

HALOCHOSCOPE

Selected Shailos U'Teshuvos

PESACH

Based on Excerpts from *Halochoscope*
By Rabbi Shimon Silver

Mara D'Asra, Young Israel of Greater Pittsburgh



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Shailos U'Teshuvos Pesach

Rabbi Shimon Silver

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Introduction

The selections of this booklet represent a small part of the archives which has been re-edited. The She'aylos in *Halocholescope* are all real-life questions. Naturally, sometimes the true circumstances surrounding the She'ayla must be modified.

The format of the *Teshuva*, shiur style, speaks for itself. We have used an “American” system of transliteration, representing a cross between *Ashkenazi* and *Sephardi* enunciation. This was adopted simply because the English reading audience is used to it. We use no original Hebrew characters, as it is a slight strain on the eyes to cross back and forth between the two directions. References are given at the end of paragraphs or sections, rather than as footnotes. Since this is not intended as a Halachic guide, if one wishes to study a source, he should follow up all references fully. In some instances, references were condensed for lack of space. Though some expansion of original issues was possible in this book form, references were left basically intact.

There is no glossary. Almost every term is glossarized on its first mention. Subsequently, we rely on the serious reader's memory.

On no account may these conclusions be used to judge similar situations. Circumstances change, the author makes mistakes, and the reader sometimes misunderstands. There is a special *Siyata Dishmaya*, which the author has many first-hand experiences to prove, that helps a Rav answer questions when they arise.

Nor is the purpose of *Halocholescope* to serve as a guide or instructional *sefer*. It is purely of an exploratory and informational nature.

The following note accompanied the third anniversary of *Halocholescope*:

We are familiar with the Talmudic passage about Hillel. A gentile came, asking to be proselytized on condition Hillel would teach him all of the Torah standing on one foot. Hillel responded: “What you do not like done to yourself, do not do to your fellow!” We marvel at Hillel's wisdom. We elaborate on how the entire Torah is encapsulated in this dictum. However, there is more to the story. Hillel went on to tell the gentile: “The rest is commentary, GO AND STUDY IT.”

If one hears a nice *Dvar Torah* on the week's *Parsha*, he would not feel that he is now familiar with the entire *Parsha*. What, then, is the purpose of this book?

Rav Dovid Cooper *shlita*, related the following story to us, in the name of Rav Yechezkel Abramski *zt'l*: As a Rebbi in Volozhin, Reb Chaim Brisker would ensure that the *bachurim* were learning with *bren*, enthusiasm. If he noticed a *chavrusa* waning, he would engage them in discussion. He would pose an interesting question with a twist. It was designed to pique their interest, give them some “zip,” to draw them into the *Sugya*, Talmudic passage. He left them to do the rest themselves.

In the same way, these discussions are designed to pique the interest, to spark discussion, and to give people impetus to study Halacha thoroughly. Hopefully, in an unobtrusive way, this will lead to heightened awareness of Halacha and more studying of the sources, particularly the Talmud.

Rabbi Shimon Silver

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I. **BEDIKAH**

1. *Bedikas Chometz* with the Help of a Minor
2. *Bedikas Chometz* in a Hotel
3. *Bedikas Chometz* if Leaving Home for Pesach

I. *Bedikas Chometz* with the Help of a Minor

Halochoscope Parshas Vayikra 5756 Vol IV No 10

QUESTION: What are the guidelines for enlisting the help of a minor (under Bar or Bas Mitzvah) for *Bedikas Chometz*, the search for leaven products?

Issues to Consider:

- (A) The Mitzvah of *Bedikas Chometz*
- (B) Making a *Shliach*, delegating another person to do a Mitzvah
- (C) Trusting a child for crucial Halachic information.

(A) *Bedikas Chometz*

According to some commentaries, *Bedikas Chometz*, the search for leaven, is a Scriptural obligation, based on the Talmud's use of *Pesukim* to derive some details of the Mitzvah. Others maintain that it is Rabbinical, based on an explicit Talmudic statement to this effect.

Some consider it to be a part of the Mitzvah to destroy Chometz, an obvious Scriptural obligation, and even view the search itself as a method of destruction. That is, since the Mitzvah stated in the Torah is to physically destroy the leaven, with the goal of eliminating the Chometz in one's possession, *Bedika* can be viewed as a way to achieve this through clearing it away and confirming its absence. Some commentaries consider the *Bedikah* a way of avoiding violation of the negative Mitzvos, *Bal Yeira'eh Uval Yimatzei*, Chometz shall not be seen in one's possession, nor be hidden where it could be found. Therefore, one must search in order to find it and remove it from his possession before Pesach. Others say, however, that Scripturally this step would not be necessary, as one can effectively remove Chometz through *Bitul*, by disowning it, which is required anyway after destroying known Chometz. This view suggests that the *Bedikah* is done as a precaution against violating the more serious Mitzvah forbidding the eating of Chometz on Pesach. Although one might disown it, if he nevertheless finds a bit of Chometz in his home on Pesach, he might be overcome with temptation to eat it.

According to either view, the Chometz will be destroyed once found. Therefore, the Brocha on the Mitzvah to destroy Chometz is made before the *Bedikah*.

The *Bedikah* must be made at night, in part because nooks and crannies must be checked out for possible Chometz, and to see into these places it helps to shine artificial light (from a candle or flashlight), which is most effective only at night. In addition, night time is most often when people are home from work and available for the *Bedikah*. Therefore, *Bedikas Chometz* is made the night before it will be destroyed, the night of Erev Pesach. If it cannot be done then, one must still make up for it as soon as possible, on the next day, even after the time has come to destroy the Chometz, and according to most Poskim, even on or after Pesach.

Since it is considered extremely important, one may not engage in any other activity on this night before fulfilling this Mitzvah, including eating and Torah study. Only davening Maariv takes precedence, because it involves a definite Scriptural obligation (reciting Shema) and because of the rule that when there is a time conflict between two Mitzvos, the rule is that the more frequent one comes first.

Every area in one's possession where Chometz was brought recently must be searched. Since this is a daunting task, the areas are customarily cleaned before the night of Erev Pesach to make the search easier. However, this cleaning, though required by the Halacha according to some Poskim, does not count as an actual *Bedikah*.

The Mitzvah of *Bedikah* becomes incumbent on anyone at home thirty days before Pesach. One who travels from his home within thirty days prior to Pesach, regardless of whether he intends to return home before, during or after Yom Tov, must search for Chometz the night before he leaves. Since he is not doing his *Bedikah* on Erev Pesach itself, however, most Poskim rule that he should not recite the Brocha.

If one knows that no Chometz was brought into an area for thirty days or more, he may assume that no unknown Chometz will be there. Therefore, if one is planning to travel more than thirty days before Pesach, he need only look for known Chometz, and may rely on *Bitul* for the rest. This also limits the areas that require *Bedikah* to

rooms where known Chometz might have been taken during the thirty days prior to Pesach. [See Pesachim 2a 6a-7a 10b, Rashi Tosafos Ran, Poskim. Rambam Hil. Chometz Umatza 2:1-4, 18-19, 3:6-7 etc. Tur Shulchan Aruch Orach Chaim 431, 432, 433:1-3, 11, 436:1 commentaries.]

(B) Delegating a *Shliach*

Many Mitzvos may be fulfilled by a *Shliach*. One delegates another person to perform the act of the Mitzvah in his stead and is credited with the Mitzvah when his *Shliach* does it.

The Mitzvah to check for Chometz falls, first and foremost, to the head of the household. The Talmud discusses towns where it was customary to hire paid laborers to check for Chometz. The discussion there centers on who is liable to pay for the *Bedikah*, when a house is rented on the thirteenth and the fourteenth of Nissan [expanded discussion of this in *Bedikah* section 3 (C) & (D)]. However, the usual rule applies, *Mitzvah Bo Yosair Mibishlucho*, it is a greater Mitzvah when done personally than when done through agency of a *Shliach*.

The job of *Bedikas Chometz* might be delegated to a *Shliach* if the area to check will be too much for one person, or if one owns property in different locations, particularly if they are not in the same town. [This would raise a concern if part of Pesach will be spent in both places, or if a person will be in his home on the night of *Bedikas Chometz* when the obligation takes effect, but be spending Pesach at a vacation home and only arrive too late on Erev Pesach to perform the *Bedikah*.] Alternatively, the head of the household might be incapacitated, and will need to appoint someone else to do the job. Although an *Anuss*, one who is involuntarily unable to perform a Mitzvah, is normally exempt, performing *Bedikas Chometz* nonetheless will help prevent the possible resulting consequences if it is not performed.

If the head of the household will not be home that night, he should formally delegate the job to another family member, or to anyone who will take his place. If he will be home, but cannot do the entire job, he should organize a team, including himself and other members of the household. Each will take full responsibility for his section.

When a *Shliach* is appointed to do the entire *Bedikah* he should recite the Brocha. When the head of the household delegates part of the *Bedikah* to others, only he should recite the Brocha when beginning his section. The other family members should be present and consider his Brocha as their own, through the principle of *Shomei'a Ke'oneh*, that one who listens to a recitation may consider it as though he himself said it, provided both parties had this in mind.

One may, according to many Poskim, appoint a *Shliach* to do *Bitul Chometz* the next day as well, though it is recommended that one should do the *Bitul* himself. One need not be present in his home to affect *Bitul*, which is basically a renunciation of ownership. A *Shliach* appointed to do *Bedikah* is not automatically authorized to do *Bitul*, but would need to be designated.

The laws of *Shlichus* are derived from Pesukim. The Pesukim limit the provision to agents who are included in the category of *Bnei Bris*, entered into covenant of the Torah with HaShem. Agency means that the activity of one person legally counts as the activity of the person who delegated him, which implies that the agent must be eligible to perform the act, i.e., to do the same Mitzvah himself. Thus, someone not obligated in this Mitzvah would not be considered fit to be a *Shliach*.

Usually a child is ineligible to act as a *Shliach*. Firstly, children are not obligated in the Mitzvos until they reach the age of Bar or Bas Mitzvah. Normally, the limitation on a child in representing adults, or even being obligated in Mitzvos, is based on their lack of *Da'as*, understanding what they are doing. One cannot be obligated until he understands the Mitzvah he is doing. Secondly, one of the sources for *Shlichus* (the laws of offering the *Korban Pesach*, Pascal lamb) uses the term *Ish*, a man, meaning an adult. A third concern is in cases where the performance does not lead to a result but is a Mitzvah in act alone, one relies on the *Shliach* to follow through on his undertaking. When the *Shliach* is an adult he can be considered dependable, but a child is more prone to distraction, and as a result, the Mitzvah itself will be lost. At the point of Bar Mitzvah, however, of age to understand Mitzvos, one is viewed as adult for their performance as well.

There are three primary categories for which one might act as a *Shliach*. Some Mitzvos are a personal obligation (some of which are often fulfilled through a second party, through *Shomei'a Ke'oneh*); some are not a personal obligation but are a Mitzvah nonetheless, and might have been fulfilled through a second party (such as *Shechita*, ritually slaughtering animals for their meat); and some things are done as preparation for a Mitzvah, but

might not be a Mitzvah in their own right, for example transacting money such as giving Tzedaka or paying a debt. In the third case, the Shlichus may not require full eligibility in the performance of the Mitzvah.

A child's *Shechita* is acceptable if he is supervised by an adult, despite the fact that until he is Bar Mitzvah he is not obligated in the Mitzvah. Ultimately, the animal was slaughtered by a Jew who will eventually be obligated in the Mitzvah. [See e.g. Brochos 34b Kidushin 41b Eruvin 31b-32a Pesachim 4a-b Megila 19b (Turei Even) Me'ila 21a Chulin 2a I2b-I3a Poskim. Tur Sh. Ar.Yoreh Deah I:5 (Levush) I20:3 commentaries. Halochosepe III:2-3II.] For our purposes, we want to know what type of category is most accurate for *Bedikas Chometz*.

(C) Trusting a Child for Crucial Information

The Torah specifies guidelines for accepting testimony, and does not accept testimony of a child witness. Though witnesses are associated with court hearings, they are also required to verify the permissibility of items. For example, when buying meat, one must verify that it was killed according to the Halacha, and then Koshered correctly. To testify to this, one need not fulfill all the requirements of witnesses in court, but should have full credibility, at least in the area he is reporting on. Thus, one who is suspected of violating the laws of Kashrus could not be trusted as a Mashgiach.

The Talmud does not directly address whether or not one may ask a child to do *Bedikas Chometz*, but discusses trusting his claim to having done a *Bedikah*. He is believed, because once *Bitul* is performed, the Mitzvah of *Bedikah* is "merely" a Rabbinically ordained precaution. Thus, the child's testimony is considered acceptable to the point that assurance of *Bedikah* is based on it. Elsewhere, the Talmud discusses problems arising from evidence that "children" take Chometz into areas already checked for Chometz, leading Poskim to clarify that the "child" doing the *Bedikah* must be at least at the age of *Chinuch*, old enough to realize the gravity of the Mitzvah.

Accordingly, some Poskim permit total reliance on children over this age. However, most Poskim maintain that the Talmud only relies on these children *Bidi'aved*, after the fact, or as a last resort. This is due to the hesitancy with which the Talmud accepts their word, the fact that an available adult is always preferred, and the fact that it only helps if the adult will also do *Bitul*. Some Poskim point out that even accepting their word only helps if one is informed prior to the last possible time for *Bitul Chometz*, to ensure that *Bitul* may follow. According to some Poskim his word is only accepted about his own house.

In our case, the head of the household will be doing most, or at least part of the *Bedikah* himself. Although this is not the same as supervising the *Shechita* of a minor, since he will not be present for the *Bedikah* of the child while conducting *Bedikah* in another part of the house, it is better than delegating the entire Mitzvah to the child. In discussing delegating part of the *Bedikah* to family members, the Poskim recommend adults, and some specifically exclude minors. Although not all of them explicitly discourage minors, it might be assumed that these Poskim also agree that reliance on a child's *Bedikah* is not ideal.

A factor which might alleviate the situation is eligibility as a *Shliach*, which, according to some is the status of an *Ish*. A twelve year old boy or eleven year old girl may be considered *Samuch L'ish*, close enough to adulthood for some laws. These laws do not, in fact, include *Bedikas Chometz*, but since the child is considered to be on an advanced level of understanding, delegating him for partial *Bedikah* may be less problematic. In this case of a child who is *Samuch L'ish*, therefore, one may rely on those Poskim who permit it outright. [See Pesachim 4a-b Eruvin 31b (Tos) Rambam Hil Chometz Umatza 2:17 Tur Sh. Ar. O.C. 432:2 (Cook Yaakov (Maharil) Baer Hetev Mishneh Berurah Aruch Hashulchan etc.) 437:4 Magen Avraham 8, Y. D. I37:3 commentaries.]

2. *Bedikas Chometz* If Leaving Home for Pesach

Halochosepe Parshas Tzav/HaGadol, Pesach 5761 Vol IX No 1

QUESTIONS: Someone plans to spend the entire Pesach away from his home. If he sells his house to a gentile for the duration of Pesach, will he still need a thorough *Bedikah* search before he leaves town? Does this depend on when the sale takes place? If he must search, must he clean the house thoroughly first? Does he recite a Brocha on such a *Bedikah*?

Issues to Discuss:

- (A) Cleaning the house before the *Bedikah*
- (B) The timing of the obligation to search
- (C) Sale or rental of property, and the obligation of search and removal of leaven

- (D) One who leaves town before Pesach, and his obligation to search
- (E) The Brocha on *Bedikas Chometz*

(A) Cleaning the house before *Bedikas Chometz*

The search for Chometz is meant to accomplish one or both of the following: to ensure that one will not *own* Chometz during Pesach, and to ensure that one will not *eat* Chometz on Pesach.

The presence of Chometz on one's property is forbidden. One searches to ensure that none is present. Having found some, it must then be destroyed, known as *Biur Chometz*, before the beginning of Pesach. One must also do *Bitul*, nullify remaining Chometz that escaped attention during the search. After *Biur*, one must nullify Chometz that might not have escaped attention, but escaped the *Biur*. Really, having done *Bitul*, there is no longer any risk of violating the prohibition of having Chometz in one's possession. This should, therefore, negate the need for a *Bedikah* totally. However, there is a risk that one might find a tempting morsel of Chometz on Pesach. One might inadvertently eat this Chometz, though it is considered null and void and does not halachically belong to the eater. Nonetheless, this is a violation of the prohibition against eating Chometz. Therefore, one must always conduct a search.

Thus, the search is for pieces that could constitute either a violation of possession or pose a risk of temptation to eat. Crumbs are so insignificant that individually they are automatically considered null. They are also not big enough to pose a temptation of eating. Even if they are gathered together in an amount that they would constitute a violation, the *Bitul* will nullify them. Nonetheless, under normal circumstances one should look in places where such an amount could be concentrated. One is therefore looking for both sizable pieces as well as concentrations of crumbs in places where these could have been left.

To conduct a thorough and effective search, the area to be searched must be cleared before the search. It must be generally clean, so the search can be conducted efficiently. This is not only a piece of good advice or for convenience. The Poskim require this as a Halachic precondition to searching. It is based on a Talmudic passage which, although discussing a different issue, references the notion that when women sweep an area, they also check to see what is there, and their "check" is reliable. It also implies that if they would not first sweep, their statement would not be relied upon. However, as stated in the same passage, one cannot rely on the sweeping alone, because the item might have simply been swept into a hole. Accordingly, before *Bedikas Chometz*, one must also sweep the areas that are to be checked for Chometz.

However, even if one did sweep and search at the same time, even at night, it is not necessarily considered *Bedikas Chometz*, if the searching was not done for *Bedikah*, but only in preparation for it. There is an independent obligation to go through with the search. If, however, one did have in mind the fulfillment of the Mitzvah of *Bedikah*, but simply searched on an earlier night, his search can be considered a *Bedikah*. He may also search on Erev Pesach itself as a personal stringency, he should not recite the Brocha a second time. [See Nidah 56a-b, Mordechai Psachim 536. Tur Shulchan Aruch Drach Chaim 433: II, commentaries.]

(B) The Timing of *Bedikas Chometz*

The Talmud determines the timing of the search to be the night of the fourteenth day of Nissan. It goes on to explain the need to search by night, specifically. The object of the search is to find and destroy all Chometz present. If this is the case, one should really perform it as close as possible to the time that the Chometz must be destroyed, which would be the daytime of Erev Pesach. The Talmud concludes, however, that there are two good reasons to push the *Bedikah* back to the night before. Firstly, due to its importance, there is a need to ensure that it will be done properly. Therefore, a time is chosen that people are most available to be at home. Second, the search must be thorough, including a check of even cracks and crevices that could have Chometz placed there, which could require a candle light. By day, the light of a candle is not as effective due to the surrounding light. The eyes seem to focus better when guided by candle light at night. Therefore, the closest night to the time of destruction is the night before.

According to some, the optimum time for *Bedikah* is at the beginning of the night. Some even suggest starting before it gets fully dark. There is a minority view that checking at any later hour is simply *Tashlumin*, a make-up for having missed the true time at the beginning of the night. However, the majority maintain that any time of night would be appropriate. Nonetheless, we strive to perform the search as early in the night as possible. Apart from the general maxim that *Zrizim Makdimin*, the conscientious hurry to do Mitzvos, there is a risk that one might

get involved in other activities and forget *Bedikah* until it is too late or he is too tired. Thus, specifically time-consuming activity is forbidden, including a meal and Torah study, as soon as the time for *Bedikah* arrives.

If one does a *Bedikah* the preceding night, a minority view considers it a valid *Bedikah*. Some even suggest that one may do it by day on the thirteenth of Nissan. However, most Poskim maintain that it should not be done by day at all, unless one forgot to do it the night of Erev Pesach. In this case, he must do it the morning of Erev Pesach. The majority view is that it should not be done the night of the thirteenth. This is not the night before one plans to destroy his Chometz. In practice, one who did *Bedikah* by day on the thirteenth did not fulfill his obligation. The exception to this is an open area, such as a porch, which can be checked sufficiently by sunlight. This need not be checked again by night. However, if one did a *Bedikah* by night on the thirteenth, he need not do the *Bedikah* again on the fourteenth. If he wishes to practice stringency and do so anyhow, he should not recite the Brocha.

When Erev Pesach falls on Shabbos, it is not possible to burn the Chometz on that day, nor search for Chometz by candle light at night. Accordingly, the process is pushed back to the night before, to Erev Shabbos, the thirteenth of Nissan. In this case, therefore, because the thirteenth of Nissan becomes the new official date of *Biur*, the evening of the thirteenth becomes the official time for *Bedikah*, and a Brocha is recited for this *Bedikah*, even though it is "early." [See Psachim 2a 4a 7b 13a, Poskim. Tur Sh.Ar. O.C. 431:1-2, 433:11, 444, commentaries.]

(C) The *Bedikah* Obligation on a Rented Property

Bedikah is connected to the Mitzvah to destroy Chometz, i.e., to search for it, and when it is found to destroy it. This applies to the owner of the Chometz, but is connected to owning the property on which it is found. One could not necessarily search for his Chometz on someone else's property, nor would one destroy Chometz belonging to another. [*Bitul* accomplishes a goal similar to destroying it.] *Bedikah* is also connected to the chance of finding some Chometz on Pesach and inadvertently eating it. [*Bitul* does not take care of this problem.] The precautionary aspect would also apply to the owner of property on which Chometz is found. Even if the Chometz does not belong to him, one could be tempted to eat it. However, one who has unwanted Chometz belonging to a gentile on his property may simply partition it off. Under normal circumstances, he is not obliged to destroy it.

The Mitzvah is also connected to the prohibition against having it in one's possession. The owner of property could be in violation even if the Chometz articles do not belong to him, but are under his jurisdiction. However, in general, the Mitzvah is incumbent on the owner of Chometz found on his own property.

In light of the above discussion on the initial timing of *Bedikas Chometz* (that it should be done on the evening of the 14th), the Talmud raises the question, if one rents property that has Chometz belonging to the landlord, who must do the *Bedikah*?

The landlord has no interest in keeping the Chometz. It has no value to him after it becomes forbidden. However, there is an obligation to remove it. The discussion is in the context of the obligation not taking effect until the night of the fourteenth. If it is rented earlier, apparently, there is no obligation on the landlord. The tenant now has an obligation to take care of his newly acquired property.

The dilemma involves two factors – that the landlord owns the Chometz, and that once rented, the property is in the hands of the tenant – which raises the question: which is the determining factor for *Bedikah*? Is the obligation to conduct *Bedikah* due to the risk of eating something found on one's property regardless of who owns the Chometz, in which case the renter would be responsible for the search, or is it to avoid the violation of owning Chometz, in which case the property owner would be responsible? Either way, the property must be searched – but by whom? Because this property might have Chometz, although it will most likely be nullified in any case, should one party be more responsible for the search than the other? Should one factor or the other determine which of the parties has the larger role?

The Talmud poses this question with regard to a property that has already changed hands, and when the transaction took place on the 14th of Nissan. However, the Talmud's discussion raises several additional questions. If the issue is ownership of the Chometz and not rights to dwell in the property, the responsible party would be the property owner if the transaction took place at *any* time in the year. Regardless of who has rights to the property on the 14th of Nissan, the Chometz itself belongs to the property owner and therefore must be removed or nullified by him. Another question rising from the Talmud's discussion is, if the property owner left Chometz around the house, is it known or unknown? We find that the main issue is the obligation to search for specifically unknown Chometz. A third issue is the way the Talmudic passage compares the Mitzvah of *Biur Chometz* to *Mezuzah*, the obligation of

the dweller. The landlord would not be obligated in *Mezuza* unless he also lived in the property. In the case of Chometz, was the landlord living on the property before renting it for Pesach or not?

In moving towards resolution, the essential questions appear to be first, whether the landlord transfers his obligation to conduct *Bedikah* by renting his property, and second, regardless of the landlord's responsibility, does the fact that the renter is directly affected by the obligation (in the event that Chometz exists) require the tenant to assume responsibility in the landlord's absence. How does the process of *Bitul* affect this dilemma, as well as the violation of possessing Chometz of another Jew on one's own property (if one has rented and therefore has tenant rights to it)? All of these issues in the initial stages of the passage are raised or alluded to by the commentaries.

The conclusion of the Talmud is that the determining factor is who has the key to the property in his possession as the evening of the fourteenth of Nissan began, when the obligation to search takes effect.

However, upon this conclusion, new issues are raised! Is the possession of the key yet an additional factor, or part of the earlier issues raised? Does the Talmud mean that the transfer of the key alone signifies responsibility for the property, without consideration for the rental agreement or any valid act of *Kinyan*, a halachically binding act of transfer of property? Following is a list of the various opinions on the halachic conclusions, from which we might derive a resolution for our case.

