

Journal of Halacha and Contemporary Society

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JOURNAL OF HALACHA AND
CONTEMPORARY SOCIETY

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May he and Judy and the entire family be blessed with health, simcha and nachas, and may our community be blessed with the fruit of his extraordinary dedication for many years to come.

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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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Deafness In Halacha: A Reappraisal

Rabbi Moshe Taub

For thousands of years, people born without the ability to hear were often erroneously consigned to mental institutions. It was not until a few hundred years ago that sign language and other techniques were developed to communicate with such people and even teach them how to speak so that they could make themselves understood.

The Gemara (*Chagiga* 3a; *Yevamot* 113a) rules that a *cheresh* – which here, and almost everywhere else in the Talmud, refers to one who can neither hear nor speak (*Chagiga* 2b) – is exempt from all mitzvot.¹

This dichotomy, between the unchanging halachot relating to *chershim* and the advancing pedagogic skills of specialists in the fields of oralism (spoken language) and manualism (sign language) has, over the past few decades, been exponentially magnified by the tremendous technological advances in modern-day hearing aids and cochlear implants. Consequently, many *poskim* (major halachic decisors) have addressed the question of whether and to what extent the status of deaf persons who now exhibit understanding and can communicate with others should be modified from the

1. See *Iggerot Moshe Yoreh Deah* 4:49:2 where he briefly states that such a *cheresh* should nevertheless seek to fulfill mitzvot for “...it is not appropriate for one to permit an action for himself with the excuse that the Torah allows it.”

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way they were categorized in the days of the Gemara.²

The goal of this article is to present the many views found in the *poskim* concerning deafness in the modern age.³

Deafness – General Halachot

About one in one thousand children are born deaf.⁴ Infants and adults can also develop deafness due to illness (e.g.

2. We should note that we find earlier indications of sign language and lip reading in the Talmud. See *Gittin* 59a in the Mishnah and *Yevamot* 112b regarding hand signaling (“*remiza*”) by and to deaf individuals; in *Chagiga* 3a we are taught regarding some form of lip reading. See also *Tosephta Terumot* 1:2 where it is taught that the deaf sons of the second-generation mishnaic sage R. Yochanan Ben Gudgada were charged with all the *taharot* (purifications) of Jerusalem. Such responsibility could have only come about through some sort of communication and special education; *Sota* 13a teaches us that Chushim the son of Dan was deaf and yet he was able to communicate.

3. Indeed, the *Minchat Chinuch* (21:10) remarks that a monograph on the laws for the deaf is needed. See also *Maaseh Cheresh*, a 12-page *sefer* on this topic published by R. Yehuda Leibish Broch in the mid 19th century.

4. It is estimated that genetics plays a role in about 30-50% of childhood deafness cases, and it can be determined if one’s deafness is due to a genetic marker or not (“Understanding the Genetics of Deafness” by *Harvard Medical School of Hereditary Deafness*). I contacted Dr. Rehm, the author of this review, and she further explained that there is still much being discovered regarding the role that genetics plays in deafness. *Chazal* allude to the role genetics can play in causing deafness, in *Chagiga* 3a: “Two mutes living in Rebbe’s area who were either the grandchildren or nephews of Rabbi Yochanan Ben Gudgada would make sure to sit in front of Rebbe when he would enter the study-hall to lecture...” This is the same Rabbi Yochanan Ben Gudgada mentioned above (*Tosephta Terumot*, 1) whose sons were deaf, suggesting either remarkable coincidence or an allusion to genetics playing a role in deafness and muteness. Even more, it would seem that his nephews’ muteness was likely related to severe cases of hardness-of-hearing as the Gemara itself seems to indicate when it informs us that his nephews would make sure to sit in front of Rebbe when he would teach, which, if they were simply mute, would not be an understandable action, and certainly would not warrant being a detail mentioned in the Gemara (cf. *Ein Yaakov* and *B’Einei Yitzchak* ad loc and *Maharsha* to *Eruvin* 13a who offer different solutions to this problem).

meningitis). There is no halachic distinction between conductive deafness (where the inner ear works, yet, for a host of possible reasons, the sound is not able to travel through the ear canal) and sensorineural hearing loss (where the inner ear, the cochlea, is unable to perform its function of discerning sounds by sending messaging to the brain).

While the scriptural source for the ruling that a *cheresh* is exempt from all mitzvot is unclear, the *Chatam Sofer* on *Even HaEzer* 2:2 posits that it is a *Halacha l'Moshe M'Sinai* (a fiat, something taught to Moshe Rabbenu at Mount Sinai, which is accepted without scriptural source). See *Minchat Shlomo* 1:34 who also discusses what possible source *chazal* (the early rabbis, a term usually reserved for rabbis from the time of the Talmud) had for this law,⁵ and where he also seeks to explain how this halacha (that a deaf-mute is exempt from mitzvot) might today go through a radical change – if *chazal* had been aware of our ability to train deaf-mutes so that they could understand things the way other people do.

According to some, this status of a *cheresh* as exempt from mitzvah observance applies equally to one born deaf (congenital) as well as one who developed deafness and muteness later in life (*Maaseh Cheresh*); others disagree,⁶ and are therefore more lenient regarding one who was at one time able to hear or speak.⁷

From the straightforward reading of the Gemara (*Chagiga* ad loc; *Yevamot* 113-114; *Shavuot* 42a) one can infer that this exemptive status of the archetypal deaf-mute is causative in

5. That this law is a direct *mesora* (tradition, and in this case – as *Chatam Sofer* argued – Oral Law) would be challenged by the views of R. Eliezer, and more so R. Yehudah, who argue on it, see *Tosephta Terumot* 1:1, 1:2.

6. *Pri Megadim*, kollelet 2:4-7; *shu't Mima'amakim* 3:2; *Sdei Chemed* #103.

7. See also *Nishmat Avraham*, Artscroll edition, volume 1 pages 27, 28 with footnotes. See *Sdei Chemed*, *Ma'arechet* 8, *klal* 103.

nature and not intrinsic.⁸ What this means is that it is precisely *due* to deafness and lack of communicational aptitude that a deaf person's development becomes arrested, which *then* leads to a deficiency in the rational agility and mental maturity that would be necessary to bind one to the Torah's many obligations (even its negative laws; see *Yevamot* 114b). Rabbi Moshe Feinstein further explains communication as being the key to intellectual growth and development, and a deaf-mute who, perforce, cannot communicate, has to be viewed as unique within the confines of halacha proper.⁹

Thus, this that a *cheresh* refers to one who is both deaf and mute is not due to two unrelated conditions (deafness and muteness) having coincidentally struck the same individual, rather it is precisely **because** one is (born) deaf that he would never learn how to speak or communicate.¹⁰

In fact the biblical term for *deafness* – the root *CH'R'SH* – is often used to connote *silence* as well (e.g. *Shmot* 14:14, *inter alia*). The Radak (*Sefer HaShorashim*, column 239) explains that this word's true meaning is indeed “deaf(ness)”, and it is used sometimes to mean “silence” merely to allude to the fact that one who is silent is *acting* as a deaf person would since, typically, they are fated to silence.

Based on the above rationale, it is easily understood why one who is a *medaber* (can speak but is deaf) or a *shomea* (hears but can't speak) is obligated in all mitzvot (*Shulchan Aruch* 55:8). Having only the skill of writing, however, would not transform one who is a deaf-mute into a *medaber* (*Tur, Even Haezer, siman* 120:5, 121:6; see *Gittin* 71a with *Rashash*).¹¹ This is certainly true regarding one who was born deaf.¹²

8. See Rashi *ibid*, s.v. '*cheresh*', that such a *cheresh* is not a *bar-daat* (of common intelligence); see *Iggerot Moshe, Even Haezer* 3:33.

9. *Ibid*.

10. *Rav miBartenurah*; Rambam, *Peirush Hamishnayot, Terumot* 1:2.

11. As quoted by Dr. Steinberg in *Encyclopedia Refuit* vol.2, footnote 58.

12. Based on *Gittin* 71a. See *Encyclopedia Talmudit, erech 'cheresh'*, column

It is critical to point out that a Jewish *cheresh* – which rarely, if at all, exists today in the classic deaf-mute form – is still an equal member of the Jewish nation – e.g., one desecrates Shabbat to save them,¹³ and the Torah warns us to not curse them.¹⁴ Other such examples include the ruling by some that a *kohen* (priest) who is a true *cheresh* is still entitled to the special honors due to *kohanim*,¹⁵ and the view that we do not stop a *cheresh* from donning *tefillin*.¹⁶ Furthermore, one fulfills the mitzvah of procreation through a deaf child.¹⁷

One modern expert on issues of medical halacha argues that the above laws notwithstanding, one cannot feed a true *cheresh* non-kosher food or assist him in performing other sins.¹⁸

Shomea, Medaber, and Pikeach

As stated, a mute who is not deaf (*shomea*) is halachically viewed as a *pikeach* (a person of common intelligence, capable), and would therefore be obligated in all mitzvot. The same applies to one who is deaf but can speak (*medaber*) (except possibly mitzvot that are dependent on *shmia* (listening), e.g. *megilla*).

Communication being the reason for a *cheresh's* unique status in halacha, one can make the cogent argument that in modern times when even the most severely deaf-mute is taught some form of communication, their status might well be changed to that of a *medaber* and they could then be viewed

496 and footnotes 30-37.

13. *Minchat Chinuch*, 39.

14. *Vayikra* 19:14.

15. *Minchat Chinuch* 269:3.

16. *Mishnah Berurah*, *siman* 37:12. See also *shu't Tzitz Eliezer*, 15:32:2. Cf. *Magen Avraham*, *siman* 282:6 and *Hagahot Rav Akiva Eiger* ad locum.

17. *Rema*, *Even Haezer* 1:6.

18. Dr. Steinberg, *op.cit.*, column 540 in the name of the *Pri Megadim*, *kollelet* 2:1. See also *Maggid Mishneh*, *Hilchot Shabbat* 20:7.

as no different from that of the average Jew, in that he would be obligated in virtually all mitzvot.¹⁹ This would seem to be true whether or not their hearing devices give them perfect hearing, and even if they do not have perfect speech. The same may be argued even concerning a *cheresh* who can communicate using only sign language. If true, many supplemental questions would arise, e.g. their being counted for a *minyan*, and regarding hearing devices themselves and if they are viewed as affecting true halachic hearing (*shmia*) for mitzvot.

The major *poskim* of the late 20th century all discuss this issue: Rabbi Moshe Feinstein (*Even Haezer* 3:33, etc.); Rabbi Shlomo Zalman Auerbach (*Minchat Shlomo* 1:34, etc.); Rabbi Eliezer Waldenberg (*Shu't Tzitz Eliezer*, 15:46, etc.); Rabbi Yitzchak Yaakov Weiss (*Minchat Yitzchak* 2:113, etc.). We shall first marshal their views and later seek to apply them to common cases.

Hearing Aids vs. Cochlear Implants

Before discussing the views of the *poskim*, it is important to clarify that the term “hearing aid” that will be referenced when discussing the various responsa literature is simply a reflection of the terminology used by the *poskim*. Cochlear Implants (referred to in this article as CI), which are a fairly new invention, would probably be no different, from a halachic standpoint, than standard hearing aids.

Some do argue that CI should be viewed as halachically

19. Lord Jakobowitz, writing in his groundbreaking *Jewish Medical Ethics* (p. 336, footnote 180), states, “The legal disabilities of the deaf and dumb are entirely due to the mental dementia resulting from their inability to communicate audibly with their environment. But in view of the modern advancement in the treatment of such cases, it has been suggested that their religious and legal status may now be modified...”

more lenient than a standard hearing aid in two areas: 1) Shabbat: Because a standard hearing aid is similar to a microphone (it is, in essence, a mini microphone), the same Shabbat concerns should apply to both. It has therefore been argued that at least concerning the Shabbat issue of *hashma'at kol* (producing sounds)²⁰ which is one of the concerns regarding microphones on Shabbat, CI should not be affected, for CI works through sending audible pulses to the brain and not through amplified sounds. 2) Fulfilling a mitzvah dependent on hearing (e.g. *megilla*) – there is much debate whether such mitzvot can be fulfilled through a microphone (and hearing aids) (see next section), and here too some argue that CI “...may...” be a non-issue due, again, to the fact that CI is not a microphone.²¹

It would seem, however, that both of these points may be moot, based on faulty assumptions. As for the point made regarding *hashma'at kol*, Rabbi Moshe Feinstein (*Iggerot Moshe Orach Chaim* 2:85, s.v. *vhenay hataam*) has already ruled that this is of no concern even for hearing aids because, although essentially a microphone, the sound produced by a hearing aid is not meant for nor can it be heard by others (the *rabim*).²²

20. This is a rabbinical prohibition relating to performing an act on Shabbat whose result produces sound in a permissible way or method (i.e., a radio set on a timer to go on/off) when that act would typically be achieved – when performed on non-Shabbat or festival days – in a manner that would be forbidden on Shabbat due to the fear that some may come to believe that a violation was performed; see *Shabbat* 18 and *Orach Chaim siman* 252.

21. See *Torat HaCheresh* [a focus on using hearing devices on Shabbat], page 5, by R. Mordechai Shuchatowitz, published by NCSY in 2002 for their deaf youth division. See also *Techumin* 5764, Dr. Brema.

22. An additional factor to consider is that our acceptance of this rabbinic decree of *hashma'at kol* is debated and is not codified as an absolute. Indeed the Rema in *siman* 252:5 only brings this decree as a “*yeish omrim*” (some say) and states, “such is the custom [to be stringent]”. Furthermore, in *siman* 244:6 the Rema rules that in cases of great need or financial loss we follow the lenient view. This would seem to be the case all the more so regarding one who needs to rely on this view so that he could hear! See footnote 52

Furthermore, regarding both points 1 and 2, which seek to distinguish between hearing aids and CI because the latter works without a microphone – this is a non-starter due to the fact that CI does work through a microphone! While it is true that hearing aids simply amplify sounds so as to be audible to a damaged ear, CI also *begins* its process with a microphone. It is only after the sound is first picked up by a microphone that the speech processor organizes the sounds, the transmitter and stimulator transforms these sounds to impulses, and finally the electric array gathers these and sends them to the various areas of the auditory nerve.²³

If anything, one could argue that CI should be viewed as a *greater* halachic concern than hearing aids regarding mitzvot that rely on hearing, for while both begin as microphones (that

regarding how the Rema chose when to rule leniently when there are a number of views. Cf. Gra *siman* 252 who is more stringent regarding this debated decree. See *Biur Halacha* s.v. ‘*v’hachi noheg*’.

23. See *Tradition*, Spring 2009, “Survey of Recent Halakhic Literature” by Rabbi Bleich, where he briefly discusses the question of a halachic distinction between CI and standard hearing aids. He quotes, and then disagrees with, the view of Dr. Israel Brema (op. cit.) who argues, like Rabbi Shucatowitz above, that because CI works without a microphone it should be more effective halachically. Rabbi Bleich in his dissent does not mention that *in fact* CI does begin its process with amplified sound. Indeed Rabbi Bleich writes, “The crucial Halachik difference between a hearing aid and a cochlear implant is that the latter does not transform electrical current into amplified sound waves”. It is my contention that both he and Dr. Brema are factually incorrect. I sent my language used above (“CI also begins its process with a microphone. It is only after the sound is first picked up by a microphone that the speech processor organizes the sounds, the transmitter and stimulator transforms these sounds to impulses, and finally the electric array gathers these and sends them to the various areas of the auditory nerve”) to Dr. Ross of the University of Connecticut, an eminent expert in this field, who replied: “You are quite correct; a CI and a HA both require microphones in order to begin the electronic processing. Your wording is absolutely accurate. Both, also, eventually engage the auditory nerve (albeit differently) to transmit electronic nerve impulses to and through the brain.”

convert sound into electric signals, see *Minchat Shlomo* 1:9)²⁴ only CI reverse engineers these signals and then rearranges them, which means that a CI takes sound one step further away from the original speaker when compared to a standard hearing aid!

Nevertheless, based on the leniency of Rabbi Tzvi Pesach Frank (see next section) that “*all sounds are kosher*”, and Rabbi Feinstein’s argument (see next section) that even natural sound waves are manipulated before reaching one’s ears, it would seem that all hearing devices may be treated equally, and that once one is hearing only a shadow of the first sound, it is irrelevant how many steps removed it is; however, further halachic clarification is required regarding this last point.

With the above in mind, let us look to some of the responsa literature that discuss modern day deafness, both in generalities and specific cases. We will further seek to apply them to common cases in the section that follows it.

Iggerot Moshe

Rabbi Moshe Feinstein rules that someone who was born a *cheresh* (deaf-mute) but later had a hearing aid attached which permits him to hear and which allows him to communicate with others, would have the status of a *pikeach* (of common intelligence) and be obligated in mitzvot like any other Jew.²⁵

What makes this particular responsum so fascinating is that although he advances such a pragmatic halachic view when discussing modern-day *chershim*, he nevertheless goes on to explain that one’s ability to hear through an electrical device

24. It should be noted that, today, there are several different types of microphones, some of which, like fiber optic microphones, compare little to the classic devices. Research needs to be done to see if Rabbi Shlomo Zalman Auerbach’s analysis (in *Minchat Shlomo*) would apply in these cases as well.

25. *Even Haezer*, 3:33; written in 1971, a fact that will become important in a forthcoming paragraph.

does *not* transform one into a *shomea* (one who can hear), but rather transforms him into a *medaber* (one who can speak). Rabbi Feinstein draws a distinction between electronic hearing aids and the crude mechanical hearing aid that the *Pri Chodesh*²⁶ ruled would transform a *cheresh* into a *shomea*, for the latter still allowed one to hear the original voice or sound.

It would appear then that Rabbi Feinstein is suggesting a somewhat complicated halachic structure: modern electrical devices allows one to “hear” – although not “halachic hearing” – through which a *cheresh* would learn how to converse with others, and it is the lack of being able to converse with others which is at the heart of a *cheresh*’s halachic disability – which, once removed, would make him a *medaber*. This ruling applies even if one’s speech can be difficult, but not impossible, to understand.²⁷ Such an individual would be viewed as no different than the average Jew.²⁸

This ruling of Rabbi Feinstein, where he states that electrically amplified sounds are not viewed as *shmia* (hearing), would seem to contradict an earlier responsum of his where he was asked regarding hearing the *megilla*, or other obligations dependent on hearing, through a microphone.²⁹ There he argues that since even regarding regular speech the vibrating waves/air that enter the listener’s ear are in fact unique and different than the vibrating waves/air that were used when the words were first spoken, the sound modified through a microphone should be viewed as no different halachically than natural sound waves themselves, and one can, then, fulfill such mitzvot through it. He ends there by

26. *Even Haezer*, 121.

27. *Ad locum*.

28. Rabbi Feinstein however does rule, in accordance with Rambam (*Hilchot Mechirah* 29:22), that although viewed as a *medaber* and obligated in mitzvot, he does not have the ability to sell land.

29. *Iggerot Moshe Orach Chaim* 2:108. See also *Iggerot Moshe* 4:91:4, where he permits listening to *havdala* over a telephone in cases of need.

stating that while one should not protest those who follow this ruling, he is reluctant to have this leniency acted upon.

It seems puzzling, however, that in the *teshuva* mentioned earlier, which apparently was written years later,³⁰ he maintains an opposite approach, arguing strongly against a hearing aid being seen as halachic *shmia* with not even a hint of an allowance or mention of his previous lenient approach comparing such audibility to sound waves.

Furthermore, in 1980 Rabbi Feinstein was again asked about hearing the *megilla* through a microphone, and he then reiterated his inclination to be lenient – although he was slightly more hesitant – and warned that it nevertheless should be avoided, even *b'sha'at hadchak* (cases of need).³¹ He makes no reference to his earlier responsum regarding hearing aids where he completely rejected such manipulated sounds as true *shmia* on pure halachic grounds.

While it is tempting to solve this apparent discrepancy in Rabbi Feinstein's views by suggesting some dissimilarity between a microphone and hearing aids, such a distinction is untenable, especially when we consider that virtually all scholars who discuss hearing aids connect it to their or others' views regarding a microphone.³² In fact Rabbi Feinstein himself draws such a comparison!³³

When assessing Rabbi Feinstein's view on the issue of

30. While the *teshuva* in *chelek* 2 does not have a date, one can assume, based on its being in an earlier book, and by the dates of the *teshuvot* before and after, that it was written around 1965. However, there are occasions in the *Iggerot Moshe* where earlier *teshuvot* are printed in later books and vice-versa.

31. *Iggerot Moshe Orach Chaim* 4:126.

32. E.g. *Teshuvot V'Hanhagot* 1:101; *Minchat Shlomo* 1:9, brought below.

33. *Iggerot Moshe* 2:85 where after forbidding the use of microphones on Shabbat, Rav Moshe was asked about hearing aids *which he admits are the same thing* – although he allows the latter for reasons that are specific to Shabbat law.

microphones/hearing aids and mitzvot that require hearing (*shmia*), some scholars look only to his microphone *teshuvot* and therefore quote him as being lenient.³⁴ Others quote only the hearing aid *teshuva* and therefore cite him as being stringent in this matter.³⁵

Even the *sefer 'Shmaitza D'Moshe'*, which seeks to gather all of Rabbi Feinstein's rulings as a flowing commentary to the *Shulchan Aruch*, states in his name: "One should not hear the *megilla* through a microphone, even in a *sha'at hadchak*..." In their commentary they seem to focus only on the latter two *teshovot* mentioned in this article. (Nevertheless, they accurately quote him as forbidding it under any circumstances).³⁶

Minchat Shlomo

Rabbi Shlomo Zalman Auerbach (*Minchat Shlomo* 1:34), writing to Rabbi Chaim Pinchas Sheinberg, recalls a case where both he and Rabbi Elyashiv were asked regarding a deaf boy who was trained to talk (limitedly) and even had a *chavruta* (a learning partner). They both ruled that this boy had the status of a *pikeach* and was therefore obligated in mitzvot with the possible exception of being called up to the Torah, because of the fear that some will not understand his blessings (this last point will be explored later). This seems to be in contrast to the view of the *Iggerot Moshe* (3:33 s.v. '*v'hanochon*') who only speaks of a *medaber* who also has a functioning

34. See Rabbi Howard Jachter's *Grey Matter* and the chapter titled "Fulfilling Mitzvot Through Hearing Devices"; Rabbi Tendler and Dr. Rosner in the *Journal of Halacha and Contemporary Society*, Fall 1991, "The Physically and Mentally Disabled", footnote 17.

35. See *Encyclopedia Refuit*, loc. cit footnote 386, where the *teshuva* regarding hearing aids (*Even Haezer* 3:33) is quoted as proof that Rabbi Feinstein would not accept them as a vehicle through which to hear the *megilla* and that, like Rabbi Auerbach (see below) he does not perceive hearing devices as affecting halachic *shmia*.

36. *Siman* 689:2.

hearing aid or once had modest hearing. However, Rabbi Auerbach clearly rules that even one with no hearing can be viewed as a *pikach*, seemingly without having to be categorized as either a *shomea* or a *medaber*. Rabbi Auerbach ends with some discomfort about disagreeing with earlier *poskim*³⁷ who had ruled that a *cheresh* who learns to talk is still considered a true *cheresh* and is simply viewed as if repeating words blindly. We all clearly see, Rabbi Auerbach asserts, that today this no longer holds true.

In a separate *teshuva* (1:9) Rabbi Auerbach discusses the issue of fulfilling mitzvot requiring hearing through a microphone. He rules that one does not fulfill his obligation in such a manner. He then writes in parentheses: "It pains me that now deaf people, who can only hear by using a microphone-like device, would not be able to fulfill the mitzvot of *shofar*, *megilla*...at the very least they should not make a blessing on these mitzvot."

Tzitz Eliezer

The *Tzitz Eliezer* (15:46:5) also rules that deaf people today, who go to special schools or can converse with others, have the status of *pikchim* and are obligated in all mitzvot. He also suggests that there is no difference between one who can only hear when spoken to in a loud voice and one who can only hear through a hearing device; both of them, he rules, would be obligated in all mitzvot.³⁸ He therefore rules unlike Rabbi Auerbach and views such hearing as "halachic hearing".

However, at the same time, in three other responsa he argues against the possibility of fulfilling a mitzvah through a microphone, because a) he views such devices as not

37. E.g. Maharam Schick, *Divrei Malkiel*.

38. Ibid s.v. "*ukeshemedabrim*". See *Perisha Choshen Mishpat*, *siman* 235:20; *Sma* ad loc. 46.

producing the original sound,³⁹ b) it takes away from the reverence we are to have in the synagogue and for *davening*.⁴⁰ He therefore, in the latter *teshuvot* mentioned, approaches the issue of fulfilling mitzvot dependent on *shmia* through a hearing aid similar to the *Minchat Shlomo* and the more stringent *teshuva* from the *Iggerot Moshe*.⁴¹

Rav Frank and Chazon Ish

Relating specifically to the issue of hearing devices, Rabbi Tzvi Pesach Frank, writing to Rabbi Yitzchak Yaakov Weiss, rules differently.⁴² He argues that with the exception of the mitzvah of *shofar*, where the Gemara explicitly rules that one must hear the sound itself and not its echo (or a reverberation), a microphone is in fact viewed as halachic hearing.⁴³ The Chazon Ish also suggested a similar permissive approach verbally to Rabbi Shlomo Zalman Auerbach (*Minchat Shlomo* 1:9).⁴⁴ As we will see in the next section, this debate between Rabbi Shlomo Zalman Auerbach and Rabbi Frank (and possibly Rabbi Feinstein) colors how one approaches a slew of issues in practical halacha.

39. 4:26:2:8; he even goes so far as to compare it to listening to it through a "gramophone"(!). See also *ibid* 8:11.

40. 4:26; 5:3. This concern would seem to apply little to hearing devices.

41. *Op cit* 3:33. As with Rabbi Feinstein's *teshuvot*, it is possible to solve this contradiction between *Tzitz Eliezer's* permissive *teshuvot* and stringent ones if we can come up with some distinction between hearing aids and microphones.

42. Although assertive in his language, he ends the letter by stating "*tzorich iyun b'zeh*" (further study relating to this issue is required). See Rabbi Frank's *Mikroei Kodesh*, *Purim* #27.

43. *Rosh Hashana* 27b. However, see *shu't Halachot Ketanot* 276 where no distinction is made between *shofar* and other mitzvot, all requiring that the initial sound be heard. See *Tzitz Eliezer* 8:11:7 where he explains the intent of this *teshuva* of the *Halachot Ketanot*.

44. He bases this on the logic that the sound being heard was first generated by the original speaker.

From the above we see that while disagreeing on the particulars, these *poskim* nevertheless have a clear consensus that obligates virtually all of today's *chershim* in mitzvot, and which rules that their status has (in most cases) changed from their earlier status of being absolved from all mitzvah observance.⁴⁵ There is, however, some disagreement regarding the peripherals, the application of which will be discussed hereinafter.

