

Journal of Halacha and Contemporary Society

Number LXVIII

**Published by
Rabbi Jacob Joseph School**

WE ARE PROUD TO DEDICATE
THIS VOLUME OF THE
JOURNAL OF HALACHA AND CONTEMPORARY SOCIETY

IN HONOR OF
MOSHE KUPIETZKY
משה יוסף בן הרב יעקב צבי ע"ה

IN CELEBRATION OF HIS
SEVENTIETH BIRTHDAY.

MAY HE AND ARLENE AND THEIR
CHILDREN AND GRANDCHILDREN
BE BLESSED WITH HEALTH AND
ABUNDANT SIMCHA AND NACHAT.

DASSIE AND MARVIN BIENENFELD
ELLEN AND MORRIS BIENENFELD
JOANNE AND MOSHE BANE
AND THEIR FAMILIES

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**Rabbi Alfred S. Cohen,
Editor**

The Journal of Halacha and Contemporary Society

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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.

Inquiries regarding subscriptions, back issues of the Journal and related matters can be faxed to (212) 334-1324 or sent by email to mschick@mindspring.com.

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Letter from the Editor

Some 30 years ago, upon the encouragement of Dr. Marvin Schick, President of the Rabbi Jacob Joseph School, we entered upon a new venture – to edit a publication which would explore the complexities of Jewish law (Halacha) in the context of a rapidly changing world.

Truth be told, I could not at that time have imagined what a wonderful and life-changing experience this undertaking would become. The numerous people that I have met in the course of editing this Journal, contributors and thinkers from all over the world, the lively discourses, the intellectual challenges – all have been highly stimulating and deeply satisfying. The experience has vastly exceeded even my fondest hopes.

Moreover, the overwhelmingly positive response to the Journal both from contributors and readers, has been a source of great personal satisfaction. I am humbled and thrilled by the success of the Journal.

However, I believe it is time for someone from the younger generation to assume the role of editor, someone who will be able to perceive, define, and address the new challenges which emerge for the Jewish people in the modern world. To that end, I will be leaving my post as editor of the Journal of Halacha and Contemporary Society, eagerly looking forward to witnessing its new direction and new leadership.

I cannot retire from this position, however, without expressing my deeply felt appreciation and admiration for the members of the board of the Rabbi Jacob Joseph School, for their support throughout the years, both financial and personal. Above all, I must express my unlimited respect for and admiration of Dr. Marvin Schick, president of the RJJ school, without whose vision and dynamic leadership this Journal would never have been possible. His consistent encouragement and invaluable advice, his dedication and wisdom, have contributed immeasurably to the success of our endeavor. Marvin is a unique individual, a person who has given unstintingly of his time, his thought, his energy for the benefit of the Jewish community in an unparalleled career of devotion to the Jewish people. May the Al-mighty

reward him and his family for their goodness, and grant him many more years to continue his good works.

In leaving, I want to thank the members of my family for their patience, encouragement, and input over the years, as well as the Editorial Board and many others who helped read and edit the Journal. I need to thank especially those who contributed articles to the Journal, so that we could accomplish our goal: to enlighten and clarify practical Jewish law for those interested in understanding and appreciating our beautiful heritage, and showing how the timeless Torah remains vitally relevant and modern throughout the ages.

Finally, I thank our many readers for their responses to the articles, their encouragement and their enthusiasm. Hopefully, the coming years of the Journal will continue to enrich Jewish life in America and elsewhere.

RABBI ALFRED COHEN

Using *Tzedaka* Funds to Pay for Fertility Treatments

Rabbi Dovid Sukenik

Establishing a family is a cherished dream for most couples, but sometimes the reality is that difficulties arise in conception or delivery of children. Medical treatment of fertility problems is a common attempt to address these issues. In addition to the emotional and physical stress that may result from the pursuit of fertility treatments, a couple facing infertility often confronts a financial burden as well. The American Fertility Association states:

Infertility affects approximately 6.1 million Americans, about ten percent of the reproductive age population. Due to the high cost of treatment, most suffer not only emotionally, but also financially. The infertile pay premiums for health benefits, such as maternity services, that they are unable to use... Currently, no federal legislation exists mandating insurance coverage for infertility treatment. Only 15 states have mandates to provide or offer insurance coverage for infertility treatment.¹

According to the American Society for Reproductive Medicine (ASRM), the average cost of one cycle of In-Vitro Fertilization (IVF) in the United States is \$12,400.² The Bnei Olam website reports:

1. American Fertility Association, "Insurance and Advocacy Handbook," <http://www.theafa.org/article/afa-insurance-and-advocacy-handbook/>.

2. American Society for Reproductive Medicine, "Q06: Is In Vitro Fertilization Expensive?" <http://www.asrm.org/detail.aspx>.

Rabbi Sukenik is a rebbe at the Joseph Kushner Hebrew Academy and Rae Kushner Yeshiva High School.

Few insurance companies offer fertility coverage and even fewer fertility experts accept fertility insurance. Fertility insurance and coverage rules are more difficult to navigate than most other insurances. Procedures must be pre-approved and conducted within a certain time frame.³

Although the courts have attempted to force insurance companies to pay for these treatments,⁴ it is still difficult to find a plan that will cover all treatments. As such, medical costs for a couple could easily be well beyond their means, regardless of what professional field they work in. A number of worthy organizations have been created to assist Jewish couples undergoing fertility treatments, including providing financial assistance. Their ability to help couples with the financial burden depends on donations that they receive.

This article will discuss the permissibility of a couple's accepting such funds for these treatments. Moreover, we need to determine whether Jewish law considers donations to such Jewish organizations as fulfilling the religious requirement to give charity. The ramifications of this are important, as the amount of donations could potentially increase if *ma'aser* (tithe) funds could be used. While we will note various halachic principles and rulings, each situation must be dealt with on an individual basis in consultation with a rabbinic advisor, taking into account both the financial and medical situation of the couple.⁵

Using *Ma'aser* Funds

May a couple use funds that they themselves have set aside as *ma'aser* (the mandatory tithe for charity) to pay for fertility treatments? May they accept *ma'aser* money from others for this

3. See http://www.boneihamam.org/services_detail.php?service=insurance.

4. See, for example, the New Jersey Family Building Act of 2001, http://www.state.nj.us/dobi/acrobat/pn02_260.pdf. The new "Obamacare" has done little to change the healthcare approach to paying for these medications and procedures.

5. See <http://www.theyeshivaworld.com/coffeeroom/topic/infertility-treatments-tzedaka> for a candid discussion about this issue.

purpose? Finally, can donations to Jewish organizations that facilitate treatment for childless couples be considered as *ma'aser*?

In order to apply the rules of *tzedaka* (charity) to fertility treatments, we must first review the laws of *ma'aser kesafim* (monetary tithe).

The Obligation to Give *Ma'aser*

There are three opinions among the *poskim* regarding the obligation to dedicate a tenth of one's income to *tzedaka*. Some maintain that the obligation is *de'oraita* (Torah obligation),⁶ others insist that it is *derabbanan* (rabbinic obligation),⁷ and a third group suggests that it is a *minhag* (custom) that dates back to our patriarchs, Avraham, Yitzchak, and Yaakov.⁸

If the obligation is a Torah or rabbinic mandate, *ma'aser* funds can only be used to pay for fertility treatments if those treatments qualify as appropriate use of *tzedaka* funds. If separating *ma'aser kesafim* is merely a *minhag*, however, as many *poskim* assume, a

6. *Rabbeinu Ovadiah Bertenura*, *Pe'ah* 1:1; *Taz*, *Yoreh Deah* 331:32 (see *Aruch Hashulchan*, *Yoreh Deah* 249, who understands *Taz* this way); *Sh"ut Maharam Brisk* 1:70; *Sh"ut Chavot Yair* 224 (in the name of R. Dovid Oppenheim); *Sh"ut Chatam Sofer*, *Yoreh Deah* 232 (in the name of Maharil); *Sh"ut Minchat Yitzchak* 10: 85. See also *Shenot Eliyahu*, *Pe'ah* 1:1, and *Alim L'Terufah* (letters of the Vilna Gaon).

7. *Sh"ut Chavot Yair* 224; *Sh"ut Noda BiYehuda*, *Mahadura Kamma*, *Yoreh Deah* 73; *Sh"ut Ketav Sofer*, *Orach Chaim* 139; *Sh"ut Teshuvah Me'Ahavah* 1:86 (explaining the opinion of *Maharam MiRotenberg*); *Birkei Yosef*, *Yoreh Deah* 249:3; *Sh"ut Tzitz Eliezer* 9: 1.

8. *Sh"ut Maharam MiRotenberg* (defus Prague) 74; *Bach*, *Yoreh Deah* 331; *Sh"ut Chavot Yair* 224; *Sh"ut Shevut Yaakov*, *Yoreh Deah* 2: 85; *Sh"ut Yaavetz* 1: 3, 6 (citing this as the opinion of *Chacham Tzvi* as well); *Sh"ut Mahari Assad*, *Yoreh Deah* 334; *Sh"ut Meishiv Davar*, *Yoreh Deah* 77; *Sh"ut Chatam Sofer*, *Yoreh Deah* 231; *Pitchei Teshuvah*, *Yoreh Deah* 331:12 (in the name of *Mishnat Chasidim*); R. Akiva Eiger, *Commentary to Pe'ah* 1:1; *Sh"ut Noda BiYehuda*, *Mahadura Tinyana*, *Yoreh Deah* 198; *Sh"ut Maharit* 1: 127; *Sh"ut Maharshag*, *Yoreh Deah* 36; *Sh"ut Pnei Yehoshua* vol. 1, *Orach Chaim* 2; *Beit Meir*, *Yoreh Deah* 249; *Ahavat Chesed* 18:2; *Sh"ut Yismach Levav*, *Yoreh Deah* 31. See also *Kovetz Darchei Hora'ah* 10:7; *Eretz HaTzvi*, *siman* 20; *Sh"ut Cheishev Ha'Efod* 3: 33; *Badei Hashulchan* *Yoreh Deah* 249 s"k 3.

couple need not accept the practice if they know that they will be incurring large medical expenses. However, once a couple has accepted upon themselves to set aside *ma'aser* to give to the poor, they have bound themselves to this obligation after the third time doing so.⁹ (See further discussion of this hereinafter.)

Use of *Ma'aser* Funds for Mitzvah Purposes

Maharam MiRotenberg writes that even though *ma'aser* is only a *minhag*, one may not use *ma'aser* money for other mitzvot because it is already established that these funds are intended for the poor.¹⁰ Maharil similarly writes not to use *ma'aser* money even for the sake of a mitzvah, such as donating candles to a synagogue. Instead, the money should be given to poor people.¹¹

Ramo quotes the Maharil.¹² *Be'er HaGolah* explains that Ramo means a person may not use his *ma'aser* money to fulfill a mitzvah he is obligated to do. However, he may use *ma'aser* funds to pay for a mitzvah that he is not obligated in.¹³ *Chatam Sofer* rejects this claim of *Be'er HaGolah* and asserts that *ma'aser* money may not be used for any mitzvah other than giving to the poor.¹⁴

Drisha quotes Rabbeinu Menachem of Merseburg, who was asked regarding a case of a person who wanted to use *ma'aser* money to buy *seforim* (religious books).¹⁵ Rabbeinu Menachem replied that one may use *ma'aser* funds to enable him to perform a mitzvah – such as serving as a *sandek* (person holding baby

9. *Sh"ut Chatam Sofer, Yoreh Deah* 231. See *Sh"ut Imrei Yosher* 2:136; *Sh"ut Cheishev Ha'Efod* 3:33; *Sh"ut Minchat Yitzchak* 5:34:4; *Sh"ut Chelkat Yaakov, Yoreh Deah* 137.

10. *Sh"ut Maharam MiRotenberg (defus Prague)* 74.

11. *Sefer Maharil, Hilchot Rosh Hashanah*. *Sh"ut Maharil* 56 writes that one may not even use *ma'aser* money for *matanot la'evyonim* on Purim, which goes to the poor.

12. Ramo, *Yoreh Deah* 249:1. See also *Taz* 1.

13. *Be'er HaGolah* 249:5.

14. *Sh"ut Chatam Sofer, Yoreh Deah* 231.

15. *Yoreh Deah* 249:1. *Shelah* also quotes this opinion (*Inyon Tzedaka U'ma'aser*) as well as *Sifte Kohen* 249:3..

during *brit milah*), helping a couple get married, or buying *seforim* to learn from and lend to others – if he otherwise would not have the financial ability to perform the mitzvah. According to Rabbeinu Menachem, it would seem that if a lack of funds would discourage the performance of the mitzvah, one would be allowed to use *ma'aser* funds for this purpose.¹⁶

In summary, according to *Be'er Hagolah's* understanding of Ramo and *Drisha's* understanding of Rabbeinu Menachem, there may be room to allow the use of *ma'aser* funds for mitzvah purposes. However, according to the simple reading of Ramo, and the view of many *Acharonim* [latter scholars],¹⁷ *ma'aser* funds may not be used for mitzvah purposes.

According to many *poskim*, there is a possible way to use *ma'aser* funds for mitzvot even if it is not normally permitted. When one begins to set aside *ma'aser* funds, one may state that he is doing so “*bli neder* (without a promise)”¹⁸ or that he plans on using the money for mitzvot.¹⁹ If one performs a voluntary mitzvah three times – like donating *ma'aser* – it becomes a halachic obligation to continue to do so. If one did not do so, however, some *poskim* rule that *hatarat nedarim* (annulment of vows) is not possible, as *nidrei mitzvah* (promises to perform a mitzvah) cannot be nullified. *Minchat Yitzchak*, however, writes that one may perform *hatarat nedarim* in this case and then use the funds for the purpose of fulfilling other mitzvot.²⁰

The question of whether one's *ma'aser* funds may be used to pay for fertility treatments thus partially hinges on whether pursuit of such treatments constitutes a mitzvah. A couple undergoing fertility treatments is hoping to fulfill the mitzvah of

16. See, however, *Pitchei Teshuva Yoreh Deah* 249:2 and *Chatam Sofer* *ibid.* According to Rabbeinu Menachem, it would seem that if a person could afford to pay for the mitzvah he may not rely on *tzedaka* funds.

17. For example, see *Chatam Sofer* *ibid.* and *Pitchei Teshuva* *ibid.*

18. *Kovetz Teshuvot* 3:147. See *Ahavat Chesed* 18:2.

19. *Sh"ut Chatam Sofer, Yoreh Deah* 231; *Ahavat Chesed*, chapter 18.

20. *Sh"ut Minchat Yitzchak* 8:83, 10:85, based on *Shulchan Aruch, Yoreh Deah* 258:6.

peru urevu (the command to procreate).²¹ If the couple is experiencing secondary infertility, (i.e., they have at least two children – the minimum mandated by *peru urevu*-- but are experiencing difficulty having more), they could still fulfill the mitzvot of “*shevet*” (the command to populate the world)²² and “*vela’erev al tanach yadecha*” (to continue having children later in life),²³ which mandate that one continue to produce offspring even after the minimum requirement is fulfilled.

The *Acharonim* dispute how the mitzvah of *peru urevu* is actually fulfilled. R. Aharon Walkin,²⁴ R. Moshe Feinstein,²⁵ and R. Tzvi Pesach Frank²⁶ assert that the mitzvah is fulfilled when a husband and wife have relations. The dispute between Beit Shammai and Beit Hillel in the Talmud, regarding the amount of children one must have, regards only the point at which one no longer has an obligation to have relations every month, not the point at which the mitzvah of *peru urevu* is fulfilled, nor does it refer to the requirements for fulfilling that mitzvah.²⁷ R. Yosef Babad²⁸ and R. Yitzchak Blazer,²⁹ however, maintain that the mitzvah of *peru urevu* is only fulfilled with the birth of a boy and a girl. Thus, according to R. Babad and R. Blazer, pursuing fertility treatments could only be considered a potential mitzvah. According to the first opinion, the mitzvah of *peru urevu* is fulfilled by the couple even if they never have children.

Furthermore, according to a number of *poskim*, if a couple conceives through artificial insemination, they do not fulfill the

21. *Bereishit* 1:28.

22. A reference to *Yeshayahu* 45:18, “*lo tohu bera’a la’shevet yetzara.*”

23. A reference to *Kohelet* 11:6, “*baboker z’ra et zerecha, vela’erev al tanach yadecha.*”

24. *Beit Aharon*, *Gittin* 41a, s.v. *v’yesh*.

25. *Iggerot Moshe*, *Even Ha’ezer* 2:18.

26. *Sh”ut Har Tzvi*, *Orach Chaim* 76.

27. In *Yevamot* 61b Beit Shammai maintains that one must have two male children to fulfill the mitzvah of *peru urevu*, while Beit Hillel maintains that one must have a male and a female.

28. *Minchat Chinuch*, *Mitzva* 1 and 306.

29. *Sh”ut Pri Yitzchak* 42.

mitzvah of *peru urevu*. The *poskim* discuss whether “*nitabra b’ambati*” (a case in which a woman conceives “in a bathing pool”) without actual relations, fulfills the mitzvah. *Chelkat Mechokek* expresses doubt whether the man whose sperm impregnates a woman in such a way fulfills the mitzvah of *peru urevu*.³⁰

However, *Beit Shmuel*³¹ and *Mishneh LaMelech*³² write that the man is considered the father of the child in such a case.³³

30. *Chelkat Mechokek, Even Ha’Ezer* 1:8. He later mentions that Ben Sira was the son of Yirmiyahu and was born through an instance of *nitabra b’ambati*. R. Yonatan Eibeshitz (*Bnei Ahuvah, Hilchot Ishut, Perek* 15) notes that this seems to indicate that *Chelkat Mechokek* leaned in favor of considering a child born under such circumstances as a legitimate child. See *Sh”ut Tzitz Eliezer* 9:51:4:3.

According to *Taz (Even HaEzer* 1:8), the man in the case of *nitabra b’ambati* does not fulfill *peru urevu*. The Ya’avetz (*Sh”ut She’ilat Ya’avetz* 2:97) supports this view on the basis that no physical act of *biah* (intimacy) took place between the man and woman. R. Chaim Yosef Dovid Azoulay (*Birkei Yosef, Even Ha’Ezer* 1:13) concurs that the lack of intimacy invalidates this as a mitzvah. See also *Bigdei Yesha, siman* 123. See also, *Minchat Asher Bereishit, siman* 1, and *Bava Batra, siman* 8. *Bigdei Shesh, Even Ha’ezer* 1:11, suggests that since the act lacks *kavana* (intent), there is no mitzvah. Maharam Shick (*Sefer HaMitzvot, Mitzva* 1) similarly suggests that the act in this case is not purposeful, but rather incidental (“*mimeilah*”). He notes that the halacha is that one does not fulfill the mitzvah of *peru urevu* if he only has one son, even if that son himself has a son and a daughter, because that result was incidental to his actions; he cannot fulfill the mitzvah through his son’s act. *Be’er Mordechai (Yoreh Deah* 195:59) rejects this proof, noting that there is a fundamental difference between the case of grandchildren and the case of *nitabra b’ambati*. The grandfather did not perform any act whatsoever and should therefore not be credited with a mitzvah. In the case of *nitabra b’ambati*, in contrast, the husband performed an action, albeit not one of normal cohabitation with his wife.

31. *Even HaEzer* 1:10.

32. *Hilchot Ishut* 15:4.

33. They note that *Hagahot Semak* quotes Rabbeinu Peretz (quoted in *Bach, Yoreh Deah* 195, and *Taz* 195:7) that a woman may not lay down on a bed sheet of another man because she might conceive in this way and we are concerned that the child will later marry a sibling. This seems to indicate that the man is considered the father. *Taz (Even HaEzer* 1:8) rejects the proof of *Beit Shmuel*. He writes that perhaps we only assume that the man is the father *lechumra*, (on the strict side) and therefore do not allow

According to *poskim* who maintain that *peru urevu* is not fulfilled in the case of *nitabra b'ambati*, it seems that a child born through artificial insemination also does not fulfill the requirements of the mitzvah.³⁴ Some *poskim* maintain that although a child born through medical intervention is considered a descendant for all halachic purposes, the mitzvah of *peru urevu* would still not be fulfilled in such a manner because it is only fulfilled if done in the "*derech kol ha'aretz*," the natural fashion.³⁵

Tzitz Eliezer (R. Eliezer Waldenberg) maintains that one does not fulfill the mitzvah of *peru urevu* through artificial means.³⁶ Thus, any expensive procedure for which the couple needs extra funds would not fulfill the mitzvah according to R. Waldenberg. This is also the opinion of R. Yaakov Breisch.³⁷

Many *poskim* disagree, however, and assume that the mitzvah of *peru urevu* indeed is fulfilled when a couple conceives through artificial insemination.³⁸ Many note that even if *peru urevu* is not fulfilled, the mitzvah of *shevet* is still fulfilled, as that mitzvah clearly pertains to the goal of having children and not to the means of accomplishing that goal.³⁹ Thus, it would seem that

the woman to lie on another man's bed, but not *lekulah* (on the lenient side); we do not assume that the man has fulfilled his obligation of *peru urevu*.

34. Nonetheless, there is a distinction between the two cases. In the case of *nitabra b'ambati*, the *zera* (seed) was emitted without any intent to fulfill the mitzvah or with the explicit intent to waste the seed. In contrast, when *zera* is emitted for use in artificial insemination, it is done intentionally in order to be subsequently placed inside the woman. See *Sh"ut Beit Yaakov* 122; *Sefer Sha'rei Yeshua*, quoted in *Birkei Yosef, Even HaEzer* 1; *Sh"ut Mishpatim Yesharim* 1:396; *Avnei Mishpat, Even HaEzer* 1:18; *Sh"ut She'eilat Yaakov* 41; *Sh"ut Levushei Mordechai mahadura 4 siman* 109, "*Hafraya Melachutit*," in *HaRefuah L'Or HaHalacha*, p. 30.

35. *Sh"ut Mishpetei Uziel* 2:19; *Sh"ut Yaskil Avdi* 5:10.

36. *Sh"ut Tzitz Eliezer* 9:51:4.

37. *Chelkat Yaakov, Yoreh Deah* 14-21.

38. See *Chelkat Mechokek* *ibid.*, *Beit Shmuel* *ibid.*, *Sh"ut Beit Yaakov siman* 122, *Divrei Malkiel* 4:107, *Hagahot Har Tzvi to Tur Even Ha'ezer siman* 1, *Sh"ut Minchat Yitzchak* 1:50, *Sh"ut Yabia Omer* 2:1.

39. See *Sh"ut Emek Halacha* 1:60; *Noam*, vol. 1, p. 157 (the view of R. Shlomo Zalman Auerbach); *Kol Tzofayich* (Jerusalem, 5740), p. 367; *Sh"ut*

there are sufficient grounds to consider the pursuit of fertility treatments a mitzvah on some level.

If there is indeed a mitzvah involved in pursuing fertility treatments, may *ma'aser* funds be used to pay for them? As we saw above, according to Maharam MiRotenberg, Maharil, and Chatam Sofer, the mitzvah status of fertility treatments is irrelevant, as *ma'aser* funds may not be designated for any use other than giving to the poor. However, according to *Be'er HaGolah* and perhaps Rabbeinu Menachem, it would seem that *ma'aser* money can be used to pay for fertility treatments. Although one is obligated to perform the mitzvah of *peru urevu* and cannot skip *mitzvat onah* (conjugal relations) until the mitzvah is fulfilled, there seems to be no halachic requirement to pursue fertility treatments.⁴⁰ Thus, paying for such medical care would be considered a mitzvah that one is not obligated in, which, in *Be'er HaGolah's* view, may be subsidized by *ma'aser* funds. Finally, according to *Minchat Yitzchak*, if pursuing these treatments is a mitzvah, one may use *ma'aser* funds to pay for them if one performs *hatarat nedarim* for the implicit *neder* created upon setting aside those funds.⁴¹

Donation of Ma'aser Funds to Pay for Medical Expenses

Even if a couple is otherwise financially independent and we

Ohalah Shel Torah 1:69.

40. R. S. Z. Auerbach, quoted in *Shulchan Shlomo Erchei Refuah* vol. 2 p. 99.

41. In a *teshuvah* (responsum) regarding whether a couple can use their own *ma'aser* money to pay for fertility treatments, R. Asher Weiss (*Darchei Hora'ah*, vol. 10, *Kuntres Shiurim V'Teshuvot* 8) notes many of the issues that we have raised until this point and concludes that one can use *ma'aser* funds for these purposes only in a *sha'at hadechak* (extenuating circumstances), when one could not pay for the treatments otherwise. In a private correspondence, R. Yechezkel Feinhandler, author of *Sefer Be'Orach Tzedaka*, agreed that there are grounds to permit using *ma'aser* funds for fertility treatments. Similarly, R. Gideon Weitzman of Machon Puah informed me that R. Mordechai Eliyahu and other *gedolim* permitted the use of *ma'aser* funds for these purposes.

wouldn't normally classify them as poor people, since the medical expenses exceed their finances, they could be classified as poor. They would be in a situation similar to one discussed in *Sefer HaChinuch*, as quoted by R. Chaim Kanievsky:

And you, my child, do not think that the mitzvah of *tzedaka* only applies to a poor person who does not have for food and clothing, because the mitzvah may sometimes apply even with regard to the wealthy – for example, a wealthy person who is in a place where he is not recognized and who needs to borrow money, and even a wealthy person who is in his hometown and is recognized due to a time of illness or other circumstance when he cannot find the money from another place. This is also included in the mitzvah of *tzedaka* without a doubt, for the Torah desires a world of kindness and commands us to fulfill the needs of creations who are men of the covenant, to the best of our ability.⁴²

Accordingly, it is possible that one may give them *tzedaka* funds to pay for their medical expenses.⁴³

Do fertility treatments qualify as expenses for illness? Regarding the laws of Shabbat, many *poskim* assign the status of *choleh she'ein bo sakanah* (ill, but not dangerously so) to the infertile couple.⁴⁴ However, the requirements entailing *choleh* status on Shabbat may be different than that of a *choleh* in the context of the laws of *tzedaka*. It would seem that for *tzedaka* purposes, a *choleh* is defined as anyone who is undergoing an expensive medical procedure, regardless of the diagnosis.

Donating to Fertility Organizations

Irrespective of the obligation of *ma'aser kesafim*, it is certainly

42. *Sefer HaChinuch*, Mitzvah 479.

43. *Tzedaka U'Mishpat*, ch. 6, n. 15; *Derech Emunah*, *Hilchot Matnot Ani'im*, ch. 9, *seif katan* 84. *Ahavat Chesed* 19:2 writes that one should be lenient regarding paying for a mitzvah performed by another who cannot afford to pay for it him or herself.

44. For a full discussion of this topic, see my "Fertility Treatments on Shabbat," *JHCS*, LX (Fall 2010), 49-54.

appropriate to donate money to organizations that provide services to infertile couples. In a responsum regarding the benefits of donating to Shaare Zedek Medical Center, R. Eliezer Waldenberg notes many reasons that donating money to a hospital is a great mitzvah and a worthy cause,⁴⁵ and many of those reasons apply to these organizations as well.

One of the reasons that R. Waldenberg cites is that such a donation fulfills the mitzvah of *hatzalat nefashot*, saving lives. One can similarly suggest that donating to organizations that help infertile couples helps them to fulfill the mitzvah of *peru urevu* (at least according to some opinions). R. Waldenberg further notes that donating to a hospital fulfills the mitzvah of “*v’ahavta l’rei’acha kamocha* (love your fellow Jew as yourself),” a reason that would also apply to donations to fertility organizations. Just as one would want to have money to pay for these procedures if he needed them, he should provide the opportunity for others. Finally, R. Waldenberg notes the statement of Rambam regarding a doctor’s obligation to heal:

A doctor is obligated by law to heal the sick members of the Jewish people. This is included in the verse, “And he shall return to him,” which includes his body – if he sees him lost and he can save him, he should do so with his body, money, or knowledge.⁴⁶

Donating money to help an infertile couple could certainly be included in this.

Conclusion

Based on the above, there are grounds to permit and even promote the allocation of charity funds to organizations that help couples pay for fertility treatments. The Talmud teaches that *Moshiach* will not come until all *neshamot* (souls) are brought into this world.⁴⁷ The ability to participate in this important mitzvah is thus not only a privilege, but also a responsibility.

45. *Sh”ut Tzitz Eliezer* 15:38.

46. *Peirush HaMishnayot, Nedarim* 4:4.

47. *Yevamot* 62a.

Honoring Parents

Rabbi Alfred Cohen

“Honor thy father and thy mother” is one of the Ten Commandments known to virtually everyone in the western world.¹ It seems so straightforward – and yet, if we think about it, it is very hard to define exactly what behavior is considered “honor”.²

In every person’s life, many situations arise where it is difficult to know exactly what the proper and honorable behavior requires one to do. Unlike earlier generations, where traditions were well established and family and communal ties strong, the modern world presents many inter-generational challenges. Often, well-intentioned individuals are perplexed, trying to cope with difficult situations involving their parents, whether it be health or financial issues, or senility, or authority conflicts. What to do when parents disapprove of a potential spouse? How to cope with parents who have become senile? Additionally, the new realities of broken and blended families present troubling quandaries for people struggling to maintain the proper Jewish attitudes in uncharted territory. How does Judaism require us to treat step-parents or in-laws? Or non-Jewish or non-religious parents? In this study, we will attempt to determine the halachic parameters of “*kibud*”, honor, and suggest solutions for

1. *Shemot* 20:12; *Devarim* 5:16; Rambam, *Hilchot Mamrim* 6:1; *Peah* 1:1 – *li chamura shebe’chamurot*. The Meiri *Kiddushin* 31a writes that even non-Jews understand the propriety of the concept. The Gemara further expresses the opinion that the mitzvah of *kibud av v’em* was taught to the Jewish people in the desert even before they arrived at Mt. Sinai.

2. For additional discussion of this topic, see “*Kibud Av V’em Dilemmas*” by Mark Bleiweiss, *JHCS*, vol. 37, pp.85ff.

problematic challenges.³

Before we turn to specific halachic considerations in the mitzvah of *kibud av v'em*, we should try to understand why this mitzvah is so central to Jewish values that it is placed in the first part of the Ten Commandments, the part dedicated to our duties to the Almighty, rather than the second half which teaches about our relationships with people. Rav Elie Munk paraphrases the insights of Rabbi Samson Rafael Hirsch on this:

Judaism relies greatly upon the transmission of traditions and historical truths from one generation to the next....Tradition is dependent on faithful transmission from parent to child, and on the willingness of the child to accept it. Thus, the survival of our great heritage depends on the obedience of children to their parents. This is the fundamental condition for the eternal survival of the Jewish people. Parents perform Hashem's work on earth, and they deserve the veneration enhanced by love that is also due to Hashem.⁴

Kavod–Honor

The Gemara equates *kibud av v'em*, the honor one owes one's father and mother, to the honor one must observe for the Almighty.⁵ In the Talmud, we find numerous anecdotes⁶ about the Sages and how they extended themselves to fulfill the

3. The biblical command does not seem to encompass love of parents, and it is an open question whether that too is obligatory. According to Rambam (*Teshuvot* 160), there is no special obligation to love the parent more than a Jew is bidden to love all other Jews. Others, however, maintain that loving the parent is included in the directive to honor. Just as the parent loves the child, the child ought to reciprocate and love the parent. See, for example, *Chareidim*, *Aseh* 81:37 and *Panim Me'ivot* 2-35.

