught selling non-kosher food as kosher.²

When these situations arise, the primary question that must be asked is: at what point in time did he start selling non-kosher? Sometimes, this can be determined through investigation. Other times, an assessment must be made to determine if this was an isolated event or an ongoing activity.

This article will primarily focus on the halachic means of assessing whether it should be considered an isolated event or an ongoing activity. The practical significance of this question relates to whether one who previously purchased meat from a butcher who was later caught selling non-kosher should assume that the meat purchased was not kosher. If it is considered non-kosher, the utensils used to cook that meat may require *kashering* (the process used to remove non-kosher food from

1. See for example, Fernanda Santos, "Butcher is Accused of Passing off Chicken as Kosher," *New York Times* Sept. 7, 2006 Section B; Column 3; Metropolitan Desk; Pg. 3.

2. A search for the term "selling non-kosher" on Google's news archive website (<http://news.google.com/archivesearch>) produced 492 results on January 8, 2007, many of which dealt with actual cases of butchers selling non-kosher as kosher.

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utensils). Additionally, if one has frozen food that was made with meat from that store, one would be required to discard it.

An Analysis of the Question

In order to assess which point in time one should assume that the butcher started to sell non-kosher meat, it is necessary to analyze the situation. The Gemara, *Chullin* 9a, states that the default status-quo of a live animal is that it is non-kosher. This status-quo can only be overturned when it is determined that it was slaughtered properly. Based on the principle of *eid echad ne'eman b'issurin* (a single witness is reliable for matters of ritual law),³ a reliable individual can overturn the status-quo of the animal by stating that he knows that it was slaughtered properly.⁴ When one purchases a piece of meat, he may not simply assume that the meat was slaughtered properly. He must know that it was slaughtered properly. This can be achieved through an oral or written declaration⁵ by a reliable individual that the meat is kosher.

How does one establish himself as a reliable individual? *Tur*, *Yoreh De'ah* 119,⁶ states that every Jew has a *chezkat kashrut* (he is established as reliable) unless there is a reason to suspect that he is unreliable.⁷

The question of the unscrupulous butcher can now be

3. *Gittin* 2b.

4. See Rashi, *Gittin* 2b, s.v. *Hacha*.

5. Rambam, *Hilchot Ma'achalot Asurot* 11:26, implies that if an individual is established as reliable, one may purchase meat from him without a formal declaration that the food is kosher. If he is not established as reliable, a reliable individual must declare that the item is kosher before partaking of that item.

6. Based on the comments of the Gemara, *Avodah Zarah* 39a.

7. Rambam, *Hilchot Ma'achalot Asurot* 11:25, states that nowadays, one may not purchase meat, wine or similar items from an individual unless he is already established as reliable.

analyzed as follows: the ability to overturn the prohibited status of an animal is predicated on the established reliability of the individual who claims that it is kosher. When the reliability of that individual is called into question, he loses the ability to overturn the prohibited status of the animal. However, this individual was previously established as reliable. Therefore, by default, there is a period of time between the last moment when he was known to be reliable and the moment when his reliability is called into question. During this period of time, do we give credence to his established reliability and allow it to dominate the current question? Or do we assume that since there is a doubt about his reliability during this period of time, there are insufficient grounds to overturn the original prohibited status of the animal?⁸

Based on this analysis, the question of the unscrupulous butcher can now be presented as part of a broader question: in a situation where there is an established status-quo that is overturned by an action that is predicated on a second status-quo, and that second status-quo is flawed, at what point in time do we consider the action to be ineffective?

8. This discussion is limited to situations where there is a previously established status-quo. If there is no previously established status-quo, R. Ya'akov Reisher, *Shevut Ya'akov*, 2:51, rules that one would not apply this discussion. For example, if one is responsible to remove forbidden fats from animals and it is discovered that he is not properly removing those fats, one must question whether it is necessary to retroactively invalidate all meat that he was responsible for. In this example, there is no previously established status-quo that the meat is non-kosher. The meat is kosher, but requires someone to remove the non-kosher fats. Therefore, it is arguable that if this individual was established as one who can properly fulfill his responsibilities, one cannot retroactively invalidate the meat that he was responsible for based on a question regarding his established status-quo. Nevertheless, for technical reasons, R. Reisher is more stringent regarding one who neglected to remove fat than regarding a slaughterer who neglected to slaughter properly.

This question is addressed in a Mishnah, *Mikva'ot* 2:2. The Mishnah states that if a *mikvah* (ritualarium) was measured and found to be lacking (the requisite forty *sa'ah* of) water, all of the ritually impure people (and all vessels) that immersed in that *mikvah* should still consider themselves ritually impure (if the immersion took place since the last time the *mikvah* was checked and found to meet its requirements). This case in the Mishnah is clearly comparable to the question at hand. The person entering the *mikvah* is established as impure prior to his immersion. The immersion was supposed to overturn the status-quo. However, a proper immersion is predicated on the *mikvah* maintaining its own status-quo as a valid *mikvah*. The Mishnah, in rendering all immersions invalid from the time of the last measurement, implies that a status-quo cannot be overturned by an action that is predicated on a second status-quo that was called into question.

Nevertheless, Tosafot note that there is a ruling in the Gemara which seemingly contradicts the principle established by the Mishnah.⁹ The Gemara, *Chullin* 10a, discusses a case where a slaughtering knife is found blemished after slaughter. If it was known that the knife was blemished at the time of the slaughter, the slaughter is certainly invalid.¹⁰ In this situation, R. Chisda rules that if the knife hit the neck-bone after the slaughter (prior to discovering the blemish), the slaughter is considered valid and the blemish in the knife is assumed to have occurred after the slaughter.

This situation seems comparable to the situation of the invalid *mikvah*. The act of slaughter attempts to overturn the prohibited status of the animal. However, the efficacy of the slaughter is

9. Tosafot, *Chullin* 10a, s.v. *Sakin*.

10. Rashi, *Chullin* 10a, s.v. *Nifgema*, explains that a knife with a blemish will tear rather than slice. A proper slaughter requires that the trachea and esophagus are sliced.

predicated on the maintenance of the unblemished status of the knife. Following the principle established by the Mishnah regarding the invalid *mikvah*, one should conclude that when the established status of the knife is called into question, all acts of slaughter performed with this knife since the last time it was checked should be considered invalid. Why, then, does R. Chisda rule that the slaughter is valid?

Tosafot present three answers to this question. First, the invalidation of the *mikvah* is the result of an ongoing process of evaporation or leakage while the blemish caused by the knife happens in one instant.¹¹ Second, the reason why R. Chisda rules leniently is, in that particular situation the knife hit the neck-bone subsequent to slaughter. Since the blemish in the knife most likely occurred subsequent to the slaughter of the animal, there is no need to be concerned about the possibility that it occurred prior to the slaughter. Regarding the invalid *mikvah*, there is no indicator to determine the moment of invalidation. Third, R. Chisda's ruling is based on the principle of *sefek-sfeika* (double doubt). There is a doubt as to whether the blemish occurred before or after the slaughter. Even if the blemish occurred before the slaughter, it is possible that the slaughterer did not use that section of the knife to slaughter the animal.

Application to the Case of the Unscrupulous Butcher

11. The concept of retroactive invalidation as a function of an ongoing process is mentioned by the Gemara, *Niddah* 2b. Rashi, ad loc., s.v. *Chaser*, explains that whenever the cause of the flaw in status-quo is a function of a process, the question of when the flaw in the status-quo occurred is of a higher quality. *P'ri Megadim*, M.Z., *Yoreh De'ah* 105:3, explains that when the flaw is the result of a process, the initiation of that process could not have possibly occurred at the moment that the flaw was discovered. Therefore, one must assume that the status-quo was flawed since the last time it was checked.

Determining which of the three answers of Tosafot is the accepted answer is a significant factor in determining the rule regarding the unscrupulous butcher. According to the first answer, one must still determine whether the transformation of an individual into someone unreliable is part of an ongoing process or whether it is instantaneous. If it is part of an ongoing process, we will assume that this individual was unreliable since the last time he was known to be reliable. If it is instantaneous, he is assumed to have been reliable up until the time he was found to be unreliable.

According to the second answer, when the status-quo upon which one is relying is flawed, everything is invalidated retroactively unless there is something that indicates that the flaw was caused by an event that occurred at a later point in time. Regarding the unscrupulous butcher, generally, there is not going to be an indicator that will help determine the time of invalidation. However, there may be cases where there is an indicator which helps determine the cause of invalidation.¹²

According to the third answer, one would invalidate everything retroactively unless there are other doubts besides the time of invalidation. Regarding the case of the unscrupulous butcher, there may be cases where other doubts enter into the equation. If, for example, the butcher was certainly selling mostly kosher meat when he was caught, it is possible to be lenient based on a double-doubt. First, perhaps the butcher started to sell non-kosher subsequent to the consumer's most

12. For example, if there was a major change in the way the butcher shop operates (there was a change in management; the owner started working at times that one would not expect him to work; etc.), there is reason to believe that this change was an indicator for the change in behavior of the butcher. According to the second answer in Tosafot, all items sold prior to this change would be considered valid. Every situation of this nature would need to be dealt with on a case-by-case basis.

recent purchase of meat. Second, even if the consumer purchased meat while the butcher was selling non-kosher meat, perhaps all of the consumer's selections were those meats that were actually kosher.

The Lenient Position

Orchot Chaim rules that one who is non-observant is not considered reliable. However, if a butcher becomes non-observant, there is no need to retroactively invalidate everything that he sold previously.¹³ This ruling is codified by *Beit Yosef*, *Bedek HaBayit*, *Yoreh De'ah*, no. 119 and *Shach*, *Yoreh De'ah* 1:8.¹⁴

P'ri Chadash, *Yoreh De'ah* 1:9, rules that if a butcher is caught selling non-kosher meat, there is no need to retroactively invalidate the meat that was sold prior to catching him. He claims that one only retroactively invalidates a status-quo if the cause of the flaw is part of an ongoing process. However, vis-à-vis selling non-kosher meat, the cause of an individual's

13. *Orchot Chaim*, *Hilchot Avodah Zarah* no. 6.

14. *Orchot Chaim's* case is not a direct comparison to the classic case of the unscrupulous butcher. *Orchot Chaim* refers to a case where there was a specific event in which the individual renounced his observance of mitzvot. *Beit Yosef* merely quotes *Orchot Chaim* (almost) verbatim. However, *Shach* does seem to apply the ruling of *Orchot Chaim* to the classic case of an unscrupulous butcher who was caught selling non-kosher meat. *Shach* also brings support to this ruling from an anonymous ruling cited by Maharshal, *Yam Shel Shlomo*, *Chullin* 7:16, stating that when there is suspicion regarding a certain individual, his reliability is not cancelled retroactively. However, if one examines the case as presented by Maharshal, it is clear that the case deals with a rabbi who was caught issuing erroneous rulings regarding prohibited fat (on a kosher animal). There is a noteworthy distinction between this case and the case of the unscrupulous butcher in that the rabbi's rulings did not affect any previous status-quo. The animal is a kosher animal and some of its fat is permissible and some of it is prohibited. When there is no previous status-quo, one should not necessarily invalidate everything retroactively. See note 8.

loss of reliability occurs instantaneously.¹⁵

R. Aryeh L. Heller, *Shev Shemateta* 3:4, also rules that one should not retroactively invalidate the meat sold by the unscrupulous butcher. However, he provides a different rationale. R. Heller claims that the cases mentioned by Tosafot are not comparable to the case of the unscrupulous butcher. Regarding a *mikvah* that is lacking the requisite amount of water or a knife that is blemished, there is physical evidence that the status-quo no longer exists. One must then apply one of the three answers of Tosafot to determine its time of invalidity. Regarding the unscrupulous butcher there is no evidence that the status-quo no longer exists. R. Heller claims that an act of transgression provides no indication that other acts of transgression may have occurred previously and therefore, the act is insufficient to overturn an individual's innate *chezkat kashrut*.

R. Ya'akov of Karlin presents a similar explanation. He claims that Tosafot's discussion is limited to cases where the flaw in the status-quo creates a permanent change to the status-quo. If a *mikvah* is lacking the requisite amount of water it will remain invalid until it is refilled. Similarly, a knife that is blemished will remain blemished until it is repaired. For this reason, the current status of the *mikvah* or the knife can be projected retroactively or prospectively. However, the status of a butcher who sells non-kosher meat is not permanently changed. He may decide the next day that he is no longer

15. *P'ri Chadash*'s assertion that the loss of reliability occurs instantaneously assumes that the cause is defined by actions so that the butcher is invalidated the instant he begins selling non-kosher meat. It is arguable that one should focus on the thought process involved in the decision to introduce non-kosher meat into the kosher butcher shop. If the focus is on the thought process, one would consider it an ongoing process and there is no single instant which caused his invalidity. The latter position will be presented in the next section.

interested in selling non-kosher meat. Therefore, one cannot project his current status retroactively and one should assume that he retained his previously established status-quo (*chezkat kashrut*).¹⁶

If one assumes the lenient position and the butcher is not invalidated retroactively, all products sold by the butcher prior to the incident that called his reliability into question are assumed to be kosher. Therefore, one who purchased meat prior to that time may still use that meat and the utensils used to cook any meat sold prior to this time do not require any form of *kashering*.

The Stringent Opinion

Rashba discusses a case where a slaughterer was found to be negligent in using a blemished knife on two occasions. Rashba rules that one must retroactively invalidate everything that was slaughtered by this slaughterer.¹⁷ Rashba's ruling implies that if a butcher is caught selling non-kosher meat, one should invalidate everything sold by the butcher retroactively.¹⁸ *Taz*, *Yoreh De'ah* 119:16, specifically addresses this issue and rules that if a butcher is caught selling non-kosher meat, all meat

16. *Mishkenot Ya'akov*, *Yoreh De'ah* no. 4.

17. *Teshuvot HaRashba* 1:619.

18. While Rashba does seem to rule that one should retroactively invalidate all the meat sold by the unscrupulous butcher, *P'ri Chadash*, *ibid*, provides an alternate explanation to Rashba's responsum. According to *P'ri Chadash*, Rashba's case was unique in that the slaughterer was negligent on two occasions. *P'ri Chadash* contends that Rashba's ruling to invalidate everything retroactively only applies to animals that were slaughtered after the first incident. Animals that were slaughtered prior to the first incident are not included in Rashba's ruling and are permitted. R. Chanania Kazis, *Chok L'Yisrael* 1:10, disagrees with *P'ri Chadash*'s interpretation of Rashba's ruling and contends that Rashba, in retroactively invalidating the meat of the slaughterer, intended to retroactively invalidate all of the meat of the slaughterer.

that he sold should be considered non-kosher retroactively.

There are a number of reasons provided by the *Acharonim* to explain why one would invalidate all of the meat retroactively. First, *P'ri Megadim* implies that the accepted answer of Tosafot is the first answer and therefore, the critical factor is whether the cause of the flaw in status-quo is instantaneous or whether it is part of an ongoing process. *P'ri Megadim* contends that the decision of whether one should introduce non-kosher meat and sell it as kosher is the result of a thought process that does not occur instantaneously.¹⁹

Second, *Chok L'Yisrael* 1:10 explains that the concept of *chezkat kashrut* is not really based on a status-quo. The reason we rely on an individual is that statistics (*ruba d'leta kaman*) dictate that an individual who appears as if he observes *mitzvot* is most likely reliable. This reliability is only applicable when we can assume that the individual is part of the majority who are reliable. If we find out that he is an anomaly, we assume that he was never reliable. In the case of the *mikvah* and the case of the blemished knife, the question focuses on what to do with conflicting status-quos. The case of the unscrupulous butcher is irrelevant to that discussion because the question does not hinge on an actual status-quo.²⁰

19. *P'ri Megadim*, S.D. 1:8 (4). See note 15.

20. Other *Acharonim* discuss the question of whether *chezkat kashrut* is based on an actual status-quo or whether it is the function of statistics. *P'nei Yehoshua*, *Gittin* 17a, in his comments on Tosafot s.v. *Mishum*, states that it is a function of statistics. R. David Tebil, *Nachalat David* no. 26, disagrees with *P'nei Yehoshua* and asserts that *chezkat kashrut* is an inherited trait that each individual is born with. Even if one assumes that *chezkat kashrut* is based on statistics, one may still conclude that the butcher should not be invalidated retroactively. See for example, R. Yosef D. Soloveitchik, *Teshuvot Beit HaLevi*, 2:4, who states that *chezkat kashrut* is based on a very strong statistic and for this reason, the unscrupulous butcher should not be invalidated retroactively. See also R. Yoel Teitelbaum (The Satmar Rebbe), *Chidushei Sugyot* 10:15, who suggests that *chezkat kashrut* is only a function of statistics if one must make a

Third, R. Yoel Sirkes rules that the primary answer of Tosafot is the first answer that distinguishes between causes that are instantaneous and causes that are part of an ongoing process. In reality, one should not invalidate the meat retroactively. However, R. Sirkes contends that the discussion in Tosafot is limited to biblical laws. As a matter of Torah law, the meat is not invalidated retroactively. Nevertheless, as a matter of rabbinic law, the meat is invalidated retroactively. R. Sirkes explains that Rashba, who invalidates the meat retroactively, will agree that on a biblical level, the meat is not invalidated retroactively.²¹

If one assumes the stringent position, all meat purchased from this butcher should be assumed non-kosher. One certainly may not eat any meat that was purchased prior to the incident that called his reliability into question. Furthermore, all utensils that came into contact²² with meat purchased from that butcher require *kashering*.

The Middle Position

R. Alexander S. Shor, *Tevu'ot Shor* 2:32, presents a middle position on the issue. He states that in principle, the stringent

determination on an individual without knowing anything about him. However, if one knows that this individual is pious, then his *chezkat kashrut* is based on an actual status-quo and the standards to overturn that status-quo are higher.

21. It is interesting to note that Rashba, *Chullin* 10a, s.v. *Sakin*, in listing the various answers to Tosafot's question, does not list the first answer. Rashba, *Torat HaBayit HeAroch*, 1:2, 16b, presents a similar list and sides with the second answer of Tosafot.

22. In truth, the only utensils that require *kashering* are those that came in contact with the meat while it was hot. However, even utensils that came into contact with the meat while it was cold require rinsing (see *Shulchan Aruch*, *Yoreh De'ah* 105:2). Knives that were used to cut cold meat require *ne'itzah*, a process which involves sticking the knives into hard soil (see *Shulchan Aruch*, *Yoreh De'ah* 121:7).

position should be followed. He contends that the entire discussion in Tosafot is irrelevant to this case because Tosafot's discussion centers on resolving R. Chisda's ruling, that one may permit the slaughter of an animal if a blemish was found in the knife after the slaughter, with the ruling of the Mishnah regarding the *mikvah* that was found lacking the requisite amount of water. However, the Gemara, *Chullin* 10a, also cites the opinion of R. Huna that if the knife is found blemished after the slaughter, the animal is not kosher even if the slaughterer hit the neck-bone after the completion of the slaughter. R. Shor contends that R. Huna's opinion is the normative opinion, which proves that a flawed status-quo cannot overturn a previously established status-quo.

Nevertheless, R. Shor rules that there is more room for leniency regarding utensils that did not come into contact with meat from that butcher shop within the last twenty-four hours. The Gemara, *Avodah Zarah* 76a, states that the *kashering* of a utensil whose last contact with non-kosher food was more than twenty-four hours ago is only rabbinic in nature. Therefore, R. Shor rules that since the question of whether one must *kasher* the utensils is only rabbinic in nature (after twenty-four hours),²³ one may be lenient regarding utensils that are not able to be *kashered*.²⁴ R. Refael Y. Chazan arrives at (basically²⁵) the same

23. Central to this discussion is whether one can treat a utensil that was not used for non-kosher food in the last twenty-four hours as a question of rabbinic law. *Teshuvot Maharibal* 3:103, rules that if there is a question regarding the kashrut of an item and that question also relates to the utensil that came into contact with the item, the question surrounding the status of the utensils is treated as a question on a biblical level. This is because the original question relates to biblical law and only after twenty-four hours does the question become one of rabbinic law. However, *P'ri Megadim*, S.D. 110:63 (1), and R. Akiva Eger, *Teshuvot Rabbi Akiva Eger* 1:79, both rule that if the question regarding the utensils was not discovered until after twenty-four hours have elapsed, one may treat this question as one of rabbinic law.

24. A utensil may not be able to be *kashered* for one of two reasons. First, there are certain porous materials, such as earthenware, for which the Gemara,

conclusion and explains that since the prohibition on the utensils is only rabbinic in nature, and there is a doubt if non-kosher meat came into contact with the utensils, there are grounds for leniency based on the principle of *safek d'rabbanan l'kula* (one may be lenient on matters of rabbinic law).²⁶ However, since this line of thinking is based on a number of assumptions,²⁷ R. Chazan is only willing to rule leniently on those utensils that would have to be discarded otherwise. Those utensils that can be *kashered* must undergo the normal *kashering* procedure.²⁸

Pesachim 30b, states that placing these utensils in boiling water is ineffective in totally removing the non-kosher particles that are absorbed into the utensil. Furthermore, the Gemara states that one cannot even *kasher* an earthenware utensil by applying direct fire to it because there is a concern that the person applying the fire will be worried about destroying his utensil and he won't apply enough heat to the utensil. Second, if a utensil came into contact with non-kosher meat without a liquid medium (for example, the utensil was used for baking or roasting the meat), that utensil can only be *kashered* by applying a direct fire to it. Many utensils simply cannot withstand the application of direct heat.

25. R. Chazan requires that one place the utensil in boiling water three times. This is based on the opinion of *Sefer Halttur*, *Sha'ar Rishon*, pg. 14, who allows *kashering* earthenware utensils that were not used in the last twenty-four hours by placing them in boiling water three times. Although *Sefer Halttur's* opinion is not considered normative, R. Chazan suggests that one should at least place the item in boiling water three times to fulfill his opinion. R. Shor does not mention this requirement.

26. *Chikrei Lev*, *Yoreh De'ah* no. 14.

27. The first assumption is that a question regarding a utensil that was rendered non-kosher and then sat for twenty four hours is considered a matter of rabbinic law. See note 23. The second assumption is that the rabbinic prohibition of using a non-kosher utensil after twenty-four hours is treated like other rabbinic prohibitions. R. Chazan argues that this rabbinic prohibition is more stringent. Third, according to many authorities, all meat that was sold by the unscrupulous butcher is assumed to be non-kosher and this is not a matter of doubt.

28. Both R. Shor and R. Chazan seem to be focused on the *hefsed merubah* (great loss of money) aspect of this case in distinguishing between utensils that can be *kashered* and those that can not. There is another reason to distinguish between such utensils based on the principle of *davar sheyesh lo matirin*, which will be discussed later in the article.

The leniency of R. Shor applies only to utensils that came into contact with meat that was purchased from the unscrupulous butcher. If one has food items that contain meat purchased from this butcher, R. Shor would certainly prohibit eating those food items.

The Modern-Day Butcher Shop

The modern-day butcher shop differs from the classic butcher shop in a number of ways. These differences raise a few questions. First, nowadays, almost all butcher shops are under the auspices of a *hashgacha* organization, which certifies that the products sold in the store are kosher. The job of the *hashgacha* organization is to independently verify that the products are kosher. Should the failure of the *hashgacha* organization to prevent the incident lead one to assume that it was always ineffective in stopping this butcher, or should one assume that the butcher capitalized on a temporary moment of weakness and this was a one-time incident? Second, prior to the invention of the automobile and refrigeration, it was much easier for a person to know whether he purchased meat from a certain store. Nowadays, if a butcher is caught selling non-kosher meat, someone who lives hundreds of miles away may be unsure if meat from that store ever came into contact with his utensils. Does someone who is unsure if he ever purchased meat from that store have to be concerned that non-kosher meat may have come into contact with his utensils?

The Role of the *Hashgacha* Organization

A *hashgacha* organization does not necessarily verify the *kashrut* of an establishment by placing a full-time *mashgiach* (supervisor) on premises. The organization may choose to employ random spot-checks to verify the *kashrut* of the establishment. R. Shlomo Eger states that if the butcher is caught on a random spot-check, one should assume that the butcher was never deterred by the possibility that the *mashgiach* may suddenly appear for a spot-

check. Therefore, the presence of a *hashgacha* organization will not play a role in determining whether the meat should be invalidated retroactively.²⁹

R. Eger's comment may be limited to a situation where the *hashgacha* organization relies on random spot-checks. This system is unique in that the verification process is based on the fear of the proprietor. If it is determined that the proprietor was not fearful of being caught by the *mashgiach*, the entire system is proven ineffective. However, if, for example, the *kashrut* was verified by not allowing the proprietor access to the refrigerator, and the proprietor managed to obtain access to the refrigerator, one is not forced to conclude that the system was never effective.³⁰

If One is Unsure Whether He Purchased Meat from that Butcher

As mentioned previously, if a butcher is caught selling non-kosher meat, it is likely that there will be many individuals who are simply unsure whether they ever purchased meat in that store. If one follows the opinion that there is no need to invalidate this butcher's meat retroactively, this discussion is insignificant. However, if one follows the stringent opinion that all of the meat must be invalidated retroactively, must one be concerned that his utensils may have come into contact with meat from that store?

In a previous article by this author, the concept of *kol kavua*

29. Gilyon Maharsha, *Yoreh De'ah* 1:2, s.v. *V'Ain Omrim*.

30. Within this example there are many permutations to address. If the *hashgacha* organization was frequently negligent in locking the refrigerator, the system was never effective. If the proprietor gained access to the refrigerator by hiring a locksmith, this does not reflect a breakdown in the system such that one should assume that a locksmith was hired on multiple occasions (unless there is evidence to the contrary).

k'mechtza al mechtza was discussed.³¹ The Gemara, *Ketubot* 15a, states that if there are ten stores, nine of which sell kosher meat, and one that sells non-kosher meat, and someone bought meat from one of the stores and does not know from which one he bought the meat, it is prohibited. If however, the meat was found in a location outside of those ten stores, it is permitted. The rationale³² is that when the *leidat hasafek*, the origination of the doubt, is in a location that relates to the matter of doubt, one may not follow the 90% probability that he bought from a kosher store. Rather one must treat the meat as having a one-to-one possibility that it is not kosher. Therefore, the meat is prohibited, as one must be stringent on questions of Torah law. This principle is known as *kol kavua k'mechtza al mechtza*, any mixture of permitted and prohibited items, whose origination of doubt relates to an established location, is considered a mixture of equal proportion regardless of its actual composition. However, if the meat was found in a location outside of those ten stores, the meat is permitted as the *leidat hasafek* was not in a location that relates to the origination of the doubt, and the regular *rov* (majority rules) principle is followed.

31. See Joshua Flug, "A Review of the Recent *Sheitel* Controversy," *Journal of Halacha and Contemporary Society* 49 (2005): 27-29. For the benefit of the reader, some of the material is repeated in this article.

32. The principle of *kavua* is arguably not based on the laws of probability, but rather serves as a limitation to the principle of *rov*. See R. Shimon Shkop, *Sha'arei Yosher*, no. 4, who explains that the principle of *kavua* is an innovation of the Torah to treat *kavua* items as part of the larger category to which they belong rather than as individual entities. When an item is considered *kavua*, the focus is on possibilities, not probabilities. A piece of meat from an established location can either be categorized as kosher or non-kosher. When the piece in question is only subject to these two possibilities rather than the probability that it originated from a non-kosher store, the principle of *rov* is no longer applicable as the possibilities are equal. If the piece is not subject to *kavua*, the probability that the meat originated from a kosher store will determine whether the piece is permitted.

