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**Rabbi Alfred S. Cohen,
Editor**

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The Journal of Halacha and Contemporary Society is published twice a year by the Rabbi Jacob Joseph School whose main office is at 3495 Richmond Road, Staten Island, New York, 10306. We welcome comments on the articles included in this issue and suggestions for future issues. They should be sent to the Editor, Rabbi Alfred Cohen, 5 Fox Lane, Spring Valley, New York 10977.

Manuscripts that are submitted for consideration must be typed, double-spaced and on one side of the page and sent in duplicate hard copy to Rabbi Cohen. Each article will be reviewed by competent halachic authority. In view of the particular nature of the Journal, we are especially interested in articles that concern contemporary halachic issues.

More generally, it is the purpose of this Journal to study through the prism of Torah law and values major questions facing us as Jews in the twenty-first century. This encompasses the review of relevant biblical and talmudic passages and the survey of halachic literature, including recent responsa. Most importantly, the Journal of Halacha and Contemporary Society does not present itself as the halachic authority on any question. Rather, the aim is to inform the religious Jewish public of positions taken by respected rabbinic leaders over the generations.

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Celiac: A Guide to Mitzvah Observance

Rabbi Dovid Cohen

A. Introduction

1. Medical information¹

Celiac disease² is an autoimmune condition where the body reacts to the consumption of gluten/gliadin, a protein found in wheat, barley, rye, and spelt. The celiac's (colloquial term for a person affected by celiac disease) body responds to the consumption of gluten in a manner which damages the small intestine, particularly the villi that line the duodenum (beginning of the small intestine). This, in turn, affects the celiac's ability to absorb calcium, iron, and a number of vitamins.

Different celiacs exhibit radically different levels of symptoms to this condition. The classic symptoms of celiac diseases are gastrointestinal, including abdominal pain,

1. The medical information presented in this section is merely an introduction to the halachic issues discussed in this article and is, of course, no substitute for guidance from a physician.

2. Celiac is technically not a "disease" and is more closely associated with allergies. It is more formally known as celiac sprue or gluten sensitive enteropathy.

diarrhea, and atypical stools. Other celiacs have no apparent stomach symptoms but fail to grow appropriately, have dermatological symptoms and/or show the effects of iron deficiency (lethargy, irritability), while other celiacs have absolutely no symptoms at all. This author is personally aware of one celiac who couldn't get out of bed for a day after eating foods she wasn't supposed to, another (child) whose behavior would change so dramatically after eating gluten that her teachers could tell when she had mistakenly ingested the wrong food, and a third who was completely asymptomatic. The potential long-term effects of not properly absorbing these nutrients are quite serious for all celiacs, and among other conditions include amenorrhea, anemia, infertility, intestinal lymphoma, and osteoporosis.

Currently, there is no known treatment for celiac disease. Rather, celiacs must adopt a strict, lifelong gluten-free diet which allows their intestines to heal and absorb nutrients; in turn, their symptoms subside and they can expect to be as healthy as anyone else. Invariably, a celiac will make a mistake and eat some gluten, and it appears that it may take days, weeks, or even months for their intestines to fully recover from the incident.³

3. In response to a question on how long it takes for a celiac on a gluten-free diet to recover from a one-time consumption of gluten, Dr. Stefano Guandalini, Professor of Pediatrics and Chief of the Section of Gastroenterology at University of Chicago Comer Children's Hospital, wrote to the author (via email) that:

It depends on too many variables: amount of gluten introduced, duration of the ingestion, even the genetic asset (DQ2 homozygous vs. heterozygous, etc.). The short answer is: it varies. However, in general I would think that after one single "dose" of gluten the small intestinal inflammation should recover typically within days (5-10) in children, and perhaps a few weeks in the elderly. This is based on my best guess, there is no literature on this (but there is literature showing that in many adult celiacs some minimal degree of inflammation can actually persist for months or even years in spite of a GFD [gluten-free diet]...).

Another gastroenterologist told the author that an adult celiac who ingested gluten one time could be "set back months".

The general consensus⁴ of expert opinion appears to be that most celiacs are permitted to eat oats that are specifically grown, processed, and packaged in a gluten-free environment (as opposed to standard oats which are often contaminated), but some celiacs are unable to tolerate even such oats.

A gluten-free diet is difficult for anyone, but is particularly difficult for a religious Jew who is expected or required, for the purpose of a mitzvah, to eat foods made from the five primary grains – wheat, barley, spelt, rye, and oats⁵ – on

4. See, for example, <http://www.csaceliacs.org/InfoonOats.php>.

5. Throughout the generations, the majority of *Poskim* have accepted the opinion of Rashi (*Pesachim* 35a s.v. *shibolet shual*, שְׁבֹלֶת שׁוּעַל) who translates *shibolet shual* as oats (using the French word “aveine/avoine” which is similar to the Latin name for oats, *avena sativa*).

In recent years, this translation was challenged by Dr. Yehudah Felix, an Israeli botanist, who argued that oats did not grow in *Eretz Yisroel* at the time of the Mishnah. Furthermore, he cited other indications that oats could not possibly be one of the five grains discussed in the Mishnah, which have a unique halachic status. According to Dr. Felix’s position, oats cannot be used for matzah, and the other halachot of the five grains (*challah*, *berachot*, *chametz*) do not apply to them. [His position, that oats, which are relatively gluten-free, are not one of the five grains, would seem to dovetail with those who suggest that the presence of significant amounts of gluten is what differentiates the five grains from rice, corn, and other “grains”.]

This suggestion was widely rejected by all contemporary *Poskim*, including Rav Moshe Feinstein, Rav Elyashiv (both cited by Rav Ephrati at the end of his article in *Mesorah* 13), and Rav Yosef Dov Soloveitchik (see *M’pneinei HaRav*, p. 69), based on our age-old tradition that שְׁבֹלֶת שׁוּעַל is oats. Additionally:

– Dr. Mordechai Kislev (*Sefer HaYovel*, *Mincha L’Ish*, pp. 155-168 & 179-185) disputes Dr. Felix’s archeological and other proofs, on academic grounds.

– Dr. Munk (*Techumin* I pp. 97-100) suggests that what differentiates the five grains from all others is that they contain beta-amylase (which oats do contain), which allows the fermentation to occur before the proteases cause the grains to go rancid.

– Rav Ephrati (*ibid.*) and Rabbi Kestenbaum (*Sefer HaYovel* *ibid.*, pp. 169-170) report that they tested oats and have found that they *can* become *chametz* (as the five grains are supposed to) and do not become rancid (as other grains are supposed to).

Based on the above, we will assume that oats are שְׁבֹלֶת שׁוּעַל and are

different occasions. This article will address those issues, providing background and possible solutions for the celiac.

2. Mitzvah performance which makes one ill

In the coming pages, we will discuss a number of different *sh'ailot* (halachic issues) which celiacs face due to their inability to eat certain foods. Before discussing those specific questions and possible solutions, it is worthwhile to discuss the more general question of whether a person is required to perform a mitzvah if doing so will cause him to become sick.

In this context, there are three levels of sickness – *safek sakanah* (slightest chance of mortal danger), *choleh she'ain bo sakanah* (illness that temporarily incapacitates), and *michush* (minor discomfort). It goes without saying that if there is any chance that performing a mitzvah will lead to *safek sakanah*, the person should definitely not perform the mitzvah. However, in most cases a celiac who breaks his diet one time to perform a mitzvah will fall into the category of a *choleh she'ain bo sakanah*, and we will therefore limit our discussion to the halachot of that case.

A person is not required to spend more than 1/5 of his money to fulfill a positive biblical mitzvah (*aseh d'oraitah*), such as lulav or matzah.⁶ What if eating matzah (or performing some other positive mitzvah) will make the celiac sick to the point that he/she will become a *choleh she'ain bo sakanah*? Is that justification for that person not to perform the mitzvah? A number of *Acharonim*⁷ discuss this question, as follows:

therefore suitable for all mitzvot which require one of the five grains.

6. Ramo 656:1. A person may not violate a *mitzvat lo ta'aseh d'oraitah* (negative biblical commandment) unless they are in a situation of possible danger to life--*safek sakanah* (ibid.), but there do not appear to be any situations where a celiac would face that choice due to his illness; we will therefore ignore that possibility.

7. Many of the sources cited in this section were brought to the author's attention by *B'tzel HaChochmah* 5:92.

- *Maharam Schick*⁸ discusses whether a *choleh* who eats matzah or *marror* against the doctor's orders can recite a *beracha* and appears to hold that if there is no *sakanah* one **must** perform the mitzvah even though it will make him sick.
- *Birkei Yosef*⁹ appears to hold that a *choleh she'ain bo sakanah* is *patur* (exempt) from positive biblical mitzvot, where performing the mitzvah exacerbates or causes his sickness.
- *Aishel Avraham*¹⁰ suggests that there is no special leniency for a *choleh* (sick person) except that if the person would be willing to pay 1/5 of his money to avoid the illness caused by fulfilling the mitzvah, then he is excused from performing that mitzvah.
- *Binyan Shlomo*¹¹ presents a long discussion on this question. He brings opposing proofs¹² and at one point seems to think the question is a *machloket* (disagreement) between two answers cited in *Elyah Rabbah* 640:8. However, he later suggests that hurting one's body is considered worse than spending one's money, and inasmuch as one is not required to spend more than 1/5 of his money for a positive mitzvah, he is also not required to make himself sick (as a *choleh she'ain bo sakanah*).
- *Tzitz Eliezer*¹³ cites this latter part of *Binyan Shlomo* and accepts it.

8. *Maharam Schick* OC 260.

9. *Birkei Yosef* 640:5.

10. *Aishel Avraham* (*Butshetsh*) *Tinyana* on *Ramo* 656:1 s.v. *ulai*.

11. *Binyan Shlomo* OC 47 (*Rav Shlomo Vilna*).

12. Some of his most direct proofs are from *Gemara Succah* 25a and 26a and *Shulchan Aruch*/*Ramo* 640:3-4; some of these proofs can also be found in *Birkei Yosef*, *ibid*.

13. *Tzitz Eliezer* 14:27 (and in 19:22 relating to celiacs). *Avnei Nezer* YD 321 advances a similar line of reasoning in a situation where performing a *brit* on the eighth day would render a child permanently maimed. [Of course, it is more understandable that one would be lenient in that case than in ours.]

A number of contemporary *Poskim*¹⁴ accept the lenient opinion and rule that a celiac who has **no other option** but to either perform the mitzvah *d'oraitah* or become sick, is excused from performing that mitzvah. Others who might follow the strict opinion should consult carefully with a rabbi and doctor before performing a mitzvah that might endanger their health.

The above discussion is limited to a positive mitzvah (*aseh d'oraitah*), but all agree that one is not required to make himself sick in order to perform a **rabbinic** mitzvah (*aseh d'rabannan*).¹⁵ This ruling encompasses many of the *sh'ailot* which will be discussed in the coming pages.

The aforementioned principles have bearing on many issues covered in this article, and should be kept in mind when considering those issues. For example, the discussion on how a celiac can fulfill the mitzvah of eating matzah at the Seder will consider different options, but if none of those options are viable for a given person, the decision about whether or not to eat wheat matzah will be based on the principles noted above.

In the coming pages we will discuss a number of questions that celiacs might face due to their condition. The discussion will be divided into the following sections: *Shabbat & Yom Tov*, *Pesach*, *Succot*, *Other Yomim Tovim*, *Berachot*, and *Miscellaneous*.

14. *Poskim* who adopt the lenient opinion include:

- *Tzitz Eliezer* cited in the previous footnote.
- Rav Chaim Pinchas Scheinberg (*Halacha U'refuah* Vol. 4 pages 125-138) basically accepts the *strict* opinion, but (on pages 134-135) follows the lenient position for people with a chronic/ongoing condition; celiacs would presumably qualify for that leniency.
- Rav Moshe Sternbuch (*Halacha U'refuah* Vol. 4 page 147).
- Rav Gedalia Dov Schwartz, in a personal conversation with the author (and others seemed to share this opinion).

15. *Shulchan Aruch*/Ramo YD 155:3. The exceptions to that rule do not appear to be relevant to our discussion.

B. Shabbat & Yom Tov (General)

3. Kiddush

In order to fulfill the mitzvah of *kiddush*, one must not only recite or hear *kiddush*, but also do so “*b’makom seudah*”, literally “where the meal will take place”.¹⁶ If people heard *kiddush* but did not do so *b’makom seudah*, they have not fulfilled their obligation and may not eat any other food. The literal translation of *b’makom seudah* is “in the location of the meal” but *Shulchan Aruch*¹⁷ clarifies that “meal” is defined as the type and quantity of food for which the person has to recite *birchat hamazon* or *al hamichyah*. Therefore, he holds that if a person eats a *kezayit* of *mezonot*¹⁸ cake or a *revi’it* of wine he has eaten a “*seudah*”.

According to this opinion, if a celiac attends a *kiddush* where there is no gluten-free oat/*mezonot* cake, (s)he may still fulfill the obligation of *kiddush b’makom seudah* if they drink a *revi’it* (about 3 ounces)¹⁹ of grape juice or wine. [If the celiac is the person reciting *kiddush*, he should preferably drink two *revi’iot* – one for *kiddush* and the other to fulfill the obligation of *kiddush b’makom seudah*.]²⁰

However, Rav Akiva Eiger²¹ argues that this opinion--that *kiddush b’makom seudah* can be fulfilled with a *revi’it* of wine--is based on a rejected opinion cited in *Shulchan Aruch* 184:3. He maintains that in practice one must eat a *kezayit* of *mezonot* (or

16. *Shulchan Aruch* 273:1 & 3.

17. *Shulchan Aruch* 273:5 as per *Mishnah Berurah* 273:22 & 25.

18. In this context, “*mezonot* cake” refers to cake which earned that *beracha* due to the presence of one of the 5 primary grains, but a cake that is *mezonot* due to the presence of rice does not qualify (see *Mishnah Berurah* 273:25).

19. See *Kol Dodi Hagadah* (Rabbi Dovid Feinstein) 2:6.

20. See *Mishnah Berurah* 273:27 based on *Prishah* 269:3 and *Taz* 273:4. [It is however noteworthy that *Prishah* and *Taz* are commenting respectively on *Beit Yosef* and *Ramo* who hold that one *revi’it* is sufficient.]

21. Rav Akiva Eiger to *Shulchan Aruch* 273:5 based on *Prishah* 269:3.

hamotzi). *Mishnah Berurah*²² rules that *l'chatchilah* (preferably) one should be strict and follow this opinion, but when there is no other choice, one may rely on *Shulchan Aruch* who holds that drinking a *revi'it* of wine qualifies as *b'makom seudah*. Accordingly, a non-celiac (who can eat *mezonot* cake) or a celiac who has gluten-free *mezonot* cake should satisfy the obligation of *kiddush b'makom seudah* by eating a *kezayit* of cake. However, a celiac who does not have gluten-free *mezonot* cake can satisfy that obligation by drinking a *revi'it* of wine or grape juice.

Drinking this much grape juice or wine at a meal (where they do not eat *hamotzi* foods) affects the *berachot* (blessings) on other foods eaten at that meal; this will be discussed below in Section 20.

4. Challah

*Shulchan Aruch*²³ rules that the evening and day *seudot* of Shabbat (and *Yom Tov*)²⁴ must include bread. Elsewhere, however, *Shulchan Aruch*²⁵ clarifies that there is a difference between this requirement and the requirement to eat "bread" on the first two nights of Pesach (and Succot).²⁶ On the first nights of Pesach there is an inherent requirement to eat matzah, but this is not the case for Shabbat. On Shabbat the only reason *Chazal* required a person to eat bread is as a means of assuring that he would get the most pleasure from his

22. *Mishnah Berurah* 273:25.

23. *Shulchan Aruch* 274:4.

24. *Shulchan Aruch* *ibid*, does not specifically note that the *Yom Tov seudot* require bread. However, that position can be inferred from *Shulchan Aruch* 188:6 where Shabbat and *Yom Tov* have a similar status as relates to someone who forgot the additional paragraph added to *birchat hamazon* (as opposed to someone who forgot on *Rosh Chodesh*, discussed in *Shulchan Aruch* 188:7). See more on this in footnote 29.

25. *Shulchan Aruch* 167:20 as explained by *Taz* 273:3 and *Magen Avraham* 167:41.

26. See *Mishnah Berurah* 167:95.

Shabbat *seudah*. For this reason, the halacha is that someone who gets more pleasure from **not** eating, is actually permitted to fast on Shabbat!²⁷

According to the above explanation, it would seem that a celiac is excused – and in fact, even forbidden²⁸ – from eating bread/*challah* at the Shabbat *seudot*. The mitzvah is to have *oneg* Shabbat (pleasure) as a result of eating bread, and although celiacs may actually enjoy biting into a piece of *challah*, they will get more pleasure from **not** eating wheat-based products. Clearly, then, *Chazal* never required them to eat bread on Shabbat. It would appear that the same is true of *Yom Tov*.²⁹

27. *Shulchan Aruch* 288:2.

28. See *Mishnah Berurah* 288:3. However, this leniency does not apply to a (non-celiac) person who enjoys bread (or some other form of *hamotzi*) but would rather eat other foods instead (Rav Dovid Zucker, *Rosh Kollel Zichron Shneur*, Chicago). As noted, the celiac will not be eating bread at the Shabbat *seudah* and will conclude the meal with the *bracha* of *al hagefen* for the grape juice or wine they drank (as in #3 above) (and *borei nefashot* for other foods). The *beracha* of *al hagefen* has a special insertion for Shabbat, and there is a question whether the celiac must repeat *al hagefen* if (s)he forgot this insertion – see *Pri Megadim* AA. 188:9 and *Kehillot Yaakov*, *Berachot* #25. (A non-celiac who will eat bread at the Shabbat *seudah* surely does not have to repeat *al hagefen* in this situation.)

29. *Beit Yosef* (OC 188 page 168a) cites Rosh (*Berachot* 7:23) and others, who say that the requirement to eat bread on *Yom Tov* is based on the mitzvah of *simcha* (joy), which does not apply on Shabbat. However, there is still a mitzvah on Shabbat of *oneg* (pleasure). *Responsa Chatam Sofer* OC 168 says that the mitzvah of *simcha* is different than the mitzvah of *oneg* (which also applies on *Yom Tov*), in that *simcha* objectively requires the person to eat even if he does not enjoy doing so, while *oneg* does not. If we combine these two statements – the requirement to eat bread on *Yom Tov* is based on *simcha*, and *simcha*-based requirements are not influenced by the person's subjective likes and dislikes – one can draw the conclusion that someone who does not enjoy bread must nonetheless eat it on *Yom Tov*.

However, the truth is that *Darchei Moshe* 529:2 (cited in *Mishnah Berurah* 529:20) states that one who enjoys fasting on *Yom Tov* is permitted to do so as “that is considered his pleasure”, and *Ramo* 529:2 codifies that when he states that the halachot of fasting on *Yom Tov* are the same as on Shabbat. In addition, *Responsa Levushei Mordechai* OC 93 proves that the statement by

Of course, a celiac who is medically permitted to eat gluten-free oats and can obtain *challah* or matzah made from such oats, reverts to being in the same status as everyone else who is required to eat bread/*challah* at the *seudot* of Shabbat and *Yom Tov*.

[See Sections 9 and 13 regarding how a celiac can fulfill the mitzvah to eat bread/matzah on the first two nights of Pesach and Succot.]

5. *Berachot* on Shabbat Foods

The proper *beracha* on Shabbat foods prepared for a gluten-free diet (e.g. oat muffin, *cholent*) are discussed in Sections 19-22.

6. "*Shalosh Seudot*"

In order to encourage people to recite *havdalah* (the blessing recited over a cup of wine to mark the official conclusion of Shabbat) as soon as possible, *Chazal* decreed that one may not eat after Shabbat until they actually perform that mitzvah.³⁰ One exception which *Shulchan Aruch*³¹ offers is that:

If the person began eating before nightfall, he may continue eating, but if he merely sat down to drink, then he must stop once nightfall occurs.

Many people take advantage of this leniency, starting their

Rosh cannot be understood according to its simple reading, because if so the requirement to eat bread would apply on *Chol HaMoed* (when there is a mitzvah of *simcha*) and not on the first night of *Yom Tov* (when there is not), when in fact neither of those statements are correct. He suggests, therefore, an alternate understanding of Rosh (which is possibly in line with *Chatam Sofer* who discusses eating but does not specifically mention bread).

In conclusion, while there is reason to think that the requirement to eat bread applies on *Yom Tov* even if the person does not enjoy eating it, Ramo indicates that this is not so.

30. *Shulchan Aruch* 299:1.

31. *Ibid.*

shalosh seudot (the third Sabbath meal, in the afternoon) just before *shekiah*/sunset and then continuing to eat even well after nightfall. However, there is a *machloket* (disagreement) regarding this halacha, and that *machloket* is quite relevant to celiacs.

- *Aruch HaShulchan*³² and other prominent *Poskim* assume that the term “eating” in *Shulchan Aruch* refers specifically to someone who began eating bread or some other food upon which the *beracha* of *hamotzi* is recited. Such meals are meaningful enough that a person who starts the meal is allowed to continue eating for as long as he wants to. However, a person who merely eats cake, fruit, or some other food is similar to *Shulchan Aruch*’s latter case, of someone who sat down only to drink, and that person must stop his meal when nightfall occurs.
- However, *Shevet HaLevi*³³ understands that a person may be lenient regardless of which food he ate before nightfall, on condition that he was eating that food as part of (or to begin) the *shalosh seudot*. Since the person designated this food as his Shabbat *seudah*, Shabbat “continues” for as long as he eats and, in a sense, the time for *havdalah* does not begin until he has finished eating. According to this more-expansive reading of *Shulchan Aruch*, one who eats any food is considered to be “eating”, and only someone who sits down only to drink must stop when nightfall happens.

The common practice is to follow the stricter interpretation, but this poses a particular difficulty for celiacs who cannot eat

32. *Aruch HaShulchan* 299:5; this is also the opinion of *Yalkut Yosef* 299:1 and appears to be the opinion of *Pri Megadim* AA 299:2 and *Mishnah Berurah* 299:2. See also *Shemirat Shabbat Kehilchatah* 59:14 and footnote 47 there.

33. *Shevet HaLevi* 8:36 (end) based on *Levush* 299:1 (end). [Rashbam, *Pesachim* 105a s.v. *havdalah* understands the halacha in a manner similar to *Levush*.]

bread or other *hamotzi* foods. In order to be strict (*machmir*) for *Aruch HaShulchan*, they would have to finish their *shalosh seudot* before nightfall. Often this would force them to eat at a different time than the non-celiac members of the family and/or not have much time to eat after *mincha* (which is commonly scheduled to end just before *shekiah*).

To sum up, the reasons which might permit a person with celiac to adopt the lenient opinion are as follows:

- In cases of great need one may often rely on a lone lenient opinion, especially as relates to rabbinic prohibitions (such as this).
- *Aruch HaShulchan* and the other *machmirim* do not explain the basis for their position. It may be that it is based on an assumption that the person's choice **not** to eat bread is itself an indication that the person is merely snacking and not eating a "true" meal.³⁴ If so, they may agree that a celiac, who does not have the option of eating bread, can be lenient as long as he is eating what he considers a "true" meal.
- As noted, the prohibition is a means of reminding people to recite *havdalah*. Accordingly, *Mishnah Berurah*³⁵ rules that in cases of need one may even **begin** a meal after sunset as long as it is more than 30 minutes before the time when (they hold) one may recite *havdalah*. Although *Mishnah Berurah* reserves this leniency for those in need, it may well be that the celiac can rely on this as a matter of regular practice.
- *Shulchan Aruch*³⁶ cites a minority view that women are not obligated to recite *havdalah* at all. One could argue that

34. See *Shemirat Shabbat Kehilchatah*, Chapter 59 footnote 47, who suggests a similar line of reasoning in a different context.

35. *Mishnah Berurah* 299:1.

36. *Shulchan Aruch* 296:8; see also Ramo ad loc.

according to that opinion, women would be permitted to eat even before they recite *havdalah*. Although the normative halacha does not accept that opinion, it may be an additional factor permitting a female celiac to eat *shalosh seudot* later than *shekiah*.

7. *Eruv Chatzeirot*

On Shabbat, one is forbidden from carrying items outside the house in areas that are not surrounded by walls (i.e. a *reshut harabim* or *karmelit*). Additionally, even if the area is enclosed by walls or a *tzurat hapesach* (colloquially referred to as an “*eruv*”), Chazal decreed that if the area is used by the residents of more than one house, one may not carry there unless they first create an *eruv chatzeirot*.³⁷ Thus, although the hallways of an apartment building are surrounded by walls, and the streets of one neighborhood may be enclosed with an “*eruv*”, the residents of the building or neighborhood cannot carry in the hallway or street unless there is also an *eruv chatzeirot*.

An *eruv chatzeirot* is created by designating a piece of food to belong to all the residents who have rights to use the shared area, and the joint ownership of the food item is what allows them to carry in the shared area. One rule of *eruvei chatzeirot* is that they are effective only as long as the food item remains edible,³⁸ and therefore a box of matzot – which remains edible without refrigeration for many months – is the most common food-item used to create an *eruv chatzeirot*.³⁹

Does that mean that a celiac, who cannot eat matzah, cannot participate in the community-wide *eruv chatzeirot* because the *eruv chatzeirot* is not edible for **him or her**? If that were the case, then in the examples given above, the celiac would not

37. Shulchan Aruch 366:1 & 386:1.

38. Shulchan Aruch 368:5.

39. Ramo 368:1.

be able to carry in the shared hallway or street. Fortunately for the celiac, this is not a concern, as the halacha is that one may create an *eruv chatzeirot* even using matzah of *terumah*, even though *terumah* can be eaten only by *Kohanim* (and the *eruv chatzeirot* includes non-*kohanim*).⁴⁰ The halacha merely requires that the *eruv chatzeirot* be edible to some residents (as opposed to being spoiled and inedible), but does not require that every single resident be permitted or able to actually eat the food.⁴¹ Therefore, just as a non-Kohen may use a *terumah* matzah, so, too, a celiac may use a gluten-containing matzah.