4. Rabbi Elie Munk, *The Call of the Torah*, *Shemot*, p. 277.

5. *Kiddushin* 30b. The Meiri to *Kiddushin* 31a writes that 'just as one is obligated to honor his father and mother with food and drink, so he must honor them with all kinds of respect...and the Rabbis only gave examples [but not specific rules] for these are matters for which there is no limit...'

6. See *Encyclopedia Talmudit*, vol. 26, p. 367, which cites the Chida, *LeDavid Amar*, *siman* 5, *ot* 34.

required filial duties.⁷ Based on these accounts, the Talmud encapsulates the child's obligations toward his parent as, "he feeds and gives to drink, dresses and covers [the parent], takes him out and brings him in..."⁸ The *Shulchan Aruch* similarly defines the parameters of *kibud av v'em*.⁹

It is important to realize that it is not only what the child does for his parents, but how he does it that counts:

"There can be a person who feeds his father pheasant, but [because of the way he does it, the son] will be taken from this world, and there can be someone who makes [his father] work at the mill and [nevertheless this action] brings him to Eternal Life."¹⁰

Yir'ah

In addition to the biblical commandment to honor one's father and mother, there is also the imperative to "revere" them, as the Torah says "*ish aviv ve'imo tira'u*",¹¹ "a man should revere his mother and his father."¹² Technically, there is a difference between *kavod* and *yir'ah*.¹³ We find this issue addressed in

7. The opinion of Meiri to *Kiddushin* 31a is cited by the *Encyclopedia Talmudit*, volume 26, p. 377. If there is a custom in a country to show respect to a parent in a certain way, then it becomes mandatory for the Jewish child to treat his parent in this way as well, for otherwise it would be considered *zilzul* (contempt) of the father or mother. The Rashba questions why no blessing is recited when one honors the parent.

8. *Kiddushin* 31b; Rambam, *Hilchot Mamrim* 6:3; *Shulchan Aruch Yoreh Deah* 240:4; *Shu't Rabbi Akiva Eiger* 1:68.

9. *Yoreh Deah* 240:5.

10. The exact text seems to be a difference of opinion between the Babylonian and the Jerusalem Talmuds. See the Meiri to *Kiddushin* 31a.

11. *Vayikra* 19:3.

12. Rambam, *Mamrim* 6:1; *Chinuch* 212; Commentary of Rav Perlow to R. Saadiah Gaon, *mitzvat aseh* 9:10; Malbim, *Torat Kohanim Kiddoshim* 1, *kibbud bekum ve'aseh*, *yir'ah beshev ve'al ta'aseh*. See Smak, *hakdama* mitzvah 7, who writes that "reverence" is a mitzvah which depends on one's heart and thoughts, while "honor" is a function of one's actions.

13. Rashi notes the disparity – for honor, the father is mentioned first, but for reverence, the mother. He explains as follows: it was clear to Hashem

Kiddushin.¹⁴

Reverence is that he does not stand in his [father's customary] place and does not sit in his [customary] seat, nor does he contradict his father¹⁵ nor "prove" that the father is right, nor call him by his first name – even after death.¹⁶

For ease of explanation, we will treat all the obligations of *kavod* and *yir'ah* as "honor" or "respect" in this study, despite the technical differences between them.

Respect

Our Rabbis evaluate the quality of care the child gives the parent not in terms of actual material goods but rather in attitude: the Ramo, teaching that whatever one gives a parent, "it should be done with a pleasant mien", writes,¹⁷

And so, conversely, even if he makes his father grind with a grindstone, but his intention is for the good, so that his father may be saved from a more difficult situation, yet he speaks words of conciliation to his father and shows him that his intention is for the good, until he appeases his father to the point where he is willing to grind with the grindstone, he [the son] will inherit the world to come.¹⁸

that the child fears the father more than he fears his mother (and therefore it is necessary to reinforce this attitude towards the mother); but as far as honor, the child really honors his mother more, for "she coaxes him with words" (*mishadalto*) and therefore there is a greater need to instruct about the father's honor.

14. 31b. *Yoreh Deah* 240:4. It is forbidden for the son to show annoyance, rather he should fulfill his duties cheerfully.

15. *Pitchei Teshuva* on the Ramo. Nevertheless, the son is permitted to have a private discussion with his parent and offer a dissenting opinion.

16. This is forbidden only in the father's presence, according to the Gra and Taz to *Yoreh Deah* 240. But see the comments of *Shach*, *ibid*, note 2, and *Aruch Hashulchan*, *ibid*, n. 13.

17. Ramo, *Yoreh Deah* 240:4.

18. The Gra *Yoreh Deah*, *ibid*, cites a text in *Nedarim* 38b as the source for this ruling.

Furthermore, *kibud av v'em* also entails that the child demand that others treat his/her parents with respect and not allow the parent to be demeaned or insulted. *Chazal* tell us that Yosef's life was shortened because in his encounter with his brothers as viceroy of Egypt, he allowed Yehudah to call their father Yaakov "my father, your servant."¹⁹ *Sefer Chassidim* goes so far as to say that if the child is unable to stop the pejorative speech about his parent, he should "put his fingers in his ears so as not to hear those words."²⁰

Paying For The Mitzvah – Mishel Av Or Mishel Ben

A recurring issue that arises in connection with the mitzvah of *kibud av v'em* is, who is obligated to pay for the mitzvah? In the course of the Talmudic examination of this question,²¹ Rabbi Yehuda and Rav Natan bar Oshaya disagree, with the former ruling that it has to come from the son's pocket and the latter putting the expense on the father.²²

There are different ways of looking at the question: is this a mitzvah like any other, and the person performing the mitzvah is obligated to pay for it, or is the child only obligated to expend effort on behalf of the parent, while the parent has to bear the

19. *Sotah* 13a.

20. *Sefer Chassidim* 72. The *Sefer Hayir'ah* 197 adds that if the child's defense of the parent's honor will only engender more vituperation, it is better to keep silent.

21. *Kiddushin* 32a.

22. The *Chazon Ish*, *Even Ha'Ezer* 148, writes that the son is only obligated if the father has no money. *Tosafot*, s.v. *oro*, *Kiddushin* 30a rule that if the father doesn't have the funds to support himself, it is the child's obligation to do so (he may use the money he has to give to *tzedaka*). *Tosafot* are of the opinion that the Jewish court could even force the child to do so, despite the fact the *beit din* generally does not compel a person to perform a positive mitzvah for which the award is mentioned (and the Torah promises long life for honoring one's parents – see *Chullin* 110b), but here it is a question of *tzedaka*, or lack of respect, or even embarrassment for the parents, and for those things *beit din* does compel compliance. See Gra, *Yoreh Deah* 240:2, who cites the Ramo in *Choshen Mishpat* 97:16, who rules that the *beit din* should employ "light measures" to enforce compliance.

cost? These issues are termed in Halacha as *mishel av* and *mishel ben*. As an example, a father asks his son for a sandwich. The son has to bring it to him; but who has to pay for the sandwich? The Halacha says it is the father, and this is termed *mishel av*.^{23,24}

The ramifications of this principle are numerous. *We will see that this is a crucial factor in deciding many real-life issues*: it sets limits on the demands parents can make on their children and it also guides children in knowing how to navigate the shoals of *kibud av v'em* while still maintaining their own lifestyle and independence.

The question of *mishel av/mishel ben* arises in myriad situations: when a mother objects to her son's choice of a bride, when a father wants his son to join his business and the son does not want to, or the child wants to choose a profession which the parents don't approve. These situations, and many others, will be discussed in the following pages, but in order to understand the resolution of these problems, one must first understand the factors that enter into the halachic determinations.

Who Is Obligated In Kibud Av V'em

Our rabbis taught:²⁵

[The Torah says] "man" ("A man should fear his mother

23. If the son has to travel in order to bring the sandwich to the father, who pays for the transportation? Some, like *Har Tzvi*, *Yoreh Deah* 197, say this is not part of the mitzvah of *kibud av v'em*, and therefore the son has to bear the cost – *mishel ben*. Thus, according to him, if the father lives far away from the son, the child must personally pay for the expense of going to the parent's house to care for him – since he could theoretically walk, he is taking transportation for the sake of his own convenience, and not for the father's sake. But others say, no, the father has to pay for the transportation costs. *Chazon Ish* writes that the son is only obligated to pay if the father doesn't have the money for it. *Even Ha'ezer* 148. See also *Chatam Sofer*, YD 229. *Shevet Halevi* 2:111 opines that if the father doesn't have money because he is unwilling to collect debts that are owed him, the children are not obliged to support him from their own funds. See further in the text, under "financial issues".

24. *Yoreh Deah* 240:5.

25. *Kiddushin* 30b.

and his father” – *Vayikra* 19:3), from which I can only learn [that this applies to] a man; from where [can we learn that it includes] a woman? When it says “you (plural) shall fear”, this refers to two [i.e., it includes a woman as well]. If so, why did it say “man”? It is because a man has the wherewithal to do, but a woman does not have the wherewithal in her hands to do [as she wishes] inasmuch as she is in the control of others [i.e., her husband]. Rav Udi said, if she gets divorced, then she and a man are equal [in their obligation to the parent].²⁶

Parent-child relationship

Even though the Torah speaks only to children’s duty to honor their parents, our Rabbis have introduced many words of advice to parents about how to treat their children, particularly adult children. The goal is for the parent to avoid making *kibud av v’em* so onerous that the child will find it difficult to discharge his Torah obligations. Parents, just like all Jews, must be careful not to create or encourage a situation which will cause another Jew to sin. Thus, the *Shulchan Aruch* rules that, “It is forbidden for a person to be oppressive in his demands upon his children and to insist upon every aspect of his honor”, so as not to create a “stumbling block”. Rather, let him “forego”, and ignore slights to his honor.²⁷ This is based on the dictum of the Gemara, not to always react nor demand obedience.²⁸ *Sefer Chassidim* enjoins parents, “G-d-fearing persons should forgive their children even

26. Rambam, *Hilchot Mamrim* 6:6. This applies also if she is widowed, see *Shulchan Aruch Yoreh Deah* 218, note 19. But when she is married, if her husband does not object, she is required to do for them just as a man.

27. *Yoreh Deah* 240:19. The Rambam says essentially the same: “Even though we have been commanded (in *kibud av v’em*), it is forbidden for a person to place a heavy load (of obedience) upon his children, nor to be overly particular with them as regards his honor, lest he will cause them to stumble; rather, he should forgive and look away.” *Hilchot Mamrim* 6:6.

28. *Kiddushin* 32; similarly, Rambam, *Hilchot Mamrim* 6:8, and the *She’iltot* 101. Even so, the Gemara there does caution the children of a *talmid chacham* to be especially careful not to offend their father.

without their knowledge, in order not to cause them to be punished."²⁹

Sefer Chassidim advises a parent that, if he knows his child is upset, he should not instruct him to do something for him, even though the son will do it; it is sinful to put him in a position of doing what he doesn't want to do.³⁰ Conversely, if the son senses that the father would like to be involved in the son's work and activities, and this will calm down the father's anxieties, he can surely ask the father to join him. For example, if the son has to go out at night and the father worries about it, the son can ask him to come along.

It is forbidden to strike an older child,³¹ and a parent who does so violates the prohibition of "setting a stumbling block before a blind person",³² for this might provoke the child to hit him back, which is a biblical prohibition punishable by death.³³

Sometimes the generation gap is too great to bridge. *Sefer Chassidim* advises that when two people cannot get along together, they should separate. This is true even though it is the child who is experiencing distress, not the parent.

It is written "how good and pleasant it is when brothers live together"...nevertheless, a father and son who are always arguing and in anger [should not stay together, despite the verse extolling it]...Even if it is the son who is being caused misery by his father, it is preferable for them to separate, since they cannot tolerate living together.³⁴

It is up to parents to raise their children in the proper way a Jewish child should relate to the parent. One of the best ways to do this is by insisting that the child treat the other parent with respect and deference, and they in turn should always treat each

29. *Sefer Chassidim* #152. See also *Kiddushin* 31a.

30. *Sefer Chassidim* #562.

31. *Yoreh Deah* 240:20. The *Ritva*, *ibid*, says that the definition of "older" depends on the nature of the child, while *Ramo*, *ibid*, says 22 or 24 years old.

32. *Vayikra* 19:3.

33. *Vayikra* 20:9.

34. *Sefer Chassidim*, *ibid*.

other in a gracious manner. In this way, the child will not think that the father or mother is insisting on *kibud av v'em* for the sake of their own aggrandizement. Furthermore, no parent should ever agree to allow the child to inflict pain or embarrassment upon them. It is never acceptable – even if the parent acquiesces – for a child to speak disparagingly or insultingly to his parents.³⁵ It is also forbidden for a child to say something negative about his or her parents to others.³⁶

There may be a permissible exception: if a person is having psychological counseling, and as part of therapy needs to speak about his/her relationship with their parents, is he permitted to report negative aspects of their behavior? At a meeting with Rabbis and other professionals at Torah Umesorah about 50 years ago, Rav Hutner z"l addressed this issue. He cited numerous examples in the Talmud where outstanding Rabbis spoke to their teachers about things which others did to them. Was this not considered *lashon hora* (talebearing or gossip)? Rav Hutner explained that it was "*lashon hora leto'elet*" – for a positive purpose – and therefore could be sanctioned.³⁷

Defining The Mitzvah

How does Jewish thought classify the mitzvah of honoring parents – is it "between man and G-d" or is it a mitzvah "between man and man"? If it is mitzvah between man and G-d, then the father or mother cannot forego (*mochel*) the honor due them, but if it is an interpersonal mitzvah, they do have that prerogative.

In the view of Rambam, this mitzvah reflects a person's obligations to others who have done so much for him; it is like repaying a debt. Furthermore, the parents are "partners" with the Almighty in bringing this person into the world, and for that

35. *Maharam Schick Yoreh Deah* 218; see *Minchat Chinuch* 212, notes 5 and 6.

36. *Yoreh Deah* 241:6. Despite the mitzvah of respect, a son is allowed to take his father to a *din Torah*, even though it means he will certainly be disagreeing with his father's assertions. The *Taz*, *ibid* #2, rules that he should have someone else go and represent him.

37. Reported to the writer by persons who attended.

alone he owes them respect and gratitude.³⁸ Ramban, on the other hand, considers this mitzvah as being in the realm of a person's obligations vis-à-vis G-d.³⁹

Mochel

The concept of a parent "foregoing" his honor (*mochel*) also needs a bit of clarification. There are two ways this can come about, and we need to distinguish between them: there is a situation where the parent desires a certain behavior from the child, but is willing to forgive the child's negligence in this regard. The other situation is where the parent really doesn't care about this (such as having the child stand up when the parent enters the room). In the first case, it is certainly a mitzvah for the child to do it; in the second, there is really no mitzvah or obligation for the child to do it.⁴⁰ Radvaz rules that even if the parent tells the child that he need not exhibit a certain behavior of honor, it only means the child is not punished if he does not show this particular respect to his parent; he remains obligated in *kibud av v'em*.⁴¹

It is assumed that the father's exempting the son from certain requirements of *kavod* are self-understood and do not need to be specifically articulated in each case. For example, there are often times when parents and children are having a discussion, and the father asks for his son's honest opinion on the matter. Even if the son disagrees with the father's position, he is permitted to voice his opinion, inasmuch as the father specifically asked for it. In such a situation, it is understood that the father has agreed to

38. *Pirush Hamishnayot, Pe'ah* 1:1.

39. Commentary to *Shemot* 20:12. The same position is taken by Abravanel and Malbim in their respective commentaries, *ibid.* *Minchat Chinuch* 33 says he is not sure of the classification. The Ramban writes that part of rendering respect to parents is not to call any other individual "father" or "mother". However, in *Kiddushin* 31b, the Gemara relates that Abaye used to refer to his nurse as "mother". It is difficult to reconcile these two positions.

40. *Mevakshei Torah, siman* 245.

41. Cited by *Pitchei Teshuva Yoreh Deah*, *ibid.* note 16; see also *Sefer Chassidim* 573 and 603.

excuse any contradiction the son may voice; he truly wants to hear his honest opinion.⁴²

Although we have seen that it is the duty of children to treat their parents with respect and serve them, yet, go to any home, and you will find the mothers serving the children their food and doing all sorts of errands on their behalf. Often this includes adult, even married children. Is this wrong?

The Rabbis conclude that if it is the father's wish to serve his son, it is permissible (unless the father is a "*ben Torah*", a Torah scholar).⁴³ The rationale is that "what a person wants, that is his honor" – i.e., deferring to a person's wishes is showing him the greatest honor.⁴⁴ *Sefer Chassidim* explains that were it not for this rationale, no one could successfully be respectful to their parents. If the father passes the salt to his child, or the mother makes supper and serves it, it would technically be a violation of *kibud av v'em* were it not for the fact that the parent desires this mode of relationship.⁴⁵

Iggerot Moshe contends that a parent's acquiescence to a lack of "*kavod*" cannot always be assumed. Thus, if a child stole money from his parents, Rav Moshe rules that there is no question he must refund the money unless his parents specifically tell him to forget about it. His assumption that probably they would forgive him is worthless. Furthermore, if they don't know that it was their own child who robbed them, certainly they have not forgiven the thief nor given up on getting their property back;

42. *Aruch HaShulchan* 240:13; see *Maharam Schick Yoreh Deah* 218.

43. The Gemara in *Kiddushin* 31a tells that Abaye, a great Rabbi, had parents who wanted to honor him by washing him. Abaye did not know whether he was permitted to let them do this, and was told that his mother could, but not his father, inasmuch as his father was himself a Torah scholar and it would hurt him, deep down, to do this service.

44. *Ibid.* Not everything that a parent wants is acceptable, however. *Sefer Chassidim* in 573 specifically notes that the father cannot forego certain aspects of the honor due him if it will result in disgraceful (or forbidden) behavior. Thus, for example, if the children are fighting and hitting each other, the father cannot say, "don't hit your brother, hit me instead."

45. *Ibid.*

consequently he needs them to specifically excuse his theft.⁴⁶

There are those who advise parents to be cautious about permitting behavior from their children which does not conform to halachic requirements for *kavod*. Even though the parents may truly not care about the required demonstrations of *kavod*, it may influence other children and parents to be reconciled to less than proper behavior, and that is not a good idea. It is far better to inculcate our children with the proper standards which have been followed for thousands of years.⁴⁷

The *Aruch HaShulchan*, however, reports that in his day (late nineteenth century) it was customary for sons to occupy the father's seat in the synagogue if he was not there (even though that is a specific prohibition – "he should not sit in his place"), and the custom was never challenged.^{48 49}

No Benefit to Parent

There are occasions when a parent will tell a child to do something which has no bearing on the welfare of the parent. Does the child have to listen? For example, a woman will tell her married daughter to put a sweater on her child, it's cold outside. Does the daughter have to obey? Since the Gemara, in delineating the *kavod* due a parent, says the child has to bring the parent food and drink, is that an indication that the child's obligation is simply to cater to the parent's physical needs? Indeed, there are *poskim* who conclude precisely that, opining that if the parent receives no benefit from the request, it is not incumbent on the

46. *Iggerot Moshe Choshen Mishpat* 1:84. In the next paragraph he addresses the related issue of parents who gave their child money to buy food and instead he used it for other things. If the parents did not make a specific condition that the money was to be spent only on food, it is not considered stealing.

47. *Teshuvot Vehanhagot* 3:276; *Sefer Chassidim* 339.

48. *Aruch HaShulchan Yoreh Deah* 9.

49. *Taz*, *Yoreh Deah* 241, *Ramo* 240:8, *Sefer Chassidim* 584. Nevertheless, a son is allowed to take his father to a *din Torah*. There are some who say that for technical halachic reasons, a son cannot take his mother to a *din Torah*; see *Ktav Sofer* 108. One could argue that this no longer applies in the modern world.

child to fulfill that wish.⁵⁰ On the other hand, we find numerous opinions that a child should fulfill the parents' wishes, even when it does not affect their welfare, except in situations where the child is strongly averse to doing what the parent wants.⁵¹

Waking A Parent

There is a famous story in the Talmud about the righteous Gentile, Dama ben Netina, who refused to wake his father who was sleeping with the key under his pillow to a precious gem which he could have sold for a fortune. He was rewarded by Heaven the following year, when a red heifer was born in his herd – a tremendously rare and valuable commodity.⁵² This precedent is always adduced as a level of respect for parents that we should all emulate.

The *Aruch HaShulchan*, *Yoreh Deah* 240:40, cites *Sefer Chassidim* 337, who remarks that if the son knows that the father will be distressed that he was not awakened, then he should wake him. Thus, if the child knows that the father wants to go to shul for a minyan, but has overslept, he would be allowed to wake him.

50. Ritva, *Yevamot* 6a; *Maharik* 164; *Gra* 240:36, cites various opinions. *The Fifth Commandment*, p. 187, by Rabbi Moshe Lieber, reports in the name of Rav Eliashiv, that if a parent wants the child to do something for him/her instead of fulfilling an optional mitzvah, the child should obey. On the other hand, if the mother's request is of no benefit to the mother (for example, put on your raincoat when you go), the child does not have to listen.

51. Rashba; *Gra Yoreh Deah*, end of 240, footnote #291; Ritva 6a. Although a child is forbidden to cause pain (even psychological distress) to the parent, *Sefer Meshivat Nefesh* 1:16 explains that it is not the child causing the parent pain, the parent is causing it to himself. *Teshuvot Vehanhagot* 1:529 indicates that it matters what the child's motives are in doing something the parent is not happy about. So, for example, if a son has decided to grow a beard because he thinks it will enhance and elevate his religious observance, or if he wants to adopt a stringent practice (*chumra*) and the parent objects, there are differences of opinion as to what to do. He cites a report that the *Ariz'al*, who wanted to immerse in a cold mikvah often, as a *chumra*, refrained because his mother objected. The author also examines the motives of the parents in objecting, as constituting a factor in the halachic ruling: there is a difference if the parent objects in order to spite the child or because the child's action may embarrass the parent.

52. *Kiddushin* 31a.

The *Aruch HaShulchan* advises that even if the father needs to be awakened in order to pray with the minyan, still it is advisable to get someone else to do it rather than the child doing it himself, “and it seems to me that that is the custom.”⁵³

What to do in actual practice is succinctly stated by *Chazal*: “Doing what he wants is showing respect.”⁵⁴ In other words, the child has to try to determine what the parent would actually want him to do.

Difficult Demands or Needs

Sometimes, especially when parents become elderly, they may make requests which the child feels are unreasonable. Does he/she still have to accommodate them? There is an account in the Gemara which may offer guidance:⁵⁵ Rav Assi, living in Babylonia, had an old mother he cared for. One day, she asked him to get her some jewelry; he did it. The next time, she said she wants a husband, and her son answered, “I’ll look into it for you.”⁵⁶ But when she said, “I want you to find me a husband who is as good-looking as you” – he up and left, and went to Eretz Yisrael. In her last request, he sensed that she had lost her mind and wanted to marry him; at that point, he realized he could no longer take care of her. Therefore, he arranged with others to supervise her care, and he left.

This episode offers some guidelines for dealing with elderly, senile, or unreasonable parents, says the Ramo.⁵⁷ First of all, we

53. What if the father doesn’t mind missing the minyan and would prefer to sleep? See *The Fifth Commandment*, p. 87 note 83, in the name of Rav Eliashiv, about how to proceed.

54. Jerusalem Talmud, *Peah* 1:1, as brought by *Mekor Chesed*, note 2, in his commentary to *Sefer Chassidim*, *ibid*, citing *Chayei Adam*, *kelal* 67:1 (78).

55. See *Kiddushin* 31b.

56. This answer opens up an intriguing option: did Rav Assi mean it when he indicated he would look for a new husband for his mother? If so, then we can learn from this that it is not disrespectful to the deceased parent for the child to help the living parent find a new partner. On the other hand, if Rav Assi didn’t mean it, we can deduce that if a parent is unfortunately not of sound mind, the child is permitted to lie in order to placate them.

57. *Yoreh Deah* 240.

see that even though the mother at an advanced age might not have needed the jewelry – yet if she wanted it, he had to give it to her. On the other hand, when she wanted to marry him, that made it impossible for him to spend time with her. If a parent makes excessive or impossible demands, says the *Sefer Chassidim*, the child should leave (although of course making arrangements for their care).⁵⁸

Even if a parent is demented or senile or incapacitated, the child still has to treat him with respect, even if he is unaware of the respect.⁵⁹ Thus, if a parent is blind, the child should still stand up when he enters the room.⁶⁰ Esav, Isaac's wicked son, is nevertheless considered to be the exemplar of *kibud av v'em*; when he came to serve his father – who was blind – he donned special clothing in his honor, *bigdei chamudot*. We see, then, that one must honor a parent even when the parent cannot appreciate it or even be aware of it.

The *Kuntrus Kibud Av V'em* rules a child should visit the parent daily, if that is the parent's wish. The *Chazon Ish* went every day to visit his mother and spent about half an hour chatting with her.⁶¹

It is important to treat all elderly people with dignity and respect; particularly if they are frail or bedridden, people sometimes speak about them as if they were not present and cannot hear the conversation. Obviously, this attitude is painful to a sentient person, and the child must be very careful not to inflict this type of pain on his parent. The *Sefer Chassidim* notes that Hashem did not speak to Yitzchak as long as his father Avraham was alive – so that no one would think that there was something lacking in Avraham and that is why Hashem had to speak to his son.⁶²

58. *Sefer Chassidim* 343.

59. *Pitchei Teshuva Yoreh Deah* 240:6.

60. *Nishmat Avraham Yoreh Deah* 240:3, citing *Shearim Metzuyananim Behalacha*, based on a text in *Yuma* 53a. Rava stood up for his teacher, Rav Yosef, even though Rav Yosef was blind and consequently unaware of this honor.

61. *Kuntrus Kibud Av V'em*, p.331-2.

62. *Sefer Chassidim* 579.

Mental Illness

As people live longer, it sometimes happens that old age does not treat them kindly. Alzheimer's disease and other versions of mental frailty have increasingly become a problem in modern society, and more and more seniors fall prey to this phenomenon. The children of parents thus stricken have no easy resolution to the multiple problems this situation raises – the plight of the (mentally) healthy spouse, who may find it difficult if not impossible to cope with the need to take care of a partner in this sad condition; the concerns of children, and their pain at witnessing their parent's vitality being drained, sometimes leaving the parent not even able to recognize his/her own child. All this places a very heavy, sometimes intolerable burden on the caretaker.

Not all families can afford to, or want to, consign the stricken parent to a nursing facility. Sometimes, children feel they must take the sick parent into their own home. Even the most devoted child, however, may find himself or herself under terrible strain in such a situation, sometimes even losing control of their temper and yelling at the parent.

Rav Zilberstein, author of *Avnei Zikaron*, addresses this situation.⁶³ "If it is for the father's benefit to live with the son...the son should keep him in his house because this is the ultimate good for him, and that is the Torah's wish..." He continues, however, citing the *Shulchan Aruch*, that some might say that since stress will inevitably cause the child to violate the laws of *kibud av v'em* by speaking intemperately to his parent, perhaps it would be better not to take the parent into one's home. Perhaps one could draw an analogy to the laws of lending, where the *Shulchan Aruch* advises one not to lend money to a person who habitually does not repay loans, because the lender will almost surely violate the biblical prohibition of dunning a borrower (*lo yigosh*, *Devarim* 23:20).⁶⁴ However, Rav Zilberstein points out that

63. P.282.

64. *Choshen Mishpat* 93:4.(However, there is some question whether this is actually the ruling of the *Shulchan Aruch*; there may be a misprint in the accepted text).

the two situations are not really analogous. Whereas a lender is not required to lend money and therefore has a choice not to put himself into a situation where he might violate the Halacha, a child really has no option about taking care of his parent. Even though unfortunately the child might do or say the wrong things occasionally, yet on the whole, the parent is benefiting immeasurably by being with the child, and therefore the Torah would want him to continue.

One of the most difficult situations for a child to handle is when their parent embarrasses them; even so, the child must always treat the parent with respect and deference. On the other hand, the child is permitted to try and avoid such a situation. Assume, for example, that an Orthodox man or woman has a mother who is not observant of Jewish practice, or less than optimally observant. When he goes to visit her, she wants to take a walk with him – she in her shorts and halter, he in his black suit. He is going to be embarrassed, but he should nevertheless comply. With a little forethought, however, it might be possible to figure out how to circumvent this problem and avoid the awkward situation.⁶⁵

Miscellaneous Laws Of Honor For Parents

It is forbidden to call one's parents by their first names – unless one prefaces the name with an honorable title.⁶⁶ Ramban (Torah commentary, *Shemot* 20:12) maintains that a person should not accord anyone the other than his own biological father status of

65. See Rambam, *Hilchot Mamrim* 6:10 and *Aruch HaShulchan Yoreh Deah* 240:16, who adds that the child can try to prevent the embarrassment, but it should be done in a nice manner.

66. *Kiddushin* 31a; *Sanhedrin* 100a. see also Rambam, *Hilchot Mamrim*, that it is only forbidden if the name is unique or distinctive to the parent. Also, it seems that one should not call someone else by the same name as his father, in his father's presence. Tosafot, *Yevamot* 57b, s.v. *amar Shmuel*. *Sdei Chemed*, III, p 202-3, cites various places in the Talmud where people called their Rabbi by his first name, because they prefaced the name with a honorific, such as 'my revered teacher, Rabbi,' etc. The same would apply to a father. *Sefer Chassidim* 460 discusses the Sephardic practice of naming their children after their living parents.

father. (For how to conduct oneself with a step-parent or an adopted parent, see further in this study).