If one is unsure whether he purchased meat from the unscrupulous butcher, it is arguable that since the *leidat hasafek* occurs in the home, the rule of *rov* dictates that one should not be concerned about the possibility that he purchased meat in that store. However, this case is not really one where there are nine kosher stores and one non-kosher store. Rather, the case is that there are ten stores that sell kosher meat. Someone bought meat from one of the stores and only later discovered that one of the stores was actually selling non-kosher meat. This concept is called *kavua limafreya*, retroactive *kavua*, and is the subject of a dispute between Rashba, *Mishmeret HaBayit* 4:2, and Ra'ah, ad loc. *P'ri Chadash*, *Yoreh De'ah* 110:13, rules leniently on *kavua limafreya*.³³ According to *P'ri Chadash*, the rules of *kavua* would not apply to one who is unsure whether he purchased meat from the unscrupulous butcher, and he may rely on the fact that the rule of *rov* dictates that he did not purchase meat from that store.

Even if one is not willing to accept *P'ri Chadash*'s ruling on its own, one can combine this leniency with the opinion that there is never a need to invalidate the meat of the unscrupulous butcher retroactively. Therefore, there are more grounds for leniency when one is unsure whether he actually purchased meat in that store.³⁴

Additional Considerations of the Posek

One factor that a *posek* must consider when ruling whether

33. See however, *P'ri Megadim*, S.D. 110:14, who is less inclined to rely on this leniency.

34. One may also factor in the third opinion in Tosafot that when there is a *sefek-sfeika* (double doubt), one may be lenient. In this situation, there is a doubt whether one ever purchased meat in that store. Additionally, even if one did purchase meat in that store, there still remains a doubt if the meat was purchased prior to the butcher's decision to sell non-kosher meat or subsequent to that decision.

one must *kasher* utensils that came into contact with meat purchased from an unscrupulous butcher is that there are some utensils which are relatively easy to *kasher*, others that are more difficult, and others that cannot be *kashered* at all. Ruling that all utensils must be *kashered* inevitably results in the discarding of all utensils which cannot be *kashered* and, therefore, *hefsed* (loss of money) is certainly a factor in any decision.

Furthermore, there is an actual halachic factor that potentially distinguishes some utensils from others. The Gemara, *Beitzah* 3b, states that if there is a prohibited item that was mixed into a majority of permissible items and the prohibited item will (or can) become permissible, that item is not nullified in the majority of prohibited items. Rashi, ad loc., s.v. *Afilu*, explains that since there is a method of rendering the item permissible, one should not rely on nullification.³⁵ The Gemara, *Beitzah* 4a, further states that if there is a doubt regarding a rabbinic prohibition and the questionable item can become permissible, one may not rely on the principle of *safek d'rabbanan l'kula*, on matters of rabbinic law, one may be lenient. Rather, one should wait until the item becomes permissible. This principle is known as *davar sheyesh lo matirin* (an item that has a method to become permissible).

Rashba states that if a utensil that requires *kashering* gets mixed with other utensils that are permissible, one should employ the principle of *davar sheyesh lo matirin* and require that all of the items be *kashered* rather than rely on nullification.³⁶

35. See Ran, *Nedarim* 52a, s.v. *V'Kashya*, for an alternative explanation of this principle.

36. *Torat HaBayit HeKatzar* 4:4, pg. 38a. R. Shlomo Luria, *Yam Shel Shlomo*, *Chullin* 8:86, disagrees with Rashba's application of this case to the principle of *davar sheyesh lo matirin*. The classic case of *davar sheyesh lo matirin* is one where the prohibited item will become prohibited automatically. If one must perform an action in order to permit the item, one does not apply the principle of *davar sheyesh lo matirin*.

However, Rashba concludes that the principle of *davar sheyesh lo matirin* does not apply if one must spend money in order to achieve the permissible method. Since *kashering* utensils is costly (there is a cost to heat up water), one may rely on the nullification of the prohibited utensil. Rashba's ruling is codified by *Shulchan Aruch, Yoreh De'ah* 102:3.

Maharil disagrees with Rashba and contends that since it is not that costly to heat water for the purpose of *kashering*, one should *kasher* all of the utensils rather than rely on the nullification of the prohibited utensil.³⁷ *Shach, Yoreh De'ah* 102:8, recommends following the opinion of *Maharil* unless there is great loss involved.

Applying this discussion to the case of the unscrupulous butcher, suppose a *posek* concludes that there is a doubt regarding the utensils that came into contact with meat purchased from the butcher. One can argue that since the utensils did not come into contact with the meat in the last twenty-four hours, the entire question of whether to *kasher* the utensils is rabbinic in nature.³⁸ Given that there is a doubt whether there is need to *kasher* the utensil, one should be able to employ the principle of *safek d'rabbanan l'kula* and permit use of the utensils without any *kashering* process. However, according to *Shach*, the principle of *davar sheyesh lo matirin* limits the leniency of *safek d'rabbanan l'kula* by demanding that one avoid *safek d'rabbanan l'kula* and simply *kasher* one's utensils.

Nevertheless, even if one employs *davar sheyesh lo matirin* in this situation, its application is limited to utensils that are easily *kasherable*. R. Avraham Danzig, *Chochmat Adam* 53:23, rules that if it is very difficult to *kasher* an item, the *davar sheyesh lo matirin* principle does not apply. Furthermore, if the item cannot

37. *Teshuvot Maharil* no. 164.

38. See note 23.

be *kashered*, *davar sheyesh lo matirin* certainly does not apply.

Based on the ruling of *Chochmat Adam*, one can construct a middle position similar to that of R. Shor. If the utensil can easily be *kashered*, one would employ the principle of *davar sheyesh lo matirin* and require that the utensil be *kashered*. However, if the utensil is not easily made kosher, the *davar sheyesh lo matirin* principle is not employed and one may be lenient based on the principle of *safek d'rabbanan l'kula*.³⁹

Conclusion

In the unfortunate situation of a butcher who is caught selling non-kosher meat, an analysis must be performed in order to determine the point in time at which the butcher lost his reliability. The article presents a number of methods used to make such an assessment. If one assumes the most stringent approach, one must *kasher* all utensils that came into contact with meat purchased from that store. One must also discard all food items that may contain meat from that store. If one assumes the lenient approach, the butcher is assumed to be reliable up until the time when he was caught. The utensils used to prepare meat from that store and items that were purchased from that store prior to that time may be used. A middle approach would require *kashering* for those items that can easily be *kashered*, while those that are not require no *kashering*.

There are a number of other factors that play a role in this determination. One must assess the role of the *hashgacha* organization. Additionally one must address situations in which one is unsure whether one actually purchased meat from the butcher at all.

39. See note 28.

The Valance of Pain in Jewish Thought and Practice

Rabbi Alfred Cohen

While millions of medical and surgical procedures are performed yearly in this country, and myriads of researchers are involved in refining, perfecting, and advancing medical knowledge to levels which continually amaze us, alleviation of the pain which is almost inevitably a concomitant of these procedures arouses hardly any interest at all. Paradoxically, it seems that many patients who undergo surgical procedures in the USA suffer considerably more pain than is necessary.¹ And until recently, not one medical student in this country was tested on the ability to help alleviate pain for surgical patients.² Fortunately, the situation seems slowly to be changing: In September 1994, Michigan lawmakers passed a resolution requiring pain management education of physicians and other health care professionals. Studies are showing that untreated pain is not a factor external to the healing process but rather has a significant negative impact on the rate of recovery, not to mention quality of life, ability to concentrate, sleep, and perform effectively, even to socialize and maintain normal sexual activity.³ For example, depression, as an expression of psychological or emotional pain, has a demonstrable effect on

1. "Pain Management Standards are Unveiled," JAMA, Vol. 284, July 26, 2000.

2. Ibid. p. 429.

3. American Pain Foundation, "Pain Facts" at <http://www.painfoundation.org/page.asp?file=Library/PainSurveys.htn>.

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the rehabilitation of stroke victims.⁴ Belatedly, the phalanx of health care professionals is awakening to the devastating effects of pain as a factor in the welfare of individuals.

Judaism has been aware of these effects for millennia, and from the first, has factored in pain and its effects/management/prevention in establishing normative practice. In this study we will explore many laws, guidelines, and insights of the Torah and rabbinic teachings concerning many varieties of pain, as well as the practical directives – halacha – which emerge from them.

As with so many things in this world, pain is not always a bad thing to be avoided at all costs. Often, pain is the first or the only clue to the individual that something is amiss in his body. Seeking to rid oneself of a nagging pain, a person may discover dental decay or a subtle fracture, and avoid serious problems down the road when responding to minor aches.

The same is true on a spiritual level: pain, whether physical or psychological, is a warning that something is amiss in our personal spiritual universe. On a most basic religious insight, the Gemara tersely posits,

אין מיתה בלא חטא ואין יסורין בלא עון

There is no death without sin and there are no pains without a transgression [precipitating them].⁵

In other words, our Sages saw physical – or emotional – pain as a Divine message warning the individual that something needs to be changed. However, as we will explore in this study, there are many layers of rabbinic thought on this topic, including seeing pain in a positive light – as an impetus to review one's

4. School of Healthcare Studies,
http://healthcare.leeds.ac.uk/pages/research/sym_more.htm.

5. *Shabbat* 55a.

physical or spiritual condition, which should lead to improvement or striving for higher spiritual planes. There are also further dimensions in the Jewish understanding of pain, ranging from the positive to the dreadful, which we will explore hereinafter.

Sefer Chassidim 164 notes that at times pain is not due to an actual sin but may rather be serving a beneficial function, garnering the individual great reward in the Hereafter for the unhappiness he willingly accepts here; an example might be the existential qualms a father feels when he does not agree to a beloved child's pleas for them to go for a walk together, choosing instead to spend the time learning Torah. Although his emotions might be painful, they nevertheless assure that his reward in the Hereafter will be even greater.⁶

Causing pain

The Torah considers causing unnecessary pain to any individual – whether physical or psychological – to be forbidden. Thus, even when a transgressor must be whipped for his sin (*malkot*), the Torah warns, “Forty lashes he shall be struck, but no more...lest your brother be degraded in your eyes.” Even the dignity of a sinner must be maintained, so that causing him excessive pain or embarrassment is forbidden to the *Beit Din*; moreover, contra-intuitively, the man designated to whip the sinner was not a strong muscular person but rather a relatively weak one, so as to minimize not only the psychological but also the physical pain.⁷ Based on the clear biblical teaching that it is forbidden to whip a sinner excessively and cause him unwarranted pain, the *Shulchan Aruch* rules

6. On the other hand, the author of *Sefer Chassidim* remarks that pain ensuing from *commission* of a sin does not qualify as pain which serves to save him from pain in the World to Come.

7. *Devarim* 25:3; *Ketubot* 17b.

that obviously it is forbidden ever to strike an innocent person.⁸

While some pain may be beneficial, Judaism generally does not believe that a person should seek out distressful experiences, even if they may result in a positive effect. The Rabbis were critical of a *Nazir*, a person who forswears drinking wine in a desire to become more holy, and the Talmud goes so far as to say,

And if even a *Nazir* who [only] pained himself by [abstaining from] wine is called a “sinner”, how much more so anyone who causes himself pain [by abstaining] from anything [pleasurable permitted to him].⁹

This principle is echoed by the halacha in *Orach Chaim* 571:1, a person who voluntarily accepts a fast is considered holy (*kadosh*) if he is healthy, but one who is not healthy and strong, is a sinner (*choteh*).¹⁰ We see that causing oneself pain is not automatically considered laudable by Jewish law.¹¹

In *Tzitz Eliezer*, Rav Waldenberg forbids a medical student from inserting an IV line into a patient; inasmuch as he is not proficient in the procedure, he will cause the patient unnecessary distress, and therefore a more experienced doctor should do it.¹² The Radvaz (728) rules that although technically the

8. *Choshen Mishpat* 420:1. For further particulars on the *issur* of causing pain to any living creature, let alone a person, see *BeTzel HeChochma* 4:125.

9. *Ta'anit* 11a.

10. See *Mishnah Berurah*, 571:5, who rules that although abstention from excessive eating may be quite admirable, it would be far more productive to abstain from excessive speaking, “for by doing so there will not be any damage to his body nor to his soul, nor will he be weakened thereby.”

11. The *Shulchan Aruch* rules in 571:2 that a scholar or teacher who chooses to fast is committing a sin, for he will not be able to perform his job as well as he should.

12. XIV:35; Rav Waldenberg forbids it even if the patient implicitly gives consent (by going to a teaching hospital), and he quotes *Shulchan Aruch HaRav*, *Hilchos Nezikei Haguf Vehanefesh* 5:4, as issuing a similar ruling. As for the

directive to help an animal who is struggling with a heavy load is not extended to a person who is similarly overloaded, nevertheless it is forbidden to stand by without helping a person who is in distress.¹³

The Gemara relates an incident which occurred in the yeshiva of Rabbi Akiva: One time, one of the students became ill, but no one went to visit him.¹⁴ However, R. Akiva did go and personally attended to the sick person's needs. Afterwards, R. Akiva went to the *Beit Midrash* and made the following pronouncement: "Whoever does not visit the sick is as if he spilled blood." This cryptic statement is explained by the rabbis as follows: "Whoever does not visit the sick, does not pray for him to [recover and] live and does not pray for him to die [if his pain is great and he is beyond recovery]..."¹⁵

Although generally it is forbidden to ask for someone's death, we see, writes the Ran, that suffering great pain puts the victim in a different category, where it is appropriate to pray for the

issue of how the prospective doctor is supposed to get experience, see Rav Waldenberg's responsa 84 and 85. Apparently, this prohibition of causing unnecessary pain applies even when one chooses to inflict pain upon himself, such as in plastic surgery or dieting. For further discussion, see *Nishmat Avraham III*, pp. 204-215.

13. *Sefer Chassidim* 666 makes a sweeping pronouncement that any person who causes pain to his fellow man will be punished for it, and even one who causes unnecessary pain to an animal will be called to judgment. In No. 44, *Sefer Chassidim* censures someone who even pulls on the ear of an animal, terming it "a cruel trait." This sentiment is echoed by the Ramo in *Even Haezer* 5. In 831, however, *Sefer Chassidim* does permit killing a pesky fly, but the reason is obvious—in this case, it is for the benefit of people, which makes it permissible. For further sources and insights, see the article on animal experimentation in *JHCS* XI, p. 19.

14. Perhaps this is an example of the lack of respect Rabbi Akiva's students had for one another, which ultimately led to a terrible plague which decimated their ranks.

15. *Nedarim* 40a.

end of his suffering.¹⁶ Application of this principle in practice, however, is a matter of considerable dispute, continuing even to the modern era.¹⁷ It is somewhat problematic that this startling permit to request someone's death is not mentioned by the Rambam nor the *Shulchan Aruch*. The talmudic text is also not clear as to who may pray for another person's demise – anyone, or perhaps only a great Torah scholar? This principle adumbrates the question of not undertaking "heroic" medical procedures to extend the life of a person undergoing great pain.¹⁸

Emotional pain

The experience of pain is of course not limited to the physical realm, and there are many who would argue that emotional or psychological pain cause far greater anguish than does physical pain. Not surprisingly, the Talmud abounds in episodes of people who were suffering such acute psychological distress that those who observed it prayed for their respite – and were answered.

Choni Hame'agel was a great scholar who, the Gemara relates, fell asleep for 70 years, and when he rejoined the yeshiva found that he did not understand them nor did they understand him. With the cry או חברותא או מיתותא – "Let me have a [Torah] companion or let me have death", he asked for mercy due to his utter devastation at not being able to learn Torah. The Gemara concludes that his prayers were answered.¹⁹

16. Ran, *Nedarim* p. 40.

17. See *Iggerot Moshe Choshen Mishpat* II:74; *Tzitz Eliezer* V *Ramat Rachel* 5.

18. In *Yoreh Deah* 334, the ruling is that removing an impediment to a person's dying is permitted, but hastening someone's death is surely forbidden. These are ambiguous concepts which require a great deal of clarification before one can presume to implement them.

19. *Ta'anit* 23a.

In a somewhat similar incident, Rabbi Yochanan was virtually going out of his mind with frustration when he had no one with whom to learn after the death of his Torah partner Reish Lakish. Whereupon his students begged G-d to have mercy, *ונח נפשיה*, he passed on.²⁰ Rabbi (R. Judah the Prince) suffered for years from an intestinal ailment which eventually prevented him from putting on *tefillin* and learning Torah. When his maid saw how distressed Rabbi was at his inability to learn, she prayed for his release, and Rabbi died.²¹ *One must emphasize that there is absolutely no contemplation whatsoever of any measure other than prayer to relieve pain, whether physical or emotional.*

Sometimes “pain” seems to be defined extremely broadly by halachic authorities, to include situations which might strike one as distress or discomfort, rather than pain. Rav Shlomo Zalman Auerbach rules that if there are three sick people in a hospital room and their sleep is being disturbed because of a light burning in the room, it is permissible to turn it off on Shabbat – albeit the *Shulchan Aruch* only permits extinguishing a light for a person who is so sick that he is in mortal danger.²² [The halacha is that a fire which can cause harm to “*rabim*” (many) may be extinguished on Shabbat, and this may be analogous to the pain of *rabim*]. Apparently, the aggregate “pain” of losing sleep warrants this application to the rules of Shabbat.

Obviously, emotional pain occurs in many situations which are not life threatening, and once again we find Jewish law being acutely sensitive to a person’s psychological needs. If someone suffers from a “disability” or “disfigurement” which

20. *Bava Metzia* 85a.

21. *Ketubot* 104a. See also *Sotah* 48b; *Bava Metzia* 84a; *Avoda Zara* 18a; *Medrash Tehillim* for other incidents of people praying for the release of others from emotional pain.

22. *Shemirat Shabbat Kehilchata* 32, n. 175; *Torah Shebe’al Peh* 732, p. 25, citing the Rosh to *Shabbat*, chapter 14.

embarrasses him, the halacha is often elastic enough to accommodate his needs. As a case in point, it is generally forbidden for a man to dye his hair, since that is [or at least was] a “woman’s thing” and thus *assur*.²³ אסור לאיש לצבוע שערות.²⁴ However, if a young man’s hair suddenly turns white, and he is embarrassed to go out, the halachic ruling is that it is permitted for him to dye his hair so as not to suffer the pain either of embarrassment or solitude.²⁵ (This permit does not extend to a man’s dyeing his hair in order to look younger, which is a different issue altogether.)

While a man is not supposed to groom himself in the way women do, but if he suffers emotional pain due to having to appear in public with crusts on his body, the Gemara permits him to remove them,²⁶ and the Tosafot comment that this is so “because there is no greater pain than this.”²⁷ (Unlike a person’s hair turning white, which happens to virtually everybody eventually and therefore is not a *mum* (blemish), crusts on the body surely are not that common. While undoubtedly white hair on a young person will attract attention, it is still not a true disfigurement.)

Regardless of the normative halacha, we see that psychological pain definitely rates as true pain in Jewish law, and there is an imperative to alleviate it as much as possible. Thus, if a person is close to death and requests that his family be gathered, one is permitted to violate the Shabbat to bring them to his bedside,

23. *Devarim* 22:5. A man is not allowed to wear a woman’s garment.

24. *Yoreh Deah* 182.

25. Not all agree to this. Some maintain that it is perfectly normal for a young man’s hair to turn white and therefore it is not a “*mum*” which should embarrass him. Others, however, do consider it a form of disfigurement and therefore permit hair dyeing. For further source material, see *Nishmat Avraham* V, p. 69, n.1.

26. *Shabbat* 50b and Rashi there s.v. משם ליפות את עצמו אסור.

27. S.v. בשביל, cited in *Darchei Moshe Yoreh Deah* 156 and Ramo, *ibid*, no. 2.

for fear that his emotional distress at their absence may hasten his death.²⁸

In a famous ruling, the *Shulchan Aruch*²⁹ permits a doctor attending a woman in labor to put on a light on Shabbat – even if the doctor does not require it and even if the woman herself is blind! However, lest she become distressed that she is not getting proper care and therefore miscarry, it is permitted.

The Torah repeatedly urges the Jewish people to try and bring joy to the lives of the poor, the widowed, and the orphaned, and it is particularly severe about causing any unfortunate persons emotional distress by being less than sensitive to their oppressed mind set. In *Masechet Semachot* the following exchange is recorded:

When Rabban Shimon ben Gamliel and Rabbi Yishmael (two of the “Ten Martyrs” during the era of Roman persecution) were being taken out to execution, Rabbi Yishmael was weeping...I am crying, he told the other rabbi, because we are being killed as murderers or Shabbat desecrators...[Rabban Gamliel] said to him, “Perhaps you were sitting at a meal one day and a woman came to inquire about her [halachic status as a] *niddah* [and you did not take the time to go and answer her], and the Torah has warned “if you cause her pain...”

28. *Shulchan Aruch Orach Chaim* 306:9. *Shemirat Shabbat Kehilchata* 32, n. 82 discusses whether it is only permissible to have a non-Jew bring them or whether rabbinic laws may be violated in order to accommodate the dying person’s wishes and assuage his distress. See also *Aruch HaShulchan* 306, No. 20 and the Gra, 306. *Shoel Umaishiv* III 2:180 extends the leniency to a sick person who is not dying, and *Chelkat Yaakov* I 64 even includes violation of Torah laws. See also *Rashba* IV 255, *Maharsham* IV 54, *Horei Bashamayim* II 189 (about sending a note on Shabbat to a *tzaddik* to pray for the sick individual). See also *Tzitz Eliezer* VIII 16 and VIII 7.

29. *Orach Chaim* 330:1. The rationale here is the same as the one which permits a husband to travel with his wife to give birth on Shabbat.

[then G-d will punish you for it].”³⁰ R. Yishmael answered, “I know [about this verse] ‘if you pain her...’and I have often cautioned the members of my household that if someone comes to ask a [halachic] question [even] in the middle of my eating or sleeping, that should not stop them, but rather they should be brought before me or I should be awakened – because my heart was afraid.”³¹

We see that the prohibition to cause pain is so strict that the rabbis were prepared to consider that even a saintly rabbi might merit execution for having been callous toward a widow!

A frightening example of the severity of causing emotional distress is related in *Ketubot* 62b: a Torah scholar, who spent the whole year away from home studying Torah, always came home for Yom Kippur. However, one year he was so engrossed in his studies that he was delayed in returning. His wife was so distraught that she wept due to her concern. At that moment, the building where her husband was learning collapsed, and he died!³²

A perusal of numerous discussions in the Talmud reveals that the Rabbis entertained an amazingly broad and elastic understanding of “pain”, extending it to situations which we might think are rather trivial. Nevertheless, they were ready to modify certain legal imperatives in order to avoid causing even relatively minor distress to others.³³

30. “Im ano ta’aneh”, *Shemot* 22:21.

31. See *Shu”t Maharsham*, II No. 210, where he writes that this is a “*midat chassidut*”.

32. For a discussion of how this punishment was appropriate, given that now his wife would be even more heartbroken, see R. Chaim Shmulevitz, *Sichot Mussar* 5732, chapter 2.

33. More recently, we find a striking responsum in the writings of R. Shlomo

Avoidance of pain, however, whether physical or emotional, does not dominate rabbinic thinking to the extent that the halacha is prepared to set aside all principles so that a Jew should not suffer. The Gemara discusses a theoretical case of a man pining for a certain woman, who will die if he cannot have relations with her.³⁴ The Gemara is prepared to let him die rather than sully the purity of a Jewish woman, who is not to be considered a mere toy – but that is beside the point here. What is germane to our topic is the question – what would the man have died of? A broken heart? Unrequited emotion? Apparently, the rabbis took seriously the premise that emotional pain could destroy a person and were therefore prepared at least to consider taking steps to assuage his distress. The talmudic text can certainly serve as a precedent to show that Jewish law takes very seriously the deleterious effect of pain, albeit without giving it primacy over other principles.³⁵

Pregnancy

Torah law does not view the customary aches and pain

Zalman Auerbach (*Minchat Shlomo*, I, end of responsum 7). On Shabbat, a person becomes dangerous ill, to the extent that one is permitted to violate Sabbath law. That sick person needs to have a light in his room, but there is none available; however, next door, his neighbor has a light which he wants to use for the Sabbath. Is the healthy neighbor obligated to give the sick person his light, which will leave him sitting in the dark on Shabbat – so that it will not be necessary to violate the Sabbath by turning on a light? Or, in a similar case, must a healthy person give his Sabbath food to a very sick person (so that food will not have to be cooked for him) and himself be deprived of his Sabbath meal? Rav Auerbach rules that the healthy person is not obliged to bear the discomfort of sitting in the dark on Shabbat, or of giving over his own food, just so that Sabbath will not need to be desecrated for his sick neighbor.

34. *Sanhedrin*, end of *perek ben sorer umoreh*.

35. I heard this analogy in the name of my Rosh Yeshiva, Rav Yitzchak Hutner z'l; it is similar to the halacha that if a child locks himself into a room on Shabbat, it is permissible to break down the door and release him, so that he does not get frightened to death.

associated with pregnancy as extraordinary and needing to be avoided. On the contrary, part of a woman's obligations in her marriage is the bearing of children, and the normal discomforts associated with this condition are simply facts of life. However, there are times when, due to conditions of the fetus, a "normal" pregnancy and delivery are not feasible. How much distress must a woman bear, if she is not so inclined? For example, if the baby is experiencing heart distress, and the doctors recommend bed rest or Cesarean delivery, does she have to agree? (We are not considering that most women would not think twice about the option of endangering their baby; Jewish law has to deal with the stark reality that she may have a choice).

Although we might assume that the woman is not entitled to put the discomfort or pain of a Cesarean section before the baby's very life, actually Rav Shlomo Zalman Auerbach has ruled otherwise. In his view, the only danger which a woman upon marriage agrees to accept is the usual pain and danger of a normal pregnancy. According to Rav Auerbach, the woman may have the option not to agree to a surgical intervention.³⁶

The same approach seems to be operative when it comes to questions concerning limiting a woman's activities, foods, or even smoking which might be harmful to the baby. Even though her husband may feel very strongly about the effect her actions may have on the child, it is questionable whether he is permitted to cause her the pain of abstinence.³⁷

36. Cited in *Nishmat Avraham Yoreh Deah* 157:4:2.

37. *Shulchan Aruch Even Haezer* 80:12 writes: "She was given food which is appropriate for her [condition], however she desires to eat more or to eat other foods. There are those who say that the husband is not able to prevent her due to the danger to the fetus, inasmuch as the distress to her body takes precedence; and there are those who say that he is able to prevent her." Writing in *HaMa'ayan* Nissan 1980,, p. 49, Rav S.Z. Auerbach notes that the "pain" of not eating certain foods cannot be considered a substantial pain,

This issue is the subject of a further halachic debate between two *Acharonim*, the *Beit Shmuel*³⁸ and the *Chelkat Mechokeik*.³⁹ The crux of their disagreement hinges on interpretation of a passage in the Gemara *Nedarim*.⁴⁰ The Gemara posits a situation wherein a stream runs through two neighboring towns. If town A uses the water to wash their clothing, there will not be enough for the people in town B to drink. In the Gemara, two opinions are cited: Rav Yose would allow town A to use as much water as it needs (he assumes that dirty clothing and poor hygiene will impact on their health), while the other rabbis argue that the people of town A are not entitled to mitigate their distress at the expense of the very lives of the people in town B.⁴¹

R. Yose's position is hard to understand. Can he really intend that alleviation of pain to one group is worth the lives of the others? Or perhaps he is weighing the distress of the townspeople of A against the cost of finding alternate sources of water for town B?⁴² The manner in which different rabbis interpret this text impacts on the way they rule on the question of pain to the pregnant woman as against the welfare of her unborn child; and as the Talmud itself records disagreement among rabbinic scholars then, it remains a topic of controversy among rabbis now.⁴³

and therefore he would permit her to be stopped from eating them.

