

”את כל הדבר אשר אנכי מצוה אתכם היום



תשמרו לעשות

לא תסף עליו ולא תגרע ממנו”

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תשרי תשע”ח

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TRAVELING FOR CHAG: DO I KEEP ONE DAY OR TWO?

By Rabbi Mosheh Aziz

In the Torah¹, the holidays which we celebrate are always prescribed to have only one day of Yom Tov at a time. For example, Shavuot is kept for only one day. Sukkot only has one day of Yom Tov where one may not perform *melacha*, followed by six days of Chol Hamoed, followed again by only one day of Yom Tov for Shemini Atzeret. This continues to be the practice in Israel until today, as prescribed by the Torah.

Outside of Israel, due to confusion regarding the calculation of the calendar, the rabbis instituted to keep a second day Yom Tov. There are some who suggest² that the practice of observing two days of Yom Tov

dates back over 2500 years, and was first instituted by the prophet Yechezkel and Daniel when Israel was first exiled to Bavel. Even though today we operate on a fixed calendar, and there is no longer any doubt regarding the correct identity of the day of Yom Tov, rabbinic law requires that we continue the traditions of our ancestors and keep two days of Yom Tov.³ The observance of the second day – *Yom Tov Sheni Shel Galuyot* – is required by rabbinic law.

The institution of observing a second day of Yom Tov applies only outside Eretz Yisrael. In Eretz Yisrael, only one day is celebrated as the Torah prescribes. The only exception to this rule is Rosh

Hashana – even in Eretz Yisrael, Rosh Hashanah is celebrated for two days.⁴

What happens if an individual from outside Israel travels to Israel for the holidays, or vice versa? If one was traveling and moving permanently, then he would obviously begin keeping like the native residents of his new locale. For example, a person who moves from the Diaspora to Israel immediately begins to observe only one day of Yom Tov just like native residents of Israel. Even though he had been observing two days of Yom Tov his entire life, once he becomes a resident of Israel he observes only one day.

However, the halacha becomes more complex if

¹ פרשת פינחס

² תשובות רב האי גאון, מובא בילקוט יוסף (עם תרגום אנגלית, מהדורת סקא) דף שסד

³ ביצה ד: ובמשנה תורה הלכות קידוש החודש פרק ה הלכה ה

⁴ ביצה ד: ובמשנה תורה הלכות קידוש החודש פרק ה הלכה ז. אולם, יש ראשונים שסברו

שגם ראש השנה איהו נוהג אלא יום א' בארץ – ע' בבעל המאור למסכת ביצה במה שכתב על הגמ' בדף ה ע"א (ד"ה הא לן הא להו).

someone is visiting Israel but intends to return home after the holiday. For this circumstance, Maran⁵ (Rav Yosef Karo, 16th century) in his responsa applied the principle from the Mishna⁶ that one who leaves his home, but has in mind to return must observe the holiday according to the custom of where he came from, and not according to the custom of where he is staying. Maran argues forcefully that this is the correct practice, and that the common practice of his day was that those who came from outside Israel to Israel for the holiday would observe the second day of Yom Tov, and make their own *minyanim* with Torah reading like the second day of Yom Tov. Based on this principle, Maran says that an individual who lives in Israel but is spending the holiday outside Israel should keep only one day of Yom Tov (just like his place of residence). However, Maran says that such an individual should not publicly do *melacha*

on the second day, even though he himself is not keeping the second day of Yom Tov. If such a person wants to work or do something which is forbidden on Yom Tov, he should only do so privately and not publicly. For example, if he wishes to drive, or turn on the lights, or buy or sell an item, he must do so privately and not in a way which would disrespect the Jewish community where he is residing for the holiday, since they are keeping the second day of Yom Tov.