All of the above creates a unique category of halachic status, for although such classifications as *medaber* and *shomea* were discussed in the Gemara, and at times in the *Shulchan Aruch* (e.g. *siman* 199:10 with *Mishnah Berurah* 28), the plausibility of people who were deaf yet could talk or vice-versa was at one time too rare to be commonly discussed in the codes.⁴⁶

What follows is an attempt to gather the most common halachic questions relating to deaf or hard-of-hearing *pikchim* today. Due to the breadth of this topic we will focus on the *Orach Chaim* section of the *Shulchan Aruch* as it relates to a *medaber* with and without a hearing device. Beyond this, some of the other questions that relate to hearing aids (e.g., Shabbat use) and sign language will be briefly touched upon.

Practical Applications

Tekiat Shofar – Even according to the lenient opinions cited above that view assisted hearing through a hearing aid or CI as halachic hearing, *tekiat shofar* (*shofar* blasts) would be different. The Gemara (*Rosh Hashana* 27b) has already ruled that an echoed sound is not enough to fulfill this mitzvah, as one must hear the original blast. Nevertheless, a deaf person

45. See also *shu't Divrei Chaim Even Haezer* 72 and 73, where he also views modern-day *chershim* as *pikchim*.

46. Specifically regarding one who was born deaf. When the Gemara discusses one who is deaf yet who could talk, Rashi often makes the point that this is due to his becoming deaf later in life, e.g. Rashi, *Chagiga* 2b.

who hears with such a device should still blow *shofar* for himself. Should they have even faint hearing without the assistance of a hearing aid, then they should take the hearing aid out before the blasts.⁴⁷ In any case, such a person may certainly not blow *shofar* for others.

However Rabbi Shternbuch marshals the early view of Rabbi Yonatan M'Lunel (b. Provence 1135) who rules⁴⁸ that a *cheresh* who can talk is obligated in *shofar*.⁴⁹ Rabbi Shternbuch therefore suggests that someone who could talk but cannot hear (or one with a hearing device, which according to most is viewed as deaf when it comes to this mitzvah) should learn to blow *shofar* for himself,⁵⁰ and do so without making the blessing. This also seems to be the ruling of the *Aruch HaShulchan*.⁵¹

Berachot, Kriat Shema, Tephilla, Kriat HaTorah – The *Shulchan Aruch* rules (62:3; 206:6) that although prayers and blessings must be heard by the reciter, *b'dieved* (ex post facto), if one says the words but not loudly enough so as to hear them, one still fulfills his obligation (see *Berachot* 15a). A deaf person who can talk, even without a hearing device, would then be obligated in all such mitzvot and fulfills them although he cannot hear what he is saying, or only hears with

47. See *Mishnah Berurah*, *siman* 589:13, that one can fulfill this mitzvah through a *mechanical* hearing aid. See also *Piskei Teshuvot* 489:3.

48. This ruling is found in his commentary to the *Mishnah*, *Rosh Hashana* 29a. His ruling is based on a novel reading of this *Mishnah* which otherwise seems to clearly state that a *cheresh* has no mitzvah in *shofar*.

49. *Moadim U'Zmanim* 1:1.

50. An exact opposite approach is found in the *Beit Yosef siman* 689 in the name of the Rashbatz, who argues that regarding *shofar*, since it is a mitzvah based on *shmia* and not the act of sounding it, one that cannot hear is not even a *bar-chayuv* (obligated individual). This approach to a *medaber* differs from Rabbi Frank's. Although both rule that a *medaber* cannot fulfill this particular mitzvah, there is no reason according to Rabbi Frank not to still view the *medaber* (with a hearing device) as a *bar-chayuv* (obligated individual), which may allow him to exempt others.

51. 589:6.

his hearing aid. Although for a person with healthy hearing this would only be acceptable after the fact, for such a *cheresh* it would be his *l'chatchila* (primary method of observance).⁵² Another argument offered is based on the rule of "*kol harouy l'bila*" (lit. "anything that is fit to be mixed", see *Menachot* 103b), meaning that it should be enough that the *medaber* is in fact speaking in a sound loud enough to be audible, it is irrelevant if he himself hears it or not (see *Sha'agat Aryeh* 6,7; *shu't Maharil Diskin* 181). The consensus is that a deaf person may recite the blessing "*HaNoten LaSechvy Vina*" (...Who gives insight to the heart/rooster"). This is true even regarding a true *cheresh*.⁵³

Regarding a *kohen* who is a *medaber*, the *Mishnah Berurah* (*siman* 128:49) rules that he is obligated in the priestly blessing even though he cannot hear the *chazzan's* call.

Both a *medaber* and a *shomea* are counted for a *minyan* according to all views (*Shulchan Aruch siman* 55:8). Regarding a *minyan* made up solely of such individuals, or even when they make up four or more of the ten, they must be informed or aware as to when to answer *amen* (*Pri Chadash* ad loc. 8; *Shulchan Aruch HaRav* 11; Cf. *Taz*, *siman* 124:2; *Sukkah* 58b).⁵⁴

52. See Rema in his introduction to *Torat Chatat*, where he explains that when appropriately following a *b'dieved* it becomes "*Ki Heter Gamur Aliva D'Hilchatah*". The concept of *b'dieved* can be, and often is, easily misunderstood. It is only utilized when there is already a view that allows that certain action or inaction *l'chatchila* yet, for whatever reason, this view is not seen as normative. See Marharsham, in *sefer Daat Torah*, *hilchot treifot* 38 – see *Taz* 688:5; *Shach*, *Yoreh Deah* 54:9 and 242:5; *Pri Megadim*, *sefer hanhagot Orach Chaim* 1:9 and *klallim l'horah* #6. The Rema writes that *b'dieved* is actually a fallback to normative law and away from an accepted stringency, and that in such cases of need, "*Yesh Leha'amid Davar Al Dino*" –we are only reverting to the basic law.

53. Inferred from Rema *siman* 46:8; *Magen Avraham* *ibid.*; *Kaf Hachaim* uses the same reasoning in the name of the *Arizal*; *Shulchan Aruch HaRav*; *Mishnah Berurah*, who suggests, in the name of the *Chayei Adam*, that he wait until sunrise to recite this blessing.

54. The *Gemara* here relates that in a certain large shul in Alexandria many

Again, according to both the Chazon Ish and Rabbi Frank (and perhaps Rabbi Feinstein) there would be no restrictions should they be equipped with a hearing device, even if they make up the entire *minyan*. According to the view of Rabbi Shlomo Zalman Auerbach, that even a classic *cheresh* who was taught some form of communication and can move his mouth so as to be understood by others has the status of a *pikeach*, then such

could not hear the *chazzan* (the one leading services) and could only know when to respond by having someone standing up and waving a cue. See *Shulchan Aruch* 55:8 with *Mishnah Berurah* (38) and *SA Harav* (11) how to relate this to deafness; Cf. *Taz siman* 124:2. See also *Halichot Shlomo* vol. 1, page 265 and footnote 26. See however *shu"t Maharil, siman* 106 and 150, who seems to argue that even if a *medaber* is not alerted to answer *amen* he should still be counted for a *minyan* based on *Sanhedrin* 39a, "G-d resides amongst ten", regardless if they respond to the *chazzan*. In fact this *teshuva* was the source for the *Shulchan Aruch's* ruling to allow a *medaber* to be counted in a *minyan*! See *Aruch HaShulchan siman* 55:12 who writes "And one should not ask regarding one who cannot hear what the *chazzan* is saying, or (regarding) one who cannot speak, 'How can they be included to say *kaddish* and *kedusha*', for this is not a question...for what is needed is ten for the Divine presence to settle there, even if not all of them can answer". It would seem from his next paragraph (13) that we would nevertheless limit the number of *medabrim* who won't know when to answer to no more than four out of the ten; the *Shulchan Aruch HaRav* states this explicitly (55:11). There is support for this lenient approach in the *Shulchan Aruch* itself. In *siman* 55:6 he rules that one can include in a *minyan* one who is praying his silent *amida* and even one who is sleeping, yet in *siman* 124 he rules that if there are not ten answering *amen* to the *chazan's* repetition, that it is "a quasi blessing in vain". To explain this apparent discrepancy some explain (*Derisha* 124:1) that even in the latter ruling he only wrote that it is a "quasi blessing in vain" meaning that *bish'at hadchak* it would be allowed and it was only such *sha'at had'chak* cases that he was referring to in *siman* 55. Others, however, explain (*Shulchan Aruch HaRav*) that there is no discrepancy, for while the *Shulchan Aruch* allows one who is sleeping to be counted for a *minyan*, this is only for *kaddish* or *kedusha*, whereas by the *chazzan's* repetition, where blessings are being made, he rules that an answerable *minyan* is required. According to this last opinion the *medabrim* would have to be told when to answer during the *amida's* repetition. It would seem, however, that the view of the *Maharil* can be further supported by this ruling of the *Shulchan Aruch* (55:8) who rules that a *shomea* is counted for a *minyan*. Being that a *shomea*, by very definition, can't answer *amen* (!) this ruling lends strong support to the notion that what is needed is ten men, even if they are not responding.

an individual would count for a *minyan* as well.⁵⁵ It should be pointed out that even according to Rav Shlomo Zalman's more stringent view regarding hearing aids (that one does not fulfill mitzvot *shmia* through them) an individual so equipped may use it to know when to answer *amen*.⁵⁶

The general consensus, and the general custom, is to allow a *medaber* to be called up to the Torah for an *aliya* (Torah blessing).⁵⁷ Rabbi Feinstein allows even a true *cheresh* to receive an *aliya* for his bar mitzvah or *aufwurf*—so that he should not feel downgraded – and writes that in such a case the *cheresh* should try to say the words as best he can, although such an *aliya* may not be from the main seven *aliyot*.

A *medaber* acting as the leader for prayer services (*chazzan*) is subject to debate.⁵⁸ Therefore regarding saying *kaddish*, while a *medaber* may certainly say it along with others, saying it alone, however, would be subject to the above dispute. However, according to both the Chazon Ish and Rabbi Frank (and perhaps Rabbi Feinstein) this dispute would not apply to one with a working hearing aid or CI who can, without equivocation, lead a congregation during prayers and *kaddish*.

As for a *medaber* acting as the actual reader of the Torah, this should be avoided, yet can be done in cases of need, such as the bar mitzvah of a *medaber*.⁵⁹ Certainly regarding biblical readings (e.g. *parshat Zachor*) we should not rely on these lenient views. In addition, and as we will point out below, there is a distinction between the reading of the Torah and the

55. See also *Halichot Shlomo* vol., 22:26.

56. See *ibid.* 22:16.

57. *Iggerot Moshe Yoreh Deah* 4:41:6; *Shu't Teshuvot V'Hanhagot* 1:155; *Siddur Beit Yaakov*; *Pri Megadim*, *siman* 139 M.Z. 2; Cf. *Minchat Shlomo* 1:34, although being that the latter's concern was about understanding his words, even he would agree that in cases where this is not a fear, there is no concern.

58. See *Biur Halacha siman* 55 s.v. '*cheresh*'.

59. *Teshuvot VeHanhagot*, 1:150.

reading of *Megillat Esther*, the latter being more stringent regarding a *medaber*.

With respect to fulfilling the mitzvah of hearing the Torah being read, Rabbi Moshe Shternbuch suggests that even according to the views that rule that microphones/hearing devices are not considered true *shmia*, the mitzvah of *kriat haTorah* (reading from the Torah) would be different.⁶⁰ This is because this mitzvah may not be an obligation to hear a person read the Torah, rather simply to hear ‘words of Torah’.⁶¹

A *medaber* and a *shomea*⁶² are counted toward a *zimun* – groups for grace after meals (Rema *siman* 199:10)⁶³ of both three and ten. According to some (see *Shulchan Aruch Harav*) they should not (especially a *shomea*) be counted as one of a *zimun* of three, and even in a *zimun* of ten there should be no

60. Ibid. 1:150; 3:79.

61. See also *Shulchan Aruch HaRav*, *Hilchot Talmud Torah* #2, where the Rabbi of Liadi posits that one does not even have to understand *Torah Sh'bKtav* (the written Torah) when studying it to warrant reward; see *Gevurat Yitzchak* by Rabbi Yitzchak Sorotzkin, where he draws a distinction between *kriat haTorah* where one fulfills a mitzvah even if they do not understand it and *mitzvot hakhel* where there is an obligation to hear and understand (*Chagiga* 3a) based on the verse (*Devarim* 31:12) “...so that they will hear and so that they will learn”, and which would therefore exclude a *medaber*. This idea of *kriat haTorah* being about hearing words of Torah and necessarily the reading itself is strengthened by the view that Moshe Rabbeinu’s regulation mandating thrice weekly Torah readings is not an obligation on each individual, rather on the congregation, which would mean that the halachic rules of *shomea k’oneh* (the listener fulfilling his obligation through the one speaking) are not activated during its readings. For this reason some argue that even hearing *kriat haTorah* through a microphone would not be a concern either; see *Piskei Teshuvot* 135 and *shu’t Teshuvot V’Hanhagot* 1:55. According to the several responsa of the *Tzitz Eliezer* sourced in the last section, where he decries the usage of microphones in a synagogue due to his view that it transgresses the reverence demanded of us there, these arguments would do little to assuage his feelings.

62. See *Mishnah Berurah*, *ibid*.

63. Although the Rema utilizes the term “*cheresh*”, the *Mishnah Berurah* (28) explains that he was only referring to a *medaber*.

more than four *medabrim*.⁶⁴ As for leading the *zimun*, see *Biur Halacha siman* 199 s.v. “*meztarfin*” who relates this question to the issue of a *medaber* acting as the *chazzan*. He ends by suggesting that it might be possible to be more lenient concerning his leading a *zimun*. Here too, the Chazon Ish and Rabbi Frank would view one equipped with a hearing device like anyone else.

Kriat HaMegilla – A *medaber* who can hear through the help of a hearing aid, according to the view of Rav Shlomo Zalman Auerbach (1:9), may have no way of fulfilling the mitzvah of reading the *megilla* and is therefore exempt from it (*ones rachmana patrei* –G-d does not hold us culpable for impossible actions).⁶⁵ As stated previously, Rabbi Auerbach does imply that they should still listen to the reading while making sure not to say the blessings.

Shulchan Aruch siman 689:2 with *Mishnah Berurah* (5), regarding one who is completely deaf (*Shaarei Teshuva*) yet can speak, rules that he cannot even read the *megilla* for himself. Even though we mentioned above that regarding blessings and prayer that require one to hear the words that they utter, a *medaber* nevertheless fulfills his obligation, they argue *kriat ha'megilla* is different. This is due to the special concept of *pirsumei nissa* –the public showing of the miracle we are coming to commemorate that is activated on Purim and that obligates the reader to hear the words that he is saying (*Beit Yoseph*). Many *Acharonim* (post-16th century scholars) disagree with this ruling of the *Shulchan Aruch* (Gra, *Sha'agat Aryeh*, et al) and allow for a *medaber* (with no hearing aid) to read the *megilla*, even for others.⁶⁶

64. Based on the points raised in footnote 61.

65. See *Avnei Nezer Orach Chaim* 439 and *Kovetz HeOrot* 48:14 if an *ones* can still be viewed as *bar-chayuv* in order to be fulfill others' obligations. See *Chavatazelet HaSharon, Shmot*, page 93-95; *Shalmei Toda, Purim*, page 164.

66. Although even these views do not recommend that he be the one to read it for others.

The *Meiri* (*Megilla* 19b) explicitly compares *megilla* to the case of being a *chazzan* and rules that for *megilla*, too, a *medaber* can read for others and exempt them. The *Shaarei Teshuva* (ad loc. 2) posits that when dealing with one who could hear through a hearing device, even the *Shulchan Aruch* would agree that he could read the *megilla* (cf. *shu't Tzemech Tzedek Even HaEzer* 323). This last point, however, is difficult to rely upon due to the fact that the *Shaarei Teshuva* was speaking of non-electrical, primitive hearing aids of bygone years, which, as pointed out by Rabbi Moshe Feinstein (*Even HaEzer* 3:33), must be viewed more leniently than modern ones. The Chazon Ish and Rabbi Frank, again, would see one equipped with a modern hearing device like anyone else even regarding *kriat hamegilla*.

Shabbat – Due to all that has been discussed thus far, a *cheresh-medaber* should make *kiddush* and *havdala* for himself and should not exempt others. It would seem, however, that a father of a household may be lenient in this matter and lead *kiddush*, etc., for his wife and children. This is due to the many lenient approaches we have seen regarding modern-day hearing devices, and based on the many opinions mentioned in the *Biur Halacha* (*siman* 55) that allow a *cheresh* who can speak (even without a hearing device) to fulfill mitzvot on behalf of others. While we would not typically rely on these views, in cases of need we would, and a father being seen as the head of the household is crucial for children, especially in our day.⁶⁷

Hearing Aids on Shabbat – A week after Rabbi Feinstein received a query (*Iggerot Moshe Orach Chaim* 4:84) regarding the use of microphones on Shabbat –which he forbids for four

67. It is related that Rabbi Yaakov Kamenetzky, when visiting his married children, would refuse to sit at the head of the table, explaining that the function of the father, and his being seen as unimpeachable in his role as head of the house, is sacrosanct and should never be infringed upon when his children are present, even though he was thereby usurping his own children's biblical obligation of honor – *kibud av* – for him. *Reb Yaakov*, Artscroll, page 324.

separate reasons –he received a query (ad loc. 85) relating to hearing aids on Shabbat. He ruled that albeit a hearing aid is indeed a mini-microphone and he had recently ruled that microphones are forbidden to be used on Shabbat, one can still wear a hearing aid on Shabbat. He goes on to demonstrate how all four of his reasons forbidding a microphone on Shabbat would not apply to hearing aids.⁶⁸

While Rabbi Feinstein suggests that it is better for others not to speak directly to the wearer on Shabbat unless it is urgent,⁶⁹ according to Rabbi Shlomo Zalman Auerbach (*Minchat Shlomo* 1:9), talking directly to the wearer is of no concern. As for raising or lowering the volume of hearing aids on Shabbat, there are a number of views. Some, like Rav Shlomo Zalman Auerbach (*Minchat Shlomo* 1:9 *anaf beit* 1; *Shemirat Shabbat K'hilchata* 34:28; *shu't Be'er Moshe* 1:17) felt that adjusting the volume on electrical devices –so long as no new current is being created, rather an existing one is being raised or lowered –is allowed. One's personal *rav* should be consulted before acting on this issue.

The reader is directed to Rabbi Elysha Sandler's excellent article in *Journal of Halacha & Contemporary Society*, XLI; Spring 2001 – Pesach 5761, "The Use of Hearing Aids on Shabbat", as well as *Torat HaCheresh*, by Rabbi Shuchatowitz (NCSY, 2002) where issues that relate to Shabbat are discussed in greater detail.

68. Rav Levi Yizchak Halperin of the Institute of Science and Halacha, in a statement issued in 1996 and quoted in *Torat Hachersesh* footnote #5, posits that cochlear implants are no different than hearing aids as they relate to Shabbat.

69. Op cit. See also *Orchot Rabbeinu* (Kanievsky) vol. 1 p. 146, where it is written that the Steipler Gaon would not speak directly to one equipped with a hearing device on Shabbat; he would, however, speak to a group of people even if it was known that one of the people there was using a hearing device.

Sign Language

There is significant debate as to the status of a deaf person who cannot be assisted with hearing aids and who never learned how to talk, yet has the ability to converse in sign language. A competent *rav* should be consulted.⁷⁰

Rabbi Feinstein (in a *teshuva* first published in the back of the first volume of Rabbi Eider's English work on the laws of *nidda*),⁷¹ rules that one who was born deaf and also cannot speak yet *can* converse in sign language still has the status of a true *cheresh*.⁷² He draws a comparison to writing, which, as stated above, is not a skill that transforms a born *cheresh* into a *medaber*.⁷³ Nevertheless, he rules in a later responsum that if a

70. Rav Yechiel Yaakov Weinberg, *Kitvei R. Weinberg*, 1:1, seems reluctant to rely on any scientific standards in assessing *pikcheut* (common intelligence). See also *shu't Tzemach Tzedek* 77 and *Nishmat Avraham* (Artscroll) Volume 1, page 27. However, a logical proof can be brought from *chazal* that would seem to indicate against both viewing sign language as a language (or talking) and against judging a true *cheresh* pragmatically: The Mishnah (*Yevamot* 112a) rules that a *cheresh* may marry through *remizah*, i.e. signaling, which Rashi explains as hand motions. The Gemara 112b explains that although biblically such deaf people are exempt from all mitzvot and that in reality such an acquisition should be of no religious value, for the benefit of society it is allowed. This would mean, it would seem, that generally sign language is insignificant, and one's ability to "understand" is not judged on a case-by-case basis, otherwise we would not need this special *takana*/allowance only for marital matters.

71. *Halachos of Niddah*, Page 25.

72. *Iggerot Moshe Yoreh Deah* 4:1:25 and reiterated in 4:49:1. The question was in regard to the *niddah* inspections of a *chereshah* and if she is trusted to do it herself. On page 71 of the English section of his book, Rabbi Eider writes, in the footnote, quoting Rabbi Feinstein as his source, "There is a view that holds that a deaf-mute, although she is capable of communicating intelligently, may not perform her own examinations". He could only be referring to sign language as indicated by his question posed to Rabbi Feinstein printed in the Hebrew section found in the back of this volume.

73. Further complicating his view on the matter, in a later *teshuva* (*Yoreh Deah* 4:49:5), Rabbi Feinstein allows such a *chereshah* to do her own examinations so long as her husband trusts her; it is therefore not our place to make a definitive statement about Rabbi Feinstein's ultimate ruling.

cheresh is unable to recite any words, it is better he *daven* in sign language than not to *daven* at all.⁷⁴ This last point is consistent with his view stated above that even a true *cheresh* who is exempt from all mitzvot should still not abandon Torah. Others disagree and rule that a *cheresh* who has the ability to converse in sign language has the status of a *pikeach* (fully understanding person).⁷⁵

As for using sign language during *davening* at times when talking would not be allowed, a logical distinction must be made between the arbitrary motions people may make at times in order to communicate specific things (i.e., for silence, or for a pen) and an official, agreed upon language of signs and gestures. The *Shulchan Aruch* rules (*siman* 63:6) that one is not allowed even to motion during the first chapter of *kriat shema*. The *Mishnah Berurah* (*siman* 104:1) rules the same for the *amida*.⁷⁶ Regarding *birchat hamazon* (grace after meals), the *Shulchan Aruch* rules (*siman* 183:8) that some say all the laws regarding prayer apply as well to *birchat hamazon*, which the *Aruch Hashulchan* explains would mean that one cannot communicate through motion, just as during any prayer. These laws would all the more so apply to sign language. Regarding other points in *davening* where talking is not allowed, or is frowned upon, sign language, while certainly not viewed as talking,⁷⁷ and certainly such communicating

74. *Yoreh Deah* 4:41:3. See also *Shevet Sefer Even Haezer* 21 s.v. “*veraiti*” where he begins to say that sign language does not change the status of a *cheresh*, but ends in doubt. His writes that his father too (the Chatam Sofer) was not sure how to view them. He therefore suggests that they should be stringent in mitzvot.

75. See also *shu’t Beit Shlomo Orach Chaim* 95; *Divrei Malkiel* 6:35, both as brought in *sefer Hilchot Gerim* (Klein) p. 117, footnote 44, where, based on these sources, the author rules that such *chereshim* may be accepted as converts.

76. See also the *Chida* as brought in the *Sha’arei Teshuva* ad loc. and *Ben Ish Chay*, *Chukat* #8.

77. E.g., see *Birkei Yosef* (*siman* 104:2) who rules that although one cannot motion during *shemoneh esreh*, if children are disturbing one’s *davening* it is better to motion than to silence them verbally; see also *shu’t Be’er Moshe* 3:13.

does not disturb others when compared to talking, would nevertheless seem to go against the reverence we are to have toward prayer and the synagogue (see *Shulchan Aruch siman* 150; *Zohar, parshat Teruma*) and will certainly weaken the atmosphere in shul and may even cause the other worshippers witnessing such open communication to view actual talking lightly.

Conclusion:

As can be seen by this brief monograph, the laws of a *cheresh*, *medaber*, *shomea* and all the cases in between, touch upon virtually every aspect of Jewish life. Precisely because of developments in the field of deaf education and the advancement of the deaf and hard-of-hearing in daily life, *poskim* devote much time to clarifying their status.

Everyone in *klal yisroel* has their important role to play as well as their deficiencies. Let us all come to terms with our own and use them to benefit others too. May we soon merit the promise of Yeshayahu (35:5-6): "*The eyes of the blind shall be clear-sighted, and the ears of the deaf shall be opened...the lame shall leap as the hart, and the tongue of the mute shall sing.*"

This article is dedicated to the bachurim and rebbeim of Yeshivas Nefesh Dovid – a yeshiva for the deaf and hard-of-hearing.

Physical and Occupational Therapy Practices: A Halachic View

Rabbi Yigal Shafran, Ph.D.

Physical therapy (PT) and occupational therapy (OT) are medically-related fields that have begun to attract a large number of religious women. These fields raise unique halachic questions, many of which relate to issues of modesty. Physical therapy includes a great deal of physical and emotional contact with the patient and requires a personal and warm relationship. Needless to say, this may be problematic when the patient and therapist are of opposite gender.

Of course, we put many of these concerns aside when a doctor provides life-saving therapy for a patient, but sometimes the therapist serves not in a strictly medical capacity, but rather to simply strengthen the body. Where does PT lie on this spectrum? Indeed, one must always distinguish in these disciplines between different circumstances and different workplaces. Thus, for example, in the case of athletes who have not been injured in the process of the game but use PT simply as a helpful tool for strengthening the body, or, for example, a woman and her male tennis instructor— there is no place to be lenient at all in issues regarding modesty.

In PT and OT there are three main goals in treating a

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physically-compromised person: to bring him or her back to optimal function; to prevent complications and illnesses; and to improve the patient's quality of life. The ages of patients vary greatly: they may be infants, children, teenagers, adults or seniors. Their conditions also vary greatly: there are those who are healthy but suffer discomfort; there are those whose status is intermediate (i.e., they suffer pain and find it difficult to function); there are those whose condition is critical (i.e., they cannot function at all); and there are those whose condition is very critical (e.g., intensive care patients, unconscious patients or seniors who are extremely dependent on their environment). In all these cases, PT prevents critical, life-threatening complications, in the following ways, among others:

- It helps to prevent bed sores, which can cause infections and are particularly common among patients who are bedridden and have limited mobility.
- It allows respiratory rehabilitation in the intensive care unit after surgery and general anaesthetization. The treatment improves respiratory ability, and it can prevent suffocation and partial lung collapse (atelectasis). Similarly, respiratory rehabilitation increases the amount of oxygen in the blood, and this has a noticeable impact, accelerating healing and improving function. It also prevents pneumonia, a very critical issue for bedridden patients.
- It assists in rehabilitation after strokes — an issue with great impact and in which physiotherapists play a distinctive role. Some of the abilities which PT helps the patient reacquire are general mobility, walking, changing position from sitting to standing, etc.
- It is integral in activities to improve the cardiopulmonary capacity of cardiac patients, to ensure proper function and to prevent complications or setbacks.

Thus it would seem that, as a general statement, PT and OT constitute medical treatment for all intents and purposes.