38. *Even Haezer* 80, n. 15.

39. *Ibid*, n. 22.

40. 80b. It is interesting that this text is cited neither by Rambam nor *Shulchan Aruch*.

41. A perusal of the talmudic text seems to indicate that the rabbis in the Gemara understood the danger to town A as approaching death. However, that is not the opinion of the Netziv in *Sheiltot*, end of *parshat Re'eh*, 147:4.

42. This in fact is the conclusion of Rav Ovadia Yosef in *Torah Shebe'al Peh* XIX, 1977, p. 21; see also *Iggerot Moshe Yoreh Deah* I 145.

43. The *Tzitz Eliezer* rules that a woman who has a medical problem which is being exacerbated by her pregnancy and may cause her death has the option of not ending the pregnancy if she so chooses. If she is willing to risk death in

Pain in the performance of a mitzvah

How much pain is a person required to endure in order to observe a commandment? This issue is very germane, for example, for a person who is allergic to grain but must eat matzoh on Pesach.⁴⁴ And while no one would tell a deathly ill person to leave the hospital to hear the shofar, the question remains for someone who will find it quite painful to attend a service where the shofar is sounded (assuming that it is not possible to have a private shofar ceremony at home). To put it succinctly, how much does the presence of pain affect the halachic process?

It is not possible to give a definitive answer to this question, because it varies, first of all depending on which mitzvah is in question, and secondly depending on the level of pain the individual would experience. The *Shulchan Aruch* rules that “someone who does not drink wine because it harms [pains] him...has to force himself to fulfill the mitzvah of four cups of wine [at the Seder].”⁴⁵ In his commentary, the *Mishnah Berurah* explains that the case here is not that the person will become bedridden if he drinks the wine, but rather will get a terrible headache; although able to walk around, he will be in considerable pain.⁴⁶

The amount of pain also is a factor, as emerges from a

order to bring a child into the world, she is permitted that option. *Tzitz Eliezer* IX P. 239, s.v. “ve'im”, and *Nishmat Avraham* III, p. 228, s.v. “vekotev hasefer”.

44. *Yechave Daat* I 61.

45. *Orach Chaim* 472:6.

46. *Ibid*, *Sha'ar Hatziyun*, n. 52. He asks, what rationale could release him from the obligation to drink wine? Well, drinking the wine is mandated as a sign of *cherut*, freedom. Consequently, there is room to argue that being forced to drink wine which, instead of causing joy is causing him great pain, “is hardly the action of a free man!”

statement in *Shulchan Aruch*:⁴⁷

מי שיש לו מיהוש בעלמא...אסור לעשות לו שום רפואה⁴⁸

Someone who experiences pain [on Shabbat] (not severe enough to cause him to be bedridden)...is forbidden to take any medicine.

This seems to be an admonition that one should not overreact to pain, but perhaps develop the capacity to handle minor setbacks and discomforts. Some pain may be a normal part of the aging process, for example. The wise person will take it as a timely reminder from the *Ribono Shel Olam* of his own mortality. This does not imply that our Sages were callous. Whether it is a “positive” or “negative” message which pain is sending, that is of little consequence at the moment a person experiences it. Introspection can come later, but certainly, anyone who is capable of minimizing or eliminating pain which strikes someone is obligated to do what he can. As a case in point, the rabbis exempted a sick person from the requirement to sit in a succah – not only he, but even those responsible for his care. This is because they are performing a mitzvah by caring for the sick and minimizing his suffering; and one who is involved in a mitzvah is exempt from another mitzvah.⁴⁹The

47. *Orach Chaim* 328.

48. 328:1.

49. *Orach Chaim* 640:3. In *Kovetz Shiurim* II 46, Rav Elchanan Wasserman draws an analogy from the halacha of a sick person and the mitzvah of sitting in a succah, to the mitzvah to take care of one's health. By the same token that a caretaker is exempt from sitting in the succah, anyone who would become sick by doing a mitzvah is perforce exempt and should abstain from it. Rav Waldenberg echoes this sentiment, writing that it is logical that, for the performance of a positive mitzvah or observance of a negative mitzvah by not doing an action, there is no obligation to do them or to observe them if as a result of it the individual would get sick, even if not a life-threatening illness. *Tzitz Eliezer* XVI 23. See the comments of Rav Scheinberg cited in *Nishmat Avraham* p. 218, s.v. “ach ayain.”

poskim always try to minimize pain or discomfort in the performance of a mitzvah. An example is that although optimally a woman is supposed to make an internal examination twice daily throughout her “seven clean days”, if the process causes her much discomfort, they permit her to reduce the number of examinations to the minimal acceptable level,⁵⁰ and sometimes even less than that if absolutely necessary.⁵¹

Brit Milah

In light of the strong statements in Jewish law forbidding causing pain to anyone, the almost universal practice of *brit milah* raises an obvious question. In the past, criticism of the procedure by outsiders was brushed off with the belief that a newborn’s immature nervous system did not really sense the pain except for possibly a moment. Recent research belies that assumption, and many are now advocating application of local anesthetics to mitigate the pain arising from circumcision. These include injecting a dorsal nerve block or applying topical anesthetics.⁵²

How does Jewish law view these suggestions? And even if they would be rejected for newborn babies, should they perhaps be utilized for adult male converts, who must also receive a *brit milah*?⁵³ Given the strong statements decrying causing pain,

50. See *Noda BiYehudah Tinyana Yoreh Deah* 129, cited in *Pitchei Teshuva* 196:8; and *Aruch HaShulchan*, 196:30. It goes without saying that this lenient ruling in no way removes the obligation to make a *moch dachuk*.

51. See *Chochmat Adam* 117:12 and *Iggerot Moshe Yoreh Deah* II 69.

52. “Preventing Circumcision Pain”, http://www.circumcisioninfo.com/circ_pain.html.

53. Since the pain of circumcision experienced by an adult convert is arguably much greater than that of an infant, it has been suggested that perhaps the prospective convert might even be put to sleep for the procedure, but this raises the problem that “*mitzvot tzerichot kavana*”—performance of a mitzvah requires “intent”. Who must have the “intention” to perform the mitzvah –

should these palliatives be employed?

The question was addressed to the author of *Imrei Yosher*,⁵⁴ who answered that, on the contrary, pain is an integral part of the mitzvah of *milah*. He cites a *Medrash* that our Father Avraham “felt and was in pain, so that *Hashem* should double his reward.”⁵⁵ Since the first *milah* was done with pain, he reasons, surely this should continue to be the way it is performed. Furthermore, since we know that the Rabbis knew about anesthesia,⁵⁶ if they did not advocate its use when performing a *milah*, it surely must be because they considered pain to be an essential element of the mitzvah.

This logic, however, does not sit well with R. Ovadia Yosef. While it is true that Avraham *Avinu* wanted to experience enhanced pain in order to increase his reward, Rav Yosef argues that one can hardly draw an analogy from this greatest of Jews to the requirements for an ordinary individual.⁵⁷ Consequently, he opines that “it is up to whoever wants to be strict (*machmir*) to bring clear proof [for this thesis], and the truth will out, that pain is not a mandatory factor (*me’akev*) in a *brit milah*.⁵⁸

The question of using anesthetics has been discussed by numerous halachic authorities, and the consensus appears that total anesthesia is far less acceptable than use of a cream or other substance to effect local deadening of sensation. It is interesting to note that even those who frown upon use of any

the one being circumcised, or the one performing the procedure? See *Sefer Koret HaBrit*, p. 35, ot 21, and *Yabia Omer*, V, p.229, n. 4.

54. II 140, n. 3.

55. *Medrash Rabbah*, *Lech Lecha*.

56. See *Bava Kamma*, beginning of *perek HaChovel*.

57. *Yabia Omer* V, *Yoreh Deah* 22, P. 230.

58. Among the sources he adduces for his position are *Me’archei Lev Yoreh Deah* 53m *Maharsham* VI: 108; *Chelkat Yoav* in the journal *Ohel Mo’ed Kuntrus* I 60:7, who agree that pain is not an integral part of the *milah*.

substance for the circumcision of a newborn, are more prone to be lenient when it comes to lessening the intense pain an adult who requires *brit milah* might experience.⁵⁹

Surgery To Relieve Pain

All surgical procedures carry some risk and, therefore, surgery is generally proscribed by Jewish law unless there is sufficient halachic reason to override this concern. Would surgery to relieve pain fall within the permitted parameters? There are numerous rabbinic indications that surgical intervention only for the purpose of relieving or reducing pain would indeed be acceptable in Jewish law:

Based on a statement in the Tosafot that anything done to alleviate pain cannot be *assur*,⁶⁰ the author of *Shearim HaMetzuyanim BeHalacha*⁶¹ rules that surgical procedures for reduction of pain are permitted. Rabbinic decisors also rely on numerous mentions in the Talmud about the practice of bloodletting, which was considered in ancient times as an effective method of reducing pain. And since so many people in the modern era undergo surgery to relieve pain, R. Shlomo Zalman Auerbach permits it based on the halachic principle *shomer peta'im Hashem*, "G-d watches over the simple people". This dictum presupposes that even if something is not safe or wise, G-d usually will not allow harm to come to so many people who are acting, possibly without thinking about what

59. See *Seridei Aish* III:96; *Shevet HaLevi* V:147:2; *Tzitz Eliezer* XX:73. We should note that although Rav Moshe Feinstein wrote on virtually every modern topic, one does not find in his works a responsum dealing with this issue; however, on a related question having to do with *milah*, Rav Moshe expressed the opinion that sometimes our Rabbis oppose a suggested innovation because they "do not want to change the manner of [doing] the mitzvah from the way it was always done," *Iggerot Moshe Yoreh Deah* II:119.

60. *Nazir* 59a, s.v. "*veha*".

61. 190:4. See also Chazon Ish, *Yoreh Deah* 69.

they are doing, even if it is not wise.⁶²

However, *Mor Uketziyah* was opposed to operating even to reduce severe pain.⁶³ But since his responsum was penned many years ago, when surgery was far more dangerous and far less sophisticated, many *poskim* nowadays do not consider his opinion a valid precedent. In actual practice, most rabbinic authorities do permit surgical intervention for significant pain, despite minor risk.⁶⁴

Drugs For Pain

Writing centuries ago, Ramban succinctly put his finger on the problem with drugs and medications: "There is always danger in medicines – that which cures one can kill another."⁶⁵ That is precisely the problem with administering pain-killing formulations, such as morphine, which although help inestimably to improve the quality of life by reducing or masking pain, are also potentially life threatening, either due to their lethal nature or because they can become habit forming.

Cognizant of this double-edged sword, Rav Waldenberg⁶⁶ nevertheless opines that although morphine may possibly hasten the death of a particular patient, since it is being administered in order to relieve pain, which is part of the purview of healing which the Torah permits, it is permissible to use despite the attendant risk.⁶⁷

62. Cited in *Nishmat Avraham Yoreh Deah* 155:2.

63. 328. The question was about kidney stones.

64. *Tzitz Eliezer* X 25:17 and XI 42; *Nishmat Avraham* II 155:2; *Nishmat Avraham* p. 49 n.3. See *JHCS* Vol. XV, p. 79; *JHCS* XLVIII p. 29, about plastic surgery for psychological pain.

65. *Torat HaAdam* in *Kitvei Ramban* II p. 43 (Chavel Edition).

66. *Tzitz Eliezer* XIII 87.

67. In *Iggerot Moshe Even Haezer* IV, p. 72, Rav Feinstein writes that if this treatment results in the death of the patient, but the doctor was following

The Gemara rules that it is forbidden to move or even touch a person who is near death (*gosses*)⁶⁸ for fear that any intervention might hasten his death.⁶⁹ Yet, Rav Akiva Eiger,⁷⁰ based on a text in *Sefer Chassidim*,⁷¹ writes that if there is a fire in the house, it is permissible to move the *gosses* even if it might hasten his death, since it is certain he would find it preferable to being burned. The analogy to morphine is obvious – a person suffering dreadful unremitting pain would almost certainly be willing to risk death or addiction in order to achieve cessation of pain.⁷²

R. Shlomo Zalman Auerbach, in giving permission to administer morphine to a person in severe pain, posits two provisos:⁷³

- That the intent is only to alleviate pain.
- If the patient is so close to death that even administration of a bit of morphine might cause immediate death, it is not permitted.

the best medical advice of the day, took his time and studied the situation well and acted properly, then he is not even categorized as an “accidental murderer”.

68. *Shabbat* 151a.

69. Ramo on *Shulchan Aruch Yoreh Deah* 339:1 gives permission to remove a noise that may be keeping the person from dying; since no one is touching him, it is not considered killing.

70. *Yoreh Deah* 339.

71. 724.

72. The concern that morphine may become addictive does not pose a problem when the patient is dying shortly anyway.

73. *Nishmat Avraham* II p. 246. Whether morphine may be given on Shabbat, see *Shemirat Shabbat Kehilchata* 32 n. 150, as well as *Assia* IV, p. 260-264, which discusses the opinion of R. Shlomo Zalman Auerbach as well as those who disagree. It is interesting to see that doctors view morphine not as directly killing a patient but rather as weakening the body to the extent that it is unable to fight the underlying disease. This indirect causation is not considered murder in Jewish law.

Rav Moshe Feinstein dissents with this line of thinking, writing that “to give medicinal drugs which will precipitate death or to do any action which will cause shortening life, even for a moment, is considered to be shedding blood.”⁷⁴

But at times pain is so severe that even an *issur* of the Torah may be set aside in order to alleviate it: The Torah punishes with death a son who strikes his father and draws blood. The Rabbis extended this and prohibit ever causing a father any physical pain, even if the son is a doctor and the father needs medical treatment. However, if the father is in great pain and there is no one else available to do the surgery, Ramo permits a son to amputate his father’s limb, in order to bring relief.⁷⁵

Saving a life

Is there an obligation for a person to agree to suffer pain in order to save someone else’s life?⁷⁶ The answer would impact on many scenarios – would a compatible donor be morally obligated to donate blood or bone marrow (a relatively unpleasant procedure) in the attempt to save someone’s life? Is it optional – or mandatory, based on the mitzvah not to stand idly by while another person is in mortal danger? How about a doctor taking a long vacation? Must a gynecologist go out at night to personally deliver a baby⁷⁷ or may he allow a less-

74. *Iggerot Moshe Choshen Mishpat* II 73:1.

75. Ramo, *Yoreh Deah* 241:3.

76. The *Ohr Sameach*, *Hilchot Rotzeach* 7:8, rules that a person must even be prepared to sacrifice his own limb in order to save someone’s life, but the *Radvaz* (III 627) holds the opposite position. For other sources, see *Nishmat Avraham* II 2, p. 65 n.47 and n. 48.

77. If the gynecologist is permitted by Jewish law to drive to the hospital on Shabbat to deliver a baby, even if there is another equally qualified doctor there, because halacha presumes that a woman might get frightened and miscarry if she is not in the hands of the doctor she trusts—then surely there must be reciprocal obligation for the doctor to bear some inconvenience even

experienced hospital resident to do it? All these questions are really one – how much, if any, emotional or physical discomfort must a person be willing to undertake in order to help another?

It is the opinion of the *Magen Avraham*,⁷⁸ based on a text in *Shabbat*,⁷⁹ that every Jew is under obligation to willingly suffer some measure of physical or emotional pain in order to save the life of a fellow Jew.⁸⁰ Furthermore, every person is entitled to save his own life, even if it causes pain to someone else.

However, the *Taz* writes that pain may be worse than death,⁸¹ and just as no one need sacrifice his own life to save another's life, one also need not suffer great pain to save someone else.⁸²

Rav S.Z. Auerbach was asked if a person must volunteer for a medical experiment which may help others in the future, and responded that if the dying person is at hand, "one is permitted [*muttar*]⁸³ to suffer even very great pain, such as donating his kidney, in order to save this dangerously ill person." However, he goes on to add that if it is only a study which might bear useful information in the future, then "a person may agree to undergo a minor pain, such as giving blood, because he has mastery over his own body, but need not undergo significant pain."⁸⁴

if she gives birth at an inconvenient time.

78. *Magen Avraham*, end of 156.

79. *Shabbat* 33b. The same ruling is found in *Ha'amek She'eilah, Shelach*.

80. The same sentiment is found in *Sanhedrin* 73a.

81. *Ketubot* 33a. The Gemara comments that although Chananya, Mishael, and Azarya allowed themselves to be thrown into a burning furnace, they might not have been equally willing to endure torture. Pain, in the view of the Gemara, may at times be worse than death.

82. *Yoreh Deah*, *ibid*.

83. In halachic terminology, *muttar* means "can" but not "obligated".

84. *Nishmat Avraham* II p. 66.

Embarrassment

How does the pain of embarrassment affect the rulings of Jewish law? To take an extreme example, must one suffer embarrassment in order to save another person's life – such as running through the street without clothing in order to run and save someone? Various *poskim* debate this issue. The author of *Chochmat Shlomo*⁸⁵ opines that no one need shame himself for the sake of another:

It appears to me that...one is obligated to save another person with his body if it is not in a shameful way, but if it would shame him...then if it is a major embarrassment or very difficult, for example if he is old...[he need not do it].

On the same question, Rav Moshe Feinstein takes strong issue with the previously mentioned ruling, writing,

Begging the pardon of great wise men, [but] this is a total mistake...and the words of the *Chochmat Shlomo*, G-d forbid that one should speak them.⁸⁶

Rav Feinstein strongly expresses his conviction that one should not even entertain such a bizarre notion that shame would be sufficient reason not to save someone's life. No embarrassment could outweigh the value of life! Yet, one has to be aware that the Gemara itself heaps praise upon Tamar⁸⁷ for being willing to die rather than embarrass Yehudah by revealing that she was pregnant by him.⁸⁸ In the words of the Gemara,

מוטב יפיל אדם עצמו לכבשן האש ואל ילבין פני חברו ברבים

85. *Choshen Mishpat* 426; see also *Sefer HaChinuch*, Mitzvah 240. "Shame is a great distress for people, there is none greater."

86. *Iggerot Moshe Yoreh Deah* II p. 290.

87. *Bereishit* 38:26.

88. *Sotah* 10b.

It is preferable for a person to throw himself into a burning furnace rather than embarrass his fellow man in public.

If a person cannot save even his own life by embarrassing someone else, how does it make sense that he needs to embarrass himself in order to save someone else's life?⁸⁹

Mental anguish

As noted, physical pain, even torture, may not be as dreadful as emotional anguish. In *Sefer Melachim*⁹⁰ we find the episode of Eliahu bringing a dead child back to life. Eliahu was being supported by a poor widow and, when her son suddenly died, she begged the prophet to help her. Eliahu carried the child to his own room, and there prayed over him and stretched out over his body, breathed into his mouth, and brought him back to life. The Tosafot question how Eliahu, who was a *kohen*, could have come into contact with a dead body since this is forbidden to a *kohen*!? The Tosafot answer that "it was clear to him that he would live [again] and it was permissible because of *pikuach nefesh* [danger to life]."⁹¹

R. Moshe Feinstein explains that Tosafot do not mean that Eliahu could touch the dead child because it was a case of *pikuach nefesh*, life and death for the child and that he couldn't revive him without coming in contact with his body – for there is no issue of *pikuach nefesh* for someone who is already dead!⁹² Rather, explains Rav Moshe, it was a matter of life and death for the mother! She was in so much pain that Eliahu feared that she would die of anguish, and *that* is why it was permissible

89. See *Minchat Shlomo* I near end of No. 7, s.v. "venir'eh".

90. *Melachim* I 17.

91. *Bava Metzia* 114b.

92. *Iggerot Moshe Yoreh Deah* II 174, *anaf* 1 s.v. "velachen".

for him to touch the child.

This responsum of Rav Moshe Feinstein stakes out a major position on the valance of emotional pain. The author of *Nishmat Avraham* writes that Rav Neuwirth (author of *Shemirat Shabbat Kehilchata*) told him that based on this responsum in *Iggerot Moshe*, one could argue that if a person's house is on fire on Shabbat, and he has to stand by doing nothing as he watches his entire worldly possessions going up in flame, our concern lest this so traumatize him that he may die would permit allowing people to put out the fire, even on Shabbat.⁹³

However, it appears that Rav Shlomo Zalman Auerbach does not concur. In *Shemirat Shabbat Kehilchata* he is quoted as challenging that rationale:⁹⁴ After all, the normative halacha is that one does not desecrate Shabbat for a person who is in danger of losing a limb (not a vital organ, but an arm or leg). Wouldn't such a loss be at least as traumatic as losing one's home or worldly goods? And wouldn't it be possible to extend the pain of losing one's possessions to the entire family whose house is burning down, thus making it a "*hezek de'rabbim*" (harm affecting many people) which would permit extinguishing the fire –and yet the halacha remains that we do not put out a fire on Shabbat!⁹⁵ Thus, he finds the reasoning faulty.

93. Part V, p. 39; see also *Nishmat Avraham* I, p. 240, s.v. "*kol kitvei*."

94. Chapter 41, note 8.

95. *Magen Avraham* 329:5 rules that if someone breaks into a person's house on Shabbat, the homeowner should let him take everything rather than violate the Sabbath by killing him (killing a housebreaker is permitted by Jewish law). Others, however, dispute this ruling and permit killing the intruder because it is possible the homeowner will be terribly distraught and resist being robbed. Knowing this, the intruder implicitly comes prepared to kill the homeowner if necessary; this makes him a *rodef*, threatening the very life of the homeowner, and therefore Jewish law permits him to be killed even on Shabbat. This is another example of halacha factoring emotional trauma into the normative law. See *ibid*, n. 70; the same reasoning is cited in *Shemirat Shabbat Kehilchata* Chapter 25, no. 50 and at the end of *Minchat Shlomo* I:7, p.

We must conclude that in this regard, the issue of emotional pain as a possible threat to life requires further clarification by halachic authorities. There are times, however, when *poskim* have indeed accepted emotional distress as adequate rationale to be lenient in certain areas: for example, if a woman already has two children who are not well, causing her great emotional distress and psychological tension, there have been *rabbonim* who permit her to take measures postponing a further pregnancy until she is more capable of coping with her burdens.⁹⁶

Experiencing Pain

Our culture has primed us to seek pleasure and avoid pain at all costs. Perhaps we need to rethink that philosophy. Judaism does not always view distress or pain in a wholly negative light. Sometimes, as we have seen, pain is meant to function as an alarm bell, warning us that more serious problems lurk, which must be tended to before they get out of hand. This is surely true on a spiritual level, and not only in the physical sense. As *Kohelet* points out, when one neglects a leaky roof, the ultimate result is collapse of the entire structure.⁹⁷

Judaism views even minor aggravation as a “punishment” which should serve to arouse the person to introspection and self-improvement. Nothing happens by chance. If the suit you ordered doesn’t fit, or if you put your shirt on inside-out and now have to do it again, even if you put your hand in your pocket for a quarter for the meter and came out with a nickel – these trivial annoyances are visited on us by the *Ribono shel Olam* for a reason. Let us remember what has been said previously – there is no pain without sin. Any pain we

56, s.v. “*venir’eh*”.

96. See, among others, *Nishmat Avraham* III p. 68; *Otzar HaPoskim* 60:23, p. 111 and p. 126.

97. 10:18.

encounter, however trivial, is meant to warn that our behavior needs improvement, that we should change while yet we can.

A most striking instance of how to respond to wretched circumstances is found in the episode of King David as he was fleeing Jerusalem because of his son Avshalom's rebellion. As David was negotiating his way across the slopes of the Kidron valley outside the city, a man named Shimi came out and began cursing him and throwing stones upon him. But when Avishai, David's general, wanted to kill Shimi for his treachery, the king would not let him, saying, "Leave him alone and let him curse, *because [surely] G-d told him so*. Perhaps G-d will see my pain and repay me with good in place of his curse today."⁹⁸ In this stark statement, we see a profound philosophy of Judaism: Nothing can happen without *Hashem's* willing it. If a person suffers embarrassment, pain, rejection, degradation – all these happen because, on some level, he deserves it;⁹⁹ let it be expiation for his sins (*kappara*) (as per the text in *Sefer Chassidim* cited earlier) and perhaps garner him mercy from Heaven.

The lesson to be adduced from Dovid *Hamelech's* noble acceptance of pain and degradation as inflictions he deserved are cited by the *Minchat Chinuch* in his explanation of why the Torah forbids our taking revenge for any pain or wrong perpetrated against us by a fellow Jew:

...A person should know and take to heart that whatever happens to him, whether good or bad, it comes from G-d...and nothing can come from one person to another unless it is the will of the Blessed One. Therefore, when [others] pain or hurt him, the person should know in

98. II *Shemuel* 16:11-12. Ralbag writes that Dovid felt that this degradation came upon him from G-d, as punishment for his sins.

99. There is, however, a concept in Jewish thought that sometimes pains come as a trial, a test, and not necessarily as a punishment. To some extent, that is an underlying thesis of the Book of Job.

his heart that his [own] sins brought it upon him, and he should not seek to take revenge since he [the other person] is not the cause for the evil but rather the sin is what brought it about, as Dovid *HaMelech* said, "Let him curse....."¹⁰⁰

In his *Sichot Mussar*, R. Chaim Shmulevitz discusses the concept "*chavivim yesurim*", that pain should be cherished [!] by the sufferer as a sign of G-d's love. Among the sources he relies upon is a text in the Talmud:¹⁰¹

Whoever has lived forty days without distress has already received his "world" [i.e., his reward for good deeds done in this world]; in the west [in Eretz Yisrael] they said [about this] that destruction is prepared for him.

What this talmudic text implies, says R. Shmulevitz, is that a person is far better off suffering some setbacks in this world rather than experiencing no pain.¹⁰² It might even be interpreted as saying that if a person experiences no distress it is because he is not worthy of G-d's attention, and is therefore permitted to run free without interference. *Interference is for our benefit, it means that G-d wants us to constantly monitor our behavior and make sure we do not stray off the path.*¹⁰³

Our rabbis unequivocally view this world as a preparation for the permanent World to Come, and without exception considered that pain and punishment in this world are far preferable to eternal pain in the World to Come. Seen in that way, pain is a gift, a warning, an opportunity.

100. *Sefer HaChinuch*, Mitzvah 241.

101. *Sotah* 6a.

102. See a similar sentiment expressed by R. Akiva in the instance when his teacher, Rabbi Eliezer, was suffering greatly; *Sanhedrin* 101a.

103. See R. Chaim Shmulevitz, *Sichot Mussar* 1972:14.

Women and Prayer

by Rabbi Menachem Genack

Shemoneh Esrei

Maimonides' (Rambam) opinion is that the obligation to pray each day is of biblical force,¹ derived from the verse "*to serve him with all your heart*"² which *Chazal* interpret as referring to prayer.³ Therefore, Maimonides states that since one is obligated to pray each day, both men and women are included in the obligation, for it is a constant non-time linked mitzvah.

Nachmanides (Ramban) disagrees and states that the mitzvah of *tefillah*, the obligation of prayer, is only rabbinic in nature and the source text quoted is only an *asmachtah*, a rabbinic allusion to the text whose literal meaning is more general than a reference only to prayer.⁴ However, Nachmanides does concede that in times of crisis there is indeed a biblical obligation to pray. Ramban derives this from the verse *וכי תבואו מלחמה בארצכם על הצר הצורר והרעתם בחצצרת* "When you go to wage war in your land against an enemy who oppresses you, you shall sound short blasts with the trumpet."⁵ Rabbi Joseph B. Soloveitchik, (the Rav zt"l), in analyzing the dispute between Rambam and Ramban, explained that both are in fundamental agreement that the obligation to pray is rooted in our

1. Rambam, *Hilchot Tefillah* 1:1-2.

2. *Devarim* 10:12.