8. *Eruv Tavshilin*

When *Yom Tov* occurs on Friday, one is required to create an *eruv tavshilin* to permit cooking on that Friday for Shabbat.⁴² An *eruv tavshilin* must include a cooked item and should preferably also include a baked item.⁴³ As with the *eruv chatzeirot*, an *eruv tavshilin* is effective only so long as the food remains edible;⁴⁴ it is therefore common to use a cooked egg and a matzah for the *eruv tavshilin*.

While the halacha is quite clear that a matzah may be used for *eruv chatzeirot* even if some people cannot eat matzah, a contemporary work, *Eruv Tavshilin Ha'aruch*,⁴⁵ cites a *machloket*

40. *Shulchan Aruch* 386:8.

41. See, for example, *Mishnah Berurah* 386:47 who discusses the acceptability of an *eruv chatzeirot* made of *challat chutz la'aretz* (challah taken from dough outside the land of Israel) which is *tamei* (halachically impure) where, although by the letter of the law it is permitted to a *Kohen* (after *tevillah*), but the custom is that no *Kohanim* eat it nowadays. This indicates that even an *eruv chatzeirot* which no one can actually eat right now (because the *Kohen* hasn't yet undergone *tevillah*, and even if he were to do so would not eat it due to the custom) may still be used since the food is potentially edible to at least one person.

42. *Shulchan Aruch* 527:1.

43. *Shulchan Aruch* 527:2, as per *Mishnah Berurah* 527:5.

44. See, for example, *Shulchan Aruch* 527:15.

45. *Eruv Tavshilin Ha'aruch* 6:12 (and the footnotes ad loc.), by Rabbi Yisroel Dovid Stern (B'nei Brak 5755). [His discussion does not specifically

(disagreement) whether the same leniency applies to *eruv tavshilin*. *Kol Bo*⁴⁶ holds that it does, and would therefore hold that a celiac could use wheat-matzah for an *eruv tavshilin*. On the other hand, he cites *Divrei Shalom*,⁴⁷ who brings a number of proofs that the *eruv tavshilin* must be edible to the person using the *eruv tavshilin*. He therefore recommends that the celiac should use some other baked item for his *eruv tavshilin*.

Even within the strict opinion, it is worth noting that:

- At the very end of the responsum (*teshuvah*), *Divrei Shalom* notes that if the person setting up the *eruv tavshilin* cannot eat the food being used but others in the family can, the *eruv* is effective for those other people. Therefore, he would agree that the non-celiacs in the family can surely rely on the *eruv* made with matzah.
- The entire requirement to have a baked item is merely *l'chatchilah*, as the letter of the law is that it is sufficient to have merely a cooked item.⁴⁸ Accordingly, even if the matzah is not suitable for the celiac's *eruv tavshilin*, the *eruv* is *b'dieved* acceptable.

C. Pesach

9. Matzah at the Seder

One of the primary mitzvot at the Seder is to eat matzah, and

address celiacs.] He suggests that the *machloket* depends on the *Poskim's* different explanation for exactly why *eruv tavshilin* is effective (see *Biur Halacha* 527:1 s.v. *v'al y'dei*).

46. *Kol Bo*, *Hilchot Eruvei Tavshilin* (which is Chapter 59) (Volume 3 pp. 374-375 of the Yerushalayim 5752 edition). The same position can also be found in *Orchot Chaim*, *Hil. Yom Tov, Din Eruvei Tavshilin* #3.

47. *Divrei Shalom* 4:91, by Rabbi Shalom Kraus (5739). *Eruv Tavshilin Ha'aruch* does note that *Divrei Shalom* and the other contemporary *Poskim* who share his opinion do not record the opinion of *Kol Bo*, implying that they may not have been aware that a *Rishon* disagrees. [See *Shach* in rule #8 printed after YD 242 regarding how to rule in such a situation.]

48. See *Mishnah Berurah* 527:5.

since matzah is typically made of wheat the celiac faces a serious question of if and how they can fulfill that mitzvah.

A – Availability of oat matzah

Approximately 20 years ago, Rabbi Ephraim Kestenbaum of London began developing gluten-free oat matzah so that celiacs and others allergic to wheat could fulfill the mitzvah. His thinking was that oats are one of the five grains which Jewish law considers suitable for matzah, and oats are also naturally low in gluten, which is the protein which causes a reaction in celiacs; most of the medical community therefore believes that it is safe for celiacs to eat oats. Consequently, he developed specific breeds of oats which are particularly low in gluten and also suited for producing matzah, and he has been producing hand and machine oat matzot ever since.⁴⁹ Although these matzot are quite expensive, they serve as a welcome relief for the many celiacs who want to eat matzah at the Seder without compromising their health.

Two objections have been raised to the production and use of oat matzot, as follows:

B – Production

*Shulchan Aruch*⁵⁰ records that matzah may be made from any (or all) of the five grains, including oats, but Ramo comments that the *minhag* (custom) is that all matzah should be made from wheat. *Mishnah Berurah*⁵¹ sees the *minhag* as based on the assumption that people prefer wheat matzah. He therefore rules that if wheat matzot are not available, one may bake matzot from the other four grains. Accordingly, a celiac who is unable to eat wheat matzah would clearly be permitted to bake and eat oat matzot.

49. For more on these matzot and information on where they can be purchased, see <http://www.glutenfreeoatmatzot.com/>.

50. *Shulchan Aruch* 453:1.

51. *Mishnah Berurah* 453:2.

However, Maharsham⁵² suggests that a second reason for the *minhag* is based on the Gemara⁵³ which indicates that the *chimutz*-process for some grains is different than for wheat, and we should therefore only bake matzah from the grain with which we have the most experience (i.e. wheat). Based on this, *Minchat Yitzchok*⁵⁴ says that one should not produce matzot from non-wheat grains even for those who are unable to eat wheat matzah.

Although the responsum (*teshuvah*) ends on a strict note, Rabbi Kestenbaum⁵⁵ reports that when Dayan Weiss was informed that there are some people who are so allergic as to be unable to eat wheat matzah under any condition, he agreed that such people were permitted to eat oat matzot.⁵⁶ This leniency is quite understandable in light of Ramo/Maharsham merely reporting a *minhag* to use wheat only; the leniency is even more appropriate regarding the oat matzot made by Rabbi Kestenbaum, since, in fact, he now has many years of experience working with oats and preventing them from becoming *chametz*.

C – Use at the Seder

A more serious question is whether oat matzot, as they are manufactured nowadays, are suitable for use at the Seder. The Gemara in *Pesachim* 35a says, "...anything which can become *chametz* may be used for the mitzvah of matzah." The *Rishonim*

52. Maharsham in his comments to *Orchot Chaim* (453:2).

53. Gemara, *Pesachim* 40a, which is referred to in *Magen Avraham* 453:5 & 9.

54. *Minchat Yitzchok* 9:49.

55. Rabbi Kestenbaum in *Sefer HaYovel*, *ibid*.

56. There is even indication of this position in the printed *teshuvah* where *Minchat Yitzchok* concludes with a statement that he believes it is highly unlikely that anyone cannot tolerate one *kezayit* of wheat matzah, giving the impression that his ruling may partially be based on that understanding. See also *Cheshev HaEphod* III:9 who takes a more lenient (but somewhat similar) stance in a *teshuvah* addressed to Dayan Westheim, *Rav HaMachshir* for Rabbi Kestenbaum's matzot.

have two ways of understanding this:⁵⁷

- Ramban⁵⁸ holds that this means that the specific mixture of grain and liquid used in creating a matzah must be susceptible to *chimutz* (becoming *chametz*). However, matzot made from wheat flour and *mei peirot* (fruit juice) without water cannot be used at the Seder because such a mixture can **never** become *chametz*, even though wheat flour mixed with water can.
- Rambam⁵⁹ maintains that the Gemara is providing criteria for determining which **species** of grains can be used to create Seder matzot, but that there is no specific requirement that the **specific** grain used in creating any given matzah should be able to become *chametz*. Therefore, in the aforementioned case of wheat flour mixed with *mei peirot*, Rambam would consider the matzah suitable for use at the Seder (if one overcomes the concern of לחם עוני).⁶⁰

This *machloket* is relevant to oat matzot, because oats are different than other grains in that they must be heat-treated before being stored. After that treatment they are unable to become *chametz* (as per Gemara, *Pesachim* 39a). If so, according to the understanding of Ramban (that one may only use matzot made from a mixture which could become *chametz* if left alone for long enough), oat matzot would not seem to be acceptable for use at the Seder, since heat-treated oats cannot become *chametz* even if they are mixed with water!⁶¹ (This

57. Many of the sources cited in this section are from the article of Rabbi Shmuel Singer in *Mesorah* 15, pp. 90-94.

58. Ramban, *Milchemot Hashem, Pesachim* 10b.

59. Rambam, *Hil. Chametz U'matzah* 6:5 as per *Maggid Mishneh* and *Lechem Mishneh* ad loc.

60. The requirement that matzah used at the Seder be "poor man's bread", i.e., not enriched with fats or juices.

61. Interestingly, it would appear that the facts noted in the text would obviate the concern of *Minchat Yitzchok* noted earlier (that we cannot be sure

concern would not apply to spelt matzah, which may be a solution for some people who are allergic to wheat.)

Thus, it turns out that using oat matzot at the Seder depends on whether one follows the opinion of Rambam or Ramban. Which opinion is accepted? A number of *Acharonim*, including *Pri Megadim*⁶² and *Gra''z*⁶³ (both of whom seem to be based on *Magen Avraham*⁶⁴), appear to follow the strict opinion of Ramban. *Chayei Adam*⁶⁵ cites a number of proofs to Rambam's position, and concludes his discussion with the statement that one may rely on Rambam in *sha'at had'chak* (a time of urgent need). This statement indicates that he prefers the strict opinion wherever possible.

The reticence of *Poskim* to rely on the lenient opinion is mirrored in *Shevet HaLevi*⁶⁶ who, in a *teshuvah* written to Dayan

how long it takes other grains to become *chametz*). On the other hand, we must consider that in an unpublished *teshuvah* on the topic of oat matzot (which covers many of the issues discussed in the text), Dayan Westheim raises another concern with the heat-treatment of oat matzot, suggesting that the considerable moisture released during the process might itself cause *chimutz*. He concludes that this does not pose a concern, and *Shevet HaLevi* 9:117 (cited below) concurs with this position.

62. *Pri Megadim* MZ 461:2 discusses the question and appears to take a strict approach, citing *Magen Avraham* 471:5 (among others), and only references *Magen Avraham* 454:1 as an afterthought. (See more on *Magen Avraham's* position in the footnotes below.)

63. *Gra''z* 462:1 citing exactly the same rationale as *Magen Avraham* 471:5 (in fact, *Magen Avraham* is the source noted in the margin of *Gra''z*).

64. *Magen Avraham* 471:1 (end) appears to follow the opinion of Ramban (see *Dagul Mirivavah* ad loc.) and that seems also to have been the assumption of *Magen Avraham* 454:1. However, *Magen Avraham* 454:1 then suggests (ואפשר לומר) an answer which would agree with Rambam (see *Dagul Mirivavah* ibid.). [Rav Akiva Eiger ad loc. actually references Ramban on *Magen Avraham's* answer, as if to say that Ramban disproves the possibility of saying such an answer.] As noted in a previous footnote, *Pri Megadim* and *Gra''z* appear to conclude that in essence *Magen Avraham* accepts Ramban. See also *Chatam Sofer* to *Magen Avraham* 471:1.

65. *Nishmat Adam*, Pesach #15.

66. *Shevet HaLevi* 9:117:4.

Asher Westheim, the certifying rabbi (*Rav HaMachshir*) for Rabbi Kestenbaum's oat matzot, notes that in cases of great need a celiac may rely on *Chayei Adam*/Rambam and eat oat matzot at the Seder (but should have someone else recite the *beracha* of "*al achilat matzah*" for him).

In recent years, however, another group, known as the Lakewood Matzah Bakery,⁶⁷ has begun producing gluten-free oat matzot which avoid rancidity without ever heat-treating the oats. These matzot are free of the above concern and may definitely be used at the Seder even according to Rambam.

Note: The information presented above is true for oat matzot baked for 5770/2010 (and earlier years). Over the years, Rabbi Kestenbaum and Dayan Westheim have made a number of unsuccessful attempts to use oats which are not heat-treated, but believe that for Pesach 5771/2011 and beyond their matzot will meet this higher standard.

D – Summary

Theoretically, one may fulfill the mitzvah of eating matzah at the Seder with oat matzah, and for many celiacs this is the only available choice. *Poskim* raise two issues with this practice, of which the second, more serious, one applies only to one brand. Therefore, people who are able to perform the mitzvah with other matzot should refrain from using oat matzot, and those who must use them should (as of this writing) preferably use the matzot produced by the Lakewood Matzah Bakery.

10. One *kezayit* of matzah

Some celiacs also have a hard time tolerating oats, and the best solution for them is to eat just the bare minimum amount of (oat) matzah which is required. Although most people are

67. For more on these matzot and information on where they can be purchased, see <http://www.lakewoodmatzoh.com/>.

required to eat 5 *kezaytim* of matzah at each Seder – 2 at *motzi-matzah*,⁶⁸ 1 at *korech*,⁶⁹ and 2 at *afikomen*⁷⁰ – the celiac who cannot stomach so much can fulfill the biblical mitzvah (*d'oraitah*) of eating 1 *kezayit* on the first night of Pesach and should eat nothing at the second Seder.

Most people's first inclination would be that a person choosing this option should eat his lone *kezayit* of matzah at *motzi-matzah*, when everyone else at the Seder fulfills their mitzvah and recites the *beracha* of "*al achilat matzah*". However, this would mean that the person would not fulfill the mitzvah of *afikomen*. Therefore, *Shulchan Aruch*⁷¹ rules that he should skip *motzi-matzah*, eat *marror* (and no *korech*) and the Seder meal (*Shulchan Oreich*). When the meal is finished and the others are ready for *afikomen*, he should then wash *hamotzi*, recite the *berachot* of *hamotzi* and "*al achilat matzah*", eat his one *kezayit* of matzah (with *hasaibah*) and not eat anything afterwards (just like everyone else who does not eat after *afikomen*). In this way, he has fulfilled the mitzvah *d'oraitah* of eating matzah on the Seder night and of eating *afikomen*.

[A person who eats absolutely no matzah at the Seder makes a minor change in the recitation of the Haggadah; see the footnote for details.]⁷²

11. Quinoa

The Ashkenazic custom is not to eat rice, corn, beans, and

68. *Shulchan Aruch* 475:1.

69. *Ibid*.

70. *Mishnah Berurah* 477:1.

71. *Shulchan Aruch* 482:1 as per *Mishnah Berurah* ad loc.

72. *Biur Halacha* (483:1 s.v. *ad ga'al Yisrael*) says that a person who will not be eating matzah at the Seder must alter the *beracha* of אשר גאלנו (recited at the end of *Maggid*) to remove the wording that implies he will be eating matzah. Therefore, instead of saying בו מצה ומרור כן והגיענו הלילה הזה לאכול, he should say בו מצה ומרור כן והגיענו הלילה הזה כן ה' אלקינו... he should say בו מצה ומרור כן ה' אלקינו... and not say בו מצה ומרור כן ה' אלקינו... as the *Shulchan Aruch* rules.

certain other foods known collectively as “*kitniot*”.⁷³ *Chok Yaakov*⁷⁴ says that as a general rule we limit this *minhag* to those items which were in use at the time the *minhag* began, but other “new” foods are permitted even if they seem to meet all qualifications as *kitniot*. Many contemporary *Poskim*⁷⁵ accept *Chok Yaakov*’s position, but others⁷⁶ take a stricter stand.

In recent years, this disagreement has a practical application relating to a South American grain known as quinoa. Quinoa was only recently introduced to the Northern Hemisphere and was surely not known or consumed by the Jewish community at the time the *minhag* of *kitniot* began. As such, it qualifies for *Chok Yaakov*’s leniency, and communities which follow that position were happy to have a “new” food to eat on Pesach. For celiacs this was especially good news, because until now the only starch they had available on Pesach was potatoes, since they could not eat (wheat) matzah nor matzah products, nor *kitniot*.

In considering whether they can use quinoa (and some other grains that also qualify according to the opinion of *Chok Yaakov*), the celiac should bear in mind the following:

- As noted, some *Poskim* do not accept *Chok Yaakov*’s leniency, and each person should consult with his rabbi for a personal halachic decision.
- Quinoa may grow near wheat and/or be processed on equipment used for wheat, barley (and other small

73. Ramo 453:1 and 464:1. See below in Section 23 and footnote 158 regarding a celiac who feels unable to maintain the *minhag* of *kitniot*.

74. *Chok Yaakov* 453:9.

75. *Iggerot Moshe* OC III:63 (citing *Chok Yaakov*), and personal communications with Rav Gedalia Dov Schwartz, Rav Herschel Schachter, and Rav Moshe Heinemann (representing respectively cRc, OU & Star-K – but see the coming footnote).

76. I have been told this by Rav Yisroel Belsky (representing OU – but see the previous footnote), and have heard that this is also the position of many Israeli *hashgachot*.

grains), and therefore one must ascertain that the quinoa is not contaminated with *chametz*⁷⁷ (or gluten!).

D. Succot

12. Eating outside the Succah

During Succot, men⁷⁸ are required to eat certain foods in the succah. Which foods are included in that mitzvah? There are implications in the Gemara that bread and *minei targimah* require a succah;⁷⁹ there are three basic explanations for the term “*minei targimah*”:

- *Tosefta*⁸⁰ states that *minei targimah* includes foods (other than bread) made from the five primary grains, and all *Poskim* appear to accept this explanation.
- *Rabbeinu Peretz*⁸¹ holds that it also includes meat, fish, cheese and other foods eaten with bread.

77. As a rule, *chametz* which was mixed into other foods before Pesach can be *batel b'shishim* (nullified in a mixture of 60/1). However, that leniency would not apply if a kernel (or partial kernel) of wheat/*chametz* were mixed into quinoa, because this would be an example of *ta'aruvot yavesh b'yavesh* (mixture of two dry things) where Ramo 447:4 rules that even a *mashehu* (smidgen) cannot be *batel* (nullified).

78. See *Shulchan Aruch* 640:1 that women are excused from the mitzvah of Succah.

79. Gemara, *Yoma* 89b, says that bread eaten as *achilat arai* (temporary / not as a meal) does not have to be eaten in the succah, but bread eaten as *achilat kevah* (permanent / as a meal) requires a succah. The next lines in that same Gemara assume that *minei targimah* must be eaten in the succah.

80. *Tosefta*, *Berachot* 4:4 cited in Rosh, *Succah* 2:13 (and in turn in *Beit Yosef* 639 pp. 343a & 343b).

Rosh implies that *Rabbeinu Peretz* accepts this explanation of *minei targimah* (in addition to his own understanding), and Rashi (cited below) says outright that such foods meet his standard of *minei targimah*.

81. *Rabbeinu Peretz*, cited in Rosh *ibid.* and *Beit Yosef* 639 pg. 343a. *Rabbeinu Peretz* uses the example of meat and cheese, but *Tosafot*, *Succah* 27a s.v. *b'minei* describes this opinion as including “meat, fish, and other foods which accompany bread”.

- Rashi⁸² holds that (in addition to the definition of *Tosefta*) *minei targimah* includes fruit.

Shulchan Aruch and *Ramo*⁸³ rule that *minei targimah* is limited to *Tosefta*'s explanation and therefore rule that only bread and other foods made from the five grains must be eaten in the Succah. [Our discussion focuses on the **types** of foods which require a succah, and ignores the **quantity** of those foods.] According to this ruling, celiacs would be permitted to eat just about all of their food – other than those which contain oats – out of the Succah.

However, *Mishnah Berurah*⁸⁴ does cite *Poskim* who are *machmir* for *Rabbeinu Peretz*'s understanding of the term *minei targimah*, and suggests that a person who eats a full meal which includes meat, fish, cheese or similar foods should eat that meal in the succah even if they did not have any of the five grains. Celiacs who follows this stringent position would, in fact, be required to eat many of their meals in the succah. Within this strict opinion it is worth noting that (a) it applies only if one is eating a full meal (as opposed to a snack),⁸⁵ (b) *Mishnah Berurah*⁸⁶ says that at such a meal one should not recite the *beracha* of *laishev baSuccah*. We will see below (Section 14) that this may **not** be true for a celiac, and (c) *Mishnah Berurah*⁸⁷ summarily rejects those *Poskim* who accept Rashi's opinion.

In the coming section we will see that the definition of *minei targimah* is relevant to a celiac in another context.

82. Rashi, *Berachot* 27a s.v. *b'minei*. Although Rashi appears to suggest his explanation independently, the truth is that it is based on one of two answers the Gemara, *Yoma*, *ibid.*, provides for a question. In fact, Rosh, *ibid.*, cites *Maharam Rutenberg* as maintaining that fruit must be eaten in the Succah (i.e. like Rashi) based on that answer in the Gemara.

83. *Shulchan Aruch* and *Ramo* 639:2.

84. *Mishnah Berurah* 639:15.

85. See Rosh and *Mishnah Berurah* *ibid.*

86. *Sha'ar HaTziun* 639:39.

87. *Sha'ar HaTziun* 639:38 rejecting the opinion of *Chayei Adam* 147:3 (end).

13. The first nights of Succot

The Mishnah⁸⁸ states that there is a mitzvah (for men) to eat in the Succah on the first night of Succot (and on the first two nights outside of *Eretz Yisroel*). The obligation to eat on the first night of Succot is not stated explicitly in the Torah, and the Gemara⁸⁹ derives the mitzvah to eat from a *gezairah shavah* (comparison) to Pesach; just as one is required to eat (matzah) on the first night of Pesach, so too one is obligated to eat on the first night of Succot.

Based on this, *Yerushalmi*,⁹⁰ as understood by Rosh,⁹¹ wonders how fully we compare the obligation on Succot to that of Pesach; namely, do we say that just as on Pesach one must eat a *kezayit* of “bread” made from the 5 primary grains (i.e. matzah), so too on Succot a person must eat a *kezayit* of such bread, or can one satisfy the obligation by eating a *kezayit* of *minei targimah* [as described above]? *Yerushalmi* does not resolve this question; consequently, *Shulchan Aruch*⁹² rules that

88. Mishnah, *Succah* 27a.

89. Gemara, *Succah* 27a.

90. *Yerushalmi*, *Succah* 2:7. *Yerushalmi* poses two related questions as to the extent to which the mitzvot of eating on the first nights of Pesach and Succot are comparable; one question refers to the halacha stated in 471:1, and the other is whether one must eat “a *kezayit* of *dagan* in the Succah”. Rosh (*Pesachim* 2:15) cites *Yerushalmi* and adds what, at first glance, appears to be a third question – “may one satisfy their obligation with *minei targimah*”? In truth, *Yerushalmi* does not pose a third question, and those words in Rosh are actually his *explanation* of *Yerushalmi*’s second question. (An alternate way of understanding *Yerushalmi* might be that the question is whether the mitzvah requires a *kezayit* or possibly requires that one eat a *beitzah* of *pat*, as per the position of Ran noted in footnote 96.)

91. See the previous footnote.

92. *Shulchan Aruch* 639:3 as per *Gr”a* 639:3 s.v. *afilu* and *Mishnah Berurah* 639:21 (as opposed to *Levushei Serad* ad loc.). *Pri Megadim* (end of MZ 643) considers the comparison to Pesach so complete that he suggests that just as matzah *ashirah* (matzah with eggs or juices added) is not acceptable for the Seder, so too the *pat* used for the first night of Succot cannot have any ingredients other than flour and water! [It appears that this opinion is not generally accepted, and it is noted here as a mere example.]

one must adopt the strict stand and eat a *kezayit* of bread produced from (one or more of) the five primary grains.

This universally-accepted halacha poses exactly the same challenge to the male celiac as the mitzvah to eat matzah on the first night of Pesach. How can he fulfill this mitzvah *d'oraitah* if he cannot eat wheat, rye, spelt or barley? The simple answer is that he should resolve this issue just as he did on Pesach – by eating a *kezayit* of bread, crackers, muffins or some other “*pat*” made primarily of gluten-free oats. In choosing this option, the person should be sure to consume a *kezayit* of **oats** (as opposed to a *kezayit* of oat muffin) within about 3 minutes (*k’dei achilat pras*).⁹³

However, there are situations where even this is not an option. For example, some celiacs are unable to eat even oats, and their reaction is severe enough to qualify for the leniency listed in Section 2 above. We have seen that many hold that one is not required to make himself sick to perform a mitzvah *aseh* such as eating in the succah on the first night of Succot. If this was the case on Pesach, the celiac would not really have much choice – the mitzvah is to eat matzah made of one of the 5 grains and someone who cannot eat any of those grains cannot possibly fulfill the obligation.

The same is not completely true on Succot. As noted, it is an unresolved question whether the mitzvah specifically requires bread or if one can fulfill the obligation (be *yotzeh*) with a *kezayit* of *minei targimah*. In general we are *machmir* to eat bread, but it would seem that the celiac who cannot eat the five grains should be “*machmir*” and eat a *kezayit* of *minei targimah* in the succah so as to fulfill the mitzvah, at least according to one view in the *Yerushalmi*. Is that feasible? In the

93. The *kezayit* of *pat* must be eaten within *k’dei achilat pras* (*Mishnah Berurah* 639:22 end) and that *shiur* is approximately 3 minutes long (see below in footnote 134). As noted below at the end of Section 19, the bulk of the non-oat ingredients do not count towards the *shiur* (measurement) of a *kezayit*.

previous section we saw that there are different⁹⁴ explanations for the term “*minei targimah*”:

- *Shulchan Aruch* accepts the position that it includes items made of the five primary grains. This does not offer the celiac any new options.
- *Mishnah Berurah* recommends being strict (*machmir*) for the opinion of *Rabbeinu Peretz* that *minei targimah* also includes meat, fish, cheese and other foods which accompany bread. According to this position, possibly a celiac may be able⁹⁵ to satisfy the obligation to eat on the first night of Succot by eating a *kezayit*⁹⁶ of meat or fish (in

94. The text presents two of the possible definitions of *minei targimah*, and – based on *Sha’ar HaTziun* 639:38 cited above in footnote 87 – ignores Rashi’s translation.

