



THE RELEVANCE OF TORAH IN ALL SITUATIONS: A SAMPLE OF HALACHIC RULINGS FROM THE COVID-19 CRISIS

Every morning, we recite the *Birchot HaTorah* and thank HaShem for giving us the Torah. If we pay careful attention to the text, we may notice an apparent inconsistency in tenses:

ברוך אתה ה' אלקינו מלך העולם אשר בחר
בנו מכל העמים ונתן לנו את תורתו בא"י נותן
התורה.

*Blessed are you HaShem ... Who has
chosen us from all nations and gave us
His Torah, Blessed are you HaShem
Who gives the Torah.*

The blessing switches from *natan* (Who gave) to *notein* (Who gives). Why does the blessing switch from past tense to present tense? Why not be consistent? The Vilna Gaon, *Kol Eliyahu* to *Eruvin* 21b, suggests that the blessing is referencing two different aspects of the giving of the Torah. The written Torah was given at Sinai. *Matan Torah*, which we

commemorate on Shavuot, is an event that took place in the past. However, at Sinai, there was an oral Torah that was also given, and in each generation Torah scholars add new analysis and interpretations. In *Birchot HaTorah*, we recognize not only the past event that took place at Sinai, but the ongoing gift of new interpretations and analysis that we experience on a constant basis. We refer to HaShem as He “Who gives the Torah” in the present tense because this type of *Matan Torah* happens at every moment.

Much of the ongoing interpretation and analysis is the result of changing times. The Torah is constant and never changes, but the circumstances in which we must keep the Torah are always changing. Every generation must find a way to apply the Torah's timeless messages and laws to new circumstances.

The ninth of the Thirteen Principles of Faith is the principle that the Torah will never change. Rabbi Soloveitchik (cited in *Nefesh HaRav* pg. 276) added homiletically that there should be a fourteenth principle that supplements the ninth one — that the Torah is relevant and meaningful in every generation and in every circumstance.

Over the past few months, our whole way of life changed as the result of COVID-19, and with that, we were faced with many questions about how to observe the Torah under these circumstances. Our Torah leaders not only showed us how to apply Torah law to these unusual circumstances, they showed us how to make texts that were written hundreds or thousands of years ago, about very different circumstances, relevant to a 21st-century crisis. The goal of this article is to provide some of these examples.¹

The Halachic Status of a Video Conference

Before Purim, several Jewish communities and individuals were placed in quarantine. How were they supposed to fulfill the mitzvah to read (or hear) the Megillah without the ability to attend a service? Some of those individuals had access to a Megillah to read or someone to read for them (from a proper distance), but others did not. Were they able to fulfill the mitzvah by listening to or watching a Megillah-reading taking place elsewhere?

The question of whether we can listen to the Megillah over phone or video conference is not new. This is something that poskim have already debated and in previous years, this issue was avoided by arranging for someone to read personally for those in need. However, this year, because so many people were in this situation, it wasn't practical to find someone to personally read for all affected individuals.

What are the arguments for and against listening to the Megillah by phone or video conference? The debate actually centers around how to understand a Mishna, *Rosh HaShanah* 27b, discussing blowing a shofar into a pit:

התוקע לתוך הבור או לתוך הדות או לתוך הפיטס אם קול שופר שמע יצא ואם קול הברה שמע לא יצא.

If one blew a shofar into a pit or a cistern or a jug, if he heard the sound of the shofar, he has fulfilled his obligation. If he heard the sound of the echo, he has not fulfilled his obligation.

What is the exact problem with hearing the echo of the shofar? R. Shlomo Zalman Auerbach, *Minchat Shlomo*, no. 9, suggests that the problem is that one isn't actually

hearing the sound of the shofar but a replication of it. For this reason, one who hears shofar or Megillah through a microphone or telephone cannot fulfill the mitzvah, since the sound that is heard is not the actual sound, but a digital (or analog) replication of the sound.