There are some general rules which apply to various situations of *kibud av v'em*: in Jewish law, a married woman should put respect for her husband's wishes ahead of respect for her parents' wants. If a woman's circumstances do not permit her to take care of them herself, she must still make sure that her parents are cared for.⁶⁷

Violating The Torah

The Gemara teaches that if a parent instructs the child not to return a lost object he found, or to become ritually impure if he is a Kohen, the child should not comply.⁶⁸ This is indeed recorded as the Halacha by the *Shulchan Aruch Yoreh Deah* 240:15: "If his father tells him to violate the words of the Torah, whether it be a positive mitzvah or a negative mitzvah, even if it is a rabbinic command – he should not listen to him." If the parent wants to stop the child from being friendly with someone with whom the parent is involved in a dispute, the child need not comply.⁶⁹

Rav Sheinberg turns to the issue of parents protesting when the child observes a custom, not a Jewish law, and it causes controversy. He writes that if it is only a custom, not a law, he should follow his father's wish.

How should a child interact with his non-observant parent, or even a parent who is generally observant but is doing something wrong? The Gemara rules that the child is still required to treat the parent with respect; rather than saying – "you're not allowed to do that" – the child should say, very nicely,⁷⁰ "Dad, this is what

67. Rambam, *Hilchot Mamrim*, 6:10, and comments of Ravad, *ibid*.

68. *Bava Metzia* 32a; see *Atara Lamelech*, p. 94 and 40.

69. Rav Perlow's commentary to *Sefer Hamitzvot* of Rabbi Saadiah Gaon, vol. 1, p. 100, based on *Yoreh Deah*, *ibid*.:16. Since the parent is essentially telling the child to violate a Torah law, the child is not permitted to listen.

70. Why does the Gemara stress that he should say it "nicely"? Is it because when you speak to your father (*kibud av v'em*) you have to do it nicely, or it is because of the mitzvah of *tochacha*, reprimand – since you want the person to accept your words, you have to tell it to him nicely. See

the Torah teaches.....".^{71,72} Even so, it will surely cause the parent distress; therefore, it would be better to say, "there is a verse in the Torah which says....", without making direct reference to what the parent is doing; this allows the parent to decide how to process the information on their own.

Sometimes dealing with parents who are less observant can raise problems for their children. There is a story – possibly apocryphal – told about the son of a Conservative Rabbi who went to study in a yeshiva in Eretz Yisrael and became totally observant. Before returning to America, he asked his Rabbi what he should do regarding *davening* with the father in his shul. Precisely what the Rabbi told him to do is not clear, but he did caution the son definitely not to *daven* in the local Orthodox shul, for that would be a source of embarrassment and hurt for his father. It is highly important to realize that sensitivity and respect need to inform our attitudes towards parents at all times, especially in delicate circumstances.

Other Areas of Conflict

It sometimes happens, to our great sorrow, that relatives choose to marry a non-Jew. What should an adult child do if his/her parents want him to attend a mixed marriage? The *Taz* writes that it is surely forbidden to attend. And if one's absence will cause a rift in the family – nevertheless that should not be a consideration.⁷³

What about parents wanting the adult child to attend a gathering where the food is not kosher (even if he doesn't eat it)?

Sefer Chassidim 110 and *Mikor Chesed*, *ibid.*, 4 & 5.

71. *Kiddushin* 32a; one could argue that perhaps this approach is only recommended if the parent is interested in observing the Torah; otherwise, such a comment could arouse defiance. See *Aruch HaShulchan Yoreh Deah* 240:16.

72. *Kiddushin* 33. What if it is a rabbinic, not a biblical infraction? Should the child still say something? The Rambam considers that it applies even for a rabbinic rule. One wonders why the Gemara speaks about a father transgressing but not a mother.

73. *Taz*, *Yoreh Deah* 240. Also *Shoalim Vedorshim*, *ibid.*

If the child is well known as a religious person, he should not attend, for it would cause a *chilul Hashem* – people would not realize that he is not eating, and would think that a religious person ate at a non-kosher party (or erroneously conclude that the food was indeed kosher).⁷⁴

A Wicked Parent

Rambam rules that even if a person's father and mother are deemed to be "totally wicked" people who habitually sin, "it is forbidden (for the child) to strike them or to curse them."⁷⁵ Even a *mamzer* – the child of an adulterous relationship, whose parents are undoubtedly considered major sinners – must exhibit proper respect and reverence for his parents.⁷⁶ The *Tur*, however, does not concur with this ruling, writing that there is no obligation to honor parents who are "wicked", based on a passage in *Bava Kamma* 94b, where the Gemara says that if the father was a *rasha* (wicked), there is no obligation of *kibud av v'em*.

These diametrically opposed opinions of two major *Rishonim* form the basis of continuing disagreement in determining the final normative Halacha. Thus, the *Shulchan Aruch* rules that "a *mamzer* must honor and revere his father...",⁷⁷ but the Ramo, in his gloss there, notes that "there are some who say that he is not required to honor his wicked father unless he did *Teshuva* (repented)."⁷⁸

How do we determine whether an individual is to be adjudged as "wicked", *rasha*? The halachic ruling is that for a person to be

74. Yuma 80a. also *Shoalim Vedorshim*, *ibid*, *siman* 4.

75. Rambam, *Hilchot Mamrim* 5:12, based on *Sanhedrin* 85a.

76. *Ibid*, 6:11. See also *Rishon LeTzion*, *Yoreh Deah* 241:4. See also *Birkei Yosef*, *Yoreh Deah* 241:4. Also, *Ohr HaChaim Kedoshim* 19:3, regarding a parent who doesn't honor his own parents. For further discussion of how to treat "wicked" individuals, see *Yerushalmi*, *Terumot* chap.8, *Mishnah* 3 (about a man who derided a rabbinic teaching); *Minchat Yitzchak* 6:137, part 1; *Seridei Eish* 2:98.

77. *Shulchan Aruch Yoreh Deah* 240:18. *Pitchei Teshuva*, n. 15.

78. The *Aruch HaShulchan* follows the Ramo in his ruling, while the *Bach* and the *Kitzur Shulchan Aruch* 143:9 follow the *Shulchan Aruch*.

labeled *rasha*, he must transgress deliberately and consistently, and despite being reprimanded and told that his behavior is wrong.⁷⁹ As for a parent who exhibits bad character and is disliked by others, or who is a drunk – the child should distance himself from him.⁸⁰

Non-Observant Parents

It is an unfortunate albeit undeniable truth that many Jews of the older generation are not as religiously observant as their children choose to be. Although a Jew always has to show respect for father and mother, there are nevertheless subtle or even overt differences in the halachic rules of behavior, depending on whether the parent is observant or not.

However, the laws concerning *mumarim* – wicked people who “rebel” against G-d, i.e., people who deliberately defy religious law – do not apply to people who were themselves brought up by parents who were not observant. Rather, they are to be classified as “*tinok shenishba*” – like a child who was kidnapped from his Jewish environment and raised by heathens. In such a situation, obviously, when the child grows up, he cannot be blamed for his lack of religious observance. It might be more correct to consider such a person as ignorant or indifferent, rather than defiant and cynical.⁸¹ Consequently, the Halacha of *kibud av v'em* for parents who themselves were never brought up to observe Jewish law reflects this nuance, mandating they be treated with respect.

79. *Smag*, *mitzvot aseih* 112, cited in *Hagahot Maimuni* 6:11; Rambam, *Hilchot Mamrim* 6:11; *Minchat Chinuch* 48 considers that he is considered wicked even if he only failed to perform a positive mitzvah, not only if he violated a negative commandment.

80. *Aruch Hashulchan* 140:33 and 39; see the midrash he cites. See also *Shu't Teshuvot Vehanhagot* 1-526, 527, 528. *Aliva de Hilchata*, *Yevamot* 22b discusses how the child should proceed if the father is wicked but others outside the family do not know it. If the parent physically abuses the child, he is considered “wicked” and the child is not obligated to respect him.

81. For an in-depth discussion of how or when a person should be defined as “wicked” (*mumar*) in Jewish law, and when he may more aptly be considered an ignoramus or *tinok shenishba*, see the article by Rabbi Moshe Weinberg in *Journal of Halacha and Contemporary Society*, Vol. XII, p. 69 ff.

Classifying many non-observant Jews in modern society as *tinok shenishba* –essentially removing the onus from them for being irreligious – is a ploy used extensively by *poskim*. Almost a century ago, the *Melamed LeHo'il* was asked whether it was permissible to count for a minyan, a Jew who desecrated Shabbat on a regular basis.⁸² In his responsum, he cites the opinion of the *Binyan Tzion* that “ Sabbath desecrators in our times are to be considered as a babe who was kidnapped and taken by Gentiles...and it is not their intention to rebel against fundamentals of our faith”.⁸³

In the twentieth century, the Chafetz Chaim wrote that many non-observant Jews today should not be considered as acting in defiance of Jewish law. Rather, they have been led astray (by their upbringing), and it is a great mitzvah to teach them the proper way.⁸⁴

What The Mitzvah Entails

Having laid out some general parameters of the responsibilities of offspring to respect their parents and follow their wishes, we will turn now to specific areas where these requirements may – and often do – cause problems:

Choosing a Spouse

If a son or daughter wants to marry someone of whom the parents do not approve, what are the Torah guidelines?⁸⁵ The Ramo rules succinctly that the child does not have to obey the

82. Rabbi D.Z. Hoffman, *Melamed LeHo'il*, Part I, 29.

83. *Binyan Tzion* 23. Rabbi Hoffman also quotes the opinion of *Shoel UMaishiv* 1:276, (writing in the 19th century, when the Reform movement had decimated the ranks of observant Jewry in Germany) that Jews in America who do not observe Shabbat should be considered as *tinok shenishba*.

84. *Letters of Chafetz Chaim*, #26. See also *Shemirat Shabbat Kehilchata* 33, *Lev Avraham* pp 141-2, *Tzitz Eliezer* 9:41:15, *Iggerot Moshe Orach Chaim* 1:33, *Yabia Omer* 1 *Yoreh Deah* 11, *Chelkat Yaakov* i:45.

85. The rules apply equally to a son or daughter. See *Noda Biyehudah Tanina*, *Even Haezer* 45; *Tzitz Eliezer* III:78 and XV:34.

father's wishes in this regard,⁸⁶ and the rabbis give 3 reasons for this opinion:

- "*Mishel ben*" – the father is entitled to respect for issues that concern him (*mishel av*), as explained previously. However, on a matter which is really the child's concern (*mishel ben*), the father does not have the right to tell the child what to do. Since the child will have to live with the decision of marrying a spouse not to his/her liking, the parent cannot tell the child whom to marry.⁸⁷
- It is a mitzvah to follow the parent's wishes only if the parent gets physical benefit from it such as food or drink.⁸⁸
- If the parent tells the child to violate the Torah, the child does not need to obey (if the child marries someone he doesn't like, he or she will end up hating them, and that is *assur*).⁸⁹

We will elaborate upon application of these principles to real-life situations, below.

The Ramo cites the opinion of *Maharik*: "The father has no power to prevent [or object to] his son from marrying the woman he wants." Ramo garners various proofs that the son is not required to honor his parents except in matters which pertain to the father (*mishel av*) such as feeding him and bringing him a drink; however, on a matter which does not pertain to the father, it is clear that he has no power to stop his child.⁹⁰

We may take this as a general principle – on issues which are not relevant to the parent or where the parent derives no

86. *Yoreh Deah* 240:25.

87. *Maharik* 166. The question involved a man who wanted to marry a woman suspected of inappropriate behavior; nevertheless, *Maharik* said the son can do as he wishes. See also *Shevet Halevi* 2:117 and 2:111.

88. Gra note 36 to *Yoreh Deah* 240.

89. *Yevamot* 6a.

90. *Darchei Moshe*, *Yoreh Deah* 240, in the name of *Maharik* 166; *Shu't R. Akiva Eiger* 68.

benefit,⁹¹ the child has no obligation to listen. Thus, if the mother says, “take your boots, it’s rainy today” or “it’s too cold to take your baby out for a stroll”, the child is free to follow his or her own inclinations.⁹²

Despite this halachic principle, some *poskim* are not entirely sanguine about the child’s ignoring the parents’ advice, even if halachically permitted to do so. For example, the *Chazon Ish* questions – what if the child’s recalcitrance will cause the parent distress? What if the parents will be embarrassed by their child’s marrying this person? What if their distress is enough to make them sick?⁹³ Why/how is a child permitted to do this? What about the commandment to revere one’s parents, in addition to honoring them? Consequently, *Chazon Ish* seems to disagree,

91. Tosafot, *Kiddushin* 32a, s.v. “Rabbi Yehudah...” See also the Ramban and Rashba to *Yevamot* 6a, cited by the Gra to *Yoreh Deah* 240:36. See also *Atara Lamelech*, p. 92.

92. *Shu’t Maharam Lublin* 136 and 95. *Shevet Halevi* 10:156 writes that actually there is disagreement among the *Rishonim* (medieval rabbis) about this rule, and there are those that say that if a parent insists upon the child doing or not doing something, when it really does not affect the parent, then the child can do what he wants when not in the presence of his parent. See *Sefer Hamitzvot Of Rav Saadiah Gaon*, I, page 100. Rav Perlow in his commentary there cites *Yoreh Deah* 16 that if the parent forbids the child to converse with a certain person who is the parent’s enemy, the child need not listen, since he is being asked to violate the Torah (which forbids hating another Jew). But in the absence of being told to do something forbidden, it seems that the child would indeed have to listen, even though the parent receives no physical benefit. We find the same opinion in the *Riva* 127, concerning a parent who tells the child to divorce his/her spouse. See also *Sefer Chassidim* 561. See also the *Noda Biyehudah Even Haezer* 2:45. The *Makneh*, *Kiddushin* 32b writes that if obeying the parent entails a loss for the child at the same time that the parent received no benefit, the child need not comply.

93. *Meishiv Davar* 2:50 and *Tzitz Eliezer* 15:34 and 3:153; *Mevakshei Torah*, volume 4 in the name of the *Shach* says that despite the child’s freedom to marry whom (s)he wishes, they should take into account the parents’ reaction, as explained by the Gra, *Yoreh Deah* in the laws of *kibud av v’em*. Basically, however, the consensus seems to be that the child is not obligated to heed the parents’ objections unless, of course, the child is contemplating marrying someone whom the Torah forbids marrying. See further discussion in the text, above.

writing "...but we have not heard that he is permitted to distress him..."⁹⁴

Other sources also express reservations concerning the conclusion of Ramo that it is permitted to disregard the parents' wishes when seeking a spouse. The Malbim⁹⁵ praises the patriarchs of our people, and other exemplary biblical figures, who never disagreed with their parents' choice of a spouse: Yitzchak, Yaakov, Tamar, all agreed to follow the dictates of their elders without reservation. The Malbim clearly feels this is the right attitude; whether he disputes the halachic ruling of Ramo is questionable.

A similar sentiment is expressed by the *Sefer Chassidim* 564, which raises the issue of a son who wants to marry a girl who is not good for him. *Sefer Chassidim* recommends that he listen to his parents, and points to the precedent of Yaakov, who followed the advice of his parents Yitzchak and Rivka not to marry a Canaanite girl but rather to seek a wife in Mesopotamia.⁹⁶

It is also necessary to understand the parents' true motives in opposing a marriage match. It could be they are genuinely concerned that this person is not suitable for their child; however, it could be that they don't want their daughter to marry someone from another city, because this will deprive them of her attendance on them. In that case, they are worried about themselves rather than about her. Their motivation, thus, has an impact on the Halacha of whether or not the child needs to follow the parental advice.⁹⁷

Financial

There are limits to what losses a child has to accept in order to

94. *Chazon Ish Yoreh Deah* 149:8 – but he notes that he did not give this matter his full attention.

95. *Devarim* 27:16.

96. *Mevakshi Torah*, in the name of Rav Shach, writes that albeit within the letter of the law, there is no obligation of *kibud av v'em* to follow his parents' wishes in regard to marriage, "nevertheless, he ought to take their opinion into consideration. Furthermore, it is not clear that there is not an element of *kibud av v'em* in this matter." See also *Sefer Chassidim* 564.

97. *Margaliot Hayam* 76b, in the name of Rabbeinu Yonaton.

honor his parents. Basically, the father has the right to tell the child to desist from an action which might earn the child money: this is not considered that he is causing him a loss; rather, he is preventing him from making a profit. But the Ramo says that if a father wants to take his son's purse full of money and throw it into the river, the child is not required to let him. However, if he has already done so, the child must not cause his father any pain or anguish in retaliation.⁹⁸

At times, when parents get older, they find it difficult to attend to all their needs, and the child (or children) often step in to assist. What guidelines should the children be following? To what extent are they allowed to manipulate the parent's financial matters in order to pay for their maintenance? When a daughter opens her mother's refrigerator and finds moldy or deteriorating food, is she permitted to throw it out? Can a child sell his/her parent's assets – without their knowledge or perhaps without their consent – in order to afford a caretaker?

The Gemara long ago addressed a cognate situation: there is a poor person who is too proud to take charity. Is it permissible to steal from him, be caught, and be sentenced in accordance with Jewish law to pay back double the theft? In this way, the “thief” would be benefiting the poor man without hurting his pride. Unequivocally, the Gemara rules that it is always forbidden to steal, even if it is done to benefit the “victim”, even if it is done for the person's good.⁹⁹

There are nuances to this ruling: *Sefer Chassidim* #585 allows a son of parents whose workers who often steal from them, to confiscate his parents' money so that it will not be lost.¹⁰⁰ In the words of *Sefer Chassidim*, this is not “stealing” but rather “*hashavat aveidah*”, returning a lost object. The child is to be praised for using the parents' money to provide for their needs, when the parent does not have the wisdom to care for his money

98. This is *mishel ben*. Ramo, *ibid*.

99. *Bava Bathra* 61a. What adds difficulty to this Talmudic conclusion is that in the same tractate, p. 15, the Gemara praises Job for essentially doing this precise thing.

100. *Avnei Zikaron*, *Kuntrus Kibud Av v'Em* P. 300; *She'iltot* 58:4.

himself. It seems to be the opinion of *Sefer Chassidim* that children have leeway to intervene if or when they notice that the parent is seriously wasting money in a foolish manner or others are taking advantage of the parent's mental frailty; then the child can move to preserve the parent's assets.

Avnei Zikaron, *Kuntrus Kibud Av v'Em* discusses the situation of a parent who is old and has lost his mental abilities;¹⁰¹ the family wants to sell his assets and use the money to provide proper care for him. He writes that if it is done sincerely (*leshem shamayim*), it would be permitted. However, since one cannot be certain of the purity of one's own motives, the question should be decided by a *beit din*. (The children could be fooling themselves that they are selling the father's property in order to be able to provide proper care – but what if they want to sell because they have found a prospective buyer who offers a large sum, which they will eventually inherit? And what if the father, despite encroaching senility, is adamant about not wanting the property sold?)

All that has been said here concerning children taking charge of their parents' assets applies only if the parents are not able to provide for their care on their own, and the funds will be used exclusively for the benefit of the parent's health and according to a doctor's directions. Similarly, if a child sees that the food in the refrigerator is spoiled, it is permitted to discard it, in order to protect the parent's health.

What to do if parents cannot afford to pay for their expenses? Generally, it would be the responsibility of the children, primarily the sons. The *Shulchan Aruch* indicates that despite the Halacha that *kibud av v'em* is *mishel av* – meaning that the cost of honoring parents devolves upon the parents – nevertheless, “if the father does not have [money] and the son does, the [Jewish court] forces him to provide sustenance for his father as much as he can.”¹⁰²

How much does a son need to contribute? Just the standard ten percent of his income that should go to *tzedaka*, or is he obligated

101. P.301. See also *Choshen Mishpat* 290:27.

102. *Shulchan Aruch Yoreh Deah* 240:5.

to take care of all their needs, if he has the funds?¹⁰³ The Ramo to *Shulchan Aruch Yoreh Deah* 240:5 writes that the son is obligated to give the father only as much as he is required to give to *tzedaka*; “nevertheless, a plague will befall someone who supports his father from his *tzedaka* allotment if he has enough money otherwise”. If the sons are unable to do so, and if there is a wealthy son-in-law, the opinion of the *Aruch HaShulchan* is that he should be pressured to support the father-in-law out of his *tzedaka* funds, inasmuch as he has an obligation to honor his father-in-law.¹⁰⁴ A question which is beyond the purview of the present study is how to define the parent’s needs – just the bare necessities of life, or is it necessary to maintain him in the style to which he was always accustomed? This issue remains to be clarified.

If the father is capable of working, but chooses not to, the children are not required to support him.¹⁰⁵ Similarly, if the parents are owed money but don’t want to collect it, it is not the responsibility of their children to provide for them.¹⁰⁶ While this may seem straightforward, the reality is that sometimes the parent may be physically capable of working, but psychologically not able to hold down a job. It may therefore devolve upon the children to support their parents in such a situation. These matters may need to be addressed on a case-by-case decision, with the help of a Rabbi and perhaps a mental-health professional.¹⁰⁷

103. See *Aruch HaShulchan Yoreh Deah* 240:18/2.

104. *Yoreh Deah* 240:38.

105. *Chatam Sofer, Shu’t Yoreh Deah* 229; *Aruch HaShulchan Yoreh Deah* 240:18 writes that if his father is tight-fisted and finds it hard to part with his money, even to provide for his own needs – there is a difference of opinions. If a person is living in poverty because he is too stingy to spend his own money on his needs, it is not necessary to give him charity. However, in the case of a father, it would depend: according to the opinion that *kibud av v’em* is *mishel ben*, the child would have to support his parent, but according to the view that it is *mishel av*, the child would not have to pay the father’s expenses.

106. *Shevet Halevi* 2:111.

107. The source for this ruling is in Talmud *Yerushalmi, Shabbat* 14:3, and

Moving Away

There are numerous instances in life when people have to contend with the imperative to honor parents which may conflict with a person's own wishes. There are times when a child wants to move away from parents for financial reasons, such as a better job, or simply because he or she would prefer living in a different part of the city or country. Sometimes, an adult wants to move away because his/her own parents are having a negative effect on the grandchildren. All these situations, and many cognate ones, can arouse anxiety or conflict in the children's hearts.

It sometimes happens that elderly parents come to rely on having their child live nearby, and object when the child wants to move his home elsewhere. Rav Moshe Feinstein¹⁰⁸ writes that G-d does not view with favor a person who takes steps to avoid having to perform a mitzvah.¹⁰⁹ Even if technically it may be permissible to take such action, it is not the right thing to do. The import of the responsum is that in the absence of a pressing need, a person should avoid doing something which will result in his inability to fulfill a mitzvah – and this applies also to caring for parents. Unless there is a good reason or important need, a person should not put himself into the situation of being unable to fulfill the mitzvah of *kibud av v'em*. This aspect of giving respect to parents adds another dimension to a mitzvah which, in the eyes of many, is already considered to be one of the most

quoted in *Derashot Haran* 6 and by *Nishmat Avraham*, II, P 109. In *Metivta*, Yuma 85b, p. 34, the conclusion is given that a person who is psychologically impaired may be considered in the category of *pikuach nefesh* – in mortal danger. The same ruling appears in *Nishmat Avraham* II, p. 109.

108. *Iggerot Moshe*, *Orach Chaim* 3:93.

109. Rav Moshe was writing about whether it is permissible for a person to take a trip on Sukkot, which will make it impossible for him to observe the mitzvah of dwelling in a sukkah; the issue is whether one may voluntarily enter into a situation where he will be exempt from performance of a mitzvah. Applying that principle to the issue of *kibud av v'em*, the question is whether a person is permitted to move far away from his parents, which will exempt him from the mitzvah of tending to their daily needs. The source for this is *Menachot* 43.

difficult mitzvot to perform.¹¹⁰

If parents ask the child not to move away, claiming they need the child's help in tending to their needs, generally the child should follow their wishes, as Rav Moshe indicated. Nevertheless, *Aruch HaShulchan* sets some guidelines:¹¹¹ "Studying Torah is a greater mitzvah than honoring father and mother."¹¹² Therefore, he permits the son to go to the yeshiva he wishes, even if it is distant, inasmuch as someone who is involved in performing one mitzvah is exempt from other mitzvot."¹¹³

Another exception to this general rule is in a case where the child will suffer a significant loss due to not moving; since we rule *kibud av v'em* is *mishel av*, the child is not obligated to incur

110. One could argue that if the child wants to move, he should take his parents with him. This is easier said than done; parents are often reluctant to leave familiar surroundings in their old age.

Although we do not derive Halacha from a midrash, it is nevertheless instructive to review Rashi's comments to the verse (*Bereishit* 11:32) which tells about the death of Terach, father of Avraham. Right after telling about the death of Terach, the Torah records that Hashem instructed Avraham to leave his country, which Avraham did and ultimately settled in Canaan. Rashi notes that although Scripture gives the impression that Avraham left after his father's death, actually Terach did not die until many years later, but Hashem did not want to publicize the reality that Avraham left his elderly father behind and did not fulfill the mitzvah of *kibud av v'em*.

111. *Yoreh Deah* 240:36. See also *Shulchan Aruch Yoreh Deah* 240:13, based on *Gemara Megillah* 16b.

112. *Pitchei Teshuva Yoreh Deah* 240:22 extends this even to a case where the child wants to attend a shul where he feels he can *daven* better, but the father doesn't want him to. For this mitzvah, too, the child need not obey his father. Rav Pam in his *Atara Lamelech*, p. 93, discusses the conflict between a son who wants to *daven* in his yeshiva and the father who wants the son to *daven* with him.

113. He supports his reasoning by noting that Yaakov was paid back for being away from his parents for 22 years, and therefore Yosef was taken from him for 22 years. Actually, Yaakov had been away from his parents for 36 years – yet he was not taken to account for the 14 years that he spent studying Torah at the yeshiva of Shem and Ever. His logic is not quite clear – surely Yaakov's parents wanted him to study Torah with Shem and Ever? See *Teshuvot Vehanhagot* 3:274.

physical or financial pain, or suffer for the educational needs of himself or his children, or strains on his marriage in order to honor his parents. For any of these reasons, he can move; it would be advisable, however, to consult with a rabbinic authority on the proper procedure to follow.

What if the son spends his time learning Torah and the father, who is working, wants the child to stop learning and work for him? Rav Shmuelewitz writes that *Sefer Chassidim* indicates that if a child “knows that when his father is not busy working, he wastes his time or [engages in sinful behavior, such as] frequenting prostitutes, or gossiping, or starting arguments... then it is mandatory for the son to keep his father busy with work so that during that time he will not sin.”¹¹⁴

Is it contrary to the mandate that the child should support and care for his parent, if the child goes to learn Torah while the parent supports him? If that is the wish of the father, then even if people go around saying that the son is thereby being disrespectful, “he should listen to his father’s [request, and go to learn]; and in compensation for the shame [the son suffers], his reward will be greater.”¹¹⁵

Parents’ Wishes Regarding Education

There are almost inevitably conflicts between what the parents want for their child and what the child wants for himself. One of these areas of concern is long-term study of Torah, on the part of the son, while the parents want him to get a trade or a secular degree. This was the substance of a query addressed to Rav Ovadiah Yosef, z”l, and he offered a sweeping analytical response:¹¹⁶

Both sides have impressive rabbinic dicta upon which to rely: the Mishnah in *Avot* 2:2 says that “it is good to study Torah with *derech eretz*”, which is usually taken to mean a trade or a profession. The Gemara similarly records a debate between Rabbi

114. Ibid.

115. *Kiddushin* 30a.

116. *Yechave Da’at* V:56.

Yishmael and Rabbi Shimon bar Yochai regarding whether a Jew should only learn Torah or also seek a livelihood.¹¹⁷ There, the Gemara records that “many did as R. Shimon bar Yochai did – only learning Torah – but they were not successful.” On the other hand, the Gemara writes that “many did as R. Yishmael advised – learning and working – and they were successful.”

After recording the divergent opinions, Rav Ovadiah Yosef concludes that nevertheless, the *Shulchan Aruch* rules very succinctly – “Talmud Torah takes precedence over honor for father and mother.”^{118,119}

Analyzing and expanding upon these sources to arrive at his ruling, Rav Yosef writes that for the majority of people, the best solution is to follow a path which will lead to economic independence. A person should have a secular education or some other training which will enable him to support his family and himself, albeit he should continue studying Torah and make the pursuit of a livelihood secondary. In this way, he will garner “both worlds”. Nevertheless, he recognizes that there can be a singular individual,

...whose soul yearns for the Torah and the pinnacle of his desire is to uplift himself in the heights of Torah.... About such a person, Rav Nehorai said “I reject all the crafts of this world and I do not teach my son anything besides Torah.”¹²⁰

In other words, generally a child should follow the parents’ advice and acquire a means of self-support. But exceptional individuals who feel themselves strongly drawn to Torah study only, are entitled to follow their inclination. Studying Torah is a

117. *Berachot* 35b.

118. *Yoreh Deah* 240:13.

119. *The Fifth Commandment* by R. Moshe Lieber, p. 187, writes that if a young woman wants to go away to study in a girl’s seminary, but this will make it impossible for her to fulfill *kibud av v’em* while she is there, she is permitted to go anyway. However, the parents are not obligated to pay for her. The principle that the study of Torah takes precedence of *kibud av v’em* applies to women as well as to men.

120. This is based on Rambam, at the end of *Hilchot Shemitta veYovel*.

mitzvah of such consequence that the parent is not allowed to prevent the child from proceeding. *Minchat Yitzchak* rules that a parent is not allowed to refuse to sign a passport application for the son who wants to go to learn.¹²¹

Medical Issues And Treatment

Causing a parent physical harm is so egregious a sin that the Torah assigns the death penalty for a child who strikes his parent.¹²² The Gemara posits that he is executed only if he causes the parent to bleed.¹²³ This might become an issue if the child is a doctor or dentist and wants or needs to tend to the parent. The Gemara asks, "Is a son permitted to draw blood for his father?" In its inquiry, the Gemara records that Ravina's son Mar, who was a doctor, would not lance a boil on his father's body, for fear of doing more than is absolutely necessary, thereby inadvertently transgressing the biblical prohibition.¹²⁴

It is the opinion of *Shulchan Aruch* that even if the parent has a splinter, the child should not remove it for him; similarly, if the parent needs to have bloodletting, the child should not do it, even if he is a doctor and intends it for healing.¹²⁵ However, the Ramo in his gloss adds that if the parent is in pain and there is no one else available to do the procedure, the child may do it. This leniency is further expanded to permit a child who is a medical

121. *Minchat Yitzchak* 5:79. See further, *Chelkat Yaakov* 3:130, *Iggerot Moshe Yoreh Deah* 3:82, and *Yabia Omer* 6:40, who stress the importance of devoting time to studying Torah exclusively, without secular studies.

122. *Shemot* 21:15.