95. The word “possibly” in the text reflects the fact that the celiac will fulfill his obligation only if the answers to the following two questions are both “yes”: (a) can one fulfill the mitzvah by eating *minei targimah* and (b) does *minei targimah* include meat and fish. In fact, these two questions may qualify as a *sfek sfekah* (double doubt), in which case one may not be required to be *machmir* at all; that question is beyond the scope of this document.

The text presents the simple way of understanding, that this is an example of *safek d’oraitah l’chumrah* (to be strict when there is doubt concerning a biblical commandment). In fact, some *Acharonim* hold that that principle would not apply in our case because even after doing the “act” (eating the non-*pat*) the person will not be sure he has fulfilled the mitzvah. For a lengthy discussion on this topic, see *Ein HaTechelet* #41 who cites those who follow this latter opinion (including an unnamed *Gadol*, reported to be Rav Chaim Soloveitchik), and many proofs that the strict position stated in the text is, in fact, correct. This issue is also discussed in some of the contemporary *teshuvot* and *seforim* on *techelet*.

96. The text has presented the position of Rosh that one is required to eat a *kezayit* on the first night of Succot. Ran (*Succah* 12b) argues that since the general rule is that one is required to eat in the *succah* only if he eats a *beitzah*-size (i.e. 2 *kezayitim*) of bread (*Shulchan Aruch* 639:2), therefore on the first night of Succot one is also required to eat a *beitzah* of bread. *Beit Yosef* (639 page 343b) rejects this opinion, and it is not stated in *Shulchan Aruch* 639:3 or any of the commentaries printed “on the page”, but *Mishnah Berurah* 639:22 does recommend that, if possible, one should satisfy this opinion by eating a *beitzah* of *pat*. [*Mishnah Berurah*’s suggestion seems quite reasonable in light of the fact that Ramo 639:5 accepts that part of Ran’s position which

a 3-minute period)⁹⁷ with intention⁹⁸ to fulfill that mitzvah.

Based on this and other factors, Rabbi Yitzchok Zilberstein⁹⁹ recommends that someone who cannot eat a *kezayit* of *pat* on the first nights of Succot should eat a *kezayit* of other foods which may qualify as *minei targimah*.

14. *Laishev BaSuccah*

The general rule is that the *beracha* of "*laishev baSuccah*" (...Who...has commanded us to sit/dwell in the Succah) is recited only when one eats a specific amount of bread, cake or other foods made from the five primary grains.¹⁰⁰ At first glance it would seem that a celiac would never be able to recite that *beracha* (unless they were able to eat foods made with oats). In fact, however, there is firm basis for the celiac to recite that *beracha*, as follows:

Most *Rishonim* hold that *laishev baSuccah* is recited every time one makes a "fresh" entrance into their Succah regardless of whether they plan on eating in the Succah, and that *beracha* is effective until they "permanently" leave the Succah, such as when they leave to go to *shul*. According to this opinion, a person might recite *laishev baSuccah* many times each day of Succot, even if they only eat three meals in the Succah. On the

Beit Yosef argued with (i.e. eating in the Succah if it rains on the first night).]

97. See footnote 93.

98. The general rule is that, at least as relates to *mitzvot d'oraitah* (such as eating in the succah on the first night of Succot), one must have *intent* to fulfill the mitzvah when they do the required act (*mitzvot tzrichot kavanah*--see *Mishnah Berurah* 60:10 & 625:1). However, see *Biur Halacha* 60:4 s.v. *v'yesh* that *b'dieved* this does not apply to eating-based mitzvot such as eating in the Succah on the first night of Succot (but see *Moadim U'zmanim* 1:86 & 6:69).

99. *Chashukei Chemed*, *Succah* 27a (page 177 in the *Av* 5766 edition). Among the other sources he cites are *Yaavetz* (*Pesachim* 114a, printed on page 22a after the *Maharsha*) who holds there is a subjective standard as to which foods must be eaten in the succah.

100. See *Shulchan Aruch* 639:2 and *Mishnah Berurah* 639:13, 15 & 16.

other hand, Rabbeinu Tam argues that *laishev baSuccah* is recited only when one eats a meal which one **must** eat in the Succah (specific amounts of food made of the five grains, as above), and all other time spent in the Succah is subordinate to those meals.¹⁰¹

*Shulchan Aruch*¹⁰² records that the custom is to follow the latter opinion. However, *Taz*¹⁰³ rules that the custom is limited to cases of someone who will be eating one of the five grains on a given day. In such cases, the *laishev baSuccah* recited on eating the meals in the Succah “covers” all of the other time the person spends in the Succah. But this logic does not apply to a person who is fasting or does not plan on eating one of the five grains on a given day of Succot. Since he will not be reciting *laishev baSuccah* on meals, the halacha reverts to the opinion of most *Rishonim* that a *laishev baSuccah* is recited every time the person make a “fresh” entrance into the Succah.

Although *Ma’amar Mordechai*¹⁰⁴ rejects *Taz*’s position, *Mishnah Berurah*¹⁰⁵ follows the lead of many *Poskim* who accept it, and would hold that celiacs who (cannot eat oats and) will not be eating any of the five grains, may recite *laishev baSuccah* when they choose to enter the Succah even if they will not be eating anything at all! When the celiac leaves the Succah to go to work, *shul*, on a trip, or leaves the Succah in some other “permanent” way, the effectiveness of their *laishev baSuccah* ends, and when they return to the Succah they should recite a new *beracha*.¹⁰⁶

101. For more on these opinions, see *Mishnah Berurah* 639:46. It is noteworthy that in practice *Gr’a* is reported to have followed the opinion of most *Rishonim* (*Ma’aseh Rav* 218).

102. *Shulchan Aruch* 639:8.

103. *Taz* 639:20 (end).

104. *Ma’amar Mordechai* 639:8, quoted and accepted by *Kaf HaChaim* 639:97.

105. *Mishnah Berurah* 639:48. This is also the opinion of *Chayei Adam* 147:15. [It is not clear if other *Poskim* agree with *Chayei Adam*’s extension of *Taz* (which is also cited in *Mishnah Berurah*.)]

106. It is noteworthy, however, that *Pri Megadim* (to *Taz* *ibid.*) suggests that

E. Other *Yomim Tovim*

15. Purim

One of the mitzvot of Purim is to partake in a festive meal during the daytime of Purim.¹⁰⁷ *Shulchan Aruch*¹⁰⁸ notes that the meal must contain wine; Ramo¹⁰⁹ adds that the meal should be grand, even listing certain foods which are customarily eaten at the meal. However, these *Poskim* do not mention whether one is required to eat bread / *hamotzi* at this meal (as with other *Yom Tov seudot*) or not, and this leads to a debate among later *Poskim*.

Maharshal¹¹⁰ holds that bread is required just as at every other *seudat Yom Tov*, while Magen Avraham¹¹¹ argues that there is no such requirement for Purim. *Mishnah Berurah*¹¹² and others cite both opinions and leave the issue unresolved, although a number of these *Poskim* seem to favor the opinion that bread is **not** required. It is worth noting that even the strict opinion would apparently agree that a celiac does not have to eat bread at the *seudat Purim*, as follows: The mitzvah

Taz may hold that after the celiac recites *laishev baSuccah* once in the morning, he should not repeat *laishev baSuccah* until (a) the next morning when he reenters, or (b) he leaves the Succah with intention of not returning there for the rest of the day, and then does return after all. The text follows *Mishnah Berurah* who appears *not* to accept this suggestion, and says rather that after every permanent leaving of the Succah the person recites a fresh *beracha* upon returning.

107. *Shulchan Aruch* 695:1.

108. *Shulchan Aruch* 695:2.

109. Ramo 695:1-2.

110. *Responsa Maharshal* 48; *Taz* 693:2 accepts this opinion.

111. *Magen Avraham* 695:9; this is also the opinion of *Birkei Yosef* 695:1 (cited in *Sha'arei Teshuvah* to Ramo's introduction to 695).

112. *Mishnah Berurah* 695:15 (as relates to one who forgot to recite *al hanisim* during *birchat hamazon* at the Purim *seudah*); see also *Tzitz Eliezer* (19:27:4), *Shevet HaLevi* (1:205 on *Siman* 695), and *Yechaveh Da'at* (1:89) (who cites many sources and concludes that it is preferable, but not required, to have bread at the *seudah*).

to eat bread at the Purim *seudah* is not more strict than the mitzvah to eat bread on (Shabbat or) *Yom Tov*, and we have seen that someone who dislikes bread or becomes sick from eating it is not obligated to eat bread on those occasions. Thus, all agree that a celiac who cannot eat oat-bread is not required to eat bread at *seudat Purim*, and the controversy between Maharshal and *Magen Avraham* is limited to a celiac (or anyone else) who can eat oat bread.

16. *Erev Tishah B'av*

The last meal eaten before *Tishah B'av* is known as the *seudah hamafseket*, and the common custom¹¹³ is to eat bread (dipped in ashes) and hard-boiled eggs at that meal. There is not much question that a celiac who cannot eat bread should just eat the egg at that meal, and the issue to consider is whether he should substitute gluten-free bread instead of traditional bread. That question depends, in turn, on the following question:

How can the custom to eat bread and eggs at the *seudah hamafseket* be reconciled with the halacha¹¹⁴ that one may only eat one cooked or broiled food at that meal? Why are the bread and egg not considered two separate cooked/broiled foods and forbidden? It would appear¹¹⁵ that the answer to that question is that bread is the staple of every meal and the restriction on foods served at the *seudah hamafseket* presupposes that bread is being served. Thus, in truth the

113. See *Kitzur Shulchan Aruch* 123:3 and *Mishnah Berurah* 552:22 (end).

114. *Shulchan Aruch* 552:1 and *Ramo* 552:3.

115. *Shulchan Aruch* 552:5 records a custom to eat eggs at the *seudah hamafseket*, and in 552:6 he discusses the merit of just eating bread with salt and water, but never puts these two together – to eat bread with egg. *Aishel Avraham (Butshetsh)* 552:1 suggests esoteric answers for the question posed in the text, but the lack of discussion of this question by most *Poskim* implies that there is a “simpler” explanation. This author posed the question to a number of rabbis who all (independently) suggested the answer given in the text.

prohibition is that in addition to the bread the meal should not have two **other** cooked or broiled foods.

What is the status of gluten-free bread – made of rice, bean, or potato “flour” – as relates to this halacha? For the non-celiac it is clear that rice bread (for example) is not a staple food, and if one eats it at the *seudah hamafseket* he may not eat any other cooked or baked food. It would seem that the same should apply even for a celiac because (a) the halacha is generally established based on the practice of the general population and not of smaller groups such as celiacs, and (b) the truth is that as a rule, even celiacs do not use gluten-free bread as their staple food in the same way traditional bread is used.

On a practical level it is worth noting the following: Nutritionists suggest that a person should eat a large amount of starch before a long fast, such as *Tishah B'av*, so that the person will have the strength to fast. This poses a particular difficulty for celiacs preparing for *Tishah B'av* when it occurs on Sunday, because most of the starch which they can eat (potatoes, rice) isn't very appetizing when it is cold, and it is not so simple to warm up food on Shabbat afternoon (i.e. the time right before the fast). The celiac has to consider this before Shabbat and either cook starches that can be eaten at room temperature (e.g. quinoa, canned corn, gluten-free crackers), leave food on the *blech* for *Shalosh Seudot*, or prepare a way to warm food that late in the day (e.g. by placing it on top of a hot urn).

17. *Aseret Yimei Teshuvah*

There are different opinions as to whether the prohibition for a Jew to eat *pat akum* (bread-like foods baked by a non-Jew) applies to bread baked by a baker/*paltar*.¹¹⁶ *Shulchan Aruch*¹¹⁷

116. See *Shulchan Aruch* YD 112:2 and commentaries ad loc.

117. *Shulchan Aruch* 603:1.

rules that even those who follow the lenient opinion on this matter (and permit eating bread baked by a non-Jew) must be strict (*machmir*) during *Aseret yimei teshuvah* (the 10 days from Rosh Hashanah through Yom Kippur). Is *Shulchan Aruch* ruling that during *Aseret yimei teshuvah* one must **generally** act in a more pious manner, and *pat paltar* is merely one example of how this should be done, or is this ruling somehow **specific** and limited to *pat paltar*? This question is relevant to celiacs¹¹⁸ because the prohibition of *pat akum* applies only to items made of the five primary grains¹¹⁹ and celiacs cannot eat those grains!¹²⁰ If *pat Yisroel* is just an **example** of how one should be *machmir* during *Aseret yimei teshuvah*, then the celiac would have to find some other “strictness” (*chumrah*) to follow for those days.

The simple reading of *Shulchan Aruch* implies that his ruling is specific to *pat Yisroel*. However, a closer reading shows near-unanimous agreement¹²¹ that it is a general directive to be

118. The same question is relevant to non-celiacs who are *machmir* regarding *pat paltar* all year round.

119. *Shulchan Aruch* YD 112:1.

120. Even the strict opinion holds that if the *pat paltar* tastes better or is somehow of better quality, one is not required to eat *pat Yisroel* (*Shulchan Aruch* YD 112:5). Therefore, during *Aseret yimei teshuvah* one is only required to try to participate in the baking of the bread they like [so that it is not considered bread baked by a non-Jew] (see *Mishnah Berurah* 603:1) or else find a bread which they find as desirable as the *pat paltar* they usually eat. Accordingly, it would seem that even celiacs who can eat oats would not be required to eat *pat Yisroel* oat muffins (and similar items) during *Aseret yimei teshuvah* because there are very few kosher, gluten-free oat muffins on the market, and if the celiac found one that they actually enjoy eating they would probably not be required to try a less-appelling *pat Yisrael* version.

121. See for example *Chayei Adam* 143 (page 862 in the *Meorot Da'at* 5748 edition), *Sha'ar HaTziun* 609:1, and *Iggerot Moshe* OC 3:12. *Aruch HaShulchan* 603:2 implies that in principle he agrees with this position, although he limits the types of *chumrot* one should choose to adopt. The opinion which comes closest to rejecting the position stated in the text is *Levush* 603:1, who sees a special connection between *Yerushalmi* (cited further in the text) and *pat paltar*, in that both relate to *kedushah* (holiness), and possibly he would hold that one should be *machmir* only in areas that are similarly connected.

more particular during *Aseret yimei teshuvah*. In fact, the source of *Shulchan Aruch's* ruling is a text in the *Yerushalmi*,¹²² which does not say a word about *pat paltar* at all, but rather discusses eating *Chullin b'taharah*!¹²³ Clearly, *Shulchan Aruch* understood *Yerushalmi* to be providing an example of how one should be *machmir*, and since that example is not realistic nowadays,¹²⁴ *Shulchan Aruch* picked a different example (*pat Yisrael*). The same is true for the celiac. He cannot be *machmir* to eat *pat Yisrael* so, in consultation with his rabbi, he should temporarily adopt some other *chumrah* which he may not practice all year (e.g. *chalav Yisroel*, *Beit Yosef glatt*, keeping Shabbat until 72 minutes after sunset, not carrying in a city-wide *eruv*, etc.).¹²⁵

18. Erev Yom Kippur

There is a mitzvah to eat on *Erev Yom Kippur*, and *Minchat Chinuch*¹²⁶ says that it is obvious that one can fulfill that mitzvah by eating any food. He infers this from the halacha (discussed above) that even on Purim when there is a formal *seudah* requirement, *Magen Avraham* says one is not required to

The examples given in the other *Poskim* (other than *Chayei Adam*, who gives no example) apparently did not accept *Levush's* interpretation.

122. *Yerushalmi*, Shabbat 1:3 cited in *Tur* 603.

123. Eating *Chullin b'taharah* was a practice whereby people ate food that had no *kedushah* (*Chullin*) with the same level of spiritual purity (*taharah*) usually required for foods that do have *kedushah*.

124. See, for example, *Magen Avraham* to 603:1, who explains reasons why following this practice nowadays involves seemingly insurmountable hurdles.

125. In this context, it is worth noting the caution of *Iggerot Moshe* (ibid) that one should be careful not to choose a *chumrah* which negatively affects another person. [Another *chumrah* that many people would add to the list in the text is *yoshon*, but this is not suitable for a celiac since *yoshon* applies only to the five primary grains (*Shulchan Aruch* YD 293:1).]

126. *Minchat Chinuch* 313:9 in the traditional edition. See also *Ktav Sofer* OC 112 & 114.

eat bread.¹²⁷ This position seems implicit in the *Shulchan Aruch*¹²⁸ and later *Poskim* who list a number of foods which one should or should not eat on *Erev Yom Kippur*, but make no mention of any specific need to eat bread.

In contrast, *Sdei Chemed*¹²⁹ says that if eating on *Erev Yom Kippur* is a “practical” mitzvah to assure that one is able to fast on Yom Kippur, then one might be required to eat bread. However, the truth is that the full line in *Sdei Chemed* actually says that this opinion would hold “one must eat bread or some other wholesome/nutritious (מידי דמיון) food, and one does not fulfill the obligation by eating other things”. So, *Sdei Chemed* is merely saying that people need to pick foods that help them fast, and eating a potato is just as good as eating a slice of bread.

Thus, all opinions appear to agree that there is no requirement to eat bread (or any of the five grains) on *Erev Yom Kippur*, and a celiac can fulfill the obligation to eat in preparation for the fast just as well as any other Jew.

F. *Berachot*

19. Oat muffins

Many celiacs are able to eat gluten-free oats and use those oats to create muffins, rolls, or other baked goods. [The coming paragraphs will use muffins as the example, but the

127. We saw that as relates to Purim there are those who hold that one is required to eat bread; nonetheless, it seems that *Minchat Chinuch* maintains that all opinions agree regarding *Erev Yom Kippur*: he says that his point is brought in *Magen Avraham* as relates to Purim (as noted in the text) and “here surely this is true, and this seems obvious”, and those words imply that although there may be a disagreement regarding Purim, all would agree that there is no need to eat bread on *Erev Yom Kippur*.

128. See *Shulchan Aruch* 608:4 and commentaries ad loc.

129. *Sdei Chemed* Volume 8 p.354 (*Ma’arechet Yom HaKippurim* 1:3), based on the explanation of the mitzvah given in *Tur* 604.

same halachot apply to rolls and other baked goods made with oats.] However, the muffins are often not 100% oat flour but rather a mixture of a number of “flours” (e.g. rice flour, potato starch, bean flour) and other ingredients; accordingly, the *beracha rishonah* and *beracha acharonah* (the blessings before and after eating) on the muffin depend on a number of factors:

- *Hamotzi* is recited on muffins which contain enough oats to affect the taste.¹³⁰ There are two cases where *hamotzi* is not recited:
- If the muffins have no oat taste, the oats play no role in determining the *beracha rishonah*, and the *beracha* will likely be *shehakol*.¹³¹ [If the muffin has no oat taste but is made with rice flour the *beracha* may be *mezonot* due to the rice; this will be discussed below in Section 21.]
- Even if there are enough oats to affect the taste, if the other ingredients in the recipe dominate the taste of the muffin (e.g. chocolate muffin), the *beracha rishonah* is *mezonot* unless one is *koveah seudah* on the muffin (i.e., makes the muffin the staple of the meal instead of bread).¹³²

The following halachot do not apply to the two exceptions

130. *Shulchan Aruch* 208:9 as per *Mishnah Berurah* 208:44.

131. See *Mishnah Berurah* 208:45 & 49.

132. The class of foods known as “*pat*” (bread-like items) is divided into two categories: standard *pat* and *pat haba’ah b’kisnin*. Standard *pat* refers to bread or bagels which are soft and basically have the simple taste of the grain, while *pat haba’ah b’kisnin* refers to *pat* which is either crunchy (e.g. crackers), dominated by non-grain tastes (e.g. chocolate cake), or filled/topped with other items (e.g. pie). The *beracha rishonah* and *acharonah* on standard *pat* are *hamotzi* and *birchat hamazon*, respectively. Since *pat haba’ah b’kisnin* is generally eaten as a snack, the *beracha rishonah* and *acharonah* are *mezonot* and *al hamichyah* respectively, but if they are used as a bread-replacement during a meal (*koveah seudah*) the *berachot* are *hamotzi* and *birchat hamazon* (just like standard *pat*). The details of *pat haba’ah b’kisnin* and what constitutes *keviat seudah* are discussed in *Shulchan Aruch* 168:6-7 and the commentaries ad loc.

listed above (no oat taste or oat taste is overwhelmed and there was no *keviat seudah*).

- *Birchat hamazon* is recited after eating the muffin if the recipe contains more than $1/8^{133}$ oats **and** the person ate a *kezayit* worth of oat flour within 3-4¹³⁴ minutes.¹³⁵ For example, if the recipe consists of $1/4$ oats, *birchat hamazon* would be recited only if the person ate 4 *kezayitim* of muffin (such that he effectively ate 1 *kezayit* of oats) in that amount of time. In addition, the muffin has the full status of “bread” which requires *netilat yadayim* with a *beracha* before eating it, and is considered the staple of the meal, so that no other *beracha rishonah* is required for other foods eaten as part of the meal.
- If the muffin is made of less than $1/8$ oats and/or the

133. The actual words of *Shulchan Aruch* are that the muffin must contain a “*kezayit b’chdei achilat pras*” of oats (or one of the other “5 grains”). *Mishnah Berurah* 208:43 clarifies that in fact there is a *machloket* whether *kezayit b’chdei achilat pras* refers to a mixture which is $1/6$ or $1/8$ oats (see *Shulchan Aruch* 612:4 & 618:8), and as relates to this halacha he rules that one should follow the opinion which defines it as $1/8$.

In calculating the ratio of oats to other ingredients (or any other halachic measurement), the measurements are made in volume as opposed to weight (*Pitchei Teshuvah* YD 98:2). For example, a mixture of 1 pound of oat flour and 1 pound of potato starch is halachically treated as being $3/5$ oats and $2/5$ potatoes because the volume of oat flour is approximately 50% higher than that of potato starch. Thus, in investigating a muffin produced in a commercial bakery (where they likely measure ingredients by weight), one can judge the percentage of oats only after converting the weight-percentages into volume-percentages. See the text below regarding if and how non-grain ingredients (e.g. sugar, water) are included in the calculation.

134. All food eaten within the time of “*k’dei achilat pras*” is considered to have been eaten in one “sitting” and combines towards deciding whether the person ate the required *shiur*. There is considerable discussion in the *Poskim* as to how long the time-frame for *k’dei achilat pras* is, and the most widely accepted view is that of *Marcheshet* I:14:5-8 who rules that it is either 2.70, 3.60 or 4.80 minutes. See, for example, *Aruch HaShulchan* 202:8 (3-4 minutes), *Shemirat Shabbat Kehilchatah* 54:30 (4 minutes, but if possible one should be *machmir* for 2 minutes), and *Iggerot Moshe* OC IV:41 (3 minutes).

135. *Shulchan Aruch* 208:9.

person ate less than a *kezayit* of oat flour,¹³⁶ (but he ate a *kezayit* of the overall muffin) the following halachot apply:

- Our version of *Shulchan Aruch* (208:9) states that the correct *beracha acharonah* is *al hamichyah*. Some *Acharonim* accept this ruling but *Gr"a* amends the words of *Shulchan Aruch* to read that the person should recite *borei nefashot*. Due to this disagreement, *Mishnah Berurah*¹³⁷ recommends that one avoid this question by not eating such muffins (or by making sure to eat a *kezayit* of the oats), but if one did eat the muffin they may rely on *Shulchan Aruch* and recite *al hamichyah*.
- Although the person did not eat a *kezayit* of oats, there is basis for assuming that the muffin is nonetheless considered the primary part of the meal and a *beracha rishonah* is not required for the other foods eaten as part of the meal (see the footnote).¹³⁸ This is especially true if the

136. In both cases noted in the text the crucial factor is that the person did not eat a *kezayit* of oat flour within the required amount of time. The difference between the cases is that in the former (less than 1/8 oats) it is physically impossible to eat a *kezayit* of oats in the given time, but in the latter (more than 1/8 oats) it was the person's decision not to eat enough oat flour.

137. *Mishnah Berurah* 208:47.

138. Bread is the staple of a meal, and once a person recites *hamotzi* on a piece of bread they are not required to recite a *beracha rishonah* on any other foods served as part of that meal (*Shulchan Aruch* 177:1). [This does not include wine/grape juice, and certain foods served as adjuncts to the meal (e.g. dessert) (*Shulchan Aruch* 174:1, 176:1, 177:1-4 and elsewhere).] Does the same halacha apply if the person ate less than a *kezayit* of bread, and only ate the bread to avoid having to recite the *beracha rishonah* on other foods? *Magen Avraham* 177:1 suggests that it in that case the *hamotzi* will not absolve the requirement to recite a *beracha rishonah* on the other foods since the bread is clearly not the staple of this meal. [*Iggerot Moshe* OC IV:41 accepts this ruling, but rejects *Magen Avraham's* similar discussion regarding someone who ate a *kezayit* of bread but personally does not consider it to be the primary part of his meal.]

The earlier text noted that *Shulchan Aruch* 208:9 rules that if a muffin contains less than 1/8 oats (but has an oat taste) the proper *beracha rishonah* is *hamotzi* even though it is physically impossible for the person to eat a

muffin is eaten as part of a Shabbat *seudah*.¹³⁹

kezayit of oats in the required amount of time. Thus, even though the person ate a *kezayit* of muffin, he does not recite *birchat hamazon* since he did not eat a *kezayit* of oats. At first glance, that case would seem to qualify for *Magen Avraham's* ruling that someone who eats less than a *kezayit* of "bread" cannot consider it the staple of his meal and must recite a *beracha rishonah* on the other foods served at that meal. If so, we could question why *Magen Avraham* and other *Poskim* are silent about this issue? Why is it that no one notes that in this case the *beracha* on the muffin is *hamotzi* but that *hamotzi* does not excuse the person from reciting the *beracha rishonah* on the other foods served at the meal?