3. Gemara, *Ta'anit* 2a.

4. Ramban, comments to Rambam's *Sefer Hamitzvot*, *Mitzvat Aseh* 5.

5. *Bamidbar* 10:9.

confrontation with crisis. However, Ramban defines crisis in terms of an external danger, whether it be war, famine or plague, or any other malevolent force confronting man and disturbing his natural equanimity. In such circumstances one must beseech G-d for deliverance. On the other hand, Rambam defines the crisis which precipitates the obligation of prayer not as the occasional external danger, but rather the ever-present existential crisis of our very mortality. Frail, finite man, who is “today here and tomorrow is in the grave”, is born into a state of crisis which shadows him everywhere.

The Mishnah (*Berachot* 3:3) states that women are obligated in *tefillah*. *Magen Avraham* (106:2) understands that Rambam’s explanation of that statement is that women are obligated in the once-a-day biblical requirement to pray. That ever-present obligation, which is not time-bound, has no particular text, and consequently women’s only obligation is to recite some form of prayer each day. The rabbinic obligation to recite the *shemoneh esrei* thrice daily is a time-linked mitzvah from which women are exempt. However, according to Ramban, there is no biblical foundation for the daily prayer service, and the entire mitzvah is rabbinic. We must perforce conclude that women are obligated to recite the actual *shemoneh esrei*, as the Mishnah states that women are obligated in *tefillah* despite its being time-linked, for women – like men – are dependent on G-d’s mercy and must therefore pray.

Magen Avraham suggests that the reason most women do not recite the *shemoneh esrei* is that, relying on the opinion of Rambam, they fulfill their prayer obligation by any form of petition in the morning, after *netilat yadayim*.⁶

6. *Rabbeinu Yonah* (*Berachot* 7a in the pages of *Rif*) queries how women who are unfamiliar with Hebrew pray in other languages, given that Gemara (*Shabbat* 12b) requires that an individual pray only in Hebrew. He answers that since women are reciting the exact text of the *tefillah* that would be said

Magen Avraham assumes that according to Rambam, there is no biblically required form of prayer. Prayer is essentially amorphous and any form of petition suffices to fulfill the mitzvah of *tefillah*. However, the Rav zt"l, quoting his grandfather Rav Chaim, pointed out that according to Rambam there is indeed a biblically mandated structure to prayer. Although the nineteen blessings of the *amidah* are of rabbinic origin, the tri-sectional structure of *shevach*, *bakashah*, *hoda'ah* – praise, petition and concluding with thanks – is biblically required as Rambam states in *Hilchot Tefillah* 1:1-2:

מצות עשה להתפלל בכל יום...נשים ועבדים חייבין בתפלה לפי שהיא מצות עשה שלא הזמן גרמא, אלא חיוב מצוה זו כך הוא שיהא אדם מתחנן ומתפלל בכל יום ומגיד שבחו של הקדוש ברוך הוא ואחר כך שואל צרכיו שהוא צריך להם בבקשה ובתחנון ואחר כך נותן שבח והודיה לה' על הטובה שהשפיע לו כל אחד לפי כחו.

It is a positive commandment to pray every day.... Women and [Canaanite] slaves are obligated in prayer for it is not a time-bound mitzvah. But the obligation of this mitzvah is that a person should supplicate and pray every day and speak the praises of *Hashem* and afterwards request his needs by way of pleas and supplications and then to praise and thank *Hashem* for all the good He has bestowed on him. Each man [should pray] according to his strength.

Consequently, petition of any kind will not suffice, but would require that it be formulated in accordance with the tri-partite

by the congregation, albeit in translation, that is not viewed as a *tefillat yachid* (individual's prayer), but as *tefillah b'tzibur* (communal prayer). This opinion of *Rabbeinu Yonah* is also cited by *Rosh* (*Berachot* 2:2). It is clear that according to them, women are reciting the full *shemoneh esrei*, as opposed to the position of *Magen Avraham*. However, *Magen Avraham's* position is based on his understanding of Rambam, and would agree that according to Rambam and others who consider *tefillah* a rabbinic obligation, women's obligation would be to recite the full text of *tefillah*.

structure of the *shemoneh esrei*.

Additionally, *Magen Avraham's* contention that, according to Rambam, women are not obligated to pray the standard *shemoneh esrei* three times a day (because that rabbinic obligation is time dependent and women are exempt from all time-linked mitzvot), seems to be in conflict with the Gemara in *Berachot* (20b) which states:

Women are obligated in prayer, for it involves beseeching mercy. Because one might have mistakenly thought that because of the verse, “evening, morning and afternoon, I will pray and cry out, and He will hear my voice” (Psalms 55:10) one would consider prayer a time-linked mitzvah, (the Mishnah inform us otherwise).

The implication of the Gemara – which uses the words “evening, morning and afternoon” – is that women are obligated to perform the three-times daily schedule of prayer. Apparently, Rambam interpreted the Gemara that since the biblical mitzvah is not time-linked, but is constant each day, without a time break in the obligation, so too, the rabbinic obligation to pray thrice daily is similarly not time linked, but is superimposed on the biblical obligation, thereby giving definition to the biblical concept of the ever-present obligation to pray.⁷ *Magen Avraham* (70:1) explains this position in context of the statement of Gemara (*Berachot* 21a) “ולואי שיתפלל אדם כל היום כולו” (if only we could pray all day long), which indicates that, in essence, the time for prayer isn’t limited only to the formal times delineated by *Chazal*.⁸

7. See also *Sha’agat Aryeh*, *Siman* 14, who suggests that even if Rambam holds that women’s biblical obligation is to recite one brief prayer a day, he agrees that they have a rabbinic obligation to recite *shemoneh esrei* three times a day.

8. The custom is to blow 100 sounds from the *shofar* on Rosh Hashanah

According to Rambam, women's obligation to pray each day is Torah based, as the mitzvah applies constantly – without a break in the time of obligation – and it is therefore not considered *zman geramah* (time linked). In this way, *tefillah* is different than *tefillin*, for example, where one is exempt from donning them on Shabbat and Yom Tov (and at night according to some opinions), such that *tefillin* is not a constant mitzvah, but is rather time linked as its obligation applies only at certain times. For this reason, *tefillin* is a mitzvah which is *zman geramah* (and women are exempt) while *tefillah* is not *zman geramah*.

The Rav *zt"l* questioned this premise as follows: Although *tefillah* is a constant obligation and there is no span of time specifically exempt from the obligation, yet each day one has a new obligation to pray, and in that sense the mitzvah is definitely time linked because at specific times one is (once again) obligated to pray. Thus, the fact that there is a new obligation each day should render *tefillah* as *zman geramah* even though the mitzvah is constant. Before answering this question, we will look further into the issue of whether “constant” *mitzvot* are considered *zman geramah*.

even though the halacha requires only 30 sounds. *Tosafot* (*Rosh Hashanah* 16b s.v. *vitokin*) explain that this is not a violation of *bal tosif* (adding to a mitzvah) because that prohibition does not apply when one does a mitzvah multiple times. *Minchat Chinuch* 454 argues that it is not a violation of *bal tosif* because each blow is a new fulfillment of the mitzvah to blow *shofar*. We can understand this statement and connect it to the idea mentioned in the text, based on the Rav's understanding that the blowing of *shofar* is a wordless form of *tefillah*. [Some of his proofs to this were from (a) the closing words of the *berachah* of *shofrot* in Rosh Hashanah's *mussaf shemoneh esrei* and (b) the Gemara's (*Rosh Hashanah* 26a) explanation for why a cow's *shofar* can't be used for the mitzvah. For more on this see *Gan Shoshanim* Vol. 2 Chapter 30]. As such, just as each prayer offered during the day is a fulfillment of the dictum “ולואי שיתפלל אדם כל היום כולו” (if only a person could pray the entire day) so too, each time one blows *shofar* that is another fulfillment of the Rosh Hashanah form of praying.

*Sha'agat Aryeh*⁹ discusses whether women are obligated in the mitzvah of *zechirat yetziat mitzrayim*, remembering the Exodus from Egypt, given that according to Ben Zoma (*Berachot* 12b) the mitzvah applies to both day and night. He is generally understood to have ruled that the mitzvah is *zeman geramah* since it is not one continual mitzvah but rather a dual mitzvah – of remembering the Exodus by day and of remembering the Exodus at night. The obligation to remember the Exodus is therefore time-linked because the mitzvot of the day and night are distinct, each applying only to their respective times of day and night; correspondingly, the day mitzvah does not apply to the night and the night mitzvah does not apply to the day. As such, the obligation of each of the dual independent mitzvot begins and expires at a specific time, and women are therefore exempt since it is *zeman geramah*.

The Rav *zt"l*, however, understood *Sha'agat Aryeh* as saying that remembering the Exodus is considered *zeman geramah* because each day and night presents a new obligation, even though there is no time when one is exempt from the obligation. Accordingly, women are excused from the mitzvah of *zechirat yetziat mitzrayim* because the mitzvah refreshes itself each morning and night, thereby qualifying it as a mitzvah which is *zeman geramah*.

Support to the position that defines *zeman geramah* as depending on whether there is or isn't a new obligation each day can be found in the opinion of Rosh¹⁰ who holds that *tzitzit* is considered *zeman geramah* in spite of his understanding that one is obligated to wear *tzitzit* during both the day and night. Rosh holds that the term "*kesut layla*" refers to nightclothes (e.g. pajamas) and they are excused from *tzitzit* even if they are worn during the daytime, while day clothes must bear *tzitzit*

9. *Siman* 12.

10. *Rosh*, *Hilchot Tzitzit*, first halacha.

even when they are worn during the nighttime.¹¹ If one is obligated to wear *tzitzit* on day clothes both by day and night, how can *tzitzit* be considered a mitzvah which is *zeman geramah*? Obviously, Rosh holds that since the definition of which clothes must bear *tzitzit* is related to a time factor (i.e. the clothes generally worn during the day), the obligation is viewed as being time linked and the entire mitzvah is therefore considered *zeman geramah*. Thus, Rosh's understanding of *tzitzit*'s standing as a time-linked mitzvah indicates that even if one is constantly obligated to perform a specific mitzvah, the mitzvah can still be considered *zeman geramah* if the obligation is time linked.

This brings us back to the question raised earlier – although *tefillah* is a constant mitzvah, each day presents a fresh requirement to pray and therefore even Rambam should consider it *zeman geramah*? The Rav zt"l suggested, based on the wording of Rambam, that prayer is an all-encompassing religious gesture that is such an overarching mitzvah as to not be considered *zeman geramah*. Although there is a new obligation each day, the fulfillment of this crucial mitzvah satisfies a requirement that transcends time; therefore, it is not *zeman geramah*, and women are obligated to fulfill it.

Ramban will interpret the aforementioned Gemara alternately, that prayer, which entails beseeching divine mercy – which women require no less than men – is an exception to the general principle that women are exempt from time-linked mitzvot. Prayer is so basic a religious gesture that the Rabbis did not exclude women, even though it is time linked.

11. In contrast, Rambam (*Hilchot Tzitzit* 3:7-8) holds that *kesut yom* (which is obligated in *tzitzit*) refers to any clothes – including pajamas – worn during the daytime, and *kesut layla*, (which is excused from *tzitzit*) refers to any clothes worn during the nighttime. Accordingly, *tzitzit* is clearly a time-linked mitzvah as one is obligated to wear them during the daytime and not during the nighttime.

*Mishnah Berurah*¹² insists that women should *daven* the *shemoneh esrei*, at least for *Shacharit* and *Mincha*, and *Aruch Hashulchan* 106:7¹³ considers that women should pray all three *tefillot* daily. The Rav *zt"l* was known to rule in accordance with the latter opinion.¹⁴

Indeed, the Midrash confirms that women are obligated to *daven shemoneh esrei*:

“And Chanah prayed” (I *Shmuel*, 2:1). From here we learn that women are obligated in prayer, for Chanah prayed the eighteen blessings.¹⁵

Chanah serves as the model for prayer. The source for the silent *shemoneh esrei* is Chanah’s famous prayer. What was special about Chanah’s prayer which transforms it into the paradigm of prayer? Why was Chanah answered this time in her anguished plea, as opposed to the innumerable unanswered

12. *Mishnah Berurah* 106:4.

13 *Aruch Hashulchan* 106:7.

14. *Shulchan Aruch* 296:8 cites a dispute as to whether women must recite (or hear) *havdalah* – should *havdalah* be viewed as a time-bound mitzvah from which women are excused, or it is part of the mitzvot of Shabbat which women are obligated in. *Biur Halacha* (ad loc.) suggests that even those who hold that women are obligated in *havdalah* might agree that they are excused from reciting *borei me’orei ha’esh* because, in essence, it is a *berachah* on the discovery on fire which is not a part of the *havdalah* (separation) between Shabbat and weekdays. However, based on a concept developed by the Rav *zt"l*, one can argue that women are in fact obligated in that *berachah*. The *berachah* on fire is recited after Shabbat to commemorate that G-d taught Adam how to make fire on the first *motzai* Shabbat. Rav Soloveitchik suggested that *borei me’orei ha’eish* does have an inherent connection to *havdalah* because the reason fire wasn’t discovered on Friday night – the first night of Adam’s existence – was because creating fire would have been a violation of Shabbat. If so, the fact that fire was discovered on *Motzai* Shabbat is very much related to the sanctity of Shabbat; therefore, *borei me’orei ha’eish*’s place in *havdalah* is integral and by no means coincidental, and women would be required to recite it.

15 *Yalkut Shimoni*, *Shmuel* #80.

previous prayers she had undoubtedly offered?

The Rav *zt"l* explained that until this journey to Shiloh, Chanah's immense burden of her childlessness was borne jointly by herself and her loving husband Elkanah. However, when Elkanah told her during their pilgrimage to Shiloh, that she was more important to him than ten sons, Chanah realized that Elkanah had given up hope of ever having children from her. Now the joint burden was hers alone. In her utter loneliness, Chanah cried out to G-d and prayed as never before. And out of that lonely, tormented cry, G-d answered her and she was delivered of a son, the prophet Shmuel.

Chanah is the prototype of prayer, for the essence of prayer is to stand before the *Shechinah*, devoid of pretense and the accoutrements of power, in lonely communion with G-d.

The silent prayer of Chanah reflects the intimacy of prayer. Certain subjects we are willing to discuss with colleagues and friends; more sensitive and intimate matters are reserved only for a spouse, in the privacy of one's home. The ultimate in intimate communication is prayer. It is that dimension of communication which is exemplified by the silence of Chanah's prayer.

The attribute of intimacy and the humble knowledge that we are totally dependent on G-d is most profound in women, as expressed in the *pasuk* "All the honor of the king's daughter is internal."¹⁶ Men often find intimate conversation difficult, even in some cases demeaning, because it threatens to strip a man of the veneer of strength. Therefore, a woman is chosen by Providence to be the prototype of the silent *shemoneh esrei*.

Birchot Keriat Shemah

All opinions agree that women are excused from the mitzvah

16. *Tehillim* 45:14.

of reciting *keriat shemah* because it is clearly a time-bound mitzvah.¹⁷ *Magen Avraham* (70:1) rules that women are similarly excused from reciting the *berachot* that precede *keriat shemah*. However, he holds that they must recite the *berachah* that follows *keriat shemah* because that is a fulfillment of the mitzvah to mention *yetziat mitzrayim* which is not a time-bound mitzvah since it must be performed every day and night. On the other hand, *Mishnah Berurah* cites *Pri Megadim* and *Sha'agat Aryeh* who suggest that women may even be excused from mentioning *yetziat mitzrayim* because the requirement to recite it at night may be rabbinic (*Pri Megadim*) (leaving the biblical mitzvah time-bound to the daytime) or because there are really two separate mitzvot – a day and night mitzvah – each of which is time-bound (*Sha'agat Aryeh*).¹⁸

Rabbi Ovadiah Yosef¹⁹ makes a novel suggestion, that since (Ramban holds) *birchot keriat shemah* are *birchot hamitzvot* (*berachah* recited upon performing a mitzvah) Sephardic women are forbidden from reciting *birchot keriat shemah* in keeping with the Sephardic acceptance of *Shulchan Aruch's* ruling²⁰ that women should not make *birchot hamitzvot* for those mitzvot that they aren't required to perform! One could argue that *Shulchan Aruch's* objection to women reciting *birchot hamitzvot* stems from the fact that those *berachot* generally contain the word "וציונו" (and He commanded us) which is inappropriate for someone who was never "commanded" to perform the mitzvah. However, *birchot keriat shemah* don't contain the word "וציונו", so it would appear that even *Shulchan Aruch* would not object to women reciting that *berachah*.²¹ It is noteworthy that

17. *Shulchan Aruch* 70:1.

18. *Mishnah Berurah* 70:2 citing *Pri Megadim* ad loc. and *Sha'agat Aryeh* 12 (cited in the text above).

19. *Shulchan Aruch* O.C. 589:6.

20. *Beit Yosef* O.C. 17.

21. Rabbi Yigal Sklarin pointed out that *Minchat Yitzchak* II:58 makes a

Kaf HaChaim (70:1) – a prominent Sephardic *Posek* – specifically rules that women may recite *birchot keri'at shemah*. As noted, this discussion is limited to Sephardic women, but Ashkenazic women may surely recite *birchot keri'at shemah* based on the Ashkenazic custom for women to recite all *birchot hamitzvot*.

The above discussion of whether women are required to recite the *berachah* after *keriat shemah* raises a practical question for those women who choose to recite that *berachah* in *shul*. If a woman came late to *shul* and finished *keriat shemah* just as the congregation was about to begin *shemoneh esrei*, should she recite the *berachah* after *keriat shemah* or skip it and start *shemoneh esrei* together with everyone else? Her conflict is that the former will allow her to be *someich geulah l'tefillah* – start *shemoneh esrei* immediately after finishing the *berachah* after *keriat shemah* – while the latter will allow her to recite *tefillah b'tzibur* – start *shemoneh esrei* together with the congregation. If a man praying *shacharit* would be faced with the same dilemma, the halacha is clear that he should not skip the *berachah*, because being *someich geulah l'tefillah* is more important than *tefillah b'tzibur*. However, it would seem that according to *Pri Megadim* and *Sha'agat Aryeh*, a woman faced with this scenario should prefer *tefillah b'tzibur* to being *someich geulah l'tefillah*, because she is required to recite *shemoneh esrei* but not required to recite *geulah*. It is therefore logical that she should choose to upgrade her *tefillah* (via *tefillah b'tzibur*) rather than improve her *geulah*.

A possible flaw in this argument is that it is generally assumed that being *someich geulah l'tefillah* is an enhancement in *tefillah*. However, *Kehillat Yaakov* posits that there is a disagreement about exactly this point, with some *Rishonim* holding that being *someich geulah l'tefillah* gives a proper conclusion to the *geulah* and is not related to the *tefillah*. As such, those opinions would surely hold that a woman should skip the *berachah* and recite

similar point, albeit from a slightly different angle.

tefillah b'tzibur. However, upon further analysis it would also appear that even those who hold that being *someich geulah l'tefillah* enhances *tefillah*, would agree that the woman should favor *tefillah b'tzibur*. For although women can choose to be *someich geulah l'tefillah*, how can they be required to be *someich geulah l'tefillah* if they are not even obligated to recite the *geulah* in the first place! This is somewhat analogous to the *minchah* prayer – there is no requirement to recite a “*geulah*” before *minchah* and therefore there can't possibly be a requirement to be *someich geulah l'tefillah* at *minchah*. As such, it seems clear that the woman should choose to recite *tefillah b'tzibur* – which is completely related to *tefillah* which she is obligated in – and miss being *someich geulah l'tefillah*, which includes a *geulah* that she isn't even required to recite.

An underlying theme of the above discussion is the value of communal prayer (*b'tzibur*). The Gemara tells us that the prayers which are said *b'tzibur* are more readily accepted in heaven, and the halacha goes so far as to require one to travel a *mil* (an 18 minute trip) out of their way or out of their home in order to *daven* with a *minyan*. Additionally, one who *davens* with a *minyan* has the opportunity to hear *chazarat hashatz* (the *chazan's* repetition of *shemoneh esrei*), recite *borchu* and answer *amein* to numerous *berachot* and *kaddish*. These advantages of *tefillah b'tzibur* are so great that *Iggerot Moshe*²² rules that even if one is able to have more *kavanah* (concentration) during home prayer, he should nonetheless choose to pray in *shul* with a *minyan*. Although a *minyan* requires ten men, the advantages of *tefillah b'tzibur* obviously apply to all members of the congregation – men and women.²³

22. *Iggerot Moshe* O.C. II:27 & III:7.

23. Women who choose to pray in an “all-women prayer group” rather than with a *minyan* are losing this significant dimension of *tefillah b'tzibur*.

Kashrut for Children

Rabbi Aryeh Lebowitz

I. Introduction

Observance of the laws of kashrut necessitates familiarity and training. In most Orthodox homes, training begins at a very young age. In this essay we will discuss the degree to which children are required to observe these laws. Specifically, (a) whether one may provide a child with non-kosher food or medication, (b) at what age one must begin to monitor what foods a child eats, and (c) which laws may be compromised for the sake of a child.

II. Three issues

In approaching any particular question of kashrut for children, three separate issues must be dealt with: (a) *lo ta'achilum* (the prohibition to provide a prohibited substance to a minor); (b) the mitzvah of *chinuch* (training children in the performance of mitzvot); and (c) *timtum halev* (negative spiritual impact caused by ingesting non-kosher foods). Leniency is often predicated on the ability to address all three issues. We will first provide some background information to help understand each of the three halachic issues:

A. *Lo Ta'achilum*. The Talmud (*Yevamot* 117a) derives a prohibition for an adult to provide a child with a prohibited item,¹ from the verse *lo ta'achilum* (Leviticus 11:42).² Medieval

1. תרומת הדשן בפסקים וכתבים סימן סב. writes that the reason for this prohibition

talmudic commentators debate whether this prohibition is rabbinic or biblical in nature, with the general consensus seeming to be that it is in fact a biblical prohibition.³

The Talmud specifically refers to feeding a child blood or prohibited insects, and to bringing a child who is a *kohein* to a cemetery. However, the talmudic commentators assume that the prohibition is not limited to these three examples;⁴ rather, they are indicative of a larger prohibition that applies to providing a child with any prohibited item.⁵ In order to determine

is so that the children not grow accustomed to the prohibited item and continue to seek it out after becoming adults. Perhaps then it would be permissible to provide prohibited items to a child who will never become obligated in mitzvot (i.e. somebody who is terminally ill or has a halachic status of a mentally incompetent person with no hope for recovery). See, however, שו"ת חתם סופר (או"ח סימן פג ד"ה ואומר) who questions this assertion on the grounds that we do not alter biblical laws based on the reasons we suggest for them (לא דרשינן טעמא דקרא).

2. The Talmud actually cites three separate verses that teach a prohibition to feed a child something that is prohibited. The Gemara provides an explanation for the necessity of all three verses.

3. See פרי מגדים פתיחה הכוללת חלק ב' אות ט'.

4. While some medieval rabbinic authorities do maintain that the prohibition applies only to these three halachot because they view the three verses cited as excluding all others from this halacha – שלשה כתובים הבאים – most maintain that these three verses function as a single combined source from which to extend the prohibition to providing a child with any prohibited items. See בית יוסף אורח חיים סימן שמג ד"ה ודע עד ד"ה וכתבו ותרומת הדשן חלק ב' סימן סב.

5. The Gemara explains that we require three verses to teach this prohibition because each case adds a detail that the others do not share. From the prohibition of feeding a child blood, we see that the prohibition applies even to those items that are only forbidden in a sizable portion (the Gemara assumes that one is liable for consuming a *revi'it* of blood. However רמב"ם הלכה א' ערוך לגר כריתות דף כא:בב. See ערוך לגר כריתות דף כא:בב. who distinguishes between congealed blood and liquid blood). From the prohibition to feed a child prohibited insects we learn that the prohibition applies even to items whose punishment is not *karet*, but simply a negative commandment. Finally, from the prohibition to bring a child *kohein* into a cemetery we learn

whether a given case represents a violation of this prohibition, it is important to establish the following factors:

1. This prohibition does not distinguish between parents and other Jews who are not related to the child.

2. The prohibition also does not distinguish a child who has reached the age of *chinuch* (religious training) from a child who has not yet reached the age of *chinuch*.

3. This prohibition does not require one to stop a child from committing a prohibition on his own, only to providing the child with the prohibited item.⁶

B. Chinuch. In general, parents have an obligation to educate and train their children in the ways of the Torah.⁷ To determine whether a given case would constitute neglect of this responsibility involves the following factors:

1. There is a dispute among the medieval halachic authorities whether this obligation is unique to the parents or if it applies

that this prohibition applies even to items that are only problematic for a small segment of the community (כהנים). See שער משנה ברורה סימן שמג ס"ק ד and שער הציון שם ס"ק יד.

6. The exact parameters of "providing" a child with a prohibition will be explored later in this essay.

7. See יומא דף פב where the mishnah requires a child to be taught to fast on Yom Kippur even before he becomes bar mitzvah to train him in mitzvot. See also סוכה דף ב: ורש"י שם ד"ה מדרבנן, ונוזיר דף כח: רש"י חגיגה ו. ד"ה קטן רמב"ם. The exact source for this obligation is the subject of some debate among *poskim*. (חנוך לנער על פי דרכו - משלי, cites the verse, מלכות מאכלות אסורות פרק יז הלכה כח ריטב"א סוכה שם. "train the youth according to his way") as the source. שם. ורשב"א מגילה יט also cite this verse as the source. This would strongly suggest that the requirement is only *midivrei kabbalah* (based on the words of the prophets). Indeed חיי אדם כלל סו סעיף א' writes that the obligation of *chinuch* is only *midivrei kabbalah*. However, משך חכמה בראשית פרק יח פסוק יט, assumes that the source of the obligation of *chinuch* is the verse דברים את בניכם דברים, which relates to Torah study. See also ספר קיום התורה פרק ה' אות מא, in which the Chafetz Chaim maintains that one who properly educates his children is in fulfillment of the biblical commandment of "והודעתם לבניך וגו'".

to other Jews as well.⁸ The *Mishnah Berurah* (343:7) is stringent when it comes to biblical prohibitions and lenient when it comes to rabbinic prohibitions.

2. This obligation applies only to children who have reached the age of *chinuch* (defined as the age that a child is capable of performing the particular mitzvah with all of its details).⁹

3. The parent is also obligated to stop his child from violating a prohibition even when the child initiates the prohibited activity on his own.¹⁰

C. Timtum Halev. The Ramo writes that even when an infant ingests non-kosher food, the food has a negative effect on the spiritual development and wellbeing of the child.¹¹ It is assumed that the food will lead to the development of negative character traits in the child that are likely ultimately to lead him to

8. ד"ה שמע מינה. write that the *beit din* is required to prevent a child from violating a prohibition once he reaches the age of *chinuch*. See בית יוסף או"ח סימן שמג ד"ה וכתבו.