123. *Sanhedrin* 84b. see *Shulchan Aruch Yoreh Deah* 241:1,

124. Mar thought it would be *muttar* for a son to treat his father medically. However, if the son makes an incision greater than minimally required, he would be in violation of this severe prohibition. The *Chelkat Yaakov* 2:39, however, relies on the *Minchat Chinuch* 48 to permit a child's treating the parent, if there is a need and if the parent forgives the bleeding or even the extra, inadvertent cutting. See Rambam, *Mamrim* 5:7 and Ramban, *Torat Ha'adam*, vol. II, p. 43 (Chavel Edition). Others are of the opinion that it is always forbidden for a child to cause a wound in the parent, even if medically indicated. See the discussion in the text.

125. *Yoreh Deah*, 243.

specialist and the one most qualified to treat the parent's illness, to treat his parent, even if he wounds him in the process.¹²⁶

The resolution of this issue is highly relevant to many common interactions between sickly parents and their medically-trained offspring: giving a diabetic parent the daily insulin shot, drawing blood for medical tests, cleaning and tending teeth by a dental hygienist, and the like.

Doing Something Detrimental to Parent's Health

Although parents are supposed to act as responsible adults, the truth is they have human weaknesses like everyone else. What should the child do if the parent wants him to do something or give him something which is dangerous or at least detrimental to his health, and the doctor has warned him to avoid this? Certainly the child should not do it, just as he would be forbidden to endanger any person's life. But what if it might only possibly be dangerous – *safek sakana*? And what constitutes "possible mortal danger" in Jewish law?¹²⁷

Rabbi Shlomo Zalman Auerbach, in his *Minchat Shlomo*, opines that whatever is the usual perception of people that something is potentially deadly dangerous, that is the halachic definition of *safek sakana*.¹²⁸ Thus, if a doctor were to tell a person that his child needs to be vaccinated on November 1, and November 1 turns

126. *Nishmat Avraham Yoreh Deah* 241:1. *Gesher Hachaim* even allows the son to treat his father in a situation where there are other doctors available but they will charge a great deal of money, while the son will do it gratis. *Har Tzvi Yoreh Deah* 197 disagrees: Since the son is a doctor, the father would have no expense in getting the treatment from his son. It is the son who is concerned lest he cause his father to bleed, and therefore it is the son's responsibility to get someone else to do it, and the son has to pay. This is not about *kibud av v'em*, where the father would have to pay (*mishel av*). Rather, it is the son's concern about a different mitzvah – causing bleeding – and therefore the son has to pay.

127. A somewhat related issue can also arise if the child has power of attorney over the parent's assets, and the parent tells the child to give him some money, which the child knows will be used in a sinful way. What should he do? This is discussed in *Chashukei Chemed, Sukkah*, p. 158.

128. *Chelek* 2, 29, s.v. *ul'inyan safek*. *Shemirat Shabbat Kehilchata* 32, n.2.

out to be Shabbat, in almost all cases no one is so anxious about the matter that they would get the shot on Shabbat; waiting a day or so is not perceived as constituting a real threat to life. However, if the doctor who administers the therapy is only available on that Shabbat and will not return for quite a while, then the Halacha might decide it would be dangerous to delay. It depends on the case.¹²⁹

Writes the *Sefer Chassidim*: "Even if the father says [to the son], 'If you don't give me this thing I will never forgive you, not in this world nor in the World to Come' – he does not have to listen and give it to him."¹³⁰ In truth, there is considerable debate about accepting this ruling, and about the extent or full import of this startling statement from the *Sefer Chassidim*; perhaps it applies only in a situation where there is mortal danger to the parent's health, but possibly it pertains even to a situation where it will cause harm, but not death.¹³¹ A further factor is whether the harm would be immediate – such as giving a diabetic forbidden candy – or delayed, such as giving a person with heart problems the cigarette he craves, since that is not likely to cause him to keel over right then and there.¹³²

129. He writes that possibly it should be considered a danger to life and Sabbath law should be set aside. The SSK, *ibid*, cites the opinion of *Chazon Ish*, *Ohalot* 22:32, and letter 202 in volume I of *Letters of Chazon Ish* that a situation is only considered *pikuach nefesh* if the danger is present now (otherwise, one could theoretically justify opening his store on Shabbat because if he doesn't have enough money, he will die of starvation....).

130. 234. See also *Aruch Hashulchan* 240:41.

131. See *Brit Olam* in the name of *Mahari Molcho* and *Yad Shaul*. The resolution of this question is relevant also to the rabbinic controversy whether one is obligated to do whatever the parent wants or only those things which bring him physical benefit or pleasure. In the present scenario, there is surely no physical benefit to the parent, albeit there is the satisfaction of getting what he/she wants. See the opinion of R. Ovadia Yosef *Kibud Av v'Em* 21.

132. *Nishmat Avraham Yoreh Deah* 146 cites a responsum he received about this: "And the Gaon R. Shlomo Zalman Auerbach wrote to me that it is possible that [the *Sefer Chassidim*] intended to say that honor to one's parent comes from giving him something, not when he takes something away from him (i.e., his health)....and he will be causing him damage greater than the pleasure he gives him."

Avnei Zikaron, Kuntrus Kibud Av v'Em, also seems to conclude that if giving the parent what he/she wants might cause an immediate deterioration of the parent's condition, the child should not acquiesce. However, if something is contra-indicated but will not have an immediate consequence, the situation is more problematic, and perhaps the child should comply.¹³³ One must also factor in the effect the child's not acquiescing to the parent's request will have. Perhaps the parent will become so upset at being denied that it will endanger his health or even his life. Or else, he might refuse a procedure which might benefit him, but to try and force him would cause great distress, perhaps inflicting more harm. In such a case, the child should not try to impose his will upon the parent.¹³⁴

On the other hand, *Mevakshei Torah* 242:4 reports that Rav Eliashiv, when asked about giving the father a cigarette which the doctor had forbidden, ruled that the child should not do it: "Albeit there is no concern for immediate danger to life, nevertheless, he should not listen to his father because for the father there is a prohibition to smoke, and in a case of a prohibition, there is no requirement for *kibud av v'em*".¹³⁵

A Terminally Ill Parent

There are times when a person is very ill and asks his child to tell the truth about his condition. The Gemara addresses that problem: "Someone who is sick and progressing towards death, we say to him, [it is time for you to] confess,"¹³⁶ although we try to reassure him that many people have confessed and yet continued to live a long time. We believe that it is desirable for a person to return his soul to his Maker pure and forgiven of sin, by making confession before death (*vidui*). It would seem,

133. Ibid, note 22.

134. *Iggerot Moshe Choshen Mishpat* 2:33, note 5.

135. Ibid, note 8 – if the parent requests the son not to smoke, then the son is prohibited from smoking in his father's presence (or if he will find out). This is aside from the reality that smoking is probably not permitted for anybody at any time.

136. *Sanhedrin* 43b and *Shabbat* 32a.

therefore, that if the patient wishes, he should be kept informed of his true condition. However, when the Halacha is recorded in *Shulchan Aruch*, there is a caveat added – but don't do this for "ignorant people nor for women nor for children" for fear that they will cry and lose their hope to live.¹³⁷ Basically, the Halacha is that one must tread with great sensitivity on this area, not to frighten someone more than he/she can handle, not to break their spirit, but to encourage them in this difficult passage.

These seem to be contradictory directives – on the one hand, a dying person should be given the opportunity to repent and cleanse himself of sin before dying.¹³⁸ On the other hand, the bad news of possibly impending death can so dishearten a person that he loses his will to live, which might lead to an early death. Sometimes a person is critically ill and needs to make decisions about medical options; for this, he/she needs to know the truth. It is therefore important for the informer to present the options in a positive manner, which may lift the patient's spirits and may help in his healing.¹³⁹

How do these directives for dealing with a critically ill person apply in a situation where the parent is very ill and asks the child to tell him the truth about his condition? Based on the rules explained above, *Shearim Metzuyananim Behalacha* rules that the child should not tell the truth to the parent; he further posits that there is a requirement of honoring one's parent only in such a

137. *Yoreh Deah* 338 and 320:1. See also *Nishmat Avraham* 338:1 and 338:3; *Betzel Hachochma* 2:55.

138. *Sefer Chassidim* 154 (this appears in only some editions) seems to say that it would be desirable for the parent to know of his probable impending demise so that he can put his affairs in order. However, it is evident that there is some kind of misprint in the *Sefer Chassidim*; consequently, it is difficult to know his true opinion.

139. *Shearim Metzuyananim Behalacha*, *Yoreh Deah* 240 concludes, "However, if there is no hope for recovery, telling the patient the truth will be futile in effecting recovery and will be counter-productive. Moreover, there have been numerous instances when doctors thought treatment would be futile, but the patient recovered. Ultimately, it is in the hands of the *Ribono shel Olam*." He quotes the *Da'at Kohen* that the doctor's medical opinion only serves to create a doubt; what was accepted medical opinion in one generation turns out to be rejected in another time.

way that will bring calmness of spirit, not upheaval and concern.¹⁴⁰ The child should make his father or mother feel better, not feel depressed or sad. These concerns do not apply when it is crucial to the parent's medical treatment for the parent himself to decide on the proper medical course of action to take, a decision which cannot be made without full disclosure of the realities of the situation.

Elder Abuse

It is sad but true that there are people who abuse their elderly parents. But when medical personnel want to report to the police the bruises and cuts they find on their frail older patients, the victims often beg them not to – whether it is out of love for the children even when they are evil, or sometimes, they plead – doctor, please don't report him/her, I have no one else to take care of me, and I will die if I am on my own. Nevertheless, the Netziv writes that there is no room here for pity for the child, nor even for pity for the parent who will be bereft; the Torah law is unequivocal. Even if the parent acquiesces to the abusive treatment (fearing that otherwise he will get no help at all), we should not allow it to continue.¹⁴¹

There is no question that the child is absolutely forbidden to strike his parents, even if they abuse him. If the situation becomes intolerable, the child should leave, and hire someone else to tend to his parent, as discussed herein previously.¹⁴²

140. 193:2.

141. However, the *Chinuch* 48 notes that the father can forego the honor due him; nevertheless, it is absolutely forbidden for the child to hit his parent, regardless of such "permit". See, however, the view of *Minchat Chinuch*, *ibid*, note 3, as well as *Minchat Yitzchak* 1:27 and *Shevet Halevi Yoreh Deah* 4 and *Betzel Hachochma* 2:55.

142. Rambam rules that albeit the child is entitled to extricate himself from a difficult situation, he is not permitted simply to abandon the parents, but must provide appropriate care via a third party. See Rambam, *Hilchot Mamrim* 6:10, and comments of *Kesef Mishneh* there; also, *Tzitz Eliezer* 12:59 forbids the child to tie his parent to a bed or a chair, even if that is done for their safety. See *Nishmat Avraham, Yoreh Deah* 241, note 4, who cites the view of Rav Neubart that if there is no one else to do this, and it must be done,

Bathing the Parent

Being able to take a shower is one of the pleasures of civilization.¹⁴³ When a person has to “afflict his soul” on Yom Kippur, one of the “afflictions” is not being able to wash the body; also when one is a mourner (and on Tisha b’Av), washing is severely restricted. Feeling clean all over is a definite pleasure. The question therefore arises, if the parent is not able to wash him/herself, may the child do it for them?¹⁴⁴

The Gemara permits a man to use the communal bathhouse (where all the men were naked) with everyone “other than his father, his father-in-law, his mother’s husband, and his sister’s husband.”¹⁴⁵ The *Aruch HaShulchan* extends this rule to a student, writing that a student should not bathe in the bathhouse together with his Rebbe.¹⁴⁶

Various rationales are adduced for this restriction: Rashi writes that seeing his father naked will bring to the son’s mind where he (the son) came from, inspiring impure thoughts.¹⁴⁷ Meiri writes that it is not respectful to see his father thus. But he notes that Rabbi Yehudah allowed it if was a necessary way to honor the father – i.e., if the father requires help in bathing, then it is

then the child should do it.

143. *Nedarim* 81b.

144. *Otzar Haposkim* 23:6, s.v. *v'im*, rules that even if the father requires this service, it is forbidden for the son to do it; apparently he agrees with Rashi that it may lead to *hirhur*, inappropriate thoughts, which would be a violation of the biblical command of *yir'ah*, respect.

It is interesting to note that R. Moshe Feinstein questions if there exists *hirhur* after a person has died (when performing *tahara*). After citing various proofs for either side of the issue, he rules that a person should follow the custom of his place. *Iggerot Moshe* 2:147.

145. *Pesachim* 51a.

146. 242:42. If the student was there first, he does not have to leave when his Rebbe enters.

147. The same is true for the father-in-law. Why Rashi chose this reason is puzzling, for when it comes to the teaching that one should not bathe together with his Rebbe, Rashi explains it is forbidden because the student owes respect and reverence to the Rebbe. Certainly that is true of the parent as well? See *Iggerot Moshe Yoreh Deah* 2:147.

permitted for the son to assist him.¹⁴⁸ The Ramo notes that nowadays, since men cover up their private parts when they are in the bathhouse, and no untoward thoughts are likely to be aroused, it has become permissible.¹⁴⁹

Based on these precedents, it would seem that a child may wash the parent's body, with the exception of the privates. And certainly this would be permitted if the parent's body must be kept clean so as to avoid infection, which could be deadly. All this is if there is no one else available to do it. As for a son washing his mother, there are additional issues, and if at all possible, a daughter should do it.¹⁵⁰

Aino Lefi Chevodo

The Gemara accepts a principle that sometimes a person is dignified or prestigious or elderly, and it would be beneath his dignity to have to do certain actions (*aino lefi chevodo*); therefore, he is exempt.¹⁵¹ As an example, if someone finds a lost object in

148. *Otzar Haposkim* II, p. 236 discusses what to do if the father needs an injection (in a situation where the son is permitted to administer it), but the injection is supposed to be done in a part of the body normally covered. He permits the son to do it if he is a medical professional and no one else is available, relying on the principle that *beavidataihu teridei*, a person whose profession requires dealing with people's exposed bodies, can be considered as simply doing his job and not being aroused by what he sees. He also counsels that only a small area of skin should be exposed at a time (*megaleh tefach, umechaseh tefach*).

149. *Even Haezer* 23:6; he expresses the same thought in *Yoreh Deah* 242:16, remarking that it would only be forbidden for a student to remain in the sauna if his Rebbe appeared there naked.

150. *Iggerot Moshe*, *Yoreh Deah* 2:147, discusses whether these strictures also apply to a son or daughter participating in the *tahara* (ritual washing) of the parent's body prior to burial. He also extends the inquiry to include a grandchild. He rules that if there is no *minhag*, the child surely should not participate in the parent's *tahara*, but the grandchild may, for his obligation to honor the parent's parent is not the same as honoring one's own parent.

151. See for example, *Bava Metzia* 29b, *Berachot* 19b, *Sanhedrin* 18b. Does this principle apply only to a great scholar or to any older person? See *Shita Mekubetzet* 30a,s.v. *zaken*. For a thorough examination of the principle *aino lefi chevodo* and when it applies, see *Iggerot U'ketavim Pachad Yitzchak* 33, note 4, and *Minchat Yitzchak* 2:84, note 2.

the street, he is supposed to pick it up and return it to the loser. However, if a person finds something on the street and it is beneath his dignity to pick it up – as a matter of fact, if it were his own property he would not want to be seen carrying it in the street – then that person is excused from the obligation to pick up the lost object and return it to its owner. (As an example, if someone finds a lost cat, and would be embarrassed to walk through the streets carrying a cat in his arms). Does this principle apply also to *kibud av v'em*? Does a child need to do something for his parent which would embarrass him or be beneath his dignity? As an example, if a person's car has a flat tire – he might well consider it beneath his dignity to fix it personally, but would wait for a service to do it. Can he therefore demur to fix his father's tire if it gets a flat, and get someone else to take care of it, or does the son need to fix it himself if that is his father's request?

More specifically, if a person would find it degrading to have to bathe his parent, there are various opinions on the matter. Some maintain that since honoring parents is a mitzvah, then the child is surely obligated to do the mitzvah, regardless of his feelings about it. Others, however, feel that just as a prestigious individual is excused from returning a lost object which would embarrass him, so, too, in this case the child should be excused.¹⁵² As far as a child doing something to a parent which is inherently disrespectful, (for example, tying the parent down, for his own safety), see *Sdei Chemed*, III, p. 102.¹⁵³

It has already been noted that rabbinic authorities are divided on whether *kibud av v'em* is a mitzvah between people – *bein adam lechavero* – or an obligation one has to Hashem – *bein adam*

152. Ramban, *Torat Ha'adam*, p.57. This is also cited by the Ran to *Kiddushin* 33a.

153. According to *Mevakshei Torah* (248), Rabbi Shlomo Zalman Auerbach was asked whether a son is permitted to act as the mohel for his own father. Rav Auerbach allowed it if there is no one else (he does not go into the question of *hirhur*, perhaps because we can generally excuse physicians from such restrictions because, since it is their profession, they do not entertain lascivious or inappropriate thoughts for the object of their professional ministrations – *beavidataihu teridei*).

lamakom.¹⁵⁴ If it is a mitzvah between man and his fellow, then the same rules apply as in any financial relationship between people. The exemption of *aino lefi chevodo* applies only to a mitzvah between two people; therefore, “it is not appropriate for my dignity” would be a valid reason for exempting the person from fulfilling the request. On the other hand, if the mitzvah speaks to the obligations an individual has to Hashem, then of course his “*kavod*”, his own dignity, would not be a relevant factor. Based on this issue, there is a question whether a prestigious person such as a Torah scholar is permitted to say, “even though it is degrading, I want to do it”, or whether we would rule that *kevod hatorah*, the honor due to the Torah which this person represents, forbids him to do it. This question is a controversy between the Rambam and the Rosh.¹⁵⁵

Rambam writes that the child must provide care for the parent, even one who loses his mind, “until [Hashem] pities them” (i.e., takes them out of their misery and lets them die).¹⁵⁶ The *Bach* adds that in a sad situation where a parent has lost his/her mental ability, the child need not obey their requests. The flip side of this is that if indeed a parent is in this condition, the child is not allowed to abandon them or leave. The only excuse a child has for leaving a parent is because it is too difficult to respect

154. See *Otzar Iyunim*, *Kiddushin*, *Ma’aracha kibud av v’em*; *Shita Mekubetzet*, *Kiddushin* 32a, s.v. *kativ bagilyon*. The exemption is not all-inclusive. See *Nedarim* 39b.

155. Rambam, *Hilchot Gezeila ve’Aveidah* 11:13 and Rosh, *Bava Metzia*, chap. 2, number 25. This issue is discussed in connection with an episode related in Gemara *Bava Metzia* 31b: Rabbi Shmuel bar Yose saw a person carrying a heavy object, and felt he should help him. However, it would not be respectful to his position for Rabbi Shmuel to be seen carrying heavy objects in the street, so instead he gave the man some money to hire workers to help him drag the load. But the Gemara concludes that it is not really possible to arrive at a halachic decision in this case, because Rabbi Shmuel was not under any obligation to help the other man, he was acting “*lifnim meshurat hadin*”, beyond the letter of the law. Therefore, we cannot use this example to derive a rule about how to apply the principle “*aino lefi chevodo*”. This rationale that it can’t be used to set a rule is cited in the Rosh, but not mentioned by the *Tur* 263.

156. Rambam, *Hilchot Mamrim* 6:10.

their wishes – but in this case, the child no longer has to follow the parent's wishes.

Parents Left With Caregivers

It often happens that one of the parents needs care which is beyond the capacity of the other parent to provide, and a caretaker must be brought into the home. This may raise problems of *yichud* (two people of opposite gender may not be alone together if not married or related to each other), if the healthy parent is absent for a while. Since the laws of *yichud* were instituted in order to prevent sexual temptation and transgressions, it would depend a great deal on the health of the patient whether sexual arousal is likely.¹⁵⁷ In fact, there are numerous halachic issues relating to *yichud*, not only when it pertains to a caretaker and patient – such as a man's father moving into the house, and having to be alone with his son's wife at times. Resolution of these issues is beyond the purview of this study. However, they are not insurmountable obstacles; for example, a neighbor could be given a key to the home, or surveillance cameras installed. The fear of being discovered is often halachically sufficient to render the situation no longer one of *yichud*. In all cases, a competent rabbinic authority should be consulted.

There may also be a halachic issue if a female nurse needs to bathe a male patient, or the reverse. The Ramo rules that those personal ministrations which are forbidden to a husband/wife when there is a *niddah* situation, do not apply to an attendant of the opposite sex who is hired to take care for an unwell person.¹⁵⁸ Depending on the general health of the patient, however, certain actions might still be considered too affectionate; rabbinic advice should be sought to find the proper approach.

A possible leniency on these issues may arise from the position of the Chatam Sofer that fear of police or government reprisal or professional disqualification against a perpetrator may be

157. *Yoreh Deah* 335, based on *Terumat Hadeshen* 252. See *Tzitz Eliezer* 6:40.

158. *Even Ha'ezer* 21. For example, washing the person's face. See also *Aruch HaShulchan* 21:7.

sufficient to permit a person to enter into a somewhat dangerous situation of *yichud* – such as a woman being alone in a hospital.¹⁵⁹

Conflict Between Divorced Parents

Unfortunately, divorce is becoming more and more common in the Jewish community, and it raises concomitant problems for the children of warring parents. The child, whether young or adult, is torn between clashing demands. What to do?

The *Shulchan Aruch* rules that in general the father's wishes take precedence, inasmuch as both the mother and the child are required by Jewish law to honor the father.¹⁶⁰ However, the parameters change when the parents are no longer married, because then she is no longer required to honor her ex-husband; consequently, if the offspring is confronted with conflicting demands from divorced parents, he faces a problem as to what to do. The rule is that when parents are no longer married to each other, they should be accorded equal respect.¹⁶¹ If one made the request first, there is no question that the child has to fulfill that request first ("one who is involved in performing a mitzvah is exempt from performing another mitzvah.")¹⁶²

However, if they both make requests at the same time – conflicting requests – there are no precise parameters as to what to do. This is a situation which, sadly, arises often: for example, each of the divorced parents wants the child to spend YomTov with him/her.

The Gemara *Kiddushin* 31a raises the question of what to do if the father and mother simultaneously request the child to do something – "his father says, bring me some water, and his mother says, bring me some water" – which of them has precedence? Some Rabbis suggest that rather than showing

159. *Shu't Chatam Sofer*, *Yoreh Deah* 76 and *Otzar Haposkim*, *Even Haezer* , *siman* 22.

160. *Yoreh Deah* 240:14, based on a Mishnah in *Kritot* 28a. There is some question whether the woman's requirement to respect her husband is a rabbinic or a biblical commandment. See *Maharsha to Kiddushin* 31a.

161. Meiri, *Kiddushin* 31a.

162. *Ibid.*

preference for the father over the mother, the child should bring a pitcher of water, set it down in front of them both, and tell them to please help themselves.¹⁶³ While this is an ingenious solution, it is not one that is always practicable. In the situation mentioned above, the child cannot be in two places at the same time on YomTov.

The *Shulchan Aruch* rules that divorced parents have equal right to the child's respect and he can serve first whichever one he wants.¹⁶⁴ Is there some kind of obligation on the child to try and keep them both satisfied? At times, the only option is to follow the maxim *shev v'al ta'aseh adif*, which means it is preferable not to do any action rather than do a positive act which will anger one of them.¹⁶⁵

It is also advisable for a child to try and avoid arousing conflict between parents. Thus, if he did something his mother asked him to do, and then the father is annoyed at what he did and asks – "why did you do this, I don't like it" – he should not say he was doing what the mother wanted.¹⁶⁶

Poskim also discuss various issues that arise when a parent directs the child not to show respect to the other parent: what should a son do if his widowed mother doesn't want him to name his newborn son after his father, for she claims that hearing the name will cause her grief?¹⁶⁷ This and other situations don't always have a clear cut solution; it would be helpful to discuss the options with wise rabbinic counsel.

There are numerous instances where conflicts between

163. *Yam Shel Shlomo*, Kiddushin 31; *Beit Yosef Yoreh Deah*, ibid.

164. *Yoreh Deah* 240:14. *Noda Biyehudah* 240:14, but the *Pitchei Teshuva*, note 12, cites the opinion of *Yam Shel Shlomo* who feels that it is wrong for the child to show preference for one parent.

165. *Chazon Ish Yoreh Deah* 149:6. Perhaps the ruling is that the parent who tells the child not to listen to the request of the other parent should be ignored, for he/she is telling the child to violate the mitzvah of *kibud av v'em*. In that case, the child should do what he wants or do nothing, *shev v'al ta'aseh*.

166. *Yoreh Deah* 240:17.

167. See *Teshuvot Vehanhagot* 4:208 and *Chashukei Chemed, Sukkah*, p. 154.

divorced parents create problematic situations for their children: a father tells his son, don't invite your mother to your wedding, and if you do, I won't pay for the wedding. Should the son invite his mother nevertheless and suffer this substantial monetary loss?

We might find the answer by returning to the Talmudic story about the righteous Gentile Dama ben Netina, who wouldn't wake his father to get the key to the room where a valuable gem was kept (*Kiddushin* 31a). The Ran asks, why couldn't the son wake his father? By not waking his father, Dama ben Netina suffered a considerable loss by failure to sell his gem. Wouldn't the father have been happy to have him get that profit? The Ran offers two answers:

- Something is considered *mishel av* (i.e., that the father has to pay) only when it pertains to the father's *kavod*; but here it was a question of *tza'ar* – distressing the parent by waking him, and for that the child is obligated to spend his own money.
- By not getting the key under his father's pillow, the son did not *lose* money, he just missed an opportunity to make a lot of money. Not gaining profit is not called losing money.

Following this second rationale of the Ran, we would have to say that the son who invites his mother to his wedding against his father's wishes is not losing money – he's just not getting the money he would otherwise have received. However, if the father had already promised to pay for the wedding, then the money would be considered as already belonging to the son; consequently, foregoing that money would indeed be a loss, one which he would not be required to suffer.¹⁶⁸

Another touchy situation: the father remarries after the divorce. When the son is getting married, the father wants his new wife to be invited, but the ex-wife avers that having the new wife at the wedding will cause her great pain. Either way, the child is going

168. *Chashukei Chemed, Bava Bathra* 120a says the son is not obligated to lose money he would otherwise have received and may therefore decline to invite his mother.

to be hurting one parent.¹⁶⁹ In this not-unusual case, rabbinic advice can be helpful because resolution of the dilemma will depend not only on the wishes of the parents but also the role the new wife (or husband) has played in raising the child. See further discussion later in this study, in the section on adoptive and step parents.

Another sad scenario: the father asks his son to visit his grave weekly after his death, but the mother does not want him to. The *Beit Yosef* (*Yoreh Deah* 241) has ruled that death is equivalent to divorce, in the sense that after the marriage is ended by death, the wife is not required to honor her husband, and she is entitled to make this request. What should the son do – is he required to respect his father's wishes? Do the wishes of the living parent prevail over those of the deceased?¹⁷⁰ Here again, according to some, it seems that the child can choose to follow whichever one he wants. The *Noda Biyehudah*, however, maintains that he should follow the wishes of the living parent.¹⁷¹ Conversely, the Ramo rules that it is not within the power of the father to prevent the son from reciting kaddish for his mother.¹⁷²

Despite what has been said so far, it is obvious that even when a child is permitted not to follow parental directives, surely one is

169. For a full discussion, see *Chashukei Chemed*, *Niddah* 31a.

170. See *Pitchei Teshuva* *Yoreh Deah* 240, note 11. See the *Shu't R. Akiva Eiger*, *ibid*, and *Beit Yosef* *Yoreh Deah* 376. There are various opinions about what to do in this situation:

- *Noda Biyehudah* *Even Haezer* 2:45 opines that the living parent's wishes always take precedence.
- *R. Akiva Eiger* 1:68 says that the father's wishes should always prevail.
- *Birkei Yosef* *Yoreh Deah* 8 says that the child can do whatever he wants, inasmuch as death has severed the bond between his father and mother, and the mother is no longer obliged to respect her husband's wishes.
- *Chazon Ish* 149:6 writes that the child should always choose not to do something rather than to take a positive action (*shev v'al ta'aseh*).

171. *Even Haezer* 45.

172. *Yoreh Deah* 376:4. See *Shu't R. Akiva Eiger* 1:68, *Aruch HaShulchan* 37, *Shevet Halevi* 10, who consider whether kaddish is different from other mitzvot, since recitation of kaddish is beneficial for the soul of the departed. Possibly then, the Ramo's ruling applies only in this special case.

not permitted to disgrace the parent.¹⁷³

Second Marriages, Step Parents, Adoptive Parents

The Gemara in *Ketubot* 103a relates that as Rabbi (Rabbi Judah the Prince, commonly called simply “Rabbi”) lay on his deathbed, he gathered his children around him to give them his final wishes. Then he admonished them “be careful to give honor to your mother.” The Gemara is puzzled – why did he feel it necessary to make special mention of this – after all, it is a biblical command known to all! In response, the Gemara concludes that Rabbi was not referring to his children’s mother but rather to his own wife, who was not the children’s biological mother. From this anecdote, the Gemara concludes that respect for one’s father’s wife is also mandated by the Torah, deriving it from the additional word “*et*” in the Torah: *kabad et avicha v’et emecha*, to include the father’s spouse and the mother’s spouse.¹⁷⁴ Nevertheless, this begs the question – if respect for a parent’s spouse is mandated by the Torah, surely Rabbi’s children would have known that already and would have acted accordingly. Therefore, the Gemara adds another dimension: respect for the step-parent is required as part of the respect due to the parent; once the parent has died, that obligation ceases.^{175,176} From the fact that Rabbi told his offspring to be diligent in their respect for the step-mother, we may deduce that it is a fine and proper thing to do, even after death of the parent.¹⁷⁷

173. *Turei Even*, *Megillah* 28a; *Birkei Yosef Yoreh Deah* 240; *Minchat Chinuch* 48; *Beit Yitzchak Yoreh Deah* 1:158-9, and *Chatam Sofer*, *Choshen Mishpat* 177.

174. The word *et* can be interpreted to mean “with” – i.e., the one who is with your father or mother. The Talmud there also applies the *et* to include one’s older brothers and sisters.

175. Rambam, *Hilchot Mamrim* 6:15.

176. If the parent and step-parent get divorced, are the children still obligated in respect for their former step-parent? The *Minchat Chinuch* 33, s.v. *dinei*, opines that the respect one owes to a step-parent is a concomitant of the respect for the parent; if they are no longer married, the parent may not be concerned about respect for the divorced spouse, and to that extent the children would be excused from exhibiting particular respect.