R. Auerbach, op. cit., notes that he discussed the matter with R. Avraham Y. Karelitz (*Chazon Ish*). *Chazon Ish* responded that if the listener hears the sound through an amplification system immediately after the sound is produced, it is possible that he fulfills the mitzvah. R. Auerbach explains that accordingly, one must explain that the problem with the echo is that the sound is not heard immediately upon its production.

R. Moshe Feinstein, *Igrot Moshe, Orach Chaim* 2:108, argues that even if we consider the sound coming out of a speaker as a reproduction, it does not necessarily invalidate the sound because any sound that is heard is not the actual produced sound but a reverberation of sound waves. He posits that the problem with hearing the echo is that an echo is a weak sound. Sound produced through an amplification system is a strong sound and therefore not subject to the invalidity of the sound of the echo.

Therefore, R. Feinstein rules that in principle we should not protest those who use an amplification system for the reading of the Megillah, provided that the sound is heard at the time of reading (i.e. not a recording). However, he was not willing to endorse using a microphone for Megillah reading.

When Rav Hershel Schachter was asked about the permissibility of quarantined individuals to fulfill the mitzvah by phone or video, he responded as follows:

Lechatchila, Rav Moshe Feinstein rules that this is not permitted. In a bidi'eved situation, since mikra megillah is derabanan, it is permitted. (This is as opposed to Rav Shlomo Zalman Auerbach who thinks even then it is not permitted. Rav Soloveitchik raised the same issue as Rav Moshe Feinstein regarding the reason why we do not allow shomei'a ke'oneh on a kol havarah.) Therefore, in a situation in which it is impossible to have an in person mikra megillah due to pikuach nefesh considerations caused by Coronavirus, it is permissible to hear mikra megillah via a live phone call or video. We follow the rule that sha'as had-chak ke-di'eved dami; in a sha'as had-chak we allow le-chatchila what is usually only accepted bidi'eved.

Based on R. Feinstein's ruling, we wouldn't normally allow someone to fulfill the mitzvah of Megillah by phone or microphone but would invalidate the reading of someone who performed the mitzvah in this manner. However, because this is a pressing situation and because R. Feinstein didn't invalidate the reading in these situations, we employ the rule *sha'at hadechak kedieved dami*, in pressing situations we can endorse practices that are usually only valid *ex post facto* (see *Yad Malachi, Klalei HaDinim* no. 587).

Virtual Minyan

Another question relating to video conferences is whether we can create a "virtual minyan" with ten men, each in their own homes, who recite the services together. Can we consider them all together for the purpose of reciting prayers that require a minyan (Kaddish, Kedusha, the Chazan's Repetition)?

There is a dispute between Rashi and Tosafot in *Pesachim* 85b regarding the inclusion of someone for a minyan

who is standing on the other side of a wall. Their dispute revolves around how to understand a dispute between R. Yehoshua ben Levi and R. Yehuda as to whether a wall serves as a barrier between those in the synagogue and those on the outside. Tosafot write:

פי' בקונטרס לענין צירוף ואין נראה ...
ובפרק כל גגות (עירובין צב:) משמע סתמא
דגמרא דמחיצה מפסקת לצירוף דקאמר ט'
בקטנה ואחד בגדולה אין מצטרפין ... ונראה
לר"י דהכא מיירי לענין לענות יחיד קדושה
ויהא שמיה רבא מברך דאין מחיצה מפסקת
לריב"ל ולרב יהודה מפסקת

According to Rashi, the Gemara is dealing with counting the person on the outside as one of the ten people in the minyan. This is not accurate ... In Eruvin 92b, the Gemara indicates that a wall does serve as a barrier to join people for a minyan as it says that if there are nine in a small room and one in the big room, they cannot combine for a minyan ... Rather, Rabbeinu Yitzchak suggested that here we are dealing with an individual answering for Kedusha and Kaddish. According to R. Yehoshua ben Levi, the wall does not serve as a barrier and according to R. Yehuda, it does.