The first view is that the transfer of the key affects a *Kinyan* for the rental. It would not work to take total possession of a property, but works to finalize a rental agreement. The only question is why this particular choice of *Kinyan* is singled out. It is possible that one needs specifically this type of transfer in for a property rental transaction. Accordingly, in our case, one would have to transfer the key before the night of *Bedikas Chometz* to the hands of the gentile or his agent. This would exempt the Jew from his obligation to search for possible Chometz in his possession. However, actual Chometz would still pose a problem. Though some Poskim exempt a Jew from the Scriptural violation of possession of Chometz if it is on the property of a gentile, they agree that there is a rabbinic obligation to destroy it. To avoid this, one would be required to sell all Chometz on the property to the gentile as well. Crumbs (gathered in one place) and small pieces are not generally sold. These must be given as a gift to the gentile. However, items like garbage in cans or bags are not generally given as gifts. To accomplish *Biur* one should try to make an arrangement for it. Failing this, one could assume that the gentile knows by common sense to clean up a mess left by the landlord, and that by adding to the existing garbage he is taking over liability for the garbage as well.

The second view is that even if a regular *Kinyan* on the rental took place, the keys must also change hands. As long as the landlord has control of the keys, the tenant can not be obliged to search, and by default the responsibility remains with the landlord. According to this view, as well as the keys being handed over before the night of *Bedikas Chometz*, the regular *Kinyan* (money, a document, or other forms of *Kinyan*, or all of them to be sure) must also be made to transfer the property to the gentile. However, this view maintains that this all only applies if the rental agreement is intended to take effect beginning on the fourteenth. If the agreement begins on the thirteenth, one primary *Kinyan* is enough. There is no need for a key to be transferred. Accordingly, this view would allow one to effect a transaction before *Bedikas Chometz* night, effective immediately or any time until then, which would then exempt the landlord of his obligation to search.

The third main view maintains that even with no *Kinyan*, if a key is transferred with the intent to eventually make a *Kinyan*, the landlord is exempt. The reason is that if the key is in the possession of either party, the other is not in a position to search.

Once the obligation applies to one party at the start of the time of obligation, it does not transfer to the other party later. However, this view raises additional questions. Must a regular *Kinyan* also take place earlier, or, as mentioned, will the key suffice? If it does take place, is the regular *Kinyan* effective, even if it is done on the thirteenth? Does the order of the *Kinyan* and the key transfer make a difference? Some suggest that the "time of obligation" stretches through the night, thus the *Kinyan* and key transfer, and their order, could play a role. Does the effective date of the agreement play a role? Does the agreement on the lease conditions, without the actual transfer *Kinyan* play a role?

In one view, the entire issue is determined by the time of the transfer of the key, but believes that eventually there must be a *Kinyan* as well. A second view considers a rental agreement like a sale, and therefore sees no need for the transfer of a key. However, a third view would require a key transfer in a sale as well. For our case, this means that the key must be transferred to the gentile's hands before the night of the fourteenth.

In summary, as regards the property, one would have to make a rental Kinyan and transfer the key before the night of *Bedikas Chometz*. The ideal situation would be to stipulate that the transfer is effective at this time as well. Also, ideally, one should sell or give the gentile all known Chometz, with a specific arrangement for the transfer of crumbs and Chometz otherwise considered garbage. [See Psachim 4a, Poskim. Tur Sh. Ar. O.C. 437:1 etc., commentaries.]

(D) The Obligation to Search before Leaving Town

All of the above assumes that the person selling or renting his property to the gentile has the status of a landlord, with a home elsewhere in town which he will already be searching on the night of the fourteenth. In our case, the person leaves town. His obligation would be on his home. By selling or renting it, he wishes to exempt himself of the this obligation.

Based on a Talmudic passage, if one leaves to go abroad within thirty days of Pesach, he will need to search before he leaves. If he leaves more than thirty days prior to Pesach and does not plan to return before or on Pesach (depending on interpretations of different Poskim), he is exempt. Most Poskim maintain that he will not have to check even for known Chometz. However, if he plans to return, or if he leaves within thirty days of Pesach and does not plan to return, he must conduct a complete check before leaving. In the first case, this is due to the risk that he will not manage to search upon his return or in the event that it will already be Pesach. Therefore, the Rabbis applied the obligation to him.

In one view, this applies specifically to one who will not be moving to another home to do his *Bedikah* there, but rather, will be on a traveling trip during Pesach. He may not exempt himself entirely from *Bedikah*. If he moves into a new home, he will fulfill his obligation there, but otherwise, will have no place to perform it. Some say that this applies specifically to one whose home will be occupied by a gentile and is owned by a gentile landlord, as no one else will be checking the home for Chometz once he leaves. If a Jew would move in, the laws of rental to a Jewish tenant discussed in section C apply. Others, however, say that he should conduct *Bedikah* even if the home will be rented by a Jew. Some say that this only applies to those who will be traveling long distance or does not have a stable place of residence for the holiday, applying stringency only to who will be in transit or traveling long distances.

Others disagree with this view entirely, maintaining that if a gentile will occupy the home, there is no point in searching. The Chometz will be taken over by the gentile, and he will even bring in more of his own. There is no obligation to search if there is no need to destroy. Both views are presented by the Poskim, and the ideal is to try to satisfy both.

Accordingly, if our questioner leaves early, he should search before he leaves, even if his home will be under the gentile's jurisdiction. However, if a Jew sells all of his Chometz to a gentile before the time of the prohibition applies, the Poskim debate whether he must search the places where the Chometz is being kept. It will be sealed off, and the space will be transferred to the possession of the gentile. It is there with full knowledge of its existence without needing to check. Why should one search there? Others maintain that the time of the *Bedikah* begins before the time of the sale, therefore, when the obligation takes effect, the Jew is required to fulfill it. The prevailing practice follows the lenient view, but one should try to affect the sale before the night of *Bedikah* anyhow. In our case, this will prevent an onlooker's conclusion that he is avoiding *Bedikah* altogether. We can assume that the sale will indeed take place early, since the traveler wishes to leave early.

Since the traveler, according to one view, is obliged to do his *Bedikah* early, does this also advance the time he may make his sale effective specifically in order to avoid *Bedikah*? According to the view that whenever *Bedikah* takes effect he is exempt of the obligation to search the rooms with Chometz in them, there is no need to arrange an earlier sale, especially if the rooms themselves are sold. To satisfy the view that he must check before leaving, he one would need to sell the Chometz and the rooms before his obligation takes effect, i.e., before the last night he is home. He would then be living in the gentile's house, which gives the sale the appearance of a loophole. Furthermore, he does not at all satisfy the view that when leaving town one must fulfill some form of *Bedikah*. To satisfy this view, one could exclude one room in his home from the early sale and check it. Or he could arrange to do part of the *Bedikah* in the place where he stays for Pesach. To check his clothing, car and other portable things does not seem to satisfy this requirement. In transit one needs to eat – where will this be taking place? Evidently, checking luggage is insufficient to be considered *Bedikah*. The Poskim say that no Brocha is recited on such a *Bedikah*, even when performed on the fourteenth. They are not a “house,” which the Torah mentions as the place from where Chometz must be removed and destroyed. [See Psachim 6a, Poskim Tur Sh. Ar. O.C. 436:1-3, commentaries.]

(E) The Brocha

The Brocha on *Bedikas Chometz* applies to both the *Bedikah* and the *Biur*. There are at least five opinions on reciting the Brocha on an early *Bedikah*. Some say that as long as it is done by night, one recites the Brocha, even if it is an early *Bedikah*. Others maintain that one only recites the Brocha if *Bedikah* is performed at the appropriate time, generally on the 14th, but on the 13th when Erev Pesach is Shabbos. In a third view, if the *Bedikah* is a precaution against returning on Pesach and possibly finding Chometz, no Brocha is recited, but if it is due to the obligation taking effect, i.e., within thirty days of Pesach even if one will not be returning, it is recited. In a different view one must be both returning and checking within thirty days to require a Brocha. In another view one recites the Brocha only when it is connected to *Biur*, which would only be on the night before the actual obligation of *Biur*, and an earlier *Bedikah* is not the final check before *Biur*, as one may still buy more Chometz. Therefore, in our case, even if one does a *Bedikah*, he should not recite the Brocha. Besides, the entire obligation to do a *Bedikah* is questionable, since the property is being sold with its Chometz, and the majority view exempts one from *Bedikah* in this case. [See Psachim 7a-b, Poskim. Tur (Bais Yosef etc.) Sh. Ar. O.C. end 436, commentaries.]

3. *Bedikas Chometz* in a Hotel

Halochoscope Parshas Tazria 5760 Vol VIII No 3

QUESTION: When spending a night in a hotel during Pesach, is one obliged to check the room for Chometz?

Issues to Consider:

- (A) *Bal Yeira'eh*, Chometz in one's possession
- (B) Ownership that a hotel guest has on the Chometz in his room

(A) *Bal Yeira'eh*

As mentioned, one may not have Chometz in his possession on Pesach. This is forbidden Scripturally as a part of two Mitzvos, *Bal Yeira'eh*, it shall not be seen, and *Bal Yimatzei*, it shall not be discovered, i.e., it may not be concealed in one's possession, nor may it be given to the possession of a gentile for safekeeping.

The Torah excludes from this Mitzvah the Chometz of a gentile on a Jew's property. There is still concern that the Jew will forget that the Chometz is not his and be tempted to eat it. Therefore, it must be placed behind a partition. If the Chometz originally belonged to a Jew and was sold to a gentile, if left in its usual place it might be used out of habit. The practice is to either lock it up and place the key in a new place, to move it to another location, or to place an obvious reminder on the place where the Chometz is stored. Although it is also common practice to rent or sell the location of the Chometz to the gentile, this does not take care of the possible problem of unintentional sampling.

In our case, if the Jewish guest finds Chometz in his room, he assumes it belongs to the previous guest. If this guest was a gentile, there is no prohibition against this Chometz. It is assumed he will not be tempted to eat it, as he will consider it possibly non-kosher in the first place. If the previous guest abandoned it, however, the issue is whether it is now property of the hotel or if it is part of the room which has been rented by the present guest, and therefore in his possession. If the original owner of this Chometz was a fellow Jew, he might have himself dispossessed it before Pesach. If this is the case, however, the concern of unintentional sampling remains.

Our question is whether or not there is an obligation of *Bedikas Chometz*, or an obligation to destroy it in order to prevent possible consumption of or benefit from it. While a hotel may tidy rooms, they are not necessarily concerned with the removal of Chometz. Therefore, one may assume that if there is Chometz somewhere (such as in a drawer), the cleaning staff did not remove it. Would there be an obligation to search for this possible Chometz, and if so, with or without the recital of a Brocha?

If one performed no *Bedikah* before Pesach, when he does it on Pesach he recites a Brocha. If he did perform it before Pesach, any Brocha he recited initially is still valid for subsequent searches. However, the original Brocha only applies to the obligation that existed at that time, and not on newly acquired property. Although in this case, he did not knowingly take possession of this new Chometz, there may be no need for a Brocha for a different reason. His *Bedikah* is to prevent inadvertent consumption of someone else's Chometz, and not as fulfillment of the Mitzvah to destroy Chometz in his possession. The Brocha is recited for the specific Mitzvah to destroy Chometz in one's possession, and may not apply for this destruction.

In conclusion: If he finds Chometz, whether of a Jew or non-Jew, he can assume that it is abandoned, and the owner no longer cares about what happens to it. Thus, without taking possession of it, he can destroy it if he wishes as a precaution against inadvertent consumption, but would not recite a Brocha because the destruction is not the fulfillment of a Mitzvah. [See Psachim 2a 6a-7b 10b Rashi Tos. Ran, Poskim. Rambam Chometz Umatza 2:1-4 18-19 3:6-7 etc. Tur Shulchan Aruch Orach Chaim 431 432(: I) 433: 1-3 11, 435: (Magen Avraham 2, commentaries) 436: I 446: I, Kitzur Ill: 17, commentaries]

(B) The Hotel Room

The Talmud maintains that a tenant is obliged to search for Chometz in a rented property if he assumes possession of the property any time before or on the evening of *Bedikas Chometz*. [What constitutes the act of taking possession for property is debated by the Poskim. Some maintain that the tenant must make a Kinyan, valid act of acquisition, and also receive the key. Many Poskim maintain that either receiving the key or making a valid Kinyan transfers liability. Interestingly, actually occupying the space is not the critical factor.] Once the property is transferred, therefore, by Kinyan or key, Chometz on the premises would be considered the liability of the tenant, and the search becomes obligatory on the rented property.

If possession of property is not taken until Pesach itself, it seems the issue should not apply. However, this is only true if the property was previously the liability of another Jew, as the Talmud notes that unless otherwise informed, one can assume that a Jew would have performed *Bedikah*. [The Poskim debate whether the tenant may renege on his rental agreement if he finds out that the house was not searched for Chometz.] If the hotel is owned or run by a gentile, however, in which case there is no expectation that the property would have been previously – or properly – searched, the Mitzvah of *Bedikah* would apply to the new tenant, even if it is already Pesach. While a tenant has exclusive rights to his leased property and may not be moved by the landlord, a hotel guest, on the other hand, might only have rights to a room “anywhere” in the hotel. The manager may retain the right to move him from room to room. However, there seems to be an unwritten agreement that this will not occur in the middle of the night. At least overnight, a guest has purchased exclusive “ownership” of the room, and becomes like a tenant for this period in terms of liability for *Bedikas Chometz*. Lacking a Jewish hotelier who would have performed *Bedikah*, therefore, the guest has responsibility for the search. [See Psachim 4a-b, Poskim. Tur Sh. Ar. O.C. 436:3 437: 1-3, (Yeshuos Yaakov I) commentaries. Maadanei Shmuel III: note 21.]

[The case of a Jewish hotelier would raise some of these issues as well. His obligation would be to search for Chometz in rooms under his control. Chometz brought into the hotel by others during Pesach would not be his liability. This is especially true if he specifically disclaims liability of possessions renters leave behind. However, he must be careful to not to assume ownership of abandoned Chometz. If he does find such Chometz when a guest leaves, he must destroy it. His responsibility to check a room after a gentile guest leaves is less stringent than after a Jew leaves, as he would have less temptation to eat it, assuming it is not kosher. In any case, the temptation to inadvertently consume discovered Chometz would not be as pressing, as he will not be occupying the rooms himself.]

Aside from a precautionary *Bedikah* to prevent inadvertent consumption, a guest does not want to be liable for *Bal Yeira'eh* or *Bal Yimatzei* on Chometz found in his newly acquired property. Would the Chometz be owned by him, or owned by someone else but simply located on his property? If the Chometz left in his room belongs to the previous lodger, there is no issue of possession for the present lodger. If, however, it was abandoned, it may have become property of the hotel by way of *Kinyan Chatzer*, an owner-less item left on their property. This can present a problem regarding possession, when the new guest acquires his rental rights from the hotel. [Assuming that the acquisition of the use of the hotel space is made with money or any form of transaction binding by secular law, the transaction is binding according to the Torah.] Once a rental transaction takes place, the contents of the property is also transferred, including Chometz therein.

In general, the Poskim struggle with the concept of taking possession of Chometz on Pesach, since it is worthless and forbidden as soon as it enters the possession of the Jew. Thus, ideally the new lodger does not want to acquire it from the hotel. In the case that the Chometz does enter the possession of the hotel by way of *Kinyan Chatzer*, precautions can be taken to avoid acquiring the Chometz.

On one hand, there is no specific clause including the Chometz, thus it may be assumed that this is not included in the property rental. However, if it is considered included, he will want to ensure that ownership of the *Chatzer*, the hotel premises other than his own room, is not included his rental. One view contends that a tenant, and certainly a hotel guest, does not purchase even partial ownership of the hotel with his rental. Although he may be

granted permission by its owners to use parts of the hotel outside his room, he does not share ownership in these parts of the property.

Thirdly, one must give consent to acquire something. Thus, a renter may say that any Chometz already existing in this property shall not become his as a result of his acquisition of rights to the room. If the Chometz belongs to the hotel already, this method works. If the Chometz is not yet in the possession of the hotel, however, the new lodger must say before he makes the acquisition that as soon as it becomes relevant, he does not want his *Chatzer* to take possession on his behalf.

In conclusion, when he makes the legal transfer of the use of the hotel room, the guest should have very clear intention not to acquire any Chometz that might automatically enter his possession, to the point of making an explicit statement to that effect. If he feels any reason to suspect that Chometz is in the room, he must also do a *Bedikah*, but should not recite a Brocha.

II. MECHIRAH / OWNING CHOMETZ

1. Owning Stock in a Company that Deals in Chometz
2. Business Receiving Chometz on Pesach
3. Chometz Inadvertently Purchased on Pesach
4. Feeding Your Pet During Pesach
5. Selling Chometz Online

I. Owning Stock in a Company that Deals in Chometz

Halochose Pesach/Parshas Acharei Mos 5760 Vol VIII No 5

QUESTIONS: If one has stock in a company that deals in Chometz, may he keep it in his possession over Pesach? May he benefit from such stock after Pesach if the company is owned by Jews? May he benefit from the profits on Pesach itself, and may he sell such stock on Pesach?

Issues to Discuss:

- (A) *Sechora Bidvar Issur*, commercial dealing in non-kosher foods;
- (B) The Halachic status of stock and bond holders;
- (C) *Brairah*, retrospective determination of a Halachic status;
- (D) *Bal Yeira'eh* and *Bal Yimatrei*, possession of Chometz on Pesach, Benefit from Chometz during and after Pesach; *Achrayus*, liability for Chometz belonging to someone else.

(A) Sechora Bidvar Issur

Those forbidden food items that are not *Assur Behana'ah*, forbidden Scripturally to benefit from, may be used for any purposes. However, they may not be used for commercial gain, or sold even for non-food uses. This means that animals in the category of *Shekatzim* may not be dealt with commercially. These include *Beheima Temeiah*, such as pig, *Chaya Temeiah*, such as rabbit, *Oef Tamei*, such as crow, and *Dag Tamei* such as lobster.

Non-food items that are forbidden, such as *Sha'atnez*, mixtures of wool and linen may be traded. Many Poskim consider this a Scriptural restriction. Some consider it Rabbinical, linked to a passuk (by *Asmachta*). It is a *Gezaira*, safeguard or precautionary institution, to reinforce the original Scriptural prohibition against consuming the food. The limitations on this restriction, placed by the Rabbis, imply that it is Rabbinical. The other Poskim maintain that it is Scriptural but that its applications are not detailed in the Torah. Therefore, it was left to the Rabbis to decide how it should be applied.

Included in this restriction is the trapping and selling of living or dead non-kosher animals. Sometimes, a trapper or a hunter usually tries to catch kosher animals, but cannot avoid catching a non-kosher species. In such cases, he may sell his catch. For example, if a fisherman usually tries to catch tuna, but sometimes catches dolphin, he may sell the meat. Live animals may be sold for use as work animals. Their use as meat is secondary. Hides are not a food, and are thus not included in the prohibition. If one traps rabbits for their hides, it is questionable whether he may sell the meat after skinning them. If a dealer buys rabbits for their hides, and calculates his profits including the sale of the meat, he is doing business with a forbidden item. If he calculates a profit based on the hides alone, selling the meat is permissible, based on an explicit exclusion in the Torah.

Intentional dealing in *Nevalah*, meat from animals slaughtered incorrectly, is forbidden. However, if one happens to have a *Nevalah*, the Torah specifically permits selling it to a gentile. Accordingly, if one unintentionally came into possession of non-kosher food it may be sold. Another exclusion is on food-products that are Scripturally permissible but forbidden Rabbinically. These may also be sold.

Apart from the prohibition against financial gain from profits, other types of benefit are sometimes also forbidden. These include buying non-kosher food for a gentile employee. One may not take forbidden food items as security or collateral for a debt. [This will also relate to the next section. It is also a factor with regard to the Chometz issue, as we shall discuss.] If a gentile debtor cannot pay cash one may accept these items and subsequently sell them. [See Parshas Shemini II:35 (Torah Temimah), Shevi'is 7:34 (Yerushalmi, Tos. Yomtov), Psachim 23a (Tos. Rosh) Baba Kama 82b (Tos.), Poskim. Rambam, Maachalos Asuros 8:16-18. Terumas Hadeshen 200. Tur Shulchan Aruch Yoreh Deah 87, 117:1 (Taz 1), commentaries. R. Akiva Eger I:74, II:32, etc.]

(B) Stock and Bond Holders

The creation of a public company is a way to raise capital in a business venture by allowing anyone to become a shareholder in the company. However, while interested in the profits, investors do not want to suffer the losses sustained by the business venture. To this end, the company is divested from the individuals owning shares. The most one can lose is the money invested. He will not be held personally liable, and none of his other assets will be claimed. Even a majority shareholder, with control in voting and decision making, can not be held personally liable.

The corporation or limited liability company is a legal "person" in its own right that makes transactions (loans, purchases, sales, hiring and firing). Its assets belong to the company, and not to the shareholders. Its liabilities are solely those of the "company." Creditors have no claim on the personal property of the shareholders. The shareholders have no actual legal ownership on the assets, but own a share in the profits or dividends proportional to their invested share in the company. By contrast, a partnership makes both parties liable personally for all liabilities of the company, unless the partnership is structured to limit the partners' liabilities. In such instances, both are still liable in partnership for the entire debt.

The Poskim discuss whether there are Halachic precedents for both entities that do not have personal owners, and for investments with no liabilities. In the Bais Hamikdash, offerings brought were either owned by the individuals or by the community. An offering brought by a Kohain had to be burned. If a Kohain was partner in an offering it would be burned due to the share of the Kohain. However, offerings brought on behalf of the *Tzibbur*, entire nation, though they included the shares of the Kohanim, were not burned (unless it was anyhow a burned offering). The Poskim debate the Halachic implications of *Tefusas Habayis*, the status of an estate before it is divided by the heirs. It could be viewed as an independent entity, as though it really still belongs to the original owner in his grave. Yet, it does not really belong to him. If assets increase during this period, they are not divided according to the rules of division at the time of the death of the (benefactor). Certain laws, such as the addition of the *Kalbon*, a small amount surcharged when the annual Shekel donation was made to the communal coffers of the Bais Hamikdash, are affected by this status. Even common situations such as trusteeship of Tzedaka funds, or of grains or dough tithed but not yet presented to the Kohain, present similar ownership issues. The financial interest in deciding who should receive tithes, *Tovas Hana'ah*, is the subject of Talmudic debate. Does it give the donor an actual monetary share in the tithes or not?

Further examples include *Hefker*, ownerless property, which is considered the potential property of anyone who claims it first. Due to the rights to take it, it is also considered partially owned by all potential claimants. Yerushalayim is considered property of the Jewish people, as are certain types of shuls. Similarly, certain property in Eretz Yisroel was possessed in the name of the community of those who returned from Bavel during the second Bais Hamikdash era. If an individual is banned from benefit from another individual, the ban does not forbid benefiting from such communal property. In all of these cases the issue arises that individuals must have some ownership, but that it is not personal.

While the legal status sounds illogical, it must be borne in mind that ownership and liability are themselves rules that are dictated by the Torah. For animals, social life is possible without resorting to laws of ownership. For humans the Torah introduces such a connection between people and things. (Some say this is a result of the initial sin, with its subsequent curse. We are not able to rely on finding our food and livelihood directly from the world's bounty. We must resort to commercial dealings, requiring laws of ownership, transaction and acquisition (see end of

Maseches Kidushin).] Thus, it is possible to find a person liable in one situation while he is not liable in an identical one, which has a seemingly non-financial difference. Examples of these are the differences between the rules governing returning lost articles to Jews or to gentiles. Inheritance itself is another example of how the Halacha is based on Torah principles, rather than on what might seem logical. Even slavery, which is totally illogical to modern society, has its place in the Torah. There are even modern applications of these laws. While Jews are governed by such laws as dictated by the Torah, the secular society is governed by *Dina Demalchusa*. This has Torah credibility based, in part, on the Mitzvah that the gentiles must create a legal code. One purpose of such a code is the free running of the economy.

There is a difference between a stock holder and a bond holder. A stock holder is like a partner in the company, to the percentage of shares that he holds. A bond holder loans money to the company, to do as they see fit with it. Therefore, he is not doing *Sechora Bidvar Issur* himself. Nonetheless, there is an opinion that this is included in the restriction. If one has a perfected security interest in a non-kosher item, he could be considered taking collateral or security.

A stock holder, being a partner, is effectively doing business with the forbidden items dealt with by the companies. It could be argued that the investor does not handle the Issur himself. He does not make a Kinyan, valid act of transaction, and is not actively violating the Mitzvah. However, assuming he is considered a partner, partners act on behalf of each other. Furthermore, for the moment we will presume that the *Dina Demalchusa*, secular legal code, recognizes a stock holder as an owner of the company's assets, including the inventory of its wares. Some Poskim maintain that if the Jewish share-holder never even sees the non-kosher product, the prohibition is totally suspended or is relegated to the level of a Rabbinical prohibition. This is based on the view that the prohibition is based on preventing one from eating the food. Since in this instance, it is not necessary to take such measures, the restriction does not apply here.