When it comes to doctors offering treatments which are important but not urgent (as with patients who are in pain but whose lives are not in danger), we generally rely on the rule that caregivers are preoccupied with their work and that any physical contact is purely professional. Indeed, the *Shach*¹ (Rabbi Shabtai Kohen) insists that the Rambam forbids physical contact with members of the opposite gender only when it is *derech ta'ava*, that is, sexually arousing. Physical contact under medical circumstances is the standard and accepted practice among Jews, he says. The same position is held by Rabbi Z.H. Shapira² and Rabbi Yechezkel Landau. There seems to be no reason not to extend this to similar treatments given by PT and OT therapists. There is no conceptual difference here between a physiotherapist, a nurse or an occupational therapist, as long as we are talking about professionals who are performing these actions in the context of their official position, as expressed by the fact that they are employed by a responsible, overseeing institution.

However, PT therapy often involves slow, consistent treatment, the results of which accrue only after some time. In such on-going therapy, each session does not demand the caregiver's total preoccupation and concentration on the work alone, and also includes soothing communication and explanation, sometimes requiring heartfelt conversation in the midst of physical contact and professional work. In these less serious situations, when it is not clear if the patient is experiencing only discomfort or is in actual pain, a therapist should be more stringent than with normal medical care, respecting to a greater extent the halachic social norms limiting even casual physical contact with members of the opposite gender.

With these general principles in place, let us turn to some specific practical concerns:

1. ש"ך (יו"ד קנז, וקצה, כ).

2. "דרכי תשובה" (יו"ד קנז, ח מובא בנשמת אברהם יו"ד קצה).

Visual Observation:

In general, viewing the exposed body of a person of the opposite gender violates the laws of personal modesty, which is problematic because the beginning of the PT examination generally includes viewing the relevant exposed skin of the patient. *Ab initio*, a physiotherapist should observe only those body parts of a patient of opposite gender which are usually exposed, such as hands and face. If this is impossible, one may examine other places according to the principle of “the more lenient comes first” — i.e., one should first examine the most public and commonly exposed parts of the body and move on to less exposed areas.

Physical Contact:

For the most part, PT treatment includes touching to examine swelling and locate infections or touching in order to locate the specific site or origin of pain: muscles, bones, joints, etc. Any situation which requires a physiotherapist to put her or his hand on a patient of the opposite gender in order to simply express warmth or to convey a pleasant feeling through touch is surely inappropriate, as it would be in any social situation. On the other hand, painful or difficult treatment is permitted under the principle of “the more lenient comes first.” Physical examinations for patients who have only minor discomfort or pain are more problematic and ideally should be performed only by members of the same gender.

When same-gender examination proves impossible, or when the patient is in a critical condition, a caregiver of the opposite gender can rely on those authorities like R. Yair Chayim Bacharach,³ R. Amram Blum⁴ and R. Mordechai Breisch,⁵ who permit gloved contact in such cases. (This *heter* is not

3. מקור חיים (קצה, נח נדפס בתקנ"ח, מובא בפת"ש קצה, יז).

4. שו"ת בית שערים (או"ח רצד).

5. שו"ת חלקת יעקב (יו"ד צט).

universally accepted, and Rabbi Ovadia Yosef offers an extensive discussion regarding the effectiveness of wearing gloves in situations where a husband wants to hold his distressed wife's hand during childbirth.⁶ We may say that the notion of the professional using gloves during physical contact dates back to the Yerushalmi's explanation that the *kohen* wore gloves during the *sotah* ritual.⁷) In serious cases in which one cannot use gloves, one may use one's bare hands. Building a splint requires using a substance which must be shaped to the patient's limb (e.g., a hand), and gloves are inappropriate for this purpose because this substance adheres to the gloves. In this situation, it is permitted to shape the splint even without gloves.

Any quick examination – i.e., one in which the caregiver's hand does not rest on any body part for an appreciable length of time – is allowed for all patients, based on two justifications: the caregiver is preoccupied with the work, and this is done in a non-sexually arousing manner. A physiotherapist who works as an instructor for a class does not need to wear gloves while quickly demonstrating examinations in a way similar to a hasty examination. In this situation, it is permitted for the therapist to go from patient to patient and make minor adjustments even without gloves.

Directing Movements:

A physiotherapist may, in her or his professional occupation, ask a patient of the opposite gender to make different motions which are required in order to make a diagnosis. The physiotherapist may give various instructions and follow their execution; but if the patient is dealing with

6. ראה הרב עובדיה יוסף "טהרת הבית" ח"ב סימן י"ב.

7. הדיון על הכפפות הוא בירושלמי סוטה פרק ג' הלכה א': "כהן מניח את ידו תחתיה ומניפה. ואין הדבר כעור? מביא מפה". הירושלמי דוחה את הכפפה לא בגלל שכפפה לא מועילה אלא בגלל שהיא "חציצה" ובקרבן של אשה סוטה צריך בלא חציצה. מהדרייה משמע שכפפה היא חציצה טובה ומועילה.

mere discomfort or minor pain, touching the patient should be avoided. If there is no choice, the caregiver should put on gloves, and if, in the midst of the requested motion the need arises for assistance or guidance, he/she is permitted to intervene and touch the patient in order to assist in the required movement. This is true only for a request to perform different motions in an active way, with the involvement of the caregiver in the movement and with examinations for the range of movement, sensation, reflexes, pulses, etc. Thus, it is allowed to touch a patient with gloves for the sake of examinations which are designed to discover pathology or the source of a problem. If this severely hinders the examination, one may take off the gloves, examine, and put the gloves back on.

It is permitted for a physiotherapist to guide children (below the age of nine) of the opposite gender in the execution of different exercises while holding them, even without gloves, if the goal is to teach them different active exercises or to teach disabled children how to perform basic actions such as walking, dressing, etc. Issues regarding sexual interaction are clearly irrelevant to children beneath this age. For children above the age of nine, one may do so if there are other people in the room and the therapist is wearing gloves.

***Yichud*-related matters:**

The laws of *yichud* prohibit unrelated people of opposite gender to be in isolated or secluded situations together. Indeed, in a general sense the laws of *yichud* constitute good current medical practice that serve to protect the caregiver from charges of improper behavior, and the wise practitioner will adopt them in spirit and detail. A therapist should not work in a patient's house when there is no other person in the house and the door of the residence or the room is locked. If there is no possibility for additional people to be in the house, the front door of the apartment should be only partly closed.

It is forbidden to stay together in the therapeutic pool with patients who have only minor discomfort. It is permissible to treat in a therapeutic pool, those patients who find it very difficult to function, or critical patients, or patients below the age of nine, but one must be very careful about particularly modest dress, the presence of other people, defined times for entering and exiting, and very strict rules. It is permissible for female physiotherapists to use a pants skirt in a pool, and this is even preferable, on the condition that this not a specifically masculine garment.

The therapist's demeanor and dress should always project an image of a professional relationship, and this is especially important in the case of home treatments. If it is not possible to wear a professional uniform, a professional identification tag or another sign which identifies her/him as a member of the medical profession should be worn. The physiotherapist should have a mobile telephone which is activated, and her or his superiors or household members should know whom she or he is treating and be able to make contact at any time.

Treatments on Holidays and Shabbat:⁸

Strenuous exercise is prohibited on Shabbat, but PT movements which require daily practice for rehabilitation of the damaged area are permitted on Shabbat as long as they do not involve such strenuous exertion. Physiotherapists are allowed to give a patient instruction to continue practicing the different motions on Shabbat if there is a concern that without the daily continuation of the simple non-strenuous exercise (e.g., moving one's palm, etc.), there will be a certain setback in the patient's condition. In general, one may not travel on Shabbat for PT. If there is a possibility to travel with a non-

8. נושא ההתעמלות בשבת נידון באריכות על ידי הרב יצחק שיף "התעמלות, עיסויים ופיזיותרפיה בשבת, ספר אסיא ד, עמ' 5749- ומתוך התחשבות בפסיקתו של שו"ת ציץ אליעזר (ו,ד) המחמיר בעניין זה ועל כן הותרו רק הפעולות שאינן מחייבות הזעה והרציפות היא חיונית בהן.

Jewish driver or the patient is critical, one should consult a rabbi. It is permissible to work on *Chol Ha-Mo'ed* to treat a noncritical patient (a *choleh* who is not in danger).

Working with a Coed Staff:

There is no distinction between demonstrations or practices among the staff and those actions themselves as they are done to patients. It is permissible to work with a coeducational staff and to remain in the staff rooms as long as the halachic laws with respect to *yichud* and physical contact are observed. Women should sit next to women and men next to men. It is permitted to discuss everything which relates to matters of work and also material beyond this, as we are accustomed to talk with neighbors or in the market, etc.; but this should be limited as much as possible, as befitting the circumstances and elementary politeness.

In the practical studies, students must practice on each other's exposed body part, as is relevant to each case. In these studies, women therapists should practice on one another behind a curtain. If the administration insists that an instructor must enter behind the curtain in order to check and comment on the work, one should request that it be a woman instructor. If this is impossible, it is permissible for a male professional to observe the women who are practicing behind the curtain and to comment during the course of the lesson. In these cases, it is permissible for the instructor to correct any of the students' mistakes, even if one must touch them, as long as one is wearing gloves.

If the administration requires that a male instructor go behind the curtain of women who are practicing, as described above, one should prefer a non-Jewish instructor over a Jewish instructor, because with a Jewish instructor the student might be causing her fellow Jew to violate a commandment, which, of course, does not bind a non-Jew.

Final Note

In every one of the circumstances which we have described above, one must be very careful about modest dress, avoiding levity and improper speech. Nevertheless, physiotherapists cannot be tough or taciturn or display a grave manner oppressive to the patient. They must act with professional interest on the one hand and with human empathy on the other hand. They must act not with glumness, but rather in a way which expresses their duty to make life easier for the patients and ease their distress. This is their mission and their mitzvah.

PT and OT are popular professions for religious women. But it is also worth noting that promoting this important discipline among a group of religious males is extremely essential, as this endeavor will make it possible to produce more relief and comfort for the patients, without relying on questionable allowances.

* * *

Ed. note: *We are grateful to Rabbi Shafran for initiating this conversation on this important and relevant topic and look forward to additional discussions on the opinions expressed herein.*

In the Eye of the Storm: Shabbat Observance During a Hurricane or Severe Weather Event

Rabbi Kenneth Brander

There is an apocryphal tale that during the cholera epidemic of the 1830s, Rabbi Yisrael Salanter stood up in the synagogue on Yom Kippur morning and ate in front of his entire congregation.¹ (Actually, he urged anyone who was feeling weak to eat.) He acted in such a dramatic fashion out of fear that the members of his community would become susceptible to the fatal disease were they to fast. Therefore, he exhorted his parishioners to eat on Yom Kippur. When questioned about his apparent disregard for the most holy day of the Jewish calendar, he responded that he was not being lenient on the laws of Yom Kippur but rather, he was strictly observing the sacred commandment of protecting and not risking one's life.²

1. Eliezer Mermelstein, "Eating on Yom Kippur While Ill or During an Epidemic," *Kovets Ets Hayyim* 3:1 (October 2008): 273-294 (Hebrew); see also a discussion on a modification of this story in Jacob Mark, *Bi-Mechitsatam Shel Gedolei ha-Dor* (1957-1958, Jerusalem), pp. 68-69 and Lucy S. Dawidowicz, *The Golden Tradition* (1967, Canada), p. 173.

2. For further elaboration on eating on Yom Kippur in the face of communal health challenges, see, "Introduction," in *Biur Halachah Shulchan Aruch, Orach Chaim* # 618; *Sedei Chemed ha-Shalem*, vol. 9, s.v. *Yom ha-Kippurim*, siman 3.4, p. 148; *Magen Avraham, Orach Chaim* 576:2; and *She'elot*

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The hurricane and severe weather protocols that follow are written in the spirit of one of halacha's cardinal tenets: the primacy of life. With the rarest of exceptions, the biblical commandment of *ve-chai ba-hem* (Vayikra 18:5) (a person should live by the Torah, but not die because he is observing mitzvot) demands the suspension of commandments when they put at risk our physical life or mental health. However, when it comes to violating the Shabbat to preserve life (or any other matter for which the Shabbat laws may be suspended), it is desirable to keep the "violation" to a minimum (*dechuyah*), in both the number of violations done and the method in which the violations are performed. Throughout this essay, I will explain the reasoning behind the halachic and severe weather protocols that are suggested herein to help people deal with severe meteorological challenges during hurricane season, or some other disaster.³

Definition of Severe Weather

The designation of severe weather is not a function of how many feet of snow are on the ground, or how fast the rain is falling or the wind is blowing. For our purposes, severe weather conditions are defined when walking to synagogue is hazardous due to the lack of light, downed live power lines, falling trees,⁴ or dangerous debris on the street. In these conditions, the obligation of *ve-chai ba-hem* takes precedence

u-Teshuvot Chatam Sofer 6:23.

3. I am indebted to Rabbi Yehoshua Fass, Executive Director and Co-Founder of Nefesh B'Nefesh, and Rabbi Efreim Goldberg, Senior Rabbi of the Boca Raton Synagogue, who worked with me during times when these protocols needed to be written, adapted and implemented. These protocols can be found on http://yu.convio.net/site/MessageViewer?em_id=9761.0.

4. On March 13, 2010, during a severe storm, 49-year-old Ovadia Mussaffi *ob"m* and 54-year-old Lawrence Krause *ob"m* were struck by a large falling oak tree around 7 p.m., in Teaneck, N.J. after they left synagogue on Shabbat evening.

over various aspects of Shabbat and holiday observance.⁵ As mentioned, our purpose is to explore the halachic protocols in these situations.

Attending Synagogue

Attending synagogue and praying with a *minyan* have important halachic significance. This experience affords many spiritual opportunities such as the ability to recite *devarim she-be-kedushah*,⁶ taking part in the synagogue communal environment which has a special significance on Shabbat or Yom Tov,⁷ as well as fulfilling the legislative decree of Moshe to read the Torah on Shabbat day or Yom Tov.⁸ However, in a situation where walking to synagogue may cause a concern of *pikuach nefesh* (mortal danger) or injury, the responsibility to attend *minyan* is suspended.

Missed *Parashat HaShavua*

When a storm creates conditions in which synagogue attendance is dangerous, the *parashat ha-shavua* (mandated weekly Torah reading) which was not read should be read at a later date. When should that be?

The Rema indicates that it should be read the following Shabbat along with the regularly scheduled *parashah*.⁹ Rabbi Chaim Azulai (Chida) states that even if attendance for that

5. Yoma 85b; Rambam, *Hilchot Yesodei ha-Torah* 5:1; Rambam, *Hilchot Shabbat*, chap. 2; *Shulchan Aruch, Orach Chaim* 329:1.

6. *Megillah* 23b; Rambam, *Hilchot Tefillah*, 8:4-6.

7. Ramban, *Vayikra* 23:2.

8. Jerusalem Talmud, *Megillah* 4:1(75a); Rambam, *Hilchot Tefillah* 12:1. Further expansion of reading the Torah during prayer services was enacted by Ezra, see *Baba Kama* 82a; Jerusalem Talmud ad. loc.; Rambam ad. loc.

See also *Aruch ha-Shulchan, Orach Chaim*, 135:1, 2; and *Torah Temimah, Shemot*, 15:22.

9. *Shulchan Aruch, Orach Chaim* 135:2.

Shabbat Mincha in shul is possible, the Torah reading at Mincha is limited to reading only verses from the beginning of the following week's scheduled Torah portion.¹⁰ He rules that the unread *parashah* should be read on the following Shabbat, combined with the regularly scheduled *parashah*, and that the *aliyot* should be divided between the two *parashiyot*.¹¹

A large group of *poskim*, however, differ with the ruling of Rabbi Chaim Azulai. Instead, they suggest that the Torah portion and *haftorah* missed on Shabbat morning should be read later on the same Shabbat when possible.¹² Reading the morning's missed Torah portion prior to Mincha is suggested by the Chafetz Chaim (*Mishnah Berurah Sha-ar Tziyon* 135:5) and later by Rabbi Eliezer Waldenberg (*Tzitz Eliezer* 13:27). When the missed morning's *parashah* is read prior to Mincha, then Mincha's Torah reading should be the standard verses from the coming week's *parashah*. If scheduling the Torah reading prior to Mincha is impossible, then the missed morning *parashah* and the *haftorah* are to be read at Mincha in lieu of the standard section of the upcoming week's *parashah*. However, Rabbi Yechiel Epstein (*Aruch ha-Shulchan, Orach Chaim* 135:6, 7) indicates that even if the missed morning's *parashah* is read at Mincha, the standard Mincha Torah portion should also be included. The protocol would then consist of the following: begin with this week's *parashah* and then continue with the verses normally read at Shabbat Mincha. The view of Rabbi Epstein, however, seems to be a lone opinion, not mentioned by other halachists.

In a personal letter to me, Rabbi Hershel Schachter shared Rabbi Soloveitchik's opinion on this matter:

10. The same is true for Monday and Thursday, in that only the text from next week's *parashah* may be read. Therefore the complete Torah reading for Shabbat could not be read on a Monday or Thursday.

11. *Chaim Sha-al* 1:71 #5; 2:16.

12. *Mishnah Berurah*, 135:2; *Aruch ha-Shulchan, Orach Chaim* 135:6,7.

Rabbi Soloveitchik *zt'l* in his *shiurim* on the Laws of *Kriyat ha-Torah* (the reading of the Torah) favored the opinion of the Chida (R. Chaim Azulai)...Although one can fulfill the requirement of *kriyat ha-Torah* for Monday and Thursday the entire day – even after the time for *Shacharit* (morning service) has passed – nevertheless, on Shabbat where a different Torah reading was legislated for Mincha, perhaps one can fulfill the morning Torah reading only at the time that one may recite *Shacharit* ... If you write an essay [on this issue] it is appropriate to mention this position.¹³

There is an argument within halacha concerning the following situation: Due to severe weather conditions, the synagogue had limited attendance, with the majority of the regular participants not attending. May those that missed the Torah portion read it the coming week? Rabbi Ephraim Zalman Margolioth in the *Sha'arei Efrayim*¹⁴ indicates that it is appropriate to do so.

Carrying on Shabbat without an *Eruv*

Evaluating which weather conditions invalidate an *eruv* rests outside the parameters of this essay; such a discussion requires an understanding of the characteristics of the *eruv* in a particular community. Relevant considerations would include: is the *eruv* predominantly made up of *tzurot ha-petach* or halachically defined walls such as slopes, sea walls, or canal walls? What material was used to construct the *eruv*? What is the *eruv's* vulnerability to the elements? What are the weekly maintenance needs of the *eruv*? What role does *chazakah* play in this case and what type of storm creates a *reiutah* (a

13. The letter was received on June 1, 1999; translated from the original Hebrew.

14. *Sha-ar* 7:10. Rabbi Elijah Wolf in his commentary *Eliyahu Rabbah* (*Orach Chaim* 135:2) disagrees with this perspective. I thank Rabbi Josh Flug for sharing with me these sources.

challenge) to the *chazakah*? The community rabbi would need to determine which weather conditions might compromise the *eruv's* integrity and which storms the *eruv* can withstand.

We will explore the circumstances when the *eruv* has been compromised. Are there situations in which it is still permitted to carry?

There are two paradigms of public thoroughfares. The first paradigm is when the public thoroughfare is considered in the category of *reshut ha-rabim*, a public domain, rendering it biblically forbidden to carry to, from, or within it. For the most part, cities in the modern age are not considered halachic public domains;¹⁵ rather they are part of a second category, thoroughfares classified as *karmelit*, considered biblically private domains. The prohibition to carry to, from, and within these types of domains was enacted by rabbinic legislation out of concern that these thoroughfares resemble biblical public domains. The present study will focus on the public domains which are classified as *karmelit*, in which the prohibition of

15. In Rabbi Yosef Gavriel Bechhofer's, *The Contemporary Eruv*, he explains in great detail the various components that go into defining a halachic public domain (chapter 2.5 and chapter 3). While some cities of old may have been considered public domains, the structural growth in our cities and various forms of city planning have created the irony that according to many *poskim* our larger cities may be biblically private domains or a *karmelit*. Of particular note is the approach of *Beit Ephraim* and the *Chazon Ish*. See *Chazon Ish, Orach Chaim* 107, *se'ifim* 5-7, which explains why cities in our times are not halachic public domains while cities of the past may have been. In *se'if* 7 he states: "that in our time all the marketplaces and roads [even] in the largest of cities are biblically private domains. For in all [of the cities] you will find at least [one street] enclosed by three walls (where buildings enclose the majority of at least three sides of a street); and all the [side] streets that intersect the major street (which is primarily enclosed on three sides) become [biblically] private domains. Since this is the situation [we may enable carrying] through the use of a *tzurat ha'petach*. The *Mishnah Berurah* in *siman* 345 writes at length that it is difficult to be lenient [that it is not defined as a public domain] because there are less than 600,000 people traveling [through the city] especially when so many are traveling to engage in business. Nevertheless, based on the leniency just articulated [regarding the major streets being enclosed by walls] for our cities the issue is clear and broad."

carrying is rabbinic in nature. The analysis below takes this factor into account.

1. Carrying is permitted to obviate danger to life or limb. In this situation there is no difference whether the domain is deemed a *reshut ha-rabim*, biblically prohibited, or a *karmelit*, rabbinically decreed as prohibited (*Shulchan Aruch, Orach Chaim* 328:2). When possible, and if treatment will not be delayed, carrying should be done with a *shinui* (in a fashion irregular from the norm).

While many *poskim* insist that biblical prohibitions cannot be violated for *sakanat eiver*, danger of loss of limb, including Ramban,¹⁶ Rosh,¹⁷ RaN,¹⁸ Chafetz Chaim,¹⁹ R. Neuwirth²⁰ and R. Shmuel Vosner,²¹ many treat the notion of danger to a limb as no different than danger to life. This school of thought includes: Meiri,²² Rabbi Meir ha-Kohen of Rothenburg,²³ Rabbi Yechiel Yaakov Weinberg,²⁴ Rabbi Eliezer Yehuda Waldenberg,²⁵ and Rabbi Aharon Soloveichik.²⁶ They would permit even biblical prohibitions to be violated.

This approach of danger-to-limb being considered life-threatening has parameters which must include:

16. *Chidushei haRamban, Avodah Zara* 28b.

17. *Tosafot haRosh, Avodah Zara* 28b, s.v. *Ayin*.

18. *Ran, Shabbat* 39b, s.v. *uma'ha sam'enan*.

19. *Mishnah Berurah, Orach Chaim* 6:25.

20. *Shemirat Shabbat ke-Hilchatah* 33:2.

21. *Shevet ha-Levi* 8:93.

22. *Meiri, Avodah Zarah* 28b, s.v. *Ayin*.

23. *Haggahot Maimuniyyot, Shevitat Asor* 2:8.

24. *Seridei Esh* 2:34.

25. *Tzitz Eliezer* vol. 8, *siman* 15, 10:9.

26. Rabbi Aharon Soloveichik's discussion on the fact that *sakanat eiver* is considered *pikuach nefesh* is found in *The Concise Code of Jewish Law* (New York, 1977), vol. 2, pp.489-490. see also *Nishmat Avraham, Hilchot Shabbat* 328:46.

- Injury or illness that threaten to permanently damage a limb or minimize its functionality.
- When the delay in treatment can cause infection.
- When delay may result in loss of limb.
- An injury/infection that may cause any loss of hearing.²⁷

Even according to the *poskim* who do not equate danger to the limb with *pikuach nefesh*, it is well documented that any injury to the upper leg which can cause internal bleeding,²⁸ a fractured elbow,²⁹ head trauma,³⁰ an open break,³¹ a severed finger or toe,³² is to be considered danger to life.

Furthermore, the Talmud makes it clear that for any injury / infection that may cause a challenge to sight, one is mandated to violate the Shabbat.³³

2. Carrying is permitted for individuals who need medical attention without which the person's functionality would be compromised. This carrying should preferably be done with a *shinui*.

The *Shulchan Aruch* rules:

27. This is inferred in the responsa of R. Yair Bachrach (*Chavot Yair* 183) who states that a wound to the outside of the ear is not considered *sakanat eiver* since there is no sensory loss, implying that if the hearing was affected it would be considered *sakanat eiver*; R. Asher Weiss, "Te'ferat Petza b'Shabbat," *Ateret Shlomo* 10 (2004-2005): 149-153 (Hebrew) who states that any organ whose function will be compromised is in the category of *sakanat eiver*; *Halachos of Refuah on Shabbos* (p. 117)

28. *Halachos of Refuah on Shabbos* (p. 115) see also footnote 116 on p. 104.

29. *Ibid* (pp. 115,157).

30. *Ibid* (pp. 221-22).

31. *Ibid* (p. 115, 157).

32. *Ibid* (p. 115) see also footnote 13.

33. *Avodah Zarah* 28b; *Shulchan Aruch, Orach Chaim* 328:3; *Shulchan Shlomo* 328:38.

[The accepted opinion] ... if there is no danger [of loss of] limb [but one's functionality is limited and is bed ridden] one may violate prohibitions with a *shinui* [acting in a manner which is irregular] and if there is a concern of danger [of loss of] limb one can/may violate prohibitions without the need for *shinui* (*Orach Chaim* 328:17).

The classification of prohibitions permitted in the above ruling is subject to an argument between various halachic authorities. Some suggest that the prohibitions permitted in the above context are limited to rabbinic violations only. When there is no danger of loss of limb, what is permitted is a *shvut de-shvut*³⁴ and when there is danger of loss of limb, a rabbinic prohibition may be violated without the need of a *shinui*.³⁵

Others³⁶ suggest that in this case the *Shulchan Aruch* permits the violation of even biblical prohibitions. When there is no danger of loss of limb, an act normally constituting a biblical prohibition would be permitted with a *shinui*, thereby reducing the infraction to a rabbinic violation only. When there is danger of loss of limb, a biblical prohibition may be violated even without the need of a *shinui*. Whenever possible, these protocols will follow the more stringent interpretation in

34. *Shvut de-shvut* describes an act prohibited on Shabbat where there are two independent reasons to consider the violation rabbinic in nature. For example, the biblical prohibition of carrying an object applies when the creative act of carrying is done because one wants the object in a new location. However, if the interest is not for the object to be in the new location but rather for it to leave the original location, then the act of carrying is only prohibited rabbinically, and is labeled a *shvut*. When that object is also carried in an unusual manner, then there is a second independent reason to reduce the act to a rabbinic prohibition and it is considered a *shvut de-shvut*.

35. Magen Avraham, *Shulchan Aruch*, *Orach Chaim* 328:12; *Mishnah Berurah*, *Orach Chaim* 328:54.

36. *Shulchan Aruch ha-Rav*, *Orach Chaim* 328:19; *Eglei Tal Melech Tochein*, *siman* 18; *Kalkelet Shabbat* (*Amirah la-Ovdei Nakhrim*, *siman* 6:1), found in *Shishah Sidre Mishnah – Im Shiv'im Ve-achat Peirushim* (Jerusalem, 1972-1973) p. 21.

the *Shulchan Aruch*; when they do not, it will be so indicated.