Tosafot's opinion — that all ten people must be in the same room in order to create a minyan — is codified by *Shulchan Aruch, Orach Chaim* 55:13. Based on the opinion of Tosafot, R. Yosef Zvi Rimon ruled that we cannot create a minyan over video conference since each person is in a separate room. However, the argument can be made to answer for Kaddish and Kedusha if one is watching a video conference of an existing minyan (such as in Israel where the Ministry of Health allowed outdoor minyanim of small groups during certain periods of time).

R. Rimon also noted another idea relevant to video conferencing and

prayer. Some Rishonim explain that the reason why a fixed text was chosen for prayer was so that the Jewish people can be united in prayer. This reason applies even when there is no minyan, and as such, it is worthwhile for a community to pray together over video conference even if it doesn't constitute a minyan.

Tevilat Keilim

When a metal or glass utensil is purchased from a non-Jew, there is a mitzvah to immerse the utensil in a mikveh prior to using it. As Pesach approached, this was a challenge for many communities. Many people were making Pesach for the first time and had purchased new utensils that required immersion. Some communities felt that it was not safe to open the keilim mikveh. Even in communities where proper safety precautions were implemented, there were people who were told to stay home and couldn't access the mikveh. As such, an alternative needed to be found.

Shulchan Aruch and Rama (*Yoreh Deah* 120:16) discuss what to do when there is no access to a mikveh:

אם שכח ולא הטביל כלי מערב שבת או מערב
יום טוב יתנונו לעובד כוכבים במתנה ואחר כך
ישאלנו ממנו ומותר להשתמש בו: הגה: וכן
יעשה אפילו בחול במקום שאין לו מקוה (ב"י).
*If one forgot to immerse a utensil before
Shabbat or Yom Tov, one can give it as
a gift to a non-Jew and then borrow it
back. Then one may use it.*

Glosses of Rama: This solution should also be employed during the week in a place where there is no mikveh.

Immersion of utensils is not permitted on Shabbat or Yom Tov. Therefore, if one forgot to immerse a utensil beforehand, another option needs to

be found in order to permit using it on Shabbat. The solution is to give it as a gift to a non-Jew and then borrow it back. The utensil, which is now owned by a non-Jew, doesn't require immersion. Rama adds that this solution can also be employed during the week when one has no access to a mikveh. *Taz* (18) adds that this is only a temporary solution. As soon as Shabbat is over or as soon as one has access to the mikveh, there is a requirement to repurchase the utensil and perform the mitzvah properly.

In Shulchan Aruch's time, employing this solution involved bringing the utensil to a non-Jewish neighbor and asking him to lift up the utensil in order to acquire it. In an age of social distancing requirements, this solution isn't practical. How then can we implement such a solution during the COVID-19 crisis?

We face a similar challenge every year before Pesach. From a halachic perspective, the simplest way to perform *mechirat chametz* (sale of chametz to a non-Jew) would be for the owner of the chametz to bring his or her chametz to the non-Jew, have the non-Jew pick up the chametz as a means of acquisition (to fulfill the opinion of R. Yochanan in *Bechorot* 13b), and then pay money (or a down payment) for the chametz (to fulfill the opinion of Reish Lakish, see Rabbeinu Asher, *Bechorot* 1:2). However, it is not practical to have everyone take all of the chametz out their homes and have a non-Jew lift up every single chametz item. Instead, everyone in the community appoints the rabbi as their agent to sell the chametz. The rabbi then performs a series of transactions to ensure that both the opinions of R. Yochanan and Reish Lakish are satisfied.