177. *Shulchan Aruch*, *ibid.* He also notes that respect for an older brother is

Since respect for the step-parent arises from the duty to respect the parent, it follows that the parent can forego this honor. Thus, if the parent says, you can call my new spouse by his/her first name, that would be permitted.¹⁷⁸

When considering the manifold issues that arise, especially in the modern world's "blended families", the Torah and rabbinic literature can give us some guidance as to the optimal course for adopted children and step-children to follow in dealing with their new and/or biological parents.

Judaism has high praise for someone who raises an orphan in his/her home, and it is a mitzvah to honor this person "more than his [biological] father or mother".¹⁷⁹ A person must always sit shiva for a (Jewish) biological parent, whether that person raised him/her or not. Whether a person may or should sit shiva for an adoptive or step-parent is a question which cannot be answered yes or no. It depends on the nature of the relationship and the extent of the parent's involvement in raising the child.¹⁸⁰ This rule is deduced from a midrash that when Moshe was told by Hashem to go to Pharaoh on the mission to free the Israelites from bondage, Moshe responded that he could not go until he received permission from Yithro, "who took me in and opened his house to me, and I am like a son to him..."¹⁸¹

This sentiment is echoed by the Gemara which explains the

similarly an extension of the respect due to parents. See *Megillat Esther, Shoresht 2*, who discusses whether the requirement of respect for the older sibling similarly ceases upon the death of the parent. See *Minchat Chinuch 33*, s.v. *v'ayein*.

178. *Chatam Sofer 84* discusses whether *yi'rah* (reverence) similarly applies to the step-parent, since there is no word *et* in the command to revere the father and mother. See also *Makneh, Kiddushin 31*.

179. *Sanhedrin 22*.

180. Rav Gustman *z"l*, in a conversation with this writer, said that he thought an adopted child should sit shiva, based on an episode in the Gemara, where Rabban Gamliel "accepted *tanchumin*" (consolation) upon the death of his trusted servant Tivi. (*Berachot 16b*). That precedent shows that one may sit shiva for persons who one feels were important influences on their lives, even if they are not blood relatives.

181. *Mechilta Yitro*.

rationale: “a person has to honor his Rabbi (personal teacher) even more than his father, inasmuch as his father brings him into this world, but his Rabbi brings him into the World to Come.”¹⁸² In the same way, if a child is adopted and raised by someone else, he owes that adoptive or step-parent even more respect than he owes his biological parent.¹⁸³

Understanding the source for this halachic ruling is the key to understanding how to cope with various situations of conflict or tension that arise. It also leads to an understanding that there is no blanket rule, no one-size-fits-all paradigm suitable for all occasions. The decision for the right course of action will depend on the role the step or adoptive parent has played in the child’s life.

If a woman remarries when her son is two years old, and her husband essentially acts as the boy’s father, providing material and spiritual and emotional sustenance, then the boy must accord him honor as his father, and the adoptive father’s wishes take precedence over the biological father’s wishes. However, if the mother remarries when her child is 17, then the new husband cannot be considered as having raised the child and enabling him to earn the World to Come. He must be treated with respect, first of all out of respect for the child’s biological mother, and furthermore for any part he may play in the child’s life since the mother remarried. But he need not be given preference over the biological father’s wishes for his son.

An adopted child is not permitted to refuse a relationship with his biological father, if the latter wants it. The respect owed to the one chosen by Hashem to be His partner in creating this person cannot be abrogated.

Kibud Av V'em for a Convert

It is a general principle of Judaism that “a Gentile who

182. *Bava Metzia* 31.

183. *Bava Metzia* 31. In *Eruvin* 65a and *Kiddushin* 31b, the Gemara writes that the noted *Amora* Abaye called the woman who raised him, “Mother”.

converted is equivalent to a newborn.”¹⁸⁴ This means that, strictly speaking, the convert, newly Jewish, is a new entity without any blood relations and is supposed to sever ties with his non-Jewish environment. In theory, the *ger* (convert) would be permitted to marry his biological sister if she also converted, since they are both considered as new entities without blood ties. Our Rabbis, however, forbade such a union; among other reasons, they did not want it to appear that Judaism was more lenient about societal taboos than the rest of the world.¹⁸⁵ The same rationale perforce applies to the rules of *kibud av v'em* for a convert – he or she must show respect for the biological parent, as is common in all cultures.

Does that mean that the biological parent, who is still a Gentile, is to be treated with the same deference that a Jew has to show his parent, or does it mean that the *ger* has to treat the biological parent according to the norms of Gentile society?

Rambam teaches that “It is forbidden for a *ger* to curse his Gentile father or to strike him or to shame him....and he should treat him with a measure (*miktzat*) of respect.”¹⁸⁶ In modern times, Rav Moshe Feinstein instructed a *ger* to visit her sick mother, since not visiting her would cause the mother mental distress.¹⁸⁷ Rav Moshe explains that a child must express gratitude to the parent who raised and nurtured her; the convert must treat her mother in the manner which is considered proper and respectful by most people in general society. He also instructed the convert to visit her parents in accordance with the current mores of society. However, he did not encourage – as a matter of fact, he discouraged – frequent visits or bringing grandchildren.

Rav Ovadiah Yosef allowed a *ger* to pray for the well-being of his non-Jewish parents and even to recite kaddish for them after their death.¹⁸⁸ *Sdei Chemed* says that a converted or adopted child

184. *Yevamot* 45b.

185. *Yevamot* 22a, “*shelo yomru bahnu mikedusha chamura likedusha kalla.*”

186. *Hilchot Mamrim* 5:11; *Shulchan Aruch Yoreh Deah* 241:9.

187. *Yoreh Deah* II:130.

188. *Yechave Da'at* 6:60, based on the biblical episode of the Prophet Elisha

who is reciting kaddish does not share the priority of recitation accorded other mourners reciting kaddish for their parents. His advice is that the congregation should recite an extra chapter of *Tehillim* so that the convert (or adopted child) can recite kaddish following it.¹⁸⁹

In-Laws

Married persons are obligated to respect the parents of the spouse,¹⁹⁰ and this applies both to a woman and her husband's parents and to a man for his wife's parent.¹⁹¹ However, if the parents do not get along with their in-law, there can be anguish for their child – whom to listen to – the spouse or the parent? As far as a wife is concerned, although she is commanded to honor her father and mother, nevertheless, she should follow her husband's wishes, not those of her parents.¹⁹² Thus, if the husband objects to her spending time with her parents, she should not go to them. If the parents tell her not to listen to her husband, she should not obey them. In this triangle, the wife's place is by her husband's side.

What about the husband's obligation to his wife? Is it reciprocal, does he have to defer to her wishes the way she defers to his? Discussing this, the Gemara notes: "Our rabbis have taught: A man who loves his wife as he loves himself, and honors her more than himself, about him the [biblical] verse says 'and you will know peace in your abode' ".¹⁹³ Is this dictum to be taken

praying for the welfare of Na'aman, a non-Jew, II *Melachim* 4.

189. *Sdei Chemed* 5:156.

190. *Yoreh Deah* 240:24 discusses whether this is a biblical or a rabbinic rule. Also, whether this obligation is a function of the respect married people owe to each other, or is it a separate obligation. See *Yechave Da'at* 6:51.

191. *Birkei Yosef*, *ibid*; *Bach*, *ibid*; *Pitchei Teshuva Yoreh Deah* 374; *Sefer Chassidim* 345 writes that the obligation is only for *kavod*, respect, but not for *yir'ah*, reverence. (As an example, it is permitted to call a parent-in-law by their first name, something not permitted for a parent due to *yir'ah*.)

192. Based on the text in *Kiddushin* 30; see the opinions of *poskim* cited in *Yechave Da'at*, 6:51.

193. *Yevamot* 62b, *Sanhedrin* 76b, *Rambam*, *Hilchot Ishut* 15:19; see

as a real obligation, or is it simply a lovely sentiment or wise advice? The *Beit Yosef* cites the opinion of Rabbenu Simcha that it is a real obligation.¹⁹⁴

If parents come to visit their married child in his/her home, who should get served first by the wife – her husband or the parents? *Sefer Chassidim* writes: “If a father has a married daughter who is busy taking care of her husband’s needs, (even) if the father needs her, he should not tell his daughter to tend to his needs...but if the husband is a good person, he should tell her to take care of her father first”.¹⁹⁵

It would seem that the husband is only entitled to prevent his wife from tending to her father if it will entail a loss for him, in that his wife will not be available to take care of her obligations to him. However, if there is no conflict, it is proper to let her do it.

On the question of taking an elderly parent into the house to live with the family, Rambam rules that one must not force his/her parent on the spouse. You “cannot force a person to allow others to live with him in his home.” Certainly if it affects *shalom bayit* (domestic tranquility), don’t take the parents in.¹⁹⁶

A major source of friction in a family arises when the two sets of in-laws argue with one another, each pressuring their child to side with them. This is unfortunately especially prevalent when a couple is planning on getting married, and the in-laws argue about the protocol and about payment for various expenses. When parents involve their children and ask them to retaliate against the in-laws, they are basically telling their children to violate Jewish law, which requires people to treat their parent-in-law with respect. Of course, the child should not comply. Nevertheless, it takes tact and wisdom to navigate these tricky relationships, as Rav Pam advises:

Consequently, a person should act with intelligence and

Maharsha, *Yevamot*, *ibid*.

194. *Shulchan Aruch*, *Even Haezer* 154; *Yam Shel Shlomo* III 141:21. See further in *Sdei Chemed*, p. 170 note 3, p.60.

195. *Sefer Chassidim* 335. See also *Torah Temima* to *Vayikra* 19:3 note 4.

196. *Hilchot Ishut* 13:14.

wisdom to act circumspectly so as not to anger his father and enlarge the controversy; and he should try with all his might to quiet down the argument and to institute peace between them [the two sets of in-laws].¹⁹⁷

Yoreh Deah 374 notes that since a married person is supposed to show respect for the parent-in-law, if the husband or wife is sitting shiva for the loss of a parent, the spouse should also observe certain elements of mourning. This is done out of respect for the in-laws.

In-Law and Step-Parent Conflicts

In addition, there are often clashes of will between parents and their child's spouse, and often the child is in the middle. If a married person knows that his/her parents are quarrelsome people (*ba'alei ketata*) and realizes that in conflicts with his/her spouse, it is really the parents who are at fault, the child should refrain from getting angry with the spouse. *Sefer Chassidim* 563 and 564 advises a husband not to tell his wife that she should try to live with the grief his parents are dishing out, nor should he tell her to be quiet.

Establishing a cordial relationship with one's parents-in-law is certainly desirable, and may also be a halachic requirement. The *Tur*¹⁹⁸ cites the example of David (I *Shmuel* 24:12), who called his father-in-law Shaul "my father", to rule that one must treat the spouse's parents with respect.¹⁹⁹ Many also consider it required to treat a parent's new spouse with respect, as an extension of the

197. *Atara Lamelech*, p 94; *Teshuvot Vehanhagot* 5:273.

198. At the end of *Yoreh Deah* 240.

199. See *Shach Yoreh Deah*, *ibid*, note 19; *Pitchei Teshuva*, *ibid*, note 20. We see also that Moshe Rabbenu treated his father-in-law Yitro with respect, see *Mechilta Yitro* 1. See *Minchat Eliezer* 3:33 for the source of this obligations and whether it is biblical or rabbinic; possibly it is neither, but only the obligation to treat an older person with respect.

honor one owes to his/her parent.^{200,201}

There are many questions that people ask as they try to apply these principles to daily life: R. Moshe Feinstein was asked what to do in the following situation: within the 12-month mourning period over the death of her father, a woman's husband was being honored at a dinner, and he wanted her to attend with him. She felt that during the year of mourning for her father, she should not go. But Rav Feinstein told her to go. He explained, why is there only a 30-day mourning period for all deceased relatives, but twelve months for parents? It is due to the requirement to honor the parents,²⁰² which is superseded by the requirement for her to honor her husband.²⁰³ In light of this ruling, we see that in cases of conflict between her husband and her parents, the woman should follow her husband. On the other hand, as we have seen, the husband is certainly obligated to treat his in-laws with respect.

Respect After Death

After the parents die, they are still entitled to respect from their children.²⁰⁴ In discussing the parameters of *kibud av v'em*, the *Shulchan Aruch* notes,

He has to honor him even after death. How? When quoting

200. *Ketubot* 103a, *Yoreh Deah* 240:21. See *Shu't R. Akiva Eiger* 1:68 and *Maharam Schick* mitzvah 33, who consider that it is part of *nachat ruach*. *Darkei Moshe Yoreh Deah* note 7 is not certain that a parent can forego this obligation.

201. Whatever the exact nature of the obligation to honor the step-parent, it ceases upon the death of the parent.

202. Rav Hutner, *z"l*, held that the mourning period for a parent is a full year because of the nature of the loss – a break in the *mesorah* [heard from him by the present writer].

203. The *Shach*, *Yoreh Deah* 344:9 writes that if before death the parent instructs the child not to observe the mourning period, then the child need observe mourning only the standard 30 days which is required for all close relatives, but not the additional 11 months. Since it is the father's prerogative to waive his *kavod*, the son does not have to observe a whole year's mourning.

204. *Ramo*, 240:9.

something from his father, he should say, “this is what my father, my teacher (*avi mori*), said.” If it is within the first 12 months after death, he should say, “*hareini kapparat mishkavo*” (whatever punishment accrues to him should come to me instead). If he is quoting him more than 12 months after death, he should say, “may his memory be blessed.”²⁰⁵

The *Tzitz Eliezer* notes a custom that if a child has not visited his parent’s grave in 10 years, he should not visit ever again, based on a teaching by the *Sefer Chassidim* that when a child visits the parent’s grave, it brings them pleasure and satisfaction, and they in turn pray on behalf of their loved ones.^{206,207} Presumably, the *Tzitz Eliezer* reasons that if the parents are upset that their child has not visited, a visit after 10 years will not appease them, and they won’t pray on the child’s behalf.²⁰⁸ Of course, if the child was unable to go, and it was not out of disregard, then the child can go after the obstacles to visiting the

205. *Yoreh Deah* 240:6.

206. *Tzitz Eliezer* 14:75. He distinguishes between visiting a *tzaddik’s* grave and a parent’s grave, and also mentions the concept that a person should recite kaddish and observe the *yahrzeit* for only 50 years, but he disapproves of it, claiming that it reflects non-Jewish influence. The same thought is expressed in *Rav Pe’alim* 4:17, *Orchot Rabbenu* 1, in the name of the Steipler. However, Rav Halberstam, in the name of the *Divrei Chaim*, maintains that these observances should not extend beyond 50 years. The *Divrei Yoel Yoreh Deah* 190 writes to someone who had been learning Torah and therefore had not visited his parent’s grave for years, that it would have been *bitul Torah*. However, if he is now near them, he can go. (The responsum does not mention how many years the child had not been there.)

207. See *Aliva deHilchata*, *Bava Bathra* 58a about the value of visiting the parents’ graves.

208. The entire thrust of this passage in *Sefer Chassidim* is difficult to understand. The author “proves” that the dead can experience pleasure after their death by the statement of Barzilai of Gilead (2 *Shmuel* 19:38), who refused King David’s offer to come and live in his palace, saying that he was an old man and preferred to live in his own city and be buried there near his parents. Apparently, that burial plot would give him satisfaction.

grave have been removed.^{209,210}

If the father dies and the mother remarries, does the child still have to give preference to fulfilling the wishes of his deceased father which may be opposed by his living mother?²¹¹ The *poskim* disagree as to resolution of this question.²¹²

The rules and limitations for *kibud av v'em* apply after death the same as in life.²¹³ If a son's business will suffer if he has to be in shul to recite kaddish – for example, he will lose customers who want his personal input – then he may forego the recitation. However, *Rav Pe'alim* considers a son's not reciting kaddish for his parent as demeaning the parent's honor; he therefore considers it mandatory for the child to attend minyan and recite the kaddish at least once in each prayer service, even if it entails a financial loss.²¹⁴

Parental Visits

If the son is entertaining important people at his table, and his parents are also there, who should get served first? *Sefer Chassidim*²¹⁵ discusses such a situation, and says the "honors" should be allocated in the same order of precedence as mandated when a number of important individuals sit down to a meal together: thus, the teacher (Rebbe) must be served prior to his

209. He maintains that married women are always to be considered as 'oness', prevented due to impediments.

210. *Even Yaakov*, 44, note 5 (this is part of *Tzitz Eliezer*) on the question if a child who has not been at his parent's grave for 10 years is permitted to go afterwards, suggests taking into account if the failure was due to deliberate neglect or whether it was due to circumstances he could not control; there is also discussion about how this principle might apply to married women, who may have less freedom of movement than men.

211. *Noda Biyehudah Tanina* 45: for example, the mother wants the daughter to marry a man that the father had said she should not marry.

212. *Shu't R. Akiva Eiger Yoreh Deah* 68; *Aruch HaShulchan* 240:37 discusses the case of a father who wants his son not to recite kaddish for the mother who passed away.

213. *Divrei Malkiel* 4:96.

214. *Orach Chaim* 14.

215. *Sefer Chassidim* 579.

father. However, *Sefer Chassidim* notes that “if the father pays the Rebbe to teach his son, and he would not teach him without being paid, then the father has precedence.”²¹⁶ Since nowadays, all yeshivot charge tuition and most would probably not accept a student without payment, then the “student” needs to honor his father before his Rebbe.

The *Aruch HaShulchan* writes that

...when the father is old and his son takes him into his house, to eat at his table, the son should sit in his regular place as before, and the father sits at his side, and the father is not concerned about this. Also, as far as the Jewish law is concerned, there is no problem, inasmuch as the son is the head of the household and his wife sits near him, then it would not be appropriate for the father to sit at the head of the table next to his daughter-in-law; therefore it is necessary for the son to sit at his regular place next to his wife... Nevertheless, the father should wash his hands first for the meal, and he should be given the first piece of bread, and also other allocations of respect at the table are given to the father first; and this is our custom and it should not be changed.²¹⁷

This ruling seems to indicate that the father should be served first and given the most honorable place at the table, even in his child’s house; however, if there are technical reasons for giving priority to others, this rule would not apply.

When Kibud Av V'em Conflicts With Other Mitzvot

It is a very interesting question to what extent honoring one’s parents takes priority over other mitzvot, a question addressed directly by the *Shulchan Aruch Yoreh Deah* 240:36:

If his father says, “bring me some water to drink”....but it is at a time when the child has to perform a mitzvah whose time is passing, such as burying the dead or attending a funeral – If it is possible for the mitzvah to be done by

216. *Shach*, *Yoreh Deah* 242:66; *Choshen Mishpat* 264:1.

217. *Aruch HaShulchan Yoreh Deah* 240:11.

others, then he should involve himself in honoring his father. But if there are no others there... he should perform the mitzvah and leave off the honor of his father.

To this ruling, Ramo appends a comment, that if it is not a transient mitzvah which must be done at this specific time, he should first honor his father and only thereafter fulfill the mitzvah.

These rulings are based on a text in the Gemara:

R. Elazar ben Mattiah says: "The father says (to the child), 'give me some water to drink', at the same time that there is a mitzvah which needs to be performed."²¹⁸ He should forget about his father's honor and perform the mitzvah, inasmuch as he and the father are both liable to do the mitzvah."

Issi ben Yehudah says: "If it is possible for the mitzvah to be done by others, let it be done by others, and let him go to take care of *kibud av v'em*."²¹⁹

Another difficult situation: the parent wants the child to spend Shabbat with him in a place which has Sabbath-desecration. Or the parent wants the child to come to the parent's Seder, which will be short and dry, while the child's Rebbe has invited him to a Seder which is sure to be spiritually uplifting? What are the guidelines?

With regard to spending Shabbat in a non-observant environment, Rav Sheinberg quotes the *Iggerot Moshe Yoreh Deah* 1:156 that it is forbidden to spend Shabbat in such an environment.²²⁰ However, if the parents are Sabbath-observant

218. Rashi explains that the mitzvah under discussion is one that has to be performed right away, such as burying the dead. The Ran further maintains that the situation in the Gemara only pertains to the parent making the request prior to the child's having started on the mitzvah. However, once the child has already embarked on the mitzvah, he/she does not have to leave it in order to honor the parent's request, because "one who is involved in a mitzvah is exempt from another mitzvah."

219. *Kiddushin* 32a.

220. *Shoalim BiTeshuva*, *siman* 9. He made an exception for a mohel who had to perform a brit on Shabbat in a non-religious environment. Rav Moshe

but their environment is not conducive to the Sabbath spirit, it will depend on how much this disturbs the child to spend Shabbat with them. If he finds it too difficult, he should not go, since Shabbat is made for our pleasure, not for stress. But if the child can tolerate it, then he should go to his parents. Furthermore, he should try to inject an element of spirituality by discussing a *d'var Torah* and hopefully in that way inspire his parents.²²¹ However, one issue which is not clarified is why the principle of “your life comes first” – which includes spiritual life, not just physical life – why that principle is not operative in this situation. One would think that the child has the right to seek to maximize his/her own spiritual welfare before being concerned with *kibud av v'em*.²²² A person faced with this conflict should seek competent rabbinic advice.

Grandparents

A great deal is written about the honor and respect due to grandparents under Jewish law. With the reality that nowadays people are living far longer, a person's relationship with grandparents requires further scrutiny. The Gemara writes that “children's children are like children,”²²³ which in effect would extend to the grandparents the same respect due to parents.²²⁴ Nevertheless, the grandchildren should serve their father first, and then the grandfather (unless the father foregoes his precedence and tells them to serve his father first).²²⁵

instructed the mohel to leave immediately after the brit was completed.

221. “Certainly, it is right and proper for [the son] to go there so that he can merit them to observe the mitzvot as they should be, and certainly in this way he will bring them closer to the holy Torah.” *Iggerot Moshe Yoreh Deah* 1:156.

222. See *Pitchei Teshuva Yoreh Deah* 240:22, which teaches that a child can go to learn in a yeshiva where he thinks he will do better than the one his parents want.

223. *Yevamot* 62b; exactly what this means is open to interpretation.

224. *Chatam Sofer Yoreh Deah* 345 discusses what a person should do if the grandparent makes a request which will prevent the grandchild from learning Torah.

225. See *Sotah* 49a; Gra, *Yoreh Deah*, *ibid*, note 34. Is the obligation of

The Ramo writes that “there are those who say that a person is not obligated to show respect for his father’s father, but this doesn’t appear right to me; rather, his obligation to respect his father is greater than that of honoring his father’s father.”²²⁶

Where this principle becomes problematic is if the parent dies; is the grandparent entitled to have a say in the raising of the children? Since honoring grandparents can be seen as an extension of the honor due one’s parents, does the obligation to the grandparents lapse once the parent has died?²²⁷ Furthermore, what if the parent tells his child that it is not necessary to honor the grandparent? Can a parent excuse the child’s obligation to honor the grandparents? The resolution to all these questions depends on whether respect for grandparents is an extension of the mitzvah to honor parents or whether it is a mitzvah on its own. The *poskim* disagree on this; since we are dealing with a possible *d’oraitha* (biblical law), one should be strict in observing this mitzvah.

Despite comparing grandchildren to children, the Halacha does not treat them the same. Thus, Rambam rules that if a person curses his grandparent, it is considered equivalent to his cursing any other Jew.²²⁸ On the other hand, if grandparents are considered to be the same as other Jews, then it would be permissible for a grandchild to render medical treatment, give injections, do dental work, etc., even if bleeding might result,

respect for grandparents a biblical or a rabbinic commandment? See *Ya’avetz* 2:129; *Tuv Ta’a’m Vada’at* 141.

226. *Yoreh Deah* 240:24,. See also Gra, *Shulchan Aruch* 34, *Aruch HaShulchan* 44, *Sdei Chemed*, *Ma’aracha* 20. Rashi also comments (*Bereishit* 46:1) that when Yaakov heard the good news that his son Yosef was still alive, he brought a thanks-offering to the G-d of his father Yitzchak, rather than calling Him the G-d of his grandfather Avraham. Therefore, he concludes “a person is obligated in his father’s honor more than his grandfather’s honor.” *Shu’t Maharam Lublin* 136 rules that one owes more honor to the father’s father than to the mother’s father.

227. See *Shu’t R. Akiva Eiger*, 1:68.

228. *Hilchot Mamrim* 5:3. But see also *Aruch HaShulchan*, *Yoreh Deah* *ibid*, note 44, based on a Talmudic text in *Sotah* 49; also, *Shu’t R. Akiva Eiger*, *Yoreh Deah* 240: 68.

which is not the case with parents.

Sefer Chassidim advises someone who never had the opportunity to respect his parents, to be especially respectful to his grandparents or older brothers and sisters, or even righteous or learned people.²²⁹ The *Kuntrus Kibud Av V'em* (p323) rules that if a brit is being made early in the morning, they should wait for the grandfather, even if he cannot come till later in the day. And Ramo (*Teshuva* 118) allows a grandchild to recite kaddish for his mother's father (with the mother's permission).

Conclusion

On July 2, 2013, the New York Times ran a brief article about a new social problem in China and what was being done to redress it:

Chinese officials apparently think it is not enough these days to count on tales and parental admonitions to teach children the importance of filial piety, arguably the most treasured of traditional virtues in Chinese society.

The government enacted a law on Monday aimed at compelling adult children to visit their aging parents. The law, called "Protection of the Rights and Interests of Elderly People," has nine clauses that lay out the duties of children and their obligation to tend to the "spiritual needs of the elderly."

Children should go home "often" to visit their parents, the law said, and occasionally send them greetings. Companies and work units should give employees enough time off so they can make parental visits.

The article continues that Chinese social scientists are trying to explain how the exigencies of modern industrial life have created new realities which make it difficult for young people to spend time with their parents. Many young people have moved away from the villages and to the new technological and industrial centers, far removed from their homes and families.

229. *Sefer Chassidim* 345.

Consequently, the Chinese have taken the drastic step to enforce “filial piety” by assessing fines and penalties for neglect of aging parents. It certainly is a sad day for Chinese society, a culture nurtured for thousands of years on love and respect of the elderly. Their attempt to remedy the situation is radical and, despite all that, unlikely to really make a systemic difference in the current situation.

“Honor thy father and thy mother” has always been a fundamental teaching in Judaism, inscribed in the Ten Commandments. Fortunately, the Jewish people have consistently maintained their whole-hearted devotion to this mitzvah, performing it with love and exemplary devotion throughout the ages, and it is hardly necessary to pass legislation enforcing this devotion.

Rav Pam probes beneath the surface of this great mitzvah:

[*Kibud av v'em* is done] not only with deeds and words, but also with thought; thus, for example, a person should picture them in his mind as important and honorable people, and in his heart he should establish their importance and their superiority.... Sometimes this is not a simple matter, for it may be contrary to the reality. Nevertheless “there is no person who does not have his moment” and there is no person who does not have within himself something good.²³⁰ It is necessary only to think about and to focus one’s heart on that aspect of the beauty which is in that person and to attach his mind to it...²³¹

Modern life presents challenges to our age-old traditions, and requires that we understand how we may better perform our obligations to Hashem and to our parents. To that end, the current study has focused on the myriad obligations and forms where “filial piety” is required, and notes how our sages, both ancient and modern, have counseled us on the best way to perform this noble mitzvah.

230. *Avot* 4:3.

231. Rav Pam, *Atara Lamelech*, p. 92.

Practical Halachic Questions for Anatomy Students

Matthew Schaikewitz

I. Introduction

Every year, scores of Orthodox Jewish students enroll in medical schools across the nation and the globe. Year after year, these students encounter the same halachic challenges, but no halachic manual has been made available to help students successfully navigate the issues. While numerous authors have written on the fundamental issue of cadaveric dissection, few if any have written about the practical, day-to-day questions which arise for students in the anatomy lab. In this article we will discuss the following practical issues encountered by students of anatomy: 1) bone boxes and *tumat kohanim*, 2) bringing a visitor to the lab, 3) proper conduct in the presence of cadavers, 4) wearing *tzitzit* in the lab and 5) washing hands after lab.

II. Bone Boxes and *Tumat Kohanim*

Question: As part of the anatomy course, many students are offered the option of keeping a box of bones to aid in the study of osteology. Is this box of bones capable of transmitting *tumah* (ritual impurity) to *kohanim*?

Discussion: Although *kohanim* today are considered as already in a state of *tumah* and currently have no method of purification, almost all *Rishonim* maintain that there is still a biblical commandment prohibiting a *kohen* from coming into contact with a human corpse.¹ While Raavad² makes a comment

1. See *Nishmat Avraham Yoreh Deah* 369:1.

2. *Hasagat HaRaavad* on Rambam *Hilchot Nezirut* 5:15.

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implying that there is no prohibition today because *kohanim* are already in a state of *tumah*, many claim that Raavad only refers to the absence of punishment but agrees that a prohibition still exists.³ In the forthcoming paragraphs, then, we will assume that this prohibition is still in effect.

A. *Tumat Ohel* and Non-Jewish Corpses

One of the ways a *kohen* can contract *tumah* is by being under the same roof as a human corpse (*tumat ohel*), and it is this law which poses the greatest concern for the *kohen* and the bone box. While this law certainly applies to Jewish corpses, there is a debate among *Rishonim* whether the same is true for the corpses of non-Jews. This debate is particularly relevant for our discussion of medical schools in North America because it seems reasonable to assume⁴ that the bones found in the boxes are of non-Jewish origin. Rambam⁵ and others maintain that the law of *tumat ohel* is limited to Jewish corpses, whereas Tosafot⁶ write that the law applies to non-Jewish corpses as well. Although most *Rishonim* rule that there is no *tumat ohel* for non-Jewish corpses, *Shulchan Aruch*⁷ writes that it is proper to be careful to avoid walking over the graves of non-Jews, and Ramo⁸ adds that even though there are lenient opinions it is proper to be stringent.⁹ Almost all authorities assume that *Shulchan Aruch* and Ramo

3. See *Pitchei Teshuva Yoreh Deah* 372:9 and *Responsa Chatam Sofer Yoreh Deah* 339. According to *Dagul Merevavah Yoreh Deah* 372, Raavad may even hold there is a biblical prohibition.

4. We can invoke the principle of following the majority, because most people in the world are not Jewish. For medical schools in Israel, however, if the bones are gathered from Israeli citizens, then this majority would not be in effect.

5. *Hilchot Tumat Meit* 1:13 and *Hilchot Avel* 3:3.

6. *Bava Metzia* 114a s.v. *mahu*.

7. *Yoreh Deah* 372:2.

8. *Ibid*.