It is forbidden to take interest, or to borrow money for interest. This only applies to one who is personally liable, known as a *Shibud Haguf* to another person. Thus, if the borrower or lender is a company with limited liabilities, the issue of interest might be viewed very differently. If the liability of a mortgage loan is limited to the actual house, there is no personal liability. Therefore, borrowing from a Jewish moneylender might be permissible even with interest. This matter, including the issue of whether to consider the company an entity outside the shareholders, is debated by the Poskim.

One may not do business on Shabbos, and the profits are forbidden. If a gentile works on a Jew's behalf, using the Jew's funds or merchandise, it is also forbidden. It is permitted if the gentile works on his own initiative, but if the appearance is given that the gentile is acting under the instructions of the Jew it is still forbidden. If the Jew invests in a company, some Poskim consider the company a non-person. Therefore, the partners are not considered owners and the Jewish shareholders are not liable for work done on Shabbos. Others maintain that the real "owners" are those who run the company. Minority owners play no role in decision making (despite their vote on board memberships) and are not considered owners. Majority shareholders are active in decision making, and may not do business on Shabbos. Since there are gentile shareholders, the company may be viewed as a partnership with a gentile. This must be structured to permit Shabbos commercial activity. If the directors do not include majority shareholders in the decision making process, even if they give them the courtesy of asking or listening to their opinions, the Jewish shareholders need not be considered partners. Creating a limited liabilities partnership does not suspend restrictions to do business on Shabbos.

Other considerations might make the entire issue easier or more difficult to decide in our case. Furthermore, the *Dina Demalchusa* considers public companies and corporations (or limited liability companies) as entities in their own right. Some Poskim maintain that *Dina Demalchusa* is followed rigorously. However, we only follow it in issues that relate to secular law, such as dealings with gentiles, or even with fellow Jews when the initial transaction was made under the impression that it would be governed by secular law. Chometz, and its ownership, is a non civil issue. Our real issues will include the ownership of the assets themselves and the ownership of the premises on which the Chometz assets are stored. [See Nedarim 47b-48a, Avoda Zara 53b (Ritva), Sh. Ar. O.C. 255, 453, 458, Y.D. 117 (Taz 2, Pischei Teshuva 6, Darkei Teshuva 17, 21-22, 25.), commentaries. Minchas Yitzchok III:I, VII:26, Moadim Uzmanim III:269, note I. Igros Moshe O.C. I:90 IV:54, Y.D. 11:39, 52, 53. E.H. I:7, C.M. 11:15, 52.)

(C) *Berairah*

Generally, one must predetermine a change in Halachic status, which is known as *Berairah*, retrospective predetermination. For example, someone residing more than two thousand cubits away from two communities in opposite directions wishes to attend a shiur on Shabbos in one of the communities, and can set an *Eruv Techumim* to change his center, enabling him to attend a shiur in one of the communities. Due to the distance, however, he will only be able to choose one community; the problem is that he does not know which community is hosting the scholar and he must make his determination before Shabbos. By using *Berairah*, he can say that his determination will be made depending on which direction the Chochom arrives. Although he will only find out this information when it is already Shabbos, he will say that this is what he had in mind before Shabbos.

The Talmud debates the acceptability of *Berairah*. The conclusion followed is that when effecting Scriptural Halachic changes of status we may not rely on *Berairah*, but when dealing with a Rabbinical change one may rely on *Berairah*.

Profit from a business is considered to be the business itself. When partners divide profits, therefore, the money is Halachically considered a division of the partnership. This raises a question on the retrospective ownership of the goods supplied by each partner. Should the items received by a particular partner be attributed to him always? Once contributed, does he own items received by other partners?

A relevant example relating to Pesach would be the case of a Jew and gentile who jointly own a food store which sells Chometz during Pesach. After Pesach the goods are divided. May we say that the goods collected by the gentile after Pesach were considered his on Pesach as well? Accordingly, they were not in the possession of a Jew on Pesach. If the Jew did not violate *Bal Yeira'eh*, possessing Chometz on Pesach, then anyone may benefit from these goods. However, if the Jew is guilty of *Bal Yeira'eh* on these goods, the fact that a gentile now owns them does not allow another Jew to buy them. Since the prohibition forbidding benefit from such Chometz is Rabbinical, we apply *Berairah*.

Taking this further, if the store sells both Chometz and non-Chometz items, then the partners divide the profits, the Jew may even benefit from his share. He may claim that in retrospect all the Chometz goods belonged to the gentile. His own profits came from the sale of the non-Chometz items. One may even buy Chometz from this store after Pesach by claiming that when the profits are divided, the item will be determined to have belonged to the gentile during Pesach.

If *Sechora Bidevar Issur* is Rabbinically forbidden, we may apply the same rule to shareholders in a company, when some are Jewish and others are gentile. According to those who consider it a Scriptural prohibition, if it becomes less severe when a Jewish partner never sees the food, making it into a Rabbinical prohibition, the rules of *Berairah* may be applied. However, on Pesach, benefiting from Chometz is forbidden Scripturally. Therefore, much of our question would not be answered with this method. Some Poskim maintain that a Jew may benefit in a partnership situation if the gentile sold items without the Jew's knowledge. Profits earned after the Jew found out are forbidden. This would also not help in our case. Other methods suggested by some Poskim to permit profiting from partnerships would not help practically for a shareholder. [See Eruvin 36b-37b Gittin 25a etc., Poskim. Mishneh Berurah 448:2. Darkei Teshuva 117:17-19.]

(D) *Bal Yeira'eh, Bal Yimatzei, Hana'ah, Achrayus*

Benefiting from Chometz on Pesach is Scripturally forbidden. This includes using it to feed one's animals, to burn for fuel to heat, to use it in ways other than eating, such as an ingredient in a cosmetic or medication (if the Chometz is so disfigured as to render it non food these laws change), or profiting from it commercially. It is Scripturally forbidden to possess Chometz on Pesach. This includes having Chometz on one's property so that it is "seen," known as *Bal Yeira'eh*, and owning it in ways that it is not seen, known as *Bal Yimatzei*. Hiding it on one's property or depositing it with a gentile for safekeeping is included in the latter.

If the Chometz was in the possession of a Jew during Pesach, based on the above considerations, it is forbidden after Pesach. This Rabbinical ordinance penalizes one who kept the Chometz in his possession. Consequently, anyone else may not benefit from the actual Chometz either. The money exchanged for these goods is permissible to those who did not violate the Mitzvah.

If a gentile deposited Chometz with a Jew for safekeeping, or vice-versa, the violation of *Bal Yeira'eh* is determined by taking into account the ownership and the liability. Liability is determined by the legal liability for loss or damages. Thus, if the Jew is liable for the goods of the gentile, he violates *Bal Yeira'eh*. The Jew would be

obliged to destroy it or dispose of it. Conversely, if the gentile is liable for goods of the Jew stored on his property, the Jew might still be liable. If a Jew sold whatever rights he has in it due to his liability, the Poskim debate whether he has satisfied his obligation to dispose of it.

In modern day Chometz sales, the property on which the Chometz lies is included in the sale. This sale is sufficient even on the Chometz of the gentile, since it also removes it from his property. If the Jew did not dispose of it, it is forbidden to benefit from after Pesach. However, if the gentile comes to claim it, even on Pesach, the Jew may let him repossess it unless there is a chance that the gentile will sell or give it to a Jew. If the Jew is not legally liable, but will be forced to cover losses by an unethical gentile, the Poskim debate whether he is liable for *Bal Yeira'eh*. Though we follow the stringent view, this Chometz is permissible after Pesach.

If a Jew loaned money to a gentile before Pesach and took Chometz as a security, he could be liable for *Bal Yeira'eh*. This would depend on how the security was given. If it was given with the provision that in the case of default the goods will be considered the property of the lender as of the time of the loan, the Jew is liable. If the gentile defaults, it is considered as though the Chometz was in the possession of the Jew throughout Pesach. Conversely, if the same deal was struck by a Jew who borrowed money from a gentile and defaulted, the Chometz may be benefited from by other Jews.

In light of these Halachos, the stocks and bonds must be reexamined. The first issue is the ownership of the goods. Do they belong to the directors, with the shareholders simply holding the liability, or is the opposite true, that the owners are the shareholders, and the company executives simply guardians with liability? The same issue is raised with regard to the property where they are stored. Can the status of the Chometz be considered belonging to the shareholders but in the possession of the gentiles, with *Achrayus*, responsibility, on the part of the gentile?

The lack of input by the shareholders might be due to the way their agreement is made. If the terms allowed them to determine the status of the goods, they would have the full right to do so. Alternatively, is the business a new entity, such that the shareholders are not considered owners of the Chometz by law, but the company is the "owner"? Some suggest a basis for this in government currency: we are not held liable for government owned Chometz, even though anyone who holds currency bills has a share in it in the same way that a shareholder holds company stock.

Some Poskim maintain that the shareholders in a limited liabilities company might not be considered owners in *Dina Demalchusa*, but that they are owners according to the Torah. It is inconceivable that a person can own a company but create a legal fiction making him only a shareholder and not liable to his creditors. On the other hand, shareholders in a company owned by gentiles have no control or liability. In strict Torah terms, they are not owners or partners, but are merely loaning the money. Therefore, they do not own the Chometz at all. According to this view, one may not own a Chometz limited liabilities company, but may own shares in a gentile owned company.

Another consideration is whether the shareholders themselves make day to day decisions. For that matter, do the shareholders restrict the decision making of the directors in any way, such as rights to trade company stock, unless it is for the benefit of the shareholders? Furthermore, it must be determined whether the shareholders can vote, and whether they could unite to take a vote on policy, without consulting the directors. Bank notes do not give exclusive rights to the citizen to sell government assets or goods. However, the shareholders' limitations on the directors' rights mean that the goods are not entirely out of their jurisdiction. The Poskim debate partial jurisdiction on Chometz, and most forbid owning such Chometz on Pesach.

In summary, both according to Torah law and according to secular law, the legal status of shareholders might not be sufficiently impersonal to absolve one from *Bal Yeira'eh*. Thus, certainly on Chometz that existed at the time the shares were purchased, and even on Chometz purchased subsequently on the shareholders behalf by the company, the Jew is liable. He must, therefore, sell these with his Chometz to a gentile before Pesach. The fact that this is not a legally binding sale in the eyes of the regulatory commissions, and that no taxes are paid, raises the question that this sale is not binding in *Dina Demalchusa*. In addition, some shares must be sold by a certain time to be considered sold, especially if the shares are in an overseas company, or in a stock market in another time zone, and a normal Chometz sale does not generally take overseas transactions into account. However, the common practice to sell Chometz in this way has been upheld by the Poskim, based on the way it is formulated. The main sale is on the title to the actual Chometz, and a deposit is paid. The Kinyan is thus affected at the time of sale, with the balance left to be determined at a later date. It is now firmly in the possession of the gentile for the duration of Pesach. Since those who raise the issues about the legality of the sale also reject the concept of ownership of a shareholder, it works either way. True, ownership according to secular law does not make one a partner in the goods, but the sale is also not effective in secular law. As much as the ownership is valid in Jewish law, the sale according to Jewish law will

absolve one from *Bal Yeira'eh*. [See Psachim 5b-6a, 30b-31b, Poskim. Tur Sh. Ar. a.c. 440-441, commentaries. Minchas Yitzchok II, I:1, VII:26. Moadim Uzmanim II, I:269, note I.]

If the stock was not sold to a gentile, since the Poskim debate whether the stock gives ownership to the Jew in the first place, many would maintain that the Jew was never in violation of *Bal Yeira'eh*. In addition, we have raised the possibility of employing the rules of *Berairah*. Furthermore, appreciation in the share value does not reflect actual profit from the sale of the Chometz. Dividends, which do reflect it, are calculated on a year-long basis, and one may assume, partly based on *Berairah*, that he is not gaining directly from the Chometz owned on Pesach. Therefore, this benefit would be permitted. On Pesach, one should avoid doing business with such shares. According to the Poskim who consider the shares a loan, one need not be concerned. However, since it is a question of a Scriptural prohibition, one should avoid it.

In conclusion, the shares should be sold with other Chometz. No shares may be sold or new shares purchased on Pesach. If shares were not sold before Pesach, however, it appears that one may benefit from them after Pesach.

2. A Business Receiving Chometz on Pesach

Halochoscope Parshas Shemini 5753 Vol I, No 12

QUESTION: Someone is receiving a delivery from a non-Jew which includes Chometz items. What should he do if they arrive on Pesach? May he pay for them? If he has already paid for them ahead of time, must he include them in his sale of Chometz to a gentile before Pesach, or can he assume that he did not really acquire them as his own with payment alone? If he accepted the delivery, may he benefit from these items after Pesach? And, finally, what does one do if a gift of Chometz is given to him or delivered to him on Pesach without his consent?

Issues to Discuss:

- (A) *Bal Yeira'eh, Bal Yimotzei* – the prohibition against having Chometz in one's possession on Pesach
- (B) *Chometz She'Avar Alav HaPesach* – Chometz which was in a Jew's possession during Pesach
- (C) Making an acquisition of Chometz on Pesach itself
- (D) *Kinyan Kesef* – Acquisition through payment. Can one make a *Kinyan Kesef* from a gentile?
- (E) *Kinyan Davar Shelo Ba La'olam* - acquiring something that is not yet in existence
- (F) Disposal of Chometz which is not one's own

(A) *Bal Yeira'eh, Bal Yimotzei*

Having Chometz in one's possession during Pesach is a violation of one of these two Scriptural commandments: *Bal Yeira'eh*, Chometz should not be seen in your possession, and *Bal Yimotzei* nor shall you conceal it in your possession nor even leave your own Chometz in the possession of a gentile. [Parshas Bo 12:19 See Ramban and Rambam Hil. Chometz 4:I. Magid Mishneh.]

This does not apply to the Chometz of a gentile left by the gentile on the property of a Jew. However, if the gentile left it in the care of Jew, meaning that the Jew is liable for theft or loss, there would be a violation of *Bal Yeira'eh*. [See Psachim 5b, Rashi, Tosafos, Rambam Hil. Chometz Umatza 4, 3, etc.]

(B) *Chometz She'Avar Alav HaPesach*

Scripturally all Chometz is permitted after Pesach regardless of whose possession it was in on Pesach. However, it is Rabbinically forbidden to benefit from any Chometz that was in the possession of a Jew during Pesach, even if he did not intentionally violate *Bal Yeira'eh* and even if it was beyond his control - *Oness*. The reason for this Rabbinic ordinance is to encourage people to destroy their Chometz and not to keep it until after Pesach when they will be allowed to use it. [See Psachim 29a. Rambam Hil. Chometz I,4. Mishneh Berurah 445, 9 and Biur Halacha.]

If, therefore, someone acquires Chometz during Pesach and keeps it in his possession for later use, one may *not* benefit from it after Pesach. Thus, as long as the acquisition is ruled valid in Jewish law, the goods delivered cannot be sold.

(C) Acquiring Chometz on Pesach, *Kinyan Chatzer*

If the Chometz being delivered has not been paid for prior to delivery, then the Chometz is transferred into the possession of the Jew on Pesach upon its delivery. In this case, the Jew will then be in violation of *Bal Yeira'eh*. In fact, the act of acquisition will be considered a violation of this Scriptural commandment.

There are various methods of acquiring something, called *Kinyanim*, which are all demonstrations of ownership. The *Kinyan* being used in our case is *Kinyan Chatzero* - his property completes the transaction. This means that anything placed in one's yard can become his without an active *Kinyan* such as picking it up. If he is present and standing on his property at the time of the delivery, then his *Chatzer*, his property, makes the *Kinyan* for him. [See Bava Metziah 12a.]

There is, however, a question whether it is at all possible to acquire Chometz on Pesach. It is forbidden to derive any benefit from Chometz, therefore one cannot take possession of it because it is impossible to say he owns it. Ownership, in Jewish law, must give the owner exclusive rights to use. If someone cannot use something, his ownership is meaningless. It should be impossible to violate *Bal Yeira'eh* even with one's own Chometz since its uselessness deems it not his own. Nonetheless the Torah considers it in one's possession since he did not destroy it. However, if it was not his when Pesach began, how can he gain possession of it on Pesach? [See Pesachim 6b-7a. Rambam Hil Chometz Umatzo I,3.]

One answer is to say that since the Torah considers previously owned Chometz as belonging to the person with regard to violating *Bal Yeira'eh*, simply being seen in his possession, so too one can also gain possession of it on Pesach with regard to *Bal Yeira'eh*. [See Noda Biyehuda Vol I O.C. No 19.] Another explanation is that when buying the Chometz on Pesach from a gentile, it does have a selling value in the hands of the gentile. It also has a value for the Jew since he can otherwise wait until after Pesach to make his purchase. Therefore, Chometz of a potential transaction still has value and purpose before a purchase is complete; only after a purchase does it become valueless. [See Or Sameach Hil. Chometz I, 3 and Marcheshes I, 2 quoting Ran, Avoda Zora.]

Accordingly, if the Chometz in question was purchased from a gentile, the transaction could be valid, and the purchaser in violation of *Bal Yeira'eh*. (If it is purchased from a Jew, the transaction might not be valid, freeing the purchaser of *Bal Yeira'eh*, but the Chometz is anyway forbidden because the seller violated *Bal Yeira'eh*.) However, in order for the transaction to be valid, the Jew must make a valid *Kinyan*. We have already discussed *Kinyan Chatzer*, meaning that accepting the delivery in question would be a sufficient *Kinyan*. There is a dispute whether or not a *Kinyan Chatzer* can take effect for Chometz on Pesach since clear consent might be necessary, and the purchaser would definitely not give consent where he will be unable to benefit. According to the lenient view, the only way one is able to effect a *Kinyan* on Chometz on Pesach is with an active *Kinyan*, or if with the passive *Kinyan Chatzer*, additionally with positive consent to take possession. [See Noda Biyehuda Vol I O.C. No 19 citing Masas Binyomin. See Shul. Aruch O.C. 448, 2. Taz and Magen Avrohom.]

The fact that the purchaser ordered these goods and does want to take delivery at some time does not amount to consent to make a *Kinyan* with his *Chatzer* specifically since he presumably would not want to acquire it on Pesach itself. However, if he exhibits care to have it placed in a particular section of his property, this shows his consent to accept the delivery and deems the *Kinyan Chatzer* valid. In this case, therefore, it is necessary to be very clear at the time of the delivery that he does not intend to accept delivery until after Pesach, and he should not pay or sign a receipt. Thus, if he states clearly, "I take no responsibility until..." he may even tell the deliverer where to place the Chometz. If the Chometz is still left on his property against his wishes, he is free of the problem of *Bal Yeira'eh* and may make a valid *Kinyan* after Pesach, and then make use of the Chometz. To prevent faulty conclusions from onlookers as well as guard himself against temptation, although it is technically considered the Chometz of a gentile since he made clear that he is not liable for it, he should nevertheless cover the Chometz or erect a partition to conceal it until Pesach is over. [See Shul. Aruch O.C. 448, 2 Mishneh Berurah 5-6, Shaar Hatziyun 7.]

(D) *Kinyan* from a Gentile

In Scriptural terms, one of the valid *Kinyanim* is *Kesef*— currency. Many authorities consider paper money as currency. However, for reasons beyond our discussion, the Rabbis invalidated *Kinyan Kesef* when both parties are Jewish. When a gentile is making the acquisition, *Kesef* is still a valid *Kinyan*; in fact, it might be the only valid *Kinyan*. If a Jew is acquiring something from a gentile, many authorities say that the *Kinyan* is completed with the payment or cash currency. [See Bechoros 13a-b. Poskim, and a summary in Biur Hagra Choshen Mishpat 194,11]

In our case, the purchaser had paid for the items in advance. If he had paid cash, then we could technically assume that they were his before delivery, and he was already in violation of *Bal Yeira'eh*. If, however, he did not pay cash, but by check or credit card, and certainly if he made a telephone order using a credit card number, there was no direct *Kinyan Kesef*. Nonetheless, any Kinyan that is recognized by the government as legally binding is also considered valid in Jewish law. Accordingly, regardless of his method of payment, he has made a legal Kinyan. Delaying the effect of the Kinyan to the time of delivery, either by making the original Kinyan at the purchase contingent on delivery or by stating that one does not wish to acquire it at the purchase, only at the time of delivery, might mean that a second Kinyan at delivery is necessary. [See Bava Basra 74a. See Kidushin 59-60 Kesubos 82a, 86b, etc.] However, since the purchase is being made from a gentile, it is possible that the *Kinyan Kesef* of the Jew is not complete until he makes a second Kinyan of his own and therefore he does not yet own the Chometz. This cannot be determined without a careful investigation into the nature of the transaction. [See Bava Basra 54b, Shul Aruch Choshen Mishpat 194:1-3. Sma, Shach, Biur Hagra, Nesivos, Mishneh Berurah 448,19 (end), Shaar Hatziyun 56.]

(E) *Davar Shelo Ba Laolam*

If a valid Kinyan took place at the time of purchase, and this was before Pesach, the Jew may sell the items with the rest of his Chometz to a gentile before Pesach as is customary. However, in Jewish law, one may not make a transaction on something that does not exist yet, but when it does come into existence it will belong to the buyer. Likewise, one cannot sell something which is not yet in one's possession even though he is sure that it will come into his possession later. This is because it is not possible to give full consent to a transaction unless one is clear about the article in question, and without consent the transaction is not valid. If, therefore, there was no valid Kinyan at the time of purchase the Jew does not own the Chometz until he accepts delivery, and cannot include it in the Chometz he sells to the gentile before he makes his own valid Kinyan. [See Bava Metzia 16a-b. Shulchan Aroch Choshen Mishpat 210. Mishneh Berurah as above.]

(F) Disposal of Chometz Which One Does Not Own

In the event that the Jew is unwilling to accept the delivery we have already detailed in section C what he must do. If Chometz is delivered in the mail as a free sample, one must be careful not to show that he is willing to accept delivery and follow the instructions in section C. If Chometz belonging to a gentile neighbor was mistakenly delivered to a Jew, the Jew should push it out of his property with a stick. He should not handle it directly because he might eat it unwittingly. [See Shul. Aroch. O.C. 446:3, 440:2 and commentaries.]

3. Chometz Inadvertently Purchased on Pesach

Halochoscope Parshas Vayikra 5754 Vol II No 9

QUESTION: If someone inadvertently bought a package of or containing Chometz on Pesach may he return it for a refund? If not, may the item be disposed of by flushing it down the toilet rather than by burning, and is a Brocha recited when doing so?

Issues to Consider:

- (A) The *Issur Hana'ah*, prohibition against benefiting from Chometz.
- (B) *Bal Yeira'eh*, the prohibition against possessing Chometz; *Tashbisu*, the Mitzvah to destroy it, and what constitutes *Biur*, destruction.
- (C) The Brocha *Al Biur Chometz* – when is it recited?

(A) The *Issur Hana'ah*, prohibition against benefiting from Chometz

There is a Scriptural negative commandment forbidding any benefiting from Chometz. This means that besides the prohibition against eating Chometz, one may not feed it to animals or profit from its sale. Averting a loss is not always considered actual benefit, halachically. Therefore, if one will not be better off by using *Issur Hana'ah*, but will lose by not using them, he might be permitted to use them. In our case, the question is: would returning a purchase to obtain a refund be considered benefit with regard to the *Issur Hana'ah* of Chometz, since the purchaser is really trying to avert a loss?

In fact, a Jew may not sell Chometz in his possession on Pesach anyway, since not only must he destroy it, but the Torah considers the Chometz outside his jurisdiction specifically because of the *Issur Hana'ah*. It is his as a liability in the violation of various commandments, not for its use or sale. Accordingly, one may not exchange Chometz for money, or anything else, on Pesach under any circumstances.

Money exchanged for Chometz on Pesach does not assume the properties of the *Issur Hana'ah*. However, the seller himself is still forbidden to benefit from it Rabbinically. Since it is not a Scriptural law, when a great loss would otherwise be incurred, the money is permitted. Similarly, if the Chometz was sold at a time when the *Issur Hana'ah* itself was not Scriptural but Rabbinical, such as right before midday on Erev Pesach, the money may be benefited from to avoid a major loss. Furthermore, if the money was mixed with other money, all the money is *Safek Issur Hana'ah Miderabanan*, a doubtful Rabbinical prohibition, which is permissible. If it happened to a Scriptural prohibition, the mixture would be forbidden, or in some cases, the equivalent value of its benefit must be destroyed before the rest may be used.

Therefore, the purchaser in our case may not claim a refund. However, if he has done so already, and the money is already mixed up in his wallet, he may use it. If he can recognize which money he received in exchange for his Chometz, however, he himself may not use it but others may. (See Pesachim e.g. 6b-7a, 28-29 etc. Chulin 4b. Shulchan Aruch Orach Chaim 450 443:1-3, commentaries, Shulchan Aruch Harav. Maadanei Shmuel II3:24 etc.)