The Hacham Tzevi⁷ (Rav Tzevi Hirsch Ashkenazi, 17th Century) in his responsa disagrees with Maran's contention the we should apply the principle that one who leaves his home but has in mind to return should observe the holiday according to the custom of where he came from. Hacham Tzevi was asked about those outside of Israel who travel to Israel for the holidays, if they should observe one day or two days of Yom Tov. He says that the principle

regarding one who leaves his home but has in mind to return only applies to matters of *minhag*, not matters of *halacha* or of *mitzvot* in the Torah. Only in areas where two communities differ in customs do we say that an individual should be strict and observe according to the custom of the community he came from. However, the situation of keeping one day or two days of Yom Tov is not only a matter of custom. In fact, if a resident of Israel decided to keep two days of Yom Tov instead of one day, he would be violating a Torah commandment not to add on to the Torah!⁸ Therefore, Hacham Tzevi ruled that those who go to Israel for the holidays must keep only one day of Yom Tov. He rules that on the second day they should pray as they do in Israel, and they may even do *melakha*.

The final halacha continues to be a matter of wide-ranging *machloket* with many opinions.

⁵ שו"ת אבקת רוכל סימן כו
⁶ פסחים פרק ד משנה א

⁷ שו"ת חכם צבי סימן קסז

⁸ דברים פרק יג פסוק א, וכמבואר במשנה
תורה הלכות ממרים פרק ב

Rav Ben-Haim's pesak:

One who travels from outside Israel to Israel for the holidays:

If the person owns an apartment or home in Israel, he should keep only one day of Yom Tov in Israel. It is as if he is going back to his own home, even if it is only temporary.⁹

If the person is single (unmarried), and if, in theory, if the circumstances were right (if he or she would find the perfect spouse in Israel and/or find a job, and his or her expenses would be taken care of) he or she would move to Israel, he or she should also keep only one day of Yom Tov.¹⁰ It is on this basis that students studying in yeshiva or seminary in Israel should only observe one day of Yom Tov.

If an individual is married, and does not have a residence in Israel, he should be strict and not perform *melacha* on the second day of Yom Tov. On the second day, he should pray as though it is a regular day (or Chol Hamoed, depending on the holiday). If it is not Chol Hamoed, he must wear *tefillin*. However, he should not engage in any acts of *melacha* which are prohibited on Yom Tov such as driving or turning on lights. An Israeli who is not keeping the second day of Yom Tov may perform these acts for him.

One who travels from Israel to outside Israel for the holidays:

A resident of Israel who is outside of Israel for the Yom Tov, whether single or married, should follow the opinion of Maran. In essence, he only keeps one day of Yom Tov even though he is outside Israel. The second day for him is a regular day (or Chol Hamoed, depending on the holiday) and he should pray accordingly in private. Out of respect for the Jewish community residing there, he may only perform *melacha* in private for himself and not in public. He should not perform acts of *melacha* for the other Jews residing there. He may participate in the meals and holiday rituals together with the Jews who are keeping two days of Yom Tov.

⁹ מורנו הרב נר"ו אמר שכך שמע מפני הרב מרדכי אליהו זצוק"ל כששאל אותו הלכה למעשה

¹⁰ שו"ת יחווה דעת חלק א סימן כו

ELEVATORS ON SHABBAT

By Sammy Baniliv

There are varying opinions on the matter of elevator use on Shabbat and Yom Tov. In this article, we will attempt to show all sides of this highly debated topic in Halacha.

One of the earliest discussions on the use of elevators was put forth by Rabbi Yitzchok Yaakov Weiss (1902-1989, author of responsa Minchat Yitzchak).⁹ Rabbi Weiss forbade the use of all elevators on Shabbat, even if they are completely automated. Rabbi Weiss's primary argument states that a passenger's addition of weight in an elevator causes the elevator to work harder, thereby causing its motor to produce more current. The basis for his ruling is the case in the Gemarah¹⁰ where it states that there is a rabbinic enactment to avoid riding on a sedan-like chair being carried by others because it is not in the spirit of Shabbat. He concludes by saying that there should be no difference between riding in a horizontal or vertical mode of transportation.