However, the *mechirat chametz* model needed to be adapted for selling utensils during the COVID-19 crisis. First, for *mechirat chametz*, the rabbi only meets the non-Jew one time (or twice if he has congregants who are in a time zone where Pesach starts earlier) in order to execute the sale. The sale of utensils requires that such an arrangement be done on a frequent basis so that those who purchase utensils can sell them to a non-Jew and use them soon after. Second, when the rabbi meets with the non-Jew for *mechirat chametz*, the non-Jew physically hands the money for the purchase of the chametz to the rabbi. He also shakes the rabbi's hand as a method of transaction called *situmta*. *Situmta* means that if a symbolic act is performed that is recognized by local businesses as a method of transaction, the transaction is valid. Since business deals are customarily completed with a handshake, a handshake constitutes *situmta* and is customarily employed in *mechirat chametz*. With social distancing guidelines in place, it is not practical for a rabbi to have frequent meetings with a non-Jew that involve the non-Jew and the rabbi physically interacting.

The Beth Din of America, with the guidance of its Sgan Av Beth Din, Rabbi Mordechai Willig and its Director, Rabbi Shlomo Weissmann, created a system to sell one's utensils through an online form.² To accomplish this, the transfer of money is performed electronically. At the time of the sale, the non-Jew uses PayPal to pay a deposit for the utensils that are being purchased. To fulfill the opinion of Reish Lakish, who does not recognize monetary transfer as a valid form of transaction in this situation, the user filling out the form, checks off a box that states, "I hereby convey,

transfer and assign to Mr. Matt Pavia the personal property described above (the "Personal Property"), effective immediately upon my signing and submitting this instrument." Since filling out such a form is considered a customary means of completing a sale online, this constitutes *situmta*. The transactions are performed every few days and the times of the transactions are posted. The introduction to the form states that, "The kelim will be purchased back from the non-Jew at a later date. After that time, since this sale mechanism is only to be used *bisha'as hadechak* (in an extraordinary circumstance) such as the present situation, you should immerse your kelim in a mikvah once it is safe to do so. When the date for the repurchase is established you will be notified by email so that you can properly immerse your kelim in a mikvah at that time."

Medical Issues

Unfortunately, the COVID-19 crisis brought about a number of difficult dilemmas in the area of medical ethics. Healthcare workers were forced to make very difficult decisions regarding allocation of resources, triage, removing patients from ventilators and many other questions. R. Asher Weiss wrote several responsa on these issues. We will give one example. R. Weiss was asked about a Hatzalah member whose wife was in a high-risk category for COVID-19. As a first responder, he was much more prone to getting infected and as such, there would be a greater likelihood that his wife would contract the disease. Should he continue to volunteer for Hatzalah, or should he take a leave of absence?

R. Weiss begins by noting two arguments that could be made for him to continue his work with Hatzalah

based on ideas that R. Weiss noted in a eviuous responsum (*Teshuvot Minchat Asher* 3:121). First, when it comes to the prohibition against self-endangerment, we always weigh the risks against the benefits. If something is potentially dangerous but the gain is greater, we may engage in the activity despite the risk. Second, first responders and health-care professionals who are engaged in life-saving activities are expected to expose themselves to a higher degree of risk than ordinary individuals. As such, we can argue that this member of Hatzalah is permitted to expose himself to contagion because the benefits of saving lives outweigh the risks. Furthermore, because he is a first-responder, perhaps he should be required to do so.

R. Weiss then writes that this line of thinking is incorrect for three reasons. First, it is very likely for a first-responder to contract the disease. This is beyond the higher degree of risk that first-responders are required to undergo. Second, a person may risk his own life when there is a greater benefit, but he doesn't have the right to risk the life of others (i.e. his wife). Third, and most important, this is something that others can do instead of him. Since there are others who can respond to the call that do not have high-risk family members, it is better that they be the ones to respond.

Endnotes

1. The rulings referenced in this article were distributed by email or other messaging platforms. Some of the rulings can be found at KolCorona.com which has a collection of many of the rulings that were issued.
2. The form and the details of the system are available at bethdin.org/kelim.