It seems that the answer is that in truth the case of the muffin is not at all similar to that of *Magen Avraham*, as follows: *Magen Avraham's* ruling is predicated on the fact that the person ate so little of the bread that there is no way to consider it the primary part of his meal. However, in our case, the person is eating a full *kezayit* of the *hamotzi* muffin and gives all appearance of considering it the staple of his meal, and only due to a technicality (the muffin is 7/8 non-oats) is unable to recite *birchat hamazon*. Although the person did not eat a *kezayit* of the oats (which is what rendered the muffin fit for *hamotzi*), he did eat a *kezayit* of the muffin, thereby showing that he considers this muffin to be the staple of his meal. If so, we can apply the general rule that if one eats a meal that includes a *hamotzi*-item, the only *beracha rishonah* required is *hamotzi*.

It would seem that we can support this understanding from the ruling at the end of *Magen Avraham* (as per the understanding of *Mishnah Berurah* 177:3) where he discusses a given case where the person *may* not be considering the bread to be the primary part of his meal and may therefore have to recite a separate *beracha rishonah* on the other foods served. *Magen Avraham* rules that if this occurs at a Shabbat *seudah* where one is required to eat bread, the bread takes on the required significance regardless of the person's intentions, and no *beracha rishonah* is required on the other foods. This implies that it is possible for an outside factor (Shabbat) to override the person's actions or seeming intentions. In our case as well, the non-oat ingredients of the muffin do not contribute to the requirement to recite *hamotzi* or *birchat hamazon*, but when the person eats a (full) muffin containing oats and the other ingredients, they serve as an outside factor which indicates that this *hamotzi* food is the primary part of the meal.

139. As noted in the previous footnote, *Magen Avraham* discusses two cases, someone who ate less than a *kezayit* of bread and someone who ate a *kezayit* but does not consider the bread to be the mainstay of his meal. We noted that *Iggerot Moshe* does not accept *Magen Avraham's* reasoning as relates to the latter case. We also mentioned that *Magen Avraham* concludes by noting that his conclusion does not apply to bread eaten at a Shabbat

- Before (reciting *hamotzi* and) eating the muffin the person should wash *netilat yadayim* but not recite the *beracha*.¹⁴⁰

In determining whether a person has eaten a *kezayit* of oats, it is clear that any other flours included in the recipe do not “count” towards the *kezayit*. *Mishnah Berurah*¹⁴¹ cites two opinions as to whether sugar, spices and other items which merely flavor the grains¹⁴² count towards the *kezayit* of oats which must be eaten.

20. Drinks after wine

The previous section mentioned the well-known halacha that one who eats bread is not required to recite a *beracha rishonah* on other foods eaten as part of that meal. A similar halacha applies to wine (and grape juice): after drinking wine one is not required to recite a *beracha rishonah* or *beracha acharonah* on any other liquid consumed at that meal.¹⁴³

For many people this halacha has no practical application because the only time they drink wine is when they recite *kiddush* (or *havdalah*) and then they immediately eat bread/

seudah, and it is not clear whether this limitation even applies to the former case (the person who ate less than a *kezayit*) or just to the latter. If the limitation applies even to the former, then there is no question that someone eating less than a *kezayit* of oats as part of a Shabbat *seudah* does not have to recite a *beracha rishonah* on the other foods served at that *seudah*.

140. This is the general halacha of one who eats less than a *kezayit* (and some say, even less than a *beitzah*) of bread; there is a *machloket* whether *netilat yadayim* is required and the ruling of *Mishnah Berurah* (158:9-10) is that one should wash *netilat yadayim* but not recite the *beracha*. See also *Iggerot Moshe* OC IV:41.

141. *Mishnah Berurah* 208:48. If a recipe contained 20% oat flour, 70% potato starch and 10% flavorings, it would seem that even the lenient opinion would only allow the person to consider 2/9 of the flavorings to be “oats” and there is no way to act as if it is “all” oats.

142. See *Vezot Haberachah* #14 regarding the water, oil and other liquids included in the recipe.

143. *Shulchan Aruch* 174:2 & 208:16.

challah. Thus, they drink wine during a meal, and therefore they do not recite other *berachot*. However, the celiac who recites *kiddush* but does not recite *hamotzi* at Shabbat meals needs to become familiar with some particulars of this halacha as they apply to his situation:

- There are three opinions as to how much wine a person must drink before he is excused from *berachot* on other drinks. *Biur Halacha*¹⁴⁴ accepts the middle-opinion that it applies after drinking at least *malei lugmav* (a cheek-full) of wine. *Malei lugmav* is a subjective measure which fluctuates from person to person,¹⁴⁵ inasmuch as it equals the amount of wine which would fit into one of that person's cheeks. *Shulchan Aruch*¹⁴⁶ calculates that in an average-sized male it is about 1.5 ounces.
- *Mishnah Berurah*¹⁴⁷ cites two opinions whether the other liquids must be present at the time the person drank the wine or if it suffices that the person knew they would be drinking other beverages.
- As relates to another halacha in *Hilchot Berachot*, *Minchat Yitzchok*¹⁴⁸ defines "liquid" as anything which flows and

144. *Biur Halacha* 174:2 s.v. *yayin*. However, in deference to the opinion that the halacha applies even if one drank a tiny bit of wine, he suggests that perhaps one who drank less than a *malei lugmav* should hear the *beracha* of *shehakol* from someone else (or recite *shehakol* on a non-liquid) thereby surely avoiding the requirement to recite a *beracha* on the liquids.

145. See *Mishnah Berurah* 271:68. See *Biur Halacha* 271:13 s.v. *v'hu* regarding a small person whose cheek holds less than most of a *revi'it*.

146. *Shulchan Aruch* 271:13 equates *malei lugmav* (of an average person – as per *Mishnah Berurah* *ibid.*) with "the majority of a *revi'it*," and we have seen in Section 3 that a *revi'it* is approximately 3 ounces.

147. *Mishnah Berurah* 174:3; he seems to favor the opinion that the liquids must be present.

148. *Minchat Yitzchok* 2:110:1-4, discussing whether the amount required for a *beracha acharonah* is a *kezayit* (as required for solids) or a *revi'it* (as required for liquids). [In a completely different context, *Pri Megadim* MZ 105:1 cites a similar definition of liquids from *Responso Rosh* 20:1.]

can be consumed without chewing or sucking. Thus, someone who drank wine or grape juice would be excused from reciting *shehakol* on soda, juice, or clear chicken soup, but would be required to recite a *beracha* on ice cream, ices, and yogurt (even though they are made from liquids).

21. Rice-based foods

As relates to the laws of *berachot*, rice¹⁴⁹ has a unique status--it is similar to the five primary grains in some ways but not in others. It is similar to the five grains in that the *beracha rishonah* on cooked rice is *mezonot*,¹⁵⁰ and that is true even if the rice had previously been ground into a powder.¹⁵¹ [The *beracha* on liquefied rice (e.g. Rice Dream) is *shehakol*.]¹⁵² On the other hand, it is different from the five grains in that the *beracha acharonah* on rice is *borei nefashot*¹⁵³ and the rule of *kol sheyesh bo* (see footnote)¹⁵⁴ does not apply.¹⁵⁵

Therefore, the *beracha rishonah* on rice pasta is *borei minei mezonot*, and the *beracha* on pasta made of a mixture of corn and rice would depend on whether it contains more corn (in which case the *beracha* is *shehakol*) or rice (in which case the *beracha* is *mezonot*). Similarly, the *beracha* on gluten-free rice

149. The text follows the common practice which translates “*orez*” as rice, as per *Mishnah Berurah* 208:25.

150. *Shulchan Aruch* 208:7.

151. *Ibid.*

152. See *Shulchan Aruch* 208:6 and *Mishnah Berurah* 208:23.

153. *Shulchan Aruch* 208:7.

154. If a food is made of a few ingredients which have different *berachot*, the *beracha* for the finished food is often determined by which ingredient constitutes the majority of the food. If, however, one of the ingredients is one of the five primary grains, then the *beracha* is *mezonot* even if the product contains less than 50% grain (*Shulchan Aruch* 208:2). This rule is known as “*kol sheyesh bo mei'chamishet haminin*” which literally means “anything which contains one of the five grains”. There are exceptions to this rule.

155. See *Shulchan Aruch* 208:2.

crackers or cake mixes which contain rice powder depends on whether they are made of more or less than 50% rice. In all of those cases, the *beracha acharonah* is *borei nefashot*.

In this context, we should note a ruling reported by Rav Yisroel Belsky¹⁵⁶ in the name of Rav Moshe Feinstein. He ruled that if a fruit cocktail is 30% peaches (*ha'eitz*), 30% grapes (*ha'eitz*) and 40% pineapple (*ha'adamah*), the *beracha* on the fruit cocktail is *ha'eitz*, since 60% of the food is *ha'eitz*, even though there is more pineapple than any other ingredient. Similarly, if a rice cracker is made of 40% rice flour (*mezonot*), 35% potato starch (*shehakol*), and 25% nut flour (*shehakol*), the proper *beracha* is *shehakol* since more than 50% of the cracker is *shehakol* ingredients.

In many cases a consumer cannot independently determine the percentages of each ingredient in a commercially-prepared food, and often the simplest way of determining the *beracha* is to ask the *Rav HaMachshir* or kosher certifying agency.

22. Cholent

Most people eat *cholent* as part of a meal, after they have already eaten bread/*challah*. Therefore, they do not recite any *beracha* on the *cholent*. Even if the *cholent* is not eaten during a meal (e.g. on Friday night or at a *kiddush*) the typical *cholent* contains barley, and the generally-accepted rule¹⁵⁷ is that the *beracha rishonah* is *mezonot* (based on the principle of *kol sheyesh bo* as explained above). However, many celiacs do not recite *hamotzi* at the beginning of their meal, and gluten-free *cholent* which they eat does not contain any barley. What, then, is the proper *beracha* for them to recite before eating the Shabbat *cholent*?

156. Personal communication with the author (November 2005).

157. The *beracha* on foods which contain cooked barley devolves on the discussion in *Mishnah Berurah* 208:15 and *Iggerot Moshe* OC 1:68, and the text reflects the common practice to recite *mezonot* on pearled barley.

Based on the principles we have discussed in the previous section, it seems that the *beracha rishonah* is usually *ha'adamah*. The principle of *kol sheyesh bo* does not apply to rice; therefore the *beracha* is determined based on the largest-volume ingredient. In a typical gluten-free *cholent*, the majority of the *cholent* is *ha'adamah* ingredients (beans, potatoes, and/or quinoa) and only a minority is *shehakol* (meat) or *mezonot* (rice), rendering the proper *beracha rishonah* as *ha'adamah*. Of course, if a particular recipe is mainly rice or meat, the *beracha* would change appropriately.

G. Miscellaneous

23. *Hatarat Nedarim*

A person who is diagnosed with celiac will need to make radical changes to his/her diet, and will find that a gluten-free lifestyle severely limits food choices. It could be that previously, before being diagnosed as having celiac, this individual may have chosen to adopt certain strict halachic rules (*chumrot*) relating to food, but now they no longer feel able to maintain these *chumrot* while also trying to follow a gluten-free diet. For example, at 20 years of age a person adopted the practice to eat only *chalav Yisroel*¹⁵⁸ dairy products – and at age 25 was diagnosed with celiac. Restricting themselves to only *chalav Yisroel*-gluten-free foods drastically limits their viable options for gluten-free meals and snacks. Had they known they had or were developing celiac,

158. Other examples might be a celiac who cannot find *yoshon* gluten-free oats or who feels they need to eat *kitniot* on Pesach. [Anyone – including Sephardim – who eats *kitniot* on Pesach should be careful to limit themselves to “basic” foods (e.g. corn on the cob), and be wary of eating any foods which are processed (e.g. canned corn, soy milk) or have added ingredients (e.g. vitamin-fortified rice), unless they consult with a kashrut professional who can ascertain that the items are truly *chametz*-free (or that the *chametz* is *batel*) and not processed on *chametz* equipment.]

they would never have adopted the *chumrah* of using only *chalah Yisroel*.

Such a change in circumstance (i.e. being diagnosed with celiac) is probably sufficient grounds for the person to undo his original acceptance of the *chumrah*, using a procedure known as *hatarat nedarim* (annulling a vow).¹⁵⁹ Many people are familiar with the procedure of *hatarat nedarim* which is performed on *Erev Rosh Hashanah*. However, the procedure for *hatarat nedarim* for a celiac (or some other person) who wants to undo acceptance of a *chumrah* is somewhat more complicated and must be done with the advice of and under the guidance of a competent rabbi.

24. Kashrut of specialized ingredients

The pantry of a celiac contains all types of ingredients that rarely appear in other consumers' kitchen. The celiac learns that items such as rice flour, xanthan gum, and flax seed can be used to make foods which mimic traditional breads and cakes without leaving the gluten-free diet.

Furthermore, since these ingredients are not as popular as "standard" ingredients like oil, sugar, and salt, they tend to be quite expensive and hard to come by. It is therefore worthwhile for the celiac to be in touch with the local kashrut supervision organization or with someone at a larger *hashgachah* who can help them determine which of these ingredients can be purchased **without** kosher certification, thereby giving the celiac more flexibility in purchasing them. (I.e., some of these arcane ingredients do not have kosher certification but may in fact be totally kosher.)

159. See *Shulchan Aruch* (and *Ramo*) YD 214:1. See also *Shach* 214:2 and *Dagul Mirivavah* ad loc., who give similar explanations why this permanent/illness-based retraction of the *chumrah* requires *hatarat nedarim*, while certain other temporary/mitzvah-based retractions (such as in *Ramo* 568:2) would not.

Inasmuch as this type of information changes from time to time, we will not attempt to list those foods that do or do not require *hashgachah*, other than to mention that the “flours” (e.g. sorghum flour) and simpler ingredients tend to be acceptable without *hashgachah*, while the more sophisticated ingredients (e.g. xanthan gum) and the processed foods (e.g. gluten-free pretzels) must bear acceptable kosher certification.

Making Sushi on Shabbat¹

Rabbi Ari Zahtz

As the range of foods we eat continues to increase and develop, new questions relating to the interplay of these foods and halacha can emerge. In particular in regards to *hilchot* Shabbat we need to constantly review if any new procedures relating to preparing food run counter to halachic principles.

In this brief study, I will examine the preparation of sushi on Shabbat to understand how it relates and interplays with halacha, specifically with the *melachot*. There are thirty-nine general categories of prohibited activity on Shabbat, called *melachot*. Any action which resembles a *melacha*, either by being performed in the same way as that *melacha* or achieving the same goal as the *melacha*, is forbidden on Shabbat.

In the preparation of sushi, cooked rice is spread out on top of the *nori* (a square, paper-thin sheet of seaweed) and all of the ingredients appropriate for the particular roll (fish, vegetables, etc.) are placed on top. The square is then rolled up

1. Editor's note: Sushi is such a relatively new item in the Jewish kitchen that there has not been a great deal of halachic discussion about it among leading *poskim*. Therefore, in a departure from our usual procedure, the *Journal of Halacha and Contemporary Society* is publishing this article as an introduction to the topic. We invite comments and input from our readers.

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to cover the ingredients on the inside. A bamboo mat is then placed around the roll and used to squeeze the roll together tightly, so that it stays intact. The roll is then sliced into several pieces and placed with the inside facing up, where the "beauty" of this food can now be seen and enjoyed.

The first halachic issue that needs to be addressed in terms of making sushi on Shabbat is *tochain*, grinding. The *Shulchan Aruch* rules that it is prohibited to cut vegetables into very small pieces, *dak dak*, on Shabbat, because it is so similar to grinding.² However, there do not seem to be clear guidelines among halachic authorities as to how to define the size of these pieces; therefore, one should be careful not to cut vegetables into very small pieces on Shabbat.³ When making sushi as well, one should be careful and concerned that the size of the vegetables being cut are not in fact too small.

According to some *poskim*, there is no prohibition of cutting vegetables into tiny pieces if the pieces of vegetables will be consumed immediately after having been cut.⁴ Others, however, disagree and do not allow cutting vegetables into tiny pieces even when they are being cut in close proximity to consumption.⁵ Therefore, one should be careful when cutting the vegetables to be used for the sushi that they are not cut into tiny pieces and that they be consumed soon after having been cut.

It seems, therefore, that the issue of *tochain*, grinding, can be avoided when preparing sushi. Either the pieces can be cut immediately before preparation into large enough pieces, or more simply they can be cut into the appropriate size for sushi before Shabbat and be refrigerated and later used on Shabbat.

2. *Shulchan Aruch Orach Chaim* 321:12.

3. *Biur Halacha Orach Chaim* 321 s.v. *Hamichataich*.

4. *Shulchan Aruch* *ibid*.

5. *Mishnah Berurah Orach Chaim* 321:45.

However, there is a more complicated halachic issue that must be addressed: One of the thirty-nine *melachot* is *boneh*, building. The most obvious case of building on Shabbat is that of actual construction, building or adding to a structure attached to the ground. However, there are other types of building that are prohibited because in principle they are similar to building, even though a cursory look at the action being done would make it seem to be very different.

It is necessary to clarify whether there exists a halachic concept of prohibited “building” in the context of food. In the *melacha* of building, *boneh*, one attaches separate distinct units together to become part of a larger structure. If one takes food items and binds them together, can this be considered analogous to building? Is one liable for “building” when preparing sushi? While the action certainly is different than standard construction, the principle reflected by the *melacha* of *boneh* is perhaps applicable.

Specifically, in our scenario when all of the separate, distinct ingredients of sushi are combined together into a single unit-- a new food called sushi-- is that a violation of *boneh*?

The Gemara says that one who takes curds and turns them into cheese (*megabein*) on Shabbat violates the prohibition of *boneh*, building, on a biblical level.⁶ Clearly from this we see that the prohibition of *boneh* definitely is operative even in the context of food. It is therefore necessary to analyze what the parameters of this prohibition are and to determine if they are relevant in our particular context.

The Rashba explains that the *melacha* of *boneh* does not apply in every circumstance when separate things are joined together. In his view, rather, it is defined as “creating a new entity” (*sheim chadash*); therefore *megabein*, making cheese, is included under the rubric of *boneh*, inasmuch as the curds

6. *Shabbat* 95a.

have been taken and transformed into a new entity with a new name, cheese.⁷

The Rambam, however, explains *boneh* as simply gathering together many separate pieces and sticking them together, thereby creating one single unit (even if we would not refer to the new combination by a new name). This is why *megabein*, making cheese, is forbidden as a subset of *boneh* – the individual curds are gathered and stuck together in such a way that they become a single unit, irrespective of the fact that the new entity is now known as cheese.⁸ The *Magen Avraham* seems to accept this definition of the Rambam as the standard we apply as halacha.⁹

Other than cheese making, how have the rabbis previously applied this definition of building in other contexts of food preparation? Would these precedents also be relevant to sushi? Should we go so far as to say that every time someone takes pieces of food and sticks them together one has violated the prohibition of building on Shabbat?

The *Magen Avraham* seems to address this point through a question he asks concerning a halacha recorded in the *Shulchan Aruch*. The *Shulchan Aruch* rules that if someone gathers together figs, sticking them to one another in order to make a ring out of them (a large circle), or makes holes in them and attaches them with a string creating one unit, he is liable for having been *me'amer*, gathering, another one of the prohibited categories of work on Shabbat.¹⁰ The *Magen Avraham* asks, why is he not liable for *boneh* as well? What this person did seems to conform to the Rambam's definition of *boneh* – he took separate pieces of food (figs) and combined them into one unit, very similar to the definition of *megabein*, cheese making.

7. *Chidushei Harashba Shabbat* 102b s.v. *hai mahn*.

8. *Mishneh Torah Hilchos Shabbat* 7:6.

9. *Orach Chaim* 319:18.

10. *Shulchan Aruch Orach Chaim* 340:10.

The *Magen Avraham* answers by qualifying the definition of *boneh*: he explains that an action is only considered to be *boneh* if the person is concerned with the beauty of the final product or with its precise size or shape. In the case of the figs, explains the *Magen Avraham*, although he has taken separate figs and bound them together into a single unit, since he is not concerned with the final appearance of the figs, it cannot be considered *boneh*.¹¹

The *Chayei Adam* extrapolates from this discussion in the *Magen Avraham* that *boneh* in the context of food is not limited to cheese making, but would even include sticking fruits together in order to create a specific image or shape.¹²

R. Shlomo Ganzfried also writes that sticking fruits together on Shabbat would be prohibited as a subset of *boneh*. He adds that one who is cutting up onions and eggs should be careful and try not to smooth it out into a shape or special size but rather should leave them how they fall on the plate. This would ensure that although the onions and eggs have been put together to form one unit, it will not be considered *boneh*; rather it would be similar to the case of the figs cited above.¹³

R. Asher Weiss writes that taking layers of cake and piling them one on top of another while filling the layers with cheese or frosting (similar to a seven-layer cake) is forbidden because of *boneh*. Certainly according to the Rambam it is *boneh*, inasmuch as many separate pieces have now been transformed into a single unit. Even according to the Rashba, who defined *boneh* as creating a new entity, he suggests this is a new type of food, a layer cake, and not just pieces of cake that happen to be stuck together.¹⁴

11. *Magen Avraham Orach Chaim* 340:17.

12. *Chayei Adam* 39:1. Also see *Shemirat Shabbat Kehilchata* 11:11, who records this as the practical halacha.

13. *Kitzur Shulchan Aruch* 80:25.

14. *Minchat Asher Shabbat* 83:3.

R. Weiss further notes that from the *Magen Avraham*¹⁵ it is clear that one is liable for *boneh* even if the food is connected in a nonpermanent way. As proof, he cites the Mishnah¹⁶ which notes about fig rings that if part of the ring becomes *tamei* (religiously impure), only that particular portion is *tamei*, but not the rest of the figs that comprise the ring. Normally when dealing with a single object, if part becomes *tamei* the entire unit is rendered *tamei*. However, here they are not considered to be fully bonded together to deem them one large unit for *tum'ah*. Simultaneously, we see that the *Magen Avraham* considers their creation a single unit in terms of the prohibition of *boneh* on Shabbat. Clearly, the threshold necessary to consider items combined into one unit for *boneh* on Shabbat is not as high as the complete bond necessary for *tum'ah*.¹⁷

If we apply our analysis to the case of sushi, what seems to emerge is that making sushi on Shabbat does in fact involve the *melacha* of *boneh*. When making sushi, both the threshold of *boneh* according to the Rambam and according to the Rashba are met.

According to the Rambam, the definition is taking separate units and combining them into one unit (even if the new entity does not have a new name). When making sushi all the various ingredients – fish, rice, vegetables and seaweed – are taken and rolled together into one unit. A bamboo mat is even used to squeeze the roll together to ensure that it will not fall apart when cut or picked up. The additional requirement of the *Magen Avraham* that it is only *boneh* if one is concerned with having a certain appearance, certainly applies here as well, since one of the appeals of the sushi is its attractive aesthetic appearance, and there certainly is concern for its having a precise size and shape.

15. *Magen Avraham* *ibid*.

16. *Terumot* 2:1.

17. *Minchat Asher* *ibid*.

Additionally, it would appear that in this case, even according to the Rashba (whose opinion does not seem to be normative halacha), who said that *boneh* is defined as taking separate things and creating a single entity referred to by a new name, there would be a problem of *boneh*. Here, certainly, when all the ingredients are rolled together, nobody would say that we have some rice and some vegetables with some fish, rather it is certainly a new separate food that we refer to as sushi.¹⁸

To summarize, *l'halacha* it would seem that *tochain*, grinding, is not the major problem in terms of making sushi on Shabbat, but rather *boneh*. Making sushi on Shabbat would appear to be a violation of *boneh*, similar to the prohibition of making cheese from curds on Shabbat, and therefore should only be prepared before Shabbat to be eaten on Shabbat.¹⁹

The remaining question is what difference is there between salad, sandwiches, and wraps and the case of sushi. The two primary differences seem to be (a) intending to build a precise or attractive product and (b) whether the separate parts have

18. Further proof that sushi is a new name specifically referring to the new unit consisting of the separate ingredients combined is that, if you ask for sushi in a restaurant, you would not be satisfied if you were given all the ingredients separately on a plate; rather you expect a combination of the foods rolled together in the appropriate manner.

19. The question that remains is whether this prohibition is on a rabbinic level or a Torah level. At first glance there does not seem to be any difference between the prohibition of *boneh* when making cheese and the prohibition of *boneh* when making sushi. Once it has been determined that the general principle of *boneh*, combining separate pieces into one larger unit, applies to sushi as well, then presumably the level of prohibition is the same, and the Rambam clearly writes that making cheese is a biblical prohibition. However, perhaps we can suggest that in the case of sushi the prohibition would in fact be a rabbinic prohibition as the sushi will be consumed shortly after being made and in that way differs from building and even from cheese making.

Furthermore, there might be a practical difference if the prohibition were on a rabbinic rather than biblical level: under certain circumstances it might be permissible to have a gentile make the sushi for Jews (*amira l'akum*).

truly been combined into a larger unit. In the case of a salad, sandwich, or wrap, generally speaking one's intention is not to make either a very precise product or to design it in a very attractive way. Certainly the presentation of food is an important aspect of the culinary experience, but it does not seem to involve the same concern for precise beauty as sushi does.