Depending on the circumstances, it is possible that the original transaction was a *Mekach Ta'us*, mistaken purchase, which is not binding on the purchaser. If this is the case, the buyer never acquired it and is entitled to a refund. The details of *Mekach Ta'us* are complex and a Rav should be asked to determine if this purchase is in that category.

Generally, if the seller is Jewish, was aware that the Chometz was forbidden, and knew that the buyer was unaware, he is obligated to refund the money. Furthermore, a Jewish seller has no jurisdiction over the Chometz to sell it, which can also invalidate the transaction since the buyer probably had no intention of acquiring it by any other *Kinyan*, form of acquisition. In any event, the buyer should destroy the Chometz himself; and furthermore, halachically, this should not jeopardize his chances of obtaining a refund. If the seller is a gentile, who had full jurisdiction to sell, the secular laws apply, which means that the Chometz is now in the possession of the Jew, and he may not exchange it for money. [See Baba Kama II3a. Rambam Hil. Chometz Umatza I:3 commentaries Or Same'ach. Sh. Ar. Choshen Mishpat 234:4,369:II, commentaries.]

(B) *Bal Yeira'eh, Tashbisu, Biur*

One may not have Chometz on their property during Pesach, a Scriptural commandment. Therefore, in our case, if the purchaser realizes before entering his home that he bought Chometz he should not even take it into the house.

The buyer is also obligated to destroy the Chometz, Scripturally, even if it is not his own, according to some authorities. Others say that he is not obligated himself, but should do it to save the owner from violating a commandment. If he already brought it into the house he should immediately remove it from his property and destroy it.

The method of *Biur*, destroying, is the subject of Talmudic debate. According to one opinion the only acceptable method is burning it. This poses a problem if there is no fire or fuel available. If one does not destroy it, besides neglecting the Mitzvah of *Tashbisu*, he is in violation of *Bal Yeira'eh*. The consensus is that to avoid *Bal Yeira'eh*, any method of destroying is acceptable, but that the specific Mitzvah of *Tashbisu* is only fulfilled by burning. However, there are times when other methods of destroying are also acceptable.

One opinion is that until midday Erev Pesach only burning is acceptable, but after that all other methods are also acceptable. The majority view, however, is the exact opposite, that until Erev Pesach any method is acceptable, but on Pesach it must be burned. A second opinion is that all methods of destroying are always acceptable, including crumbling it and throwing it to the wind, or throwing it into a river. In practice, we rely on the Poskim who follow the second opinion, but try to satisfy both by burning whenever possible. This is especially the case when destroying the Chometz on Pesach, in accordance with the opinion that only burning is acceptable during this time. Nonetheless, since it is usually quicker and easier to flush Chometz down the toilet, it is often the preferred method today; this quickly removes it from one's possession within moments of its discovery.

Chometz found on YomTov is Muktzah, because it has no use, and may not be moved (it should be covered to prevent its being eaten). If, however, one has the Chometz in his hands, for example, he found it inside a book he

was holding, he need not drop it but, as with all Muktzah, may hold it until he finds somewhere suitable to put it down deliberately. Although burning it on YomTov is forbidden, as it constitutes Melacha not done for the needs of YomTov, it may, and should, be flushed down the toilet.

The Talmud requires crumbling the Chometz before throwing it in a river in the event that a boat will pass by and someone will see it and come to eat it. This does not apply to the sewer, since it will be rendered inedible as soon as it goes in. [See Pesachim 12b, 27b-28a, commentaries Poskim Sh. Ar. O.C. 445:1, Taz, Magen Avraham, Mishneh Berurah etc. 446 Biur Halacha.]

(C) The Brocha

Bedikah, searching for the Chometz, *Biur*, destroying it, and *Bitul*, nullifying it are all parts of the Mitzvah to ensure that one will not have Chometz in his possession on Pesach. The Brocha is therefore recited at the beginning of performance of this Mitzvah the night before Pesach, when we begin searching. When destroying Chometz found on Pesach one is not obligated to repeat the Brocha, since the Chometz being destroyed was included in the *Bitul* portion of the Mitzvah for which he already said a Brocha. Some Poskim rule that if there is more than an olive size piece of Chometz there is a new Rabbinical obligation to destroy it, which requires a new Brocha. If one acquired new Chometz after his initial *Bitul* on Erev Pesach, as in our case, he must recite a Brocha when destroying it. [See Pesachim 6a, 7a-b. Sh. Ar. O.C. 432:1, 435, Magen Avraham 2, Baer Hetev 3, Mishneh Berurah 5, 446:1 Commentaries. Kitzur Sh. Ar. III:17.] [**Note:** Although our modern bathrooms are considered *Batei Kisaos Parsiyim*, clean enough to recite Brochos, by contemporary Poskim, it is preferable to say the Brocha outside the bathroom whenever possible.]

In conclusion: If the seller is Jewish, a Rav should be consulted to determine whether the sale was invalid and the buyer is entitled to a refund. If the seller is a gentile, the buyer should not request a refund. In any event it should be destroyed; it may be flushed down the toilet, and a Brocha should be recited.

4. Long-Lasting Fish Food on Pesach

Halochoscope Parshas Ki Sisa / Purim 5754 Vol II No 6

QUESTION: Somebody will be spending the entire week of Pesach out of town. He has a fish tank in his home. The fish must be fed regularly. Normally he would be able to feed them with food that is not Chometz during Pesach. However, since he will not be home he must use long-lasting fish-food, all of which contain Chometz. What are his options?

Issues to Discuss:

- (A) The prohibitions of Chometz and their *Shiurim*, minimum measurements
- (B) Permissibility of selling one's livestock to a gentile for Pesach and allowing him to feed it Chometz
- (C) Chometz of a gentile on the property of a Jew

(A) The Shiurim of Chometz

There are two Scriptural commandments forbidding the presence of Chometz on one's property: *Bal Yeira'eh*, it should not be seen, and *Bal Yimatzei*, it should not be discovered. In addition one may not benefit from Chometz, *Issur Hana'ah*. Therefore, one may not feed Chometz to a pet or animals in his possession, or benefit by knowing they are being fed Chometz even off his premises.

Although almost all substances forbidden in the Torah have a Shiur, a minimum, they are often still forbidden in *Chatzi Shiur*, smaller amounts, but do not carry a penalty for violating the commandment. However, to qualify for a *Chatzi Shiur* prohibition, the smaller amount must be fit to be combined with more of itself to complete the Shiur and thereby bring about the violation of the commandment in full. This limits the application of Chatzi Shiur to situations where such combining is possible. For example, forbidden foods have a minimum of *Kezayis*, an olive-size, to be liable for penalty. If one eats a half-*Kezayis*, one is in violation of Chatzi Shiur because if he immediately ate another half *Kezayis* it would not be considered a separate act but would combine with his first act, as eating can be done over a period of time yet be considered one act.

However, *Hotza'ah*, carrying in public domain, on Shabbos has a minimum of four Amos, cubits, meaning the act of picking something up at the beginning of the four Amos, transporting it across them, and putting it down. If one picked up the article and carried it two Amos, then put it down and repeated this for the remaining two Amos,

his second act is not combined with his first act, but is a separate act. This is not forbidden Scripturally. In many cases, such as *Hotza'ah*, there is a Rabbinical ordinance forbidding any act done in a smaller Shiur that would require a full Shiur Scripturally.

Eating Chometz on Pesach is forbidden Scripturally, even in *Chatzi Shiur* amounts, unless it is neutralized in a mixture of permissible foods. Rabbinically however, even when it is only present in small amounts, it cannot be neutralized on Pesach, meaning that if it was neutralized before Pesach it is permissible, but if the mixture was made on Pesach it is forbidden.

Bal Yeria'eh also has a minimum Shiur of Kezayis. Does the prohibition of *Chatzi Shiur* apply to *Bal Yeria'eh*? On the one hand, if he came into possession of another *Chatzi Shiur*, they would combine to make a Shiur. On the other hand, he would only be in violation from the time the second piece came into his domain. If he would remove the first piece before acquiring the second, he would not be in violation. Therefore, his present "act" of *Bal Yeria'eh* on the first half-Shiur is not going to combine with the second act. There is, therefore, a debate among the Poskim whether the rule of *Chatzi Shiur* applies to *Bal Yeria'eh*. There is an opinion that the positive commandment – *Tashbisu*, to destroy Chometz, applies to all Chometz forbidden to eat, and as mentioned, *Chatzi Shiur* is forbidden to eat. Therefore, having *Chatzi Shiur* of Chometz in one's possession amounts to passive violation of *Tashbisu*.

Benefit can be measured in several ways. For example, it can be viewed in monetary terms or in terms of physical pleasure. Sometimes it is given a Shiur of *Perutah*, a small coin whose value is the minimum normally worth bothering about. Other times it is not given a Shiur but forbidden if it can be shown to give any pleasure, including a fragrance. With regard to Chometz, if its presence makes a difference it is forbidden; for example using an inedible product containing a small amount of Chometz-based alcohol is forbidden Scripturally if one benefits from the Chometz even though it is of insignificant monetary value. One may not even feed an ownerless animal Chometz belonging to someone else on Pesach because of the pleasure derived from seeing the animal fed.

From this discussion, it is clear that one may not use Chometz pet-food or have it in one's possession even in small amounts. [See Beitza 2a. Yuma 74a. Shabbos 74a, Rashi, 102a 105a, etc., Poskim. Chacham Tzvi 85. Shaagas Arye 81. Pri Megadim: Psicha Koleles, Madrega 1:5, Psicha-Hil. Shabbos, Hil. Pesach 1:1:8, 2:3:4-7, Hil Basar Bechalav. Tur, Shulchan Aruch Orach Chaim 442:7-8, Magen Avraham 10-12, Mishna Berura 1, 33. Sh. Ar. Harav 446: Kuntres Achron, I.]

(B) Selling One's Livestock

Since animals should not be left hungry and feeding them non-Chometz food is expensive and can make them sick, the suggestion was made that they be sold to a gentile for the duration of Pesach. The gentile will feed them as his own and the Jew will buy them back after Pesach. Aside from the general rules with regard to selling certain types of animals to gentiles, there are some details to be discussed regarding Pesach.

One may not give one's animals to a gentile with the intention of having them fed Chometz by the gentile because he is still benefiting from Chometz, even though it is not his own. He is comforted knowing his animal will be fed. However, according to some Poskim, one may leave animals with a gentile for the purpose of feeding for a period of time before Pesach without expressly telling him not to feed them when Pesach arrives, and can do so even with a financial arrangement. The reason is that when the gentile chooses to feed them Chometz, he is doing it for his own convenience – he would anyway have to feed them something else. However, other Poskim consider this benefit as well.

Selling the animal entirely can be a solution to this problem; the animal is no longer the property of a Jew so he is not benefiting from the Chometz being fed to it. According to some authorities, however, selling raises the concern of *Ha'arama*, a seemingly obvious evasion of Halacha. If the animal is sold together with its feed to the same gentile it is obvious that the Jew is evading the benefit-prohibition by using a Halachic loophole, especially since following Pesach, the animal and food are returned to the Jew. Therefore, in order to use this method of ensuring and animal is properly fed, it is customary to make the procedure less obvious. The food is first sold to one gentile, and the animal is sold to a second gentile. The first gentile is instructed to give the feed to the second one on credit. If possible the animal should be taken by the gentile to his property. If this is not possible, a section of the Jew's property where the animals will be kept and fed (e.g. a barn) should be sold to the gentile. The procedure for Kinyan, transfer of possession is that the gentile gives the Jew a coin worth at least a *Peruta*, which need not be the full value of the animal, stipulating that this should transfer the animal into the gentile's possession, and that the balance will

be paid later. The gentile should also take possession by moving the animal onto his property. If the animal will be kept on a section of the Jew's property, the coin should also be used to acquire that area, and the animal should be moved there. After Pesach, the animal may be returned instead of the balance. [See Pesachim 21a-b, 29, etc. Tur, Bais Yosef, Sh. Ar. O.C. 443:1, 448:6-7, Shaaray Teshuva, Mishna etc. 450. Y.D. 320:6, commentaries]

(C) Chometz of a Gentile on a Jew's Property

A Jew is not in violation of *Bal Yeira'eh* when a gentile's Chometz is left on his property, provided the Jew is not liable for its loss or damage. However, since he may be tempted to eat or to use it, it should be concealed from his sight. In addition it is customary to rent or sell the area on which the Chometz is placed to the gentile as a part of the Kinyan process. For example, if one sells his Chometz and leaves it all in a corner of his basement, he should sell that corner and conceal the Chometz. To conceal it, a forty-inch partition should be erected all around the Chometz. [See Pesachim 5b-6a. Sh. Ar. O. C. 440:1-2, commentaries.]

In our case, a fish tank cannot be moved to the gentile's property, so it is sold to him with its immediate location, and a partition is erected all around it. The food was already placed in the tank by the owner; it was thus not practical to sell it to a second gentile. Therefore, in this case, the food was sold with the fish and the tank to the same gentile, relying on those Poskim who permit this.

5. Selling Chometz Online

Halochoscope Parshas Tzav/Shabbos HaGadol 5769 Vol. XII No. 31

QUESTION: Can one authorize a Rav for the sale of his Chometz Online?

Issues to Discuss:

- A) Possession of Chometz on Pesach; Sale of Chometz
- B) The *Harsha'ah*, authorization of a Rav to sell one's Chometz
- C) The Halachic Status of Transactions Online

A) Sale of Chometz

Possession of Chometz during Pesach involves two Scriptural Mitzvos: *Bal Yeira'eh*, it may not be seen, and *Bal Yimatzei*, it may not be found. One may not conceal Chometz on his property nor leave it in the care of a gentile. This does not apply to the Chometz of a gentile left on the property of a Jew. If the Jew is a guardian, liable for theft or loss, there is a violation of *Bal Yeira'eh*. Possessing Chometz is also an automatic violation of the positive Mitzvah to destroy one's Chometz, or *Tashbisu*. Further, benefiting from Chometz in a Jew's possession during Pesach is forbidden as a Rabbinically imposed penalty.

Consequently, one must destroy all Chometz before Pesach or remove it from his possession by giving it away, selling it or declaring it *hefker*, disowning it. According to the Talmudic view that we follow, it is Scripturally forbidden to benefit from Chometz on Pesach, which restricts one from selling it. Thus, the sale or other transaction to remove the Chometz must take effect before the time that it is forbidden, one seasonal hour before noon on Erev Pesach. Destroying the Chometz is the most definitive way to dispose of it, in addition to fulfilling *Tashbisu*, although some poskim maintain that *Bitul*, nullifying it, and even making it *hefker*, are also forms of *Tashbisu*. [Some even say *Bitul* takes effect through the mechanism of *hefker*.]

A merchant with large amounts of Chometz will not want to destroy it. He would not want to declare it *hefker*. If he did *Bitul*, the effectiveness of his declaration would be suspect; could he really be sincere about considering his inventory "nullified like the dust of the earth"? Furthermore, if one did make his Chometz *hefker* or *Batel*, benefiting from it after Pesach would be forbidden. This additional measure is imposed Rabbinically to prevent abuse of the *Bitul* concept, specifically in situations whereby people might insincerely make a statement of *Bitul* in order to keep Chometz in their possession during Pesach.

As a solution to this problem, the merchant may sell his Chometz to a gentile, who may possess it on Pesach. The Chometz remains on the property of the Jew, but it is transferred to the possession of the gentile. The sources of this practice are two passages in the Talmud. In the first, a Jew is traveling on a ship, presumably accompanying his merchandise, though this is not self evident. He is in no position to sell it all regularly. He cannot burn his personal Chometz, especially if he will need it later in his voyage. He may sell his Chometz to a gentile accompanying him, or give it as a gift, and buy it back after Pesach. However, he should not indicate that he intends

to buy it back. This might be self-evident, but it should not be stated as though it were a condition of the sale, as doing so would make the sale look insincere. In the second case, a Jew is already selling Chometz to a gentile customer. He may ask the customer to buy more Chometz than necessary, in order for the Jew to buy it back from him after Pesach. However, again, he may not make the sale conditional on this. Since the Chometz is not delivered, the transaction might also have the appearance of a ritual formality. Nonetheless, it is relied on as a true solution, especially for large amounts, such as the inventory of a merchant.

This is useful nowadays, when food is held in storage for long periods. It is also helpful when disposal in other ways is difficult. The sale stipulates that the Jew does not remain guardian of the Chometz of the gentile, and the gentile initiates payment with a nominal deposit, but the essence of the sale is the transfer of ownership. [See Psachim 4b-5b, 11b-13b, 21a-b, 27b-30a, Tosefta 2:6-7, Poskim. Tur Sh Ar OC 441:4, 443, 445, 448: esp. 5, 7, commentaries.]

B) *Harsha'ah*

To enact a sale, a proper form of Kinyan, act of halachic transaction, must take place. The seller and buyer are required to perform this Kinyan, in addition to the consent of both parties. The location of the Chometz is sold or rented to the gentile. He is allowed access to his Chometz during Pesach. Various forms of Kinyan are made, to ensure that the possession of Chometz is properly transferred, and a proper halachic transaction must be drawn up. It is important that the seller is aware of the halachic process. It is usually left to the town's Bais Din, or to a Rav, who acts on behalf of others who designate him. Delegating another to effect a change in halachic status is known as *Shlichus*, agency. An agent is appointed simply, by way of a verbal designation.

Secular transfer of ownership involves the owner relinquishing his claim so that the new owner can take possession. A Jewish Kinyan requires the active participation of the first owner as well. The new owner's part can be replaced by a *Shliach*. By performing his part in the Kinyan, the agent acquires the item as the 'hands' of the owner. The first owner, however, must also have the item in his hands in order to give it over to the second party.

A simple *Shliach* has the authority to perform an act, but is unable to negotiate details of a transaction regarding someone else's property unless he is given at least nominal rights to the property itself. The sale of Chometz in particular involves possible negotiations on a price. At the time of sale, an approximate value is given. In the event that the gentile will indeed choose to accept delivery, the full price will need to be decided by the seller. This authority requires more than simple *Shlichus* to perform an act. In the case of a Chometz sale, the Rav or Bais Din will also be drawing up a proper contract. In these situations, an agent might agree to something that the seller would not agree to himself.

To authorize an agent for transactions including negotiation, one prepares a *Harsha'ah*, translated loosely as a limited power of attorney. The seller empowers the Rav to prepare his contract for the sale, and do whatever it takes to complete it. He gives permission and full power to the Rav, and agrees to abide by his decision. This means that he will not be able to say later that he did not agree to something, even if it ends up to be detrimental in his personal situation. The easiest way to do this is for the Rav to prepare a communal *Harsha'ah* with the details specified, giving him full authority. Each signatory agrees to all the conditions.

Private contracts of *Harsha'ah* can also be prepared by sellers. They should detail the items sold and their location. An approximate value is included, so the gentile will have this available on his documents from the transaction. The Rav will also need to prepare a separate sale contract. In it he will include whatever he has been authorized to sell in the accompanying *Harsha'ah*.

An additional reason is given for this *Harsha'ah*. Since the gentile will not be paying in full and the Jew will still have the Chometz in his possession, there is some concern that the sale will not have enough validity to save the Jew from violating ownership of part of the Chometz. Therefore, by transferring the right to sell the Chometz to a different Jew, the first Jew is relieved of his violation. The second Jew never really owned the Chometz, and is not held liable for any amount above the value of the initial partial payment.

To validate the *Harsha'ah* contract, a *Kinyan Sudar* is made. The Rav gives the seller a utensil to acquire, which is then returned to the Rav. This is not the sale of the Chometz, but an act to confirm resolve of the parties to go through with the transaction. Since an act is performed, it is clear that their agreement was not just in word. This is known as *Gemiras Da'as*. In actuality, all Kinyanim amount to *Gemiras Da'as*, confirmation of an agreement to transfer ownership from one party to another. The optimum form of such *Gemiras Da'as* is the *Kinyan Sudar*, thus it is utilized for situations where a commitment needs to be reinforced. The Kinyan binds the Rav to go through with

the sale, and absolves the seller of his liability for the Chometz remaining in his possession. Even without this extra Kinyan, however, a *Harsha'ah* will still work.

If one is guardian of another Jew's Chometz, and the owner left no instructions about *Biur*, he may destroy it. Since *Biur* is a Mitzvah, we assume that the owner wants to fulfill it, and does not want to violate the prohibitions against owning the Chometz on Pesach. If its value is such that the owner would rather sell it, the guardian may also assume this agency himself.

The poskim discuss the ability of the Bais Din to sell the Chometz of community members who are ignorant of the procedure to sell. This is, of course, relied on *Bidi'aved*, after the fact, in the hope that the owner would perform his own *Bitul*, state agreement to the conditions of his sale and not wish to violate its prohibitions. Based on the principle of *Zachin le'adam shelo befanav*, one may do something to the advantage and benefit of his fellow without his knowledge. Thus, if one cannot actually sign a *Harsha'ah* and make a Kinyan, contemporary poskim allow the seller to rely on authorizing the Rav by phone. However, many insist that a signed *Harsha'ah* should also be delivered to the Rav before the time of sale, even in the mail. This way, the gentile can have full *Gemiras Da'as*, based on a printed document. At the very least, prior to receiving the printed document, the Rav can stipulate at the sale that any documents received later in the morning before the deadline for selling will be included.

Some Rabbanim also state in their sale that they include "anyone who could possibly be included according to the minimal standards," in order to save this non-participating group from violating, at least by the most minimal standards. A seller, however, should not rely on this to the best of his ability. He must make every effort to ensure full *Gemiras Da'as* from both his own perspective and that of the gentile. [See Baba Kama 70a, Poskim. Tur, Sh Ar OC 448, CM I22-3 etc., commentaries. S.A. Harav, Mechiras Chometz. R Eider XI:A8:I0, notes.]

C) Transactions Online

With the popularity of Online communication, it has become common to substitute many commercial transactions with Online 'clicks'. This is really an interactive answering machine. With a click, we communicate a message to another party. Therefore, we ask if one can delegate a Rav with a message?

The Online form has the advantage of a printable record. Apart from the lack of direct Kinyan, there is no actual document. However, the transaction could have the secular validity of a documented contract. Does the binding nature of the secular agreement work halachically? A true *Harsha'ah* requires witnesses. Our modern custom is to substitute witnesses with the signature of the seller. Online, some use a digital signature, which is ideally forge-proof, similar to a password. The Talmud does discuss a symbol instead of a signature, but in association with a written document. If a printout is made of the Online form, however, one can argue that this is a written record.

A document can be made either for recording purposes or as a valid contract. Although a printout is an acceptable record, it is not a properly prepared contract. A digital signature resembles the halachic case where one enlists an agent to sign in place of him. In most such instances, however, a statement is made before witnesses, which is not the case here. Accordingly, in our case, even if the seller does provide a digital signature and the Rav prints out the document, all he has is evidence of the 'message'. Nonetheless, the proof is acceptable, provided it is considered so in secular law. If identity theft becomes such that such proof is questioned, the signature loses its status halachically as well.

The *Harsha'ah* for *Mechiras Chometz* is a true, valid and binding contract. If a Kinyan is made, the written *Harsha'ah* can be used as a proof. Thus, if the seller makes a *Kinyan sudar* later with the Rav, the Online authorization will serve as proof and as a record to be passed to the gentile to show commitment.

The only other rationale to rely on the Online option is *Zachin le'adam shelo befanav*. Since the seller expresses a wish to sell as evidenced by his authorization, the Rav can sell for him. There is a value to the Online commitment. If a contract made Online can be enforced by secular law even if the signatory maintains that the agent acted against his interests, the contract is effectively a *Harsha'ah*. Thus, if appropriate language can be used to enforce this, the agreement will be valid. [See Gitin 36a 65b-etc. 87b Baba Basra 161b, Poskim. Tur Sh Ar EH 130- 141- CM I22:4 (SMA 7 Shach 12), commentaries. Avnei Nezer OC 338 347. Sdei Chemed, Maareches Chometz Umatza 9:2.]

In conclusion, if an in-person Kinyan is not possible, and the language of the online contract is totally binding, one can rely on it as a *Bidi'aved* for *Mechiras Chometz*.

III. ACHILAH & MINHAGIM

1. Ashes of Chometz in a Self-Clean Oven
2. *Chumra*: The Minhag of Not Eating Gebrochtz
3. Taanit Bechorot or Siyum for a Minor
4. Using Wine from the Kos Shel Eliyahu
5. Sheva Brachos on Pesach

I. Ashes of Chometz in a Self Clean Oven

Halochoscope Parshas Ki Sisa - Parah 5769 Vol. XII No. 28

QUESTION: A self-cleaning oven was kashered for Pesach by running it through the cycle. Ashes, or a powdery residue, were left behind. The oven was then used for Pesach. Assuming that they are from Chometz material, is there an issue with these ashes?