9. The Gemara סוכה מב states that a child who knows how to properly shake a *lulav* should be trained to do so. A child who knows how to properly wrap himself in a *tallit* should be trained in the mitzvah of *tzitzit*, and a child who can care for *tefillin* properly and protect their elevated holy status should be trained to wear *tefillin*. This strongly indicates that there is a different age of *chinuch* for each mitzvah. The age of *chinuch* is specifically the age at which the child can perform that particular mitzvah with all of its details. However, in numerous places the Gemara vaguely refers to the age of הגיע (ברכות טו: מגילה יט: וערכין ב: "having reached the age of training"—see להיווך תוספות ערכין ב: perhaps indicating a single specific age that *chinuch* begins. אמת ליעקב ברכות דף טו: הו"ד בהערות על note this apparent contradiction. (See #148 who resolves this difficulty.) Generally, we assume as a matter of halacha, as פרי מגדים (פתיחה כוללת חלק ב' אות) writes that a child should be trained in each mitzvah when he is capable of fulfilling that particular mitzvah properly. When a mitzvah requires a level of understanding, the child becomes obligated in the performance of the mitzvah when he is able to understand the idea of the mitzvah. For further analysis of this topic see הקטן והלכותיו פרק ב' הערה כ.

10. שולחן ערוך אורח חיים סימן שמ"ג ומשנה ברורה שם סעיף קטן ב'.

11. יורה דעה סימן פא.

violate multiple prohibitions as an adult.¹² It is interesting to note that this prohibition is mentioned in *Shulchan Aruch* only in the context of a nursing baby drinking the milk of a woman who has eaten non-kosher foods.¹³ The talmudic source, however, applies this concept to the general ingestion of non-kosher foods.¹⁴ The application of this principle to nursing from non-Jewish women is not a result of the violation of a

12. It seems that this concept applies only to food and not to the violation of other prohibitions. Based on this, מרומי שדה חולין ה' explains the comment of השתא בהמתן של צדיקים אין הקב"ה מביא ד"ה השתא (God does not cause a stumbling block even for the animals of the righteous, certainly not for the righteous themselves) applies only to eating non-kosher food but not to other prohibitions. Tosafot state further that this concept would not apply to foods that are generally permissible but may not be eaten at this time (i.e. eating before reciting *havdalah*). When it comes to other prohibitions, a righteous individual may sometimes inadvertently violate the prohibitions, but nothing negative will result since it was done entirely inadvertently. When it comes to food though, even if no prohibition was violated the food would still have a negative effect, and God would not allow that to happen to a righteous person. This concern of *tintum halev*, the ראב"ד הו"ד ברא"ש פרק יו"ה"כ explains, is also the reason that the סימין rules that it is better to violate the Shabbat for the benefit of a dangerously ill person than to feed him non-kosher food. See also חיד"א ספר פתח עינים על בית דוד על הטור יו"ד סימן פא who quotes the עבודה זרה דף כו who asks where we ever find a source in ancient rabbinic literature that *tintum halev* can be caused even when no prohibited food has been consumed.

13. ערוך השלחן יו"ד סימן פא סעיף לז attributes the rebelliousness of the younger generation to the fact that people are not careful about this halacha. See also תלמוד ירושלמי דף טו. ד"ה שובו who cites a passage in *Acher* that the mother of *Acher* had smelled the fragrance of idols as she was eating, thus causing the spiritual impurity to spread through her system, ultimately leading her child to go off the proper path.

14. The Gemara בבבבמות קיד' discusses the issue of a Jewish baby nursing from a non-Jewish woman. It does not, however, directly link the discussion to the issue of *tintum halev*. In fact, the Gemara seems to offer conflicting messages as to whether it is actually prohibited to allow a child to nurse from a non-Jewish woman. In עבודה זרה the Mishnah states that it is permissible, while in בבבמות the Gemara states that the milk is similar to milk of a non-kosher animal and is therefore only permissible in time of danger.

forbidden act of eating non-kosher,¹⁵ but is a natural consequence of ingesting the food that has impure sources.¹⁶ There is a dispute amongst the medieval commentators regarding its parameters:

1. Rashi writes that the child tastes all of the foods ingested by the woman who is nursing him, in the milk.¹⁷ Ritva adds that non-Jewish women eat all sorts of prohibited insects. Based upon this approach it would seem that if the non-Jewish woman were to eat only kosher food before nursing, it would not be a problem to have her nurse a Jewish child.

15. Both the ט"ז יורה דעה שם ס"ק כה and the ש"ך יורה דעה שם ס"ק כו maintain that even when a woman had permission to eat non-kosher food (i.e. her life was in danger) she should not nurse her child after eating it. Similarly, the משך חכמה דברים ו'יא writes that the Torah allowed Jews upon entering *Eretz Yisrael* to eat non-kosher food (see .חולין דף יז), but immediately warns us השמר לך פן תשכח את ה' אשר הוציאך מארץ מצרים מבית עבדים ("be careful lest you forget God who has taken you out of Egypt") to teach us that even though there may have been a halachic dispensation to allow the consumption of otherwise prohibited foods, the negative effects of these foods are still present and one must be wary of them. This approach, however, seems to be contradicted by the הר"ן דרוש יא ד"ה ואני סובר who writes that when a *beit din* rules that it is permissible to eat a certain food, even if they are later proven to be incorrect in their ruling, one who followed the ruling and ate the food will not suffer *timtum halev*. See, however, מסורה חוברת יא עמוד עא where Rabbi Avraham Rubin suggests that one can distinguish between knowingly ingesting non-kosher food with a rabbinic allowance to do so (because of illness, etc.) and unknowingly ingesting the food based on a ruling of the *beit din*. Whenever a person is aware of the fact that the food is indeed not kosher, we remain concerned with the idea of *timtum halev*. See also ח' פרק ל' תפארת ישראל למהר"ל פרק ח' who, in developing the idea that mitzvot are not determined by nature, states that the food itself does not cause the *timtum halev*, but the sin causes it. See also תורה תמימה שמות ב'ז, ויקרא יא:מג ומקור ברוך פרק כז פסוק מג.

16. See מסורה חוברת יא אלול תשנ"ה במאמרו של הרב אברהם ישראל רובין שליט"א where this assertion is proved from the statement of the רשב"א that although there is no technical *kashrut* problem with milk from a non-Jewish woman, the child should not be fed that milk because it causes bad character traits to develop.

17. סוטה יב.

2. Rashba assumes that this is not a halachic consideration that is necessarily related to non-kosher food, but is merely a *midat chassidut* (stringency for pious individuals),¹⁸ because the uniquely Jewish character traits of mercy, modesty, and kindness to others (*rachmanim, bayshanim, gomlei chassadim*) are assumed to be passed along through mother's milk.¹⁹ It would seem from this that the problem would persist even if the non-Jewish woman ate only kosher food prior to nursing.

III. Feeding non-kosher foods to children

A. *Direct feeding*. The *Shulchan Aruch* rules that no Jew may feed non-kosher food to a Jewish child of any age.²⁰ This applies even if the food is only rabbinically²¹ prohibited,²² and even if

18. 18. Rashba assumes that this is not a halachic consideration that is necessarily related to non-kosher food, but is merely a *midat chassidut* (stringency for pious individuals),¹⁸ because the uniquely Jewish character traits of mercy, modesty, and kindness to others (*rachmanim, bayshanim, gomlei chassadim*) are assumed to be passed along through mother's milk.¹⁹ It would seem from this that the problem would persist even if the non-Jewish woman ate only kosher food prior to nursing.

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one did not intend for the child to eat the food, but to play with it.²³ If the child is ill, and there are not any non-Jews

law (such as food cooked by a non-Jew), may be fed to children. It should be noted, though, that when the non-Jew cooks food in a kosher pot, the pot might require koshering before being used again for kosher food. See שולחן ערוך יורה דעה סימן קיג סעיף טז.

22. ש"ך יורה דעה סימן פא ס"ק בא שם. This halacha is in fact subject to a dispute amongst medieval rabbinic authorities. The ר"ן יומא writes that one may feed the child rabbinically-prohibited foods even after he has reached the age of training for mitzvot. The רשב"א concurs, but reveals in a responsum that he only intended this statement as theoretical halacha, but not to be relied upon in practice. The opinion of the שולחן ערוך reflects that of the סוף הלכות מאכלות אסורות that it is even prohibited to feed the child rabbinically-prohibited food. Rabbi Ovadiah Yosef יורה דעה חלק א' explains the dispute as follows: Generally we consider all biblically-prohibited items to be איסורי חפצה (prohibitions that relate to the object itself), while rabbinic prohibitions are considered to be איסורי גברא (prohibitions that relate to the person). Thus, סימן רלד writes, one who violates a rabbinic prohibition inadvertently (בשוגג) is not in need of any atonement. Had he done something objectively wrong (i.e. an איסור אישורי, whether he meant to do it or not, he would require atonement. Since he has only violated a prohibition on the person (an איסור גברא), which is loosely based on the prohibition to rebel against the words of the rabbis, his unwitting action can hardly be termed a rebellion and therefore does not constitute a prohibition at all. Perhaps all agree that the prohibition to feed a child would only apply to a prohibition relating to the object (i.e., an איסור חפצה), but not to a prohibition relating to the person (an איסור גברא – because a child is not obligated in any mitzvot). It can therefore be explained that the רמב"ם views rabbinic prohibitions as prohibitions on the object (איסור חפצה) thereby forbidding one from feeding them to children, while the רשב"א views them as prohibitions relating to the person – איסור גברא – thereby permitting them to be fed to children. (See also וואמנם, שו"ת בית שערים חלק או"ח סימן קי"ב ד"ה ואמנם, שו"ת אבני צדק או"ח ס"ס מה, ושו"ת מנחת אלעזר חלק א' סימן ה). For further elaboration see שיק באור הלכה סימן שמ"ג ד"ה מד"ס, שו"ת רע"א סימן טו, ושו"ת מהר"ם שיק או"ח סימן קעג.

23. משנה ברורה שם ס"ק ד' בשם המגן אברהם. It should be noted that this prohibition applies only to non-kosher food. When it comes to other prohibitions שולחן ערוך הרב סעיף י writes that you may place it in front of the child even if you are certain he will violate the prohibition. For this reason, many *poskim* have permitted putting a child (who is not yet at the age to understand what he is doing) in front of a light switch that you would like turned on or in front of a refrigerator door when the light inside was left on.

available, one may feed the child rabbinically-prohibited foods.²⁴

1. Feeding children meat during the nine days. The *Shulchan Aruch* records the practice not to eat meat from *Rosh Chodesh Av* until *Tisha b'Av*.²⁵ This practice is not a rabbinic prohibition per se, but a custom that has been accepted by the majority of the Jewish people. Whether or not one may feed children meat during this time depends on how one understands the prohibition to feed a child non-kosher food. The *poskim* are divided on this issue:

a. The stringent approach. The *Mishnah Berurah*, citing earlier authorities, rules that in the absence of a necessity relating to a mitzvah, even the youngest of children should not be fed meat during the nine days.²⁶ The logic for this position is that although there is no requirement to train a very young child to mourn the loss of the *beit hamikdash*, the prohibition of feeding children prohibited items extends even to those items that are only prohibited due to custom.

Rabbi Chaim Pinchas Scheinberg has ruled that it is even permissible to instruct a child to open the refrigerator if, in his own mind, he does not associate the opening of the refrigerator with the light turning on. It would similarly be permissible to instruct a very young child to flick a light switch, if the child does not yet know to associate his action with the light turning on or off (שמע) (בני עמוד קב). See, however, הערה where he points out that the example cited by the הרב שולחן ערוך was of giving a child a cookie with writing on it, where we do not have to worry about the fact that he will eat it and thereby erase the writing. The prohibition of erasing such writing, however, is only a rabbinic prohibition (עיין משנה ברורה סימן שמ"ק יז), possibly suggesting that it would be forbidden to place a biblical prohibition in front of the child.

24. שמע ערוך הרב סימן שמג סעיף ו'. See also Rabbi Dovid Weinberger's שמע page 129.

25. שולחן ערוך אורח חיים סימן תקנא סעיף ט.

26. משנה ברורה סימן תקנא סעיף קטן ע' ושער הציון שם אות ע"ו. See also שו"ת who even prohibits feeding children meat late on Friday afternoon during the nine days, unless they

b. The lenient approach. The *Magen Avraham* writes that when a child has not yet reached the age to properly understand the idea of mourning the destruction of the *beit hamikdash*, there is nothing wrong with feeding him meat during the nine days.²⁷ The *Aruch Hashulchan* relies on the opinion of the *Magen Avraham* for a particularly weak child who stands to gain from the extra meat in his diet.²⁸

2. Feeding children outside of the sukkah. The *Magen Avraham* writes that just as we may not feed children prohibited foods, we may also not feed them outside of the sukkah during the holiday of Sukkot.²⁹ The *Mishnah Berurah* cites this comment of the *Magen Avraham* and adds that one cannot even instruct a child to eat outside of the sukkah, as this would constitute a violation of *lo ta'achilum*.³⁰ Although generally the prohibition

customarily eat their Shabbat meal at that time (because of the late summer Shabbatot). See also שו"ת רבבות אפרים חלק א' סימן שעא וחלק ב' סימן קנא אות כב.

27. מגן אברהם סימן תקנא ס"ק לא. See also עמוד קצ ה' עמוד קצ who argues that there is ample room to be lenient in this matter. First, many *Rishonim* maintain that one is permitted to feed a child rabbinically-prohibited food. Second, even if one may not feed rabbinically-prohibited food to a child, there may be room to distinguish between rabbinically-prohibited food and food that is only prohibited based on a *minhag*. Finally, one can argue that the prohibition to feed a child prohibited items only applies to items that are *always* prohibited, and not to items that are only prohibited for a certain amount of time. See above footnote 22 and below footnote 76 for an elaboration of this point.

28. ערוך השולחן אורח חיים סימן תקנא סעיף כו.

29. מגן אברהם סימן תרט"ז ס"ק ב, See, however, מגן אברהם או"ח סימן תר"מ where he states explicitly that although one may not feed a child on Yom Kippur, one may feed a child outside of the sukkah on the holiday of Sukkot. See בנין כה שו"ת בנין כה who resolves the contradiction by differentiating between a child that is fed by a man and a child that is fed by a woman. A woman who feeds the child need not do so in the sukkah because she is exempt from the mitzvah of sukkah herself. A man, on the other hand, who is obligated in the mitzvah of sukkah would be required to feed his child in the sukkah as well.

30. ערוך לנר סוכה דף ב' See also משנה ברורה סימן תר"מ ס"ק ה' who also states that one who feeds a child outside of the sukkah has violated *lo ta'achilum*. The תוספות ישנים ליומא דף פב uses this idea to answer the question of ערוך לנר

of *lo ta'achilum* applies even to the youngest of children, Rabbi Moshe Shternbuch points out that one may feed a very young child outside of the sukkah. He explains that young children would be exempt from sukkah due to the fact that they require the assistance of their mothers in order to eat properly.³¹

a. Later authorities strongly question the application of *lo ta'achilum* to feeding a child outside of a sukkah. After all, *lo ta'achilum* is the prohibition to provide a child with a prohibited item. Providing a child with perfectly kosher food that he plans on eating outside of the sukkah would not be included in this prohibition. Furthermore, the prohibition of *lo ta'achilum* applies only to violation of negative commandments, and not to the neglect of positive commandments.³²

b. Indirect feeding. The *Mishnah Berurah* writes that it is also prohibited to tell a child (of any age) to eat non-kosher food on his own.³³ In fact, Rashi strongly implies that an adult cannot even hint to the child that he would not mind if he ate the non-kosher food.³⁴

c. Telling a non-Jew to feed non-kosher food to a child. The *Mishnah Berurah* points out that it is likewise forbidden to tell

גליין הש"ס לסוכה שם.

31. ערוך השלחן סימן תר"מ סעיף ב. שו"ת תשובות ונהגות חלק ג' סימן ר"א. See also who justifies the common practice to feed children outside of the sukkah based on a child's lower threshold for pain caused by the cold climates.

32. שו"ת הליכות שלמה (להגרש"ז אועירבך זצ"ל) פרק תשיעי בדבר הלכה אות מה. שו"ת אבני נזר או"ח סימן תפא. See, however תשובות ונהגות חלק ג' סימן ריא who shows that eating outside of a sukkah can properly be labeled as a prohibition, and not merely the neglect of a mitzvah.

33. ריטב"א יבמות דף קיד: ומאירי שם. משנה ברורה סימן שמג ס"ק ה'.

34. רש"י יבמות דף קיד. בד"ה בעושה על דעת אביו ומאירי שם. It does seem, though, from other halachic sources that it is permissible for somebody other than a parent to put the child in front of the food and allow him to eat on his own. Although on Sukkot one may not feed a child or tell him to eat outside of the sukkah, the משנה ברורה סימן תרמ בשער הציון ס"ק ח' writes that it is permissible to put food in front of the child to eat. See also ב' סימן ט'.

a non-Jew to feed non-kosher food to a Jewish child of any age, just as one may not ask a non-Jew to violate any prohibition for you.³⁵ However, if a child is ill, one may ask a non-Jew to feed even a biblically prohibited food to the child. In fact, when a child needs *chametz* on Pesach for health reasons, we allow a non-Jew to bring the child to the non-Jew's home and feed him the *chametz*. If this is not feasible, it is even permissible for the non-Jew to bring the *chametz* into the Jew's home and feed the child there, provided that no Jewish adults touch the food.³⁶ If, however, the non-Jew feeds the child without being told to do so, only the parent must stop the child from eating.

d. Child takes the food. When the child grabs non-kosher food without being prompted by an adult to do so, the prohibition of *lo ta'achilum* does not apply, but the mitzvah of *chinuch* certainly does. Therefore, only the parents would be obligated to stop the child from eating the food if it is rabbinically prohibited and the child is above the age of *chinuch* (six or seven years old). If the food were biblically prohibited, all Jews would have to stop the child from eating the food.³⁷ If the child is under the age of *chinuch* (training) but above the age where he can understand that he is doing something wrong (and not just due to fear of his parents), only the parents must stop him. If, however, he is too young to understand why he is being told not to eat the food, even the parents do not have to

ומקראי קודש חלק ימים נוראים עמ' קנד.

35. משנה ברורה סימן שמ"ג ס"ק ה'.

36. משנה ברורה שם.

37. שולחן ערוך אורח חיים סימן שלד סעיף שם. See also משנה ברורה סימן שמג ס"ק א-ב, 1. that if the child violates a Shabbat prohibition on his own because he assumes that his father wants the particular action to be done, one must stop the child because the father is required to see to it that the child not do prohibited labor on Shabbat. See also חינוך הבנים למצוות עמוד כז who suggests that the age may be as young as two. See also Rabbi Simcha Bunim Cohen's *Children In Halacha* (page 8) who suggests that the age may be as high as four years old.

1. A practical example of this may be when a child finds a non-kosher candy in a cereal box. If the child has not yet reached the age of *chinuch* (leaving out the issue of *tintum halev*), one need not stop the child from eating the candy. If, however, he has reached the age of *chinuch*, the parent is certainly obligated to stop him and others would be obligated to stop him if the food is biblically prohibited. Once again, though, we would be hard pressed to permit this under anything but the most difficult circumstances due to the concern of *tintum halev*.

The halachic issues we face when feeding children non-kosher food seem to be particularly difficult when it comes to medication.⁴⁰ While it is not difficult to find kosher certified food to give to children, it may often be extremely difficult to find a proper medication with kosher certification. This problem may be exacerbated by the fact that many medications made

40. Paradoxically the problem of non-kosher medications for adults may not be nearly as great. This is because adult medications generally come in tablet form and can be swallowed. Rabbi Shlomo Zalman Auerbach שו"ת סימן י suggests that swallowing pills is considered to be a benefit that is an "abnormal" way of receiving benefit – *שלא בדרך הנאתן* and therefore permissible even for a person who is not dangerously ill. Furthermore, Rabbi Moshe Feinstein זצ"ל סימן צב and Rabbi Ovadiah Yosef זצ"ל סימן ס' permit taking medication that has no taste or a poor taste.

specifically for children have added flavors to make them palatable to children.⁴¹ In order to address this problem a number of lenient considerations have been suggested:

A. Small measures of prohibited items. The first leniency is based on a comment of Rabbi Eliezer Waldenberg relating to mixtures that contain non-kosher food. Generally speaking, in order for one to be punished for consuming a prohibited food, he must eat a complete measure of that food (usually a *kezayit* – size of an olive – for solid food, and a *revi'it* – somewhere between 3 and 6 fluid ounces – for liquids). Nevertheless, even if one consumes less than the full measure of food (a *chatzi shiur*), while he will not receive a punishment, he has violated a prohibition. The Talmud records a dispute whether the prohibition of consuming a half measure is biblical or rabbinic in origin.⁴² The normative ruling follows the opinion that consuming a half measure is a biblical prohibition.⁴³

Based on this alone one would be inclined to assume that when consuming a medication that contains a half measure of non-kosher food they have violated a biblical prohibition. Yet, two prominent *Acharonim* have suggested that even though normally eating a half measure of a prohibited item is biblically prohibited, when one consumes a half measure as part of a mixture that contains a majority of permissible food, he has violated only a rabbinic prohibition.⁴⁴ Rabbi Waldenberg has ruled in accordance with this opinion. One may argue that if taking medication without kosher certification is at worst only

41. The kashrut of children's medications is often particularly difficult to ascertain because of glycerin. Glycerin can come from a forbidden animal or from plants or petroleum. It is impossible for the consumer to know (and very often even the manufacturers don't know) where the glycerin came from.

42. יומא עג.

43. רמב"ם הלכות שביתת עשור פרק ב' הלכה ג'.

44. מנחת כהן שער התערובת א:ד, פרי חדש אורח חיים סימן תמב.

rabbinically prohibited, there may be room for leniency with a child who is considered to have the status of a *choleh she'ein bo sakanah* (somebody who is ill, but not dangerously ill).⁴⁵ Rabbi Shlomo Kluger rules that a *choleh she'ein bo sakanah* can consume rabbinically prohibited items for medicinal purposes.⁴⁶ It should therefore follow that children may consume medications that do not have kosher certification.

1. Rejecting this view. This lenient approach relies on an assumption that has been rejected by a majority of the halachic authorities. As mentioned, Rabbi Shlomo Kluger maintains that a *choleh she'ein bo sakanah* may consume rabbinically prohibited food for medicinal reasons. However, the Ramo maintains that a *choleh she'ein bo sakanah* may not use even rabbinically prohibited foods for medical treatment.⁴⁷

B. Double doubt. Rabbi David Heber has suggested an alternate lenient approach, based on some of the considerations we have already mentioned. The *Beit Yosef* rules that while an adult should not drink from the *kiddush* wine in shul on Friday night,⁴⁸ one may give the wine to a child to drink. Indeed, this is the common practice in most shuls where *kiddush* is recited on Friday night. Rabbi Ovadiah Yosef explains the logic of giving the wine to children in the following way: Although, as

45. Rabbi David Heber, *ibid.*, p. 92. There may be additional room for leniency because we are usually not certain of the presence of the prohibited substance in the first place.

46. שו"ת האלף לך שלמה סימן קב.

47. רמ"א יורה דעה סימן קנה סעיף ג' וכן הסכימו בשו"ת רעק"א סימן ה' וחיי אדם כלל סט. בנשמת אדם סימן ג'.

48. בית יוסף אורח חיים סימן רסט בשם הרא"ש פרק ערבי פסחים סימן ה' ורבינו ירוחם חלק א' והגהות מיימוניות פרק כט אות מ ומרדכי בפרק ערבי פסחים בשם מהר"ם מרוטנבורק הלכות ברכות תפ"ו ע' קעח. The logic for this stringency is that one does not fulfill his obligation of *kiddush* in shul because there is a requirement for the *kiddush* to take place in the same time and place as the meal (קידוש במקום סעודה). As such, any sipping of the wine is considered to be a violation of drinking before *kiddush*.

we have already noted, we rule in accordance with the Rambam that one may not even feed a rabbinically-prohibited food to a child, Rashba maintained that we may do so. Although we accept the opinion that one may not drink from the *kiddush* wine in shul, some *Rishonim* maintain that we may do so. Rabbi Yosef therefore suggests that we may combine the lenient ruling of Rashba with those who permit drinking the *kiddush* wine to form a *sfek sfeika* (“double doubt”) that allows the child to drink from the *kiddush* wine in shul.⁴⁹

We have now demonstrated a willingness on the part of the *Beit Yosef* to use the opinion of Rashba along with another rejected halachic opinion to form a *sfek sfeika* to serve as the basis for a lenient ruling. Taking this logic one step further, Rabbi Heber suggests that we may formulate a similar “double doubt” in permitting children to take medication without kosher certification. Perhaps we may rule like Rashba that one may feed rabbinically-prohibited foods to children, and like Rav Shlomo Kluger that a *choleh she’ein bo sakanah* may ingest rabbinically-prohibited foods for medicinal purposes.⁵⁰ Rabbi Herschel Schachter agrees with this approach and rules leniently that flavored medication without kosher certification may be given to children in the absence of a suitable alternative.⁵¹

V. Hospitals and Institutions

One of the more heartbreaking issues that *poskim* have to

49. שו”ת יביע אומר חלק א’ יורה דעה סימן ד’ אותיות ה-ז’. This approach is fairly explicit in the words of the בית יוסף himself. The בית יוסף also suggests another reason to be lenient with children, because if nobody were to drink this wine we would be facing a more serious prohibition of a *beracha* in vain.

50. Obviously, both of these doubts assume the ruling of the פרי חדש and מנחת כהן (that less than a full measure of prohibited food mixed with a majority of permissible food is only rabbinically prohibited) to be correct.

51. As reported by Rabbi Chaim Jachter, *Kol Torah* Spring 2005, and confirmed by Rabbi Schachter in a personal conversation with this author.

deal with relates to care for a child (or mentally-disabled adult who often is considered the halachic equivalent of a child) by placing the child in an institution that does not provide kosher meals. Obviously, when a family is faced with this most difficult decision, the matter must be discussed with a competent *posek*. For that reason, we will not provide practical guidelines, but will merely survey some of the halachic literature on this topic to determine varying levels of response to the halachic issues involved.

A. The response of the Chatam Sofer. The Chatam Sofer was asked about a young orphan who was mentally disabled, and whose relatives wanted to place him in an institution for the physically and mentally handicapped where he would gradually learn to live something resembling a normal life with a certain degree of independence. Although the family was capable of sending food to him on a daily basis, the institution would not allow any of its patients to eat outside food. All patients had to be part of a single community and support system, which included having all meals together. After discussing the issues of *chinuch* and the prohibition of *lo ta'achilum* at great length, the Chatam Sofer arrives at the conclusion that there is no problem on either count because the child is an orphan and the Jew is neither feeding him directly,⁵² nor asking a non-Jew to

52. Even if the Jew were feeding him directly, the Chatam Sofer argues that it may be permissible to place him in the institution based on the following logic: The Gemara שבת טז states that if one is traveling in the desert and he does not know which day is Shabbat, he should do whatever minimal amount of work is necessary on each day in order to stay alive. Beyond that, however, he may not do any prohibited labor. Tosafot point out that there is an exception to this rule. He may walk as far as he possibly can (even well beyond the *Techum Shabbat*) on each day because if he does not walk he will never get out of this situation. Similarly, it could be argued, this child will never be able to perform mitzvot properly without remaining in the institution. It may therefore be permissible for him to violate whatever prohibition is necessary in order to one day be able to fulfill the mitzvot properly. This comparison, though, may be debatable. Certainly the man who is stuck in the desert is obligated in

feed him non-kosher food.⁵³ However, the Chatam Sofer concludes that once the child becomes a bar mitzvah he should be removed from the institution, as he is now obligated in the performance of mitzvot in his own right. All of this is from a strictly halachic perspective. The Chatam Sofer adds, though, that considering the effect of *timtum halev*, it is perhaps more advisable to keep the child out of the institution because *Chazal* tell us:⁵⁴ מוטב שיהיה שוטה כל ימיו ואל תהיה רשע שעה אחת לפני המקום – “it is better to be a fool for your entire life than to be a wicked person for even a moment in front of God.”⁵⁵

B. Rav Moshe Feinstein's response. Rav Moshe Feinstein was asked about a girl who was suffering from an incurable mental illness that was a result of irreversible brain damage. The girl was exceedingly difficult to care for, and her father suffered from a heart condition, which could deteriorate if he was to have the constant stress of looking after his daughter. The only institution available to help her did not serve kosher food. Rav Feinstein cited the earlier responsum of the Chatam Sofer who pointed out that there is no problem of *lo ta'achilum* when you place the child in the institution without specific instructions to feed the child non-kosher food. Furthermore, the parents are not neglecting their obligation of *chinuch* because the child is so severely mentally disabled that she is unable to be educated, and will never become obligated in mitzvot.⁵⁶ The only remaining

the mitzvah of Shabbat and will never be able to fulfill his obligation properly until he is out of the desert. The mentally-disabled child, however, is not obligated in any mitzvot currently, so there may not be the same dispensation to allow the person to embark on a path that would lead to an obligation in, and proper fulfillment of, the mitzvot.