Furthermore, even if one is concerned with the precise aesthetic appeal of a salad, sandwich, or wrap, these items do not seem to reach the same level of being bound into one unit as does sushi. The salad is not combined together at all and therefore certainly it would not present a *boneh* problem. Albeit the vegetables sit in the same bowl, but they are not stuck together or held to each other in any way. Even in the case of a sandwich or a wrap, where one wants to combine the ingredients into a single unit and eat them together, there is nothing actually holding the unit together. For example, if you would pick the sandwich up from the top piece of bread instead of the bottom, the remainder of the sandwich would not be attached. Even a wrap where all the food is rolled together, if you would not pick up the wrap and hold it together, if you just pick it up from one side, the entire thing will generally fall apart. Therefore, the component necessary for *boneh*, that a person has created a single unit of parts stuck together, is lacking. However, in the case of sushi even if one would pick up the sushi from an edge and hold it, the unit stays together, and thus, it seems, should be considered a new unit for which *boneh* is in fact a concern.

Based on this analysis, this author suggests that perhaps a distinction can be drawn between a professional or experienced sushi chef and the beginner or laymen. If a person lacks the necessary experience to make a sushi roll that will stay together (or does not squeeze it at the end with the bamboo mat) or does not know the art of creating a precise aesthetic pleasing sushi roll, then we might say that in fact making sushi would be similar to making a sandwich or a

wrap that does not meet the criteria of *boneh*. On the other hand, a caterer or a professional chef who makes sushi rolls that are both a tight unit and intended to be aesthetically pleasing, might be forbidden from making sushi on Shabbat.

May a Convert be a Member of a Rabbinical Court for Conversion?

Rabbi Michael J. Broyde

Orthodox Jews in America live in a dynamic environment that is virtually unprecedented in Jewish history. This has created new realities which halacha must contend with and provide for. Unsurprisingly, the increase in converts within the Orthodox community has borne an increased focus on the related halacha.¹ Conversely, until a century ago, conversions were relatively infrequent and thus did not demand much practical discussion.² The sparse pre-modern halachic literature on the topic reflects this reality.

Converts and their children have become an active part of the Orthodox Jewish community. Many achieve leadership roles – some learn in Yeshiva for decades and become rabbis. As a result of the increased presence of converts within the Jewish community, a new halachic question has emerged: Is it

1. See for example, Michael Broyde and Shmuel Kaddosh, “Book Review: Transforming Identity,” *Tradition* Volume 42:1 Spring 2009 at pages 84-103.

2. See for example the first footnote in *Aruch HaShulchan*, *Yoreh Deah* 268, which makes it clear that conversions were very rare.

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permissible for a convert to serve as a member of a *bet din* when the *bet din* oversees a conversion? This is a serious topic since, as is true for any halachic matter that needs a *bet din*, an unacceptable *bet din* is hazardous for all parties involved. This is especially important with regard to conversions, due to the serious consequences associated with questionable conversions.

Part I: The Talmud's Discussion of a Convert Serving on a *Bet Din*

Classical talmudic sources address the restrictions and requirements that halacha places on a *dayan* serving on a rabbinical court. However, none of the classical sources specifically address the question of whether a convert can serve on a *bet din* that is presiding over a conversion. Rather they deal with the general qualifications necessary to serve on a rabbinical court in various types of cases. The Mishnah in Tractate *Niddah* 6:4 states the general rule that:

Anyone who is fit to judge capital cases is fit to judge monetary cases, but there are those who are fit to judge monetary cases that are not fit to judge capital cases. Anyone fit to judge is fit to be a witness, but there are those who are fit to be a witness but are not fit to judge.

This source tells us that depending on the subject matter of the case, the requirements of the *dayanim* vary. Here we are given four possible tiers of 'fitness': (1) Those who are fit to judge capital cases, monetary cases, and to be a witness; (2) Those who are fit to judge monetary cases and to be a witness; (3) Those who are only fit to be a witness; (4) Those who are not fit to judge and cannot serve as a witness. From this source we can gather that there is a hierarchy of importance based on the nature and gravity of the subject matter being adjudicated. For example, capital cases are stricter than commercial cases.

The Mishnah *Sanhedrin* (4:2) elaborates by identifying those who are fit to judge capital cases, and from this information,

the Mishnah further infers which individuals are fit to judge financial cases and which individuals may serve as witnesses. It states:

Anyone is fit to judge a monetary case, but not everyone is fit to judge a capital case; only Kohens, Levites, and Israelites who can marry into a Kohen's family.

From a simple read of this Mishnah we learn that Jewish men are unfit to judge capital cases if, had they been women, they would be ineligible to marry a Kohen. This restriction purposely identifies and excludes those individuals who are, for one reason or another, not fully qualified to sit in judgment of all cases. The Talmud reasons that the more authority one person can exercise over another, the more that person ought to be a natural member of society. According to Jewish law, individuals who can marry into a Kohen's family are more 'natural' members of Jewish society, as they can marry all members of society.

This type of distinction should not make the reader morally uncomfortable nor should one think it is an unusual distinction for any and every legal system to make. Many legal systems restrict access to high political office to people who are natural born citizens. For example the U.S. Constitution states in article II, Clause 1 that:

No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President.

If one became an American citizen through "conversion" ("naturalization"), he or she cannot become the President (or the Vice President)³ of the United States. This is analogous to the Jewish legal concept that a convert cannot become a king

3. Since the Twelfth Amendment to the United States Constitution states that: "[N]o person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States" that seems a reasonable insight.

of the Jewish people.⁴

A *beraita* quoted in the *Yerushalmi*⁵ in reference to this Mishnah tells us more about who is *fit* (rather than who is unfit) to judge monetary cases: “Anyone is fit to judge a monetary case.” Rabbi Yehuda says: “Even a *mamzer*.”⁶ While a *mamzer* is excluded from sitting on capital cases, he is permitted to serve as a member of a *bet din* adjudicating financial cases. Rabbi Yehuda uses the term “even” because a *mamzer* is not only barred from marrying into a Kohen’s family; he is also barred from marrying into any Israelite family. Yet, he is still permitted to serve on a *bet din* judging financial matters. The Talmud continues:

Anyone is fit to judge a monetary case – Who does the word “anyone” include? Rabbi Yehuda said: “It comes to include a *mamzer*.” Wasn’t this already taught? “Anyone who is fit to judge capital cases can judge monetary cases, but not everyone who is fit to judge monetary cases is fit to judge capital cases.” The question was asked: “Who does [the word] ‘anyone’ include?” And Rabbi Yehuda said: “It comes to include a *mamzer*”! One of them comes to include a *mamzer* and one of them comes to include a convert. And this is necessary, for if it told us [only] “convert”, we might assume that this is because he is fit to “enter the community” but for a *mamzer* we would have said no. And if it told to us [only] *mamzer*, we might assume this is because he came from Jewish parents, but for a convert, who did not come from Jewish parents, we would have said no. Hence, they are both necessary to teach that both may serve on a *bet din*.⁷

4. See Rambam *Laws of Kings* 1:4.

5. Tractate *Sanhedrin* 4:8.

6. A *mamzer* is a child resulting from a sexual relationship between two Jewish people ineligible to marry each other at the moment of conception. A *mamzer* is precluded from marrying Kohanim, Levites, and Israelites.

7. *Sanhedrin* 36b.

Here the Talmud gives us some insight as to why capital cases warrant such strict requirements that neither a *mamzer* nor a convert is an acceptable *dayan*. From this and other talmudic sources we see that serving on a *bet din* for a financial matter entails a fundamentally different role than does a judge serving on a capital case. *Dayanim* who we might think are ineligible for positions of discretionary authority (*serarah*) are nonetheless eligible to serve on a rabbinical court for financial cases. The rationale is that in the case of a commercial dispute, the parties involved are free to settle the dispute using any agreed-upon resolution they wish and in so doing they can accept any agreed-upon judge to rule on their case.⁸ In financial cases, a monetary asset or interest is in dispute. Since individuals have complete ownership and authority over their monetary assets, disputants can accept whatever judges they wish.⁹

Financial cases stand in stark contrast to capital cases, where the accused are not free to craft any resolution or court that is to their liking.¹⁰ In fact, there is no such thing as "accepting a resolution" in a capital case. No party can agree to have himself killed as a resolution because, as opposed to financial interests, individuals do not have complete ownership and dominion over their bodies.¹¹ Capital cases entail the fullest level of adjudication in Jewish law, and thus the law reserves the authority to judge capital cases to those Jews who, among other qualifications, satisfy certain lineage requirements.¹²

8. See *Shulchan Aruch, Choshen Mishpat* 3:1.

9. This category includes a person who gives money to somebody who is not entitled to it as a matter of halacha.

10. In the Jewish tradition a person is not even the owner of his own body and thus cannot agree to have himself killed and certainly may not commit suicide.

11. Suicide, for example, is thus prohibited; see for example *Yoreh Deah* 345:1.

12. To explain this, consider the following: if a person confesses to owing another person money, his statement is adequate to enforce him to pay the

An even more restrictive rule is put forward in *Yevamot* 102a with regard to the *bet din* for *chalitza*:

As the *beraita* states in the name of Rabbi Shmuel bar Yehuda from the verse ‘*beyisrael*’ – a *bet din* of born Jews and not a *bet din* of converts . . . Rava states that a convert may judge his fellow convert as a matter of Torah law, as it states “you shall place upon you a king chosen by God. From among your brothers you shall choose a king”. “From among” means among your brothers, but a convert may judge a fellow convert. If his mother is Jewish, he can judge even a Jew. But for *chalitza*, both his mother and father must be Jewish...

The very nature of *chalitza* as a non-adjudicative hearing requires that the participating *dayanim* meet additional requirements as compared to *dayanim* presiding over commercial matters. During *chalitza*, the members of the *bet din* serve as witnesses to validate the change in a person’s halachic status; here the *bet din* acts in a different role as compared with the adjudicative role a *bet din* serves in a commercial matter.

Similar to *chalitza*, conversion is also a status-changing event, which could explain why many scholars conclude that conversion and *chalitza* follow the same requirements. In the case of *chalitza*, a Jew who is a convert is ineligible and even the child of a convert is ineligible to serve on the *bet din* – regardless of whether the widow having the *chalitza* done is a convert herself. Unlike financial matters wherein some talmudic sources rule that it is acceptable for a convert to judge his fellow convert, when it comes to cases involving *chalitza*, no such leniencies apply. This distinction could be understood as differentiating between cases that require the *dayanim* serving on the *bet din* to make a halachic judgment as

money, whereas if one confesses to a capital crime, he cannot be executed based on that confession.

compared with cases where the *dayanim* serve as witnesses in order to officially document what occurred.

Section II: *Rishonim* and *Shulchan Aruch* on Converts in a *Bet Din*

The *Rishonim* and *Shulchan Aruch* glean a number of coherent rules regarding the acceptability of converts¹³ serving on a *bet din* from the talmudic sources discussed earlier. Rambam writes:

A *bet din* of three, one of whom is a convert, is an invalid *bet din*, unless his mother is a born Jew...¹⁴

All are valid to judge monetary matters, even a convert, so long as his mother is a born Jew. A convert may judge his fellow convert, even if his mother is not Jewish.¹⁵

According to Maimonides (Rambam), it is only permissible for a convert¹⁶ to preside over financial cases if all the parties involved are converts. However, Rashi disagrees with the Rambam because he understands the Talmud's leniency that permits converts to judge fellow converts to extend to capital cases as well as to financial cases. Rashi posits that if the convert on trial agrees to accept a convert as a judge in capital cases, then such a *dayan* is permitted.¹⁷ Tosafot agree with the

13. For clarity's sake, it is necessary to note a linguistic peculiarity found in the sources. In the time of the Talmud, *Rishonim*, and *Shulchan Aruch*, the word *ger* was often used to denote either a non-Jew who converted to Judaism or the child of a convert. Thus while we might find the phrase "a *ger* whose mother converted" to be an oxymoron, this phrase is used repeatedly in the classical, pre-modern sources.

14. *Sanhedrin* 2:9.

15. *Sanhedrin* 11:11.

16. In this context, "convert" refers to the modern definition of a convert: only a Jew who converted to Judaism, not to his children.

17. Rashi, *Yevamot* 102a, s.v. *ger dan chavero ger*.

rule of Rambam,¹⁸ as do the Rif,¹⁹ the Rosh,²⁰ and the *Tur*.²¹ In the matter of *chalitza*, all authorities agree that a convert is prohibited from serving as a *dayan*.²² Even the children of converts (if both the parents are converts) may not sit as a *dayan* on *chalitza* matters.²³

The *Shulchan Aruch* summarizes the halacha in three different places, all consistent with each other. *Even HaEzer* states the following regarding a *bet din* for *chalitza*:

If one of the members of the *bet din* is found related, otherwise invalid, or a convert, the court is invalid. Even if his father is a convert and his mother a born Jew, the child is invalid to serve as a *dayan* for *chalitza* until his father and mother are born Jews. *Ramo: Some say if his father is Jewish, he may serve.*²⁴

In *Choshen Mishpat* 7:1 the *Shulchan Aruch* states:

A *bet din* of three in which one member is a convert, this court is invalid to judge born Jews, unless the convert's mother [*Ramo: or father*]²⁵ is a born Jew. A convert may judge his fellow convert, even if his mother is not a born Jew.

In *Yoreh Deah* 169:11, the last halacha found in *hilchot gerim* (laws of converts) states:

18. Tosafot, *Yevamot* 102a s.v. *ger*.

19. Rif, *Sanhedrin* 13b.

20. Rosh, *Sanhedrin* 3:10.

21. *Tur*, *Yoreh Deah* 269.

22. *Shulchan Aruch Even HaEzer* 169:1.

23. *Ibid.* There is a conceptual dispute present about the nature of this rule, with some maintaining that it is for the children of two converts that the Talmud needs the specific textual insight, and of course a convert himself is never eligible; others disagree with this interpretation.

24. *Even HaEzer* 169:1.

25. *Ramo's* view accepts that either the father or the mother may be a born Jew.

As a matter of judging, a convert is valid to judge monetary matters only if his mother is Jewish. But if his mother is not Jewish, he is not allowed to judge a Jew; but his fellow convert he may judge. However, he may not sit on a *chalitza* matter even if the woman doing *chalitza* is a convert, until both the mother and father are of Jewish lineage.

In sum, a convert may only sit as a judge on financial cases if all parties to the case are converts. The only area of halacha still unclear is the acceptability of one whose mother is a convert and father is a born Jew, which the *Shulchan Aruch* and *Ramo* argue about, and which remains a contemporary dispute. All subsequent restatements of Jewish law have accepted these rules that limit converts to judging monetary matters with the consent of the parties.²⁶

Part III: May a Convert Serve on a *Bet Din* for a Conversion?

There is no discussion in the classical, pre-modern sources, as to whether a convert may sit on a *bet din* for conversions. To the best of my knowledge, the first authority to address this issue is Rabbi Shlomo Kluger (1783 - 1869). In his commentary on *Yoreh Deah*, he states:

On the question of whether a convert can serve on a *bet din* to accept converts: It is true that according to Rashi in *Yevamot* 102a, a convert can judge his fellow convert on capital matters and it is obvious according to this view that he can sit on a *bet din* to accept converts as well. But according to *Tosafot*, who argue there and rule that on capital matters he [a convert] cannot judge... Thus, according to *Tosafot*'s view, it appears that a convert can

26. See *Aruch HaShulchan* CM 7:1-5 as well as *Kovetz HaPoskim* on *Choshen Mishpat* 7:1.

not sit on a *bet din* for conversion.²⁷

Rabbi Kluger contends that a rabbinical court for conversion should follow the same standards as a rabbinical court for capital matters, as opposed to the standards for financial matters. Since normative halacha excludes converts from serving on capital cases,²⁸ Rabbi Kluger posits that a convert may not sit on a conversion case either.

Rabbi Akiva Eiger further advances the classic explanation as to why capital cases are likened to conversions – serving as a *dayan* in both capital cases and in conversion cases are forms of *serarah* (authority), in which a convert cannot participate; similarly, being a king, which is another form of *serarah*, is something that a convert cannot do. Rabbi Akiva Eiger writes:

Rambam writes in chapter one, paragraph four, of the *Law of Kings*, that one may not appoint a convert as king until his mother is a born Jew. Not only is kingship restricted, but even all positions of authority within the Jewish community [are restricted to non-converts] and even the manager of the water well who distributes water to farmers [are restricted to non-converts]; and even more so [converts are restricted from serving as] judges or local presidents even after many generations.²⁹

Responsa Bemareh Habazak, a multi-volume collection of questions and short answers with annotations prepared by the *Eretz Hemdah* Institute under the leadership of Rabbi Shaul Yisraeli (1910-1995) also takes Rabbi Kluger's view.³⁰ Additionally, Rabbi Yisraeli notes that such a conversion [in which a convert sat on the *bet din*] is valid *bede'eved* (post factum), based on the possibility that Rashi is correct, or the

27. *Yoreh Deah* 269:3 and *Responsa Tuv Tam Vedat* (Volume 6 page 595).

28. See *Tur Yoreh Deah* 268.

29. *Yoreh Deah*: 269:1.

30. *Bemareh Habazak* 3:82 (at page 136). (This volume is the last one where every *teshuva* published was approved by Rav Shaul Yisraeli).

view that a conversion is valid with just one *dayan* rather than three.³¹

A second approach, adopted by Rabbi Shalom Yosef Elyashiv (b. 1910), argues that a conversion is most analogous to *chalitza* because they both require that the *bet din* witness and record what is happening rather than adjudicate a dispute. Since converts are unquestionably prohibited from serving on a *bet din* presiding over a *chalitza*, it follows that converts are also prohibited from sitting on conversion panels. Moreover, just like a *chalitza* is invalid, even after the fact, if a convert was participating on the panel,³² so too a conversion is invalid even after the fact if a convert sat on the panel. Rabbi Elyashiv states:

Tosafot in *Ketubot* (44b s.v. *veama*) write that even though a convert cannot be a judge, nonetheless he can judge converts; this is the halacha. From this it appears that for matters of conversion [which require three *dayanim*] a convert is invalid as a *dayan* since the central part of accepting converts is similar to judging Jews, as the judgment is about converts entering the Jewish community, and one who is judging the Jewish community is like one who is judging Jews.³³

The editor of this volume then added the following note: “And I asked Rabbi Elyashiv if it voids the conversion even

31. Mordechai in *Yevamot* 36 cites the view of Rabbi Yehuda ben Yom Tov and Rabbenu Simcha that conversion needs but a single *dayan* and Tosafot (*Kiddushin* 62b s.v. *ger*) ponder such a possibility, albeit conclude that such is not to be followed *lehalacha*. Nearly all the *Rishonim* accept Tosafot’s view. So, too, a small group of *Rishonim* adopt Rashi’s view that a *ger* can sit on death penalty cases involving a convert (see Bach, *Choshen Mishpat* 7, who cites Rabbenu Yerucham as adopting Rashi’s view).

32. This is true even if the woman doing *chalitza* explicitly accepts a convert as a member of the panel.

33. See Rabbi Shalom Yosef Elyashiv, *Hearot Lemasechet Kiddushin*, page 436.

after the fact if one of the *dayanim* was a convert and he said, in his view, 'yes'."³⁴

A decision issued by the rabbinical court in Jerusalem over a decade ago supports Rabbi Elyashiv's opinion.³⁵ The decision concluded that conversions and *chalitza* are similar in that they both serve to change the halachic status of the person as opposed to adjudicating a matter; therefore, the rabbinical court involved must be the same for both. This view suggests that the issue has nothing to do with whether a convert may serve on a *bet din* in general – rather it reasons that the members of a *bet din* for a conversion or *chalitza* serve as the gate keepers of an individual's new halachic status, and this role is inappropriate for a convert. Rabbi Hershel Schachter indicates a preference for this view as well.³⁶

The third view, adopted by Rabbi Gedalya Felder (1921-1991),³⁷ proposes that the role played by a rabbinical court in a conversion is most similar to the role of a *bet din* in a financial court case. He understands the convert-in-waiting to be close enough to an actual convert, and thus the individual who is in the process of converting may accept another convert as a *dayan* in his case. It is considered no different than any other case in which it is valid for a convert to judge a fellow convert, such as financial disputes. Rabbi Felder states:

From what we have explained, one could say that we rule that a convert may judge his fellow convert and according to Rashi, even capital matters . . . It is ruled in *Shulchan*

34. Id.

35. See *Dinnai Mamonot Uberurai Yuchsin*, 7:416.

36. See Rabbi Hershel Schachter, "*Bedin Ger Dan Chavero Ger*" *Kol Zvi* 5762, 294-301 at page 299. Rabbi Schachter quotes this view in the name of *Shalmei Shmuel* 45 of Rabbi Shmuel Lev Yulov.

37. *Nachalat Tzvi* 1:226-227; note, this *teshuva* is only found in the second edition of this work and not the first. But see Rabbi Chanoch Henoch Cohen, "*Be-inyan Ger Ha'im mutar letzorfo l'dayan Bevet din Shel Shelosha be-Kabbalat Ger*", *Shana beShanah* 5752, 259-265.

Aruch (Yoreh Deah 269:11; Choshen Mishpat 7:1) that on financial matters a convert can judge other converts. And conversion is called 'judgment' and based on that, we need three judges, and conversion is no different from financial matters. I found a responsum on this matter in *Responsa She'arit Yisrael* from the great Rabbi Israel Zev Mintzberg (Yoreh Deah 22) who contemplated this matter concisely and ruled that a convert may sit on a *bet din* to accept faithful converts, and [the convert can] be involved in every matter related to conversion.

In this view, conversions are analogous to monetary cases involving only converts, where it is agreed that a convert is permitted to judge another convert. Support for this opinion, albeit *bede'eved*, can be found in the views of the *Responsa Bet Mordechai* 1:81 and in the *Aderet's Maneh Eliyahu* 8 as well as Dayan Grosnas' *Lev Aryeh* 21. As a reasonable proof to this view, one could add that during a discussion concerning which parts of a conversion may take place at night, both the *Shach* and the *Taz* in Yoreh Deah 268:9 seem to analogize the rabbinical court for conversion to the rabbinical court for financial matters, at least *bede'eved*.

It might well be that the basic dispute here is about whether the *bet din* plays an adjudicative or observational role in a conversion case. In a *chalitza*, a man or woman does not need permission from the judges to perform *chalitza*: the role of the *dayanim* is merely observational, and the process runs because of the action taken by the parties involved. The *dayanim* are only needed to witness the halachic status change, and they do not make a judgment on the merits of the case. In a commercial dispute or a death penalty adjudication, the judges serve a much more central role because they decide the case on its merits. In order to complete their job in a commercial or capital dispute, the *dayanim* must engage in the discretionary act of judgment and adjudication. The logical question follows: Into which of these categories does

conversion fit?³⁸

Section IV: Conclusion and Determining the Normative Halachic Practice

The modern sources put forth three views as to whether a convert may sit on a conversion panel; each view presents a unique reasoning supporting its conclusion.

- Rabbi Kluger posits that a conversion is more serious than financial matters and thus, just because a person is qualified to hear financial cases, he is not necessarily fit to serve on a conversion panel. The rationale for this reflects the seriousness with which Jewish law views a convert's entrance into the Jewish nation. Conversions are matters of the soul, quite literally, and therefore analogous to capital cases, which are also matters of the soul.

- Rabbi Felder disagrees with Rabbi Kluger's logic; he understands conversions to be analogous to financial cases involving only converts. He therefore concludes that since converts may serve on financial cases involving converts, they are also eligible to be *dayanim* in conversion cases.

- On the other hand, Rabbi Elyashiv conceptualizes conversions in a completely different manner: As conversion is an individual's entry into the Jewish people, it is a status-changing event of great magnitude. Therefore, the case most closely resembles that of *chalitza*, which is also a status-changing event. Rabbi Elyashiv concludes that a fully-authorized *bet din* is needed in both *chalitza* and conversion cases.

The basis of this dispute can perhaps be found in the *Shach*³⁹

38. A corollary of this might well be the question of whether a *bet din* for conversion can decline to convert someone as a matter of discretion when he or she is completely ready to convert, merely because the *dayanim* wish not to convert this person.

39. *Yoreh Deah* 268:9.

where the *Shach* ponders two competing understandings regarding the nature of conversions. The *Shach* writes:

Acceptance of mitzvot not in front of a panel of three rabbis is invalid even after the fact, as is the opinion of Tosafot and the Rosh that acceptance of commandments is like the opening of a court case, which, as explained in *Choshen Mishpat* Chapter 5 needs to be during the day. But immersion and circumcision is like the conclusion of a court case that, as is explained there, can be finished at night. This matter is a little bit difficult since the Ramo writes, in *Choshen Mishpat* 5:2, that there are those who say that if they proceed and judge at night their judgment is valid. If that is so, according to this view certainly even the acceptance of commandments is valid after the fact at night, and the Ramo should not have been silent here. It is possible that specifically only for money matters, Ramo contemplated as correct the view that court proceedings at night are valid since on money matters a court can freely transfer property. This is similarly stated in *Bach* in *Choshen Mishpat* 5, who notes that for matters of *chalitza* we are strict and invalidate a *chalitza* that was done at night. Nonetheless, for money matters we rely on the view cited by the Ramo. *In this case, conversion is like chalitza.*⁴⁰

The *Shach* contends that there are two ways to understand the conversion ritual, and thus there are at least two different ways to construct a rabbinical court to oversee it. Each of these two constructions imposes significantly different requirements.

One can view a court for a conversion to be on the same level as a court for financial cases. Since the requirements regarding who may sit on a *bet din* for financial cases are more lenient than the requirements for judging capital cases or

40. Id. (emphasis added).

witnessing *chalitza*, it follows that a convert can serve on a *bet din* for conversion, just as he may serve on a financial case.

The other view within the *Shach* suggests that one should view a court for conversion like a regular court, but without any of the leniencies customarily found in financial adjudication; this produces a rabbinical court whose members are held to the standards of a court for *chalitza*. If that is the case, then a convert cannot serve on such a *bet din*.

Since this dispute is without clear precedent, it is certainly wise to err on the side of caution and mandate that only born Jews serve as *dayanim* in cases of conversion. Given that there are eminent *poskim* who consider such conversions invalid, even after the fact, it would be a disservice to any potential convert (as well as to the Jewish community) to intentionally staff a conversion panel with such a rabbinical judge, especially since there are abundant competent and technically qualified rabbis available.