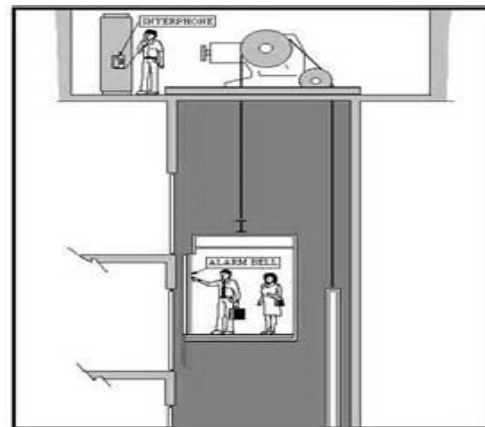
Another prominent 20th century posek, Rav Yosef Eliyahu Henkin¹¹ (1881-1973) held that it is permissible to ride an elevator if one does not push any of the buttons. Rav Henkin points out that the Halacha¹² follows the opinion of Beit Hillel,¹³ who holds that prior to Shabbat one may

arrange for his utensils to perform work on Shabbat. Accordingly, since the rider performs no *melacha* (forbidden act of labor) on Shabbat itself, Rav Henkin argued to permit the use of an elevator on Shabbat if no buttons are pushed. Rav Moshe Feinstein¹⁴ (1895-1986) agrees with Rav Henkin's ruling that if the elevator is not operated by a Jew, and a non-Jew has not been explicitly instructed to operate the elevator, one may ride the elevator.

Increased Electricity Flow, Significant?

According to some poskim¹⁵ in the case of an elevator the increased current/electricity flow is only caused indirectly (*gerama*) When one enters the elevator, the motor is not operating. Only at a later point in time, when the elevator begins to ascend, does the current flow increase. Performing *melacha* on Shabbat indirectly (via *gerama*) is permitted in cases of exceptionally great need.¹⁶ This is similar to the case discussed in the Gemara¹⁷ of "Sof Chamah Lavo". The Gemara discusses a case in which one ties a man up in the desert and leaves him in the desert overnight. The sun rises the next morning and kills the victim of heatstroke. The Gemara states that this is considered an indirect murder, and therefore the

perpetrator would not be sentenced to death (although he would face other forms of severe punishment for this heinous crime). Rashi¹⁸ explains that since the killing agent (the sun) was not present when the man tied up the victim, the act is classified as a *gerama*. Similarly, when one enters an elevator, the motor is not operating; it is only when a passenger is standing still that his weight causes an increase in current. This argument was put forth by Rav Shlomo Zalman Aurbach¹⁹, who in turn ruled that an elevator may be used on Shabbat in cases of great need.



Rav Halpern refutes

Rav Levi Yitzchok Halpern (author of the work "Maaliot Bishabbat"), a foremost expert on the halachic dynamics of an elevator, points out that the weight of the passenger riding on the elevator

⁹ מנחת יצחק ג:ס

¹⁰ מסכת ביצה דף כה ע"ב

¹¹ כל כתבי ב:נט

¹² שולחן ערוך אורח חיים סימן רנב סעיף ה

¹³ מסכת שבת דף יז

¹⁴ אגרות משה או"ח ח"ב סי' פ

¹⁵ שמירת שבת כהילכתה ח"א עמוד שה

¹⁶ שולחן ערוך סימן רלד

¹⁷ סנהדרין דף עז עמוד א

¹⁸ שם ד"ה סוף חמה

¹⁹ שמירת שבת כהילכתה א:שה

assists the elevator's motor in the descent of the elevator. He writes: "If the passenger is responsible for the descent, he is responsible also for illuminating the breaks, lights and other electric appliances which are activated during the descent."²⁰

Rav Halpern points out another problem associated with descending via an elevator. He writes: "When the car is descending with a heavy passenger load it may speed up to a point where the counterforce developed in the motor is greater than the force of the electric power station. When this condition occurs, the motor, rather than aiding the descent, is used to brake the car thus preventing dangerous overspeed. When the speed of a motor increases to a value above that for which it was designed, it automatically becomes a generator. Instead of consuming electrical energy it generates power which is fed into the electric company lines to be used by consumers in the immediate vicinity."

In other words, when an elevator is in free-fall mode, it may be forced to use a certain amount of counterforce to stabilize the speed at which the elevator is dropping due to the forces of gravity. When this occurs, an electric generator is ignited as a result of the passengers' added weight.