Issues to Discuss:

- A) Kashering an oven for Pesach
- B) The *Issurim*, prohibitions of Chometz, particularly *Hana'ah*, benefit
- C) The Status of Ashes of Chometz
- D) When something is baked using a forbidden and a permissible fuel together

A) Kashering an Oven for Pesach

When food is cooked in a utensil, particularly metal and earthenware, flavor is absorbed into the walls of the utensil. This is called *Belia*, swallowing. This extract will be imparted to the next food cooked in the same utensil. If a food is forbidden, its flavor extract is also forbidden, known as *Taam Keikar*. Thus, if the first food was forbidden, and the second food was permitted, the *Taam* of the first food forbids the second food. If the extract is undetectable, the second food is not forbidden. We assume that one part in sixty is neutralized. It is assumed that all the *Taam* available is absorbed, and that the walls of the utensil can be saturated with it. Thus, under normal circumstances, to neutralize forbidden *Taam*, one must have sixty times the volume of the walls in the second batch of food. Generally, most medium to heavy utensils do not have this capacity.

The utensil may not be used for permissible food until it is cleansed. To cleanse all traces of forbidden flavor, one must purge it in the same way it was absorbed, known as *kebol'o kach polto*. This is determined by the normal use of the utensil. A utensil used cold will absorb a *Taam* if the forbidden food was left to soak in the utensil for twenty four hours. To purge this *Taam*, the utensil is therefore soaked in cold water for this same time period, and the process is repeated three times. A utensil used to cook with a liquid medium absorbs *Taam* through the heated liquid, and would be Kashered by *Hag'alah*, boiling the flavor out of the walls. A utensil cooked or baked with no liquid medium must be heated directly.

There are two forms of direct heating, or *Libun*: *Libun Chamur*, strong heat whereby that the surface of the utensil becomes red hot and appears ready to peel off; and *Libun Kal*, moderate heating, the point at which its surface would cause straw (or tissue paper) to char. These are not considered purging methods, but rather, methods of destroying *Taam*, ie, the *Taam* is not removed but destroyed in place. In a case where the utensil was in direct contact with both the food and the fire at the time of absorption, *Libun Chamur* is required. Where the utensil had direct contact with the food, but indirect contact with the fire, *Libun Kal* is sufficient.

When *Hag'alah* (boiling) is done, the surface of the utensil must be clean, so the water penetrates the walls without the risk of reabsorbing new flavor from residue on them. For *Libun*, the fire will burn the residue along with the flavor. For *Libun Kal*, however, unless one is able to apply the heat directly to where the residue is, it is advisable to clean the surface well. In most cases, we expect that residue would be burned up like the flavor, but there is always a chance that residue will survive even in cases where flavor is destroyed.

Usually, foods are cooked in ovens are placed in pans, with or without a liquid. In former times, bread was baked directly on the surface of the oven. Items cooked in the oven with no liquid medium absorbed direct flavor. Nowadays, people do not bake directly on its surface. [Modern ovens, however, by contrast, are in direct contact with the fire.]

For cleaning modern ovens, the poskim debate whether *Libun Chamur* is required, or whether *Libun Kal* is sufficient. In addition, the method used in place of *Libun Kal*, heating the oven to the highest temperature, might not

provide true *Libun Kal*. Thus, some require torching the surfaces of the oven. Others maintain that the oven never absorbs flavor at a temperature higher than the highest setting, and rarely absorbs it directly. Spills are not considered to be normal usage, although steam absorbed in the roof of the oven is a form of *Taam* carried as particles in a liquid. However, it is determined that fumes, known as *Raicha*, do not pose a long term *Taam* concern. Therefore, in practice, heating it at the highest setting for a reasonably long time suffices as *Libun Kal*.

It is generally accepted that a self-cleaning oven's cleaning cycle counts as *Libun Chamur*. Some maintain that the interior oven door surface does not reach the required heat for this, and on Pesach, it should be covered with foil, if one wants to practice stringency to kasher with *Libun Chamur*. In any case, it is more than sufficient for *Libun Kal*.

General kashering should be done after the utensil has not been used hot for twenty four hours. At that point, even if flavor remains in its walls, it has become too old to impart "beneficial" flavor if reabsorbed. Thus, even if the water used for kashering will absorb and thereby impart it back to the utensil, the flavor will not be strong enough to affect the utensil a second time. One also tries to use an amount of water so large that any flavor will be neutralized by its small proportion, thus the common procedure is to dip the utensil for several seconds into a large pot of scalding water.

Kashering for Pesach through *Hag'alah* should be done before the time that Chometz becomes forbidden on Erev Pesach. After this time passes, even tiny traces of Chometz flavor can forbid a mixture, as well as a large amount of kosher for Pesach food (and also the kashering water). In addition, on Pesach, even old flavor is considered fresh. For *Libun*, however, and particularly *Libun Chamur*, neither of these considerations apply. There is no concern that the flavor being destroyed will be imparted back into the walls of the utensil. [See Pesachim 30a-b 44 Avoda Zara 66b 75b-76b Zevachim 97a Chulin 97-99, Poskim. Tur Sh Ar OC 121[:4-9, 13 etc.] 122:I, commentaries. Hilchos pesach (R. Eider) XVI:E.]

B) Prohibitions of Chometz; *Hana'ah*

The Issurim of Chometz on Pesach include: the prohibitions against eating, benefiting from and possessing it, and the positive Mitzvah to destroy it. For practical purposes, any food with Chometz content is forbidden. If there is a possibility that Chometz content was introduced as an ingredient to a mixture before the time of the prohibition, it may be neutralized, but if introduced on Pesach, it may not be neutralized. If the Chometz is unfit to eat, either by humans or even by animals, there are varying levels of restriction, depending on how unfit it is, and on when the food became unfit.

Possessing Chometz is a violation of *Bal Yeira'eh*, Chometz shall not be seen, and *Bal Yimatzei*, it shall not be found. The former forbids having Chometz on one's property that can be seen. The latter forbids owning Chometz that cannot be seen, such as Chometz deposited with another person, or hidden away in one's possession. If a gentile's Chometz is given to a Jew for safekeeping, the factors that affect it are liabilities for loss or damages. The same applies to Chometz given to a gentile by a Jew, perhaps as a security for a loan. The terms of the security and of default are also taken into account. Similar issues arise with regard to stock, whether in a private or a public company that has Chometz inventory.

Destroying Chometz applies primarily before Pesach. If Chometz is found on Pesach, it must also be destroyed. On Yomtov one may not burn it. Therefore, it is *Muktzeh*, since it has no useful purpose. It may not be moved, such as to flush it down the toilet. Rather, something heavy is cupped over it, and on Chol Hamoed it is taken out to be destroyed.

Benefiting from Chometz is forbidden in many forms. Direct benefit includes use as a salve, such as an oatmeal patch. It also includes using Chometz as fuel to cook with, if it is burned on Pesach. In a mixture, Chometz can be made into starch or glue. Inedible items could include inedible Chometz itself, inedible Chometz in a mixture, or edible Chometz in an inedible mixture. Indirect benefit includes benefiting from feeding the Chometz to animals. This includes animals belonging to the Jew, or even other animals.

One benefits from seeing the animal fed. It also includes benefit from the sale of Chometz. The money exchanged for items forbidden to benefit from, in violation of the prohibition, is forbidden in turn. If this money is mixed with permissible money, such that it can not be traced, the owner may use that money. [See Psachim e.g., 6b-7a 28-29, Poskim. Tur Sh Ar OC 443:1-3 450, commentaries.]

C) Ashes of Chometz

Burnt ashes, even of Chometz, are not considered edible. Nevertheless, we question whether its ashes are still forbidden, and if mixed into other food in the oven. Even if they cannot be considered food, they may still be considered beneficial to the mixture. In general ashes are not considered beneficial in food. In non-food mixtures, however, they are used frequently, as in ink and dyes, to scrub utensils, and to scrub the skin. They are used in shampoos, and can be used as part of a fertilizer, or in various processes, such as metal refining. They are also useful to cover spills, and halachically are used for covering the blood of a slaughtered bird. Thus, they are certainly not useless.

There are two types of *Issurei Hana'ah*, items from which it is forbidden to benefit. One type is required by the Torah to be burned, and their ashes are permissible, because the Mitzvah of burning removes the *Issur* from them. The second type is not required to be burned, but must be buried, although some maintain that this is a Rabbinical rather than Scriptural requirement. Either way, if they are burned but not buried, or buried and dug up later, one cannot say that their Mitzvah has been performed. Therefore, benefiting from the ashes is forbidden. Chometz is the subject of Talmudic debate.

One view is that for proper destruction, Chometz must really be burned. One can destroy it other ways to get it out of the way, but they would not constitute fulfillment of its Mitzvah. Accordingly, the ashes would be permitted. The other view, however, maintains that it need not be burned, which would consider the ashes forbidden. We follow this view, and prohibit the ashes for any type of beneficial mixture or use, except to cover the blood of a slaughtered bird, since this is a Mitzvah and is not a benefit.

However, all this only applies to ashes from Chometz burned after the *Issur Hana'ah* had already taken effect on it. Though one does not violate possessing Chometz, one may not benefit from the ashes. If one burned the Chometz to ashes before the required time, however, the ashes pose no problem. They are not considered ashes of an item from which benefit is prohibited. Therefore, if one Kasher'd his self cleaning oven before the Zman, the ashes pose no problem. [See Pesachim 21a, 26b-27b, Temurah 33b-34a, Poskim. Tur Sh Ar OC 442:9, 445:1-2, commentaries.]

D) Baking using a Combination of Permissible and Forbidden Fuels

A problem arises if the oven was put through the self clean cycle after the time on Erev Pesach when Chometz is already forbidden. The ash-residue should have been removed before cooking fresh food in the oven. Even if the ash was partly non-Chometz, the Chometz component is never neutralized by being mixed. If it was left in the oven and food was baked, a serious issue arises. In former times, any kind of solid fuel that produced heat could be used. As a result, food cooked or baked in the oven benefited from the heat produced by any other items burned in the oven. If these included Chometz, the food would be forbidden, having benefited from the Chometz. Even if the coals are removed, food can be cooked in these ovens by the remaining heat, and even the ashes retained heat.

If the oven cools down, and then is reheated with ashes left inside, the Talmud concludes that in this case, the food is forbidden on Pesach. One can argue that the benefit is not derived solely from Chometz. In such cases, there is Talmudic debate on whether to forbid an item. However, in a situation where the contribution from the forbidden part is obvious, the food is forbidden.

Modern ovens have their own independent heat source. The heat of other items in the oven may contribute to the heat by maintaining it, but heat from ash-residue of a self-cleaning cycle is likely to be negligible. It is difficult to see how this could be considered noticeable or obvious benefit to the food cooked or baked in the oven. It is surely not a piece of solid fuel that is heated to produce a glow.

The poskim discuss relaxing the rule that forbids benefiting from a combination of ashes if the food was cooked on Erev Pesach after the zman Issur. Some also relax it if the food was cooked on Pesach itself, in cases of extreme hardship, such as when one has no other food to enjoy Yomtov. In our case, we may rely on this, due to the very minor role of the residual ash. [See Pesachim 26b-27b Poskim. Tur Sh Ar OC 445:2, commentaries.]

2. *Chumra*: The Minhag of Not Eating Gebrochtz

Halochoscope Parshas Tazria-Metzora 5756 Vol IV No 13

QUESTION: Someone never formally adopted the personal *Chumra*, stringency, to refrain from eating Matzo soaked in water, known as *Matzo Sheruya*, or Gebrochtz. However, for many years he spent Pesach with relatives who practiced this *Chumra*, and, by default, followed it himself. He now wishes to spend Pesach with relatives who do not practice the *Chumra*. Since a *Chumra* is considered a *Neder*, vow, does he now need a *Hataras Nedarim*, absolution of his vow?

Issues to Discuss:

- (A) *Matzo Sheruya*, Gebrochtz
- (B) The uniqueness about *Chumros* on Pesach, in terms of a *Neder*

(A) *Matzo Sheruya*

The concern with eating wet Matzo on Pesach is part of a larger concern with eating a *Chashash Chometz*, tiny possibility of *Chometz*. Any time flour or raw grain is mixed with water, there is a risk of *Chimutz*, its leavening and becoming *Chometz*. This increases when it is warmed. The only way to avoid it is to maintain a cool temperature and to scrupulously ensure that the process is not given time to be completed, or to kill the leavening agent. Thus, raw flour or grain mixed with water on Pesach must either be eaten immediately or baked. The heat of the oven will arrest the leavening process by killing the yeast.

The Talmud was never concerned about wetting Matzo; baked Matzo is not anticipated to cause *Chimutz*, and the practice is mentioned by the Poskim only relatively recently. A factor that changed which may have caused the issue to surface is the type of Matzo used in modern times. The Matzo used in Talmudic times was similar to the bread they ate during the year, a soft mixture baked in flat cakes. The dough was very well kneaded and the baking process was long enough to ensure that it did not come out raw. [The Talmud does imply a restriction on baking very thick Matzos to avoid *Chimutz* taking place in the middle, where the heat might be just right.] Constant kneading and baking prevents *Chimutz*, but there was a nagging concern that the length of the process risked more mistakes. Therefore, in more recent times *Rekikin*, wafer-Matzo became the norm. This is created by quickly mixing a thick batter, rolling it very thin and enabling it to bake very quickly. In this process, since less care is taken with the mixing, concern arises that some flour might inadvertently remain unmixed. Baked flour will not become *Chimutz*, but it is flour which may exist inside the Matzo that was not yet exposed to heat, that upon contact with water will be subject to leavening.

Accordingly, the practice began to avoid wetting Matzo. Initially, this was meant as a personal restriction for pious individuals, but it spread to include entire communities, especially those under the influence of the Chasidim. This could be based on a Talmudic reference to restricting certain practices for simple people because they would otherwise tend to laxity, but that by emphasizing such *Chumros*, people would be encouraged to more scrupulous observance.

Interestingly, other Poskim maintain the exact opposite: that the basis for the *Chumra* of avoiding wet Matzo was specifically the thick cake Matzo of the Talmud, which is more likely to have unbaked flour inside, while thin *Rekikin* would pose no such concern. Furthermore, if the Matzo is finely ground into Matzo-meal as it is with the *Rekikin*, there is little chance for enough flour in one spot to cause *Chimutz*.

The reaction of the Poskim to the *Chumra* is mixed: there is a veiled condemnation of it, based on a lessening of *Simchas Yomtov*, joy of eating on Yomtov that may result from holding the *Chumra*. It is thus seen as a leniency rather than a *Chumra*. In addition, the Talmud refers to fulfilling the Mitzvah of Matzo with *Rekikin* soaked in water, recommended for those who cannot chew. Some Poskim defend the *Chumra* as *Leshem Shamayim*, done for the sake of heaven, and therefore permitted. Presumably, if the Chasidim who emphasize *Simcha* do this, they must feel that the concern for *Chometz* overrides the Mitzvah of *Simcha* in this instance. One can rejoice without Matzoballs or breaking Matzo into soup (the original "Gebrochtz"). At the same time, those who choose not to practice it are praised for acting *Leshem Shamayim* in favor of *Simchas Yomtov*. Other Poskim maintain that there is ample reason for the *Chumra*, but do not forbid Gebrochtz. [See Pesachim 36a-37a 39b-40b 41a. Tur Shulchan Aruch Orach Chaim 453:3-10, 454-60 etc. (Mishneh Berurah 458:4) 460:6 Shaarei Teshuva IO. 461:4463:3 commentaries. Sh. Ar. Harav, Teshuva 6.]

(B) Chumros on Pesach

The Talmud forbids putting flour into hot water, even though it will kill the yeast. We sometimes restrict ourselves from something permissible when it would be too difficult otherwise to refrain from something prohibited, comparable to telling a Nazirite, forbidden to partake of grape products, to also stay far from a vineyard. On Pesach in particular we prefer to restrict ourselves even from permissible products if they could lead to laxity in restricted products. The Scriptural prohibition of Chometz applies to pure Chometz, punishable severely when eaten in amounts the size of an olive or larger, and still forbidden in smaller amounts. In mixtures it is only forbidden Scripturally, if its taste is detectable and not neutralized by the other ingredients. Rabbinically, a minute presence of Chometz forbids the entire mixture (except in certain circumstances). There is also a Kabbalistic assurance that totally refraining from Chometz will ensure one's fear of G-d for the entire year. Thus, it is customary to practice stringencies with regard to Chometz.

Usually, a Chumra attains the status of a Neder. However, on Pesach, due to the Mitzvah of Simchas Yomtov and to the fact that some practices are of controversial or dubious origin, the Poskim sometimes say that no *Hataras Nedarim*, nullification of vows, is required. To avoid controversy, it is recommended that when adopting such Chumros one should stipulate that it is *Bli Neder*, without a vow. This works when the person adopting the Chumra understands what he is doing. For many Chumros that have evolved on a community-wide basis this is not the case. Therefore, another ploy used to remind oneself that it is not adopted as a full Neder is to violate the Chumra on the last day of Pesach outside Eretz Yisroel, when the restrictions to observe the holiday are also Rabbinical.

A practice becomes a Neder when it is observed three times. Accordingly, one should stipulate "Bli Neder" before beginning a practice, even if he does not verbally pronounce his intention to follow it. Would a person become bound to a Chumra by following the custom at least three times? One who refrained from eating Gebrochtz in his parent's home, though not conscious of the reason, might require a *Hatara*, nullification of his vow. This person never formally adopted this custom, but has been practicing it for years. In addition, he did not necessarily mean to restrict his eating habits in the homes of people who eat Gebrochtz. He would easily find a *Hatarah* because he never meant to make the Neder.

However, would *Hatarah* be necessary? Firstly, refraining from doing something is not the same as adopting an active practice. Unless he had stated "I don't eat Gebrochtz!" there was never any evidence that he refrained out of conviction. Maybe he didn't care for Matzo-balls. Nonetheless, there was some Halachic basis for refraining, which he did understand, and he never said clearly that he did not follow the practice out of conviction. Sometimes this is sufficient to warrant a *Hataras Nedarim*. However, in this particular case, there are Poskim who condemn the practice altogether, and certainly many who do not consider it a Chumra worthy of *Hataras Nedarim*. Thus, our questioner may rely on those, combined with other mitigating factors, we may assume that he is not required to gain absolution of the vow, which he may have never intended to make in the first place. [See Pesachim 40b etc. Shaarei Teshuva 453:10 Igros Moshe O.C. III:64.]

3. Taanit Bechorot or Siyum for a Minor

Halochoscope Parshas Tzav / Shabbos Hagadol 5756 Vol IV No 11

QUESTION: It is customary for firstborn males to fast on Erev Pesach, or to participate in a *Siyum*, meal celebrating completion of a section of Talmud. If a child is too young to fast, his father must do so in his place. Is it acceptable for the son to celebrate his own *Siyum*, exempting his father from the obligation to fast?

Issues to Discuss:

- (A) The reason for *Taanis Bechorim*, the fast of the firstborn
- (B) What is a *Siyum* celebration?
- (C) A minor's role in these matters

(A) The Fast of the Firstborn

The practice of *Taanis Bechorim* is considered a Minhag, custom adopted by the Jewish people. The earliest reference to this fast is in the Talmud (Yerushalmi). The discussion is about Rabbi who fasted on Erev Pesach. One suggested reason for his fast was that he was a Bechor. This was then rejected when another sage maintained that his own father was a Bechor and did not fast. One interpretation is that the Talmud entertained the possibility that a

Bechor might fast, but that it was not accepted. Accordingly, this is no real source for a Minhag for the firstborn to fast, but an indication that there could be reason for it. The other view is that there was indeed such a practice, though not adopted widely.

A second source, closely linked to the Talmud, discusses the permissibility of fasting at any time during the month of Nissan. *Taanis Bechorim* is mentioned as one exception to the rule that Nissan is meant to be a month of rejoicing, not fasting. According to this, the reason for *Taanis Bechorim* must be sufficient enough to override the rule of not fasting during Nissan. By early modern history, the Minhag seems to be well founded. About five hundred years ago the practice was observed in some parts of Germany, but not in France, but several generations later it had spread such that the Poskim of the time no longer discuss different communities' observance or lack of it. [See Yerushalmi Pesachim 10:I (68b) Pesachim 108a (Tosafos, Meiri) Sofrim 21:3 Tur Shulchan Aruch Orach Chaim 470 commentaries, Poskim]

The reason commonly given for this Minhag is that the Bechorim were spared from the decree against all firstborn sons in Egypt on the night of Pesach. The Jewish firstborn could have been killed in the same way, but a miracle took place to save them. [One source explains that Egyptian firstborn were the priests to pagan gods, and that Jews also worshipped idols then, therefore Jewish firstborn also served in this function (see *Kol Bo*)] Since Jewish firstborn deserved to die as well, they commemorate their deliverance by fasting and repenting.

One would expect a celebration for a miracle, so how does a fast day commemorate it? One reason offered is that the Egyptians were punished, mainly, because they refused to subordinate themselves to HaShem, challenging Him after every plague. To be protected from this final plague, the Jewish firstborn had to subordinate themselves, and fasting demonstrates this kind of subordination. Thus, though they might not have been worthy of the miracle, they fast to show that they no longer deserve to die with the Egyptians. [See *Sefer Hatoda'ah*.]

Although the plague killing the Egyptian firstborns took place on Pesach itself (the first night), one may certainly not fast then, so the fast is commemorated on Erev Pesach. Several additional reasons explain why fasting on Erev Pesach might be permissible in any case: Erev Pesach was a day of Nissan not spent commemorating the induction of the Mishkan, one who is easily satisfied should fast in order to retain appetite for the Seder, and it is considered the day Haman sent forth his decree to annihilate the Jews (although in the Megilla the decree appears to be sent on the thirteenth of Nissan, one day earlier).

One opinion forbids fasting past noon, requiring the eating of fruits. This is because the Korban Pesach, Pascal lamb, was offered at this time, therefore the day is considered a holiday in its own right. In addition, it is preferable not to introduce a fast on Erev Shabbos, so that people will not be completely famished at the onset of Shabbos, and possibly Yomtov should be the same. Some also add the concern for Chukas Hagoy, emulating idol-worshippers, who traditionally fast on the eve of their holiday. This opinion is not followed, but is utilized by the Poskim when allowing dispensations for those who find fasting difficult.

Some Poskim require women firstborn to fast as well as males. Normally, a woman firstborn does not have the Halachic status of Bechor. However, the Midrash teaches us that Basya, the daughter of Par'oh, a firstborn, would have died also if the merit of rescuing Moshe had not protected her. Accordingly, female Jewish firstborn were also spared, and should commemorate it like males, although most Poskim do not follow this opinion.

An unusual detail of this Minhag is that the father of a Bechor fasts when the Bechor is too young to fast himself. The parents were also being punished in Egypt, as Par'oh was told by HaShem "behold I shall kill your firstborn son." When the child grows up, his own punishment is more meaningful. Therefore, customarily a father will fast for his firstborn child until he is able to appreciate the fast himself. If there is no father, or, according to some, if the father is a Bechor and is fasting anyhow, a minority view says the mother should fast. However, if family members experience difficulty in fasting, many Poskim rule leniently, as the fast is not considered to be obligatory, and opinions exist which outright object to fasting all day in Nissan or on the day the Korban is offered. Ruling can be lenient additionally if the fast will aggravate the effects of Matza, Maror and wine on an empty stomach. [See Tur Sh. Ar. O.C. 470, Biur Hagra, commentaries. Teshuvos Maharil 14, 110, 158.]

(B) *Siyum*

Completing a great Mitzvah is cause for celebration, especially the Mitzvah of Torah study. From the Talmud it appears that the idea of celebrating completion of a section of the Torah with a public *Seudas Mitzvah* is to include other people in the celebration. In fact, the indication from this source is that the *Siyum* is hosted by others in honor of the *Mesayem*, the one completing it. The Poskim say one should save his last segment of the

Maseches (section of Talmud) for an opportune occasion, and invite many people to join in the celebration. The purpose is both to rejoice in having reached a landmark in one's studies, and to encourage others and raise their ambitions. [There is also a celebration at the completion of the writing of a Sefer Torah; a proclamation of encouragement at the completion of each of the five Chumashim when they are read in Shul, and when the whole Torah is completed, *Simchas Torah*.]

One fasting for personal reasons may sometimes break his fast to participate in a Seudas Mitzvah. Even a public fast may be broken by participants in the Seuda of a *Bris Milah*. This dispensation is discussed with regard to *Taanis Bechorim* too. However, only the immediate family and dignitaries participating in the actual *Milah* may eat. Moreover, some Poskim say they should make up the fast on another day. Thus, we see that the *Taanis* is taken very seriously by the Poskim. However, it is a time honored tradition to save a *Siyum* specifically for the *Taanis Bechorim*, sparing Bechorim from fasting for the rest of the day. Some suggest that it was instituted to satisfy those who feel that one should not fast on this day at all.