It is worth explaining more fully the rationale behind being strict on a practical level in such a case (in all but the rarest cases). This stringency reflects a general halachic-process issue, which is easily overlooked. As discussed, there is a dispute about the validity of a conversion in which a convert was a member of the *bet din*. It is very difficult to resolve this dispute, since very few classical sources discuss this particular issue, and a practical consensus has not developed in modern times. Some permit a convert to sit on a conversion panel even *lechatchela* (*ab initio*) while others invalidate such a conversion even *bede'aved*.

So what is a typical *bet din* supposed to do? In an ideal halachic world, the answer would be that each *bet din* should determine which *posek* they should follow ("*aseh lecha rav*") and the *bet din* should consult its own regular *poskim*. The problem with this approach is if that becomes the actual practice, then those who are lenient on this matter produce converts who are still gentiles according to those who are

strict. Consider, for example, a hypothetical *bet din* for conversion, which is staffed exclusively by students of Rabbi Felder. Rabbi Felder certainly was an eminent and respected *posek*. If they follow the rule of *aseh lecha rav*, this *bet din* ought to permit converts to sit on such a conversion panel, because that is Rabbi Felder's reasonable understanding of the halacha. Yet, if this hypothetical *bet din* in fact does such conversions under this rule, they know full well that another hypothetical *bet din*, staffed by students of Rabbi Elyashiv (also an eminent *posek*) would still consider such converts to be gentiles. This result is certainly bad for the general Jewish community, and further it is unfair to the convert at hand. This is true even for a *bet din* that is absolutely certain itself that converts may serve on a conversion panel (as their *posek* told them so directly).

In this sense, conversion matters ought to follow the rule found in Jewish divorces: a *bet din* strives as a matter of normative practice to issue *gitten* that are valid according to all views: it is only in cases where a *get* cannot be issued consistent with such a standard that any lower standard should be employed.⁴¹ Similarly, a *bet din* for conversion should only consist of individuals that are valid *dayanim* according to the strictest halachic interpretation, unless no other valid *dayanim* are present and a conversion has to be performed (a very rare case). If the *bet din* relies on the strictest rules when there is no reason not to, they can be sure that the *gitten* and conversions that they preside over will be valid and respected within the entire Jewish community as opposed to only being accepted within a smaller segment of the population.

41. See *Rivash* 399 and *Yabia Omer*, *Even HaEzer* 6:6(3); see also *Taz*, *Even HaEzer* 17:15 who notes that in time of urgent need (such as a case of *igun*) the consensus rule is not followed. Precisely because there are virtually no cases where only a convert can sit on a panel for conversion, such ought to never happen, just as a *get* need never be given that any significant group of *poskim* think is invalid (other than in cases where that is the only way to give the *get*).

Converts and the Jewish community as a whole are ill served by having a conversion that others will not accept (especially if they can have a conversion accepted by all with no additional effort).

We should be blessed to live in a time where all conversions are for the sake of heaven and all conversions are handled by conversion panels qualified to do so.

Vaccination in Jewish Law

Rabbi Alfred Cohen

Introduction

It is a well-known axiom of Jewish thought that guarding and preserving one's health is a mitzvah, as the Torah commands: "*venishmartem me'od lenafshoteichem*."¹ Not only is it a mitzvah for the patient to seek relief but also for the doctor to heal. Commenting on the biblical verse *verapo yerapeh* (the doctor shall heal) (*Shemot* 21:19), the Talmud notes:² "From here [we see] that permission is given to the doctor to heal."³

Jewish law includes prevention of disease within the purview of the doctor's mandate to heal (see further in this article). One of the major innovations in this regard in the past few generations has been the development of vaccines, which generally bestow long-term immunity against specific

1. *Devarim* 4:15.

2. *Berachot* 70a, *Bava Kamma* 85a.

3. This counters any putative argument that since disease comes about through Divine decree, it would be sacrilegious to try to find a cure. See Rashi and Tosafot, *Bava Kamma* 85a. Tosafot (see *Moshav Zekeinim* to *Shemot* 21:19) clarify that one might have thought, since the biblical verse is discussing a case where one person wounded another, that the only time resort to a doctor is permitted is when the sickness came about via human agency. Therefore it is necessary to add that even in heaven-sent illness, healing should be pursued.

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sicknesses. Vaccination, however, is occasionally not without problematic, even tragic, consequences for some recipients. In addition, the increase in a number of terrible conditions, including autism, has been attributed by some to vaccinations, albeit without scientific proof. There are those who claim that vaccinations can and do cause tremendous harm to many individuals (as evidenced by faulty flu vaccine a few years ago). On the other hand, the medical establishment counters that many diseases could be eliminated altogether if universal vaccination were achieved (which is virtually what has happened with smallpox in the United States).⁴

In light of this, a contentious debate rages in American society at this time about vaccination policy – whether to vaccinate all children or only those whose parents choose to do so; whether it is a violation of human rights to force people to undergo treatment when they object, whether the “greater good” warrants possibly harmful action against the few.⁵

The intent of this study is to examine what Judaism has to say on this topic. We will explore the extent to which medical opinion should be relied upon, and whether it is mandatory to do so, focusing in particular on the current movement opposing universal vaccination against many diseases.

This issue has particular immediacy in the near-hysteria surrounding the spread of swine flu (H1N1) throughout the world. Millions wear masks as they go about their daily lives, and even in the United States, schools and camps have been closed out of fear. The medical authorities in this country

4. Albeit numerous studies and tests have been undertaken to try to confirm or reject the allegations of vaccine involvement in certain conditions, neither side of the controversy has been able to show conclusively that it is right and the other side wrong.

5. In 2009, New York State made a law requiring hospital workers to be inoculated for swine flu and regular flu, in order to be able to continue working near patients. The workers protested that many did not want to do this. *NY Times*, September 21, 2009.

worked frantically to develop a vaccine to counter the expected near-pandemic as well as to meet the threat of possible biological warfare. It is therefore all the more important to clarify whether Jewish thinking advocates reliance on preponderant medical opinion, and whether following medical advice to be vaccinated is mandatory or optional – or contra-indicated – in Jewish law.

To come to grips with this issue, we will need to understand what the specific issues of conflict are and how the halacha (Jewish law) applies to each argument. Is there a religious obligation (*chiyuv*) to be vaccinated? Another question is whether and/or for what reasons individuals may be entitled to opt out of vaccination, even if their non-participation might endanger the larger community. Conversely, we need to determine whether in halacha, the welfare of the larger group pre-empts the rights and concerns of the individual.⁶

6. It is a given in Jewish jurisprudence that the halacha follows the majority (*Shemot* 23:2). An example of this principle can be found in a talmudic discussion about the following scenario: there are 10 butcher shops in one area, 9 selling kosher meat and 1 selling non-kosher. A piece of meat is found in the street fronting the stores – we can assume it came from the kosher butcher shop, based on the fact that most meat in the vicinity is kosher (*Chullin* 11a; *Tzitz Eliezer* IX:17, n.1). The exception is when it concerns *pikuach nefesh* (mortal danger to life), *Yoma* 84b and 85a. Judaism holds life so precious that if even a remote possibility exists that an action might save someone's life, we must take it, "so that nothing [we do or do not do] would lead to the death of a Jew." Tosafot *ibid*.

Although the Gemara specifically indicates that *pikuach nefesh* situations suspend the majority rule, it is not easy to determine just when or how this applies to our present discussion. How to decide which "majority" group should be the determining factor--most of the people in the world who contract swine flu, for example, will not die from it, but also the majority of people being vaccinated will not die or suffer serious consequences. Setting up the halachic "equation" can be ambiguous, making it difficult to arrive at a clear halachic conclusion.

In his *Tzitz Eliezer*, VIII:9, VI:7, as well as IX:17, p. 74, Rav Waldenberg says one can only choose not to rely on what happens in the majority of cases if he is actually confronted with a person who has a fatal condition. Thus, he would not allow a pharmacy to produce medication on Shabbat on the claim

The Doctor in Jewish law

How much weight is given to medical opinion by Jewish law? Although we have noted the talmudic teaching that seeking to be healed by a doctor is acceptable or recommended in Jewish law, the Ramban notes that in previous times, when the Jewish people still had prophets, pious individuals did not go to doctors for healing but rather to prophets and holy men, realizing that the true cause of sickness is sin; they would seek advice on how to improve their behavior in order to merit healing.⁷ Nevertheless, Ramban himself acknowledges that in the present, one may and should go to doctors to be healed.⁸

Furthermore, it appears that not only is it meritorious to heal the sick, but the mitzvah includes taking measures to insure that people don't get sick in the first place, as one of the major writers on Jewish medical rulings extrapolates from the rulings of Rambam:⁹ The role of the doctor includes three types of activity, the first and most important of which is maintaining health, which includes taking steps to prevent loss of health.

Moreover, we see that the Sages were prepared at times to rely upon the expertise of doctors to help them decide questions of Jewish law. The Gemara records the case of a

that somewhere surely there was a sick person who would benefit from it.

The Chazon Ish requires a reasonable expectation of mortal danger before he is prepared to suspend the majority rule, *Ohalot* 22:32. He mentions that in case of an enemy besieging a city, or a dangerous disease rapidly spreading through a community, it might be permissible to transgress some Sabbath laws.

7. Ramban, *Commentary to Vayikra* 26:11. As admirable as *bitachon* (trust in G-d) is, an individual has to be consistent in his *bitachon*. If he is prepared to rely only on prayer and therefore refuses to take a vaccine – then he has to maintain that level of behavior at all times. One cannot “pick and choose” when to be ultra-pious and when to rely on science.

8. See *Chatam Sofer, Even Haezer* II:82.

9. *Nishmat Avraham Yoreh Deah* p. 228, n.4.

woman who was having bodily discharges, and the Rabbis asked a doctor for a way to determine the nature of the discharges, so that they could know whether to rule the woman *tehora* or *temeiya* (ritually pure or impure).¹⁰

A further example of the weight given to medical expertise is evident in a responsum penned many years ago, when vaccines were still new. A Jewish parent asked his rabbi what to do in the following situation: an expert doctor would be coming to town ("from the great city of Prague"), but would only be available on the Sabbath. Should the parents have their child vaccinated immediately, or would it be permissible to wait until after the Sabbath, although there was a possibility that the doctor would have left by then?¹¹ The response given was that if indeed the doctor is a licensed expert in the administration of the vaccine, then it is even permissible to carry the baby to him on Shabbat to get the shot (if it was not possible to convince him or to pay him to do it at another time). This is ample proof that preventing sickness is not only desirable but is important enough in certain cases to permit Sabbath desecration.¹²

10. *Niddah* 22a. The *Chatam Sofer Yoreh Deah* 158 explains that in this case the Rabbis were seeking clarification for the nature of these discharges (they were not asking the doctor whether she was impure or not).

11. *Teshuva Me'Ahava* 134-135. Ancillary issues that needed to be clarified included whether the vaccination causes bleeding or is simply injected under the skin; also there is some discussion whether the parents' bringing the child affects the ruling (*mesaeiya*). See *Shabbat* 93a and *Beitzah* 22a.

12. There appeared an article by Dr. Ed. Reichman in *Jewish Action*, Winter 2008, which reported the positions of current *gedolim* on the question of vaccination. Rav Waldenberg's opinion is cited on the topic of tetanus shots on Shabbat. Albeit there are challenges to many vaccines, for some reason tetanus is not included in the controversy; there seems to be universal acceptance of its beneficial effects.

A ruling by Rav S.Z. Auerbach concerning rubella vaccination is also cited in the *Jewish Action* article. It should be noted that Rav Auerbach was explaining the definition of *pikuach nefesh*. Rav Auerbach offers a fascinating definition of *pikuach nefesh* in that he includes the anxiety a person might feel if he were not able to be treated or vaccinated for an extended period of time

There are numerous other instances in talmudic literature of rabbis strongly advocating following expert medical advice to prevent disease, not only to treat it.¹³ In Tractate *Shabbat* we find Rav Huna admonishing his son for failing to attend a lecture on preventive medicine,¹⁴ and elsewhere the Talmud cautions that a person must take steps to safeguard health.¹⁵ The preponderance of halachic opinion leaves little doubt that Jews committed to halacha are obligated to follow the medical opinions of today's doctors – and nowadays the overwhel-

as also being within the parameters of *pikuach nefesh*. Rav Auerbach would even permit consumption of non-kosher food or vaccination on Shabbat in order to allay excessive anxiety in such a case.

In *Tzitz Eliezer* IX p. 74, Rav Waldenberg accepts the definition of *pikuach nefesh* as including conditions which are of major concern and cause anxiety in the patient. However, he is not prepared to allow *chilul Shabbat* for every anxious person! We are supposed to follow the Gemara. On the other hand, just because a person doesn't feel worried about something the Gemara says he **should** be worried about – that doesn't change the halacha as indicated by the talmudic sages. For example, the Gemara is of the opinion that for a woman who has given birth it is dangerous to fast within three days. Even if a woman feels confident in her ability to withstand fasting on Yom Kippur within 3 days of childbirth, we would not change the halacha and tell her she may or should fast!

Rav Waldenberg goes on to argue against factoring in anxiety in reaching a halachic decision: if a parent says he is not worried about not performing *metzizah* on his newly-circumcised son, even though the Gemara says it is dangerous to omit the procedure – would anyone imagine that his lack of anxiety would render the procedure not halachically necessary? Based on these rationales, he rejects a patient's anxiety as a factor to be taken into account with *pikuach nefesh*. See also *Shiltei Gibborim*, *Avoda Zara*, chap.2, p. 9 in *Dapei HaRif*; Ramo, *Yoreh Deah* 179:3 and Gra, *ibid*, no. 8. However *Iggerot Moshe Orach Chaim* 129 rules that if a sick person has a temperature of 102, we should desecrate the Sabbath for him, and then adds that if the patient is deeply concerned about his condition, we may transgress Sabbath law even for 101 temperature. On this last point, *Tzitz Eliezer* XV:7 disagrees.

13. Sadly, it is necessary nowadays to add that not only should the medical advice be expert, but it is also important to verify that the advice is **unbiased and unpaired for**.

14. *Shabbat* 82a.

15. *Ibid*, 32a.

ming majority of doctors strongly advocate mass vaccination.¹⁶

Non-Jewish doctors and their medical opinions

Perhaps there are those who would claim that the high regard Jewish thought has for doctors' opinions applies only to Jewish ones. There were many centuries when hatred of Jews was rampant, particularly in light of the prevalent belief then that Jews were virtually the spawn of the Devil and eager to perform all sorts of evil. Consequently, it became an accepted Jewish practice not to use non-Jewish doctors, whose enmity might cause them to harm rather than cure their Jewish patients. In today's climate, however, that concern generally does not apply. In the words of the *Chayei Adam*, "nowadays they [non-Jewish doctors] are not suspected of murdering [Jews]."¹⁷

Furthermore, in the modern age, all doctors are considered "qualified" [inasmuch as they need to pass a licensing exam]; a person should choose the best-qualified doctor available, whether he is Jewish or not.

16. See Doctors DiPoce and Buchbinder, "Preventive Medicine", *Journal of Halacha and Contemporary Society*, Vol. XLII, Fall 2001, p. 70.

It is interesting to note that the *Chatam Sofer*, *Orach Chaim* 76, questions how we can rely on medical knowledge that has been gleaned from studies made on people who are so different from ourselves. The *Shulchan Aruch Yoreh Deah* 116 writes that certain foods don't affect non-Jews in the same way as Jews, since Jews refrain from eating certain foods, and their constitution may therefore be different; Jews also observe mitzvot and have a lifestyle which renders them psychologically and even physically different from gentiles. Perhaps they will react differently to medications than others? Lest this concern be considered bizarre, let us remember that in the past few years, women and blacks have argued that certain medications and medical assumptions are invalid, inasmuch as most testing is performed on white males! Indeed, new tests have indicated that some of the conclusions reached by science are faulty when applied to groups different from the test group. Perhaps the *Chatam Sofer's* reservations are not as outlandish as they may at first appear; they may even be prescient.

17. Cited by the *Mishnah Berurah Orach Chaim* 20:7. *Shemirat Shabbat Kehilchata* chapter 40, note 1, lists extensive sources to buttress this position.

If a sick person must eat [on Yom Kippur], if there is an expert doctor there, even if he is an idolater, and he says that if he [the patient] does not eat it is possible that his sickness will worsen and endanger him – we follow his instructions and feed the patient, even if the doctor has not said that otherwise he will die.¹⁸

Following this ruling, nowadays most *poskim* readily rely on non-Jewish doctors, who are considered trustworthy and reliable.¹⁹ R. Moshe Feinstein is reported as saying that “the majority of non-Jewish or non-observant Jewish doctors follow their profession and are totally unconcerned with the incitement [and hatred preached by some religious leaders] and therefore we need not be concerned about this...”²⁰

Vaccines

Multiple statistics attest to the great improvements in public health wrought by the introduction and use of vaccines, from combating whooping cough (pertussis) and measles to the

18. *Orach Chaim* 608:1.

19. *Shach*, *Yoreh Deah* 155:3; see also Chida, *Shiurei Beracha Orach Chaim* 1; *Panim Meiroi* I:12; *Shevut Yaakov* II:76; *Tiferet Yisrael* 77:2-6. See *Aruch Hashulchan Yoreh Deah* 187:8, who opines that nowadays “there is no difference between a Jewish and non-Jewish doctor, as long as he is qualified, we can rely on him not to spoil his professional reputation.” Further sources for this opinion appear in *Pitchei Teshuva* 187:30, *Nishmat Avraham* p. 185; *Kaf Hachaim*, *Orach Chaim*, 328, s.k. 48 and 17; *Minchat Yitzchak* 125:6 and 127:2. *Tzitz Eliezer* VIII:15 opines that a rabbi has to use his judgment whether to permit using a non-Jewish doctor. Other *poskim* who allow one to use a non-*shomer Shabbat* doctor [who technically would have almost the same status as a non-Jew] include *Tiferet Yisrael*, *Yoma* 8:26, and *Shemirat Shabbat Kehilchata* chap. 39, n. 15;

20. *Sefer Halacha Urefuah* I:p. 130. See also *Tzitz Eliezer* VIII:15, who rules that the decision will depend on the way the Rav understands the situation. It is the sentiment of many that nowadays we would accept the doctor’s opinion. However, there are those who maintain that the close relationship of doctors and vaccine-producing pharmaceutical companies prevents doctors from judging the medical realities fairly, particularly because they get many free gifts and “perks” from these manufacturers.

virtual elimination of smallpox from many part of the world.²¹ Nevertheless, there are many parents today who resist or refuse to have their children inoculated, for a number of reasons, primarily because they consider them dangerous. Is refusal to be vaccinated sanctioned by Jewish law?

The author of *Avnei Nezer* was asked by a man what he should do in the following instance: his doctor had told him that for health reasons he should drink milk which was not kosher. The questions were – may he drink the milk or is he permitted to ignore the doctor's instructions and not drink milk at all? In his response,²² the *Avnei Nezer* concludes that if there is true *sakana* (danger to life) in not following the doctor's advice and moreover if the doctor is an expert who can be relied upon, then it is surely permissible to drink the milk.²³

The major portion of his responsum, however, addresses the second half of the query, whether it is permissible to *refuse* to drink the non-kosher milk. He notes that according to Ibn Ezra, the Torah only grants a doctor the right to heal wounds outside the body, not internal ones (such as the current patient had).²⁴ Most *poskim*, however, do not accept this restriction. He then considers the commentary of the Ramban, that in the past, truly pious people did not resort to doctors but rather to spiritual guides, who would teach them to overcome sin and thereby also overcome sickness, which are the wages of sin.²⁵

21. See "Parental Refusal of Pertussis Vaccination is Associated with an Increased Risk of Pertussis Infection in Children", by Jason M. Glanz *et al*, www.pediatrics.org at NY Medical College Health Sciences Library, note 19.

22. *Avnei Nezer*, *Choshen Mishpat* 193.

23. He even contemplates that it might be permissible to drink the milk even if there is no danger to life, if the doctor considers it beneficial.

24. On the phrase *verapo yerapeh*, *Shemot* 21:19.

25. In his *Commentary* to *Vayikra* 26:11, Ramban notes that the Bible criticizes King Asa for turning to doctors when he became ill, rather than turning to G-d's messengers. He also adduces proof from a text in *Berachot* 60a and the commentary of *Taz* to *Yoreh Deah* 336. See also the Talmud *Bava*

Nevertheless, Ramban himself concedes that nowadays, in the absence of prophets to advise us, we are certainly permitted to seek medical advice. Based on these two precedents, *Avnei Nezer* initially concludes that the patient is definitely entitled to decline the non-kosher milk. It is possible to argue, therefore, that if a vaccine (drink) is not kosher, the *Avnei Nezer* would not consider it imperative for a Jew to follow his doctor's advice and ingest it.

However, he then cites the view of the *Bach*, who interprets the biblical criticism of King Asa (see note 25) not to his inquiring of doctors but rather to his reliance *only* on doctors, without seeking prophetic guidance.²⁶ Asa should have realized that the doctor is no more than a messenger from the Almighty. If we accept this reasoning, then it would be forbidden for the patient *not* to drink the milk. Although a total *tzaddik* might be permitted to abstain, ordinary people should follow the doctor's advice. This conforms to the ruling of virtually all halachic authorities.²⁷

Perhaps the most emphatic ruling is by Rav Yosef (see previous note), who writes, contrary to those who sanction disregarding medical advice,

However, with all due respect to their Torah knowledge, their words are astounding...and thus it is explained by the Radvaz that G-d forbid a sick person should be strict with himself [and decide to forego medical advice].

In concluding his responsum, the *Avnei Nezer* writes:

Kamma which tells about a very pious individual in Israel who drank goat's milk albeit the Rabbis forbade raising small animals in Israel.

As mentioned previously, if a person truly wants to trust only in G-d for everything, he may do so – but he must be consistent in this trust and act accordingly in all instances, not just when it suits him.

26. *Bach* to *Yoreh Deah* 336.

27. See, for example, R. Ovadia Yosef, *Yechaveh Da'at* I:61; R. Yonatan Eibschutz, *Kereiti U'feleti* 188:5; Chazon Ish, *Letters* I:136, as quoted earlier in this study.

To sum up: [the halacha is that] if a sick person is told by his doctor that if he fasts on Yom Kippur there is a possibility [i.e., not a certainty] that his life is in danger, he [the patient] is required to follow his instructions and to eat on Yom Kippur....If the sick person is strict with himself and fasts, not only is he not acting in a righteous manner but rather on the contrary, he will certainly be punished from Heaven for this.

In other words, if even on Yom Kippur and even in a case of only *possible* danger, the halacha is that person **must** follow the doctor's advice, certainly in the instance under question here, the patient must follow doctor's orders. It follows therefore from the argument of the *Avnei Nezer*, that being vaccinated is required by Jewish law, if doctors so advise.

We will end this part of our inquiry with references to two of the undisputed greats of the twentieth century: There is a story about the Chafetz Chaim, who was revered worldwide for his piety. One time a man came to him, begging for a *beracha* (blessing) for his daughter, who was gravely ill. Responded the Sage – "[My blessing is –] take her to a doctor!"

One of the outstanding rabbis of the past generation, the Chazon Ish, wrote in a letter that,

As for me, I consider natural efforts concerning health to be a mitzvah [a positive commandment]... and as one of the obligations [that a person has] for maintaining himself.²⁸

The *Shulchan Aruch* does not give *carte blanche* to following a doctor's instructions if they entail religious transgression, unless the condition is severe and there is no other choice:

28. *Iggerot HeChazon Ish* I:136. He adds that, albeit the mind cannot function well unless the body is functioning well, one needs to be cautious not to depend on one's own effort excessively. A necessary balance between *emunah* (faith) and *hishtadlut* (effort) must be maintained.

Every sick person who is to be fed forbidden food [i.e., non-kosher], this only applies to a known cure or by the instructions of an expert, but we do not permit any forbidden substance for the sick person if the remedy can just as readily be performed in a permissible manner.²⁹

This exception is an important factor when considering whether Jewish law requires vaccination. In the case of the new vaccine designed to be given to 11-year old girls to prevent cervical cancer, which has caused some deaths and some serious problems, and where medical screening without any danger can do just as good a job, there is no question that Jewish law does not require it (or may not even permit it).

Challenges to medical vaccination policies

While it is true that for many generations doctors' opinions were accepted with great reverence, nowadays this veneration of the medical profession seems to have undergone a major revision. Today, people are typically more cynical and skeptical of "expert opinions", and that includes the pronouncements of the medical profession. For some, there is a pervasive feeling that government agencies which should be guarding the health of Americans are often in cahoots with medical and pharmaceutical associations who are primarily interested in preserving their privileges.³⁰ The multiple instances of food poisoning occasioned by practices to which

29. Ramo to *Yoreh Deah* 155.

30. On August 19, 2009, the *New York Times* reported that there is a move to put a halt to medical journal articles drafted by drug companies. It seems that quite a few articles purporting to show the effectiveness of this or that medicine were really written by paid employees of drug companies, who then paid doctors to allow their names to be affixed to the articles, giving them legitimacy. In light of this phenomenon, it is little wonder that many people are wary of accepting "the best medical opinion" as really an unbiased scientific pronouncement. Of course, Jewish law would not accept as valid the conclusions of such tainted "research", and the bottom-line halacha might be affected.

those agencies turn a blind eye is just one example which fosters this impression.

One of the areas where this new attitude is quite evident is the question of vaccines.³¹ Nowadays, there are a host of “new” devastating diseases which some people are blaming on the proliferation of vaccines against the “old” sicknesses. This fear leads many to avoid vaccinating themselves or their children.³² The distrust is fueled by many speakers, publications, and organizations leading an assault on the concept of mandatory universal vaccination in this country. We should note, parenthetically, that the media give equal time to both sides of the controversy, although in truth the number of people favoring vaccination far exceeds the small minority of naysayers.