Rav Halpern attempts to prove that one is responsible for his weight even if he is not moving.

The Mishna²¹ discusses a case where two people are in a wagon that is being pulled by a mixture of different types of animals, which is a Biblical prohibition. According to Halacha²² both the driver and the passive rider receive punishments. From this case, Rav Halpern concludes that even though someone is sitting completely motionless and it is purely his weight and nothing else that causes it to move, he is still liable.

Performing an Action that would have occurred either way

Rav Shlomo Zalman Aurbach discusses how, since the passenger is not causing any direct change in the performance of the elevator, his presence may be considered irrelevant in the eyes of halacha. His main proof is from the Gemara²³ which concludes that one who writes two letters in a certain color ink on top of an already existing ink in the same color has NOT violated the prohibition of writing on Shabbat. From a halachic perspective, you have not created or done anything new that did not exist before, so from a halachic perspective this is not classified as "writing". There is a very important concept in Halacha called "מלאכת מחשבת", which means that we are liable for violating Shabbat only when we had a mental or physical attempt to do something new. Therefore, when one does not accomplish something new it is questionable whether he has violated the law.

מסיע אין בו ממש

Rav Shlomo Zalman Aurbach attempts to bring another reason as to why a passenger is not halachically responsible for the effects of his weight on the operation of the elevator. His basis is the concept of "זה יכול וזה אינו יכול". The Gemara²⁴ explains that if two people perform an act that could have been technically accomplished by one person, both parties have not violated a biblical prohibition. But, if both parties are needed to perform the act or labor, then both have violated the prohibition. The latter is the concept of "זה אינו יכול וזה יכול". A discussion arises as to whether someone who "assists" in the performance of the action violates a rabbinic prohibition. The actions of the individual who is unable to perform the *melacha* without the assistance of the other party is described by the Gemara as *מסיע אין בו ממש*, someone who merely assists has no significance. The Halacha concludes that one who assists has violated no prohibition²⁵. Rav Shlomo Zalman Aurbach concludes that an elevator passenger falls under category of someone who is merely "assisting/aiding" to the elevator, thereby concluding that the passenger is not responsible for the effect his weight has on the mechanics of the elevator process.

Asking a Non- Jew to push the button

Asking a non-Jew to perform a *melacha* for the benefit of a Jew

²⁰ מעליות בשבת דף יא

²¹ מסכת כלעים ח:ג

²² שולחן ערוך יורה דעה רצז:יב

²³ מסכת שבת דף קד

²⁴ מסכת שבת דף צב ע"ב

²⁵ יורה דעה סימן קטח סע' כא עיין ט"ז שם,

משנה ברורה סי' שכח ס"ק יא

is not permitted.²⁶ However, there is room for leniency in the case of the elderly, ill or pregnant women.

Other Halachic Concerns

Modern elevators have sensors and other weighing and measuring mechanisms that transmit information to their control systems based on the passenger entering the elevator. These sensors are usually triggered

immediately upon entering and may pose a halachic concern.

Shabbat Elevator

The Shabbat Elevator takes a few steps to minimize halachic issues that exist:

1. The electronic weighing mechanisms in the elevator are disconnected.
2. The elevator is modified so that the passengers weight has no impact on the elevator's descent.
3. Lights and sensors are eliminated or are not triggered immediately upon entrance.

Rav Ben-Haim's pesak:

When planning a trip, one should do his utmost to organize his schedule around staying in an area where he will avoid performing a *melacha*.

When necessary, it is permissible to use a Shabbat-mode elevator.

Although there are authorities that discuss the difference between ascending and descending in an elevator, it is better to refrain completely from using a regularly functioning elevator on Shabbat and Chag due to the variety of prohibitions that can arise.