9. *Shulchan Aruch* and Ramo are not referring to the prohibition of touching non-Jewish corpses, which is prohibited by Rambam in addition to Tosafot. See *Shach Yoreh Deah* 372:4.

also invoke stringency when the corpse and *kohen* are both under one roof.¹⁰

B. Combinations of Bones Capable of Imparting *Tumat Ohel*

Until now our discussion has focused on the ability of an entire corpse to transmit *tumah*. Our next task is to determine if isolated human bones are capable of imparting *tumah*, and, if so, which combinations of bones are required. Stemming primarily from a Mishnah in *Ohalot* (2:1), Rambam¹¹ codifies the laws governing *tumat ohel* as they relate to isolated bones which are not attached to flesh. According to Rambam, any one of the following collections of bones is capable of imparting *tumat ohel*: 1) the spine, 2) the skull, 3) the majority of the stature of a person (*rov binyano*), 4) the majority of the total number of bones in the body (*rov minyano*), or 5) one quarter of a *kav* of bones (*rova hakav*), which is a volume of bones equaling roughly one pint.¹² One might conclude that nearly all bone boxes are capable of imparting *tumat ohel* because virtually all bone boxes have a volume of bones greater than the measurement of one pint. While this may indeed be true for Rambam, it is important to mention that other *Rishonim* disagree about the nature of *rova hakav*. According to Tosafot¹³ and others, an alternative understanding of *rova hakav* is offered, and the bones found in current bone

10. The term used in halachic literature to describe a scenario where the *kohen* and source of *tumah* are both under one roof is *ohel hamshacha* (literally, a contiguous covering). The simple understanding of *Shulchan Aruch* and Ramo is that they also invoke stringency in the case of *ohel hamshacha*. See, however, *B'Ikvei HaTzon* by Rav Herschel Schachter *siman* 35 footnote 16 for two opinions which claim that *Shulchan Aruch* and Ramo do not invoke stringency in the case of *ohel hamshacha*.

11. *Hilchot Tumat Meit* 2:8-10. The opinions of Rambam from the upcoming discussion which lack citations refer to this source.

12. According to *Midot VeShiurei Torah* by Rav Chaim Benish, a *kav* in contemporary measurements is between 1.38 liters (1.5 quarts) and 2.4 liters (2.5 quarts). Taking an intermediate value of two quarts per *kav*, one quarter of a *kav* equals one pint.

13. *Nazir* 49b s.v. *veal chatzi kav atzamot*.

boxes would not satisfy this requirement.¹⁴ Although Rambam's requirement of *rova hakav* is under debate, most of the other criteria listed by Rambam are agreed upon by Tosafot and other authorities. Therefore, we will briefly analyze the remaining items listed by Rambam in order to determine whether all authorities would assume the boxes convey *tumat ohel*.

1. Spine

With regard to the spine, Rambam writes that if even one vertebra is missing from the eighteen total vertebrae, there will be no *tumat ohel*.¹⁵ Rambam also implies that the vertebrae alone – without the ribs – are capable of transmitting *tumat ohel*. However, Tosafot¹⁶ and Rosh¹⁷ in their commentaries to the Gemara in *Nazir* (52a) suggest that some of the ribs need to be attached to the spine to impart *tumat ohel*.

2. Skull

Rambam writes that a complete skull will impart *tumat ohel*, but if it is missing a *selah* (measurement of an ancient coin) it is considered like any other bone. *Shulchan Aruch*¹⁸ writes that a *selah* is one third of a *tefach*, whereas *Shach*¹⁹ maintains that the size is slightly smaller.

3. *Rov binyano*

Rambam writes that the entire *binyan* (structural frame) of a

14. According to Tosafot, not all bones are capable of transmitting *tumat ohel* even though they comprise a volume of *rova hakav*. Instead, only bones which derive from *rov minyan* or *rov binyan* can combine to the necessary volume capable of transmitting *tumat ohel*. According to this interpretation, bones comprising the numeric or structural majority of the skeleton will transmit *tumat ohel* only when they are whole. If only fragments of these bones remain, however, there will still be *tumat ohel* if the pieces combine to the volume of *rova hakav*.

15. As evidenced by Mishnah *Ohalot* 1:8, these eighteen vertebrae do not include the cervical vertebrae.

16. S.v. *tehorah*.

17. S.v. *ta shma shedrah shegeirad* through s.v. *tehorah*.

18. *Yoreh Deah* 30:2.

19. *Yoreh Deah* 30:5.

person consists of two bones in the calf, the bones in the thighs, the ribs, and the spine. Rambam writes that an example of *rov binyano* is two bones in the calf and one bone in the thigh (tibia, fibula, and femur).

4. *Rov minyano*

The Mishnah in *Ohalot* (1:8) states that there are 248 *eivarim* (limbs) in the human body, and Rambam²⁰ and others write that each *eiver* must contain a bone. Rambam, in accordance with the Beraita,²¹ writes that *rov minyano* is no fewer than 125 bones, even if a particular individual has more or less than the normal 248 bones.

As mentioned previously, Rambam's definition of *rova hakav* will almost certainly be satisfied by all bone boxes. To determine if one's particular bone box will impart *tumah* according to other *Rishonim* as well, one would need to examine the bones and see if they meet the other criteria as enumerated by Rambam and the other *Rishonim*. In practice, however, it would be difficult to posit that the opinion of Rambam should be ignored. Therefore, it is suggested that medical students assume that their bone boxes contain the requisite amount of bones capable of transmitting *tumat ohel*.

C. Bones Originating from Multiple Corpses

Even if a bone box contains a combination of bones which usually transmits *tumat ohel*, another consideration may challenge the ability of the bone box to impart *tumah*. The Mishnah in *Ohalot* (2:6) says that, according to the accepted opinion, a spine, skull, or quarter *kav* of bones which originates from two corpses does not impart *tumat ohel*. Rambam²² codifies this law as well. Although not explicit in the Mishnah or

20. *Hilchot Tumat Meit* 2:3 in reference to an *eiver* (body part) capable of transmitting *tumah* on its own. Rav Ovadia MeBartenura *Ohalot* 1:7 writes explicitly that an *eiver* must consist of bone.

21. Gemara *Bechorot* 45a.

22. *Hilchot Tumat Meit* 4:1.

Rambam, it would appear that *rov binyan* and *rov minyan* would also impart *tumat ohel* only if the bones originated from the same corpse.²³ If the bones in the boxes originate from different cadavers, it is possible that the collection of bones is incapable of imparting *tumat ohel*.

D. Can the Box Itself Block the Spread of *Tumah*?

A further factor which must be elucidated is whether the closed box itself can serve as an *ohel* (covering) to prevent the potential *tumah* from spreading. The Mishnah in *Ohalot* (3:7) says that to serve as an *ohel*, the dimensions of the covering must be at least one *tefach* squared and the covering must be at least one *tefach* above the object transmitting *tumah*. Even if these requirements are met, however, not all materials can serve as an *ohel* to effectively block the spread of *tumah*. Ramo²⁴ writes that any material which itself can become *tamei* cannot prevent the spread of *tumah*. Therefore, if the bone box itself is capable of contracting *tumah* it will not provide an adequate barrier. If the box is fashioned from wood or metal, the box will not block the spread of *tumah*.²⁵ If the box is made from plastic, then it may be able to block the spread of *tumah*.²⁶

E. How Does *Tumah* Spread Throughout a Building?

In order to ease the studying process, some students may decide to bring their bone boxes home, which might bring the boxes in close proximity to *kohanim* in a residential setting. The medical student may reside in an apartment building where a *kohen* lives in the same building or even on the same floor. Most authorities maintain that when an apartment door is closed, the

23. In *Sefer Taharat HaKohanim* p. 84, Rabbis Munk and Lombard write that all of the five collections of bones listed above must originate from the same corpse to impart *tumat ohel*. See *Chazon Ish Taharot* 21:7 s.v. *vehena* where it is explained why two corpses cannot combine to transmit *tumat ohel* in these cases.

24. *Yoreh Deah* 371:1.

25. Rambam *Hilchot Keilim* 1:1.

26. *Badei HaShulchan Hilchot Niddah* 190:107.

ohel is restricted to the apartment and, as a consequence, *tumat ohel* is confined to that apartment.²⁷ However, when the door to the apartment is opened, the *ohel* is extended to include the hallway and *tumah* spreads throughout the hallway. A *kohen* who happens to be in the hallway when the door is opened would be under the same *ohel* as the bone box and would contract *tumah*. Similarly, if the doors to two apartments on the same floor were opened simultaneously, the apartments would be considered two parts of the same *ohel*, and *tumah* could spread throughout both apartments even if a bone box was in only one of them.

An additional law regarding *tumat ohel* indicates that *tumah* can spread even past a closed room. This unique law is referred to as *sof tumah latzeit*. This law states that any room or corridor through which a corpse will eventually exit is considered as if the corpse is there right now.²⁸ While most authorities discuss the principle of *sof tumah latzeit* in the context of whole cadavers, logically this rule should apply to any part of a cadaver which is capable of conveying *tumat ohel*.²⁹ If the law of *sof tumah latzeit* applies to the bone boxes, this rule would dictate that there is *tumah* in any location through which it is likely that the student would leave the building carrying the box. This could include the stairwells, the elevators, the lobby, and any main floor on which the anatomy student resides. In practice, however, contemporary authorities seem to agree that *sof tumah latzeit* does not apply to

27. *Taz Yoreh Deah* 371:3 maintains that a closed door which is attached to the wall by metal hinges does not effectively block *tumah* from spreading past the door. However, *Nekudot HaKesef* ad loc. rejects *Taz*. See *Nishmat Avraham* (English Edition) *Yoreh Deah* 372 that in practice we are not concerned for the opinion of *Taz*.

28. See *Ramo Yoreh Deah* 371:4.

29. See *Taharat HaKohanim*, p. 116, for two reasons offered to explain the concept of *sof tumah latzeit*: 1) there is a concern that the corpse will suddenly be taken out through an exit without ample warning or 2) since the cadaver will eventually leave through an exit it is considered as if it is already there. According to both lines of reasoning, it would appear that the law of *sof tumah latzeit* should apply to any part of a corpse capable of transmitting *tumat ohel*.

the corpses of non-Jews.³⁰ Therefore, assuming that the bone boxes originate from non-Jewish cadavers, one need not be concerned for *sof tumah latzeit* with regard to the bone boxes.

F. Conclusion

Based on our discussion, one should assume that bone boxes are capable of transmitting *tumat ohel*. However, the law of *sof tumah latzeit* likely does not apply. The halachic status of the bone boxes has ramifications for both the student in possession of the box as well as for the *kohen* in question. If the student wishes to bring the box to a location where *kohanim* may be present, he should be aware that the box can transmit *tumah* within the same *ohel*, which may pose a problem in an apartment building. When bringing the box into the building, a *kohen* in the parking garage or lobby at the same time as the box would contract *tumah*. The student and the *kohen* should also be aware that even if the bone box is inside an apartment, the bones can transmit *tumah* to the hallway if the door is open. Additionally, the bones can transmit *tumah* into another apartment on the same floor if the doors to both of the apartments are open simultaneously. The medical student is encouraged to speak with a halachic authority about bringing a bone box to a location that *kohanim* are likely to be present. Similarly, a *kohen* is advised to speak with a Rabbinic figure about dwelling in an apartment building where medical students may have bone boxes or about visiting such a building.

III. Bringing a Visitor to the Lab

Question: May one bring a visitor to the lab?

Discussion: Some medical schools have the practice of allowing students to bring a guest to anatomy lab. This allows a friend or relative of the student to explore the lab and examine the dissected cadavers. Assuming it is permissible for the student

30. *Gesher HaChaim* 1:6:3 writes that since *tumat ohel* for non-Jewish corpses is only rabbinic, we are not stringent regarding *sof tumah latzeit* for non-Jewish cadavers. See *B'Ikvei HaTzon* 35:9 where other similar opinions are cited. See also *Divrei Sofrim* by Rav Nachum Yavrov *Hilchos Aveilut* 371:28.

to engage in the dissection, one would initially think that it should certainly be permissible for a guest to visit the lab and examine the cadavers. However, an argument could be made to permit the student to dissect while forbidding the guest from visually examining. In analyzing this question, it will prove necessary to address two main issues: 1) whether it is forbidden to derive benefit, or *hanaah*, from non-Jewish cadavers³¹ and 2) whether visiting the lab constitutes *hanaah*.³²

A. The Prohibition of Deriving Benefit from Cadavers

Virtually all authorities maintain that the prohibition of deriving benefit from Jewish corpses is biblical in nature.³³ Most *Rishonim* rule, however, that there is no *issur hanaah* (prohibition of deriving benefit) from non-Jewish corpses, and the Gemara *Yerushalmi*³⁴ seems to say so explicitly. Nevertheless, *Shulchan Aruch*³⁵ rules in accordance with the minority view³⁶ that one may not derive benefit from non-Jewish cadavers.³⁷ Ramo does

31. The topic of deriving benefit from non-Jewish corpses is discussed at length in *Nishmat Avraham*, *Yoreh Deah* 349:1 (Hebrew edition). Many of the sources presented here were drawn from that discussion. We focus on non-Jewish cadavers based on the assumption that the cadavers in North American medical schools are not Jewish, based on the principle of following the majority.

32. The question of visual examination constituting *hanaah* is described at length by Rabbi J. David Bleich in *Cadavers on Display*, *Tradition* 40:1 (Spring 2007), pgs. 87–97. Many of the sources here were drawn from this article.

33. Gemara *Avodah Zarah* 29b implies that the prohibition is biblical. See *Nishmat Avraham* (English version) *Yoreh Deah siman* 349 footnote 9, that although most authorities maintain the prohibition is biblical, *Sh'eilat Ya'avetz* writes it is rabbinic.

34. *Shabbat* 10:5. See *Korban Haedah* there s.v. *bemeit akum* who writes explicitly that non-Jewish corpses are permitted *behanaah*.

35. *Yoreh Deah* 349:1.

36. *Responsa Rashba* 365

37. Although *Shulchan Aruch* only states that it is forbidden to derive benefit from the burial shrouds of Jewish and non-Jewish cadavers, it is clear that *Shulchan Aruch* agrees it is also forbidden to derive benefit from the cadavers themselves. As to whether the prohibition regarding non-Jewish corpses is biblical or Rabbinic, one might reason that if the law parallels the

not argue. Despite the ruling of *Shulchan Aruch*, however, many later authorities, including Gra,³⁸ *Shach*,³⁹ and *Chatam Sofer*⁴⁰ rule in accordance with the majority of *Rishonim* that one may derive benefit from non-Jewish cadavers.

However, Rav Shlomo Zalman Auerbach and Rav Moshe Feinstein are not willing to diverge from the ruling of *Shulchan Aruch* except under special circumstances. Dr. Avraham S. Avraham⁴¹ writes in the name of Rav Shlomo Zalman Auerbach that it is only permissible to derive benefit from non-Jewish corpses when doing so fulfills a useful purpose like learning medicine. In a different context, Rav Moshe Feinstein⁴² writes concerning cadaveric transplants that since the overwhelming majority of specimens originate from non-Jewish cadavers and since this is a case of great need, one may rely on the opinions who maintain that it is permissible to derive benefit from non-Jewish cadavers.

The aforementioned opinion of Rav Auerbach indicates that we are lenient with this potential *issur hana'ah* for the purpose of learning medicine. Still, it is not clear whether this dispensation should be granted to visitors of the lab.

B. Does Learning Constitute Benefit?

The first consideration we will address is whether according to Jewish law one derives benefit by examining a cadaver and subsequently gaining a greater understanding about the workings of the human body. This question has been addressed by numerous authorities in the context of performing an autopsy in order to gain medical information which could help treat

prohibition regarding Jewish corpses it should be biblically mandated with regard to non-Jewish corpses as well. However, *Pitchei Teshuva Yoreh Deah* 349:1 quotes an opinion that the prohibition is Rabbinic.

38. *Yoreh Deah* 349:1.

39. *Nekudot HaKesef Yoreh Deah* 349:1.

40. *Responsa Chatam Sofer Yoreh Deah* 336.

41. *Nishmat Avraham* (Hebrew Edition) *Yoreh Deah* 349:1:1:1.

42. *Iggerot Moshe Yoreh Deah* 1 229:6. See also the opinion of Rav Moshe Feinstein regarding requesting autopsies in *Moriah*, Elul 5744, pp. 59-60.

future patients. In addressing the autopsy question, *Noda BiYehuda*⁴³ does not explicitly mention the concern of *hanaah*, and his omission seems to indicate that acquiring medical information does not constitute *hanaah*. Indeed, *Har Tzvi*⁴⁴ writes explicitly that gaining information by watching a dissection does not constitute *hanaah* and he believes this is the opinion of *Noda BiYehuda* as well. *Chatam Sofer*⁴⁵ writes explicitly that an autopsy would constitute *hanaah* from the deceased and that in his opinion *Noda BiYehuda* would agree to this position.⁴⁶ Ostensibly, the problematic *hanaah* mentioned by *Chatam Sofer* is the medical information gained from the autopsy. However, it is unclear according to *Chatam Sofer* whether the *hanaah* stems from the acquisition of medical information per se or whether it is considered *hanaah* because that information will be used to treat patients in the future. If learning itself constitutes *hanaah*, then the lab visitor may be deriving benefit from the cadavers. However, if implementation of the knowledge in the future is necessary to constitute *hanaah*, then the lab visitor will likely not be deriving benefit from the cadavers.

C. Does Gazing Constitute Benefit?

The second major consideration is whether gazing at a cadaver constitutes forbidden benefit. One of the primary sources which addresses this question is the Gemara in *Pesachim* (26a) which states that “sound, sight, and smell are not subject to *meilah*”. *Meilah* is the *issur hanaah* associated with the consecrated property of the Temple. While gaining benefit from Temple property is normally subject to the prohibition of *meilah*, this Gemara seems to say that gaining benefit by gazing at the Temple

43. Responsa *Yoreh Deah* 210.

44. Responsa *Yoreh Deah* 278.

45. Responsa *Yoreh Deah* 336.

46. *Chatam Sofer* explains that *Noda BiYehuda* did not mention the prohibition of *hanaah* because he was only addressing the concerns of the questioner, who was concerned about the desecration of the dead but did not ask whether the autopsy would violate of the prohibition of deriving benefit from the dead.

property is not considered a forbidden act. This would imply that the act of gazing is not formally included in the term *hanaah* under Jewish law. However, the Gemara explains that although there is no concern of *meilah*, a prohibition still exists. The simple reading of the Gemara is that gazing at the Temple property does not constitute *meilah* on a biblical level but is nevertheless forbidden due to Rabbinic prohibition.

It remains to be determined, however, whether the act of gazing constitutes forbidden benefit only with regard to *meilah* or whether it also constitutes benefit regarding other objects which are forbidden *behanaah*. Rav Ovadia Yosef⁴⁷ proves from many authorities that the prohibition associated with “sound, sight, and smell” is not limited to *meilah* but applies to all *issurei hanaah*, and even if the lab visitor merely benefits from the sight of the cadavers, this could constitute forbidden *hanaah*.

One may argue that there is room for leniency with regard to gaining benefit from the sight of a cadaver because this action is considered an unusual form of benefit. Indeed, some authorities⁴⁸ maintain that deriving benefit from a corpse in an unusual manner is not biblically prohibited. However, Rabbi Akiva Eiger⁴⁹ writes explicitly that receiving benefit in an unusual manner from a cadaver is forbidden even for the sake of a sick person, and Rav Moshe Feinstein⁵⁰ and Rav Shlomo Zalman Auerbach⁵¹ favor this position.

Even if there is a prohibition of gazing at a corpse, this prohibition might not be transgressed by merely looking. Regarding the Gemara’s statement that sight does not constitute *meilah*, Rashi⁵² describes “sight” as “benefitting from the beautiful

47. *Yabia Omer* 6 *Orach Chaim* 34:3-5.

48. *Responso Radvaz* 3:548 writes explicitly that receiving benefit from a corpse in an unusual manner is only Rabbinically prohibited. Some also infer from *Mishneh LeMelech Hilchot Avel* 14:21 that receiving unusual benefit from a corpse is not biblically prohibited.

49. *Chidushei Rabbi Akiva Eiger Yoreh Deah* 349:1.

50. *Iggerot Moshe Yoreh Deah* 1:229 end of section 5.

51. *Minchat Shlomo Tinyana* 97.

52. *Gemara Kritot* 6a s.v. *umareh*.

appearance of the *heichal* (a section of the Temple)". According to this definition, visual examination which constitutes *hanaah* is more than just looking but actually taking pleasure in the appearance of the forbidden object. For our purposes, merely observing or identifying a bone or blood vessel would likely not constitute forbidden benefit.

D. Conclusion

Ultimately, whether or not it is problematic for a guest to visit the anatomy lab may depend on the experience of each individual visitor. A person who increases his knowledge of the human body or gazes wondrously at the beauty of G-d's creation may in fact be gaining prohibited benefit.

Although later authorities seem to concur with Rabbi Akiva Eiger that there is no leniency of unusual benefit from cadavers, some maintain that this is only true in regard to Jewish cadavers. Perhaps unusual benefit from non-Jewish cadavers is permissible.⁵³

IV. Proper Conduct in the Presence of Cadavers

Discussion: Medical schools currently have policies mandating proper respect of the cadavers in anatomy lab. Although exceptions exist, students by and large abide by expected codes of conduct and treat the cadavers with dignity. This does not necessarily mean that idle conversation, laughing, and making occasional jokes is forbidden in the anatomy lab. In the ensuing discussion, we will try to determine how Jewish law views this sort of behavior. It should be emphasized from the outset that our discussion will only focus on the technical requirements emanating from the letter of the law. Whenever possible, students should engage in the dissections with utmost respect for the cadavers and with the conscious awareness that they are handling human beings created in the Divine Image.

53. See Rabbi J. David Bleich's *Contemporary Halakhic Problems* Volume II pg. 64, where the opinion of Rav Shlomo Zalman Auerbach is quoted.

A. Levity as a Breach of *Kevod ha-Meit*

Shulchan Aruch, based on the Gemara in *Megillah* (29a), rules that one should not engage in levity (*kalut rosh*) in a cemetery.⁵⁴ *Shach*⁵⁵ writes that levity is forbidden because it demonstrates a lack of respect for the dead, (*kevod ha-meit*). While *Shulchan Aruch* only mentions the prohibition of levity within the confines of a cemetery, Rav Yechiel Michel Tukachinsky, in *Gesher HaChaim*⁵⁶, writes that it is forbidden to engage in levity in front of a corpse even outside a cemetery.

It remains to be determined whether the prohibition of levity is limited to Jewish cadavers or whether it extends to the cadavers of non-Jews as well. This question is particularly relevant to medical schools outside of Israel where the overwhelming majority of cadavers in anatomy lab are non-Jewish. Of course, there is no question that all humans – Jews and non-Jews alike – are created in the Divine image.⁵⁷ As such, all cadavers in anatomy lab should be treated with respect and dignity.

B. The Prohibition of *Nivul ha-Meit* (desecration of the dead)

In the context of a criminal who is hanged after death, the Torah in *Devarim* 21:23 commands “*lo talin nivlato al ha-etz*”, that the corpse should not remain hanged overnight. *Chazal* teach that this verse is the source for the general prohibition of *nivul ha-meit* (desecrating the dead).⁵⁸ It is not clear from the statements of *Chazal*, however, whether the prohibition of desecrating the dead also applies to the corpses of non-Jews. *Chatam Sofer*⁵⁹ and Rav

54. *Yoreh Deah* 368:1. Elsewhere, in a discussion of inappropriate behavior in the synagogue, *Shulchan Aruch Orach Chaim* 151:1 lists *s'chok* (laughter), *hitul* (mocking), and *sichah beteilah* (idle conversation) as examples of *kalut rosh*.

55. *Yoreh Deah* 368:1.

56. *Chelek* 1 perek 5 1:3-4.

57. See *Bereishit* 1:27 and 9:6. Also see Mishnah *Avot* 3:14.

58. See *Sifrei* 221 and Mishnah *Sanhedrin* 46a.

59. *Yoreh Deah* 336.

Kook⁶⁰ state explicitly that no such prohibition exists for non-Jewish cadavers. It is important to note, however, that these two authorities do not endorse purposeless desecration of non-Jewish corpses. *Chatam Sofer* writes his opinion regarding an autopsy which could be useful for future patients and Rav Kook is discussing procurement of cadavers for medical schools in Israel. In both of these scenarios, physical damage to the cadaver serves a useful purpose.

Some authorities maintain, however, that the prohibition of *nivul ha-meit* also applies to the cadavers of non-Jews. Rabbi Ben-Zion Uziel, in *Mishpetei Uziel*,⁶¹ writes explicitly that this prohibition applies equally to Jews and non-Jews.⁶² Others⁶³ write that the potential extension of the prohibition to gentile corpses is dependent on a debate between Rashi and Ramban⁶⁴ in their respective commentaries to *Devarim* 21:23.

It is reasonable to assume that those who limit the prohibition of *nivul ha-meit* to Jewish corpses would maintain that no technical requirement of *kevod ha-meit* applies to non-Jewish cadavers. If this is true, then *Chatam Sofer* and Rav Kook would both maintain that *kevod ha-meit* is not technically required towards cadavers of non-Jews. According to those who forbid *nivul ha-meit* towards non-Jewish cadavers, however, it is possible that an obligation to accord honor to non-Jewish corpses exists as well.

C. *Darchei Shalom*

While it seems logical to examine *kevod ha-meit* in light of the

60. *Daat Kohan* 199.

61. *Yoreh Deah* 1:28.

62. In *Contemporary Halakhic Problems* Volume II pg. 58, Rabbi J. David Bleich notes the opinion of Rav Joseph B. Soloveitchik which can be found in an article written by Rabbi Immanuel Jakobovits. In this article, Rav Soloveitchik is quoted as stating that there is no distinction between Jews and gentiles regarding the prohibition of *nivul ha-meit*.

63. *Teshuvot Or Hameir* 74. See also *Minchat Chinuch* 536.

64. Rashi implies that the prohibition only applies to Jewish corpses. However, one explanation in Ramban (s.v. *velo tetamei et admarcha*) implies that non-Jewish corpses are also subject to this prohibition.

prohibition of *nivul ha-meit*, one statement cited in *Beit Yosef* appears to reject such reasoning and implies that there is a requirement of *kevod ha-meit* towards non-Jewish cadavers according to all opinions. *Beit Yosef*⁶⁵ cites the opinion of *Kol Bo* that one is required to escort non-Jewish cadavers a distance of four *amot* (arm-lengths). Because escorting the dead is a function of *kevod ha-meit*,⁶⁶ the statement of *Kol Bo* appears to be halachic precedent for the requirement of according honor to non-Jewish cadavers. However, not all authorities agree that the requirement to escort the dead is in place for all non-Jewish cadavers. *Beit Yosef* writes that one is only required to escort righteous gentiles, and the statement of *Kol Bo* does not appear in *Shulchan Aruch*.⁶⁷ *Bach*, however, maintains that the requirement of escorting the dead applies to all non-Jewish corpses,⁶⁸ because of *darchei shalom* (fostering harmony). It is possible that *Bach* would mandate other actions besides escorting the dead which are also a function of *kevod ha-meit*. Therefore, it might emerge from *Bach* that frivolity would be forbidden in anatomy lab if this behavior would impinge on *darchei shalom*.⁶⁹

D. Conclusion

Certain activities should always be avoided in the anatomy lab. Physically damaging or mutilating a cadaver for no reason is an action which falls under the category of *nivul ha-meit*; frivolous behavior will likely not be classified as *nivul ha-meit*, but it could

65. *Yoreh Deah* 367 s.v. *katav*.

66. See *Bava Batra* 100b.

67. See *Shulchan Aruch Yoreh Deah* 151:12 where escorting the dead is absent from the list of actions performed because of *darchei shalom*.

68. *Yoreh Deah* 367 s.v. *katav*.

69. In the book *Reb Yaakov*, by Yonason Rosenblum, the following story is told of Rav Yaakov Kamenetzky (pp. 248-249): "Reb Yaakov was once talking to someone when a gentile funeral procession passed by. He accompanied the funeral cortege the requisite four *amot*. When the person with whom he had been talking expressed surprise that one is also required to accompany the body of a non-Jew, Reb Yaakov told him, 'He, too, was created *b'tzelem Elokim*.'" Apparently, Rav Kamenetzky ruled in accordance with this opinion of *Kol Bo*.

be a breach of *kevod ha-meit*. However, very few authorities directly discuss the requirement of *kevod ha-meit* towards non-Jewish cadavers.

V. Wearing *Tzitzit* in the Lab

Question: Is one obligated to wear *tzitzit* in the lab?

Discussion: It has become a universal custom for males to wear a *tallit katan* in order to have a constant reminder of the mitzvot.⁷⁰ Rav Moshe Feinstein writes that it is forbidden to deviate from this practice.⁷¹ Given the importance of wearing *tzitzit*, we will assume that one should wear them in the lab until proven otherwise.

It becomes apparent from *Shulchan Aruch* that the presence of cadavers themselves is not sufficient reason to refrain from wearing *tzitzit*. *Shulchan Aruch* states that one is permitted to enter into a cemetery wearing *tzitzit* as long as they are covered.⁷² The same law applies to one who is within four *amot* of a corpse.⁷³ The reason why the *tzitzit* should not be exposed is because doing so is considered "mocking the deceased" (*lo'eg larash*) as they can no longer perform this mitzvah. Because the only stated reason for covering the *tzitzit* in a cemetery is *lo'eg larash*, it appears that the authorities do not consider wearing the *tallit katan* in front of a cadaver to be a disgrace to the *tzitzit*. Furthermore, assuming that the cadavers in anatomy lab are non-Jewish, the *tzitzit* could even be exposed in the lab. Because non-Jews are not obligated in the mitzvah of *tzitzit*, there is no concern of *lo'eg larash*.

One might reason that the anatomy lab is still a dirty place and wearing the *tallit katan* in the lab would be disgraceful to the *tzitzit*. However, *Shulchan Aruch* writes that one is permitted to

70. *Shulchan Aruch Orach Chaim* 24:1. *Shulchan Aruch* 24:6, quoting *Menachot* 43b, explains the great reward for those who are scrupulous in this mitzvah. See *Menachot* *ibid.* for additional benefits.

71. *Iggerot Moshe Orach Chaim* 4:4.

72. *Shulchan Aruch Orach Chaim* 23:1.

73. *Ibid.* 23:3.

wear the *tallit katan* in the bathroom.⁷⁴ Thus, it would seem that the *tzitzit* should be worn in anatomy lab as well.

However, anatomy lab may in fact be more problematic than bathrooms. Currently, cadavers in the lab are preserved in chemicals which give off a foul odor. Students report that the smell of the chemicals permeates one's clothes and even remains on the clothes for days or weeks after leaving the lab. Because of this odor, one could argue the *tallit katan* does become dirty and disgraced through the smell and may be forbidden to wear in the lab.