On the other hand, though it is chosen by some Poskim as the ideal example of an opportune date for a *Siyum*, other Poskim criticize it. The actual joy of completing the *Maseches* could be at any time, but was saved for this day. The *Siyum* should not be planned for a day when people should be fasting. Moreover, frequently the entire section is studied for this *Siyum*, rather than being a celebration in its own right, thus creating the perception of a loophole. In addition, a true *Siyum* should be a bread-based Seuda, and according to some, a meal including meat, both of which are not generally practiced on Erev Pesach. Furthermore, only the person who studied the section is rejoicing, and *Bechorim* who did not complete the *Maseches* should not participate.

However, since the main purpose of a *Siyum* is for the other people there (as well as the other reasons mentioned), the practice is to join in a *Siyum*. [Some maintain that the participating Bechorim must be able to follow along with the *Mesayem*.] One contemporary Posek maintains that the initial practice to fast is a Minhag, and, accordingly, its application is controlled by the prevailing Minhag, which today, is to make a *Siyum*.

[See Shabbos 118b-119a, Moed Katan 9a, Bava Basra 121b (Rashbam Nimukei Yosef Tos. Yomtov Taanis 4:8) Eruvin 41a-b, Tur Sh. Ar., Yoreh Deah 246:26 Rema Shach 27 (Ar. Hash. 45) Teshuvos Maharam Mintz 119. Yam Shel Shlomo Baba Kama 7:37 & end. Chavos Yair 70. O.C. 470:1-2, Magen Avraham (Sh. Ar. Harav 8 Ar. Hash. 5 Mishneh Berurah 10 Kaf Hachayim 10. Chayei Adam 29:12.) 551:10 (Mag. Av. 33 35 commentaries) 559:9 (Mag. Av. 11) 568:10 (Mag. Av. 10 etc.) 570, 572:3, 669 Rema Taamei Haminhagim 634(3) Igros Moshe O.C. 1:157, 11:12 Nachalas Shimon Melachim 27:8 Hilchos Pesach-Eider XVII:B note 48.]

(C) The Child's Role

Three issues must be addressed with regard to a child's role in this: 1. Must the child fast, and will his own *Siyum* absolve him? 2. If the child does so, does he also absolve his father from fasting on his behalf? And 3. May an adult Bechor participate in a child's *Siyum* to absolve his own independent obligation to fast?

A minor is not obligated in Mitzvos, but his parents are obligated in Chinuch, to train him (though some Poskim consider the child obligated in Chinuch himself). A child does not fast for Chinuch, except on Yom Kippur, when he or she is trained to fast by incrementally increasing the hours each year. The Poskim refer to the parents' obligation to fast for a young firstborn son, "until he grows up." Though this implies an obligation on the father until the child is Bar Mitzvah, at least one major Posek states that it applies until the child is old enough for Chinuch.

The child is not obligated in any Mitzvos, but there is a Mitzvah to teach children Torah, so it is clearly considered Torah study, even if not as an obligation per se. Indeed, it is from this very same Passuk that the adult's Mitzvah of Torah study is derived. Proofs abound that children's study is considered the highest form of the fulfillment of this Mitzvah, and that it is in fact rewarded as a Mitzvah. [It prevents a city from destruction, and even keeps the world going.] Furthermore, there are indications by some Poskim that a child is obligated in this Mitzvah. He is also eligible to be considered a Talmid Chochom for whom one must rise in respect. Thus, there is reason to consider his Torah study a valid cause for celebration for himself, but not necessarily on the level of an adult's study.

A *Siyum* could be viewed as a Seudas Mitzvah for the *Mesayem*, in which other participants join, or as the celebration of all participants, as appears from the Talmudic sources. As a communal celebration, a child's Torah is cause for the celebration of attending adults. This could be seen simply as the joy of a Jew studying Torah, regardless of his level of obligation, because it celebrates Torah study in and of itself, or it could be seen as a celebration of the Mitzvah of Torah study, which might depend on the level of obligation.

In conclusion, in our case, where the father is not a Bechor, and the child has reached the level of Chinuch, the father may rely on the child's *Siyum*. Firstly, the father might no longer be obligated to fast. Secondly, the child is celebrating a *Siyum* himself, so even if he would not fast yet (due to his age) the Chinuch of the occasion is present. Thirdly, fasting is a Minhag, and, as has been mentioned, some leniencies can be applied. It is also possible to allow adult *Bechorim* participating in the *Siyum* of a child to eat, if we consider it a communal celebration. [See Shabbos 119b Yuma 82a Thr Sh. Ar. O.C. 470: (Levush 3) 616:2. Y.D. 244:I (Shach Taz Ar. Hash. 3) 245:5, 8 (Ar. Hash. I, 5) 246:I (Gro 2) Sh. Ar. Harav Talmud Torah I:I.]

4. Using Wine from the Kos Shel Eliyahu

Halochose Parshas Tazria-Metzora 5758 Vol VI No.s 14 & 15

QUESTION: At the Pesach Seder, four cups of wine are drunk. A fifth cup is poured at the same time as the fourth, but is not drunk. This is known as the *Kos Shel Eliyahu*. Many have the custom to cover the full cup, leave it until the next morning, and then recite Kiddush on the same wine the next day. If it was left uncovered overnight, it may not be used for Kiddush, but there is a further obligation to drink wine during the Seuda on Yomtov – May this wine be used to fulfill that obligation?

Issues to Discuss:

- (A) The Fifth Cup, the *Kos Shel Eliyahu*
- (B) Using the wine for Kiddush the next day
- (C) *Gilyu*; *Yayin Meguleh*, exposed wine
- (D) The invalidity of such wine for Kiddush
- (E) The obligation of wine for *Simchas Yomtov*, rejoicing on Yomtov

A) Wine at the Seder and the *Kos Shel Eliyahu*

The Rabbis instituted four cups of wine to be drunk during the Pesach Seder. Each is connected to a part of the Seder service. The first is for Kiddush; the second, for the reading of the Haggadah, the part known as “Maggid”; the third, for Bircas Hamazon; and the fourth, for Hallel. The practice of drinking wine was not instituted at the Seder specifically for these times, but for other reasons – mainly to demonstrate *Chairus*, freedom, as it is considered behavior of a free man to drink this much wine with his meal. However, once four cups of wine were called for, they were inserted at instances where drinking wine was already required or customary.

One of the main purposes of instituting four cups is to allude to references in Tanach to our *Geulah*, redemption, in the beginning of Parshas *Va'eira*. They are “Vehotzeisi,” I shall take you (the Jewish people) out [of Egypt], “Vehitzalti,” I shall save you, “Vega'alti,” I shall redeem you, “Velakachti,” I shall take you for My people. There is a fifth expression of Geulah mentioned there, “Vehaivaisi,” and I shall bring them [to Eretz Yisroel], which we do not commemorate with a cup of wine. One explanation offered for this is that this statement will only be fulfilled at Moshiach's arrival. However, some Poskim have a version of the Talmudic text that refers to taking a fifth cup for the last part of the Hallel service in the Seder. This part includes Psalms 135-136, after what we usually call Hallel, and is known as *Hallel HaGadol*.

The main Talmudic texts require "no less" than four cups for every single Jew, including the poorest, but the Talmud also indicates that one should not add to the cups. Some commentaries consider the fifth cup a matter of Talmudic debate; the opinion that says *Hallel HaGadol* should be recited over it is a minority view, opposed by an anonymous, though majority view. Some explain it as a voluntary practice, but most Poskim do not follow this ruling. Nonetheless, we have a custom to fill a fifth cup.

There are various reasons given for the fifth cup. The oldest source for the Minhag is a collection of personal practices of the Maharil, a major Ashkenazic Posek who lived about five hundred years ago, stating that some add a fifth cup if one needs the extra drink, and relate it to the fifth expression of Geulah, *Vehaivaisi*.

Another, more well known custom associated with this cup is the one which gives it its name, *Kos Shel Eliyahu*. The prevailing Minhag is to pour this cup at the time we open our front doors to say “*Shefoch Chamasecha*,” after we drink the third cup. One reason offered for the door-opening ritual is to demonstrate the fact that we are guaranteed that this night is *Layl Shimurim*, a night when HaShem watches over us and protects us. This is how the Torah describes the night the Jews left Egypt, saying that it is a night of protection for Jews in all

generations. By leaving our doors open we show that we do not worry about intruders and profess total trust in this guarantee.

However, this reason does not explain why it is at this juncture of the Seder that the demonstration is made. Therefore, others explain it as follows: the Hallel-Nirtza part of the Seder is to arouse HaShem's appeasement so that He will hurry to bring about our ultimate redemption. We must, therefore, teach the children, the focus of the Seder ritual, that there is an important tradition that before Moshiach comes, Eliyahu Hanavi will come. This is stated in Navi, and is our way of ensuring that no impostor will claim to be Moshiach. Therefore, we open the door in honor of Eliyahu Hanavi, and also pour a cup of wine in his honor. Thus, we teach the children this sure sign of the advent of Moshiach. In some communities there was even a practice to rise from the reclining position to say Baruch Haba, symbolically welcoming Eliyahu. Some add that there have been four Geulos from four oppressors so far: Egypt, Babylon, Persia and Greece. It is appropriate to dedicate a fifth cup to Eliyahu Hanavi who will initiate the fifth, final Geulah. It is suggested by a number of sources that the *Kos Shel Eliyahu* is surrounded by participants' fourth cups. Some suggest that the head of the household actually does drink the fifth cup after Hallel HaGadol.

There is a further tradition that Eliyahu does indeed visit each Seder in his non-physical form. Some commentaries add that according to Talmudic tradition, the ideal time for the Geulah is the month of Nissan, and according to some the night of the Seder. [Poskim question this, however, based on the Talmudic dictum that Eliyahu would not come on Erev Shabbos or Yomtov, so Moshiach could not come the following day, and furthermore, would not be able in his physical body across such a wide expanse, as it would violate the rules of *Techum Shabbos*, the boundaries one may not cross on Shabbos or Yomtov.] Some say that the traditional reason for "*Shefoch Chamasecha*," the demonstration of our belief in *Layl Shimurim*, is cause for our meriting the advent of Moshiach. Therefore, at this juncture we remind ourselves of Eliyahu Hanavi, who must arrive first.

Another reason we customarily set out the *Kos Shel Eliyahu* is simply due to our ambiguity in whether to drink a fifth cup. In instances of doubt, we do nothing until Eliyahu Hanavi arrives in his physical form, with Moshiach, and he will decide these issues for us. Finally, a minority opinion suggests that initially, the wine for the entire Seder was placed in one cup at the center of the table. To arouse the interest of the children, the idea of Eliyahu Hanavi was attached to it. However, this opinion is discounted by the Poskim. According to this view, the *Kos Shel Eliyahu* would have been poured at the beginning of the Seder – and indeed, there are, in fact, records of such a practice. [See Pesachim 118a, Rif, Maor, Raavad, Milchemes, Ran. Eruvin 43b, Divrei Nechemia. Teshuvos Chasam Sofer VI:97-98. Maharil, end of Dinei Seder. Hagadas Maharal (Miprag) Divrei Negidim. Rema, Orach Chaim 480:2, Chok Yaakov 6, Chasam Sofer. Aruch Hashulchan I. 481, commentaries. Maadanei Shmuel 119:note 4. Taamei Haminhagim 551. Sefer Hatoda'ah.]

(B) Using the Wine for Kiddush the Following Morning

This Minhag could have originated for one of two reasons. The Talmud teaches us that as part of his *Lechem Mishneh*, two breads required for each Shabbos Seuda, one should use a loaf that had been set aside for an Eruv. [The Eruv must be intact when Shabbos begins, but may then be eaten]. Since one Mitzvah was already done with this loaf, it is appropriate to fulfill another with it. [The issue of *Mitzvos Chavilos* does not apply here. The *Chavilos* consideration is applied when two Mitzvos are performed together and give the appearance that one finds the Mitzvos a bother. In this case, however, the second Mitzvah is done on a later occasion.] Based on this, it is customary to save Hadasim from one's Lulav to use for *Besamim* for Havdalah. Similarly, in our case, the wine used for the *Kos Shel Eliyahu* at the Seder is used for another Mitzvah the next day. The Poskim point out that eating Challah at any time on Shabbos is also a Mitzvah. Therefore, even if it was not used for the *Lechem Mishneh*, one should eat the Eruv Challah during the Seuda on Shabbos. Accordingly, in our case, if it may not be used for Kiddush, one should drink it during the Seuda, though the Brocha was not recited over it.

Alternatively, since this cup is to satisfy in some way a view that requires a fifth cup, one should recite a Brocha over it. The first opportunity to do so is the next morning, since the custom we follow forbids drinking a fifth cup after the fourth by night. According to this reason, one would prefer to use it specifically for Kiddush.

There is concern, however, that leaving the cup overnight on the table raises the specter of *Haorchim Lagad Shulchan Vehamemal'im Lameni Mimsach*, an idolatrous practice to set a table with bread or wine in honor of an idol. The idea that Eliyahu might come during the night and sip the wine with no one around sounds superstitious. The Poskim discuss a similar practice. When they were going through difficulties, some people had a custom to set aside food and wine for a Seuda for Eliyahu Hanavi. They planned the Seuda for when they would overcome their

difficulties, and forbade anyone from touching the wine until then. Though the practice is debated, with some Poskim justifying it, all agree that if one specifies that the wine is for Eliyahu Hanavi it is forbidden. This is considered like *Yayin Nesech*, wine dedicated to Avoda Zara. Therefore, this should always be avoided with regard to the *Kos Shel Eliyahu*. Rather than saying that Eliyahu will drink from it (unfortunately, a tradition persisting in children's stories) it must be emphasized that it is poured *in his honor*. In any case, the notion that if Eliyahu HaNavi were to sip from the cup would pose a halachic problem if it were to be used for Kiddush, as it would thereby become *Pagum*, deficient, and be *Passul*, invalid, for Kiddush unless more wine is added.

The practice to set a table overnight is forbidden in any event if it is done for superstitious purposes, even if honoring the original idol was not intended. However, this Kos is being left for Kiddush. The Poskim debate a practice to leave Challah on the table overnight on every Shabbos or Yomtov. Some forbid it, maintaining that it originated in the above idolatrous practice. However, others justify it, in that it was not done due to superstition, but in honor of the Shabbos or Yomtov. In fact, it is considered by some a requirement to set the table before the onset of Shabbos. This includes not only covering the table and laying out place settings, but also placing the Challah on the table. The Minhag is to take Challah straight from the oven to the table on Erev Shabbos. Thus, leaving a Challah on the table overnight that can be used for the daytime Seuda is justified as an extension of this practice. By the same token, it would be considered an honor to Yomtov that the wine already poured for the fifth cup be left out for the next day, rather than poured back in to the bottle. Others, however, maintain that to show *Kavod Shabbos* it is sufficient to leave pieces of Challah and the remains of the Kos of Kiddush, but that leaving a whole loaf or full cup would not be necessary. Those holding this view, in our case, may rely on the fact that the Kos is covered, or that it was poured for a different reason, otherwise, it may be removed from the table but not poured back into the bottle. [See Shabbos 117b, Poskim. Yeshaya 65:11, Sanhedrin 92a. Tur Shulchan Aruch Drach Chaim 180:2, Kaf Hachaim. 394:2, commentaries. Yoreh Deah 178:3, Taz 7, Darkei Teshuva 22. 179:17.]

(C) *Giluy*

The prohibition forbidding wine left exposed is neither strictly a Scriptural nor Rabbinical ordinance. It is in a third category of its own, overlapping in both. There is a Scriptural obligation to safeguard one's health and life, which is contained within a number of Mitzvos, both positive and negative. Aside from well-known hazards, the Rabbis determined certain things to be dangerous, due to spiritual or unrecognizable dangers or due to a health risk. In one respect, things forbidden due to *Sakanah*, danger, are more stringent than Scriptural Mitzvos. Although commonly we tend towards leniency in Halacha in instances of doubt, even doubt involving a *Sakanah* is dealt with stringently, even if the risk is lower than fifty percent.

Giluy is considered a risk due to the presence of snakes or other creatures that may have drunk from the exposed liquid, leaving behind poisonous venom which would be harmful or fatal to humans. The Rabbis determined the details and circumstances regarding the dangers of an unattended liquid. One detail is that *Giluy* only poses a risk on liquids which are a matter of Talmudic debate. According to all Talmudic opinions, water, milk, and *non-mevushal* (natural) wine are liquids open to risk, but *Yayin Mevushal*, boiled wine, is not included in the risk.

In our time, the Poskim agree that the circumstances resulting in the risks of *Giluy* no longer exist. Even in Talmudic times there were cases where wine was left unattended, but one could rely on the fact that snakes would not access it. All the more so, in contemporary times, snakes are not considered common. However, there is a view, subscribed to mainly by those who follow Kabbalistic practices and the disciples of the Vilna Gaon, that the risk of poison deposits is only one reason that *Giluy* is forbidden. This view proposes that an open liquid is also subject to the risk of a *Ruach Ra'ah*, evil spirit, that may come to rest on it. Those who drink from or use such liquids can thus be affected by the *Ruach Ra'ah*. There may also be further reasons unknown to us, and therefore, we may continue to apply *Giluy*. However, as the strict Halacha does not forbid *Giluy* in modern times, we do not throw away the resource that was exposed, as it would put us at risk of violating a further Scriptural Mitzvah of *Bal Tashchis*, concern for wastefulness. [See Terumos 8:4-7, Chulin 9a-b 10a 49b, Poskim. Tur Sh. Ar. Y.D. 116:I (Pischei Teshuva, Darkei Teshuva) 5 etc., commentaries. Maasei Rav (Gr'a) 95]

(B) The Invalidity of *Yayin Meguleh* for Kiddush

During the time of the Talmud, there was a type of sieve that was placed over a wine barrel. The Talmud debates whether there is any suspicion of a snake getting into the barrel under this sieve. We follow the opinion that permits such wine for drinking, but would not permit it for use as *Nesachim*, the sacrificial libations in the Bais

Hamikdash. The Talmud invokes a rule based on the Navi disqualifying sick animals for use as offerings. The Navi states "*Hakrivaihu Na Lefechasecha, Hayirtzecha Hayisa Panecha*, Why don't you offer it as a present to your human governor? Will he be pleased with you for this? Will he show you favor for it?" The Navi goes on to condemn one who has a defective animal in his herds and flocks and uses it as an offering. We learn from this that the Navi decries two types of unacceptable offerings. One should not offer *Ma'us*, that which he despises himself. And one may not offer that which he knows would be unacceptable as a gift to a human governor.

Therefore, the Talmud disqualifies wine that was left exposed for use as *Nesachim*. Even if there is no danger to drinking it, the wine is not considered to be maximum quality. Any offering that is *Ma'us*, disgusting, is all the more unacceptable. In the case of wine covered with a sieve, it might be considered *Ma'us* for serving to a governor, but would be acceptable for regular consumption.

The Talmud says that only wine suitable for *Nesachim* is acceptable for Kiddush. In one respect Kiddush is less stringent. Certain wines should not be brought for *Nesachim*, but if brought, fulfill the obligation. These wines, such as freshly pressed (grape juice) are not only acceptable for Kiddush, but ideal. However, the Talmud forbids both bad-smelling wine and *Yayin Meguleh* for Kiddush [in the case when the wine is not a *Sakanah* to drink.] Accordingly, although nowadays *Yayin Meguleh* does not pose a danger to drink, it would still be unsuitable for Kiddush. The Poskim allow it, however, if it was only left unattended for a short while. Since wine was not as plentiful in their locales, governors would still drink it. It appears that suitability varies according to the prevailing attitudes of the local governors and the times. We are left to speculate on the stringency in modern times. As we have no further conclusive ruling, however, we follow the guidelines of earlier Poskim.

According to one Posek, *Yayin Meguleh* is forbidden for Kiddush because Kiddush is a "Mitzvah V'Avodah," viewed as a form of service like *Nesachim* in the Bais Hamikdash. [Perhaps in Kiddush, the element of sanctification implies Avoda.] It appears from this interpretation that something used for Avodah would warrant invoking *Hakrivaihu Na Lefechasecha*, a test of quality required for a human governor; since Avoda is offering a gift to HaShem, it can be compared to offering gifts to a human dignitary. However, we also find that sometimes an item is forbidden for Mitzvos which do not seem to be considered Avoda. For example, spices left in a barrel used for *Yayin Nesech*, wine used for idolatrous purposes, may be smelled, as they were not intended to absorb the wine flavor, but to impart their scent to the wine. However, they may not be used for *Besamim* at Havdalah, and the Mitzvah of *Besamim* does not appear to be an Avoda. Not surprisingly, *Yayin Meguleh* is also forbidden for Havdalah. A second example is the discovery of an animal in a vat of oil. Depending on the proportions of the rat to the oil, the oil might still be permissible to consume, but would be invalidated for lighting in a shul, presumably because lighting in a shul is also like an offering. [See Malachi 1:8. Baba Basra 97a-b, Poskim. Tur, Sh. Ar. O.C. 154:12,272:I Levush, Magen Avraham, Y.D. 108:6 commentaries.]

(C) Simchas Yomtov with Wine

The Mitzvah of Simcha in the Torah, spelled out by the Talmud, is to consume the meat of offerings on Yomtov. Thus, during the time that the Bais Hamikdash stood, *Shalmei Simcha*, peace offerings were made specifically to fulfill this requirement. However, if one had offered a different Korban at this time and ate the meat on Yomtov, he fulfilled his obligation. Thus, we see that the emphasis seems to be the meat, with the provision that it come from a Korban.

The Mitzvah of Simcha applies all seven days of a festival, but there is discussion whether it applies on the first night. Some commentaries maintain that the Mitzvah need only be fulfilled once. The reference to seven days distinguishes it from other Yomtov Korbanos. The difference is that the *Chagiga*, another type of Yomtov peace offering, must be brought the first day, and on all subsequent days with *Tashlumin*, a make up. The Simcha could be brought ideally on any day, thus most Poskim maintain that the Mitzvah applies every day.

The Talmud rules that all Jews are obliged to rejoice on Yomtov. This is derived from a Passuk interpreted to mean that a householder must ensure that all his dependants rejoice. Each must be provided with items that bring him or her joy: men with wine; women, new clothing; and children, sweets and nuts. The Poskim debate whether the Mitzvah is the obligation of the head of the household to make everyone happy, or of each individual to rejoice.

The Talmud says that without the Bais Hamikdash, the only way to achieve Simcha is through wine. Some Poskim maintain that while meat of a Korban brings full Simcha, mundane meat needs a complement of wine to bring proper joy, thus both meat and wine are obligatory. Most Poskim, however, do not require meat. There is a debate on the nature of the obligation nowadays. Some Poskim suggest that the requirement to eat *Shalmei Simcha*

applied only when the Bais Hamikdash stood. Some note that although there is technically no Scriptural Mitzvah, there is still a Rabbinical one, to rejoice. The opinion we follow, however, maintains that the obligation to achieve Simchas Yomtov continues to be a Scriptural Mitzvah even today.

Some say that today any medium that brings joy is acceptable, for example, the sweets that delight children. Others maintain that drinking alcoholic wine is obligatory, in addition to doing other things that bring joy. Therefore, in addition to Kiddush and to being *Kovei'a Seuda Al Hayayin*, having wine as the main beverage of the Seudas Yomtov (to fulfill the obligation of *Kavod Yomtov*), one must drink wine of alcoholic content on each day of Yomtov and Chol Hamoed as well.

Our question is whether one may use *Yayin Meguleh* for this Mitzvah of drinking wine to achieve *Simchas Yomtov*. Does the concern of *Hakrivaihu Na Lefchasecha*, that it should be fit for the governor, apply to this Mitzvah as well? A Brocha need not be recited on this wine, assuming it is imbibed after the recitation of Kiddush. Is the main purpose of drinking it the joy experienced, which could be achieved with any wine? Although, cannot joy be achieved with other means? We have shown that some Poskim and even an opinion in the Talmud maintain that alcoholic wine itself is essential. Is the main objection to *Yayin Meguleh* for any Mitzvah, or only for a higher level of Mitzvah used in a direct act of Avoda? If today's Mitzvah is Rabbinic, instituted as a recollection of the Mitzvah in the Bais Hamikdash, would it not then be considered a substitute for this true Avoda? If it is Scriptural, it is directly linked to the Mitzvah of *Shalmei Simcha*. In addition, the Rambam writes that "the entire Simcha must include Avoda," which is interpreted by some to mean that the experience of *Simchas Yomtov* must be pursued as Avoda. In light of all of these considerations, it would appear that wine used for *Simchas Yomtov* should not be *Meguleh*. Therefore, one may drink the wine, but not to fulfill his Mitzvah of *Simchas Yomtov*. [See Psachim 68b 70b-71a 109a Beitzah 15b (Yam Shel Shlomo) Sukah 42b 47b Moed Katan 14b (Tosafos) Chagiga 8a-9b, Poskim. Rambam Yomtov 6:16-18, 20, Chagiga 1:1 (Raavad). Tur Sh. Ar. O.C. 529, commentaries. Shaagas Arye 65-66. Moadim Uzmanim 1:29. Hilchos Chol Hamoed Zichron Shlomo, Biurim I.]