Scientific background

For the halacha to take a position on the question of the advisability of vaccination, it is necessary to understand the scientific realities. A vaccine is a substance that introduces a whole or partial version of a pathogenic microorganism into the body, for the purpose of “training” the body to defend itself against this organism whenever it threatens to attack and infest the body.³³ The first attempt at vaccination is usually ascribed to Edward Jenner, a physician from Gloucestershire, who in 1796 discovered a substance found in cowpox which,

31. In the past, there were many diseases which ravaged the population, and vaccines were greatly helpful in saving lives. As such, they were seen as marvelous scientific breakthroughs which were a tremendous boon to humanity. In 1952, just before the Salk vaccine was discovered, there were 300,000 cases of polio, resulting in 58,000 deaths, mostly children. (Wikipedia). Nowadays, polio is rare in the U.S.

32. Allen, Arthur, *Vaccine*, Norton and Company, 2007, p. 265.

33. *Vaccine*, p. 14. There are various types of vaccine – those with live virus (modified so that it can cause infection leading to the body’s developing immunity, without actually getting the disease), with dead virus, with live bacteria, with dead bacteria, p. 20.

when inoculated into people, offered protection from smallpox.³⁴

Mass vaccination is seen as an effective method to protect large populations from the ravages of disease. Thus, there is an entire protocol of vaccines usually administered to children, starting at quite a young age. The targets are measles, polio, whooping cough, chicken pox, mumps, and meningitis, among others. Most states require all children entering school to show proof of vaccination, although there are some states which exempt those with religious or personal objection, or for medical reasons.³⁵

The courts have not uniformly allowed this exemption to be utilized: while it is one thing for an adult to opt out of a perceived benefit due to personal or religious preference, it is quite another to permit a parent to endanger – in the view of the majority scientific opinion – the welfare of a minor.³⁶

There is also a different category of vaccine, which is not

34. Ibid, pp. 44-50.

35. NY Medical College Health Services Library, 5/27/09, from www.pediatrics.org. A study has shown that children whose parents refuse pertussis immunization are at high risk for developing this serious infection. One might think that since most children are immunized, the unimmunized ones would also escape infection, but that is not the case. "Herd immunity" does not completely protect them. "Parents need to know the consequences of choosing not to vaccinate (NYTimes, June 9, 2009 Science section) Furthermore, the *Journal of the American Medical Association* (July 7, 1999, pp. 47-52, cited in JHCS XLII, p. 91, n. 99, by Drs. DiPoce and Buchbinder, "Preventive Medicine,") reported on the health consequences of exempting on religious or philosophical grounds – those granted the exemption were 35 times more likely to contract measles.

There are also some who argue that Jews ought to accept vaccination just as all others do, for that is the law of the land. Were Jews to refuse to do this, and perhaps thereby endanger the larger society, it would cause a *chilul Hashem*. On the other hand, if exemptions are granted to others based on their personal beliefs, then if a Jew opts out due to his beliefs, it would not lead to a *chilul Hashem*.

36. Prince v. Commonwealth of Mass, 1944.

designed to prevent the spread of an infectious disease but rather to protect the individual who is being inoculated from developing a condition. An example of this is a relatively new vaccine for cervical cancer, which the medical establishment is recommending be given to all girls from age 11 and up. Follow-up research has shown there are broad benefits, although some risk exists, including at least 20 deaths and possibly 2 cases of Lou Gehrig's disease caused by the vaccine.³⁷

Despite the prevailing medical attitude that disease must be fought, resisted, and wiped out, there is a countervailing philosophy which regards the human body as having an innate ability to fight disease in a natural way and overcome it. Rather than attacking the sick body with chemicals, this view holds that nature has the ability to heal the person without further intervention.³⁸ This philosophy points to the rising number of victims of asthma and other chronic health problems as proving the point – we have become so accustomed to rushing to attack any malady with pharmaceutical interventions that the body is no longer able to ward off disease on its own, as it previously could. (One example cited by proponents of this philosophy, to show the harm actually caused by over-medicating sick people, is the case of Franklin Delano Roosevelt, who was stricken at age 39 with polio. They claim that he had been [overly] protected from childhood diseases due to his privileged environment and therefore had failed to develop a natural immunity to polio.³⁹ Whether there is any validity to this claim, of course, cannot be proven.)

Some have also expressed the fear that by immunizing the

37. *New York Times*, August 19, 2009, p. A12.

38. It is not clear to this author how this philosophy of medicine accounts for the millions of people who used to succumb to the diseases now combated with vaccines and medication.

39. *Vaccine Safety Manual* by Neil Zimmer, p. 18.

majority of the population to childhood diseases (diseases which some people consider basically innocuous, although that point is highly questionable), vaccines are actually transforming disease patterns in unpredictable ways. Perhaps suppressing chicken pox in children may result in escalating shingles (which derives from the same organism as chicken pox) into a virulent adult affliction.

There is an abundance of information now available, much of it on the internet, much of it neither edited nor peer-reviewed – and often inaccurate. Most parents are not sufficiently trained to sift effectively through what they hear and read, to get to the truth. There is also the argument that actually the risk of side effects has been grossly over-reported by the media, and that the risk is negligible compared to the danger society will face if vaccine-preventable diseases re-infect the general population because large numbers of parents have stopped having their children vaccinated.⁴⁰

Thus, the standard medical position is challenged by arguments of an apparently scientific nature, which are hard to quantify. And when, tragically, a child dies or becomes very ill, it is easy to see why parents will seize upon any argument to affix blame for a bewildering death. Their grief, fear, and frustration can easily be manipulated to focus on vaccination as the culprit. The media publicize these cases of disastrous

40. Dr. Louis Copper, Prof. Emeritus of Pediatrics, at the College of Physicians and Surgeons at Columbia University and former president of the American Academy of Pediatrics, argues that it has been “proven” that there is no link between autism and vaccination. *Mothering* magazine, “The Vaccine Debate”, p. 40. On the other hand, in the same article, Dr. Sears, who describes himself as pro-vaccine, thinks the pro-vaccine movement is doing parents a disservice by categorically dismissing the fears about vaccine safety and labeling parents who don’t vaccinate as selfish. “I think that any doctor who tells parents you have nothing to worry about, there’s no chance of a serious reaction, is making a false statement. A better way to put it is ‘vaccines are very important. Diseases can be severe, and I’d say the benefits of the vaccines outweigh the risks, but you need to be aware there is a very small risk of a severe reaction to the vaccine.’” Ibid, p. 43.

events allegedly caused by vaccines, and the emotional arguments can move many people, more than medical studies challenging or disproving the allegations.

Whether there is any validity to the claims linking vaccines and many diseases is a question which numerous tests and studies have attempted to determine. Mercury and aluminum additives have been blamed, but no evidence has conclusively put that contention to rest. The truth is that “vaccines, like any drug, do carry some risk, but in healthy children that risk is minute. A very small number of immunized children will have an allergic reaction to the vaccine, sometimes so severe it kills them.”⁴¹ But the reality of life is that most people do fly in airplanes, or drive cars, or take penicillin, or have surgery with anesthesia, even though in all these situations there is a small risk of harm, probably greater than from a vaccine.

Another factor buttressing the anti-vaccine arguments is the reality that some of the diseases which still appear on the schedule of routine vaccination are now so rare in the US that an unvaccinated child has no quantifiable risk of catching them. A good example is polio, which has not occurred in this country for years – but the vaccine itself paralyzes eight children a year.⁴²

Another target of vaccine policy for universal vaccination critics is the new vaccine for cervical cancer, which has evoked serious opposition among doctors. Follow-up research has shown there are broad benefits, but also some major risks, including at least 20 deaths and possibly 2 cases of Lou Gehrig’s disease.⁴³ A professor at the Mailman School of Public Health at Columbia University charges, “The message they were giving [in a JAMA article about how well the vaccine

41. “Making the Case for Vaccination” by Laura Blue, *Time Magazine*, Nov. 13, 2007.

42. *Mothering*, p. 43. Similar statistics apply also to diphtheria and hepatitis B.

43. *New York Times*, August 19, 2009, p. A12.

works] was really the drug company message. It was being marketed as if every girl were at equal risk ...and needed this vaccine."⁴⁴ An accompanying editorial questioned "whether any level of risk is acceptable when inoculating a healthy population against a disease that [is relatively rare and] can be prevented through screening." In view of the hesitation of serious medical opinion about the wisdom of this type of mass inoculation, Jewish law would certainly not find it necessary to acquiesce to it.

Briefly to sum up characteristics of this controversy and the factors which continue to fuel passions on either side:

- Many of those opposing vaccinations have no personal experience of the tragic consequences of the diseases which were eradicated (or reduced) by their introduction. It is difficult for people today to understand the panic that pervaded communities every summer when polio would suddenly strike down thousands of healthy children, leaving many of them dead, crippled, or forever tethered to an iron lung.⁴⁵ Diphtheria, whooping cough, and measles similarly left many dead or impaired for life. These conditions have become rare in this country, thanks to almost universal vaccination.
- Unfortunately, the press and other media are always eager for controversial issues to awaken readers and listeners. Thus, the anti-vaccine demonstrators, who may be few, get the same media exposure as pro-vaccine parties, who are much more numerous besides usually being far more knowledgeable.

44. Ibid.

45. *Vaccine*, by Arthur Allen, pp. 160 ff: Most could live in an iron lung for only 2 years, although some did live longer. Many did survive the disease but limped for the rest of their lives. Hospitals used to segregate polio patients and limit their visitors; for the first 2 weeks, no visitors were allowed. Newspapers from that era depicted parents standing on ladders outside their children's hospital ward, tapping on windows to get their children's attention.

- Scientific information, appealing to the intellect, has a far less powerful appeal than emotional or scare tactics.⁴⁶
- Whenever science or medicine seek to introduce an innovation, there is hesitancy if not resistance, inasmuch as the cure may prove to be more harmful than the sickness. (Remember the tragic consequences, decades ago, of thalidomide given to pregnant women to counter morning sickness, which resulted in the birth of thousands of hideously deformed babies.) On the other hand, to reject all innovations due to this fear paralyzes society and prevents many sick people from finding relief.⁴⁷

The individual and the group

The question for American society then becomes – is it ethical/politically feasible to force people to engage in an activity which they consider harmful? As far as Jewish law is concerned, the questions are somewhat more complicated: How far must a person go to protect himself from possible harm, particularly if that protective step might cause him considerable pain? Does an individual have the right to withdraw from a program which benefits the group, if he feels it will be detrimental to him personally? What if his refusal to participate endangers the welfare of the majority – how do we find the proper balance between the right of an individual to protect himself and the right of the community to protect *itself*? The difficulty is compounded by the reality that we really do not know conclusively that vaccines do *not* cause harm, although there is also little evidence that they *do*.⁴⁸

46. On April 19, 1982, NBC-TV produced an hour-long documentary about the dangers of whooping cough vaccine, including images of dead babies. The emotional appeal of this harrowing program is obvious.

47. *Vaccine*, p.441.

48. On February 8, 2009, the *New York Times* ran an article about a Dr. Andrew Wakefield, who sparked a major scare over the safety of the MMR vaccine given to children. He was charged with misrepresenting the results in his report, although he denied the allegations. This incident highlights the

Jewish law grapples with the tension between the rights of the individual and the needs of the community. Sometimes it appears necessary to permit something detrimental to one person in order to benefit the larger group. This issue has been addressed countless times in rabbinic and responsa literature.

One such question appears in a responsum penned by Rav Eliezer Waldenberg in his *Tzitz Eliezer*.⁴⁹ Imagine the following scenario: a bomb (grenade?) is thrown into a crowded marketplace, where it will kill the 50 people there. There is an individual who could deflect it elsewhere, where it will kill one person, not the fifty. Is he permitted to do so? In his reply, Rav Waldenberg refers to the writings of the Chazon Ish, who has expressed uncertainty about what to do:⁵⁰ Should the ruling be that one should try to save the larger group, or is the halacha that it is forbidden to kill any person, even to save a large group?

The *Tzitz Eliezer* interprets the Chazon Ish as ruling that it is preferable to take no action, even if it means more people will get killed.⁵¹ No one is able to decide whose life is more valuable. He does, however, note the famous incident mentioned in the Gemara about two individuals, Pappus and Lulianus, who sacrificed their own lives to save their Jewish community.⁵² The Gemara is lavish in its praise of these two

difficulty of ascertaining the truth, at the same time that it fosters mistrust of the scientific and medical “establishment”, which has been shown in the past to falsify or obfuscate unpleasant realities.

49. Rav Waldenberg originally addressed this issue, based on a text in *Niddahl* 61a, in a *siyyum* which he made upon completing study of the Talmud; subsequently, he expanded it and included it in his *Responsa Tzitz Eliezer* XV:70.

50. *Chazon Ish, Sanhedrin* 25.

51. He cites Rabbeinu Yonah, among others who have ruled the same way.

52. It seems that one time, the king got angry at the Jews of his town, thinking they had wronged his daughter. In his anger, he declared that he would kill all the Jews of that town. At that point, these two men “confessed” to the crime (although they had done no wrong), and thereby saved the entire community. *Ta’anit* 18b; see Rashi there.

self-sacrificing men.

Based on this episode, we could extrapolate that if one fears serious complications from a vaccine, he is not required (but deserving of praise) if he proceeds in order to benefit the community. However, *Tzitz Eliezer* is somewhat hesitant to draw such a direct conclusion, for he notes the distinction that in the talmudic episode, the two men would have been killed with the entire group in any case.

That talmudic incident may be a precedent to be relied on in the present instance concerning vaccines: all people are susceptible to disease, and if some refuse to get vaccinated, all may be harmed. Therefore it seems to be permissible to force all people to get vaccinated, but not if it might result in death for a specific person who has a vulnerability. A person who is likely to suffer a severe reaction should not be coerced, but if some may be only slightly harmed or pained by the vaccine, they should be required to do so, for it is possible to argue that they might have been even more endangered by the actual disease.⁵³

Communal obligations

One aspect of the vaccine controversy is the demand that all persons in the community should be inoculated. The rationale is that even a minority of non-immunized people, who may contract the disease, are not only endangering themselves but others as well. That is because the protection afforded by a vaccine is not fail-safe, and even inoculated persons could get sick and die, in the presence of the disease in others. Therefore, it has become policy in many school districts not to allow unvaccinated children to attend. It is argued that unless all students are inoculated, all will be in danger; furthermore,

53. However, some diseases are so rare nowadays, that the reality is that more die from complications of the vaccine than from the disease. *Mothering*, *ibid*, p. 43.

the contention is all must be inoculated in order for dangerous diseases to be virtually eliminated from our society.

Based on biblical verses, the Gemara maintains⁵⁴ that one must take positive action and effort to save the life of another person,⁵⁵ and also that one is obligated to expend money to protect persons in danger.⁵⁶ Rav Waldenberg in *Tzitz Eliezer* extends this obligation to restoring the health of others, if that is possible, especially since neglect of one aspect of health can theoretically lead to life-threatening situations.⁵⁷ Furthermore, he adds that this health-improvement measure "must be done even against the absolute will of the sick person."⁵⁸ There can be little question that in his opinion, as far as Jewish law is concerned, a government is required and empowered to provide this kind of service for its citizens.

There are precedents in Jewish law for coercing all members of a community to participate in a program which benefits the community as a whole. Thus, it is permissible to prohibit people from smoking in a public place, inasmuch as "second-hand smoke" can harm non-smokers. Also, community members can be forced to pay for erection of walls which will protect the entire community.⁵⁹ We can apply this rationale to our case, and posit that all people should be vaccinated, with some reservations, as will be shown.

The individual's pain

How much pain or risk is an individual required to incur for

54. "Lo ta'amod al dam re'acha."

55. *Sanhedrin* 73a.

56. *Vehashevota lo*. *Devarim* 22:2.

57. *Tzitz Eliezer* XV:40, basing himself on the *Pirush Hamishnayot* of Rambam. See also *Nedarim* 38a. Rav Waldenberg further raises the question whether the patient is liable for the expense of his treatment.

58. He adduces a similar ruling from *Mor Uketziyah* in support of his position.

59. *Bava Bathra* 8.

the safety of the community? We have already noted that no one can be coerced into endangering his own life or health in order to benefit the group. But moderate pain or inconvenience would probably not qualify for this exemption. The *Shulchan Aruch Even Haezer* 80:12 brings two opinions – one negative, one positive-- regarding a pregnant woman who wants to eat food that could severely harm or even kill her baby – can she be forcibly prevented from doing so?⁶⁰

The opinions pro and con rely on a situation discussed in *Nedarim* 80b: Town A and Town B both get their water from the same source. But if the people in town A also use the water to wash their clothing, there will not be enough for the citizens of Town B to drink. Can the residents of Town B stop those in Town A from washing their clothes? The Gemara allows the people of Town A to continue washing their clothing, based on the Gemara's belief that without proper hygiene, the lives of those in Town A would be endangered.⁶¹ Rambam, however, forbids the townspeople of A to wash their clothing (possibly in a case where Town B would not be able to access water elsewhere).⁶²

Nevertheless, based on the talmudic precedent, *Beit Shmuel* rules that a pregnant woman cannot be stopped from eating what she desires, even if it would harm her baby. And R. Shlomo Zalman Auerbach is reported to have ruled also that a pregnant woman does have the option to eat what she wants, despite the consequences to her fetus.⁶³ However, almost all

60. A modern example of this situation would be a pregnant woman's smoking or drinking much alcohol.

61. See my article "The Valence of Pain in Jewish Thought", in *Journal of Halacha and Contemporary Society*, Vol. LIII, Spring 2007.

62. Such is the interpretation of R. Ovadia Yosef, writing in *Torah Sheb'al Peh*, Vol. XIX 1977, p. 201.

63. *Nishmat Avraham Yoreh Deah* IV, p. 193. The specific question was about forcing someone to donate bone marrow which could save someone's life but would involve anesthesia and pain for the donor but no danger to life. Rav Auerbach writes that "we should beg and plead with him to do this

poskim dispute his conclusion; they would stop the mother from harming her child.⁶⁴

All halachic authorities concur that individuals as well as the community can act to prevent someone from harming them. Many have written that no person, however, is obligated to *endanger* himself in order to prevent harm to someone else. Thus, if someone is so severely allergic to the medication in a vaccine that he could die, he is certainly not obligated to take it, regardless of the harm to others.

However, it is instructive to note that this exemption is given only in the case of death or very serious reaction to the drug; suffering some pain from the vaccine may not free a person from the obligation to join in protecting the community.

We do not rely on miracles

Turning again to the issue of refusing vaccination, there are those who claim that a Jew should trust in G-d's Providence to stay healthy and not resort to such measures as vaccination for protection. In actuality, however, Jewish law expressly forbids "relying upon a miracle." Although the Almighty can certainly perform a miracle to save someone from harm, it is forbidden to put oneself in a situation where divine intervention is required.⁶⁵

As a matter of fact, the Gemara records a number of miraculous circumstances which occurred daily in the *Beit Hamikdash* – but nevertheless, certain procedures were followed so that the miracles would not be needed.⁶⁶ An example is the "miracle" that the *Lechem hapanim* (Showbread),

great mitzvah" of saving another's life. However, ultimately "one should not put any pressure on him....not even psychological pressure."

64. See *Sheiltot* 147:4; *Tiferet Yisrael perek kammah*, *Peah* 41; *Nishmat Avraham Even Haezer* p. 150; *Iggerot Moshe Yoreh Deah* 145.

65. *Ramo, Yoreh Deah* 116:5.

66. *Pirkei Avot* 5:5.

which was kept in the Temple for an entire week, never turned stale. Yet, the racks where the Showbread was exhibited were specifically made out of marble, not silver, because silver had the tendency to turn the bread stale.⁶⁷ Rashi explains these apparently redundant efforts as “we do not rely on a miracle.”

On Passover Eve, myriads of Jews would gather at the Temple in order to offer the Paschal sacrifice. They were divided into three separate groups, and the gates had to be closed to separate them. The question arose whether to close the gates manually or to rely on a miracle to close them. In the controversy on this point, Abaye said the gates closed miraculously, but Rava maintained that they were closed manually since “we do not rely on a miracle.”⁶⁸

We see this concept in the Torah itself: Jews are commanded to build a railing around the roofs of their homes [which many used like a porch], so that the “faller would not fall.”⁶⁹ This odd linguistic structure indicates a basic Jewish belief – if someone is supposed to die, he will ultimately die anyway (“the faller”), but everyone needs to take precautions to prevent bad things from happening. Rambam extends the imperative of putting up a fence in a treacherous place to include the requirement to take steps to prevent any dangerous condition from existing.⁷⁰

Another example of the Torah’s telling us the importance of avoiding dangerous situations is found in the reluctance of our Father Yaakov to send Benyamin to Egypt at the behest of the Vizier, “lest a misfortune occur on the road.”⁷¹ All the

67. *Shabbat* 154a; see also *Yerushalmi Yoma* 1:4.

68. *Pesachim* 64b. Rambam follows Rava in his ruling, *Hilchot Korban Pesach* 1:11.

69. Rashi, *ibid.*

70. *Hilchot Rotzeach* II. This halacha is repeated in *Choshen Mishpat* 427.

71. *Bereishit* 44:29.

commentators ask the obvious question – couldn't a misfortune happen at home as well? Don't we believe that when a person's time is up, it's up? However, they respond that in a dangerous situation [such as traveling on the open road thousands of years ago], one may not have sufficient merit to overcome danger and could die anyway, even before the proper time. The *Sefer Hachinuch* explains that in general G-d runs the world according to a natural order, to which we are all subject. The Torah commands us to take proper action to follow these "natural" rules and avoid hazardous situations.⁷²

The principle not to rely on miracles applies even when one is performing a mitzvah. The Gemara⁷³ tells about a child who climbed up a tree at his father's request, to send away the mother bird [a mitzvah] – and fell to his death. If the rung of a ladder is rotten, the climber will fall even if he is trying to do a good deed. Even the Prophet Shmuel, who was certainly a righteous man, hesitated to follow G-d's instructions [!] to crown David as king of Israel, protesting that if King Saul hears about it, he will kill him – and G-d agreed and instructed him to employ a subterfuge!⁷⁴ If even an outstanding individual such as a prophet is afraid to rely on miraculous intervention when following an express command from G-d – it is obvious that all Jews need to be careful about protecting their lives and health, and not rely on miraculous salvation.⁷⁵

72. *Sefer Hachinuch* 546. Nevertheless, there are some righteous individuals who rise above these natural restrictions: Avraham Avinu who allowed himself to be thrown into a burning furnace rather than renounce his faith in G-d; Chananiah, Mishael, and Azariah who did likewise, as well as other instances recorded in *Ta'anit* 20b and 21a, recounting marvelous events which occurred to Nachum Ish Gamzu. It goes without saying that most people do not fit into this category of saintliness.

73. *Kiddushin* 39b.

74. *Ibid.*

75. *Kiddushin* 39b. For the same reason, we don't explore cracks and crevices when we search for *chametz* the night before Pesach. However, our

Shomer Petaim Hashem

The Talmud often remarks that *shomer petaim Hashem* – G-d watches over simple people. This approach is utilized when the Talmud labels certain behavior as harmful (whether for physical or metaphysical reasons) but the reality is that everyone does it anyway and nothing bad happens to them. In explaining this apparent contradiction, the Gemara takes the position that although certain activities are indeed inherently harmful, yet, since so many people do them without realizing the potential harm, our merciful *Hashem* saves them from the consequences.

Thus, in *Shabbat* 129b, the Rabbis note that after bloodletting (a common medical procedure in the past), a woman should not have sexual relations – yet people commonly did and nothing bad happened to them. That is because “*shomer petaim Hashem*”. In a similar vein, the Gemara considers it harmful for a woman pregnant for 90 days to engage in marital intimacy, yet questions how all people do it anyway without any untoward effects?⁷⁶ Once again, the Gemara invokes the principle that “G-d watches over the simple”.⁷⁷

There is lack of clarity whether the “danger” perceived by the Talmud is physical or spiritual, since the dictum “*shomer*

rabbis maintain that the *sakana* (danger) which one must avoid at all times refers only to physical danger, not a metaphysical one. For example, matzoh for Pesach must be baked using water which was drawn and stood overnight (*mayim shelanu*). There is another rule that when a person dies in a building, all the water in vessels in that house must be discarded, due to the danger of evil spirits. What if a person dies when there is *Mayim Shelanu* in the building? The rabbis rule that nevertheless, that water need not be discarded and may be used for baking matzoh, relying on the principle *shomer petaim Hashem*. (see below)

76. See also the Gemara’s response “from Heaven there will be mercy” about the reality that many ignore the talmudic warning that there are situations where it is dangerous for certain women to become pregnant, (they do it anyway). *Yevamot* 12b.

77. *Niddah* 55b.

petaim Hashem" is applied in either case. A famous example is the talmudic warning that a woman who has been widowed twice is a "*katlanit*" and if she marries again, her third husband would likely also suffer the same fate as the earlier two. Yet, the reality is that many men do marry such widows and live to a ripe old age. In the words of the *Terumat Hadeshen*, "albeit the Gemara terms it a...danger, nevertheless, *shomer petaim Hashem*."⁷⁸

Shemirat Shabbat Kehilchata cites Kovetz Shiurim:

Whatever everyone does without being concerned [about so-called danger], a person is permitted to rely on this [fact], since G-d watches over the simple.⁷⁹

This principle of *shomer petaim Hashem* obviously needs some amplification, since it can hardly be *carte blanche* for people to engage in risky behavior or fail to take necessary precautions.⁸⁰ What are its parameters, and how should we understand this concept within the framework of Jewish thought and halacha?

To get a clearer understanding on some of its applications, we can turn to a number of incidents recorded in Torah and Talmud, to see how the concept applies: how come Yosef went to look for his brothers, when he knew they hated him? Shouldn't he have taken precautions? Why was this righteous individual so careless about avoiding danger? Then, there is an episode in the Talmud about a very pious individual

78. *Terumat Hadeshen* 211. Even though the custom is to be lenient about the matter and let a man marry such a widow despite the danger, the author questions whether a *talmid chacham* should rely on this lenient approach.