Regardless of whether one does or does not wear the *tallit katan* in the lab, the following three points will be useful for anatomy students to clarify the procedure of making new blessings on the *tzitzit*:

- 1) When taking off one pair of *tzitzit* and changing into a new pair, a blessing should be recited on the new pair.⁷⁵
- 2) When taking off one *tallit katan* for an extended time and replacing the same *tallit katan*, a new blessing may be required. All authorities agree that a significant break in time (*hefsek*) would mandate a new blessing, but there is a dispute with regard to the amount of time that constitutes a *hefsek*.⁷⁶ Because there is a large range of opinions about what constitutes a *hefsek*, a *Rav* should be consulted.
- 3) It is common that students change clothes in a bathroom before and after anatomy lab. However, it is forbidden to recite a blessing in the bathroom. If one needs to recite a blessing over the *tallit katan*, one may still don the *tzitzit*

74. *Orach Chaim* 21:3 as explained by *Taz*.

75. The blessing on the new *tallit katan* according to *Ramo Orach Chaim* 8:6 is "על מצות ציצית".

76. See *Laws of Daily Living* by Rabbi Simcha Bunim Cohen pp. 236-238, citing *Halichot Shlomo* 3:7 that even an activity lasting three hours may not constitute a *hefsek*. In many institutions, anatomy lab sessions last less than three hours.

while in the bathroom. After leaving the bathroom one should shake the *tallit katan* and then recite the blessing.⁷⁷

VI. Washing Hands after Lab

*Shulchan Aruch*⁷⁸ writes that the hands must be washed after walking in a cemetery⁷⁹ or after touching a cadaver. Even outside a cemetery, it is customary to wash hands while in the presence of even one cadaver⁸⁰ because of *ruach raah*, an impure spirit. It is not explicit from *Shulchan Aruch*, however, whether the requirement of washing hands is limited to Jewish corpses or if it also extends to non-Jewish corpses. Later authorities who discuss this question seem to concur that there is no distinction between the cadavers of Jews and non-Jews with regard to hand-washing. *Kaf HaChaim*⁸¹ writes that the hands should be washed after touching a non-Jewish corpse, and Rav Yitzchak Yosef⁸² writes that one must wash hands after taking leave of a non-Jewish cemetery.

It appears from the aforementioned opinions that the hands should be washed after lab to remove the *ruach raah*; the authorities advise that one should try to wash the hands immediately.⁸³

In order to remove the *ruach raah* which descends on a person

77. Precedent for this procedure is based on *Shulchan Aruch Orach Chaim* 8:10, who writes a similar law regarding one who dons the *tallit katan* when his hands are unclean.

78. *Shulchan Aruch Orach Chaim* 4:18.

79. Literally *Shulchan Aruch* writes "one who walks between cadavers", but this is understood by later authorities to mean walking in a cemetery.

80. *Magen Avraham Orach Chaim* 4:21, *Mishnah Berurah* 4:43, and *Aruch HaShulchan* 4:21. While *Aruch HaShulchan* limits the requirement to a case where one is within four *amot* of the deceased, *Mishnah Berurah* does not explicitly limit the case to within four *amot* of the dead.

81. *Orach Chaim chelek* 1, 4:81.

82. *Yalkut Yosef Orach Chaim* 4:57.

83. *Mishnah Berurah* 4:38 citing *Pri Megadim*. See also *Mishnah Berurah* 4:43 citing *Ramo* that one should not enter into another house or building before washing the hands.

who is sleeping overnight, the hands are washed three times⁸⁴ from a vessel.⁸⁵ Are these two requirements – washing three times and washing from a vessel – necessary to remove the *ruach raah* from cadavers? While many⁸⁶ assume that washing one time suffices, some⁸⁷ are stringent and require three times. With regard to washing from a vessel, many leading authorities do not mention this requirement and imply that a vessel is not required. Nevertheless, some⁸⁸ do require a vessel.

We must re-examine whether an additional hand-washing is truly necessary after lab. After all, virtually all students wash their hands with soap and water after each lab session for hygienic reasons. Once the students have already washed their hands in this method, are they obligated to wash again to remove *ruach raah*? The argument could be made that *bedieved* (after the fact) this method of washing works to remove the impure spirit. As already mentioned, many authorities assume that washing three times is not necessary after handling cadavers. In addition, Ramo⁸⁹ writes that upon awakening in the morning, *bedieved* neither a vessel nor *koach gavra* (direct human force) is required.⁹⁰ Seemingly, then, an additional hand-washing to remove *ruach raah* would not be necessary. Ultimately, this likely depends on the location of the sink – if the sink is located outside of the lab, one would likely not be required to wash again. If it is inside the lab, however, washing hands there may not remove the *ruach raah* because immediately after washing the hands one is still in

84. *Shulchan Aruch Orach Chaim* 4:2.

85. *Shulchan Aruch Orach Chaim* 4:7.

86. *Magen Avraham* 4:17 is lenient, and his opinion is quoted by *Aruch HaShulchan* 4:21. *Mishnah Berurah* 4:39 writes that washing three times is not necessary and afterwards cites authorities who require washing three times. This implies that there is room to be lenient.

87. See *Mishnah Berurah* *ibid*.

88. See *Piskei Teshuvot chelek 1 siman 4* footnote 164 for a synopsis of opinions.

89. *Orach Chaim* 4:7.

90. *Mishnah Berurah* 4:16 explains that Ramo refers to a *bedieved* case and *Mishnah Berurah* 4:17 cites *Chayei Adam* that this works even to remove *ruach raah*.

close proximity to the cadavers and susceptible to *ruach raah*. It would appear that in this case one should wash again, but it may not be necessary to wash from a vessel three times.

VII. Conclusion

Medical school presents a unique challenge to the Orthodox Jewish student. Aside from the demanding coursework and busy schedule endured by all medical students, religious Jews are confronted with unfamiliar halachic quandaries. The present article is written with the intention of raising awareness about a small fraction of the halachic questions faced by medical students.

When is a *Kallah* Required To Cover her Hair

Dovid Emanuel Feinberg

There many mitzvot that apply and change when marriage occurs. One of these special commandments is the obligation for married women to cover their hair.¹ The marriage process in Jewish law has many different parts, such as the *kabbalat panim*, *chuppah*, and *sheva berachot*. At what point does halachic marriage take place during this prolonged process? At what moment would a *kallah* become obligated to cover her hair?

The present analysis will focus on three points: 1) A brief overview of the sources that obligate a woman to cover her hair and how these sources do not answer this issue. 2) The different stages of marriage in halacha and how they impact on this question. 3) At which moment during our modern day wedding ceremony does the *kallah* become obligated to cover her hair? In answering the third part, the following four approaches will be discussed: a) before the *chuppah*² b) after the *yichud* room c) the morning following the wedding d) she may have the ends of her hair revealed for the entire wedding.

I. Sources that obligate a woman to cover her hair

The Gemara in *Ketubot*³ states פרוע דאורייתא דכתיב ופרע את ראש האשה ותנא דבי רבי ישמעאל אזהרה לבנות ישראל שלא יצאו בפרוע ראש –

1. Refer specifically to *The Journal of Halacha* volume XXX, page 81, where the obligation of married women to cover their hair is discussed at length.

2. Throughout this article, *chuppah* will be referring to the part of the wedding when the *chatan* and *kallah* are standing under a canopy.

3. 72a.

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"The *Baraita* taught in the *Beit Medrash* of R. Yishmael states that there is a biblical prohibition for the daughters of Israel to go out with their hair uncovered."⁴ By using the term, "the daughters of Israel," the Gemara seems to imply that all women, even those who were never married, must cover their hair.⁵

However, in *Ketubot*,⁶ the Mishnah states, a *kallah* goes from her father's house to the *chuppah* with her hair uncovered.⁷ During the times of the Mishnah and Gemara, a man would *mekadesh* (betroth) his wife and approximately twelve months later bring her to the *chuppah* for *nesuin* (the full-fledged marriage).⁸ Therefore, the *kallah* mentioned in this Mishnah must already be an *arusah* ("betrothed"). Thus, it seems an *arusah* and certainly a

4. Numerous opinions maintain that covering hair is biblically required. Among them are the *Meiri* (72a), the *Tashbetz* (*Zohar Harakia a'say* 137, letter 52), *Be'er Shevah siman* 18, and *Maharam Shick* (*Yoreh Deah siman* 217 d'h "V'al kol panim"). Also, see *Iggerot Moshe* (*Even HaEzer* 57) how he understands Rashi. However, the *Trumat Hadeshen* (242) understands the Rambam as of the opinion that this requirement is only rabbinic in nature. See *Yechave Daat* Vol 5:62 the first footnote, where he discusses the Gemara's usage of the term *d'oraitha*, if that is to be taken literally or rather just as an emphasis.

5. *Bach* (*Even Haezer* 21:2 d'h "Lo") explains that this language of "the daughters of Israel" is the reason why the Rambam (*Hil. Ma'achalot Asurot*, 21:7) and the *Shulchan Aruch* (*Even Haezer* 21:2) say that even an unmarried woman must cover her hair. The Vilna Gaon (*Even Haezer* 21:11) also makes this point. However, see the *Mahari HaLavi* (*Responsa, siman* 9) for a dissenting view on how to explain the language of *penuah*.

6. 15b.

7. Rashi (15b d'h "V'Rosha") explains *paruah* to mean שער על כתיפה, that her hair is falling/draped over her shoulders. This implies that only the bottom part of her hair was revealed. The *Shita Mekubetzet* (15b d'h "V'Rosha") records that the *Geonim* were of the opinion that her hair was completely uncovered.

8. See *Ketubot* 57 and *Shulchan Aruch Even Haezer* 56:1, and *Chavot Yair* 196. However, nowadays, the marriage process is performed differently as explained by the *Ramo* (*Even HaEzer* 55:1). *Sephardim* follow the opinion of the *Shulchan Aruch* and do *yichud* after the wedding is over and that is the primary *nesuin* (see *Yechave Daat* vol 5:62). The *Ran* in *Ketubot* 1b d'h "U'lfichat" and the *Gra* *Even Haezer* 55:11 explain the reason for this change in custom from the time of the Gemara.

single woman would not have to cover their hair.⁹

This same apparent contradiction appears in the *Shulchan Aruch*. In one place, the *Shulchan Aruch*¹⁰ says – שער של אשה שדרכה לכסותו אסור לקרות כנגדו אבל בתולות שדרכן לילך פרועות הראש מותר – one may read *shema* in front of an unmarried woman as she is not obligated to cover her hair. However, elsewhere the *Shulchan Aruch*¹¹ says – לא תלכנה בנות ישראל פרועות ראש בשוק אחת פנויה ואחת – אשת איש – that even unmarried women must cover their hair.¹² The commentators address this issue and offer various explanations to resolve this discrepancy.¹³ In the end, all of these halachic authorities agree that before marriage a woman is not obligated to cover her hair.

II. The Different Stages of Marriage

However, the halacha that a married woman must cover her hair does not shed sufficient light on our issue. Marriage according to halacha does not necessarily have a clear-cut

9. If an *arusah*, who is considered an *aishet ish* (a married woman) may have uncovered hair, then certainly a single woman may. As an aside, it is important to note that whether an *arusah* is obligated to cover her hair is subject to a major debate among *poskim*. See *Mahari HaLevi* (Responsa 1:9, *Mishnah Berurah* 75:11, *Responsa Rabbi Akiva Eiger* (Vol 1:79). Among contemporary *poskim*, see Rabbi Shlomo Zalman Auerbach (cited by *Ishei Yisrael*, Ch. 55, footnote 77) and Rabbi Yosef Shalom Eliashiv (cited by *Mishmeret Chaim*, Ch. 3, footnote 15), and *Sedei Chemed* (*Asifat Dinim*, *Ma'arechet Dalad: Daat Yehudit*, and specifically *d'h "U'L'inyan"*).

10. *Orach Chaim* 75:2.

11. *Even HaEzer* 21:2.

12. The literal translation is that daughters of Israel may not go with their hair uncovered, whether single or married.

13. The *Bach* (*Even Haezer* 21:2 *d'h "Lo"*) says that the *minhag* is in accordance with the *Shulchan Aruch* in *Orach Chaim* (75:2) that only married women must cover their hair. See the *Perisha* (*Even HaEzer* 21:3), *Beit Shmuel* (*Even Haezer* 21:5), *Chelkat Mechokek* (*Even HaEzer* 21:2), and *Magen Avraham* (*Orach Chaim* 75:3). Also, see the *Machatzit HaShekel* 75:3, *Mishnah Berurah* 75:12, *Shevet HaLevi* (5:199, letter 3), and *Even Yisroel* (7:8) who discusses the opinion of the *Magen Avraham*. See *Yabia Omer* Vol 4 *Even HaEzer siman* 3. Also, the *Dagul MeRevava* (*Even Haezer* 21:2 *d'h "Mechaber"*), *Shvut Yaakov* (*Responsa* vol 1:103), *Beir Heitev* (*Even Haezer* 21:5) and the *Mishnah Berurah* 75:11.

definition. There are two processes required for a man to halachically marry a woman. He must first “acquire” her with *kiddushin*,¹⁴ and then finish the process with *nesuin*,¹⁵ a process accomplished through *chuppah*.¹⁶ The halachic relationship between husband and wife is distinctly affected by each of these stages. After *kiddushin* alone, it is considered adultery for another man to have relations with her. However, only after *nesuin* does a husband inherit from his wife,¹⁷ assume the power to annul her vows,¹⁸ and only then may she eat *terumah* if he is a *kohen*.¹⁹

Furthermore, in truth, *nesuin* itself can be divided into two phases. A woman who was merely brought to the *chuppah* without consummating the marriage is referred to as נכנסה לחופה ולא נבעלה. At this stage, the woman is still considered a virgin by halacha. Once she is placed in a situation where cohabitation is possible, even if the marriage was not actually consummated, she is no longer considered a virgin, but rather a full-fledged married woman. At this stage she would be referred to as being a *chezkat beula*, with the status of a non-virgin for all halachic purposes.²⁰

The *Shaar HaMelech*²¹ discusses these two stages of *nesuin* at

14. *Kiddushin* 2a. Rambam, *Hil. Ishut* 1:2.

15. Rambam, *ibid.* 1:1.

16. *Kiddushin* 6a. Rambam *Hil. Ishut* 10:2. See *Shulchan Aruch (Even Haezer 55:1 & 61:1)* and *Ramo (Even HaEzer 55:2)*.

17. *Kiddushin* 10a, *Yevamot* 29b, *Shulchan Aruch, Even HaEzer* 57:1.

18. *Kiddushin* 10a. *Ketubot* 49b-50a, *Shulchan Aruch, Yoreh De'ah* 234:8.

19. Rambam *Hil. Terumah* 6:3 and 8:7.

20. The laws of *Sotah* highlight the difference between these two stages of *nesuin*. The Torah teaches us (*Bamidbar* 5:20) a woman who is merely a נכנסה לחופה ולא נבעלה would not drink the *sotah* waters. She must have been intimate with her husband to be considered a *sotah* who is obligated to drink the *sotah* waters (*Sotah* 24b. Rambam, (*Hilchot Sotah* 2:5) and the *Devar Shaul* there. Also, see *Avnei Yashfei (Responsa Vol 3:107)*.

21. See *Chupat Chatanim*, Chapter 10. Additionally, see the *Taam HaMelech* (there) letter 14, *Beit Shmuel Even HaEzer* 7:36, and *Chelkat Mechokek* there, *Gemara Ketubot* 48b-49a and specifically Rashi on 48b d'h “*Shmuel*” and *Tosafot* 50a d'h “*V'Eima*”. Also see the *Shulchan Aruch Even Haezer siman* 57, *Yoreh Deah* 234:8 and *Even HaEzer* 7:12 with the *Beit Shmuel* 36, *Chelkat Mechokek* 23, and *Taz* 13. Additionally, See Rabbi Akiva Eiger (*Tosafot* on

length. He suggests that whether *chuppah* itself without the potential for cohabitation gives a woman the halachic status of a non-virgin or whether this status change requires the potential of cohabitation, is the subject of a dispute among *Rishonim*. One opinion maintains that *chuppah* itself removes the woman's halachic status as a virgin, while the other maintains that she loses this status only after she has been exposed to a situation where we can assume that marital relations have occurred.²² Accordingly, a woman's status after the *chuppah* that we perform, which is done in public view, would depend on this dispute.²³

These issues are at the crux of our discussion. At which stage of marriage does a woman become obligated to cover her hair – already as an *arusah* or may she wait until being a *nesuah*? Even as a *nesuah* would that obligate her regardless of whether she is a halachic virgin or not, or may she wait until losing her virgin status? Moreover, if the obligation is dependent on losing her status as a virgin, then at what point in the marriage process does she in fact lose this status, with *chuppah* alone, or is the possibility for cohabitation required? Furthermore, how does our modern-day *chuppah* fit into this equation?

There is no general guideline to answer these questions. Each law as it relates to marriage has a different requirement. Some start with *nesuin* alone, while others require a *chezkat beula*. As will be discussed below, contemporary halachic authorities deduce from different sources the bottom line of which stage obligates a woman to start covering her hair.

III. The *Kallah* becomes obligated through *Nesuin* – *Chuppah*

The first opinion stated earlier was that a *kallah* must cover her hair before the *chuppah*. Rabbi Yechezkel Landau²⁴ quotes a

Mishnah *Ketubot* chapter 3 Mishnah 1 letter 37).

22. Even if marital relations did not occur, the mere fact that they were together in a place where it could have occurred is sufficient to give her *chezkat beulah*, i.e., a presumption of being a *beulah*.

23. We will soon discuss this issue as it relates to the *yichud* room.

24. In *Dagul MeRevava Even Haezer* 21:2 d'h "Mechaber".

*Yerushalmi*²⁵ that states a נכנסה לחופה ולא נבעלה, a woman who was previously brought to *chuppah* but was divorced or widowed before the marriage was consummated, would not go to her subsequent *chuppah* with her hair uncovered.²⁶ Based on this, Rabbi David Horowitz²⁷ says that *nesuin* and not cohabitation must be what triggers the obligation for a woman to cover her hair.²⁸ Therefore, a woman would become obligated to cover her hair under the *chuppah*, immediately after *nesuin* has occurred.

He adds that since the obligation commences while she is standing under the *chuppah*, she must cover her hair even beforehand to prevent even one moment of her hair being exposed.²⁹ He explains the Mishnah which states that a virgin

25. *Ketubot* 2:1.

26. The background to the *Yerushalmi* is the following: A *betulah* receives a *ketubah* of 200 zuz while a *beula* receives only 100 zuz. At a wedding, different behaviors are done to indicate if the *kallah* is a *betulah* or a *beula*. Knowing her status was important in case witnesses would be needed at a future point in time to testify about her. The Mishnah in *Ketubot* (10b) says that "going to the *chuppah* with her hair uncovered" is an indication that she is a *betulah*. The *Yerushalmi* questions the reliability of this indication. How are we to be certain that she is a *betulah*? Perhaps she is a נכנסה לחופה ולא נבעלה, whose *ketubah* is 100 zuz (despite being a *betulah*). The *Yerushalmi* answers that such a woman does not go to the *chuppah* with her hair uncovered. Thus, it is clear from the *Yerushalmi* that a married lady who never consummated her marriage must cover her hair. See the commentators of the *Yerushalmi* for an explanation as to why "uncovered hair" is an appropriate indicator for the *betulah* status.

27. *Kinyan Torah B'Halacha* Volume 2:43.

28. Additionally, he brings another Gemara in *Ketubot* as support for this opinion. The Mishnah (*Ketubot* 15b) states the *kallah* walking to the *chuppah* with hair uncovered is an indication that she received the *ketubah* amount of a virgin. The Gemara (*Ketubot* 11b-12a) comments that by a second marriage, even if witnesses testify that she did not have marital relations with her first husband, she would only receive the *ketubah* amount of a non-virgin. Accordingly, she would not go to the *chuppah* of her second marriage with her hair uncovered, as would indicate her *ketubah* is 200 zuz. This as well shows that marriage alone, without a *chezchat beula*, without the possibility to consummate the marriage, will obligate a *kallah* to cover her hair. See *Yeshuot Yaakov* (*Even HaEzer* 21:1), and further here in text.

29. Rabbi Moshe Shternbuch (*Teshuvot V'hanhagot* vol. 5:334) and Rabbi Binyamin Silver (*Az Nidberu* Vol 12:50) both write that this is the optimal

goes out with a veil while her hair is uncovered refers to her travelling to the place of her marriage or to how she conducts herself before being wed, before the *nesuin*, but not when she actually enters the *chuppah*.³⁰ Rabbi Horowitz believes that this understanding is explicit in the *Taz*³¹ and the *Beit Shmuel*³² who state that covering the *kallah's* hair is a preparation for the *chuppah*. Thus, before a *kallah* is escorted to the *chuppah* and afterwards for the entirety of her wedding celebration, she must ensure that her hair is completely covered.

IV. The *Kallah* becomes obligated through *Yichud*

The second opinion is that the *kallah* is only obligated to cover her hair after the *yichud* room. This view maintains that a *chezkat beula*³³ is what obligates a woman to cover her hair. Rabbi Yaakov Kamentzky³⁴ maintains that this view is supported from the Gemara in *Ketubot*.³⁵ He understands that Gemara as saying she in fact acquired a *chezkat beula* status from the first marriage and that is why she only receives a *ketubah* of a non-virgin in the subsequent marriage.³⁶ In actuality, *nesuin* alone would not be

way for a *kallah* to conduct herself. See *Avnei Yashfei* (*Responsa*, Vol. 3:107).

30. Rabbi Binyamin Silver echoes this point as well in *Az Nidberu* *ibid*.

31. *Even HaEzer* 65:2.

32. *Even HaEzer* 65:3. The custom was and still is nowadays for the *chatan* to cover the *kallah's* head with her veil. We refer to this as the *bedeken*. The *Bach* understands that the *bedeken* is done following the opinions that the *bedeken* is how to do *chuppah* (*Even HaEzer* 61,1). The *Taz* says that this is certainly not considered *chuppah* and it is done as preparation for the *chuppah*. Rabbi Horowitz understands the "preparation" to mean that the *bedeken* was done in order to prevent her hair from showing during the actual *chuppah*.

33. Meaning a circumstance took place in which the *chatan* and *kallah* could have had marital relations to consummate their marriage.

34. *Emet L'Yaakov* on *Shulchan Aruch*, *Even HaEzer* 55:1, footnote 25. Rabbi Shlomo Zalman Auerbach held like this as well (*Shalmei Simcha*, p.342, and in *Mevakshei Torah*, Vol. IV p.392). See *Az Nidberu* Vol 12:50.

35. 11b-12a, quoted in footnote 28 above.

36. The Gemara in *Ketubot* (11b-12a) states a *nesuah* is entitled to a *ketubah* of 100 zuz even if she never consummated the first marriage. The *rishonim*

enough to change her *ketubah* status. Therefore, without a *chezkat beula* she would not cover her hair in the subsequent marriage. This is consistent with the most basic understanding of the aforementioned Mishnah in *Ketubot*, that the *kallah* goes to the *chuppah* with her hair revealed. At our weddings where we have a *yichud* room after the *chuppah*, at that point she would acquire the halachic status of a non-virgin, a *chezkat beula*, and then be obligated to cover her hair for the rest of the wedding.

Another aspect to consider in this interpretation is as follows: Even though the Jewish wedding ceremony has become almost universal, there is an important distinction pointed out by Rabbi Ovadia Yosef. He agrees that a *kallah* is not obligated to cover her hair until after the *yichud* room albeit for a different reason. He is of the opinion that the halacha is in accordance with the Rambam that *yichud* is required for *nesuin*.³⁷ Thus, she is not considered a *nesuah* until after the *yichud*.³⁸ Therefore, for *Ashkenazim* who do

are bothered, if she never consummated the marriage why is she only entitled to 100 zuz. The Ramban (*Ketubot* 12a d'h "V'Lechush") quoting a *Yerushalmi* explains that with a previous marriage she loses her "*chen*" (grace) to her husband. The first marriage itself causes her value in terms of *ketubah* to decrease. Therefore, her subsequent husband will only give her a *ketubah* of 100. However, Rashi (11b d'h "Sh'Harei") and Tosafot (12a d'h "Shanei") understand that the second husband assumes the first husband was actually intimate with her. Tosafot explain that the second husband doesn't really believe the witnesses who say they were never in seclusion or that there was not enough time to consummate the marriage. (See the Rashba 12a d'h "Rav Ashi" and the *Shita Mekubetzet* in the name of the *Shita Yishana* as to why he wouldn't believe the witnesses in this scenario). Therefore, this Gemara proves that only in a situation in which intimacy is possible, will a *kallah* receive a *ketubah* of a 100 zuz in her subsequent marriage. Accordingly, she must be obligated from that point to cover her hair. Additionally, see the *Chatam Sofer* (*Ketubot* 12a d'h "Amar Rabbah") who explains this Gemara in this fashion according to the Rambam. See *Tur* and *Shulchan Aruch* (*Even HaEzer* 67:2) and *Be'er Heitev* (there 67:1) who understand the Gemara like Tosafot. See *Aruch HaShulchan* (*Even HaEzer* 55:6).

37. The *Shulchan Aruch* states only the Rambam's opinion in *Even HaEzer* 55:1. Therefore, Rabbi Ovadia Yosef maintains that we rule in accordance with the Rambam that *yichud* is required for *nesuin*.

38. The *chuppah* which is performed at our weddings is done as an extra

yichud immediately following the *chuppah*, a *kallah* must cover her hair immediately after *yichud*. However, for *Sephardim*, who perform *yichud* only after the entire wedding festivities have concluded, there is no requirement for the *kallah* to cover her hair at all during the entire wedding celebration.³⁹

V. The *Kallah* becomes obligated the morning following the wedding

The third opinion is that a *kallah* is not obligated to cover her hair until the morning following the wedding. Seemingly, this is authenticated in the writings of Rabbi Moshe Sofer.⁴⁰ He writes that women in his town kept their hair uncovered for the entire wedding and only shaved their heads the following day.⁴¹ This custom is based on the assumption that a woman is not obligated to cover her hair until she loses her halachic status as a *betulah* which does not occur until the next day.

However, there is an apparent difficulty with this custom. Doesn't a woman lose her *betulah* status immediately after the

measure to satisfy the other opinions. See *Yalkut Yosef Soveah Semachot*, Vol. 1, 12:1 and *Hilchot Tzitzit siman* 8 footnote 19, page 63, who addresses the propriety of reciting the *sheva berachot* under the *chuppah* if *nesuin* has not yet occurred. Also, see *Yabia Omer* vol. 5, *Even HaEzer siman* 8.

39. *Yechave Da'at* 5:65. Also see *Asay Lecha Rav*, Vol. 4, 55.

40. *Yoreh Deah* 195.

41. Later authorities debate the exact extent of this *minhag* that *Chatam Sofer* records. *Az Nidberu* (ibid.) and *Shevet HaLevi* (9:259) maintain that only the bottom part of her hair, which extended below the veil, was uncovered. *Az Nidberu* explains that perhaps they did not perform *yichud* until after the wedding and since the *Ramo* (*Even Haezer* 55:1) requires *yichud* to fulfill the opinion of the *Rambam*, the *Chatam Sofer* was willing to be lenient for the remainder of the wedding ceremony. The *Shevet Halevi* argues that the *Chatam Sofer* did not have a source for this custom and merely noted its existence so that one should not protest it. Others understand that according to this custom, the *kallah's* hair would be completely uncovered for the entire wedding ceremony. See *Teshuvot V'Hanhagot* 4:294 and 5:334. However, the *Kinyan Torah* (2:43) understands that the *Chatam Sofer* was merely saying that the custom was to wait until the next day to shave her head, but that she certainly covered her hair after the *chuppah*.

yichud room as explained earlier? This predicament can be resolved according to the opinion of Rabbi Moshe Feinstein, who also held that a woman becomes obligated to cover her hair only after losing her standing as a *betulah* and that *nesuin* alone does not remove this status.⁴² He understands that even the *yichud* room does not remove this status as it does not give the impression that the *chatan* and *kallah* have been intimate. It is obvious to all that the marriage has not yet been consummated.⁴³ Thus, the *kallah* retains her halachic status as a *betulah* and is not obligated to cover her hair until the following morning.⁴⁴

42. See *Lev Yita* (Chapter 32 footnote 4).

43. Rabbi Feinstein understands that there is an *anan sahadu* (unadulterated testimony) nowadays that marital relations will not take place in that room, they will not consummate the marriage there. Therefore, she would not have a *chezkat beulah* after the *yichud* room, as a *chezkat beulah* is predicated on the fact that we can assume she was intimate with her husband. Therefore, she would not have a *chezkat beulah* until the next morning after the wedding. However, Rabbi Moshe Feinstein held that the next morning even if they have not yet consummated the marriage she is *bechezkat beulah* and must cover her hair. Additionally, an interesting idea to consider is the following. The Ramo (*Even HaEzer* 55:1) cites the custom of the *chatan* and *kallah* to perform *yichud* immediately after the *chuppah*. He says that the *chatan* and *kallah* are escorted to their house and eat together in a private place. This custom is first brought by the *MaHaril* (*Laws of Nesuin* 6) from the *Kadmonim* (earlier generations). He states that this custom was done in order to generate and foster more love between the newly married couple. It was not done as a way to accomplish *chuppah* or a *chezkat beulah*. The *Nachalat Shivo'ah* (12,9) says explicitly that the Ramo's intention is as the *MaHaril* states, and he is not requiring *yichud* as part of the *chuppah* in halacha, or as a facilitator to give a *chezkat biah* to the *kallah*, to create a situation for them to be intimate. Thus, this custom of doing *yichud* should not be viewed as giving the *kallah* a *chezkat biah*. However, see the the *Bach* (*Even HaEzer* 61) and the *Beit Shmuel* (55,5 & 62,1) who explain differently.

44. See *Lev Yita* (Chapter 32 footnote 4) where he states that this was also the opinion of Rabbi Avigdor Miller. Also, see *Halichot Chaim* (Vol. 2 question 329, footnote 268) who writes that he heard from two independent sources that Rabbi Aharon Kotler told them before their weddings that the *kallah* does not have to cover her hair until the next morning, which was the *minhag* in Lita. Although Rabbi Kotler told his family members to cover their hair at the *chuppah*, this was a personal stringency but according to the letter of the law there is no obligation until the morning following the wedding.