In the above situation when a person needs medical attention without which his/her functionality would be compromised, rabbinic prohibitions, including carrying in a *karmelit*, should be modified by carrying with a *shinui* (irregular fashion).³⁷ The definition of a *shinui*, for example, in the case of carrying medicine to the ill, would include carrying the medicine in a shoe, or placed between the belt and the pants/shirt, in one's waistband, or under one's hat. If the carrying with a *shinui* precludes one's ability to help the ill, carrying may be done in a straightforward fashion.³⁸

Limitation of functionality includes any ailment that makes a person bedridden (even with a severe headache), or in which he/she feels weak and sluggish.³⁹ That person is in the halachic category of *choleh sh'ein bo sakanah* (one who is ill, bed ridden, without danger to life or limb). In severe weather situations, this situation is further complicated. Allowing a person to remain "marginally ill" is easily rectified when medical attention is accessible after Shabbat. However, in the aftermath of a storm, medical attention is often triaged to deal with emergencies, private physicians may be unavailable, and medicine is often difficult to find.⁴⁰ Therefore, allowing a

37. *Shabbat* 92a, *Shulchan Aruch*, *Orach Chaim* 328:12; *Mishnah Berurah*, *Orach Chaim* 328:47, 57; *Shemirat Shabbat ke-Hilchatah* 18:51.

38. *Chayei Adam* 69:12, quoted in the *Mishnah Berurah*, *Orach Chaim* 328:102.

39. *Halachos of Refuah on Shabbos* (pp. 39 -42) see also footnote 5.

40. During Hurricane Katrina, patient care became exceedingly difficult as hospitals lost power to operate equipment such as lab and x-ray equipment, dialysis machines, and elevators; family members fanned patients for hours in sweltering hospital rooms; emergency surgery was done by flashlight with little or no anesthesia; there was no running water or working bathrooms (workers were using buckets or plastic bags as toilets). There were reports of critically ill patients carried up and down dark stairwells; there were jerry-rigged ventilators; it was impossible to check lab values or use electronic devices for IV meds; emergency departments were forced to move to the second floor to escape floodwaters, people sleeping on the roof to escape heat and stench, bodies were stacked in stairwells because

person to remain untreated/unmedicated over Shabbat could have even more severe repercussions than just limiting functionality on Shabbat.⁴¹

morgues were full and there were no telephones or electronic communication. Post Katrina, 8 out of the 16 hospitals in New Orleans were closed, some permanently, and 2000 of the 3500 practicing physicians were displaced. See H. Rodriguez and B.E. Aguirre (2006), "The Impact of Hurricane Katrina on the Medical and Healthcare Infrastructure: A Focus on Disaster Preparedness, Response, and Resiliency." Retrieved Nov 1, 2011, from Disaster Research Center, University of Delaware: <http://dspace.udel.edu:8080/dspace/bitstream/handle/19716/2380/Australia%20PP%20-%20Havid%C3%A1n%20SPACE%20READY.pdf?sequence=1>.

During the 2004 hurricane season (June 1-November 30), in Florida alone over 74 hospitals were damaged, 8 hospitals closed, most lost cell and regular phone service, 41 hospitals lost electrical power, 9 hospitals lost water supply, 11 hospitals lost crucial support functions, 28 hospitals lost ancillary services, 13 hospitals and 624 patients were evacuated, 59 hospitals canceled 2,842 surgeries and closed outpatient services for a total of 985 days. See K. Streit, A. Castello and R. Rasmussen. (n.d.), "Eye of the Storm: Impact of the 2004 Hurricane Season on Florida Hospitals." Retrieved October 16, 2011, from Florida Hospital Association: <http://www.fha.org/hurricanesurveyweb.pdf>).

On August 20, 2011, Hurricane Irene formed. During the weekend of August 26, some New York City hospitals were evacuated (Coney Island Hospital in Brooklyn, Veterans Administration Hospital in Manhattan, NYU's Langone Medical Center in Manhattan, and Staten Island University Hospital) and were slowly reopened on Monday, August 29th. More than a dozen nursing and adult care facilities were also evacuated and the North Shore-LIJ hospitals operated on emergency power for a while. See B. Nafziger, (2011, August 29), Dotmed News. Retrieved November 1, 2011, from After Hurricane Irene, NY hospitals begin to re-open: <http://www.dotmed.com/news/story/16777>).

In all of the above situations accessibility to drugs and doctors were challenging during and, for varying durations, after the storm.

41. *Nishmat Avraham*, vol. 1, 328:3; *Halachos of Refuah on Shabbos* (p. 43 footnote 6). See also Rabbi Shlomo Zalman Auerbach, *Shulchan Shlomo* 328, footnote 76.

A child up to eight years old,⁴² an infirm senior,⁴³ or someone with psychological challenges⁴⁴ are all considered to be a *choleh sh'ein bo sakanah* (ill, but not in a life-threatening situation). If the parent or caregiver feels that moving locations is in the best interest of the health of the baby, child, one with psychological trauma, or an infirm senior, and the environment of the current location cannot be remedied, (this can be due to the fact that one's home has been damaged or is without electricity and therefore going to another home which may have power or just additional people present would have a calming effect) then carrying in a *karmelit* would be permitted.

In this situation, carrying a child or an adult who can normally walk would be permitted without any *shinui*.⁴⁵

42. The idea that a child is considered a *choleh she'in bo sakanah* is found in the Rema, *Shulchan Aruch, Orach Chaim* 276:1; *Shemirat Shabbat ke-Hilchatah* 37:2; *Halachos of Refuah on Shabbos* (p. 46, n. 11). The age of a child with which we are concerned is a matter of discussion between the *poskim*. Rabbi Avrohom Yeshaya Karelitz seems to describe a child no older than three years (*Chazon Ish, Orach Chaim* 59:3), Rabbi Shlomo Zalman Auerbach follows the Chazon Ish (*Nishmat Avraham*, vol. 1, 328:54), Rabbi Waldenberg states that this applies until six years of age (*Tzitz Eliezer*, 8:15.12), Rabbi Yitzchak Yaakov Weiss states until nine years old (*Minchat Yitzchak* I:78).

43. *Aruch ha-Shulchan, Orach Chaim*, 328:19; I am grateful to Rabbi Tzvi Sobolofsky for sharing this source with me.

44. Those with emotional distress due to the severe weather event would be considered *choleh she'in bo sakanah*. This is evident from the responsa of *Minchat Yitzchak* 6:105.2 and Rabbi Moshe Sternbuch (*Teshuvot v'Hanhagot* 4:82, *s.v. v'amnam*). For further elaboration of the halachic response to individuals with mental challenges and the need to be concerned about their mental health in situations where the current situation might lead to additional instability, see *Encyclopedia Hilchatit Refu'it* (vol. 6, pp. 426 – 431). That we violate rabbinic prohibitions for a *choleh she'in bo sakanah* to deal with issues of psychological trauma is found in *Biur Halacha* 328, *s.v. Kol S'regelim*.

45. Since the child/senior is normally capable of walking on his/ her own, the act of carrying is considered rabbinic, and since the rabbinic carrying is being done in a *karmelit* in which carrying is prohibited only rabbinically, it is considered a *sh'vut de-sh'vut* which we have already indicated is permitted for *choleh she'in bo sakanah*. See also *Shemirat Shabbat ke-Hilchatah* 18:51.

However a child or senior who does not have the normal capacity to walk would need to be carried or wheeled in a stroller/wheelchair with a *shinui*. Alternatively, the action can be reduced to only a rabbinic concern, making it permissible in our unique situation, when the act of carrying is performed by two people (when only one is necessary),⁴⁶ or when two people simultaneously carry or wheel the individual in need. The permission to carry also includes carrying food, when possible with a *shinui*, for the above group of people when one feels that it may be necessary.

As mentioned earlier, the need to employ a *shinui* is not required when the *shinui* will impede one's ability to help the ill individual. Furthermore, in a situation where the goal is to leave the damaged home, carrying the person may also be done without any need for *shinui*. Any objects accompanying the person, when possible, should be carried with a *shinui*.⁴⁷

In addition, it is permissible to carry one who needs medical attention regardless of his or her classification as a *choleh sh'ein bo sakanah* (ill, but not in a life-threatening situation). This is unique in a situation like ours in which leaving the person unattended may lead to life/limb threatening after Shabbat as medical resources are being triaged.⁴⁸

46. *Shabbat* 3a.

47. Normally the prohibition of carrying from one domain to another is predicated upon the desire to move the object from its place of origin to its destination with a specific benefit of having the object in this new location. In our situation, the interest is not specifically to be in the new location but rather to leave the present one. Therefore, this carrying is *melacha she-enah tzrichah le-gufah* which is permitted in a case of a *choleh sh'ein bo sakanah* (*Shabbat* 30a; *Meiri* ad. loc.) This additional allowance creates a permissibility to carry even without a *shinui*. See also *Sefer Shulchan Shlomo, Orach Chaim* 328:25, and *Ha-Elef Lecha Shlomo, Orach Chaim* 146, where he permits a parent, wanting to attend synagogue to recite kaddish, to carry his child in a *karmelit*.

48. This idea of suspending rabbinic enactments even for a potential *choleh sh'ein bo sakanah* is suggested in a number of sources including: *Nishmat Avraham*, vol. 1, 328:3; *Shemirat Shabbat ke-Hilchatah*, chap. 32, n. 13; *Be-ikvei ha-Tzon* #10; *Halachos of Refuah on Shabbos*, p. 43.

3. Summary: it is permitted to:

a. Carry an ill person who is a *choleh sh'ein bo sakanah* to a treatment location.

b. Use a Gentile to help in any circumstance of *choleh sh'ein bo sakanah*.⁴⁹

c. As stated in the *Shulchan Aruch* above, a Jew may help a *choleh sh'ein bo sakanah* with any rabbinic (or perhaps biblical) prohibitions with the use of a *shinui*.

d. When there is danger of loss of limb, it is often considered *pikuach nefesh*. In certain circumstances there is uniformity and in other circumstances there are different perspectives. Even those that are stricter maintain that rabbinic prohibitions may be violated without the need of *shinui*.

e. Carry a person not in the category of a *choleh sh'ein bo sakanah*, if leaving the person in the current location would lead to danger of life or limb.

f. Carry a baby, infirm senior, a person with psychological challenges, or a child/adult traumatized by the event to another location to enable that person to function without compromise.

Use of Candles, Flashlights, and Glow Sticks:

In severe storms, especially in regions of the country where electrical lines are above ground, power outages are very common. Therefore, prior to Shabbat, one should hang or place lit flashlights (with fresh batteries), open glow sticks and freeze them (freezing suspends their expiration), or kindle *yahrzheit* or hurricane candles safely in key locations.

49. *Shabbat* 129a; *Shulchan Aruch*, *Orach Chaim* 328:17; *Shulchan Aruch*, *Orach Chaim* 276:1.

Lighting candles/ flashlights on Shabbat

If the light or flashlight went out on Shabbat or if the individual did not prepare light prior to Shabbat and now requires light, what may be done?

Light to care for a child, for one in trauma, or for the infirm:

When light is necessary to care for a child, one in trauma, or the infirm, and no other light is available, a Gentile may kindle the light or change the batteries. As we have already explained, this is permitted based on the fact that they are considered within the category of *choleh sh'ein bo sakanah*. Therefore the rabbinic prohibition of telling a Gentile to do a biblical prohibition is suspended (*Shulchan Aruch, Orach Chaim* 276:1). Furthermore, in case of trauma, or to preclude a member of the family from becoming a *choleh sh'ein bo sakanah*, it would be permitted to ask a Gentile to refresh the batteries in a flashlight. If no Gentile is available, following the approach mentioned above that even biblical prohibitions may be performed for a *choleh sh'ein bo sakanah*, a Jew may do so with a *shinui*.⁵⁰

Light to enable one to eat:

Rabbi Binyamin Zilber explains (*Az Nidbaru* 5:54) that it is also permitted for a Gentile to kindle the light, change the batteries even for a healthy adult to eat a Shabbat meal or to pray, provided that this action is done by a Gentile in an irregular fashion (*kil'achar yad*).⁵¹ An example of this is a right-

50. The interpretation of *Shulchan Aruch Orach Chaim* 328:17 by R. Shneur Zalman of Liadi, *Shulchan Aruch ha-Rav, Orach Chaim* 328:19 and, *Eglei Tal Melech Tochein siman* 18. See also *Shemirat Shabbat ke-Hilchatah*, chap. 33, n. 17*; *Shevet ha-Levi* 8:93; *Halachos of Refuah on Shabbos*, p. 50, n. 28.

51. It would seem that in a similar circumstance the Rema might permit this activity without the need for a *kil'achar yad*. See *Shulchan Aruch, Orach Chaim* 276:2.

handed Gentile kindling the candle or changing the batteries with his or her left hand. This, according to Rabbi Zilber, would make the action a *shvut de-shvut* and therefore permitted for activities deemed to be a mitzvah.

When the absence of light isn't just an issue of comfort or inconvenience but has a chance of potentially creating a life-threatening situation (i.e. there is some storm damage in the home), and there is no available Gentile, one may change the batteries or rekindle the candles without hesitation.⁵²

Moving a Candle

Despite the permissibility of having pleasure from the light of a candle, the movement of a candle is forbidden and is considered *muktzah*.⁵³ However, this rabbinic prohibition is tempered if there is no other way to deal with the following situations: General medical concerns for an adult which, if left unattended, could cause harm that he/she would be considered a *choleh sh'ein bo sakanah* or to help with the comfort and welfare of the elderly; those who have life-threatening medical conditions; children under eight years old; and children above eight years old who are traumatized by the severe storm.⁵⁴ In these situations it would be permitted to move the candle. As the *Magen Avraham* states, in a case of *choleh sh'ein bo sakanah*, moving *muktzah* with one's hands is permitted.⁵⁵

52. Iggerot Moshe, Orach Chaim 3:69; Be-ikvei ha-Tzon #10, end of n. 3

53. Shabbat 46b; for an explanation of why a candle is not permitted to be moved even *le-tzorech gufo* (which is the norm), see *Minchat Shlomo* 1:14.

54. All of these situations are at least considered to be a *choleh sh'ein bo sakanah* and the rabbinic prohibition of *muktzah* would be suspended to help them. See *Minchat Shlomo*, *ibid.*; *Shemirat Shabbat ke-Hilchatah*, 33:6; as well as sources mentioned previously in this essay.

55. *Magen Avraham*, Orach Chaim 328:15; *Kalkelet Shabbat* (*Muktzah*, s.v. *mutar le-taltel*, summary note 3:4, p. 20) found in *Shishah Sidre Mishnah – Im Shiv'im Ve-achat Peirushim* (Jerusalem, 1972-1973); *Halachos of Refuah on Shabbos*, p. 50, n. 29, 30.

Moving a flashlight

A flashlight that is lit prior to Shabbat may be moved without any of the above concerns. Since it is made to be carried and its movements will not cause an adjustment in the light that radiates from it, there is no prohibition to carry it from one place to another in the home.⁵⁶

The Use of a Glow Stick

Glow sticks can last for 6 to 12 hours depending on the temperature (the cooler the temperature, the longer they last), and the size of the stick. Glow sticks generate light due to a chemical reaction. Each glow stick contains within it a small thin-walled glass ampoule containing a solution of hydrogen peroxide. An additional chemical is found in the glow stick, phenyl oxalate ester, surrounding the thin walled glass ampoule. The glow stick is activated when one bends it and hears a little snap. The snap is the glass ampoule breaking. The chemicals inside the ampoule are then released and mixed with the chemicals that once surrounded the ampoule. A chemical reaction occurs and energy is released as visible light.⁵⁷ Once the reaction is complete, the system stops emitting light. This chemical reaction does not generate heat because the released energy takes the form of light (electromagnetic radiation) instead of heat (which is actually more typical of an energy-releasing chemical reaction).⁵⁸

Rabbi Israel Rosen and Rabbi Dr. Nachum Rabinovitch address the issues surrounding cracking glow sticks on

56. *Minchat Shlomo*, *ibid*.

57. The chemical reaction brings the system from a higher to a lower energy state (or from an energized intermediate to a lower energy state) and energy (equivalent to the difference in energy between the two states) is released as visible light.

58. I thank Dr. Chaya Rapp, Associate Professor of Chemistry at Stern College for Women, for her scientific guidance on this issue.

Shabbat or Yom Tov.⁵⁹ Both explore the potential prohibitions for such an act and both come to the conclusion that there are no biblical prohibitions. Rabbi Rabinovitch is hard-pressed to suggest any rabbinic prohibitions as well and Rabbi Rosen suggests two possibilities of rabbinic prohibitions.

One suggestion to avoid these prohibitions is to open glow sticks prior to Shabbat and then freeze them, allowing the chemical process to begin prior to Shabbat, avoiding any halachic issues. The cooling of the glow sticks decelerates the chemical reaction, slowing down the glow stick from ceasing to emit light. However, this idea may have limited use, for many may not want to open the freezer to remove the suspended glow sticks, for fear of compromising food stuff in the freezer when there is no electricity.

In our situation, where a state of pitch black darkness can create risks, and there are no prepared glow sticks, it would certainly be permitted to ask a Gentile to crack the glow stick. When that option is not available, a Jew would be permitted to do so to insure that no trauma nor any other physical danger adversely affect any individual.

Television or Radio

Often people are advised to make use of a television or radio to keep informed of critical safety / weather information. When this occurs on Shabbat, there are several issues which need to be considered:

1. Turning the television / radio on and off.
2. Deriving pleasure from prohibited acts, namely the radio / television programs produced on Shabbat and / or Yom Tov.
3. Rabbinic prohibition of *hashma'at kol*, prohibiting a

59. *Techumin* 13 (1991-1992), pp. 135-145.

device that makes noise to remain on for Shabbat/Yom Tov, even if it began to function prior to Shabbat/Yom Tov.

4. Rabbinic prohibition of *shema yetaken keli shir*, prohibiting the use of any device that produces music out of concern that if it breaks on Shabbat/Yom Tov, one may be tempted to repair it and violate a biblical prohibition.
5. Switching channels/radio stations and manipulating the volume.
6. *Muktzah*, or moving a battery-operated radio/television from one location to another within the home.

1. Turning the television/ radio of and off:

The question of turning the television and/or radio on or off revolves around the fact that doing so transgresses a prohibition. While there is an argument regarding the nature of the prohibition, what it is and whether it is rabbinic or biblical,⁶⁰ the way to obviate this dilemma is simply to turn it on prior to Shabbat. Rabbi Mordechai Yaakov Breisch suggests that turning on a radio prior to Shabbat to help in the treatment of a *choleh sh'ein bo sakanah* is permitted.⁶¹ In our situation, knowing the weather and safety alerts in a timely

60. See *Chazon Ish*, *Orach Chaim* 50, s.v. *u-bpitchat* that the prohibition is *binyan*, creating a circuit. *Tzitz Eliezer* 1:20, chap six; 8:21, classifies the prohibition as the creation of fire, *mavir*, which occurs within the wiring, due to the electrical current passing within it (this biblical prohibition should not apply if the device is battery operated). Rabbi Isser Zalman Meltzer (in a letter of introduction in the *Chelkat Ya'akov*) comments, in the name of Rabbi Chaim Ozer Grodzinsky, that turning on an electrical appliance on Shabbat is biblically prohibited. *Minchat Shlomo*, 12, states that the prohibition of electricity is rabbinic in nature. This is also the same position taken by *Minchat Yitzchak* 3:33 and Rabbi Hershel Schachter (*Mesorah*, vol.20, 2004, p. 61).

61. *Chelkat Ya'akov*, *Orach Chaim*, 1:63.

fashion during severe meteorological events is the best way to avoid becoming a *choleh she-yesh bo sakanah* or critically ill. Therefore, R. Breisch's ruling may be followed. Rabbi Waldenberg also suggests that in a time of significant need, it is permitted to listen to a television/radio on Shabbat/Yom Tov. Rabbi Waldenberg further suggests that a sign placed on the television/radio should be affixed to the device reminding members of the household that it is Shabbat/Yom Tov and the device should not be turned off.⁶²

2. Deriving pleasure from prohibited acts, namely the radio/television programs produced on Shabbat and/ or Yom Tov:

The Talmud (*Shabbat* 38a) prohibits a Jew from receiving pleasure from actions performed by another Jew in desecration of Shabbat/Yom Tov. It also prohibits (*Shabbat* 122a) receiving any pleasure from activities of a Gentile, forbidden to a Jew on Shabbat, when the act is being performed solely for the Jew's benefit. These talmudic prohibitions are codified both in the *Mishneh Torah*⁶³ and *Shulchan Aruch*.⁶⁴

This concern is really an issue only in the State of Israel for it is only there that the listening audience is predominantly Jewish. Therefore, the listener is prohibited from receiving pleasure even when the technician is a Gentile. Furthermore, since the majority of the population is Jewish, it stands to reason that the technician may be a Jew violating the Shabbat. In such a case, any Jew watching such a program violates the prohibition of receiving pleasure on Shabbat/Yom Tov, from a Jew who, through the program's production, violated the Shabbat.⁶⁵

62. Tzitz Eliezer, 3: 16, 12.

63. Hilchot Shabbat 3:9, chap 6.

64. Orach Chaim, 276:1, 318:1.

65. Tzitz Eliezer 3: 16, 12; Har Tzvi 1:183; Yabia Omer, 6:34; Aseih Lecha Rav 1:35; Chazon Ish, Menuchah Nechonah, 36.

However, outside of Israel where the potential listening population is a Gentile majority, we follow the presumption of the majority, allowing us to assume that the technician is not Jewish, nor is the program being developed for a Jewish population.⁶⁶ Since the program is being produced for the safety of the entire population which is being threatened by severe weather, the above prohibitions are negated.⁶⁷

3. Rabbinic prohibition of *hashma'at kol*:

The Talmud (*Shabbat* 18a) quoting the Mishnah states the following:

Water may be conducted into a garden on the eve of the Shabbat just before dark, and it may go on being filled the whole day of Shabbat; a perfume brazier may be placed under garments which continue to absorb the perfume the whole day of Shabbat; and sulphur may be placed under [silver] vessels and they undergo the process of sulphuring the whole Shabbat...But wheat may not be placed in a water-mill unless it can be ground when it is still day [Friday]. What is the reason? Rabbah answered, "Because it makes a noise".

While the actions of all the scenarios mentioned in the Mishnah began prior to Shabbat and are therefore permissible, the mill in particular creates noise. This will advertise the fact that creative labor, albeit technically permissible, is "happening" on Shabbat and destroys the spirit of the day. Therefore, even permissible creative actions which create constant noise are forbidden on Shabbat because of the above rabbinic enactment.

In the *Shulchan Aruch's* codification of this law (*Orach Chaim* 252:5), there is a recognition that this rabbinic enactment is not

66. *Shabbat* 122a.

67. *Aseih Lecha Rav*, ad. loc.

accepted by all. Both the Rambam and Rabbi Yosef Karo⁶⁸ reject it and permit the mill to function on Shabbat provided the process began prior to its onset. Even the Rema, who forbids the functioning of the mill, limits the rabbinic enactment to situations where there is no chance of great loss.⁶⁹ In our situation, in which such storms can create great loss and even important safety concerns, *pikuach nefesh* applies, and the issue of *hashma'at kol* should be of no concern. Furthermore, Rabbi Shlomo Zalman Auerbach points out (*Minchat Shlomo* 1:9) that the entire prohibition of *hashma'at kol* applies only when the device is outside, creating a noisy public display compromising the spirit of the Shabbat. In our case, when the radio/ television is placed in a side room, this concern is not relevant.

4. Rabbinic prohibition of *shemah yetaken keli shir*, prohibiting the use of any device that produces music out of concern that if it breaks on Shabbat/Yom Tov one may be tempted to repair it and violate a biblical prohibition:

The Talmud (*Beiza dh* 37b) states the following:

Mishnah... One may not climb a tree,... nor clap the hands, nor dance...**Talmud...**Nor clap the hands, nor slap the thighs, nor dance; it is a preventive measure lest he might repair musical instruments.

This prohibition is suggested by some *poskim* to forbid the use of the radio or television on Shabbat or Yom Tov.⁷⁰ This is due to the fact that these are instruments through which music is heard, and the concern is that if the radio or television

68. *Mishneh Torah*, *Hilchot Shabbat* 3:1, 2; *Shulchan Aruch*, ad. loc.

69. Rema, *Shulchan Aruch*, ad. loc.; Magen Avraham, *Orach Chaim* 252:20; *Pri Megadim*, *Aishel Avraham* 252:21, states that even Rabbi Moshe Isserles permits it *me'dina* (based on a pure halachic analysis), yet he encourages one to be stricter due to the fact that so many of the late rabbinic codifiers had a more stringent view of this issue.

70. *Tzitz Eliezer*, ad.loc.; *Aseih Lecha Rav*, ad.loc.

would break, one might fix it on Shabbat or Yom Tov, thereby violating the biblical prohibition of *makeh be-patish*. Below are some of the reasons that this concern is obviated in our case:

a. The *Magen Avraham* (*Orach Chaim* 338:1) limits the prohibition of *shemah yi-takein keli shir* only to a situation in which music is being heard. In our case, the intention is just to listen to the news and emergency announcements, and therefore this rabbinic enactment would not apply. The *Magen Avraham* gives examples of the same instrument used for two different purposes, one for music and the other as a wake-up device, and states that due to the different nature of the use, the applicability of the rabbinic enactment is to be viewed differently.⁷¹

b. The Rema (*Orach Chaim* 339:3) indicates that since common people are not able to fix musical devices (and surely not televisions or radios), the prohibition no longer applies.⁷²

c. Even if one would disagree with the Rema and suggest that the rabbinic enactment is relevant, built into this legislation is a suspension clause to care for the needs of a *choleh sh'ein bo sakanah*.⁷³ In our situation, the rabbinic enactment conflicts with the need to be informed to secure the safety and security of oneself and one's family and protect one's household from a potential life-threatening situation. Avoiding being placed in a circumstance in which one would be considered a *choleh sh'ein bo sakanah*,⁷⁴ or worse, being placed in grave danger, allows one the same halachic consideration as if one were

71. See also *Machzit haShekel*, 338:1.

72. *Iggerot Moshe*, *Orach Chaim* 4:84, 4, seems to acknowledge this approach when discussing the prohibition of using a microphone on Shabbat. He suggests that *shemah yetaken keli shir* is applicable since its adjustment and volume correction can be done by anyone.

73. *Eruvin* 104a; *Magen Avraham*, *Orach Chaim* 338:1.

74. See above n. 52.

already a *choleh sh'ein bo sakanah* or in grave danger.⁷⁵ Therefore this enactment would be suspended.

5. Switching channels/ radio stations and manipulating volume:

The issue of switching channels or manipulating volume is discussed by Rabbi Shlomo Zalman Auerbach (*Minchat Shlomo* 1:9), who indicates that raising/lowering the volume on a radio or changing the station is not a prohibited act. He bases this on the fact that the manipulation of electrical flow is not the same as creating a flow anew and is therefore not forbidden. This would permit one to change the volume/channel on a radio or television –but only in which there are no LED displays. If LED displays would be affected by adjusting the volume/channel, it may preclude the changing of the channel/volume on such devices.⁷⁶ However, a simple radio or older television which does not have such displays would not be problematic.