53. He would merely be asking the institution to provide medication and sustenance for the child, leaving the choice of what kind of food to give him to the non-Jews who run the institution.

54. מסכת עדייות פרק ה' משנה ו'.

55. שו"ת חתם סופר או"ח חיים סימן פג.

56. See פרי מגדים פתיחה כוללת חלק ב' אות ט who argues that deaf-mute or

issue is that of *tintum halev*, which, in a strikingly similar case, caused the Chatam Sofer to recommend that a child be kept out of an institution. In order to address this problem, Rav Feinstein pointed out the following lenient considerations:

1. In the case of the Chatam Sofer the institution was meant to rehabilitate the patient, where ultimately the patient would be able to function as a normal adult. In Rav Moshe's case, however, the girl's illness was not curable. The institution only served to care for her in a way that she would not put herself into danger and to provide her with a meaningful life experience. Since the concern of *tintum halev* is that the child will develop tendencies that will result in prohibitions when the child gets older, this is only a concern for a child who will one day become obligated in mitzvot. One who will never become obligated in the performance of mitzvot need not be concerned with the effect of *tintum halev*.⁵⁷ Even if through some miracle the child would be cured, Rav Feinstein argues that God would likely cure the *tintum halev* as well, because there is no sense

mentally disabled children are not subject to any mitzvah of *chinuch*. מנחת פרי מגדים, seems to concur with this ruling. See, however, where the same author suggests that a deaf-mute is included in the mitzvah of *chinuch*. See also כא סימן where he writes that his father (the author of כתב סופר) was invited to visit a school for the deaf, and was so impressed by how functional the students were that he asked the administration to see to it that the children put on *tefillin* each day. See also דברי סימן עג וע"ט, ובשו"ת דברי סימן ע' מלביאל חלק ו' סימן לה ובשו"ת משנה הלכות חלק ו' סימן טו, ובשו"ת חקרי לב סימן ע'.

Relating specifically to a mentally-disabled person, Rav Shlomo Zalman Auerbach writes (שו"ת מנחת שלמה חלק א' סימן לד) that if the child is capable of a minimal understanding of Judaism (i.e. that God gave us the Torah, and we fulfill His commandments) he is obligated in mitzvot that he is capable of fulfilling, and by extension he is included in the mitzvah of *chinuch* when he is a child. It seems that in the case Rav Moshe Feinstein was dealing with the girl was so severely mentally disabled that even a basic understanding of Judaism was beyond her grasp.

57. A similar distinction is quoted in the name of זצ"ל ר' שלמה זלמן אויערבאך in נשמת אברהם חלק ה' עמוד נז in the name of ר' יוסף שלום אלישיב שליט"א and

in God performing miracles just to increase the number of wicked people in the world.

2. In this particular instance the health of the father is also at risk. Certainly the threat to the life of the parent overrides all three possible prohibitions in feeding the child non-kosher food.

C. The approach of Rabbi Shlomo Zalman Auerbach. Rabbi Auerbach, while agreeing in principle to the concerns of the Chatam Sofer and Rabbi Feinstein, makes a few additional distinctions. Even in a case of a child who has no hope of ever becoming obligated in mitzvot, one may only place him in a non-religious institution, but not one that is not Jewish. He explains that although there is no issue of *chinuch* or *timtum halev*, it is impossible that one would be permitted to “do such a thing that will cause this child to be raised as a Gentile in every matter, and ultimately, be buried as a Gentile.”⁵⁸ Specifically relating to children with Down’s syndrome, Rabbi Auerbach stresses the importance of keeping the child in a warm and nurturing home environment like any other child.

D. The responsum of Rabbi David Tzvi Hoffman. The specific question posed to Rabbi Hoffman was about a case of a thirteen-year old boy who had suffered a major spinal injury. The only available facility to effectively aid in his rehabilitation did not offer kosher food for patients. Rav Hoffman argued that although it seemed that the boy’s life was not in danger, he must not be kept from going to this hospital. He based this assertion on a number of considerations: First, some medieval authorities maintain that one may violate Shabbat even to save a limb of a person.⁵⁹ Second, some authorities rule that

58. As quoted in עמוד נו חלק ה' עמוד נו.

59. Although the שולחן ערוך rules to the contrary, this is the opinion of אור זרוע הלכות יום כפורים סימן as cited in רבינו תם and תוספות סוכה דף כו. ד”ה ואפילו ר”פ.

even those who would not permit desecration of Shabbat to save a limb would permit other biblical prohibitions to save a limb.⁶⁰ Third, it could be argued that by definition a spinal injury always carries with it an element of true danger to the patient's life. Certainly, if the patient were to subsequently suffer a fall into a dangerous area and be unable to save himself, his life would be in danger as a direct result of his injury.⁶¹ Finally, the amount of mitzvot that the child is going to be held back from fulfilling as a result of his illness may warrant temporary violation of commandments to ensure his recovery and a lifetime of serving God with maximum physical capacity.

1. Theoretical position. Rabbi Hoffman points out that whenever one is in a position where they are forced to consume prohibited foods they should consume the lesser prohibition first. Therefore, prior to eating any non-kosher meat, the boy should eat foods that consist of combinations of kosher and non-kosher products. When eating food that is completely prohibited he should consume less than a *kezayit* (olive-size piece) every four minutes.

It should be noted that in this specific case Rabbi Hoffman was addressing a thirteen-year old boy. While it is clear that Rabbi Hoffman would have been just as lenient for a child,⁶²

60. This is the opinion of 'ד' ס"ק ש"ך סימן ש"ך אורח חיים סימן ש"ך א' based on the 'ג' ש"ך יורה דעה סימן קנ"ז ס"ק ג'.

61. ספר ארחות חיים סימן ש"ך א' בשם הגהות מיימוני פרק י"ד מהלכות מאכלות. אסורות, ובא"ח כלל נט בשם תשובת מהר"ם.

62. Indeed, Rabbi Hoffman uses the possibility that this boy may not have the necessary physical maturity to be considered an adult as an additional reason to be lenient. He argues that although we generally assume that a thirteen-year old child who does not have two hairs must have had the hairs at one point and they have fallen out, we only make this assumption because most thirteen-year old boys have already grown two hairs. Therefore, from the perspective of the *beit din* relating to the laws of *miun* and *chalitzah* it is necessary to be concerned for the majority. From the perspective of the child, however, the ס"ק א' פרט ו' explains that he has no obligation to

there is more reason to be lenient about consuming less than a *kezayit* at a time for a child than for an adult. Rav Chaim Ozer Grodzinsky raises the possibility that there is no prohibition of feeding a child a half measure. He explains that although we generally assume consuming a half measure of a prohibited item is biblically forbidden, a group of later authorities limit that rule to prohibitions of eating.⁶³ The *Pnei Yehoshua* explains the logic to this distinction as follows: We normally assume that even a half measure is prohibited because there is enjoyment in eating even a small measure of food. When, however, the prohibition does not involve physical pleasure that can be enjoyed in small measures, there would be no prohibition of doing anything less than that which the Torah explicitly prohibits. The prohibition to feed a child non-kosher food is not a prohibition of eating, as the adult does not feel any physical satisfaction in feeding the child a half measure.⁶⁴

2. Practical position. In spite of the halachic veracity of this approach, practically speaking Rabbi Hoffman points out that such eating habits would be very difficult to implement. After all, the child was suffering from a physically debilitating illness and needed all of the nourishment he could get. If the doctors notice his modest diet they may suspect that he is not taking his recovery seriously and not devote their full attention to him. Furthermore, the child will hesitate to eat any time food is brought to him. This attitude may lead him to neglect to eat even when his condition warrants it. Therefore, practically

follow the majority because only one who is halachically an adult is bound to follow the majority, but one who may not be an adult, and even has an assumed status of a child – חזקת קטנות – would not be required to follow this majority. See פני יהושע קידושין דף עג for a similar argument. If he is in fact still a child, there is no question in Rabbi Hoffman's view that he may stay in the hospital as no Jew is feeding him any prohibition and the hospital staff has not been instructed to feed him non-kosher food.

63. שו"ת אחיעזר חלק ג' סימן פא.

64. פני יהושע ביצה דף ז.

speaking the child should eat whatever is served to him and he should be told that a special exception to the laws of kashrut applies to one with his condition, so that he may regain his strength to serve God when healthy.⁶⁵

E. Summary. In summation, the Chatam Sofer and Rabbi Moshe Feinstein maintain positions that reflect a great concern to the issue of *timtum halev* even in extenuating circumstances and in the absence of other halachic problems. This position is somewhat difficult to understand considering that *timtum halev* does not seem to be a halachic concern (as is evidenced by its omission from the entire discussion of a child eating non-kosher food cited in *Shulchan Aruch Orach Chaim* 343), but a worthwhile stringency to observe when possible. Indeed, Rabbi Hoffman omits any mention of a concern for *timtum halev* from his response, presumably because he views it as a non-issue in difficult circumstances. Rabbi Yakov Breisch was asked about the permissibility of receiving a blood transfusion from somebody who eats non-kosher food. In his response he points out that one should not concern himself with *timtum halev* at a time that he is ill, even if other blood is available, because any delay may cause a deterioration of his condition.⁶⁶

VI. Waiting between meat and dairy

Perhaps the most common question relating to *kashrut* with

65. שו"ת מלמד להועיל חלק ב' (יורה דעה) סימן לב.

66. שו"ת חלקת יעקב יו"ד סימן יג. Interestingly, Rabbi Breisch cites a comment that he had heard from the Belzer Rebbe who stated that when a person is weak and sick their *yetzer hara* for normal sins is not as strong. In order to compensate for this loss, the *yetzer hara* focuses the patient's attention on being lenient with the mitzvah of "and you shall live by them" and causes the patient to seek out unnecessary stringencies that put a person's life in danger. Rabbi Breisch concludes that the proper performance of the mitzvah of "and you shall live by them" should serve to protect a person from the *timtum halev* caused by non-kosher foods. See שו"ת חלקת יעקב חלק ב' סימן מ.

children is how long a child has to wait between eating meat and dairy foods. The halacha does not seem to have been dealt with explicitly in writing, with exact ages and times, by the major halachic authorities prior to the end of the 20th century. In order to properly understand the approaches of the *poskim* to this question, some background information is necessary:

A. General halachot pertaining to waiting between meat and dairy. The biblical prohibition of eating meat and dairy together applies only to meat and milk that were cooked together.⁶⁷ If one eats meat and then drinks milk in the same meal he has not violated the Torah prohibition. Nevertheless, the rabbis instituted a number of safeguards to protect the Torah law. First, one may not eat meat and milk together, even if they were not cooked together.⁶⁸ Second, one may not even eat meat and milk consecutively, without some minimum waiting period.⁶⁹

The Gemara, however, never states explicitly how long one must wait between eating meat and dairy foods. The lone source in the Babylonian Talmud on the topic is a statement made by Mar Ukva to the effect that while his father would not eat meat and dairy on the same day, he would only wait from one meal to the next.⁷⁰ The opinions of the medieval authorities range from no mandated waiting period,⁷¹ to a

67. חולין קה.

68. שולחן ערוך יורה דעה סימן פז סעיף א'.

69. חולין קה.

70. חולין שם.

71. תוספות חולין קה. ד"ה לסעודתא. provided that one recites a *beracha acharona* in between. There is another opinion cited in עוף קד: ד"ה עוף which simply requires a cleansing of the mouth between the two, which suggests that Mar Ukva's decision to wait until the next meal was a personal stringency. This is the opinion of רבינו תם and גדולות, but has been rejected by the halacha.

minimum six-hour waiting period.⁷² While the *Shulchan Aruch* rules in accordance with the Rambam that the full six-hour period is required, the Ramo merely recommends six hours as a proper custom, but rules that even an hour waiting period would suffice.⁷³ The *Shach*, while agreeing with the Ramo that a single hour is halachically sufficient, states that anybody who is infused with the spirit of Torah (*reiach hatorah*) should wait the full six hours.⁷⁴ Indeed, the majority of Ashkenazic Jewry today waits the full six hours.

B. The specific guidelines offered by the poskim for children. Although we have previously illustrated that it is forbidden to feed non-kosher food to a child, Rav Moshe Shternbuch writes that this prohibition does not apply to feeding a child dairy foods after meat. He explains that while we may not eat dairy

72. רמב"ם הלכות מאכלות אסורות פרק ט' הלכה כח, רשב"א חולין דף קה, רא"ש חולין. See, however, אות יג, פרק ח' אות ה' who suggests that maybe even these *Rishonim* would not require a full six-hour wait, and five and a half hours would suffice. The logic for this suggestion is that in earlier generations people did not have clocks to tell them exactly what time it was, and they were often forced to estimate. Generally the halachic definition of "close to" a certain time is within a half hour of that time. The comment of כתובות קד that all measurements of the rabbis were meant to be exact (and not just estimations) would not apply to waiting between meat and dairy because the rabbis of the Talmud never gave an exact time to wait. Furthermore, the מאירי מגן אבות סימן ט עמוד מזו writes that one only has to wait "five or six hours". In spite of all of these arguments, Rabbi Yosef is hesitant to be lenient in practice, barring very difficult circumstances. See also נשמת אברהם סימן פט.

73. רמ"א יורה דעה סימן פז סעיף א'. The שם ס"ק ג states that he was unable to find a source for the one-hour waiting period. However, the ביאור הגר"א שם points to a passage in the זוהר that prohibits eating milk and meat during the same hour.

74. ש"ך יורה דעה סימן פז ס"ק ה' בשם היש"ש. Although the simple reading of the כף החיים implies that this is the recommended course of action for all Jews, כף החיים understands the term "anybody who has a smell of Torah" as a reference to only the greatest Torah scholars and *tzadikim*, but average people are not required to wait the full six hours. The כף החיים does note that according to the לבוש anybody who waits the full six hours is worthy of blessing.

after meat, the food does not have the status of forbidden food, and is only prohibited as an additional fence around the actual prohibition.⁷⁵ It goes without saying that there is no issue of *timtum halev* involved because there is no ingestion of non-kosher food regardless of how short the wait. The only issue in determining a proper time frame is the mitzvah of *chinuch*.

1. Rabbi Shmuel Vosner. Rav Vosner provides general guidelines and explanations for the halacha without specifically identifying an exact age for each of the categories of children that he identifies.

a. Young children. When dealing with very young children, Rav Vosner rules that no minimum waiting period is required. He reasons that young children are considered to have the status of an ill person, and the halacha allows an ill person to eat a milk meal after a meat meal, in accordance with the opinion of Tosafot.⁷⁶

b. Older children. When dealing with older children the matter becomes more complex. Rav Vosner is lenient to a degree with children who are “a little bit grown up”. He cites a statement of the *Meiri* that since the talmudic source only requires waiting until the next meal time, and children generally eat more frequently than adults, it would be permissible for a child to have a milk meal shortly after a chicken meal. The *Meiri* was not willing to allow a milk meal after a true meat meal, but since fowl meal is only rabbinically considered meat in the first place, we may be lenient with it. Rav Vosner reasons that if the *Meiri*, who maintained that the halacha demands a waiting period of six hours, is willing to be lenient with a child, certainly

75. שו"ת תשובות והנהגות חלק א' סימן תלה.

76. See ערוך השלחן יו"ד סימן פז אות ד' and כף החיים שם אות כא who require even a sick person to wait one hour.

Ashkenazic Jews who only maintain the six-hour period as an added stringency (albeit necessary) may be lenient and allow children to eat a milk meal only one hour after a chicken meal.⁷⁷

2. Rabbi Moshe Stern. Rav Stern divides children into four age groups. He does not explain the reasoning or provide sources for his conclusions. The age groups should be divided as follows:

a. A child under the age of three does not require any waiting period. Cleaning off his mouth from meat residue suffices.⁷⁸

b. A three-year old child should be made to wait one hour, gradually increasing his waiting period until he turns six.⁷⁹

c. A six-year old child should be encouraged to wait the full six hours, but if unable to do so, may be permitted to eat dairy just three hours after eating meat.⁸⁰

77. שו"ת שבט הלוי חלק ד' סימן פד. Rav Wosner expresses some mild reservations about relying on this ruling because while the מאירי was lenient, his leniency was based on the fact that the six-hour waiting period is halachically mandated. It would then follow that for children, for whom it is not halachically mandated, there is room for leniency. However, since we assume that the six-hour waiting period is required based on מנהג, it could be argued that the מנהג applies equally to children.

78. See רב יעקב קמינצקי זצ"ל במחיצת רבינו (עמוד פה) where it is reported that רב יעקב קמינצקי זצ"ל also did not require any waiting period until the child is three years old.

79. Requiring a three-year old to wait one hour is somewhat puzzling. After all, is the only issue is one of *chinuch* it seems that the three-year old is well below the age of *chinuch* for this mitzvah. While he did not agree with this ruling, Rabbi Hershel Schachter was able to explain it as follows: We have assumed that the prohibition to feed a child prohibited items does not apply when you are feeding him perfectly kosher dairy food after feeding him meat. Clearly, though, feeding meat and dairy together would be prohibited. It may therefore be argued that the ביאור הגר"א and the זוהר view food eaten within one hour of each other as if they are together. This would make the dairy food we give the child within an hour of meat food a prohibition of rabbinic *basar v'chalav*. Indeed, רב יעקב קמינצקי זצ"ל believed that feeding a child milk within one hour of eating meat is included in the prohibition of לא תאכילם במחיצת רבינו עמ' פה.

80. The exact source for waiting three hours is not perfectly clear. The

d. Once a child reaches the age of nine, the full six-hour waiting period should be strictly enforced.⁸¹

VII. Conclusion

In analyzing the multitude of issues relating to what our children may and may not eat in different circumstances one is struck by the deep sensitivity that we must have toward negative spiritual influences on children, even when they go beyond the normal strictures and demands of the halacha.⁸² This theme, while based in ideas of kashrut, can, and should, be applied to all aspects of the upbringing that we provide for our children.⁸³

more well-known *Rishonim* do not record such a practice. However, רבינו ירוחם does record this practice. It may be explained based on a comment of the ספר מומור לדוד in the name of דרכי תשובה יורה דעה סימן פז אות ו since the days are short during the winter months it is likely that the time between one meal and another was not more than three hours. It would be illogical to assume that one must wait longer during the summer than he does during the winter, so we may safely assume that if three hours suffices during the winter months, it would also suffice all year round. See also יביע אומר שו"ת יביע אומר ר' משה' in the name of מסורה חוברת ח' עמוד עה-עז and חלק א' יו"ד סימן ד' אות יב regarding the custom to wait three hours.

81. שו"ת באר משה חלק ח' סימן לו אות ד'. R. Yaakov Kamenetzky agreed that at the age of nine a child must wait the full waiting period that his family's custom requires, but, unlike Rabbi Stern, he did not mention any additional stringencies for the child at the age of six. Indeed, שו"ת חלקת יעקב חלק ב' סימן פח writes that a child under the age of nine who expresses a strong desire for milk may be given milk after waiting just one hour.

82. It is therefore not surprising at all that the משנה ברורה סימן שמג ס"ק ב' raises issues relating to basic parenting in the context of this discussion. The משנה ברורה warns not to allow our children to speak *lashon hara*, or to lie or quarrel because, although they may be under the age of *chinuch*, engaging in such behavior becomes habitual and will become increasingly more difficult to thwart as the child grows older.

83. The author expresses appreciation to Rabbis Avi Lebowitz, Warren Cinamon, and Akiva Bergman for their insightful comments that helped in the preparation of this article. The editorial corrections of Mr. Yosef Sinensky are also deeply appreciated.

Pareve Meat

Rabbi Daniel Friedman

With the amazing advancements in technology that we are witnessing in the twenty-first century, and the increasing ability to create and alter foods based on laboratory tampering, the potential for synthetically-produced food is fast becoming a reality. The manufacture of artificial meat, possessing all of the chemical characteristics of meat, but not actually coming from a live animal, began as an experiment for NASA in order to enable astronauts to gain nourishment from meat manufactured by cell reproduction. A team of scientists reported in *Tissue Engineering*¹ that the technology has advanced to the point where one could “grow chicken nuggets without the chicken,”² eventually mass-produced for the average consumer. Clearly, the advantages of such production are many, including the ability to sustain growing world populations, the advantages to the environment (in terms of reduced animal methane production) and the exciting new world that is opening up to vegetarians, many of whom are so inclined on account of their disdain for the needless killing of animals. The question remaining for Torah-observant Jews is what would be the status of this laboratory-manufactured meat, vis-à-vis kashruth and meat (*fleishig*) status.

1. June 29, 2005.

2. University of Maryland (<http://www.newsdesk.umd.edu/SciTech/release.cfm?articleID=1098>).

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The Process

A meat cell is placed in a bacterial culture, where it clones itself time and time again, until an entire piece of meat is formed. The new “meat” is stretched to give it the texture of meat, and methods are currently being formulated to achieve correct feel and color.

The Appearance of Meat

If something looks and tastes like meat, does that automatically give it the title “meat”, thereby placing upon it all of the restrictions of “*basar*”?

The Talmud relates that Rabbi Chanina and Rabbi Oshia would occupy themselves in *Sefer Yetzirah*, the *Book of Creation*, and create a calf every Friday in honor of Shabbat.³ What was the status of this cow? Did it need *shechita*? Was it subject to the laws of separation between meat and milk? If something looks like meat, how could it halachically not be considered meat? The Talmud does not give details in this regard.

However, we find another example of such a phenomenon earlier in our history. The Torah says that Yosef brought the “bad reports” of his brothers to their father.⁴ The Jerusalem Talmud explains that they appeared to Yosef to be eating the flesh of a living animal, thereby transgressing one of the basic Noahide laws.⁵ There are various explanations for this talmudic statement. Rabbi Isaiah Horowitz explains that the brothers also in fact manufactured this animal with the assistance of the *Sefer Yetzirah*.⁶ Therefore, unbeknownst to Yosef, who saw them eating without *shechita*, this animal did not need *shechita*, as it

3. *Sanhedrin* 67b.

4. *Bereishit* 37:2.

5. *Peah* 1.

6. *Shnei Luchot Habrit II, Vayeshev*.

was not “born of a mother”, and only animals born of a mother require *shechita*.⁷

Thus, one could suggest that meat manufactured in a laboratory, which is not “born of a mother” is not subject to the requirement of *shechita*, (apart from the obvious inability to perform the ritual, that being that we are not creating a complete animal).

Now that we have established that a laboratory-manufactured animal may not require *shechita*, what meat could be manufactured for the kosher consumer? It goes without saying that a kosher meat cell must be used as the originator. However, perhaps we could extend this to meat from an animal that was not halachically slaughtered, or better yet, to a non-kosher animal, such as pig, relying on the concept of *bittul*, nullification, whereby the original non-kosher meat cell would be completely negligible within this new piece of meat.

Less than an Olive’s Weight

In order to receive punishment for the consumption of forbidden food, one must eat the weight of an olive.⁸ Since the size of a meat cell is miniscule, the minimum amount that one would need to eat in order to transgress the minimum quantity would not be present in this case. Thus, if our starting point is negligible, perhaps it could be argued that since the original

7. We need not be concerned here with the general principle that we do not decide halacha from *Aggadah*, as this rule would apply when we are utilizing a story that is extraneous to the text. Here however, the text clearly states that Joseph brought “their evil report”. The Jerusalem Talmud is simply explaining the nature of that report. Rabbi Horowitz, who in turn explains the ambiguity of the talmudic statement, is merely explaining an apparent difficulty in the plain meaning of the text, by giving us a statement of fact, such that when an animal is not born of a mother, it does not require *shechita*.

8. *Yoma* 80a; Rambam, “Laws of Forbidden Foods”, 14:1.

amount was too small to qualify as a prohibited substance, then any multiplication that takes place would be multiplication of a unit that was never originally punishable and therefore cannot magically, *ex nihilo*, incur punishment. Nevertheless, of course, the absence of punishment does not negate the inherent violation even for *chatzi shiur* (less than the minimum punishable amount), and so even this miniscule amount would violate the Torah's prohibition of consumption of a forbidden food.⁹

***Chatichah Naaseit Neveilah* ("Chanan") – The Piece Becomes Contaminated**

If meat absorbed a drop of milk, or vice versa, without the requisite sixty parts¹⁰ to nullify the absorbed substance, then the entire piece becomes a prohibited food item. This process is called *Chatichah Naaseit Neveilah*, the piece becomes contaminated. Thus, if this item were to fall into a new batch of kosher food, one would need sixty times that piece, in order not to prohibit the entire dish. Failing that, the entire new substance becomes forbidden food, and were that mixture to fall into a further batch, once again sixty would be needed to nullify the prohibited food, as opposed to simply sixty times the original drop of milk.

Shulchan Aruch declares that this rule applies only to mixtures of meat and milk,¹¹ because a new forbidden substance (called *basar b'chalav*, meat *in* milk) has been created (in contrast to the constituting two ingredients of meat *and* milk, which were both previously permissible), whereas this would not apply to other forbidden mixtures, because no new substance has been created, the new mixture is simply a prohibited food within a permitted

9. *Yoma* 74a; Rambam, *ibid*, 14:2.

10. *Chullin* 98a.

11. *Yoreh Deah* 92:4.

food.¹² Rabbi Moshe Isserles disagrees and applies this principle to all cases, including those of intrinsically forbidden foods. Thus the question is, when an item of food becomes contaminated by virtue of the fact that it did not contain enough kosher ingredients with which to nullify the non-kosher ingredients, and then falls into another batch, do we calculate the nullification requirement based on the initial amount of non-kosher ingredient, or based on the entire newly contaminated item? According to *Shulchan Aruch*, apart from cases involving meat and milk mixtures, the new calculation is based solely upon the original non-kosher ingredient. According to Ramo, we always calculate the entire amount of the contaminated item and must have a sufficient quantity in the mixture to nullify that entire item.

In the case of laboratory-manufactured meat, we face two potential scenarios:

(i) We could use a cell from a kosher animal, which has been legally slaughtered, thereby being kosher.

(ii) We could use a cell from either a non-kosher animal, such as a pig; or from a kosher animal, which was not slaughtered appropriately, either way rendering the initial cell non-kosher.