There are other *poskim* as well who require a *kallah* to cover her hair at some point during the wedding, yet give a *limmud zechut* (valid reason) for those with the *minhag* to be lenient. One such individual is Rabbi Chaim Dovid HaLevi.⁴⁵ He explains that after *yichud* all of the halachic implications of marriage apply. However, only true *yichud*, which involves bringing the *kallah* into the halachic equivalent of the *chatan's* house, accomplishes this. The *yichud* that we perform at our weddings does not satisfy this requirement. Even those who rent out the *yichud* room so that the *chatan* will take "ownership" of the room have not succeeded in making the room into "his house." The room is nonetheless not the place or way in which a husband lives with his wife in complete privacy.⁴⁶ Therefore, not until that night

Rabbi Moshe Shternbuch (*Teshuvot Vehanagot*, vol. 5:334) writes that there are many *chassidish* communities who have this custom. Moreover, in *V'aleihu Lo Yibol* (Vol 1 page 71 – from a *talmid* of Rabbi Shlomo Zalman Auerbach) it is brought that the custom of the generation before Rabbi Shlomo Zalman Auerbach was that the *kallah* would not cover her hair at the wedding. Furthermore, it is brought from the Ravad Rosenthal that the custom in Yerushalayim from at least 80 years ago was like this as well. There are those (*Shalmei Simcha* Chapter 21 and *Yismach Lev* 242) who bring the *Shvut Yaakov* (*Respona* vol 1:103, *Be'er Heitev Even Haezer* 21:5, *Mishnah Berurah* 75:11) as a support to this view. Since he holds a woman is only obligated to cover her hair as a *chezkat beulah* this would permit her to wait until the following day to cover her hair. However, it should be noted that this extension of the *Shvut Yaakov* is not so simple. The *Shvut Yaakov* is coming to say a stringency, a *chumrah*, that even a woman who is not married must cover her hair if she is not a virgin. However, you don't necessarily see a woman who becomes married without a *chezkat beulah* as exempt from covering her hair. Rather, perhaps the *Shvut Yaakov* would hold marriage alone is actually enough to obligate her in covering her hair. In fact, the *Nodah Beyehudah*, *Dagul MeRevava* (*Even Haezer* 21:2 d'h "Mechaber"), holds like this, that an unmarried woman with a *chezkat beulah* and a married woman even without a *chezkat beulah* must cover their hair. Moreover, even if the *Shvut Yaakov* would agree that a woman without a *chezkat beulah* is not obligated to cover her hair, to apply this to our modern day weddings you must be willing to say the *yichud* room does not give her a *chezkat beulah* as explained above by Rabbi Feinstein.

45. *Asay Lecha Rav* Vol. 4, 55.

46. See *Lechem Mishneh* in *Hilchot Ishut* 10:1 and *Drisha* 61:1 who write that the *chatan* must bring the *kallah* to his actual house to show that she is

following the wedding, when real *yichud* occurs, will the *kallah* be fully married and required to cover her hair.

Rabbi Moshe Shternbuch⁴⁷ proposes a similar *limmud zechut*. He explains that real *yichud* would be in a room with a bed set up to create the potential for consummating the marriage. Therefore, the *nesuin* done nowadays is an extended process which is not completed until the couple undergoes real *yichud*. He brings the following as a support to this idea of an extended *nesuin* process: The Gemara⁴⁸ debates if one can perform *nesuin* with *biah* (marital relations) without first performing *kiddushin*. The *Magid Mishnah*⁴⁹ writes that even according to the opinion that *biah* creates *nesuin*, the husband is prohibited from having any further relations with his wife until he brings her under the *chuppah*. She is only a *nesuah* with regards to the other laws of a *nesuah*. Therefore, we see from this halacha that there is a precedent for having a *nesuah* in limbo. She is only a partial *nesuah* in the process of becoming a complete *nesuah*. Similarly, maintains Rabbi Shternbuch, our weddings nowadays are also an elongated processes of *nesuin*. As such, she would not be obligated to cover her hair until the morning after the wedding when the *nesuin* process would have been completed.

Finally, it is brought in the name of Rabbi Shlomo Zalman Auerbach that one should certainly not initiate a fight over this matter of a *kallah* not covering her hair for the entirety of her wedding.⁵⁰

completely in his domain. *Sha'ar HaMelech* (Chupat Chatanim Chapter 9) and *Chelkat Mechokek* 55:4 write that the *chatan* must bring the *kallah* into his domain in a permanent fashion and that *yichud* in a temporary place is not effective. See also *Beit Shmuel* 55:2.

47. *Teshuvot V'Hanhagot* 5:334.

48. *Kiddushin* 10a.

49. *Hilchot Ishut* 10:1.

50. *Shalmei Simcha* pg. 343. *V'Alayhu Lo Yibol*, p.286 and *Ishei Yisrael*, Ch. 55 note 77. They say as well in his name that although there is no clear source for a lenient approach, she may rely upon the fact that there are many G-d fearing people who conduct themselves in such a way. However, if the majority of the *kallah's* hair is covered by her veil, this would be even better and she may certainly remain that way for the duration of the wedding.

VI. The ends of her hair may be revealed for the entire wedding

The fourth opinion was that a *kallah* may have the ends of her hair revealed from the beginning through the end of the wedding. This is shown by the Rosh's⁵¹ understanding of a Gemara.⁵² The Gemara cites a statement of R. Shmuel Bar Nachmani in the name of R. Yonatan that one may stare at the *kallah's* face in order to instill her beauty in the eyes of her *chatan*.⁵³ The Rosh explains that this staring should be at the *kallah's* uncovered hair or veil for the entire first day of *sheva berachot*.⁵⁴ Since the "seven days of celebration" do not start until after the *nesuin*, i.e. after the *chuppah*, this implies that even after *nesuin* the *kallah's* hair was uncovered.⁵⁵

The *Mahari HaLevi*⁵⁶ understands the Mishnah's statement that a *kallah* goes out wearing a veil with her hair uncovered before *nesuin*, as explained by Rashi, that only the bottom of her hair is uncovered.⁵⁷ Thus, the *Mahari HaLevi* explains that the ends of the *kallah's* hair were uncovered before the *chuppah* and according to the Rosh remained that way after the *nesuin* until the first day of *sheva berachot* ended. Therefore, the obligation to completely cover her hair would only begin after the first day of *sheva berachot*. Of course, as Rashi explains, even before this time she would not be permitted to completely uncover her hair, but would be required to wear a veil or some other type of partial

51. *Ketubot*, 2:3.

52. *Ketubot* 17a.

53. Rashi there d'h "L'Chavevah" explains that seeing everyone gaze at her will cause the *chatan* to perceive her as being more attractive.

54. The *Tur* brings this (*Even HaEzer* 65:2) and the Ramo codifies this law as a way of gladdening the *chatan*.

55. As explained by the *Mahari HaLevi*. Also see *Masat Moshe* vol. 2 *Even Haezer* 7 who understands the Rosh in a similar way. See *Kinyan Torah* (vol. 2, 43) for an opposing view.

56. *Responsa* 9. See *Responsa* of Rabbi Akiva Eiger (1:79) who seems to interpret the Mishnah like the *Mahari HaLevi*. Rabbi Moshe Shternbuch (*Ketubot* 15b d'h "matnitin") explains Rashi this way as well.

57. *Ketubot* 15a d'h "U'Rosha".

covering on her hair during the wedding just as the *kallah* in the Mishnah in *Ketubot*. Accordingly, she would only be allowed the have the ends of her hair exposed during the entire wedding.

VI. Another plausible reason why a *Kallah* may leave her hair uncovered for the entire wedding.

Conversely, this Rosh could be understood to support the opinions that a *kallah* may have her hair completely uncovered for the entire wedding. The *Shita Mekubetzet* explains that Mishnah as referring to a *kallah* whose hair is completely exposed.⁵⁸ Therefore, according to the previous explanation by Rosh, a *kallah* would be permitted to have her hair completely uncovered from before *nesuin* until the end of the first day of *sheva berachot*. Thus, a *kallah* could have her hair completely uncovered for the entirety of the wedding. Apparently, this explanation would be in line with the aforementioned opinions that the obligation to cover her hair does not commence until the evening when she loses her *betulah* status. Yet, seemingly, to apply this to our modern day weddings we would have to maintain that the *yichud* room does not create a *chezkat beulah* for the *kallah*, as explained by Rabbi Feinstein above.

However, Rabbi Yaakov Stern⁵⁹ in his commentary on *Shulchan Aruch* understands differently. He personally is of the opinion that a *kallah* must cover her hair at some point during the actual wedding. Nonetheless, he recognizes that some have a *minhag* to be lenient and the *kallah* does not cover her hair until the morning after the wedding. Rabbi Stern states that the *heter* for this practice is based on this Rosh, who seems to be allow this even after she is a *chezkat beulah* as long as it is the first day of the wedding. Nonetheless, the day following the wedding even if it is still the first day of *sheva brachot* she would be obligated to cover her hair. To clarify the reasoning of the Rosh, he gives a novel possible explanation: From the Gemara in *Ketubot*⁶⁰ it

58. *Ketubot* 15b d'h "U'para".

59. *Imrei Yaakov Even HaEzer* 65:2 d'h "Avol".

60. 72a-72b.

seems that according to the letter of the law, on a Torah level, the obligation for a woman to cover her hair is only in a public domain and does not extend to her house or courtyard.⁶¹ Certainly, the wedding hall is not considered to be a true public thoroughfare and, therefore, perhaps we can consider the wedding hall to have the status of the *kallah's* courtyard.⁶² Even though a woman is still required to cover her hair in her courtyard, since this obligation is rabbinic, for the purposes of gladdening the *chatan*, the Rosh must understand that the Sages allowed her to be lenient and abide by only the Torah obligation for the first day of *sheva brachot*. However, it should follow that according to this explanation as soon as the *kallah* leaves the wedding hall she would be obligated to cover her hair as the Torah obligation would now apply, for she is in a public area.

VII. Conclusion

While our contemporary wedding process has become fairly standardized across the spectrum of Jewish practice, this is one area which does not share such a homogeneous attitude. This study was intended to outline the issues that go into the halachic query concerning a *kallah*. Hopefully, one will be able embrace this mandate with a firm grasp of the questions and concerns contained in this very special halacha.

61. See *Trumat Hadeshen* (siman 10), *Taz* (*Even HaEzer* 115:5), *Beit Shmuel* 115:9, and *Shevilei Dovid* (*Orach Chaim* 75:1). Additionally, the *Chatam Sofer* (1:36), *Mishnah Berurah* (75 *Biur Halacha* d'h "Mechutz"), and *Iggerot Moshe* (*Even Haezer* 1:58).

62. Although the *Yerushalmi* (*Ketubot* 7:6. Cited by *Rosh* in *Ketubot* 7:9) states that a courtyard in which the public gathers has the status of a public thoroughfare, since a wedding hall is open only for invited guests, perhaps it would retain its status as a courtyard for this halacha.

Letters

To the Editor:

I read with interest Rabbi Moshe Revach's halachic analysis of *meshulachim* requesting *tzedaka* in homes, *batei midrash* and shuls and his conclusion that endorses "an obligation to donate to every solicitation made... unless there are mitigating circumstances." Notwithstanding the cogency of his halachic analysis, I feel the need to object to his conclusion based on three points.

The first is a halachic principle that was not discussed anywhere within the piece. The *Sifrei* describes a hierarchy of how *tzedaka* is to be distributed, wherein the statement is made "*aniyei ircha kodmin*," the poor of your city have priority. This principle, codified by both the Rambam (*Matnot Aniyim* 7:13) and *Shulchan Aruch* (YD 251 :3), is reinforced by the Ramo there, who states explicitly that the impoverished residents of a city "come first before other poor people who come from other places."

In other words, it is halachically incumbent upon a community to insure that its own needy are cared for before extending its resources to benefit those from elsewhere. While some presume that American Jewish communities are so awash in dispensable income as to render this point moot, the facts on the ground point to huge unmet needs within those communities that are targeted for solicitation from outside. It is unfair for itinerant fundraisers to target communities where an overwhelming majority of day school students require financial aid; where young families require loans from family and/or public assistance to meet basic needs and where local *hachnasat kallah*, *gemach* and *chesed* resources are perpetually strained.

The related issue is whether a token donation would suffice where a substantial contribution is not possible. R. Revach suggests that with "a smile and an explanation... one can avoid any hard feelings." In my experience, that is virtually guaranteed to trigger either a dramatic display of insult or an attempt to negotiate. I can recall one representative of a

yeshiva who stalked off from my doorstep after loudly proclaiming that “no one gives that!” It is now routine for collectors to arrive at the door with copies of cancelled checks from earlier donations. Hands and flyers are extended in the faces of individuals who are obviously reciting *kriat shema* and *shemona esrei*. Smiles and explanations can do very little in that scenario.

Finally, the halachic terms used betray a dramatic difference between the world of the Ramo and our own. In all prior eras, “*shoel al hapetachim*” more or less meant what it sounds like; begging as a barely preferable alternative to starvation. It was an act of desperation by an individual who had exhausted all other options. Now imagine transposing today’s methods to that time period: a Jew from Morocco borrows a small fortune to pay for a trip to Cracow; plans an elaborate itinerary involving multiple communities; pays a driver in cash, from the *tzedeka* money, for pointing out the “good houses” and starting times of local *minyanim*. Is this really what the Ramo had in mind?

I would argue that an individual’s halachic obligation to give *tzedeka*, in whatever amount, is best fulfilled by donating to reputable organizations with accountable leadership, who distribute the money fairly and in accordance with accepted halachic principles.

IRA B. TAUB MD

* * *

I sincerely appreciate Dr. Taub’s interest in my article on the requirement to donate to every solicitation made of us by *meshulachim*. He raised three points and I wish to clarify my position on these issues.

The first issue raised by Dr. Taub is that there are halachot dictating a hierarchy relating to the distribution of *tzedaka*, and this hierarchy should render the halachot discussed irrelevant regarding the majority of the people collecting at the door. It is certainly true that such a hierarchy exists, however only in the

context of prioritizing the allocation of one's available *tzedaka* funds. There, a hierarchy beginning with one's relatives, poor of the town, etc., is to be followed to determine who is most deserving. Our discussion examined the halacha of not turning any solicitation away empty handed (stemming from an obligation to empathize with another, or not shaming another rather than the requirement to give *tzedaka*). This obligation of donating a *token amount* supersedes any hierarchy if one does have *tzedaka* funds to donate, and even refers to people who have already donated their required *tzedaka* for the year, as mentioned in the article. As this obligation is not dependent on any hierarchy, the halachot related to the hierarchy are not mentioned in the article.

A related issue raised by Dr. Taub is that often large scale contributions are made arbitrarily to organizations in a different city, while one's own city's institutions are in dire straits. Additionally, there are many cases where immediate relatives of wealthy magnates receive no funding and live in abject poverty, while the rich man donates money for trees in Israel. This is an excellent point that should be addressed by community leaders; however, it does not conflict with the point of my article that at least a token donation must be given to each solicitation.

The second point took issue with my statement "*if one cannot offer a quarter donation, then one may even offer less, if it is accompanied with a smile and an explanation of how one would love to give more but doesn't have the means*". The point was made that many people accept such explanations less than warmly, and during *davening*, etc., it is impossible to give such explanations anyways. I, too, have been subject to the receiving end of society's less noble personalities. One time, I brought a bag with about \$20 worth of pennies to a shul to give to the first *meshulach* soliciting. When I offered it to one, I received a public tirade from him for being insensitive because it was hard to carry and now he has to get rid of the pennies. (My subsequent offer to retract the donation was refused!)

Notwithstanding such individuals, the halacha does remain constant, and refusing any request is forbidden. For albeit such

individuals exist, we still must be careful for the collector who is made of more sensitive material and a brusque brush-off of the request would hurt him. If the person does refuse the dime, etc. then one is, of course, under no obligation to raise his donation. One possibility to deal with the *meshulachim* who come to one's house is to prepare sealed envelopes with the token donation one can manage (\$1-\$18) inside and say, "I would love to give more, but this is what I am able to right now." The sealed envelope is usually enough to close the meeting.

As for the solicitations made during davening, as mentioned in the article, since one is *osek b'mitzva* there is no need to donate or even explain the refusal.

The third point made is that perhaps today's methods of collecting *tzedaka* are not the same as during the Ramo's times. While one could argue the point, I will reemphasize a *heter* from R. Felder *Shlit"a* (cited on pg. 98), who argued that since the average person collecting in a shul knows that most people will turn him down, he may not construe it as an insult if yet another person turns him down. However, as I mentioned, most *poskim* do not mention such a *heter*. It would appear that although it may be true that *tzedaka* collectors today are different than yesteryear, nevertheless people's feelings aren't, and being ignored or refused still hurts.

Thank you again for your interest in the article and I appreciate being able to clarify the material.

* * *

Dear Rabbi Cohen:

I always enjoy reading the Journal, and while most authors cite various options and provide excellent *mareh mekomot*, occasionally an author will state his opinion – to which he is entitled, as long as it is clear that it is his opinion.

In Issue LXVII, the article on "Creating Human Embryos Using Reproductive Cloning Techniques," by John Loike, Ph.D. and Rabbi Moshe Tendler, Ph.D is very firm on the

scientific matter, and a bit less so on the halachic matter. Still, I can accept that.

The issue I have is with footnote 43. It states that the Gemara in *Megillah* 13a states that Esther had no halachic father. It states no such thing. The Gemara says that her father died before she was born, and that her mother died when she was born. Rashi explains that there was no man she could call "Father", and no woman she could call "Mother". Nowhere is it stated or implied that she had no halachic father. Certainly her biological parents who subsequently died are her halachic parents.

RABBI DAVID H. ZABACK

* * *

Dear Rabbi Cohen,

Regarding Rabbi Bechhofer's article about *psak* on *hashkafa*: As is often the case in matters of *hashkafa*, beliefs are polarized; everyone assumes their truth to be self-evident and exclusive. In this field of conclusory and ad hominem argument, it was profoundly satisfying to read an honest, thorough, and articulate analysis of this very important issue.

I would have liked to see some analysis about why the Rambam holds that you can't have *psak* in *hashkafa*. Is it because *psak* only means choosing one from among several valid possibilities, and all that you need to avoid *apikorsut* (heresy) is that such a thing is possible? Is it because in halacha you can be *meikil* (lenient) for *tzaar gadol* or *hefsed meruba*, (major distress or monetary loss) even in *de'oraytot* (biblical commandments), so it's clearly not an excision of the alternative? I understand that this was not the purpose of the article, but this question deserves to be addressed in a lengthier treatment of this issue.

I also would have enjoyed seeing Rabbi Bechhofer wrestle with the question of whether *paskening* about whether one can

psaken on matters of *hashkafa* qualifies as an issue of halacha or *hashkafa*.

ELIEZER EISENBERG, CHICAGO

* * *

I read Rabbi Bechofer's article about *psak* in matters of *haskkafa*, and felt that the article was very nicely done. However, the disagreement drawn between the position of Rav Soloveitchik, as articulated by Rav Schachter in the name of Rav Aaron Kahn, and the position of Rav Aryeh Kaplan, does not seem to me to be correct. In the *Divrei HaRav* (page 100), Rav Soloveitchik's *shiur* on the first *perek* of *Avot* is printed. There Rav Soloveitchik teaches that there is no definitive *psak* in matters of *middot* and *mussar* (which is a large part of what we would term *hashkafa*). The notes there cite the same *Peirush Hamishnah* of Rambam that is cited by Rabbi Kaplan. Obviously, since Rav Soloveitchik espoused both that it is improper to view halacha and *hashkafa* as operating in distinct realms and that definitive *psak* in matters of *hashkafa* is not possible, there is no contradiction between these views. There certainly are halachot about what one is permitted to think and what one is forbidden to think. Even so, as a general rule matters of *hashkafa* do not lend themselves to definitive *psak*.

RABBI EZRA SCHWARTZ
Rosh Yeshiva and *Bochen*
Yeshiva University - RIETS

* * *

Dear Editor,

I enjoyed reading Rabbi Bechhofer's article "Does *Psak* Apply to Matters of *Hashkafa*?" in your Spring 2014/Pesach 5774 issue.

The author wrote that "Decisions in halacha must end with a pragmatic resolution that regulates our behavior – viz., a *psak halacha*." The author then considers whether a disputed

viewpoint in *hashkafa* is binding, if it can be determined that a majority of authorities endorse it.

I would argue that even if it could be determined that a majority of authorities endorse a position in halacha (and certainly *hashkafa*), this is not sufficient for it to be considered binding and for the opposing position to be considered rejected. Rather, it may well be the case that both opinions remain part of the halachic system. The Gemara in *Niddah* (9b) says that if the halacha is determined definitively, the rejected opinion loses any halachic standing. In the absence of a definitive determination, it is possible that even a minority opinion may be relied upon in a *shaat hadchak* (situation of great need). Practically, in many disputes the halacha is not definitively decided and the halacha is formulated by the *Poskim* such that even a minority opinion retains halachic “weight.” A strong indication of this is that there are times where minority lenient opinions do not independently allow one to be lenient but do create a basis for leniency when they overlap.¹ Another indication is the fact that it can be considered a *middat chassidut* (extra piety) to be strict and fulfill a minority position.²

Thus, even if *psak* could exist in *hashkafic* matters, it could still be the case that many disputes are not definitively resolved and the different sides each retain *hashkafic* weight. The concepts of strict, lenient, *shaat hadchak*, and *middat chassidut* do not apply in *hashkafic* matters. However, if the dispute is not resolved, then both *hashkafic* viewpoints retain legitimacy, possibly with one of them considered more mainstream.

Sincerely,

RABBI MICAH SEGELMAN
Rochester, NY

1. See Rabbi Hershel Shachter, *Kuntres B'Anyanei Psak Halakha*, 5766, on this issue.

2. See *Mesillat Yesharim*, Chapter 14.

Rabbi Bechhofer responds:

Rabbi Eliezer Eisenberg writes seeking some analysis of the Rambam's position that there is no such concept as a *psak hashkafa*.

I believe that the Rambam should probably be understood along the lines of the Ramban's statement in his Disputation at Barcelona (a transcript in English is at [http://israel613.com/books/RAMBAN_DISPUTE E.pdf](http://israel613.com/books/RAMBAN_DISPUTE_E.pdf)):

He [the apostate friar Pablo Christiani, the major disputant on behalf of Christianity] then cited an aggadah which said that, on the very day the Temple was destroyed, the messiah was born. I then said that I do not believe this, although it is a proof for my view. Now I shall explain to you why I said that I do not believe this. Know that we Jews have three types of books. The first is the Bible, and we all believe it completely. The second is called Talmud, and it is a commentary on the merits of the Torah. For in the Torah there are 613 commandments and there is not one of them that is not explained in the Talmud. We believe in the Talmud concerning explanation of the commandments. We have yet a third book called Midrash, that is sermons. This is analogous to the bishop standing and giving a sermon, with one of the listeners deciding to write it. In regard to this book, those who believe it well and good, but those who do not believe it do no harm. We have sages who wrote that the messiah will not be born until close to the time ordained for redeeming us from exile. Therefore I do not believe in this book, where it says that he was born on the day of the destruction of the Temple. We also call this book aggadah, that is, stories, meaning that these are only things which one person tells another.

To be sure, the Ramban could not mean to detract from the profound wisdom that inheres in Aggadah, as he himself was one of the great expositors of that wisdom! But what did he mean?

In his commentary on the disputation (*Kitvei Ramban* vol. 1 pp. 308-309), Rabbi Chaim Dov Chavel considers the Ramban's statement. He begins by citing the position of Rabbi Mordechai Eliasberg (*Shvil HaZahav* p. 27), who asserts that the Ramban did *not* mean what he said. Rabbi Eliasberg complains that scoffers in subsequent generations took the Ramban's words as a basis for their dismissal of several fundamental concepts of Judaism, contending that they are "mere" Aggdah, which the Ramban evidently does not require us to believe. Rabbi Eliasberg surmises that the Ramban was aware of the potential damage to which his statement might eventually lead, but that seeing himself sorely pressed in his battle to save the entire religion, he determined it worthwhile to make the misleading statement so as to avert the immediate peril.

Rabbi Chavel questions Rabbi Eliasberg's contention. He notes that Rabbi Avraham ben HaRambam (in his "Introduction to Aggadah" – available at <http://www.mesora.org/AinYaakov.html> – a fundamental treatise that is excerpted at the beginning of the *Ein Yaakov* compendium of *aggadot*) writes words that are very similar to those of the Ramban:

The fourth part contains explanations of certain passages in a poetical style; but their intention was not that everyone should believe that this is the meaning of that passage... And think not like those who do not grasp the real truth that every simple *Derash* or so-called allegorical explanation of the passage uttered by the sages, was handed over by tradition, like the principal parts of the Torah, because the fact is otherwise; that the explanation of such passages which do not involve either a dogma of a religious principle or any law of the Torah, has no traditional bearing, but was explained by the authors, merely according to their own knowledge and feeling. And many of them are used merely as figures of speech in a poetical style, or are explained in that poetical form...

Rabbi Chavel then notes that according to the *Shiltei Gibborim* (to *Avodah Zarah* 19b), the position taken by the Ramban and Rabbi Avraham ben HaRambam emerges from the *Yerushalmi*

(*Nazir* 7:2, 35a in the Vilna ed.). The *Shiltei Gibborim* there quotes the *Riaz* (Rabbi Yeshaya Acharon Zaken of Trani), whose version of the *Yerushalmi* read: וכי המדרשות אמנה הם דרוש וקבל שכל – “But are Midrashot a [matter of belief], rather [they are a matter of] expound and receive reward.” The *Riaz* elaborates: “Behold that here it is explained that the Sages did not state Midrashim as matters of *Emunah*, of fundamental belief, but rather as enhancements of the understanding of Scripture, and as the expounding thereof in any manner to which the Scripture can serve as an allusion.”

However, counters Rabbi Chavel, our version of the *Yerushalmi* reads: מאי כדון מדרשות אמינא דרוש וקבל שכל – substituting the word *amina* (which, in Aramaic, means “I say”) for the word *emunah* (faith), totally changing the meaning of the phrase. The phrase as we have it means: *What is the conclusion? I say that these derivations [of Halachic measurements from Scriptural allusions are a matter of] expound and receive reward [i.e., asmachta’ot] (Korban HaEdah, see also Maharam de Lunzano and Sha’arei Torat Eretz Yisrael on this passage).*

Rabbi Chavel then cites the *Sdei Chemed* (Klal Aleph #103), who in turn cites the *Shoel Umeishiv*, Rabbi Yosef Shaul Halevi Nathanson, who in his *haskamah* to the *Sidrei Taharot* rejects the *Shiltei Gibborim*, writing: “Although in the introduction to the *Menorat HaMaor* it is stated in the name of Rav Hai Gaon that *aggadot* are not matters of belief, it is forbidden to say this, *except in cases in which there are no Halachic ramifications*. But in cases in which there are Halachic ramifications, it is forbidden to say this.” Rabbi Chavel notes that in negating the blanket application of the *Riaz*’s perspective, the *Shoel Umeishiv* implicitly endorses its application to *aggadot* such as the one that the Ramban addresses in the disputation – an *aggadah* that has no Halachic ramifications.

Thus, what the Ramban is saying is that any *aggadah* that does not relate to Halacha may well constitute the personal wisdom of the sage who expounded it, and is therefore not definitive in the sense that a *psak halacha* is binding.

But what of the “danger” that concerned Rabbi Eliasberg?

Rabbi Chavel posits that this intellectual danger is similar to that which concerned Rabban Yochanan ben Zakkai when he said (*Kelim* 17:16): “Woe to me if I say, woe to me if I do not say.” In that case Rabban Yochanan proceeded nevertheless to “say” matters that might be exploited by criminals, because “the pathways of Hashem are straight; the righteous will walk them, while the wicked stumble upon them.” Although the truth may entail risks, we must nevertheless pursue it. If the Ramban's statement is a true reflection of his thought, it is a legitimate Torah perspective, and should be known and acknowledged as such, despite any potential pitfalls.

The Rambam himself, in his letter on Astrology (available at <http://people.bu.edu/dklepper/RN242/rambam2.html>), elaborates a perspective similar to that of the Ramban:

What we have said about this from the beginning is that the entire position of the star gazers is regarded as a falsehood by all men of science. I know that you may search and find sayings of some individual sages in the Talmud and Midrashim whose words appear to maintain that at the moment of a man's birth, the stars will cause such and such to happen to him. Do not regard this as a difficulty, for it is not fitting for a man to abandon the prevailing law and raise once again the counterarguments and replies (that preceded its enactment). Similarly it is not proper to abandon matters of reason that have already been verified by proofs, shake loose of them, and depend on the words of a single one of the sages from whom possibly the matter was hidden. Or there may be an allusion in those words; or they may have been said with a view to the times and the business before him. (You surely know how many of the verses of the holy Law are not to be taken literally. Since it is known through proofs of reason that it is impossible for the thing to be literally so, the translator [of the Aramaic Targum] rendered it in a form that reason will abide.) A man should never cast his reason behind him, for the eyes are set in front, not in back...

There can be no doubt that the Rambam also does not mean to detract from the wisdom of the sages. He himself writes at great length in his introduction to his commentary on the Mishnah concerning the profound wisdom that is embedded in aggadah. Rather, on account of such wisdom being the position arrived at by the specific sage who states it, it is not mandatory that someone else whose logic runs counter to that statement accept it unquestioningly.

A statement of the Meiri concerning the aggadah of *Zugot* (*Pesachim* 109b-112a) is noteworthy, because the positions of the Rambam and the Meiri are often congruent. The Meiri there writes that in the Talmudic era “the masses were very influenced by popular beliefs and superstitions. The Sages directly combated these beliefs when they were linked to idolatrous practices. If the beliefs were simply foolish but not idolatrous, the Sages would not reject them directly but rather took steps to limit their impact” (see <http://www.vbm-torah.org/archive/aggada/18aggada.htm>).

Rabbi Ezra Schwartz cites a source that seems to conflict with the source cited in the essay as to the precise position that Rabbi Soloveitchik took in regard to the notion of a *psak hashkafah*. The positions of giants of Torah scholarship such as Rabbi Soloveitchik are often complex and nuanced, and I concede that further analysis of his opinion on this matter is warranted.

Rabbi Micah Segelman correlates a principle that exists in Halachic disputes – viz., that “both opinions retain some measure of halachic validity” – to *Hashkafic* disputes. This is also an area that warrants further analysis. I have dealt with the principle – which is generally known as *Eilu VaEilu* – elsewhere (see <http://www.aishdas.org/rygb/eilu.htm>), and I certainly think it a worthwhile endeavor to compare and contrast notions of “multiple valid positions, sometimes with one generally considered more mainstream” as they pertain to both Halacha and *Hashkafa*.

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