A representative of Duracell and Energizer⁷⁷ indicated that keeping the volume low on the device is a variable in the drain rate of the battery. Therefore, the radio's volume will affect the amount of hours a battery operated radio will play uninterrupted.⁷⁸ Keeping the radio low should be encouraged

75. *Mishnah Berurah, Orach Chaim* 328:17.

76. Elaborated upon by Rabbi Zev Lev, *Ma'archei Lev* (Jerusalem, 1995), Chapter 4; *Encyclopedia Talmudit*, Vol. 18, pp. 715-716.

77. I thank Ms. Orli Haken, The David Mitzner Presidential Fellow for Yeshiva University Center for the Jewish Future, who was in touch with both Energizer and Duracell to research these facts and helped in various ways to ensure the completion of this essay.

78. The fact that raising the volume to hear the news increases the drain rate on the battery is not of halachic consequence. One might suggest that it be considered *g'ram kilkul* (indirectly causing a destructive act of draining the battery which is not manifested until the battery ceases to function). *G'ram kilkul* is another example of two independent concurrent reasons to consider the action rabbinic in nature. As we have explained earlier this is classified as a *shvut de-shvut*. In the case where a battery-operated radio

until there is a need to listen to the news. This will avoid the need to have the batteries switched in the middle of Shabbat which poses a halachic challenge. If for some reason the batteries die, then the protocols mentioned above for changing the batteries in the flashlight should be followed.

6. *Muktzah*, moving a battery operated radio/television from one location to another within the home:

It is preferable that the radio/ television be placed in a side room and only be listened to when necessary for the safety and security of one's home and family. If for some reason the radio needs to be moved, it may be done only by moving the device without the need to shut it off (i.e. a battery-operated radio/television). While a radio/television is normally considered *muktzah*, in a situation in which listening to the radio is permitted, moving it would not be prohibited.⁷⁹

Conclusion

As the guarantors of Torah, we are compelled to examine every phenomenon that occurs in our lives through its prism. Through such activity, we guarantee the eternality of the Jewish people's covenantal relationship with God. The topics discussed here reflect that reality and, at the same time, demonstrate an example of halacha's sensitivity to challenges that often occur in our communal and personal lives. Let us hope that the above protocols are limited to a theoretical conversation and our communities will not be exposed to these or other challenges.

needs to be used because the extreme nature of the weather has/or will cause a power outage and awareness of the news has been requested by authorities so that one can determine if additional protective precautions are necessary; all those in that geographical area would be considered in the category of being in potential danger. Therefore, a *shvut de-shvut* would be permitted.

79. Magen Avraham, Orach Chaim 309:1; R. Aryeh Fromer, *Shei'elot u-Teshuvot Eretz Tzvi* #64.

Determining the Onset of *Aveilut*

Rabbi David Etengoff

Introduction

One of the salient aspects of 21st century life is the physical distance that often separates friends and family members from one another. Under ordinary conditions, this usually does not prove to be deleterious to relationships, since there are multiple modalities whereby quality communications can be maintained. Significant distances, however, can readily prevent one from attending the burial of a friend or family member – particularly if the deceased will be buried in a foreign country such as Israel. This creates an archetypical halachic conundrum: At what point in time should a *karov* (a relative who is obligated to mourn) who is unable to attend the funeral begin to sit *shiva* (the traditional seven-day mourning period)? An up-to-the-minute statement of this problem is found on Rabbi Eli Mansour's website, Dailyhalacha.com:

A situation recently arose concerning a family in Montreal who lost a relative, living in Miami. The family in Montreal did not travel to join the other relatives at the funeral, which was held two days later, and they therefore faced the question of when to begin *Aveilut* (mourning). Does the period of *Aveilut* begin only after

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the funeral, in which case they should call the relatives in Miami to find out when the funeral concluded and then begin *Aveilut*, or should they begin immediately? Although generally mourning observances begin only after the funeral, perhaps in this case, when the relatives are not attending the funeral, they should begin observing *Aveilut* immediately upon hearing of the unfortunate news.¹

We are fortunate that our subject has deep roots in classic rabbinic sources and in the responsa literature of contemporary *poskim* (halachic decisors). It is to these writings we now turn.

Classic Sources: Talmud, Rashi, Rambam, and Ramban

The *locus classicus* for our topic is a statement in *Talmud Bavli*, *Moed Katan* 22a: “Raba told the people of Mahoza: ‘You who do not follow the funeral bier should begin counting [the days of mourning] as soon as you turn your faces from the city gates.’” Rashi (s.v. *delo azlitu batar arsa*) clarifies Raba’s statement and notes:

One who accompanies the funeral bier does not take on the obligations of mourning until the grave has been completely closed – in the instance wherein the bier is being transported from Babylonia to Israel for burial. [As is well known, it is most often the case that] all obligatory mourners are unable to travel to *Eretz Yisrael*. In such a circumstance, they must accompany the deceased for a *parsa* [approximately four kilometers] or a *mil* [Latin, mile].

Rashi continues his explanation (s.v. *ahadritu afyichu m’baba*

1. <http://www.dailyhalacha.com/displayRead.asp?readID=1436>

d'abla and *athilu manu*) by suggesting that once the mourners have left the outermost gates of the city and have returned to their homes,

They should begin to count the days of *Aveilut* even though the deceased will not be buried for many days, and even though *Aveilut* normally does not commence until the burial has been completed. Nonetheless, for those individuals who will not see the actual interment, their returning to their homes prior thereto is tantamount to the entire burial having taken place.

In sum, Rashi explicates two essential aspects of Raba's position:

1. Those who accompany the deceased to far off lands do not begin *Aveilut* until the actual burial has been completed in its entirety.
2. *Krovei hameit* (relatives that are duty-bound to sit *shiva*) who are unable to attend the burial are obligated to begin their *Aveilut* immediately upon returning home from the funeral procession – “even though the deceased will not be buried for many days, and even though *Aveilut* normally does not commence until the burial has been completed.”

The Rambam codified Raba's statement in *Mishneh Torah*, *Hilchot Avel* 1:5:

When it is customary for people to send a corpse to another city to be buried and they do not know when the burial will take place, from the time they turn back from accompanying the corpse, they are obligated to count the seven and thirty days of mourning and begin mourning rites.

Rambam differs from Rashi on two substantive points:

1. Rashi focused upon travel to another country, i.e., *Eretz Yisrael*, whereas Rambam extends this idea to another

city – more in keeping, perhaps, with Raba's actual pronouncement.

2. The Rambam asserts that lack of knowledge, i.e. *chisaron yidiah*, as to when the burial will actually take place (“*v'ainam yodim matai yikaver*”) is the key factor in determining the onset of *Aveilut* regarding an interment that will take place in a different city and by extension, a distant land. Rashi does not provide this, or any other, rationale in his explication.

Rabbi David ben Zimra, known as the “Radbaz,” penned an important caveat to Rambam's (Maimonides) position. He was in consonance with the emphasis the Rambam placed upon the *chisaron yidiah* factor in regards to interment in either a foreign country or a different city. Yet, he opined, if the burial takes place within the mourners' city, this factor is no longer operable, since direct data regarding the time of the burial will soon be readily accessible to one and all:

But if the deceased is buried in the city proper, even if it is outside the immediate boundaries of the city (“*chutz l'techum*”), the onset of *Aveilut* does not take place until the mourners return [from the city's edge] and everyone becomes aware that the burial has been completed.

Rav Zimra's halachic conclusion was in many ways foreshadowed by the Ramban's position as elucidated in his *Sefer Torat HaAdam*. Therein, Ramban (Nachmanides) explains Raba's above-quoted talmudic statement in the following manner:

In my opinion, these words [of Raba] were only said when the soon-to-be mourners have the departed transported [for burial] from city to city. In such an instance, since his relatives transferred the *niftar* to their agents in this matter, and the former have turned their faces away from any further direct involvement with the corpse, it is as if “he is lost to them.” In this case, “giving up” (“*yayush*”) is the equivalent of the closing of the

grave. When they bury the deceased, however, in a cemetery that is close to the city (“*samuch l’ir*”), and the pallbearers will be returning immediately [to the city of origin] on the same day, then the onset of *Aveilut* does not commence [for those who did not attend the actual burial] until the other mourners return from the interment and tell them that the deceased has been buried – since their mind has been completely occupied with thoughts of the departed (“*she’harei da’atam aluv*”).²

In summary, Raba’s statement, and the interpretations and explications thereof, by Rashi, Rambam, and the Ramban, form the fundamental underpinning of the halachic decisions concerning our subject found in two prominent compendia of Jewish Law, namely, the *Tur* and the *Shulchan Aruch*. As such, let us now examine these works.

Classic Sifrei P’sak: The *Tur* and the *Shulchan Aruch*

Rabbeinu Yaakov ben Asher (known as the “*Tur*”), the son of the Rosh and the author of the *Arbaah Turim*, brings the opinions of his father, as well as the Ramban, the Rambam, and the anonymous Gaonic work *Baal Halachot Gedolot*, in the context of his discussion of how to determine the time of the onset of *Aveilut*. The *Tur* presents his father’s approach to this issue in the following manner:

After the burial has been completed, and the grave has been fully closed, *Aveilut* begins. This is the case, even if one will wait a long time to place the last burial stone upon the grave. When is this the case? This is stated in regards to those who escort the deceased to the cemetery. Those, however, who do not accompany the *niftar* [to the

2. It should be noted that even though the Ramban introduced the concept of *yayush*, whereas the Rambam focused upon the notion of *chisaron yidiah*, Ramban believed that his words accurately reflected those of Rambam: “*v’chane nirin divrei HaRambam zal.*” Ibid., page 163.

cemetery], immediately begin to count their days of *Aveilut* as soon as they turn their faces away from the funeral bier.³

The Rosh discusses two different, but familiar, scenarios regarding the commencement of *Aveilut*:

- 1) *Krovim* who accompany the *niftar* to the cemetery
- 2) People who do not go to the cemetery but are nonetheless obligated in all the laws of mourning.

In the first instance, *Aveilut* begins subsequent to the completion of the interment, whereas in the second case, mourning rites begin once the *krovei hameit* turn their faces (i.e. cease their involvement) from burying the departed.

Rabbeinu Yaakov ben Asher continues his review of the germane halachic literature on our topic by noting that the Ramban's position differed from that of the Rosh:

However, the Ramban wrote that it is only when they transport the body from city to city do the mourners begin their *Aveilut* upon their handing the deceased to the transporters – for it is at that time that they [the *krovim*] turn their faces from the funeral bier for they have already given up any further involvement with the departed. This, then, is similar in kind to the closing of the grave [and, therefore, *Aveilut* begins].

The point of departure between the Rosh and the Ramban is clear: "Only when they transport the body from city to city do the mourners begin their *Aveilut* upon their handing the deceased to the transporters." Thus, the Rosh does not require city-to-city movement of the *niftar* for *Aveilut* to become incumbent upon the mourners, whereas this is the constitutive criterion for the Ramban regarding the same. The *Tur* continues by noting the latter section of the Ramban's above-

3. *Yoreh Deah* 375.

cited position:

When they bury the deceased, however, in a cemetery that is close to the city and the pallbearers will be returning immediately on the same day, then the onset of *Aveilut* does not commence until the other mourners return from the interment and tell them that the deceased has been buried – since their mind has been completely occupied with thoughts of the departed.

The *Tur* likewise suggests that the Ramban's position is congruent with that of the Rambam.⁴ Moreover, Rabbeinu Yaakov notes that his father's position (i.e., the Rosh) ultimately championed that of the Rambam and his focus upon *chisaron yidiah* (lack of knowledge about the actual interment). The Rosh, therefore, rejected the view of the *Baal Halachot Gedolot* who contended "even if the burial took place in one's city, *Aveilut* begins immediately as soon as the mourners turn their face [from the deceased.]"⁵

Rabbi Yoel Sirkes, known as the "*Bach*," after the title of his commentary on the *Arbaah Turim*, strongly emphasized the *chisaron yidiah* theme that is common to the Rambam and the Ramban and is reiterated by Rabbeinu Asher:

It appears that their rationale [i.e. Rambam and Ramban] in this instance is because the mourners do not know when the burial will actually take place – and, therefore, they do not know when the grave will be completely closed so that they may count [the onset of their *Aveilut*] from that time. As a result, they begin their *Aveilut* immediately upon turning their face from the deceased – for in this case the turning away of their face is tantamount to the closing of the grave. In the instance, however, wherein the interment is close to the city, and

4. See footnote 2.

5. Ibid.

they, therefore, know when the grave will be closed, they do not begin to count the days of *Aveilut* until the grave is actually closed.⁶

Rabbi Yosef Karo employed nearly the same linguistic formulation as we find in the Rambam's ruling concerning our matter.⁷ In addition, he adds that those mourners who accompany the deceased to another land would begin their *Aveilut* upon the completion of the burial⁸ – an idea that fits quite well with the sources we have examined to this point.

Positions of Recent *Poskim*: Rabbis Feinstein, Auerbach, and Waldenberg

Rabbi Moshe Feinstein discussed our subject in two different responsa.⁹ The first responsum was penned to Rav Moshe's friend and colleague, Rabbi Naphtali Carlebach. The case focused upon the death of a relative in Belgium wherein some of the American *krovim* traveled thereto, while others remained behind. It was clearly established that the funeral would not take place until the American mourners arrived overseas. The question was, therefore, asked: "At what point in time should *Aveilut* begin for those relatives who remain behind?" Rabbi Feinstein answered this question by stating:

6. *Bayit Chadash l'Arbaah Turim, Yoreh Deah* 375:3. It must be noted that Rabbi Yechiel Michel Epstein in his *Aruch HaShulchan, Yoreh Deah* 375:8 repudiates the *Bach's* understanding of the sources quoted by the *Tur*. As a result, Rav Epstein claimed that the *Bach* misunderstood the *Tur's* position. See the cited subsection for a full presentation of Rav Epstein's position.

7. *Shulchan Aruch, Yoreh Deah* 375:3.

8. Rav Karo, like the *Tur* before him, also discusses the case wherein the head of the household (*gedol hamishpacha*) accompanies the deceased, and its impact on the onset of *Aveilut* for those mourners who remain behind. See *Shach's* comments upon our section of the *Shulchan Aruch*, sub-section 2, s.v. "*v'im gadol hamishpacha*," for a thorough analysis of this sub-topic. This paper, however, will not discuss this particular issue since it is not a focus of the recent *poskim* whose works we are presenting.

9. *Iggerot Moshe, Yoreh Deah* I: 253 and *Yoreh Deah* II: 170.

"In my humble opinion, those who remain here should immediately begin their *Aveilut* since they are not traveling there [i.e. Belgium]." Rav Feinstein noted that his reasoning was based upon the concept of "*makom rachok*" ("a far away place") rather than any notion of lack of knowledge (*chisaron yidiah*) as to when the burial would take place.¹⁰ He concluded his answer by elaborating upon this theme:

Based upon the above line of reasoning, since the nation of Belgium is an extremely far away place ("*makom rachok tuvah*"), and it is not in the realm of possibility whatsoever that the mourners [who have not yet traveled] would travel from here to there in order to be at the interment – therefore, even the Rambam and the *Shulchan Aruch* would agree that those who remain behind should immediately begin to count their days of *Aveilut*.

Rav Moshe continued this exact line of reasoning in his second responsum – in this instance, to an anonymous party. The case in this *teshuvah* concerned air transportation of the *niftar* to Israel via airplane with the *krovim* remaining behind. Here, too, he answered in an unequivocal manner: "It is clear-cut (*pashut*) that they are immediately obligated in *Aveilut* as soon as the airplane travels with the departed, since this is perforce considered to be 'turning their faces' [from the dead]." Herein Rabbi Feinstein explicitly rejected the notion of *chisaron yidiah* as the causal agent for the immediate onset of *Aveilut*. Thus, he rules *Aveilut* would immediately commence for those who remained behind – even if they were informed of the exact moment of the burial by either a telegram or through a phone conversation. In his concluding remarks in support of his position, Rav Moshe cites both the Ramban and the position of the *Aruch HaShulchan*:¹¹

10. Rav Feinstein cited the *Baer Haitev* to *Shulchan Aruch*, *Yoreh Deah* 375:2 subsection 1, as his proof for his conclusion.

11. See footnote 6.

Therefore, in our case, wherein [the deceased] is transported to the Land of Israel, from the moment the airplane travels with the deceased – it is neither relevant to say that the deceased will be brought back nor that those who remain behind will travel there in time for the burial. Thus, [those who remain behind] will not be able to offer any other further assistance. Therefore, those who remain behind should begin their *Aveilut* immediately – even if they know when the interment will take place. This is the case, since they no longer are concentrating upon the needs of the dead and it is the functional equivalent of having given up on any involvement regarding the funeral (“*nityaashu*”) as the Ramban stated in reference to transporting the body from city to city. [Moreover,] I have carefully examined the *Aruch HaShulchan* in sub-section eight [of *Yoreh Deah* 375] and he, too, wrote that the onset of *Aveilut* is neither dependent upon nor determined by knowledge of the time of the interment, but, rather, by the far away distance of the burial site (*richuk hamakom*). One should look there [*Aruch HaShulchan*], and this is clear both theoretically and in the actual halachic practice.

As we have seen, Rabbi Feinstein incontrovertibly rejected *chisaron yidiah* as a causal factor in determining the onset of *Aveilut*, and emphasized *richuk hamakom* in its place. Therefore, even if the mourners were to have clear and present knowledge as to the exact moment of the burial (i.e. via telegraph or telephone or, nowadays, email or Skype), they would still begin their *Aveilut* from the moment that the plane transporting their loved one departed the tarmac.¹²

12. Rabbi Feivel Cohen, in *Badei Hashulchan*, 375:2, *Biurim*, s.v. *Od*, page 46, raises two substantive issues with Rav Feinstein's conclusion: 1) It is relatively easy for the mourners who thus far have remained behind to board another airplane and thereby be present for the actual interment – thus putting off the time of the onset of *Aveilut*. 2) *Krovim* that remain behind could certainly be involved with ongoing plans regarding the burial via

Rabbi Eliezer Waldenberg, in *Tzitz Eliezer* V, *Even Yaakov*, section 40 (pages 56-57), cited the entire responsum of Rabbi Feinstein as found in *Iggerot Moshe, Yoreh Deah* I: 253. He then proceeded to firmly, yet respectfully, reject both Rav Moshe's reasoning and his conclusion regarding the determination of the onset of *Aveilut*. Rav Waldenberg noted that he was simply amazed by Rav Moshe's brief attention to the halachic literature on the subject at hand when "he should have been expansive – and by all means should have brought the words of the *poskim* regarding this matter." It seems, however, that the *Tzitz Eliezer* was most troubled by Rav Moshe's rejection of the *Bach's* emphasis upon knowledge, *yidiah*, or lack thereof, as the fundamental factor in deciding when *Aveilut* begins:

Moreover, it appears as if he almost completely removed himself from the words of the *Bach*, as found on the *Tur*, who explicitly explains the concept of [the onset of *Aveilut*] being contingent upon knowledge [as to when the burial took place]... Beyond a doubt, the *Bach* explains that the entire matter is based upon knowledge [or lack thereof].

Rav Waldenberg then proved that the vast majority of halachic decisors did not rule in accordance with Rav Moshe's opinion, i.e., that *Aveilut* begins immediately for those *krovim* not accompanying the body. Instead, for these *poskim*, *Aveilut* begins only after the burial has been completed. In doing so, Rav Waldenberg cited and followed the opinion of Rabbi Naphtali Tzvi Yehudah Berlin (the *Netziv*) who clearly stated "... someone who is in a different city and is not involved with the deceased does not begin *Aveilut* until the actual burial."¹³ Thus, Rav Waldenberg opined:

It appears from that which we have said that the opinion

telephone or some other communication device. As such, they would still be in *aninut* and would not enter into *Aveilut*.

13. *Sheilot u'Teshuvot Meishiv Davar, Yoreh Deah* 72. In addition, the *Tzitz Eliezer* quotes no fewer than six other major *poskim* whose views concur with the *Netziv*.

of the majority inclines toward the conclusion in the case in which the author of the *Iggerot Moshe* was asked – to begin to count *Aveilut* from the time of the burial, and not as he concluded to begin [*Aveilut*] immediately.

Another dissenting opinion from that of Rav Moshe Feinstein was issued by Rabbi Shlomo Zalman Auerbach in his responsa *Minchat Shlomo*, I: 91:25. He adopted a compromise between the content and intent of our passage in the *Shulchan Aruch* and the technological possibilities of modern life. Thus, he opined that if the *karov* sent the body from outside of Israel to be interred therein, and ceased thereby to have any other involvement with the *niftar*, then his *Aveilut* would begin immediately. Yet, if the close relative remains involved with the funeral proceedings and the honor and needs of the deceased through “speaking by telephone with people in the Land of Israel,” his *Aveilut* would not begin until the cessation of this activity:

Nonetheless, if the would-be mourner is still involved with worry and anxiety and is speaking by telephone with [people in] the Land of Israel regarding matters pursuant to the needs of the deceased and his honor, then he appears to continue to be an *onan* [the category immediately prior to mourning] and he is, therefore, proscribed from eating meat and imbibing wine. Moreover, it is possible that he is not obligated in any of the commandments until he ceases entirely to speak with people in the Land of Israel regarding these matters. It is only at that time that he may be considered to have “turned his face” from the deceased and thereby begin to mourn – for just as he was not obligated in the other commandments, so, too, was he not obligated to mourn.¹⁴

14. As noted above, Rav Moshe stated that even if the potential mourner were to be notified via telegram or telephone regarding the actual time of the burial, he would nevertheless begin to count *Aveilut* from the time that the plane transported the *niftar*. Rav Feinstein did not, however, explicitly

Thus, for Rav Shlomo Zalman Auerbach, continued involvement with *kevod hameit* (the honor and needs of the deceased) through some form of modern communication modality,¹⁵ suspends the onset of *Aveilut* until the termination of such activity.¹⁶

Conclusion

This paper has traced the questions and answers associated with the determination of the onset of *Aveilut* from the time of the *Amoraim* until our own historical moment. As in all substantive matters of halacha, there are a variety of cogent, compelling, and competing opinions on our subject. As such, in this as well as in all other areas of Jewish law, one is duty-bound to search out a competent halachic authority to render a final and definitive decision.

discuss the possibility wherein the *karov* would remain an active participant through various potential kinds of communication devices. We, of course, can only surmise what Rav Feinstein would have ruled in such a case.

15. I.e., telephone, and by extension, instant messaging and telepresence (two-way audio-visual communication).

16. Rabbi Feivel Cohen, *op. cit.*, pages 46 and 47, in his *Biurim* section, essentially agrees with Rav Auerbach's position. Thus he states: "It therefore appears, that in an instance wherein one is still involved with the needs of the departed, 'turning his face' away from the *niftar* does not constitute the onset of *aveilut*." Even more explicitly: "It also appears, however, that if a *karov* is involved with the needs of the departed via the telephone or other similar means, he does not begin to mourn, since his mind is preoccupied with the deceased."

In general, however, Rabbi Cohen maintains that in situations wherein *krovim* are no longer actively involved with the long-distance burial, their *Aveilut* begins as soon as the departed begins his final journey. This is the case, he opines, "even in our time when, in most instances, the time of burial is clearly known – nonetheless, the ruling of the Sages remains in place, even in the face of changing circumstance [i.e. the ability to know with exactitude as to when the burial was completed.]" *Badei Hashulchan*, end of 375:11.

Hemophiliac *Brit*

Rabbi A. Cohen

Performing a *brit* on a Jewish boy is a fundamental biblical requirement, almost universally observed for thousands of years. Moreover, when a non-Jew wishes to convert to Judaism, he is not accepted until he has a *brit*. A Jew who [deliberately] does not have a *brit*, the Torah says, is punished with *karet*, spiritual [and physical] excision. In the Torah there is an incident where Moshe Rabbeinu was almost killed because he delayed giving his newborn son a *brit*, and was only saved when his wife Tzippora rushed to have it done. Thus, there is no question about the primacy of this fundamental mitzvah.¹

Nevertheless, the Gemara records the following ruling:

If a baby boy has two older brothers who died after having a *brit* [or even if only one older brother died but also the mother's sister's son died after having a *brit*] – this [third] child should not be circumcised.²

Apparently, the rabbis of the Talmud were aware of some sickness which could cause a child to die from having a *brit*, and therefore they exempted such a person from the

1. The *brit* consists of three basic components: *chituch*, cutting, *priah*, revealing the glans by peeling back the foreskin, and *metzitzah*, drawing blood from the wound. For further explanation of the procedure, see "Circumcision Clamps" by Rabbi Donny Frank, in *The Journal of Halacha and Contemporary Society*, No. XXXVI, pp. 32-57.

2. *Shabbat* 134a.

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procedure which might kill him.³ Furthermore, they were also aware that this disease was passed on to the child via the mother, wherefore they took into account not only the mother's offspring, but also her sister's.

Although at the time they did not have a name for this disease, we have now identified it as hemophilia. A hemophiliac lacks a certain clotting factor in his blood (and this genetic disease generally occurs in males but is carried and transmitted by females). Consequently, the incision for the *brit* (or for that matter, almost any incision or even bruise) can lead to uncontrolled bleeding, possibly resulting in death.⁴ Since having a *brit*, while constituting a fundamental Jewish requirement, is not one of the three commandments for which one must give his life, the rabbis ruled that a hemophiliac should not have a *brit*.⁵

3. See *Seridei Eish*, II, 102 and 103, where Rav Weinberg discusses whether a Gentile hemophiliac who wishes to become Jewish may convert without the requisite *brit*, since it would endanger his life. The Rambam wrote in *Hilchot Milah*, chapter 1, that "a danger to life puts off everything [pertaining to the *brit*] because it is possible to circumcise him at a later time, but it is never possible to restore a Jewish soul."

4. In actuality, all hemophilia is not the same – there are different severities of the disease, and it would require the advice of an expert pediatric hematologist to determine the risk factor of any kind of surgical procedure for any specific child suspected of being a hemophiliac, or actually diagnosed as one. Sometimes it is not possible to establish the level of risk until the child is six months or older; in the event of a surgical procedure, he might have to remain in hospital for a few days to be watched and possibly medicated.

5. See *Chatam Sofer*, *Yoreh Deah* 245; *Yechave Da'at* I:61; *S'dei Chemed*, *ma'aracha chametz* 14; *Radbaz* IV:67, who examine the question whether a person may jeopardize his life in order to perform a mitzvah or whether that would be equivalent to committing suicide. See *Nishmat Avraham* V:264 which discusses whether it is permissible for a hemophiliac child, who was exempted from circumcision, to opt for a *brit* when he becomes an adult; on this question see also *ibid*, III:172, and *Minchat Yitzchak* I:49. See also *Seridei Eish* II:102, where he discusses whether it is permissible for a non-Jewish hemophiliac to undergo a *brit* for conversion, which procedure will endanger his life.

Nevertheless, a major problem remains: while the uncircumcised hemophiliac is unquestionably Jewish and undoubtedly exempt from this mitzvah – yet the reality is that he remains, in fact, an *arel*, a person whose foreskin has not been removed. And there are certain religious restrictions concerning an *arel*. For example, if there were today a *Bet Mikdash*, (Temple)⁶ he would not be permitted to enter its precincts, nor would he be allowed to eat from the Passover sacrifice. Even the father of an uncircumcised child would not be permitted to eat from it. Thus, in essence, through no fault of his own, he is in some measure religiously deficient or at least disqualified from taking his place as a full member of the Jewish people.