79. R. Elchanan Wasserman, *Kovetz Shiurim*, *Yevamot*, cited by *Shemirat Shabbat Kehilchata* 32, note 2. The *Tzitz Eliezer* IX:17, p. 74, brings many sources where the adage *shomer petaim Hashem* is qualified.

80. R. Moshe Feinstein unequivocally approved universal testing of prospective marriage partners to assure that they were not both carriers of the deadly Tay-Sachs disease gene. Since a simple test, without any negative side effects, could prevent a calamity, R. Feinstein saw no justification for ignoring it; *Iggerot Moshe Even Haezer* IV:10.

(*chassid*) who was in the middle of prayer when a nobleman asked him a question.⁸¹ The *chassid* ignored him until he had finished his prayer. The nobleman was astounded – how could you have ignored me, I could have killed you in an instant for your insolence! The *chassid* responded that, just as he would ignore the nobleman if he were talking to a king of flesh and blood, certainly he felt entitled to ignore the nobleman when addressing the King of the Universe! The Gemara rejects this as a glib answer, and tries to understand why the *chassid* was entitled to endanger his life just to finish his prayer – once again invoking *shomer petaim Hashem!*

The upshot of these discussions may indicate that even if technically some action is contra-indicated, if most people do it and no harm ensues, it seems to be acceptable to engage in this behavior.⁸²

However, the *Avnei Nezer* is adamant that if all doctors agree that a certain behavior is risky, *it is forbidden to rely* on the principle “*shomer petaim Hashem.*”⁸³ This is also the position taken by *Tzitz Eliezer*.⁸⁴ In another responsum, the same author rules that since it is forbidden to draw blood on the Eve of Shevuot, the respondent should not do it but rather reschedule his surgery for another time. However, if there is danger in the postponement, then he may draw the blood and have the surgery, rather than rely on *shomer petaim Hashem*.⁸⁵

81. *Berachot* 32b.

82. However, in a situation of *pikuach nefesh*, it is not proper to assume that since the majority of people can get away with this behavior, it is acceptable. One must always be exceptionally careful in a case of *pikuach nefesh*. See *Tzitz Eliezer* VIII:15 and IX 17:1-9.

83. *Avnei Nezer Yoreh Deah* 321. However, *Yehudah Yaaleh Yoreh Deah* I:222 does not agree with this opinion. See also *Avnei Nezer*, *ibid.*, who discusses performing surgery on a newborn's foot, if the procedure will cause postponement of his *brit*.

84. IX:51.

85. *Ibid.*, XII:46. The *Achiezer* I:23 also writes that in a case of danger, one is not permitted to rely on G-d's protection of the simple.

The question which goes to the heart of the present discussion is obvious: if foregoing vaccination is a risk to health – whether of the individual or the community – is it permitted by Jewish law?

Rav Ovadia Yosef explores this question in a lengthy responsum, citing the question of Yosef and his brothers and also the incident of the praying *chassid* mentioned above.⁸⁶ He also brings the case of Rabbi Akiva, who was stranded with only a bit of water, and instead of saving it to drink, used it to wash his hands prior to making the blessing after the meal (*mayim acharonim*). Rav Yosef finds justification in these actions because he claims that in most cases, brothers do not kill each other, offended noblemen do not kill people, and most travelers do not die of thirst. Consequently, he finds justification in the reality that *in most cases*, despite the danger, people come out all right. He concludes that therefore our rabbis were prepared to rely on the principle that, in most cases, G-d watches out for people.⁸⁷ He notes, however, that R. Meir did not approve of their behavior.

Since most people do get vaccinated, one cannot opt out based on the claim *shomer petaim Hashem*, which only applies when many people engage in behavior which is, strictly speaking, unwise. Furthermore, most people do not get untoward reactions to vaccines, so once again individuals would be protected from harm by this principle.

When permitted

It is interesting to note that all the occasions when the Talmud resorts to the adage *shomer petaim Hashem* seem to

86. *Yabia Omer* X:13.

87. Otherwise, how can one justify venturing out on a trip through the desert or the sea (which are surely permitted, since one is even supposed to recite *birchat hagomel* after completing such a trip). Why wouldn't the Jewish law require the traveler to stay home?

involve observance of a mitzvah.⁸⁸ Many halachic decisions over the centuries have permitted a questionable action, relying on *shomer petaim Hashem*. Although it is the opinion of *Chelkat Yaakov* that one may resort to this assurance only in cases specifically mentioned in the Talmud or *Rishonim* (early rabbinic authorities), many if not most *poskim* do rely on it in numerous situations.⁸⁹

According to the Gemara, it is permissible to perform a *brit* on a cloudy day and not to push off the mitzvah because of the weather (it was thought that bad weather could endanger the infant).⁹⁰ Despite this talmudic statement, the *Beit Yosef* rules that if the father wants to delay the *brit* for this reason, he may do so, “and one who does this [is doing] good.”⁹¹ Based on this, we may conclude that one need not rely on *Hashem’s* Providence to protect in a risky situation, even if many people do so.

This approach is reiterated by R. Ovadia Yosef, discussing eating food touched by someone who had not washed *netilat yadain* upon waking in the morning.⁹² Inasmuch as the Gemara writes that “there is an evil spirit upon those who eat” such bread,⁹³ Rav Yosef cautions that one should be careful about it; nevertheless, if it has already been touched, he reluctantly permits it. Presumably, this is because of *shomer petaim Hashem*.

88. Examples include nursing mothers who become pregnant despite the rabbinic warning that this may threaten the health of the nursing baby (*Yevamot* 12b) and men who marry twice-widowed women, despite the rabbinic caution against doing so, (*Terumat Hadeshen* 211). Since so many people ignore these warnings, the rabbis were prepared to rely on *shomer petaim Hashem*.

89. 60:39.

90. *Shabbat* 133.

91. *Yoreh Deah* 262. The *Nimukei Yosef*, in the name of the Ritva to Gemara *Shabbat*.

92. *Yabia Omer*, IV *Orach Chaim* 1.

93. *Shabbat* 108b.

The foregoing examples represent merely a sampling of the many diverse situations where the dictum *shomer petaim Hashem* is seen as an option, albeit it is certainly not mandatory to rely upon it. How then does this apply to the present inquiry: Are non-vaccinated Jews entitled to rely on G-d's protection alone to stay healthy?

In exploring the extent to which one may rely on the adage that G-d guards the simple, rabbinic responders have delimited its use: The *Avnei Nezer* maintains that it applies only in situations where danger is neither common nor imminent.⁹⁴ In the case of a woman who had varicose veins and was warned by her doctors that a pregnancy would likely cause the veins to burst, endangering her life, he adamantly urged her not to become pregnant:

In such a case, where the doctors' judgment is that if she becomes pregnant she will surely die...certainly our Sages concur that one may *not* rely on [the principle that] "from Heaven there will be mercy!"

The parallel to vaccination is obvious.

Vaccines, Danger, and Smoking

What if a person is not concerned with the danger of contracting a disease and therefore chooses not to be inoculated? We can perhaps draw parallels from other situations:

R. Moshe Feinstein maintained in a responsum that since so many people smoke, it could not be declared *assur* (forbidden in Jewish law).⁹⁵ But Rav Waldenberg (the *Tzitz Eliezer*),

94. *Even Haezer* I:81.

95. *Iggerot Moshe Choshen Mishpat* II:76. R. Moshe indicates that he is relying on the medical science of his day; it could be that according to the medical knowledge of our day, when the pernicious effects of smoking are better known, he might have ruled differently. We are not in a position to know.

disagreed with the basic premise and rejected the suggestion that *shomer petaim Hashem* prevails; on the contrary, he wrote that smoking should be forbidden.⁹⁶

In his responsum, he quotes the Rambam's ruling in *Hilchot Rotzeach* 5:5 that,

Many things were forbidden by our Sages because there is an element of danger to life. Whoever transgresses them [these strictures] and claims, "I am only endangering myself, and what does that have to do with anyone else" or [who claims] "I don't care about it", is to be punished with lashes for rebellion.

The *Tzitz Eliezer* also quotes extensively from the Chafetz Chaim:

And in my humble opinion, the reason that the Torah cautions about guarding one's life [i.e., health], is for the reason that G-d created the world ... in order to do kindness to his creatures ...and whoever endangers himself is as if he is rejecting the Almighty and desires neither His service nor His reward. There is no greater blasphemous disrespect than this.

The author of *Nishmat Avraham*⁹⁷ cites the Chafetz Chaim, who confronted some habitual smokers who were finding it hard to break their habit: "Who permitted you to accustom yourself [to smoking]? Our Rabbis have written that a person is not allowed to harm himself...!"⁹⁸

In a different responsum,⁹⁹ the *Tzitz Eliezer* brings a text in Rambam:¹⁰⁰

And inasmuch as a whole and healthy body is given by

96. *Tzitz Eliezer* XV:39.

97. *Orach Chaim*, p. 279.

98. *Likutei Amarim*, chap. 13.

99. *Tzitz Eliezer* XV:40.

100. *Hilchot Deot* 5:1.

G-d, since it is not possible that [a person] will understand things having to do with the knowledge of G-d if he is sick, therefore, it is necessary that a person...act in a manner which makes one healthy or restores health.¹⁰¹

Expanding on this theme, he also cites the opinion of the Yaavetz, writing in *Mor Uketziyah*,¹⁰² that one must do whatever is necessary to save a life, even against the wishes of the sick person, based on the biblical prohibition “do not stand idly by your fellow Jew’s blood...” Therefore, he rules, it is “clear and simple” that the government, whose primary concern should be the health of the community, is not only able but even obligated (to take necessary measures). This leaves little doubt that in the view of this leading *posek*, accepting vaccination would be an imperative.

However, it must be stressed that the necessity of being vaccinated as a public health measure is not equal for all sicknesses. Polio is so rare nowadays in America that more people actually die each year from the vaccine than from the disease! As we have mentioned for the cervical cancer vaccine, although it is generally safe, yet there have been serious complications; moreover, there are harmless screening options which can protect potential cancer victims, so that the vaccine need not be considered an imperative to protect the entire community. There is no one-size-fits-all answer to the vaccination issue.

Is sickness from heaven?

Although we have been examining our subject through the lens of halacha – whether or not Jewish law requires Jews to be vaccinated in accordance with medical policy – there is another facet to this topic, a theological, *hashkafic*, one. The present study is not the venue to discuss that question, yet we

101. *Vayikra* 19:16.

102. *Orach Chaim* 328.

would be remiss were we not at least to allude to it: how does Judaism regard sickness – as a natural phenomenon or as divinely-directed phenomenon?

On the one hand, the Talmud says that a person does not so much as bump his finger unless “from Heaven” it was so decreed. Following that train of thought, one could argue that vaccination is neither helpful nor warranted, for no one will get sick who is not supposed to get sick, and no one will be saved who is supposed to die anyway. On the other hand, there are numerous express biblical warnings and references to be cautious, not to engage in dangerous behavior lest some disaster befall. But if one is supposed to live, the caution is not required, and if one is supposed to die, it will happen anyway. Why does Jewish law so often warn about avoiding danger?

If we believe that each person’s life span is decreed by Heaven, then that person should theoretically be immune to plague and pestilence.¹⁰³ Yet, the Torah itself warns *venishmartem me’od lenafshoteichem*,¹⁰⁴ which certainly seems to imply that life can be cut short if danger intrudes. Consequently, the rabbis were very careful to warn about getting into dangerous situations, although their final opinion on this question is difficult to discern: The Ramo writes that “at a time of plague, it is good to flee the city.”¹⁰⁵ Yet, elsewhere he writes that no one can get sick unless it has been so ordained from Heaven.¹⁰⁶ This statement is also difficult to

103. *Yam shel Shlomo, Bava Kamma*, chap. 6:26, questions whether someone can die before his allotted time: “No one dies before his time”, the Gemara says in *Sanhedrin, perek zeh borer*, but at the beginning of *Chagiga*, there is discussion of the verse that people do die before their time (“*yesh nispeh belo mishpat*” *Mishlei* 13:23). In *Yevamot* 49b and 50a the Gemara debates whether one’s lifespan is decreed at birth and, if so, whether it can be extended or diminished based on one’s deeds.

104. *Devarim* 4:15.

105. Ramo to *Yoreh Deah* 116:2. See *Bava Kamma* 60b. See also *Teshuvot HaRamo*, Introduction II, pp. 38-9, as well as note 55 in the Responsum.

106. *Pitchei Teshuva Yoreh Deah* 116:8, cites *Responsa of the Rashbash*, No. 195,

understand, in light of the fact that he himself left his city of Cracow in the years 1551-1556 due to a problem with the air in the city at that time.¹⁰⁷

R. Chaim Palagi writes that one is not obligated to visit a person who is suffering from a contagious disease, since there is no obligation on a person to endanger himself just to fulfill a mitzvah.¹⁰⁸ And the *Sefer Chassidim* rules that it is forbidden for a person with a contagious disease to spend time with other people unless he informs them of his condition.¹⁰⁹

These few references hardly qualify as meaningful discussion of a deep theological problem, which in any case is ancillary to our study here. Yet they offer a fascinating indication that Jewish wisdom cannot be chopped into neat categories. Beliefs and legal principles are not two distinct disciplines, they are both part of the same tapestry of Judaism.

discussing the whole question of how any person can get sick and die if it was not decreed on Rosh Hashanah.

Rabbi Immanuel Jakobovits, writing about Jewish medical ethics, asserts that the custom prevailed not to visit persons afflicted with the plague or other serious communicable disease, despite the mitzvah to visit the sick. See "AIDS: A Jewish View" by Dr. Fred Rosner in *Journal of Halacha and Contemporary Society*, Vol. XIII, Spring 1987, p. 31.

107. See *Nishmat Avraham Yoreh Deah* 335, n. 22 and *Orach Chaim* 22, which cites Rav Waldenberg who claims that both a doctor and a soldier are obligated to risk their lives if necessary, because that is their job; lack of performing their roles properly would have disastrous consequences for society.

However, in *Chashukei Chemed, Succah*, pp. 331-333, Rabbi Zilberstein discusses a query made to him in 2006, from a doctor in a northern city in Israel which was being shelled by rockets. The doctor, fearing for his life, asked if he was permitted to leave the city; the rabbi proceeds to examine the question.

108. *Nishmat Kol Chai II Choshen Mishpat* 49.

109. No. 673. If he fails to inform others, he transgresses the prohibition not to put a stumbling block in the path of a blind man. *Vayikra* 19:19.

Conclusion

This study has shown that Jewish law supports following expert scientific and medical advice, both for the individual and for the protection of the community. While the principle seems straightforward, the reality is that each component of this principle needs to be examined and qualified. In our examination, we have found some serious flaws in “medical and scientific advice”, which casts doubt as to the proper course of behavior.

As mentioned, in one day alone (August 19, 2009), the *New York Times* reported two very troubling verities impacting on our topic: Some “scientific” studies showing the efficacy of various new drug are not actually the result of careful, unbiased research but rather are penned by persons working for the drug manufacturers, who thereafter pay (or induce) prominent scientists to put their names on the “research”. Obviously, such tainted evidence cannot serve as the rationale for accepting advice. The second report in the *Times* was about a clinical study of the effects of a new vaccine for cervical cancer, which is being recommended for all girls 11 years and older. Although in general the vaccine was judged to be beneficial, at least 20 deaths as well as other serious complications have resulted. Quite a few doctors (and even an editorial in JAMA, which reported the clinical study) have serious reservation about inoculating healthy girls with a vaccine which could kill or harm them, when much less invasive measures already exist which could protect them equally well.

In view of the ongoing controversy about the wisdom of vaccinating and the dangers to the public of not vaccinating everyone, Jewish law would recommend a case-by-case review by a halachic authority when a question arises. There cannot be a simple yes/no answer: it depends on the seriousness of the danger – both to the individual and the community; on the known track record of the vaccine; on the prevalence of the disease as weighed against the reality of

possibly serious side effects.

As always when trying to find solutions to problems of health and disease, we are aware of how precarious is the human condition in this world; we yearn for that halcyon time when there will be no more disease or pain, only days of blessing and peace.

Letters

To the Editor:

I read with interest and appreciation the article by Drs. Raymond and Sammy Sultan on “*shomer-Shabbat* Residency” in the Fall 2009 issue of *The Journal of Halacha and Contemporary Society*. Since they admirably place their discussion in the context not only of halacha but also of *hashkafa*, I think there are some additional considerations that should be discussed in relation to residency training on Shabbat, and medical practice generally.

As Drs. Sultan point out, very, very few training positions are available in *shomer-Shabbat* programs, and almost none of these positions are in programs of the highest quality. In reality then, medicine would seem to be off-limits as a profession if a position is taken generally that prohibits observant Jews from entering non-*shomer-Shabbat* residencies, as seems to be the stance of Rabbi Herschel Schachter.

Can it really be the case that observant Jews cannot perform the mitzvah of *pikuach nefesh* in the most direct way possible, by entering the medical profession? This seems perverse. The Talmud states that the responsibility for safeguarding life through medical care is great; we are instructed that a scholar should not live in a city without a competent physician (*Sanhedrin* 17b). Should this responsibility be given over entirely to non-Jews? Even if this approach were desirable, it would be practical only in the diaspora, where there is an abundant supply of non-Jews entering the medical profession. In *Eretz Yisrael*, what solution could there be? Relying on non-observant Jews would just really change the problem to one of *lifnei iver*, which is no solution at all, of course.

It seems that another issue related to *hashkafa* arises regarding *shomer-Shabbat* residency training. For such programs to exist, non-Jews of course must work every Saturday. This is likely to create certain resentments towards

Jews in those training programs and more generally. In the non-Jewish world, celebrations such as weddings are frequently held on Saturday, for example, and non-Jewish residents might be invited and want to attend, only to find that they are on-call and unable to switch duty hours because the available pool of non-Jews able to work is small.

Also, in *shomer-Shabbat* training programs, how are conflicts regarding competing claims of religious observance to be resolved? Non-Jews may have their own important religious observances that at times fall on Saturday. In a polyglot society such as we have in the United States, a claim that one group's obligations of necessity supersede that of another is likely to be met with frustration and resentment. (It is undoubtedly because of issues such as these that even in cities such as New York, with large numbers of observant Jews training in medicine, *shomer-Shabbat* training programs remain uncommon.)

The challenge for those who take the position that it is better to forego a career in medicine than to train in a non-*shomer-Shabbat* residency program is to address the consequences of their position. Should observant Jews be largely exempt from or unable to participate in the important mitzvah of *pikuach nefesh*? Should they be able to accept care from Jews who trained in non-*shomer-Shabbat* programs, thus exploiting a state of *lifnei iver*? Should they encourage the widespread creation of *shomer-Shabbat* programs, which are likely to create tension and resentment between Jews and non-Jews?

Sincerely,

NEIL W. SCHLUGER, M.D.

Columbia University College
of Physicians and Surgeons

Authors' response:

We appreciate the thoughtful response, and we give thanks to Dr. Schluger for his bold comments, the editorial staff for

agreeing to publish the dialogue, and our audience for listening, altogether enabling this issue to be discussed further – one of our primary goals in writing the article to begin with.

Generally speaking, we agree with Dr. Schluger, and we too are troubled by the notion that “observant Jews not be able to perform the mitzvah of *pikuach nefesh* in the most direct way possible.” However, such a visceral and intuitive rationale may not, strictly speaking, provide adequate justification for non-*shomer-Shabbat* residencies. After all, consider the prohibitions against blowing the Shofar or shaking the Lulav on days when Shabbat and Yom Tov coincide – does that not also “seem perverse” on an intuitive level? And yet, that is normative halacha, for the precious nature of Shabbat may not tolerate compromise in the face of conflicting values.

On the other hand, the visceral argument should not be discounted completely and simply for that reason; it merely needs to be further clarified in order to garner legitimacy. In our article we proposed various possible legal bases for allowing non-*shomer-Shabbat* residency – including the need to become a *baki*, or because *Lo min kol adam zoche lehitrapot*. Ultimately, though, the strongest defense may lie ironically not on concrete grounds, but in a vague and ill-defined meta-halachic principle, yet still a halachic principle. If forced to find precedented terminology, perhaps the best-fit is that of “*Hatzalat Yisrael*”, a concept applied in issues of grand communal significance, and felt possibly to be “greater than *pikuach nefesh*” (see *Hakira* Vol 8, Summer 2009). Paradoxically, then, we might say that non-*shomer-Shabbat* residencies are allowed not on an individual basis, but only for the collective and greater community, (and in turn, practically, for the individual).

Also, we recognize the real and sensitive concern not to “create tension and resentment between Jews and non-Jews.” However, we do not see this as a valid basis for not encouraging the widespread creation of *shomer-Shabbat*

programs. Rather, we believe that such a sensitivity can and should be taken into account in properly promoting, not avoiding or discouraging, *shomer-Shabbat* residencies. The bigger question, though, lies not in the idealized future, but in dealing with the imperfect current climate in which *shomer-Shabbat* residencies are scarce and/or non-existent.

In short, then, we reiterate our support of both sides of the coin, and reflect on the complexity of the situation: ideally *shomer-Shabbat* residencies should be pursued; yet under present circumstances non-*shomer-Shabbat* residencies are a legitimate option, though without clearly-defined justification, and should therefore not be taken lightly and not without the need for on-going re-evaluation and communal introspection.

DR. S. SULTAN

DR. R. SULTAN

* * *

To the Editor:

In your Journal issue no. LV, Rabbi Alfred Cohen published an informative article regarding "Reading Another Person's Email".

Allow me a few remarks:

1) I would like to correct an unfortunate misunderstanding on p. 101 footnote 4. The writer quotes an opinion that since the [pre-nuptial] *Tennaim* agreement states that "they will rule over possessions equally", this entitles the husband and the wife to open and read each other's letters and emails. The writer deems this argument to be "a bit of a stretch".

If indeed the above-mentioned view would have been based on the clause "they will rule over possessions equally", I would agree that there is no reason to read so much into the commitment. Yet the above opinion is misrepresented. As a perusal of the source will reveal, it is actually based on a different phrase in the *Tennaim*, namely that husband and wife "will not hide anything from each other". If one accepts that

the *Tennaim* document is a legal contract rather than a hyperbolically-laden literary grace, this may arguably entitle them to read each other's letters.

2) On page 105 footnote 22, the writer wrote he was unable to find the desired text in *Sefer Chassidim* #1013. I would like to point out that it can be found in #1017.

3) On page 114 and footnote 53, *Shu"t Maharshag* III:44 is quoted. I would like to point out two corrections here: The author is Rav Shimon (not Rav Yehudah) Greenfeld, and the right source is *Shu"t Maharshag* II:44. Also the quote in footnote 50 should state volume II.

בברכת התורה,

Sincerely

RABBI BORUCH OBERLANDER
Budapest, Hungary

* * *

Rabbi Cohen responds:

Thank you for your letter. I am gratified to see the interest you took in my article and very much appreciate your comment concerning the *Tennaim*. I believe your insight is right on the mark.

* * *

To the Editor:

Rabbi Yosef Wagner and Rabbi Binyamin Silver in their article on heating food on Shabbat in vol. 57 in footnote 59 quote an opinion of Rabbi J.B. Soloveitchik that one can rely on the lenient position of the Ran. It is then brought that Rav Shachter said that Rav Soloveitchik permitted this only if he thought that they would place the food directly on the *blech* anyway (i.e. *bidi'eved*).

With all due respect to Rabbi Schachter, I am sure that Rabbi Soloveitchik allowed *lechatchila* returning food from the

refrigerator to the *blech* on Shabbat as long as the food was on the *blech* at the beginning of Shabbat. When I was learning in Rav Soloveitchik's *shiur*, my *chavrusa* Rabbi Karasik went to Rav Soloveitchik to ask this exact question and was told that it was allowed. After going over the issues, we went back to R. Soloveitchik to ask about returning food to the oven rather than the stove top. At the point he got upset and said that he has already answered us and not to bother him again with the same question. Obviously, if Rav Soloveitchik told two of his *semicha* students that it was allowed, then it was *lechatchila*. Furthermore, R. Karasik's father was personally very close to Rav Soloveitchik.

I have been told of the contents of the letter signed by Rav Soloveitchik where Rav Soloveitchik clearly directed his correspondent (Rabbi Irwin Haut z"l) to do *chazarah* with cold solid foods that were in the fridge overnight as long as they had been on the fire during *bein hash'mashot* of Friday night. Furthermore, the guidelines for the Maimonides kitchen which Rav Soloveitchik had personally seen had a page that also included the same directive in terms of reheating cold food on Shabbat.

RABBI ELI TURKEL
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* * *

Thank you for your letter.

We have spoken to Rabbi Schachter of your contention, and he once again reiterated that he ruled on the question in line with what he had heard from his Rebbe, Rav J. B. Soloveitchik. On the other hand, he concedes that Rav Soloveitchik may have given a different response to someone else, depending on the context of the question and also how the Rav himself perceived that question. Rabbi Schachter does not dispute your report of what Rabbi Soloveitchik said. However, in the absence of the Rav's writing a clear exposition of his position

on this halacha, and whether he meant that *hachazarah* is *muttar bide'evad* or *lechatchila*, one cannot make a definitive statement regarding his position. This is especially true since *Shulchan Aruch Harav* (O.C. 253:19), *Mishnah Berurah* (ibid: 56 and 67), and *Aruch Hashulchan* (ibid: 19) all follow Ramo's stringent ruling with regards to this issue, thus making the possible leniency a greater novelty. It should be noted though, that *Pri Migadim* in *Mishbetzot Zehav* (ibid: 12) and *Eglei Tal* (*Melechet Haofeh* 23) do support the possibility for leniency.

Since the article was never intended to establish the *halacha lema'aseh* on this question, but rather to illuminate the halachic issues involved, we cannot offer you a more concrete answer. Of course, the proper thing to do is for each person to consult his own Rav for a *psak halacha*. We are gratified that our article sparked your interest, and hopefully perusal of its contents will strengthen knowledge of and commitment to the laws of Sabbath observance for readers of the *Journal of Halacha and Contemporary Society*.

RABBI YOSEF WAGNER
and
RABBI BINYAMIN SILVER

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