²⁶ שלחן ערוך אורח חיים סימן רעו סעיף ב

BIYOMO TITEN SECHARO: THE HALACHOT OF COMPENSATING YOUR WORKERS

By Sammy Baniliv

Introduction

The Torah, in Parashat Ki Tisa, discusses the obligation to pay workers the wages they are due and to do so on time. The Torah says:

“You shall not oppress a hired worker who is poor and needy, whether he is one of your brothers or one of the sojourners who are in your land within your towns. You shall give him his wages on the same day, before the sun sets, for he is poor and counts on it, lest he cry against you to Hashem, and you be guilty of sin.”²⁷

Every time we pay a worker on time, even for a job as seemingly miniscule as babysitting or waiting tables, we are fulfilling a Torah mitzvah of *beyomo titen secharo*, and refrain from transgressing a prohibition of *bal talin*.²⁸ Considering that nearly every individual must deal with the concept of compensating workers in some form, it is very important to be familiar with the details pertaining to this law.

According to Jewish law, an employee should be compensated with money, not a cash equivalent, unless the person

on the receiving end agrees to it.²⁹ For instance, one may not pay his babysitter with a supermarket voucher rather than cash, even if it holds the same value. The only exception to this case is if the worker wholeheartedly agrees to accept vouchers in payment for his services. In such a scenario, it is permissible to pay in this manner, since he waives his right to be paid in cash. Payment in something other than money is prohibited in a case of duress or if the receiver feels severely reluctant.³⁰ An employer must prepare himself in advance to ensure that he will be able to pay his worker upon completion of the job (whether at the end of the day for a day laborer, or upon producing the finished product for a contractor). If one has limited funds, it is prohibited to spend money if, as a result, one will be unable to pay his workers on time.

Defining the Types of Laborers

In addressing the question of when a laborer must be paid for his work, the first issue that requires attention is how the laborer is defined.

Employee Vs Contractor

One important distinction lies between an employee and an independent contractor. According to Halacha, the primary difference between the two is whether the employer can demand that the job is performed in a specific manner. If the employer retains the right to decide how the job is completed, the worker is classified as an employee. If the employer only retains control over the finished product and not over how the job is done, the worker is classified as an independent contractor. It is worth noting that if the worker is highly specialized in his field, he is likely an independent contractor.

Another fundamental difference lies in whether the employee is paid for his time or for the job. The Rama³¹ writes, “If one is hired for a period of time he is considered a *po'el*, whereas if he is hired to teach a child a book he is a *kablan*. Only when he must work for hours, so that the employer effectively owns his time, is he considered a laborer.”

²⁷ דברים כד, יד-טו

²⁸ ויקרא יט, יג

²⁹ חושן משפט סי' שלו סע' א

³⁰ תוספות מסכת בבא קמא דף ט ע"א

³¹ חושן משפט סימן שלג סע' ה

Paying a Laborer (po'el)

The Torah passage referring to payment on time seems to be referring to a time-based laborer (po'el): "You shall give him his wages on the same day, before the sun sets, for he is poor and counts on it, lest he cry against you to Hashem, and you be guilty of sin."

The negative commandment is clearer: "You shall not leave the wages of a laborer (sachir) with you until the morning."

The Ramban³² explains that the straightforward explanation of the words is that a day-laborer must be paid upon completing his

workday, before sunset, so that he can purchase basic requirements for himself and his household.

Likewise, the Shulchan Arukh³³ rules: "What are their times? A day laborer must be paid during the subsequent night, and a night laborer during the subsequent day". The Shulchan Arukh continues by explaining what the halachah would be for a worker who works for a number of hours during the day or night (and not for the entire day or night): "If he completes his work in the day, he must be paid on that day. And if at night, he must be paid during that same night."

Paying a Contractor (Kablan)

Due to the nature of the mitzvah—the basic requirement to ensure that workers are paid on time—it was clear to the Sages of the Talmud that the obligation of timely payment applies not only to a laborer, but also to a contractor who is hired to perform a specific job. However, unlike a po'el, a contractor does not need to be paid until he completes the entire job he was assigned.

SUMMARY

Today, many forms of compensation exist. However, as discussed above, it is still an employer's Halachic obligation to pay his workers in a timely and appropriate fashion and to abide by all the terms of his workers contract in an appropriate manner.

לעילוי נשמת האשה הכשרה שגדלה בניה ובנותיה בדרכי התורה

ורדה בת בן-ציון ע"ה

³² רמבן על התורה פרשת דברים

³³ חושן משפט סי' שלג סע' ד

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