Using a kosher cell would not pose any problem of *Chanan*, as the entire substance would remain kosher. Using a non-kosher cell, however, would pose a problem for Ashkenazim, as per the ruling of the Ramo that all forbidden foods are subject to the problem of multiplication. This may not be a problem for Sefardim, if we redefine the process of multiplication, as follows:

The Process of Multiplication

When cells "multiply", in fact they split. Thus at first glance,

12. *Maggid Mishnah*, as brought by *Shach/Taz*.

it would appear that the result is two of the same original cell. However, in order for cells to multiply, they must be placed in a culture, which they “feed” off. The culture could consist of a variety of substances, some kosher, some not. For the purpose of this discussion, we shall assume that the culture is plant-based (a workable assumption) and therefore kosher pareve. When the cells have fed enough, they grow large enough to split into two smaller cells, which then feed off the culture, until they too are big enough to split, and so on and so forth. Now, there are three approaches that we could take to this feeding system:

(i) We could compare it to a cow eating grass. When the cow eats grass, it grows. When we slaughter the cow, are we eating cow plus grass? Clearly we are not. We are simply eating cow. Analogously, the entire new piece of meat resulting from multiplication would be the same meat with which we began. If one were to begin with a non-kosher meat cell, then the entire new piece of manufactured meat would thus be considered non-kosher.¹³

(ii) This is not a cow. This is a cell, that does not have teeth or a digestive system. Therefore the new substance, made up of meat cell plus plant culture, is just that and nothing more. This is now a mixture of the two substances.¹⁴ According to this second method of understanding, we would take the entire new piece of meat and calculate the amount of original meat cell in the total new substance and be able to nullify it. Thus,

13. To the extent that even an unborn animal in its mother’s womb is considered part of the animal (*Chullin* 99a).

14. This is the reason why honey is permissible. Instead of viewing it as a substance being produced by forbidden creatures (bees), Rambam *Mishneh Torah*, “Laws of Forbidden Foods” 3:3, describes the process as one whereby the bees simply capture the product from the flowers and hold it for a period of time, eventually regurgitating it in the form of honey, without ever having digested and processed it.

according to this presentation of the status of this meat, we could suggest that the meat would be kosher for Sefardim.¹⁵

(iii) Perhaps we could suggest that the first cell "gives birth" (that is, produces) the second cell. The Talmud discusses the situation where a non-kosher animal gave birth to a kosher animal (and vice versa).¹⁶ In such a case, even though the newly produced animal possesses all the signs of a kosher animal, we still determine that "something coming from *tameh* is *tameh*". Thus, if the first meat cell is non-kosher, the second too would be non-kosher. Nevertheless, the *poskim* argue whether this ruling of the Talmud completely renders the meat forbidden, or only with regards to eating.¹⁷ According to the *Aruch Hashulchan*, the meat would be totally forbidden.¹⁸ However, according to the *Pri Megadim*, it would only be forbidden to eat.¹⁹ Otherwise, it would be considered permissible, both stringently, that is that one would be liable for *karet* (being spiritually cut off) for partaking of its fats (*chelev*, which incur no special punishment for consumption of those deriving from a non-kosher animal, whereas for a kosher animal, the punishment would be extraordinary); and leniently, that it would be permissible to write a *Sefer Torah*, *tefillin* and *mezuzot* on its parchment.²⁰ Thus, if it could be determined that our original meat cell had "given birth" to a new plant cell, perhaps it would be permissible to use the hide for holy writings, being

15. Nevertheless, we shall see below (*davar hamaamid*) that even for Sefardim, this would pose a problem.

16. *Bechorot* 5b.

17. We find a similar dispute between Maimonides and Raabad in "Laws of Forbidden Foods" 3:4, regarding the total prohibition of human milk, or lack thereof.

18. YD 79:17.

19. YD 81:47.

20. My thanks to Rabbi Netanel Wiederblank for his suggestions here and elsewhere in this piece.

that according to the *Pri Megadim*, only human consumption thereof would be forbidden.²¹

***Ein Mevatlin Issur L'chatchila* – We May Not Actively Nullify a Prohibited Substance**

Maimonides writes that it is forbidden to take a forbidden mixture and add enough permissible food to it, in order to nullify it (in sixty) and render the food permissible.²² However, if this was done, then *ex post facto* the food may be eaten, except by the perpetrator or the person for whom the blend was combined. This *ex post facto* leniency may be relied upon for example, according to some *poskim*,²³ with regards to drinking pure orange juice, manufactured without supervision.²⁴ In most instances of laboratory-manufactured

21. Cf. Rambam, "Laws of Forbidden Foods" 3:18, who states that milk from a non-kosher animal or non-kosher eggs are biblically prohibited, without punishment (of lashes), however, as it says (Leviticus 11:8) "You shall not eat of their flesh," that is one is punished for the flesh, but not for the milk or eggs, "and one who eats them is as though he ate half the [required] amount (*chatzi shiur*) and does not get lashes for it." The *Tzofnat Paneach* takes this idea further and explains that the reason for the prohibition of eating half the minimum punishable amount is due to "something coming from *tameh*" and therefore if something comes from a forbidden substance that never contained the requisite amount, it may not be considered forbidden.

22. "Laws of Forbidden Foods," 15:25, based on *Beitzah* 4b. *Shulchan Aruch* YD 95:5.

23. Including Rabbi Moshe Heinemann of the Star-K. See www.star-k.org/kashrus/kk-thirst-generation.htm.

24. 100% pure orange juice manufactured without supervision poses the problem of what other juices may have been manufactured on the same equipment. For example, grape juices may pose *stam yaynam* (wines touched by a non-Jew) issues. However, the argument permitting the orange juice is that the first run on the equipment would effectively *kasher* the equipment (as it would almost certainly be processed at the same temperature as any previous manufacture, thereby effecting *kashering* on the basis of the principle *k'bolo kach polto*, the same temperature of liquid would draw out any previously absorbed forbidden liquids). However, now this batch of orange juice would be non-kosher. Nevertheless, upon being mixed with future batches, it would

meat, the intended consumer would be the general public (not the kosher consumer, a small minority of the public) and therefore, *ein mevatlin issur l'chatchila* would not be a concern.

Davar Hamaamid – The Essential Ingredient

Nonetheless, there is another law, which would be of greater concern. The Talmud says that we cannot nullify a substance that is an essential element of the greater mixture.²⁵ For example, cheese made by a non-Jew is forbidden for consumption. This is due to the rennet used in the cheese as part of the manufacturing process. Even though the rennet is but a minute amount and adds no taste to the final product, since it is an integral ingredient in forming the product, it prohibits the product. Here, it goes without saying that the original cell is an essential ingredient of the new larger piece of meat. Thus, we would never be able to nullify the cell.

Thus, according to both Sefardim and Ashkenazim, it would be forbidden to manufacture meat (at least for the purpose of human consumption), using a non-kosher meat cell, as this would render the entire new piece forbidden. However, it does not discount the possibility of using a kosher meat cell. The question that remains is, if one were to utilize a kosher meat cell, what would be the status of the new substance? Would it be *fleishig* or *pareve*, that is, would the new manufactured piece of meat be considered meat or not?

Fleishig versus Pareve

Rabbi Horowitz (above) has shown that there can exist a

be nullified and therefore permissible. This is because it was not mixed together for Jewish consumption, rather it was mixed together for general sale and, ex post facto, the Jewish consumer may take advantage of this and purchase the product.

25. *Chullin* 116a.

substance that looks and feels like meat and yet is not meat. Whether or not laboratory-manufactured meat has the status of meat vis-à-vis consumption with milk is dependent upon the discussion above, regarding the meat cell eating from the plant culture.

If we suppose that this is equal to a cow eating grass, then each time the cell grew from the culture and split, this would be equated with the growth of an animal and therefore retain the same status as a naturally-growing animal. If, on the other hand, we regard the growth of the meat cell as a new mixture of plant and animal life, being that consumption has not occurred in the traditional sense, we would judge the laboratory-manufactured piece of meat as a totality, consisting of meat and plant and calculate the amount of meat in the entire piece in comparison with the amount of plant. Most certainly, the plant contribution would be far greater than the original meat cell. This would then nullify the original meat cell and the new substance would be considered *pareve*. *Chanan* (the "Piece Becomes Contaminated") would not be a concern here, as there was never any prohibited food involved.

Even according to Rabbi Mosher Isserles, whose determination is that *chanan* should apply in all cases, not only those dealing with meat and milk mixtures, in this case he would certainly agree that there is no concern, as we are not dealing with any prohibition whatsoever at this point. Similarly, we need not worry about the abovementioned principle of "we may not actively nullify a prohibited substance", as this food was never prohibited.²⁶ Regarding *davar hamaamid*, the essential ingredient, Rabbi Yosef Caro writes that this applies only to completely forbidden substances and would not even apply to mixtures of kosher meat and milk, let alone to a

26. *Shulchan Aruch* YD 95:5.

completely permissible substance, such as in our case.²⁷ Meaning, even though this cell is the essential ingredient in this newly created piece of meat, we may still nullify it, because the exclusionary clause within the law of nullification (whereby one can never nullify an essential ingredient, no matter how small) only applies to forbidden ingredients. Thus, if we consider this piece of laboratory-manufactured meat to be a combination of plant culture and meat cell, the meat would be nullified within the plant mixture, and despite its appearance and taste, the meat should be considered *pareve*.

Marit Ayin

One final consideration before digging into your cheeseburger:²⁸ Rabbi Moshe Isserles writes, based on the Talmud,²⁹ that concerning a mixture of meat and almond milk, "One should place almonds next to the milk, [in order to avoid] *marit ayin*."³⁰ This may be understood loosely as wrong assumptions, that is, we are concerned lest an onlooker incorrectly assume that we are eating a forbidden mixture. Thus, in order to consume this "cheeseburger", one may have to display some form of representation that one is in fact consuming laboratory-manufactured *pareve* meat.

The question arises, however, whether perhaps such dairy/meat-appearing products are so prevalent today, that a signifying object is unnecessary, because everyone is familiar with such products and nobody would suspect that meat and dairy are being eaten together; and if so, once the Ramo has stated this halacha categorically in *Shulchan Aruch*, can it be

27. Ibid 87:11.

28. Webster's Definition: A hamburger with a piece of cheese placed on top.

29. *Kerituth* 21b.

30. 87:3.

altered with time? Contemporary halachic authorities seem to differ in this regard. According to Rav Ovadia Yosef,³¹ one would in fact no longer need a *heker* (symbolic recognizable object) nowadays, when eating products together that appear to be meat or milk, but are not.³² It is interesting to note that the *Pri Chadash* questions the Ramo's source generally for instituting *marit ayin* situations not taught by the Sages of the Talmud.³³ According to Rav Belsky, a *heker* would be required even for soy products.³⁴

31. *Yechaveh Daat* 3:59.

32. *Shulchan Aruch* (*Orach Chayim* 243:2) rules that if it is common in a certain city for people to rent out their bathhouses, one may rent one's bathhouse to a gentile, despite the Talmud's ruling in *Avodah Zarah* 21b. There is no *marit ayin* since people in this city will assume that the gentile rented the bathhouse from its owner, whereas in the time of the Talmud, this was not the practice. Thus, the *marit ayin* prohibition of the Talmud is rescinded in places and times when the concern no longer exists. This information was extracted from an article entitled, *But what will the Neighbors Think? Understanding the Halachos of Maris Ayin* by Rabbi Yirmiyohu Kaganoff, which appeared in *The Yated*, February 17, 2006, pp.64-5. Thanks to Rabbi Daniel Feldman and the OU Webbe Rebbe for clarifying some *marit ayin* issues and bringing the article to my attention.

33. *YD* 87:6.

34. From an internal document of the OU Kashrus department #X-94: Under what condition can an OU meat restaurant serve "cheeseburgers" made with *pareve* cheese? One who eats meat with *pareve* milk is required to make a noticeable *heker* that the milk is *pareve* (Ramo 87:3). If the restaurant would print "cheeseburger made with *pareve* cheese", all in the same sized font, on their menu, would that satisfy this requirement? Seemingly, this would serve as a *heker* for (a) the people who order a cheeseburger in the restaurant, but wouldn't cover (b) other people in the restaurant who see this person eating the cheeseburger, (c) people who order over the phone (and who may not even see the menu), and (d) people at a "party" who are served a meal ordered from the OU restaurant. Is this type of *heker* sufficient? Rav Belsky said that the restaurant could serve the cheeseburgers if the menu and receipts would have the above statement, since that would be a *heker* for many people (cases "a" and "c" above). He explained that the *heker* of putting almonds on the table (Ramo *ibid.*) is quite subtle and many people who see

Conclusion

Pareve "meat" would have to be grown in a medium or culture, which one cannot automatically assume would be kosher. Consequently, the entire process would require kashruth certification. It is unclear whether kashruth authorities would eventually determine the finished product to be *fleishig* or *pareve*. However, even if it is considered *pareve*, one must be aware of potential *marit ayin* issues, at least until the product becomes widespread. More to the point, it is highly questionable if any reputable kashruth organization would even be willing to provide *hashgacha* for such a product, inasmuch as the entire product is based on numerous *heterim*.

the almonds won't make the inference that the milk is *pareve*. This shows that the *heker* only has to give some indication but doesn't have to be infallible. We can extend that to say that even if some people (cases "b" and "d" above) won't see the *heker*, it is still an acceptable *heker*. As such, it is acceptable for the restaurant to sell the cheeseburgers if they indicate on the menu and on the receipts that the cheese is *pareve*.

Thus, the common occurrence and widespread use of *pareve* meat would not preclude the need for a *heker* of some sort.

Yemenite *Shofar*: Ideal for the Mitzvah?

Rabbi Ari Z. Zivotofsky, Ph.D.

Introduction¹

The only biblical mitzvah associated Rosh Hashanah is to hear the blowing of the *shofar*. It is therefore important to clarify the laws surrounding this commandment, the most basic of which is the source of the *shofar*. From what animal may it be made? The typical image is of a *ba'al toke'a* blowing a ram's horn *shofar*. But today some people are opting for long, elaborate *shofarot*, others have almost straight ones, and yet others prefer the simple ram's horns. The easiest to make is from a cow's horn. Are there preferences? Are some kosher and others not?

Talmudic sources

The answers to these questions are not found anywhere in the Torah; there are two basic mishnaic statements and their talmudic discussions, and one unlinked talmudic statement, regarding the animal source of the *shofar*. None of them address the quality of the sound produced because that is halachically irrelevant. The Talmud explicitly states (*Rosh Hashanah* 27b)

1. For a thorough analysis of this topic, see "*Drasha L'Rosh Hashanah*" of the Ramban, *Kitvei Ramban*, Chavel ed., Mossad Harav Kook, 5738, vol. 1, pages 226-234. See also: Moshe Ra'anan, "Zoological aspects in *Hilchos shofar*" [Hebrew], 269-294, in *B'Rosh Hashanah Yikateivun*, edited by Amnon Bazak, Alon Shvut, 5763.

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that all *sounds* are kosher for a *shofar*. The requirements discussed concern the *origin* of the *shofar*.

1) The Mishnah² records that for Rosh Hashanah all *shofarot* are kosher with the exception of the cow horn because it is a *keren*.³ Rav Yossi responded that indeed all *shofarot* are called *keren* and thus that should not disqualify a cow's horn.

The Talmud⁴ agrees that indeed all *shofarot* are called *keren*, but notes that all are called both *keren* and *shofar*, while that from a cow is only called *keren*. Ulla provides a further rationale for the exclusion of a cow's horn based on the principle of "*ein kategor na'asa sanegor*," a prosecutor [cow – reminiscent of the golden calf] cannot become a defender [by being used as a *shofar*].⁵ Abaye provided yet a third distinction between a cow's horn and others, based on how it grows.

2) In the following series of mishnahts (*RH* 3:3-5) two opinions are recorded regarding the source and shape of the *shofar* used on Rosh Hashanah. The first opinion maintains that on Rosh Hashanah the *shofar* should be from a straight horn of a *yael* [ibex],⁶ on fast days it should be from a bent horn of a *zachar*

2. *R.H.* 3:2.

3. And not a *shofar*. Rashi (26a, s.v. *she'hu keren*) explains that regarding *yovel*, *shofar* is written (Leviticus 25:9), and the laws of Rosh Hashanah are derived from those of *yovel*.

4. *R.H.* 26a.

5. It is striking that according to the Mishnah the *shofar* was gold plated and the Gemara's (*R.H.* 27a) only qualification is that the gold not be on the mouthpiece, with no mention of "*ein kategor na'asa sanegor*." Based on *Sukkah* 37, Rav Shmuel Kawior suggests (*HaPardes*, Kislev 5752, Nov-Dec 1991, 66:3, 9-10) that when the gold is for beautifying a mitzvah it is *batel* (nullified) and is like part of the *shofar*, and thus is not there to be an adversary. See *Chelkat Yoav* 3 and *Avnei Nezer* OC 432-433 for a discussion of when a "*hiddur*" interposes and when not.

6. Rashi translates *yael* as a "stein buck." Similarly, in Deut 14:5 he translates "*ako*" as "*yael* of the rocks," which he then says is "stein buck." Rashi was obviously not referring to the Steenbok (*Raphicerus campestris*) of Africa, a

[ram],⁷ and Yom Kippur of *yovel* it has the same requirements as Rosh Hashanah. Rabbi Yehuda disagrees and holds that on Rosh Hashanah a ram's horn should be used, but agrees that on Yom Kippur of *yovel*, a straight *shofar* of a *yael* is required.⁸

In the Talmud,⁹ Rav Levi rules like Rabbi Yehuda regarding Rosh Hashanah, and states that on both Rosh Hashanah and Yom Kippur the mitzvah is with a curved ram's horn and on fast days a straight *shofar* is preferred.

In explanation of the debate, the Talmud (*RH* 26b) explains that the *shofar* is reflective of what one's internal posture should be on the various days. Thus, the first authority in the Mishnah holds that ideally on Rosh Hashanah one should be straight and upright in prayer, based on *Eicha* 3:41.¹⁰ Rabbi Yehuda's

small antelope with very short horns (record is 7.5 inches). Rather, he meant the Ibex, a type of wild goat from the genus *Capra*, especially *C. ibex* or *C. nubiana* (Nubian Ibex). In German Steinbock is a wild goat of the rocks, an ibex. Rashi (*Chullin* 59b, s.v. *v'harei tzvi*) also identifies the talmudic *tzvi* with "steinbuck." Moshe Catane (*Otzar Lo'azei Rashi*) says that the Old French *esteinboc* is derived from the German *steinbock*, and often the printed version of Rashi has the German word without the leading e, and it means "goat of the rocks." Calling an ibex a wild goat is appropriate; they are so closely related that goats and ibex have been successfully crossbred to yield a *ya'ez*.

Tosafot (*RH* 26b, s.v. *yael*) cite the *Aruch* that *yael* is an ewe (female sheep). *Tosafot Yom Tov* and others reject this identification for various reasons. *Tosafot Yom Tov* cites a *Yerushalmi* that a *yael* is rarer than a ram, a difficult statement if *yael* is a female sheep. *Chacham Tzvi* (*shu"t* 98) defends the *Aruch* against this proof from a halacha in *Bechorot*. Others (e.g. *AH OC* 586:1) note that female sheep do not have horns. The *Ohr Zarua* (*Kilayim*, 258) quotes the *Aruch* that *yael* in *RH* is a ewe (*kisba*), but elsewhere it is a *beast* that resembles a young female sheep (*rachel*).

7. In the Mishnah "zachar" is sometimes a synonym for ram, e.g. *Shabbat* 5:2 and *Shekalim* 5:3.

8. The Ramban (*Drasha*, p. 231) suggests that these *mishnayot* are only discussing what took place in the Temple.

9. *R.H.* 26b.

10. Rashi, based on a *Yerushalmi*, inserts the notion that the Gemara is referring to prayer and cites the verse.

view prefers that when one approaches God in prayer on Rosh Hashanah, a humble, bent posture is more appropriate, and Rashi cites I Kings 9:3. On the *Yovel* (Jubilee), when we proclaim freedom, an upright posture is warranted.

3) Another source states (*RH* 16a): "Rabbi Abahu asked: 'why is a *shofar* of a ram (*ayil*)¹¹ blown [on Rosh Hashanah]? Because God said 'blow before me with a ram's horn so that I will remember the sacrifice of Yitzchak the son of Avraham (*Akeidah*),¹² and I will credit you as if you sacrificed yourself to me'."

Halachic Rulings – The *Shulchan Aruch* and Others

The *Shulchan Aruch* (OC 586:1) mentions a requirement that does not appear to have a talmudic source when he rules that the "horns" of most *chayot* [non-domesticated animals] which are one solid bone [i.e. antlers] and do not have an insertion are invalid as *shofarot*. The Ramo (*ibid*) adds another rule that is seemingly without a talmudic basis and that is difficult from both an halachic perspective and the reality, when he prohibits the use of a *shofar* made from the horn of a non-kosher animal. These two rulings require lengthy discussions and will be addressed elsewhere.

11. A sheep (*Ovis orientalis*) in its second year is called an *ayil*. Regarding *shofar* the age and gender are immaterial (*Taz* 586:1) and the Rambam (*shofar* 1:1) simply used the word *keves* – sheep, not *ayil*. This is as opposed to an *ayal* mentioned e.g. in Gen 49:21 and Deut 14:5, which is the common deer (*Cervus capreolus*). It is important to distinguish between *ayil* and *ayal* and the *Aruch Hashulchan* (OC 586:3) claims that the *Taz* (586:1) mixed them up. This apparent mix-up is also stressed by Rabbi Akiva Eiger (OC 586) and his son-in-law the *Chatam Sofer* (OC 586). *Tzvi* is most likely the gazelle (*Gazella gazella*) native to Israel.

12. See Genesis 22:13 where Avraham sacrifices a ram in lieu of his son Yitzchak. Note that the verse explicitly points out that the ram was entangled in its horn, encouraging the suggestion that the horns play a significant role.

From the mishnaic sources above it seems that there are two debates. The first is between the Rabbis and Rav Yossi regarding the use of a cow's horn. The second is between the Rabbis and Rav Yehuda, and seems to be regarding the preferred *shofar*, not which are valid or invalid. This is how many *Rishonim* see it.¹³¹⁴ In this manner Rabbi Abahu's statement is an explanation of the preferred, not the only, source of a Rosh Hashanah *shofar*.

As will be seen shortly, the Rambam did not understand the sources this way, but the *Shulchan Aruch* (OC 586:1) rules in this manner and states that the mitzvah on Rosh Hashanah is with a curved ram's horn, but post-facto all *shofarot*, whether curved or straight, are kosher, although curved is preferred, except that from a cow, which is always unacceptable. The *Elef Hamagen* (586:5) delineates the order of preference:¹⁵ 1) curved ram; 2) curved other sheep; 3) curved other animal; 4) straight – ram or otherwise;¹⁶ 5) non-kosher animal; 6) cow horn. The first four categories are used with a *beracha*, the fifth without a *beracha*, and the final, not at all. The *Mishnah Berurah* (586:4) subdivides level three with a preference for a goat over an

13. This is the way Tosafot (RH 26b, s.v. *shel yael*), Rosh (RH 26b and *Kitzur Piskei HaRosh*, RH 3:1), Rashba, Ran, Ramban (*Chidushei Ramban* RH 26b – who thought this was so obvious he apologized for writing it), Raavad (commenting on Rambam, *shofar* 1:1), *Rokeach* (203, p. 93 in 5727 ed.), and Meiri (RH 3rd perek, Mishnah 4) understood the discussion.

14. A modified version of this understanding is that the Rabbis and Rav Yossi were debating the source of the *shofar* while the Rabbis and Rav Yehuda were discussing the preferred shape of the *shofar* (Ramban, Rashba, *Turei Even*).

15. This order is also how the *Taz* (586:1) and the *MB* (586:5) understand the *Shulchan Aruch*. See a similar list in Rav Chaim Kanievsky, *Shoneh Halachot*, 586:1-4. The *Aruch Hashulchan* (OC 586:3) suggests the possibility of a slightly different order in which a ram, even straight, is preferred over a curved, non-ram.

16. This would probably include the gemsbok, even though it is today called in Hebrew *re'em*. See my forthcoming article for a discussion regarding the horn of a *re'em*.

antelope, because it is more akin to a ram, and thus more reminiscent of the *akeidah*.

Most authorities permitted *shofarot* from other than ram's horns, but clearly viewed ram's horns as a preference. This led to an interesting edict in early 15th century Germany. Rabbi Yom Tov Lipmann Muelhausen¹⁷ issued a public proclamation in which he notes that the Rambam and others permit only *shofarot* from rams and those who do permit non-ram *shofarot*, prefer that it be from a ram. Yet, he says, for the previous 40 years all *shofarot* made in Germany were from goats! And even when people brought ram's horns to the sole (non-Jewish) *shofar* maker, he substituted goat's horns and fashioned them into *shofarot*. Rav Muelhausen states that in order to rectify this travesty, two years prior he got Jewish *shofar* makers to produce *shofarot* from ram's horns and they are now spreading; therefore, he is issuing a curse on anyone who makes or utilizes a non-ram *shofar*. This was true whenever a ram's horn was available, even if it were smaller or produced an inferior sound.

Halachic Rulings – Rambam and Others

The Rambam (*Hilchot shofar* 1:1) understands the apparently competing mishna's as just that, and rules significantly differently than the *Shulchan Aruch*. He views Rav Levi's statement and Rav Abahu's statement as exclusive and not merely as the preference, and the halacha does not follow the first mishnah. Thus, he states that the *shofar* on Rosh Hashanah and *yovel* must be from a curved sheep's horn.¹⁸

17. Muelhausen's letter was republished by Avraham Berliner in "*D'varim Atikim, Kvod Halevanon*," Sept 2, 1869 [26 Elul, 5629], *Halevanon*, vol. 6, pages 278-279, available on the Hebrew University website. I thank Professor Yisrael Yaakov Yuval for pointing this letter out to me. On the preference for a ram's horn over a goat's see: *Otzar Hageonim*, 53.

18. Significantly the Rambam does not say *ayil* but *keves*.

From where did the Rambam derive this? Rav Kapach¹⁹ observes that Rav Saadya Gaon²⁰ had ruled similarly, and suggests that the source is the Gemara²¹ quoting a *braita* in which Rabbi Akiva explained that the word *yovel* (Jubilee) means a ram, and thus a ram's horn is used. Because the laws of Rosh Hashanah are learned from *yovel*, Rabbi Akiva holds that on Rosh Hashanah only a ram's horn is kosher, and there is a general rule that the halacha follows Rabbi Akiva.

Despite the *Tur*'s²² comment that the Rambam was opposed by all, the *Aruch Hashulchan*²³ has a different read on the debate. He concurs that the *Shulchan Aruch* is following in the footsteps of the Raavad, Rosh, Ramban, Ran, and *Tur*. However, he claims that the Rambam is not alone, and expresses surprise that the *Shulchan Aruch* did not even mention the Rambam's opinion, and notes that Rashi, Tosafot, *Smag*, *Yereim*, and *Hagahot Maimoni* all agree with it.²⁴

Some suggest that the Rambam agrees with the *Shulchan Aruch*. They suggest that when the Rambam ruled that all *shofarot* not from *keves* are *pasul*, he meant to exclude only bovine ones; however a goat and *yael*²⁵ are acceptable and are included in

19. *Commentary to Rambam, Hilchot shofar 1:1*, note 8.

20. *Siddur Rav Saadya Gaon*, 5730 ed, p. 217.

21. RH 26a.

22. OC 586.

23. OC 586:3, 5.

24. There are several sources, including a note in the 5746 edition of *Mateh Efraim*, that direct one to see *Shu"t Pnei Yehoshua* OC:30 who supposedly defends the Rambam's position against all attacks. I have been unable to locate such a *Pnei Yehoshua*. See, however, the *Lechem Mishneh* who indeed defends the Rambam's position at great length.