5. Sheva Brachos on Pesach

Halochoscope Pesach 5758 Vol. VI No. 13

QUESTION: If someone gets married close to Pesach and celebrates Sheva Brachos during the Seder, what is the procedure with the extra cups of wine drunk for them?

Issues to Discuss:

- (A) The *Kos Shel Brocha*, cup of wine at Bircas Hamazon
- (B) The Kos of wine at Sheva Brachos
- (C) The four cups of wine
- (D) Two "Kedushos" on one Kos
- (E) Drinking extra wine at the Seder

(A) The Kos Shel Brocha

The matter of *Kos Shel Brocha* is Halachically very interesting. There is no direct reference to it in the Torah. This would indicate that it is, at best, a Rabbinical obligation. However, in terms of obligation, there is no reference to it in the Mishna either. The Talmud derives from certain terminology used by the Mishna in a number of places that there seems to be an obligation to use a Kos of wine when reciting Bircas Hamazon, but does not rule conclusively that there is an obligation. A supportive opinion may be found, but from a voice we do not follow when ruling Halachically. In one reference, in fact, the Talmud rejects the implication altogether, noting that the Rabbis required a Kos of wine at a meal for another reason entirely, and since there would be a Kos already, it could simply be attached to this Mitzvah of the Bircas Hamazon.

Nonetheless, the Talmud teaches us many advantages and praises for the *Kos Shel Brocha*, the cup of blessing, as it is known. Among them is the value of being honored with reciting it on behalf of the entire company eating together. The Talmud records that a heavenly voice rang out to say that its performance is worth forty gold pieces. The reward cited for enacting it, "An unlimited heritage," is derived directly from a Passuk of Torah. There are conditions to its size, fullness, manner of holding it, proper dress when holding it, and the like, all of which indicate that it is a Mitzvah. Some of these are derived from Pesukim. The Talmud debates whether there are ten

conditions or only four. In keeping with the opinion that there are ten, the Zohar states that they were instituted Rabbinically because of the Torah, which was given in ten Dibros.

One Posek cites a reference made by the Talmud regarding the laws of Korbanos: Some Korbanos do not have *Shira*, song, or Hallel recited during their service unless they are accompanied by *Nesachim*, wine libations: *Ain Omrim Shira Ela Al Hayayin*. This is derived from Pesukim, and appears to be a Scriptural Halacha. It appears that this Posek considers this a source for the *Kos Shel Brocha*, that wine should be present when engaging in songs of blessing. However, it is possible that this phrase is used as support for the Halacha that wine, as opposed to other drinks, should be the beverage used for the *Kos Shel Brocha*. Another source offered is that all Mitzvos of blessings and praise were instituted by the Rabbis over a Kos of wine, considered to be an honorable way to praise HaShem, based on the Passuk: *Kos Yeshuos Esa Uveshem Hashem Ekra*, I will lift the cup of salvations and callout in the Name of HaShem (Tehillim 116), and additionally, in Kabbalah a kos of wine symbolizes the source of blessing and livelihood in the world.

Regarding the actual obligation, there are three main opinions in the Poskim: One view is that there is always an obligation for *Kos Shel Bircas Hamazon*. This view requires an individual to recite Bircas Hamazon on a Kos of wine as well. Those who follow Kabbalistic interpretations of Mitzvos keep this view in accordance with the aforementioned Kabbalistic reason. [There is even a minority view that one may not even partake of a bread meal unless he knows that he will be able to recite Bircas Hamazon with a Kos.] The second view maintains that the requirement for a Kos might only apply to a *Zimun*, a group of three or more people reciting Bircas Hamazon. The *Mezamen*, leader of the three must have a Kos, and recite *Hagafen* afterwards. The third view is that there is no obligation, but would be considered a Mitzvah, i.e., voluntary, but the fulfillment of a Mitzvah if done. [And if one does decide to do the Mitzvah, he is obliged to follow its conditions.] This view considers the *Kos Shel Brocha* a *Hidur*, an embellishment, on the Scriptural Mitzvah of Bircas Hamazon. Even in the third view of the kos of Bircas Hamazon as a Mitzvah, however, some view its performance as obligation, although not *Me'akev*, essential, to the fulfillment of Bircas Hamazon.

The common practice is not to require a Kos for an individual, but if reciting Bircas Hamazon in a *Zimun*, some people try to fulfill it. Usually, this is done on Shabbos or at another gathering where wine is available. The reason given for bypassing a Kos at other times is that we are commonly not *Koveia Seuda Ai Hayayin*, we do not drink wine as the staple for our Seudos. [However, if wine is at the table, this reason may not apply, thus it is proper to take the wine away from the table if there will in fact be a *Zimun*, but a Kos of wine is not planned.] Another explanation for laxity is that a *Mezamen*, leader, exempts the assembled with his recital of Bircas Hamazon. However, since we most commonly recite the entire Bircas Hamazon individually even with a *Zimun*, we would most likely not have in mind to participate in the *Mezamen's* Brocha on the wine either. When a *Minyan* is assembled, however, there is a greater requirement to participate in a communal Brocha, including the Brocha on the Kos at the end. Therefore, it is more common to institute a Kos when Bircas Hamazon is recited with a *Minyan*. Based on this, a *Kos Shel Brocha* would be recited at a Sheva Brocha only because it is a Seudah gathering with a *minyan*.

An individual does not usually use a *Kos Shel Brocha*. There is a practice to take a Kos even when reciting Bircas Hamazon individually, but to leave it on the table in front of oneself, rather than raising it a Tefach (four inches) off the table as is done with a *Zimun*. This is to satisfy both the opinion that requires it, by having it there, and the opinion that does not, by not picking it up. Others disagree with this practice and maintain that one should either hold it up or not use it at all.

If the *Kos Shel Brocha* will be added, some of the details of the Mitzvah include that the wine must be tasted, the Kos must be full, and it may not be *Pagum*, sipped previously, as sipping from a cup prematurely reduces the honor of the remaining drink in the cup. If it had been previously sipped, however, the status of *Pagum* may be corrected by adding a drop of wine from a bottle (which presumably has not been previously sipped), and most Poskim agree that even water may be added to correct the wine. [Many people use the same wine for all four cups at the Seder, drinking most of it each time. They then top it up with fresh wine from the bottle to correct the *Kos Pagum*.]

The minimum amount for a *Kos Shel Brocha* is a *Revi'is*, the Talmudic measure of liquid volume used for most Mitzvos to do with drinking. This measurement can range from three to six ounces, depending on the opinion regarding how to calculate the amount. Tasting involves drinking a "cheek full." This Halacha is cited with regard to Kiddush and applied to *Kos Shel Brocha* as well. [There are challenges to this ruling but the common practice is to follow it. One explanation is that since the idea seems based on *Shira Al Hayayin*, drinking less than this amount

does not count as drinking wine.] One might question the need for the wine to be tasted, but as is the rule with any *Bircas Hanehenin*, Brocha over food, if a Brocha is recited, in general one must at least taste the food. In this case, not only is a *Kos Shel Brocha* a *Bircas Hanehenin*, but it is also a *Bircas HaMitzvah*. [In exceptional cases, a *Bircas Hanehenin* is recited as a *Bircas HaMitzvah* whereby the drink need not be consumed, such as wine under the Chupah.]

There is a debate over whether the Brocha as well as the drinking of the wine are an inseparable part of *Bircas Hamazon*, or whether the Mitzvah is simply to have an accompanying Kos of wine at the recital of *Bircas Hamazon*, and as long as a Kos will be consumed, a Brocha will be necessary. The difference between the views is whether the Brocha must be said by the Mezamen, the case if considered part of the *Bircas Hamazon*, or if another person may recite it, the case if considered an independent Mitzvah. The first view cites the Talmudic discussion that apparently requires the Mezamen not only to recite the Brocha, but to drink the wine as well. This would be problematic in a situation where the one who recited the *Bircas Hamazon* is not allowed to drink the wine. The reason given for this is that it is disrespectful for the wine when a Brocha is recited on it but it is not drunk. If a child, or someone else, could both recite the Brocha and drink it, why should there be any sign of disrespect? Evidently, the one who recited *Bircas Hamazon* must himself recite the Brocha and drink the wine.

The second view is that the Mitzvah itself is simply that the wine must be tasted at some point, in its own right, and that therefore the Brocha must be recited. One who is unable to drink may recite the *Bircas Hamazon*, then send the Kos to another participant to say the Brocha and drink it. A third view is that the Brocha is indeed part of the obligation of the one reciting *Bircas Hamazon*. However, he may split this part of the Mitzvah off for the sake of honoring another person with it if he wishes. [See Brochos 35, 42a-43a 46a 51a-52a (Raavad and Milchemes notes on Rif) Shabbos 76b-77a Eruvin 40b Pesachim 102b 105b-106a 117b Chulin 87a, Poskim. Rambam, Brochos 7:15 Shabbos 29:13. Tur (Bais Yosef, Bach) Shulchan Aruch Drach Chaim 182 (Levush I) 183, 190, commentaries. Moadim Uzmanim 246 (Vol III).]

(B) The Kos at the Sheva Brochos

At a wedding special Brochos are recited. The actual ceremony includes two parts: The *Erusin* and the *Nisuin*. These were originally spaced a few months apart, with the interim devoted to preparing and grooming the Choson and Kallah for married life. In the interim they are considered married, in terms of forbidden relationships, but may not yet live together. The *Nisuin* concludes the second step of the marriage. Even when they were held consecutively, they were originally held in two different places. Nowadays, the two are held at the same time and place, separated by the reading of the *Kesuba*, marriage contract. .

The *Erusin* involves the Choson giving the Kallah a ring in the presence of witnesses. At this ceremony, in the presence of a Minyan, quorum of ten men, *Bircas Chasanim* is recited. The source for these Brochos is the story of Boaz and Rus related in *Megillas Rus*. Two Brochos are recited for the ceremony: *Borei Pri Hagafen* and the *Bircas Erusin*. The person reciting the Brocha need not be the Choson, though this was the initial ideal practice. In modern times it has become common for the Choson to delegate this to an agent, usually his Rav. One reason suggested by the Poskim for this is not to embarrass a Choson who does not know how to recite the Brochos. This is based on the Mikra *Bikkurim* and *Viduy Maaser*, Scriptural Mitzvos at the time the Bais Hamikdash stood. They involved bringing new fruits and making certain proclamations. Some people were not eligible or qualified to make the proclamations, sometimes due to their own fault. So as not to discourage these people from coming at all, because of their shame, measures were taken to change the way the *Viduy* was proclaimed. However, the Choson and the Kallah drink the wine, and not the Rav. This is in keeping with the fact that the Brocha is considered a *Bircas HaMitzvah* and not a *Bircas Hanehenin*. [Some Rabanim lick their fingers where the wine spilled on them, just to satisfy any nagging doubts.]

The *Nisuin* involves the recital of seven Brochos, the first of which is *Bircas Hagafen* again. Once again, the ideal person to recite them would be the Choson, but it is customary for the Choson to honor others with the Brochos. Again, it is the Choson and the Kallah who drink the wine, and not the Rav. This entire ceremony is what we call the Chupah.

Later at the Seuda following the ceremony a special order of *Bircas Hamazon* is recited. This includes a special mention of the Simcha, time of rejoicing, during the Zimun, and Sheva, seven, Brochos recited after the *Bircas Hamazon*. One of them is the regular *Borei Pri Hagafen*, and the other six are the same recited at the *Nisuin*. At the *Nisuin* the first Brocha is *Borei Pri Hagafen*, at the Seuda, it is the last. If either Choson or Kallah is previously

unmarried, any Seuda during the following seven days is also treated as part of the Seudas Chasunah, wedding feast, the same Brochos would be recited at Bircas Hamazon. Originally, all the seven days of feasting were held in the same place. Nowadays, people spread out to other locations, but the Poskim maintain that these meals are still a continuation of the original wedding feast, simply in new locations. The one provision made is to follow the exact procedure as at the wedding, but to include *Panim Chadashos*, new faces, on subsequent days other than Shabbos and Yom Tov. If there are no new faces, some of the Sheva Brochos may still be recited, though if a full Minyan is not present, fewer may be recited. This is what we call the *Sheva Brochos*.

There is a principle (see section D) of *Ain Osin Mitzvos Chavilos*, that we do not try to “bundle” Mitzvos together. This means that one should not use the same cup of wine for two separate Mitzvos. There is a debate, therefore, over whether the same Kos used for Bircas Hamazon may also be used for Sheva Brochos. We generally follow the ruling that two Kosos are used. The first is used for the Bircas Hamazon. Before reciting *Hagafen*, a second Kos is used to recite the Sheva Brochos, i.e., the remaining six. Then the first Kos is used again to recite *Borei Pri Hagafen*. The one honored with reciting Bircas Hamazon then drinks from this Kos and both Kosos are given to the Choson and Kallah. Though they are separate Mitzvos, *Borei Pri Hagafen* is not recited twice.

The Kos at the *Erusin* is a matter of debate. Some Poskim consider it important, but not essential. Others maintain that it is essential. The difference between the opinions is when wine is not available. According to the first view, no Kos is used. According to the second view, beer or other beverages used as the staple at a meal would be used as a substitute. At the *Nisuin*, and according to most Poskim during the Sheva Brochos, all agree that the Kos is essential. Therefore, if wine is not available, other beverages are used. The custom generally followed is that if no wine is available, beer is used. If no beer is available, for *Erusin* one proceeds without a Kos, but for *Nisuin*, since the Kos is essential, one cannot proceed until a suitable beverage is obtained.

The reason *Birchos Nisuin* is more stringent is that the source for the Brocha on wine is the same source supporting the need for seven Brochos, the Scriptural Passuk, *Sheva Bayom Hilalticha*, “I praised You seven times in a day.” If there is no wine or its substitute, only six Brochos would be possible, therefore we ensure that all seven Brochos are possible for the satisfaction of *Nisuin*. The ceremony of *Erusin*, however, is a Mitzvah in itself without a Kos of wine. We add the Kos to increase the honor and joy of the occasion. Therefore, if one is not available, we are still able to proceed with the ceremony itself.

At the Seudos it is customary to share the Brochos with other attendants, except for the last Brocha, *Borei Pri Hagafen*, which is recited by the one who recited Bircas Hamazon. Since this Brocha applies to both Mitzvos, the one who recited *Borei Pri Hagafen* must recite it as part of his obligation, according to those who require him to recite it every time. The other Mitzvah, though according to our custom we perform it using a second Kos, is exempted with the one *Bircas Hayayin*. [See Pesachim I02b (Tosafos etc.) Kesubos 7a-8b (Rosh, Yam Shel Shlomo) Poskim. Tur Sh. Ar. Even Haezer 61-62, commentaries.]

(C) The Four Cups of Wine at the Seder

The Rabbis instituted four cups of wine to be drunk at the Seder. One cup would in any case be consumed by the leader of the household at Kiddush. According to the earlier discussion, another would be present at Bircas Hamazon under many circumstances, consumed by the leader of Bircas Hamazon. Alternatively, the drinking of these cups could also be divided among the listeners. (These cups can be shared out.) More wine might be consumed during the Seuda. However, according to the commentaries, in the case of the Seder, it is obligatory upon all participants to consume four Kosos individually. Even one who normally can not tolerate wine must try to force himself to drink wine for this Mitzvah. Women, though normally exempt from time-bound Mitzvos are also included in this Mitzvah.

The sources for the four Kosos are listed in the Yerushalmi: Not only to correspond to the four expressions of redemption in the beginning of Parshas *Va'eira*, when HaShem relates his future redemption of Yisroel from Mitzrayim to Moshe Rabeinu, but also to correspond to the four cups served to Paroh in Parshas *Vayeshev*; to correspond to the four empires whose ideologies spread over the civilized world; to correspond to the four cups of punishment that HaShem will give the nations of the world to drink, and in connection with these, four cups of comforting HaShem will give Yisroel. These are the sources for the number four. Aside from this there is an obligation to drink the wine to celebrate *Cheirus*, freedom. If one drank the amount of four cups all at once he fulfilled the *Cheirus* wine obligation, but since they were not separated, he did not fulfill the obligation of four distinct cups.

The fact that the Kosos are located at the particular four junctures they are is a secondary step in the Rabbinical institution. Since four cups must be placed in varying locations throughout the Seder, they are arranged to coincide with Mitzvos requiring a cup already. Thus, the first is used for Kiddush as well; the second for the Hagadah; the third for Bircas Hamazon; and the fourth for Hallel.

In discussing whether all participants in the Seder are required to have all four cups, the commentaries discuss the existence of two parts in the Mitzvah: listening to the Brochos, and drinking the wine. It seems clear that participants can fulfill their obligation of the Brocha by listening to the leader. The question is whether they also need their own Kos, even if they do not say a Brocha independently. This is in keeping with the usual rule of *Shomeia Ke'oneh*, to fulfill a Mitzvah involving saying something one need not say it himself but may listen carefully to another person saying it. The rule is that for *Birchos Hanehenin* one may only rely on another person's Brocha if the other person is also partaking of the food and if the listener is not knowledgeable enough to recite his own Brocha. For *Birchos Hamitzvos*, even if the person reciting the Brocha has no need for it himself, he may exempt even a knowledgeable listener, based on *Areivus*, the inter-responsibility each Jew has to ensure that his fellows fulfill the Torah.

The Brochos on the four Kosos are Brochos on Mitzvos. Therefore, knowledgeable participants could fulfill their Brocha obligation by listening to the leader. However, probably due to the fact that each has his or her own cup as well as Hagadah, many have the custom to follow along in an undertone. There is actually a debate on whether it is better to rely on one leader to exempt the others in such Brochos, or whether it is better for each person to say his own. Is there an advantage when doing the Mitzvah in a group? Customarily, on Shabbos, when the leader is the only one making Kiddush on a Kos and reciting *Hamotzie* on *Lechem Mishneh*, two loaves, it is normal to rely on his Brocha, and by contrast, on Pesach for the cups of wine, Matza and Maror, and on Sukos for *Leishev Basuka*, participants often recite their own Brochos. [See Brochos 21b 45a-b 53a Tosefta 6:20 Pesachim 99b 108a-109b 117b, Yerushalmi 10:I Rosh Hashana 29a-b Suka 38b Poskim. Tur Sh. Ar. O.C. 8:5, 213, 298 Yoreh Deah 19 (Tevuos Shor 8) 265, commentaries. Teshuvos Mabit 117, 180. Avnei Nezer O.C. 381. Beer Moshe VI:75-77. Nitei Gavriel Yomim Noroim, Teshuva 4.]

(D) Two Kedushos on one Kos

We have already touched on the issue of *Ain Osim Mitzvos Chavilos*, not doing Mitzvos in "bundles." The reason for this is that if more than one Mitzvah is performed at the same time, it may appear that the person feels burdened, and is trying to "kill two birds with one stone." Accordingly, we do not make two *Kedushos*, sanctities, on one Kos. For example, if one had to recite Bircas Hamazon at the same time as Havdalah or Kiddush, this would raise the question of whether to use the same Kos for both or bring a fresh Kos for each. In the case of the Kosos at the Seder there are indeed two intentions on the first and third Kos, which also satisfy the Mitzvos of Kiddush and Bircas Hamazon. In fact, the person reciting the Brochas must have both Mitzvos, Kiddush and his obligation at the Seder, or Bircas Hamazon and his obligation at the Seder, in mind when reciting each Brocha and drinking. However, in this case, the four cups were intentionally instituted to coincide with these Mitzvos. The idea was to relate each cup to a Mitzvah. The second and fourth Kosos also relate to Hagadah and to Hallel.

We have mentioned the controversy over requiring separate Kosos for Bircas Hamazon and Sheva Brochos. The issue is similar to that of the four Kosos. The opinion maintaining that only one cup need be used for both distinguishes between the case of a Sheva Brochos and an instance when Kiddush is shared with Bircas Hamazon. Kiddush and Bircas Hamazon are two separate Mitzvos, thus combining them would appear to be *Chavilos*, and therefore they should be performed on two separate cups. In the case of Sheva Brochos, on the other hand, the institution of a special Kos for seven Brochos may be considered only an embellishment of the normal Bircas Hamazon that should anyway be performed in the presence of a Minyan. Therefore, in the case of Sheva Brochos, the additional Brochos are considered part of the Bircas Hamazon and may utilize the same Kos.

This cup would be the same used for the issue would be: according to our practice, a fourth cup should be used for Sheva Brochos, right after Bircas Hamazon. This raises the problem dealt with in the following section. [See Pesachim 102b, Tosafos, Rosh, Poskim. Tur Sh. Ar. 271:6 E. H. 62:9, commentaries.] In our case, performing Sheva Brochos at the Seder, just as with any situation in which Bircas Hamazon would be enhanced by a Kos of Brocha, we may embellish this Bircas Hamazon with Brochos for the Choson and Kallah.

(E) Extra Wine at the Seder

There is a restriction on drinking extra wine at the Seder. Between the second and third Kos, i.e., during *Shulchan Orech*, the Seuda, one may drink more, but between the third and fourth Kos, one may not. One reason given is that during the Seuda the food will prevent the wine from the effect of intoxication. After the Seuda, when no more food may be eaten, the drinker might become intoxicated and unable to complete the required part of the Seder, Hallel. Secondly, drinking an additional Kos following the meal would give the impression that one wishes to add to the number designated by the Rabbis. Accordingly, drinking a separate Kos for Sheva Brochos would raise this issue.

According to the view that permits using the same Kos for Bircas Hamazon and Sheva Brochos, this is no problem. The Brocha will now represent three Mitzvos: Bircas Hamazon's *Kos Shel Brocha*, Sheva Brochos, and the third Kos of the Seder. Many Poskim suggest following this view on Seder night. There arises a dispute, however, on whether to recite the Brocha of *Hagafen* first or to keep it at the end. The majority favor reciting *Hagafen* at the end. Similarly, if less than a Minyan is present, when fewer Brochos are recited on the same Kos as Bircas Hamazon, *Hagafen* is recited last.

Another suggestion by the Poskim to satisfy the alternate view is to have a participant recite the Sheva Brochos, then to have the leader of the group recite *Hagafen*. The one reciting the Sheva Brochos would have in mind to fulfill the Sheva Brochos with his cup on behalf of the assembled, as well as the Choson and Kallah. However, for those who recite individual Brochos, this would not work. No one would be free to recite the Sheva Brochos. In addition, this presumes that the one reciting the Sheva Brochos need not have his own *Kos Shel Brocha* at the Seder.

If we say that the Rabbis wished to link the third Kos to Bircas Hamazon, we might not satisfy the requirement with a Sheva Brochos Kos. Or, maybe any Kos Shel Mitzvah is good enough. The Rema, whom we usually follow, suggests that the leader recite Bircas Hamazon on his own Kos, and Sheva Brochos on the Choson's Kos. It seems that he includes *Hagafen* on the Choson's Kos. A third suggestion is to recite the Sheva Brochos on a new Kos, but not to drink it right away. The Choson may use this Kos for his fourth Kos and Hallel. [See Darkei Moshe O.C. 473:4. Sdei Chemed, Asifas Dinim, Maareches Chometz Umatza 15:7. Kaf Hachayim D.C. 479:3-4.]

IV. SEFIRAH

1. Child's Recitation of *Sefiras HaOmer*
2. Counting *Sefiras HaOmer* after Dawn

I. A Child's Recitation of Sefiras HaOmer

Parshas Bemidbar/Shavuos 5755 Vol III No 19

QUESTION: At what age should a child begin to count Sefiras HaOmer? May he count early in the evening before he goes to sleep? If so, should he recite the Brocha? If he missed counting one night, may he continue counting on subsequent nights?

Issues to Discuss:

- (A) The Mitzvah of Sefiras HaOmer: Its Meaning and Its Timing;
- (B) Chinuch, training and educating children to perform Mitzvos;
- (C) Brochos recited by children.

(A) Sefiras HaOmer

When the Bais Hamikdash was standing, counting the days from the second day of Pesach until Shavuos was a Scriptural Mitzvah. On the second day of Pesach the Korban Omer offering of the first of the new barley crop took place. We are commanded to verbally count the days and weeks from then until Shavuos. Since we presently don't have the Bais Hamikdash, however, most Poskim do not consider the Mitzvah Scriptural but Rabbinical, *Zecher Lemikdash* to remember the Bais Hamikdash.

By its nature, to fulfill the Mitzvah of Sefiras HaOmer one must be aware that he is counting and why he is counting. Therefore, many Poskim are of the opinion that if one does not understand Hebrew he must count in a language that he understands. The simple meaning of the Mitzvah is to show our eager anticipation for the

celebration of Shavuot when we received the Torah. We celebrate the holidays that correspond to events of the past to reenact those events in our own lives. When the Jews left *Mitzrayim* Moshe had told them that they would serve HaShem at Mount Sinai in fifty days. They then began counting the days. Just as they experienced this excitement, we, too, count the days.