Moreover, it is considered a *g'nai* (disgrace) for a person to be an *arel*, even if exempt. Thus, Rashi says it was a *g'nai* for the Jewish people that they did not perform a *brit* on their children the entire 40 years they were in the desert. This despite the fact that while traveling in the dangerous conditions of the desert, they were exempt from performing the *brit*. Nevertheless, it was a *g'nai* for them to be uncircumcised.⁷

In recent years, medical science has developed many new techniques, among them “bloodless” forms of “surgery”, such as laser surgery.⁸ The question therefore arises, whether it would be permissible for a hemophiliac to have a *brit* performed on himself by means of laser surgery instead of the traditional method. In laser surgery, albeit the foreskin is removed, there is no actual incision and little, if any, bleeding.⁹ In the traditional *brit*, the foreskin is cut and rolled back over the glans. There is some blood proceeding from this

6. See Rashi and Tosafot to *Yevamot* 70a. See also hereinafter, note 24.

7. Rashi, *Bamidbar* 9:1. See comments of the *Gur Aryeh* to Rashi, *ibid*.

8. Laser surgery is like an “electric cut”.

9. See A. Jacobsen and V.T. Joseph, “Carbon dioxide laser circumcisions for children” in *Pediatric Surgery International*, Springer-Verlag 2003.

maneuver; indeed, many consider the blood of the *brit* to be an essential requirement of that ritual. Even a child born “already circumcised” – i.e., without a foreskin – requires that a cut be made so that some blood flows.¹⁰ Even a convert who may already be circumcised, needs to have a minor cut so that there will be “blood of the *brit*” (*hatofat dam brit*).¹¹ Blood seems to be an essential component. As part of the *brit*, the attendees bless the child with the verse “...And I said to you ‘in your blood, you will live...’” (*ve’omar lach, bedamayich chayi...*).

The issue we will consider in the present study is whether there is any halachic problem if a hemophiliac opts to have a *brit* performed by laser surgery, which is basically a bloodless surgery.¹² We might ask, why not do it? Well, even laser surgery is still surgery,¹³ and why subject someone to the risk and pain of surgery if by Jewish law he is exempt from the procedure? Furthermore, one needs to clarify if a *brit* performed with a laser instead of a knife even qualifies as a *brit* in Jewish law. It is not sufficient to just “cut” the foreskin; it is also required that it be done according to the halacha. Aside from a specific procedure, there is also a time element involved in a *brit*. For example, if a child is circumcised before the eighth day, he is not considered as having a *brit*.¹⁴ If he has the *brit* at night, it is not considered that he has a *brit*, since the verse requires that he be circumcised “on the eighth day.”¹⁵ In other words, if the *brit* is not performed in accordance with the prescribed procedure, the person has not fulfilled the mitzvah

10. *Yoreh Deah* 265:5.

11. *Ibid.*

12. For more information on the procedure and techniques of laser surgery, google “laser circumcision”; there is even a video showing how this is done.

13. There is a possibility that the area of healing in a laser *brit* might rupture at some later date.

14. Because before the eighth day, his foreskin is not considered *orla*, and the Torah mandates that the *orla* must be removed in the *brit* procedure.

15. *Vayikra* 12:3.

and the individual may not even be considered *mohul* (having a *brit*). Consequently, if a laser *brit* does not fulfill the halachic requirements – it is nothing more than an effort in futility.

There is little doubt that the traditional Jewish community will continue to follow the traditional practices of a *brit*, as they have been doing for thousands of years. What we want to clarify here, however, is if the traditional method is not feasible, may other methods be used?¹⁶

Changing a *minhag* (tradition)

The *Shulchan Aruch* rules that a *brit* may be performed “with anything, even a [sharp] stone or with glass, and with anything that cuts other than ‘the stem of a reed’ [because it might have irregular sharp edges which could harm the child]. But the most desirable way is to *mal* (circumcise) with a knife, and all Israel have accepted to *mal* with a knife.”¹⁷

A number of years ago, there was introduced a “new” method of performing the *brit* – using a clamp rather than a cutting tool, which was considered more hygienic or safer. With the clamp, there may be some blood coming from the

16. An ancillary question is, if laser *brit* would indeed qualify as a *brit*, would others, who are not hemophiliac, but who balk at performing the *brit* in the traditional manner, be permitted to opt for the “bloodless” *brit*, so that at least they would be considered *mohul*.

Another question concerns an adult who requires a *brit* but wants to avoid the pain – may he have the procedure while under anesthesia? Is the mitzvah only to live with the foreskin removed, or is there also the requirement that he be aware of what is transpiring during the *brit*? See *Maharach Or Zarua* 11, *Shu”t Zecher Yitzchak* 5, and *Shevet Halevi* V 147:2.

17. *Yoreh Deah* 264:2. There is some discussion as to why the preferred tool for a *milah* is metal. It could be because a metal edge is the sharpest and will therefore do the best job. The *Gra*, *ibid.*, No. 17, cites a text in Tractate *Shabbat* as the source for this conclusion. The *Aruch HaShulchan*, *ibid.*, cites the verse in *Yehoshua* 5 where Hashem tells Joshua to circumcise all the Jewish men prior to entering into the Land of Israel: “Take sharp knives....” as the source for the practice.

wound, but a minimal amount.¹⁸

Rav Shlomo Zalman Auerbach, confronted with a family which refused to have their child circumcised in the traditional manner, accepted that the mitzvah could be performed with a clamp. The author of *Nishmat Avraham*¹⁹ relates being present when a *mohel* from America asked Rav Auerbach what to do in that situation: there was a family that wanted him [the *mohel*] to make a *brit* on their son following all the halachic requirements, but with one proviso – that he use a [*mogen*] clamp. If the *mohel* refused to use the clamp, the family would have the *brit* done elsewhere, either before the eighth day, or at night, or possibly in violation of the Sabbath. The *mohel* wanted to know if he could accede to their demands. Rav Auerbach responded that he could perform the *milah* using the clamp, as long as he made sure that there would be blood from the *brit*.

Rav Waldenberg, however, ruled negatively, maintaining that it is not permissible to make any changes in the age-old *brit* protocol. In his opinion it was better to do nothing, and leave the child uncircumcised.²⁰ He was of the opinion that by employing the clamp, the mitzvah was not performed at all. He cites the opinion of Maharam Schick that if the *mohel* doesn't perform *metzitzah* (extracting the blood), no [halachic] *brit* has been performed, and it is preferable to do nothing. With the clamp, there is no *metzitzah*, and that would invalidate the entire procedure.

Following the tradition (*minhag*) is such a fundamental aspect of Jewish practice that R. Moshe Feinstein wrote that he

18. Many leading *poskim* were opposed to this clamp. *Iggerot Moshe Yoreh Deah* III:98,99 ruled that it was forbidden to use the clamp and that if one did, the mitzvah was not fulfilled. See also *Minchat Yitzchak* V:24:2, and *Tzitz Eliezer* VIII:29.

19. *Chelek* V, p. 86, #3. See also *Nishmat Avraham* II, p. 180, #3.

20. *Tzitz Eliezer* XX:52. See also *Tzitz Eliezer* VIII:29 and X:38. He also objected to the clamp because he considered that it caused excessive pain.

would not attend a *brit* performed with the clamp.²¹ In his *Iggerot Moshe, Yoreh Deah* III:99, he adds, "in any circumstance, one should not make a *brit* with any tool [other than the traditional one], for [performance of] the mitzvah should not be changed."

The "clamp" is not the only innovation which has been introduced in the modern age. In the nineteenth century the author of *Binyan Tzion* was asked about the acceptability of a novel way of performing *priah* [rolling back the foreskin]. His response was unequivocally negative: while he concedes that in the Gemara there is no definition of how to perform that part of the *brit*, nevertheless, he writes,

In truth, all the ways to perform [any of] the mitzvot are known to us only via tradition.²² For example, how do we know that the ethrog is the *pri etz hadar* which is written in the Torah? [The only way is] by word of mouth, going back to Moshe Rabbenu.²³

Defining the Mitzvah of *Brit*

Aside from the issue of adhering to traditional practice, it becomes crucial to determine the precise requirements of a *brit*. If the mitzvah is that the *orla* be removed, then removing it with a laser should be okay. But if the mitzvah is to cut off the *orla* with a metal instrument, then a laser removal would not qualify. While it destroys and removes the *orla*, it does not cut it off, thereby failing to perform this aspect of the mitzvah²⁴

21. See note 13.

22. The *Pitchei Teshuva* 264:13 discusses a question which arose in Europe, when some *mohelim* did not cut the entire foreskin during the *milah*, but rather removed the remainder during the *pria* procedure.

23. *Binyan Tziyon* I:88. The author, Rabbi Ettlinger, advocates removing any *mohel* who changes the way of doing a *brit* (if another *mohel* is available to the community). However, if there is no one else, Rabbi Ettlinger is not ready to forgo the *brit* altogether.

24. We cannot argue that the mitzvah is simply for the boy not to have the

(and there is no *metzitzah* possible). It must therefore be determined whether a *brit* performed in a non-traditional manner does qualify as a *brit* and is not merely a futile gesture.

The need to clarify what constitutes the essence of the biblical commandment of *brit* arose out of the rabbinic responses to introduction of the *mogen* clamp. A dissenting ruling concerning the clamp (and the rationale expressed therein applies equally to a laser *brit*) was voiced by the author of *Minchat Yitzchak*, who invalidates it because he insists the foreskin must be cut, not just removed. He explains that his conclusion is based on centuries of halachic discussions, where the rabbis would not permit a *brit* to be performed by smearing a certain salve (*sam*) on the foreskin, which would make the foreskin shrivel up and fall off. Since they knew about this salve but yet never contemplated administering this salve for a baby who could not be circumcised in the traditional way, evidently the requirement is not just that the *orla* be removed, but that it must be cut.

In contrast to the authorities quoted thus far, Rav Wosner has a far more lenient position. He cites the view of *Kinyan Torah* that, based on nuances in the language employed by the *Shulchan Aruch*, any method of removing the foreskin is acceptable.²⁵ He notes the *Shulchan Aruch* rules that the *milah* can be done “with anything that cuts”, whether it be a stone or glass or “anything that cuts”. However, in specifying the rules for kosher slaughter (*shechita*), the *Shulchan Aruch* starts out with the same formula – “one slaughters with anything, whether it be a stone or with glass” – but omits the phrase “or with anything that cuts”. Consequently, rules the *Shevet Halevi*, this means that while *shechita* is not valid unless there is a cut, *brit milah* is valid so long as the foreskin is removed;

foreskin any more, because we have noted the halacha that if he has his *brit* at the wrong time, such as before the eighth day or at night, he is not considered as being *mahul*, even though he no longer has a foreskin.

25. *Shevet Halevi* IX:92.

ideally one should use metal, but anything that gets the job done is acceptable.²⁶ “And when there is danger [to life] ... there certainly cannot be a greater *sha’at hadechak* (urgent exigency) than this.”

Rav Vosner continues, for someone who cannot tolerate having a cut, such as a hemophiliac, it would be permissible to have the *orla* removed in a different manner, such as with the laser. Although Rav Vosner maintains that a laser would be acceptable, he disallows reciting the blessing “on the *milah*”,²⁷ although he nevertheless mandates reciting the second *bracha*, “Who has commanded us....to bring him into the covenant of our Father Avraham.” Rav Vosner explains that albeit the person has been circumcised, “he did not perform the *form* of the mitzvah in accordance with the wish of the holy Torah”, and therefore it would be inappropriate to recite a blessing that one has done what G-d commanded. He even entertains ruling in accordance with Rabbenu Tam that a child who cannot endure the *brit* procedure and is exempt, should not be considered an *arel*, and could technically partake of the *korban Pesach*.²⁸

Rav Vosner’s opinion does not remain unchallenged. The *Minchat Yitzchak*²⁹ quotes *Imrei Yosher* that “*guf hamilah ee efshar al yedei sam*,” it is not permissible to effect a circumcision by means of some kind of medication or lotion that would remove the *orla*. Inasmuch as the biblical verse specifically requires *hemol yimol*, that the male should be circumcised, that means there must be a cut, and any other way of removing the

26. He notes a midrash that when Avraham had his *brit*, it was done by a scorpion.

27. Ramban, *Sefer Hamtzvot* (*Hashmatot*) rules that there is a specific mitzvah to perform Torah commandments in the way they were intended, based on the verse “...and be careful [to observe the mitzvah] in the way I have told you...”

28. See his *Shevet Halevi* IV:69 and III:7.

29. *Chelek* VIII:89, *Chelek* V:24, *ot* 2. He addresses all the sources adduced by the *Kinyan Torah* and shows why they are not applicable.

foreskin is not valid. Just as the *Imrei Yosher* disqualifies “*sam*” – medication – so too the laser is not acceptable. *Milah* is only accomplished properly by a cutting process.

In the opinion of Rav Shlomo Zalman Auerbach in *Minchat Shlomo*, the laser is even worse than using a *sam* to remove the foreskin; at least, when using the *sam*, someone has to physically apply the medication to the organ. But with a laser, there is not even an action to remove the foreskin. In his view, it is the laser machine, not the person, which is doing the action and therefore he finds it totally unacceptable. He rules that it is better not to do it at all, rather than to do it improperly, “even if he remains an *arel* all his life...”³⁰

To summarize: the opinion of most leading *poskim* is that no change should be made in the traditional manner of *brit*. However, there are those who are willing to be lenient for a hemophiliac, who is not able to have the standard surgical procedure. The sheer volume of discussion and inquiry concerning the performance of a *brit* is testimony to the dedication which the Jewish people has always exhibited in adhering to the letter and spirit of this mitzvah, always viewing it proudly as a sign of our commitment to our faith.

30. *Minchat Shlomo* II, p.368. “And especially since in our time, it is possible to circumcise without any concern for danger, although it may cost a great deal.”

Scriptural Inscriptions on Jewelry

Rabbi Eli Ozarowski

I. Introduction¹

In recent years, it has become popular in the Jewish community for young women to wear jewelry engraved with verses from the Torah or quotes from rabbinic literature.² Unfortunately, some serious halachic issues arise when dealing with this type of jewelry or other materials that contain *pesukim* (verses), such as embroidered cloth or yeshiva sweatshirts. In this article, we will address and analyze the various halachot related to this question to determine whether it is permitted to buy them, wear them, and bring them into the bathroom or other unclean areas.³

1. I would like to thank Rav Daniel Mann, *Dayan* at *Kollel Eretz Chemdah* and *rebbe* at the Gruss Kollel in Jerusalem, for his help and suggestions in preparing this article.

2. See, for example, <http://oneofakind-store.com/main.sc> and the vast range of options available on the site for engraving jewelry with Jewish sayings.

3. The halachic issues discussed here overlap somewhat with the general question of properly disposing of Torah works, commonly referred to as *geniza* or *sheimot*. However, we will focus mainly on those sources relevant to our discussion as well. For a summary of the numerous sources and *poskim* who address that issue, see *Piskei Teshuvot* (*Orach Chaim* 154:#15-18), *Sefer Halacha Berurah* by R. Dovid Yosef (*Orach Chaim* 154:16-17); R. Yechezkel Feinhandler, *Sefer Ginzei HaKodesh*, Rabbi Jacob Schneider, “*Sheimot* and their disposal,” *Journal of Halacha and Contemporary Society*, Fall

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II. The two concerns of the Rambam

The first source to deal directly with a similar issue was the Rambam (*Teshuvot HaRambam* 268), who was asked about whether embroidering a *pasuk*, or verse, on a garment was permissible and ruled⁴ that it is not permitted. He then offers two reasons to justify his *psak*.

Reason #1

"The first reason is that one may not write individual verses from the Torah [outside of a Torah scroll], rather he may [only] write three words and no more." As the Rambam goes on to explain, it is forbidden to write individual sections of the Torah, and certainly individual *pesukim*, outside of a *Sefer Torah* or *Chumash*. This is based on the Gemara (*Gittin* 60a) which states that individual sections of the Torah may not be written down for a child to study, either because the Torah was given all together ("*chatumah nitnah*") or because it was given in sections but eventually transmitted together as one unit ("*megilah nitnah v'idabak*"). According to some opinions, this halacha may be biblical in origin.⁵ Both Rambam (*Hilchot Sefer Torah* 7:14) and *Shulchan Aruch* (*Yoreh Deah* 283:2) rule in

1991; Rav Eliezer Melamed, *Peninei Halacha Likutim I*, p.139; and *Techumin* Volume 30, pp.472-496 (addressing the problem of disposal of Shabbat *parsha* pamphlets known in Israel as *alonim*).

4. Rambam here uses the term "*tallit*" to describe the garment, which in earlier times often referred to a standard garment (see for example the Mishnah, *Bava Metzia* 2a) as opposed to what we often refer to as *tallit* today, namely the full size *tallit* which is worn exclusively in shul. See footnote #14 about whether our type of *tallit* would be included in this prohibition.

5. See *Turei Even* (*Megillah* 8b) who maintains, based on Rambam (*Hilchot Sefer Torah* 7:1), that this halacha is a biblical one. Rambam there states that the mitzvah to write a *Sefer Torah* is derived from the verse "And now write for yourselves this song, (*Devarim* 31:19)" which he interprets to mean that the Torah must include this song (*Parshat Haazinu*) in it, but one cannot write any individual *parsha* by itself. Since writing a *Sefer Torah* is a biblical mitzvah, *Turei Even* proves that the prohibition of writing individual sections must also be biblical in origin. However, others suggest that it is only rabbinic and not biblical.

accordance with this Gemara, permitting only an entire book of the *Chumash*, such as *Bereshit*, to be written individually, but nothing less than that.

However, many later *poskim* have noted⁶ that following this ruling would create serious concerns, since many shuls and educational facilities at the time lacked sufficient copies of the regular *Chumash*, thus making it difficult for children to study Torah, among other things. Therefore, they claim that we can rely on the *rishonim* such as Rif (*Gittin* 28a in pages of the Rif), Mordechai (*Gittin* 407), and others, that do not rule in accordance with this Gemara, based on the concept of “*Eit Laasot L’Hashem*,”⁷ “It is a time of emergency,” which is occasionally employed by the Gemara to permit violating certain prohibitions to ensure that the Torah not be forgotten.⁸ This has indeed become the widespread universal custom, and even today it is assumed to be permitted to write individual sections of the *Chumash*.

Based on this, it might appear that this reason of Rambam is not a relevant factor in our discussion to prohibit using rings or other jewelry with *pesukim* engraved on them, since the custom has evolved to permit writing individual *pesukim*. However, later authorities (*acharonim*), debate whether the permissive ruling is limited to cases where it is necessary for educational or spiritual purposes, such as studying Torah or *davening*. Some, such as Taz (*Yoreh Deah* 283:1), Beer Heitev (*Yoreh Deah* 283:1), and Mishnah Berurah (*Orach Chaim* 638:24),

6. See Rosh (*Gittin* 4:20) who explains the Rif mentioned below as being concerned that most people at the time could not write an entire *Sefer Torah* from which to study. See also Shach (*Yoreh Deah* 283:3), Taz (*Yoreh Deah* 283:1), Bach (*Yoreh Deah* 283:1), Beer Heitev (*Yoreh Deah* 283:1), and Pitchei Teshuvah (*Yoreh Deah* 283:1) who all allow this practice.

7. Literally translated as “it is a time to do [something] for Hashem,” taken from *Tehillim* (119:126).

8. This concept is discussed elsewhere in the same talmudic discussion, in *Gittin*, concerning the famous allowance of writing down the entire Oral Torah, despite the prohibition to do so, due to concern of its being forgotten .

recommend against writing such *pesukim* for unnecessary educational purposes,⁹ such as writing *pesukim* on the wall as a fortuitous sign,¹⁰ while others do not limit the leniency in this way and permit writing *pesukim* even in such cases.¹¹ According to the more lenient approach, perhaps one could argue that this particular concern of writing *pesukim* is not violated, since the presence of the *pesukim* may serve as a *siman tov*, a positive spiritual sign, or a constant reminder of G-d or some other Jewish value (depending on the particular verse engraved) similar to the writing of *pesukim* on the wall.¹²

9. These *poskim* do not use the expression of an outright prohibition, but rather “*lav shapir avid*,” “it is not appropriate to do so.”

10. The *Mishnah Berurah* here is discussing writing and placing *pesukim* on the wall in a sukkah, and he forbids the practice for this reason as well as the second reason of disgrace discussed below. See also *Maharit* (2:3) referred to by *Pitchei Teshuvah* (*Yoreh Deah* 283:1) and *Machatzit HaShekel* (*Orach Chaim* 40:1) who is stringent concerning having verses from Scripture written above the *bimah* in shul on Yom Kippur to increase the intensity of the *davening*. He feels that this is not sufficient reason to be lenient. Interestingly enough, *Magen Avraham* (*Orach Chaim* 40:1) and *Mishnah Berurah* (*Orach Chaim* 40:3) actually quote this *Maharit* as being lenient about this question, but in truth he is stringent, at least in the context of our topic (though he rules that the second reason of the Rambam is not a problem in this case). Perhaps they meant that he was lenient concerning the second reason of causing verses from the Torah to be disgraced. It is noteworthy as well that the *Mishnah Berurah* permits having *pesukim* on the wall in shul (see next footnote) yet forbids placing *pesukim* in the sukkah partially due to the concern of writing *pesukim* outside of a *Chumash*, which appears to be contradictory.

11. See *Shach ad loc.* who does not specifically limit the leniency as do *Taz*, *Sefer Bnei Yonah*, *Magen Avraham* (*Orach Chaim* 40:1) and *Mishnah Berurah* (*Orach Chaim* 40:3). Furthermore, a number of *acharonim* are lenient when the script used is invalid for use in a *Sefer Torah*, such as *Tashbetz* (1:2) cited in *Pitchei Teshuvah* (*Yoreh Deah* 283:2). Thus, script which does not qualify as Assyrian script, the type of script used in a *Sefer Torah* (discussed later in the article) would be permitted according to them. Rav Eliezer Melamed, *Peninei Halachah Likutim* Vol. I, p.125, rules that one may be lenient on this issue, assuming that the script used is not valid for use in a *Sefer Torah*.

12. Although one could argue that the presence of a *pasuk* or rabbinic saying simply enhances the beauty of the jewelry but does not specifically add any religious dimension to the experience of wearing it, students this

According to the more stringent opinions, it would seem inappropriate to engrave *pesukim* on jewelry, because it does not serve as a critical educational tool for study. Rav Hershel Schachter felt¹³ that this is the accepted approach and such jewelry is therefore prohibited for this reason.

Reason #2

Rambam describes his second concern as “stronger than the first one” and this would therefore appear to be the more serious problem with embroidering or engraving *pesukim*.

Rambam explains that *pesukim* embroidered on clothing, will inevitably be taken into the bathroom and other places considered to be unclean. This is different than garments with *tzitzit*, which are classified as *tashmishei mitzvah*, ritual objects, but do not contain *kedusha*, holiness, like that of *tefillin* or *Sifrei Torah*, and are therefore not prohibited from being brought into unclean areas.¹⁴ Consequently, the words of the Torah on the *tzitzit* will be subjected to terrible disgrace, which is prohibited. Although the Rambam harshly criticizes one who embroiders *pesukim* into a garment, it would appear that he agrees the nature of the prohibition is only rabbinic, given the lack of any such direct prohibition in the Talmud, as well as the fact that it is only a decree due to a concern of the potential

author has spoken to indicate that they specifically choose this jewelry because of the religious element they perceive it contains. However, unfortunately it does not appear to hold sufficient weight to solve the second concern of bringing it into the bathroom and other unclean areas, in which case it should still be prohibited according to Rambam and *Shulchan Aruch*.

13. Written communication from 26 Tamuz, 5772 (July 15th, 2012).

14. In earlier times, most regular garments worn had four corners and therefore were obligated to have *tzitzit* attached to them. Consequently, Rambam here may be referring exclusively to a standard garment and explaining that since one would walk into the bathroom with it, any *pesukim* written on it would be subject to degradation and therefore forbidden. However, it is unclear whether he would also forbid embroidering *pesukim* on the full-size *tallit* which is generally worn in shul alone.

negative consequences, which is usually rabbinic in nature.

The *Shulchan Aruch* (Yoreh Deah 283:4) codifies this statement of Rambam, ruling that it is indeed forbidden to embroider *pesukim* into a *tallit*, and in the *Beit Yosef*, Rav Yosef Karo makes mention of both of these reasons offered by the Rambam.¹⁵ Based on this, it appears that even if one argues that the first reason above is not sufficient to absolutely forbid using *pesukim* in jewelry or other clothing, it would still be prohibited to make, and most probably buy, such an object based on the second reason. Even if a person attempts to be careful not to bring it into unclean areas, it is very difficult to assure that it is never taken to the bathroom. Some *poskim*, such as *Shach* (Yoreh Deah 283:6), do permit writing *pesukim* on the Torah scroll covers since it can be virtually assured that they will not be brought to inappropriate places, but in our case there is certainly a much greater chance that people will wear the jewelry into the bathroom, and these objects would not qualify for the leniency used for the *Sifrei Torah*.

III. How many words

Although the *poskim* do prohibit writing *pesukim* (verses), they note that if only a few words are written, this does not qualify for either category of prohibition discussed above. In the responsum referenced above, as well as in *Hilchot Sefer Torah* (7:14), Rambam states that writing three words or less is not considered to be a Torah quote and hence does not contain intrinsic holiness.¹⁶ This ruling is codified in the *Shulchan*

15. See *Shach* (283:6), *Taz* (283:3), and other commentaries that cite both reasons as well.

16. It is interesting to note that Rambam himself (*Perush Mishnayot Sotah* 2:4) rules that only two words may be written on multiple lines to avoid creating the holiness of a scroll, but three words are forbidden, which contradicts his position in the *Mishneh Torah*. See *Sefer Mafteach*, Frankel Edition of the Rambam, *Hilchot Sefer Torah* (7:14), who references sources that deal with this question.

Aruch (Yoreh Deah 283:3) as well, and even writing a number of lines with three words on each line is permitted. The *rishonim* derived the source for this idea from the golden tablet designed by Queen Helena, which the Gemara (*Gittin* 60a, *Yoma* 38a) comments had *Parshat Sota*, the section of the Torah discussing a rebellious wife (*Bamidbar* 5:11-31), engraved into it, and were written “*serugin*,” which apparently means divided into sections. Thus, many *rishonim* interpret this to mean that if the entire section is written in separate lines consisting of three words each, such an endeavor would be permitted.¹⁷ Based on this approach, one could allow wearing jewelry that only has three words engraved on it, such as the popular expressions “*Deracheha Darchei Noam*,” “its ways are ways of peace” (*Mishlei* 3:17) or “*V’erastich Li L’olam*,” “And I will betroth you forever” (*Hoshea* 2:21).