25. *Yael* is included because it is considered a "wild goat." The Radak in his *Sefer Hashorashim* (end of *shorash* "*yael*") defines a *yael* as a "*tayish bar* – wild goat". So too *Metzudot Tzion* on *Iyov* 39:1 translates *yael sela* as "wild goat."

keves. Rav Yosef Karo in the *Beit Yosef*²⁶ cites this without comment, the *Taz*²⁷ cites it approvingly, and Rav Yosef Karo in the *Kesef Mishneh* quotes this suggestion and rejects it as not being what the Rambam meant. Indeed most commentaries understood the Rambam as he clearly wrote – nothing but sheep. However *Sefer Beit David* on the *Tur*²⁸ asserts that this interpretation of the Rambam, which he attributes to the *Orchot Chaim*, nicely explains the Rambam's statement in his commentary to the Mishnah that the halacha is not like Rav Yossi.

Kudu Horns

While the Rambam seems to be in the minority in this regard, if one follows the Rambam, his opinion seems clear. Thus, for example, most Yemenites in general follow the Rambam and not the *Shulchan Aruch*, and thus would seem to be bound by this ruling as well. This raises an interesting problem. The vast majority of the Jewish world uses ram's horns, the major exception being "Yemenite shofarot", the long curved horns made from the greater kudu (*Tragelaphus strepsiceros*).²⁹ How is it that they use shofarot that are not from rams?

The first question is did/do Yemenites actually use the kudu horn?³⁰ In the *Jewish Encyclopedia* (Vol. 11, page 303) there are

26. OC 586, end of s.v. *v'dah*.

27. 586:1.

28. Rav Yosef David, 1734; #406.

29. The greater Kudu (*Tragelaphus strepsiceros*), a slender antelope of order Artiodactyla, family Bovidae, is native to eastern and southern Africa. It is 1.3 meters at the shoulder, reaches a maximum weight of 450-600 pounds. With its narrow, vertical white stripes on its reddish brown body and a fringe on the throat it is easily identifiable. The male has long divergent corkscrew like horns, the longest of which was measured at 67 inches.

30. Yemenites may not be the only ones who use other than a ram's horn. Rabbi Herbert Dobrinsky (*A Treasury of Sephardic Laws and Customs*, Ktav,

pictures of 13 different *shofarot*. Only number 1 is from a kudu and the legend describes it as used by the “Beni-Israel of Bombay.” Interestingly, none of the 13 is said to be from Yemen. However, all of those pictures are taken from a pamphlet issued as part of the *Smithsonian Annual Report* in 1892 written by Cyrus Adler and called *The shofar – Its Use and Origin*.³¹ *Shofar* #5 from plate XLVIII is the above referred to *shofar* and has the same legend. On page 301 additional details are provided, and it notes about that *shofar* that “It was brought from Aden [Yemen], and is said to be made of the horn of an animal called the ‘cudoo’”. In the 1974 *Encyclopedia Judaica* (Vol. 14, entry: *shofar*, pages 1445-1446) there are pictures of 8 *shofarot*. Number 8, the kudu *shofar*, is described as “Yemen, 18th century”. Rav Yaakov Sapir (*Even Sapir*, 5749 ed., page 165) records that when he visited Yemen in the late 1850s, in all of Yemen they used *shofarot* of a *yael* that were two *amot* long and very curved. Avraham Shmaryahu, who moved to Israel from Yemen in 1949 and now lives in Ramat Gan, clearly remembers that in the synagogue in Yemen they used the very long, curved *shofarot*, although there were also medium sized *shofarot* available.³² It indeed appears that in at least some parts of Yemen the kudu horn was used as a *shofar* on Rosh Hashanah.

What would the Rambam say in the absence of a ram’s horn? The Chida (*Birkei Yosef*, 586:1) quotes his teacher as saying that in places where they have accepted the Rambam as their authority, if there is no ram’s horn available, they should not

1986, p. 331) records (without source) that “It is a tradition among the Spanish and Portuguese Jews to use the horn of an antelope for the *shofar*. Thus, it is longer and straighter, without the many bends that some *shofarot* contain.” Indeed Rabbi Nathan Cardozo reports (personal email March 1, 2002) that the Spanish Portuguese in Amsterdam use an antelope *shofar*. However, Rabbi Abraham Levy of the London Spanish and Portuguese synagogue reports (Personal conversation 3/30/2000) that they use a “regular” *shofar*.

31. From the Proceedings of the *United States National Museum*, vol. XVI,

say a *beracha* on any other *shofar*. He, however, disagrees. Rav Aharon Kapach (*Yeriot Aharon*, Jerusalem, 5763, p. 41) asked his teacher Rav Yosef Kapach (no relation) about using other horns and he replied that according to the Rambam, blowing anything other than a ram's horn is the same as using a piece of wood.

Rav Ovadya Melamed³³ suggests that rams' horns are easier to acquire than the "*yael*" horns that the Yemenites use and this is a proof that there must be an ancient Yemenite tradition that preceded the Rambam, that *yael* horns are acceptable, and maybe even preferable because of the greater amount of curves. Rav Shlomo Muchrar,³⁴ an elderly Yemenite *talmid chacham* who grew up in Yemen and now lives in the Haifa area, stated exactly the opposite. He remembers that the only reason the kudu horn was used in Yemen despite it being less than the ideal was that in parts of Yemen sheep with usable horns were virtually non-existent.

Rav Yosef Kapach³⁵ addresses the issue of the source of *shofarot* used in Yemen. He observes that most Jews in Yemen used rams' horns as required, but there were those who used horns from a *yael*, and in the city Tza'ana there were those who used the long, curved horns. Others objected to its use and in defense it was claimed, and Rav Kapach says it seems quite implausible, that they are also rams' horns. Others, he writes, admit it is not from a ram, but argue that it is an ancient tradition among Yemenite Jews to use it and it accords with the basic law that all horns other than from a bovine are kosher. In 1887 Rav Yechezkael Shaul-Rofeh was sent from Tiberias to Yemen as an emissary of the *beit din*, and upon returning to Tiberias he brought one of those *shofarot* to ask the sages of Tiberias about

1893, pages 287-301 with plates XLVI-XLIX.

32. Personal conversation, November 19, 2006.

33. *Mesoret hatefillah v'shoresh haminhag l'eydut yeshurun*, n.d., p. 301.

using it. Their response was simply that in their region there is no such thing as a horn like that from a member of the sheep family, nor have they ever heard of such a thing, and therefore the sender should continue to research the source.³⁶

There may actually be a side benefit to the Yemenite custom. The fact that the Yemenites use the horn of this antelope for a *shofar* may have kashrut ramifications. The *Chochmat Adam*, *Chazon Ish*, and others³⁷ require a *mesorah* for an animal species to be kosher. Assuming that there is no disagreement that the horn of a non-kosher animal is not acceptable for use as a *shofar*, the Yemenites' use of a kudu horn might be sufficient to satisfy the requirement for a *mesorah* and enable all segments of Jewry to treat the kudu as a kosher animal. But this is currently only speculative.

Shape of the *shofar*

The Mishnah³⁸ mentioned "a straight horn of a *yael* (antelope)" and a bent horn of a *zachar* (ram)". Yet an antelope horn does not appear to be straight. One common explanation is that the *yael* horn is *curved* while the ram horn is *spiraled*. This would mean that the description of the *yael* horn as "*pashut*" means bent but not spiraled. Alternatively, the difference is not in the quality (curved vs. spiral) but in the quantity of the curves, as the Meiri there explains, that "*pashut*" means not as bent as a

36. Although no corroboration should be necessary to justify what appears to be a longstanding tradition of an entire ancient Jewish community, former chief Rabbi Eliyahu Bakshi-Daron recently stated for the record that kudu *shofarot* are kosher, are not from a bovine species, but are also not from a ram (cited in Rabbi Dr. I.M. Levinger, "List of potentially kosher animals" [Hebrew], *Teudat Kashrut*, 28-29[Nissan-Iyar 5764/April-May 2003], p. 43).

37. See sources in Ari Zivotofsky, "Buffalo, Giraffe, and the Babirusa ("kosher pig"): The Halakhic and scientific factors in determining their kashrut status", *BDD*, Winter 2001, 12:5-32.

38. *RH* 3:3-5.

ram's horns. However, the same word, *pashut*, is used in a Mishnah in *Eruvin* (ch. 1) and there it must mean actually straight and cannot mean bent as a *yael* horn. It is possible that the Mishnah in *RH* really meant straight, and that *yael* has a broader definition. It includes not only the ibex found in Ein Gedi, but cousins such as the gemsbok (*Oryx gazella*), a type of African oryx that indeed has ramrod straight horns.

In making a *shofar*, the ossicone is removed from the casque, leaving the proximal end of the "*shofar*" hollow. Because the ossicone does not extend the entire length of the casque, the distal end is hollowed by drilling. If it is curved this is not an easy task. It is made easier either by cutting off a larger section of the solid end or by applying heat to straighten the mouthpiece end.³⁹ Rav Yosef Kapach has strongly argued against this straightening, which he says is not done by Yemenites.⁴⁰ He notes that the Mishnah, Gemara, Rambam, and *Shulchan Aruch* all stress that a *shofar* should be a curved ram's horn. The word curved would seem to be superfluous because all ram's horns are by nature curved, and he thus concludes that it may not be straightened. How much is too straight? Rav Kapach suggests that it should be considered straight if it resembles a *yael* horn, and from his accompanying illustration it appears that he understood a *yael* to be an ibex. Not only is it no longer a

39. Experimentation (by Dr. Ethan Schuman) has found that dry heat at 550 degrees Fahrenheit can significantly soften the horn. Supposedly the heating can soften it to the extent that it can be "poured" into a mold and made into a "perfect" *shofar*. There was such a scandal in 1992, with *shofarot* that were all identical and literally "too good to be true" (*Jerusalem Post*, Sept. 4, 1992).

40. "*Shofar shel Rosh Hashana*", *Sinai*, Nissan-Elul, 5731, 69:209-212; also found in his commentary to Rambam, *Hilchot shofar* 1:1, note 7, and emphasized again in the middle of note 8. Note that in addition to the problem raised by Rav Kapach and discussed here, this heating introduces another problem. During the heating and straightened holes may develop in the *shofar* and less than scrupulous *shofar* makers have been known to fill in those holes, and this may invalidate the *shofar*.

preferred curved *shofar*, but, he argues, it is no longer a *shofar* at all, but rather a *chatzotzra* (trumpet). Both a *chatzotzra* and a *shofar* can be from an animal's horn, so there must be a difference.⁴¹ This difference, he argues, is that a *chatzotzra* is straightened out while a *shofar* is not. Such a straightened horn would thus be *pasul* (invalid) as a *shofar*.⁴²

Mateh Efrayim (586:2) prefers a bent horn (*mitzvah l'chatchila*) to a ram's (*mitzvah min ha'muvchar*) and rules that if it was straightened out, it is considered as if it was initially straight.

Rav Saadya Gaon⁴³ states that it is prohibited to change the shape of the horn. The *Pri Megadim*⁴⁴ rules that if artificially straightened, it loses the advantage of being curved, and it is like *pashut*, although it is certainly still kosher. Rav Yaakov Etlinger⁴⁵ similarly explains that the Gemara gives both the reason of a remembrance of the *akeidah* and that one should be bent in his prayers to teach that a *shofar* from a ram is not sufficient if it is straightened in hot water.

Rav Moshe Sternbuch⁴⁶ writes that one should preferably use a Yemenite *shofar* made from a ram's horn because they do

41. In the talmudic period and later, the names *shofar* and *chatzotzra* took on interchangeable and confused meaning as indicated by Rav Achai Gaon in the *Sheiltot* (171), writing that on the first of *Tishrei* we are obligated to blow a *chatzotzra*. For sources on the shape, source (including that *chatzotzra* can be of animal source and not only silver), and use of a *chatzotzra*, as well as on the confusion that existed, see Rav Mordechai HaKohen, "*B'kol shofar v'chatzotzra*," *Torah She'b'al Peh*, vol. 7, 5725, 47-53.

42. The existence of this discussion is due to the natural shape of the ram's horn, which is usually quite curved at the narrow end and thus requires straightening to drill it. A cow's horn is actually much straighter and thus easier to make into a *shofar*.

43. *Siddur Rav Saadya Gaon*, 5730 ed., p. 217.

44. *Eishel Avraham* 586:1 and *Mishbetzet Zahav* 586:1.

45. *Aruch Laner*, RH 26b, Tosafot s.v. *shel yael*.

46. *Mo'adim U'zmanim*, vol. 8, notes on vol. 1, #5, "*hiddurim in shofar*".

not alter the shape by heat treatment, and it is preferable to use a *shofar* whose natural shape has not been changed.⁴⁷ Rav Kapach once explained to his students that in Yemen the hole was “drilled” in the curved part of the horn without straightening it, by using a piece of flexible metal heated red hot.⁴⁸ There was thus no need to cut off a large percentage of the horn in order to bore the hole.

Despite all of this, it is clear that the standard practice, at least in Ashkenazi lands, was to straighten the *shofar*. Scribal books⁴⁹ compare the shape of the *shofar* to the letter *vav* – which is straight with just a small curve at the end – a clear indication that typical Ashkenazi *shofarot* were straightened for a significant fraction of their length.

***Shofar Hagadol* in Jewish Thought**

One might be inclined to refer to the kudu *shofar* as a *shofar hagadol*, a phrase that is found in *Tanach*, lore, and liturgy. It should be obvious that “*gadol*” in those contexts can mean great and not necessarily large, but it is interesting how this phrase is understood by various *midrashim* and commentators. The *Rokeach*⁵⁰ actually understood it as large, suggesting that for *tchi’at hametim* God will use a *shofar* that is one *amah* as measured by His *amah* based on *Zechariah* 9:14..

The Rebbe of Kotzk once explained that “*u’bshofar gadol yitaka*” means that if an *adam gadol*, a great person, will blow the *shofar*, then even if the only sound that emerges is a *kol d’mama daka* –

47. Note that although he writes about a “Yemenite *shofar*” he does not mean a kudu horn, but rather a ram’s horn made the way Yemenites fashion it without straightening.

48. Reported to me by Rav Hananel Seri on 9/26/06.

49. Cited in Yosef Bransdorfer, *Orah V’simcha* on *Hilchot shofar* of the Rambam, Yerushalayim, 5766, p. 12-13.

50. End of 203, p. 96 in 5727 ed.

a soft small sound, nonetheless *malachim yichafezun chil v'ra'ada yocheizun* – the angels will hasten, a trembling and terror will seize them.⁵¹

In the weekday *amidah* and in the *musaf* of Rosh Hashanah we ask for God to blow a *shofar gadol* to usher in the redemption. Rav Kook⁵² explained that there are three levels of “*shofarot* of redemption” corresponding to the three levels of kosher *shofarot*. On Rosh Hashanah there is the ideal ram’s horn, the kosher horn of other species, and the *b’deived* horn of a non-kosher animal or a non-Jewish *avodah zara* animal. The “*shofar*” of the *mashiach* refers to the motivation, the call, which gathers the dispersed Jews home to Israel and Jerusalem. The ideal redemption and ingathering will be when the Jewish people appreciate that their mission as a holy people can only be actualized in the holy land. This is a religious motivation that is called the great *shofar*. Less ideal, but acceptable, is if the Jewish people return to the Land as an expression of our desire to live among our own people in our own land in a free state, i.e. a social and political motivation. This is an average *shofar*. Finally, there is the small, *pasul* (unworthy) *shofar* that is blown when no kosher *shofar* is available. The least desirable is if none of the positive motivations exist and instead our enemies awaken our need for redemption and drive us home to our land. One who fails to heed the first or second clarion call because his ears are stuffed, will perforce hear the call of the third small, *pasul shofar* and thereby fulfill his obligation. However, we pray to hear the great *shofar*, the ideal call to redemption and return that arises from deep within the Jewish

51. *Sippurei Chassidim*.

52. In a *drasha* delivered on Rosh Hashanah 5694 [1933] in the Churva Synagogue in the Old City of Jerusalem and printed in *Ma'amarei HaRaya*, vol. 1, pp. 268-269. I thank Rabbi Prof. Moshe Sokolow for first drawing my attention to this beautiful *drasha*.

soul and calls us to accept our holy mission in our Holy Land, and that God will no longer need to blow the *pasul shofar*. Even for the average *shofar*, the secular nationalism, we no longer pine. Rather, it is the great *shofar* of the ram's horn that symbolizes the great religious and spiritual yearning that we hope will drive all Jews home.

Akeidat Yitzchak

As noted above, the preference for a ram's horn is based on several factors, one of them being its connection with the *akeidah* (binding) of Yitzchak. In the eyes of *chazal*, the *akeidah* is a central theme on Rosh Hashanah, and thematically it is intertwined with the future great *shofar* and the redemption. The section of the Torah (Gen 22:1-24) describing the *akeidah* was selected as the Torah reading for Rosh Hashanah. Foods customarily eaten on Rosh Hashanah include the head of a ram in remembrance of the *akeidah*.⁵³ In the medieval period, some *shofarot* had pictures of rams engraved on them. The earliest source to mention the custom of *tashlich* explains that its purpose is to commemorate the *akeidah*.⁵⁴ And it is repeatedly invoked in the prayer service.

The Midrash⁵⁵ states that the donkey that the *messiah* will ride on (*Zechariah* 9:9) is the same donkey used by Avraham en route to the *akeidah*, just as the *shofar hagadol* that we await (*Isaiah* 27:13) is identified with the right horn of the ram used in lieu of Yitzchak. Regarding the *shofar*, the Midrash states that two *shofarot* were made from the horns of the ram: The left horn was heard at Mount Sinai (*Exodus* 11:19). The larger, right horn will be blown in the future at the ingathering of the

53. See *Tur* (OC 583 in the name of Maharam Rothenburg), *Shulchan Aruch* (OC 583:2), and *Kaf Hachayim* OC 583:22.

54. *Maharil*, section on Rosh Hashanah, chapter 39.

55. *Pirkei D'rebbi Elazar* 31.

exiles (Isaiah 27:13).⁵⁶

The Midrash (*Midrash Rabbah, Vayera*, 56:9) sees the *akeidah* as a microcosm of all of Jewish history and eventually we will be redeemed by the ram's horn as it is written, "... and the Lord God shall blow the *shofar* ..." (*Zechariah* 9:14).

Conclusion

There is a great deal more to discuss about the philosophy and significance of the mitzvah of *shofar*. The present study addresses just the technical aspects of the source of the *shofar* and in particular the points relevant to the use of kudu horns for the mitzvah. According to all opinions the preferred horn to use for a *shofar* on Rosh Hashanah is a curved ram's horn, and according to the Rambam this is the only option. There are various reasons for this preference including its curved shape and the memory of *akeidat* Yitzchak. It is also a reminder of our prayers for the future redemption based on the fact that the above cited *midrashim* all imply that the future "great *shofar*" will be a ram's horn.⁵⁷ The *Ateret Zekanim*⁵⁸ cites the *Zohar* that specifically a ram's horn should be used, because through it Israel removes the Throne of Judgment and replaces it with the Throne of Mercy.

With so much in favor of a ram's horn, the question arises why one would perform the only biblical mitzvah of Rosh Hashanah, in anything less than the ideal manner?

The *Aruch Hashulchan* (OC 586:3) concludes his discussion of this topic by noting that although the *Shulchan Aruch* ruled in

56. This midrash implies a specific *shofar hagadol*, while Isaiah 27:13 says *b'shofar*, not *bashofar*, indicating a great *shofar*, not the great *shofar*.

57. Such horns can indeed also be physically big, sometimes containing two or even three complete spirals.

58. Cited in *Elef Hamagen* 586:2.

the footsteps of the Raavad, Rosh, Ran, and *Tur*, nonetheless, seeing that Rashi, Tosafot, *Smag*, *Hagahot Maimoni*, and *Yereiim* all ruled like the Rambam, that the only kosher *shofar* is a curved ram's horn, it is obvious that we should be concerned for their opinion as well, certainly regarding a biblical mitzvah, and not permit any other *shofar*. Indeed that is the custom of the Jewish people.

The rationale for using a kudu *shofar* are either if one is a Yemenite who has that tradition, in which case there is merit to preserving a custom, or if the kudu horn is not at all artificially straightened and the ram one is, maybe it is better to use a curved kudu rather than a straight ram's horn. However, the mouthpieces of most commercially available kudu *shofarot* are straightened. Barring those circumstances, it seems clear that the ram's horn is given preference.

Letters

To the Editor,

In his excellent and well-researched article on head covering ("Yarmulkas and Hats: Societal Custom or Halachic Imperative?", *JHCS*, Fall 2006 pp.5-36), Rabbi Henschel Morris presents an insightful and highly organized discussion of the many issues that surround the topic.

One concept that was touched upon but, I believe, could benefit from additional sources and elucidation, is the distinction between the need for a minimal head covering and the need for a covering of the entire head (or at least the majority of the head). While the author does make this distinction with reference to covering the head for *tefillah* (pp. 25-28), there are numerous other examples of this requirement. The Talmud also mentions such an obligation for the following:

- 1) The acceptance of Shabbat (*Shabbat* 119a) and *Yom Tov* (see Rambam, *Hil. Yom Tov*, 6:16).
- 2) The judges on a *Beit Din* (*Shabbat* 10a).
- 3) Those who visit the sick (*Shabbat* 12b).
- 4) A cup of blessing (*Brachot* 51a).
- 5) The leper, the excommunicated, and the mourner (*Moed Katan* 15a).

When there is a more intense halachic need for submission and serious reflection (*hachnaa v'koved rosh* – see for example the comment of the *Drisha* on the *Tur, Orach Chaim*, 183:7), there is a need to cover all of the head.

In *tefillah*, it is the fact that one stands in the presence of the *Shechina* that mandates this act. Such is the theme in cases 1-3 above. Case 4 is not as easily understood. In case 5 above, it is interesting to note that the sense of submission and serious

reflection is created by exactly the opposite experience – that one is distant from the *Shechina* (for a full discussion of these and other issues, see my article, *Atifot Harosh, Beit Yitzchak*, Vol. 20, 5748, pp. 269-276).

The proliferation of works presenting the *shiurim* and thoughts of Rabbi Joseph B. Soloveitchik have clearly illustrated how he extended the notion of *atifat harosh* beyond the specific cases of the Gemara and applied it to other areas where the halacha deems the presence of the *Shechina* to be extant. Examples include:

1) *Selichot* – due either to the Gemara in *Rosh Hashana* 17b, as a source for the *chazzan* to cover his head with the *tallit*, just as *Hashem* was portrayed as a *chazzan* with the *tallit* over his head when the thirteen attributes were presented (see Arnold Lustiger, *Before Hashem You Shall Be Purified*, pp. 51-53), or due to the status of these prayers as a quasi *Shemoneh Esrei*, thus requiring everyone to have their head fully covered (see B. David Schreiber, *Noraot Harav*, Vol. 9, pp. 10-11).

2) The entire Yom Kippur *davening* (see Ahron Ziegler, *Halachic Positions of Rabbi Joseph B. Soloveitchik*, Vol. 1, pp. 81-82).

3) At the time when the *kohanim* bless the congregation (see Rabbi Soloveitchik, *Divrei Hashkafa*, p. 178).

Dvarim Shebikedusha (liturgical elements which due to their sanctity require a *minyán* – in contrast to Rabbi Morris's alternative use of the term to distinguish between the need to cover the head for sacred, as opposed to mundane, purposes) also require *atifah* according to Rabbi Soloveitchik; see Ziegler, *Halachic Positions of Rabbi Joseph B. Soloveitchik*, Vol. II, p. 41, 44).

Moreover, as is now well documented in various sources, Rabbi Soloveitchik held, in following the unique view of his illustrious grandfather Rav Chaim, that there were times when one should not cover one's head with the *tallit*: during *Keriat*

Shema and its *brachot* and during *Keriat Hatorah* (see *ibid.* p. 42, and Rav Herschel Shachter, *Nefesh Harav*, p. 104, 124).

This makes for an interesting contrast with the conclusion of Rabbi Morris's article, which cites the view of the *Aruch Hashulchan*, that since the act of normative head covering engenders a fear of heaven and will prevent one from falling prey to his *yetzer hara*, it behooves one to always keep his head covered. In the view of Rabbi Soloveitchik, however, at least with reference to the more specific mandate of *atifat harosh*, the rules that govern the usage of this halachic concept teach that its performance is to be avoided in certain circumstances, regardless of the significant spiritual benefits that such an act generally yields.

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To the Editor,

I would like to thank Rabbi Balk for citing the rulings of Rabbi Joseph B. Soloveitchik z"l (as recorded by Rabbi Ziegler and others), which extend the need for full head covering beyond *shemoneh esrei* proper. As noted in my original article (see p. 27 with note 50), *Mishnah Berurah* 8:4 endorses such an extension when he codifies *Bach's* view advocating full head covering for the entire daily *davening*. Rabbi Soloveitchik's rulings stop short of accepting *Bach*, limiting *atifat harosh* to *selichot* et al. Still, the principle that Rabbi Balk infers from those rulings -- that the requirement of full head covering extends beyond *shemoneh esrei* proper -- is indeed supported by earlier *poskim*.

Rabbi Balk cites other situations where the Gemara requires *atifah* that, he feels, indicates a need for full head covering. I thank him for noting the case of judges on a *beit din*, where Rashi's commentary supports his conclusion. I would, however,

add these observations about other cases that he cites:

Case 1 -- Accepting Shabbat: Rashi to *Shabbat* 119a interprets the Gemara's *atifah* requirement as dressing in attractive clothing (*mitatef b'begadim na-im*); *Tur* and *Shulchan Aruch* OC 262:3 codify the *begadim na-im* requirement and do not mention *atifat harosh*. Similarly, Rambam *Hil. Shabbat* 30:2-3 mandates only *ituf batzitzit* (which presumably refers to *atifat haguf* -- see *Mishnah Berurah* 8:3) and never mentions *atifat harosh*. It thus seems that *atifat harosh* is unnecessary when accepting Shabbat.

Case 4 -- A Cup of Blessing: Many *Rishonim* (e.g., Rif, Rosh, *Shulchan Aruch* 183, *Mekubalim* cited in *Magen Avraham* 183:5) subscribe to R. Yochanan's view in *Berachot* 51a that *atifat harosh* is not required, although *Mishnah Berurah* (183:11) does record a prevailing custom of wearing a hat during *birkat hamazon*.

Case 5 -- Mourners et al: *Moed Katan* 15a indeed mandates *atifat harosh* for them, but Ramo (YD 386:1) states that the custom is not to do so, and he actually discourages stringency (*v'ein l'shanot b'mah she'lo nahagu avoteinu*).

I fail to understand, however, why Rabbi Balk "contrasts" Rabbi Soloveitchik's view about *atifat harosh* during *kriat shema* with *Aruch Hashulchan's* advice, i.e. that whenever possible, one should keep his head covered to engender *Yirat Shomayim*. As Rabbi Balk notes, Rabbi Soloveitchik had reasons for discouraging *atifat harosh* during *kriat shema* and *kriat hatorah*, but he never condoned actual bareheadedness at any time. Why, then, assume that he would disagree with *Aruch Hashulchan*? Given the many *poskim* cited throughout my article that consider some head covering to be obligatory or *midat chassidut* at almost all times, I consider *Aruch Hashulchan's* conclusion to be a good piece of practical advice, and I see no reason to believe that Rabbi Soloveitchik would have disagreed.

Rabbi Henoch Morris