However, the Torah connects the Mitzvah to the Korban Omer and the Korban Shte Halechem, two loaves offered from the new wheat crop on Shavuot. The Shte Halechem must be brought exactly fifty days after the Omer, and we must count those days. According to this, the Mitzvah seems to apply only when those Korbanos are actually offered. This is why most Poskim consider it a Rabbinical Mitzvah today, to remind us of the Bais Hamikdash, and simply for enhanced meaning, linked to the anticipation of the Kabbalas HaTorah. It can also be viewed as a time of preparation; Kabbalistically each day is part of a progression towards Shavuot itself, when the Jewish people reached their highest spiritual point. In spite of the obvious connection to Korbanos, some Poskim consider this Mitzvah Scriptural even today. In fact, many people announce before counting that they “intend to fulfill the obligation stated in the Torah...” implying that it is a Scriptural obligation.

The Torah's terminology refers to counting days and weeks, which is taken to mean that it is obligatory to mention both the day and the week one is counting. This is interpreted in many different ways. Firstly, there is a debate whether they are two distinct Mitzvos: one to count the days and another to count the weeks, or that they are two parts to one Mitzvah. [According to one opinion, they are not only two different Mitzvos, but the Mitzvah to count weeks applies Scripturally today while the Mitzvah to count days is only *Zecher Lemikdash*.] Another question arises as to how one should count the weeks. One way is only to count them at the completion of each week. Others maintain that the days should be counted as part of the weeks. Thus, on the eighth day one would count a week and a day and so on. Others point out that this is really like counting only weeks, since the days represent parts of weeks. In practice we try to satisfy all opinions, to count the days individually and then to count the weeks, whole and in parts.

The Torah states that one must count *Temimos*, complete weeks. The Talmud derives from here that one should begin counting at night on the first night so that he will have counted the complete weeks without even missing the first part of a day. The barley for the Korban Omer should therefore be cut (part of the Mitzvah of this Korban is the *Ketzira*, harvesting process) by night on the second night of Pesach. Many Poskim follow the view in the Talmud that if it was not harvested at night it should still be harvested the next day. Most Poskim learn from this that if one did not count at night he may count the next day. However, some Poskim do not allow a Brocha to be said when one counts during the day (the common practice is to follow this ruling). Thus, we compare the Halachos of the Korban and the Sefirah both ways.

Sefiras HaOmer may not be done before nightfall – one can not count a day, stating “*today is...*” before the day has begun. Halachically, the day begins at night, but the beginning of the night is not known for certain. The time between sunset and nightfall, known as *Bein Hashmoshos*, twilight, is considered part of both the previous day and the next day. For example, one may not do Melacha at twilight on Friday (because it might already be Shabbos) and at twilight on Shabbos (because Shabbos might not be over yet). Accordingly, one could not count the Sefirah before it is definitely dark. However, some Poskim actually recommend counting at dusk, at least on the first day. Their reasoning is that the Torah requires *Temimos*, i.e. that the weeks and days are counted completely. Therefore, one should try to count at the earliest opportunity so as not to lose part of a day. On the first night this is especially important, besides which, there is no problem of counting while it is still really the previous day. Moreover, since the Mitzvah is Rabbinically ordained and the time of *Bein Hashmoshos* is a *Safeik*, doubt, we apply the rule *Safeik Derabanan Lekula*, in the case of a Rabbinic ordination, we are lenient in a circumstance of doubt. Other Poskim conclude that one should not count before it is conclusively night, and as for the *Temimos* concern, we need not be more concerned about Sefiras HaOmer today than the Ketzira and Sefiras HaOmer at the time of the Bais Hamikdash, when we have no indication that they hurried to fulfill the Scriptural obligation at dusk.

There is a minority view that on Erev Shabbos, when one davens Maariv before dark, one may count Sefirah earlier too. To reconcile this view, the commentaries compare Sefirah to the Shema and Shemone Esrei of Maariv which may be said after Plag Hamincha, about an hour and a quarter before the end of the day. Thus, some Poskim justify shuls that daven Maariv and count Sefirah early as well. However, the Poskim suggest that one should not recite the Brocha when counting so early and should have in mind not to discharge his obligation with this counting unless he forgets to count again later. He should then count again after dark with a Brocha.

Based on the Talmud's inference of the requirement of *Temimos*, there is a debate about the nature of the Mitzvah: Is the Mitzvah to count every day, creating one Mitzvah as a result of forty-nine small consecutive counts, or would each of the forty-nine day counts be considered individual Mitzvos? The implication of *Temimos* is that it is necessary to count every single day to qualify for fulfillment of the Mitzvah, viewing the daily counts only small parts contributing to one Mitzvah elongated over time. One difference between these opinions is that if one count is missed, the actual Mitzvah has been interrupted, thus, even if counting continues on subsequent days, the Mitzvah is still essentially incomplete. If the counts are separate Mitzvos, one who forgets to count one day is nevertheless obliged to count the next night, just as missing one day of saying Shema does not exempt one from his obligation to say it the next day. The conclusion of most Poskim is that if a day is missed, one should continue to count the remaining days, but since there is an opinion that he is no longer fulfilling the Mitzvah he should not recite the Brocha. [See Menachos 65b-66a commentaries, Poskim Rambam Hil. Temidin 7:22 commentaries (Or Sameach). Rif Ran Rosh, end Pesachim Chinuch 306. Sefer Haminhagim, Pesach note 2I(ii). Tur Bais Yosef Bach, Shulchan Aruch Orach Chaim 489 I-3, 7-8 Commentaries. Halochoscope I:23.]

(B) Chinuch

Under the age of Bar-Mitzvah or Bas-Mitzvah a minor is not obligated to keep Mitzvos Scripturally. However, there is a Rabbinical ordinance, Chinuch, obligating the observance of Mitzvos to train and prepare for their practice as an adult. All Rabbinical ordinances are compulsory because of the obligation to adhere to the words of our Rabbis, a Scriptural Mitzvah. Accordingly, since children are not obligated in this Mitzvah either, some commentaries do not consider Chinuch the child's obligation but his parents.' There is another Mitzvah, possibly Scriptural, obliging us to prevent a child from eating forbidden food, and certainly prohibiting us from feeding it to them This applies even to a small child who has not reached Chinuch age. The age of Chinuch is when the child is old enough to understand the Mitzvah or to actually perform it. In the case of positive Mitzvos this varies according to each Mitzvah. In the case of negative Mitzvos, as soon as the child is old enough to listen when he is told not to do something he must be stopped from doing any Aveira.

In the case of counting Sefirah, we have a number of questions. At which age is the child competent enough to be trained to count Sefirah – when he knows how to count, when he can keep track of the date, or when he understands why we are counting? Must the child count in the same way that adults count, meaning that it must be at the same time of day, and that if he forgets he may not say the Brocha on subsequent days? Must the minor be old enough to understand the idea of *Bein Hashmoshos* or that the new day does not begin until it gets dark? What if the child turns old enough to understand during the Sefirah period? Has he missed out on the Mitzvah because he did not count the beginning? If he has not reached the age of Chinuch is there a problem with allowing him to recite the Brocha, and should he be discouraged? If he is old enough to say Brochos, will he not wonder why the adults do not ask him to recite this one if he is around when adults count? Is there an issue of reverse Chinuch by not letting him count?

There is a question about the object of Chinuch: Some Poskim feel that it is to train the child to be in the habit of doing Mitzvos, so they will not be hard for him to adjust to when he reaches the age of Bar-Mitzvah. Others feel that it is as if the child is a little adult, and in any instance that he would not observe the Mitzvah as an adult he should not do it as a minor. According to the first view, it would appear that one should train a minor to count even if it is not going to be at the right time for an adult, or if he missed a night One may also train him in the ritual as soon as he is able to count even if he does not understand the reason for it. A child is taught to recite Shema as soon as he can talk. As he grows older he should be taught more. However, it would be considered reverse Chinuch to allow him to think he can count too early; he should wait until *Plag Hamincha* at the earliest. He can also be told that since he is counting early ("it is light outside!") he does not say the Brocha like his parents. When he is older he should wait until dusk, and should learn about the timing of the Mitzvah.

According to the other opinion, one should wait until the child is able to understand what he is doing and he should not count before the earliest time that an adult would count. i.e. dusk. If he goes to sleep before this time, he should be taught to count the next day without a Brocha. This is the way children are trained to recite Havdalah (on Sunday) if they go to sleep before Shabbos is over. As for reverse Chinuch when not letting him count with the adults, if he is old enough for that, he is probably old enough to be taught to count. However, if there is still a question about his level of understanding one should discourage him from reciting the Brocha, since he might not know what the Brocha is about. [See Sukah 42a-b Chagiga 2a 6a Brachos 48a Megilah 19b Yevamos II4a-b

commentaries. Poskim. Sh. Ar. O.C. 343. commentaries. Igros Moshe Yoreh Deah I:137, II:104. Halochose I:14, II:7, 34.]

(C) Children's Brochos

When reciting a Brocha, a child must be old enough to know to Whom he is referring in the Brocha. He is not simply practicing the motions of the Mitzvah, for if that were the case, he could recite them as soon as he is old enough to talk. However, in the case of Brochos one is using the Name of HaShem, a serious offense if it is not necessary. One may not allow a Shem, Name of HaShem, to be said in a disrespectful way, and when one hears it he must react forcefully towards the person uttering it. However, if it is said as part of a Brocha, albeit in vain, or by a child who does not realize what it is, it is less serious. Nonetheless, one may not answer Amen to such a Brocha. Therefore, children should not be encouraged to recite Brochos before they are old enough to know what they are doing. If the child is then taught the meaning of the Brocha he will appreciate it more and will not garble his Brochos as an adult. Thus, rather than being reverse Chinuch, it is true Chinuch to stop a child from reciting a Brocha until he is ready. [See Temura 4a Rosh Hashana 33a Tosafos. Sanhedrin 66a Poskim. Rambam Hil Shevuos:8-9. Sh. Ar. O.C. 206:3, 6. 215:2-4. Mishneh Berurah 16 Aruch Hashulchan 2. commentaries. Halochose I:9, II:13.]

2. Counting Sefiras HaOmer after Alot HaShachar

Parshas Acharei Mos-Kedoshim 5756 Vol IV No 14

QUESTION: May one count Sefiras HaOmer with a Brocha after dawn until sunrise?

Issues to Discuss:

- (A) *Sofeik Brocha*, reciting a Brocha when in doubt about the obligation
- (B) The Mitzvah of counting Sefiras HaOmer and its timing
- (C) When does night end and day begin?

(A) *Sofeik Brocha*

Any time a Brocha is recited, the Name of HaShem is mentioned. Normally, it is forbidden to recite HaShem's Name in vain, i.e. when there is no obligation to do so. The obligation to recite Brochos before performing a Mitzvah is Rabbinical. When there is a definite obligation the Rabbis had the authority to institute the Brocha, despite the use of HaShem's Name. When the obligation is not there, however, it is forbidden to recite the Brocha. Some consider it an outright violation of the Scriptural negative Mitzvah, *Lo Sisa*, forbidding taking the Name in vain. Other Poskim maintain that this does not apply to a Brocha; instead, it is a violation of the positive Mitzvah, *Es Hashem Elokecha Tira*, to revere HaShem. Others maintain that since a Brocha also involves praising HaShem, albeit unwarranted, it can not be forbidden Scripturally at all. However it is forbidden Rabbinically. Thus, according to many Poskim reciting a Brocha when in doubt raises the issue of a *Sofeik D'Oraisa*, questionable violation of a Scriptural prohibition. We rule stringently in such cases, to refrain from doing the act. Though saying the Brocha is also an obligation, it is a Rabbinical one. The doubt makes it a *Sofeik D'Rabanan*, a questionable Rabbinical obligation, where the rule is leniency. Particularly here, where stringency in the Rabbinical obligation leads to leniency in a Scriptural prohibition, one must refrain from reciting the Brocha. The issue in our case is: is the period between daybreak and sunrise considered daytime, or *Safeik day*, which means that no Brocha would be recited on the Sefirah, or may this time period be considered night for these purposes? [See Brochos 33a 39a (Rosh) Sanhedrin 66a Rosh Hashana 33a (Tosafos) Temura 4a Rambam Hil. Brochos I:15 Shevuos I2:9II. Minchas Chinuch 30. Teshuvos R. Akiva Eger I:25 Shulchan Aruch Orach Chaim 206:6 Mishneh Berurah 215:20. Halochose I:9 II:13]

(B) Sefiras HaOmer by Day

The Mitzvah of Sefiras HaOmer is meant to be performed by night. One basis for this requirement is that this Mitzvah is linked by the Torah to another Mitzvah, *Ketziras Haomer*, reaping the Omer offering. The Omer is an offering of the first of the ripened barley crop, brought on the second day of Pesach in the times of the Bais Hamikdash. Like all Korbanos, offerings, it was brought by day. The barley was cut by night, as soon as the first day of Yomtov was over. The Talmud learns from the juxtaposition of the two Mitzvos that the time for Sefiras

HaOmer is also by night. Though the Omer was only cut on the first night, the counting follows the same procedure on all forty-nine days.

Another source is *Temimos*, the Mitzvah to count seven complete weeks. Since the Torah specifies this requirement, we see that one should not let part of the day or week go by before counting. In Judaism, dating begins at night. Thus, the seven weeks of Sefirah begin by night, and the Mitzvah to count each day begins at night of each day. Therefore, if the Mitzvah begins by night it should not be delayed until the next day. Some commentaries point out that although it appears that the timing of Sefiras HaOmer is derived by comparing it to the *Ketzira*, the opposite is really the case; *Temimos* implies that Sefirah must be done by night, and since they seem to be interdependent, *Ketzira* must therefore also be done by night.

There are two views in the Talmud on whether the Omer may be actually cut by day. According to the view that it may be done, the Mitzvah of Sefiras HaOmer should also be possible to do by day. However, there is an opinion that although the Omer could be cut by day, it would not be the ideal manner of performing this Mitzvah. In regard to the details of the laws of Korbanos and related issues, a general principle is that if the Torah repeats a law it is essential, but if it is mentioned once it is simply the ideal. By insisting on *Temimos*, the Torah is stressing the requirement of night counting for Sefirah, while for *Ketzira* it is not repeated. Thus, though the *Ketzira* might be valid by day, according to one view, the Sefirah should not be. Another objection to the comparison is lodged. True, the two Mitzvos may be connected, and there is indeed an opinion that if the Omer was cut by day it is valid. However, the mention of cutting the Omer by day might refer to cutting it early, the day before the night of the sixteenth of Nissan, and that after daybreak on the sixteenth it would be too late. While the *Ketziras Haomer* itself may have been performed, it would not have been possible to begin counting Sefirah then, because it would be the wrong day. Accordingly, there is no source to permit counting Sefirah by day.

Today, though we do not perform the service in the Bais Hamikdash, the Mitzvah still exists. The Poskim debate whether the present day Mitzvah is Scriptural, despite the lack of the Korban to go with it, or Rabbinical, *Zecher Lemikdash*, instituted as a reminder of the services done in the Bais Hamikdash.

Assuming it is still a Scriptural obligation, it would not be closely linked to the Korban Omer, and its time need not coincide with the cutting of the Omer itself. Assuming it is a Rabbinical obligation, the Mitzvah is indeed linked to the Omer cutting. Accordingly, at the time of the Bais Hamikdash, its time corresponded to the time of the cutting of the Omer. Since today it is *Zecher Lemikdash*, its timing today must also correspond to its timing in the Temple times. Nonetheless, since it is a Rabbinical obligation, some authorities maintain that its timing may be treated more leniently than the original Scriptural obligation.

Some Poskim rule that Sefirah is permitted by day, with a Brocha. Others maintain that it is not. A third view says that *Temimos* only requires counting by night on the first night, but not on subsequent days. In practice, if one did not count by night he may count by day but should not recite a Brocha, due to the questions surrounding the applicability of the Mitzvah the following day. The following nights he may resume reciting the Brocha. [If one missed the entire day and night, however, he may not resume counting with a Brocha, due to a second debate about the nature of the Mitzvah. If counting each night is an independent Mitzvah, he may recite the Brocha again each night for the obligation that night. However, if the “counting” is considered to be one long, continuous Mitzvah, once interrupted (breaking the *Temimos* aspect), it cannot be restarted, thus prohibiting the Brocha on subsequent evenings. However, if he did count by day, there is a *Safeik-Sfaika*, two half-possibilities – maybe the count by day works in the first place, and if it does not, maybe the Mitzvah is new every night. Thus, with two half-possibilities, the Brocho for the following night is permitted.] [See Menachos 67a 72a-b Megila 20b Poskim. Shibolei Leket 234. Tur Shulchan Aruch Orach Chaim 489:7 commentaries. Halochoscope III:19.]

(C) The Beginning of Daytime

Usually, Mitzvos that must be performed by day fall into two categories: either they may be performed at any time after sunrise, with the ideal being the earlier the better (excluding, of course, those which must be performed in the afternoon); and those which may be performed before sunrise, but after it is light enough to distinguish certain colors or to recognize an acquaintance at a short distance. This earlier time is known as *Misheyakir*. Even those that should be performed after sunrise are acceptable when performed sooner.

The difference between night and day is the presence or absence of light, but there are times when this is not as clear. When the sun is showing, there is no question that it is day, and this is usually the way day is defined by the Torah. Following sunset is considered *Bain Hashmoshos*, a twilight period, inconclusively day or night. There are

different views on how to calculate this time period, based on debates in the Talmud and commentaries. Before sunrise, as it becomes lighter due to the emerging sun below the horizon, is considered day as well. The absolute earliest time to be considered day is dawn. This time is calculated backwards from the time of sunrise, which is a visible phenomenon. There are several views on how to calculate the time between dawn and sunrise based on the Talmud's measuring it as a proportion of the entire day. Part of the issue is what the Talmud considers "Day." Is day calculated by hours of sunshine, or does it also include the twilight and dawn times? Or is "day" a full 24 hr. period, with consistent 12 hour proportions regardless of seasonal fluctuations in hours of light and dark? Based on one's view of dawn one can then calculate *Misheyakir*.

The Talmud makes it quite clear that the Mitzvos done by day should be done at sunrise and are valid after dawn. It is presumed that, therefore, the Mitzvos to be performed by night are only valid at the times that the day Mitzvos are not valid. There is one notable exception to this rule: *Krias Shema*, reciting Shema. The Shema must be recited twice daily, in the morning upon rising [in Shacharis], and at night upon retiring, based on the Passuk *Beshachbecha Uvekumecha*, when you lie down and rise. This is interpreted as the time of retiring at night and the time of waking up. The time for the Mitzvah at night, though subject to much Talmudic debate, is connected to the official onset of Halachic night. In the morning, the time of rising should be the beginning of the day, which should also be the latest time for the night Shema. However, the Talmud makes a provision for one who is in a pressing situation to consider the time between dawn and sunrise as a dual purpose time. What the Talmud actually says is that if one is pressed, he may recite Shema twice at night and fulfill the obligations for the Shema of night and of day – if he says it once before dawn and again after dawn. This implies that before sunrise is considered night. Then, the Talmud suggests that reciting twice by day accomplishes the same end before, and again after sunrise. This implies that after dawn is considered day. In the same breath the Talmud considers the same time period as both night and day according to halacha for the purposes of performing a Mitzvah – halachically its status changes according to the need of the Mitzvah. [The possibility is even entertained that in an exceedingly pressing situation one might be allowed to recite Shema twice in that same time period, qualifying for both night and day recital.] The Talmud concludes, however, that the case of the Shema is flexible since the Mitzvah of its recital may depend on times of sleeping and waking rather than on the status of day vs. night, or light vs. dark.

Therefore, we may assume that regarding other Mitzvos to be performed by night, after dawn would be too late. Accordingly, one would not be allowed to recite the Brocha on Sefiras HaOmer after daybreak, even before *Misheyakir*. This is in contrast to twilight, *Bain Hashmoshos*. Some Poskim maintain that since the Mitzvah is Rabbinical, one may count Sefirah with the Brocha during *Bain Hashmoshos* because it is not conclusively day or night, whereas once the dawn breaks, it may be conclusively day, although precautions are taken to delay some Mitzvos until *Misheyakir*. Some commentaries maintain that those Mitzvos recommended for performance following sunrise are delayed simply because daybreak is not easy to determine.

One source implies that the reason Sefirah may be done at night is because *Ketzira* is at night in order to get the barley ready for the Korban. Accordingly, one might suggest that since the Korban is not brought immediately at daybreak, *Ketzira* and *Sefirah* should be valid then. Furthermore, the Talmud gives the order of the Mitzvos as *Ketzira*, then *Sefirah*, then the offering. Since *Ketzira* may be done until daybreak Sefirah must be permitted right after daybreak. However, upon examination of the Talmudic text, it is apparent that the reason Sefirah is at night is not because it depends on the time of *Ketzira*. Quite to the contrary, Sefirah must be at night due to *Temimos*, and *Ketzira* must precede Sefirah, so *Ketzira* must also be at night. [According to the opinion that *Ketzira* may be done by day we must assume that the implication is that after the *Ketzira* the Sefirah may still be done.]

In conclusion, unlike Shema, the Mitzvah of Sefirah, according to those who say it is applicable only by night, may not be performed after daybreak. Accordingly, one who counts then may not recite the Brocha. [See Brochos 8b-9a (Rosh) Megila 20a-b Menachos 67a Tur, Bais Yosef, Sh. Ar. O.C. 58: 235; 489, Levush.]

About Rabbi Silver

Rabbi Shimon Silver of the Young Israel of Greater Pittsburgh was born in London, England in 1960. He was educated at Hasmonian Grammar School. After graduating with his 'O-levels', he stayed on two more years for his A-levels before attending Gateshead Yeshiva.

At Gateshead, Rabbi Silver studied under, among others, R' Leib Gurwicz, R' Leib Lopian, R' Moshe Schwab, R' Avrohom Gurwicz and R' Mattisyahu Salomon, currently mashgiach in Beth Medrash Govoha, Lakewood. In 1982, Rabbi Silver began his studies in Beth Medrash Govoha. He settled there for 3 years after marrying Chani Goldman of Washington Heights, NY in 1983. Rabbi Silver earned his Semicha in 1985 from Beth Medrash Govoha.

Since 1985, Rabbi Silver has served as a founding Kollel fellow at the West Side Kollel in Manhattan, a member of the Kollel in Pittsburgh, Rabbi of Shaare Tefillah (the "Russian Shul"), and Bais Medrash rebbe at the Mesivta of Greater Pittsburgh in White Oak, PA. He also served as Rav and acting Menahel of Hillel Academy.

In January 1993 he launched his HalochoScope weekly. This 'newsletter' subsequently became very popular in the Pittsburgh community and nationwide. Rabbi Silver takes pride in being a pioneer in the current trend of English language quality halachic media. In 2002, when Rabbi Silver took over as Rav and acting Menahel of Hillel Academy, HalochoScope became too time-consuming. In 2006 publication was resumed, due to popular demand. It is now in its seventeenth year, with a four year break.

Since 2004, Rav Silver has been the Mara d'Asra of Young Israel of Greater Pittsburgh. He also serves as the supervising Rav of the local Eruv and Mikvah. He is a member of the Vaad Halacha of the National Council of Young Israel, and is sought after as a posek. He has authored a number of well received publications in both Hebrew and English, besides HalochoScope, and has appeared as a speaker for a spectrum of organizations.

Rebbitzen Chani Silver, nee Goldman, was born in 1963 in Washington Heights, New York. She grew up in the Breuer's Kehillah, attending Yeshiva Rabbi Samson Raphael Hirsch through high school graduation. After attending the City University of New York for a short while, studying computer science, Chani attended the Manchester Bais Yaakov seminary in England. Upon returning to the States, Chani attended COPE Vocational Institute and trained as a computer programmer. She later earned her bachelors in computer science and M.S. Ed. in instructional technology.

Chani began her working career as a programmer for the NY board of Education, for a company in Lakewood New Jersey, and as a consultant in New York. Since moving to Pittsburgh, she worked for a software company in Oakland and as a software quality assurance consultant, and, for fifteen years, as the technology director of Hillel Academy and computer teacher at Yeshiva Achei Temimim. For a short while, Rebbitzen Silver edited and produced the Pittsburgh Counterpart, a magazine for Jewish Women. More recently, she has consulted in producing multi-media educational materials, including a recent on-line course for rebbitzens for the National Council of Young Israel. She is also pioneering courses for high-school age girls.

Rabbi and Mrs. Silver currently live in the Squirrel Hill section of Pittsburgh with three of their children; their oldest married daughter lives in Israel; their second married daughter lives in Lakewood, NJ, and their oldest married son lives in Baltimore MD. They have, bli ayin hara, five more, and a growing number of grandchildren.

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Shailos U'Teshuvos Pesach

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