However, some *poskim* are stringent to forbid even three words together, based on the requirement of *sirtut*, scratching straight lines into the parchment of a *Sefer Torah* to guide the scribe where exactly to write. According to those *poskim*, such as Gra (Yoreh Deah 283:4), who equate the halachot of *sirtut* with those of maintaining the holiness of *pesukim*, perhaps even three words should be forbidden to engrave into jewelry or a *tallit*. This position is considered, but not accepted definitively, by many *poskim* addressing our issue. In fact, most of them do not take a stand on this point and consider both opinions.¹⁸ If we accept the first reason above for prohibiting writing these verses based on not writing *pesukim* outside of a *Sefer Torah*, then perhaps one should be strict

17. Concerning whether this rule of allowing multiple lines with three words each can be applied to our situation, see below, section V.

18. See the responsum of Rav Yaakov Ariel (*B’oholah shel Torah Siman* 42) on our topic referred to below. Interestingly, *Ginzei HaKodesh* (9:3) maintains that if one can understand from the context that a *pasuk* is being cited, even three words would be considered holy, but if no one could extrapolate from those particular words that a *pasuk* is being quoted, then only four words together would constitute a scriptural verse.

about expressions with three words, since that halacha, as mentioned above, may be of biblical origin for which we are generally stringent in cases of doubt. But if we adopt the second reason of potential degradation to the *pesukim* upon bringing into the bathroom, there may be room to be lenient for jewelry which contains only three words, since this reason is most likely only rabbinic in origin, for which we are often lenient in cases of doubt.

IV *Ktav Ashuri*

Another issue to confront regarding this type of jewelry is the permissibility of using *Ktav Ashuri* in a disrespectful manner. *Ktav Ashuri* is generally defined as the block Hebrew letters used in writing a *Sefer Torah*. The responsum of the Rambam quoted above raises this as an additional concern with embroidering the *pesukim* into the *tallit*: Since *Ktav Ashuri* used for writing the Torah is holy, it is not appropriate to use it for a mundane purpose. Although the case discussed was referring to a *pasuk*, apparently the Rambam felt that did not qualify as a holy purpose because it was on a garment rather than in a *Sefer Torah* or other holy book. This opinion is quoted by Rabbeinu Yerucham as well as Rema (*Yoreh Deah* 284:2), who cites it as “some say,” as opposed to codifying it as the definitive approach. A number of *acharonim* also accept this ruling as the practical halacha.

Based on this, it would appear that perhaps it is problematic to use block Hebrew letters on jewelry, due to the concerns of writing with *Ktav Ashuri* for what is possibly a non-holy purpose, plus the fact that this script may well be brought into the bathroom, which is an inappropriate location for a holy script.

However, it is also possible that the custom of using such block letters in general (such as for Hebrew newspapers) as well as in our case of jewelry can be defended:

First, some *poskim* claim that not all Hebrew block letters are

included in the category of *Ktav Ashuri*. Rav Moshe Feinstein,¹⁹ Rav Yaakov Ariel,²⁰ and Rav Eliezer Melamed,²¹ among others, claim that any slight change from the original script renders the script permissible. Rav Moshe notes that the Rambam himself supports this notion in his responsum where he comments that “because of this the *Sefardim* modified (“*shinu*”) their writing script and gave the letters different forms (“*tzurot acherot*”), until it became like another script (“*ad shenaaseh k’ilu ktav acher*”).” This formulation, claims Rav Moshe, indicates that they slightly modified their script, which eventually led to a new script, but only slight modifications, such that it would be rendered invalid for use in a *Sefer Torah*, were truly halachically necessary to avoid the problem of using *Ktav Ashuri* for regular non-Torah matters.

Second, Rav Yaakov Ariel (in the above responsum) points to a comment by the *Chavot Yair* (*Siman* 109) cited by the *Pitchei Teshuvah* (*Yoreh Deah* 271:20) that it is “appropriate to avoid treating other books printed in *Ktav Ashuri* in a degrading manner, such as wiping oneself with them or throwing them on the ground, etc.”²² According to this opinion, argues Rav Ariel, this script is treated as only partially holy, and would be permissible to use, as long as one treats it respectfully. In contrast to the first defense above, this argument alone would permit using the script but forbid bringing it into the bathroom, for example. However, Rav Ariel combines the two reasons together and thus defends the

19. *Iggerot Moshe* (*Yoreh Deah* 3:120:1) in a responsum concerning using Assyrian script for writing a *ketubah*, or marriage document.

20. *B’oholah shel Torah* (vol.1 *Siman* 41) in a responsum concerning Hebrew newspapers.

21. *Peninei Halacha* op cit.

22. The *Chavot Yair* and Rav Moshe both reference the Gemara (*Bava Batra* 166b-167a) which deals with the writing of *shtarot*, legal documents, which was done with block Hebrew letters, and prove from the examples of the style of letters discussed there that slight changes to the script remove the prohibition of *Ktav Ashuri*.

custom of all those Hebrew works that use block Hebrew letters.

According to the first opinion, it seems that from the perspective of *Ktav Ashuri*, a ring or jewelry with block Hebrew letters would not be any more problematic than other papers written this way. Given that the custom is to be lenient about block letters written in Hebrew newspapers and similar material,²³ one should not be particularly bothered by this question, even if the other questions discussed in this article concerning jewelry may still be problematic.

V. *Shem Hashem*

Our discussion has focused mainly on the potential problems of engraving or writing *pesukim* in locations which may subject them to disgrace. However, Rav Eliezer Waldenberg (*Tzitz Eliezer* 16:30) notes that writing one of the actual names of Hashem is far more problematic in this context (and many others) than simply quoting *pesukim*, due to the additional prohibitions, some of them more severe, that are associated with it. First, a Biblical prohibition exists to erase or destroy Hashem's name, as cited in the Gemara (*Shavuot* 35a, *Makkot* 22a) and codified in the Rambam (*Hilchot Yesodei HaTorah* 6:1) and *Shulchan Aruch* (*Yoreh Deah* 276:9) based on the proximity of the *pasuk* "*Lo Taasun Ken L'Hashem Elokeichem*," "You should not do so to Hashem your G-d," to

23. See *Piskei Teshuvot* (154:#16) and <http://www.shaimos.org/guidelines.htm> who cite numerous other sources concerning this question. In fact, Rav Ariel himself in the very next responsum (*B'oholah shel Torah* vol.1 *Siman* 42) uses this consideration as an additional factor to be lenient for jewelry by expanding the argument that perhaps the only prohibition of writing Torah verses in questionable locations is when they are written in true *Ktav Ashuri*, but otherwise they do not have holiness at all. R.Chaim Dovid HaLevi (*Aseh Lecha Rav* 3:45, 5:26-27) does not agree with the first lenient approach mentioned in the text, though he does reluctantly accept it as the common custom. Nevertheless, he strongly argues that such material, even concerning secular topics, may not be brought into the bathroom.

the command to destroy the mention of all idol worship in the Land of Israel (*Devarim* 12:3-4). In contrast, the prohibition of causing disgrace to *pesukim* appears to be only a rabbinic prohibition, as evidenced from the Rambam (*Hilchot Yesodei HaTorah* 6:8) who states that “holy scriptures are forbidden to destroy or burn, and one who does receives rabbinic lashes.” Second, the Rema (276:13) states that a special prohibition exists to write Hashem’s name outside of a Torah or other holy book, since it could become disgraced, and therefore it is not used in personal letters. Third, Rav Waldenberg points out that one is forbidden to stand unclothed in front of Hashem’s name, as recorded by Rambam (*Hilchot Yesodei HaTorah* 6:6), a situation which could occur frequently with such a ring or piece of jewelry.

In this context, the *Pitchei Teshuvah* (276:27) cites the *Chavot Yair* (*Siman* 16) who discusses a question very similar to ours, namely whether it is permitted to write the name of Hashem on a ring which it is certain will not be disgraced or brought to an unclean location. He continues that even if this is permitted, perhaps it should still be forbidden due to a prohibition from deriving benefit from Hashem’s Name. The *Pitchei Teshuvah* then cites Rav Yaakov Emden (*Sheeilat Yaavetz siman* 140) who believes that a prohibition to derive benefit does indeed exist, and suggests covering Hashem’s Name with something else if you want to use the ring, which he argues thereby avoids the prohibition to derive benefit. Other authorities disagree,²⁴ but Rav Moshe Feinstein (*Iggerot Moshe Yoreh Deah* 2:136) still concludes that it is appropriate to act in accordance with the stringent opinion in this case.

In sum, engraving and wearing a ring with the Name of Hashem on it involves many more problems than simple *pesukim*, and therefore should be treated even more stringently than cases of *pesukim* on clothing or jewelry.

24. See *Panim Meiros* quoted in *Pitchei Teshuvah* (276:25), as well as *Iggerot Moshe* (*Yoreh Deah* 2:136).

Although most of the jewelry in question in fact does not contain actual Names of *Hashem*, they are often substituted by the letter *Daled* or *Hey* with a dash written as ך' or ה'.²⁵ Does this qualify for the extra restrictions applied to the Name of *Hashem* as well? Rav Moshe Feinstein (*Iggerot Moshe Yoreh Deah* 2:138), in discussing the practice of writing ב"ה, which stands for *B'Ezrat Hashem*, with the help of *Hashem*, on the heading of papers, compares this to the case of the *Terumat HaDeshen* (*Siman* 171) cited by the Rema (*Yoreh Deah* 276:10) that writing *Hashem's* Name as two *Yuds* does not contain sanctity. Therefore, explains Rema, it is permitted to erase it, but only for a *tzorech*, or necessity, which the *Shach* (*Yoreh Deah* 276:14) interprets to mean a *tzorech gadol*, a great necessity, since the letter *Yud* is actually the first letter in *Hashem's* name and as such should be treated appropriately.²⁶ So too, claims Rav Moshe, *Hey* is one of the letters in *Hashem's* name and should be treated equivalently. However, other *acharonim*, such as *Aruch HaShulchan* (*Yoreh Deah* 276:28), argue that this type of form has no sanctity whatsoever,²⁷ and the Rema's case of two *Yuds* is more stringent, presumably because *Yud* is the first letter of *Hashem's* name, while *Hey* is not.^{28,29}

25. See many of the examples at http://www.oneofakind.co.il/shopassets/files/Psukim_Names.html that are in this category.

26. See also Yabia Omer (8:Yoreh Deah 26) who has a comprehensive discussion of this issue.

27. *Aruch HaShulchan's* specific examples include writing בעזרת ה', "with *Hashem's* help," using a *Daled* for *Hashem*, and אי"ה, *Im Yirtzeh Hashem*, "if *Hashem* wants," using a *Hey* for *Hashem*. The second case should be parallel to Rav Moshe's case of *Baruch Hashem* using a *Hey*.

28. It should be noted that although *Aruch HaShulchan* appears to perceive these cases as somewhat more lenient than the case of two *Yuds*, he still forbids them to be used for a degrading type of use, as does Rav Moshe. It is debatable whether bringing such an item into the bathroom would be included in this category; see below in the text and footnote #32.

29. See *Piskei Teshuvot* (154:#18) and <http://www.shaimos.org/guidelines.htm> for a full list of halachic authorities who have debated this question and the various opinions.

According to this, *Daled*, which is not one of the letters in His name, should be entirely permitted according to all authorities. On the other hand, *Hey* on jewelry or other surfaces, when written with intention to refer to Hashem's name, would seem to be subject to the aforementioned debate. Nevertheless, Rav Yaakov Yeshaya Blau (*Tzedakah Umishpat* 16: note #88) claims that simply walking into a bathroom with it is acceptable,³⁰ and only directly degrading the paper itself, such as using it as toilet paper, is forbidden.³¹ Consequently, the name of Hashem spelled in this manner would not add any additional halachic problems to those already discussed concerning such jewelry or similar materials.

V Possible factors to permit the jewelry

Although we have seen that there are some complications with buying and wearing this type of jewelry, there are other factors to consider which may avoid the problem in certain situations.

1. Words on multiple lines and abbreviated *pesukim*

The *Pitchei Teshuvah* (*Yoreh Deah* 284:1) cites authorities in the context of *sirtut* that permit writing only two or three words on one line, and then continuing the citation on the next line. Since Rambam (*Hilchot Sefer Torah* 7:14) rules similarly

30. He does add that this may be specifically ("*b'frat*") when it is in a pocket. See below where the issue of coverings in the bathrooms is discussed at length.

31. In fact, both *Aruch HaShulchan* (cited above and in 276:24) and *Iggerot Moshe* focus primarily on cases of directly degrading the name, such as burning the paper, discarding it in an unclean location, and wiping oneself with it in the bathroom, indicating perhaps that they both might allow simply bringing such a paper into the bathroom. It is also important to note that *poskim* debate the status of Hashem's name when written in English or other languages. See *Shach* (*Yoreh Deah* 279:11), *Magen Avraham* (*Orach Chaim* 334:17), *Iggerot Moshe* (*Yoreh Deah* 1:172), & other sources cited in *Piskei Teshuvot* (*Orach Chaim* 154:18) and <http://www.shaimos.org/guidelines.htm> (note #12).

that no sanctity exists for a scroll containing multiple lines with three words each, it is reasonable to argue that this solution may be effective also for avoiding the question of writing a *pasuk* in our situation, and would not render the jewelry as a holy article. This is in fact the ruling of Rav Yisrael Belsky and possibly of Rav Moshe Feinstein in the context of wedding invitations.³² Although most of the jewelry under discussion is not actually written this way, it may also be relevant when designing yeshiva or seminary sweatshirts. However, *Sefer Ginzei HaKodesh* (9:9 and footnote #30) rules in the name of Rav Eliashiv and Rav Nissim Karelitz that although perhaps valid in the context of *sirtut*, such a solution would not be allowed in our context, based on the Rambam himself in his responsum, where he notes that it can only be permitted when the lines are far enough apart that they would not be easily read together as one verse. Thus, in most cases where the lines are quite close together, it would be forbidden.³³ An additional leniency is cited by the *Pitchei Teshuvah* (*Yoreh Deah* 283:2) that if some of the words are expressed only by abbreviations or by cutting off the last few letters with a dash, this does not qualify as full words. This might be another method of avoiding the problem when fashioning jewelry or designing a sweatshirt.

32. Rav Belsky is cited at <http://www.shaimos.org/guidelines.htm> (notes #124-126) discussing this option in the context of wedding invitations with *pesukim*, while Rav Moshe's opinion is discussed in *Iggerot Moshe* (*Yoreh Deah* 4:38) where he mentions this suggestion. Although he states that this opinion "is seemingly a correct reason," since verses in the Torah are not written in this manner ("*sheharei lekka shurot elu b'kra*"), he still concludes that it is better not to write any *pesukim* on invitations, and notes elsewhere (*Iggerot Moshe* *Yoreh Deah* 2:135) that he refrained from ever using *pesukim* in any form on the wedding invitations of his children.

33. It is somewhat difficult, though, to resolve this condition with *Hilchot Sefer Torah* where Rambam does not mention anything about how far apart the lines are and whether they can easily be read together as one or not, implying that those factors are irrelevant. See Rambam, Frankel Edition, *Hilchot Sefer Torah* 7:14, *Mekorot VTziyunim* where he raises this question and leaves the matter unresolved.

2. Switching the order of words

This author has heard that some *poskim* permit switching the order of the words in the verse to avoid the problem, since the current form is not read exactly the same as the actual *pasuk*. For example, the popular verse “*Kol Sasson V’kol simcha*,” “the voice of happiness and the voice of joy” (*Yirmiyahu* 33:11) often used in reference to weddings either on invitations or in songs would be switched to read “*Kol simcha v’kol sasson*.” However, oral reports have circulated that Rav Eliashiv does not approve of this practice and does not consider it to be a valid leniency.³⁴

3. Other types of expressions found

It is important to note that although much of this type of jewelry contains references to verses from the Torah or sayings in *Chazal*, a significant number of them utilize other sayings. For example, the phrase “*tamid bisimcha*,” “always [be] in [a state] of happiness,” “*ein davar omeid bifnei haratzon*,” “nothing can stand in the way of a desire,” and “*gam zeh yaavor*,” “this too will pass,” are also quite commonly used,³⁵ but are not halachically problematic due to the lack of content from the Torah or *Chazal*. Purchasing such jewelry with these types of expressions is probably one of the best suggestions to offer to individuals who wish to avoid the halachic problems.

34. See http://www.jemsem.org/index.php?option=com_content&view=article&id=414&Itemid=54. See also *Halichot Shlomo* (20:note #72) citing R. Shlomo Zalman Auerbach and *Sefer Ginzei HaKodesh* (9:note #18) who allow slightly modifying the language of the *pasuk* (which is different than simply reversing the order of the phrases). Thus, for example, they would change “*Aaleh et Yerushalayim al rosh simchati*,” “I will place [mourning for] Jerusalem above my own rejoicing (*Tehillim* 137:6)” to “*Naaleh et Yerushalayim al rosh simchatenu*,” “We will place [mourning for] Jerusalem above our own rejoicing.”

35. See for example many of the quotes listed at http://www.oneofakind.co.il/shopassets/files/NEW_Faith.html.

4. Use for protection

Rav Eliezer Waldenberg (*Tzitz Eliezer* 16:30) rules that jewelry with Torah content is permitted to be both fashioned and purchased when worn specifically for the purpose of protection. Although when worn for medicinal value it would be forbidden due to a separate prohibition of curing oneself through words of Torah,³⁶ Rav Waldenberg says he understands that in this case, this jewelry is often worn to engender special Divine protection and therefore it should be permitted to do so, assuming that it is covered properly in the bathroom (see below). However, it would appear that today it is unusual for people to wear such adornments specifically for Divine protection. Although one might suggest that those who wear jewelry with specific verses related to protection on them, such as "*Hashem Yishmorchu MiKol Ra*," "*Hashem should protect you from all evil, (Tehillim 121:7)*" may in fact be doing so for this protection, it is still somewhat difficult to argue that in today's society, people truly believe that these *pesukim* will in fact protect them from harm when worn this way.

VI. Intention

Another factor relevant to the discussion is whether the artisan who fashioned the jewelry intended to use the phrase as a *pasuk* or simply as a catch phrase. The significance of this distinction can be seen from the *Shulchan Aruch* (*Yoreh Deah* 284:2) in the context of *sirtut*, where he rules based on Rabbeinu Tam (cited in *Tosafot Gittin* 6b s.v. *amar rav yitzchak*) that one who employs phrases from verses in the Torah in his personal letters is not required to use *sirtut*, since his intention is simply to express a certain thought rather than use the words specifically to refer to a *pasuk*.³⁷

36. See *Shulchan Aruch* (*Yoreh Deah* 155:1).

37. It should be noted that *Shach* does disagree on this point, claiming based on the *Yerushalmi* that one should be stringent to require *sirtut* even when using *pesukim* in a personal letter. However, Rav Shmuel Vosner

Furthermore, Rema (*Yoreh Deah* 276:2) states that if a scribe wrote the expression “*elohim acherim*,” “other gods,” (based on *Shmot* 20:2) which refers to other idolatrous gods, the word *elohim* is not sanctified even if the scribe intended it to refer to Hashem’s name, because the context proves that it refers to pagan gods rather than to Hashem. Based on these and other sources, many authorities state that any letters forming the name of Hashem are not treated with sanctity, including names of people or locations such as Beit El, Nechemya, and others.³⁸ Although some act more stringently, this is considered to be the standard halacha.

Based on the considerations above, Rav Yaakov Ariel (*B’oholah shel Torah siman* 42) argues that perhaps there is room to be lenient that not only may one wear jewelry or rings (or sweatshirts) with Torah verses on it, it may even be permitted to bring them into the bathroom, since perhaps the verses are intended not as Torah content, but rather simply as an expression of friendship. For example, the phrase of “*Ani L’dodi V’dodi Li*,” “I am to my beloved as my beloved is to me,” found on a ring may not have been intended to refer specifically to the verse in *Shir HaShirim* (6:3), but rather is simply being used as a “catch phrase” to demonstrate a person’s affection or friendship for another individual. Similarly, someone who gives his wife a necklace with the expression “*Eishet Chayil Mi Yimtza*,” “A wife of valor who can find,” may possibly have in mind that she is a wonderful

(*Shevet HaLevi* 7:167) feels that the accepted halacha follows the *Shulchan Aruch*, and therefore permits using phrases from *pesukim* in a newspaper to wish a *mazal tov*. Rav Moshe Shternbuch (*Teshuvot V’Hanhagot* 2:466) also accepts this premise in the context of newspapers and magazines which contain a passing reference to words of *Chazal*, but are not written for the purpose of teaching or learning Torah. See also *Yabia Omer* referred to below as well as other sources cited in *Piskei Teshuvot* (154:#14 and note #99) concerning currency with the name of Hashem on it.

38. See *Pitchei Teshuvah* (*Yoreh Deah* 276:28), *Sdei Chemed*, and *Piskei Teshuvot* (*Orach Chaim* 154:18).

person rather than the specific *pasuk* in *Mishlei* (31:10) from which the quote is derived.

Rav Ariel explains, based on a responsum of Rav Ovadia Yosef (*Yabia Omer* 4:Yoreh Deah 21), that we must ascertain the intention of the artisan who fashions the jewelry for these purposes, not that of the person who wears or buys the ring.³⁹ If the artisan intended to refer specifically to the *pasuk*, then it would retain sanctity, while if he wanted to employ the phrase as a catchy line, then it would not be sanctified.

Consequently, Rav Ariel suggests that without additional information, perhaps it can be presumed that the craftsman who fashioned the jewelry belongs to the majority of individuals who would not specifically employ the expression as a verse from *Tanach*. This is an especially logical conclusion given the fact that the prohibition of causing degradation to Torah verses is only rabbinic in origin, as discussed above (in contrast to the Name of God). However, Rav Ariel limits his potential leniency to a case when the actual source in *Tanach* is not mentioned on the jewelry, but if the jewelry actually contains the citation of the verse, such as noting that the verse “*Eshet Chayil Mi Yimtza*” cited above comes from *Mishlei* chapter 31, then clearly the craftsman does refer to the *pasuk*, and thus the jewelry would contain sanctity.

However, it is possible that in our situation, the quotes used

39. Rav Ovadia's responsum discusses the halachic status of Hashem's Name engraved on a coin, and after citing numerous sources in his usual style, he concludes that the coin does not contain sanctity since the individuals that fashion it do not have the intention of infusing it with holiness. One of his primary sources proving this contention is the Gemara (*Arachin* 6a) concerning a utensil containing the name of Hashem on it, where part of the issue revolves around whether the person who fashioned it intended for the *Shem* (name) or not, but the intention of the purchaser is irrelevant. The same conclusion can be drawn from the examples involving *elohim acherim* as well as numerous other cases discussed in the laws of writing Hashem's Name in a *Sefer Torah*, where it is clear that in cases when intention is relevant, we follow the intention of the scribe who wrote it.

do indeed refer to Scripture. In fact, many of those used are not necessarily common expressions. Rather, they are chosen precisely to recall their Torah content.

Moreover, one could also argue against Rav Ariel that perhaps the majority of jewelry containing Torah verses is fashioned by traditionally inclined artisans who are well versed in *Tanach*. If that is correct, one would surmise that most of the verses used are indeed being quoted specifically because of their religious content, and would not necessarily be subject to Rav Ariel's limitation here.⁴⁰ Truthfully, even Rav Ariel himself concludes at the end of his responsum that despite the room for leniency, "it is not recommended to purchase a pendant of this type."

VII. Using this jewelry if the person did not personally buy it.

We have seen up to this point that one should not purchase such jewelry when it contains *pesukim* or sayings of *Chazal* with more than three or four words, aside from the exceptions discussed above. This is indeed the position of Rav Ariel as mentioned, Rav Hershel Schachter,⁴¹ and other contemporary *poskim*, despite the fact that the Rambam and *Shulchan Aruch* formulate the prohibition as not embroidering rather than not owning or purchasing. Rav Moshe Feinstein (*Yoreh Deah* 2:136), in discussing wearing a ring with Hashem's Name on it, also acknowledges the halachic difficulties in selling and buying such a ring due to concerns of being placed in unclean locations (which applies even to *pesukim* that don't include Hashem's Name). However, in contrast to wearing a ring with God's Name on it, which the *acharonim* explicitly do not recommend wearing, it is not entirely clear from the sources

40. This position is supported by the fact that on the website of "Hadaya Jewelry," all of the quotes are source referenced, indicating that they are well aware of the fact that many come from *Tanach*.

41. Written communication from July 15th 2012.

whether it is appropriate or permitted to wear jewelry containing *pesukim* once it has already been purchased. Is it permitted to use if one receives it as a gift (they are very popular items)? Alternatively, if a person only discovered the halachic issues involved subsequent to purchasing it, is a person required to dispose of it or place it in storage indefinitely? Or would we say that given that such jewelry is quite expensive, may people be more lenient when they did not purchase it themselves? What should they do if a close family relative gave it to them and will be upset and insulted if it becomes known that the person never wears it?

Perhaps one can argue that once it is already in the person's possession, it turns into a *bedieved*, or *post facto* question, for which the halacha sometimes rules more leniently, so perhaps we would not be so stringent as to forbid wearing it altogether. On the other hand, given that the entire second reason of Rambam focuses on the constant dangers inherent in wearing it, it would seem logical that we should always discourage or forbid wearing it as well, since the danger of bringing into the bathroom or other unclean areas most certainly is relevant.

An additional point to consider in this context is that the Rambam towards the end of his responsum states that it is praiseworthy for the owner of the garment with the *pesukim* on it to cut them off and bury them, and "this is obligatory to do." This would indicate that indeed one may not wear or even keep such objects around the house. However, the *Shulchan Aruch* and many of the other *acharonim* do not mention this comment of Rambam, so perhaps this is not required as practical halacha.

Rav Hershel Schachter⁴² and other *poskim* felt that one should not wear or even keep such jewelry around the house, but should make sure to keep it stored away where no one will see or use it.

42. Written communication dated July 15th 2012.

VIII. Bringing items into the bathroom

Is it halachically permitted to enter the bathroom while wearing such jewelry, or a sweatshirt with Torah content? Although, as discussed, ideally a person should not own them in the first place, this question may still be relevant for those *poskim* discussed above who are lenient when necessary and do not require storing or disposing of them when already in the individual's possession. In addition, this may be an important question for rabbis and educators faced with an individual who insists on purchasing or retaining possession of this jewelry, but might agree at least to treating it properly. Based on the sources discussed above, it would indeed appear that according to most opinions, the Torah verses do contain sanctity (except for the possible exceptions discussed above) and thus should not be brought in to the bathroom while worn on one's hand or around one's neck.

Would it be permitted to bring inside the bathroom if one ensures that it is fully covered? To answer this question, we must turn to a discussion concerning the sanctity of *tefillin* for which similar rules apply. In this context, the Gemara (*Berachot* 23a), codified by the *Shulchan Aruch* (*Orach Chaim* 43:6) states that one can bring them into the bathroom if they are placed inside some other container.⁴³ According to the *Mishnah*

43. This is the standard rule which is generally followed. However, there are actually numerous distinctions concerning the question of bringing *tefillin* into the bathroom, including whether he plans to don them again upon exiting, whether he actually uses the bathroom or not, what type of talmudic bathroom is being used, how big the container is, etc. For a full discussion of the material, see the talmudic discussion referenced in the text, *Tur/Beit Yosef* (*Orach Chaim* 43), *Shulchan Aruch* there, and its commentaries. Concerning the status of modern day bathrooms which are not usually as dirty as those of old, see for example Rav Yitzchak Yaakov Weiss (*Minchat Yitzchak* 1:60), Rav Ovadia Yosef (*Yabia Omer* 3:*Orach Chaim* 2), Rav Eliezer Waldenberg (*Tzitz Eliezer* 7:5), and *Piskei Teshuvot* (43:#2, 83:#4). For an English summary of the material, see Rabbi Dr. Ari Zivotofsky, "Your camp shall be holy: Halacha and modern plumbing," *Journal of Halacha and Contemporary Society*, Spring 1995.

Berurah (*Orach Chaim* 40:7), a container in this case is actually defined as a covering, even if it does not enclose the holy object on all sides.

However, the *Shulchan Aruch* (*Orach Chaim* 43:7) cites the opinions of *Sefer HaTerumah*, Rabeinu Yerucham, and *Tur* that limit this rule to a bathroom away from home where there are no alternative locations to safely store the *tefillin*; but at home, where one can easily place it somewhere else, one should not bring the *tefillin* into the bathroom at all.⁴⁴

The implication of this statement, notes the *Magen Avraham* (43:14), is that when at home, *tefillin* may not be brought into the bathroom even when concealed in some other container. However, *Machatzit HaShekel*, cited by the *Mishnah Berurah* (43:24), suggests that if one places the *tefillin* container inside another covering or pocket of some sort which is not designated specifically for holding the *tefillin*, such as a pants pocket, it would always be permitted to bring the *tefillin* into the bathroom. This is because an object stored inside two containers is considered entirely halachically permitted.^{45 46}

44. *Ateret Zekeinim* and *Machatzit HaShekel* in their comments to this halacha both note that according to this, even outside the house if one can easily place the *tefillin* somewhere safely when entering a bathroom, such as having a friend hold them or placing them in one's wagon (or car in today's times), it would still be prohibited to bring into the bathroom with one covering alone.

45. Some *poskim* are stringent to forbid even a case of two containers: see *Aruch HaShulchan* (*Orach Chaim* 43:13) who does not quote this leniency, and *Kaf HaChaim* (*Orach Chaim* 43:30) who doesn't understand why this solution was invented if they can easily be placed somewhere else, and therefore recommends not relying on this leniency. However, the lenient view taken by the *Mishnah Berurah* has been accepted as the mainstream halachic approach, as pointed out by the *Piskei Teshuvot* (*Orach Chaim* 43:#3) and others.

46. For a discussion and list of sources concerning the necessary qualifications for two coverings, which types of utensils are considered to be designated specifically for *tefillin*, and the status of a *tallit* bag, see *Piskei Teshuvot* (40:#5 and 43:note #12) and Rav Dovid Yosef's *Sefer Halachah Berurah* (Siman 40, #6-7).

How do these rules concerning *tefillin* apply to jewelry or other materials with scriptural verses on it? It would seem logical that these would be subject to the same rules as *tefillin* and should not be taken into the bathroom with one covering, and perhaps not at all. Indeed, the Gemara (*Berachot* 23a) reports that Rav Yochanan gave some of his Torah writings to his students before entering the bathroom. However, in reality authorities debate this issue extensively, and three major approaches emerge from the *acharonim*. *Magen Avraham* (*Orach Chaim* 43:14), followed by *Beer Heitev* (*Orach Chaim* 43:11), claims that in contrast to *tefillin*, one can allow entering the bathroom with *pesukim* using one covering or container alone which covers it entirely. He proves this by noting that *Shulchan Aruch* (*Yoreh Deah* 282:7), based on the Gemara (*Shabbat* 62a) and Rambam (*Hilchot Sefer Torah* 10:6), allows one to enter a bathroom with an amulet (which usually contained the name of Hashem on it) provided that it is covered with leather. Other *acharonim* rule this way as well, including *Radbaz* and *Pri Megadim* (*Ashel Avraham* 14), and this would indeed seem to be the simplest approach based on the sources. However, the *Shulchan Aruch HaRav* (43:6) claims that this leniency applies only to a bathroom outside the house where it may be difficult to find a safe place to store the holy object, but inside the house, he says one should be stringent since it can be placed anywhere in the house. A third approach offered by other authorities, such as *Eliahu Rabbah*, holds that one must be more stringent than other holy objects and scriptural writings always require two coverings and entirely parallel the halacha for *tefillin*, where two coverings are required.⁴⁷

Applying these opinions to our case, it would seem that according to the *Magen Avraham* and those authorities who

47. See *Shaarei Teshuvah* (43:11) who cites this opinion and then claims that parents who place amulets with Hashem's Name on them on their children require two coverings all the time, since children sometimes soil their clothes.

follow his opinion, it would always be permitted to remove the ring or jewelry and place into a shirt or skirt pocket before entering the bathroom, which is not such a difficult solution. However, for those outfits that do not contain pockets, avoiding this problem may involve more difficulty. Perhaps in such situations, at least for necklaces, one can simply tuck it in underneath one's shirt so that it is covered with at least one covering.

According to the *Shulchan Aruch HaRav*, the above approach only applies outside of one's house where no easy solution exists to safely leave the jewelry outside of the bathroom, but inside one's house, one would be obligated to remove it and place it down before entering. The same should apply even outside the house in any situation where an easy solution exists, such as giving the jewelry to a friend, or placing in a backpack which remains outside, etc.⁴⁸ One may also rely on the leniency of *Machatzit HaShekel* and *Mishnah Berurah* and place the jewelry inside a container of some sort and then place in one's pocket, thus qualifying as two containers, but it may be easier to simply remove them completely and place down somewhere. Of course, a sweatshirt with Torah material would not be easy to place into any containers, and it would seem that removing it before entering the bathroom is the best option.

According to *Eliahu Rabbah* and the more stringent approach, one must always either remove the jewelry entirely or place it inside two coverings, such as a container inside a pocket, or a container in a backpack, in order to permit entering the bathroom with it.

Which of these opinions is accepted by recent authorities as practical halacha? The *Mishnah Berurah* (43:25 and *Shaar Hatziun* 16-18) cites all of the above opinions without issuing a

48. See above footnote #44.

clear definitive ruling.⁴⁹ *Aruch HaShulchan* (*Orach Chaim* 43:13) in contrast simply quotes the Rambam allowing an amulet covered with leather to be brought into the bathroom, indicating that one covering alone suffices in his opinion. Finally, *Kaf Hachaim* (*Orach Chaim* 43:28) takes the other extreme and suggests that it is appropriate always to be stringent if possible not to bring them into the bathroom at all, and certainly not with just one covering.^{50,51}

In the absence of a clear stringent ruling by the majority of halachic decisors and especially given the fact that the entire concern here is only a rabbinic one, if this situation arises it would seem that there is room to be lenient on this point when needed.⁵²

49. In the *Mishnah Berurah*, he first cites the *Magen Avraham's* lenient approach, and then cites the more stringent approach of *Eliahu Rabbah* only as "others say" rather than as the definitive ruling, while the *Shulchan Aruch HaRav's* middle approach is cited only in the *Shaar HaTziyon*. Thus, it would seem that he primarily accepts the lenient approach, but does not rule this way absolutely.

50. Rav Eliezer Melamed (*Peninei Halacha Likutim I* p.123) states that most *poskim* adopt the lenient approach but others are more stringent. He too does not give an absolute ruling, but appears to indicate that one can be lenient if they choose but those that wish to be stringent can do so as well.

51. Concerning *sefarim* and other papers containing words of Torah, many *poskim* have ruled that one covering suffices when it is necessary to bring them into the bathroom, due to a combination of factors: 1) Printed or photocopied words of Torah may not contain sanctity anyway. 2) The binding may count as one covering as well. 3) Script which is not *Ktav Ashuri* may have a more lenient status, as discussed above. 4) The status of our modern bathrooms today is debated by the *poskim* and despite the fact that we are generally stringent, they are not definitively considered to be unclean. See Rav Eliezer Waldenberg (*Tzitz Eliezer* 11:5) and other sources cited in *Piskei Teshuvot* (*Orach Chaim* 43:#3) and *Sefer Halachah Berurah* (*Orach Chaim* 43:8). However, reasons #1 and #2, which are generally viewed as the primary ones, do not apply to jewelry containing scriptural verses, and therefore it is more difficult to rule conclusively that one covering is always permitted.

52. We should note that in all of the discussions about *pesukim* being brought into the bathroom, the *poskim* are presumably referring to Torah content or *sefarim* which is important to have and therefore they are willing

IX. Summary and conclusion

Let us summarize and organize our findings concerning this issue.

1. It is halachically problematic to fashion or purchase jewelry which contains verses from the Torah or words from rabbinic literature, either because of the issue of writing *pesukim* outside of a *Chumash* for non-educational purposes or more importantly due to the concern of potential disgrace of bringing such items into unclean places such as the bathroom.
2. If only two or three words (depending on which opinion is followed) are engraved in total or placed on one line, it would be permitted to buy list items as well as bring it into the bathroom, since it does not contain any sanctity.
3. It is permitted to fashion or purchase jewelry or clothing which contains verses from the Torah. If only part of a word is used, the last letter(s) are cut off from the name, or abbreviations are used instead of the complete word.
4. Hebrew text written in block Hebrew letters may also be problematic according to some *poskim* due to the issue of using *Ktav Ashuri* for mundane topics.
5. Jewelry which either contains phrases or sayings not found in the Torah or *Chazal* are permitted to buy and wear normally.
6. Jewelry containing an actual name of Hashem on

to entertain options of how to cover it properly. In our case, on the other hand, we have seen that most *poskim* do not allow making or owning such objects in the first place, presumably because their use is not considered a crucial one, and the question of bringing into the bathroom would only arise in situations where that is difficult to follow.

them may be more halachically problematic than others and should be avoided.

7. If an individual has already purchased the problematic jewelry or is given it as a gift, *poskim* debate whether it is permitted to wear it and retain it in the house, but it certainly must be treated with the proper respect.
8. One must cover the jewelry (see #6) before bringing it into the bathroom, and some require using two coverings or not bringing it in at all.

It is clear from the above discussion that serious halachic questions exist concerning this type of jewelry, both in purchasing as well as in wearing it. Although it may be commendable that many individuals today desire to keep some reminder of Hashem or the Torah with them at all times, it does not appear to be worth the halachic risk to do so. The best alternative options one can suggest, as previously mentioned, are purchasing those with sayings from other sources, or possibly three-word expressions. Rav Yaakov Ariel, after proposing possible avenues of leniency as noted above, still concludes with the remark that “ideally it is not recommended to purchase such a piece of jewelry.” Indeed, although it is admirable that people desire to keep reminders of Hashem and of the Torah with them at all times, words of Torah are probably best kept in *sefarim* rather than placed on jewelry or on sweatshirts.

Aside from these considerations, many individuals will probably forget to remove their jewelry when entering the bathroom, thus violating a prohibition every time. One who finds himself in the situation of owning or wanting to purchase one of these should certainly consult a *rav* for personal guidance. But it is hoped that our discussion in this article will generate increased awareness of the halacha and encourage extra caution for maintaining the holiness of biblical verses.

Letters

Dear Editor,

In Rabbi Reiss's article (JHCS, Pesach 5772) on child molestation he writes about the difficulty to know for certain that molestation has occurred: "One hurdle is that acts of child molestation typically occur in private, with only the children able to testify about what has transpired." He then applies the Ramo (*Choshen Mishpat* 35:14) that in circumstances where the only individuals present are minors, they can testify with respect to actions committed in that venue. However, it seems to me that the Ramo is not applicable in our situation, because we are dealing with minors who are the injured party, as is quite clear from the quoted section above. The Ramo did not permit "testimony" from minors if they are the *Baal Davar* (plaintiff or defendant), as that is not "testimony" and they are not "witnesses" but rather *Baalei Davar*. [The *Shach* and *Aruch Hashulchan* say that even relatives are not included in the Ramo's rule, *Kal V'chomer* the *Baal Davar*.] The only applicability of the Ramo would be if a minor witnessed an act of molestation committed against another person, which is of course not the typical situation and is not what is being discussed here.

Sincerely,

RABBI BINYAMIN COHEN

* * *

Rabbi Reiss responds:

The comment of Rabbi Binyamin Cohen is very much appreciated. Rabbi Cohen is correct that I noted in my article that the Ramo (C"m 35:14) cites the special dispensation to accept testimony from minors when there are no adults present, and that this ruling of the Ramo is relevant to testimony of minors regarding allegations of child molestation. In fact, I cited the ruling of the *Shoel U'Meishiv* in

my article, who applies the ruling of the Ramo precisely to the situation described by Rabbi Cohen, namely testimony by a minor about a person who molested the minor himself (see also Rabbi Zvi Gartner's introductory article about child molestation in *Yeshurun*, Volume 15, at 638-639, who invokes the *Shoel U'Meishiv* as well in the context of dealing with contemporary cases).

In the case of the *Shoel U'Meishiv*, there were two minors who reported, after they had reached adulthood, that they had each been molested by a certain person during their childhood. Although normally minors would not be believed even in their adulthood (regarding matters of biblical import) the *Shoel U'Meishiv* cites the Ramo as the basis for accepting their testimony in this case since there were no adults around to witness their alleged molestation. Furthermore, the *Chikikei Lev* (Y"D 47) also writes based on the Ramo that in the event such allegations are made in a small schoolhouse where only minors would be present, they could be believed with respect to their allegations. The *Chikikei Lev* dealt with a case where a minor accused a schoolteacher of touching him inappropriately. He ultimately dismissed the claim as insufficient for removal of the teacher based on several grounds, including the fact that there were adults around who did not proffer testimony, but then indicated that in a case where only minors are present, they can be believed with respect to this type of testimony based on the ruling of the Ramo. The opinion of the *Chikikei Lev* is cited in the *Kovetz HaPoskim* (C"M 35:14), who specifically refers to his case as one dealing במלמד שהעידו עליו נשים וקטנים שמתנהג עמהם בדברים – with a teacher whose pupils testified about his behavior vis-à-vis themselves.

Both of these sources, of course, are subject to the same question posed by Rabbi Cohen: shouldn't the testimony be discounted anyway given that the minor is a *ba'al davar* (personally involved)? To this Rabbi Cohen raises a *kal v'chomer* (*a priori* argument) from the case of a relative, who is

excluded from the Ramo's dispensation according to the *Shach* and the *Aruch Hashulchan*. However, the reality is that neither the *Shach* nor the *Aruch Hashulchan* exclude a relative, a class explicitly included by the Ramo. They simply state that a relative is believed (in cases where only relatives were present) only to indict another relative, but not to exculpate a relative. In the case of testimony regarding molestation, it is important to note that the purpose of the testimony is neither to indict nor exculpate the *ba'al davar*, but to disqualify the perpetrator from his role as a caretaker of young children.

Perhaps the explanation for the application of the Ramo's principle to cases where minors are testifying about their own molestation is that there would be no invalidation of such testimony even with respect to adults. The *Shulchan Aruch* C"M 34:26 records the halacaha that a person can testify that "*ploni ravo afilu lirtzono*" – that he was sodomized by a specific perpetrator. According to the *Shulchan Aruch*, that testimony is accepted and can be combined with another witness to invalidate the perpetrator as a witness. According to the Rambam, such testimony can even be grounds for the imposition of capital punishment. This is based on the principle of "*palginan diburei*" – that the person's testimony is believed with respect to the perpetrator but not with respect to himself. Thus, it would be possible based on this halacha to accept the testimony of children, in accordance with the special dispensation cited by the Ramo, even if we would not accept their testimony vis-à-vis themselves.

It is noteworthy that the *Shoel U'Meishiv* himself seems to provide a different answer to this question (albeit in somewhat cryptic fashion) at the very conclusion of his responsum, in which he responds succinctly to various critiques leveled against his ruling. He indicates that even without application of the principle of "*palginan diburei*," the minor would nonetheless be believed for purposes of removing the perpetrator from his position as a caretaker of children, since the Ramo's "*takanah*" does not require satisfaction of normal

rules of testimony. However, based on the comments of the *Shach* and the *Netivot* (as well as the Ramo himself) to *Siman* 34:26, who require that in order to invoke the principle of “*paligan diburei*” a person cannot seek to reap a monetary benefit from his testimony, it is possible that when the sole testimony indicting an alleged molester is from the children who have been molested, the children would not later be able to assert monetary claims against the perpetrator in such a case. This last question is worthy of further analysis.

In summary, in situations in which multiple children are present (which does indeed happen, as when multiple children are invited to sleep in the same bed with the alleged perpetrator, etc.) it is clear that the dispensation of the Ramo would be applicable with respect to one minor testifying about what occurred to another minor, and it is additionally clear from the *Shoel U'Meishiv* and other *Acharonim* that the dispensation of the Ramo is also applicable to cases where the minors testify about molestation that they themselves have endured.

In this response, I have endeavored to provide the reasoning for the application of the Ramo to these circumstances. I thank Rabbi Cohen for provoking a further exploration of these sources.

* * *

To the Editor,

In regards to Rabbi Jachter's enlightening article on nullifying conversions (Fall 2011):

With the idea of nullifying conversions, we walk down a dangerous road that will ultimately undermine fundamental cherished principles of our religion. As is often the case with dangerous journeys, each step may seem innocuous enough, even reasonable. So, blithely forward the traveler goes, never bothering to stop, look up, and take thought of where he is going and why.

A bedrock idea of Judaism is that once joined to our faith, one is completely a Jew with all rights and responsibilities (except, of course, certain ancillary issues). Open up any introductory guide to Judaism, and this is probably one of the first things said on the subject of conversion. With the growing acceptance and practice of nullifying conversions, this important idea is being eroded. In its place is the notion that converts are only semi-Jews, having to live the rest of their lives on probation. Stray from the path – or be accused of having done so – and one risks having one's Judaism taken away. After all if one is thought not to be observing mitzvot, how does one answer the charge that you never meant to observe them all along?

What, one might ask, is the next step? Could a woman, perhaps long deceased, have her conversion nullified, in turn also nullifying the Judaism of her many descendants? Could a convert, having grown tired of Judaism, simply come before a *beit din* and testify that he was untruthful about some aspect of his observance, thus ending his membership in Judaism?

We must instead listen to the voices that have been relegated to "minority" status. For those who dream of a perfect Judaism, with every member united in correct, fervent observance, this is a hard pill to swallow. But underlying their so-called leniency is theological clarity and consistency.

"If they do not fulfill mitzot," Rav Uzziel wrote, "they will bear their sins and we are free from responsibility for this." This statement strikes against the hesitancy and hand-wringing that have come to characterize Orthodox conversions, as *batei din* worry about being "responsible" for the success of the conversion. Rav Uzziel points out the truth that no one but the convert himself can hope to be responsible for his conversion. Conversion is a deeply spiritual interaction between God and the convert. The *beit din* process is merely our – necessarily imperfect – way of acknowledging that this interaction has taken place. A *beit din* does not "make" someone Jewish any more than a human being can accomplish

any of God's other mysterious, miraculous feats. Further, any attempt to plumb the depth of the convert's soul, looking for hidden sins, is doomed to failure as well, for this, too, is the exclusive provenance of God.

"We must leave the door open for them," Rav Uzziel writes. This, rather, reflects the true responsibility of the *beit din*. Certain members of the human race – not born Jewish – have a rendezvous with Judaism, a destiny that we as born Jews must help them fulfill. For most converts, this will be a wonderful destiny that brings happiness to their lives and the world closer to redemption. Others may fare less well. But it is not for us to put insurmountable obstacles before them or try to take away what they, with sacrifice and commitment, have worked hard to achieve.

Sincerely,

RABBI FRED GROSSMAN

* * *

To the Editor:

The article by Rabbi Howard Jachter on nullification of conversions, in the *Journal*, Fall 2011, was most interesting and enlightening.

However, I found the implications of the title troubling, suggesting that it is possible to uproot a valid conversion years after a non-Jew has accepted to become Jewish and has been observing mitzvot. I cannot believe that Rabbi Jachter was suggesting any such tactic. Rather, I think [and the gist of the article by Rabbi Jachter confirms this] that the article is actually not discussing uprooting a genuine conversion but rather how to deal with a "convert" who was never sincere, even at the time of conversion, or whose conversion was not performed according to the protocol that is required by Jewish law. Should such a convert be accepted nevertheless? I think that Rabbi Jachter should have been more precise in clarifying that a genuine conversion cannot be revoked.

On the issue of what constitutes a genuine valid conversion, let me refer to a lecture by Rabbi J.B. Soloveitchek [See, *Reflections of the Rav, Volume One, Chapter XIII*], discussing the rebellion of Korach, "The 'Common-Sense' Rebellion Against Torah Authority", where he stresses that Jewish law has its own methodology. In order for an action to be valid in Jewish law, it must conform to the rules of Jewish law, not emotion or logic or any other criterion. "Jews defer only to recognized Torah scholars in the interpretation of Jewish law." Thus, although Rabbi Jachter in his article cites the rulings of Rav Uzziel, who was the Chief Rabbi of Israel, we ought to realize that, without implying any disrespect to Rav Uzziel, the majority of Torah-observant Jews do not and never did consider him the final arbiter of Jewish law. That high position in our generation has been conferred by various segments of the community on Rav Moshe Feinstein, Rav Shlomo Zalman Auerbach, and Rav Yosef Dov Soloveitchek, to name a few of the more illustrious *poskim*.

In Mishnaic times, there were opposing views of Beit Hillel and Beit Shammai, and it was decided that the halacha would follow the Academy of Hillel. Nevertheless, the Gemara notes that each group maintained and followed their own traditional rulings; despite their differences, they would intermarry. However, Rashi notes that they were careful to point out to a man contemplating marriage with a woman from a family with an opposing tradition, the possible halachic problems, so that problematic marriages could be avoided. The same thing would apply nowadays – if a rabbi or a rabbinic court performs a conversion based on an opinion which is not accepted by the majority of rabbinic authorities, they are often causing problems for that convert in the future, because there will be many people who don't accept that convert as a Jew.

Any *beit din* which fails to confirm the genuine commitment of prospective converts to Torah and halacha is not really doing them a favor. In the future, he is more than likely to find that his status as a Jew is challenged or not accepted. The State

of Israel may reject their conversions, some Jews will not accept them as marriage partners, and they may find that some yeshivot will not accept their children as students, questioning the authenticity of their Judaism.

M. LEVY

* * *

To the Editor of the *Journal of Halachah and Contemporary Society*:

Dr. Rybak's important article, *Aging Ovaries and Age-Old Tradition: Elective Egg Freezing in Jewish Law* (Spring 2012; pp. 30-36), opens up an important public policy issue for the Orthodox community:

At what age is it appropriate for the single Orthodox woman to consider egg freezing, what are the social implications and to what extent, if at all, should this activity be supported by the community? From a medical perspective, a woman should ideally freeze her eggs when her ovarian reserve is highest and her fertility potential strongest, i.e. in her 20's. Rabbis who have become knowledgeable about the issue and who recommend egg freezing generally suggest doing so between the ages of 32 and 35 years old, with 35 being considered the late end; by the age of 40 and beyond the time has passed for most women. The age recommendation is modified only when other fertility issues are apparent. However, fertility issues – mainly diminished ovarian reserve (low egg supply), which inhibits fertility – are often discovered only during the testing required in advance of the egg harvesting procedure. This leaves many women in a quandary not only on the issue of egg freezing but also regarding testing for their fertility potential prior to marriage.

Like most of their peers in the secular world, the initial focus for young, Orthodox Jewish women at the onset of dating is on finding “Mr. Right.” Because of the intense focus on family building in the community, however, it may take but a few

failed attempts to find the right *shidduch* for the focus to morph into "will I *ever* be a mother?" As the search continues, fertility slowly starts to decline. Dating in the mid 30's to late 40's leaves many such women and any potential partner unsure of whether to ignore or to attend potential fertility issues heralded by the biological clock, which ticks faster for women than it does for men.

Dr. Rybak makes a compelling case for using egg freezing as a solution to the more fraught issue of egg donation. On a community-wide scale, it would seem to make sense that this would be a widely adopted position. However, there are other issues of concern. Foremost is that the procedure and drugs involved are quite costly. Couples currently facing the need for expensive fertility treatments have access to support from a number of community organizations. Should elective egg freezing fall under the rubric of such organizational missions? How might Orthodox Jewish organizations respond to the concern, as Rybak stated, of women who, having despaired of finding their *shidduch*, choose to use their frozen eggs for fertilization with donor sperm to conceive their children? Will the traditional Jewish value system need to change and support single Jewish mothers, as has already happened in some Israeli communities?

One must also anticipate that unintended social issues will come to the fore if egg freezing is widely accepted within the Jewish community. Suppose, for example, that a young woman who is evaluated for the procedure finds out that her fertility potential is significantly reduced. What obligation does she have regarding disclosure to a potential *shidduch*? At the other extreme, will a woman who has successfully frozen her eggs be perceived as a more desirable match than one who has chosen to forego this option? Once a woman has chosen to freeze, a different set of issues may arise. Particularly when this is done at a young age (to maximize the procedure's potential usefulness), what statement is such a woman making about herself? Is it reflective of her self-image in the same way

that, say, the decision to undergo rhinoplasty? Is it a sign of deficient *emunah* that she will find the “right” one at the right time? How might such decisions be perceived by single men in the community? Would a woman with frozen eggs need to disclose this to the person she is considering for marriage?

Were egg freezing for single woman to become widely accepted within the Jewish community, this could surely affect the collective psyche. The new focus of young women may eventually shift from one of planning families when they are young to one of pursuing careers and other life goals, knowing that they have the option of delaying marriage and having children until later in life.

It is worth noting that in vitro fertilization was once considered experimental, strange, and halachically suspect, yet is now welcome among the full spectrum of Orthodox Jewish communities. Egg freezing is a technology that may take the same path, and it has the potential to markedly alter the social dynamic that has traditionally been at the core of the Jewish family. How and when to bring up egg freezing with unmarried *frum* women, and what social impact this procedure may in the future, is unexplored territory. We should be having a discussion about it.

E. Lewkowicz, RN BSN
GENESIS Fertility & Reproductive Medicine
Brooklyn, New York

* * *

Dr. Rybak responds:

Indeed, as you have so eloquently stated, the public policy and *hashkafic* issues posed by (widespread) elective egg freezing are complex – and likely thornier than the strictly halachic considerations invoked by unmarried women pursuing an essentially low-risk medical intervention designed to enhance their marriageability and maximize their chances of bearing offspring using their own eggs. Should

Rabbonim endorse elective egg freezing on an individual or general basis, it will stem from their assessment that the benefits it poses to *Klal Yisrael* and *Kedushat Yisrael* outweigh the risks. Egg freezing offers an obvious strategy for some unmarried women to lessen the likelihood they may have to rely on donor eggs in the future. For some, it may provide an alternative to considering motherhood even outside of marriage – an endeavor strongly opposed by halachic authorities. As you note, however, the availability of frozen eggs can be a double-edged sword. I agree with your sentiment that we, the Orthodox community, should have a discussion regarding egg freezing as well as the social and reproductive predicament confronting unmarried women. As medical practitioners, you and I have done our respective jobs by bringing the medical facts of reproductive aging and egg freezing to the forefront. But, ultimately, the crucial discussion must be among our halachic authorities, whose decisions and recommendations guide our actions.

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